EMPLOYMENT TRIBUNALS

Claimant: Ms A Florczak

Respondents: (1) Newmor Group Limited
(2) Mr P Chambers
(3) Mr S Maiden
(4) Mrs R Jones
(5) Mrs E Reading
(6) Mrs P Gittins
(7) Mrs E Hall

Heard: by video

On: 5, 6, 7, 8, 9, 12, 13 & 14 October 2020; 19 November 2020 and 20 November 2020 (in chambers)

Before: Employment Judge S Jenkins
Mr J Williams
Mr C Stephenson

Representation
Claimant: In person
Respondent: Mr S Willey (Solicitor)

RESERVED JUDGMENT

1. The Claimant's claim of unfair dismissal against the First Respondent succeeds, but only on procedural grounds, due to the failure by the First Respondent to allow an appeal hearing. The original decision to dismiss was however fair, and had an appeal hearing taken place it would not have affected the outcome. Therefore, no compensatory award is awarded to the Claimant in respect of that unfair dismissal. Neither is any basic award awarded, on the basis that the Claimant's conduct before her dismissal was such that it would be just and equitable to reduce it to zero.

2. The Claimant's claims other claims; of direct discrimination on the ground of race, harassment on the ground of race, victimisation, and unauthorised deductions from wages; against all Respondents all fail and are dismissed.

REASONS

Background

1. The Claimant had brought claims against of unfair dismissal, direct discrimination on the ground of race, harassment on the ground of race, victimisation, and unauthorised deductions from wages against her former employer, the First Respondent. She had also brought separate claims of direct discrimination on the ground of race and/or harassment on the ground of race against the other six Respondents, the first five of whom are employees or former employees of the First Respondent, and the sixth of whom was an external consultant engaged by the First Respondent to deal with disciplinary allegations against the Claimant. The case numbers relating to each Respondent are set out in the Appendix to this Judgment.

2. This case was originally listed in January 2020, following a preliminary hearing before Employment Judge Davies on 8 November 2019, to take place in person at the Aberystwyth Civil Justice Centre over seven days commencing on 6 October 2020. The Covid-19 pandemic obviously interfered with that, although the listing was able to be maintained.

3. At a telephone preliminary hearing before Employment Judge Moore on 30 July 2020, the Claimant confirmed that she did not have the technology to be able to participate in the hearing remotely, via the Cloud Video Platform ("CVP"). It was therefore confirmed that the Claimant would continue to attend at the tribunal venue in Aberystwyth, together with an interpreter, with appropriate technology being made available there for her to participate in the hearing, which would otherwise take place remotely, with the Respondents and all their witnesses participating remotely, as also would be the case with the three members of the Tribunal.

4. A further telephone preliminary hearing took place before Employment Judge Brace on 18 September 2020 to confirm the final arrangements for the hearing. Judge Brace set out a proposed timetable for the hearing, predicated on the Claimant and her witnesses giving evidence first. That was on the basis that, despite the Claimant's expressed wish for the Respondents' witnesses to go first, as the Claimant's allegations of discrimination formed the majority of the claims, where the burden of proof initially lay with her, it would be in accordance with the overriding objective for the Claimant's witnesses to give their evidence first.

5. Judge Brace, whilst indicating that it would ultimately be a matter for the tribunal hearing the claim, also set out a proposed hearing timetable. It was anticipated that the first day of the hearing would be confined to the Tribunal reading the witness statements and documents, with the parties not needing to attend. The Claimant's and her witnesses' evidence would be taken on the second day and the morning of the third day, and the evidence of the Respondents' witnesses would be taken on the afternoon of the third day and throughout the fourth and fifth days. Closing submissions would then take place at the start of the sixth day for one hour, with the remainder of the sixth day and the seventh day being earmarked for the Tribunal's deliberation, the preparation of the judgment, and the delivery of that judgement. Judge Brace also noted that a Polish interpreter would need to

be available for the entirety of the hearing for the benefit of the Claimant.

6. In the event, the passage of the hearing proved difficult in the extreme. After the first day of the Tribunal's reading, the Claimant missed the train to travel from her home in Welshpool to Aberystwyth on Day 2 (Tuesday 6 October 2020) and the hearing was not therefore able to commence until 11:45am. Approximately an hour was then spent dealing with preliminary matters, including the fact that one of the Claimant's witnesses would not be able to attend due to illness, the Claimant's indication that she was now able to participate in the hearing via CVP, and a further application by the Claimant for the Respondents' evidence to be taken first, which was refused for similar reasons advanced by Judge Brace. The hearing then commenced, in terms of hearing live evidence at 1:45pm, the cross-examination of the Claimant by the Respondent's representative took place until 4:10pm, including a short break, and, after dealing with further administrative matters regarding the participation of the Claimant and interpreter by CVP on the third day, the day concluded at 4:25pm. In total therefore, the Claimant was questioned by the Respondent's representative on the first day for approximately two and a quarter hours.

7. On Day 3 (7 October 2020), the Tribunal initially received an email from the interpreter, Mrs Klimczok, noting that her child was unwell and, therefore, due to her childcare obligations, that she would only be able to participate in the hearing until 2:00pm. In the event, that proved not to cause any practical difficulties, as neither the Claimant nor the interpreter were able to connect to the hearing via CVP, despite many attempts, including with the assistance of the National CVP Helpline. The parties were therefore notified that we would revert to the original plan of the Claimant attending at Aberystwyth on the fourth day. Despite her inability to connect, the Claimant made further representations by email that she should be allowed to participate in the hearing from her home. In response, two emails were sent to her on the afternoon of 7 October 2020, informing her that, in light of her inability to connect, the delays that had already been experienced, which meant that there was, by then, barely enough time left to enable the evidence of the witnesses to be considered and for the parties to make their closing submissions, the indicated arrangements would remain and the Claimant would be required to attend at the Aberystwyth Hearing Centre on Thursday 8 October. Arrangements were made for a different interpreter to participate in the hearing remotely.

8. Unfortunately, Day 4 (8 October 2020) followed torrential overnight rain, which led to flooding in the region and the cancellation of the Claimant's trains. In the circumstances, it was indicated to the parties that further attempts would be made to see if the Claimant could connect to the hearing on CVP from her home, but these again proved fruitless. Again, therefore, no evidence was able to be heard. In light of the delays that had arisen, the ability for the case to proceed on an eighth day (Wednesday, 14 October 2020) was explored with the parties, and it transpired that an additional day was able to be added in order to retain the ability to at least conclude the evidence and submissions.

9. Further problems arose on Day 5 (Friday 9 October 2020), with a further train cancellation, this time understood to have been for mechanical

reasons, which meant that the Claimant was unable to attend the hearing in Aberystwyth until just after midday. The cross-examination of the Claimant by the Respondent's representative continued from 12:15pm to 1:30pm and from 2:15pm to 4:30pm, with short breaks. It was agreed with the parties that the lunch break would be reduced to 45 minutes on that day and all remaining days, in order to broadly maintain the originally proposed timetable by Judge Brace of one and a half days (approximately eight hours) for the Claimant's evidence, two and a half days (approximately thirteen hours) for the Respondents' evidence, and one hour for submissions. At the conclusion of the day, the Claimant repeated her request to give evidence remotely from her home, but that application was again refused due to the previous problems which had occurred over two days with the Claimant's internet connection from home and the lack of any further leeway for delays in the adjusted hearing timetable.

10. Day 6 (Monday, 12 October 2020) proceeded relatively smoothly, albeit there was a slightly late start. It was made clear to the Respondents' representative that he would need to conclude his questioning of the Claimant that morning, that we would then start the evidence of the Respondents' witnesses, although we would need to interrupt that evidence in the afternoon to take the evidence from the Claimant's daughter, who was only going to be available after 3:30pm. In the event, with some short breaks, and also some interruptions due to the loss of the interpreter's connection, the cross-examination of the Claimant concluded at 1:05pm.

11. The Claimant commenced the cross-examination of the Respondents' first witness, Mrs Rachel Jones, at 1:55pm, and a short break took place between 3:15pm and 3:20pm. The cross-examination of Mrs Jones then continued until 4:10pm, at which point the Respondent's representative was asked how much time it was felt he would need to question the Claimant's daughter, and the Claimant was asked how much longer she anticipated questioning Mrs Jones. In light of the Claimant's indication that it was not likely that the evidence of Mrs Jones would be completed that day, the evidence of Mrs Jones was interrupted, and the cross-examination of the Claimant's daughter, Ms Ewelina Florczak, by the Respondent's representative took place. That commenced at 4:25pm and, including re-examination, concluded at 4:40pm. The cross-examination of Mrs Jones then continued until 5:05pm.

12. At the conclusion of the day, the Judge pointed out to the Claimant that she had spent a long time questioning Mrs Jones, and that she had a limited amount of time available for her cross-examination, which was, leaving one hour at the end of the hearing aside for submissions, approximately eleven further hours to deal with eight additional witnesses. The Claimant was therefore directed to produce an approximate timetable at the start of the seventh day, setting out the timings of her questioning of the other witnesses. The Claimant again repeated her request to be allowed to participate in the hearing from her home, noting that her daughter had been able to do so successfully via her mobile phone. That request was, however, refused, due to the previous difficulties that had been experienced with the Claimant's connection and the ongoing lack of any leeway for further delays to be accommodated.

13. In the event, at 9:19am on the morning of Day 7 (13 October 2020), the Claimant sent an email to the Tribunal, noting that she had been sick in the night and that morning, and, despite getting ready for the train (which departed at 07:49am) was unable to travel. she again requested for the hearing to be conducted remotely, which was taken to be an application for her to participate from her home. In the circumstances, there was no alternative other than to try to continue with the hearing with the Claimant connecting from her home, hoping that the connection would be effective.

14. In the event, whilst the Claimant did not access the hearing until approximately 10:05am, she was able to connect with the hearing via her mobile phone and the hearing was therefore able to proceed. However, the connection was not perfect and there was a lot of feedback and echoing which, at times, made it difficult to follow what was being said, particularly in the afternoon. It became apparent, when the Claimant was briefly muted when the Tribunal was asking questions of a witness in the afternoon, that the issue appeared to lie with the Claimant's connection, and it was recommended to her that she use headphones the following day, which she did, with a significant improvement in the quality of the connection.

15. At the start of Day 7, the Claimant was asked about the timetable that she had been directed to produce, but she could not produce such a timetable and could give no indication other than she felt she should be able to conclude by the end of Day 8, and that two particular witnesses would be shorter than the others. Whilst it was accepted that the Claimant, as a litigant in person, would have limited experience of cross-examination, although it was noted that she had represented herself at a lengthy hearing of her claims against another employer in 2018 and 2019, it was pointed out that there was only a limited time available for her to question the Respondents' witnesses and therefore that it was in her interests to manage her timings. The Judge indicated to her that he would, in the circumstances, notify her every 30 minutes of the time being taken and would potentially ask her to bring her questioning of witnesses to a conclusion in order to ensure that evidence and submissions were completed by the end of the eighth day.

16. The questioning of Mrs Jones continued, with a short break, until 11:08am, at which point the Claimant was asked how much longer she intended to take with her. She agreed with the Judge's suggestion that it should not take more than a further ten minutes. At 11:19am, the Judge warned the Claimant that she had taken a further ten minutes, and therefore she needed to bring her questions to Mrs Jones to a conclusion. at 11:28am, the Judge indicated to the Claimant that she would be allowed two further questions of Mrs Jones and then had to finish, and the questioning by the Claimant of Mrs Jones then concluded at 11:30am.

17. Following a short break, which was slightly extended due to the Claimant's delayed return to the hearing, the Respondents' second witness, Mrs Denise Jones, commenced her evidence at 11:43am. Mrs Jones no longer works for the First Respondent, and had other commitments in the afternoon, and therefore was only available for that morning, and it was made clear to the Claimant that she therefore only had one and a quarter hours in which to question her. The Judge reminded the Claimant

periodically of the time that she was taking, and suggested that she focus her questioning on the issues which had been identified during the hearing before Judge Davies back in November 2019. Despite the indication to the Claimant that the questioning of Mrs Jones would need to be completed by 1:00pm, she was allowed to continue beyond that, and, at 1:10pm, the Judge indicated that it seemed that the Claimant was going over ground that had already been covered with Mrs Jones. Following two further questions, which again went over earlier ground, the Judge indicated that he was requiring the Claimant to bring her questioning to an end. She was then allowed three further questions which meant that the questioning of Mrs Jones concluded at 1:17pm.

