



EMPLOYMENT TRIBUNALS

Claimant: Mr Leroy Rowe
Respondent: London Borough of Waltham Forest
Heard at: East London Hearing Centre
On: 3, 4, 5, 9, 10, 11, 12, 16 and 17 November 2021
Before: Employment Judge Burgher

Appearances

For the Claimant: In person
For the Respondent: Mr G Burke (Counsel)

JUDGMENT having been sent to the parties on 18 November 2021 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

Issues

1. At the outset of the hearing the following issues were identified as relevant:

Unfair Dismissal

Employment Rights Act 1996 section 98

1. The Claimant claims unfair dismissal and that his dismissal was procedurally and substantively unfair.

2. The Claimant relies alleges the following:

2.1.1. The Respondent did not carry out a fair or reasonable investigation.

2.1.2. The Respondent unreasonably ignored during the investigation or failed to take in account the Claimant's response to the allegations.

2.1.3. The Respondent failed to reasonably consider the Claimant's grievance submitted on 2 March 2018 as it related to the matters that were to be determined as part of the disciplinary process.

2.1.4. The Respondent failed to consider at the disciplinary hearing held on 30 January, 5 and 26 February 2018 the Claimant's responses to the allegation or the evidence he provided in support.

2.1.5. The dismissal for gross misconduct on 9 March 2018 fell outside the band of reasonable responses to the alleged misconduct especially when compared with the treatment of white employees.

2.1.6. The dismissal was an act victimisation as a result of the Claimant previously raising a complaint of race discrimination on 26 July 2016.

FACTS TO BE DETERMINED

3. Did the Respondent have a fair reason to dismiss the Claimant?
4. Did the Respondent conduct a full and fair investigation?
5. Did the Respondent consider the Claimant's evidence as part of its investigation?
6. Did the Respondent consider the Claimant's evidence at the disciplinary hearing?
7. Was the Respondent entitled to not invoke its Grievance process in respect of the Claimant's 2 March 2016 grievance because it related to the disciplinary case?

Direct Race Discrimination Equality s.13 Act 2010

8. The Claimant is black of Jamaican origin.
9. The Claimant alleges the following incidents were less favourable treatment of him on the grounds of his race:
 - 9.1. Between July 3rd - 7th 2017 as part of their investigation, Marc McAuley, an employee of the Respondent's CAFT team told staff Mark Richards at a guardian charity in a telephone conversation that the Claimant was a 'black fraudster' and that he had "been done for fraud".
 - 9.2. His suspension on 28 June 2017 by Maureen McEleney in the presence of Sunita Sharmar a HR Officer.
 - 9.3. The search of his home on 28 June 2017 in the presence of his daughter Alexia Rowe, by Marc McAuley, Melissa Hall, one other employee from the Respondent's CAF team with three police officers.
 - 9.4. His arrest on 28 June 2017 at work, audio recording of interview under caution by Marc McAuley under PACE Act Ilford police station.
 - 9.5. Him being taken to Ilford police station in the presence of Marc McAuley, Melissa Hall and one other colleague from London Borough of Waltham Forest.
 - 9.6. The disciplinary proceedings held on 30th January, 5 and 26 February 2018, by Maureen McEleney, Jennie Anderson Sunita Sharma, Khalada Uddin, Janet Walker, in the presence of Jennie Anderson Investigating officer Chris Grace main witness, Sunita Sharma HR, Khalada Uddin HR Janet Walker union representative, minute taker Damane Newell.
 - 9.7. His dismissal on the 9th March 2018.
 - 9.8. Ms Sharma arranging a disciplinary Hearing at work on 1 February 2018 in the presence of colleagues.
10. Was the Claimant treated less favourably by the Respondent than others on grounds of his race?

Comparators

11. Has the Claimant established comparators relevant to the acts complained of
12. The Claimant relies on the following comparators:
 13. David Ware, Dave Coleman, Tom Smyth, Graham Hiron and other employees occupying the same role but not being subject to the acts detailed above.

Time limits Section 123 Equality Act 2010

14. Has the Claimant brought the claim within three months of the acts complained of?

15. If not, would it be just and equitable to extend time to hear the Claimant's claim?

S.136 Equality Act 2010 Burden of Proof

16. Has the Claimant proven facts from which the Tribunal can decide in the absence of any other explanation, there was a contravention of the Equality Act?

17. What is the Respondent's explanation for the Claimant's treatment?

Victimisation S.27 Equality Act 2010

Grievance 1

18. The Claimant complained that a colleague Tom Smyth said to him "kiss my ass boy" on 6 July 2016 that as a black man the comments left him feeling violated, insulted and harassed. The Claimant submitted a Fairness at Work on 26 July 2016.

Grievance 2

19. In March 2018 the Claimant raised a complaint of discrimination against Marc McAuley.

20. As per the Claimant's Further and Better Particulars dated 24.09.2018, 0 alleges he was subjected to the following detriments:

21.1. The Grievance of 6 July 2016 was not logged as a formal complaint despite the Claimant chasing for one month.

21.2. He was denied the opportunity for training and given no appraisal following his first grievance compared to the previous year.

21.3. He was not given the outcome of his grievance raised in 2016 with the Respondent.

21.4. He was suspended on 28 June 2017 by Maureen McEleney in the presence of Sunita Sharma a HR Officer.

21.5. An illegal search of his home on 28 June 2018 in the presence of his daughter Alexia Rowe by Mark McAuley, Melissa Hall one more employee from the Respondent and three police officers.

21.6 His arrest on 28 June 2017, by Marc McAuley and three police officers in the presence of Melissa Hall and another employee of LBWF CAFT team.

21.7. His second Fairness At Work was never acknowledged by the Respondent.

21.8. He was told that his second Fairness At Work could be addressed at the Disciplinary Appeal Hearing in April by the Respondent's Management.

21.9. The dismissal on 9 March 2018 by Maureen McEleney.

Procedural matters

2. Given the number of witnesses the parties wish to call, the limited days the Tribunal had to consider evidence, submissions and to determine the matter a strict time cross examination timetable was ordered pursuant to rule 45 of the 2013 Employment Tribunal Regulations. Further, the Tribunal questioned whether the Respondent needed to call all of the witnesses it sought to. Mr Burke, counsel for the Respondent took instructions and decided not to call Mr John Coker. The Respondent also had a witness order in place for Ms Jennifer Anderson, investigation officer. However, she did not attend the Tribunal as ordered.

