THE EMPLOYMENT TRIBUNALS

Claimant: **Mrs J Wolloms**

First Respondent: **CI Accountancy Limited**
Second Respondent: **Mr G Killmister**
Third Respondent: **Mr L Hare**

Heard at: **Newcastle upon Tyne Hearing Centre by video**
On: **18 and 21-25 February and 14 March 2022**
In Chambers: **15 March 2022**

Before: **Employment Judge Aspden**
Ms J Maughan
Mr J Weatherston

Representation:

Claimant: **Ms McBride, solicitor**
Respondents: **Mr Gilbert, consultant**

RESERVED JUDGMENT

The unanimous judgment of the tribunal is as follows:

1. The following of the claimant's complaints are well-founded:

   (a) the complaint that the first, second and third respondents subjected the claimant to disability-related harassment by commencing disciplinary proceedings against her, contrary to the Equality Act 2010;

   (b) the complaint that the first respondent subjected the claimant to detriment contrary to Section 47C of the Employment Rights Act 1996 by commencing disciplinary proceedings against her;

   (c) the complaint that the first, second and third respondents subjected the claimant to disability-related harassment and direct disability discrimination by dismissing her, contrary to the Equality Act 2010;

(d) the complaint that the first respondent unfairly dismissed the claimant (the dismissal being unfair by virtue of Section 99 of the Employment Rights Act 1996); and

(e) the complaint that the first respondent breached the claimant's contract of employment by terminating her employment without notice.

2. The other complaints are not well-founded. Those claims are dismissed.

3. The remedy for the claims referred to at paragraph 1 will be determined at a separate remedy hearing unless remedy can be agreed between the parties.

REASONS

Claims and issues

1. Mrs Wolloms was employed by the first respondent until she was dismissed without notice, a decision which was communicated to Mrs Wolloms by letter of 18th April 2019.

2. It was common ground at this hearing that:

   2.1 Mrs Wolloms took leave under Section 57A of the Employment Rights Act 1996 between November 2018 and 7th January 2019;
   2.2 at all material times with which we are concerned, Mrs Wolloms' husband, Mr Wolloms, was a disabled person by virtue of a heart condition; and
   2.3 Mrs Wolloms did a protected act within Section 27 of the Equality Act 2010 when her legal advisor sent a letter dated 5th February 2019 containing allegations that the Equality Act 2010 had been contravened.

3. The parties' representatives agreed at this hearing that the complaints made by Mrs Wolloms, and the issues for the tribunal to decide to determine those complaints, are as follows.

   Complaint about informing the Claimant on 7 January 2019 that there was no longer a full-time position for her as she may need time off to care for her husband.

4. The claimant alleges (and the respondents deny) that the second respondent informed the claimant on 7 January 2019 that there was no longer a full-time position for her as she may need time off to care for her husband.
   The claimant complains this was:
   4.1 direct disability discrimination by the first and second respondents (ie less favourable treatment because of her husband's disability) contrary to s39 (and s110) of the Equality Act 2010;
   4.2 direct age discrimination by the first and second respondents (ie less favourable treatment because of her age) contrary to s39 (and s110) of the Equality Act 2010;

4.3 an act of detriment by the first respondent contrary to ERA s47C (read with MPLR 1999 r19).

Issues for the tribunal to decide

5. The issues for the tribunal to decide to determine these complaints are as follows.

5.1 Did the second respondent inform the claimant on 7 January 2019 that there was no longer a full-time position for her as she may need time off to care for her husband?

If so

Whether this was disability discrimination

5.2 By doing this did the second respondent treat the claimant less favourably, because of her husband's disability, than it would have treated others whose circumstances were not materially different?

Whether this was age discrimination

5.3 By doing this did the second respondent treat the claimant less favourably, because of her age, than it would have treated others whose circumstances were not materially different?

Whether this was a detriment contrary to s47C

5.4 Did the first respondent do this because the claimant took or sought to take time off under section 57A of the Employment Rights Act 1996?

Complaint about not allowing the Claimant to return to work on 7 January 2019 or at any point after that date.

6. The claimant alleges that the second and third respondents failed to allow the claimant to return to work on and after 7 January 2019.
The claimant complains this was:

6.1 disability-related harassment by the first, second and third respondents contrary to s40 (and s110) of the Equality Act 2010; and

6.2 age-related harassment by the first, second and third respondents contrary to s40 (and s110) of the Equality Act 2010;

or

6.3 direct disability discrimination by the first, second and third respondents (ie less favourable treatment because of her husband's disability) contrary to s39 (and s110) of the Equality Act 2010;

6.4 direct age discrimination by the first, second and third respondents (ie less favourable treatment because of her age) contrary to s39 (and s110) of the Equality Act 2010; and

6.5 insofar as it occurred after 5 February 2019, victimisation by the first, second and third respondents contrary to s39 (and s110) of the Equality Act 2010;

and

6.6 an act of detriment by the first respondent contrary to ERA s47C (read with MPLR 1999 r19).

Issues for the tribunal to decide

7. The issues for the tribunal to decide to determine these complaints are as follows.

7.1 Did the respondents fail to allow the claimant to return to work on and after 7 January 2019?

If so

Whether this was harassment

7.2 Was this unwanted conduct related to (the claimant's husband's) disability?
7.3 Was this unwanted conduct related to the claimant's age?
7.4 Did that conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
7.5 Did that conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? If so, was it reasonable for this conduct to have that effect on the Claimant?

Whether this was disability discrimination

7.6 By doing this did the respondents treat the claimant less favourably, because of her husband's disability, than they would have treated others whose circumstances were not materially different?

Whether this was age discrimination

7.7 By doing this did the respondents treat the claimant less favourably, because of her age, than they would have treated others whose circumstances were not materially different?

Whether this was victimisation

7.8 Did the respondents do this because the claimant's legal advisers made allegations that the respondents had contravened the Equality Act 2010 in their letter of 5 February?

Whether this was a detriment contrary to s47C

7.9 Did the first respondent do this because the claimant took or sought to take time off under section 57A of the Employment Rights Act 1996?

Complaint about commencing disciplinary proceedings against the Claimant.

8. The parties agree that the second and third respondents commenced disciplinary proceedings against the claimant on 6 March 2019.

9. The claimant complains that the commencement of disciplinary proceedings was:
   9.1 disability-related harassment by the first, second and third respondents contrary to s40 (and s110) of the Equality Act 2010;
   9.2 age-related harassment by the first, second and third respondents contrary to s40 (and s110) of the Equality Act 2010;

   or

   9.3 direct disability discrimination by the first, second and third respondents (ie less favourable treatment because of her husband's disability) contrary to s39 (and s110) of the Equality Act 2010;
   9.4 direct age discrimination by the first, second and third respondents (ie less favourable treatment because of her age) contrary to s39 (and s110) of the Equality Act 2010;
   9.5 victimisation by the first, second and third respondents contrary to s39 (and s110) of the Equality Act 2010;

   and

   9.6 an act of detriment by the first respondent contrary to ERA s47C (read with MPLR 1999 r19).

Issues for the tribunal to decide

10. The issues for the tribunal to decide to determine these complaints are as follows.

Whether this was harassment

10.1 Was this unwanted conduct related to (the claimant's husband's) disability?
10.2 Was this unwanted conduct related to the claimant's age?
10.3 Did that conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
10.4 Did that conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? If so, was it reasonable for this conduct to have that effect on the Claimant?

Whether this was disability discrimination

10.5 By doing this did the respondents treat the claimant less favourably, because of her husband's disability, than they would have treated others whose circumstances were not materially different?

Whether this was age discrimination

10.6 By doing this did the respondents treat the claimant less favourably, because of her age, than they would have treated others whose circumstances were not materially different?

Whether this was victimisation

10.7 Did the respondents do this because the claimant's legal advisers made allegations that the respondents had contravened the Equality Act 2010 in their letter of 5 February?

Whether this was a detriment contrary to s47C

10.8 Did the first respondent do this because the claimant took or sought to take time off under section 57A of the Employment Rights Act 1996?

Complaint about involving all colleagues in the disciplinary proceedings

11. The claimant alleges, and the respondents deny, that the second and/or third respondents required all her colleagues to investigate her work and/or allegations of misconduct and make statements against her as part of the disciplinary proceedings.

The claimant complains that by doing this the first, second and third respondents victimised her contrary to s39 (and s110) of the Equality Act 2010;

Issues for the tribunal to decide

12. The issues for the tribunal to decide to determine these complaints are as follows.

12.1 Did the respondents require all the claimant's colleagues to investigate her work and/or allegations of misconduct and make statements against her as part of the disciplinary proceedings?

If so

12.2 Did the respondents do this because the claimant's legal advisers made allegations that the respondents had contravened the Equality Act 2010 in their letter of 5 February?

Complaint about changing the allegations during the disciplinary proceedings

13. The claimant alleges, and the respondents deny, that the second and/or third respondents changed the disciplinary allegations during the disciplinary proceedings.

The claimant complains this was victimisation by the first, second and third respondents contrary to s39 (and s110) of the Equality Act 2010.

Issues for the tribunal to decide

14. The issues for the tribunal to decide to determine these complaints are as follows.

14.1 Did the respondents change the disciplinary allegations during the disciplinary proceedings?

14.2 If so, did the respondents do this because the claimant's legal advisers made allegations that the respondents had contravened the Equality Act 2010 in their letter of 5 February?

Complaint about withholding evidence during the disciplinary proceedings

15. The claimant alleges, and the respondents deny, that that the second and/or third respondents withheld documentation and evidence relevant to the disciplinary proceedings.

    The claimant complains this was victimisation by the first, second and third respondents contrary to s39 (and s110) of the Equality Act 2010.

    Issues for the tribunal to decide

16. The issues for the tribunal to decide to determine these complaints are as follows.

    16.1 Did the respondents withhold documentation and evidence relevant to the disciplinary proceedings?
    16.2 If so, did the respondents do this because the claimant's legal advisers made allegations that the respondents had contravened the Equality Act 2010 in their letter of 5 February?

Complaint about dismissing the Claimant

17. The parties agree that the second and third respondents (and therefore the first respondent) terminated the claimant's employment without notice.

18. The claimant complains that the termination of her employment was:
    18.1 disability-related harassment by the first, second and third respondents contrary to s40 (and s110) of the Equality Act 2010;
    18.2 age-related harassment by the first, second and third respondents contrary to s40 (and s110) of the Equality Act 2010;
    or
    18.3 direct disability discrimination by the first, second and third respondents (ie less favourable treatment because of her husband's disability) contrary to s39 (and s110) of the Equality Act 2010;
    18.4 direct age discrimination by the first, second and third respondents (ie less favourable treatment because of her age) contrary to s39 (and s110) of the Equality Act 2010;
    18.5 victimisation by the first, second and third respondents contrary to s39 (and s110) of the Equality Act 2010;
    and
    18.6 (automatic) unfair dismissal by the first respondent by virtue of section 99 Employment Rights Act 1996 (read with MPLR 1999 r20); or
    18.7 (ordinary) unfair dismissal by the first respondent by virtue of s98 Employment Rights Act 1996;
    and
    18.8 a breach of her contract of employment by the first respondent (being a termination without notice).

    Issues for the tribunal to decide

19. The issues for the tribunal to decide to determine these complaints are as follows.

Whether this was harassment

19.1 Was this unwanted conduct related to (the claimant's husband's) disability?
19.2 Was this unwanted conduct related to the claimant's age?
19.3 Did that conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
19.4 Did that conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? If so, was it reasonable for this conduct to have that effect on the Claimant?

Whether this was disability discrimination

19.5 By dismissing the claimant did the respondents treat the claimant less favourably, because of her husband's disability, than they would have treated others whose circumstances were not materially different?

Whether this was age discrimination

19.6 By dismissing the claimant did the respondents treat the claimant less favourably, because of her age, than they would have treated others whose circumstances were not materially different?

Whether this was victimisation

19.7 Did the respondents dismiss the claimant because the claimant's legal advisers made allegations that the respondents had contravened the Equality Act 2010 in their letter of 5 February

Whether this was an automatically unfair dismissal

19.8 Was the reason (or the main reason) for dismissal that the claimant took or sought to take time off under section 57A of the Employment Rights Act 1996?

Whether this was an ordinary unfair dismissal

19.9 What was the reason (or the principal reason) for dismissal ie what were the facts known or beliefs held that caused the respondent to dismiss the claimant?

19.10 Was this a potentially fair reason for dismissal?

The respondent says the reason for dismissal was related to the claimant's conduct. It will be for the respondent to show that it genuinely believed the claimant had committed misconduct and that this was the reason (or main reason) for dismissal.

19.11 If so, in all the circumstances (including the respondent's size and administrative resources), did the respondent act reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the claimant?
If the respondent shows that the reason for dismissal was misconduct, this is likely to involve consideration of the following matters:
19.11.1 whether the respondent had reasonable grounds for believing the claimant had committed the misconduct alleged;
19.11.2 whether the respondent carried out as much investigation into the matter as was reasonable;
19.11.3 whether the procedure followed was fair, taking into account the ACAS Code of Practice on Disciplinary and Grievance Procedures;
19.11.4 whether dismissal was a reasonable sanction.

Whether this was a wrongful dismissal

19.12 Did the claimant do the following:
19.12.1 fail to send a cheque in the sum of £162.10 from the respondent's rugby club client to a player and subsequently write off the same cheque;
19.12.2 fail to bank a cheque (for a sponsorship payment) in the sum of £240 for that client;
19.12.3 fail to carry out work for the rugby club client to a competent standard in that there was no visible reconciliation of VAT control accounts;
19.12.4 fail to bank a cheque payable to the first respondent in the sum of £4.31;
19.12.5 fail to renew the second respondent's practising certificate;
19.12.6 failing to deal with a matter in relation to a specified client's HSBC bank account resulting in HSBC closing a bank account, which the claimant took no steps to rectify;
19.12.7 fail to correctly balance the accounts for a client of the first respondent referred to as Client W below;
19.12.8 incorrectly account for the first respondent's VAT by accounting for VAT on both an invoice and accrual basis.

19.13 If so, did that constitute a fundamental breach of contract entitling the respondent to terminate the claimant's employment without notice?

Issues relevant to remedy that overlap with liability

20. We agreed that we would hear evidence and submissions and may determine the following issues relevant to remedy but that other issues relevant to remedy only would be determined at a separate hearing if required.

20.1 Was the conduct of the claimant before dismissal such that it would be just and equitable to reduce the amount of the basic award and, if so, to what extent?

20.2 Did the Claimant cause or contribute to her dismissal or any other unlawful treatment? If so, to what extent should any compensation be reduced?
20.3 What is the chance that the Claimant would have been (fairly) dismissed for conduct in any event?
20.4 What is the chance that the Claimant's employment would have ended in any event for some other reason?
20.5 Did either party unreasonably fail to follow the Acas Code of Practice on Discipline and Grievances?

21. Mrs Wolloms had originally made a complaint that the respondents had threatened her with disciplinary proceedings if she did not accept a settlement agreement to terminate her employment. That complaint was withdrawn by Mrs Wolloms on the first day of the hearing.

22. Ahead of this hearing there had been a disagreement between the parties as to whether certain documents upon which Mrs Wolloms wished to rely were admissible. The respondent's position was that certain documents were privileged and could not be relied upon by Mrs Wolloms. We understand Mrs Wolloms' representative had prepared a separate file of documents containing those documents. On the first day of this hearing, Ms McBride said Mrs Wolloms no longer sought to rely upon those documents. However, Mrs Wolloms' witness statement contained evidence that, on the face of it, appeared to us to be potentially covered by without prejudice privilege. We could find no sign of any application having been made ahead of the hearing to exclude that evidence. We, therefore, made enquiries of the parties' representatives to ascertain whether that evidence gave rise to any issues. At that point Mr Gilbert suggested that parts of Mrs Wolloms' witness statement were inadmissible and that there were documents in the agreed bundle of documents that were privileged. Ms McBride did not concede those points.

23. We made directions requiring Mr Gilbert to identify which parts of Mrs Wolloms' statement and which documents in the hearing bundle he contended were inadmissible. We also directed Ms McBride to say whether or not she agreed that those parts of the witness statement and all those documents were inadmissible and, if not, to say whether that was because that evidence had never been the subject of without prejudice privilege or whether she was arguing that privilege had, at some point, been waived and, if so, to explain what the grounds were for saying privilege had been waived.

