



EMPLOYMENT TRIBUNALS

Claimant: Ms Mimoza Matoshi
Respondent: Integration Support Services
Heard at: East London Hearing Centre
On: 01 ,02 ,03, 04 and 08 August 2023
Before: Employment Judge B Beyzade

Representation

Claimant: In Person
Respondent: Mr T Perry, Counsel

JUDGMENT having been sent to the parties on 14 August 2023 and reasons having been requested in accordance with Rule 62(3) of Schedule of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

Introduction

- 1 The claimant presented a complaint of unfair dismissal. That claim was issued on 11 October 2020.
- 2 The claimant also brings a complaint pursuant to Schedule 5 of the Employment Act 2002 on the basis that the claimant was not provided with a written statement of particulars or of a change to those particulars.
- 3 The respondent resisted those complaints.
- 4 A Final Hearing was held on 01, 02, 03, 04 and 08 August 2023. This was a Hearing held in person at the East London Tribunal Centre.
- 5 The parties prepared and filed a joint index and bundle of documents in advance of the hearing which consisted of 970 pages (including documents which were added by way of applications by both the claimant and the respondent during the course of the hearing).

6 The Tribunal were also provided with a file containing the parties' witness statements and that file consisted of 146 pages.

7 We discussed the Claimant's complaints and issues at the start of the Hearing. Accordingly, at the outset of the Hearing, the parties were advised that the Tribunal would investigate and record the following issues as falling to be determined, both parties being in agreement with these:

LIST OF ISSUES

1. Unfair Dismissal

- 1.1 What was the reason or principal reason for dismissal? The respondent says the reason was conduct, specifically the twenty numbered allegations in the letter from the HR consultant dated 7 July 2020.
- 1.2 The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.
- 1.3 If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:
 - 1.3.1 there were reasonable grounds for that belief;
 - 1.3.2 at the time the belief was formed the respondent had carried out a reasonable investigation;
 - 1.3.3 the respondent otherwise acted in a procedurally fair manner;
 - 1.3.4 dismissal was within the range of reasonable responses.
- 1.4 The claimant's allegations of unfairness are set out at paragraphs 63 and 64 of the Grounds of Complaint.

2. Remedy for unfair dismissal

- 2.1 The claimant states that she wishes to be reinstated to her previous employment. Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 2.2 If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 2.2.1 What financial losses has the dismissal caused the claimant?
 - 2.2.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - 2.2.3 If not, for what period of loss should the claimant be compensated?

- 2.2.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - 2.2.5 If so, should the claimant's compensation be reduced? By how much?
 - 2.2.6 Did the ACAS Code or Practice on Disciplinary and Grievance Procedures apply?
 - 2.2.7 Did the respondent unreasonably fail to comply with it, the claimant relies on paragraph 63 of the grounds of complaint?
 - 2.2.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
 - 2.2.9 If the claimant was unfairly dismissed, did she cause or contribute to her dismissal by blameworthy conduct, namely the conduct relied upon by the respondent as the reason for dismissal.
 - 2.2.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
 - 2.2.11 Does the statutory cap apply?
 - 2.3 What basic award is payable to the claimant, if any? Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal, namely the conduct relied upon by the respondent as the reason for dismissal? If so, to what extent?
3. Schedule 5 Employment Act 2002
- 3.1 When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?
 - 3.2 If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under Section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.
 - 3.3 Would it be just and equitable to award four weeks' pay?

8 The parties agreed that the Tribunal would be required to investigate and determine the issues set out at paragraphs 1.1 – 1.4 and paragraph 3.1 of those issues during the course of this Hearing. In the event that the claimant's complaints were successful the Tribunal would, thereafter, proceed to determine the issues at paragraphs 2 and paragraphs 3.2 and 3.3 at a separate hearing.

9 The claimant gave evidence on her own behalf. The claimant provided a written witness statement dated 11 July 2021 (54 pages) and a further witness statement of the same date (51 pages).

10 Dorren Sangster (who was Chair of the respondent between November 2010 until 2015 and thereafter remained on the Board of Trustees) gave evidence on behalf of the claimant and appeared via a video link (following the claimant's application made during the Hearing which I granted pursuant to Rule 47 of the Employment Tribunal Rules). Ms Corina Brujan (who worked with the respondent as a volunteer from 2018 as an interpreter and worked in paid employment with the respondent from July 2019) gave evidence on behalf of the claimant by way of a written witness statement, although due to the fact that she was in Romania for the duration of this Hearing, she was unable to give evidence in person or by video link (there had been no application made and accordingly no permission had been granted by the Tribunal for Ms Brujan to give evidence by video). Moreover the Clerk to the Tribunal advised during the hearing that the country of Romania did not permit individuals to give evidence from within Romania in English court proceedings. Ms Brujan could not return to England during the listed hearing dates. Following oral submissions from the parties and taking account of the Presidential Guidance on Taking Oral Evidence by Video or Telephone From Persons Located Abroad (in particular paragraph 21), and there being no objection to this approach, I granted permission for Ms Brujan's evidence to be provided by way of written answers given to questions posed by the respondent's representative in writing. Both witnesses prepared written witness statements.

11 Ms Alla Kurhanska (Board member of the respondent since 2016 and resigned from her role as Chair of the respondent on 15 July 2021), and Miss Leonie Goodman (Independent HR Consultant) gave oral evidence at the hearing, both of whom provided written witness statements.

12 The respondent had sought to rely on a witness statement from Sumana Begum (volunteer co-ordinator July 2016 until August 2018 and Chair of Trustees from December 2021) which was dated 27 July 2023. However, I refused the application for permission for the respondent to rely on that witness statement, the claimant objecting to the same. I gave oral reasons for that refusal during the course of the Hearing. There was no good reason provided by the respondent in terms of why their witness statement was presented late. I considered and balanced the potential prejudicial effect of granting permission to admit the late witness statement on the claimant, against any hardship that will be suffered by the respondent if their application were not granted. The respondent's representative advised that Ms Begum's witness statement was relevant to the issues relating to remedy only. In the circumstances and considering the Tribunal's overriding objective (Rule 2 of the Employment Tribunal Rules) it was not appropriate to grant permission to the respondent to rely on Ms Begum's witness statement. The prejudicial effect of granting permission on the claimant would outweigh any hardship that could be faced by a respondent as a result of my refusal of the same.

13 There was a Chronology and Cast List provided to the Tribunal by the respondent, which was discussed with the claimant at the start of the hearing.

14 The respondent was represented by Counsel, Mr T Perry and the claimant represented herself. Both parties made oral closing submissions.

15 The respondent's representative in addition to written submissions dated 08 August 2023, also provided to the Tribunal and the claimant on the fifth day of the hearing a copy of two decisions from the Employment Appeal Tribunal and the Court of Appeal (referred to below).

16 As the claimant was not legally represented, I explained the rules to her both with regards to the claim being made and the procedure followed and how evidence is given, and a decision is reached. The claimant confirmed that she had understood the position and she was able to set out her case in detail. I explained to the parties the importance of the overriding objective of the need to ensure that all decisions are just and fair and that the parties worked together. The parties worked together to achieve the overriding objective.

Findings of Fact

17 On the documents, and oral evidence presented the Tribunal makes the following essential findings of fact restricted to those necessary to determine the list of issues:

18 The claimant was employed by the respondent between 10 July 2007 and 14 July 2020. Prior to her dismissal the claimant was employed as Chief Executive Officer of the respondent.

19 The respondent is a Charity that supports the integration of migrants, refugees and the BME Community Members in Essex and in Hertfordshire.

20 At all material times the respondent's Board Members included Valentina Ellice, Timothy Tabaroo, Doreen Sangster and Sarva Jayasjetty. The respondent's Chair of trustees was Alla Kurhanska.

21 On 18 March 2020, the respondent's office was closed as a result of the Covid-19 pandemic. It re-opened on 16 April 2020.

22 A telephone call took place between the claimant and Ms Kurhanska in relation to the re-opening of the office of the respondent.

23 There was a staff meeting on 23 April 2020 which took place by video using zoom. This included the following updates from Jennifer Khoury and the claimant respectively:

“Jennifer's Update – Teaching online is different task to a regular one to one lessons and require adjustments. We have had about 8 people online on Tuesday and on average we have around 5 students per class. Anya is working on updating lamplight with the lesson's attendance. Anya also called all the students emailed them and texted, which has resulted in good attendance. Jennifer had several meetings with volunteers and teachers sorting up online classes. Jennifer shared a view of her email campaign, that could be used for the ISS main email.

...

Mimoza's Update – MM raised concerns about the insufficient workload and mentioned the furlough schema to employees and option to take has been left up to employees. As per current situation and from 20th fo April office is to continue to be covered in rota by all employees, one person in the office at the time from 9 – 4 until further notice.”

24 A number of WhatsApp exchanges took place between the respondent's staff members after the meeting on 23 April 2020. The claimant was not included in those WhatsApp messages. The messages included (but were not limited to) comments in relation to lack of management and the conversation between Alla Kurhanska and

comments in relation to other organisations working from home and Jennifer Khoury said “Guys ... maybe we should start our own thing!”.

25 There was a staff meeting on 14 May 2020. This was attended by the claimant, Lana Pareira, Joanna Hewelt, Corina Brujan, Jennifer Khoury and Ania Bialek. The minutes of the meeting (which was circulated to staff including the claimant at 12:15pm on the day of the meeting) record that the following comments were made by the claimant:

“MM said JK is not doing enough and address to all that it’s not has to be 100 but 120 percent and that we have to contact people and ask why they are not attending our classes that we need to ask for the reasons. JK replied that she was not happy with MM comments and stated that she has done everything to make it work and to the best of her ability, shifting all classes and groups to online. AB also commented on that if its required she will contact clients but in her opinion this is not professional to ask for the reasons of why clients do not attend English classes. CB has mentioned that we all work hard to be able to continue to engage with clients and some people have children, which is really difficult. JK said she has 2 young children at home. MM replied that it’s not her business and in that case JK can work from the office. JK replied I will not work from office as it is against government guidelines and if it is a formal request it should be put in writing”.

26 On 14 May 2020 the claimant sent a message to Lana Pareira in the following terms: “Hi Lana, the email issue has not been solved yet and THS is badly effecting my and our work as I can see many communications to staff are not going through, please do sort it or get some help to sort.” The claimant continued to follow up this matter thereafter.

27 An online talking group run by Jennifer Khoury took place on 15 May 2020. The attendees included Ms Alla Kurhanska, three staff members, a volunteer and two service users (students) (see page 111 of the Hearing Bundle). Alla Kurhanska was asked to attend the talking group in order to assist in terms of the numbers which had been relatively low.

28 The claimant posted a poem on the respondent’s Facebook page on 15 May 2020 titled “Were You a Hero Then” (the poem named Alla, Valentina and Timothy, describing them as heroes, and referred to the fact those individuals chose not to stay at home), a copy of which can be found at page 163 of the Hearing Bundle. Ms Hewelt’s comments on the Facebook post were as follows “Well done to our Trustees Alla, Valentina and Timothy. I am not a hero, and you have a right to stay at home. Stay at home, save lives.”

29 Ms Hewelt sent an email to the Claimant dated 16 May 2020 setting out her views in relation to the poem that was posted on Facebook.

