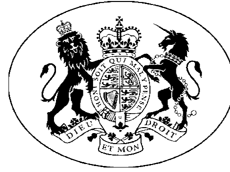
Case No: 2302002/2020



EMPLOYMENT TRIBUNALS

Claimant: Ms K Lalosakova

Respondent: Alliance Healthcare Management Services Ltd

Heard at: London South (CVP) **On: 9-11 February 2022 (Deliberations 1 March 2022)**

Before: (1) Employment Judge A.M.S. Green
(2) Ms K Omer
(3) Ms N Styles

Representation

Claimant: In person
Respondent: Mr Earl - Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that the claims for unfair dismissal and direct sex discrimination unfounded and are dismissed.

REASONS

Introduction

1. For ease of reading we refer to the claimant as Ms Lalosakova and the respondent as Alliance.

2. By a claim form submitted to the Tribunal on 18 May 2020, Ms Lalosakova brought claims of disability discrimination and unfair dismissal. Alliance defended those claims denying liability. Ms Lalosakova subsequently withdrew her claim for disability discrimination which was formally dismissed by Employment Judge Martin on the 1 March 2020. Ms Lalosakova subsequently applied to add a claim of direct sex discrimination which was allowed by Employment Judge Webster on 30 April 2021.

3. We conducted a remote CVP hearing and worked from a digital bundle of documents. The following people adopted their witness statements and gave oral evidence:

    a. Ms Lalosakova

    b. Mr Bowen

    c. Mr Nutan

    d. Ms Wilson

    e. Mr Green

4. Mr Earl and Ms Lalosakova made closing oral submissions. Because Ms Lalosakova is a litigant in person, we considered it fair and, in accordance with the overriding objective, to give her additional time to prepare her oral submissions. After hearing Mr Earl's submissions, we allowed Ms Lalosakova to prepare overnight before she made her submissions. Mr Earl did not object to this.

5. In reaching our decision, we have carefully considered the oral and documentary evidence and the closing submissions. The fact that we have not referred to every document produced in the bundle should not be taken to mean that we have not considered it.

6. Ms Lalosakova must establish her claims on a balance of probabilities.

<u>The claims and the response</u>

7. On 31 January 2020 Alliance dismissed Ms Lalosakova for reasons which they say were because of her gross misconduct. Alliance alleges that Ms Lalosakova breached their Code of Conduct and Business Ethics Policy and the Conflicts of Interest Policy. Ms Lalosakova alleges that the dismissal was unfair because the decision was based on additional allegations not forming any part of the case against her set out in the letter inviting her to the disciplinary hearing and were not addressed at that hearing. Ms Lalosakova also alleges that the decision to dismiss her was direct disability discrimination and she relies upon a male comparator, Mr Tooze. Mr Tooze was employed as Head of Operations and had used a recruitment agency (Robert Walters) without going through the proper process which his friend, Abdul, was involved with. Mr Tooze was not disciplined or dismissed whereas Ms Lalosakova was for allegedly similar misconduct.

8. Alliance denies liability for unfair dismissal and direct sex discrimination. They maintain that they conducted a fair procedure investigating the allegations of misconduct and had reasonable grounds for believing that Ms Lalosakova had an apparent conflict-of-interest in promoting third party business without following the correct procedures. Alliance denies that it treated Mr Tooze more favourably than Ms Lalosakova. Furthermore, the circumstances relating to Ms Lalosakova were materially different. Finally, when Ms Lalosakova raised the issue during her appeal, it was investigated, and it was decided that no further action was required because Mr Tooze was new to the business and had sought authority from a member of Alliance's HR team. The posts that Mr Tooze

was involved in recruiting for utilised different recruitment methods to identify candidates including the instruction of a separate recruitment company (i.e. not Roberts Walters) and there was no evidence of inappropriate conduct by Mr Tooze.

The issues

9. The issues to be determined are as follows:

Unfair dismissal

10. What was the reason for dismissing Ms Lalosakova? Alliance says it was conduct.

11. Did Alliance have a reasonable belief, based on reasonable grounds following a reasonable investigation, to believe that the claimant had committed an act of gross misconduct?

12. Did Alliance follow a fair procedure? Was dismissal a reasonable response in the circumstances of the case?

13. Did Ms Lalosakova contribute to her dismissal? Would she have been fairly dismissed if a fair procedure had been followed?

Direct sex discrimination

14. Alliance does not dispute that it subjected Ms Lalosakova to the following treatment: dismissal.

15. Was that less favourable treatment? Did Alliance treat Ms Lalosakova as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? Ms Lalosakova relies upon Mr Tooze as a comparator.

Findings of fact

16. Alliance distributes wholesale pharmaceutical, medical and healthcare products in the United Kingdom. The key personnel at Alliance involved with Ms Lalosakova's claims are:

    a. Mr Matt Addison, Alliance's Operations Director.

    b. Mr Sean Bowen, Alliance's Head of Loss Prevention and Security. Mr Bowen investigated the allegations of misconduct against Ms Lalosakova.

    c. Ms Sophie Bromilow – Alliance's Assistant General Counsel.

    d. Mr Matt Brooks, Alliance's Head of Operations, Central Distribution.

    e. Mr Sebastiano Fantini, Alliance's National Facilities Manager.

    f. Mr Nigel Farmer, Alliance's Head of HR.

g. Mr Stuart Green, a self-employed business consultant. Prior to that he was Alliance's Programme Management and Information Director. He chaired Ms Lalosakova's appeal hearing.

h. Mr Raj Nutan, who has been employed as Alliance's Healthcare Strategy and Services Director since November 2021. Prior to that he was Head of Alphega Pharmacy UK, a pharmacy support organisation for community pharmacies. Mr Nutan chaired Ms Lalosakova's disciplinary hearing.

i. Mr John Scorer, the Alliance Service Centre Manager and Ms Lalosakova's line manager.

j. Mr James Tooze, Alliance's Head of Operations, South Region.

k. Mr Nigel Farmer, Alliance's HR Director.

17. Ms Lalosakova commenced her employment with Alliance as a Warehouse Operations Manager on 10 July 2017. Her contract of employment, which Alliance signed on 12 June 2017 and which Ms Lalosakova signed on 14 June 2017 [104] provided, amongst other things, that her normal place of work would be the Croydon Service Centre, but she could be required to work at any location at which Alliance conducted business from time to time within reasonable travelling distance. Clause 9.2 of her contract of employment provided that Alliance had the right to terminate Ms Lalosakova's employment immediately and without notice for matters justifying summary dismissal as set out in Alliance's disciplinary policy [100].

18. On 4 November 2019, Mr Scorer, wrote to her offering her the position of SOP Manager based in the field. While she was not in the field, she would be based at Chessington with an effective date of 1 October 2019. She would continue to report to Mr Scorer. Her salary was increased to £57,500 per year [106].

19. Alliance has a disciplinary policy and procedure [54]. It provides that no disciplinary action will be taken against an employee unless the case has been fully investigated to establish the facts of the case. Should an employee's performance or conduct be the subject of disciplinary proceedings, at every stage in the procedure, the employee will be advised as to the nature of the complaint against them and given an opportunity to state their case before any decision is made. The policy has a section entitled "Gross Misconduct" [57]. It provides that if an employee is dismissed for an act of gross misconduct, it will take immediate effect and they will not be entitled to work the notice period or paid in lieu of notice. The policy then sets out a non-exhaustive list of examples of gross misconduct. One of these is "serious breach of Company rules or failure to observe Company procedures."

20. Alliance has a Code of Conduct & Business Ethics Policy [61]. The policy states, amongst other things:

> *c. We avoid conflict of interest situations*
>
> *To uphold WBA's reputation, we must be alert to any situations that may create a conflict-of-interest, whether real or perceived. A conflict-of-interest occurs when there is an actual or apparent interference with our*

ability to make objective business decisions because of our personal relationships or loyalties. Certain situations are more likely to hinder our capabilities in making good judgment calls, and we must take care to avoid those circumstances. If you have knowledge about a situation that may be a conflict-of-interest, you should immediately disclose it to the Global Chief Compliance and Privacy Officer or use one of the confidential reporting telephone lines/websites addresses listed in Appendix A.

Conflicts of interest could include:

- *Serving as an officer or director of or having ownership interest that exceeds 1% of the outstanding shares in another company that does business or competes with WBA.*
- *Participating in business transactions for your own personal gain based on information or relationships developed as a WBA employee.*
- *Failing to disclose that you are closely related to someone, such as a vendor or customer who has sought or is seeking a financial relationship with WBA.*

21. The Alliance Conflict of Interest Policy [85] provides, amongst other things:

4.1 Personal Financial Interests

Employees must avoid any scenario where they stand to gain personally from WBA related dealings or where there may be any appearance of favoritism such as:

…

- *Using WBA information for your own personal gain, or in which you have financial interest.*

…

4.2 Personal Relationships

Employees must avoid business with and/or supervising a friend/or acquaintances or Relatives such as:

…

- *Being related to someone, such as a vendor or customer who has sought or who is seeking a financial relationship with WBA.*
- *Relatives are defined as members of the same family who are connected by blood or other affinity including marriage, in-laws, step family and adoption and those who cohabit for any reason.*

…

5 Policy Requirements

5.1 Employees must disclose Actual or Potential Conflicts of Interest

All employees must avoid any real or apparent conflict between their personal interests and those of WBA.

22. In August 2019, Ms Lalosakova was assigned to work as a manager at Alliance's site in Letchworth.

23. On 30 September 2019, Ms Lalosakova attended a course in preventing bribery and corruption. Her training record has been provided and it shows that she passed the course [97]. Under cross-examination, she also confirmed that she completed a code of conduct awareness course on the same day and that the training covered the types of issues that are set out in the conflict-of-interest policy. From this, it is reasonable to conclude that she was familiar with and understood the principles and procedures to be followed relating to conflicts of interest that applied at Alliance.

24. Ms Lalosakova was in a personal relationship with Mr Tim Davis. In paragraph 11 of her witness statement, she states she was dating Mr Davis, and the relationship was never a secret at Alliance's workplace. She also states in paragraph 30 of her witness statement that she did not live with Mr Davis. This suggests that the relationship was not one where the couple cohabited and was not particularly significant because of that. This was explored under cross-examination when it was put to her that the relationship was closer than she suggested in her statement. For example, she had listed Mr Davis as her emergency and main contact in her HR record [154]. She did not deny that. Her HR record indicated that she was living at a property in London [153] which was the same address that she gave for Mr Davis. She did not deny that and said "yes, I lived there back in the day"'. These records point to the couple cohabiting at that time. When that was put to her, she denied it and said that she was named on her tenancy agreement. She said that Mr Davis only stayed at the property from time to time and that she shared the house with other occupants. She went on to say that "Tim was not one of those." Ms Lalosakova was then taken to the minutes of the disciplinary meeting that took place on 21 & 24 January 2020 between herself and Mr Nutan [253]. The minutes are detailed. During that hearing, she was asked whether she rented the property with Mr Davis to which she is recorded as saying:

    I rented on my own, I rented myself, it's in my name but he is there with me.

