EMPLOYMENT TRIBUNALS

Claimant: **Miss P Mowatt**

Respondent: **One Call Insurance Ltd**

Heard at: **Sheffield** **On: 23-25 November 2021**

Before: **Employment Judge Maidment**
Members: **Ms M Cairns**
Ms S Robinson

Representation
Claimant: **Mr M Houlbrook, trade union representative**
Respondent: **Ms A Sherriff, HR Manager**

JUDGMENT dated 25 November 2021 having been sent to the parties and written reasons having been requested by the respondent in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Issues

1. The claimant brings a complaint of ordinary unfair dismissal. It was clarified at the commencement of the hearing that it is not being asserted that dismissal was automatically unfair for pregnancy reasons. The respondent maintains that the claimant was dismissed for a reason related to conduct involving her failing to place a customer on insurance cover, accessing and viewing other employees' emails and spending work time conducting personal internet research.

2. The claimant confirmed at the outset also that she was not pursuing any complaint of maternity discrimination and/or harassment. In the case management process it had been identified that there may be complaints of detrimental treatment under such causes of action, including inappropriate emails about the claimant, her not having had any training, have been

demoted and a lack of support, amongst other things. It was confirmed again that such claims were not being pursued. A dismissal Judgment would be issued, it was explained, on their withdrawal.

3. The sole complaint in addition to that of ordinary unfair dismissal was of victimisation. The claimant relies on her grievances as amounting to protected acts. It was clarified on the claimant's behalf that the sole detriment is that the grievances were not, it is said, dealt with fairly and properly. It is said that there ought to have been separate investigations initiated in respect of those individuals who had made inappropriate comments about the claimant in email correspondence.

Evidence

4. The tribunal had before it an agreed bundle of documents. The tribunal heard firstly from Oliver Rose, director, Ms Sarah Chadburn, the compliance director and Mr Daniel Hart, head of projects and operational performance. The claimant then gave evidence on her own behalf. The tribunal read and accepted in evidence on behalf of the claimant, written statements given by Dana Fielding, Lauren Taylor and Joel Alderson on the basis that only reduce weight could be given to them in circumstances where they were not present to be cross-examined. Indeed, the tribunal had no signed or confirmed version of the statement submitted by Ms Fielding.

5. Having privately read into the witness statements and relevant documentation, the tribunal received a handwritten note from Ms Sherriff, representing the respondent, querying whether the tribunal needed to hear from Mr Rose and Ms Chadburn given that the claimant could not say that her dismissal was an act of victimisation given that disciplinary proceedings had been initiated prior to her raising her grievances i.e. the protected acts. The tribunal explained further that this was not the basis upon which the complaint of victimisation was pursued.

6. Having considered all relevant evidence, the tribunal makes the factual findings set out below.

Facts

7. The claimant worked for the respondent insurance brokers from 6 February 2012 and at the time of her dismissal in September 2020 held a management position. The claimant informed the respondent that she was pregnant, she says, verbally on 8 March and then certainly by email to the HR Department on 23 March 2020.

8. On 24 March the claimant attended the office just as the respondent commenced a process of sending employees home and setting up systems to allow them to work from home as a result of the lockdown caused by the coronavirus pandemic. The claimant started working from home from 25 March 2020 doing both Live Chat and her management role, which she had

held within household insurance since February 2020. All managers took on a partial customer facing role given the strain on resources during the period of lockdown.

9. The respondent's perception was that the claimant was struggling in her role, as the claimant recognised herself, and on 22 May she was told at a meeting with Katie Hiles that she would no longer have any management role but would continue purely with the Live Chat. This was not framed as a permanent change and the claimant continued to receive her normal rate of pay which recognised her management role.