24. By the morning of the second day of the hearing Ms McBride and Mr Gilbert had reached an agreement as to how to proceed. Certain parts of Mrs Wolloms' witness statement were redacted and we were provided with an amended version. In addition, certain documents were removed from the bundle, the parties agreeing that neither party would rely on those documents.

Evidence and facts

25. We heard evidence from Mrs Wolloms and from the two individual respondents, Mr Killmister and Mr Hare. We also heard evidence from two of the first respondent's employees: Mr Nixon and Ms Little.

26. Some important parts of the witness statements of Mr Killmister and Mr Hare were identical. Similarly, parts of the statements prepared for Mr Nixon and Ms Little were identical. It is obvious that those witness statements were drafted by the respondents' advisors. It is normal practice for professional representatives to draw up witness statements. However, witness statements should reflect the witness' own recollection of events. Mr Killmister told us in evidence that he had not read, or had the opportunity to read, the witness statement in his name before it was sent to the tribunal and Mrs Wolloms' representative. Mr Killmister said, however, that he agreed with what was said in the witness statement. Mr Hare said he had read his witness statement and agreed with it. Mr Nixon told us he had been sent his witness statement to review and that he had made certain corrections but those corrections had not been incorporated in the version of the statement that was sent to Mrs Wolloms and the tribunal.

27. We were referred to certain documents in a bundle prepared for this hearing. We explained at the outset of the hearing that we would only consider those documents to which we were specifically referred. During the course of the hearing the respondents disclosed certain further documents to which we were referred. References in this judgment to numbers in square brackets are to page numbers in the bundle of documents.

28. Very soon before the hearing the respondents submitted certain additional documents that they wished to rely on. Ms McBride objected to their introduction given their late disclosure and on the grounds of relevance. We have considered those documents in reaching our findings and conclusions set out below.

29. Important elements of this case were dependent on evidence based on people's recollection of events that happened some considerable time ago. In assessing that evidence we bear in mind the guidance given in the case of Gestmin SGPS -v- Credit Suisse (UK) Ltd [2013] EWHC 3560. In that case Mr Justice Leggatt observed that is well established, through a century of psychological research, that human memories are fallible. They are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. Most of us are not aware of the extent to which our own and other people's memories are unreliable, and believe our memories to be more faithful than they are. In the Gestmin case, Mr Justice Leggatt described how memories are fluid and changeable: they are constantly re-written. Furthermore, external information can intrude into a witness' memory as can their own thoughts and beliefs. This means that people can sometimes recall things as memories which did not actually happen at all. In addition, the process of going through Tribunal proceedings itself can create biases in memories. Witnesses may have a stake in a particular version of events, especially parties or those with ties of loyalty to parties. It was said in that case: 'Above all it is important to avoid the fallacy of supposing that because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.' In light of those matters, inferences drawn from the documentary evidence and known or probable facts tend to be a more reliable guide to what happened than witnesses' recollections as to what was said in conversations and meetings. If we do not accept one or other witness' version of

events in relation to a particular issue, that does not necessarily mean we thought the witness was dishonest.

30. We make findings of fact as follows.

31. Mrs Wolloms' employment with the first respondent began on 26th September 2005.

32. Mrs Wolloms was employed as finance manager and internal finance manager. She had, essentially, two sets of responsibilities within the company. On the one hand, she undertook some accountancy work on behalf of clients. Her other responsibilities involved internal accountancy for the first respondent and internal administration. Approximately 70% of Mrs Wolloms' time was spent on internal work and approximately 30% on client work.

33. During the period with which we are concerned, there were eight people involved in the first respondent's business. Mr Killmister and Mr Hare were both directors. Ms Little, was an accounting technician, Mr Nixon, a chartered certified accountant and Ms Hornsby was employed as a trainee chartered accountant. In addition, the first respondent employed Ms Hall as an administrator and Ms Graham as a bookkeeper.

34. Mrs Wolloms does not have any official accounting qualifications although in 2007 and 2008 she sat some exams for the Association of Accounting Technicians. She did not, however, complete the AAT course. The bulk of Mrs Wolloms' work involved bookkeeping, VAT returns and making client payments. When Mrs Wolloms first started doing VAT returns she was told by someone from HMRC how to go about it. Initially, Mrs Wolloms' VAT work was supervised by Mr Killmister. In later years, however, the supervision fell away.

35. In 2016 Mrs Wolloms' workload increased significantly. Mrs Wolloms' workload increased again in 2017.

36. In around April 2009 Mrs Wolloms' husband retired. Mrs Wolloms alleges that Mr Killmister asked her about retirement. Mr Killmister denies having done so. On balance we prefer Mrs Wolloms' evidence on this issue and find that, because Mrs Wolloms husband had recently retired and because Mr Killmister was conscious that it could take some time to train a replacement for Mrs Wolloms, he asked Mrs Wolloms about her retirement plans. Mrs Wolloms' response was to the effect that she did not know. We do not think Mr Killmister was trying to mislead the tribunal when he said he had not had any such discussion. We think it is more likely than not that he did not recall having the discussion.

37. When Mr Hare joined the company he introduced formal annual appraisals. Mr Hare was consistently complementary about Mrs Wolloms' performance in her appraisals. The appraisals demonstrate, and we find, that both Mr Hare and Mr Killmister considered Mrs Wolloms to be good at her job and dependable.

38. At an appraisal in September 2018 Mrs Wolloms was told that the directors were reviewing the company business plan, including succession planning and individual roles, including the role of finance manager.

39. Mr Killmister told Mrs Wolloms in September 2018 that he was hoping to retire within the next twelve to eighteen months. Mrs Wolloms and Mr Killmister were on friendly terms at that time. We accept that in the context of that conversation Mr Killmister asked Mrs Wolloms about her own retirement plans and that Mrs Wolloms said that she could not afford to retire at that time.

40. Mrs Wolloms was on annual leave from 29th October 2018 to 4th November 2018. Soon after her return to work, Mrs Wolloms' husband was admitted to hospital. He was then diagnosed with heart failure.

41. In early November 2018 Mrs Wolloms took a period of authorised leave from work due to her husband's illness. She took part of that time off as paid annual holiday. The rest was authorised absence. As noted above, it is common ground that this included leave under Section 57A of the Employment Rights Act 1996.

42. Both Mr Hare and Mr Killmister were aware from the outset that Mr Wolloms had heart failure. Mr Killmister has heart failure himself. He and Mr Hare were supportive of Mrs Wolloms and told her to take off as much time as she needed. The respondents continued to pay Mrs Wolloms her full pay notwithstanding her absence.

43. By early December Mr Wolloms was out of hospital and Mrs Wolloms thought he was recovering well. So Mrs Wolloms offered to return to work part-time or work from home. However, Mr Killmister told Mrs Wolloms not to worry about work and said they would look at the situation again in the new year.

44. We find it is more likely than not that Mr Hare asked Ms Hall to tidy Mrs Wolloms' desk at some point before Christmas 2018. This accords with a statement signed by Ms Hall and dated 21st February 2019. That statement was prepared by Mr Killmister in the course of a disciplinary investigation into allegations against Mrs Wolloms. Ms Hall did not give evidence to this tribunal and we do have reservations about whether the statements signed by the first respondents' employees during the disciplinary investigation accurately and fully reflect what they each individually recalled, believed or perceived and what they actually told Mr Killmister. Nonetheless, we accept that Mr Hare is likely to have asked somebody to tidy Mrs Wolloms' desk whilst she was absent given that she was absent unexpectedly and it was not clear when she would be able to return. There were documents on Mrs Wolloms' desk that, we accept, Mr Hare thought were outstanding filing. It is more likely than not that Mr Hare would ask somebody to look at the documents on Mrs Wolloms' desk to see if anything needed to be done with them and to sort out any filing. We find that he asked Ms Hall to do that.

45. We find:

45.1 When sorting through the papers on Mrs Wolloms' desk, Ms Hall found some cheques ie a cheque made payable to a rugby club client for £240.00 dated 19th March 2016 from one of the club's sponsors; a cheque made payable to one of the rugby client's players for his expenses dated 11th December 2015; and three cheques made payable to the first respondent: one dated 10th October 2017 for £4.31, one dated 11th October 2018 for £7.43 and one dated 12th October 2018 for £8.43.

45.2 Ms Hall told Ms Little about the cheques.

45.3 Ms Little told Mr Hare about the cheques at the time.

46. We find it more likely than not that, at this time, either Ms Hall or Ms Little also found a compliment slip and that that item was passed on to Mr Killmister and/or Mr Hare along with the unbanked cheques. The compliment slip was from the rubgy club client's sponsor. On it was a handwritten note that said: 'Advertising board rent 2015/16 season' followed by the signature of the rugby club's commercial manager and the date 5th August 2016.

47. On 2nd January 2019 Mrs Wolloms texted Mr Killmister telling him that Mr Wolloms had improved since his medication had changed before Christmas. She told Mr Killmister that he had several appointments that week and if all was good she planned to return to work on Monday 7th January, saying she was 'keen to get some normality back.' Mr Killmister replied that he would call her that Friday. He did so and asked Mrs Wolloms to come into work at 10.30am on Monday the 7th January for a catch up before starting back properly on 8th or 9th January 2019. After Mr Killmister spoke with Mrs Wolloms he sent an e-mail to Mr Hare saying: 'Jackie 10.30 Monday – she was fine.' We infer from that e-mail that, before Mr Killmister spoke with Mrs Wolloms on 4th January, he and Mr Hare had discussed Mrs Wolloms' return and that they would meet with Mrs Wolloms together upon her return.

48. On 7th January 2019 Mrs Wolloms met with Mr Hare and Mr Killmister. When Mrs Wolloms arrived in the office that day she noticed that the top of her desk was clear. When she had gone on leave there had been papers on her desk.

49. There is a dispute on the evidence between Mrs Wolloms and the respondent as to what was said in the meeting on 7th January. We make further findings of fact about this later in our judgment. What is not in dispute is that Mrs Wolloms went home after the meeting at the suggestion of Mr Hare and Mr Killmister.

50. Later that day, Mr Hare e-mailed Mrs Wolloms saying:

'further to our meeting this morning I have made some enquiries regarding options and am waiting for further advice. Gary and I have discussed this afternoon and we are in agreement that you do not need to return to work this week. I hope to have some information for you within the next few days and I will contact you again.'

51. Mrs Wolloms stayed off work for the remainder of that week as suggested.

52. Mrs Wolloms did not return to work the following week or thereafter. There is no evidence before us that she asked to return to work the following week, that she attempted to return to work or indicated that she intended to return to work and was prevented from doing so. Rather, we find that there was a shared expectation between Mrs Wolloms and Mr Killmister and Mr Hare that she would not return to work.

53. On 22nd January 2019 the respondents sent to Mrs Wolloms a typed document that was said to be a minute of the meeting on 7th January [182 to 183]. The note was headed 'Meeting: Monday 7th January 2019 to discuss recent authorised absence of Jackie Wolloms.' It included a section headed 'Background' which summarised the history of Mrs Wolloms' absence with dates. There then followed a section headed 'General' which said:

'Before this absence, WW [Mr Wolloms] has suffered for many years from ill health with underlying chronic conditions. This period has been caused by his suffering heart failure, a new condition. GK has heart failure since April 2018, so is intimately acquainted with its effects, instability and prognosis. It is a permanent chronic condition.'

The note continued with what purported to be a summary of what was discussed at the meeting on 7th January.

54. Also on 22nd January 2019 the respondents provided Mrs Wolloms with a copy of the document at [184 to 185]. This document began:

'Jackie Wolloms

For the avoidance of doubt, the following are all alleged pending investigation:-'

There then follow a bullet point list of eleven allegations. They included the following:

54.1 That Mrs Wolloms' had in excess of three years' outstanding filing.

54.2 The 'accumulated filing/papers' included the following cheques:

54.2.1 a cheque received from a sponsor for the rugby club client, that had not been banked;

54.2.2 a cheque for expenses for one of the rugby club player's expenses, that had not been issued; and

54.2.3 three cheques payable to the first respondent, that had not been banked.

54.3 There were 'several errors and omissions' in relation to the rugby club client's bookkeeping.

54.4 An HSBC bank account for one of the respondent's clients had been closed after no action had been taken following a letter from the bank advising that the account would be closed.

54.5 An invoice had not been paid for another client.

54.6 In relation to the first respondent:

54.6.1 there were 'several errors and omissions' in relation to bookkeeping; and

54.6.2 bad debts had not been removed from the sales ledger; VAT had not been reclaimed from HMRC; and bad debts had not been written off.

54.7 There were mistakes in the way VAT had been treated.

54.8 A director's practising certificate renewal application had not been completed and submitted as instructed.

55. On 30th January 2019 Ms Little sent an e-mail to Mr Hare. The subject line of the e-mail was 'JW' which stands for Mrs Wolloms. There was no further content to the e-mail itself. Attached to the e-mail was a document. In that document Ms Little set out information about four of the allegations contained in the document that had been sent to Mrs Wolloms.

55.1 With regard to the sponsorship cheque for the rugby club client Ms Little said '…when I looked into this it looks like the cheque was in fact sent to the rugby club after the flood so the post was held at the sorting office for months. Looks like [someone from the rugby club] contacted [the sponsor] who then paid online, the cheque turned up a few weeks later.'

55.2 With regard to the player's expenses cheque Ms Little said '…email sent requesting address to send cheque but no response ever received (or chased up), cheque was shown as 'not clearer' [sic] on bank rec for at least the next year! Never actually got to the bottom of whether he was actually paid or not. Assume he would have chased if not.'

55.3 With regard to the closed HSBC account, Ms Little said 'HSBC account was closed while FL on maternity leave, [Ms Hornsby] couldn't do anything as she wasn't a signatory, assume she passed on to JW to deal with. Nothing was done so the account was closed with charity money in it. HSBC still have the money now although FL is in the process of claiming it back.'

55.4 Finally, with regard to the first respondent's own accounts, Ms Little said 'bad debts not removed from sales ledger even when companies have been dissolved etc meaning VAT wasn't claimed from HMRC. Although CI company accounts not yet prepared so perhaps would have been done then?'

56. On 31st January 2019 Mr Hare sent to an email to Mr Killmister. Again, the subject line was 'JW'. In the e-mail itself Mr Hare simply said 'a (very) brief summary. I need to investigate several issues further.' Attached to that e-mail was a document which was similar, but not identical, to the document containing allegations that the parties agreed had been sent to Mrs Wolloms earlier in January. It included an allegation of 'not adhering to company e-mail and internet policy.' It is not clear what this allegation related to. The respondents disclosed this email and the email from Ms Little of 30th January, and their attachments, to the claimant for the first time during the course of this hearing.

57. We infer from the documents referred to above that Mr Hare and Mr Killmister had started some form of investigation into Mrs Wolloms' conduct or performance in January 2019. We infer that the investigation began after the meeting on 7th January 2019.

58. On 5th February 2019 Mrs Wolloms' legal advisor wrote to the respondent's HR advisors. The letter is at [187 – 190]. In that letter Mrs Wolloms' legal advisor referred to 'a recent announcement' that Mrs Wolloms 'will be subject to a disciplinary process and potentially dismissal for gross misconduct.' We infer that Mrs Wolloms had, by this date, been told that there was a disciplinary investigation ongoing. In any event, this was probably apparent from the list of allegations provided to Mrs Wolloms on 22nd January 2019.