18. The Respondents' next witness, Mrs Pauline Gittins, commenced her evidence at 2:05pm, at which point the Judge indicated to the Claimant again that she should focus on the issues identified by Judge Davies and should perhaps spend less time on background matters. The Judge alerted the Claimant to the fact that she had been questioning the witness for 35 minutes at one point and, at 3:00pm, asked the Claimant how much longer she considered she would need to take with the witness, bearing in mind that one of the Respondents' other witnesses, Mr Karpisciuk, who also no longer worked for the Respondent, was only available that afternoon. The Claimant replied that she felt she would need another hour with Mrs Gittins, to which the Judge responded that this would mean that she would end up taking up one and three-quarter hours with the witness, that there did not seem to be a need for so much time to be taken, and that it would eat into the time the Claimant otherwise had to question other witnesses.

19. The Judge indicated that he would need to limit the time available to the Claimant to question the Respondents' witnesses in order to get the hearing completed in line with the provisional timetable set out by Judge Brace, of giving the Claimant two and a half days to question the Respondents' witnesses, and he therefore directed the Claimant that she should look to finish the questioning of Mrs Gittins by approximately 3:30pm. At 3:32pm, The Judge noted that he could only give the Claimant a little more time to question the witness, and at 3:47pm (there having been a delay of two minutes due to the loss of the Claimant's connection), the judge indicated to the Claimant that he could only give her five more minutes. At 3:52pm, the Judge indicated to the Claimant that he was ordering that her questioning of the particular witness should end, noting his power to do so under Rule 45 of the Employment Tribunals Rules of Procedure. The questioning of the Respondent's fourth witness, Mr Kamil Karpisciuk, then took place over the remainder of the afternoon, concluding at 5:00pm.

20. At the conclusion of the day, the Judge noted that there were five of the Respondents' witnesses to be questioned on the last day of the hearing, and, bearing in mind that an hour would need to be reserved at the end of the day for closing submissions, that would mean there was approximately one hour per witness available to the Claimant on average. It was made clear to the Claimant that if she wanted more time than that with one witness then she would need to reduce the questioning of another witness or witnesses. The Claimant was again directed to produce, at the commencement of the eighth day of the hearing, a timetable indicating how long she anticipated taking with each witness, failing which, she would be

restricted to only one hour's questioning of each remaining witness.

21. On Day 8 (Wednesday, 14 October 2020), the Claimant again did not connect to the hearing promptly, only connecting at approximately 10:10am, although there was a further delay due to the fact that the interpreter was unable to connect until 10:19am. The Claimant was asked about her anticipated timings. She was initially reluctant to give any such indications, but ultimately said that she anticipated questioning Mr Morris for about an hour, Mrs Reading for possibly 30 to 40 minutes, Mr Chambers and Mr Maiden for approximately an hour each, and Ms Hall for a period which she described as, "quite a lot". The judge indicated that if she needed to ask more questions of Ms Hall, then she would need to reduce her questioning of some of the other witnesses. The Judge also attempted to guide the Claimant with regard to her questioning, noting that there was no need for her to ask people to confirm what was in their statements, and that she should focus on areas of the witness statements with which she disagreed. The Claimant was again informed that the Judge would alert her of the passing of every 30 minutes, and may need to curtail the questioning of the witnesses.

22. Due to the delayed start, the Tribunal explored with the parties their ability to sit later in the day in order to complete the evidence and submissions, whilst retaining the time indicated to the Claimant as available for her questions. However, the interpreter indicated that she could only participate until 4:50pm. Arrangements were, in fact, made by the Tribunal staff following that indication, for a second interpreter to be available from 4:45pm to 6:00pm, although, due to the events described below, that was not required. However, even if no additional interpreter had been available, there was still scope, at that stage, to at least complete the evidence on the eighth day, leaving only submissions and the Tribunal's deliberations outstanding.

23. The questioning of the Respondents' fifth witness, Mr James Morris, commenced at 10:35, and warnings were given to the Claimant after 30 minutes and 45 minutes, and at 11:38am, the Judge warned the Claimant that she had been questioning Mr Morris for over an hour and therefore needed to bring her questioning of him to a conclusion. The cross-examination of Mr Morris ultimately concluded at 11:42am.

24. The questioning of the Respondent's next witness, Mrs Emma Reading, commenced at 11:50am, with the Judge alerting the Claimant to the passing of 15 minutes and 30 minutes in the course of her questioning. At 12:25pm, the Judge pointed out to the Claimant that she had been questioning Mrs Reading for just over half an hour, and therefore needed to bring her questions to a conclusion. At 12:31pm, that point was repeated, and the Claimant responded that she would need two more minutes. At 12:35pm, the Judge indicated to the Claimant that he was bringing her questioning of Mrs Reading to an end.

25. It had been anticipated that the Respondents' next witness would be Mr Paul Chambers, but, although he was connected to the CVP room, he was not able to communicate with the hearing. The questioning of Mr Steve Maiden therefore commenced instead. He was questioned for some 20

minutes before the hearing broke for lunch. Following the lunch period, it became apparent that Mr Chambers' connectivity problems remained, and the Judge indicated to the Claimant that if, as seemed likely, evidence was not going to be heard from Mr Chambers, then that would inevitably mean that a further day to hear evidence would need to be scheduled and therefore she could be given a little more time for her questioning of the two other witnesses of the Respondent, Mr Maiden and Mrs Hall. The Judge noted, however, that he would still remind the Claimant of the time that had elapsed with her questioning if he felt it necessary.

26. The questioning of Mr Maiden resumed at 2:05pm and, at 2:50pm, the Judge warned the Claimant that she needed to finish her questioning of Mr Maiden by around 3:00pm in order to leave sufficient time for her to question Mrs Hall, up to the anticipated finishing time of 4:50pm. Ultimately, at 3:06pm, the Judge indicated to the Claimant that he was bringing her questioning of Mr Maiden to a conclusion and, after questions from the Tribunal, his evidence concluded at 3:15pm. A five-minute break took place in order to leave at least one and a half hours for the Claimant to cross-examine Mrs Hall.

27. However, Mrs Hall also had difficulties in accessing the hearing, and ultimately only did so at approximately 3:45pm. As it would not have been appropriate to limit the Claimant's questioning of Mrs Hall to just over an hour, which would need to include time for questions from the Tribunal, it was decided that it would be best not to commence Mrs Hall's evidence when it would inevitably not be concluded, and, as the Tribunal had to reconvene for a further day to hear Mr Chambers' evidence and the closing submissions, we would also hear from Mrs Hall on that day. The hearing then concluded at 3:50pm.

28. A further hearing day was allocated on 19 November 2020, to commence at 10:00am, in order to deal with the remaining two witnesses and the parties' submissions. A further day, 20 November 2020, was then allocated to the Tribunal for its deliberations in chambers.

29. However, Day 9 (19 November 2020) did not proceed any more smoothly than the earlier days. At the scheduled starting time of 10:00am, everyone bar the Claimant was present in the CVP Hearing Room. The Claimant then joined the Room at 10:27, having experienced technical difficulties in joining. Notwithstanding that however, the Claimant's connection was very poor and there were significant difficulties in her hearing what was being said and in her being heard by others.

30. A work-around to the difficulties was suggested of the Claimant dialling in to the CVP room from her landline, which would then serve as an audio link, and the Claimant's participation by both video and audio commenced at 10:53am. She then explained, it having been confirmed that the telephone line was not free, that she would need to break off the call after just under an hour in order to avoid being charged for the call, but that she could then redial a few minutes later. The hearing then proceeded in that manner, with the Claimant breaking off from the audio connection every 55 minutes or so, and with the Tribunal taking a break of five minutes or so on each occasion. However, at all times, the Claimant had difficulty in reconnecting, seemingly

due to her difficulty in reading the required access codes and inputting them into her telephone, such that delays occurred at every break in the proceedings, on the first occasion by over 30 minutes.

31. Due to the delays, it was proposed and agreed that a lunch break of only 30 minutes would be taken, between 1:15pm and 1:45pm. However, during that period, the Claimant left a message in the chat room of the CVP hearing, stating that her daughter had been in an accident which had led to her leg being injured and that she needed 20 minutes, which we presumed to mean 20 more minutes. In the circumstances, we therefore indicated we would reconvene at 2:05pm, and the Claimant reconnected by video at 2:06pm. However, again due to difficulties in the Claimant accessing the hearing via her landline, the hearing did not, in fact, recommence until 2:33pm.

32. The upshot of the delays, and a brief discussion at the start of the day in which we agreed to the Respondent adducing two emails which had come to its attention earlier in the week, but which had some relevance for the case, was that the Claimant's cross-examination of the two witnesses, Mr Chambers and Mrs Hall, had to be slightly curtailed, to 71 minutes in the case of the former, and 97 minutes in the case of the latter.

33. Ultimately, the evidence of the two witnesses was completed just before 5:00pm. At that point, the parties and interpreter confirmed that they could continue beyond 5:00pm in order to complete closing submissions and avoid going part-heard again., It was made clear to the parties that they would have only 30 minutes each in which to make their submissions. The interpreter requested a break of 15 minutes before proceeding, and we therefore prosed to commence submissions at 5:15pm. The Claimant however did not attempt to reconnect to the hearing until 5:20pm, and due to further difficulties in connecting via her landline, did not fully connect until 5:26pm.

34. During the course of the Respondent's submissions, the Claimant complained that she needed more time to write down what the Respondent's representative was saying. However, the Judge indicated to the Claimant that no further time could be provided, and that she should use the time when the Respondent's representative was speaking in English to write down what the interpreter had said to her in Polish. We observe, in fact, that the process of translation meant that the Claimant had more time to write down what was being said than would have been the case had the proceedings been conducted entirely in English, without the delays that naturally arose due to the need for translation.

35. Due to the Claimant's interruptions, the Respondent's representative was given until 6:00pm to complete his submissions, with the Claimant being given from 6:00pm to 6:30pm, when the proceedings finally concluded.

Evidence

36. We heard evidence from the Claimant and from her daughter, Ewelina Florczak, on behalf of the Claimant. We also had regard to a written witness statement of the Claimant's trade union representative, Roy

Streeter. However, Mr Streeter was not able to give evidence before us due to illness. His evidence was not therefore able to be tested by the Respondent, and there was therefore very limited weight that we could give to at his evidence, which, in any event, appeared largely to report what the Claimant had told him. The Claimant confirmed under cross-examination that she had provided bullet points to Mr Streeter for inclusion in his statement, and large parts of the statement referred to the Claimant in the first person which would appear to confirm that.

37. On the Respondent's side we heard evidence from Rachel Jones, Human Resources Manager; Denise Jones, former Senior Company Accountant; Pauline Gittins, former Interim Human Resources Manager, Kamil Karpisciuk, former Manufacturing Manager, James Morris, Managing Director; Emma Reading, Health and Safety Manager; Steve Maiden, Operations Director; Paul Chambers, former Manufacturing and Technical Director; and Emma Hall, Senior HR Consultant from Make UK.

38. We also had regard to the various documents in the bundle spanning some 512 pages to which our attention was drawn.

Issues and Law

39. Judge Davies had, following the hearing on 8 November 2019, identified the issues to be determined as follows.

1. Time limit / limitation issues

a. Were the Claimant's complaints presented within the time limits set out in Sections 123(1)(a) & (b) of the Equality Act 2010 ("EqA")?

b. Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; whether time should be extended on a "just and equitable" basis; when the treatment complained about occurred; etc.

2. Unfair dismissal

a. What was the principal reason for dismissal and was it a potentially fair one in accordance with Sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")? The Respondent asserts that it was conduct.

b. Did the Respondent hold that belief in misconduct on reasonable grounds, following a reasonable investigation? The Claimant identifies:

i. not permitting the Claimant a full opportunity to explain herself during disciplinary meeting;

ii. not permitting interpreter to provide full translation service;

iii. refusing the Claimant a right of appeal.

c. Was the dismissal fair or unfair in accordance with Section 98(4) ERA? Was the decision to dismiss a sanction within the "band of reasonable responses" for a reasonable employer?

3. Remedy for unfair dismissal

(i) If the Claimant was unfairly dismissed and the remedy is compensation:

a. If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the Claimant would have been dismissed had a fair and reasonable procedure been followed?

b. Would it be just and equitable to reduce the amount of the Claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to Section 122(2) ERA; and if so to what extent?

c. Did the Claimant, by blameworthy or culpable actions, cause or contribute to the dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to Section 123(6) ERA?