10. In June, Ms Bratby, head of operations, was notified by the claimant's manager, Rachel Nichol, that, following contact from a policyholder, it had been discovered that he had been without car insurance cover for a period of around six weeks. She also learned that the claimant had entered the policyholder's file the day after this had been brought to Ms Bratby's attention. This was before Ms Nichol had made the claimant aware of the issue. The claimant had been responsible for this particular policyholder. However, the claimant's access to the file, at this point in time, created suspicion as to her actions and IT were asked to produce a report of the email accounts which the claimant had accessed. It was confirmed that she had access to numerous email inboxes of colleagues at various levels of seniority. The respondent then used a newly acquired tool, known as Activetrak, which it had used from the beginning of June, to review the claimant's email activity.

11. It was found that the policyholder's renewal had been due to take place on 1 May and the claimant had confirmed that this would be completed. However, the renewal had not been actioned. It was further found that the claimant had added a number of email accounts of managers to her own Outlook account, including 2 heads of department, and had accessed them multiple times throughout the month of June. It was also found that she had accessed websites relating to the sale of prams and other children's items during working hours. On this basis, Ms Bratby recommended proceeding to a disciplinary hearing to explore the allegations further.

12. She referred in her investigation report to the respondent's own disciplinary procedures including, as examples of gross misconduct, a failure to abide by the staff code of conduct including the Financial Conduct Authority ("FCA") rules for individuals, serious breach of confidentiality and failure to carry out duties to the correct standard including, for example, a failure to ensure that a customer's vehicle was on cover for the relevant policy. The respondent's employee handbook included a section relating to the FCA's code of conduct which included an obligation to act with integrity and separately with due skill and care. The respondent had a separate policy

regarding email usage including the need to communicate appropriately, which distinguished between authorised and unauthorised use.

13. The claimant was suspended by phone by Ms Bratby on 19 June. On 22 June, Ms Bratby issued an invitation to a disciplinary hearing to be held on 23 June regarding the customer without cover and the claimant's viewing of colleagues' emails. The claimant was told that if an allegation of gross misconduct was substantiated, then her employment might be terminated. She was given the right to be accompanied by a colleague or union representative. It was anticipated that the hearing would take place by Zoom with Ms Bratby as the decision maker. The claimant's suspension on full pay was confirmed by letter of 22 June pending the investigation into an allegation of gross misconduct. A revised invitation to the disciplinary hearing was sent on 23 June in respect of a meeting to be held on 29 June. This included the allegation of accessing multiple websites during working time. It also set out the potential breaches of disciplinary rules involved.

14. On 29 June 2020 the claimant raised grievances in two separate emails send to HR. In the first of these she named five individuals as the subject of her grievance including Charlotte Bratby, Katie Hiles, Adam Padgett and Kyle Petty. She referred to her pregnancy having caused stress and anxiety about the workplace. Her complaint included that she had received minimal training when she had moved to her household management role in February 2020. She also referred to emails of others, which she said she had accessed.

15. In an email chain on 22 May 2020 between managers, the claimant said that Mr Petty had referred to her as "a fucking muppet". Until this point, the respondent was unaware that the claimant had accessed this particular email (of which it was unaware) as its search had been limited to the period of June. In separate email correspondence of 16 June the claimant noted that Adam Padgett had referred to members of staff critically and, in what she took as being a reference to her, he had referred to an intention to "manage the hell out of her as sadly becoming as bad as Gareth." Ms Bratby had responded: "If she is that bad she needs to just be sacked as you say but most experienced so she needs to prove herself."

16. The claimant referred to herself being taken off management responsibilities. She described herself as personally victimised by all these managers who had given her as much stress and anxiety as possible whilst pregnant. She said that she believed that the company was in breach of the Equality Act 2010 by not conducting an equality impact assessment with her on her pregnancy and not providing her with reasonable adjustments. She requested an explanation as to why she had not been provided with an assessment as being pregnant, she said, was a protected characteristic in

a protected period. She asked for an explanation why she was being institutionally discriminated and victimised during her pregnancy period.