3. The hearing started as an in-person hearing. However, on the third day of the hearing, 5 November 2021, the Tribunal building landlord informed the Tribunal staff of alleged inappropriate behaviour by the Claimant towards its staff. The landlord prevented the Claimant's entrance to the building and confirmed that the Claimant would no longer be allowed in the building.

4. The Tribunal was unable to proceed with the case on that day due to the Claimant not being allowed to enter the building. We considered the most appropriate way to proceed given the tight hearing timetable that had been set and the resulting loss of a day due to the Claimant's non-admission. The Claimant had explained to the Tribunal clerk that he was disputing the landlord's security teams version of events and wanted to clear his name.

5. The Tribunal had regard to the overriding objective and natural justice in respect of what the Claimant was alleged to have done and decided that the hearing should be adjourned until the 9 November 2021, to resume by Cloud Video Platform (CVP). The Claimant's files and copy of the bundle was handed to him by the Tribunal security staff.

6. The timetable set by the Tribunal at the outset was further curtailed by connection difficulties experienced by using CVP. Some witnesses were not able to be seen and heard. The Tribunal took time trying to resolve these connectivity matters and at least half a day of hearing time was lost doing this.

7. At times, the Tribunal found this case to be difficult to manage due to the emotional outbursts of the Claimant and his approach to cross-examination of a number of witnesses. The Claimant shouted, spoke over witnesses and was demonstrably upset and aggressive in his questioning. The Tribunal had to remind the Claimant on at least three occasions about his behaviour and the need to follow the appropriate process in allowing witnesses to answer questions asked. He was warned that his behaviour would not be tolerated. Regrettably, there were six separate occasions where the Tribunal had to mute the Claimant when he was failing to listen to or adhere to the directions that were given.

8. Having said that the Claimant apologised for his behaviour on several occasions once his emotions had subsided. The Tribunal accepts that as a litigant in person the Claimant was stressed and whilst his behaviour was unacceptable at times we drew no adverse inference against him.

9. We are grateful for both parties form their efforts in assisting the Tribunal to ensure all the evidence and submissions were completed in the curtailed time that was available.

Evidence

10. The Tribunal was referred to relevant pages in an ungainly paginated bundle of over 3000 pages. Notwithstanding this the Claimant made applications to submit further documents. The applications were permitted save for documents that were subject to legal privilege.

11. Throughout questioning, and his evidence, the Claimant expressed his serious concerns about the alleged failure by the Respondent to disclose relevant documentation. He consistently maintained that he was disadvantaged by the Respondent who did not put all the relevant documents in the bundle for Tribunal consideration. It was evident to the Tribunal that the Claimant's assertions in this regard were emotional and based on a deeply distrusting perception of the Respondent, as opposed to being objective or well founded.

12. The Respondent called the following witnesses to give evidence:

- 12.1 Maureen McEleney, Interim Assistant Director of Housing Management at the relevant time. She was suspension officer and subsequent dismissal officer.
- 12.2 Marc McAuley, Counter Fraud Group Manager at the relevant time.
- 12.3 Sunita Sharma HR advisor who assisted in the suspension and investigation process.
- 12.4 Glen Miller, Assistant Director of Property in Asset Management at the relevant time, dismissal appeal officer
- 12.5 Daniel Proctor Human Resources Consultant who assisted Mr Miller at the appeal.
- 12.6 David Kelly, Area Sales Estates Manager.
- 12.7 Layla Isse HR adviser who evidenced the Respondent's fairness at work procedure.
- 12.8 Chris Grace, head of building maintenance and the Claimant's line manager.

13. The Claimant gave evidence on his own behalf and called the following witnesses.

- 13.1 Bunmi Fashakin, Agency Housing Officer. Her evidence was interposed between the Respondent's witnesses to accommodate her availability.
- 13.2 Janet Walker, Claimant's union representative.
- 13.3 Shelley Anderson, an employee of the Respondent.
- 13.4 Alexia Rowe, the Claimant's daughter.
- 13.5 Mr Gary Crabb, self-employed subcontractor for one of the Respondents maintenance service providers
- 13.6 Mr Mark Richards, then Project Development Manager of the Celestial Church of Christ.

14. All witnesses gave evidence under oath and were subject to cross-examination and, when applicable, questions from the Tribunal. As a general overview of key witnesses the Tribunal observe as follows.

15. The Claimant gave evidence in a passionate and emotional way. He was evidently confused in parts. There was also a serious lack of credibility and consistency in his evidence in several respects.

16. Ms McEleney gave evidence in a professional and straightforward way narrating her involvement. She relied heavily on relevant notes of meetings. The Claimant strongly disputed the accuracy of the notes but did not provide any contemporaneous objections. We accept that the notes were not verbatim and there may have been relevant matters that were not recorded. However, we find that the notes are a reliable record of the process and detail of discussions that Ms McEleney evidenced.

17. Mr Grace gave evidence in an explicably evasive manner given his failure to effectively monitor and manage the Claimant at the relevant time. It is unlikely that the Claimant would have been able to overstep the Respondent's processes and policies as much as he did had Mr Grace inquisitively managed the Claimant and held him to account. However, Mr Grace's management failures did not impact on the credibility of the evidence he gave.

18. Mr McAuley was clearly upset about the allegations of race discrimination that were levelled against him and he responded negatively and unhelpfully to some questions asked. However, in respect of the key matters he gave evidence on his answers were more coherent and credible than Mr Richards.

19. Mr Richards' evidence was disengaged and dismissive of the Tribunal process and was unreliable in several important respects.

20. Ms Walker gave evidence in a partisan manner and was obviously not fully briefed by the Claimant on his understanding of the allegations he faced. We were unimpressed by her failure to give any specific examples of alleged unfairness of the disciplinary meeting that she attended her account provided to us.

Facts

21. The Tribunal has found the following facts from the evidence.

22. The Claimant commenced appointment with Ascham Homes on 1 October 2013. Ascham Homes was an arm's-length management organisation which was wholly owned by the Respondent but was an independent organisation governed by its own board.

23. The Claimant's employment transferred to the Respondent on 30 November 2015 by virtue of TUPE provisions.

24. The Claimant was employed as void litigation manager. This role was a management position with defined responsibilities including ensuring that the voids process was followed when the Respondent's housing stock fell vacant; to ensure that void properties were returned to a lettable standard in a timely way; ensuring financial controls and policies were adhered to; and ensuring void properties were identified, recorded and monitored.