4. EQA, section 13: direct discrimination because of race

*a. Has **Newmor** treated the Claimant as follows:*

i. Paul Chambers shouted out the Claimant on 16 November 2018 "speak English not Polish";

ii. failed to investigate the Claimant's complaint in accordance with procedure – did not provide witness statements despite being asked for them and did not suspend Paul Chambers following a complaint of harassment;

iii. Mr Morris failed to provide a safe working environment by failing to take the Claimant's complaints, made in October – December 2018, seriously thus allowing further incidents to arise.

*b. Has **Steve Maiden** treated the Claimant as follows:*

i. failing to investigate her grievance in accordance with ACAS guidance;

ii. allowing Pauline Gittins to be present during and to lead investigatory meetings, when she was one of the individuals the Claimant had complained about;

iii. *not permitting the interpreter to interpret all of what was said during the grievance meeting on or around 17 December 2018;*

iv. *not permitting interpreter to sit by the Claimant during the grievance meeting and situating interpreter between Ms Gittins and Mr Maiden;*

v. *failing to provide investigatory witness statements to the Claimant;*

vi. *delay in providing grievance outcome, which was not provided until on or around 15 March 2019;*

The Claimant relies upon hypothetical comparators only.

c. *Has **Emma Reading** treated the Claimant as follows:*

i. *on or around 6 December 2018 visiting the Claimant's home address?*

d. *Has **Pauline Gittins** treated the Claimant as follows:*

i. *on or around 15 November 2018 following the Claimant into a bathroom to invite her to a meeting at short notice without trade union representative or interpreter;*

ii. *commencing disciplinary action against the Claimant immediately after the Claimant raised a grievance in December 2018.*

e. *Has **Paul Chambers** treated the Claimant as follows:*

i. *on or around 16 November 2018 shouting at the Claimant "speak English not Polish".*

f. *Has **Emma Hall** treated the Claimant as follows:*

i. *permitting Rachel Jones to be present during the meeting of 10 January 2019 despite the Claimant having raised a grievance about her;*

ii. *telling an interpreter not to provide a full translation service during disciplinary meetings held on 10 January and 30 January 2019;*

iii. *limiting the time available to the Claimant to explain herself during meetings on 10 January and 30 January 2019,*

iv. *on 30 January 2019 informing the Claimant she had only two hours she was in a hurry and failing to convene a further meeting afterwards.*

The Claimant relies on hypothetical comparators only.

g. *Was that treatment "less favourable treatment", i.e. did the Respondents treat the Claimant less favourably than it/they treated or would have treated others ("comparators") in not materially different circumstances?*

h. *Save where indicated above, the Claimant relies on the following comparators; Paul Chambers, Emma Reading, Pauline Gittins, Rachel Jones, Steve Maiden, Denise Jones and/or hypothetical comparators.*

i. *If so, was this because of the Claimant's race and/or because of the protected characteristic of race more generally?*

5. *EQA, section 26: harassment related to race*

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

i. *Newmor's response to Denise Jones' complaint about the Claimant, made after 16 November 2018, which led to the first disciplinary procedure against the Claimant (shortly after the grievance meeting with regarding Paul Chambers)?*

ii. *Rachel Jones 'spreading rumours and encouraging other employees to treat the Claimant differently'*

iii. *Rachel Jones issuing disciplinary letters to the Claimant (this is conceded by the Respondents);*

iv. *Rachel Jones making a home visit to the Claimant (the Respondents concede that Ms Jones visited the Claimant's home address to deliver a letter);*

v. *Emma Reading making home visit to the Claimant on around 6 December 2018;*

vi. *Pauline Gittins, on or around 15 November 2018, following the Claimant into a bathroom to invite her to a meeting at short notice without trade union representative or interpreter;*

vii. *Pauline Gittins commencing disciplinary action against the Claimant immediately after the Claimant raised a grievance in December 2018;*

viii. *Paul Chambers shouting at the Claimant "speak English not Polish" on or around 16 November 2018;*

ix. *Emma Hall sending the Claimant an email on a Sunday in January 2019 demanding information;*

x. *Emma Hall telling an interpreter not to provide a full translation service during disciplinary meetings held on 10 January and 30 January 2019;*

xi. *Emma Hall limiting the time available to the Claimant to explain herself during meetings on 10 January and 30 January 2019;*

xii. *Emma Hall, on 30 January 2019, informing the Claimant she had only two hours as she was in a hurry and failing to convene a further meeting afterwards.*

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

c. *If so, did it relate to the protected characteristic of race?*

d. *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?*

e. *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? (Whether 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.)*

6. *EQA, section 27: victimisation*

a. *Did the Claimant do a "protected act". The Claimant relies upon the following:*

i. *Grievances she made against Pauline Gittins of victimisation harassment and bullying.*

ii. *Grievance against Paul Chambers of 17 December 2018.*

b. *Did Pauline Gittins subject the Claimant to detriments as follows:*

i. *on or around 15 November 2018 following the Claimant into a bathroom to invite her to a meeting at short notice without trade union representative or interpreter;*

ii. *commencing disciplinary action against the Claimant immediately after the Claimant raised a grievance in December 2018;*

iii. *from around 17 December 2018 (when the Claimant complained about Paul Chambers) until the Claimant's suspension on 22 January 2019, Pauline Gittins checked up on the Claimant every day thereby placing pressure on her;*

iv. Preventing an interpreter from providing a full translation service for the Claimant during meetings.

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?

7. Unauthorised deductions

Did the Respondent make unauthorised deductions from the Claimant's wages (Section 13 ERA) during the period of suspension and if so how much was deducted?

40. That list encapsulated the vast majority of the applicable law. However, we were also conscious, in relation to the discrimination claims, of the need for us to apply the terms of section 136 of the Equality Act 2010 regarding the burden of proof, as clarified by a number of appellate decisions, notably; Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong [2005] ICR 931, CA; Madarassy v Nomura International plc [2007] ICR 867; and Hewage v Grampian Health Board [2012] ICR 1054 That required us to consider whether the Claimant had established any primary facts from which we could infer, in the absence of a satisfactory, non-discriminatory reason from the Respondents, that discrimination had occurred. If that occurred, we then had to consider whether the Respondents, or the relevant one of them, had satisfied us that there was indeed a non-discriminatory reason for its treatment of the Claimant. We were further conscious, in that regard, of the guidance provided from the Employment Appeal Tribunal, in the cases of Dziedziak v Future Electronics (UKEAT/0270/11) and Kelly v Covance Laboratories Ltd [2016] IRLR 338, relating to the issues identified at paragraphs 4(a)(i), 4(e) and 5(a)(viii) above.

Findings

41. Our findings, where there was any dispute formed on the balance of probabilities, that were relevant to the issues that we had to decide were as follows.

42. The First Respondent is a company based in Welshpool, which manufactures wall coverings for use in public buildings and also makes wood products for boats and caravans. It employs people from a range of nationalities, with approximately 10% of its workforce being made up of overseas employees, with that percentage having been slightly higher in 2018 and 2019 as the proportion of EU nationals has reduced slightly since then. Of the overseas employees, approximately half are Polish, with other nationalities represented in the workforce being Bulgarian, Romanian and Filipino, and with the First Respondent previously also employing several Spanish employees.

43. The Claimant commenced employment with the First Respondent in October 2014, initially working for 16 hours per week, 7:00am until 10:30am on Mondays to Thursdays and 8:00am to 10:00am on Fridays. Due to difficulties in starting work at the scheduled time, the hours on

Mondays to Thursdays were changed in January 2016 to 7:30am to 11:00am. In June 2016, following the departure of another cleaner, the Claimant's hours were increased to 36 per week, 6:00am to 2:45pm on Mondays to Thursdays, and 7:30am to 3:00pm on Fridays. The Claimant's duties were split over the First Respondent's two sites, and therefore involved some time spent travelling between the two sites, for which time was allocated within the Claimant's overall working times.

44. No issue ever appears to have arisen with regard to the quality of the Claimant's work. However, there were regular issues regarding the Claimant's timekeeping, with the Claimant fairly regularly not starting the work on time, albeit she would generally make that time up, whether later on the same day or on other days. Up until July 2018, those variations appear to have been accepted and managed by the First Respondent, with its payroll team going through the Claimant's working hours manually and making appropriate adjustments to her monthly pay. In July 2018 however, the First Respondent restructured its finance team and made redundant two of the four employees in that team, including the two who had taken responsibility for the payroll function. Mrs Denise Jones, then the First Respondent's Senior Company Accountant, took over responsibility for the payroll, although she had no direct prior experience of it.

45. The changes to the finance team meant that the manual adjustments to the Claimant's wages to reflect the actual hours worked could no longer be accommodated, and Mrs Rachel Jones sent an email to the Claimant on 23 July 2018, noting that she needed the Claimant to keep to her hours as payroll would not have time to make manual adjustments to her pay going forward.

46. Following the changes to the First Respondent's finance team, errors arose in the Claimant's pay for July and August 2018, which appear to have been the starting point for the difficulties that arose between the Claimant and the First Respondent and its managers thereafter. The Claimant made contact with Mrs Rachel Jones, initially by text, at the end of August, and then more substantially by email on 2 September 2018, pointing out the discrepancies in her pay in July and August. She made reference to the difficulties this was causing her, and asked for the matter to be sorted out as soon as possible.

47. Mrs Jones replied to the Claimant by email on 3 September 2018, noting that payroll were back in the office and would be looking into the issue, but also that she had directed that an extra payment of £156 (in fact, it seems that £159 was actually paid) that would be paid as an advance on the corrected payments. Mrs Jones repeated in this email that it was more important than ever for the Claimant to work her contracted hours and that hours could be missed when she did not work those hours.

48. The review of the Claimant's pay in July and August was then undertaken by Mrs Denise Jones, but unfortunately, a further mistake was made as Mrs Jones, along with Emma Hughes, another finance employee recently recruited by the First Respondent, made a further error by crediting back the advance payment as a deduction, but without crediting the corrections

for July and August as additional payments. Consequently, at the end of September 2018, the Claimant remained underpaid. That then led the to the Claimant writing to the First Respondent's Managing Director, Mr James Morris, raising a grievance about the underpayments and noting the detriment this had caused her. In her letter the Claimant recorded that she had viewed the payment of £159 as a bonus, although we found that the payment had clearly been proposed and made as an advance pending a more complete and accurate rectification of the Claimant's pay. The Claimant concluded the letter by saying that, to discuss the matter further, she would like to participate in a meeting with the assistance of her trade union representative.

49. The letter was received by Mr Morris on 3 October 2018, and he promptly discussed the matter with Mrs Rachel Jones, who confirmed that errors had arisen as a result of the changes in the payroll team, and that a payment was being made that day. Mr Morris provided a handwritten letter to the Claimant dated 3 October 2010, in which he confirmed that, and also apologised for the mistake on the First Respondent's behalf.

50. The Claimant received that letter on 5 October 2020, and she sent an email to Mr Morris asking him to rewrite the letter on his computer and send it to her by email. Mr Morris replied a short time later, noting that the content of the letter was that the underpayment error had been corrected. He repeated that he was sorry that the mistake has been made, and noted that, unfortunately, he did not have time to rewrite the letter and suggested that if any of it was unreadable, the Claimant could perhaps ask Mrs Rachel Jones to decipher it for her, as she was used to reading his writing. In the event, we did not consider that the wording of Mr Morris's handwritten letter was in any way difficult to read, even for someone whose first language was not English. It appeared that, from the First Respondent's perspective, the Claimant's concerns over her pay had been resolved at this point.

51. The Claimant’s grievance came to the attention of Mrs Rachel Jones and Mrs Denise Jones, and the latter attempted to speak to the Claimant on 9 October 2018 to explain the errors that had arisen and how they had been corrected. This was intended by Mrs Jones to be an informal discussion, although she arranged for Emma Hughes to be present to take notes so that what was discussed could be agreed.

52. The Claimant's perspective on the meeting was rather different, in that she felt that the meeting was due to be a formal one, and, as she had had no prior notification or representation, she was not willing to attend. In the circumstances, Mrs Jones then wrote to the Claimant by letter dated 10 October 2017, noting that a formal meeting would take place on 18 October 2018 at which the Claimant could be accompanied by a trade union representative. That letter was however delayed, whether internally through the Respondent's mail processing systems, externally via Royal Mail, or a combination of the two, and did not actually arrive at the Claimant's home until 17 October 2018.

53. Without knowing that the 10 October 2018 letter had been sent to her, the Claimant then wrote to Mr Morris on 15 October 2018, noting that the sum

of money had not been paid into her bank account and that she had been asked to attend a meeting on 10 October but had refused to attend due to the short notice and the absence of her trade union representative. She noted that her grievance was still outstanding and that she would like to proceed with it, and stated that otherwise she would have no option other than to take legal steps.