17. In the claimant's second grievance email, she raised a concern that she had not been paid her monthly wage. The tribunal notes that on 24 June, Ms Bratby had emailed HR asking them to withhold any wage payments to the claimant prior to 29 June when she was due to attend her disciplinary hearing. She continued that, once the hearing had been conducted and dependent on the outcome, the payment could be made to the claimant by bank transfer on that date. The claimant was paid an instalment of her wages on 29 June, but the balance only on 30 June. The tribunal concludes that the payments were made in circumstances where it was clear that the claimant's disciplinary hearing was not going to go ahead as planned. The claimant had a company loan which would have been repayable on termination of employment and Ms Bratby did not want to risk that money not being recouped if the claimant's employment was terminated at the disciplinary hearing planned for 29 June.

18. Mr Oliver Rose, director, was contacted by the respondent's HR manager, Alex Sherriff, on 29 June notifying him of the receipt of a grievance from the claimant and asking him to take it forward. He wrote to the claimant on 6 July inviting her to attend a grievance hearing on 9 July. In the meantime, the disciplinary process was put on hold. The claimant attended accompanied by her trade union representative, Mr Houlbrook. Mr Rose allowed the claimant to explain and expand upon her points of grievance. He told the claimant that these would be taken seriously and investigated. He noted that the respondent's procedures provided for a response within 10 days, however the level of detail involved here meant that an investigation would take some time and he would contact the claimant should he need to extend matters beyond this time period.

19. Mr Rose proceeded to investigate the points of grievance and provided updates to the claimant on 20, 21 and 24 July as to his progress. He then wrote to the claimant on 31 July with his outcome. He considered that the grievance could be broken down into issues relating to communications from managers, training and wages. He also separately addressed a number of specific questions raised within the grievance.

20. As regards the aforementioned emails, he considered that Mr Petty's comment was about the claimant and that it was an inappropriate communication which ought to result in a separate disciplinary investigation involving Mr Petty. His understanding was that that had been progressed, although he did not know the outcome. As regards the communications between Mr Padgett and Ms Bratby, he considered that, whilst the language used was unsavoury, this correspondence had not been intended to be read by anyone else and there was no evidence of any victimisation of the

claimant. Several underperforming employees were being referred to. He noted that no follow-up action had been taken by the managers against the claimant. He did not believe that the emails justified those individuals being referred for a disciplinary investigation.

21. In terms of management communications, he also addressed how the claimant's performance had been evaluated and that there had been attempts to reduce the claimant's workload to assist her.

22. As regards training, he believed that training had been made available, but that the detail and structure provided within it could have been more in depth and made a corresponding recommendation that this should be improved. He explained that not all training which had taken place had been logged, but that there was some excuse given the difficult environment everyone was working in and the new methods of communication and training adopted as a result of the pandemic.

23. He found no evidence that the respondent's actions regarding the claimant's wages amounted to any predetermination of the outcome of her disciplinary hearing.

24. He also dealt with the issue of pregnancy risk assessments noting that there was an attempt to arrange for an assessment the day after HR had been notified in writing of her pregnancy. However, the claimant was on leave and a rearranged assessment on 25 March could not take place as that was the first day of lockdown and the claimant, along with other staff, was required to work from home. Thereafter, the respondent's HR department had operated on a significantly reduced capacity, but, as soon as normal operations were resumed, an assessment was arranged for and took place on 12 June 2020.

25. Mr Rose did additionally recommend that Ms Bratby be replaced as the investigating officer in the claimant's disciplinary case and that this be conducted independently, given the claimant's grievance against Ms Bratby.

26. The claimant raised an appeal against the grievance outcome, which was received by Sarah Chadburn, compliance director, on 6 August. She invited the claimant on that date to attend an appeal hearing to discuss her grounds in more detail. This took place on 14 August. The claimant was again accompanied by Mr Houlbrook. The claimant was given and took an opportunity to fully explain her points of grievance and her concerns regarding the outcome provided. Ms Chadburn determined that she would consider the whole grievance afresh.