59. In that letter of 5th February 2019, Mrs Wolloms' legal advisor gave an account of the meeting of 7th January. That account includes the following statements:

> *'[Mrs Wolloms was] shocked when Mr Hare and Mr Killmister indicated that even though [she] had the right to return to work full-time, her role was no longer available for her to return to because her husband's condition would prevent her from resuming acceptable attendance. During that meeting [Mrs Wolloms] does not recall either Mr Hare of Mr Killmister suggesting that they had found issues with her files that would need to be dealt with under the disciplinary procedure. All [Mrs Wolloms] recalls is Mr Killmister stating that all her work had been covered and was up to date and her desk had been cleared and the filing done.*
>
> *It is my understanding that the health of [Mrs Wolloms'] husband was not discussed in detail at the meeting but assumptions were made that Mr Wolloms' condition would require [Mrs Wolloms] to take time off to help her husband. [Mrs Wolloms] was therefore told that the Company could not allow her to return to her role as finance manager because the Company was concerned that she would have to be absent to care for her husband and this would have an impact on the service given to clients. The Company suggested that Jackie could return to an internal part-time role but you could not provide any details because the Company was not expecting her to be ready to return to work on 7 January 2019. After this meeting, [Mrs Wolloms] was leaving the office when Mr Hare stopped her to have a conversation and stated that the company had not expected [Mrs Wolloms] to return to work at all.*
>
> *As the company had suggested that Jackie's role was no longer available she asked Mr Hare whether it meant that her role was redundant. Neither Mr Hare nor Mr Killmister could answer this question but the comments made during the meeting clearly suggested that there is and was no genuine redundancy situation. On the other hand it is clear that the decision to terminate Jackie's employment was solely based on her status as wife and carer for her disabled husband. ….We suggest that a decision to terminate Jackie's employment was made because of the assumptions made about her husband's health and her status as his wife and carer. This clearly amounts to both sex and disability discrimination by association.*
>
> *It seems that the company had made an assumption that because of Mr Wolloms' ill health [Mrs Wolloms] would not return to work and resign from her post. When she asked to return to work and made clear that she had*

no intention of leaving, she was told that the company was not prepared to have her back on the basis of her husband's ill health and the unfounded assumption that [Mrs Wolloms] would need to take time off to care for him or attend medical appointments and this would be detrimental to her work and her clients. This is a clear case of disability discrimination by association…'

60. Mrs Wolloms' advisor went on to allege that the disciplinary case was 'fabricated and/or trumped up'. They also said in this letter that Mrs Wolloms 'was happy to return to work full time on 7 January 2019; her inability to return to work is the sole consequence of the Company's decision that she would not return to work following the discovery of her husband's disability….'. We note, however, that there is no suggestion in that letter that Mrs Wolloms now wished to return to work.

61. It is common ground that the sending of this letter was a protected act for the purpose of section 27 of the Equality Act 2010.

62. On 8th February 2019 Mr Hare e-mailed Ms Little again. He attached a document that was the same in all material respects to the document at [184 to 185] containing the bulleted list of allegations that had been sent to Mrs Wolloms in January. Mr Hare said to Ms Little in his e-mail 'any further detail you can add to the attached eg dates, who discovered issue, further investigation taken, etc would be appreciated….'.

63. On 12th February 2019 the respondents' HR advisors replied to the letter from Mrs Wolloms' representative of 5th February. The respondents' advisors asked if Mrs Wolloms wanted to raise her concerns as a formal grievance and said that, if so, arrangements could be made for her to be invited to a formal grievance meeting.

64. Mrs Wolloms' representative responded suggesting that Mrs Wolloms' grievance should be dealt with by an independent and impartial individual who is not employed by the company. They also said that 'in the spirit of compromise…as well as on account of the good relationship Jackie has had with Mr Killmister over the last thirteen years' she would be prepared to meet with Mr Killmister to informally discuss the issues in the letter of 5th February and 'see if a resolution can be reached.' In that letter Mrs Wolloms' representative said that Mrs Wolloms 'felt very strongly that a decision to terminate her employment had already been made.'

65. That same day, 19th February, Mr Hare e-mailed Ms Little chasing up a response to his earlier e-mail of 8th February. He said Mr Killmister wanted to have a chat with them both the following morning 'just to try and put a bit more detail on the issues discovered.' Ms Little responded that day making the following points:

    65.1 The first respondent's VAT was set up on both an invoice basis and a cash basis and that was 'obviously not allowed its one or the other.'
    65.2 Sales invoices had been included on the first respondent's VAT returns on the date they were raised but purchases had not been included until they had been paid.

65.3 Bad debts had not been written off on Quickbooks for the first respondent, meaning that VAT had not been reclaimed. Ms Little said this had been discovered during preparation of the company's VAT return and year-end accounts.

65.4 With regard to the rugby club client's VAT Ms Little said she had discovered an issue with an incorrect figure being used on the returns on 6th February when preparing the December VAT return. She also suggested there may have been another error with VAT that should be looked into.

65.5 Ms Little said she would check the date the issue with the HSBC account had been discovered.

66. The next day, 20th February, Ms Little sent an email to Mr Killmister, copying in Mr Hare. Regarding the HSBC account that had been closed, Ms Little said in the email:

'I discovered HSBC had closed [the client's] bank accounts on 19th December 2018, [Ms Hornsby] had asked [Mrs Wolloms] to deal with in November 2015 after [the client] stressed he was keen to keep the account open. Account was then closed 21/11/17 with a balance of £437.33, the original letter came from HSBC dated 5/9/17, typically my last day! So probably was received the next week. [Ms Hornsby] seems to remember [Mrs Wolloms] said she wasn't a signatory so [the client] would have to sort himself. This isn't the case, the signatories (noted on Dignita) are [Mr Killmister], [Mrs Wolloms] and [Ms Little]. The funds still haven't been recovered from HSBC.

67. In her e-mail Ms Little also said she had done filing for the rugby club client in November 2018 and again in December 2018; that she had sorted through Mrs Wolloms' desk and given filing for another client to Ms Graham in early December 2018; and that some issues with the bookkeeping had been found 'this week' ie at the end of February but that they were 'nothing major'. Ms Little said 'both issues had obviously been considered at the time but never actually actioned meaning additional work required bringing the bookkeeping up to a point to prepare accounts. Not sure if this is entirely relevant but thought I'd mention anyway.' Ms Little also referred to having discovered some issues regarding writing off the bad debts at the end of January or early February 2019 and that issues with the way the company's VAT return had been prepared were discovered at the beginning of December 2018.

68. The respondents disclosed these emails between Ms Little and Mr Hare and Mr Killmister to the claimant for the first time during the course of this hearing.

69. On 20th February 2019 Mr Killmister met with Ms Little and spoke with her about Mrs Wolloms. The following day Mr Killmister met with Ms Hall, Ms Graham and Mr Nixon. Following each of those meetings Mr Killmister prepared typed statements and asked those individuals to sign them. Mr Killmister's evidence to this tribunal was that the statements set out what each of those individuals had told him, that he typed up the statements from memory after the meetings, and that he had not taken any handwritten notes during any of those meetings. Both Mr Nixon and Ms Little said in evidence that their recollection was that Mr Killmister did take notes, although Ms Little suggested subsequently in her

evidence that she could not remember whether Mr Killmister took notes. These meetings were clearly arranged specifically in order to take statements from individuals for the purpose of disciplinary proceedings against Mrs Wolloms. Mr Killmister told us he was experienced in taking statements of evidence from people. It is improbable that he did not take notes. We find it more likely than not that Mr Killmister did take notes during those meetings. Those notes have not been disclosed.

70. We note the following:

70.1 The typed statements prepared by Mr Killmister for Ms Little, Ms Hall, Ms Graham, and Mr Nixon are identical in parts. We consider it unlikely that they are a verbatim record of what those individuals told Mr Killmister.

70.2 The statement prepared for Ms Little did not mention the point made by Ms Little in her email of 20th February that Ms Hornsby appeared to remember Mrs Wolloms having said she was not a signatory on the HSBC account.

70.3 The statement prepared for Ms Little did not mention the point made by Ms Little in her email to Mr Hare of 30th January that it appeared the rugby club sponsorship cheque had not been received until months after it had been drawn, by which time the sponsorship had already been paid online.

70.4 Neither the statement prepared for Ms Little nor that prepared for Ms Hall mentioned the compliment slip referred to above.

70.5 The statement prepared for Ms Graham said Ms Little had given her some papers for another client to sort through and process and/or file as appropriate and that she had done that in early December 2018. She said there were a lot of papers. The statement also said that Ms Graham had found that when she was doing some initial preparation of the accounts for that client in week commencing 18th February 2019 Ms Graham had discovered that some bookkeeping entries were not up to date and the company's Sage accounts system was not up to date. We refer to this client in this judgment as Client W.

70.6 Mr Nixon told us at this hearing that that statement prepared by Mr Killmister for him was accurate. The statement contained the following points:

70.6.1 Mr Nixon and Ms Little had worked on the first respondent's VAT return and accounts on several dates between 6th December 2018 and the end of January 2019 because both were due to be filed. Mr Nixon agreed with Ms Little that Mrs Wolloms had been accounting for the first respondent's VAT on both an invoice or accruals basis and a cash basis, which was contrary to HMRC guidelines.

70.6.2 Mr Nixon criticised the way Mrs Wolloms had treated bad debts in previous years.

70.6.3 In relation to the rugby club client Mr Nixon said Mrs Wolloms' records had been difficult to follow although it appeared the returns were not inaccurate to any significant degree. He described them as 'not what I would expect from a qualified accounting technician and…..badly ordered and poorly kept.'

70.6.4 With regard to VAT Mr Nixon said that although he was 'certainly not a VAT expert'… the errors and omissions he had seen were either basic errors of computation, misallocation or mistreatment, or simply control

accounts not being reconciled, and all would be expected to be in the knowledge and practice of any experienced and/or qualified accounting technician.

71. On 6th March 2019 a letter was sent from the first respondent in the names of both Mr Killmister and Mr Hare. The letter told Mrs Wolloms she was required to attend a disciplinary hearing on 19th March. The purpose of the hearing was said to be to discuss the following 'matter(s) of concern':

> *'It is alleged that you have neglectfully failed in your responsibilities to clients and the Company's directors where often this has caused financial loss and negligence on behalf of the Company besides additional work to resolve the issues that had come to light. These issues have come to light during your absence from work by other colleagues who absorbed your work. Further particulars are as follows:'*

72. The letter then went on to set out a number of more specific allegations against Mrs Wolloms as follows:

'1.1. In or around December 2018/January 2019, it was discovered that you had failed to send a cheque in the sum of £162.10 from [the rugby club client] to [a named player], In respect of this player's expenses.

1.2. In or around December 2018/ January 2019, It was discovered that you had failed to bank a cheque (for a sponsorship payment) In the sum of £240 dated 19 March 2016 for [the rugby club client].

1.3. In or around January/February 2019, with regards to [the rugby club client], you work fell below a competent standard as follows:
1.3.1. Method of calculation on the Output VAT being confusing and leading the Company to undertake further work to check previous VAT returns have been correctly calculated;
1.3.2. No visible reconciliation of the VAT control accounts; and
1.3.3. The general record keeping is extremely difficult to follow, being located In spreadsheets, hand written notes and printed copies of spreadsheets.

1.4. In or around January/February 2019, it was discovered that you had failed to bank the following cheques made payable to the Company from the Company's debt collection agency in respect of a former client:
1.4.1 10 October 201 7 in the sum of £4.31;
1.4.2. 11 October 2018 In the sum of £7.43; and
1.4.3. 12 October 2018 in the sum of £8.43.

1.5. In or around January 2019, it was discovered that you had failed to carry out all reasonable Instructions or follow our rules and procedures In respect of the failure to renew Mr G Killmister's practicing certificate, from the paperwork found dated September 2018.

1.6. On 19 December 2018, it was discovered that you had failed to resolve an account balance for [a named client] back on 15 September 2017. This has

resulted in HSBC closing the bank account and the client not being able to access the amount of £437.33.

1.7. It was discovered In February 2019 that you had failed to correctly balance the accounts for [Client W], causing additional work and potential liability to the client in respect of incorrect financial records.

1.8 In or around January 2019, it was discovered that you had failed in respect of the company's internal financial record keeping as follows:
1.8.1 You incorrectly accounted for the Company's VAT by accounting for VAT on both an invoice or accruals basis and a cash basis and it is alleged that this Is contrary to HMRC guidelines;
1.8.2. All sales invoices have been included on the VAT Return on the date they are raised, rendering the VAT to be brought into account prior to the invoice being collected; and
1.8.3. Debts were considered in previous years accounts but had not been properly written off the company's accounting records, resulting in the Company having failed to reclaim the VAT element.'

73. Mr Hare and Mr Killmister went on to say in their letter:

> *'If any of these allegations are substantiated, we will regard them each as serious misconduct if it is shown to be either due to your extreme carelessness and/or has a serious or substantial effect upon our operation or reputation including any effect on our clients. Taking the allegations as a whole, we may need to regard the matter as gross misconduct.'*

74. The letter said the hearing would be conducted by Mr Killmister and that Mr Hare would be 'in attendance as note taker.'

75. Enclosed with the letter was a copy of the company's disciplinary policy and copies of the statements that Mr Killmister had prepared for Ms Little, Mr Nixon, Ms Graham and Ms Hall. There was also enclosed what was described as an 'evidence pack containing supporting evidence of each allegation.' The evidence pack included copies of the following:

75.1 the expenses cheque made payable to the rugby club client's player;

75.2 the sponsorship cheque made payable to the rugby club client;

75.3 a letter to the first respondent of 10th October 2017 enclosing a cheque, together with the cheque for £4.31;

75.4 a letter to the first respondent of 11th October 2018 enclosing a cheque together with a copy of that cheque for £7.43;

75.5 a letter to the first respondent of 12th October 2018 enclosing a cheque together with a copy of that cheque for £8.43;

75.6 a letter dated 15th September 2017 from HSBC to the client whose account was later closed, giving two months' notice that the account would be

closed if action was not taken. The copy of the letter bore a handwritten note which said '20/9/17 e-mailed to Jonny with latest statement';

75.7 a letter from HSBC dated 21st November 2018 to that client stating that the account had been closed and that the balance would be held in a central account and could be reclaimed at any time.

76. Mr Killmister and Mr Hare did not provide the claimant with a copy of the compliment slip from the rubgy club client's sponsor containing the handwritten note referring to advertising board rent for the 2015/16 season and bearing the signature of the rugby club's commercial manager and the date 5th August 2016. It is clear from the evidence we heard that both Mr Killmister and Mr Hare had seen that compliment slip before they took the decision to dismiss Mrs Wolloms. We find that Mr Killmister and Mr Hare had seen that compliment slip before they wrote to Ms Wolloms in March 2019 requiring her to attend a disciplinary hearing. Indeed they were probably aware of it from the time they were made aware of the existence of the unbanked cheque made payable to the rugby club client.

77. On the same day, 6th March, the respondents' representative replied to the claimant's representative's letter of 5th February. They denied a decision had already been made to terminate Mrs Wolloms' employment. In that letter, the respondents' representative said 'With regards to the health of your client's husband, it is accepted that assumptions were made, save that these were educated assumptions from Mr Killmister's own experience of heart failure. Ultimately, regarding her future, our client explicitly informed your client that no decisions had been made and that still remains the case. There were mere proposals suggested during that meeting from our client and your client.' They also said 'As to the matter of redundancy, we can confirm that this is not to be the case in the present time. Should such a situation arise, your client will be provided the relevant information and formally consulted in the normal way.'

78. On 13th March Mrs Wolloms' representative wrote to the company's representative asking for a postponement and asking that Mrs Wolloms be sent any 'additional information gathered so that our client can review it in advance of the hearing.' They asked for some specific documents from the company.

79. On 18th March the company's representative responded to that letter declining to postpone the disciplinary hearing and enclosing some of the documents that had been requested. In that letter the company's representative said:

> *'The allegations that are being pursued are those that have currently been unearthed. There are likely to be many more, however, due to the nature of these issues, they will take considerable investigation. Accordingly, for the allegations being pursued, a proportionate investigation has taken place and you have been provided with the corresponding evidence for the same. This is not unfair nor unreasonable.'*

80. There was no explanation in that letter or at this hearing of the grounds for stating that there were 'likely to be many more' allegations.