25. The Claimant maintains that the Respondent overlooked that his role also included buyback, right to buy surveys, insurance and liaising with guardian agencies for temporary accommodation for empty property when the voids could be occupied by guardians. The Claimant states that these duties were covered by his job

description which state *'any other duties'*. However, even on the Claimant's interpretation of his job description his responsibilities would not have changed and he would have been responsible for ensuring that voids handed to guardians agencies were properly recorded in the Respondent's system, that they had the appropriate safety checks and that such checks were evidenced before contracting with the guardians agency.

FAW complaint

26. On 6 July 2016 there was an incident between the Claimant and Tom Smyth, a contracts manager working for the Respondent under an arrangement with an agency. The Claimant sent Mr Grace an email copied to Mr Smyth as follows:

'hi Chris I would like to have a meeting with you tomorrow morning concerning an incident between Tom and I in the office today.'

27. The Claimant had a meeting with Mr Grace on 7 July 2016. The Claimant maintained that there was not in fact a meeting on 7 July 2016.

28. Mr Grace prepared a series of notes of respective meetings with the Claimant that took place during July 2016. The Claimant expressed concerns that he had not seen such notes to be able to comment on their accuracy.

29. We find that there was a meeting on 7 July 2016 and to the extent that the notes record meetings that took place they are accurate in recording the dates and times of such meetings. However, on the evidence before us, we find that there were a number of material omissions and inaccuracies in Mr Grace's notes. We find that, contrary to the notes the Claimant was very upset by the use of the word *'boy'* by Mr Smyth towards him and that Mr Grace sought to pacify the concern by saying it could have been *'Irish slang'*. As a middle-aged black man being called *'boy'* by Mr Smyth, a white man, was upsetting and unacceptable to the Claimant. There is no reference in Mr Grace's minutes to this.

30. Mr Grace's notes also fail to properly record that the Claimant was seeking his complaint to be progressed formally.

31. Mr Grace also met with Mr Smyth, Christine Stewart and Larry Gbadamosi on 7 July 2016 and noted their versions of events as they were either a party or witness to the events. It was apparent that there was an argument between the Claimant and Mr Smyth, the word *boy* had been used and there was an indication that the Claimant had hit Mr Smyth.

32. Mr Grace attempted to arrange a meeting between Mr Smyth and the Claimant, to take place on 8 July 2016. However, on 7 July the Claimant stated that there was only one option either he goes or Mr Smyth goes, and there would be no compromise.

33. The Claimant next met with Mr Grace on 11 July 2016. He stated that the matter with Mr Smyth could not be resolved informally and that he would like to go through the formal process as it had gone too far to reach an amicable solution. Mr Grace stated that there could be consequences for one or more people if this went down a formal investigation route as there were counter allegations against the Claimant

regarding his conduct towards Mr Smyth and relating to Ms Kirsten Njie, she reported to the Claimant and made a complaint against the Claimant on 7 July 2016. The Claimant maintains that Ms Njie's complaint was suspiciously coincidental in that she made a complaint against him after he had made a complaint against Mr Smyth.

34. The next meeting between Mr Grace and the Claimant took place on 21 July 2016. The Claimant sent Mr Grace an email on 21 July asking whether he had carried out a formal investigation regarding the bullying and gross misconduct issue he has previously raised on 7 July 2016.

35. Mr Grace stated that he spoke with HR and the appropriate channel for resolution would be a formal investigation. The Claimant was clear that he had been requesting a formal informal process on the 11 July however Mr Grace was providing conflicting messages in view of the counter allegations and did not communicate with the Claimant that the formal process was not being pursued. However, from 21 July 2016 Mr Grace was under no doubt that the Claimant wished for formal process to be followed and the Claimant subsequently submitted a Fairness at Work (FAW) grievance work to HR on 26 July 2016.

36. The Claimant's FAW makes a complaint against Mr Smyth stating, amongst other things, that Mr Smyth got up angrily pushed his chair towards him, he then turned to him and said kiss my ass boy in a derogatory way. The Claimant goes on to state that he managed to restrain himself from further reacting to the verbal abuse. In concluding his FAW the Claimant stated that he would like Mr Smyth investigated as his behaviour had committed the following:

- 36.1 Bullying and harassment;
- 36.2 Racism;
- 36.3 Aggressive and intimidating behaviour; and
- 36.4 Threats of violence.

37. The Claimant sought the remedy of the removal of Mr Smyth from the service he wrote that Mrs Smyth's behaviour was unacceptable in the workplace and he would have to work with Mr Smyth very closely.

38. Ordinarily, the Respondent's FAW grievances are managed by HR and sent to the head of the service, which in this case would have been Ms McEleney. However, Ms McEleney gave evidence that she left Mr Grace to deal with this complaint and was not was not made aware of the detail. For his part, Mr Grace stated that he did not see the detail of the Claimant's FAW complaint as HR simply waived it to him saying it was a fairness at work complaint.

39. In this case, if both Ms McEleney and Mr Grace's evidence is to be believed, the HR representative at the time, Ms Rodrigues, was not properly following the Respondent's FAW process for the Claimant's grievance. Ms Rodrigues did not give evidence at the Tribunal. On the evidence we find that there was a serious breakdown in the Respondent's processes in communicating the detail of the Claimant's FAW grievance.

40. However, on 4 August 2016 Mr Grace was informed by Ms Rodrigues that following the investigation and considering the versions of events of the two

independent witnesses (Christine Stewart and Larry Gbadamosi) that Mr Smyth would be required to leave the Respondent with immediate effect without any notice to be paid and the Claimant should be spoken to about his conduct within the argument and his need to meet management standards going forward.

41. On 4 August 2026 Mr Grace informed Mr Smyth of the termination of his placement, effective immediately. There is no evidence before us that the Respondent notified Mr Smyth's agency of the reason for the termination of the placement for them to be dealt with by way of disciplinary action or otherwise. The Claimant gave evidence that Mr Smyth was able to secure an alternative placement at a comparable organisation immediately after his termination of his assignment with the Respondent. He maintains that this was completely unacceptable in view of the racially discriminatory conduct he was subject to.