27. She wrote to the claimant on 18 August advising that she would endeavour to provide a response within 10 working days, however that it might be necessary to extend the timeline. On 19 August she spoke to Mr Long about the circumstances in which he was made aware of the claimant's pregnancy. His evidence was that he was only made aware by text on 22 March. On the same day she also met with Sarah Cuttell, Mr Long's personal assistant to see if she had witnessed any adverse behaviour towards the claimant. On 20 August she met with Ms Bratby and involved Ms Hiles to gain a better understanding of how the claimant had been managed. On the same day she spoke to Mr Padgett who said that the wording of his email was to the effect that he meant to turn around the claimant's performance.

28. She spoke to Ms Rockett on 21 August, in particular regarding training and also on that date to Rachel Nichol whose name had been mentioned in other interviews. On 26 August she spoke to Sophie Cadman about the claimant's training. On 26 August she also received a statement from Ms Cuttell and spoke to Mr Petty. He apologised for the content of his own email. She spoke to him further indeed on 18 September regarding the respondent's expectations of the management team. She wrote to the claimant on 26 August to provide an update and suggested that she would be able to provide her response on the appeal by 11 September.

29. On 4 September she met with Ms Hiles and on 8 September raised some additional questions with Ms Rockett around the removal of the claimant from her management position. On that day she also spoke to Rebecca Stenson to understand how she had worked with the claimant. Ms Chadburn wrote to the claimant again on 9 September with a further update and to set a date for the provision of her outcome of 18 September. Ms Chadburn went on to speak to a number of members of the claimant's team on 15 September.

30. She then wrote to the claimant on 18 September with her outcome. The claimant responded on 21 September raising that there were inconsistencies and untruths within the findings.

31. Ms Chadburn's conclusion was that, whilst there were emails which she did not view as professional, there was no attempt to remove the claimant from her role within the respondent and no systemic issue of a conduct nature within the management team. She felt that a pregnancy risk assessment had taken place as soon as was reasonably practicable. She felt that necessary training had taken place and the claimant had been made aware of the key deliverables. The training hadn't been to the same standard as would normally be delivered, but that was due to the inability to deliver face-to-face training during lockdown. As regards the withholding of wages, she

did not believe there was any premeditated decision with regards to the outcome of the disciplinary case.

32. On 3 August, Mr Daniel Hart, head of projects and operational performance, was asked by Ms Sherriff and agreed to determine the disciplinary case against the claimant. In due course he was provided with a detailed investigation report completed by Ms Sherriff on 17 August 2020. He was aware of a prior investigation, but not of the detail or report produced by Ms Bratby. Attached to Ms Sherriff's report was substantial documentation showing logs and screenshots of the claimant's email and internet activity. The claimant was invited by letter of 28 August to a disciplinary hearing before Mr Hart on 11 September. This invitation listed the matters under consideration with reference to the rules which the claimant may have broken. The key issues under consideration were as originally found by Ms Bratby. On the morning of the hearing it was asked by the claimant if witnesses would be attending to be questioned. Mr Hart responded that that was not possible at short notice, however he would ensure that he heard from appropriate persons before reaching his decision.

33. The disciplinary hearing was lengthy and gave the claimant and Mr Houlbrook, who attended to represent her, a full opportunity to answer the allegations and make any representations they wished. Mr Houlbrook raised questions as to whether the process should be quashed given the lack of an earlier investigation meeting with the claimant. He also questioned Ms Bratby's earlier involvement.

34. The claimant did admit to checking the emails of colleagues, including managers, and adding inboxes to her own account. She explained that she had started this from just before she stepped down as manager as a result of her conversation with Ms Hiles, as she felt she was being left out of things such as emails and WhatsApp groups. She believed that she was being bullied and wanted to see if there was any proof. She admitted viewing meeting minutes and emails in order to look into this and said that she was just looking for emails about herself. A number of matters viewed had no reference to her, but the claimant said that she had just clicked through these to see if they had. Mr Hart noted that the claimant had reviewed information such as return to work after sickness documents from other staff members which contained no information about herself.

35. Mr Houlbrook questioned whether this been reported to the ICO and pointed out that the case was going to an employment tribunal. The claimant had indeed commenced employment tribunal proceedings on 1 July shortly after submitting her grievances. Mr Hart made it clear that he had not involved himself in the separate grievance process.