81. On 26th March Mr Killmister prepared a statement for himself which was sent to Mrs Wolloms the following day [245 and 246]. In that statement Mr Killmister said:

> *'First, with respect to the sponsor's cheque found on Mrs W's desk payable to the Club that she didn't bank. Since the cheque was found, we have made our own enquiries to investigate, and we now believe the back story to be as follows.*
>
> *[Mr H] who is the commercial manager of [the club], asked both Mrs W and I if we had received the cheque in question. She consistently stated that we had not…this would have been during February and March 2016. The sponsor company…was then obliged to demonstrate…that they had issued the cheque. They then cancelled it and paid by direct transfer to the [rugby club] bank account. Therefore, the club did not lose any money, however, these questions remain:*
> 1. *Why did Mrs Wolloms insist and continue to insist, that we had not received the cheque, when very obviously we had?*
> 2. *Why didn't she bank it as soon as it was received?*
>
> *Whilst the club didn't lose any money on the sponsor package in question, Mrs W's actions caused [Mr H] to expend and waste a large amount of time chasing [the sponsor] for money they justifiably maintained they had paid. Likewise [the sponsor's] accounts department wasted a large amount of time 'proving' to [Mr H] the cheque had been drawn, then in cancelling it, and having to instruct a transfer. Whilst relatively small amounts, they would also have incurred bank charges for cancelling the cheque and on the subsequent transfer to pay the club. [The sponsor] did not thereafter renew their sponsorship.'*

82. Mr Killmister then went on, in this statement, to refer to the expenses cheque made payable to a player at the rugby club client. In doing so, he said that the uncashed cheque was written off in the accounts for year-ending 30th June 2017 but was still showing as uncashed on 30th June 2016 balance sheet. Mr Killmister said:

> *'this is incorrect bookkeeping/accounting treatment, because the cheque would be invalid at the balance sheet date as it was drawn and dated 11th December 2015. We have discovered in the search that there were two other cheques treated in the same incorrect manner in that year's accounts as well…'*

83. On 27th March the respondents agreed to postpone the disciplinary hearing and rescheduled it to 5th April. At the same time they sent some further documents to Mrs Wolloms. That correspondence also said 'Please be advised that there has been an unauthorised attempt to access your client's desktop computer. This is being investigated.'

84. On 2nd April 2019 Mrs Wolloms' representative wrote to the company's representative. They described the disciplinary case and allegations as 'fabricated', 'trumped-up', 'malicious' and 'whimsical' and the process as 'shambolic.' They said Mrs Wolloms would not be able to attend a disciplinary

hearing as not all the evidence relevant to the allegations had been disclosed and asked for a further postponement until a subject access request that she had made had been complied with. They also asked why Mrs Wolloms was not allowed to access her computer and observed that she had not been suspended. Mrs Wolloms' representative did not, however, ask why Mrs Wolloms was not being allowed to work. Nor did they suggest Mrs Wolloms should to be permitted to return to work.

85. On 2nd April 2019 the company's representative said the disciplinary hearing would go ahead in Mrs Wolloms' absence. Mrs Wolloms then sent in written representations to the misconduct allegations on 5th April 2019.

86. The disciplinary hearing took place on 5th April 2019. Mr Killmister and Mr Hare were both present. Mrs Wolloms did not attend.

87. After the meeting Mr Hare and Mr Killmister wrote to Mrs Wolloms terminating her employment by a letter signed by both of them and dated 18th April 2019 which set out, in strident terms, what they said was their reasoning. They said they accepted Mrs Wolloms' explanation for not banking the two cheques dating from October 2018 (ie her absence from work). They said all of the allegations against the claimant were found proven. In conclusion they said:

> *'The company accepts that some of the allegations against you, if considered in Isolation, are minor. However, the remainder are to a greater or lesser extent serious, and in cases involve significant reputational risk or damage, to which you choose to be oblivious. Your poor personal practice puts the company at risk, and in turn, the future and continued employment of your colleagues.*
>
> *Taken in the round, this litany of exceptionally poor basic practice that you have managed to keep hidden from us for some time, in our view amounts to gross misconduct.*
>
> *In light of the some of the responses/submlsslons you have provided and the gravity of our findings, together with the impact you have caused in the office, we feel that there has been an irretrievable breakdown of the employment relationship. It took several colleagues to unearth the problems with your work when you were on leave for two months. We are greatly concerned at what has been discovered to date and that it has caused the company with significant additional workload. Everybody in the office is affected as a result.*
>
> *With that in mind, the company's decision is to dismiss you from your employment with immediate effect and without notice.'*

88. In her written submissions, Ms Wolloms had said she had no knowledge of ever seeing the HSBC letters. Mrs Wolloms also referred to the handwritten annotation on the first HSBC letter, a copy of which Mr Killmister and Mr Hare had sent to her with their letter of 6th March. Ms Wolloms said that note was in Ms Little's

handwriting. In their letter notifying Mrs Wolloms of her dismissal, Mr Killmister and Mr Hare said:

> *'This statement in Itself evidences a potentially very serious breach of trust as if you have no knowledge of ever seeing the letters referred to, how do you know that the first letter bears hand written annotation authored by [Ms Little]?*
> *You are hereby requested to inform us as to how you came to know that the first letter has [Ms Little's] handwriting on it if you have never seen it?'*

89. The decision taken to dismiss Mrs Wolloms was a joint decision taken by both Mr Killmister and Mr Hare. Although Mr Killmister, we find, was the dominant party in the decision-making, Mr Hare endorsed that decision. That is evident from the fact that he signed the letter dismissing Mrs Wolloms.

90. In a covering e-mail sent with that letter Mr Killmister told Mrs Wolloms that there was a 'pack of documents in support of this, which exceeds 300 pages'. He asked Mrs Wolloms to arrange to collect those documents. We infer that those were documents taken into account by Mr Hare and Mr Killmister in deciding that Mrs Wolloms had performed her job improperly. These were documents that had not been provided to Mrs Wolloms before the decision to dismiss her was taken.

91. On 24th April 2019 Mrs Wolloms appealed the decision to dismiss her and asked for copies of all the documents that had been referred to.

92. On 1st May the company's representative sent Mrs Wolloms' representative those documents purporting to support the allegations that Mr Hare and Mr Killmister had upheld against Mrs Wolloms. The next day Mrs Wolloms sent in written representations for the appeal hearing. By this time Mrs Wolloms had already started these tribunal proceedings.

93. The company's representative arranged for the appeal to be heard by somebody independent of the company, a Mr Purvis who is an accountant. In the course of arranging the appeal hearing date Mr Killmister said that Mr Purvis had the power to overturn any decisions that had been made in the disciplinary process.

94. At the end of July 2019 Mr Hare e-mailed Mr Purvis, attaching documents for the appeal hearing. Those documents included a version of the disciplinary outcome letter that had not been seen by Mrs Wolloms before. It had been edited to include additional comments made by Mr Killmister. The respondents did not tell Mr Purvis that this was not the letter that had been sent to Mrs Wolloms. One of the changes was to accuse Mrs Wolloms of a 'potentially very serious breach of trust' as she had *'patently entered the office building and access to physical client files. No other member of staff has seen her in the office during normal hours. That she has done this in a clandestine manner is evidence in itself that she knows it would not have been permitted.'* Although the respondents did not tell Mr Purvis that this was not the version of the letter sent to Mrs Wolloms, they did send a copy of that appeal pack to Mrs Wolloms and she objected to the amended letter and drew Mr Purvis' attention to the fact that it had been altered.

Mrs Wolloms also sent to Mr Purvis the grounds of appeal, which the respondents had not sent to him.

95. The respondents also sent to Mr Purvis a document containing further commentary by Mr Killmister. The contents of that document appear to be an attempt by Mr Killmister to influence the outcome of the appeal.

96. We note that that additional document includes comments on the meeting on 7th January 2019. Commenting on that meeting Mr Killmister said:

> *'7. Mr Wolloms condition was discussed in great detail, as it had been during the several telephone conversations (approximately once weekly) between Mrs Wolloms and Mr Killmister during her absence. Mr Killmister made no assumptions at all about Mr Wolloms condition. Mr Killmister also has heart failure and has been learning to live with it since early 2018. He is therefore acutely personally aware that it is a chronic, incurable, life-long and life-limiting condition, which is inherently unstable, even more so when you have other chronic conditions as well. The only assumption that was made is that, going forward, Mrs Wolloms would need time off to attend hospital and other medical appointments with her husband, and to look after him during any periods of severe instability in the heart failure itself, or any other bouts of illness, as she always has done in the past in respect of his other conditions before his heart failure was diagnosed. Mrs Wolloms agreed that that was the case, feeling that she has to attend such appointments with him, because since his stroke(s) he has problems articulating and verbalising his thoughts, and also forgets points or issues he wants to ask his medical professionals about. On that point, Mr Killmister confirmed to Mrs Wolloms that her annual leave had been used up in the two months already granted, as previously discussed during telephone conversations, and then henceforth any further time off of this nature would have to be unpaid. She replied 'that's fair enough.'*
> *8. Mr Killmister stated several times that the purpose of the meeting was to discuss how to manage Mrs Wolloms return to work due to her potential need for unplanned/short notice periods of time off due to Mr Wolloms long-term illnesses and their ongoing treatment.*
> *9. With regard to the discussion about the role being internal only, this was in the context that the possibility of frequent unplanned absence meant that working on client-related work was not possible because of lack of continuity, the main element of that work being the provision of bookkeeping/finance department service… Hence, her work may necessarily be the company's internal finance function only. Mrs Wolloms asked how much time that would take, and Mr Killmister said that we had not worked that out because this meeting was to discuss how to manage her return given her (agreed by her) probable future needs for periods of time off to support her husband. … At this point, Mrs Wolloms said 'Is redundancy on the table then?' She then went on to say that she knew her rights and knew how much she would be due. We would aver that her statements show that she came to that meeting fully intending to create redundancy as an issue, fully armed with her own calculation of what she thought she'd be able to get.'*

97. The appeal hearing took place on 6th August 2019.

98. Mr Purvis subsequently set out his conclusions in writing. He concluded that the decision to dismiss Mrs Wolloms was 'unjustified and should be revoked.' He said that Mrs Wolloms should be reinstated by the company.

99. Mr Purvis set out his reasons for reaching that conclusion. In some respects the letter is a little ambiguous. However, it is clear, and would have been clear to the respondents, that, with regard to some of the allegations, Mr Purvis did not think there had been wrong-doing or mistakes made by Mrs Wolloms at all. We note in particular the following.

    99.1 With regard to the sponsorship payment, Mr Purvis concluded that the cheque had not actually been received from the client by CI Accountancy until several months after the cheque had been written and sent to the client. Mr Purvis clearly concluded that, by the time the cheque was received by Mrs Wolloms, the sponsorship money had been chased and collected by bank transfer. It is obvious that Mr Purvis had concluded that Mrs Wolloms had done nothing wrong by not banking that cheque and that, therefore, the allegation of misconduct that had been put to Mrs Wolloms was not made out. Mr Purvis did note that it 'would have been much better' if Mrs Wolloms had made a record, at the time, of why the cheque had not been banked and had filed the cheque with that record rather than leaving it on her desk. However, he concluded that that, in itself, was a 'relatively minor matter'.

    100. With regard to the practicing certificate, Mr Purvis said there was insufficient evidence to conclude that Mrs Wolloms was responsible for the non-completion of the practising certificate.

    101. With regards to the HSBC account, it is apparent that Mr Purvis did not think Mrs Wolloms was at fault in any way.

    102. With regard to the Client W accounts it is also apparent that Mr Purvis did not think that there was any wrong-doing by Mrs Wolloms.

103. Other findings made by Mr Purvis are somewhat ambiguous. For example, it is not clear whether he considered there was any wrong-doing by Mrs Wolloms or not in relation to the first respondent's own accounts. In any event, what is clear is that he thought that if Mrs Wolloms had made mistakes in this regard then the directors (Mr Killmister and Mr Hare) were at fault for not properly supervising her.

104. Mr Hare and Mr Killmister declined to reinstate Mrs Wolloms despite Mr Purvis' assessment.

105. We return now to the meeting of 7th January 2019 and our findings as to the purpose of that meeting and what was said in it.

106. The accounts of the meeting of 7th January contained in the witness statements of Mr Hare and Mr Killmister are identical. We are of the view that they are not a reliable guide to what was said at that meeting. That is not to say we accept Mrs Wolloms' witness evidence as to what was said uncritically. We remind ourselves of the guidance in the case of *Gestmin* referred to above. Documentary records are often better evidence of what was said in meetings than the recollection of individuals. In this case, we have been referred to a number of documents that may assist in deciding what was said in the 7th January meeting and the purpose of that meeting. They include, but are not limited to, the following.

    106.1 After Mrs Wolloms had given evidence at this hearing, the respondents disclosed, for the first time, a document which was said to be a copy of a handwritten note taken by Mr Hare in the meeting of 7th January.
    106.2 There is the typed note at [182 to 183] which Mr Hare says he prepared from that handwritten note and which was sent to Mrs Wolloms on 22nd January 2019.
    106.3 There are various items of correspondence referring to what was said in the meeting.

107. Mr Killmister and Mr Hare said that the purpose of this meeting was to find out what Mrs Wolloms needed on her return to work and to inform her of what had happened in her absence. However, there is other evidence tending to show that that the meeting was arranged because Mr Killmister had already formed the view that Mrs Wolloms would need, or wish, to take time off in the future and had decided Mrs Wolloms could not do the job she had been doing before. We note the following in particular.
    107.1 This was one of the busiest times of the year for the respondent. In ordinary circumstances one would have expected the respondents to welcome Mrs Wolloms back. However, when Mrs Wolloms said she would be returning to work on the 7th January, Mr Killmister told her to come into a meeting on that date and that she could then return to work properly the following day or the day after. That indicates that he had decided that Mrs Wolloms would not be returning to her duties on 7th January. Unless Mr Killmister and Mr Hare had already decided there was to be some change to Mrs Wolloms' duties it is difficult to see why Mrs Wolloms could not simply return to work on 7th January.
    107.2 The e-mail Mr Killmister sent to Mr Hare on 4th January 2019 saying 'Jackie 10.30 Monday – she was fine' could be interpreted as suggesting that Mr Killmister and Mr Hare anticipated that Mrs Wolloms may not like what she was going to hear.
    107.3 Mr Hare's notes of the meeting indicate that they did not simply find out what Mrs Wolloms needed on her return to work and inform her of what had happened in her absence. Indeed, none of those present at the meeting say that is all that happened at the meeting.
    107.4 The respondents' representative acknowledged, on 6th March, that, before the meeting, Mr Killmister had made assumptions about Mr Wolloms' health (based on his own experience of heart failure).
    107.5 In the document Mr Killmister prepared for Mr Purvis containing comments about the meeting on 7th January 2019 Mr Killmister acknowledged that he had assumed that 'Mrs Wolloms would need time off to attend hospital and

other medical appointments with her husband, and to look after him during any periods of severe instability in the heart failure itself, or any other bouts of illness', and said the purpose of the meeting was to discuss how to manage Mrs Wolloms' return because the possibility of frequent unplanned absence meant that working on client-related work was not possible.

107.6 Mr Hare's typed note of the meeting that he prepared at some point between 7th and 22nd January 2019 prefaces his account of what was said in the meeting with comments in which he describes Mr Killmister as being intimately acquainted with the effects, instability and prognosis of heart failure and refers to it as a permanent chronic condition. Those comments read as if intended as a justification for, or at least an explanation of, what was said at the meeting.

108. Looking at all the evidence in the round we find it more likely than not that what happened was as follows.

108.1 Before the meeting, Mr Killmister had already formed the view that Mrs Wolloms would need, or wish, to take time off in the future because of her husband's heart condition. Mr Killmister assumed Mrs Wolloms' absences would be frequent and either unplanned or on short notice and that, therefore, the first respondent's business and its clients would be adversely affected. Mr Killmister had decided that, therefore, Mrs Wolloms would no longer do the job she had been doing before. When Mrs Wolloms said she was returning to work, Mr Killmister and Mr Hare decided to meet with her to tell her this. Mr Killmister and Mr Hare envisaged that either Mrs Wolloms' employment would end completely or her client duties would be removed, with a corresponding reduction in her working hours and pay.

108.2 Mr Killmister began the meeting by identifying a number of issues with Mrs Wolloms returning to the finance manager role. Those issues included Mr Killmister saying Mrs Wolloms would need time off because of her husband's illness. He made it clear he thought that it could create difficulties with client work. He said this because he assumed Mrs Wolloms would need to take time off or would choose to take time off not just to accompany Mr Wolloms to medical appointments but also to look after him. Mr Killmister said that for those reasons Mrs Wolloms could not be engaged with client work in the future.

108.3 Mr Killmister also referred to Mrs Wolloms' client work having been reallocated to others in her absence and said it would not be practical to return it to her because of her future absences. In addition, he suggested that things had already been getting on top of Mrs Wolloms before her absence.