42. The Claimant was not spoken to about his alleged misconduct towards Mr Smyth.

43. We find that the Claimant was content with the outcome of securing Mr Smyth's removal. He sent his daughter an email on 23 August 2016 indicating that Mr Smyth had had his assignment terminated when referring to Mr Smyth being moved wrote that she should '*never be afraid to challenge the status quo you should always battle*'. The Claimant's position in this regard is underlined by what he said in his disciplinary meeting on 5 February 2018 when he stated that Mr Smyth was a racist and the Claimant got him sacked.

44. We do not accept the Claimant's evidence that following 2016 in every 1-2-1 he had with Mr Grace he was seeking to raise the issue of his FAW grievance. We find that he believed it had been concluded by the removal of Mr Smyth and there was no written follow up with Mr Grace or HR about the further progression of his FAW complaint. We do not consider that it remained an issue in the Claimant's mind and, we do not accept that it was a matter that featured in the minds of either Ms McEleney or Mr Grace at all.

Invoicing

45. On the 21 September 2016 the Claimant established a company, WFPD Ltd. He was the sole shareholder, director and personal with significant control of the company.

46. The incorporation of the company coincided with the timing of a number of the Respondent's properties becoming void and marked for demolition.

47. The Claimant stated that the initials WFPD Ltd stood for Women for Progressive Development Ltd. He stated that it was a company run for the benefit of his wife. The Respondent contended the WFPD was deliberately set up to confuse clients to believe they were contracting with Waltham Forest property department. The Tribunal have no difficulty in finding that the Claimant's explanation for the name of his company is wholly incredible.

48. Shortly after incorporation of the company, on 22 October 2016, the Claimant invoiced Ad Hoc Property Management Ltd the sum of £2200 for professional fees provided in respect of Warburton Terrace.

49. On 4 November 2016 WFPD Ltd invoiced Ad Hoc Property Management Ltd the sum of £7083.20 in respect of a contribution to Warburton Terrace.

50. Warburton Terrace was a property owned by the Respondent and as such the sums invoiced would have been sums properly due to the Respondent.

51. The Claimant stated that he was assisting the Respondent in invoicing in this way, in that the sums would be paid to his company and then forwarded on to the Respondent's accounting as the Respondent had difficulties with their systems. The Claimant's position before the Tribunal was that this was all easily resolved by having a quick discussion with the Respondent's finance department. Suffice to say the Tribunal find that the Claimant's actions in this regard were objectively inexplicable and suspiciously fraudulent. There were no proper records, no reference to his line manager and it was outside the Respondent's financial procedures. We were unable to accept how a manager of the Claimant's experience could have considered this highly suspicious conduct to be an appropriate way to proceed, in any circumstances.

Training

52. There was no evidence before the Tribunal of the Claimant being prevented from taking training by the Respondent within its systems or otherwise.

Fraud investigation

53. On 18 May 2017 Mr Kelly, Area Sales Estates manager of the Respondent was contacted by an employee of Ad Hoc Property Management Ltd. Mr Kelly subsequently met with the employee concerned on 20 June 2017 where the two invoices from WFPD Ltd to Ad Hoc Property Management Ltd and a credit note from WFPD Ltd were disclosed. Mr Kelly contacted the Respondent's audit and fraud office and reported the matter to Mr Marc McAuley. Mr Kelly was asked to keep the matter confidential and he had no further involvement in the matter.

54. Mr McAuley started working in the audit and fraud team in 1990 and became one of the first anti fraud officers. He has received professional residential training at Thames Valley police, accredited by Portsmouth University. He has been working in local government for over 13 years. He is a member of the government standard advisory group setting strategy for dealing with anti-fraud and corruption and is a senior consultant with the Chartered Institute of Public Finance and Accountancy.

55. Mr McAuley had full investigating experience and qualifications but did not have your authority for arrest. As such the police were required to sanction this. However, Mr McAuley contacted the police to obtain their support to arrest and search the Claimants property.

56. Mr McAuley recommended to Ms McEleney that she suspend the Claimant so that he could arrest, search and interview the Claimant under caution. However, the Respondent's suspension policy indicates that the employee will be given an

opportunity to comment on the basis for a suspension before suspension is an acted. This did not happen in the Claimant's case.

57. On 28 June 2017, Ms McEleney read the Claimant a suspension script and was informed that he was being immediately suspended. The Claimant was handed a letter stating he was suspended to allow the Respondent to undertake an investigation into bringing the council into disrepute by seeking personal gain through false invoicing. The letter stated that the matter was considered to be serious and, if substantiated, could amount to gross misconduct which could result in the Claimant's dismissal from the Respondent. It was stated that the purpose of the suspension was to allow the Respondent to investigate the matters and decide whether a disciplinary hearing is necessary. It was stated that it was not a punishment and did not imply guilt.

58. Ms McEleney then handed the meeting over to Mr McAuley. The Claimant was then arrested and subjected to what must have been an upsetting and distressing process of arrest, search of his property, questioning and detention at Ilford Police Station. The Claimant was released from the police station on 29 June 2017.

59. Mr McAuley spoke to a number of individuals as a part of his fraud investigation. One individual was Mr Richards project development manager of Celeste Church. Celestial Church which was a party to a contract signed by the Claimant in respect of use of property belonging to the Respondent. Mr McAuley had a telephone conversation with Mr Richards asking for a copy of the contract as the contract was not been approved or recorded in accordance with the Respondent's policies. As an aside, there was no evidence that the appropriate safety checks had been undertaken by the Respondent for this third party to occupy the property. Mr McAuley asked Mr Richards if he knew Mr Rowe and Mr Richards responded that he did not know what Mr Rowe looked like as a person. Mr McAuley responded that Mr Rowe is a black man and that he would send a picture of him.

60. There parts of Mr Richards evidence that we could not accept. Specifically relating to whether Mr McAuley had offered the Celestial Church 'a better contract'. This would not have been something which Mr McAuley had any input in or authority at all. Mr Rowe is a black man and we find that the comment that Mr McAuley allegedly referred to Mr Rowe as a 'black fraudster' is clearly provocative to have precipitated some formal comment and possible complaint at the time. None was made. In these circumstances we prefer the evidence of Mr McAuley over Mr Richards in respect of the racially discriminatory comments ascribed to him.