    When she was cross examined about this entry, she suggested that it had been made in error. We found her oral evidence unreliable as there is nothing to suggest that she challenged the accuracy this entry in the minutes at or around the time of the disciplinary hearing. The fact that she raised this only when cross examined undermines her credibility. We find that Ms Lalosakova was in a close relationship with Mr Davis. She was cohabiting with him, and the relationship was of greater significance than she has suggested in her witness

statement. This was more than just dating. Had it not been of any particular significance she would not have listed him as her emergency and main contact, and it is reasonable to infer that he was cohabiting with Mr Davis given the fact that she had given the same address for him and admitted that during the disciplinary hearing. If he lived elsewhere, as she suggested and if he was only an occasional visitor, we could reasonably have expected Ms Lalosakova to have given a different address for Mr Davis in her HR record. She did not do that. Furthermore, it is immaterial that the tenancy agreement may have been in her name only in determining the nature of her relationship with Mr Davis. Many people live together in rented accommodation where only one of them is named as the tenant on a lease.

25. Ms Lalosakova prepared a document on Alliance stationary entitled "Letchworth Staff Catering" [124] (the "Proposal"). The Proposal's cover sheet indicates that it was prepared for Mr Fantini by Ms Lalosakova. She is named. The Proposal is dated 10 September 2019. The idea behind the Proposal was to provide a healthy eating option at the canteen in Letchworth. In paragraph 9 of her witness statement Ms Lalosakova says that she was approached by a number of members of staff at Letchworth asking if the catering services on site could be improved. Ms Lalosakova had got the idea for the Proposal from her local health club where a start-up company called Smart Canteens Ltd provided healthy meal options at an affordable price. She goes on to say in paragraph 10 of her witness statement that she investigated matters further and tracked down the contractor behind the concept who was called Ms Volha/Olga Kaliadka. Under cross-examination, she said that she discussed this idea for the Proposal with Mr Davis. She said he knew about Ms Kaliadka, and this was how she was introduced to her. Mr Davis put Ms Lalosakova into contact with Ms Kaliadka. Ms Kaliadka owned and worked for a business called Vera Investment Ltd. She was appointed as a director of Vera Investment Ltd on 27 September 2016 [141].

26. There was conflicting evidence about who prepared the Proposal and what Ms Lalosakova's role was in relation to its preparation. In paragraph 12 of her witness statement Ms Lalosakova says that Ms Kaliadka offered to draft the Proposal and Ms Lalosakova forwarded it to Alliance. What Ms Lalosakova is suggesting is that she acted simply as a conduit and was not responsible for preparing the document or for promoting the Proposal. Under cross-examination and questioning by the Tribunal we formed a different picture suggesting a far greater involvement; namely a collaboration between Ms Lalosakova and Ms Kaliadka in drafting the Proposal. First, it is noteworthy that the Proposal was submitted on Alliance Stationary and identifies Ms Lalosakova as the author. Secondly, in her oral evidence, Ms Lalosakova admitted that she drafted parts of the Proposal including the perceived benefits and merged in what Ms Kaliadka had written. She admitted that the document was predominantly her own work. When the Tribunal asked Ms Lalosakova why the Proposal was submitted on Alliance Stationary she replied that she thought it was the best option at the time. We found this difficult to understand given that she was also suggesting that she was merely acting as a conduit for third party supplier. Had that been the case, such an arrangement would have been at arm's length, and it is unusual, to say the least, to have presented the Proposal in the form that it was. For example, the Proposal could have been written on Smart Canteens Ltd stationary identifying Ms Kaliadka as its author given that it was her company that was pitching to provide a service at the Letchworth canteen. She also admitted under cross-examination that sending

the Proposal which was partly her work and partly the work of somebody else was different from forwarding a piece of work prepared by a different person. We note that when that point was put to her, she initially did not answer the question and had to be reminded to do so. It was also put to her that it was misleading to suggest that she was simply forwarding somebody else's work. She did not answer that question and simply said "I was the operations manager; it was my duty to explain why I wanted this proposal to work."

27. The Proposal was amended [216]. In the amended version, Smart Canteens Ltd was substituted by a different company called Simple Canteens Ltd [219]. This was the only change made to the Proposal. The date of the amended Proposal is still 10 September 2019 although at the time, Smart Canteens Ltd did not exist. It was established on 24 September 2019. Consequently, the date of the amended Proposal must postdate 10 September 2019.

28. Ms Lalosakova said that Ms Kaliadka established Simple Canteens Ltd for the purposes of providing the services described in the Proposal.

29. There was conflicting evidence about Ms Lalosakova's role after the amended Proposal was submitted to Alliance for consideration. As previously discussed, she maintained that she was simply acting as a conduit so that she could pass the Proposal to those within Alliance who were the decision-makers. We do not accept that. We believe that Ms Lalosakova was actively pushing and promoting the Proposal to be accepted so that a formal agreement would be signed between Alliance and Simple Canteens Ltd for the following reasons:

    a. On 8 October 2019, Ms Lalosakova emailed Mr Addison with a copy of a services agreement [161]. The service agreement was also produced to the Tribunal [116]. It is dated 3 October 2019. Alliance is identified as the "Client" and Simple Canteens Ltd is identified as the "Contractor." It sets out the Services to be provided at Letchworth. It also provided, in clause 23, that Alliance agreed to protect the Contractor business model by consulting and awarding the first preference choice for the catering services outsourced by Alliance. This suggests an intention not simply to provide services in Letchworth but to give first refusal to Simple Canteens Ltd on other sites where catering services would be outsourced by Alliance. The service agreement was signed by Ms Kaliadka. In her covering email, Ms Lalosakova said:

    > *Seb is fully aware and is happy for Letchworth to trial this.*
    >
    > *Nick is working on the redundancy cost for the canteen ladies (one is under 2 years of service).*
    >
    > *Potential savings of £50k a year.*
    >
    > *Its all ready to go, only need your signature on the service agreement (I was told a director has to sign it).*

    The tone of this email suggests that everything was agreed and all that now needed to be done was for a person at Alliance, with authority, to sign the services agreement. Ms Lalosakova was not simply acting as a conduit but was pushing for a signature. It is almost as though she was acting as Ms Kaliadka's agent.

b. On 21 October 2019, Ms Lalosakova emailed Mr Brooks with a copy of the settlement agreement [161] and said:

Hi Matt,

See attached.

I sent it to Matt for sign off, we agreed the staff will be TUPE.

Sebastiano is aware of this and was happy to trial it.

Natasha said to send it to you before signing the agreement.

David the SCM from Letchworth of this project.

["SCM" is the abbreviation for Service Centre Manager.]

c. There was no evidence that Mr Fantini had agreed to trial the Proposal. During his investigation, Mr Bowen interviewed Mr Fantini. In paragraph 43 of his witness statement, Mr Bowen says that Mr Fantini confirmed that he had been working on a solution to the catering situation via a national contract only for all sites and he had not replied to an email from Ms Lalosakova dated 23 September 2019 which contained the original Proposal. According to Mr Bowen, Mr Fantini was working on a different solution, and he never got involved with the Proposal. He also did not ask Ms Lalosakova about it as it was not within his authority or his duty to give the okay to such an idea. When this was put to Ms Lalosakova in cross examination it was suggested that she was misleading Mr Addison and Mr Brooks by suggesting that Mr Fantini was happy to trial the Proposal she simply said Mr Fantini's denial only arose after she presented her claim to the Tribunal, and it was at that point "where the witch-hunt starts." We have not seen any direct evidence to support Ms Lalosakova's assertion that Mr Fantini approved of a trial of the Proposal, and we believe that Ms Lalosakova misled Mr Addison and Mr Brooks in suggesting otherwise. This is indicative of behaviour seeking to push the Proposal rather than simply acting as a conduit. There was no substance at all to her emotive allegation that she was the subject of a "witch-hunt" (see below).

30. On the 25 October 2019, Mr Brooks emailed Ms Lalosakova [157]. He confirmed that he had been through her paper (i.e. the Proposal). He also stated:

Also as discussed, Canteens are being looked at Nationally. Before we enter into any agreements, this will need ELT sig- off-we are unable to enter into any local agreements.

- *What other options have been considered in terms of providing the service. How is due-diligence been done with other companies?*
- *Does this company have the ability to provide a national service?*
- *Opening times -> AM, PM, Nights. Is this 24-7 what is their model? How do they make money?*

- *What kit are they using fridges, freezers etc.) Who is liable for the maintenance. Of the £50k saving -> £20 K is for vending machines. Are these removed?*

31. Ms Lalosakova replied to Mr Brooks in an email dated 29 October 2019 [157]. She said, amongst other things:

    - *This company-Simple Canteens-is a brand set up exclusively for Alliance Healthcare-they set up successful canteens before, but this is set up specifically to meet AH's there is good investment company behind simple canteen- I did my DD*

32. We do not accept that Ms Lalosakova had done her "DD" (i.e. due diligence) on Simple Canteens Ltd as claimed in her email. Under cross-examination she accepted that was the case at the time and that her current understanding of the concept was that she would have needed to explore other potential vendors and to compare them with one another and she went on to say, "that is what I learned from the investigation when DD was explained to me." We also note that during her investigation interview with Mr Bowen she said that she had not done any background checks because she did not think that was her role [229]. Further on in that interview, she was asked what due diligence she had done, and she replied:

    > *I will be totally honest I only found out what due diligence is when I checked what it means, I was under the impression that due diligence is just when you check when you know a company can do the job and not when you go to different suppliers and find a different solution. You can put this down to my naïveté.*

33. We do not accept that Ms Lalosakova was naïve. Under cross-examination she accepted that she had been a senior operations manager at Alliance since October 2019 and had been with the company since 2017. She had been promoted in October 2019. She said she had been performing management work since approximately 2015. This was four years after she submitted the Proposal. In that context, suggesting that DD simply amounted to sending the Proposal to a decision maker, as she claimed, is disingenuous. The net effect of what she was saying was that she was trying to deflect blame to others in circumstances where she had a relationship with Ms Kaliadka and was actively promoting the Proposal on her behalf. She was abnegating responsibility.