54. That letter was passed to Mrs Denise Jones, who emailed the Claimant on 16 October, noting her letter of 15 October 2018 (incorrectly described as an email) and that the Claimant still wished to proceed with her grievance. Mrs Jones attached a copy of the letter dated 10 October 2018 and asked the Claimant to confirm her attendance at the meeting arranged for 18 October. In the event, the Claimant informed Mrs Jones that she was not able to attend the meeting on 18 October as she was not able to arrange the attendance of her trade union representative, and therefore the meeting was rearranged by Mrs Jones for 23 October 2018, and this was confirmed in a letter sent to the Claimant on 17 October 2018 by recorded delivery. However, as the trade union representative was not able to attend on that day, it was rescheduled again, first for 25 October and then ultimately for 31 October. In the meantime, however, certain events had taken place in the workplace, which ultimately were dealt with as disciplinary matters.

55. First, on 17 October 2018, an incident arose in the morning in the office of Mrs Rachel Jones. The Claimant was cleaning the office, as part of her normal duties, and Mrs Jones asked her if she wished to speak to Denise Jones about the pay issues. After some initial reluctance, the Claimant confirmed that she did, and Mrs Rachel Jones therefore called Mrs Denise Jones to her office. During the discussion that followed, Mrs Rachel Jones remained seated at a chair behind her desk, with the Claimant on the other side of the desk and Mrs Denise Jones standing in the doorway of what is understood to be quite a small room. Mrs Denise Jones engaged the Claimant in conversation about the letter that had been sent and the meeting scheduled for 18 October 2018, in response to which the Claimant confirmed that she had not received the letter, and could not attend the meeting as her trade union representative was on holiday. The parties' recollections of what then happened differ.

56. The Claimant contended that Mrs Denise Jones blocked her exit from the room and refused to move, whereas Mrs Rachel Jones and Mrs Denise Jones confirmed that the Claimant was not blocked from leaving the room, with the latter confirming that she stepped into the room, i.e. away from the doorway, in order to allow the Claimant to leave.

57. On balance, we preferred the evidence of Mrs Rachel Jones and Mrs Denise Jones, which was consistent with each other, and had also been confirmed in contemporaneous notes, made by the latter on 18 October 2018 and by the former on 29 October 2018.

58. Shortly after that, the Claimant approached Mrs Denise Jones at her desk in the open plan office area, asking her for proof that she had indeed posted the letter inviting the Claimant to the meeting on 18 October 2018. Mrs Jones confirmed that she could not prove it, as the letter had simply

been sent through the ordinary post, but that she could show her the electronic version of the letter on her computer screen. The Claimant became quite agitated and appeared to suggest that if Mrs Jones could not prove that she had sent the letter, then it had not been sent, and therefore that Mrs Jones was lying. We observed, in fact, that the letter would have arrived at the Claimant's home by this time, as she herself confirmed that it was received on 17 October, albeit that we did not consider that it had come to her attention by the time she left for work that morning.

59. Mrs Jones's evidence, as confirmed in the statement she gave as part of the disciplinary investigation in November 2018, and as also confirmed by three other individual employees present in the open plan office area at the time, and who, to greater or lesser degrees, observed the exchange, was that the Claimant raised her voice and accused Mrs Jones of lying. The Claimant, in fact, did not deny that she had called Mrs Jones a liar, commenting that she felt that it was an appropriate description in the circumstances. Due to the consistency of Mrs Jones's evidence with the evidence of other witnesses at the time and her own contemporaneous note, and indeed the Claimant's acceptance that she did indeed call Mrs Jones a liar, we were satisfied that the exchange had taken place, as described by Mrs Jones, had been a difficult experience for her, and had involved clearly inappropriate behaviour on the part of the Claimant. We observed that, even if the letter had not been received by the Claimant by that time (which was indeed the case) that did not in any sense mean that it had not been sent by Mrs Jones as letters do occasionally get delayed, or even lost, in the post.

60. Notwithstanding that incident, Mrs Jones subsequently put together a letter on 19 October 2018 to the Claimant, explaining the errors that had arisen, that an advance payment of the sums due to the Claimant of £300 would be paid on 23 October 2018, so as not to delay payment until the next payroll payment, and would be paid as an advance towards payment of the outstanding sums to the Claimant, which totalled £337.99 gross. Mr Morris also noted, in a letter to the Claimant 22 October 2018, that Mrs Jones had prepared a breakdown of the monies owed and that the payments would shortly be made. He also referred to the incidents on 17 October, and in particular noted the exchange with Mrs Denise Jones, and he described the Claimant's conduct as 'not acceptable'.

61. The grievance meeting then finally took place on 31 October 2018. It was chaired by Mr Morris, with Mrs Pauline Gittins, who had by this stage just started work as interim HR Manager to cover Mrs Rachel Jones' impending maternity leave, acting as notetaker. An independent interpreter was present, and the Claimant was accompanied by her trade union representative, Mr Jit Singh. The notes of the meeting were before us and were understood to have been accepted as accurate by all parties.

62. The meeting appeared to proceed amicably, with the Claimant explaining her concerns about her pay and how the errors had caused problems for her, following which she indicated what she proposed as an outcome. This included payment of her overdraft costs, some compensation for stress and hardship, and also included a request for a pay rise. The

Claimant specifically referred to a request that the "ladies from payroll" should not take revenge on her, which we took to be a reference to the complaint made by Mrs Denise Jones about the Claimant's behaviour on 17 October, of which the Claimant was, by then, aware.

63. Mr Morris concluded that he felt that the matter could have been resolved informally and indeed there had been two attempts to do that, but that he was sorry for the stress caused by the errors, and that the First Respondent would pay the overdraft charges if a copy of the account statement was provided by the Claimant. He confirmed that the Claimant's pay would be reviewed in January as part of the annual pay review, and that an additional day's holiday should be granted to the Claimant in light of the difficulties she had experienced. With regard to the Claimant's request that there should be no grievances raised by anyone against her, Mr Morris noted that should any subsequent grievance be received, he would have a duty to consider it on its own merits and to follow the First Respondent's processes in order to do so. Mr Morris confirmed his decision in a letter dated 6 November 2018.

64. On 12 November 2018, the Respondent's Health and Safety Manager, Mrs Emma Reading, undertook a review of the safety arrangements for the Claimant's work, triggered by a change in cleaning products used by the Respondent. Shortly after that, the Claimant raised an issue with Mrs Reading, on 22 November 2018, regarding the vacuum cleaner she was using, which she contended gave her electric shocks. The appliance was checked by the Respondent's Engineering Manager, who confirmed that it was electrically safe, but that static electricity could build up, due to the synthetic fibres contained in some of the office carpets, which could then result in a static shock when the person using it touched a door handle. Mrs Reading noted that the risk of a static shock would be reduced if the Claimant wore the safety shoes that had been provided to her at all times.

65. Mrs Reading sent an email to Mrs Rachel Jones, as the Claimant's line manager, on 22 November 2018, pointing these issues out, and noting that the Claimant needed to wear safety shoes at all times, and that she had discussed that with the Claimant earlier in the month. Mrs Jones then spoke to the Claimant on 26 November 2018, and reminded her that the health and safety assessment had made it clear that she should wear safety shoes at all times, and that that had been explained to her by Mrs Reading on 12 November 2018. Mrs Jones confirmed the content of that discussion by email on 26 November 2018, to which she attached Mrs Reading's formal risk assessment document, and in which she reminded the Claimant that safety shoes had to be worn at all times.

66. On 15 November 2018, Mrs Gittins had a brief discussion with the Claimant, in the presence of Mr Karpisciuk to try to discuss following up on Mr Morris's grievance conclusions, particularly with regard to the payment of the Claimant's overdraft costs, the Claimant having been asked to provide copies of her bank statements. Mrs Gittins also wished to discuss with the Claimant the incident between her and Mrs Denise Jones on 17 October 2018, and inform her that it was a potentially a conduct issue which was to be investigated. At the conclusion of that discussion, the Claimant asked Mrs Gittins to put the points in an email to her, which she

did on 15 November 2018.

67. The Claimant responded the following day, in a fairly formal email, noting that she would not participate in any meetings without the presence of her trade union representative, that she had not been given enough notice of the meeting that Mrs Gittins had attempted to have the day before, and also that the provision of Mr Karpisciuk as an interpreter was not appropriate as he was not independent. In the email, the Claimant stated, "*I don't feel confident enough to attend the meeting on my own. I don't have trust and confidence in the company*".

68. Mrs Gittins replied to the Claimant by email on 20 November 2018, pointing out that it was open to the First Respondent's management to meet with employees on an ad hoc basis, without the need for trade union representation. She therefore indicated to the Claimant that she was required to attend a meeting on Thursday 22 November 2018, that she could be accompanied by a fellow worker for the purposes of language support to that meeting, but that the meeting invitation was not extended to a trade union representative. Mrs Gittins concluded that she was saddened that the Claimant had said that she had lost all trust and confidence, commenting that this appeared to be after only one unfortunate episode which had now been resolved through the company's internal processes. The Claimant replied the following day by email, again quite formally, requesting that the meeting be adjourned so that a Polish interpreter could be present and that she could be accompanied by her trade union representative.

69. The Claimant subsequently complained about Mrs Gittins' conduct in attempting to find her for the purposes of their discussion on 15 November 2018. It was common ground between the parties that Mrs Gittins had found the Claimant in one of the Respondent's ladies' toilets that morning. The Claimant contended that this was done deliberately and breached her privacy, whereas Mrs Gittins explained that she had simply been looking for the Claimant (who, due to the nature of her role, moved around the site) and, not being able to find her, had tried the ladies' toilets which, as well as being a toilet facility, was also a place where the Claimant stored some of her cleaning materials. Mrs Gittins simply opened the outer door of the toilet and asked if the Claimant was there and, when the Claimant confirmed that she was in the cubicle, asked her to come to see her when she was free. We found nothing at all untoward about that discussion, and did not consider that the Claimant's privacy had been infringed.

70. On 16 November 2018 an incident occurred, between the Claimant, Mr Chambers and Mr Karpisciuk, just outside Mr Chambers' office. The incident itself, for the main part, was not significantly disputed. It appears that Mr Chambers observed the Claimant and Mr Karpisciuk, speaking in Polish just outside his office, and that he moved to the doorway of his office to speak to them and said, "*English please*". This was, as he explained, an attempt to direct employees to observe the policy, that was in the process of being developed within the First Respondent's business, of carrying out all office-related conversations in English. However, the Claimant continued to speak Polish to Mr Karpisciuk, and he confirmed in his evidence that she had said that she was not willing to speak in English

and wanted to speak in Polish. This led to Mr Chambers calling out from his desk, "*Are you deaf?*". Mr Chambers himself, in a contemporaneous email, confirmed that he made this second demand "*in a terse manner*", and in a grievance investigation meeting on 22 November 2018, he confirmed that he said that firmly. Mr Karpisciuk confirmed that Mr Chambers spoke clearly but not loudly.

71. The Claimant then described these events in a letter to Mr Morris dated 20 November 2018, in which she raised a grievance about Mr Chambers' actions. In that she did not describe the words actually used by Mr Chambers, but only differed in her description of events in that she described him as "*shouting*" and as having shouted on both occasions. She also did not explain the content of her discussion with Mr Karpisciuk, although she confirmed that she had continued the conversation in Polish. The summary of the conversation described by Mr Chambers and Mr Karpisciuk was also confirmed by another employee, Mr Andy Richards, who had been present at the time.

72. Mrs Gittins commenced an investigation into the grievance, and interviewed Mr Chambers, Mr Karpisciuk and Mr Richards. She then passed her notes to Mr Maiden, who was to conduct the grievance hearing. Mrs Gittins also spoke to two other employees, Mr Mike Bebb and Mr Robin Hawkins, who confirmed that although they had been in work that morning, they had not seen or heard anything untoward.

73. Mr Maiden wrote to the Claimant on 26 November 2018, inviting her to a grievance meeting on 29 November. In this, he informed the Claimant that he would be accompanied by a notetaker and independent interpreter, and he reminded the Claimant that she had the right to be accompanied by a work colleague or union official. However, at the Claimant's request, that meeting was rearranged, initially to 14 December 2018, and then ultimately to 18 December 2018, due to the unavailability of her trade union representative. The meeting was scheduled to take place at 1:00pm, and, on the same day, at 2:00om, the First Respondent arranged for a disciplinary hearing to be held to deal with various matters, including the Claimant's behaviour towards Mrs Denise Jones on 17 October 2018. That was also to be dealt with by Mr Maiden, and it appears that the First Respondent's intention had been to deal with both the grievance and disciplinary matters on the same day, to take advantage of the Claimant's trade union representative's attendance.