Internal process

61. On 19 August 2017 Ms McEleney contacted HR regarding a disciplinary investigation respect of the Claimant. She stated that there was no one appointed to undertake the investigation at that stage but she had someone on standby for it. Ms McEleney expressed concern about how to take matters forward given that the Claimant was absent on full pay without any meaningful contact and no information to provide to him. She was also concerned that she was trying to manage the service in his absence with no indication of when she would be able to resolve the position. Ms McEleney stated she did not have anything she can ask an officer to investigate as the information that was needed was from the internal audit and in order to progress matters she needed the internal fraud audit.

62. A 12-page internal audit was sent on the 8 September 2017 and recommendations were made. There were four recommendations two of which are relevant. Recommendation A was for the Respondent to proceed with a council prosecution against the Claimant for fraud offences. Recommendation B was for HR to conduct a disciplinary investigation based on the evidence gathered through the course of the criminal investigation.

63. In respect of recommendation B, the disciplinary investigation, Ms Jennifer Anderson was appointed as an investigating officer to consider whether there were any disciplinary allegations. The Claimant was invited to a disciplinary investigation by letter dated 9 October 2017. The elements of investigation were as follows:

- 63.1 Guardian invoices that constitute breaches of procurement rules.
- 63.2 Breaches of health and safety.
- 63.3 serious negligence causing unacceptable loss.
- 63.4 Breaches of the financial regulations.

64. An investigation meeting was held on 23 October 2017 where the allegations were discussed. Amy Clarke was taking notes at this meeting.

65. Ms Anderson and Ms Clarke attended a wedding of a colleague on 17 November 2017. Ms Clarke, whilst under the influence of alcohol, revealed to others that the Claimant was being investigated for fraud; that they found keys at the Claimant's home; that he was renting out 30 council properties including Marlow Road and Warburton Terrace; and that management would sack him.

66. The Claimant was sent the notes of the investigation meeting on 30 November 2017, he commented on them and was able to make amendments that he felt appropriate which were recorded in the updated notes.

67. The Claimant declined to attend a second investigation meeting prior to the disciplinary meeting on the basis that he thought the Respondent would have a second bite of the cherry.

68. Consequently, the Claimant was invited to a disciplinary hearing by letter dated 12 January 2018 and informed that all the relevant documentation would be sent to him five working days in advance of the hearing. He was informed that he should present any documents that he had no later than one working day in advance of the hearing.

69. The allegations the Claimant faced were breach of the Respondent's code of conduct, breach of financial regulations and breach of policies and procedures. Whilst those allegations are generic the notes of the investigation report clearly specified the detailed and extensive allegations the Claimant was to face. Further, the Claimant was clearly aware of the allegations against him and prepared a 50-page submission document dealing with the matters and putting his case.

70. The disciplinary hearing took place over three days, 30 January 2018, 5 February 2018 and 26 February 2018. Separately, the Claimant alleged that he was required to attend a meeting on 1 February 2018 at his place of work which would

have been humiliating to him. We find that the Claimant was mistaken in this regard. Once location was raised as a concern the location and date of the resumed meeting was changed to a mutually acceptable location on the 5 February 2018.

71. There were discussion following the 5 February 2018 regarding further investigations. However, Ms Walker, the Claimant's union representative expressed concerns about the disciplinary proceeding on the basis of information that was not before the Claimant. Following these observations Ms McEleney decided not to consider any further evidence as part of the process.

72. The Claimant was able to put his case and he was able to question the witnesses called by the Respondent.

73. During the disciplinary hearing the Claimant suggested a number of lines of enquiry from speaking to other individuals who were no longer employed by the Respondent in order to help support his case. He did not call the witnesses himself and Ms McEleney did not make any efforts to speak to them. On the evidence before her and what the Claimant's individual responsibility was, speaking to the further witnesses would not have addressed the Claimant's inherently implausible answers in respect of him not reading a specific contract, that he signed; that he did not disclose to his line manager; which was non-compliant with the Respondent's policies in respect of reporting and safety.

74. The disciplinary meetings were tense and difficult to manage given the emotional responses from the Claimant but we do not find that there was bias or unfairness demonstrated by Ms McEleney in the management or determination of the disciplinary.

75. The Tribunal considered Ms Walker's criticisms of the management of the disciplinary hearing. Whilst Ms Walker perceived it to be unfair she was unable to provide any specific example of unfairness for Ms McEleney to answer. We find that Ms Walker's perceptions were in the context of her not having sufficient knowledge of the Claimant's case. She did not have the Claimant's 50-page rebuttal document, that he should have given to her, and she was not aware of the extensive number matters that had already been put to the Claimant during the investigation meeting. We find that this lack of knowledge tainted her perception of the fairness of the proceedings.

76. On 2 March 2018 the Claimant submitted a FAW grievance in relation to his suspension and the subsequent disciplinary action against him. The Claimant wrote that it was brought to his attention by Mr Richards, an officer of Celeste Charity, that they had been trying to contact him from August 2017 but he was not at work. It was said that Mr Richards informed the Claimant that Mr McAuley had told him, on 3 July 2017, that the Claimant was 'being done for fraud' and is a 'criminal' and that subsequently on 7 July 2017 Mr McAuley told Mr Richards that the Claimant was a 'black fraudster'. The Claimant's grievance was that Ms McEleney and Mr McAuley subjected him to race harassment and race discrimination and that his suspension without reasonable investigation or evidence was prejudiced and biased.

77. On 9 March 2018 Ms McEleney sent a 10-page disciplinary outcome letter to the Claimant. Ms McEleney stated that the Claimant had acted in breach of the Respondent's financial regulations, policies and procedures and in breach of its health

and safety policies. Whilst there were numerous failings found by the Claimant in summary, Ms McEleney found the Claimant to have contracted with Celestial Church of Christ allowing them to use one of the Respondent's vacant houses of multiple occupation, without sign off from management, without payment to the Respondent, without recording on the Respondent's systems or completing the necessary gas safe checks to permit safe occupation of the property. The financial implications, the risk to property, safety and the Respondent's reputation were matters that in issue. Ms McEleney concluded that the Claimant's actions amounted to gross misconduct. The Claimant was dismissed without notice.

78. The Claimant was offered the right of appeal and informed that the minutes of the disciplinary meeting would follow.

79. Ms Isse responded to the Claimant's grievance on 20 March 2018 and stated that the Respondent's FAW procedure policy did not provide a platform to question decisions taken under any procedure which already offered the employee a right of appeal. The Claimant was led to understand that his second FAW grievance could be dealt with as part of an appeal against dismissal.