34. On 22 November 2019 Mr Tooze spoke to Mr Bowen about concerns that he had with Ms Lalosakova following a conversation that he had previously had with Mr Brooks. Mr Tooze had line management responsibility for the site where Ms Lalosakova was part of the management team. He was concerned that Ms Lalosakova was becoming too involved with the catering arrangement plans when he was directing her. She had been moved to Letchworth to give support to the team because of staff shortages at the time. In paragraph 8 of his witness statement, Mr Bowen states that having listened to Mr Tooze, he agreed to conduct an initial, independent fact-finding exercise which involved speaking to Mr Brooks about the concerns raised and he started to retrieve and review emails between the parties on the matter of the site's catering facility plans. He goes on to say that it became clear that there were different versions of events being portrayed and consequently, these concerns turned into a wider formal

investigation. Mr Bowen also refers to Mr Tooze being concerned that Ms Lalosakova may have been favouring Eastern Europeans over other groups when assisting with recruitment at Letchworth which he also looked interview.

35. On 26 November 2019, Ms Lalosakova emailed Mr Fantini and Mr Brooks [145]. The title of the email was "Contact details-canteen at Letchworth." The email went on to give Mr Davis' email address as an organisation called Vera Investment. He is described as the "contact details for the supplier." Under cross-examination she confirmed that she had sent this email. It was put to her that his email was connected to Vera Investment which was the same company that was owned by Ms Kaliadka. However, she said that she had not made the link at the time. She went on to say that she believed that she was dealing exclusively with Ms Kaliadka. It was put to her that could not be the case if she was handing over Mr Davis' contact details to Mr Brooks. She went on to say "yes, because I was too busy to deal with this matter and I asked Sebastiano to deal with Tim who would deal with Ms Kaliadka who would deal with the introduction." She was contradicting herself in her evidence. It was put to her again why she had not seen the link between Mr Davis and Vera Investment. Her reply was "I see the email address with veraInvestment.com." It was then put to her that she had already said earlier under cross-examination that she had discussed work-related matters with Mr Davis, and it had been suggested by her that the question of the link with Vera Investment never came up in conversation. She replied that she only knew that they knew each other for the Proposal. She said Mr Davis was trying to help her at Letchworth. It was then put to her that she knew at the time that Mr Davis was linked with Vera Investment, and she knew it. Ms Lalosakova denied this but then accepted that she should have mentioned to Alliance at the time that Mr Davis was her partner when she promoted the Proposal. Ms Lalosakova accepted that she had put Mr Davis name down as the contact person for the vendor.

36. Mr Bowen concluded that the following allegations needed to be investigated:

    a. Recruitment of Sean Quigley (Warehouse Operations Manager) outside of policy.

    b. Attempt to on-board partners business [i.e. Mr Davis] as a supplier to Alliance.

    c. Recruitment of Fleets and Transport Manager at Chessington outside of policy.

37. Mr Bowen instigated an investigation, and he sets out in detail in paragraph 15 of his witness statement the documents that he reviewed as part of his investigation. It is a comprehensive list. He states:

    I reviewed the following documents: Alliance's Code of Conduct – Conflicts of Interest (pages 51-53); the Disciplinary Policy (pages 54-60); Walgreens Boots Alliance Code of Conduct and Business Ethics (pages 61-72); the Employee Handbook (pages 73-80); the Recruitment Policy (pages 81-84); Miss Lalosakova's recent training records (page 97); the general service agreement between Alliance and Simple Canteens Ltd (pages 116-119); email correspondence between Miss Lalosakova and Sebastiano Fantini,

National Facilities Manager Service Centres ("Mr Fantini") and Mr Brooks, concerning proposals for a catering facility / provider at the Site (pages 120-123, 145-151 and 157-168); a business proposal from Smart Catering Ltd (pages 124-132); online guidance published by the Food Standards Agency about the requirements for setting up a food business (pages 133-135); Simple Canteens Ltd's details and its people's details on Companies House (pages 138-139 and 140-141); Olga Kaliadka's LinkedIn profile (pages 142-144); Miss Lalosakova's emergency contact records (pages 152 and 153-154); screenshots from Miss Lalosakova's Instagram account which showed that she followed the page for Vera Lifestyle Group (pages 155-156); various email correspondence concerning Miss Lalosakova's involvement in the recruitment of various roles at Alliance (pages 165-171); Miss Lalosakova's Facebook posts on a Czech / Slovakian Facebook group relating to job vacancies at Alliance (pages 172-175); information about Miss Lalosakova's place of residence (pages 176-179); and I also put together a timeline of the events and correspondence concerning the allegations against Miss Lalosakova which I reviewed again in the investigation process (page 180).

38. Mr Bowen interviewed Ms Lalosakova, Mr Fantini and Mr Brooks as part of his investigation. He interviewed Ms Lalosakova on 17 December 2019. A copy of the interview notes of the meeting with Ms Lalosakova has been provided [225-255]. In paragraph 11 of her particulars of claim, Ms Lalosakova says that the interview was hostile and aggressive, and she was unable to explain her position but was forced to give yes or no answers. She repeats this in paragraph 19 of her witness statement. She goes on to say that the interview lasted 3.5 hours and that despite being visibly shaken, the investigators laughed at her during the meeting. She says that the investigation made her anxious and exacerbated her symptoms of depression and anxiety. We disagree with this allegation. We have reviewed the interview notes; they are lengthy. They largely comprise open-ended questions and there is no suggestion that she was pressurised into giving yes or no answers or that the investigation was conducted in a hostile manner. Under cross-examination she admitted that the interview record was accurate that there was no record of anyone saying anything about her suffering from anxiety or depression. Furthermore, despite her claim that she had told Mr Bowen about her anxiety at the beginning of the interview, the opening part of the interview record does not reflect that claim. We also note that Mr Bowen is recorded as offering Ms Lalosakova a 10-minute adjournment during the interview [236]. In response to that she is noted as saying that she was fine. She did not want a break. This contradicts her suggestion that she felt she was being intimidated. Had she felt that, she could have raised it during the interview, and she could have agreed to an adjournment. There is nothing in the notes to suggest that she felt she was being intimidated or that a hostile environment have been created by Mr Bowen.

39. We note that during her interview with Mr Bowen, Ms Lalosakova was asked about the Alliance conflict-of-interest policy [241]. She was asked whether her relationship with Mr Davis put her in a position where she was in breach of that policy particularly utilising her knowledge of Alliance to benefit her family member as well as having a financial interest bearing in mind that she was cohabiting with Mr Davis. Her response was that there was no intention have any personal interest. She said that her only intention was to create a solution

for Mr Fantini to implement to make life for the people working at Letchworth a bit better. We then note the next question as follows:

> *SB - I'll move on to 4.2 which is titled Personal Relationships and states directly "Employees must avoid business with and/or supervising a friend/acquaintances or Relatives such as Being related to someone, such as a vendor or customer who has sought or is seeking a financial relationship with WBA". It goes on to say, "Relatives are defined as members of the same family who are connected by blood or other affinity including marriage, in-laws, step family and adoption and those who cohabit for any reason." Again your relationship with Tim would appear to put you in contravention of this policy, would you agree?*
>
> *KL-I can understand why it looks like it but I have to repeat the same thing, there was not personal interest in this.*
>
> *SB-We seem to be unclear whether Tim works for Vera Investment company ltd who is the investment company behind simple canteens, does Tim receive any payments from Vera Investment question?*
>
> *KL - I don't know, I don't check is paid, I really don't know.*
>
> *SB -So you have put your partner forward are you suggesting that he would be doing that and working for no fee?*
>
> *KL - he doesn't work for the company which would do the catering there, so no, he was just point of contact for an idea I was trying to proposing.*
>
> *SB- So just to be clear on the question, so Tim Davis you have provided is the main point of contact for this proposal that you put forward would be doing this work for no fee?*
>
> *KL- Yes that's correct, that what I was believing, I would not put forward a project that would jeopardise my career in Alliance Healthcare.*
>
> *SB- we are going to move onto the next section 5.1 which states Employees Must Disclose Actual or Potential Conflicts of Interests-All employees must avoid any real or apparent conflict between their personal interests and those of WBA. However, WBA recognizes that avoiding all conflicts may not be possible or practical; therefore, where conflicts cannot be avoided they must be disclosed and appropriately addressed. As a general rule, employees must disclose to a line manager, the WBA Global Chief Compliance and Ethics Officer or through the Company's confidential reporting line any conflict or potential conflict-of-interest". It goes on to say "Disclosure and a discussion with the employee's manager should always be the starting point when it comes to addressing a potential conflict-of-interest." Have you ever made your line manager aware of any potential conflict with regards to Simple Canteens, Tim Davis and yourself?*
>
> *KL-No I have not*
>
> *SB-On reflection do you think you should have?*

KL-Yes I have said a few times during this investigation, I made an error and should have disclosed it.

SB- Section 5.1 goes on to state- "There must be appropriate documentation of actions taken to disclose and address a potential conflict and all employees with a potential conflict must complete the Conflict of Interest Form. The manager will receive the completed form for review and approval." Have you ever filled in a conflict of interest form?

KL - No, like I said previously I made an error and I did not think about disclosing it.

SB-Could you confirm your current line manager is?

KL-John Scorer.

SB-Section 5.2 states that Managers Must Ensure Conflicts of Interest are Addressed states "Examples of appropriate management of a conflict of interest might include excluding an employee from the business decision-making process of interest or assigning management responsibility for a vendor to another employee if the current or potential business owner has a conflict". With your failure to disclose your relationship do you believe you have given your line manager Jon scorer all the business the relevant tools to enable them to follow this policy?

KL-can you repeat the question,

[the question was repeated.]

KL-Yes because I should have disclosed, and I should have probably made the decision not to introduce this proposal, I understand it now.

SB-On reflection now do you believe you're in breached conflict of interest policy.

KL- I did not follow all the steps; however the intention was not to breach this policy for personal gain and my naïveté in managing a project like this.

…

SB- Before we conclude as I said at the beginning there are several serious issues going on here, which I would like you to reflect on and consider before we close. As we have gone through, I think we have identified several breaches of company policy, we have HR recruitment, code of conduct, conflict of interest and potentially the recruitment policy. From a number of your answers I don't believe you are being completely transparent with me, you've described naïveté alongside having just had a training course on that very topic, specifically around your failure to disclose conflict of interest around your partner. There are multiple occasions where you could have flagged that conflict of interest, whether it's the perceived or real conflict of interest, having gone through your answers today I believe it's a direct conflict of interest whether you

perceive that or not. My perception is that there are several occasions where your actions have misled senior leadership, when they've actually questioned your actions and they have asked you specific questions, asking you if you had done your due diligence and your answers are misleading. It would appear when we get to some of the HR pieces, but only up until very recently, you have gone out of your way not to follow the guidance you have been giving or not seek guidance which is fairly black-and-white within policy. So before I conclude I just want to give you the opportunity to reflect on your answers.