74. On 27 November 2018, the Claimant informed Mrs Rachel Jones that she would need to take the following week (the week commencing 3 December 2018) off as leave as she needed to attend a court hearing. Ultimately, this transpired to be an employment tribunal hearing in relation to a claim the Claimant was pursuing against her other employer, but nothing turns on that. Mrs Jones explained that the Claimant had insufficient annual leave to cover the week, and in fact only had a remaining amount of four hours and fifteen minutes available. Mrs Jones indicated that she would allow the Claimant to take the remainder of the period as authorised unpaid leave, provided that the Claimant supplied her with proof of attendance at the hearing for the relevant period. Mrs Jones emailed the Claimant on 29 November 2018 confirming that conversation,

and requesting a copy of the notice of hearing in order to authorise the unpaid leave.

75. On that day, the Claimant provided Mrs Jones with a copy of a bank statement to confirm the overdraft fees that the Respondent had indicated it would cover. However, the statement did not show the Claimant's address and bank account details, and therefore could not be formally identified as the Claimant's. The statement also recorded slightly different fees to the ones that the Claimant had indicated had been charged, referring to fees of £80 on two occasions, rather than £75. In the event, it did not seem that any further proof in the form of a bank statement was ever provided by the Claimant, although the Respondent did ultimately pay the two overdraft charges of £75 each.

76. Mrs Jones reminded the Claimant, by email on 5 December 2018, that she had not received confirmation of the Claimant's court attendance, and that her absence was currently unauthorised until the Claimant had provided proof of the court date; such proof was never provided.

77. On 6 December 2018, Mrs Rachel Jones hand-delivered a letter to the Claimant, informing her that she was being invited to the reconvened grievance hearing meeting on 14 December 2018. Mrs Reading accompanied her as a witness and support, Mrs Jones being some eight months pregnant at the time. Mrs Jones and Mrs Reading confirmed that this was not an unusual step for the First Respondent to take in order to ensure delivery of correspondence to its employees. In this particular case, issues had arisen with regard to the delivery of letters through the post, as described above, and therefore Mrs Jones wished to be certain that the document was delivered. As it was anticipated that the Claimant was due to be in court on the day, it was not anticipated that she would be at home.

78. Mrs Jones rang the bell on the Claimant's house, not expecting there to be an answer, but in fact the Claimant's daughter was present. It appears that she did not open the door but opened a downstairs window and the letter was handed over. Although, in her evidence before us, the Claimant's daughter indicated that she felt upset by this exchange, her witness statement described the contact in neutral terms. It appears however, that the Claimant was upset by the personal delivery of the letter, and she later complained, in a letter to Mr Morris dated 17 December 2018, in which she also raised her concerns about Mrs Gittins speaking to her in the ladies toilet, about the visit, commenting that it amounted to an invasion of her privacy. However, we saw nothing untoward with the visit, or the way in which Mrs Jones and Mrs Reading conducted themselves during it. Bearing in mind the issues that had arisen following the delayed delivery of Mrs Denise Jones' letter of 10 October 2018 to the Claimant, and the way she had reacted to that, we considered it was entirely understandable for the Respondents to take the step of ensuring the letter was delivered and that it could be proved to have been so delivered. We do not see in any way that an employer taking the step of hand delivering a letter to one of its employees, without any further comment, was in any way improper, let alone an invasion of privacy.

79. On the morning of 18 December 2018, the Claimant emailed Mrs Rachel Jones and Mr Morris, noting that she had two meetings scheduled for that day, one of them a disciplinary hearing, and stating that, for that reason, she was unable to come to work that day, and asking to be given the day off in order to prepare for the meeting. That contact was however made after the Claimant's scheduled start, and therefore was ultimately recorded as unauthorised.

80. The grievance meeting took place on 18 December 2018 as planned. Mrs Gittins was there to take notes, and an external interpreter was present. Mr Streeter was present to accompany the Claimant, as her trade union representative. The notes of the meeting reveal it to have been a difficult one to manage, with a particular concern being raised by Mr Streeter about the lack of statements from those who had been spoken to during the process of the grievance investigation. The meeting ultimately concluded 3:10pm, with Mr Maiden indicating that there were matters for him to consider before deciding on the outcome. The length of the meeting meant that it was not possible to deal with the disciplinary hearing on that day.

81. In the meantime, in November and December, several occasions arose when the Claimant was observed not wearing her safety shoes, despite the instruction to do so. That matter, together with the alleged inappropriate behaviour towards Mrs Denise Jones on 17 October 2018; the Claimant' generally unsatisfactory attendance, both with regard to clocking irregularities and the unauthorised absence at the start of December; and her persistent refusal to respond to reasonable management instructions; were listed as the matters that would be dealt with in the disciplinary hearing.

82. Mr Maiden wrote to the Claimant on 21 December 2018, informing her that he would be making further enquiries and that, due to the Christmas and New Year shutdown, they would have to take place in the New Year. On the same day, Mrs Rachel Jones wrote to the Claimant informing her that the disciplinary hearing had been rearranged for 10 January 2019, and her letter again outlined the four disciplinary allegations and reminded the Claimant of her right to be accompanied. The letter also noted that the hearing would be conducted by an independent employment consultant engaged by the First Respondent, that Mrs Jones herself would be present as a notetaker, and that there would be an independent interpreter.

83. Also on this date, the Claimant sent an email to Mr Maiden, complaining about her treatment by Mrs Gittins and Mrs Rachel Jones, and also noting that she had not received a Christmas bonus. By this stage, the Claimant's further grievance letter sent to James Morris on 17 December 2018, in which she had raised complaints about Mrs Rachel Jones, Mrs Reading and Mrs Gittins, had been received, and Mr Morris had invited Mr Maiden to consider that matter as well. Mr Maiden then sent an email to the Claimant on 2 January 2019, noting that he would arrange for the matters raised in her email and letter to be considered and that he would be in touch with regard to arrangements.

84. With regard to the Claimant's initial grievance, Mr Maiden wrote to the Claimant on 10 January 2018 with his decision on the outcome. He concluded that whilst Mr Chambers did direct the Claimant and Mr Karpisciuk to speak in English, he did not shout, and the comment was not addressed to the Claimant specifically. He also noted that the First Respondent was developing a policy of encouraging English as the main language within the workplace, particularly within the manufacturing environment, and that Mr Chambers' request had not been unreasonable. Mr Maiden also concluded that the Claimant's expectation from the grievance considered by Mr Morris, that no further proceedings would be taken against her, had not been how Mr Morris had viewed things, and that the Claimant's anticipation that matters would not be taken further against her had not been reasonable. Mr Maiden concluded the letter by giving the Claimant a right to appeal against his decision.

85. On 10 January 2019, the disciplinary hearing commenced. The First Respondent had decided, prior to the hearing, that an external HR professional would be engaged to deal with it, due to the difficulties that had arisen in dealing with the grievance hearing on 18 December 2018. Emma Hall, a consultant employed by the First Respondent's advisers, was engaged for that purpose. Mrs Hall emailed the Claimant on 8 January 2019 to introduce herself and to explain how the hearing would proceed.

86. The hearing commenced at 1:00pm, with the Claimant again being accompanied by Mr Streeter, Mrs Rachel Jones taking notes, and an independent interpreter. The meeting again appears to have been fraught with difficulty. Whilst the notes of the meeting record that it lasted for some one hour forty minutes, with a fifteen minute break in the middle, the notes reveal that the discussion during the entirety of that period focused on the Claimant's and her representative's concerns about Mrs Hall dealing with the disciplinary matter, and with Mrs Rachel Jones's presence at the meeting, on the basis that the Claimant had raised complaints about her. Ultimately, Mrs Hall concluded that, as no progress was being made, the meeting would be brought to an end. Subsequently, Mr Morris provided a letter to the Claimant dated 15 January 2019, confirming that Mrs Hall had delegated responsibility to deal with the disciplinary matter.

87. With regard to the grievance, on 14 January 2019 the Claimant raised an appeal against the grievance decision, focusing on the interviews made as part of the grievance investigation, asking who interviewed individual employees, why some of the statements were not dated or signed, why the investigating officer, i.e. Mr Maiden, had not interviewed the individuals, and why further statements from individuals whom it was believed would support the Claimant's grievance had not been obtained. Mr Morris, in an email response to the Claimant, stated that the points raised were not a relevant basis for appeal, and asked her for what he described as "*appropriate grounds*" of the Claimant's appeal by the end of 17 January 2019. The Claimant provided a further letter on 17 January, providing more detail of her concerns over the statements. Mr Morris replied to the Claimant on 18 January 2019, again saying that he did not consider that the Claimant's letter showed any grounds of appeal. The

Claimant wrote to Mr Morris on 20 January 2019, noting that she wished to see what the witnesses had said about the incident, and Mr Morris replied on 22 January 2019, noting that seeing copies of witness statements was not part of the first Respondent's grievance procedure. A further exchange took place between the Claimant and Mr Morris over 23, 24 and 25 January, at the conclusion of which, Mr Morris stated that the First Respondent had interviewed all of the people present at the time, including those identified by the Claimant, and therefore considered that the grievance and appeal processes were now complete.

88. In the meantime, on 22 January 2019, Mr Maiden had taken the decision to suspend the Claimant pending the holding of the reconvened disciplinary hearing on 30 January 2019. The reason for that was the Claimant's continued failures to wear her appropriate PPE at work, despite having been reminded to do so. Mr Maiden informed the Claimant of this on 22 January 2019, being accompanied by another of the First Respondent's managers, Mr Wayne Evans, to do so.

89. The grievance hearing was subsequently arranged to take place on 29 January 2019. It was again chaired by Mr Maiden, accompanied by Mr Dave Gannon as notetaker. The Claimant was again accompanied by Mr Streeter, and an independent interpreter was present. The meeting explored the visit made by Mrs Jones and Mrs Reading to the Claimant's house on 6 December 2018 and why the Claimant was concerned about it, and also explored the incident when Mrs Gittins came across the Claimant in the toilets and asked her to come to see her. In the meeting, the Claimant also described her feeling that she was being bullied by Mrs Gittins and Mrs Rachel Jones. The meeting also discussed the Claimant's concern about not receiving the Christmas bonus at the end of 2018.

90. Mr Maiden then adjourned the meeting to undertake further investigations, which included meeting with Mrs Reading, Mr Evans, Mrs Jones and Mrs Gittins. By this stage however, Mrs Jones had gone on maternity leave and had had her baby, and there was therefore a delay in meeting her. The Claimant raised a concern with Mr Maiden on 19 February 2019 by email that she wanted the outcome decision, and Mr Maiden responded the following day, noting that Mrs Jones was within the protected period after the birth of her baby. Mr Maiden then met with Mrs Jones in early March and completed his report in the form of a letter which was sent to the Claimant on 14 March 2019. He did not uphold any of the Claimant's concerns.

91. In the meantime, the reconvened disciplinary hearing had taken place on 30 January 2019, the Claimant's trade union representative not having been available to attend on the originally proposed date of 22 January 2019. In advance of the hearing, on 21 January 2019, Mrs Hall sent an email to the Claimant, highlighting information from the invitation letter, which confirmed that Mrs Hall would be the decision-maker, having had that responsibility delegated to her, and that Mrs Rachel Jones would attend as a notetaker, and, if required, her adviser on procedural matters. The email contained what was described as an important note, noting that two previously scheduled hearings had been abandoned due to the Claimant's representative disrupting proceedings. Mrs Hall stated that that

was unacceptable, and that the hearing would be the "*third and final opportunity*" to hear the Claimant's case. Mrs Hall went on to say that, should that be prevented on that occasion, the case would be considered without the Claimant's input.

92. Shortly after that, certainly before 24 January 2019, Mrs Hall was informed by Mrs Rachel Jones that she had observed the Claimant carrying out her duties without wearing safety shoes. Mrs Hall then sent an email to the Claimant on 24 January 2019, noting that that incident would be added to the matters to be considered as part of the third element of the disciplinary hearing, relating to health and safety breaches.

93. On 28 January 2019, the Claimant sent an email to Mr Morris, pointing out again that she did not wish Rachel Jones to be present at the meeting on 30 January 2019, due to the fact that she had raised concerns about her, and also again asking for Mrs Hall to be removed, as she was not an employee of the company. Mr Morris replied, later the same day, confirming that the meeting would go ahead as planned, with Mrs Hall being the chairperson and Mrs Rachel Jones being the notetaker. The Claimant replied, recording her disappointment at that decision.