108.4 Mr Killmister acknowledged that Mrs Wolloms had the right to go back to her full-time job as a finance manager but said she could not do client work. Mrs Wolloms replied that without the client work it would not be a full-time job. Mr Killmister referred to Mrs Wollomss' work needing to be reviewed at some point in the future. Mrs Wolloms said either 'are you saying I'm redundant' or 'are you talking about redundancy' or words to that effect. Mr Killmister said 'I didn't say that' and said something along the lines that at some point the role may need to go down to part-time. He also said that there were a number of options. Mrs Wolloms asked what the hours would be if it went to part-time. Mr Killmister was unable to say.

108.5 Mrs Wolloms then became upset in the meeting and then the meeting ended with Mr Killmister and/or Mr Hare saying they would get in touch with her about the options.

109. One of Mrs Wolloms' allegations in these proceedings is that, on 7th January, Mr Killmister (or Mr Hare) told her that there was no longer a full-time position for her. We have found that that is not what Mr Killmister (or Mr Hare) said. Our findings of fact as to what they said are as above.

110. It is alleged by the respondents that during this meeting Mrs Wolloms said she had calculated her redundancy entitlement. That is not reflected in the handwritten note that Mr Hare said he wrote during the meeting. It is suggested that Mrs Wolloms went into this meeting hoping to come out of it with a redundancy payment or somehow engineer a redundancy situation. We reject that hypothesis. It is, in our view, highly unlikely that Mrs Wolloms had anticipated the turn the conversation would take. She had told Mr Killmister that she wanted to go back to work. If Mrs Wolloms had been trying to engineer a redundancy payment it is difficult to see why she would become so upset in the meeting when the discussion turned towards that issue.

111. Mr Killmister and Mr Hare say that, at this meeting, Mrs Wolloms agreed that she would need time off work in the future to look after her husband. For her part, Mrs Wolloms denies agreeing that she would need time off work in the future and we note that her legal advisers took issue with that suggestion after they were sent the typed note purporting to set out what was said at the meeting. The respondents refer to Mr Hare's typed note purporting to set out what was said at the meeting and to the handwritten note Mr Hare said he made at the meeting, and which was disclosed during this hearing. At the very end of the handwritten note is recorded

'JW accepted – absences
- couldn't engage in client work
- internal work not enough.'

112. We do not consider Mr Hare's records to be reliable evidence of what Mrs Wolloms said in the meeting. As recorded above, we find that, ahead of this meeting, Mr Killmister had already formed the view that Mrs Wolloms would need, or wish, to take time off in the future because of her husband's heart condition and had decided that, therefore, Mrs Wolloms could not do the job she had been doing before. That is effectively what Mr Killmister told Mrs Wolloms. He did not seek to discuss with Mrs Wolloms whether she thought she would need time off and, if so, for what purpose, for how long, how often and with what notice. Had he done so, Mr Hare's handwritten note about what 'JW accepted' is likely to have appeared not at the very end of the note but towards the beginning, where Mr Hare purports to record what Mr Killmister said to Mrs Wolloms about her need for time off and its effect on her ability to do her job. Instead, the note about what 'Mrs Wolloms accepted' appears to have been added as an afterthought, rather than contemporaneously. Looking at the evidence in the round, we find that Mrs Wolloms did not accept that she would need time off work in the future to care for her husband or that she could not engage in client work.

113. Mrs Wolloms alleges that, after the meeting, Mr Hare told her they had not expected her to come back. Mr Hare denies saying that. He admits he showed her out of the office but does not admit that he made that comment. Looking at the evidence in a round, we prefer Mrs Wolloms' evidence. We find that Mr Hare told Mrs Wolloms they had not expected her to return to work. We find the comment attributed to Mr Hare is consistent with the way this meeting was approached. A decision had already been made that Mrs Wolloms should not do client work. Mr Killmister referred in the meeting to there being 'options'. Yet at the meeting no specific options were proposed. Had Mr Killmister and Mr Hare been expecting Mrs Wolloms to return to work it is likely that they would have discussed the options ahead of the meeting and told Mrs Wolloms what those options were at the meeting. That that did not happen suggests to us that Mr Killmister and Mr Hare had not been expecting Mrs Wolloms to return to work.

114. One of Mrs Wolloms' allegations in these proceedings is that she was not allowed to return to work on 7th January or thereafter. Our findings on that matter are as follows.

    114.1 It is apparent that Mrs Wolloms did return to work on the 7th, albeit that she did not return to doing her duties. At the meeting on the 7th January Mrs Wolloms became upset and it was suggested she take the rest of the day off. Mrs Wolloms did take the rest of the day off. There is no evidence that she told Mr Hare or Mr Killmister that she would rather stay at work on that day. Later that day Mr Hare sent Mrs Wolloms the e-mail saying Mrs Wolloms did not need to return to work that week. He did not tell Mrs Wolloms she must not return to work that week or that she was instructed not to return to work or not allowed to return to work. There is no evidence that Mrs Wolloms resisted the suggestion or countered it saying that, on the contrary, she did wish to return to work that week. Insofar as it concerns the week commencing 7th January, therefore, we find the allegation that the respondents did not allow Mrs Wolloms to return to work is not made out on the facts. Rather, the respondents gave Mrs Wolloms the option to not return to work and she took it. It may well be that if Mrs Wolloms had insisted on returning to work the respondents might have refused to permit her to do so. We do not know because that simply did not happen.

    114.2 As for the period after that first week it is evident that the respondents did not do anything to encourage Mrs Wolloms back to work. However, they stopped short of failing to allow her to return to work. From 14th January there is no evidence that Mrs Wolloms attempted to return to work. We find that the decision that Mrs Wolloms would not work was as much Mrs Wolloms' choice as the respondents'. There is no evidence she was told not to go into work at that point. She was never suspended from work. We find there was simply a shared expectation that Mrs Wolloms would not go into work.

    114.3 For those reasons, the factual allegation that the respondents did not allow Mrs Wolloms to return to work is not made out.

Legal Framework

Equality Act 2010

115. It is unlawful for an employer to harass an employee: Equality Act 2010 section 40.

116. It is unlawful for an employer to discriminate against or victimise an employee by dismissing them or by subjecting them to any other detriment: section 39(1)-(4) of the Equality Act 2010.

117. Conduct which amounts to harassment, as defined in section 26 of the Equality Act, does not constitute a detriment for the purposes of section 39: Equality Act 2010 s212(1). Subject to that proviso, for the purposes of section 39, a detriment exists if a reasonable worker (in the position of the employee) would or might take the view that the treatment accorded to them had, in all the circumstances, been to his or her detriment: Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337. As May LJ put it in De Souza v Automobile Association [1986] ICR 514, 522G, the tribunal must find that, by reason of the act or acts complained of, a reasonable worker would or might take the view that they had thereby been disadvantaged in the circumstances in which they had thereafter to work. However, as was made clear in Shamoon, an 'unjustified sense of grievance cannot amount to 'detriment'.

118. The Equality and Human Rights Commission has issued a Code of Practice containing guidance as to the application of the Equality Act 2010. By virtue of section 15(4) of the Equality Act 2006, the code should 'be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant'.

119. Section 109 of the Equality Act 2010 provides that the acts of the employer's other employees are treated as acts of the employer provided they are done in the course of employment. Similarly, an employer is responsible for acts that are done for them, with their authority, by an agent. This is the case even if the employer neither knows nor approves of the acts in question.

Harassment

120. Under section 26 of the Equality Act 2010, unlawful harassment occurs where the following conditions are satisfied:
    120.1 A engages in unwanted conduct related to a protected characteristic;
    120.2 that conduct has the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

121. The protected characteristics include disability (as defined in section 6 of the 2010 Act) and age.

122. The conduct in question must be related to a protected characteristic. This covers cases where the acts complained of are associated with a protected characteristic as well as those where they are caused by it: Unite the Union v Nailard [2018]

EWCA Civ 1203, [2018] IRLR 730. The employee need not possess the protected characteristic themselves.

123. In deciding whether conduct has the effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee, each of the following must be taken into account—
(a) the perception of the employee;
(b) the other circumstances of the case; and
(c) whether it is reasonable for the conduct to have that effect.

124. Where a claimant contends that the employer's conduct has had the effect of creating the proscribed environment, they must actually have felt or perceived that their dignity was violated or an intimidating, hostile, degrading, humiliating or offensive environment was created for them: Richmond Pharmacology v Dhaliwal [2009] ICR 724, EAT. A claim of harassment will not be made out if it is not reasonable for the conduct to have the effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee: Ahmed v Cardinal Hume Academies (29 March 2019, unreported).

125. Whilst a one-off incident may amount to harassment, a Tribunal must bear in mind when applying the test that an 'environment' is a state of affairs. It may be created by an incident, but the effects are of longer duration: Weeks v Newham College of Further Education UKEAT/0630/11, [2012] EqLR 788, EAT.

126. The conduct complained of as an act of harassment may be a dismissal: Urso v Department for Work and Pensions [2017] IRLR 304, EAT. That is because section 40 prohibits harassment 'in relation to employment' which includes a person 'who is an employee' and harassment is prevented by ss.40 and 108 at every stage of employment (before, during and after employment).

Direct discrimination

127. Section 13 of the Equality Act 2010 provides that it is direct discrimination for someone to treat an employee less favourably because of a protected characteristic than they treat or would treat others.

128. The protected characteristics include disability and age.

129. As with harassment, the employee need not possess the relevant protected characteristic. In this case the claimant contends that the respondents treated her less favourably than they would have treated others because of her husband's disability. If that was the case, that would be a case of direct disability discrimination.

130. In determining whether there is direct discrimination it is necessary to compare like with like. This is provided for by section 23 of the Act, which says that in a comparison for the purposes of section 13 there must be no material difference between the circumstances relating to each case. Section 23 states that the

circumstances relating to a case include a person's abilities if the protected characteristic is disability.

131. To establish a claim of direct discrimination, the less favourable treatment must have been because of the protected characteristic itself, not something occurring in consequence of it: Ahmed v The Cardinal Hume Academies UKEAT/0196/18 (29 March 2019, unreported). The fact that someone's protected characteristic is a part of the circumstances in which the treatment complained of occurred, or of the sequence of events leading up to it, does not necessarily mean that it formed part of the ground, or reason, for that treatment: Amnesty International v Ahmed [2009] ICR 1450.

132. An employee who is treated unfavourably because of something arising in consequence of a disability of theirs but not because of the disability itself may have a claim under section 15 of the Equality Act 2010. However, the concept of associative discrimination does not extend to claims under section 15. In other words, if an employee is treated unfavourably because of something arising in consequence of someone else's disability (rather than directly because of that person's disability), the claim of discrimination will fail. The employer's actions will not constitute direct discrimination within section 13 and no claim is available under section 15.

133. The difference between less favourable treatment because of the protected characteristic of disability and less favourable treatment because of something arising in consequence of a disability was considered in the case of Chief Constable of Norfolk v Coffey [2019] EWCA Civ 1061 [2019] IRLR 805. That case is authority for the following principles:

    133.1 In the typical case where a person is dismissed or suffers any other detriment because they are unable to meet a performance standard in consequence of a disability, they will have no claim of direct discrimination.
    133.2 Similarly, where a decision is motivated not by the fact of someone's disability but by the actual things that the employer believes the employee cannot do in consequence of it, that will usually not be a case of direct discrimination.
    133.3 However, detrimental treatment motivated by an employer's concern about the ability of an employee to do the job might constitute direct discrimination if it is significantly influenced by a stereotypical assumption about the effects of the disability.
    133.4 The correct comparison is with how a person about whom no such assumption was made would have been treated.

134. The Court of Appeal in Coffey restated the established principle that the phrase 'because of' covers cases where the protected characteristic is a subconscious, part of the mental processes, or motivation, of the putative discriminator in deciding to do the acts complained of. The protected characteristic in question need not have been the sole reason for that conduct, Owen and Briggs v James [1982] IRLR 502, CA. The question is whether it was an 'effective cause' or an 'important factor': O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School [1996] IRLR 372, [1997] ICR 33 O'Donoghue v

Redcar and Cleveland Borough Council [2001] EWCA Civ 701, [2001] IRLR 615; Nagarajan v London Regional Transport [2000] 1 AC 501.

135. If an employer treats an employee less favourably because of age, that treatment will not be direct discrimination if the employer can show the treatment was a proportionate means of achieving a legitimate aim. There is no scope to justify direct disability discrimination in this way.

Victimisation

136. Section 27 of the Equality Act 2010 provides as follows:

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

(2) Each of the following is a protected act—
(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act.….'

Burden of proof

137. The burden of proof in relation to complaints under the Equality Act 2010 is dealt with in section 136, which sets out a two-stage process.
137.1 Firstly, the Tribunal must consider whether there are facts from which the Tribunal could conclude, in the absence of any other explanation, that the respondent has committed an unlawful act of discrimination against the claimant. If the Tribunal could not reach such a conclusion on the facts as found, the claim must fail.
137.2 Where the Tribunal could conclude that the respondent has committed an unlawful act of discrimination against the claimant, it is then for the respondent to prove that it did not commit or, as the case may be, is not to be treated as having committed, that act.

138. The Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142, [2005] IRLR 258 made the following points in relation to the application of the burden of proof:
138.1 It is important to bear in mind in deciding whether the claimant has proved facts from which the Tribunal could conclude that there has been discrimination that it is unusual to find direct evidence of … discrimination: few employers would be prepared to admit such discrimination, even to themselves and in some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in.
138.2 In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will

therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

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

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

138.5 Where the claimant has proved facts from which the Tribunal could conclude that the respondent has treated the claimant less favourably because of a protected characteristic, it is then for the respondent to prove that it did not commit that act or, as the case may be, is not to be treated as having committed that act. That requires a tribunal to assess not merely whether the employer has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that the protected characteristic was not a ground for the treatment in question.

138.6 Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with a code of practice.

Detriment for taking leave for dependants

139. Section 57A of the Employment Rights Act 1996 gives employees the right to be permitted to take such time off as is reasonable in order to take action that is necessary to provide assistance on an occasion when a dependant falls ill.

140. Section 47C of the Employment Rights Act 1996, read with regulation 19 of the Maternity and Parental Leave, etc Regulations 1999, gives employees the right not to be subjected to detriment for by any act, or any deliberate failure to act, by their employer that is done because the employee took or sought to take time off under section 57A.

141. The concept of detriment has the same meaning as in discrimination cases: Jesudason v Alder Hay Children's NHS Foundation Trust [2020] EWCA Civ 73, [2020] ICR 1226.

142. In Manchester NHS Trust v Fecitt [2011] EWCA 1190; [2012] ICR 372, the Court of Appeal held that the test for detriments short of a dismissal is whether the prescribed reason materially influences (in the sense of being more than a trivial influence) the employer's treatment of the employee.

143. The burden of showing the reason is on the employer: section ERA 1996 s 48(2). If the Tribunal rejects the employer's explanation for the detrimental treatment under consideration, it may draw an adverse inference and find liability but is not legally bound to do so: see Serco Ltd v Dahou [2015] IRLR 30, EAT and [2017]

IRLR 81, CA. In the Court of Appeal, Laws LJ said: 'As regards dismissal cases, this court has held (Kuzel, paragraph 59) that an employer's failure to show what the reason for the dismissal was does not entail the conclusion that the reason was as asserted by the employee. As a proposition of logic, this applies no less to detriment cases. Simler J did not hold that it would never follow from a respondent's failure to show his reasons that the employee's case was right.'

144. In Martin v Devonshires Solicitors [2011] ICR 352 the EAT held that an employer will not be liable if it can show that the reason for its act or omission was not the protected act as such, but rather one or more features and/or consequences of it which were properly and genuinely separable from it.

145. The protection against detriment in section 47C does not apply to dismissal within the meaning of Part X of the 1996 Act: regulation 19(4) of the Maternity and Parental Leave, etc Regulations 1999. A dismissal for taking leave under s57A may, however, be an unfair dismissal, as explained below.

Unfair dismissal

146. An employee has the right under section 94 of the Employment Rights Act 1996 not to be unfairly dismissed.

Automatic unfair dismissal – section 99

147. Section 99 of the Employment Rights Act 1996, read with regulation 20 of the Maternity and Parental Leave, etc Regulations 1999 (MAPLE) , provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason or principal reason for the dismissal is connected with the fact that the employee took or sought to take time off under section 57A of the 1996 Act.