KL- I understand, I will start with the canteen and looking at it from your perspective, I am trying to reflect on it and from your perspective I understand what you mean, it genuinely comes across this way, I am really really sorry that it looks like that. My intention is as much as they were stupid I had the best intention in my mind. I have made stupid decisions and I have pushed too hard on certain things. I know it might come across to you as an excuse, I was overworked, I was stressed, I have never been in such a senior position, overnight I had turned up in Letchworth and just told to do your best I didn't give Alliance what I did if I wanted to do something naughty. I genuinely have the best intention for Alliance in my heart and I still do. There was absolutely no intention to mislead anyone, I didn't want to mislead, I know you have a decision to make and I will respect it but I didn't have any slight intentions, I genuinely didn't.

SB- So just for clarity, I am not the decision maker in terms of any disciplinary action that results from this, is to gather facts, and I will consider your response from this afternoon. Craig will pull the notes together then I will make a decision on either recommend or not recommend this for disciplinary action. I am just trying to get the facts that happened at the time.

[Mr Bowen adjourned the meeting for 15 minutes].

SB-I have considered suspending you Kat to facilitate further investigation, however what I have decided to do we doing our best to retain people in business rather than suspend, both for our benefit and your benefit. I need to see some more people based on some of your responses today, equally I need to maintain your restricted access to various systems so I need to have a conversation with James is to wear best for you to attend work. On the basis that he can find somewhere that reduces risk to the business based on your actions that we have talked about this afternoon, that's where I'm intending to go from here. I do need to see some additional people from what you have said and then I will be putting this forward for a disciplinary. I heard enough from you that I am considering that we do need to consider disciplinary action but I do need to gather some more information to conclude the investigation.

40. Having carefully read the record of the investigatory meeting (the accuracy of which was not challenged), we find that is was conducted fairly and in an evenhanded manner. There is nothing to suggest that Mr Bowen behaved oppressively. Indeed, having read his witness statement, he has significant and considerable experience in conducting these types of investigations and this is

borne out in the record of the investigatory meeting. Furthermore, he was a reliable witness when he gave oral evidence. We also find that during the investigatory meeting, Ms Lalosakova admitted that she failed to disclose her connection to Mr Davis and Vera Investment in the context of the Proposal. She effectively admitted that she did not follow the conflict-of-interest policy in so many words and what she did was ethically wrong. She admitted that she should have declared that Mr Davis was her partner. She effectively admitted that there was at least an apparent conflict-of-interest.

41. We also note that Mr Bowen discussed potential breaches of the Alliance recruitment policy with Ms Lalosakova.

42. On 10 December 2019, Mr Bowen emailed Ms Bromilow [121]. He sent her a copy of the service agreement and asked whether it had been through her or the legal team and invited her comments on the "fairness/wording of the contract".

43. On 11 December 2019, Ms Bromilow replied to Mr Bowen in an email [120] in the following terms:

> *This has definitely not been through the legal team-it is woefully written, with some sentences not even making sense and lots of typos.*
>
> *In a contract like this I would expect there to be total clarity over the charges, which there is not. The catering company can only charge reasonable amounts (so you will always have a debate about what is reasonable) and it is a bit odd because the fee payable in clause 10 is stated to be zero per hour, so I am not sure what the charges relate to-just the food?*
>
> *We would never agree to an uncapped indemnity (see clauses 5 and 26) without specific approval from Pablo.*
>
> *We would never agree to clause 23 which obliges us to treat this supplier as a preferred supplier for all catering contracts awarded by AH.*
>
> *The contract is for a fixed term until Nov 2022 and while it looks like either party could terminate on 3 months' notice, this is not actually the case, because it has to be by mutual agreement.*
>
> *From an internal process perspective, I would expect this agreement to go through Seb, as a minimum.*
>
> ***If it has not been signed, it should definitely not be signed.***
>
> *Sophie*

44. After concluding his investigations, Mr Bowen prepared an investigation conclusion report. A copy of this was produced [113]. The report states, amongst other things:

> *I have interviewed Katarina (Kat) at length subsequently referenced her responses back to the two key people involved, Matt Brooks and Seb Fantini.*

Kat has confirmed that she is aware of relevant company policies.

Kat has admitted:

1) *Not carrying out due diligence on the supplier she put forward to provide catering at Letchworth*
2) *Failure to disclose and formally register a conflict-of-interest.*

[Mr Bowen then summarises Ms Lalosakova's denials in respect of the investigation]

Recommendation:

1) *I recommend that the allegation relating to Kat's conflict of interest relating to the provision of a catering service at Letchworth and her limited admission to this breach go forward to a Disciplinary Hearing for consideration as a serious breach of our Conflicts of Interest Policy and of our Code of Conduct and Business Ethics to the extent of Gross Misconduct.*
2) *I further recommend that Kat receives formal guidance in relation to correct recruitment procedures, that this is noted on her HR file but that no further disciplinary action is required on this matter.*

***Any further cause for concern**:*

During my interview with Kat she was less than transparent on a number of significant issues:

She responded in contradictory manner when asked if she was asked to explore catering options for Letchworth. From my enquiries it seems clear was very much only pushing the proposal she developed and that she had not explored any other potential suppliers.

The business proposal (Simple Canteens) has little if any track record in catering and was not even created at the time Kat submitted her proposal. Her answers in relation to this business and the proposal in her name are disingenuous.

Her partner was provided as the main point of contact for this supplier and this was not disclosed despite her having completed the relevant E-Learning only 20 days after first submitting a proposal and at no point subsequently.

Kat has attempted to mis-lead senior leadership regarding her proposal and the supplier on several occasions-e.g. stating to Matt Addison that "Seb is fully aware and happy", again to Matt Addison that "it's all ready to go, it only needs your signature on the service agreement" and to Matt Brooks that she has done her due diligence which she retracts during interview.

Kat's explanation in interview that she did not know what due diligence means is disingenuous given that she abbreviate the term to "DD" in her

own emails and skims over Matt Brooks questioning of what due diligence she has done.

Kat has partially admitted her error on pressures of work and her own naïveté however there were several opportunities where she could have sought advice or disclosed her partner's involvement. Her partner does appear to have a direct involvement in the catering proposal (s) Kat submitted however she is not being straightforward about this, even stating that despite being the main contact for that business he would not be receiving any recompense.

45. On 17 January 2020, Mr Nutan wrote to Ms Lalosakova inviting her to attend a disciplinary hearing on 21 January 2020 [256]. The letter says amongst other things:

    The purpose of the meeting will be to discuss allegation (s) of misconduct, namely relating to serious breaches of the company's Conflict of Interest policy and Code of Conduct and Business Ethics. The areas to be discussed are as detailed below, which:

    - *A conflict of interest relating to the provision of a catering service at Letchworth*

    …

    Depending on the facts established at the meeting, the outcome could lead to disciplinary action being taken against you which may result in a sanction up to and including dismissal.

46. This letter unambiguously shows the subject matter of the disciplinary hearing. It would be to address her alleged conflict of interest in breach of the applicable policies. It would not be examining the issue regarding her breach of the Alliance recruitment policy. Ms Lalosakova would or should have been in no doubt about what the case was that she had to answer.

47. Ms Lalosakova attended her disciplinary hearing on 21 and 24 January 2020. She was not accompanied despite having been notified of her right to have a companion. Mr Nutan chaired the hearing and Ms Tomanek took the minutes. A copy of the minutes of the hearing have been produced [257-285]. It is clear from reading these minutes that the hearing covered the allegations that were being made against Ms Lalosakova and she had many opportunities to explain herself, to put her side of the story across and to offer mitigating circumstances [262]. From the very outset, when she was asked to confirm her understanding of the purpose of the meeting and she is noted to have understood that it was about an allegation that she had a conflict-of-interest. Mr Nutan expanded on this to say that the conflict-of-interest related to the provision of a catering service at Letchworth [257].

48. We note that at the beginning of the hearing, Ms Lalosakova referred to the investigation meeting which left her feeling anxious and she referred to her suffering from anxiety and depression. She also said that she felt that during the investigation meeting she could not fully explain herself and she suggested

that she had been told only to answer yes or no to questions that she was asked. However, she is then recorded as saying "seeing the notes from the meeting I totally understand why I am here today" [257]. She was then asked whether she had received a copy of the minutes to which she replied, "yes I did, they were a true reflection of what was said, Craig, adjusted some of the statements on the minutes."

49. Mr Nutan went on to say whether there was anything else that Ms Lalosakova would like to add, and she is recorded as saying:

> *It would be nice to discuss the whole allegation. The investigation was rather like a Spanish Inquisition I was not given a space to answer anything more than yes or no. No one asked me why I have done what I have done. The investigation left me quite anxious; I made the Company aware I was suffering from anxiety and had counselling for 9 months.*

Mr Nutan then asked whether Ms Lalosakova was on medication, and she replied that she was not.

50. Under cross examination Ms Lalosakova confirmed that Mr Nutan gave Ms Lalosakova many opportunities to put her side of the story across. It was also put to her that the defects that she perceived with the initial investigation were cured at the disciplinary hearing in that she was given the chance for her voice to be heard. She replied that only occurred at the appeal stage and not in the disciplinary hearing. It was further put to her that she had to opportunities to put her point of view across at the disciplinary hearing and at the investigatory meeting. She agreed with that proposition. It was also put to her that even if she was correct in saying that the investigatory meeting was intimidating and unfair, she had a further opportunity at the disciplinary hearing to say what she wanted to say. Any unfairness at the investigatory meeting was secured at the disciplinary hearing. She replied:

> *I can only answer the questions that I was asked. I have never disputed what happened in the disciplinary which was fairly run. It was the investigatory process that made me feel very anxious and interrogated and I was accused of allegations creating the picture.*

This tallies with what was recorded in the minutes of the disciplinary hearing where she said "I finally got an opportunity to express my opinion" [263].

51. When Ms Lalosakova was asked why she put Mr Davis' details on the Proposal she replied that she did not know and thought it was just a mistake [262]. She went on to say that Mr Davis would provide Ms Kaliadka's contact details. Ms Lalosakova was also asked about her claim that Mr Fantini had approved of conducting a trial of the service at Letchworth, which he denied, to which she is recorded as responding "this is word against a word" [263].