“Hello Mimoza

Hope you are well. I saw your post for our trustees – poem.

It is beautiful poem, sounds like the ones from the war times.

Last few weeks has been overwhelming with fear, perhaps some similarity there.

At the same time I really believe that we should be more careful in putting message to people other there.

You are putting gratitude towards some Trustee. They are truly great. However by putting the words 'refusing' to go to work you are giving wrong information to the wider community.

Kind of unnecessary guild. Should Sarva feel bad, just because she works from home? Or anyone else.

I am not pretending I am a hero.

Not at all. All I say – it is hard. But even if I was not comfortable with going to office, I went and worked. And I am ok now.

In seminar from IOM they said that actual problem is that migrants often risking their life by not staying at home, there are often put in the more risk roles in the NHS and other jobs. The percentage of migrants who lost their life due to coronavirus is much higher than British native community.

There is so much misinformation. Our people need some clear message. Follow government advice, go to the doctor, do test yourself, go to hospital, isolate and if they really feel unsafe they should be empower to say no.

It is nothing wrong is someone fears of their life. (I am not talking about myself, I am fine with working).

On the other hand recently the government advice has changed. As you know people who work in construction, factories can actually go back to work.

I never complain to you for over 10 years, was and I am grateful, so please try to understand my point.

Still I have put myself together. I am out there, distributing the parcels, talking to service users and covering the office.

I need to work on oisc audit, so plenty to do for me in the office. To be honest I could not even make myself to go back to files, I was not able to concentrate. But I will try my best.

We are all only humans after all ... let's hope, that it will be all better soon.

Just want to add: how are you Mimoza?

Best wishes
Joanna Hewelt"

30 Following a telephone conversation on 16 May 2020, Ms Hewelt was placed on furlough leave and the arrangements relating to this were confirmed to her in writing by the claimant. Ms Hewelt signed and dated the furlough agreement on 18 May 2020.

31 On 20 May 2020, a one-to-one meeting took place between the claimant and Ms Khoury.

32 Between 21 and 29 May 2020 a number of emails were exchanged between the claimant, Ms Khoury and Ms Pareira regarding the respondent's website. This included the emails that are contained at pages 128, 132 and 133 of the Hearing Bundle. The claimant had sent an email dated 1 June 2020 at 3:19pm stating "Hi Jenny, we are stacked here and I am surprised that you did not chase the matter?? Are you in or out please??" The claimant sent a further email on 2 June 2020 to Jennifer Khoury in which she stated, "I know that you are off but I had suggested to meet and sent emails to both you and lana because none of you have given any importance to look at websites, and I am surprised you did not chase with this me if you did not hear from me as this is your job what we are doing right now, its purely clearly your job."

33 Ms Khoury sent an email to the claimant on 2 June 2020 setting out her concerns. This included the claimant's communication with employees during staff meetings, issues relating to the staff meeting on 14 May 2020 and issues in relation to the new project online English School 21 May 2020.

34 The claimant replied in the following terms:

"With all respect, seeing the length I refused to read it knowing that you put all that energy to something instead of working on what matters,
My concern is seeing your time put on things that do not matter!
Please call me if you do not understand me!".

35 Ms Khoury sent an email to the respondent's Trustees on 3 June 2020 at 12:16pm titled "Grievance Against Mimoza Matoshi". She complained about the claimant's communication with employees during staff meetings, the staff meeting on 14 May 2020, one-to-one meeting on 20 May 2020 and the new project online English School, 21 March 2020. She also included copy correspondences that took place between her and the claimant. She stated: "With the recent situation with another employee and the future of their role in the Charity and this behaviour towards me and others that is so damaging, I am unable to see myself to continuing to work for the Charity under these circumstances. I am sure that when she hears of me sending you this, she will try to fire me anyway. It truly saddens me because I came into the Charity with so much passion and enthusiasm. I have taught at a University in Saudi Arabia for most of my teaching career and not once have I been addressed like this. As it stands now, due to this management style, culture and fear of bullying, slowly anything that has been built will be destroyed and compromise the future of the organisation. This is why I felt a duty to inform you, as the Trustee."

36 Alla Kurhanska sent an email in response on 3 June 2020 which advised as follows:

"Dear Jennifer,
Thank you for your email. Thank you for raising your concerns with us.
I am sorry to hear that you were put under lots of pressure and stress at work. Bullying and harassment at work has to be treated seriously.
I feel that the case has to be investigated and addressed appropriately.
I will be asking for a trustee meeting to discuss the issues that you raised in this email."

37 The claimant was made aware of the grievance, and thereafter, she sent an email to Ms Khoury at 3:56pm in the following terms: "Hi Jennifer, Alla has told me about your complain, and I am perfectly fine for Trustees to deal with it but I need you to follow my instructions about the talking groups and I do not want any of our Charity money to be wasted in that matter as long as I am in charge of the organisation."

38 On 4 June 2020 Alla Kurhanska sent an email to the claimant advising:
"I am writing to inform you that I received the consent from the complainant to forward you their complaint. However, the complainant has informed the Board that you have already been in contact with the complainant with regards to their complaint.
The Board brings to your attention that you must not contact the complainant about their grievance".

39 The claimant also received a copy of Ms Khoury's grievance on the same day.

40 By email dated 4 June 2020 Alla Kurhanska invited the claimant to attend an interview to discuss the grievance raised on 10 June 2020.

41 The claimant complained by email dated 5 June 2020 at 10.42am to Alla Kurhanska that Ms Kurhanska cannot deal with the matter that she was indirectly involved as well in misusing the money of the Charity and she could not agree for her to be present in the meeting as she was involved and there was a clear conflict of interest. She said that she was sure that the other trustees would be able to handle the matter in a professional way.

42 Alla Kurhanska replied by email dated 5 June 2020 at 12.26 advising that she had the right to conduct the investigation and setting out her reasoning in respect of this (including the fact she is Chair of Trustees). She explained that she did not believe she misused Charity money by helping in the Zoom Talk Group. She advised that insubordination and retaliation to the Board of Trustees is gross misconduct, which could lead to disciplinary action against the claimant.

43 The claimant stated in her email sent at 1.41pm outlining her continuing objections to Ms Kurhanska's role in terms of investigating the grievance. She complained that she did not receive a call to understand what was going on.

44 On the same date an investigation meeting took place with Ms Khoury, and a copy of the record of that meeting is at pages 154-159 of the Hearing Bundle (which was continued on 10 June 2020, see the record of the meeting at pages 176 to 181).

45 On 06 June 2020 at 09.48am Ms Kurhanska sent an email to the claimant advising that the matter relating to the Talk Group is not relevant and it is the duty of the Board of Trustees to investigate and make a decision in relation to the grievance. She stated that all communications were being conducted by email.

46 On the same day at 9:25pm Ms Joanna Hewelt sent a formal grievance against the claimant to Alla Kurhanska by email (which included an attached 8-page letter). She made a number of allegations in her grievance, and she also included correspondences between her and the claimant such as an email dated 17 May 2020 in which she advised the claimant: "On the end of your conversation you have decided furlough me with

immediate effect as a way of punishment, nothing to do with my performance or a business needs.” She provided further particulars in relation to her grievance by email dated 8 June 2020.

47 The claimant sent an email to Alla Kurhanska on 8 June 2020 advising she will not attend an investigation meeting held by her. She provided two reasons for this, namely:

1. “Few weeks ago we have had a big argument and you have accused me of breaking the law and therefor asked me to close the office which I refused to.
2. The dispute I have with the employee is about misuse of money which you are indirectly involved”.

48 On the same day at 3.34pm, the claimant sent an email to Lana Pareira in relation to staff meeting requiring her to provide information and a number of copies of minutes of staff meetings.

49 A staff meeting took place by Zoom video call on 11 June 2020 during which the claimant, Ms Pereira, Corina Brujan and Anna Bialek were in attendance (see page 184 – 189 and 960 to 968 of the Hearing Bundle).

50 The claimant sent an email on 11 June 2020 at 5:11pm to Doreen Sangster making a formal complaint against Alla Kurhanska in her capacity as Company Secretary of the respondent and her obligation to raise concerns to the Charity Commission. She advised that Alla Kurhanska had launched a complaint against her, she persistently kept insulting the claimant, that she was involved in the issues, that she asked the Board that someone else took the matter in their hands immediately, that no-one was responding, and that Alla Kurhanska kept insulting her and harassing her. She also included an attachment with that email in which a number of further concerns were expressed by the claimant. The claimant stated in that attachment: “At this period in time I am already struggling mentally and physically to keep your organisation going on my own, to provide emotional support to everyone and encouraging everyone, guiding and instructing everyone how we can keep things going.”

51 The claimant was informed about the grievance raised by Ms Hewelt by email dated 13 June 2020 from Alla Kurhanska. The claimant was advised that consent was provided to share the grievance with the claimant that day, that the Board started looking into the grievance and they would be in touch to discuss this with her, and that she must not contact the complainant directly.

52 Doreen Sangster acknowledged the claimant’s grievance by email dated 13 June 2020 sent at 10.51pm advising that the Board was having an emergency meeting the following evening by Zoom where this would be raised by her along with the complaints from the other two employees (regarding the claimant). She advised she would be happy to lead in relation to the complaints if there are no objections from other board members.

53 On 14 June 2020 a Board meeting took place and on 16 June 2020 the Board’s decision in relation to the claimant’s grievance was communicated to the claimant (see pages 213-221 of the Hearing Bundle). The concluding paragraph stated as follows: “In conclusion, the majority of the Board is of the opinion that the complaint received from MM is a retaliation for the grievances raised against her and hence cannot be taken for now.

We continue the investigation as it is now. We offer MM a final chance to attend the interview with us via zoom with AK and VE on board and SJ to host the meeting and take notes of the interview. If MM declines and does not agree to be interviewed, the panel will proceed with the investigation without her.”

54 Investigation meetings were conducted with Ms Bialek on 16 June 2020 (see pages 222 – 227 of the Hearing Bundle) and Ms Brujan on 19 June 2020 (see pages 228 – 230 of the Hearing Bundle).

55 By email dated 19 June 2020 the claimant was invited to attend an investigation meeting on 23 June 2020.

56 A number of email correspondences were exchanged between the claimant, Ania Byla and Jelena Carter dated 19 June 2020. The claimant requested Ms Bryla to take over Ms Carter’s classes from the following week. Ms Carter advised that there was a contractual requirement to provide 28 days’ notice of termination. By email dated 22 June 2020 the claimant advised that they will honour any contractual obligations, Ms Bryla was requested to provide a copy of the contract, and that as Ms Carter indicated she was not ready to start that week whether she could proceed with the classes that week and the following week she would no longer require her support. Ms Bryla was unable to supply a copy of the contract.

57 The claimant was sent by email dated 22 June 2020 a copy of a letter suspending her from her employment pending a full investigation. The claimant was advised: “I write further to the board of trustees receiving grievances raised against you by the members of staff Jennifer Khoury and Joanna Hewelt on 03.06.2020 and 06.06.2020 respectively, when the allegations of bullying and harassment were made against you. Both grievances were forwarded to you in the emails by the trustee board.