94. On 29 January 2019, Mrs Hall emailed the Claimant to remind her that she should bring evidence of her attendance at the employment tribunal during the week commencing Monday, 3 December 2018, as it would be very important information for the purposes of the discussion of the allegation of unauthorised absence during that period. The Claimant replied, stating that that was a private matter, and Mrs Hall further responded, confirming that, as things stood, those four days were unauthorised absence, and that she was aiming to help the Claimant by giving her the opportunity to provide the information before the hearing. She concluded by saying that she would respect the Claimant's wishes if she chose not to supply the information.

95. The hearing took place on 30 January 2019, starting at 10:00am. The Claimant was represented again by Mr Streeter. At the start of the hearing, the Claimant and Mr Streeter provided a five-page written statement to Mrs Hall, and a discussion then ensued in relation to the disciplinary allegations. At the start of the hearing, Mrs Hall confirmed that a period of two and a half hours had been allocated for the hearing, which she commented should be adequate. She suggested that issues which had been addressed prior to the meeting should not be repeated, and that, as mentioned in the invitation letter, if the hearing was abandoned due to the Claimant's conduct, or that of her companion, then the allegations and evidence would be reviewed without her input. Ultimately, the meeting only dealt with the first two of the allegations, i.e. the incident with Mrs Denise Jones on 17 October 2018, and the Claimant's unauthorised absence and irregular attendance.

96. The notes of the meeting indicate that a lot of time was taken up in dealing with procedural matters and objections from the trade union representative and, whilst the hearing was extended to run until 1:25pm, i.e. just short of three and half hours rather than the originally anticipated two and a half hours, no further ground was able to be covered. At that point, Mrs Hall

brought the meeting to an end and said that she would be happy to cover the remaining questions by email with the Claimant providing her answers in writing. The Claimant and her representative made it clear that they wished the remaining issues to be addressed at a further formal meeting and declined Mrs Hall's proposal to provide their responses in writing. Mrs Hall concluded by saying that she would look at the information and evidence, and may change her mind about another formal meeting if it was required. In response to a question from Mr Streeter, Ms Hall confirmed that she would get back to the Claimant about the question of the formal meeting.

97. There was no further exchange of correspondence between Mrs Hall and the Claimant following the hearing, and it appears that Mrs Hall proceeded to consider the disciplinary matters, i.e. both the two that had been discussed at the disciplinary hearing and the two that had not, and draw conclusions in relation to them. She provided her decision in a letter to the Claimant dated 8 February 2019, spanning six pages. Her conclusions in relation to the four allegations were as follows.

98. With regard to the allegation of inappropriate behaviour towards Mrs Denise Jones on 17 October 2018, Mrs Hall concluded that the verbal attack had been unprovoked and had been aggressive, and therefore did not conform to the First Respondent's expected levels of conduct. She confirmed that there were certain mitigating factors to take into account, namely the Claimant's lack of awareness of a more polite alternative to calling someone a liar, and the fact that the conduct was unprecedented. Mrs Hall concluded that, in relation to this allegation, a final written warning should be issued.

99. With regard to the second allegation, that of irregular attendance and unauthorised absence, Mrs Hall again concluded that the allegations had been made out. The Claimant had been regularly late, and had been informed in July 2018 that her irregular attendance must stop, and that she must work her contracted hours. That had been confirmed by Mr Morris on 6 November 2018, but, since 31 October 2018, there had been eighteen further occasions of lateness.

100. With regard to unauthorised absence, Mrs Hall concluded that the absence taken by the Claimant to attend the employment tribunal in early December remained unauthorised as the Claimant had not provided any proof of her requirement to attend, despite several requests to do so. Mrs Hall also noted that, on 18 December 2018, the Claimant had texted Mr Morris after her start time to inform the First Respondent that she would not be attending work to prepare for the disciplinary meeting, and that that had also been recorded as unauthorised absence.

101. Mrs Hall concluded that the Claimant had repeatedly and seriously failed to comply with company instructions which amounted to a serious act of insubordination. She recorded that she felt that the Claimant had no respect for the First Respondent's business, and had breached its trust and therefore that she recommended the termination of the Claimant's employment on this ground on the ground of gross misconduct.

102. Mrs Hall noted that she had reached a similar conclusion with regard to the health and safety breaches arising from the Claimant's persistent disregard of the requirement to wear the safety footwear. She confirmed that she had seen several reports of this happening, and that statements had been provided to the Claimant at the disciplinary hearing on 30 January. She concluded that, although the point had not been covered at the disciplinary hearing, she had no reason to doubt the reports. She concluded that she felt that the Claimant had no respect for the First Respondent's business or its health and safety rules and, therefore, that she would also recommend termination of employment on the grounds of misconduct in relation to this ground.

103. With regard to the fourth allegation, of persistent refusal to respond to reasonable management instructions, Mrs Hall recorded that she did not believe, bearing in mind her findings and decisions in relation to the first three allegations, that there would be any value in taking any further action on the points raised, although it appears from her letter that she concluded that the four specific allegations were made out.

104. Ultimately, Mrs Hall concluded that the Claimant's employment would be terminated on the grounds of gross misconduct, with her employment ending on 8 February 2019. She confirmed the Claimant's right to appeal, which was required to be provided within five working days.

105. The Claimant submitted an appeal to Mr Morris dated 12 February 2019. In this she referred to her mental health state whilst going through the whole process and the departure from the company's disciplinary procedure. In addition, four specific numbered points were included. These were that the statements did not support that she had behaved inappropriately towards a work colleague, that her unsatisfactory absence should have been dealt with via the First Respondent’s absence procedure and that flexible working had been in place, and that with regard to both the health and safety issue and the refusal to respond to reasonable instructions, Mrs Hall had been asked for a further formal meeting, and had indicated she would get back to the Claimant and her representative, but no response had been received.

106. On 21 February 2019, the Claimant sent Mr Morris a further letter, noting that the First Respondent's disciplinary procedure stated that an appeal hearing would take place as soon as possible, at which the appellant would be given an opportunity to state their case. She concluded the letter by saying that if the this did not happen it would be seen as another case of discrimination.

107. Mr Morris considered the appeal without a hearing, due to the disruption that had been caused by the Claimant and her representative at previous meetings. However, there was no indication that the decision to deal with the appeal in that way had ever been communicated to the Claimant. Mr Morris considered the appeal on 14 March 2019, and wrote to the Claimant with his decision on 15 March 2019. In that letter, he noted that he was satisfied that the witness statements supported the allegation of inappropriate conduct towards a work colleague and supported Mrs Hall's assessment of the situation. He noted that the sanction she had imposed

in respect of this allegation was a final written warning.

108. With regard to the Claimant's point that her attendance issues should have been dealt with under the absence procedure, Mr Morris concluded that the correct procedure had been used, and confirmed that the First Respondent did not have a separate absence procedure. He also confirmed that he had reviewed Mrs Hall's summary in relation to this allegation and supported her outcome.

109. With regard to the Claimant's point regarding the health and safety breach allegation, Mr Morris noted that the disciplinary hearing had concluded prior to this point being addressed, but noted Mrs Hall's decision, in particular that, unless the evidence suggested that a further hearing was necessary, there would be no further opportunity to reconvene the hearing. Mr Morris noted that, given the obstructive manner in which the Claimant and her representative had conducted themselves, in relation to that hearing on two previous occasions, he had seen no value in offering the Claimant a further hearing opportunity. He also confirmed that he supported Ms Hall's outcome with regard to this allegation.

110. With regard to the fourth allegation, Mr Morris again indicated that he supported Ms Hall's recommendation, but noted that it was not a factor in coming to the overall decision to dismiss.

111. Mr Morris concluded his letter by saying that he had further considered the Claimant's statement of 30 January 2019, and was satisfied that due account of it had been taken in coming to the final decision following the disciplinary hearing. He noted that there had been three attempts at holding the disciplinary hearing, and at no stage did there appear to have been any cooperation from the Claimant or her union representative, to either behave appropriately or to seek to resolve the issues that existed. He also observed that he had made a particular effort to ensure that the disciplinary case had been dealt with impartially, by engaging someone externally, because the Claimant had raised a number of concerns about members of the First Respondent's senior management team, on whom Mr Morris would ordinarily have relied. He indicated that he was satisfied that an impartial and balanced approach had been taken, and ultimately took the decision to uphold the decision that the Claimant should be dismissed.

Conclusions

112. Applying our findings to the issues we had to determine, identified at paragraph 38 above, although not in precisely the same order as set out there, our conclusions were as follows. For convenience, we have used the same headings and sub-headings as Judge Davies did when she initially recorded the issues, and we have re-stated the original contentions, setting out underneath each our conclusions in relation to them.

EQA section 13: direct discrimination because of race

a. Newmor

Paul Chambers shouted out the Claimant on 16 November 2018 "speak English not Polish"

113. We were satisfied that Mr Chambers had said to the Claimant, on 16 November 2018, "*English please*", although we were not satisfied that he had shouted at the Claimant in doing so.

114. In considering whether this amounted to direct discrimination of the Claimant, i.e. to less favourable treatment of her on the ground of her Polish nationality, we were conscious of the guidance provided by the Employment Appeal Tribunal decisions of Dziedziak v Future Electronics Limited (UKEAT/0270/11/ZT) and Kelly v Covance Laboratories Limited (UKEAT/0186/15/LA). Those cases both dealt with instructions regarding the language to be spoken in the workplace.

115. At first glance, a direction to speak in a particular language or not to speak in a particular language could be viewed as the application of a provision, criterion or practice, and therefore to amount potentially to indirect discrimination rather than direct discrimination. However, the EAT in both cases held that such an instruction can be considered to amount to direct discrimination, and can, on its face, apply to shift the burden of proof from the Claimant to the Respondent to demonstrate that its action was not motivated by race.

116. We noted that in the Dziedziak case no evidence had been put forward by the respondent on that point, and therefore the claimant's claim had succeeded, whereas in the Kelly case, the respondent had put forward a rationale for its application of the instruction, in the form of trying to ensure that its operations were not infiltrated by animal rights activists.

117. In this case, we heard evidence from Mr Chambers, which was supported by Mr Morris, and Mr Karpisciuk, who was, as a Polish national, subject to the application of the policy, that the Respondent had demonstrated a non-race related reason for wishing to implement the policy. That was the desire, in the context of a manufacturing environment where health and safety matters were of significant importance, to ensure that there was no room for misunderstanding or for instructions not to be passed on, by using English as the operational language throughout. There was no suggestion that the direction to use English was universal, and non-British employees, including Polish nationals, were allowed to use other languages in other, social, environments. The restriction only applied to operational environments, applied to all staff, whatever their nationality, and therefore did not, in our view, amount to less favourable treatment of the Claimant on the ground of her race.

Failed to investigate the Claimant's complaint in accordance with procedure – did not provide witness statements despite being asked for them and did not suspend Paul Chambers following a complaint of harassment

118. We did not consider, as a matter of fact, that the First Respondent had "failed to investigate the Claimant's complaint in accordance with procedure". Whilst the witness statements taken for the purposes of the Claimant's grievance were not provided to her (and we observe that we considered that there was no compelling reason why that should not have happened), that did not amount to any failure to investigate the Claimant's complaints, as statements were taken and the gist of them was shared with the Claimant.

119. We also did not consider that the First Respondent's failure to suspend Mr Chambers following a complaint of harassment amounted to any form of less favourable treatment of the Claimant. The Claimant raised a grievance about Mr Chambers, which was fully investigated, and which was not upheld, and there was no need for him to be suspended for the purposes of that grievance investigation. Similarly, the Claimant was not initially suspended when concerns about her conduct were investigated, and had the disciplinary hearing concluded on 10 January 2019 as had originally been anticipated, she would, in fact, never have been suspended. Her suspension only arose on 22 January 2019 on the basis of her continued failure to observe the health and safety requirement of wearing safety shoes. We were satisfied that the Respondent acted appropriately in taking that step.

120. However, even if we had been satisfied that these matters involved an element of less favourable treatment of the Claimant, we saw no reason to consider that any such treatment would have been motivated by the Claimant's race, and therefore would not have concluded that any less favourable treatment, had we found any, would have been on the ground of race.