52. On the question of mitigation, when he was cross examined Mr Nutan said that he had considered Ms Lalosakova's exemplary record, but he considered that the incident was serious enough to warrant her dismissal. He understood that her mitigation was her naïveté and he said that he had to look at all of the evidence and had taken HR advice. Concerning the allegation of gross

misconduct, he saw a potential for a conflict-of-interest for failing to disclose her relationship with Mr Davis. Ms Lalosakova had been chasing Mr Addison to sign the service agreement in circumstances when a contract had not been awarded. Although Ms Lalosakova did not have a financial interest in the outcome, she had a personal relationship with Mr Davis who was connected with Vera Investment. He was concerned that there was an apparent conflict-of-interest. Had the contract been signed there would have been an actual conflict-of-interest. When he was asked if he could confirm if Mr Davis had any financial links or was an employee he replied:

> *I ascertained that Vera Investment was founded by Olga, she set up Simple Canteens, Tim Davis had an email address indicating that he was working for Olga. There was a link. He was your partner at the time. He was linked to Olga who you were putting forward… The evidence was based on an email address, evidence from Companies House and your responses… This was about a potential conflict-of-interest, there may have been a potential financial gain… This was about dishonesty and integrity. I did not understand why a decision-maker like Olga did not want to put herself in front of a decision-maker.*

53. Mr Nutan adjourned the hearing for 48-hours to take advice from HR and reconvened. Having heard from Ms Lalosakova, Mr Nutan adjourned the hearing to deliberate. He reconvened the meeting 15 minutes later and said the following:

> *Based on the purpose of calling this Disciplinary Hearing, I have had the opportunity to consider the evidence presented to me from the Investigation Meeting and since Tuesday I have had the time to consider your responses to my questions and have also had time to take stock of your answers today to my questions.*
>
> *These are my conclusions based on what has been presented to me, including your explanations before me:*
>
> - *You have completed the following training courses based on your training record: Preventing Bribery and Corruption (30th Sep 2009), WBA Code of Conduct Awareness (26th Nov 2018)*
> - *You have presented the mitigation of naïveté as to why you didn't disclose a conflict of interest.*
> - *By your own admission you progressed trying to put a canteen solution into the SC, despite being aware a National Solution was being developed & led by Seb, who you had dialogue with. You also said you really wanted a quick solution for the staff, hence, trying to get a solution in place.*
> - *Passing on your Partner's Contact Details re the Catering Company to Matt Brooks and Seb just doesn't make sense to me, you should have given Olga's details*
> - *I do find it difficult to understand lots of issues operationally in the SC why you didn't just pass the contact details earlier on to Seb*
> - *From a contract procurement perspective I really find it hard to believe by Olga didn't insist in getting in front of the decision-makers, you claim you passed on her contact details and it's in the proposal but it's not. I do find it strange, coupled with the fact the company you*

are proposing had only been formed at Companies House after you submitted a proposal and there was name change,

- *You stated in our meeting on Tuesday you had received pricing details from Olga that you used to place in the proposal you sent to Senior Ops management Again I don't understand why you didn't forward that email/pricing details straight away to Seb,*
- *I do find it hard to believe you didn't know what DD is? And from email dated 25 October when questions were posed by Matt Brooks re the Canteen proposal you should have passed this straight to Olga*
- *I do believe your partner works for a company owned by Olga who also owns the Catering Company SIMPLE CANTEENS you put in the proposal.*

Therefore, I do believe you have reached the following:

Code of Conduct Policy-This brings your integrity into question and as a business we cannot have someone who has question marks over their honesty & integrity in the business.

Therefore, my decision as to dismiss you from your contract of employment with immediate effect based on Gross Misconduct.

I do have to inform you that if you disagree with my decision you do have the right of appeal. This will have to be done as per the Companies Appeal Process which will detailed to you in a follow-up.

54. On 31 January 2020, Mr Nutan wrote to Ms Lalosakova confirming the decision to dismiss her setting out the reasons for the decision and notifying her of her right to appeal [268-271].

55. On the 4 February 2020, Ms Lalosakova wrote to Mr Farmer exercising her right of appeal against the decision to dismiss her. She relied upon the following grounds of appeal:

    a. Alliance did not follow a fair procedure to investigate the matter and did not follow a due process. In support of this she referred to the following:

        i. The timeframe of the disciplinary process was unreasonable having taken 8 weeks and one day. Her dismissal letter was sent one week after she was dismissed.

        ii. She was not suspended although she was notified that she was a risk of the business at the investigation. She was allowed to work remotely from home during which time she worked on a project called Populas which was highly confidential.

        iii. The notetaker at the disciplinary hearing, Ms Tomanek, was acting in the capacity as a witness and was involved in some of the allegations against Ms Lalosakova. There was a conflict-of-interest in her being present at the disciplinary hearing. The allegations were discussed at the meeting regardless of her involvement.

iv. None of the obtained statements were read, shown, or sent to Ms Lalosakova.

v. The professional code of the investigation manager and the notetaker was in breach. After the investigation on 17 December 2019, Ms Lalosakova asked Mr Bowen a question. She was visibly upset after the three-hour long investigation, but Mr Bowen and Mr Nagle laughed at her while talking to her and continued laughing when leaving.

b. Alliance had no reason for dismissal as not all of the evidence was considered. This included:

i. A conversation between Mr Addison and Ms Lalosakova about different canteen solutions in the summer of 2019 and it was agreed a uniformed business model would not be suitable for all sites (Croydon and Exeter were managed at the time).

ii. Simple Canteens' proposal was submitted to Ms Lalosakova's requirements that she had requested for Letchworth. She integrated the proposal to a business case to include internal savings. She did not approve, agree, or sign any contract/terms of conditions. She discussed It with Mr Fantini. Alliance preferred Mr Fantini's version of events disregarding what Ms Lalosakova said. Mr Fantini knew about, and approved of, the trial.

iii. Ms Lalosakova had no business involvement with Vera Investment and was exclusively employed by Alliance and committed to the company and her role. To her knowledge, Mr Davis had no business involvement and was not employed by Vera Investment. He was the referrer.

iv. Ms Lalosakova had no involvement with Ms Kaliadka and her business. She did not meet her in person and found the statement that she only lived a few miles from her "utterly absurd" given the population density of London. She was awaiting a written statement from Ms Kaliadka.

v. She did not breach the recruitment policy having acted on the instructions of Mr Scorer who had asked her to interview the candidates for the FTM role for Chessington. He had also agreed to employ Mr Sean Quigley as he missed the second interview agreed to. Robert Walters, the recruitment agency received the prompt to start the search for those roles prior to that. Mr Tooze prompted this.

vi. Ms Lalosakova did not disregard instructions from Natasha Wilson to include HR in the recruitment process. After her call, Ms Lalosakova engaged Ms Tomanek and asked her to accompany her at the FTM interviews.

c. Alliance did not treat Ms Lalosakova fairly for the following reasons:

i. The grounds for gross misconduct being a serious breach of company procedures. She alleged that company rules and procedures were breached by managers senior to her over the previous 2.5 years and, to her knowledge, none of them had been dismissed

ii. WOM Letchworth was interviewed and selected to be successful by SCM, who was not an Alliance employee at the time.

iii. FTM Letchworth was placed in the role of Support Manager to avoid unfair dismissal. The role was created for the individual and was not advertised. Other candidates were not interviewed as she had been on long-term sickness absence with mental health issues caused by a lack of support at work.

iv. Ms Lalosakova applied for the SCM role in Letchworth in the Spring of 2019 and was unsuccessful because she had insufficient work experience. In August she was sent to Letchworth to help and was in there in the capacity of SCM and she trained the new SCM in October. Whilst she functioned as SCM, her pay was significantly lower compared to the role that was advertised.

v. Alliance was aware of her anxiety and depression. She was receiving treatment for this. The stress of the allegations made against her, the uncertainty of working from home and the unreasonable timeframes of the disciplinary process exacerbated her condition. She can no longer have access to private healthcare because her employment is terminated.

d. Alliance did not try to help Ms Lalosakova to overcome the issues and failed to consider all of the evidence. In support of this she said that during the months that she in the capacity of acting SCM she did not feel supported by Alliance. She was left to manage the second biggest service centre on her own with no senior site management. She felt that the circumstances and the pressures to which she was exposed during the period August 2019 and November 2019 were disregarded as mitigating circumstances.

56. On 7 February 2020, Mr Green wrote to Ms Lalosakova notifying her of the receipt of her appeal and invited her to an appeal hearing on 19 February 2020 [282].

57. Ms Lalosakova's appeal hearing took place on 19 February 2020. The hearing was chaired by Mr Green, and notes were taken by Mr Nick Jethwa. The minutes of this hearing were included in the hearing bundle [283-290]. Having read the minutes, the accuracy of which had not been challenged, we are satisfied that Mr Green listened to Ms Lalosakova's concerns as set out in her grounds of appeal. During the appeal hearing we note:

KL - If you believed I breached the code of conduct, I have examples of other senior managers 11.1 and 11.2 in my appeal letter, section 11. When we talk about breaches of procedure, I've recruited Sean Lewis, Warehouse Operations Manager at Letchworth SC. When he was

recruited, he was interviewed by David Fussey before David was employed by Alliance Healthcare. David Fussey told me to employ Sean Lewis with James Tooze. Vicky Scott FTM went off sick, Natasha was doing the welfare meeting with her. The relevance with my case is to avoid legal action, Alliance Healthcare made a role for her, my understanding is the whole picture of breaching procedures.

SG- We need to be talking about outcome letter, we also need to be careful about speaking about other employees directly, her role was seconded and we were supporting her back to work.

KL-The third one is with Robert Walters agency. I was told by James Tooze to use Robert Walters for all recruitment cost and activity, the agency was not on our PSL and the spend was over £100k. My point is being dismissed for not following procedures, but no one has been disciplined for allowing us to use Robert Walters. Abdul is the guy at Robert Walters and crying as we could not pay them as they were not on our PSL.

SG-You made a point about Robert Walters and your point is James Tooze and Abdul are friends, you don't want anyone to get into trouble for provided a point of view that you think this is unfair. So you are saying James Tooze and Abdul are friends and have a personal interest together? I will follow up on this.

KL- Yes I have been on phone to Abdul for the last 6 months and both he and James go to Aston Villa games together. So to investigate the matter further, Raj made a point that all the allegations formed his decision, so my whole point of me bringing this up is my understanding is that the other allegations not being there, I would not have been dismissed, that is why I believe all the points are relevant. Can I ask if no other allegations were raised against me, would he still make the same decision? My outcome letter also states that I was told to focus on the task allocated to me by a Senior Manager, but I never received an email like that.

…

SG-what I'm saying is that is not the reason for dismissal, but you are saying Raj used it to make his decision, however the recruitment pieces not named as the grounds for dismissal

KL -I admitted the only fault I made is that I should have said Tim introduced me to Olga, no financial benefits to Olga, I should have mentioned it. I didn't think about it as there is no conflict of interest.