Ordinary unfair dismissal

148. When a complaint of unfair dismissal is made, it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within section 98(2) of the 1996 Act or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held: ERA section 98(1).

149. The reference to the reason, in section 98(1)(a), is not a reference to the category within section 98(2) into which the reason might fall. It is a reference to the set of facts known to the employer, or beliefs held by the employer, which cause it to dismiss the employee: Abernethy v Mott, Hay and Anderson [1974] ICR 323, CA. In Abernethy the Court of Appeal noted that: 'If at the time of his dismissal the employer gives a reason for it, that is no doubt evidence, at any rate as against him, as to the real reason, but it does not necessarily constitute the real reason'.

150. Having identified the reason (or, if more than one, the principal reason) for the dismissal, it is then necessary to determine whether that reason falls within subsection (2) or is some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. In this

case the respondent contends that the reason for the claimant's dismissal was a reason relating to the conduct of the claimant, which is a potentially fair reason for dismissal within section 98(2)(b).

151. Where an employer alleges that its reason for dismissing the claimant was related to his conduct the employer most show:
    151.1 that, at the time of dismissal, it genuinely believed the claimant had committed the conduct in question; and
    151.2 that this was the reason (or, if there was more than one reason, the principal reason) for dismissing the claimant.

152. The test is not whether the Tribunal believes the claimant committed the conduct in question but whether the employer believed the employee had done so.

153. If the respondent shows that it dismissed the claimant for a potentially fair reason the Tribunal must then decide if the employer acted reasonably in dismissing the employee for that reason applying the test in section 98(4) of the Employment Rights Act 1996.

154. Section 98(4) of ERA 1996 provides that: '… the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case.'

155. In assessing reasonableness, the Tribunal must not substitute its view for that of the employer: the test is an objective one and the Tribunal must not fall into the substitution mindset warned against by Mummery LJ in London Ambulance Service NHS Trust v Small [2009] EWCA Civ 220, [2009] IRLR 563. The objective approach requires the Tribunal to decide whether the employer's actions fell within the range of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted (Iceland Frozen Foods Ltd v Jones [1982] IRLR 439). This 'range of reasonable responses' test applies just as much to the procedure by which the decision to dismiss is reached as it does to the decision itself (Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23).

156. The Employment Appeal Tribunal (EAT) set out guidelines as to how the reasonableness test should be applied to cases of alleged misconduct in the case of British Home Stores Ltd v Burchell [1980] ICR 303. The EAT stated there that what the Tribunal should decide is whether the employer had reasonable grounds for believing the claimant had committed the misconduct alleged and had carried out as much investigation into the matter as was reasonable in all the circumstances of the case.

157. In that case the EAT also made clear that, in deciding whether an employer had reasonable grounds for believing that the employee had committed the misconduct alleged, the test is not whether the material on which the employer based its belief was such that, objectively considered, it could lead to the

employer being 'sure' of the employee's guilt. What is needed is a reasonable suspicion amounting to a belief and that the employer had in his or her mind reasonable grounds upon which to sustain that belief. If the employer's decision was reached his or her conclusion of guilt on the balance of probabilities that will be reasonable.

158. The concept of a reasonable investigation can encompass a number of aspects, including: making proper enquiries to determine the facts; informing the employee of the basis of the problem; giving the employee an opportunity to make representations on allegations made against them and put their case in response; and allowing a right of appeal.

159. The Tribunal must take into account relevant provisions of the In ACAS Code of Practice on Disciplinary and Grievance Procedures when assessing the reasonableness of a dismissal on the grounds of conduct. We expand on this below.

160. Even if procedural safeguards are not strictly observed, the dismissal may be fair. This will be the case where the specific procedural defect is not intrinsically unfair and the procedures overall are fair (Fuller v Lloyd's Bank [1991] IRLR 336, EAT). Furthermore, defects in the initial disciplinary hearing may be remedied on appeal if, in all the circumstances, the later stages of a procedure are sufficient to cure any earlier unfairness (Taylor v OCS Group Ltd [2006] IRLR 613). The Court of Appeal noted that the Tribunal must 'determine whether, due to the fairness or unfairness of the procedures adopted, the thoroughness or lack of it of the process and the open-mindedness (or not) of the decision-maker, the overall process was fair, notwithstanding any deficiencies at the early stage.'

161. In applying section 98(4) the Tribunal must also ask itself whether dismissal was a fair sanction for the employer to apply in the circumstances ie one falling within the range of reasonable responses open to a reasonable employer. As noted above, it is not for the Tribunal to substitute its view for that of the employer.

162. If a claim of unfair dismissal is well founded, the claimant may be awarded compensation under section 112(4) of the Employment Rights Act 1996. Such compensation comprises a basic award and a compensatory award, calculated in accordance with sections 119 to 126 of the Act.

163. Section 123(1) ERA provides that, subject to certain other provisions, the compensatory award shall be such amount as is just and equitable having regard to the loss sustained by the claimant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

164. The compensatory award may be reduced or limited to reflect the chance that the claimant would have been fairly dismissed in any event had a fair procedure been followed: Polkey v AE Dayton Services Ltd [1987] ICR 142. As the Employment Appeal Tribunal said in Software 2000 Ltd v Andrews [2007] IRLR 568 a degree of uncertainty is an inevitable feature of this exercise and the mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence.

165. Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the claimant, it must reduce the compensatory award by such proportion as it considers just and equitable having regard to that finding (section 123(6) of the 1996 Act). Similarly, where the Tribunal considers that any conduct of the claimant prior to dismissal was such that it would be just and equitable to reduce the amount of the basic award to any extent, it must reduce the amount accordingly (section 122(2) of the 1996 Act). The contributory conduct must be in some way 'culpable or blameworthy': Bell v The Governing Body of Grampian Primary School UKEAT/0142/07.

Wrongful dismissal

166. A dismissal without notice where summary dismissal is not justifiable will be a wrongful dismissal and give rise to an action for breach of contract.

167. An employer is entitled to dismiss an employee without notice for gross misconduct. In this context, 'gross misconduct' means conduct that constitutes a repudiatory breach of contract.

168. The question here is not whether the respondent believed the claimant to be guilty of gross misconduct. It is for the Tribunal itself to determine (a) whether the claimant actually committed the conduct alleged to constitute the breach; and (b) if so, whether that conduct did constitute a repudiatory breach of contract.

169. The concept of gross misconduct was considered in the case of Sandwell & West Birmingham Hospitals NHS Trust v Westwood, where the EAT held that to amount to gross misconduct the employee's conduct must either be a deliberate and wilful contradiction of contractual terms or be conduct amounting to a very considerable degree of negligence. In Eminence Property Developments Ltd v Heaney [2010] EWCA Civ 1168 (at para 61) Etherton LJ said the legal test for whether there has been a repudiatory breach of contract is: '…whether, looking at all the circumstances objectively, that is from the perspective of the reasonable person in the position of the innocent party, the contract breaker has clearly shown an intention to abandon and altogether refuse to perform the contract.'

ACAS Code

170. The Tribunal must take into account any provision of the ACAS Code of Practice on Disciplinary and Grievance Procedures which appears to be relevant to any question arising in the proceedings: section 207(2) of the Trade Union and Labour Relations (Consolidation) Act 1992. The Code of Practice sets out guidance as to how disciplinary matters should be handled in the workplace. At paragraph 4, it outlines the elements of a fair process as follows:
    - 170.1 Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
    - 170.2 Employers and employees should act consistently.
    - 170.3 Employers should carry out any necessary investigations, to establish the facts of the case.

170.4 Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made. The Code later says 'It would normally be appropriate to provide copies of any written evidence…with the notification.'

170.5 Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.

170.6 Employers should allow an employee to appeal against any formal decision made.

171. If it appears to the Tribunal that an employer or an employee has unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures the tribunal may increase or decrease certain awards by up to 25% if it considers it just and equitable in all the circumstances to do so (section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992).

Conclusions

Complaint about informing the Claimant on 7 January 2019 that there was no longer a full-time position for her as she may need time off to care for her husband.

172. We have found as a fact that neither Mr Killmister nor Mr Hare told the claimant that there was no longer a full-time position for her. Therefore, this complaint is not well founded.

Complaint about not allowing the Claimant to return to work on 7 January 2019 or at any point after that date.

173. The factual allegation that the respondents did not allow Mrs Wolloms to return to work is not made out. Therefore, this complaint is not well founded.

Complaint about commencing disciplinary proceedings against the Claimant.
Complaint about dismissing the Claimant

174. Our conclusions on these complaints are linked and we take them together.

Complaints of disability related harassment and disability discrimination

175. The claimant's primary contention in these proceedings, in essence, is that Mr Killmister and Mr Hare dismissed her, not for misconduct, but because of assumptions about her future work attendance due to her husband's disability and that the disciplinary proceedings were a sham process designed to secure that predetermined outcome. The respondents deny that was the case.

176. Applying section 136 of the Equality Act 2010, we are satisfied that there are facts that, when taken as a whole, could lead the Tribunal to infer that:

176.1 the respondents took disciplinary action against Mrs Wolloms and dismissed her because of Mr Wolloms' disability, having made

assumptions about the way he would be affected by his heart condition and having assumed that Mrs Wolloms would need to time off work to look after him in future; and

176.2 they would not have taken disciplinary action against or dismissed someone else in comparable circumstances ie someone who was not assumed to be likely to need frequent absences from work that were unplanned or on short notice, who had a long period of service and was considered by the directors to be good at their job, but in respect of whose work matters had come to light that indicated they may have made mistakes or failed to carry out some aspects of their work to a satisfactory standard.

177. We say that for the following reasons in particular.

177.1 Mr Killmister and Mr Hare had not been expecting Mrs Wolloms to return to work after her husband was diagnosed with heart failure. When she said she was returning to work they decided Mrs Wolloms would no longer do the job she had been doing before because they did not want her to do client work (which made up just under a third of her workload). That decision was based on an assumption that Mrs Wolloms would take time off work in the future to care for Mr Wolloms, that her absences would be frequent and either unplanned or on short notice and that, therefore, the first respondent's business and its clients would be adversely affected.

177.2 The decision that Mrs Wolloms should no longer carry out client work was significantly influenced by assumptions not just about the likely effects on Mr Wolloms of his heart failure but also about how Mrs Wolloms would react to that heart failure. Mr Killmister assumed that Mrs Wolloms would need, or wish, to take time off in the future because of her husband's heart condition. He assumed Mrs Wolloms' absences would be frequent and either unplanned or on short notice.

177.3 In deciding that Mrs Wolloms would no longer do client work, Mr Killmister and Mr Hare envisaged that either Mrs Wolloms' employment would end completely or her client duties would be removed, with a corresponding reduction in her working hours and pay. The latter course would have required Mrs Wolloms' agreement. However, when Mr Killmister told Mrs Wolloms on 7th January 2019 that she could no longer do client work and therefore the job she had been doing before her absence, it was clear from her reaction that she was not amenable to a change in her duties or to a reduction in her hours.

177.4 Within just over two weeks of that meeting, the respondents had compiled a list of numerous allegations of misconduct and sent it to the claimant (or her representative). Those allegations later formed the basis of the disciplinary action taken against Mrs Wolloms.

177.5 Mrs Wolloms had very long service, a clean disciplinary record and good appraisals that had indicated no concerns about her performance. Mr Hare and Mr Killmister considered her to have been good at her job and

dependable. Despite this, Mr Hare and Mr Killmister chose to treat the matters raised as potential gross misconduct from the outset rather than investigating them as potential performance issues to be addressed under the company's capability procedure (we were not shown the company's capability procedure but infer that one exists as it is referred to in the company's disciplinary policy).

177.6 Although Mrs Wolloms' colleagues had raised matters that warranted further investigation, a number of facts suggest Mr Killmister and Mr Hare did not have a genuine interest in finding out whether or not Mrs Wolloms was at fault and, if so, to what extent that was due to misconduct as opposed to poor performance or lack of capability. Those facts suggest the outcome of the disciplinary process was predetermined. In particular, the 'investigation' into the allegations has the appearance of one designed to secure evidence of fault and bolster the case against Mrs Wolloms rather than being an impartial exploration of the facts, looking equally for evidence or information that might suggest that Mrs Wolloms was not at fault. The same bias appears in the way in which information from colleagues was used, and the assessment of the evidence by Mr Killmister and Mr Hare. For example:

177.6.1 With regard to the sponsorship cheque payable to the rugby club client, Ms Little told Mr Hare in January 2018 that she had looked into this and it appeared that the cheque had been held up in the post for months before it reached the client and that by the time it turned up the sponsor had already paid the sum due online. If that is what happened it would clearly explain why Mrs Wolloms had not banked the cheque when it had eventually been received at the first respondent company. However, Ms Little's explanation of what she believed had happened did not appear in the statement Mr Killmister prepared for Ms Little during the disciplinary process and nor was it referred to in the letter of dismissal.

177.6.2 Mr Hare and Mr Killmister were aware of the compliment slip that was clear evidence that the sponsorship cheque had not been received at the first respondent company from the rugby club client until after 5th August 2016, some five months after the sponsor had written the cheque. The respondents upheld the allegation that Mrs Wolloms had been at fault by failing to bank the cheque notwithstanding this evidence that tended to show the claimant was not at fault. Furthermore, the respondents did not make Mrs Wolloms aware of the compliment slip until after her dismissal.

177.6.3 Regarding the closure of the HSBC account of a client, on 20th February 2018 Ms Little provided Mr Killmister and Mr Hare with information suggesting that Ms Hornsby had been involved with this matter at the time and that Ms Hornsby recalled Mrs Wolloms saying something that indicated Mrs Wolloms might have believed she was not able to deal with the matter herself. Ms Little's account of what Ms Hornsby had told her did not appear in the statement Mr Killmister

prepared for Ms Little during the disciplinary process and nor was it referred to in the letter of dismissal. Mr Killmister and Mr Hare decided not to speak to Ms Hornsby about this.

177.6.4 The respondents provided the claimant with a large amount of evidence they relied on to support the dismissal only after they had dismissed her, depriving her of the opportunity to comment on that evidence before she was dismissed. This contravened that part of the ACAS Code of Practice on discipline and grievances that says employees should normally be provided with written evidence when they are notified that there is to be a disciplinary hearing.

177.6.5 Mr Killmister then tried to influence the outcome of the appeal against dismissal, including by accusing Mrs Wolloms of a 'potentially very serious breach of trust' by going into the respondent's office (at a time when the claimant was still employed and had not been suspended).

177.6.6 Mr Killmister and Mr Hare then refused to accept the conclusion of the appeal ie that Mrs Wolloms should be reinstated. On the face of it, this appears to have deprived the claimant of an effective right of appeal, contrary to the ACAS Code of Practice. We have the clear impression that Mr Killmister never had any intention of reinstating the claimant, whatever the outcome of the appeal, notwithstanding that he told Mrs Wolloms that Mr Purvis had the power to overturn decisions made in the disciplinary process.

178. The onus is therefore on the respondents to prove that Mr Wolloms' disability was not a reason for commencing disciplinary action against Mrs Wolloms and/or dismissing her.

179. The respondents' case is that:
179.1 the reason they commenced disciplinary action against the claimant is the fact that colleagues of the claimant had raised with Mr Killmister and/or Mr Hare a number of matters concerning the way the claimant had been doing her job that warranted further investigation; and
179.2 the reason they dismissed Mrs Wolloms is that, having investigated, they believed that the claimant had fallen so far short of the standards required of her in doing her job that this was a case of gross misconduct.