80. The Claimant submitted his appeal against dismissal on 21 March 2018. There were 7 grounds of appeal, discrimination and victimisation were not mentioned. It is clear to the Tribunal that the issues being levelled against Mr McAuley which form part of the criminal investigation were not part and parcel of the Claimant's disciplinary investigation and dismissal process and as such could not properly form part of his appeal against his dismissal. This should have been subject to a separate and distinct FAW process specifically relating to the criminal fraud allegations. This was not done or considered by Mr Miller as part of the Claimant's appeal against dismissal.

81. The Claimant's appeal was heard by Mr Miller on 23 April and 27 April 2018. The Claimant submitted an 80 page appeal submission document. He accepted that he had a fair hearing as he was heard by Mr Miller but maintained that the process was unfair as all relevant investigation had not been completed and there was an absence of relevant documentation provided to him.

82. Mr Miller provided the outcome to the Claimant's appeal by letter dated 21 May 2018. Mr Miller accepted that there were unreasonable delays in the production of the minutes of the disciplinary meeting, the investigation meeting and between the investigation and the disciplinary hearing. Mr Miller was unable to conclude that the minutes of the meetings were inaccurate but he accepted that there were shortcomings in the process which would not have had an impact on the outcome of the decision and recommended that Amy Clarke to be investigated in respect of alleged breach of confidentiality. Mr Miller did not deal with the allegations of discrimination and harassment despite the fact that the Claimant was able to address it in detail at the appeal hearing. No recommendations were made in this regard.

83. Mr Miller confirmed that the Claimant's dismissal should be confirmed because the Claimant had signed agreements which created financial implications and risks for safety of the Respondent's reputation. In summary, the documents signed allowed for occupation by third parties where there was no payment to the council, no authorization and no recording or notification or certification of the property being gas safe.

84. On 3 June 2021 the Respondent informed the Claimant that it did not intend to prosecute him in relation to the two invoices presented to Ad Hoc Property Ltd by WFPD Ltd in 2016. The Respondent stated that they were of the view that there were realistic prospects of conviction but that looking at the matter in 2021 there was no longer sufficient public interest to proceed with a prosecution given the length of time that had elapsed.

Law and submissions

85. The Tribunal considered the relevant law and was assisted by hearing oral argument and detailed written submissions advanced by the parties.

Equality Act complaints

86. Section 13 of the EqA 2010 defines discrimination as follows:

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

87. Under section 9 EqA, race is a protected characteristic.

88. Section 27 EqA provides for unlawful victimisation:

“(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

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

(a) bringing proceedings under this Act;

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

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

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

(3)...

89. Section 136 of the EqA sets out. This states

136 Burden of proof

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

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

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

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

90. The burden is on the Claimant to prove, on the balance of probabilities, to establish a prima facie case of discrimination. The Court of Appeal, in Madarassy v Nomura International Plc [2007] EWCA Civ 33, Mummery LJ stated at paragraph 56 that the court in Igen v Wong expressly rejected the argument that it was sufficient for

the complainant simply to prove facts from which the tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination). It is confirmed that a claimant must establish more than a difference in status (e.g. race) and a difference in treatment before a tribunal will be in a position where it 'could conclude' that an act of discrimination had been committed.

91. Even if the Tribunal believes that the Respondent's conduct requires explanation, before the burden of proof can shift there must be something to suggest that his treatment was due to the Claimant's colour or race.

Unfair dismissal

92. The unfair dismissal claim was brought under Part 98 of the Employment Rights Act 1996 (ERA). A dismissal for a reason which relates to the employee's conduct is a potentially fair reason for dismissal. The test of whether it is fair or unfair appears in section 98(4):

General.

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)—

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

93. In British Home Stores v Burchell [1980] ICR 303, Mr Justice Arnold identified four considerations which arise in misconduct cases. Firstly, did the employer have a genuine belief that the employee was guilty of the misconduct in question? Secondly, was that belief based on reasonable grounds? Thirdly, had that belief been formed following such investigation into the matter as was reasonable in all the circumstances? Fourthly, was the decision to dismiss one that was within the band of reasonable responses

94. All relevant circumstances include the employee's length of service and disciplinary record; and the attitude of the employee to his conduct.

95. In considering the fairness of the dismissal the appeal should be treated as part and parcel of the dismissal process: Taylor v OCS Group Limited [2006] ICR 1602.

96. It is a fundamental part of a fair disciplinary procedure that an individual should know the case against them London Borough of Hammersmith and Fulham v Keable [2021] EA-2019-000733-DA.

97. In Sharkey v Lloyds Bank Plc [2015 UKEAT/0005/15] Mr Justice Langstaff held at paragraph 26

It will almost inevitably be the case that in any alleged unfair dismissal a Claimant will be able to identify a flaw, small or large, in the employer's process. It will be and is for the Tribunal to evaluate whether that is so significant as to amount to unfairness, any prospect of there having been a dismissal in any event being a matter for compensation and not going to the fairness of the dismissal itself. In assessing fairness an overall approach must be taken (see Taylor v OCS Group Ltd [2006] ICR 1602 and Whitbread plc v Hall [2001] ICR 699, the former in particular emphasising that procedure and substance run together where the section 98(4) test is being applied). Procedure does not sit in a vacuum to be assessed separately. It is an integral part of the question whether there has been a reasonable investigation that substance and procedure run together

98. It is for the Tribunal to evaluate whether a procedural flaw is so significant as to amount to unfairness. This includes consideration of compliance with the ACAS code.

Conclusions

99. In view of our findings of fact and the law, our conclusions are as follows.

Unfair dismissal

100. We conclude that the Respondent has established that it dismissed the Claimant for a potentially fair reason, namely conduct. In summary, dismissed the Claimant for gross misconduct for, amongst other things, permitting the Celestial Church Charity to occupy one of the Respondent's properties with no authorisation, no official record of it being done, no payment to the Respondent, and no sign off that the property was certified gas safe. This was contrary to the Respondent's policies that the Claimant was required to follow in order to carry out his role as Voids and Litigation Manager.