“In accordance with the Company’s formal discipline procedure, I confirm that from 22.06.2020, you are suspended from work on full pay, while a full investigation is carried out. Your suspension is to enable us to conduct a thorough and speedy investigation and does not in itself carry any implication of guilt or prejudice. Nor does it constitute any form of disciplinary action against you.

During your suspension, you are instructed not to contact by any means (directly or indirectly) any ISS charity staff, clients or funders. You may contact your trade union representative if you require their advice. If you have any queries in relation to this matter, please, email me on alla.kurhanska@gmail.com. Failure to comply with these instructions may in itself constitute misconduct (or, if this investigation is undermined in any way, gross misconduct), which may result in disciplinary action against you.

I will contact you at the earliest opportunity to inform you of the outcome of the investigation. If you are required to attend a disciplinary hearing, you will be given full details of the allegations against you and the results of the investigation in advance of the hearing.

You are required to remain available during your suspension, so that I am able to contact you if the need arises.”

58 Jelena Carter sent an email dated 22 June 2020 making a complaint about bullying. She stated at paragraph 2 of her email: “The CEO of ISS, Mimoza Matoshi, has sent me the email (please read our full correspondence below) regarding my work as a language

teacher at Falcon Language School and asking me to stop providing my service as a teacher from next Wednesday (24/06/2020) giving me only two working days' notice (22 and 23/06). According to my contract with Falcon Language School (scans attached) I have 28 days' notice, which I demanded in my email to Mimoza. Regardless of her reply to me and even if I will be granted either the pay or the right to continue my work till the end of the school year, I still want to bring this to your attention." She attached copies of the email correspondences between her and the claimant to that email.

59 The claimant sent a further email to Alla Kurhanska on 22 June 2020 complaining about her continued involvement in the investigation. She stated:

"Its shocking to see your level of irresponsibility and the harm you are causing to the organisation.

At a time where we are all struggling and working hard to keep our work going for our users you keep harassing and insulting me again.

I have already made a formal grievance against you and will still keep writing to me. Don't you think is time to make common sense and pull back and all the investigation to be handled by other trustees. **I do not feel safe in any way to be interviewed by yourself.** This email you just sent tells clearly where you have drugged the organisation. And for what?? Can you all ask yourself a question for what?? I did not trust you at the beginning and I do not trust you in any way now that you will handle the grievances fairly and professionally. I will never agree to be interviewed by you. Its my right for this, its very employee right if feeling harassed, intimidated and unsafe by one person. This is a right I have and every employee has if the **feel unsafe.**

Please step back and allow the board to conduct the interview and have my response which could have been done in ages ago if you just followed the procedures correctly. All this could have been solved with simply a call or a meeting with all staff to provide support for me and every one at these difficult time. Its unacceptable that staff have made their complains ages ago and you still have not been able to give them a response.

I am very happy to be suspended and as I have told you happy to be interviewed by any member of the board or trustees **but not yourself as I said I do not feel safe anywhere around you. Having read your email just now. I DO NOT FEEL SAFE. ISS IS NOT SAFE WITH YOU ON BOARD.**"

60 She also advised she was due to be on holiday from 1 July until the end of July 2020. She said:

"I am on holiday from 1st July till end of July and hope the board will deal with this quick and I sincerely hope you will make some common sense and stop hijacking the organisation."

61 Alla Kurhanska replied on the same day by email advising:

"The board did not receive any holiday request from you for July 2020. The board cannot approve your annual leave at such short notice and due to the investigation into the grievance raised against you. May I remind you that you must be available to the board at the first request during your suspension period. If you do not comply with the above instructions, it may result in a disciplinary action against you. Furthermore, the board requires the following items to be handed in to the office by

you tomorrow. Password for your computer, in the ISS office, payroll access details and password, ISS bank card and keypad and ISS cheque book.”

62 On 24 June 2020 the claimant attended the offices of the respondent. She used the office computer. The claimant asserted that Ms Sangster provided her authority to make payments to employees (she produced a printed email from Doreen Sangster sent to her at 11.04am that day authorising her to make payments to staff). However, Alla Kurhanska stated it was found that the claimant had deleted some files on the respondent’s desktop computer while she was in attendance at the office. The claimant was asked to leave the office by Alla Kurhanska. The claimant did not leave the office. The police were called to ensure that the claimant left the premises and assisted with the return of the bank card, keypad., laptop and office keys from the claimant. This matter was reported to the Board of Trustees by Alla Kurhanska in an email dated 24 June 2020 at 3.01pm.

63 A letter was sent to the claimant by Sarva Jayashetty dated 26 June 2020, a copy of which appears at pages 263 – 268 of the Hearing Bundle. The claimant was advised that in relation to the two grievances received, the claimant had refused to participate in the process, and that both grievances had been upheld based on the available information. It was considered by the Board that the claimant’s actions since she was informed about the grievances gave rise to allegations of gross insubordination towards the Board, brought the Board into disrepute and there were further acts of bullying and harassment. The Board decided to treat the claimant’s emails dated 13 and 22 June 2023 as a grievance against Alla Kurhanska and an independent HR consultant would be appointed to hear the claimant’s grievance (Anna Stobart from Hafton Consultancy). In this letter the claimant was invited to attend a grievance and disciplinary hearing to answer allegations of bullying and harassment against Jennifer Khoury and Joanna Hewelt on 30 June 2020. The allegations against the claimant 1(a) to (i) (relating to Jennifer Khoury’s grievance), 1(j) to ((m) (relating to Joanna Hewelt’s grievance) and 2 (n) to (t) (relating to insubordination and detrimental comments made against the Board and its Chair were set out at pages 265, 266 and 267 respectively of the Hearing Bundle.

64 The letter also advised that the claimant had been granted access to a folder containing all the evidence collected as part of the respondent’s investigation (not all the evidence was referred to in that letter). The letter stated that given the severity and widr number of the allegations, the possible consequences arising from this meeting might be summary dismissal.

65 Ms Stobart was appointed to conduct this process and to investigate the disciplinary and grievance matters.

66 By email dated 29 June 2020 the claimant’s representative requested that the grievance and disciplinary hearing be delayed by at least 7 days to allow her a proper opportunity to prepare.

67 Sarva Jayasjetty replied by email dated 29 June 2020 advising that contact had been made with Anna Stobart in order to attempt to rearrange the hearing for 7 July 2020.

68 Doreen Sangster sent an email on the same day outlining her concerns about what had happened (see page 281 of the Hearing Bundle).

69 By an email dated 30 June 2020 the claimant requested copies of a number of documents including:

1. "Staff contracts – can be accessed from my computer.
2. Folder of staff meetings.
3. Folder of trustee meetings.
4. Folder of funding and partnerships.
5. Please forward to my personal email all my communications to staff since Covid crisis began or from 6th of March (Joanna Hewelt, Lana Pereira, Jennifer Khoury, Corina Brujan).
6. Please forward to my personal email all communication to trustees in the last 24 months (Alla Kurhanska, Sarva Jayasjetty, Doreen Sangster, Valentina Ellice. Timothy Tabaroo.
7. Please forward to me copies of supervision meetings made with staff include appraisals.
8. Please forward to me copies of supervision meetings made for me by trustees include appraisal.
9. Please forward to me a copy of my contract."

70 In the same email the claimant confirmed her attendance at the hearing that had been arranged to take place on 7 July 2020.

71 The claimant sent an email to Sarva Jayasjetty on 4 July 2020 advising she had received a list of documents that she requested and that there were still documents missing and that she would appreciate if she could have a copy of those. She set out five categories of documents that she said were still outstanding.

72 Later that evening, Sarva Jayasjetty responded to each of the claimant's request for documents adopting the same numbering 1 – 5 that was used by the claimant:

1. "Trustee meetings after 12 May 2020 have been conducted to discuss how to proceed with the grievances and not about the grievance itself. Since you are one of the affected parties of the grievance and not part of the investigation panel, we cannot provide these to you. You will not need them in any way for the hearing.
2. We have not shared anything with any third party not involved with this case. Anna has been given access to documents and files which are relevant to the case so she can understand and deal with the case effectively and fairly.
3. Copy of suspension letter is attached.
4. Appraisals are not relevant to any of the grievances.
5. Paysheets are not relevant to this case. Payment details are referred only for Joanna and Jennifer, and we have provided their payslips. I can send your payslip if you want and if you tell me where they are located."

73 On 2 July 2020 Sumana Begum (who had provided a witness statement as part of the investigation) made a complaint to Alla Kurhanska in relation to a message that she received from the claimant via WhatsApp on 27 June 2020. She quoted the message which stated: "Hi Sumana, it really broke my heart to read your statement, as the matter is with the police now investigation I am sorry I have no choice but to pass it to them." She advised that she did not intend to respond to the claimant as she did not know what the claimant's intentions were. Alla Kurhanska replied to that email on the same day advising

that the email had been forwarded to Anna Stobart who is investigating the matters at the moment.

74 The grievance and disciplinary hearing took place on 7 July 2020. The minutes of that hearing are at pages 298 – 304 of the Hearing Bundle. The claimant provided a marked-up version, and a copy of her marked-up version appears at pages 311 – 319 of the Hearing Bundle. Sarva Jayashetty and the claimant both provided further marked-up versions of the minutes for that meeting.

75 Anna Stobart provided her outcome report thereafter a copy of which appears at pages 320 – 325 of the Hearing Bundle (the cover email appears at page 327 of the Hearing Bundle). She sets her findings in respect of each disciplinary allegation. Her conclusion in respect of the claimant's disciplinary matter is at page 323 of the Hearing Bundle. She concludes thus:

“Given the above, I consider that the allegations are proven and amount to gross misconduct. I considered the elements you put forward as mitigation and considered whether a final warning could be appropriate in the circumstances. Whilst I understand your attachment to the Charity and how stressful the pandemic has been, I believe that it is impossible for you to continue working with the Board. I also consider that the severity of the bullying, insubordination and allegations against the Board warrant your summary dismissal.”

76 She sets out her reasoning in her report in terms of the grievance outcome also. Firstly she states that she considered that the grievance and the disciplinary matters could be heard at the same time because in many parts the claimant's grievance was also her defence to the allegations against her regarding her insubordination to the Board. Having provided her findings in respect of the claimant's grievance under eight bold headings, Ms Stobart advised her decision not to uphold the claimant's grievance (in light of those findings).

77 Prior to that report being issued to the claimant, the Board (including Alla Kurhanska) had discussed Anna Stobart's report and agreed that the Claimant should be summarily dismissed.

78 Accordingly, Sarva Jayashetty sent an email to the claimant on 14 July 2020 in the following terms:

“Based on the decision given by Anna Stobart (Hafton Consultancy), an independent HR consultant who dealt with your grievance and disciplinary hearings, We, the board of Trustees of Integration Support Services have unanimously agreed to accept her decision and go ahead with the summary dismissal. Hence we are hereby informing you that from today, 14th July 2020, your employment stands terminated with Integration Support Services. Please check the attachments for appeal and other details.

Please be aware that you are required not to contact any person in relation to work of the charity by any means including your personal email/phone. You are also required to follow the GDPR rules at all times.

These letters have been sent to you by post as well.”

