EMPLOYMENT TRIBUNALS

Claimant: **Ms J Nyeko**

Respondent: **AIG Asset Management (Europe) Limited**

Heard at: **Central London**

On: **13 – 17, 18 September 2021 &**
23, 24 September 2021 (In Chambers)

Before: EJ Brown
Members: Mr R Baber
Mr D Kendall

Representation

Claimant: Mr Betchley (Counsel)
Respondent: Ms L Bell (Counsel)

JUDGMENT

The Judgment of the Tribunal is that:

1. The Respondent victimised the Claimant when:

i. On or around 22.01.20, Ms Monaghan responded to the Claimant's protected act by saying she did not believe there was discrimination and closed any further discussion on this;
ii. On or around 17.02.20, Ms Monaghan and Torsney invited the Claimant to an investigation meeting and claimed that the Claimant was not away on holiday and was in the UK as opposed to Uganda.

2. The Respondent did not otherwise victimise the Claimant.

3. The Respondent did not wrongfully dismiss the Claimant.

4. The Respondent made an unlawful deduction from the Claimant's wages when it did not pay her for 1 of the 5 days 10 – 14 February 2020.

REASONS

1. By a claim form presented on the Claimant brought complaints of direct race discrimination, race harassment, direct disability discrimination by association, victimisation, wrongful dismissal and unlawful deductions from wages against the Respondent, her former employer.

2. During this Final Hearing, the Claimant withdrew her complaints of direct race discrimination, race harassment and direct disability discrimination by association in their entirety. These claims were therefore dismissed on withdrawal.

3. The Claimant had already given evidence when she withdrew these claims. She said that her evidence regarding matters which occurred before her alleged protected act should be disregarded by the Tribunal. The Respondent asked the Tribunal to take the evidence into account when considering the Respondent's response. The Tribunal agreed to take the Claimant's evidence about matters before the protected act into account when considering making its decision on the Respondent's response to the claims only.

4. The List of Issues had been agreed between the parties. Following withdrawal of some claims, the issues were:

List of Issues

The Claimant and the Respondent are referred to as "C" and "R" respectively.

The Grounds of Complaint and the Grounds of Resistance are abbreviated to "GOC" and "GOR" respectively.

~~**Direct (race) discrimination**~~

1. Did R treat C in any of the following alleged ways?

~~1. On 16.12.19, Brenda Monaghan issued an unwarranted email warning to C on (GOC/para. 9).~~
~~2. On 09.01.20, Frances Torsney refused to grant C's request that R support her by funding the membership cost of a minorities support network (GOC/para. 10) (which R admits subject to confirmation that this allegation relates to the women in finance network: GOR/para. 6.2.4.2).~~
3. On 22.01.20, Brenda Monaghan immediately refused, and fa iled to consider, C's alleged request for an adjustment to her working hours to enable her to take care of a disabled family member (GOC/para. 11).
4. On or around 22.01.20, Ms Monaghan responded to the alleged verbal complaint by C (see para. 12 below) that she did not believe that there was any discrimination of any kind in AIG and closed any further discussion on this (GOC/para. 13).
5. On 28.01.20, Frances Torsney wrote to C expressly refusing to provide any support with the immigration

process, despite allegedly knowing that C would be stranded abroad, unable to return to work (GOC/para. 15).

6. On or around 17.02.20, HR invited C to an investigation meeting, claimed that C was not away on holiday and was in the UK as opposed to Uganda, and requested proof of her travel (GOC/para. 17).

8. On 04.03.20, C was dismissed (GOC/20) (which R admits: GOR/para. 1.3).

~~2. In respect of any admitted or proven treatment, was C thereby treated less favourably than R treated or would have treated others?~~

~~The claimant relies on the following actual comparators in relation to the allegations above:~~

~~1. all other members of the Global Real Estate Team;~~

~~2. other "analysts" employed by the respondent at her level who were able to claim the membership costs joining associations;~~

~~3. Daniel Woehler and Priti Shah.~~

~~The claimant relies on hypothetical comparators for allegations 1.4 – 1.7.~~

~~3. If so, was any such less favourable treatment because of race? C relies on colour, under s. 9(1)(a), EA 2010, and is black.~~

~~Harassment related to race~~

~~4. Did R engage in any of the alleged conduct stated at paras. 1.1-1.7 above?~~

~~5. In respect of any admitted or proven conduct, was it unwanted?~~

~~6. If so, was it related to race? C relies on colour, under s. 9(1)(a), EA 2010, and is black.~~

~~7. If so, did it have the purpose or effect of violating C's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for C?~~

~~Direct (disability) discrimination (by association)~~

~~Disability~~

~~8. The claimant says she is the primary carer for her brother who lives with her and is disabled by reason of a discrepancy in lower limb length~~

~~Direct discrimination~~

~~9. Did R treat C in the way alleged at para. 1.3 above?~~

~~10. If so, did Ms Monaghan thereby treat C less favourably than she treated others?~~

~~The comparators on whom C relies are Daniel Woehler (GOC/para. 11.1) and Priti Shah.~~

~~11. If so, was any such less favourable treatment because of disability?~~

Victimisation

Protected act

12. Did C on or around 22.01.20 raise a verbal complaint to Brenda Monaghan regarding Ms Monaghan and the whole team's treatment of C, including a specific complaint about an alleged campaign of racial harassment against her?
13. If so, did C thereby do a protected act within the meaning of s.27(2), EA 2010?

Detriment

14. Did R treat C in any of the alleged ways stated at paras. ~~1.1~~- 1.3 - 1.7 above?
15.
16. Did R fail to allow the claimant to make representations to it when conducting its process to determine whether or not to report the circumstances of the C's dismissal to the FCA and/or whether there had been any breach of the FCA Conduct Rules (GOC/para 18)?

17. Did R unreasonably delay telling C the outcome of that process (GOC/para 18)?

18. If so, did R thereby subject C to a detriment (or detriments)?

19. If so, did R subject C to any such detriment because C had done a protected act?

Unauthorised deductions from wages

20. What was the total amount of the wages properly payable in respect of the period 10-28.02.20?

21. Was the total amount of the wages paid to C in respect of that period less than the total amount of the wages properly payable?

22. If there was any deduction from C's wages, was the deduction required or authorised to be made by virtue of a statutory provision or a relevant provision of C's contract or had C previously signified in writing her agreement or consent to the making of the deduction?

Wrongful dismissal

23. Was R entitled to dismiss C summarily by reason of her (gross) misconduct?

Limitation

Equality Act 2010 complaints

24. Have any of the allegations been brought outside the primary time limit?

The respondent contends that this includes all of the matters stated at paras. 1.1- 1.6 and 15 and 16 above.

The EC process took place between 5 March 2020 - 19 April 2020. The claim was presented on 17 July 2020 (relevant for allegations 1.1 - 1.6) and the amendment application was presented on 11 June 2021 (relevant for allegations 15 and 16).

25. Accordingly, has any such complaint been brought within such other period as the Tribunal thinks just and equitable?

Unauthorised deductions from wages

26. What was the date of the payment of wages from which the deducti on was made?

R contends that the wages in respect of the period 10-28.02.20 were paid on 24.02.20 and 26.02.20.

27. Allowing for early conciliation, was the complaint brought within three months of that date?

28. If not, was it not reasonably practicable for the complaint to be presented within that period of three months?

29. If so, was it presented within such further period as the Tribunal considers reasonable?

Remedy

30. Should the Tribunal make the declaration claimed, namely that R unlawfully discriminated against C because of her colour?

31. Should the Tribunal recommend that:

1. R and the employees mentioned in the proceedings apologise to C;

2. R provides a clean regulatory reference for C in response to any request for such a reference; and

3. The respondent rescinds the disciplinary sanctions with no reinstatement.

32. Should the Tribunal award any compensation to C and, if so, how much?

33.

34. Should any such compensation be reduced to reflect:

1. any failure by C to take reasonable steps to mitigate her loss;

2. any contributory conduct;

3. the chance that C would (or could) have been lawfully dismissed in any event?

35. Was there any failure by any party to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures?

1. If so, was that failure unreasonable?

2. If so, is it just and equitable in all the circumstances to reduce/increase any award made to C?

3. If so, by how much, up to 25%, should the award be reduced/increased?

5. During the hearing, the Claimant made clear that her unlawful deductions from wages related only to the week 10 – 14 February 2021.

6. Allegations 1.1 and 1.2 predated the protected act and were therefore not pursued by the Claimant.

7. The Tribunal heard evidence from the Claimant. For the Respondent it heard evidence from: Brenda Monaghan, Managing Director Global Real Estate and the Claimant's line manager; Candice Palma, Employee Relations Specialist at the relevant times; Angela Daniel, dismissing officer and Constance Forrest, appeal officer.

8. There was a Bundle of documents, to which additional material was added during the hearing. Page references in these reasons are to the bundle. Both parties made written and oral submissions. The Tribunal reserved its judgment.

Relevant Facts

9. The Claimant commenced employment with the Respondent on 30 July 2018, shortly after finishing university, as an Investments Apprentice / Investments Analyst.

10. She was one of three graduates in the UK who joined the Respondent's Investments team for a two-year Global Analysts Programme. This graduate programme consisted of three, eight-month rotations, in three different teams: Chief Investments Office, Commercial Real Estate and Global Real Estate. The managers allocated to the Claimant were Richard Greenwood, John Gardiner and Brenda Monaghan, respectively.

11. The Claimant's Investments Apprentice/Investments Analyst role was also part of an apprenticeship scheme. The Claimant was required to sign an apprenticeship scheme contract, p1199 -1205 bundle, as well as an employment contract with the Respondent.