180. We have found that colleagues of the claimant did indeed bring to the attention of Mr Killmister and/or Mr Hare a number of matters concerning the way the claimant had been doing her job that warranted further investigation. Those matters included the cheques that were found in the papers on the claimant's desk as well as the closure of a client's bank account, concerns about the way the claimant had been dealing with VAT returns and some difficulties they had covering the claimant's work in her absence. That does not, however, account for the facts that suggest Mr Killmister and Mr Hare did not have a genuine interest in finding out whether or not Mrs Wolloms was at fault and, if so, to what extent that was due to misconduct as opposed to poor performance or lack of capability, and that

the outcome of the disciplinary process was predetermined. In this regard we note the following:

180.1 The respondents have not explained why the account Ms Little gave of what she believed had happened to the sponsorship cheque did not appear in the statement Mr Killmister prepared for Ms Little and was not referred to in the letter of dismissal. Nor have the respondents adequately explained why they discounted that explanation when considering the allegation against Mrs Wolloms, despite their knowledge of the compliment slip. Mr Killmister's attempt to suggest at this hearing that he did not know whether the compliment slip accompanied the cheque found on Mrs Wolloms' desk lacks credibility. The compliment slip clearly originated from the sponsor; it bore the words 'advertising board rent 2015/16 season', which was a reference to the sponsorship fee; it appeared to have been dated 5th August 2016 by the client's commercial manager, indicating that he had forwarded the compliment slip to the first respondent on or after that date (some five months after the date on the unbanked cheque); before then, the sponsor had paid the fee by bank transfer (as Mr Killmister was aware – he referred to it in the statement he prepared in the disciplinary proceedings); there was no evidence that the sponsor had ever sent the client a second cheque for the sponsorship to replace the first (March) cheque and the sponsorship fee was, we were told, a one-off payment for the year. The obvious inference is that the compliment slip accompanied the March 2016 cheque.

180.2 Regarding the decision not to speak to Ms Hornsby about the closure of the HSBC account, Mr Killmister said he did not interview her because she had nothing relevant to say. That is not correct; there are obviously questions that could have been put to her in light of what Ms Little had told the respondents about the matter.

180.3 As for the failure to provide the claimant with all evidence relied upon until after the claimant's dismissal, the respondents suggested they had simply been following advice from their representatives in sending Mrs Wolloms relevant documents only after her dismissal. We are not persuaded that was the case. It seems to us unlikely that those advising the respondents would have advised them to send the claimant evidence they considered relevant to the allegations of misconduct after but not before the disciplinary hearing. In the absence of evidence from Mr Killmister or Mr hare as to who it was who provided advice and what, specifically, they are alleged to have said that led Mr Killmister or Mr Hare to act as they did we are not persuaded that the respondents failed to provide Mrs Wolloms with relevant evidence because they had been advised that was the appropriate thing to do.

180.4 As for the respondents' refusal to accept the conclusion of the appeal that Mrs Wolloms should be reinstated, in his witness statements Mr Killmister gave a number of reasons for not reinstating Mrs Wolloms.

180.4.1 Firstly, he criticised the process followed by Mr Purvis', in particular for interviewing him and Mr Hare separately rather than together;

interviewing them before he met with Mrs Wolloms; and not giving him and Mr Hare an opportunity to challenge what Mrs Wolloms has said to him in the appeal hearing.

180.4.2 Secondly, he said there would be friction in the office if Mrs Wolloms was to return given that colleagues had given statements 'against her'.

180.4.3 Thirdly, he referred to the fact that Mrs Wolloms had already submitted a claim to the employment tribunal alleging 'unfair dismissal etc' as a reason for not allowing her back.

180.4.4 Finally, he maintained that the reasoning in his letter of dismissal was 'both correct and appropriate'. Mr Killmister said he 'completely rejects' Mr Purvis' appeal report and outcome, that he found it to be 'completely biased, not impartial and littered with mistakes and contradictions.'

180.5 Mr Killmister's allegation of bias appears to us to be unsustainable and based on nothing more than the fact that Mr Killmister did not want to reinstate Mrs Wolloms. Mr Killmister also suggested that the claimant could not return to work because it would be difficult for her and colleagues to work together. However, that is a matter that a good manager should be able to resolve. Mr Hare's evidence at this hearing was that it would not have been appropriate to reinstate Mrs Wolloms because mistakes she made with regard to VAT had the potential to damage the reputation of the respondent amongst its clients to such an extent that it could have led to the demise of the business. We find that implausible. Had the respondents genuinely thought Mrs Wolloms could bring down the business if she made errors in VAT returns they would surely have ensured her work was properly supervised.

180.6 Mr Gilbert submitted that the respondents and Mr Purvis merely took a different view of the gravity of Mrs Wolloms' misconduct and that was because Mr Purvis failed to consider the allegations collectively. The implicit premise of those submissions is that Mr Purvis agreed with the conclusions set out in the dismissal letter as to what Mrs Wolloms had done wrong. We do not accept that submission. As recorded in our findings of fact, it is clear, and would have been clear to the respondents, that Mr Purvis concluded that the allegations concerning the sponsorship cheque, the practicing certificate, the HSBC account and Client W were not made out.

181. With regard to the assumptions that, Mrs Wolloms would need, or wish, to take time off in the future because of her husband's heart condition, we note the following:

181.1 It was suggested by the respondents that Mrs Wolloms had agreed at the meeting on 7th January that she would need to take time off work in the future. We have found that she did not: that was an assumption made without consulting with Mrs Wolloms.

181.2 Mr Killmister referred in evidence to the fact that Mrs Wolloms had taken time off work in the past to accompany Mr Wolloms to medical appointments connected with other pre-existing conditions. However, it is

clear that the respondents' concerns were not that Mrs Wolloms would take occasional short periods of time off for pre-planned medical appointments given that such absences would be unlikely to disrupt client work. The respondents' concern was that the claimant would be absent from work for an extended period without being able to plan for the absence in advance so that others would have to cover her work in her absence. Mr Killmister assumed Mrs Wolloms would have such absences. He made that assumption without discussing with Mrs Wolloms whether she would, in fact, seek to take time off work if Mr Wolloms was in need of care or whether some other arrangements might be in place should that situation arise.

181.3 We consider Mr Killmister's assumption that Mrs Wolloms would take time off work to care for Mr Wolloms if he was in need of care was materially influenced by the fact that she had done just that when Mr Wolloms first became ill with heart failure. It does not follow, however, that Mrs Wolloms would do the same again in the future.

181.4 Mr Killmister made an assumption about the likelihood of Mr Wolloms needing someone to care for him in the future. His assumption was informed by his own first-hand experience of heart failure. The respondents have not, however, adduced any evidence that heart failure affects everyone, or even most people, in the same way. Mr Killmister simply assumed that Mr Wolloms' experience of heart failure would be the same as his own.

181.5 Bearing in mind the extent to which the respondents were influenced by assumptions, they have not persuaded us that the reason they treated Mrs Wolloms as they did was because of something that occurred in consequence of Mr Wolloms' disability (such as if Mrs Wolloms had been incapable of doing her job, or aspects of it, to the required standard due to Mr Wolloms' heart condition) as opposed to being treatment that was done directly because of the disability (in this case Mr Wolloms' heart condition).

182. Taking all the relevant circumstances into account, the respondents have not proved that Mr Wolloms' disability was not a reason for commencing disciplinary action against Mrs Wolloms and/or dismissing her.

Commencing disciplinary action

Disability related harassment

183. It follows from the above that commencing disciplinary action was conduct related to disability. It was clearly unwanted conduct from the claimant's perspective.

184. We find that commencing disciplinary action against Mrs Wolloms had the effect of creating a hostile, degrading and humiliating environment for her taking into account the context in which it occurred. The following facts lead us to that conclusion.

184.1 Mrs Wolloms had tried to come back to work yet the respondents insisted on having a meeting with her first. That meeting was clearly about Mrs Wolloms' husband and assumptions that had been made by Mr Killmister.

There was no plan at the meeting as to how Mrs Wolloms was going to return to work and she was left with the impression that there was no job for her to go back to although that was not specifically said. The discussion in which Mr Killmister suggested that she may not be able to go back to her job came out of the blue.

184.2 After the meeting Mrs Wolloms was not invited back to work. No attempt was made to ask her questions about the matters of concern that were later raised in the disciplinary proceedings in order to clear up any confusion that had arisen, or lack of clarity on the files; rather, the respondents went straight to taking disciplinary action.

184.3 It appeared to Mrs Wolloms that this action was being used as a mechanism to end her employment because of assumptions made about her needing time off work in the future due to her husband's heart condition. It was reasonable for her to perceive it that way.

184.4 Mrs Wolloms knew the respondents had involved her colleagues in the process. Given that the complaints involved wide-ranging criticisms of her work and professionalism she reasonably believed that the respondents were undermining her reputation amongst colleagues.

185. In light of that finding it is unnecessary for us to reach a concluded view as to whether Mr Killmister or Mr Hare's purpose in commencing disciplinary action was to create a hostile, degrading and humiliating environment for the claimant.

186. The claimant's complaint that all three respondents harassed her by commencing disciplinary action against her is well founded.

Direct disability discrimination

187. As the commencement of disciplinary action constituted harassment, as a matter of law it does not constitute a detriment: Equality Act s212. Therefore, the claim that this particular act was direct disability discrimination falls away.

Dismissal

Disability related harassment

188. It follows from our conclusions above that dismissing the claimant was conduct related to disability. It was clearly unwanted conduct from the claimant's perspective.

189. Mrs Wolloms reasonably believed her dismissal was not genuinely for misconduct reasons and that the entire disciplinary process was a mechanism to secure her dismissal because of assumptions made about her needing time off work in the future due to her husband's heart condition. She reasonably believed that, in purporting to dismiss her for gross misconduct the respondents were attacking her professionalism and her integrity and undermining her professional reputation. We find that the claimant perceived that her dismissal created a hostile, degrading

and humiliating environment for her. That perception was reasonable in the circumstances, particularly given that Mrs Wolloms reasonably believed that the respondents had used the allegations as a pretext for dismissing her because of her husband's disability, the hostile tone of the letter of dismissal, in which Mr Killmister and Mr Hare accused Mrs Wolloms of being disingenuous, suggested that everyone in the office had been adversely affected by the claimant's behaviour and accused Mrs Wolloms, without foundation, of a possible breach of trust.

190. We conclude that dismissing the claimant had the effect of creating a hostile, degrading and humiliating environment for the Claimant. In light of that finding it is unnecessary for us to reach a concluded view as to whether that was the purpose of the conduct.

191. The decision to dismiss Mrs Wolloms was taken by both Mr Killmister and Mr Hare. The first respondent is vicariously liable for the actions of Mr Killmister and Mr Hare.

192. The claimant's complaint that all three respondents harassed her by dismissing her is well founded.

Direct disability discrimination

193. We have concluded above that:
    193.1 the respondents dismissed Mrs Wolloms because of her husband's disability; and
    193.2 in doing so they treated Mrs Wolloms less favourably than they would have treated someone else in comparable circumstances ie someone who was not assumed to be likely to need frequent absences from work that were unplanned or on short notice.

194. It follows that the claimant's complaint that all three respondents subjected her to direct disability discrimination by dismissing her is well founded.

Complaints of age-related harassment and age discrimination

195. The claimant's case is that that we should infer from the fact that Mrs Wolloms was asked about retirement in 2009 and September 2018 that the directors wanted her to retire because they were considering selling the company and Mrs Wolloms was the highest paid employee after the directors and they wanted to make the balance sheet look healthier.

196. We have outlined above certain facts in relation to the disciplinary process that suggest the outcome of the disciplinary process was predetermined and that the 'investigation' into the allegations was one designed to secure evidence of fault and bolster the case against Mrs Wolloms rather than being an impartial exploration of the facts. Those facts caused us to doubt that the allegations of misconduct were the real reasons for dismissal. Nevertheless, we do not consider that that, together with the fact that some months earlier Mr Killmister asked about retirement in the context of a conversation about Mr Killmister's own retirement

plans is sufficient to shift the burden of disproving discrimination to the respondents. Indeed, Mrs Wolloms' own evidence was that when Mr Killmister first started asking about retirement it was because he was concerned about how long it would take to train somebody up to replace her.

197. The claimant has not proved facts from which we could conclude that the decision to commence disciplinary action and the decision to dismiss her were, in addition to being because of Mr Wolloms' disability, also related to age, still less that they were because of age.

198. Therefore the complaints of age-related harassment and direct age discrimination are not made out.

199. In any event, as the commencement of disciplinary action constituted harassment, as a matter of law that act does not constitute a detriment for the purpose of section 39: Equality Act s212. Therefore, the claim that commencing disciplinary action was direct age discrimination falls away.

Complaints of victimisation

200. Certain facts in relation to the disciplinary process suggest the outcome of the disciplinary process was predetermined and that the 'investigation' into the allegations was one designed to secure evidence of fault and bolster the case against Mrs Wolloms rather than being an impartial exploration of the facts. Those facts caused us to doubt that the allegations of misconduct were the real reasons for dismissal and the disciplinary process that preceded the dismissal. It is apparent, however, that the investigation into alleged misconduct was well under way by 5th February, when Mrs Wolloms' advisers wrote to the respondent making allegations of discrimination. We have found that, when Mrs Wolloms' advisers wrote their letter of 5th February Mrs Wolloms had already been told that there was a disciplinary investigation ongoing.

201. That being the case, the claimant has not proved facts from which we could conclude that the decision to commence disciplinary action and the decision to dismiss her were, in addition to being because of Mr Wolloms' disability, also because the claimant's legal advisers made allegations that the respondents had contravened the Equality Act 2010 in their letter of 5 February.

202. Therefore these complaints of victimisation are not made out.

203. In any event, as the commencement of disciplinary action constituted harassment, as a matter of law that act does not constitute a detriment for the purpose of section 39: Equality Act s212. Therefore, the claim that commencing disciplinary action was victimisation falls away.

Complaint of detriment contrary to s47C

204. This complaint concerns the decision to commence disciplinary action rather than the decision to dismiss the claimant (which is dealt with below under 'Unfair dismissal').

205. By commencing disciplinary action the first respondent clearly subjected Mrs Wolloms to a detriment.

206. The burden is on the first respondent to show the ground on which it took that action.

207. The respondents' case is that the reason they commenced disciplinary action against the claimant is the fact that colleagues of the claimant had raised with Mr Killmister and/or Mr Hare a number of matters concerning the way the claimant had been doing her job that warranted further investigation.

208. In relation to the complaint of disability-related harassment we set out above a number of facts that lead us to infer that Mr Killmister and Mr Hare commenced disciplinary action against the claimant because they assumed she would take time off work in the future to care for Mr Wolloms and, therefore, they decided she should no longer carry out her existing job. Those inferences apply equally to the complaint of detriment contrary to s47C. In our judgement:

    208.1 Mr Killmister and Mr Hare commenced disciplinary action against the claimant because they assumed she would take time off work in the future to care for Mr Wolloms; and
    208.2 that assumption was materially influenced by the fact that Mrs Wolloms had recently taken time off work under section 57A of the Employment Rights Act 1996 in order to look after her husband when he first became seriously ill with heart failure.

209. The complaint that the first respondent subjected the claimant to detriment contrary to s47C of the Employment Rights Act 1996 is well founded.

Complaint of unfair dismissal

210. The burden is on the first respondent to show the reason for dismissal.

211. The respondent's case is that the reason for dismissal was related to Mrs Wolloms' conduct, specifically that Mr Killmister and Mr Hare dismissed Mrs Wolloms because they believed she had done the things outlined in the letter of dismissal.

212. In relation to the complaint of disability-related harassment we set out above a number of facts that lead us to infer that Mr Killmister and Mr Hare dismissed Mrs Wolloms because they assumed she would take time off work in the future to care for Mr Wolloms and, therefore, they decided she should no longer carry out her existing job. Those inferences apply equally to the complaint of unfair dismissal. In our judgement the reason Mr Killmister and Mr Hare dismissed Mrs Wolloms was that they assumed she would take time off work in the future to care for Mr Wolloms and, therefore, they decided she should no longer carry out her existing job.

Automatically unfair dismissal

213. Although the claimant had taken leave under ERA s57A in the recent past, that was not the main reason the respondents dismissed her: their concern was the future and their assumption that the claimant would take time off again to care for her husband in the future.

214. Ms McBride submitted that dismissing someone because of a belief that they will exercise their right to take leave under section 57A at some point in the future is automatically unfair under section 99 of the Employment Rights Act. We do not agree that a dismissal for that reason in itself comes within section 99, read with regulation 20 of MAPLE. The proscribed reasons for dismissal refer to the employee having taken, or sought to take, leave under s57A, not a belief that they might do so in the future; in that sense they do not address a pre-emptive strike by the employer. However, what is clear from MAPLE reg 20 is that the reason (or the main reason) for dismissal need only be connected with the fact that the claimant took or sought to take time off under section 57A of the Employment Rights Act 1996. In this case, we find there was such a connection. That is because the assumption that Mrs Wolloms would take time off work in the future was materially influenced by the fact that she had done so in the recent past.