36. As regards the consumer without insurance cover, the claimant accepted that she had added the wrong action onto the file and that the policy had not, as a result, been renewed. Whilst the policy was for motor insurance, the claimant had placed an action relating to home insurance on the file. The claimant said that this was not done on purpose. Before the tribunal, the claimant referred to her changing and multiple responsibilities in terms of a source of possible confusion. She also told the tribunal that a manager ought to have audited the file and she noted that another employee had also accessed the file since the claimant had added the incorrect action. Mr Hart concluded that the failure to place the consumer on cover was solely as a result of the claimant's actions.

37. The claimant admitted to looking at websites for her personal purposes and using her WhatsApp account for personal messages during working hours. She was not sure of the time she looked at the various websites, but stated that they could have been during her breaks.

38. Mr Hart adjourned the meeting to consider his conclusion. He reviewed the investigation report again, considering the activity reports. He noted that there were 1315 interactions not related to the claimant's job role which showed access to the inboxes, sent items and deleted items of Ms Bratby, and Ms Rockett at frequent points throughout the month of June. The report also showed access to the sent items of Emma Marr and Rachel Nichol from 8 June. During the 15 working days up to 19 June it was noted that the claimant had spent 10 hours and 36 minutes viewing non-work-related matters.

39. Mr Hart noted that a number of the emails did not relate to the claimant and that he did not feel there was any reason for her to view them. She had not searched for herself in the emails by name but was conducting a general browsing where she did not appear to be looking for anything specific. The emails were viewed at multiple points throughout the working day. He also reviewed the agreement entered into by employees regarding working from home, which set out the expectations of the business, and information also informing employees that monitoring software was used of their online activities. He concluded that the claimant's actions amounted to a serious breach of confidentiality.

40. As regards the customer not being insured, he felt that as an isolated incident it was clear that there had been an oversight on the claimant's part and in isolation he would not have felt the need to take such severe action, not least with consideration given to the claimant's length of service. As regards her personal web searches and WhatsApp messages, he accepted that some of these may have occurred during breaks, albeit a significant amount of working time had been, in his opinion, lost.

41. He concluded that he had little choice other than to terminate the claimant's employment especially as she had breached the FCA conduct rules and in particular the requirement to act with integrity. She did not deny the allegations put forward and he felt he had lost faith in her honesty and integrity including in the future performance of her role. He felt that the claimant had shown little regard for company policy and had shown little or no remorse for her actions and the persistent nature of her activities.

42. Mr Hart wrote to the claimant by letter of 22 September confirming her immediate dismissal and setting out again the reasoning behind his decision. Within this he noted that she had accepted that she should not have looked at colleagues' emails and that she did it due to the feelings she had that she was being persecuted. Again, he repeated that he believed that her conduct had caused a loss in faith in her integrity in breaching the FCA code.

43. The claimant was given the right to appeal this decision but did not do so. She explained to the tribunal that a number of senior people had already been involved in her case and she did not believe that there would be any change in decision-making upon an appeal.

Applicable law

44. In a claim of unfair dismissal, it is for the employer to show the reason for dismissal and that it was a potentially fair reason. One such potentially fair reason for dismissal is a reason related to conduct under Section 98(2)(b) of the Employment Rights Act 1996 ("ERA"). This is the reason relied upon by the respondent.

45. If the respondent shows a potentially fair reason for dismissal, the Tribunal shall determine whether dismissal was fair or unfair in accordance with Section 98(4) of the ERA, which provides:-

" [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 upon 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".

46. Classically in cases of misconduct a Tribunal will determine whether the employer genuinely believed in the employee's guilt of misconduct and whether it had reasonable grounds after reasonable investigation for such belief. The burden of proof is neutral in this regard.

47. The Tribunal must not substitute its own view as to what sanction it would have imposed in particular circumstances. The Tribunal has to determine whether the employer's decision to dismiss the employee fell within a band of reasonable responses that a reasonable employer in these circumstances might have adopted. It is recognised that this test applies both to the decision to dismiss and to the procedure by which that decision is reached.