79 The cover letter attached to that email stated:

“You have committed various acts of serious gross misconduct and insubordination as outlined in Independent HR’s Report. The reasons for your dismissal can be found in the attached letter from Anna Stobart. (Outcome of the hearing 07th July 2020 regarding your grievance and disciplinary hearing).

The following arrangements apply with immediate effect (but may be varied or revoked in the event of a successful appeal):”

80 Accordingly, that letter confirmed that the claimant’s dismissal will take effect from the date of that letter which was 14 July 2020.

81 On 20 July 2020 the claimant sent an email appealing against the decision in the following terms:

“My appeal to your unanimous decision is below.

1. You denied me access to my documents to prepare for the meeting despite my repeated requests.
2. You only gave me one working day to prepare for the meeting.
3. Minutes are incorrect/manipulated.
4. You got involved many times in the meeting as observer.
5. My evidence was not considered and taken.”

82 On the same day the claimant’s representative sent a letter setting out that the first independent person was not interested in the claimant’s evidence, they refused to give the claimant access to her laptop on the day of the meeting, and advising that the claimant was not mentally or physically fit to attend any appeal.

83 Ms Sangster was removed from the Respondent’s Board on 23 July 2020.

84 Ms Brujan was notified that her contract ended on 31 August 2020 and will not be renewed by way of an email from Alla Kurhanska dated 31 July 2020.

85 The claimant started ACAS Early Conciliation on 2 August 2020.

86 On 3 August 2020 ACAS issued the claimant’s ACAS Early Conciliation Certificate.

87 On 1 October 2020 the grievance and disciplinary appeal hearing took place which was chaired by Leonie Goodman as an Independent HR Adviser. The minutes of that meeting are rather lengthy, and they appear at pages 335 – 373 of the Hearing Bundle.

88 The Claimant issued her claim on 6 October 2020.

89 The appeal outcome letter from Leonie Goodman was issued to the claimant on 23 October 2020. This extends over 10 pages, a copy of which can be found at pages 374 – 383 of the Hearing Bundle. The claimant’s appeal against the decision to dismiss the claimant was not upheld, and the original decision to dismiss the claimant for gross misconduct was upheld. In addition, the claimant’s appeal in relation to the grievance outcome was not upheld. A summary of the reasons for the decision made (which is set out more fully during the course of the letter) appears at pages 382 – 383 of the Hearing Bundle in the following terms:

“Summary

While no-one could doubt the passion and dedication you have for the charity you founded, I believe you found it hard to accept that there were people above you on the Board who make the decisions. I feel that these frustrations manifested in the way you managed the staff along with the disregard you showed for the Board of Trustees, particularly after you became aware of the content of the messages on the WhatsApp group. While I re-iterate how upsetting that must have been for you, it could have been addressed by you as Line Manager and brought to the attention of the Board. As you never chose to do that, my belief is that your dismay at the comments made affected how you responded to the complaints raised, as, in my opinion, you were reacting to the WhatsApp messages instead of the actual complaints.

It is regretful this happened and resulted in grievances being raised against you. However, as a result of the findings of these grievances, the disciplinary process was invoked and you subsequently raised a grievance which lead to the appeal processes we are discussing in this outcome letter.

While appeals to original outcomes often arise from the appellant’s belief that documents were missed or misrepresented, my view is that on the balance of probability, many of the comments submitted 3 days before the appeal meetings were what you would like to have said in hindsight as they should have been attached to your appeal request.

I believe the full investigation I carried out plus the additional points you requested to be looked into, have not found anything which reverses the original disciplinary and grievance outcomes. Therefore, as stated above at the end of each section, I reject your disciplinary and grievance appeal in full and uphold the original decisions made by Anna Stobart.

I inform you that as the Company’s disciplinary processes have been completed in full, there is no further appeal which can be made.”

90 The Tribunal was also taken to copies of the claimant’s statement of employment particulars relating to the role of Project Manager/CEO (which appeared at pages 63 to 69 within the Hearing Bundle). On the last page of that document, Ms Sangster has signed the document in her capacity as chair and the claimant also signed that document. The document is dated 05 April 2012. In addition there was a Statement of Terms provided on 08 November 2009 (see pages 506 to 521 of the Hearing Bundle), on 08 November 2010 (see pages 522 to 537 of the Hearing Bundle), and on 15 April 2013 (see pages 538 to 544 of the Hearing Bundle, which is signed by Ms Sangster and the claimant).

Observations

91 On the documents and oral evidence presented, the Tribunal makes the following essential observations on the evidence restricted to those necessary to determine the List of Issues:

92 The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of the event was more likely than not, then the Tribunal is satisfied that the event did occur.

93 Where there was a dispute of fact, I made my decision on the balance of probabilities based on the evidence of the witness which set out the position both clearly and consistently, and I also considered the content of any relevant contemporaneous documents and emails.

94 This was a case where it was possible to distil a significant amount of the material from the documents to which I was referred in relation to the material issues that required to be determined.

95 Anna Stobart did not give evidence. The Tribunal had been provided with a copy of her report. The Tribunal took into account that this was discussed, and the outcome and the reasons provided therein were agreed by the respondent's Board of Trustees. The outcome was confirmed by Ms Jayashetty by email sent to the Claimant. Ms Kurhanska gave evidence who was Chair of the Board of Trustees. On the whole her evidence and Leonie Goodman's evidence were both clear and consistent, and also consistent with the documentation before the Tribunal.

96 In relation to Corina Brujan's evidence, I noted the answers provided to written questions put by the Respondent's counsel (a process which both parties consented to following detailed discussions relating to the Presidential Guidance on obtaining evidence from witnesses that were located outside the United Kingdom arising from the fact that Ms Brujan was located in a country from which witnesses were not able to give evidence in Employment Tribunal proceedings in England and Wales). A number of the replies provided to the questions asked appeared evasive and they did not address the questions asked by the Respondent's counsel. I took into account all the circumstances and any relevant documents when considering her evidence.

97 In relation to the Claimant's written statement of employment particulars, Doreen Sangster confirmed that the Claimant was provided with a copy of these. Doreen Sangster stated that she could not recall signing the document. She stated that the document was physically signed by her.

The Law

98 To those facts, the Tribunal applied the law –

Unfair dismissal

99 Section 94 of the Employment Rights Act 1996 ("ERA 1996") provides that an employee has the right not to be unfairly dismissed. It is for the Respondent to show the reason (or principal reason if more than one) for the dismissal (s98(1)(a) ERA 1996). That the employee committed misconduct is one of the permissible reasons for a fair dismissal (section 98(1)(b) and (2)(c) ERA 1996). Where dismissal is asserted to be for misconduct the employer must show that what is being asserted is true i.e. that the employee has in fact committed misconduct.

100 Where the employer relies on conduct as the fair reason for dismissal, it is for the employer to show that misconduct was the reason for dismissal. According to the Employment Appeal Tribunal in *British Home Stores v Burchell* [1980] ICR 303 the employer must show:

- (i) It believed the employee was guilty of misconduct;
- (ii) It had in mind reasonable grounds upon which to sustain that belief; and
- (iii) At the stage at which that belief was formed on those grounds it had carried out as much investigation into the matter as was reasonable in the circumstances.

101 In *Ilea v Gravett* [1988] IRLR 487 the Employment Appeal Tribunal considered the Burchell principles and held that those principles require an employer to prove, on the balance of probabilities that he believed, again on the balance of probabilities, that the employee was guilty of misconduct and that in all the circumstances based upon the knowledge of and after consideration of sufficient relevant facts and factors he could reasonably do so. In relation to whether the employer could reasonably believe in the guilt, there are an infinite variety of facts that can arise. At one extreme there will be cases where the employee is virtually caught in the act and at the other extreme the issue is one of pure inference. As the scale moves more towards the latter, the matter arising from inference, the amount of investigation and inquiry will increase. It may be that after hearing the employee further investigation ought reasonably to be made. The question is whether a reasonable employer could have reached the conclusion on the available relevant evidence.

102 In that case the Employment Appeal Tribunal upheld the Tribunal's decision which found that the employer had not investigated the matter sufficiently and therefore did not have before them all the relevant facts and factors upon which they could reasonably have reached the genuine belief they held. The sufficiency of the relevant evidence and the reasonableness of the conclusion are inextricably entwined.

103 The amount of investigation needed will vary from case to case. In *RSPB v Croucher* [1984] IRLR 425 the Employment Appeal Tribunal held that where dishonest conduct is admitted there is very little by way of investigation needed since there is little doubt as to whether or not the misconduct occurred.

104 The employer need not have conclusive evidence of misconduct but a genuine and reasonable belief, reasonably tested. The burden of proof is on the employer to show a fair reason, but the second stage of reasonableness is a neutral burden. The Tribunal must be satisfied that the employer acted fairly and reasonably in all the circumstances in dismissing for that reason, taking account of the size and resources of the employer, equity, and the substantial merits of the case.

105 If satisfied of the reason for dismissal, it is then for the Tribunal to determine, the burden of proof at this point being neutral, whether in all the circumstances, having regard to the size and administrative resources of the employer, and in accordance with equity and the substantial merits of the case, the employer acted reasonably or unreasonably in treating the reason as a sufficient reason to dismiss the employee (s98(4) ERA 1996).

106 What a Tribunal must decide is not what it would have done but whether the employer acted reasonably; *Grundy (Teddington) Ltd v Willis HSBC Bank Plc (formerly Midland Bank plc) v Madden* [2000] ICR 1283. It should be recognised that different employers may reasonably react in different ways, and it is unfair where the conduct or

decision making fell outside the range of reasonable responses. The question is not whether a reasonable employer would dismiss but whether the decision fell within the range of responses open to a reasonable employer taking account of the fact different employers can equally reasonably reach different decisions. This applies both to the decision to dismiss and the procedure adopted.

107 In applying s98(4) ERA 1996 the Tribunal must not substitute its own view for the matter for that of the employer but must apply an objective test of whether dismissal was in the circumstances within the range of reasonable responses open to a reasonable employer.

108 Mr Justice Browne-Wilkinson in his judgement in *Iceland Frozen Foods Ltd v Jones [1983] ICR 17*, in the Employment Appeal Tribunal, summarised the law. The approach the Tribunal must adopt is as follows:

“The starting out should always be the words of section 98(4) themselves. In applying the section, a Tribunal must consider the reasonableness of the employer’s conduct, not simply whether they (the members of the Tribunal) consider the dismissal to be fair

In judging the reasonableness of the employer’s conduct, a Tribunal must not substitute its decision as to what was the right course to adopt

In many (though not all) cases there is a band of reasonable responses to the employee’s conduct in which the employer acting reasonably may take one view, another quite reasonably take another. The function of the Tribunal, as an industrial jury, is to determine whether in the circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which the reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair, if it falls outside the band it is unfair.”

109 In terms of procedural fairness, the (then) House of Lords in *Polkey v AE Dayton Services Ltd [1988] ICR 142* firmly established that procedural fairness is highly relevant to the reasonableness test under section 98(4).