12. The apprenticeship scheme contract, "Agreement for the Provision of Apprenticeship Education and Training Services" was signed by the Claimant,

the Respondent and BPP Professional Education Limited. Under the contract, the Respondent agreed that the Claimant would spend at least 20% of her normal working hours completing off the-job training, p1204. The Respondent also agreed to give the Claimant, as an apprentice, a job role which would allow her to gain the knowledge and skills needed to achieve the Investments Analyst apprenticeship, p1201. The Claimant agreed to complete all parts of the apprenticeship including exams, workbooks and projects, p1201.

13. When the Claimant commenced in her role, Eoin O'Grady was Head of the Analyst Programme.

14. During her employment with the Respondent, Julie Ashby, the Apprenticeship Scheme Skills Development Coach at BPP University, held monthly support and coaching telephone meetings with the Claimant in relation to her apprenticeship.

15. The Claimant was required to complete 9 assignments during 2019 under the apprenticeship programme. She completed 1 in August 2019 and 3 more by October 2019.

16. The Claimant was also required to pass a professional qualification examination, CFA1. She sat this on 15 June 2019 but unfortunately failed it.

17. The Claimant had a Biometric Residence Permit, pursuant to a Skilled Worker Visa, which allowed her to enter and work in the UK. The Respondent had sponsored the Claimant's visa to work in the UK.

18. In late May 2019, the Claimant's Biometric Residence Permit ("BRP")/Skilled Worker Visa went missing when she was on a train. She asked the Respondent's Global Mobility Partner, David Snowling, whether the Respondents' corporate immigration advisers, Newland Chase, should be involved in her application for a replacement BRP/visa and whether the Respondent might pay for the replacement, p1325. Mr Snowling advised that, if her manager approved the expense, the Respondent would fund the replacement. The Claimant asked Mr O'Grady for approval. Mr O'Grady, in turn, passed the request on to Frances Torsney, who had taken over management of the Global Analysts Programme from May 2019. On 30 May 2019, Ms Torsney initially declined to cover the cost, p1367. The Claimant spoke with Ms Torsney and Ms Torsney agreed that the Respondent would cover the cost of a replacement if the BRP/visa had been stolen. She asked that the Claimant provide a police report. Ultimately, the Claimant decided to cover the cost of replacing the BRP/visa herself.

19. The Claimant was due to move to her third rotation on 16 December 2019.

20. She arranged to meet her third rotation line manager, Brenda Monaghan, on 9 December 2019, to discuss her new role. The Claimant, however, did not attend the meeting. Ms Monaghan emailed the Claimant asking whether she was coming to the meeting, the Claimant, responded, saying "Apologies I had a meeting clash", p 295-296.

21. The meeting was subsequently rescheduled for 9am on 10 December 2019, when the Claimant emailed asking for the meeting to be delayed by 15 minutes because of train problems, p297.

22. At the 10 December 2019 meeting, Ms Monaghan explained what work the Claimant would be doing in her third rotation. This included a task which the Claimant would be picking up from the previous graduate apprentice. Ms Monaghan also set out her key requirements of the Claimant, which included all work deadlines being met and the Claimant not being late for meetings, p299-300. Ms Monaghan said that the Claimant would need to keep up with her Graduate Training programme and should note any telephone meetings in relation to this on the Claimant's calendar. Ms Monaghan emailed the Claimant on 11 December with a summary of the discussion, p299-300.

23. The Claimant was due to start her new rotation on 16 December 2019. At 03.45 that morning, the Claimant emailed Ms Monaghan saying that her flight had been delayed and she would not be in the office until after the 10am morning meeting, p302.

24. Ms Monaghan responded, "Hi Julie This is a disappointing start to your GRE rotation. I reiterate hours are 9am – 5pm."p 301. Ms Monaghan's email was understandably terse. The Claimant was late to work and had clearly not allowed much time between the end of her holiday and the start of her new rotation.

25. On 7 January 2020, Ms Monaghan met with the Claimant and reviewed her work. She advised the Claimant that she expected to see more output from her in the following week. She also told the Claimant that, if the Claimant needed to be out of the office during working hours, apart from at lunch, she needed to let Ms Monaghan know. Ms Monaghan observed that, if the Claimant was out of the office too much, she would not get her work done, p309-310.

26. On 9 January 2020 at 10.47 Frances Torsney emailed Ms Monaghan saying that the Claimant was enquiring about a particular post which might be available on Ms Monaghan's team. Ms Torsney said, "I asked how she is getting on in your group though early days. She seems to like it – thinks communications across the team are very good. How is it going for you?" p303.

27. Also on 9 January 2020 at 12.39, another Managing Director on the same floor as the Claimant emailed Ms Monaghan saying that the Claimant had arrived late for work, disappeared for most of the morning and had then gone for lunch. She said, "It has been noticed and a topic of conversation." P307

28. At 13.13 Ms Monaghan responded saying, "We are documenting everything… not sure how long [the Claimant] will last." P307.

29. On the same day, at 12.55 Ms Monaghan replied to Ms Torsney's enquiry about the Claimant's progress and request to be considered for the permanent role, saying, "I have .. put her on notice more is expected of her. … She goes MIA [Missing in Action] a lot… We will not consider her for the position due to lack of experience AND work ethic … I hope we see improvement now the expectation is completely clear." P308.

30. Ms Monaghan also emailed the Claimant on 9 January, saying that Ms Monaghan was not in the office that day but, "… your lateness/absence for

most of the day so far has been noted. .. Hopefully you will have noted, unexplained absence is not tolerated in GRE. If you need to book holiday or attend training please let me know in advance otherwise I am curious as to what work you are doing?", p317.

31. The Claimant explained, in reply, that she had had a hospital appointment. Ms Monaghan said that they could discuss at their weekly catchup, but that the Claimant should not be late and should put appointments in the diary, p316.

32. The Tribunal considered that these emails demonstrated that the Claimant was late and was away from her desk, without having notified Ms Monaghan in advance (whether by a calendar entry or otherwise), on a number of occasions in the early weeks of her third rotation. Ms Monaghan and others commented on this with disapproval. Ms Monaghan formed the view, early into the rotation, that the Claimant's work ethic was unsatisfactory. Ms Monaghan's emails to the Claimant, particularly that sent on 9 January 2020 at 13.10, were abrupt in tone. Ms Monaghan had considerable justification for her dissatisfaction with the Claimant's attendance and work ethic. At the same time, her communications with the Claimant lacked any pastoral tone towards a very junior employee.

33. On 16 January 2020, the Claimant had her weekly meeting with Ms Monaghan. In her note of the meeting, Ms Monaghan recorded that they had discussed "a key goal as how you get your work done". Ms Monaghan said, "I expect all my team to be responsible self-starters so you will need to demonstrate areas to satisfy this goal." p327.

34. The Tribunal observed that there was almost nothing in Ms Monaghan's emails and notes of conversations with the Claimant to show that Ms Monaghan took any responsibility for ensuring that the Claimant achieved her learning goals pursuant her apprenticeship scheme. For example, there appeared to be no plan in place to protect 20% of the Claimant's working time for her apprenticeship off-the-job training.

35. The Claimant had booked annual leave for early February 2020. On 20 January 2020 she asked Ms Monaghan to approve bringing her leave forward by 4 days, to 27 January – 7 February 2020, p1520. She said that she was no longer going on holiday but needed to fly home urgently for a family emergency. Ms Monaghan replied "OK".

36. The Claimant and Ms Monaghan met again in a weekly catch-up on 22 January 2020. At the outset, they discussed the work which the Claimant had completed in the preceding week. The Claimant then told Ms Monaghan that she was concerned that there was "unconscious bias" against her in the GRE team, as she was not being included or being tasked with completing interesting work. The Claimant also said that she felt the GRE team needed unconscious bias training and that she hoped to set up an internal Employee Resources Group with the goal of supporting black employees and offering unconscious bias training.

37. Ms Monaghan told the Tribunal that she asked the Claimant for examples of who had been unconsciously biased against the Claimant and asked the Claimant whether she thought Ms Monaghan, herself, had been unconsciously biased.

38. Ms Monaghan told the Tribunal that the Claimant did not give any specific examples of what she deemed to be unconscious bias and that did not refer to race discrimination.

39. However, immediately after the meeting Ms Monaghan sent a draft email, addressed to the Claimant, to Frances Torsney for her comments. In Ms Monaghan's draft email to the Claimant she said, "The team is well diversifie[d] with a number of women – arguably more than most real estate teams. I have not experienced/seen any bias on the team which has many cultural backgrounds including one Indian (Naveen)".

40. The Tribunal noted that, in the very sentence in which Ms Monaghan referred to "bias" on the team, Ms Monaghan said that the team had "many cultural backgrounds including one Indian..".

41. Ms Monaghan was asked a number of questions in evidence about what she understood the Claimant to have been complaining of when the Claimant had said there was unconscious bias. In evidence, Ms Monaghan said, on a number of occasions, that the Claimant had not mentioned race discrimination in the meeting. She agreed that it as a possibility that the Claimant was complaining of race discrimination, but said that she did not know it as a fact.

42. The Tribunal noted that Candice Palma, Employee Relations Specialist, who later advised Ms Monaghan on the drafting of this email, removed the reference to cultural backgrounds, p359.

43. The Tribunal found that Ms Monaghan understood that the Claimant was complaining about race discrimination in the meeting on 22 January. That was plain from the wording of her draft email, when she rejected the suggestion of bias by saying that the team had "many cultural backgrounds" and referred particularly to a non-white employee. Furthermore, the Claimant had specifically said that she wanted to set up a group which supported black employees and offered unconscious bias training. It would have been obvious to Ms Monaghan that, when the Claimant referred to unconscious bias, she meant bias against the Claimant as a black person.