…

SG- Tim was the individual you didn't declare?

KL- Yes but didn't think I about it, I'm not that stupid and could have put another name down. Olga was in Russia so I put Tim's name down.

…

SG-I've got some actions to follow up on and need to look at if policies were breached, and all the points you have made.

…

KL-I've made a mistake, if I said on day one Tim introduced me, then it would be different.

…

KL-I didn't have time to think about the decision-making process, I admit in the disciplinary I didn't say anything about my relationship with Tim, but running a site is very stressful and driving at 4 AM in morning to tell colleagues their friend was found dead on floor, I was given this site and left to do it, 2 other sites were also falling apart. I would say if not under this much pressure and stress, I would have said I know Tim.

SG-is there anything else you want to say?

Meeting closed: *1:51 PM*

58. On 13 February 2020, Mr Green wrote to Ms Lalosakova that her appeal against her dismissal had been unsuccessful [300-304]. He referred to her allegation against Mr Tooze would be investigated separately but this would have no bearing on her appeal. The decision to dismiss Ms Lalosakova for gross misconduct stood.

59. On 18 May 2020, Ms Lalosakova presented her complaint to the Tribunal.

60. On 25 August 2020, Mr Green emailed Ms Wilson with his findings of his investigation relating to Mr Tooze [310]. Notes of a Teams discussion between himself and Mr Tooze that took place on 21 August 2020 were attached [310-311]. We note in the conclusion that Mr Green found as follows:

    - *James was new to the company when he engaged RWR, and had agreed with a member of the business that he could do so, although in hindsight, this was a junior HR team member; being new, he was not fully aware of existing processes.*
    - *The recruitment selection he has been involved with is through a mixture of RWR, Michael Page-so there seems to be no favouritism in who has won the business*
    - *We have no evidence of any personal inappropriate conduct*
    - *I therefore see no further action needed*

61. Under cross-examination, Ms Lalosakova admitted that her relationship with her partner, Mr Davis was a much closer relationship than that which existed between Mr Tooze and his friend Abdul with whom he went to football matches.

62. Having heard Mr Bowen's and Mr Green's evidence we accept that Robert Walters is a well-known and long-established recruitment agency. Furthermore,

two candidates were provided by Robert Walters and a candidate was provided by a different agency, Michael Page, an existing service provider to Alliance.

63. It was suggested by Ms Lalosakova when she cross-examined Mr Green that he had deliberately delayed investigating her allegations against Mr Tooze and ultimately only interviewed him after she had presented her claim to the Tribunal suggesting that Alliance did not treat her allegation seriously. We disagree for the following reasons:

    a. We heard evidence from Mr Green when he was cross examined, and we considered him to be a reliable witness. He answered the questions that he was asked, and he was not evasive.

    b. The reason he gave for the six-month delay was because of the Covid pandemic. This had been highly disruptive to the business. We have no reason to doubt that.

    c. He was also asked further about his conclusions to the investigation, and we accept that he considered there to be a material difference between what Ms Lalosakova had done when she submitted her Proposal and what Mr Tooze did with Robert Walters. Robert Walters is a large organisation with a long-standing history and employs more than 3000 employees. Mr Green said that it had audited accounts and they have their own bribery and anticorruption policy. He said that he had been in the logistics business for 31 years and Robert Walters are well known to provide logistics personnel.

    d. He said that Mr Tooze had admitted to him that he had not followed the correct recruitment procedure, but he was new, and he had spoken to HR, and they had confirmed that it would be acceptable for him to proceed with using Robert Walters. Furthermore, HR was accountable and was responsible for managing the fees payable to Robert Walters.

    e. Furthermore, Robert Walters was in competition with Michael Page in placing candidates into Alliance. This was significantly different to the Proposal promoting Simple Canteens Ltd a company which had only been established for two weeks. There was no competition in providing the services to the canteen and Ms Lalosakova had done no background checks. That company had no history and she had failed to declare her relationship with Mr Davis. He would also have expected at least one other entity to have tendered for the work to provide services to the canteen.

64. We found Mr Green's evidence in this regard to be credible and it was reasonable for him to differentiate between what Mr Tooze had done regarding Robert Walters and what Ms Lalosakova had done regarding the Proposal and Simple Canteens Ltd.

<u>Applicable law</u>

Unfair dismissal

65. The circumstances under which an employee is dismissed are set out in the Employment Rights Act 1996, section 95 ("ERA") as follows:

(1) for the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2)…., only if) –

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

…

66. The fairness of a dismissal is set out in ERA, section 98 as follows:

(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,*

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

…

(b) relates to the conduct of the employee,

…

(4) Where the employer has fulfilled the requirement 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,

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

67. The employer must show that misconduct was the reason for the dismissal. According to the Employment Appeal Tribunal in ***British Home Stores Limited v Burchell 1980 ICR 303*****,** a threefold test applies. The employer must show that:

    a. It believed that the employee was guilty of misconduct;

    b. it had in mind reasonable grounds upon which to sustain that belief; and

    c. at the stage at which that belief was formed on those grounds, it had conducted as much investigation into the matter as was reasonable in the circumstances.

This means that the employer need not have conclusive direct proof of the employee's misconduct; only a genuine and reasonable belief, reasonably tested.

68. An employer is expected to have regard to the principles for managing disciplinary and grievance procedures in the workplace set out in the ACAS Code on Disciplinary and Grievance Procedures (the "Code"). The Code is relevant to liability and will be considered when determining the reasonableness of the dismissal. If a dismissal is unfair, the Tribunal can increase an award of compensation by up to 25% from unreasonable failure to follow the Code if it considers it just and equitable to do so.

69. Exactly what type of behaviour amounts to gross misconduct depends upon the facts of each case. However, it is generally accepted that it must be an act which fundamentally undermines the employment contract (i.e., it must be repudiatory conduct by the employee going to the route of the contract) (**Wilson v Racher [1974] ICR 428, CA**). The conduct must be a deliberate and willful contradiction of the contractual terms or amount to gross negligence.

70. Single acts of misconduct must be particularly serious to justify summary dismissal. For 'gross misconduct' to be found the conduct is likely to be considered 'such as to show the servant to have disregarded the essential conditions of the contract service' although a single act of negligence might justify summary dismissal at common law, as Lord Maugham commented in **Jupiter General Insurance Co Ltd v Shroff [1937] 3 All ER 67**, this will be in exceptional circumstances only

71. Although dismissal for gross misconduct will often fall within the range of reasonable responses, this is not invariably so. This was made clear by the EAT in **Brito-Babapulle v Ealing Hospital NHS trust 2013 IRLR 854, EAT** which overturned an employment tribunal's decision because it was based upon that false premise. The EAT noted that the Tribunal's approach gave no scope for consideration of whether mitigating factors rendered the dismissal unfair, notwithstanding the gross misconduct. Such factors might include the employee's long service, the consequences of dismissal and any previous unblemished record. The tribunal was suggesting that the existence of gross misconduct, which is often a contractual issue, is determinative of whether a dismissal is unfair, whereas the test for unfair dismissal depends upon the separate consideration called for under section 98 ERA. This decision is reflected in the Guide which states that when deciding whether a disciplinary penalty as appropriate and what form it should take, consideration should be given to, among other things, the employee's disciplinary record (including current warnings), general work record, work experience, position and length of service; any special circumstances that might make it appropriate to adjust the severity of the penalty; and whether the proposed penalties reasonable in view of all the circumstances.

72. We remind ourselves that in **Hadijioanno v Coral Casinos Ltd 1981 IRLR 352, EAT**, the EAT held that a complaint of unreasonableness by an employee based on inconsistency of treatment would only be relevant in limited circumstances:

a. where employees have been led by an employer to believe that certain conduct will not lead to dismissal;

b. where evidence of other cases being dealt with more leniently supports a complaint that the reason stated for dismissal by the employer was not the real reason;

c. where decisions made by an employer and truly parallel circumstances indicate that it was not reasonable for the employer to dismiss.

73. Although the decision in **Fennell** was not referred to, **Hadijioanno** simply placed different emphasis on the same rule. Employers, while retaining flexibility of response to employee behaviour, must act reasonably in the sanctions they choose to apply. Any change of punishment policy without warning, any dismissal for faults previously condoned or any unjustified difference in treatment of employees in similar positions will contribute towards making the dismissal unfair.

74. When determining whether or not dismissal is a fair sanction, it is not for the Tribunal to substitute its own view of the appropriate penalty for that of the employer. The position was stated most succinctly by Phillips J giving judgment for the EAT in **Trust Houses Forte Leisure Ltd v Aquilar [1976] IRLR 251**:

It has to be recognised that when the management is confronted with a decision to dismiss an employee in particular circumstances there may well be cases where reasonable managements might take either of two decisions: to dismiss or not to dismiss. It does not necessarily mean if they decide to dismiss that they have acted unfairly because there are plenty of situations in which more than one view is possible.

75. Consequently, there is an area of discretion with which management may decide on a range of penalties, all of which might be considered reasonable. It is not for the Tribunal to ask whether a lesser sanction would have been reasonable, but whether or not dismissal was reasonable: see the Court of Appeal decision in **British Leyland v Swift [1981] IRLR 91**, as applied by the Court of Appeal in **Securicor Ltd v Smith [1989] IRLR 356** (which concerned an alleged inconsistency in treatment between two employees). But this discretion is not untrammelled, and dismissal may still be too harsh a sanction for an act of misconduct.

76. In para 3 of the ACAS Code, it is stated that:

Where some form of formal action is needed, what action is reasonable or justified will depend on all the circumstances of the particular case.

77. There are a whole range of potential factors which might make a dismissal unfair. Many of these are likely to be relevant in all unfair dismissal cases. In misconduct cases they include especially the employee's length of service and the need for consistency by the employer. The importance of length of service and past conduct were emphasised by the EAT in the early case of **Trusthouse Forte (Catering) Ltd v Adonis [1984] IRLR 382** as being proper factors for a tribunal to take into account when considering whether the sanction-imposed

falls within the band of reasonable sanctions. Moreover, it was later accepted by the Court of Appeal that the severity of the consequences to the employee of a finding of guilt may be a factor in determining whether the thoroughness of the investigation justified dismissal: **Roldan v Royal Salford NHS Foundation Trust [2010] EWCA Civ 522**, (dismissal likely to lead to revocation of work permit and deportation). While this latter point has obvious sense behind it (particularly where, for example, some form of professional status is in grave jeopardy), it was suggested subsequently in **Monji v Boots Management Services Ltd UKEAT/0292/13** (20 March 2014, unreported) that some care may be needed in its application; the basic principle was not doubted, but three caveats were mentioned:

d. this is an area where the EAT must be particularly careful not to substitute its own view on the facts for that of the Tribunal;

e. it may be that the **Roldan** principle may be most applicable to facts such as those in that case itself, namely where there is an acute conflict of fact with little corroborating material either way, and/or where the case against the employee starts to 'unravel' as it proceeds, in which case it makes sense to expect a higher level of investigation and adjudication on the part of the employer in the light of the severe effects of dismissal on that employee;

f. the question is whether the Tribunal has in fact applied the **Roldan** approach, not just whether they have done so expressly, though the EAT did add that in such a case a tribunal is advised to make it clear in their judgment that this has been part of their reasoning.