101. When considering whether the dismissal was fair and reasonable in all the circumstances, the Claimant maintains that:

- 101.1 Not interviewing additional potential witnesses that were relevant to the investigation that would have had significant material impact to the outcome was unfair.
- 101.2 He was not provided with all relevant information including the interim fraud audit report, which he maintains was factually incorrect.
- 101.3 The disciplinary investigation was a predetermined expedient process to ensure his dismissal; he maintains that there was insufficient evidence to mount a fraud prosecution against him in respect of the invoices and Ms McEleney mentioned referring matters to the police during the disciplinary hearing.
- 101.4 Ms J Anderson and Ms McEleney were biased against him, underlined by what Ms Clarke said about him at the wedding.
- 101.5 His dismissal was an act of victimisation because of his two FAW complaints.
- 101.6 He was dismissed as an act of victimisation as a result of his FAW race discrimination complaint dated 26 July 2016.
- 101.7 His case in respect of the disciplinary allegations he faced was ignored.
- 101.8 Ms McEleney did not look at any alternative to dismissal in her dismissal letter outcome.
- 101.9 The whole process including the appeal was unfair. It was alleged that Mr Miller rubber stamped Ms McEleney's decision to dismiss.

There was not a fair or reasonable investigation

102. We accept that more investigation was an option, however, when considering what was done, including the extensive investigation and disciplinary process and what was before the disciplinary officer we do not conclude that the investigation was outside the band of reasonable responses. The Claimant had advanced his version of events and he was entitled to put forward witnesses he felt necessary for the allegations he faced.

103. In particular, further investigation would not have explained the Claimant's wholesale failure to raise his dealings with Celestial Church with his then line manager, Mr Grace, and his failure to have any authorised records or reports of how the relevant property was being used.

He was unreasonably ignored and his account was not taken into account; Failed to consider the Claimant's responses to the allegations or evidence he provided in support.

104. The Claimant's response to the allegations was extensively advanced during the investigation, disciplinary and appeal meetings. He was able to bring any witnesses he felt appropriate and question the witnesses the Respondent relied on.

105. The disciplinary invite expressed the allegations the Claimant was to face in generic terms. However, the content of the investigation report specified the detail of the allegations and the Claimant was fully aware of the specific allegations against him. He prepared a 50-page submission for the disciplinary meeting addressing the allegations and the first two days of the meeting was spent hearing the Claimant's case. The Claimant also prepared a 80-page submission for appeal against dismissal which was attentively considered by Mr Miller.

106. We accept that Ms McEleney suggested that information put forward by the Claimant in respect of the allegations he faced should be referred to the fraud audit team (not the police) as this may have been relevant to that ongoing process. However, we do not conclude that Ms McEleney progressed the disciplinary process as an expedient way to avoid a protracted criminal prosecution against the Claimant. The Claimant was not dismissed for those matters and the evidence and inference in respect of the allegations against him was substantial.

107. We do not conclude that the Claimant's case was ignored or not considered. The Claimant's response to the allegations was not accepted. His response was found to be implausible. The Claimant maintained that he did not read the contract between Celestial Church and the Respondent, that was specifically sent to him and that he signed on behalf of the Respondent. The Claimant's assertion that it was custom and practice for him to act as he did was incredible and further investigation would not have absolved him from his responsibility to seek appropriate authority, record appropriately and certify the property as safe to let. None of this was done by the Claimant.

That the Respondent failed to consider the Claimant's 2 March 2018 grievance.

108. We conclude that, insofar as the Claimant's 2 March 2018 FAW involved matters relating to his appeal against dismissal, these matters were considered as part of the appeal in accordance with Ms Isse's juncture that matters forming part of an ongoing process could not be a separate FAW complaint. However, the Claimant's concerns relating to race discrimination, race harassment in respect of the separate fraud criminal investigation were not dealt with. These matters were separate and as they did not relate to the reasons for the Claimant's dismissal, failure to consider them did not impact on the fairness of the dismissal. The Respondent's failure to consider these matters is considered under the Claimant's victimisation claim below.

His dismissal on 9 March 2028 fell outside the band of reasonable responses.

109. The allegations were very serious. The Claimant exposed the Respondent to the risk of damage to people, property and reputation. The Claimant had a clean disciplinary record but we do not conclude that the dismissal for these matters fell outside the band of reasonable responses.

110. The Claimant took no steps to communicate with the Respondent what he was doing with Celestial Church and he failed to follow the Respondent's policies in this regard. He refused to take any responsibility for how he acted. The failure to mention to Mr Grace during his 1-2-1's what he was doing at the relevant time was conspicuous.

The Claimant asserts that his dismissal was unfair because it was an act of unlawful victimisation.

111. We accept that the Claimant's FAW complaint dated 26 July 2016 regarding Mr Smyth amounted to a protected act. The Claimant was asserting that Mr Smyth was racially discriminatory.

112. The Claimant's grievance on 2 March 2018 to HR was also a protected act in that it referred to race harassment and race discrimination of Ms McEleney and Mr McAuley's concerning his suspension and investigation for fraud.

113. Neither of these protected acts were factors in the dismissal decision made by Ms McEleney, communicated by letter dated 9 March 2018. Ms McEleney did not know the detail of the 2016 grievance as it was not escalated to her. Ms McEleney was not aware of the 2 March 2018 grievance that was sent to HR before she decided to dismiss the Claimant.

114. Therefore, we do not conclude that the Claimant was dismissed because of his protected acts. Ms McEleney dismissed the Claimant for gross misconduct, his unauthorised and irregular dealings in permitting the Celestial Church Charity to occupy an uncertified gas safe property belonging to the Respondent.

115. Given the above conclusions, the Claimant's claim for unfair dismissal fails and is dismissed.

Race Discrimination

116. In respect of race discrimination, the Claimant is Black Jamaican for the purposes of his claim. He alleges that his suspension, arrest, search, questioning and detention at Ilford Police station were acts of race discrimination.

117. The Claimant relies on David Ware, Dave Coleman, Tom Smyth, Graham Hiron and other employees occupying the same role but not being subject to such acts as appropriate comparators to seek to establish his claim. The Tribunal do not conclude that these individuals or comparisons are appropriate. None of these individuals had engaged in objectively inexplicable and suspiciously fraudulent invoicing relating to the Respondent's properties. This fact must form part of the relevant factual basis for any relevant comparator.