44. The Tribunal noted that Ms Monaghan appeared reluctant to admit this in evidence.

45. Candice Palma, to whom Ms Monaghan reported the events of the 22 January 2020 meeting, was clear in her evidence that she understood the Claimant to have been complaining about unfavourable treatment because of race.

46. Ms Torsney and Candice Palma discussed with Ms Monaghan how she should respond to the Claimant. Given that the Tribunal has found that both Ms Palma and Ms Monaghan believed that the Claimant had alleged race discrimination, the Tribunal had little hesitation that Ms Torsney, too, believed that the Claimant had alleged race discrimination in the 22 January meeting.

47. Also in the 22 January 2020 meeting, the Claimant raised the matter of Ms Monaghan challenging her timekeeping. Ms Monaghan said that she would do this with anyone who consistently turned up to work late. In her draft

outcome email, Ms Monaghan said, " You mentioned you had a brother where you are the sole carer which has resulted in your lateness. I highlighted that I always would "put family first" but my suggestion was to get up earlier as I would not expect someone to be consistently late."

48. Ms Monaghan agreed in evidence that she had said, in response to the Claimant saying that she was the sole carer for her disabled brother, that the Claimant should get up earlier. She accepted that, on reflection, this had been a harsh comment.

49. Ms Monaghan denied that she had closed the discussion about discrimination down. In evidence she said, "I never said I had not seen any discrimination at AIG – I said in my GRE team I had not seen it. I had no intention of closing it down, as I consulted Frances afterwards, I was thinking very seriously about it. I asked for input."

50. When Ms Monaghan did email the Claimant on 3 February 2020, enclosing a summary of the meeting, she used wording which had been amended following discussion with Candice Palma and Frances Torsney, p364. The words now said, " While I have not experienced/seen bias on the team, I now understand your perception". The words "I now understand your perception" were not in Ms Monaghan's original draft.

51. Ms Monaghan's email now also included, in relation to the Claimant's caring responsibilities, the words, "In addition, while we did not discuss this, it may be worth considering if a change of hours would better support you – let me know if that is of interest and we can discuss it further."p365.

52. Ms Monaghan agreed that she had not raised this in the meeting.

53. In her letter, Ms Monaghan also said that the Claimant could reach out to Frances Torsney as the "graduates champion".

54. Ms Monaghan and Ms Palma told the Tribunal that this letter invited further discussion and showed that the Claimant had not been "shut down" when she had raised the issue of unconscious bias on 22 January 2020.

55. The Tribunal noted that the email was not sent until 3 February 2020, some 12 days later, by which time the Claimant had gone on annual leave.

56. In her evidence, Ms Palma confirmed that Ms Monaghan's draft email had been changed to remove references to the diversity of the team. She said, "That was as a result of the discussions I had with her [Ms Monaghan]. It takes an amount of courage for an individual to raise those things – to say that can feel to that individual like a bit of a put down."

57. The Tribunal found that Ms Monaghan's original draft email was an accurate reflection of what Ms Monaghan actually said in the meeting on 22 January 2020.

58. The Tribunal also found that the Claimant did not specifically ask for adjustments to her working hours during the meeting on 22 January. The subject was raised by Ms Monaghan in her email on 3 February 2020.

59. The Claimant started her annual leave on 27 January 2020 and flew to Uganda to visit her brother who was ill in hospital.

60. On 28 January 2020 at 11.13 the Claimant emailed Ms Monaghan , copied to Frances Torsney and Eoin O'Grady, saying that her bag, containing her residence card, had been stolen in the taxi on the way from the airport in Uganda. She asked how the Respondent might be able to support the process of applying for a replacement, as she needed her residence card to get back into the UK. She asked if this was something the Respondent could cover, as her work permit was sponsored by the Respondent. She said that she would then revert with the cost, p575.

61. Ms Monaghan replied within 12 minutes, asking Frances Torsney to look into the matter. Ms Torsney replied at 17.01 the same day, saying, "..it seems you are indeed very unfortunate, since this is the second time your card has been stolen over the last number of months.." She said that the Respondent did not cover the costs of loss or replacement of a card and suggested that the Claimant claim on her travel insurance, p756.

62. The Claimant replied further that day, saying that, when she had paid to replace her card on the previous occasion, she had been in the UK and was able to go to work. She said that, this time, "I am now stranded and trying to seek some guidance from [the Respondent] in order for me to get back into work within the annual leave granted." She asked if the Respondent could offer her support in applying for the visa. She said that her insurance did not offer guidance on it, p756.

63. At 18.06 on 28 January, Ms Torsney forwarded the Claimant's further email to others, including the Lauriel O'Neill, head of the Respondent's Diversity and Inclusion Unit, asking if anyone could help the Claimant to get her card replaced, p353.

64. The next morning, 29 January, David Snowling, Global Mobility Partner, asked the Respondent's immigration consultants, for advice. He forwarded the advice to the Claimant at 13.30 pp352, 372. Uganda local time is 2 hours ahead of UK time.

65. On 3 February 2020 at 08.18, the Claimant emailed Ms Torsney, copying her email to Mr Snowling, amongst others. She said that she had been in touch with the Respondent's immigration consultants and that she needed to apply for a re-entry visa. She said that there were 2 options: a standard process taking 3 weeks, costing £154, and a fast-track process, which would take a week and would cost £400. The Claimant said that her travel insurance would only pay £150 for replacing travel documents, p370.

66. Also on 3 February 2020 Ms Torsney again forwarded the Claimant's email to Ms O'Neill at the Respondent's Diversity and Inclusion Unit, and Mr Snowling and Ms Monaghan, amongst others, at 08.50 that morning, p370. She said, of the Claimant's visa, ".. she is now hinder[ed] from returning to work without it and I am now particularly sensitive to any unconscious bias perceptions – I feel the best approach is to … fund the fast track."

67. At 15.15 (17.15 local time in Uganda) on 3 February Ms Torsney emailed the Claimant, copying in Ms Monaghan and Eoin O'Grady amongst others, confirming that the Respondent would fund the fast track re-entry visa, p375.

68. The Tribunal found that, seeing that Ms Torsney did not authorize a 1 week-fast track visa until the afternoon of 3 February 2020, she must have known that the Claimant would not obtain a visa until 10 February 2020 at the earliest (1 week later) and, therefore, that the Claimant could not return to work in the UK on 10 February 2020. Realistically, the Claimant could not be back in the UK until she had both obtained the visa and rebooked her flight to reenter the UK, on the basis of the visa.

69. On 6 February 2020 Eoin O'Neill emailed the Claimant, asking how she was getting on and whether she had been able to process her visa, p375.

70. The Claimant replied at 07.32 on 10 February 2020, the day she was due back to the office, saying that she had submitted the visa application and was waiting to hear back, possibly by the end of the week, when she would rebook her flights, p375.

71. On 7 February 2020 Ms Monaghan had sent the Claimant tasks to work on, upon her return to work, p798.

72. The Claimant was due to return to work following her annual leave on Monday 10 February 2020. She did not do so, and she did not contact Ms Monaghan or Ms Torsney to tell them she would not attend, or when she would return.

73. The Respondent's Sickness Absence Policy, ps 435-442 provides, " On the first day of sickness absence, the employee must inform their manager within
74. 15 minutes of their normal start time that they will not be working because of an illness or injury".

75. Ms Torsney emailed the Claimant at 14.30 on 10 February 2020, page 384. She said that the Respondent had been expecting the Claimant back to work and asked whether the Claimant had applied for her fast track visa. She said that it was important for the Claimant to keep Ms Monaghan updated and tell her managers when she would return.

76. Ms Torsney forwarded her email to Lauriel O'Neill, Head of Diversity and Inclusion. Ms O'Neill responded, "I'm assuming that it's taking longer to come but strange that she did not just update you. I've also copied in Candice in case this ends up an AWOL case." P383

77. The Claimant did not immediately respond to Ms Tornsey's email. On 11 February 2020 Candice Palma emailed Mses Torsney and Monaghan saying, "..we now need to start the AWOL process. This involves from a welfare point of view next of kin call and AWOL letter". She also said that payroll needed to be informed of the dates of unauthorised absence so that pay was deducted, p430.

78. Ms Palma sent the Claimant a standard form AWOL letter on 11 February 2020 (pages 434-442). She said that failure to notify the Respondent of reasons for absence meant that the absence was treated as unauthorised and unpaid. The letter said that "We note that there may be extenuating

circumstances..". Ms Palma also instructed the Respondent's shared services team to place the Claimant on unauthorised leave effective 10 February (pages 541-542).

79. The Respondent's Disciplinary Policy, ps 244-250 at 247 – 248, sets out that "Any form of dishonesty" [248] will be "deemed by AIG to constitute Gross Misconduct" [247].

80. The same section of the Disciplinary Policy provides that "unauthorised or unexplained" absence is also "deemed by AIG to constitute Gross Misconduct".

81. The Claimant responded to Ms Palma's AWOL letter on 11 February at 13.48 pages 443 and 449-454), copying in Ms Monaghan, Ms Torsney and Mr O'Grady and others. In her response, the Claimant said,

"I'm expecting to hear back on the 12/02 about my visa application."

82. The Claimant attached the emails between Ms Torsney and the Claimant and the Claimant's email to Mr O'Grady dated 10 February 2020, sent before she was due to return to work that day.

83. The Claimant also attached a statement saying that her managers were all aware of her extenuating circumstances and she had kept them continuously informed. She said that she had first contacted Mr Torsney on 28 January, but it was not until a week later when Ms Torsney had responded or put her in touch with immigration consultants and authorized the submission of a fast track visa application, p499.

84. Ms Palma responded on 12 February by email, page 465, saying that she had identified several inconsistencies in the Claimant's schedule of emails. She made comments on the Claimants' schedule of emails, p465 -473.