78. One other area where it is particularly important for the Tribunal to apply the correct 'range' test is where the claimant argues that he or she should have been given a lesser penalty than dismissal on the facts. In principle that is not the question posed by the legislation, which is whether the dismissal actually imposed was or was not fair. However, the (split) decision of the NICA in **Connolly v Western Health and Social Care Trust [2017] NICA 61**, may at first sight appear to question this because the majority held that dismissal on the (rather harsh) facts was disproportionate and thought that the possibility of a lesser penalty (ignored by the Tribunal) was relevant to the question of proportionality when applying the ultimate ERA 1996 s 98(4) test of 'in the light of equity and the substantial merits of the case'. Did this imply criticism of the range test itself? The clue may be in the passage in the majority judgment which poses the question 'whether a lesser sanction would have been the one that right thinking employers would have applied to a particular act of misconduct' (emphasis added). In applying the ultimate lodestone, all factors are relevant, and the italicised phrase suggests that the possibility of a lesser penalty can be one such factor provided it is used in applying the correct range test – not whether the Tribunal thinks the employer should have imposed that lesser penalty but whether a reasonable employer could still have dismissed in spite of that lesser possibility.

79. One final point to note is that, although misconduct can take so many forms, there is no hierarchy or gradation of the 'range' test, which simply must be applied in all the circumstances. There can be instances where an employer wishes (or indeed needs) to take a 'zero tolerance' approach to a certain form of misconduct, an obvious and pressing example being abuse of children or

vulnerable adults. This can of course be a factor (and indeed in that particular example it can occasionally justify dismissal on suspicion rather than belief), especially if made sufficiently clear to employees in advance. However, conceptually this does not alter the range test itself. This was made clear by the Court of Appeal in **Newbound v Thames Water Utilities Ltd [2015] EWCA Civ 677, [2015] IRLR 734** in another particularly sensitive area. Breaches of health and safety rules by an employee are usually treated particularly seriously by employers but in this case the court affirmed that they do not constitute a separate subset in unfair dismissal, in which the range of reasonable responses open to the employer is wider than normal.

Direct sex discrimination

80. The Equality Act 201, section 13 (“EQA”) provides that “A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others”. Sex is a protected characteristic (EQA, section 4).

81. in **Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL** (a sex discrimination case), in some cases the ‘less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why. The two issues are intertwined.’ In that case S, a Chief Inspector, claimed that she was treated less favourably than two male Chief Inspectors when she was relieved of her counselling responsibilities. However, she had been the subject of complaints and representations, whereas the male Chief Inspectors had not. According to Lord Nicholls: ‘Whether this factual difference between their positions was in truth a material difference is an issue which cannot be resolved without determining why she was treated as she was. It might be that the reason why she was relieved of her counselling responsibilities had nothing to do with the complaints and representations. If that were so, then a comparison between her and the two male Chief Inspectors may well be comparing like with like, because in that event the difference between her and her two male colleagues would be an immaterial difference.’

82. The decision in **Shamoon** means that it is open to tribunals in appropriate cases to approach a direct discrimination claim not by approaching each element of the statutory definition sequentially but by asking a single question: was the claimant, because of a prohibited characteristic, treated less favourably?

83. Direct discrimination is rarely blatant. As Lord Browne-Wilkinson observed in **Glasgow City Council v Zafar 1998 ICR 120, HL**, claims brought under the discrimination legislation present special problems of proof, since those who discriminate ‘do not in general advertise their prejudices: indeed they may not even be aware of them’. For this reason, the burden of proof rules that apply to claims of unlawful discrimination in employment are more favourable to the claimant than those that apply to claims brought under most other employment rights and protections. Once a claimant proves facts from which the tribunal could conclude, in the absence of any other explanation, that an employer has committed an act of direct discrimination, the tribunal is obliged to uphold the claim unless the employer can show that it did not discriminate (EQA section136).

84. EQA, section 23(1) provides that on a comparison for the purpose of establishing direct discrimination there must be 'no material difference between the circumstances relating to each case'. In **Shamoon**, Lord Scott explained that this means that 'the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class.'

85. On the face of it, EQA section 23(1) appears to suggest that all the circumstances relating to the case must be the same before a comparison between the claimant's treatment and that of a comparator can be made. However, the EHRC Employment Code makes it clear that this is not the case. It expressly states that the circumstances of the claimant and the comparator need not be identical in every way. Rather, 'what matters is that the circumstances which are relevant to the [claimant's treatment] are the same or nearly the same for the [claimant] and the comparator' (our stress) — para 3.23. This reflects the wording used in the antecedent discrimination legislation, which provided for the 'relevant circumstances' in the claimant's case to be the same as, or not materially different from, those in the comparator's case. Case law decided under the previous legislation is therefore still applicable in determining the relevant circumstances in a direct discrimination case under the EQA.

86. In **Shamoon**, considering the comparator point, Lord Rodger said that the 'circumstances' relevant for a comparison include those that the alleged discriminator takes into account when deciding to treat the claimant as it did. He gave the example of a woman dismissed for being persistently late for work over a three-month period. The relevant circumstances will be her persistent lateness over a three-month period, and the employer's treatment of her must be compared with how it treats or would treat a man in the same or not materially different circumstances, i.e. where he too has been persistently late for work over a three-month period. According to his Lordship, the Northern Ireland Court of Appeal had been wrong to treat the question as being whether a reasonable person would attach some weight to a particular factor. The lower court had said that the fact that complaints had been made against the claimant, whereas no complaints had been made against the proposed comparators, was a relevant circumstance because no reasonable employer would have failed to take account of such a factor in determining how to treat the claimant. This was the wrong test. In his Lordship's judgment, a circumstance may be relevant if the employer in fact attached some weight to it, whether or not the tribunal thinks a reasonable employer ought to have done so.

87. It is now well established that direct discrimination can arise in one of two ways:

    a. Where a decision is taken on a ground that is inherently discriminatory, that is, where the ground or reason for the treatment complained of is inherent in the act itself, such as the employer's application of a criterion that differentiates by race, sex, etc. In cases of this kind, what was going on inside the head of the discriminator — whether described as intention, motive, reason, or purpose — will be irrelevant (**Amnesty International v Ahmed 2009 ICR 1450, EAT**).

b. Where a decision is taken for a reason that is subjectively discriminatory, that is, where the act complained of is not in itself discriminatory but is rendered so by a discriminatory motivation; i.e. by the 'mental processes' (whether conscious or unconscious) which led the putative discriminator to do the act (**Amnesty International**).

88. In the case of the former, the 'reason why' question poses little difficulty for tribunals. In the **Amnesty** case Mr Justice Underhill, then President of the EAT, said that if an owner of premises puts up a sign saying, 'no blacks permitted', it cannot be doubted that race is the reason why a black person is excluded from the premises. In cases of this kind it is irrelevant what was going on in the mind of the discriminator. The reason for the action is inherent in the act itself and no further inquiry is needed, and direct discrimination will be made out. The EHRC Employment Code gives a similar example of an employer that states in a job advertisement that 'Gypsies and Travellers need not apply.' A gypsy or traveller eligible to apply for the job but deterred from doing so because of the statement in the advert will be able to complain of direct discrimination because of race. The discriminatory basis of the treatment is obvious from the treatment itself (see para 3.12).

89. The second way in which direct discrimination can occur is where a decision to act, or not to act, is taken for a reason which is subjectively discriminatory. This is the more common form of direct discrimination, since it is unusual nowadays to find direct evidence of an intention to discriminate. Generally, those who discriminate do not advertise their prejudices. In fact, they may not even be aware of them. As Lord Nicholls explained in **Nagarajan v London Regional Transport 1999 ICR 877, HL** (a race discrimination case):

> *many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race was the reason why he acted as he did.*

90. In a case of alleged subjectively discriminatory treatment, the test to be adopted is best expressed by the House of Lords in **Chief Constable of West Yorkshire Police v Khan 2001 ICR 1065, HL**. A tribunal must ask: why did the alleged discriminator act as he or she did? What, consciously or unconsciously, was his or her reason? For these purposes, material showing discriminatory conduct or attitudes elsewhere in a particular institution is not always inadmissible in considering the motivation of an individual alleged discriminator. Authoritative material showing that discriminatory conduct or attitudes are widespread in an institution may, depending on the facts, make it more likely that the alleged conduct occurred or that the alleged motivations were operative. However, such material must always be used with care, and a tribunal must in any case identify with specificity the particular reason why it considers the material in question to have probative value as regards the motivation of the alleged discriminator(s) in any particular case (**Chief Constable of Greater Manchester Police v Bailey 2017 EWCA Civ 425, CA**).

91. Cases of subjectively discriminatory treatment are now often referred to by courts and tribunals as 'mental processes cases.' In **<u>Onu v Akwiwu and anor; Taiwo v Olaigbe and anor 2016 ICR 756, SC</u>**, it was argued that, unlike cases of inherently discriminatory treatment, such cases do not require the court or tribunal to identify the criterion adopted by the alleged discriminator. Baroness Hale (with whom the rest of the Court agreed) rejected this argument, stating: 'In "mental processes" cases, it is still necessary to determine what criterion was in fact being adopted by the alleged discriminator — whether sex, race, ethnicity or whatever — and it has to be one which falls within the prohibited characteristics.' The criterion that operated in the employers' minds in the cases before the Court was not the claimants' nationality but the fact that they were a particular type of migrant worker whose vulnerability left them open to abuse. As this criterion was not a protected characteristic, the direct discrimination claims were bound to fail.

<u>Discussion and Conclusion</u>

General observations

92. By way of general observation we found the Alliance witnesses more reliable than Ms Lalosakova. They answered the questions that they were asked; they were neither vague nor evasive nor required to be reminded that they had to answer the questions that they were asked. Unfortunately, we found that Ms Lalosakova was occasionally defensive and evasive when she was cross examined and gave contradictory accounts. For example she was asked about paragraph 12 of her witness statement which addresses the Proposal. During the course of her cross examination it became clear that the Proposal was much more than simply a cut and paste merging exercise as suggested in the witness statement. It was apparent that Ms Lalosakova wrote substantial portions of the Proposal. She also contradicted herself when she was giving evidence on why she nominated Mr Davis as opposed to Ms Kaliadka as the Simple Canteens point of contact in the Proposal. This undermined her credibility.