110 Where an employer fails to take appropriate procedural steps, the Tribunal is not permitted to ask in applying the reasonableness test whether it would have made any difference if the right procedure had been followed. If there is a failure to carry out a fair procedure, the dismissal will not be rendered fair because it did not affect the ultimate outcome; however, any compensation may be reduced. Lord Bridge set out in this case the procedural steps which an employer in the great majority of cases will be necessary for an employer to take to be considered to have acted reasonably in dismissing: *“in the case of misconduct, the employer will normally not act reasonably unless he investigates the complaint of misconduct fully and fairly and hears whatever the employee wishes to say in his defence or in explanation or mitigation.”*

111 A Tribunal in assessing the fairness of a dismissal should avoid substituting what it considers necessary and instead consider what a reasonable employer would do, applying the statutory test, to ensure the employer had reasonable grounds to sustain the belief in the employee’s guilt after as much investigation as was reasonable was carried out. In *Ulsterbus v Henderson [1989] IRLR 251* the Northern Irish Court of Appeal found that a Tribunal was wrong to find that in certain circumstances a reasonable employer would carry out a quasi-judicial investigation with confrontation of witnesses and cross

examination of witnesses. In that case a careful and thorough investigation had been carried out and the appeal that took place involved a “*most meticulous review of all the evidence*” and considered whether there was any possibility that a mistake had been made. The court emphasised that the employer need only satisfy the Tribunal that they had reasonable grounds for their beliefs.

112 Where there are defects in a disciplinary procedure, these should be analysed in the context in which they occurred. The Employment Appeal Tribunal emphasised in *Fuller v Lloyds Bank [1991] IRLR 336* that where there is a procedural defect, the question to be answered is whether the procedure amounted to a fair process. A dismissal will normally be unfair where there was a defect of such seriousness that the procedure itself was unfair or where the result of the defect taken overall was unfair. In considering the procedure, a Tribunal should apply the range of reasonable responses test and not what it would have done (see *Sainsburys v Hitt [2003] IRLR 23*).

113 The Court in *Babapulle v Ealing [2013] IRLR 854* emphasised that a finding of gross misconduct does not automatically justify dismissal since mitigating factors should be taken into account and the employer must act reasonably. Length of service can be taken into account (*Strouthous v London Underground [2004] IRLR 636*).

114 In considering a claim for unfair dismissal by reason of conduct, the Tribunal is required to consider the terms of the ACAS Code of Practice on Disciplinary and Grievance matters. This sets out what a reasonable employer would normally do when considering dismissal by reason of conduct. This includes conducting the necessary investigations, inviting the employee to a meeting, conducting a fair meeting, issuing an outcome letter, and allowing an appeal.

115 The reasonableness of the decision to dismiss is scrutinised at the time of the final decision to dismiss – at the conclusion of the appeal process (*West Midland v Tipton [1986] ICR 192*). This was confirmed in *Taylor v OCS [2006] IRLR 613* where the Court of Appeal emphasised that there is no rule of law that only a rehearing upon appeal is capable of curing earlier defects (and that a mere review never is). The Tribunal should consider the disciplinary process as a whole and apply the statutory test and consider the fairness of the whole disciplinary process. If there was a defect in the process, subsequent proceedings should be carefully considered. The statutory test should be considered in the round.

116 The Tribunal also considered the Employment Appeal Tribunal’s decision in *Khan v Stripestar Ltd UKEATS/0022/15/SM* cited by the Respondent’s representative. The Honourable Lady Wise held in that case that there are no limitations on the nature and extent of the deficiencies in a first stage disciplinary procedure that can be cured by a thorough and effective appeal. It was confirmed that the Employment Judge was correct in concluding that a lack of credibility on the part of a witness who had conducted a disciplinary hearing that was disregarded as procedurally and substantively unfair did not inevitably render the whole dismissal unfair.

117 I took into account the provisions of the ACAS Code of Practice insofar as they relate to dismissals by reason of conduct and grievances.

Employment Act 2002

118 In addition I took into account the provisions of sections 1 and 4 of the Employment Rights Act 1996 and section 38 (and Schedule 5) of the Employment Act 2002.

Submissions

119 Prior to the commencement of the fifth day of the final hearing, I was provided with a copy of written submissions on behalf of the Respondent along with copies of the two cases referred to earlier in this Judgment.

120 I considered the two authorities that were cited by the Respondent's representative namely GM Packaging UK Limited and Haslem UK EAT/0259/13/LA and the case of Tayeh v Barchester Healthcare Limited [2013] EWCA Civ 29.

121 In addition, the Claimant and the Respondent's representative both gave oral submissions during the course of the fifth day of the Final Hearing, which the Tribunal found to be informative. They are referred to, where relevant.

Discussion and Decision

122 On the basis of the findings made, the Tribunal disposes of the issues identified at the outset of the hearing as follows:

(i) Issue 1.1

123 I am satisfied that the reason for the Claimant's dismissal, the set of facts or beliefs in the employers' minds that caused it to dismiss was the Claimant's conduct. The respondent relied on misconduct as the reason for dismissal. This was established in terms of both the content of Ms Stobart's report and the Board of Trustees' approval of Ms Stobart's report. I considered the allegations and the findings made in relation to each allegation in Ms Stobart's report and the conclusion reached. Ms Kurhanska details in her witness statement that the Board met and decided to follow those recommendations. This is supported by the email from Sarva Jayshetty, another trustee of 14 July 2020 (with an accompanying letter) advising that the Board of Trustees unanimously agreed to accept Ms Stobart's decision and to summarily dismiss the claimant. The letter attached to that email states "You have committed various acts of serious misconduct and insubordination as outlined in the independent HR's report." I also took account of Leona Goodman's evidence, which upheld the Claimant's dismissal due to gross misconduct.

124 This is potentially a fair reason for dismissal in accordance with Section 98(2) of the Employment Rights Act 1996.

125 I considered whether there was an alternative reason for the Claimant's dismissal. The Claimant suggested her dismissal may have been engineered in some way by Ms Alla Kurhanska, possibly in terms of some form of punishment for having reopened the office in April 2020 (and the issues that arose in respect thereof). I do not accept that there is any evidence in support of this contention. Furthermore, there is no evidence to suggest that staff were encouraged by Alla Kurhanska to raise grievances and further, I do not accept that Ms Kurhanska's attendance in the Talking Group meeting on 15 May 2020 (attended by some other individuals who later raised grievances) showed any evidential support or basis for the claimant's contention. I noted that there were two service users present during the meeting in question. I accepted that Alla Kurhanska did not make any

threats to the claimant during the call on 23 April 2020 and, in relation to that matter, I took into account the fact that the Claimant did not complain about her conduct at the material time (or in any event the Claimant did not make a complaint contemporaneously).

Issue 1.2

126 I was satisfied that the Respondent genuinely believed in the claimant's guilt. I considered the evidence from Ms Stobart's report (which was compiled pursuant to a genuine and, on the whole, a proper process taking account the size and administrative resources of the Respondent [a relatively small Charity]). Alla Kurhanska and Leonie Goodman were very clear they each (including Board Members with respect to Anna Stobart's report) fully considered the facts and genuinely believed that the Claimant committed the alleged acts and as a consequence the Claimant should be summarily dismissed. That was a genuine belief which was held honestly.

Issues 1.3.1 and 1.3.2

127 Allegation 1b. was not ultimately established according to Ms Stobart's report (which was accepted by the Board of Trustees). As the allegation took place in a one to one meeting, Ms Stobart was unable to make a finding as to how the Claimant made the criticism against Jennifer Khoury. Accordingly, this did not form part of the reasoning relied on in terms of the Claimant's dismissal.

128 In relation to Allegation 1J., this was not established, and Leonie Goodman acknowledged that there was an administration error in terms of the date when the relevant meeting took place (the meeting was actually held on 14 May 2020 and not on 15 May 2020). The minutes of 14 May 2020 did not include reference to any criticism of Ms Hewelt. The criticism of Ms Hewelt had (according to her) been at the meeting on 23 April 2020 (per Ms Hewelt's grievance). The Respondent's representative accepts in his submissions at paragraph 26 that, as formulated, that allegation should not have been upheld.

129 The remaining allegations which were upheld and supported by reasonable grounds related to the Claimant's conduct with regards to Jennifer Khoury's grievance, Ms Hewelt's grievance, and the Claimant's insubordination and detrimental comments made against the Board and its Chair. In relation to those allegations the Tribunal notes as follows:

Jennifer Khoury allegations

130 Allegation 1a. (Criticising Ms Khoury in front of colleagues during a team meeting on 14 May 2020). The Claimant had stated at the disciplinary hearing that she did not criticise anyone in particular. This does not reflect the minutes of the staff meeting which were taken in relation to 14 May 2020. I did not accept the claimant's suggestion that the minutes were not accurate or fabricated (this was unsupported by the evidence that was before the Tribunal or indeed before the Respondent at either the first instance disciplinary or at disciplinary appeal stages). Reference was made to an email from 14 May 2020 demonstrating that the minutes were circulated, and the Claimant did not lodge any objections (or amendments) contemporaneously and at the relevant time.

131 Allegation 1c. (Tasking Ms Khoury with setting up an online school with very little support, a task which was outside her job description and represented a considerable increase in her workload); Allegation 1d. (Asking Ms Khoury to work on the online school whilst she was on annual leave); and Allegation 1e. (Criticising Ms Khoury for not doing sufficient work during her annual leave). The Claimant stated at the disciplinary hearing that all she asked Ms Khoury to do was to look at the type of website rather than asking her to actually set up the online school, and she denied asking her to work during her annual leave. She pointed out that Ms Khoury suggested a meeting during her annual leave (not the Claimant). The Claimant maintained that she did not criticise Ms Khoury for lack of work during her leave but simply asked her to be flexible.

132 In her outcome letter, Ms Stobart reviewed the email trail that was included within the grievance of Ms Khoury. It is evident from that email trail that the Claimant expected Ms Khoury to chase her about the relevant meeting whilst on holiday (see pages 682 and 683 of the Hearing Bundle). This is notwithstanding the fact that Ms Khoury offered to speak on a day that fell during her holiday.

133 The Claimant used the words “I do not want to hear this, I was off Please just get on with it or stop”. I considered Anna Stobart’s findings (see page 321 of the Hearing Bundle) and Leonie Goodman’s comments at the appeal stage (see page 375 of the Hearing Bundle). There was clearly sufficient evidence to conclude that allegations 1c., d. and e. were well-founded. The investigation was reasonable in that the Claimant’s comments were taken account of, in addition to the content of Ms Khoury’s grievance and her comments, and relevant email correspondences between the parties.

134 Allegation 1f. (declining Ms Khoury’s right to raise grievance by refusing to read her email). Ms Stobart said that the Claimant did not deny refusing to address Ms Khoury’s grievance. In terms of whether the Claimant accepted this allegation at the hearing (as Ms Stobart said) or not, I had regard to the Claimant’s correction at page 305 of the Hearing Bundle, and the email at page 137 of the Hearing Bundle. The Claimant acknowledges that she saw the complaint was addressed to other staff and did not see it as a complaint as any complaint should be confidential. Although she said she later called Ms Khoury for a meeting and Ms Khoury refused to attend, there is no supporting evidence referred to in respect of this matter in the Claimant’s corrections. Moreover it is clear from the Claimant’s email at page 137 of the Hearing Bundle that the Claimant had refused to read the email from Ms Khoury (in which she made the complaint to her).