85. Ms Palma told Ms Monaghan that the inconsistencies called into question the Claimant's honesty and integrity, p462.

86. Ms Torsney sought advice from Ms Palma as to how the period 10-14 February 2020 should be treated in respect of the Claimant's attendance and pay. On 11 February Ms Torsney sent a draft email to Ms Palma with the comment (in capital letters), "NOTE IDEALLY I DON'T [THINK] WE SHOULD PAY HER FOR ANY LEAVE – BUT I CAN ALREADY PRE-EMPT THE UNFAIR NOISE WE MAY GET AROUND THAT..", p464.

87. Ms Palma advised that it was within Ms Torsney's management discretion as to whether to record the absence as annual leave or as unpaid absence, page 489-490. Ms Torsney gave the Claimant both options in an email on Wednesday 12 February, p511.

88. On 12 February at 16:58 the Claimant emailed to say that she could not take annual leave for the period and was available to work remotely. She did not say that she had already been working that week, nor that she had spent time working on a BPP essay, p492.

89. Mses Monaghan and Torsney discussed what work the Claimant could complete whilst in Uganda p496-497, 505-506. Ms Monaghan suggested she work on her BPP assignments, as the Claimant could not look at files on the Shared Drive on her phone and would have great difficulty looking at spreadsheets on her phone, p510. In response, the Claimant stated that she had been working since 10 February 2020 on the work set by Ms Monaghan in her email of 7 February 2020 - “Also as you are aware Brenda Monaghan sent me work on 7/2, which I have been doing” , p510.

90. The Claimant did not join calls scheduled in that week, including a call with Ms Ashby of BPP which had been scheduled for 10 February, p 431.

91. Ms Monaghan asked the Respondent’s IT department about the Claimant’s ability to access the Respondent’s network.

92. Mr Terrelonge, from the IT department, informed Ms Monaghan that the Claimant did not have an active RSA token which was required to access the Respondent’s network. He said that the Claimant had attempted to log on to the system twice on 11 February, and that members of the IT team were helping the Claimant install an RSA token on the morning of Friday 14 February, pp 521-525.

93. Ms Monaghan forwarded her communications with Mr Terrelonge to Ms Palma, who noted that "this adds to the honesty and integrity piece and should be discussed with Julie on her return" p 519.

94. On 14 February Ms Torsney emailed the Claimant, querying the work she was doing and saying that Ms Torsney understood the Claimant did not have an RSA token. She asked the Claimant to provide copies of her flight booking and return visa renewal card and receipts for these, p514.

95. On 14 February, the Claimant responded, telling Ms Torsney that she had a work phone with the RSA token functioning and said that she would expect to be paid in full for the week 10-14 February 2020, p514.

96. The Claimant later produced a statement for the purpose of the disciplinary hearing wherein she said that she had been working on BPP essays “on the” BPP VLE network whilst away, p734.

97. Ms Palma advised Ms Torsney and Ms Monaghan to meet with the Claimant on her return to work and tell her that concerns about her honesty and integrity would be investigated in accordance with the Respondent’s disciplinary policy, p516.

98. The Respondent’s disciplinary policy provides, “Investigation. When a problem with your conduct has been identified, your immediate line manager will investigate the circumstances, as soon as reasonably practicable to assess whether formal action is appropriate. As part of this investigation, you may be invited to a meeting to establish the facts of the situation.”, p246.

99. They duly met with the Claimant when she returned to the office on 17 February 2020. There were no notes of this meeting. The Claimant did not provide paperwork at the meeting showing her flight bookings.

100. In evidence to the Tribunal, Ms Monaghan agreed that, during meeting, Ms Torsney and she challenged the veracity of the Claimant's account of when she travelled and when she planned to return. She agreed that they had challenged the Claimant's assertion that she was abroad.

101. She said that they had done so because of "the whole fact pattern.. booking holiday and then changing it and coming back on the date she had initially planned. Changing her story in the way that she had left out important bits of the support Frances had given …. Candice asked for documents for proof which were not provided".

102. The Claimant told the Tribunal that, during the meeting, Mses Torsney and Monaghan were antagonistic and aggressive. Ms Monaghan denied this. Ms Torsney did not give evidence.

103. The Tribunal had little difficulty in finding that Ms Torsney and Ms Monaghan were antagonistic and aggressive towards the Claimant during this meeting. They had already decided, before meeting the Claimant to ask for her explanation, that they would conduct a formal disciplinary investigation, p516. The tone of Ms Torsney's emails to the Claimant, even before the Claimant had failed to return to work, were brusque and occasionally sarcastic, p756. These were 2 very senior managers interviewing a 23 year old graduate trainee. There was no sense, in any of the emails which the Respondents' employees had sent to each other in the preceding weeks about the Claimant's lost visa, that they had any sympathy for her having been in Uganda dealing with a family emergency, and having had the stressful experience of losing her visa while there. Ms Monaghan and Ms Torsney repeatedly referred to the Claimant being "on holiday" when the Claimant had told Ms Monaghan that she had cancelled a recreational holiday in order to go to Uganda to deal with a family emergency.

104. After the meeting, the Claimant emailed Ms Torsney asking her to confirm "what the investigation is with regards to and what exactly is being brought against me", p531. The Claimant also said that she would not provide the documentation they sought until she had sought independent advice on the matter, p534.

105. Ms Torsney responded to the Claimant on the same day setting out the following allegations: 1. The email submission to HR, after the AWOL letter, compared to the email trail 2. That your holiday was initially booked inclusive to 13/2 3. Working remotely explanation not verified by the IT department. 4. To date I am yet to receive documented confirmation of Visa/original flight booking/ re-booked flight details. P530.

106. She asked the Claimant to provide evidence that she had been working remotely for the period 10-14 February by close of business on 18 February. She said that if the Respondent did not receive this by the deadline, the Claimant's absence for the period 10-14 February would be recorded as unpaid leave, p 530.

107. The Claimant did not provide the Visa documentation or evidence that she had been working remotely before the deadline of 18 February.

108. On 24 February 2020, the Claimant was issued with a disciplinary investigation report and accompanying evidence. The report recommended that a formal disciplinary hearing should be conducted. The Claimant was invited to a disciplinary hearing to consider 4 allegations of gross misconduct, allegations gross misconduct " for honesty and integrity relating to..
    - Holiday was initially booked inclusive to 131h February 2020.
    - Email submission to HR on 11th February 2020, after the AWOL letter, compared to the email trail, and unauthorized absence on 10th February 2020.
    - Working remotely explanation not verified by the IT department and no verification of work completed.
    - Failure to provide documented confirmation of Visa, original flight booking and re-booked flight details." Pp 596-597 and 613-698.

109. Ms Monaghan told the Tribunal that, although Ms Torsney and she had been involved in the matter under investigation, they produced a disciplinary investigation report which was evidence-based. She said that the Respondent's Disciplinary Policy requires an employee's immediate line manager to conduct the disciplinary investigation, p 244-250. Ms Monaghan said that the independent manager assessment stage occurs during the disciplinary hearing conducted by another manager.

110. The investigation report included a summary of the evidence in relation to each allegation. It said, in relation to the allegation that the Claimant's claim that she had been working remotely was not verified, "Julie also advised on 12th February that she was able to work remotely, had a work phone and had access to the AIG network. She also referenced that she had been working on work that her Line Manager had sent her in an email of 7th February. … The AIG IT support team confirmed that Julie requested an RSA token to enable her to work remotely on 14th February .. Julie also did not join any calls scheduled for the week of 10th February. This brings into question the honesty of Julie's confirmation that she had been working during her absence 10th -14th February 2020. On Julie's return, due to Julie's statement that she had been working remotely, Frances requested that Julie provide evidence of this by close of business 18th February 2020, or the absence would be recorded as unpaid. To date Julie has not provided evidence of the work she completed during her absence 10th – 14th February 2020." P615.

111. Ms Torsney contacted Ms Angela Daniel on or around 24 February to ask if she would chair the Claimant's disciplinary process, pages 600-605. Ms Daniel had not conducted a disciplinary hearing previously.

112. Ms Palma was responsible for providing Ms Daniel with HR advice and support throughout the process.

113. Ms Palma told the Tribunal that she made it clear to Ms Daniel, throughout the process, that the ultimate decision was hers alone and that she was there to assist, from an HR perspective, and no more. The Tribunal will return to this subject later.

114. The disciplinary hearing took place on 28 February 2020, p935-945

115. The Claimant attended the hearing with two support employees. She provided a witness statement and accompanying documents, pp 732-934. Neither Ms Daniel nor Ms Palma had been provided with these in advance of the hearing.

116. In her statement and during the disciplinary hearing, the Claimant raised concerns regarding unconscious bias. She said that she had raised these concerns before, p737. Ms Daniel told the Tribunal that she understood the Claimant to be alleging race discrimination.

117. The Claimant did not ask for clarification of the allegations against her at the start of the disciplinary hearing, p936. The Tribunal accepted the Respondent's contention that this indicated that she understood the misconduct which was alleged against her.

118. During the disciplinary hearing, the Claimant said that she had been working on her BPP essay on 10 – 13 February, pp942 – 943. She said that she was not working on the Respondent's system, but on BPP's VLE system.

119. The Claimant was asked to provide a copy of the essay she had been working on. She did so the following day, p962.

120. Following the disciplinary hearing, Angela Daniel obtained a record of the Claimant's VLE log on history from BPP. It showed that the Claimant had only logged in once, for 6 minutes, on 12 February 2020 and that her most recent log-on, before 12 February, had been on 3 January 2020, pp954-956.