Mr Morris failed to provide a safe working environment by failing to take the Claimant's complaints, made in October – December 2018, seriously thus allowing further incidents to arise

121. We did not consider that Mr Morris had "failed to provide a safe working environment" by failing to take the Claimant's complaints seriously. Whilst there was an initial delay in resolving the Claimant's concerns about her pay, which she raised in August and September 2018, satisfactorily, once matters were brought to Mr Morris's attention, he investigated them promptly and, once the Claimant indicated that she wished them to be investigated formally, set in motion a process for that to happen. We were satisfied that all subsequent complaints raised by the Claimant were dealt with appropriately. Again, however, even if we had considered that her there had been less favourable treatment in the manner asserted, we would not have considered that there was any connection of that treatment to the Claimant's race.

b. <u>Steve Maiden</u>

Failing to investigate her grievance in accordance with ACAS guidance

122. We did not consider that Mr Maiden failed to investigate the Claimant's grievance in accordance with ACAS guidance. We understood the Claimant's assertion here to be that Mr Maiden did not himself carry out the investigation, but delegated that to Mrs Gittins. However, we saw nothing improper about that. The ACAS Guide simply indicates that employers should carry out any necessary investigations, it does not direct that the decision-making officer must themselves exclusively carry out such investigations.

Allowing Pauline Gittins to be present during and to lead investigatory meetings, when she was one of the individuals the Claimant had complained about

123. The investigations undertaken by Mrs Gittins in relation to the grievance raised by the Claimant about Mr Chambers were undertaken prior to any complaint being raised by the Claimant about her. After that, whilst she participated in meetings as a notetaker, she never undertook a decision-making role, and therefore we saw nothing improper about her being involved in that way. We also repeat our observation above, that we considered that the Claimant's complaint that Mrs Gittins behaved inappropriately by speaking to her in the ladies' toilets was unfounded and unjustified. There was nothing to indicate that Mrs Gittins had deliberately followed the Claimant into the toilets, she had simply found the Claimant there, having been unable to find her in any other location, and simply spoke to her to ask her to go to see her when she was free. We saw nothing at all improper about that.

Not permitting the interpreter to interpret all of what was said during the grievance meeting on or around 17 December 2018; and

Not permitting interpreter to sit by the Claimant during the grievance meeting and situating interpreter between Ms Gittins and Mr Maiden;

124. Whilst there did seem to be a point at the start of the first grievance meeting when it was anticipated that the interpreter would only translate matters which the Claimant had not understood, on the basis that she was capable of understanding much of what was said, we noted, in fact, that the meeting, and indeed all subsequent meetings, had proceeded by way of a comprehensive translation of what was said. We did not consider that there was anything untoward in the interpreter not sitting alongside the Claimant. Indeed, the majority of this hearing took place with the interpreter being at a remote location from the Claimant.

Failing to provide investigatory witness statements to the Claimant;

125. This point has already been dealt at paragraph 118 above.

Delay in providing grievance outcome, which was not provided until on or around 15 March 2019;

126. Whilst there was a delay in providing the grievance outcome, that was due to Mrs Rachel Jones being on maternity leave, and indeed having given birth, in February 2019. The Claimant was informed about that.

127. Again, as with section *a* above, whilst we did not consider that any of the matters asserted by the Claimant involved any form of unfavourable treatment of her, we would not, in any event, have considered that any such treatment was less favourable on the ground of her race.

c. Emma Reading

On or around 6 December 2018 visiting the Claimant's home address?

128. As we have noted above, we did not consider there was anything untoward in the visit undertaken by Mrs Reading and Mrs Rachel Jones to the Claimant's home on 6 December 2018 in order to deliver a letter inviting her to a meeting. Mrs Jones confirmed that this was not an uncommon step for the Respondent to take. Also, we noted that the incident between the Claimant and Mrs Denise Jones, which led to disciplinary action being taken against the Claimant, arose from a dispute as to whether a particular letter had been sent by Mrs Jones. It transpired that that letter had indeed been sent, albeit that it had been delayed. In those circumstances, it was entirely appropriate for Mrs Jones to wish to make absolutely sure that the letter had arrived at its destination.

129. Again, although we considered that this action did not involve any unfavourable treatment of the Claimant, even if we had considered that it did, we found nothing to suggest that the treatment would have involved less favourable treatment of her on the ground of race.

d. Pauline Gittins

On or around 15 November 2018 following the Claimant into a bathroom to invite her to a meeting at short notice without trade union representative or interpreter;

130. As we have noted above, we did not consider that there was anything untoward in Mrs Gittins speaking to the Claimant in the ladies' toilet on 15 November 2018 to ask her to go to see her. With regard to the second part of this assertion, whilst the Claimant appears to have been adamant that any interaction with her employer, certainly with the HR Department, should have involved her trade union representative and an interpreter, we did not consider that that was, in any sense, a requirement unless and until a formal meeting was taking place. We did not see that Mrs Gittins', or indeed other manager's attempts to speak to the Claimant informally, without a trade union representative present, involved any element of unfavourable treatment. Similarly, with regard to interpretation, we did not consider that the Claimant was incapable of understanding basic and brief discussions in English and, where any matters were addressed formally, interpretation was made available.

Commencing disciplinary action against the Claimant immediately after the Claimant raised a grievance in December 2018.

131. Whilst, as a matter of timing, the disciplinary action against the Claimant was commenced in December 2018, shortly after the Claimant raised her grievance about Mrs Rachel Jones and Mrs Reading, and Mrs Gittins, we did not see that that was anything other than coincidental. It had been made clear to the Claimant, in meetings with Mr Morris and Mr Maiden, in October and November 2018. that the issue relating to her behaviour towards Mrs Denise Jones on 17 October 2018, was to be investigated. That investigation took place in November, and then notification of formal disciplinary action took place in December.

132. Again in relation to these matters, we did not consider that there was any element of unfavourable treatment of the Claimant, but even if we had so considered, we would not have considered that the treatment was in any way related to her race.

e. <u>Paul Chambers</u>

on or around 16 November 2018 shouting at the Claimant "speak English not Polish".

133. This has been dealt with above at paragraphs 113 to 117.

f. <u>Emma Hall</u>

Permitting Rachel Jones to be present during the meeting of 10 January 2019 despite the Claimant having raised a grievance about her;

134. As a matter of fact, Mrs Hall did permit Rachel Jones to be present during the meeting, despite the Claimant having raised a grievance about her. That had however been raised by the Claimant with Mr Morris in advance of the hearing, and he had confirmed the First Respondent's position. That was, as was confirmed by Mrs Hall, that Rachel Jones was only present to provide a notetaking service and to provide any specific HR assistance relating to the First Respondent's procedures. We noted from the minutes of the meetings in January 2019, that Mrs Jones played no part other than to take notes, and therefore we did not consider that this involved any element of unfavourable treatment; she was not involved in any decision-making capacity.

Telling an interpreter not to provide a full translation service during disciplinary meetings held on 10 January and 30 January 2019;

135. We did not consider, as a matter of fact, that Mrs Hall had told the interpreter not to provide a full translation service during the meetings on 10 January and 30 January 2019. Indeed, in contrast, the minutes of the meetings demonstrate that a full translation service operated.

Limiting the time available to the Claimant to explain herself during meetings on 10 January and 30 January 2019,

136. Whilst Mrs Hall did indeed limit the time available to the Claimant to explain herself during the two disciplinary hearings, we did not consider that she behaved unreasonably in any sense. We noted that the Claimant and, in particular, her union representative, were disruptive during both meetings, focusing on procedural aspects which had, in some respects, already been addressed in advance of the relevant meetings. Even taking into account the time spent in translation, we did not consider that the matters to be discussed should have taken more than two, or at most three, hours in total. It was only due to the fact that progress had been unable to be made on 10 January 2019, that Mrs Hall indicated that only two and a half hours would be allowed for the meeting on 30 January 2019, although, in any event, nearly an hour longer was allowed.

On 30 January 2019 informing the Claimant she had only two hours she was in a hurry and failing to convene a further meeting afterwards.

137. We did not consider that Mrs Hall informed the Claimant that the meeting was limited due to her being "in a hurry". As we have said, time was limited due to the actions of the Claimant and her representative. Mrs Hall did indeed fail to convene a further meeting afterwards, although she had made this clear to the Claimant at the meeting, and we consider this in more detail below in respect of the unfair dismissal claim.

138. We considered that that could potentially be viewed as a point of unfavourable treatment of the Claimant. However, we saw nothing to suggest that Mrs Hall's actions were in any way derived from the Claimant's race but were, rather, derived from the approach taken by the Claimant and, in particular, her trade union representative, at the meetings. As we have stated, the time allocated to the meeting on 30 January 2019 should have been adequate to enable all the matters to be discussed, and we considered that Mrs Hall would have taken exactly the same approach to a British employee had they, and their trade union representative, taken the same approach.

EQA section 26: harassment related to race

139. Many of the issues raised under this heading, eight of the twelve matters, have been addressed above in respect of the claim of direct discrimination. Our conclusions in respect of those matters from the perspective of the harassment claim are the same, in that where we did not consider that there was any unfavourable, let alone less favourable, treatment of the Claimant, other than in relation to the first direct discrimination allegation, we similarly did not consider that those matters amounted to unwanted conduct related to the Claimant's race, which had the purpose or effect of violating her dignity.

140. In relation to the remaining matters, our conclusions were as follows.

Newmor's response to Denise Jones' complaint about the Claimant, made after 16 November 2018, which led to the first disciplinary procedure against the Claimant (shortly after the grievance meeting with regarding Paul Chambers)

141. We did not see how the First Respondent's response to Mrs Denise Jones' complaint about the Claimant, which led to disciplinary action against the Claimant, could be said to have been unwanted conduct on the ground of the Claimant's race. As a matter of fact, we were satisfied that the Claimant had behaved inappropriately towards Mrs Jones, and that the commencement of disciplinary action in respect of that matter was appropriate.

Rachel Jones 'spreading rumours and encouraging other employees to treat the Claimant differently'

142. The specific elements of the allegation of "spreading rumours" were summarised in further information provided by the Claimant following the initial preliminary hearing in November 2019. Most of these have been covered in relation to other matters, apart from the allegation that Mrs Rachel Jones and Mrs Denise Jones "surrounded" the Claimant in an office and did not let her leave. As we have noted above, at paragraphs 55 to 57, we were not satisfied that matters happened as described by the Claimant, and concluded that, whilst Mrs Denise Jones did attempt to have a conversation with the Claimant in Mrs Rachel Jones' office, once the Claimant expressed her unwillingness to have that discussion, the meeting ended and the Claimant was allowed to leave the room. Overall, we did not conclude that Mrs Rachel Jones had spread rumours or encouraged other employees to treat the Claimant differently and therefore concluded that there had been no unwanted conduct in that regard.

Rachel Jones issuing disciplinary letters to the Claimant (this is conceded by the Respondents);

143. As a matter of fact, Mrs Rachel Jones did issue disciplinary letters to the Claimant, as would have been expected as she was the First Respondent's Human Resources Manager. Again, we did not consider that there was any element of unwanted conduct relating to the Claimant's race in this regard, as Mrs Jones would have done exactly the same for any employee, regardless of their nationality.

Emma Hall sending the Claimant an email on a Sunday in January 2019 demanding information;

144. Mrs Hall did send an email to the Claimant on a Sunday. However, the Claimant appeared to raise concerns about this whilst giving her evidence on the basis that, as a Catholic, she did not wish to be disturbed on a Sunday. The email sent by Mrs Hall, on 27 January 2019, simply asked the Claimant to confirm her attendance at the disciplinary hearing on 30 January, the following Wednesday, and did anticipate that there would necessarily be any response from the Claimant on the Sunday. We observed that the Claimant could simply have not read emails on the Sunday if that was her desire. Furthermore, there was evidence within the

bundle that the Claimant had herself sent an email on a Sunday. We did not therefore consider that the sending of the email by Mrs Hall amounted to unwanted conduct.

145. Even if the sending of the email by Mrs Hall had amounted to unwanted conduct, it could only have been unwanted conduct by reference to the Claimant's religion and not by reference to her nationality, which was not what the Claimant was asserting had taken place.

146. Overall, we did not consider that there had been any occasions of unwanted conduct by any of the Respondents which were connected to the Claimant's race and which had the purpose or effect of violating her dignity.

EQA, section 27: victimisation

147. The first issue for us to address in relation to the Claimant's victimisation claims was whether or not she did 'protected acts". In this regard, the Claimant indicated that she relied on grievances she had raised against Mrs Gittins, and also a grievance against Mr Chambers, stating that that had been raised on 17 December 2018. However, we noted that the grievance on 17 December 2018 had raised concerns about Mrs Rachel Jones, Mrs Reading and Mrs Gittins, and that the grievance regarding Mr Chambers had been raised in a letter dated 20 November 2018.