135 Taking into account the Claimant’s correction to the minutes at page 305 and the email at page 137, the evidence indicates that the allegation was well founded. Moreover, there were reasonable grounds for the Respondent upholding this allegation (I also considered page 375 of the Hearing Bundle). This was a serious matter as recognised by Ms Stobart as the Claimant was denying Ms Khoury the right to progress her grievance complaint.

136 Allegation 1g. (Retaliating against Jennifer Khoury for raising the grievance by calling her on her mobile and sending her a text and an email on 3 June 2020). As referred to in my findings of fact above, the email at page 147 of the Hearing Bundle in which the Claimant informs Ms Khoury that Alla Kurhanska had told her about her complaint and that she was perfectly fine for Trustees to deal with it is relevant in respect of this allegation. This shows the Claimant contacting Ms Khoury to inform her that she was aware of her grievance. Ms Stobart had relied on supporting documentary evidence

in terms of making her findings about that allegation. This behaviour was not considered to be appropriate. The Claimant made the point that the call and text were sent before the Claimant realised Ms Khoury had raised a grievance. The Claimant clearly acknowledges in her email of 03 June 2020 that she was aware of a complaint made by Ms Khoury. Leonie Goodman followed up matters relating to this allegation when she interviewed Ms Khoury during the appeal process, which is apparent at page 896 of the Hearing Bundle (and which is referred to in her outcome report).

137 There were reasonable grounds in relation to the conclusions reached by Ms Stobart and Ms Goodman relating to this allegation. The Respondent carried out as much investigation as it could in all the circumstances.

138 Allegation 1h. (Committing breach of confidentiality by discussing Ms Khoury's grievance and performance in her absence in a meeting dated 11 June 2020). The Tribunal noted that sections of the relevant recording were played during the Claimant's disciplinary hearing (see page 307 of the Hearing Bundle). The Claimant did not deny when the recording was played that she had criticised Ms Khoury in respect of her grievance. In this regard, the Claimant's mitigation that she relied on including her anxiety and stress having discovered the second grievance against her was considered by Ms Stobart in her report (see page 321 of the Hearing Bundle). Ms Stobart was entitled to find that this allegation was well founded based on the evidence considered, that this was a breach of confidentiality, and that the Claimant's mitigation could not be a reasonable excuse in the circumstances.

139 Allegation 1i. (Terminating Jennifer Khoury's employment by not renewing her fixed term contract without good reasons and without authorisation from the Board on 12 June 2020). The Claimant's reasons for this was lack of budget and the fact that she did not need to obtain authorisation from the Board (see page 307 of the Hearing Bundle). Ms Stobart concluded in her report that Ms Khoury's role was of the utmost importance to the Respondent's organisation.

140 The Claimant stated in her appeal that funding documents had not been reviewed to support the conclusion reached. During the course of the Claimant's appeal, this matter was reviewed further, and Leonie Goodman's conclusion recognised that funding documents were relevant, they had not been looked at, but she ultimately upheld the decision on the basis that the Claimant had failed to undertake consultation with the Board of Trustees. That conclusion was consistent with the evidence and reasonable enquiries were made to establish the facts, in the circumstances.

Jennifer Hewelt's allegations

141 In relation to Jennifer Hewelt's allegation 1j, The Tribunal noted that the allegation in question was upheld based on the minutes which showed criticism of Joanna Hewelt (see page 321 of the Hearing Bundle). Leonie Goodman accepted during the appeal process that there was no meeting on 15 May 2020 and had erroneously identified the allegation as relating to 14 May 2020 (despite the fact that the minutes of the meeting on 14 May 2020 did not include criticism of Ms Hewelt). This in fact had occurred at the meeting on 23 April 2020 (see Ms Joanna Hewelt's initial grievance). As I stated earlier that allegation was not established and it should not have been upheld (the Respondent's representative acknowledges this).

142 Allegation 1k. (abusive language used in an email from you to Ms Hewelt dated 16 May 2020 interpreting your poem posted on Facebook on 15 May 2020 as an attack on those who feared working in an office at the height of the pandemic). In respect of that allegation, Ms Stobart had concluded that the Claimant's email was aggressive and that any provocation the Claimant felt was insufficient to justify her conduct. Reliance was placed on the minutes of the meeting (see page 308 of the Hearing Bundle).

143 There were reasonable grounds for upholding this allegation and the Respondent took such steps as were reasonable in the circumstances in terms of investigation of the same.

144 Allegation 1l. (Using the Government Furlough Scheme as a way of punishing Ms Hewelt for raising concerns about working from office during the lockdown period and for criticising the poem written by you on FaceBook). The Tribunal noted that Ms Stobart's conclusion that furlough had been used as a retaliation was based on the email exchanges between the Claimant and Ms Hewelt (and included a quotation from Ms Hewelt's email which appears at page 168 of the Hearing Bundle).

145 The Claimant's defence to this allegation was that this was not retaliation for the comment on the Facebook post but was something Ms Hewelt had been asking for since the office reopened. The Claimant made no comment on the summary of her case in the minutes at page 308 of the Hearing Bundle.

146 I considered that there was a reasonable basis for Ms Stobart's finding and that reasonable enquiries and investigations had been made.

147 Allegation 1l. (Committing Breach of Confidentiality by discussing Ms Hewelt's grievance and mental health in her absence in a meeting dated 11 June 2020). Once again relevant sections of the recording were played during the disciplinary hearing (see page 308). There are two allegations numbered with 1l. in the outcome report – this is the second allegation labelled as 1l (in the letter of 26 June 2020 this is listed as allegation 1(m)). It was accepted that when the recording was played at the disciplinary hearing that the Claimant had discussed Ms Hewelt's grievance and her mental health. It was reasonable to conclude (and there was a reasonable basis to conclude) that this conduct was wholly inappropriate, that mental health issues are considered to be sensitive data, and that this should never have been discussed at a staff meeting. I accept that the Respondent carried out a reasonable investigation in respect of this allegation.

Allegation 2 – Insubordination and Detrimental Comments made against the Board and its Chair

148 Allegation 2n. (Committing Insubordination to the Trustee Board by refusing to attend the grievance investigation into these) In respect of that allegation, Ms Stobart concluded that the correct process had been followed to invite the Claimant to the interview and that there was no good reason to support the Claimant's position of refusing to attend the hearing. Leonie Goodman noted that the Claimant failed to attend the first grievance hearing and she advised she will not attend the second grievance interview if this was to be conducted by Alla Kurhanska (she also found that the Claimant was sent copies of the documents relating to those matters and there were no missing documents that could have affected the outcome). Accordingly, the conclusion reached was

supported by the evidence and a reasonable investigation took place in the circumstances.

149 Allegation 2o. (Making Derogatory Remarks about Board Members at the staff meeting dated 11 June 2020). Relevant extracts were played from the recording of the meeting on 11 June 2020 during the disciplinary hearing (see page 309 of the Hearing Bundle). Ms Stobart found that the Claimant said at that meeting that the Board was incompetent and their aim was to damage the charity. The Claimant accepted that derogatory remarks were made by her at that meeting. Ms Stobart advised that the Claimant should have raised any such concerns with the Board (not with her staff members). Leonie Goodman found that as the minutes of the meeting on 11 June 2020 were issued on the same day as the meeting, there was no investigation into any missing paperwork that could have affected the outcome. The Respondent's conclusion reached was reasonable, the Claimant had an opportunity to put forward any mitigation and their investigation followed a reasonable investigation that took place into the circumstances.

150 Allegation 2p. (Breach in suspension terms and conditions by attending ISS Office and using ISS Desktop and Laptop and refusing to leave the office on Chair's request which resulted in police intervention). In this respect, Anna Stobart had reasonably concluded that the Claimant knew that she was suspended (this was confirmed to the Claimant in writing), and that she should not have attended the Respondent's office even if she was asked to do so by Lana Pereira as she had alleged (and, further, that she should have raised any pay issues with the Board). Her refusal to leave when Alla Kurhanska had asked her to do so was also noted in this respect. The Tribunal referred to its findings of fact in respect of the incident in question (referred to earlier in this Judgment). The conclusion that this amounted to gross insubordination was reasonable and based on rational grounds in the circumstances.

151 Allegation 2q (Refusing to hand in ISS properties such as ISS bank card, laptop, ISS bank keypad saying that it belonged to you in the presence of the police). The conclusion in respect of that allegation of Ms Stobart, was that the Claimant did not dispute the allegation and the Claimant pointed out to her that ultimately she returned the property in question in the police's presence. The conclusion that this amounted to gross insubordination was reasonable and based on rational grounds in the circumstances.

152 Allegation 2r. (Deciding to go on annual leave without approval of the Trustee Board and your email to the Board (27 June 2020 and also reinstating your decision verbally in front of the police on 24 June 2020)). Ms Stobart concluded that there was no evidence that the Claimant had raised a medical reason for her absence as she claimed at the hearing. She quoted from the email at page 245 of the Hearing Bundle from the Claimant to Alla Kurhanska dated 22 June 2020 in which the Claimant stated, "I am on holiday from 1st of July till end of July and hope the board will deal with this quick and I sincerely hope you will make some common sense and stop hijacking the organisation." In the circumstances Ms Stobart had formed a reasonable conclusion that the Claimant took leave during a time when the Claimant knew that the Respondent intended to finalise their investigation, which amounted to insubordination.

153 Allegation 2s. (Deleting of files on the Charity computer whilst using it during the period of suspension between 9:50am and 12Noon on 24 June 2020 before the police arrival evident from the recycle bin on the computer detailing the date and time of deletion). The Claimant asserted that this allegation was made up. Ms Stobart advised

that after the meeting she reviewed the Claimant's Desktop and saw evidence that some files had been deleted. Leonie Goodman concluded that there was evidence before her during the appeal to the effect that the dates and times of documents deleted corresponded in terms of when the Claimant had attended the Respondent's offices (and being on her computer) during the course of her suspension. Leonie Goodman acknowledged that the evidence she considered had not been made available to the Claimant. Leonie Goodman also conducted investigations to assist her in ascertaining the facts with regards to the conduct of the appeal. However she rejected other matters that the Claimant had raised in her appeal and she concluded that in respect of those she had received the documents that the Claimant required for preparation.

154 Allegation 2t. (Cancelling ISS bank cards at 12:42pm on 24 June 2020 during your suspension period which was confirmed by the bank when contacted by the Treasurer Ms Valentina Ellice). Ms Stobart noted that the Claimant did not dispute this allegation. Leonie Goodman stated in her appeal outcome that this matter related to the cancellation of ISS bank cards and the Claimant advised her at the appeal hearing that she did not assert that there was any missing paperwork. Therefore no further investigation was carried out. The Claimant sets out what had happened in respect of cancelling the bank card at paragraph 172 of her witness statement. Ms Stobart (and Leonie Goodman) had reached a reasonable conclusion, based on reasonable grounds in relation to this allegation, and the Claimant was given a reasonable opportunity to make representations.

Conclusions on issues 1.3.1 and 1.3.2 in relation to allegations 1a. to 2t.

155 In respect of those allegations, I was satisfied that the Respondent carried out a full and thorough investigation in this case in terms of sustaining the genuine and honest belief in the Claimant's guilt. The underlying facts of the investigation were supported by the documents to which I was referred.