121. Ms Daniel wrote to the Claimant, attaching the evidence from BPP, p952. She also asked the Claimant to provide the document history for the essay. The Claimant replied saying that there was no means to work on an essay on the VLE; she had worked on her essay offline and had only accessed the VLE on one occasion, p957.

122. Ms Ashby confirmed, in evidence to the Tribunal, that students access the VLE to obtain details of work required from it. They then work offline on their assignments and upload the finished work to the VLE. Ms Daniel did not seek clarification from BPP on this at the time.

123. The Claimant explained that she could not provide version histories for her essay because this function only worked for files stored on OneDrive or SharePoint and none of the files she checked on the Respondent's drives had this feature, pp960-968.

124. Ms Palma provided Ms Daniel with a template decision document for her disciplinary outcome, p1473. It advised Ms Daniel, under each allegation heading, that she should detail the allegation, the evidence regarding it, her conclusion and potential outcomes of the misconduct for the Company and clients.

125. However, the only outcome provided on this template decision stated, "I am satisfied that I have thoroughly investigated the allegations of misconduct and I have concluded that the nature of your misconduct is so serious that it amounts to gross misconduct which warrants your summary dismissal. As a result, your employment with the Company has been

terminated, effective DATE, you will be paid up to and including this date. For dismissal on the grounds of gross misconduct you are not entitled to receive your contractual notice period or contractual pay in lieu [however due to your visa dependency you will receive one months pay in lieu of contractual notice together with any accrued holiday.] …"

126. The draft letter was addressed to the Claimant. The outcome paragraph appeared also to be specifically directed to her, in that it mentioned the specific circumstances of her visa.

127. On 4 March 2020, Ms Daniel met the Claimant to inform her that the outcome of the disciplinary process was that the Claimant would be summarily dismissed for gross misconduct.

128. Ms Daniel confirmed this in writing on 6 March 2020, pp 1019-1023.

129. In the outcome letter, Ms Daniel found that there was no case to answer in respect of Allegation One. She told the Tribunal that, at the disciplinary hearing, the Claimant had provided her original flight ticket and the receipt for the ticket change. Ms Daniel told the Tribunal that she felt that the Claimant had been honest in her account of her travel booking.

130. In her outcome letter, Ms Daniel said that she had found Allegation Two, "Email submission to HR on 11th February 2020, after the AWOL letter, compared to the email trail, and unauthorised absence on 10th February 2020, to be proven. She said that the Claimant had explained that, while the Claimant had submitted her visa application on 3 February, it had only been processed on receipt of the Claimant's biometrics on 5 February.

131. However, in Ms Daniel's outcome letter, she said, "Your honesty continues to be of concern, given that you continue to state that Frances was the root cause to the delay in your application… the evidence shows that a delay occurred after you were signposted to .. immigration advisers on 29 January 2020. You then presented the two options to management on 3 February after which you received same day approval to proceed with the visa application." p 1021. Ms Daniel also said, "you would be expected to communicate your absence with all relevant managers.. on balance I have concluded that had Eoin not emailed you it is more than likely that you would not have notified of your unplanned absence." P1021.

132. The Tribunal found Ms Daniel's reasoning to be puzzling. The fact remained that the Claimant had emailed Mr O'Grady, telling him that she would not be attending work.

133. In evidence, Ms Daniel accepted that the Claimant had, indeed, been absent from work because of visa problems and had, in fact, rebooked her flights when she said she had. Ms Daniel said that, ultimately, the "absent without leave" referred to one day only, 10 February. She said that she defined "AWOL" on this day as not attending work that day and not telling her employers that she was available for work. She said that she had no experience herself of disciplinary hearings involving employees being absent without leave.

134. Ms Daniel told the Tribunal that being absent without leave was so serious that it leads to dismissal in the Respondent organisation. She agreed that, despite this, she had failed to consider it at all in the draft outcome letter. Ms Daniel said that she had been guided by HR on this.

135. Ms Daniel found Allegation Three – "Working remotely explanation not verified by the IT department and no verification of work completed" to be proven. The outcome letter said,

"When asked what specifically you had been working on, you explained that you were working on your BPP essay which is considered part of your work Programme. You explained that you had accessed the BPP Virtual Learning Environment (VLE} system from 10th-14th February 2020 and had been using this in conjunction with Microsoft Word to complete your essay of approx. 3000 words. You confirmed that on 14th February you gained access to the AIG network and was able to perform a task requested by your manager.

You were requested to and provided a copy of your draft essay- this was provided on Saturday 29th February. In addition, I have reviewed the BPP VLE login in data. The BPP login evidence shows that, between 10th and 14th February 2020, you only accessed the VLE system on the 12th February at 18:24pm for 6 minutes. As a result of this evidence, I asked you for further comment and you stated that you had not clearly explained this in the disciplinary hearing, and stated that you had previously downloaded what you needed from the VLE therefore had worked on the assignment offline.

While you were able to provide a copy of your essay, you have not been able to provide save change history to confirm the date the document was created and last saved. In addition, the evidence from BPP VLE is concerning and does not corroborate with your original account provided in the hearing. This further calls into question your honesty, also prior to 12th February 2020 you had last logged in on 3rd January 2020, therefore your second account that you had downloaded what you needed previously, seems unlikely given the period of time that had passed since you last log in. Furthermore, the amount of work produced being one 3000 word assignment and one response to Brenda's email is not sufficient to be deemed a full week's work.", p1021.

136. Ms Daniel held that there was no case to answer in respect of Allegation Four, on the basis that the Claimant had provided the requested documentation.

137. Ms Daniel had previously produced a draft outcome, p949. In it, she said, in relation to allegations 1, 2 and 4, "My conclusion on this point is that the outcome cannot be considered as misconduct or gross misconduct." Her draft conclusion on allegation 3 said, "HR???".

138. Her conclusion on allegation 2, in the eventual outcome letter was therefore changed, from dismissing the allegation completely, to upholding the allegation and finding that it amounted to gross misconduct. Ms Daniel's witness statement, produced for the Tribunal, was silent on the fact that she had produced a first draft outcome letter which was substantially changed.

139. Mses Palma and Daniel were asked questions about who was responsible for the changes to the draft outcome letter and why. Ms Palma

said that she had discussed the draft outcome with Ms Daniel and had pointed out that she had failed to deal with the "AWOL" part of allegation 2, in Ms Palma's view. Ms Palma said that the eventual decision was entirely Ms Daniel's. Ms Daniel told the Tribunal, on several occasions during her evidence, that she "needed to be guided by HR" in relation to the conclusion.

140. Ms Daniel told the Tribunal, in that her draft conclusion, " HR???" regarding allegation 3, indicated that she wanted advice from HR regarding the appropriate wording. She said "I was unable to validate that she had been working. I requested VLE back up or audit trail as a result of that and given that there were inconsistencies…. in my opinion she was not being honest about what had happened in that period. She had the opportunity to clarify. It seemed like she accessed the system on a different date. There were many things which were difficult to corroborate – all I wanted for her to explain again what exactly took place."

141. Ms Daniel said that she took into account the Claimants clean disciplinary record, young age and inexperience and the circumstances of trip. She agreed that she did not mention those things in her outcome letter – she said that she was guided by HR on this.

142. In oral evidence, Ms Daniel told the Tribunal that, on a finding of gross misconduct, dismissal was the only sanction available. Her witness statement was slightly different, in that she said that dismissal for gross misconduct was in line with the disciplinary policy.

143. The Respondent's disciplinary policy says, " … if you commit any act of Gross Misconduct, it is likely that disciplinary action will be in the form of dismissal with or without notice….Alternative action short of dismissal may be considered, for example, transfer to another position or demotion. p247".

144. Ms Daniel was asked about the wording of the policy, which did not suggest that dismissal was the only sanction available for gross misconduct. Ms Daniel that she had been guided by HR on this.

145. On all the evidence, the Tribunal decided that Ms Palma was involved in the decision to uphold allegations 2 and 3 against the Claimant. In evidence, when Ms Daniel was asked to explain her decision on these conclusions, she said, on numerous occasions, that she sought HR guidance on it. It was evident that Ms Daniel had deferred to Ms Palma's advice. The Tribunal was surprised that she had been asked to conduct this complex disciplinary hearing when she had had no prior experience of disciplinary hearings at all.

146. Ms Daniel was wrong in her understanding of the Respondent's disciplinary policy and its guidance regarding her discretion as to the appropriate disciplinary sanction for gross misconduct policy. She also said that she deferred to HR on this.

147. Ms Daniel said that AWOL was always seen as Gross misconduct and had never been tolerated by the Respondent. Ms Daniel was asked about her knowledge of this, given that she had not conducted any previous disciplinary hearings. She clarified, " I am talking about expenses – that is gross misconduct."

148. The Respondent's Disciplinary Policy gives examples of gross misconduct as including "Any form of dishonesty, including but not limited to fraud or theft".

149. Ms Daniel told the Tribunal that, given that all the allegations she was asked to make a finding on related to the Claimant's honesty and integrity, she felt that upholding just one allegation would have been serious enough to constitute gross misconduct. She also said that honesty and integrity of employees is very important in the financial regulated sector.

150. Ms Daniel denied that she had dismissed the Claimant, in any way, because the Claimant had complained of race discrimination. She said that she personally might take a different view to the Respondent about the seriousness of AWOL in all circumstances.

151. Ms Daniel told the Tribunal that she had concluded that the Claimant was not working in any material sense during the period 10-14 February.

152. She also said that had given the Claimant every opportunity to explain, but that her explanation could not be corroborated.

153. Ms Palma also denied that she had made decisions in any way because the Claimant complained of race discrimination. She appeared to be truthful when she said that she was aware that it was very difficult for employees to make allegations of race discrimination.