48. A dismissal, however, may be unfair if there has been a breach of procedure which the Tribunal considers as sufficient to render the decision to dismiss unreasonable. The Tribunal must have regard to the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015.

49. If there is such a defect sufficient to render dismissal unfair, the Tribunal must then, pursuant to the case of **Polkey v A E Dayton Services Ltd [1998] ICR 142**, determine whether and, if so, to want degree of likelihood the employee would still have been dismissed in any event had a proper procedure been followed. If there was a 100% chance that the employee would have been dismissed fairly in any event had a fair procedure been followed, then such reduction may be made to any compensatory award. The principle established in the case of **Polkey** applies widely and beyond purely procedural defects.

50. In addition, the Tribunal shall reduce any compensation to the extent it is just and equitable to do so with reference to any blameworthy conduct of the claimant and its contribution to her dismissal – ERA Section 123(6).

51. Under Section 122(2) of the ERA any basic award may also be reduced when it is just and equitable to do so on the ground of any kind conduct on the employee's part that occurred prior to the dismissal.

52. Pursuant to section 27 of the Equality Act 2010:

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

(a) B does a protected act; ….

Sub-paragraph (2) of this section provides:

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

……..

(d) making an allegation that A or another person has

contravened this Act.

53. As regards the meaning of "detriment" the Tribunal refers to the case of **Chief Constable of West Yorkshire Police –v- Khan [2001] 1 WLR** where it was said that the term has been given a wide meaning by the Courts and quoting the case of **Ministry of Defence –v- Jeremiah [1980] QB 87** where is was said that *"a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment".* There does not have to be any economic loss inflicted upon an employee for him or her to have suffered a detriment.

54. To succeed in a complaint of victimisation, the detriment must be "because" of the protected act. There is an initial burden on the claimant to prove facts from which the tribunal could conclude, in the absence of any other explanation, that the respondent has contravened Section 27. The burden then passes to the respondent to prove that discrimination did not occur. If the respondent is unable to do so, the tribunal is obliged to uphold the discrimination claim.

55. In the **Khan** case Lord Nicholls put forward that the "by reason that" element *"does not raise a question of causation as that expression is usually understood. Causation is a slippery word, but normally it is used to describe a legal exercise. From the many events leading up to the crucial happening, the court selects one or more of them which the law regards as causative of the happening. Sometimes the court may look for the "operative" cause, or the "effective" cause. Sometimes it may apply a "but for" approach. For the reasons I sought to explain in* ***Nagarajan –v- London Regional Transport****, a causation exercise of this type is not required either by section 1(1)(a) or section 2. The phrases "on racial grounds" and "by reason that" denote a different exercise: Why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact."*

56. It is again clear from the authorities that a person claiming victimisation need not show that the detrimental treatment was meted out solely by reason of the protected act. If protected acts have a "significant influence" on the employer's decision making, discrimination would be made out. It is further clear from authorities, including that of **Igen Limited –v- Wong [2005] ICR 931**, that for an influence to be "significant" it does not have to be of great importance. A significant influence is rather *"an influence which is more than trivial. We find it hard to believe that the principle of equal treatment would be breached by the merely trivial."*

57. Applying the legal principles to the facts as found, the tribunal reaches the

conclusions set out below.

Conclusions

58. The claimant brings a complaint of ordinary unfair dismissal. It was clarified at the outset of the hearing that she was not saying that she was dismissed because of her pregnancy. She had previously been complaining of pregnancy discrimination and/or harassment arising out of a number of aspects of her treatment at work including matters which formed part of her grievances including inappropriate emails, receiving no training, being demoted and a lack of support during her period of pregnancy. Those complaints were however withdrawn at the commencement of this hearing before any evidence was heard. The only additional complaint beyond that of unfair dismissal remained one of victimisation.