156 A detailed investigation report was produced with references made to several documents collated during the investigation process. On the whole, the Claimant was given the relevant documents in advance of the disciplinary hearing and the appeal hearing. The Claimant had the chance to comment on the same at the disciplinary hearing, and indeed, during the appeal stage. Leonie Goodman acknowledged that the evidence she considered relating to allegation 2s was not made available to the Claimant. However, having considered the evidence before the Tribunal from the Claimant and the Respondent's witnesses, I am satisfied that this is unlikely to have made any difference to Ms Stobart or Leonie Goodman's decisions (and that the investigation and the procedure followed was fair and reasonable in all the circumstances).

157 A reasonable and full investigation had taken place in all the circumstances and the Claimant was given a number of opportunities to set out her responses to the allegations (which I am satisfied that she understood).

158 The Claimant sought copies of documents and there were correspondences between the Claimant and the Respondent relating to this prior to the disciplinary hearing on 7 July 2020 that I was referred to within the Hearing Bundle. The Respondent furnished the Claimant with a number of documents and where documents were not provided, a satisfactory explanation was provided in respect thereof.

159 The Tribunal noted that a number of investigation meetings took place, and that a statement was taken from Ms Corina Brujan recorded via a Zoom meeting (see page 228 of the Hearing Bundle) on 19 June 2020. There was also a Zoom meeting with Ms Ania Bialek, FES Administrator on 16 June 2020 (see page 222 of the Hearing Bundle).

160 The Respondent had carried out as much investigation as was reasonable in the circumstances of this case in relation to the allegations that were found to be proven (except in relation to allegation 1j. [see above]). The allegations which were found proven created in themselves serious and significant concerns.

161 Anna Stobart intimated in her report that in light of her findings, the Claimant's employment situation was untenable (a decision that the Board which included Alla Kurhanska who gave evidence before the Tribunal had concurred) and Leonie Goodman concluded that the Claimant's actions undermined trust and confidence. I accepted the evidence of Alla Kurhanska and Leonie Goodman in relation to this matter which were both clear and consistent. Accordingly, I accepted that the decisions reached by Anna Stobart (and approved by the Respondent's Board) and Leonie Goodman were within the band of reasonable responses in terms of their conclusions that the Claimant's actions undermined the Respondent's trust and confidence in the Claimant.

Issues 1.3.3 and 1.3.4

162 In relation to the allegations that were proven, the Tribunal found that the process followed by the Respondent as a whole was fair and reasonable in all the circumstances.

163 I did not find that there was any evidential basis for Alla Kurhanska not being involved in the disciplinary or grievance investigation on grounds of any actual or apparent conflict of interest as alleged by the Claimant. In any event the disciplinary and grievance hearing was chaired by Anna Stobart, an Independent HR professional, and it was sanctioned by the Board (and their decision was confirmed by Ms Jayashetty in writing).

164 The Claimant challenged the basis of Allegation 1J. The Respondent's representative conceded that this allegation was not proven in terms of the manner in which it was formulated.

165 In relation to Allegation 1G, the Claimant said that this had not been established and there was no evidence of relevant correspondences including text messages. However, the Claimant sent an email on 3 June 2020 (the content of which I have set out above in full in my findings of fact) in which she references the complaint and the fact she was aware of her grievance, both of which was unnecessary and clearly inappropriate. It was difficult to comprehend why the Claimant sought to address this to the complainant at the relevant time.

166 The Claimant's lawyers requested the disciplinary and grievance hearing to be postponed in email correspondence dated 30 June 2020. They requested the hearing to be postponed by at least 7 days on that date. Accordingly, the Respondent rescheduled the meeting for 7 July 2020. The Claimant has sent an email thereafter acknowledging the meeting was scheduled on that date (and confirming that she will be attending).

167 The Claimant also claimed that minutes presented by the Respondent to the Tribunal were inaccurate. In relation to the disciplinary hearing record, I considered that

the Claimant was given the opportunity to comment on the notes. The Tribunal was taken to the Claimant's comments during the course of the hearing. I was satisfied that the Claimant's comments were taken into account by both Anna Stobart and Leonie Goodman.

168 The Claimant also referred to her mitigation particularly in relation to her mental health at the relevant time. There was reference to the Claimant's state of health in her grievance sent to the Respondent on 11 June 2020. However, apart from the reference to her mental state during that correspondence, I did not find any evidence that the Claimant had presented further material evidence of her mental state to the Respondent at the material time. In any event, I am satisfied that the Claimant's mental health was taken into account by both Ms Stobart in her report (which was subsequently considered and approved by the Respondent's Board) and by Leonie Goodman during the appeal process and appropriate weight and consideration was given to the same, where appropriate.

169 I noted that the allegations that were brought against the Claimant were upheld except in relation to Allegation 1B.

170 I further noted that the Claimant was provided with an opportunity to comment on the investigation report both during the disciplinary hearing and the appeal process.

171 Leonie Goodman provided her reasoning relating to the appeal independently albeit she upheld the decision to dismiss the Claimant for gross misconduct. The analysis that was carried out following the appeal hearing was detailed and thorough. The process was reasonable.

172 Further, the disciplinary process was carried out with an open mind and the Claimant's position was fully taken into account and considered in detail.

173 I considered all the allegations (except Allegations 1B and 1J) were found proven (and that the Respondent's decision in respect thereof was reasonable in all the circumstances) and that a detailed and thorough investigation was carried out in respect of these.

174 In relation to those allegations, there was no point that the Claimant had raised which had not been considered. The Respondent had acted fairly and reasonably with regards to the procedure (including the investigation and the disciplinary hearing) in the Claimant's case. I was satisfied that the Respondent had not breached the ACAS Code of Practice on disciplinary and grievance procedures ("the ACAS Code") in terms of the investigation or disciplinary hearings that it carried out particularly in relation to the allegations that I have found to be substantiated.

Issue 1.3.4 – Claimant's Allegations of Unfairness

175 I have considered each of the Claimant's allegations of procedural unfairness set out at paragraph 63 of her Grounds of Complaint and my conclusions are as follows:

175.1 I do not consider that the allegations at paragraphs 63.1 and 63.2 are well founded. Ms Khoury and Ms Hewelt's grievances were properly and fairly investigated and Ms Kurhanska's involvement in them did not affect the

fairness of the disciplinary process followed. The Claimant did not attend meetings with Ms Kurhanska to discuss the allegations. Moreover the Respondent's representative submits that even though the disciplinary invite letters referred to the grievances that had been raised as having been upheld, the issues raised in those grievances were still live as part of the disciplinary process considered by an independent third party (Ms Stobart). Ms Khoury's grievance, it is submitted, is effectively, allegations 1a, 1b, 1c, 1d, 1e, 1f, 1g from the disciplinary invite letter whilst, Ms Hewelt's grievance is allegations 1j) (save for the incorrect transposition of the date of the meeting), 1k) and 1L). There is no evidence that outcome letters were sent out to Ms Khoury and Ms Hewelt before the end of Ms Stobart's report. The Respondent's representative points out that the fact that Ms Stobart did not uphold allegation 2b) shows that matters were not predetermined by any previous investigation.

- 175.2 In relation to allegation 62.3, the Respondent submits that whilst it was largely legitimate (albeit unwise) for the Board to describe the Claimant's grievance as retaliation, it is clear that this label did not predetermine anything as regards the disciplinary investigation. In appointing Ms Stobart, the Board had acted reasonably in terms of dealing with the Claimant's grievance and had assigned this to an independent person to determine.
- 175.3 I do not accept that the Respondent failed to take into account the Claimant's mental health condition in scheduling the grievance/disciplinary meeting on 07 July 2020. Firstly it was the Claimant who had requested to resolve matters before 1 July 2020 (see page 245 of the Hearing Bundle). Secondly, the Claimant had not explained to anyone that that the relevant period of absence was required for an operation. Thirdly, after the meeting had been scheduled for 30 June 2020 at the Claimant's request, the Claimant had (via her solicitors) requested a delay of "at least 7 days". Accordingly, the hearing was scheduled pursuant to the Claimant's request. The Respondent points out that the Claimant did not make anyone at the Respondent aware of her suicide attempt and made no mention of being unable to attend on 7 July 2020 due to ill health. When the Claimant requested a postponement of the appeal due to health reasons this was accommodated.
- 175.4 There was no evidence that the Respondent did not take into account the Claimant's mental health during the disciplinary hearing as alleged by the Claimant. The Claimant attended the disciplinary hearing and appeared to be well prepared. During the rather lengthy disciplinary hearing the Claimant was able to discuss the numerous allegations against her in detail.
- 175.5 The Claimant attended the disciplinary hearing with a significant amount of documentation. Some of these had been provided in response to her requests for further documentation. The Claimant had requested further documentation (see page 283 of the Hearing Bundle) but much of it related to matters that were not disciplinary allegations the Claimant was being asked to respond to (see page 265 of the Hearing Bundle). The Claimant was given a detailed response addressing why only certain requests were relevant (see page 292-293 of the Hearing Bundle).

175.6 As mentioned above, the disciplinary hearing was a lengthy hearing during which the allegations were discussed in detail. The Claimant attended with documentation which was referred to. Ms Stobart clearly took onboard the contents, including for example the Claimant's documentation regarding her health (see page 936 of the Hearing Bundle). A lot of the documents the Claimant refers to in paragraph 205 of her witness statement were either not disputed or were already in Ms Stobart's possession (see witness statement paragraph 205 bullet point 3 and documents regarding Ms Kurhanska's involvement in the investigation or correspondence with Ms Khoury about the online school during her holiday period), or they did not relate to the allegations at all (including documentation regarding Jelena Carter). A substantial part of the appeal process was taken up with considerations of what (if any) documentation was missing and the effect it would have had on the outcome of the process. The Respondent contends that any deficiencies at the investigation stage were rectified on appeal.

175.7 I do not find based on the evidence that I heard and the documents that I was referred to, that there was a failure by the Respondent to consider the Claimant's evidence. There was a lengthy disciplinary/grievance hearing. Many of the allegations were determined by reference to the documentation provided to the Claimant. Ms Stobart took into account the relevant evidence. There was a thorough review at which the Claimant was again able to state his case before another independent third party, namely Leonie Goodman.

175.8 The Respondent acknowledges that the notes at pages 303-304 of the Hearing Bundle are too brief and that more was discussed at the four-hour hearing. However, the notes were not intended to be verbatim. The Respondent points out that given the numerous allegations, having a structure to the notes kept makes sense and that the Claimant's amendments at pages 305-310 of the Hearing Bundle are relatively minor in many ways. The thorough appeal considered whether there were any areas where further investigation was necessary. The dismissal was not rendered unfair by the length of the notes that were provided by the Respondent, nor any alleged failure to keep an accurate record of what was said.

175.9 I note that there were a number of references to the difficulties created by the COVID-19 pandemic in Ms Stobart's report (see page 321 of the Hearing Bundle points e) and f), and also at page 323 below allegation 2 t)). It is clear that the effects of the COVID-19 pandemic were taken into account in terms of Ms Stobart's decision (which was approved by the Respondent's Board).