154. In Ms Daniel's outcome letter, she said that a decision would be made on whether the allegations which had been upheld against the Claimant constituted a breach of one or more of the conduct rules of the Financial Conduct Authority ("FCA"). The letter also stated that the Claimant would be notified of the outcome of this assessment, and any consequences, in due course.

155. This wording was provided to Ms Daniel by Ms Palma. Ms Daniel simply incorporated this wording into the letter and assumed that the relevant people in the Respondent company would deal with FCA regulatory matters as appropriate.

156. Ms Palma told the Tribunal that, at the time the Claimant was dismissed, the Respondent was preparing for the implementation of the Senior Managers & Certification Regime ("SMCR"), under which breaches of the Financial Conduct Authority's (the "FCA") Code of Conduct or "COCON" rules by certain employees would need to be included in an annual report to the FCA. Ms Palma therefore contacted Rebecca McGill (the Respondent's UK HR Employee Relations Lead) on or around 5 March 2020, to ask whether any wording needed to be included in Ms Daniel's outcome letter to refer to the COCON rules, in case a report concerning the Claimant would need to be made to the FCA in the future. Ms McGill spoke with Nicola Wilkes (Chief Compliance Officer & MLRO) who confirmed that some wording should be included in the dismissal letter, from a risk perspective, in case a report did need to be made to the FCA, pp1002-1003.

157. Ms Palma told the Tribunal that, in the event, there was no assessment regarding whether the Claimant had breached the COCON rules, whether at the time of the Claimant's dismissal, or at any time afterwards. In October 2020, Ms Wilkes and Ms Palma briefly discussed whether the Claimant might need be included in the Respondent's annual return to the FCA. Ms Wilkes informed Ms Palma that the FCA's COCON rules did not apply to the Claimant at the time of her dismissal pp 1183-1187. As a result, the Respondent never considered whether the Claimant had breached the COCON rules and no report was made to the FCA concerning her.

158. Ms Palma told the Tribunal that the Respondent does not invite any affected employee to make submissions, or give evidence in any separate process, for determining whether to report findings of a disciplinary hearing to the FCA, pursuant to its regulatory obligations.

159. She said that, as a result of correspondence from the Claimant to the solicitors representing the Respondent, Travers Smith LLP, in November and December 2020, it became clear that the Claimant was concerned that a submission had been made to the FCA concerning her. Ms Palma therefore emailed the Claimant on 19 January 2020, to confirm that there had not been, p 69. She said that the delay in informing the Claimant that she had not been subject to any further FCA-related process was an oversight.

160. The Claimant undertook early conciliation through ACAS on 5 March 2020 - 19 April 2020.

161. She presented her claim to the Tribunal on 17 July 2020, including allegations 1.1 - 1.6 in the List of Issues. She presented her amendment application, including allegations 15 and 16, on 11 June 2021. The period 5 March 2020 – 19 April 2020 – 45 days - is not to be taken into account in considering whether the claims had been brought in time.

Relevant Law

Victimisation

162. By 27 Eq A 2010,

" (1) A person (A) victimises another person (B) if A subjects B to a detriment because—(a) B does a protected act, or (b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this A

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act…."

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

163. The test for causation in the discrimination legislation is a narrow one. The ET must establish whether or not the alleged discriminator's reason for

the impugned action was the relevant protected characteristic. In Chief Constable of *West Yorkshire Police v Khan* [2001] IRLR 830, Lord Nicholls said that the phrase "by reason that" requires the ET to determine why the alleged discriminator acted as he did? What, consciously or unconsciously, was his reason?." Para [29]. Lord Scott said that the real reason, the core reason, for the treatment must be identified, para [77].

164. If the Tribunal is satisfied that the protected act is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it had a significant influence, per Lord Nicholls in *Nagarajan v London Regional Transport* [1999] IRLR 572, 576. "Significant" means more than trivial, *Igen v Wong, Villalba v Merrill Lynch & Co Inc* [2006] IRLR 437, EAT.

Detriment

165. In order for a disadvantage to qualify as a "detriment", it must arise in the employment field, in that ET must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to "detriment". However, to establish a detriment, it is not necessary to demonstrate some physical or economic consequence, *Shamoon v Chief Constable of RUC* [2003] UKHL 11.

Burden of Proof

166. The shifting burden of proof applies to claims under the *Equality Act 2010, s136 EqA 2010*.

167. In approaching the evidence in a case, in making its findings regarding treatment and the reason for it, the ET should observe the guidance given by the Court of Appeal in *Igen v Wong* [2005] ICR 931 at para 76 and Annex to the judgment.

168. Adapted for victimisation under the *Equality Act,* that guidance is as follows:

(1) Pursuant to s136 EqA 2010 it is for the claimant who complains of victimisation to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of victimisation against the claimant which is unlawful by the Act or which is to be treated as having been committed against the claimant. These are referred to below as 'such facts'.

(2) If the claimant does not prove such facts he or she will fail.

(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of victimisation. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in'.

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word 'could' in s136. At this stage, the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful victimisation. At this stage, a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

….

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant unfavourably because of the protected act, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever because of the protected act, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that the protected act was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice."

Unreasonableness

169. Simply showing that conduct is unreasonable or unfair would not, by itself, be enough to trigger the transfer of the burden of proof—see *Bahl v Law Society* [2003] IRLR 640, EAT per Elias J at [100], approved by the Court of Appeal at [2004] IRLR 799.

170. The Court of Appeal in *Khan v Home Office* [2008] EWCA Civ 578 stated:

"It does not follow that, because the respondent was guilty of unlawful discrimination in its woeful inattention to and handling of the appellants' historic grievances, it was also guilty in relation to … other matters

[complained of]. It may well be that, especially when acting in disregard of its own redundancy policy and procedure, the respondent acted unreasonably or unfairly but an employer does not have to establish that he acted reasonably or fairly in order to avoid a finding of discrimination. He has only to establish that the true reason was not discriminatory: *Griffiths-Henry v Network Rail Infrastructure Limited* [2006] IRLR 865, at paragraph 22, per Elias J."

Time Limits & Continuing Acts

171. By *s123 Equality Act 2010*, complaints of discrimination in relation to employment may not be brought after the end of

171.1. the period of three months starting with the date of the act to which the complaint relates or

171.2. such other period as the Employment Tribunal thinks just and equitable.

172. By *s123(3)* conduct extending over a period is treated to be done at the end of the period. failure to do something is to be treated as occurring when the person in question decided on it.

173. In *Commissioner of Police of the Metropolis v Hendricks* [2003] ICR 530, the Court of Appeal held that, in cases involving numerous allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken' in order to establish a continuing act. The Claimant must show that the incidents are linked to each other, and that they are evidence of a 'continuing discriminatory state of affairs'. This will constitute 'an act extending over a period'. The question is whether there is “an act extending over a period,” as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed'.' Paragraph [52] of the judgment.

Wrongful Dismissal

174. It is for the Respondent to prove that the Claimant was in fundamental breach of contract, so as to justify summary dismissal.

175. The nature of the test to be applied was considered by Collins Rice J in *Palmeri v Charles Stanley & Co Ltd* [2020] EWHC 2934 (QB) at paragraph 42. '42. The test I am required to apply for that is variously formulated in the authorities. It includes considering whether, objectively and from the perspective of a reasonable person in the position of Charles Stanley, Mr Palmeri had “clearly shown an intention to abandon and altogether refuse to perform the contract” by repudiating the relationship of trust and confidence towards Charles Stanley (Eminence Property Developments v Heaney [2011] 2 All ER (Comm) 223). In a case like this “the focus is on the damage to the relationship between the parties” (Adesokan v Sainsbury's Supermarkets Limited [2017] ICR 590 per Elias LJ paragraph 23). There is relevant analogy with the formulations in the employment cases: “the question must be — if summary dismissal is claimed to be justifiable — whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service.” (Laws v London Chronicle

[1959] 1 WLR 698, pages 700-701) It must be of a "grave and weighty character" and "seriously inconsistent – incompatible – with his duty as the manager in the business in which he was engaged" (Neary v Dean of Westminster [1999] IRLR 288, paragraph 20), or "of such a grave and weighty character as to amount to a breach of the confidential relationship between employer and employee, such as would render the employee unfit for continuance in the employer's employment" (Ardron v Sussex Partnership NHS Foundation Trust [2019] IRLR 233 at paragraph 78).'

176. *Harvey on Industrial Relations and Employment Law Division AII, Duties of the Employee (5)(b) Honesty* advises that dishonesty usually justifies summary dismissal at common law.

Discussion and Decision

177. The Tribunal took into account all its findings of fact when coming to all its decisions. For clarity in this judgment, it has addressed each issue separately.

Protected Act

178. The Tribunal decided that the Claimant did a protected act when, at their meeting on 22 January 2020, the Claimant told Ms Monaghan that she was concerned that there was "unconscious bias" against her in the GRE team, as she was not being included or being tasked with completing interesting work, that the GRE team needed unconscious bias training and that she hoped to set up an internal Employee Resources Group with the goal of supporting black employees and offering unconscious bias training.

179. The Tribunal noted the definition of protected act in *s27(1)(d) EqA 2010* as including "making an allegation (whether or not express) that A or another person has contravened this Act."

180. The Claimant did not expressly say that she had been subjected to race discrimination, but she said that she had been subjected to bias and treated unfavourably. In this context, she also said that she wanted to set up a group to support black employees.