118. In view of the highly suspicious invoicing, including establishing a company to facilitate this, we do not conclude that the Claimant's race played any part whatsoever in his suspension, arrest, search, questioning and detention. Whilst it was distressing for the Claimant to have been subject to this process we conclude that it simply would not have occurred at all had he not invoiced in the way he did.

119. We conclude that the Claimant's criticisms against Ms McEleney are misplaced as she complied with Mr McAuley's request to suspend the Claimant in order for him to be arrested and questioned.

120. We have not found that Mr McAuley said that the Claimant was a "black fraudster" as alleged by Mr Richards.

121. We conclude that Mr McAuley was following appropriate protocols in view of the serious and suspicious fraud revelations concerning the Claimant. Fraud allegations against staff did not occur frequently and Mr McAuley had only facilitated the arrest of two employees of the Respondent for alleged fraud, the Claimant and a white woman. We do not conclude that Mr McAuley's actions amounted to less favourable treatment at all and conclude that he would have followed the same process in respect of any employee suspected of doing what the Claimant had done.

122. In respect of the disciplinary proceedings, the meetings held, and how they were conducted we conclude that it was inevitable that there would have been an investigation and possible disciplinary action against any employee suspected of doing what the Claimant did. Once the investigation concluded that there were matters that should progress to disciplinary Ms McEleney managed the matter. The meetings were emotional and tense given the Claimant's outbursts.

123. Having considered all the relevant circumstances we conclude that a hypothetical white comparator in the same circumstances would not have been treated any differently by Ms McEleney.

124. In relation to the Claimant's dismissal, this arose from the findings that the Claimant had committed gross misconduct and not because of his race. We considered the Claimant's contentions that Ms McEleney was biased and had a predetermined decision to dismiss him regardless of what he said. The Claimant relies on what Ms Clarke told Ms S Anderson as establishing bias amongst the investigator, Ms J Anderson and Ms McEleney. However, what Ms Clarke said under the influence of alcohol at the wedding in November 2017 did not transpire. Ms Clarke was party to the evidence that was being addressed in the investigation meeting but not the decision made by Ms J Andersen to recommend disciplinary action. Indeed, the Claimant was not dismissed for 'renting out 30 properties'. Further, Ms McEleney was not party to the investigation process and took her decision independently following consideration of the information before her, including the Claimant's representations.

125. Therefore, we do not conclude that the Claimant's race formed any part in the decision-making process in dismissing him.

126. In relation to the allegation that the Claimant was required to attend his place of work for a meeting on 1 February 2018, we conclude that he was confused. He was not required to attend this meeting, he objected and it was rearranged to take place on 5 February 2018 at a different location that he was content with.

127. In all these circumstances the Claimant's race discrimination claim fails and is dismissed.

Victimisation

128. As outlined above, we conclude that the Claimant made protected acts in his FAW's dated 26 July 2016 and 2 March 2018 respectively.

129. We then considered whether the Claimant was subjected to detriment because of his protected acts.

130. The Claimant originally raised a concern on 6 July 2016 which was formally progressed to a FAW on 26 July 2016. The mischief of the grievance, the removal of Mr Smyth, was achieved on 4 August 2016. The Claimant was aware of this and he was content with the outcome. Whilst he did not get formal notification of the conclusion of this FAW he did not seek to raise the matter again until his subsequent Tribunal claim that he presented in July 2018. We therefore do not conclude that the Claimant reasonably believed that he was subject to detriment in the way his first FAW request was dealt with.

131. We do not conclude that the Claimant was denied training. The Respondent's procedures permitted the Claimant to attend training he requested. There were no training needs identified in his 2016 appraisal that were denied to him and no evidence that the Claimant requested training.

132. In respect of not having an appraisal in 2017, Mr Grace conducted appraisals for all of his staff later than planned in that year (they were also undertaken later than planned in 2016). Mr Grace got around to appraising his staff in July 2017, by which time the Claimant was suspended. We do not conclude that the Claimant's 2016 FAW played any part in him not being appraised by Mr Grace in 2017. The reason was because the Claimant was suspended from work before the 2017 appraisal round and did he not subsequently return.

133. The Claimant was suspended by Ms McEleney, following the recommendation of Mr McAuley. It is fanciful to suggest that he was suspended because he raised a FAW on 26 July 2018, the details of which neither Ms McEleney nor Mr McAuley were aware of. The Claimant was suspended following his objectively inexplicable and suspiciously fraudulent invoices he submitted relating to the Respondent's property.

134. The Claimant's objectively inexplicable and suspiciously fraudulent invoices led to his arrest, search, questioning and detention at Ilford police station. It formed part of the same factual matrix that was parasitic upon the suspension. We do not conclude that this took place because he raised a FAW on 26 July 2018.

135. We do not conclude that the Claimant was dismissed because of his protected acts. Ms McEleney dismissed the Claimant for gross misconduct, his unauthorised and irregular dealings in permitting the Celestial Church Charity to occupy an uncertified gas safe property belonging to the Respondent.

136. The Claimant's second FAW dated 2 March 2018 was acknowledged by Ms Isse on 20 March 2018. The Claimant's discrimination allegations relating to the suspension and the criminal process was not dealt with. Whilst the Claimant fully ventilated these matters in the disciplinary appeal hearing with Mr Miller, Mr Miller did not resolve them. We conclude that the failure to consider these grievance allegations amounted to a detriment.

137. The Tribunal then considered whether the failure to deal with the Claimant's second FAW, insofar as it related to the Claimant's suspension and the criminal investigation, was because the Respondent did not want to address allegations of discrimination. We conclude that the failure to do so was the confusing nature of having a criminal investigation, a separate disciplinary investigation and the overlap and interplay between the Respondent's appeal process and FAW procedure. The

Claimant's FAW concerns relating to the investigation and dismissal were properly considered under the disciplinary appeal process. However, matters relating to the suspension and criminal investigation were not dealt with at all. We do not criticise Mr Miller for not considering such matters as he was considering the appeal against dismissal but HR ought to have established a process to consider this.

138. We do not conclude that the fact that a separate process was not done was because of the desire to avoid considering the discrimination allegations in the FAW or because of the 26 July 2016 grievance. The confusion caused by extensive documentation and overlapping processes, poor management and communication was the reason why the matter was not progressed.

139. Therefore, the Claimant's claim for unlawful victimisation fails and is dismissed.

140. All the Claimant's claims fail and are dismissed.

Employment Judge Burgher

4 January 2022