59. The tribunal considers that in the claimant's first of the two grievances submitted on 29 June 2020 she did a protected act. She clearly within such grievance refers to being personally victimised and a team effort to give her as much stress and anxiety as possible whilst pregnant. She alleged that the respondent was in breach of the Equality Act 2010 by not conducting a workplace assessment. She referred to pregnancy being a protected characteristic and asked for an explanation as to why she was being institutionally discriminated against and victimised during her pregnancy period.

60. The claimant then, as the sole detriment in her complaint, maintains that her grievances were not dealt with fairly and properly. In exploration with her representative, it was confirmed that the issue related to the grievance process (not the outcome) and that there ought, he said, to have been initiated separate disciplinary investigation processes into those individuals who had commented upon the claimant inappropriately in their emails.

61. Whilst in his submissions, Mr Houlbrook has referred to lack of training and support as forms of victimisation, they are no victimisation complaints pursuant to section 27 of the Equality Act in respect of such matters, which are before this tribunal.

62. In the claimant's victimisation complaint, the perpetrators must be Mr Rose and Ms Chadburn, they being the individuals who conducted the grievances and determined the procedure which they ought to adopt.

63. At no stage has Mr Houlbrook referred them to any breach of the respondent's written grievance procedure or indeed the ACAS Code on Grievance Procedures. Nor has he referred to the case of any other employee who raised similar grievances which were dealt with differently or in accordance with an alternative procedure. He has suggested to Mr Rose

that there ought to have been a disciplinary investigation into those who had disparaged the claimant in email correspondence. Mr Rose explained that he did indeed make a recommendation in respect of a disciplinary investigation into the conduct of Mr Petty and believed this had been carried out. He, however, had not regarded the emails between Mr Padgett and Ms Bratby to be of a similar nature in terms of how the claimant was referred to and in circumstances where, whilst there was evidence of frustration regarding the claimant, there was no evidence of any follow-up action taken against the claimant to, for instance, take her to task regarding her performance, let alone to remove her from the respondent. He considered the language used to be unsavoury but not to amount to a form of "victimisation". Ms Chadburn considered that the correspondence between Mr Padgett and Ms Bratby was unprofessional, but did not understand that it amounted to an attempt to remove the claimant and found no systemic issue as regards the conduct or professionalism of the management team.

64. At the end of Mr Rose's and Ms Chadburn's cross examination, the tribunal raised with Mr Houlbrook that he had not questioned them regarding their motivation or reasons for their conclusion and specifically that he had not suggested that the way they had dealt with the grievances was influenced by the claimant having made a complaint of unlawful discrimination. He was indeed reluctant to do so and ultimately did not wish to put that suggestion to the witnesses. The position he took, on behalf of the claimant, with Mr Rose was that the grievance investigation could have been done better and that there was not perhaps as much "meat on the bone" as there could have been, particularly regarding the emails. As regards Ms Chadburn, it was made clear on behalf of the claimant that it was felt that she had done a very thorough job. Mr Houlbrook said that he did not wish to put to her that she had committed any act of victimisation.

65. The claimant might reasonably consider that action ought to have been taken against Mr Petty (which it appears it was) and against Ms Bratby and Mr Padgett in respect of the inappropriate emails and that any failure to do so amounted to detrimental treatment. There are no facts, however, before the tribunal which could lead it to conclude that the process adopted or indeed the decision-making of Mr Rose and/or Ms Chadburn in the grievance process was in any sense whatsoever influenced by the claimant having done a protected act. The tribunal can positively conclude that it was not. They came to their own genuine view regarding the inappropriateness of the emails and the level at which they should be addressed which involved the initiation of the disciplinary investigation in respect of Mr Petty, but no such action against the others. That decision was taken without any regard to the fact that the claimant had made allegations of unlawful discrimination. Indeed, the claimant's allegations were wide-ranging and of general mistreatment and bullying in the main and there is no evidence of the respondent being particularly concerned or improperly sensitive to the

discrimination aspect of her complaint. The complaint of victimisation fails and is dismissed.