181. The Tribunal has already found that Ms Monaghan understood that the Claimant was complaining about race discrimination in the meeting on 22 January. That was plain from the wording of her draft email after the meeting, when she rejected the suggestion of "bias" by saying that the team had "many cultural backgrounds" and referred particularly to a non-white employee. The Tribunal has also found that, as the Claimant had specifically said that she wanted to set up a group which supported black employees and offered unconscious bias training, it would have been obvious to Ms Monaghan that, when the Claimant referred to unconscious bias, she meant bias against the Claimant as a black person. Ms Palma and Ms Daniel both gave evidence that they understood that the Claimant was alleging race discrimination. The Tribunal has found that Ms Torsney also believed that the Claimant had made an allegation of race discrimination.

182. On all the evidence, the Tribunal considered that, on 22 January 2020, the Claimant's made an allegation that she had been treated less favourably because of race.

Alleged Detriments

183. Alleged Detriments 1.1 and 1.2 in the List of Issues predated the Claimant's protected act.

Detriment 1.3
On 22.01.20, Brenda Monaghan immediately refused, and failed to consider, C's alleged request for an adjustment to her working hours to enable her to take care of a disabled family member (GOC/para. 11).

184. On the Tribunal's findings of fact, the Claimant did not ask to adjust her hours. Ms Monaghan did not refuse or fail to consider any such request. This allegation fails on the facts.

Detriment 1.4
On or around 22.01.20, Ms Monaghan responded to the alleged verbal complaint by C (see para. 12 below) that she did not believe that there was any discrimination of any kind in AIG and closed any further discussion on this (GOC/para. 13).

185. The Tribunal found that Ms Monaghan did say that she had not seen any discrimination in the team. These were the words she used in her original email draft. In addition, she challenged the Claimant, asking her for examples of unconscious bias and asking her directly whether the Claimant believed that Ms Monaghan had exhibited it. This would have been very challenging to the Claimant, a junior employee, who, the Tribunal finds, was attempting to raise the issue in a non-confrontational way. Ms Monaghan contradicted the Claimant by saying the team was diverse. She did not undertake to look into the matter of unconscious bias, or to discuss it again. The Tribunal found that, by all these comments, Ms Monaghan did close down the discussion. Ms Palma confirmed that Ms Monaghan's draft email, which was an accurate reflection of what Ms Monaghan had actually said, had been changed because "It takes an amount of courage for an individual to raise those things – to say that can feel to that individual like a bit of a put down."

186. The Tribunal found that Ms Monaghan's tone, in response to the Claimant's concerns, was dismissive. This extended to the advising the Claimant to "get up earlier", when the Claimant, a 23 year old junior employee, revealed that she was the sole carer for her disabled brother.

187. The Tribunal considered whether Ms Monaghan's actions in closing down the conversation and saying she had not seen discrimination on the team amounted to a detriment. The Tribunal took into account the fact that the Claimant was a graduate trainee and Ms Monaghan was a senior manager, with considerable authority over her. The Claimant was a graduate trainee / apprentice and was hoping to be kept on as an employee after her training was complete. The Claimant had raised serious concerns, only for those to be dismissed by a manager who was in a position of control over her and her future career.

188. Ms Monaghan effectively told a junior black employee that race discrimination did not exist on the team. The Tribunal decided that dismissing a junior employee's concerns in this way, without any undertaking to reflect or discuss the matter again, both "put down" and "shut down" the Claimant. A reasonable employee in the Claimant's position would feel disadvantaged in the workplace thereafter. They would reasonably consider that serious concerns they raised would be likely to be dismissed, rather than taken seriously.

189. The Tribunal rejected the contention that the corrected email, when it was eventually sent, eliminated the detriment. The email was sent 12 days later, after the Claimant had gone on annual leave. Taking a realistic view of the matter, the Tribunal considered that the letter was too little, too late, to correct the dismissive approach Ms Monaghan had taken in the meeting.

190. The Tribunal also decided that the detrimental treatment was because of the protected act. Ms Monaghan specifically dismissed the Claimant's concerns about unconscious bias; there was a clear link between the protected act and the detrimental conduct. The burden of proof shifted to the Respondent to show that the protected act was not part of the reason for Ms Monaghan's detrimental actions. The Respondent did not discharge that burden. Ms Monaghan was reluctant even to accept that the Claimant had alleged race discrimination. Her email was changed to ameliorate the words she had actually used. The Tribunal found her evidence on this meeting and why she acted as she did to be unsatisfactory. It did not accept that there was a non-victimising reason for the detrimental treatment.

Detriment 1.5
On 28.01.20, Frances Torsney wrote to C expressly refusing to provide any support with the immigration process, despite allegedly knowing that C would be stranded abroad, unable to return to work (GOC/para. 15).

191. Initially on 28 January 2020 Ms Torsney responded to the Claimant in a sarcastic manner, declining to offer assistance and saying, "..it seems you are indeed very unfortunate, since this is the second time your card has been stolen over the last number of months.." She said that the Respondent did not cover the costs of loss or replacement of a card and suggested that the Claimant claim on her travel insurance, p756.

192. After the Claimant replied further that day, saying that, when she had paid to replace her card on the previous occasion, and was now stranded and trying to seek some guidance to get back into work within her annual leave, Ms Torsney did forward the Claimant's request to other mangers, asking if anyone could help the Claimant to get her card replaced, p353.

193. The next morning, 29 January, David Snowling, Global Mobility Partner, asked the Respondent's immigration consultants, for advice. He forwarded the advice to the Claimant at 13.30 pp352, 372.

194. After Ms Torsney's original, somewhat hostile response, Ms Torsney did, on the same day, investigate whether the Respondent could assist the Claimant. She ensured that the Claimant received assistance by the following

day. She responded quickly when the Claimant drew her attention to the fact that the Claimant would be stranded abroad.

195. The Tribunal decided that Ms Torsney's actions in this regard did not amount to a detriment. Mr Torsney clearly heeded the Claimant's further explanation of her need for help. A reasonable employee would not feel disadvantaged thereafter, when their employer had responded very promptly once the employee's needs had been fully explained.

Detriment 1.6
On or around 17.02.20, HR invited C to an investigation meeting, claimed that C was not away on holiday and was in the UK as opposed to Uganda, and requested proof of her travel (GOC/para. 17)

196. By email on 14 February Ms Torsney asked the Claimant to provide copies of her flight booking and return visa renewal card and receipts for these, p514. The Claimant returned to work on 17 February, 1 week after her booked return date. Ms Monaghan and Torsney met with the Claimant to discuss her late return. The Claimant had not provided documentation showing when she booked and changed her travel dates.

197. However, the Tribunal found that this meeting went well beyond an investigatory meeting to establish the reasons for the Claimant's late return to work.

198. On the facts, the Tribunal found that Ms Monaghan and Ms Torsney were antagonistic and aggressive towards the Claimant during this meeting. Ms Monaghan agreed, in evidence, that they accused the Claimant of not having travelled to Uganda at all, and of being in the UK instead.

199. The Tribunal considered that inviting an employee to a meeting and asking them to provide proof of travel bookings and dates, when they have arrived 1 week late to work, was not in itself a detriment. The Respondent was entitled to investigate the Claimant's failure to attend work for a week. It is not detrimental to treat employees in accordance with policy. The Respondent's policy provides for investigation meetings to be held to investigate problems with employees' conduct, p246.

200. However, the Tribunal concluded that this meeting was not simply an investigation meeting. As the Claimant alleged, Ms Monaghan and Ms Torsney accused the Claimant of not having been in Uganda at all – when there was no justification for making that accusation. The accusation had not been raised in any of the discussions with HR while the Claimant was away. It was a very different to suggesting that the Claimant had taken an extended holiday, or had failed properly to update the Respondent on her whereabouts.

201. The Tribunal found that that the conduct of the meeting, in making this unjustified and unsupported allegation to the Claimant, in the aggressive and antagonistic way described by the Claimant, did amount to a detriment. An employee would consider themselves disadvantaged in the circumstances that they were accused by 2 very senior managers of a more serious act of misconduct than there was justification for alleging. While investigation meetings can be held, an employee would reasonably feel disadvantaged by an unnecessarily hostile meeting.

202. The Tribunal considered whether the burden of proof shifted to the Respondent to show that the Claimant's protected act was not part of the reason for this unnecessarily hostile investigation meeting. The Tribunal considered that the burden of proof did shift. Ms Monaghan had already victimised the Claimant in the meeting on 22 January 2020.

203. Ms Torsney had also expressly or impliedly referred to the Claimant's protected act in correspondence with HR about the Claimant's absence: On 3 February 2020 Ms Torsney had said, in an email, ".. I am now particularly sensitive to any unconscious bias perceptions..", p370." In an 11 February email Ms Torsney had said, "NOTE IDEALLY I DON'T [THINK] WE SHOULD PAY HER FOR ANY LEAVE – BUT I CAN ALREADY PRE-EMPT THE UNFAIR NOISE WE MAY GET AROUND THAT..", p464. This demonstrated that the Claimant' protected act was in her mind. The description "unfair noise" suggested that Ms Torsney also had a negative view of the Claimant's protected act.

204. As stated, Ms Torsney did not give evidence. The Tribunal did not accept Ms Monaghan's denial that the meeting was hostile. It found that the Respondent did not discharge the burden of proof to show that the protected act was not part of the reason for the hostile conduct of the investigation meeting. The Tribunal considered that there was ample evidence that Ms Torsney continued to feel negatively towards the Claimant, specifically because of her protected act. It finds that this consciously, or subconsciously, was part of the reason for this unnecessarily oppressive investigatory meeting.

Allegation 1.8
On 04.03.20, C was dismissed (GOC/20) (which R admits)

205. On the Tribunal's findings, the Claimant was summarily dismissed on 4 March 2020, having done a protected act on 22 January 2020. She had also already been victimised at the meeting on 22 January 2020 by Ms Monaghan and in the investigation meeting on 17 February 2020 by Ms Monaghan and Ms Torsney.