176 Furthermore, I considered the Claimant's allegations of substantive unfairness set out at paragraph 64 of the Grounds of Complaint and I have set out my conclusions below:

176.1 As I indicated above, I consider that Ms Khoury and Ms Hewelt's grievances were properly and fairly investigated and Ms Kurhanska's involvement in them did not affect the fairness of the disciplinary process followed as to the Claimant.

- 176.2 I do not accept that the Respondent's decision to dismiss the Claimant was outside the range of reasonable responses nor that an employer acting reasonably would have given the Claimant a warning prior to summary dismissal. It is clear that alternatives to dismissal were considered by Ms Stobart (see page 323 of the Hearing Bundle). The Respondent submits that the Tribunal must be wary of not substituting its own decision for that of the employer.
- 176.3 The Claimant attended the disciplinary hearing with a significant amount of documentation. Some of this had been provided in response to her requests for further documentation. The Claimant had requested further documentation. The Claimant was given a detailed response addressing why only certain requests were relevant (see pages 292-293 of the Hearing Bundle).
- 176.4 The Respondent acknowledged that the notes at pages 302 to 303 of the Hearing Bundle were too brief for a 4-hour disciplinary hearing. The notes were not intended to be a verbatim record. The Respondent points out that the Claimant's amendments are relatively minor and that the appeal was thorough and there was consideration of whether any further investigation was necessary. Leonie Goodman considered the Claimant's contention that the minutes were incorrect or manipulated, and having done so, upheld the decision to dismiss the Claimant. I accept the contention that the claimant's dismissal was not rendered unfair due to the length of these notes or any alleged failure to keep an accurate record of what was said.
- 176.5 I am satisfied that based on the evidence that I heard and the documents to which I was referred that Ms Stobart's report took into account the Claimant's evidence provided at the disciplinary hearing. The evidence that was taken into account and the conclusions reached were reviewed by Leonie Goodman during the appeal process (Leonie Goodman considered that the decision to dismiss the claimant should be upheld).
- 176.6 There was no evidence to satisfy the Tribunal that the Respondent failed to take account of the Claimant's mental health either prior to or during the disciplinary hearing.
- 176.7 In relation to the Claimant not being provided with a warning from the Trustees or that she was not given an opportunity to improve, I took into account that Ms Stobart considered alternative options to dismissal. However she concluded that it was impossible for the Claimant to continue to work with the Respondent's Board. Leonie Goodman, having reviewed the allegations independently, agreed with the decision that the Claimant should be dismissed. In the circumstances, it was within the band of reasonable responses for the Respondent to consider that there was no alternative to dismissal.
- 176.8 The Claimant suggests that alternative employment with the Respondent was not considered for the Claimant. The Claimant does not set out the details of any alternative role which she was able to perform within her appeal (which is summarised on the first page of the appeal outcome letter). There was no evidence of any alternative vacancies that were suitable for

the Claimant. The Respondent refers to the lack of alternative roles, the small size of the Respondent's organisation, and the fact of the deterioration of the relationship between the Claimant and the Respondent's Board and her staff. In any event Ms Stobart had reasonably concluded that concluded that it was impossible for the Claimant to continue to work with the Respondent's Board.

176.9 I do not accept the claimant's contention that her actions were not serious enough to warrant a finding of gross misconduct. The fact that the Claimant would normally be dismissed without notice or payment in lieu of notice due to gross misconduct is set out in the Respondent's Disciplinary Policy (see page 73 of the Hearing Bundle). Ms Stobart concluded that the Claimant's actions amounted to gross misconduct and made the decision to dismiss the Claimant summarily (a decision with which the Respondent's Board agreed). The decision to dismiss the Claimant for gross misconduct was upheld by Leonie Goodman on appeal. I consider their decisions to be within the band of reasonable responses.

177 The Claimant should have understood the importance of appropriate behaviour particularly in terms of her role as Chief Executive Officer. The conduct in question was reasonably considered to amount to gross misconduct. The Claimant had failed to follow the Respondent's expected standards of behaviour.

178 The Claimant's conduct was serious given the effect of her conduct on other employees. I considered the contents of the communications and grievances from relevant employees in respect thereof. I considered that the Respondent acted in accordance with the ACAS Code. I also considered that Anna Stobart (whose report was approved by the Board members including Alla Kurhanska who gave evidence before the Tribunal) and Leonie Goodman reasonably concluded that the Claimant's actions in terms of the allegations that I have found were substantiated, could have led to serious issues in terms of the Respondent's workforce, some of whom had intimated that they may be placed into an untenable position where they would have to leave their employment.

179 In all the circumstances it was reasonable for the Respondent on the facts of this case to conclude that the Claimant was guilty of gross misconduct and that she had committed the allegations in question at the relevant time.

Cumulative or Individual Consideration of the Allegations

180 For the avoidance of doubt, the Tribunal considered the allegations against the Claimant both cumulatively and individually. The Tribunal was satisfied that taking the allegations that were found to be substantiated as a whole or individually, the Claimant's conduct amounted to gross misconduct and the Respondent was entitled to dismiss the Claimant for that conduct in all the circumstances.

Was Dismissal Within the Band of Reasonable Responses

181 A finding of gross misconduct does not of itself mean that dismissal is inevitable. A reasonable employer would consider the full context in deciding upon penalty. In this case the decision to dismiss the Claimant on the facts before the Respondent was a decision

that a reasonable employer could make. The Respondent acted fairly and reasonably in dismissing the Claimant by reason of her conduct.

182 The Claimant had made a number of points during her disciplinary hearing and the appeal process. Those points were fully considered by the Respondent. While a reasonable employer could have decided not to dismiss the Claimant and they could have imposed a lesser penalty, I am satisfied that an equally reasonable employer could decide to dismiss the Claimant on the facts before them. The full background and mitigation presented by the Claimant was considered prior to dismissing the Claimant and the Respondent acted fairly and reasonably in their approach.

183 The Claimant contended that a lesser sanction could have been applied. By way of an example, the Claimant referred to the fact that a written warning could have been provided to her in order to obviate the need to dismiss the Claimant.

184 When the Tribunal questioned the Respondent's witnesses in respect of this matter, it was clear from the answers given by the Respondent's witnesses that a warning would not have alleviated their concerns (in terms of the concerns that were before the Respondent at the material time). The Respondent's concerns related to trust and confidence which goes to the heart of the contract (and employment relationship) between the Claimant and the Respondent.

185 The Claimant also raised in her grounds of complaint that the Respondent failed to consider alternative employment. The Claimant did not identify any particular employment which she says would have been suitable for her to undertake in order to avoid her eventual dismissal. In any event, I am satisfied that it was not reasonable in the circumstances for the Respondent to have placed the Claimant within alternative employment at the relevant time. I took into account the size and undertaking of the Respondent, and the fact that it is a relatively small employer.

186 There were serious and significant trust and confidence issues, and the consequences and risks arising from that were serious. There was no evidence of any inconsistency of treatment and in any event that was not suggested in terms of the submissions made to the Tribunal.

187 The Respondent concluded that the Claimant was guilty of gross misconduct and there was no confidence that the Claimant could continue to be employed going forward. Anna Stobart in terms of her report (which was approved by the Respondent's Board) and Leonie Goodman had not been satisfied that the Claimant had shown any or any sufficient insight in relation to her conduct. The Respondent's actions in dismissing the Claimant were reasonable on the facts before the Respondent.

188 The Respondent took account of the facts of the case and the full factual matrix, the decision to dismiss the Claimant on account of her conduct was fair and reasonable, it was also a decision that fell within the range of reasonable responses open to a reasonable employer in this case taking account of the size and administrative resources of the Respondent's undertaking, and in accordance with equity and the substantial merits of this case.

189 In reaching my conclusion, I took into account that I must not substitute my own view for that of the employer.

190 In view of those circumstances and in terms of my findings, I find that the Respondent's decision to dismiss the Claimant was within the band of reasonable responses that was open to a reasonable employer.

Respondent's alternative reasons for dismissal

191 The Respondent's representative submitted that in the alternative that the Respondent had pleaded that the Claimant's dismissal was for some other substantial reason. If I was wrong to conclude that the reason for the Claimant's dismissal was conduct I would have concluded that the reason for the Claimant's dismissal was some other substantial reason. This is based on the allegations that the Respondent found to be established during the course of the first instance disciplinary and the appeal processes respectively.

192 Accordingly, if I were wrong to find that the claimant was dismissed by reason of gross misconduct, I would have determined that in all the circumstances, the Respondent was entitled to find that trust and confidence in the Claimant had been destroyed or seriously damaged, and therefore, the Claimant's dismissal was reasonable in all the circumstances. A dismissal on grounds of some other substantial reason, I am satisfied, would have been both procedural and substantively fair, considering all the circumstances.

Issue 3.1 - Claim under Schedule 5 of the Employment Act 2002

193 Paragraph 3.1 of the list of issues refers to the question "when these proceedings were begun, was the Respondent in breach of his duty to give the Claimant a written statement of employment particulars or of the change to those particulars?"

194 This requires the Tribunal to review Sections 1 and 4 of the Employment Rights Act 1996 ("ERA 1996") and to assess whether the Respondent were in breach of their statutory duty to provide a Statement of Initial Employment Particulars and/or a Statement of Changes pursuant to those provisions.

195 The Respondent's representative submits that the Tribunal has been shown several contracts of employment for the Claimant, which satisfy the requirements of sections 1 and 4 of the ERA 1996 (see pages 506 and 522 of the Hearing Bundle respectively).

196 I considered that there were copies of statements of employment particulars provided to the Claimant and copies of those were included in the Hearing Bundle (see the final paragraph of the Tribunal's findings in fact, above). Doreen Sangster who was called to give evidence by the Claimant by CVP during the course of the hearing acknowledged that the Claimant was provided with terms and conditions of employment, and she intimated that she had signed those terms physically. I had no reason to doubt Doreen Sangster's evidence in respect thereof. Therefore, any claim that the Claimant was not provided with a written statement of initial employment particulars pursuant to Section 1 of the ERA 1996 must fail.

197 I considered whether the Respondent were in breach of their duty to provide details of any Statement of Changes of those particulars. Firstly, it was not clear what changes it was alleged by the Claimant had occurred to her initial employment particulars and that, accordingly, should have been provided to her by the Respondent (by way of a written

statement containing particulars of the change) and in what respect the Respondent were alleged to have been in breach of their duty under Section 4 of the ERA 1996. In any event, I was not satisfied having considered the evidence that was before the Tribunal, that the Respondent was in breach of their duty to provide a Statements of Changes in accordance with Section 4 of the ERA 1996. Therefore, the Claimant's claim made pursuant to Section 38 of the Employment Act 2002 is dismissed.

Conclusion

198 The Tribunal was satisfied that there was a fair reason for the Claimant's dismissal namely misconduct.

199 The Tribunal considered whether the dismissal was fair and reasonable in accordance with Section 98(4) of the ERA 1996 including the size and administrative resources of the employer and found that dismissal was fair and reasonable in all the circumstances. The Claimant was not unfairly dismissed.

200 The Respondent did not breach their duties under Section 1 and Section 4 of the ERA 1996 and accordingly the Claimant's claim made pursuant to Section 38 of the Employment Act 2002 is dismissed.

Employment Judge B Beyzade
Date: 31 January 2024