66. Turning to the claimant's complaint of unfair dismissal, the tribunal finds that the dismissal was for a reason relating to conduct. It has never been suggested to Mr Hart that there was any other reason behind his decision to dismiss. Indeed, the tribunal is clear that he believed that the claimant's failure to put the customer on cover, her viewing of colleagues' emails and adding their accounts to her own and, finally, her time spent on personal messaging and internet searches justified dismissal. It is clear that he did not regard the personal website browsing and messaging as an act of gross misconduct, including in circumstances where some of this could have been undertaken during break times. Whilst the failure to put the consumer on cover was an act of gross misconduct, as reflected in the respondent's own procedures, he perhaps would not have dismissed the claimant had that been her only failing. The tribunal is clear that the overriding and predominant concern of Mr Hart was the claimant acting in breach of the principle of integrity and breaching trust and confidentiality by reading the emails of colleagues.

67. That decision was reached on reasonable grounds and after reasonable investigation. The claimant did not deny any of the misconduct of which she was accused. There was no lack of investigation in the claimant not having been interviewed prior to the disciplinary hearing. Prior to the hearing she was presented with all of the evidence gathered and to be considered. She was given a full opportunity at the disciplinary hearing to provide her own explanation. This was not a case dependent upon the witness evidence of any other individual. The claimant's activity was evident from IT activity logs.

68. The only criticism raised relates to steps the respondent had taken or not taken prior to Mr Hart's involvement. Again, there was a suggestion that the claimant had been deprived of an opportunity to test her case by not being invited to a prior investigation meeting. That did not prejudice the claimant in all the circumstances and there is no requirement in the ACAS Code on Disciplinary Procedures or elsewhere, for instance within the respondent's own procedures, that a prior investigation meeting take place in all circumstances. There is a complaint that Ms Bratby was to be the judge, jury and executioner in the claimant's case. However, clearly that did not happen as she was removed from the process. It is irrelevant that this removal was triggered by the claimant having raised a grievance against her. The tribunal must view what the respondent did, not what it might have done and its focus is on Ms Sherriff's thorough investigation report and how Mr Hart addressed this with the claimant at her disciplinary hearing.

69. Mr Houlbrook, on the claimant's behalf, said to Mr Hart that he accepted that there was no indication that he was victimising the claimant and that he and the claimant believed that Mr Hart had acted fairly in the disciplinary process. Indeed, a fair procedure was adopted. The claimant was accompanied by a trade union representative and given a full opportunity to state her case with a full awareness of the detail of the allegations against her. She was given a right of appeal.

70. The issue is then whether dismissal was within a band of reasonable responses. The respondent's own procedures make it clear that a failure to put a customer on cover was a potential act of gross misconduct and in particular that there was a requirement generally to act with integrity, with appropriate policies regarding authorised and unauthorised use of IT systems. Regardless of those procedures, it was reasonable to conclude that the claimant knew that she was acting improperly in the way she accessed and read the emails of her colleagues and managers.

71. Whilst not actually put to Mr Hart, the claimant's case comes down to the question of whether a lesser sanction should have been imposed in circumstances where she held her hands up when confronted with the allegations, felt that the access was justified by her concerns that she was being excluded and that the respondent had failed to remove her access to certain email accounts after she had seen her management responsibilities taken away from her. It was put that she had been effectively allowed by the respondent to do what she did for a period of 4 weeks.

72. There is no merit in this latter point. Just because the claimant had an opportunity to view emails does not mean that it was appropriate for her to do so. Furthermore, the claimant's feelings of concern and upset may provide an explanation for her actions but do not provide a justification so as to render dismissal unreasonable. Again, the respondent was not dealing with a single inappropriate lookup where the claimant was making a specific search for something which concerned her. Her viewing of colleagues' emails was calculated, sustained and extremely wide ranging involving her not simply in searching for references to herself but viewing correspondence which had nothing whatsoever to do with her and which in some cases was of a private nature. The respondent did not act outside the band of reasonable responses in considering that there was such a loss of faith and trust in the claimant that it could no longer sustain her employment.

73. The claimant's complaint of unfair dismissal must fail and is dismissed.

Employment Judge Maidment

Date 14 January 2022