206. Ms Daniel, the dismissing officer, was aware that the Claimant had done a protected act – the Claimant told her, during the disciplinary hearing, that she had complained about unconscious bias. Ms Daniel understood this to be a complaint of race discrimination. Ms Palma, who the Tribunal has found was involved in the decisions in the dismissal process, was aware that the Claimant had done a protected act on 20 January 2020.

207. Ms Daniel upheld two allegations of gross misconduct against the Claimant; "unauthorised absence on 10th February 2020" (part of allegation 2) and "Working remotely explanation not verified by the IT department and no verification of work completed" (allegation 3).

208. The Respondent's Disciplinary Policy provides that "unauthorised or unexplained" absence is "deemed by AIG to constitute Gross Misconduct".

209. Nevertheless, the Tribunal considered that Ms Daniel acted unreasonably in considering that the Claimant had been guilty of unauthorised

or unexplained absence when she did not attend work on 10 February. The Claimant had told Eoin O'Grady, a manager, that day, that she would not be attending. While Mr O'Grady was not the Claimant's line manager, the Tribunal has found that Ms Torsney and Ms Monaghan must have known, from what the Claimant had told them of her visa application during the previous 2 weeks, that she could not possibly return to work on 10 February 2020.

210. The Tribunal also considered that Ms Daniel misinterpreted the Respondent's disciplinary policy in considering that the only sanction for gross misconduct was dismissal.

211. Taking all these matters into account, The Tribunal considered whether the Claimant had shown facts from which the ET could conclude that the protected act was part of reason for dismissal. The burden of proof did shift to the Respondent to show that the Claimant's protected act was not part of the reason for dismissal.

212. However, The Tribunal was satisfied that neither Ms Torsney nor Ms Monaghan was involved in the decision to dismiss. The Tribunal did not find that their investigation report was flawed or misled the disciplinary meeting.

213. Ms Daniel upheld the allegation that the Claimant's claim to have worked remotely, to justify being paid for a week, was not verified.

214. Ms Daniel gave the Claimant the opportunity to explain what work she had done. Ms Daniel had evidence, from the investigation report, that the Claimant had changed her account of the work that she did. The Claimant initially said that she had a Token and was able to work. She later said that she had been working on her BPP essay. She did this only when evidence was presented to her to she had been unable to access the Respondent's systems and carry out work for the Respondent. The Claimant provided one 3,000 essay on 29 February as proof of the BPP essay work she had done over 5 days on 10 – 14 February 2020. She was unable to show the version history of the document, including when it was created.

215. The Claimant claimed pay for 5 whole days of work from 10 – 14 February 2020. The Tribunal accepted Ms Daniel's evidence that she concluded that the Claimant had not worked in any material sense from 10 – 14 February.

216. The Tribunal accepted the Respondent's witnesses' evidence that dishonesty is considered to be particularly serious in the financial services industry.

217. The Respondent's Disciplinary Policy, pps 244-250 at 247 – 248, sets out that "Any form of dishonesty" [248] will be "deemed by AIG to constitute Gross Misconduct" [247].

218. The Tribunal did note that Ms Daniel's evidence was unsatisfactory in some respects, including her misinterpretation of the disciplinary policy regarding sanctions for gross misconduct. It did take into account that Ms Daniel's conclusion, that the Claimant's absence on 10 February 2020 was unexplained and amounted to gross misconduct, was unreasonable.

219. It noted that Ms Daniel was inexperienced and relied on HR advice. The Tribunal took into account the fact that Ms Palma was involved in the decision making, and influenced Ms Daniel to change her conclusions. Nevertheless, the Tribunal was satisfied that Ms Palma had reason to do so. She identified that Ms Daniel had not addressed the specific issue of the Claimant being "AWOL" when she did not attend work and did not contact her line manager.

220. In the Claimant's submissions to the Tribunal, she did not argue that Ms Palma had been the conduit for victimisation by Mses Monaghan and Torsney. She did not argue that Ms Palma's influence meant that Ms Daniel victimised the Claimant.

221. The Tribunal found that, while Ms Daniel was wrong in her interpretation of the Respondent's policy that summary dismissal was the only outcome for gross misconduct, the policy did provide that summary dismissal would be the usual outcome.

222. Furthermore, the Tribunal found that Ms Daniel was an honest witness who did try to give the Claimant every opportunity to explain her actions. In particular, Ms Daniel carefully explored the work for which the Claimant claimed 5 days' pay.

223. Ms Daniel said, in evidence, that a dishonest claim for expenses would invariably result in dismissal. The Tribunal accepted Ms Daniel's evidence on this. Dishonesty in expenses claims is fraudulent.

224. The Tribunal also accepted that a claim for 5 days work, which was not done, was substantially the same as claiming for expenses which had not been incurred. It accepted that the Respondent would dismiss an employee who claimed for money they had not earned.

225. The Tribunal therefore accepted Ms Daniel's evidence that she considered that the Claimant had acted dishonestly by claiming payment for work she had not done. It accepted Ms Daniel's evidence that she considered that dismissal for this was the appropriate sanction and was in line with the Respondent's treatment of other similar misconduct. It accepted Ms Daniel's evidence that her decision in this regard was not, in any sense, because the Claimant had done a protected act.

226. Having carefully considered all the evidence, the Tribunal was satisfied that Ms Daniel's decision to dismiss was not in any way because the Claimant had done a protected act.

Allegation 16
Did R fail to allow the claimant to make representations to it when conducting its process to determine whether or not to report the circumstances of the C's dismissal to the FCA and/or whether there had been any breach of the FCA Conduct Rules (GOC/para 18)?

227. The Tribunal accepted the Respondent's evidence that it did not conduct any process for determining whether to report the Claimant to the FCA. It took no steps to report the Claimant to the FCA. There was no

process on which the Claimant could make representations. This allegation failed on the facts.

Time

228. The Claimant undertook early conciliation through ACAS on 5 March 2020 - 19 April 2020.

229. She presented her claim to the Tribunal on 17 July 2020, including allegations 1.1 - 1.6 in the List of Issues. She presented her amendment application, including allegations 15 and 16 on 11 June 2021. The period 5 March 2020 – 19 April 2020 – 45 days - is not to be taken into account in considering whether the claims had been brought in time.

230. There is a 3 month time limit for bringing claims to the Tribunal. Even excluding the 45 day early conciliation period, the Claimant's successful complaints would, individually, be out of time.

231. The Tribunal considered whether the acts of victimisation incidents were linked to each other, so that they are evidence of a 'continuing discriminatory state of affairs'. It considered whether there was "an act extending over a period," as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed'.'

232. The Tribunal concluded that the 2 acts of victimisation were part of an act extending over a period, and part of a discriminatory state of affairs. As the Tribunal has noted, Ms Torsney had referred in negative terms to the Claimant and "unconscious bias" while the Claimant was in Uganda and unable to return to the UK. The Tribunal was satisfied that Ms Monaghan and Ms Torsney had a continuing negative attitude to the Claimant, because of her protected act, and that the 2 acts of victimisation were manifestations of that. Mses Monaghan and Torsney continued to be the Claimant's direct line managers until her dismissal. The discriminatory state of affairs was ongoing. The Claimant's dismissal took place a short time later, on 4 March 2020. The Tribunal had little hesitation in finding that Ms Monaghan and Torsney's negative view of the Claimant, because of her protected act, continued from 17 February 2020 until the date of her dismissal.

233. The acts of victimisation were in time because they were part of a continuing act which extended until the date of dismissal. Wrongful dismissal

Wrongful Dismissal

234. The Tribunal considered whether the Respondent had shown, on the facts, that the Claimant's conduct was "such as to show the servant to have disregarded the essential conditions of the contract of service." (Laws v London Chronicle [1959] 1 WLR 698, pages 700-701), or of a "grave and weighty character" and "seriously inconsistent – incompatible – with his duty as the manager in the business in which he was engaged" (Neary v Dean of Westminster [1999] IRLR 288, paragraph 20), or "of such a grave and weighty character as to amount to a breach of the confidential relationship between employer and employee, such as would render the employee unfit for

continuance in the employer's employment" (Ardron v Sussex Partnership NHS Foundation Trust [2019] IRLR 233 at paragraph 78.

235. The Claimant claimed payment for 5 days work, when her account of the work she did changed over time and was not supported by the available evidence.

236. The Tribunal accepted that the Claimant had done some work on her 3,000 word essay during the week 10 – 14 February. It was not clear, on the evidence, that the Claimant ever logged into the Respondent's systems that week. The Claimant gave no detailed evidence regarding the work she did each day. She did not log into the VLE until 12 February 2020. It appeared, therefore, that she had not worked on her essay on 10 and 11 February at all. On all the evidence, the Tribunal was not satisfied that the Claimant did more than 1 day's work in the relevant week.

237. On several occasions, the Claimant asked the Respondent to pay her for 5 days that week. She therefore claimed pay for 4 days' work, when she was not entitled to be paid for those days' work. The Tribunal found that that was, indeed, sufficiently serious to amount to a breach of the term of trust and confidence, so as to justify summary dismissal.

Unlawful Deductions

238. The Respondent did not pay the Claimant at all for the week 10 – 14 February 2020. On the evidence, the Tribunal accepted that the Claimant did 1 day's work in the relevant week. She was entitled to spend 20% of her time working on her BPP assignments in any event. The Respondent ought to have paid her for this work but did not. It made an unlawful deduction of 1 day's wages from her pay.

Remedy Hearing

239. There will be a remedy hearing for 1 day in this case on 14 January 2022. The parties should agree directions for preparation for that remedy hearing, including exchange of witness statements and send the agreed directions to the Tribunal.

_____

Employment Judge Brown

_____

Date 25 October 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

.26/10/2021.

FOR THE TRIBUNAL OFFICE