215. Therefore we find that the claimant's dismissal was automatically unfair, pursuant to section 99 of the Employment Rights Act 1996.

Ordinary unfair dismissal

216. Had we not found that the dismissal was automatically unfair, we would have found the dismissal unfair under section 98 for the following reasons.

217. We have rejected the respondent's case that the reason for dismissal was a reason related to the conduct of the claimant. The reason for dismissal was the assumption that Mrs Wolloms would take time off work in the future to care for Mr Wolloms.

218. That was not a reason falling within section 98(2) of the Employment Rights Act 1996. Nor was it the respondent's case that this was some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. Therefore, the respondent has not shown a potentially fair reason for dismissal. In any event, by failing to seek further information from the claimant about the likelihood of her needing time off work in the future, pursuing a predetermined disciplinary process in order to engineer the claimant's dismissal, and misrepresenting the reason for dismissal the respondent clearly acted wholly unreasonably in treating their assumptions about the claimant's ability to do her job as sufficient reason to dismiss her.

Complaint of wrongful dismissal

219. To determine this complaint we must make further findings of fact. Therefore, we shall return to it below in our reasons.

Complaint about involving all colleagues in the disciplinary proceedings

220. The claimant alleges that the second and/or third respondents required all her colleagues to investigate her work and/or allegations of misconduct and make statements against her as part of the disciplinary proceedings and that they did this because her legal advisors had made allegations of discrimination in their letter of 5th February 2019.

221. Ms Wolloms's colleagues had become involved with Mrs Wolloms' work during her absence for reasons that pre-dated the letter of 5th February. That was not because the respondent required Mrs Wolloms' colleagues to 'investigate her work'. What they did was require Mrs Wolloms' colleagues to cover for her and file documents on her desk during her absence. They did that, and had good reason to do so, because of Mrs Wolloms' absence: it had been unplanned for and was of uncertain duration and deadlines for carrying out some work were approaching. During the course of carrying out those tasks Mrs Wolloms' colleagues came across matters that concerned them and Mr Killmister and/or Mr Hare were alerted to those concerns. That had nothing to do with, in any event in most cases predated, the letter from Mrs Wolloms' solicitor of 5th February.

222. As far as the statements are concerned, it is not the case that Mr Killmister and Mr Hare obtained statements from all of the claimants' colleagues: they did not obtain a statement from Ms Hornsby. They did, however, speak to Ms Little, Mr Nixon, Ms Graham and Ms Hall. They had clearly started to speak to Ms Little before the letter of 5th February. Indeed they had prepared a list of allegations in January. The individuals with whom Mr Killmister spoke and for whom he prepared statements all had relevant things to say about the matters that formed the subject matter of the allegations.

223. For reasons explained above, we have rejected the claimant's complaint that disciplinary proceedings were commenced against her and she was dismissed because her legal advisers made allegations of discrimination. For the same reasons we reject the complaint that the respondents obtained statements from Mrs Wolloms' colleagues because her legal advisers made those allegations.

224. This complaint of victimisation is not well founded.

Complaint about changing the allegations during the disciplinary proceedings

225. Whilst the allegations made against Mrs Wolloms in the disciplinary proceedings referred to in the letter inviting Mrs Wolloms to a disciplinary hearing were not exactly the same as those which Mrs Wolloms had initially been informed, it is commonplace for allegations of misconduct or poor performance to evolve as matters are investigated.

226. We do not accept there is evidence from which we could properly infer that the way the allegations evolved was because of Mrs Wolloms' representative making allegations of discrimination in the letter of 5th February.

227. This complaint is not made out.

228. We note that the respondent appeared to add an additional allegation of misconduct in the version of the disciplinary letter sent to Mr Purvis during the appeal process. However, that post-dated the claim being presented to the tribunal. Therefore, it cannot be a matter that is before us.

Complaint about withholding evidence during the disciplinary proceedings

229. A large number of documents that Mr Hare and Mr Killmister say they felt were relevant to the disciplinary proceedings were not provided to Mrs Wolloms until after the decision to dismiss was taken. We accept that was a detriment to Mrs Wolloms.

230. We do not, however, believe that the complaint of victimisation is made out. For reasons explained above, we have rejected the claimant's complaint that disciplinary proceedings were commenced against her and she was dismissed because her legal advisers made allegations of discrimination. For the same reasons we reject the complaint that the respondents withheld evidence because her legal advisers made those allegations.

231. This complaint of victimisation is not well founded.

Complaint of wrongful dismissal

232. Where there has been gross misconduct, an employer can defend a claim of wrongful dismissal even if it did not dismiss the employee for the conduct in question. We must, therefore, consider whether the respondent has proved that there was gross misconduct. To determine that matter we need to make further findings of fact.

Allegation that Mrs Wolloms failed to send a cheque in the sum of £162.10 from a rugby club client to a player and subsequently wrote off the same cheque

233. Mrs Wolloms was responsible for doing accountancy work for a rugby club client of the first respondent. As recorded in our findings of fact above, when sorting through the papers on Mrs Wolloms' desk in December 2018, Ms Hall found a cheque made payable to one of the client's players for his expenses. The cheque was dated 11th December 2015.

234. We make the following further findings of fact. At the time the cheque was drawn, the respondents did not have an address for the player and nor did they have his bank account details. Mrs Wolloms sent an email asking for an address for the player to send a cheque to. No response was received. That demonstrates that Mrs Wolloms tried to resolve the issue at the time. The fact that the cheque was found on Mrs Wolloms desk shows that the original cheque was not sent to the player. There is no evidence before us that the player or anyone at the club chased the respondents or Mrs Wolloms for payment and we infer that they did not. That no one chased the respondents for payment suggests the player received payment by some other means. The respondents' evidence is that no such payment was evident from the club's accounts. However, we accept Mrs Wolloms' evidence that the club sometimes made payments by cash.

235. Looking at the evidence in the round, we are not persuaded that it is more likely than not that Mrs Wolloms actions in not sending the cheque to the player were culpable or blameworthy in any sense.

236. As for the writing-off of the cheque, the respondents have not explained why that was culpable or blameworthy behaviour, still less why it was an act of misconduct.

237. The respondent has not proved that there was misconduct by Mrs Wolloms in relation to the way she dealt with this cheque.

Allegation that Mrs Wolloms failed to bank a cheque (for a sponsorship payment) in the sum of £240 for the rugby club client

238. We have found that in December 2018 Ms Hall found a cheque on Mrs Wolloms' desk payable to the rugby club client for £240.00 dated 19th March 2016 from one of the club's sponsors. Ms Hall or Ms Little also found a compliment slip that originated from the rugby club client's sponsor. On it was a handwritten note that said: 'Advertising board rent 2015/16 season', which was a reference to the sponsorship fee. The slip also bore the signature of the rugby club's commercial manager and the date 5th August 2016. We infer that the club's commercial manager forwarded the compliment slip to the first respondent on or after that date (some five months after the date on the unbanked cheque). Before then, the sponsor had paid the fee by bank transfer. There was no evidence before us that the sponsor had ever sent the client a second cheque for the sponsorship to replace the first (March) cheque and the sponsorship fee was, we were told, a one-off payment for the year. We infer that the compliment slip accompanied the March 2016 cheque.

239. That timeline is supported by what Ms Little told Mr Hare in January 2018 ie that she had looked into this and it appeared that the cheque had been held up in the post for months before it reached the client and that by the time it turned up the sponsor had already paid the sum due online. We find that is what happened. It explains why Mrs Wolloms did not bank the cheque when it was eventually received at the first respondent company. That Mrs Wolloms did not bank the cheque when she received it was not blameworthy or culpable in any way. Indeed, she could justifiably have been criticised had she banked it.

Allegation that Mrs Wolloms' work in respect of the rugby club fell below a competent standard in that there was no visible reconciliation of VAT control accounts

240. In his appeal conclusions, Mr Purvis found that there were no errors in the accounts but that it was not immediately obvious where some of the figures in the accounts had come from. Mr Purvis was an independent person and a qualified accountant. The evidence before us suggests he considered the evidence before him with great care. Although he did not give evidence at this hearing, his conclusions carry significant weight.

241. We find that some of the claimant's workings in the accounts she was responsible for were not clear because she annotated computer summaries with hand-written notes and calculations. That was not good practice. It had not led to errors but meant it was not as easy for someone to pick up her work in her absence as it could have been. The respondent has not, however, proved that Mrs Wolloms' work fell below a competent standard as alleged.

Allegation that Mrs Wolloms failed to bank a cheque payable to CI Accountant Ltd in the sum of £4.31

242. We have found that, when sorting through the papers on Mrs Wolloms' desk in December 2018, Ms Hall found a cheque made payable to the first respondent dated 10th October 2017 for £4.31.

243. In her written submissions for the disciplinary hearing, Mrs Wolloms said she had telephoned the sender and had been told by them that the company received a further cheque in July 2018 for £6.09 which included the amount of £4.31. We accept that is what Mrs Wolloms was told and infer that, for some reason, payment was made a second time. We do not know why that was. It could have been because Mrs Wolloms had failed to bank the original cheque in time, or it could have been for some other reason. Even if Mrs Wolloms had failed to bank the original cheque in time, the respondent has not proved that it was more likely than not that this was due to something more than an oversight on Mrs Wolloms part.

Allegation that Mrs Wolloms' failed to renew Mr Killmister's practising certificate

244. It is not in dispute that, at some point in 2018, Mrs Wolloms was asked to deal with the renewal of Mr Killmister's practicing certificate and that she had not done that by the time her husband became unwell unexpectedly in early November 2018. The deadline for renewing the practicing certificate was 30 September 2018. The renewal application form was sent to Mr Killmister by letter of 11 September 2018. The first respondent's case is that the form was given to Mrs Wolloms in September 2018 for completion. Mrs Wolloms' evidence is that she was only passed the form to deal with, by Mr Hare, on the day she returned from annual leave, immediately before Mr Wolloms fell ill unexpectedly and she then began a period of unscheduled leave to look after him. What she said in evidence is consistent with what she said during the disciplinary process. As for the respondent's witnesses, at this hearing Mr Killmister challenged the suggestion that Mr Hare, rather than he himself, had given the form to Mrs Wolloms to complete. In contrast, Mr Hare's evidence to the Tribunal was that it was he (Mr Hare) who passed the form to Mrs Wolloms to complete. He said he believes he did this in September because he would have had no reason to hold on to it once he became aware of it. That assumes, however, that Mr Hare himself came into possession of the practicing certificate in September. When giving evidence, Mr Hare speculated that Mr Killmister asked him to deal with it because Mr Killmister was not working full time. Mr Hare said he could not remember when that was.

245. We found the evidence of Mrs Wolloms on this matter to be far more compelling than that of Mr Killmister and Mr Hare. We find that Mrs Wolloms was not asked to

deal with the form until just after her return from holiday and just before Mr Wolloms fell ill.

246. The fact that Mrs Wolloms did not submit the practicing certificate in the short period she was at work after her return from holiday was not culpable or blameworthy: she cannot have predicted she would need to take leave to look after her husband. There was no misconduct on Mrs Wolloms' part.

Allegation that Mrs Wolloms failed to deal with a matter in relation to a specified client's HSBC bank account resulting in HSBC closing a bank account, which the claimant took no steps to rectify

247. It is not in dispute that HSBC closed a client's account in November 2018 after sending a letter on 15th September 2017 giving two months' notice that the account would be closed if action was not taken. The client in question was one of Ms Little's. Ms Little was on maternity leave at the time of these events. Taking into account the document sent by Ms Little to Mr Hare on 30th January 2019, Ms Little's email to Mr Killmister of 20th February 2019, the handwritten note on the first HSBC letter (which Ms Little said was written by Ms Hornsby), and Ms Little's evidence we find as follows:

    247.1 In Ms Little's absence, Ms Hornsby was responsible for dealing with this client's affairs on a day to day basis.
    247.2 Ms Little spoke to Ms Hornsby at some point between 30 January and 20 February 2019. Ms Hornsby told Ms Little that:
        247.2.1 when the first letter from HSBC came in she spoke to Mrs Wolloms as she (Ms Hornsby) was not a signatory on the HSBC account;
        247.2.2 Mrs Wolloms told Ms Hornsby she was not a signatory either;
        247.2.3 Ms Hornsby then forwarded the letter from HSBC to the client on 20th September 2017;
        247.2.4 she kept a copy of the letter on which she wrote that she had emailed the letter to the client with the latest statement;
        247.2.5 HSBC later closed the account.

248. The only evidence that Mrs Wolloms was aware of the first HSBC letter is hearsay. Ms Hornsby did not give evidence at this hearing. We accept that she told Ms Little she had but it would probably have been apparent to Ms Hornsby at the time that she herself could be open to criticism for failing to follow the matter up with the client after she had made him aware that action needed to be taken to keep the account open. Ms Hornsby had a motive to play down her own involvement and deflect responsibility to others. In the circumstances, without hearing from Ms Hornsby first-hand we are not satisfied that it is more likely than not that Ms Hornsby did speak to Mrs Wolloms about the impending closure of the account as she claimed to have done.

249. As for the allegation that Mrs Wolloms took no steps to rectify the closure of the account, the letter from HSBC confirming closure of the account was received when Mrs Wolloms was absent from work caring for her husband. In any event, the client was not hers to deal with. Mrs Wolloms cannot be criticised for failing to rectify the closure of the account.

Allegation that the claimant failed to correctly balance the accounts for a client of the first respondent referred to as Client W above

250. We find that the deadline for completion of Client W's accounts was at the end of February 2019. That was some way off at the time Mrs Wolloms took leave to look after Mr Wolloms. When she went on leave, Mrs Wolloms had not reflected certain information received from the client in the accounts. Ms Little described these as 'minor issues' when she drew Mr Hare's attention to them.

251. In his appeal conclusions, Mr Purvis found that the claimants' work on this matter was work in progress; that Mrs Wolloms was preparing the working papers and accounts when she went on holiday leave and subsequently had time off to look after Mr Wolloms; that that was a satisfactory explanation for the file being incomplete; and a competent senior should have been able to pick up the file and complete the accounts as necessary.

252. We agree with Mr Purvis' conclusion that there was no misconduct by Mrs Wolloms. Mrs Wolloms' working methods were not a model of perfection but they cannot reasonably be considered to constitute misconduct.

Allegation that Mrs Wolloms incorrectly accounted for the company's VAT by accounting for VAT on both an invoice and accrual basis

253. In light of the evidence of Ms Little and Mr Nixon, we find it is more likely than not that Mrs Wolloms accounted for VAT on an invoice and cash basis in the first respondent's accounts. We accept that was erroneous: Mr Purvis acknowledged in his appeal findings that doing this would be incorrect and that was the evidence of Mr Nixon and Ms Little. The evidence of Mr Nixon was that Mrs Wolloms did not appear to have been making this mistake consistently throughout the time she was dealing with VAT returns. We accept that was the case. This was a relatively recent mistake rather than a long-standing failing. It coincided with an increase in Mrs Wolloms' workload.

Did Mrs Wolloms' conduct constitute a fundamental breach of contract entitling the respondent to terminate the claimant's employment without notice?

254. The only matters relied on by the respondent for which Mrs Wolloms could be criticised are as follows.
    254.1 Mrs Wolloms made mistakes accounting for VAT at a time that coincided with an increase in workload.
    254.2 Mrs Wolloms' working methods made it somewhat difficult for others to take over her work should she be absent or should someone else take over responsibility for the work she was doing for some other reason.

255. Even when taken together, those matters fall a very long way short of the sort of conduct that could be considered gross misconduct. The respondents have not established that Mrs Wolloms wilfully neglected her duties or that her conduct was

so negligent that it evidenced an intention to abandon and refuse to perform her contractual obligations.

256. The first respondent dismissed Mrs Wolloms without notice. In doing so it breached the claimant's contract of employment. The claim of wrongful dismissal is well founded.

Issues relevant to remedy that overlap with liability

257. At this hearing we agreed that we would hear evidence and submissions and may determine certain issues relevant to remedy set out in the list of issues above. On reflection we have decided the parties' representatives should have an opportunity to consider our liability findings above and make further submissions at the remedy hearing before we reach a concluded view on those matters.

EMPLOYMENT JUDGE ASPDEN

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 31 May 2022

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JUDGMENT SENT TO THE PARTIES ON

13 June 2022

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