93. We also noted that Ms Lalosakova was occasionally unwilling to make reasonable concessions when cross-examined. For example, she was unwilling to concede that it was unethical not to disclose her relationship with Mr Davis at the time when the Proposal was submitted. This was despite the fact that during her investigatory interview with Mr Bowen she had admitted that she should have mentioned Mr Davis. This is clearly set out in the notes of that meeting whose accuracy Ms Lalosakova has not challenged [240]. Her attempt to distance herself from that undermined her reliability and credibility.

94. We also observed how Ms Lalosakova prevaricated about the nature of her relationship with Mr Davis appearing to play it down. We believe that this was attributable to her wishing to downplay it given the definition of a relative in the conflict-of-interest policy. Contemporaneous evidence both in terms of and in what she said during the investigatory meeting suggest that she was cohabiting with Mr Davis and was in a relationship that would bring her into the ambit of the definition of a relative in the conflict-of-interest policy. The evidence of Mr Davis' link with Vera Investment was also played down which we find incredible given that he had introduced Ms Lalosakova to Ms Kaliadka about the Proposal. At best, this was not naïveté as claimed by Ms Lalosakova in mitigation but "turning a blind eye" to the reality of the relationship between Mr Davis, Ms

Kaliadka, Vera Investment and Smart Canteens Ltd. She was deliberately withholding information from Alliance which questions her integrity and honesty. This undermines reliability and credibility.

95. We agree with Mr Earl's submission that the overall impression made by Ms Lalosakova and how she gave her evidence is similar to the impression that was formed by Mr Bowen, Mr Nutan and Mr Green at each stage of the disciplinary process.

Unfair dismissal

96. We accept that the operative reason for dismissing Ms Lalosakova was gross misconduct. There had been serious breaches of the Code of Conduct on Business Ethics and the Conflict-of-Interest Policy. Ms Lalosakova had failed to disclose that she was closely related to Mr Davis who was potentially a vendor who was seeking a financial relationship with Alliance. This is one of several examples of a conflict of interest set out in the policy [72]. Mr Davis was the point of contact at Simple Canteens Ltd and was in a close personal relationship with Ms Lalosakova

97. Paragraphs 4.1 and 4.2 of the Conflict-of-Interest Policy give clear guidance on personal financial interests and personal relationships [88]. Ms Lalosakova knew that there were issues with the Letchworth canteen. She knew about that because of her employment and her work at the Letchworth site and disclosed that to Ms Kaliadka and Mr Davis. There was an apparent conflict-of-interest which should have been disclosed by Ms Lalosakova to Mr Scorer, her line manager. Instead, having substantially drafted the Proposal on Alliance Stationary, she promoted and pushed this to management. She sent a service agreement which had been signed by Ms Kaliadka to Mr Addison. The terms of the service agreement went beyond providing the service to the Letchworth canteen and contained a provision in clause 23 giving Simple Canteens Ltd a right to access similar services at other sites if those services were to be outsourced.

98. Mr Bowen, Mr Nutan and Mr Green had evidence from Ms Lalosakova indicating that there was an apparent conflict-of-interest and that she had misled Alliance by failing to disclose her relationship with Mr Davis. She told Mr Brooks and Mr Addison that Mr Fantini was happy for the services to be trialled at Letchworth. Mr Fantini denied this. We accept that was the case. She told Mr Brooks that she had completed due diligence on Simple Canteens Ltd when she had not. Consequently, at each stage of the process, Alliance was entitled to believe that Ms Lalosakova had breached the applicable policies.

99. It is clear that Mr Nutan had a genuine belief in Ms Lalosakova's culpability. This is clearly reflected by what he wrote in his witness statement, the letter that he wrote to Ms Lalosakova terminating her employment and the minutes of the disciplinary hearing which Ms Lalosakova accepted were accurate. Ms Lalosakova in reality was promoting the Proposal rather than simply acting as a conduit and she was doing so with her partner, Mr Davis. Alliance had reasonable grounds for believing that this was dishonest and in breach of the applicable policies. Mr Bowen, Mr Nutan and Mr Green believed that Ms Lalosakova or Mr Davis were involved in Simple Canteens Ltd, and this fact had not been declared as required.

100. Alliance's belief was held on reasonable grounds. On the material available to him, gross misconduct was a finding that was open to Mr Nutan. He clearly struggled with Ms Lalosakova's explanations for failing to disclose her relationship with Mr Davis and the Proposal. As we saw under cross-examination, Ms Lalosakova admitted this. She had produced the document herself and had merged in text written by Ms Kaliadka.

101. Ms Kaliadka had only recently received further training on the policies shortly before she wrote the Proposal. This undermines her mitigation to the effect that she had been naïve and was guilty of an error of judgment. She was a senior and experienced manager and knew about the relevant policies. She knew what she was doing.

102. Mr Nutan had the benefit of Mr Bowen's thorough notes produced during his investigation. The notes point to an even-handed investigation. Crucially, during his meeting with Ms Lalosakova, she had admitted to Mr Bowen that she had breached the policy [240, 243 & 254].

103. Mr Nutan knew about Ms Lalosakova admissions, her recent training and the contradictions in her evidence and he, therefore, quite reasonably believed that Ms Lalosakova had breached the applicable codes which was a serious matter. It was sufficiently serious to warrant summary dismissal for gross misconduct.

104. We were impressed by the quality of Mr Bowen's investigation and his level of training and experience which he set out in detail in paragraphs 2 and 3 of his witness statement. The investigation pack that he sent to Mr Nutan is extensive showing the breadth of his review. He concluded that Ms Lalosakova had a case to answer although no further action should be taken regarding breaches of the recruitment policy. He recognised the differences between these.

105. We have no concerns about the fairness of the disciplinary process that was followed. At each stage, different people were involved. At each stage, Ms Lalosakova was notified of her right to be accompanied. At each stage, Ms Lalosakova was given the opportunity to put her side of the story across and offer mitigation. The investigation, the disciplinary hearing and the appeal hearing were conducted in an open and evenhanded manner. We do not accept that the process was oppressive or that Ms Lalosakova was pressurised into giving yes or no answers. That is contradicted by the volume of notes taken suggesting a thorough hearing at each stage. The fact that Ms Lalosakova was not suspended does not undermine the fairness of the process. A suspension should never be indicative of prejudging a case whilst it is being investigated. We do not accept that failing to suspend Ms Lalosakova meant, in her submission, that the allegations were not as serious as Alliance claimed.

106. Dismissing Ms Lalosakova was a reasonable response under the circumstances. The key reason was an element of dishonesty. Ms Lalosakova was in a senior position and the investigation revealed serious questions about her integrity. When an employer is faced with serious questions about an employee's integrity, particularly one in a senior position, dismissal must be within a reasonable range of responses. We remind ourselves that in this case Ms Lalosakova has put in issue her exemplary record as a factor to be weighed in the decision whether to dismiss. We are reminded that the starting point here

is that in a case of gross misconduct involving integrity and honesty there may be little role for an exemplary record.

107. Under all the circumstances, the dismissal was fair and her claim for unfair dismissal is dismissed.

Direct disability discrimination

108. We accept Mr Earl's primary submission that there was no less favourable treatment in relation to Ms Lalosakova and Mr Tooze. This was because both individuals were investigated in respect of breaches of the recruitment policy. In both cases no further action was taken. They were treated equally. Our only criticism is the time that Alliance took to investigate Ms Lalosakova's allegation that Mr Tooze had breached the recruitment policy by favouring Robert Walters because of his friendship with Abdul. It was a relatively straightforward matter to investigate and yet it took six months. We do not believe that this was connected to Ms Lalosakova instigating proceedings in the Tribunal and we accept that the Covid pandemic had a role to play in the delay. However, notwithstanding that the investigation could have been concluded sooner. This does not suggest a prime facie case of direct discrimination thereby shifting the burden of proof to Alliance.

109. In the alternative and, on the hypothesis that there is an analogy between how Alliance treated Ms Lalosakova and her comparator, Mr Tooze the alleged unfavourable treatment being the dismissal had nothing to do with Ms Lalosakova's sex. The operative reason was the material difference between the purported impropriety on the part of Ms Lalosakova and Mr Tooze which led to her dismissal for the following reasons:

a. The nature of the relationship between Ms Lalosakova and her partner Mr Davis and friendship between Mr Tooze and his friend Abdul was significantly different. On the one hand there is a relationship of cohabiting partners whereas on the other hand there is a friendship with two men enjoying their company at football matches. We believe that there is a greater chance of a benefit accruing to a life partner rather than a friend.

b. There is a significant difference between Robert Walters and Simple Canteens Ltd. Robert Walters is a large recruitment agency with a long-standing history and employs some 3000 employees. Simple Canteens Ltd was a new company established for the purposes of providing the services as set out in the Proposal. It had no business trading history. Furthermore, Ms Lalosakova was actively promoting Simple Canteens Ltd and gave the impression that Mr Davis, her partner, was the key contact. By contrast, Mr Tooze went to a well-established recruitment agency who were well known in the logistics industry. He enabled Robert Walters to propose two candidates for recruitment. Furthermore, there was competition in that Michael Page, another recruitment agency, also offers a candidate for recruitment. In contrast, Ms Lalosakova did not propose any potential service providers other than Simple Canteens Ltd. Mr Tooze liaised with and took advice from HR who approved what he did. Ms Lalosakova did not receive approval for the Proposal from Mr Fantini despite her claims to the contrary. The Proposal was her project which she initiated and pushed to the extent of proffering a service

agreement which Ms Kaliadka had signed. In her email of 21 October 2019 to Mr Brooks she gave the impression there was a "done deal" by saying that the service agreement, which had not been approved of or even reviewed by the Alliance legal team (indeed when Ms Bromilaw eventually saw the agreement she emphatically said it should not be signed) had been sent off to Mr Addison for "sign off" and by saying that "we agreed staff will be TUPE".

c. The comparative level of experience of Ms Lalosakova and Mr Tooze is relevant. Ms Lalosakova had been with Alliance for two years whereas Mr Tooze was new to the company. She had recently been trained in the Bribery and Corruption Policy and she was aware of the principles underpinning conflicts of interest.

110. Further, and in the alternative, the operative reason for dismissing Ms Lalosakova had nothing to do with her sex. She was dismissed for gross misconduct.

111. For the foregoing reasons, the claim for direct sex discrimination is dismissed.

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Employment Judge

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Date 11 March 2022