148. On considering the grievances involving Mrs Gittins, we could not see that any of them raised any concern that anything had happened which amounted to a breach of any aspect of the Equality Act 2010. We did not therefore consider that any of those grievances amounted to protected acts.

149. With regard to the grievance raised against Mr Chambers however, the grievance did make reference to an allegation that Mr Chambers had made the Claimant feel humiliated in front of others, and that that was of a 'discriminatory nature". In the circumstances, we were satisfied that that grievance did indeed amount to a protected act for the purposes of section 27 of the Equality Act.

150. The next issue for us to address was whether the Claimant had been subjected to any detriment as a result of having made that protected disclosure. The Claimant raised four such detriments, as set out at section 6b of the list of issues at paragraph 39 above.

151. The first of these actually predated the protected act and therefore could not have been caused by it. The second and fourth have already been dealt with above and we record that our view in relation to those matters is the same as it was in relation to the direct discrimination and harassment claims. That is that there was no detrimental treatment, and if there had been we would not have considered that it had arisen because of the protected act.

152. That left the third issue to be addressed, which was that the Claimant contended that Mrs Gittins checked up on her every day following the

receipt of her grievance against Mr Chambers. Whilst there was evidence that Mrs Gittins, and Mrs Rachel Jones, from the HR perspective, and Mrs Reading, from the health and safety perspective, were noting the Claimant's failures to wear her safety shoes, that arose following Mrs Reading's health and safety assessment and the clear direction given to the Claimant by Mrs Reading and Mrs Rachel Jones that she was required to wear her safety shoes at all times.

153. We did not consider that Mrs Gittins had, in any sense, "checked up" on the Claimant every day, and we were satisfied that the occasions when the Claimant's breaches of the direction to wear her safety shoes were addressed were part of the normal day-to-day conduct of the First Respondent's business. We did not therefore consider that anything that arose in relation to this matter amounted to detrimental treatment, and, again, even if it had, we would not have considered that any such detriment arose because the Claimant had done the protected act.

Unauthorised deductions

154. The Claimant's contentions in relation to this claim were clarified, in the further information she provided following Judge Davies' direction, as relating to an alleged failure to pay her during her period of suspension, and an alleged failure to cover the agreed overdraft costs of £150.

155. However, we could see from the pay slips within the bundle that a payment of £150 had been made to the Claimant in her January salary, and that she had received her normal salary in January and in February she had received a payment of roughly a quarter of her normal salary, which reflected the fact that she had been employed only for eight days during that month. We were therefore satisfied that there had been no failure to pay sums due to the Claimant, and therefore there had been no unauthorised deductions from her wages.

Unfair dismissal

156. Turning finally to the unfair dismissal claim, we first had to consider the reason for the dismissal, and whether the Respondent had established that it was the Claimant's conduct.

157. We were satisfied that that was the case, in the form of the Claimant's unauthorised absences and her failure to comply with the requirement to wear the safety shoes. The Claimant contended that the treatment of her, and indeed her ultimate dismissal, was due to her race, but, as we have indicated above in relation to the various discrimination claims, we did not consider that that was the case. We did not consider that the Respondent had any ulterior motive in implementing disciplinary action against the Claimant and in ultimately dismissing her.

158. We then turned to the question of whether dismissal for the reason of the Claimant's conduct was fair in all the circumstances, applying the test set out in BHS v Burchill [1978] IRLR 379, of whether the Respondent had a genuine belief of the Claimant's guilt of the commission of the disciplinary offences, whether that belief was based on reasonable grounds, and

whether those grounds were formed from a sufficient investigation.

159. In that regard, we were satisfied that the Respondent had a genuine belief that the Claimant had committed the disciplinary offences of which she was accused, namely; taking unauthorised absences, and failing to comply with health and safety directions. We were also satisfied that that belief was based on reasonable grounds, as it was clear that the Claimant had indeed taken unauthorised absence, and had compounded that by failing to respond to what we considered were perfectly reasonable directions to provide evidence of her absences, which could then have led them to have been considered as authorised, albeit unpaid, absences. Similarly, we could see from the evidence of Mrs Rachel Jones, Mrs Gittins and Mrs Reading, supported by various emails within the bundle, that there had been several occasions on which the Claimant had been identified as failing to wear the safety shoes as directed.

160. We were also satisfied that those grounds followed a sufficient investigation. We noted that the most of the investigative steps that were undertaken related to the allegation that the Claimant had behaved inappropriately towards Mrs Denise Jones in October 2018, an allegation which led only to the imposition of a final written warning and did not lead to the Claimant's dismissal. With regard to the two matters which did lead to her dismissal, there was no particular investigation undertaken, but we were satisfied that the conclusion that there was a disciplinary case to answer was self-evident from the background circumstances.

161. We were conscious that we needed to judge the Respondent's actions in the context of the range of reasonable responses, applying the guidance from Sainsburys Supermarkets Limited v Hitt [2003] IRLR 23, and we considered that the action taken by the Respondent did indeed fall within that range.

162. We then considered whether the imposition of the sanction of dismissal was fair in all the circumstances, applying the guidance provided in Iceland Frozen Foods v Jones [1982] IRLR 439, that we again had to judge that in the context of whether the decision fell within the range of reasonable responses open to an employer acting reasonably in the circumstances.

163. In that regard, we noted that the First Respondent was faced with an employee who had taken unauthorised absence on two occasions, the second of which, in fact, she took without any form of advanced discussion with the First Respondent. With regard to the first occasion, whilst there was agreement that the Claimant could take the absence as an authorised, unpaid absence, it was made clear to her that that was dependent on her providing evidence of the reason for her absence, i.e. her attendance at the employment tribunal hearing. However, despite several requests from Mrs Rachel Jones, and later from Mrs Hall, which made it clear to the Claimant that they did not require her to provide any personal information, but simply required her to provide the notice of tribunal hearing, the Claimant did not cooperate. We were satisfied that the First Respondent's decision to dismiss was one which a reasonable employer acting reasonably was entitled to reach.

164. The First Respondent was also faced with clear and repeated breaches of the health and safety direction given to the Claimant to wear safety shoes at all times, which were imposed for the Claimant's own safety in the context of the issues arising from her use of the vacuum cleaner. Again, we considered that the reaction of the employer in dismissing for that reason fell within the range of reasonable responses.

165. We were not, however, satisfied that the First Respondent had complied with all appropriate procedural requirements. We noted that the First Respondent had undertaken appropriate steps with regard to the notification of the various hearings and the Claimant's right to be accompanied at them, and had warned her of the possibility that dismissal was a sanction that could be imposed.

166. With regard to the procedural requirement that a disciplinary hearing be held, we noted that disciplinary meetings were held but were not able to be completed. That was due to the approach of the Claimant and her trade union representative, which was, throughout the various meetings, disruptive. However, the fact remained that, during the disciplinary process, only two of the four disciplinary allegations were dealt with. Also, the position left at the end of the hearing was that the Claimant and her trade union representative wished to reconvene the meeting to deal with the remaining two matters, but that Mrs Hall did not consider that was appropriate. The Claimant and her representative made it clear that they did not wish to engage with the process of providing their responses to the two remaining allegations in writing, and Mrs Hall concluded the meeting by indicating that she would contact the Claimant if she felt a further meeting was required. She did not make any further contact, proceeding on the basis that she had concluded that dismissal was appropriate, and therefore, that there was no benefit in reconvening the hearing.

167. With regard to the decision to dismiss on the ground of the failure to comply with health and safety direction, we would have had significant concerns about the procedural fairness of that step. Notwithstanding the disruptive behaviour of the Claimant and her representative, the Claimant had been denied the ability to provide her responses to the allegations that had been raised, and which it was considered justified her dismissal. Whilst reconvening the hearing may have been unattractive from the First Respondent's perspective, we considered that it either should have been reconvened, or the fact that it was not going to be reconvened should have been made clear to the Claimant in writing, and she should have been reminded of her ability to provide her responses to those allegations in writing.

168. We did not, however, consider that those procedural failings were fatal to the fairness of the decision to dismiss. That was because Mrs Hall made clear in her evidence before us that she reached her decision to dismiss both in relation to the unauthorised absence allegation and in relation to the failure to comply with the health and safety direction. The unauthorised absence issue had been fully aired at the disciplinary hearing, and therefore the Claimant had had a full opportunity to respond to that allegation. Mrs Hall was therefore in a position to form a conclusion

on that point, and she formed the view that, in isolation, dismissal in respect of that allegation would be the appropriate sanction.

169. In the circumstances, we considered that, at that stage, the dismissal was procedurally fair, and that the concerns we had identified about the procedural fairness of the decision to dismiss in relation to the health and safety matter made no difference to the ultimate decision to dismiss.

170. We were however concerned that the Respondent's failure to allow an appeal against the decision to dismiss was unfair. We noted that the Claimant was notified of her right to appeal, and indeed filed an appeal, and that that appeal was considered, without any further input from the Claimant and without a hearing, by Mr Morris. However, the First Respondent's disciplinary procedure makes clear that an appeal hearing will be held, and the ACAS Code also indicates that holding an appeal hearing is part of the required process.

171. We again had regard to the disruptive behaviour of the Claimant and her representative, which was cited by Mr Morris as his reason for dealing with the appeal without a hearing. Again, as was our view with regard to Mrs Hall's decision not to reconvene the disciplinary hearing, we considered that had Mr Morris made it clear in writing to the Claimant that an appeal hearing was not going to be held due to the disruptive behaviour of the Claimant and her representative, and had Mr Morris invited the Claimant to provide any further amplification of her appeal in writing, then we considered that the fact that a formal appeal hearing was not held could have been excused. However, Mr Morris did not do that, and the first the Claimant knew about the outcome of her appeal was when she received Mr Morris's decision letter.

172. We considered that that was unfair, and noted the direction of the Court of Appeal in Taylor v OCS Group Limited [2006] ICR 1602, confirmed by the EAT in Mirab v Mentor Graphics (UK) Ltd (UKEAT 0172/17), that following appropriate procedural steps in relation to an appeal is a fundamental part of the assessment of the fairness of the dismissal, and it is not the case that a failure in relation to an appeal is only relevant if the original process was unfair.

173. Applying that guidance, that led us to conclude that the ultimate decision to dismiss the Claimant was unfair due to, but only due to, the First Respondent's failure to arrange an appeal hearing, or to make it clear to the Claimant in writing that that was not going to happen and to invite her to provide further comments in writing.

174. We then considered what compensation should be awarded in light of that finding of unfair dismissal. First, looking at the compensatory award, and applying the direction of the House of Lords in Polkey v E A Dayton Services Limited [1988] ICR 142, we were satisfied that the lack of an appeal hearing made absolutely no difference to the overall decision to dismiss the Claimant. She had not provided any explanation for her failure to provide evidence of her absence at the disciplinary hearing, and we did not see what she could have said at the appeal hearing which would have changed that. Similarly, had any appeal hearing also considered the

failure to comply with the health and safety direction, we again did not see that that the Claimant could have provided any information which would have overturned that decision.

175. In the circumstances, we considered it very clear that any appeal hearing, or further information the Claimant could have provided in writing without an appeal hearing being held, would have made no difference to the outcome, and therefore considered that no compensatory award should be ordered.

176. With regard to the basic award, we were conscious that the Polkey principle, drawing, as it does, on the provisions of section 123(1) of the Employment Rights Act 1996, which indicate that the amount of a compensatory award shall be such amount as the tribunal considers just and equitable, does not apply to a basic award, the terms of which are governed by sections 121 and 122 of that Act.

177. Section 122(2) however provides that the amount of a basic award can be reduced where a tribunal considers that any conduct of a claimant before the dismissal was such that it would be just and equitable to do so. In that regard, we were conscious that the misconduct of which the Claimant was accused had been clearly established, and that the Respondent had sufficiently complied with procedural formalities up to the point of dismissal, so as to render the dismissal fair at that stage. In the circumstances, we considered that it would be just and equitable to reduce the basic award, and to reduce it to zero, due to the Claimant's conduct which was the reason for her dismissal.

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Employment Judge S Jenkins

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Date: 8 December 2020

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
9 December 2020
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FOR EMPLOYMENT TRIBUNALS

APPENDIX

1600389/2019 – Newmor Group Limited
1600428/2019 – Mr P Chambers
1600561/2019 - Newmor Group Limited
1600562/2019 – Mr S Maiden and Newmor Group Limited
1600563/2019 – Mrs R Jones
1600564/2019 – Mrs E Reading
1600565/2019 – Mrs P Gittins
1600597/2019 – Mrs E Hall