EMPLOYMENT TRIBUNALS

Claimant: Ms. M Fontenelle

Respondent: LTE Group

Heard at: London South, by video

On: 4, 7, 8, 9, 10 and 11 July 2025

Before: Employment Judge Cawthray
Ms. S Dengate
Mr. S Huggins

Representation
Claimant: Mr. Webster, Counsel
Respondent: Mr. Flood, Counsel

JUDGMENT having been sent to the parties on 14 July 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Background, procedure and evidence

1. The hearing considered the two above mentioned two claims that the Claimant has submitted.

2. The case was managed at a case management preliminary hearing at which the Claimant was permitted to amend her claim and a list of issues was produced. The Claimant was represented at that hearing.

3. The parties had agreed a bundle of 816 pages for the final hearing.

4. All the witnesses had provided a written witness statement and all gave oral evidence having affirmed or swore on a holy book.

5. In relation to witness evidence, it was submitted by Mr. Webster on behalf of the Claimant that Mr. Bryne for the Respondent found it convenient to not understand questions and used in obfuscation in his answers. The Tribunal did not consider this to be the case. The Tribunal considered Mr. Bryne, and the other Respondent witnesses, to be clear and cogent in his and their evidence providing consistent explanations for their actions and decision making throughout the process.

6. In relation to the Claimant, the Tribunal noted that the Claimant's evidence changed at several points during the hearing, and her oral answers were very different to accounts that she gave at the time of events as recorded in the contemporaneous documents. She asserted some documents were fabrications, and we saw no evidence of this being the case. Mr. Webster said the Claimant's evidence was a little illogical and suggested that given the position she was nervous of the Respondent it was not unnatural to feel under attack in these proceedings. The Tribunal accept that any witness is likely to feel nervous during a tribunal hearing. However, all parties were professionally represented and the Tribunal considered that Mr. Flood's cross examination of the Claimant was considered, calm, clear and fair, and any pressure felt could not account for inconsistencies or "illogic".

The issues

7. The issues, as set out below, were taken from the Case Management Order and the representatives confirmed at the start of the hearing that the issues were correct. The Tribunal has used the same numbering as in the Case Management Order for ease of reference.

1. Time limits

1.1 Given the date the claim form for the First Claimant was presented and the dates of early conciliation, any complaint in the First Claim about something that happened before 10 June 2023 may not have been brought in time.
1.2 Were the discrimination and victimisation complaints in the First Claim made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
1.2.2 If not, was there conduct extending over a period?
1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?
1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Unfair dismissal

2.1 The parties agree that the Respondent dismissed the Claimant with effect from 13 July 2023.
2.2 What was the reason or principal reason for dismissal? The Respondent says the reason was conduct [or some other substantial reason]. The Tribunal will need to decide whether the Respondent genuinely believed the claimant had committed misconduct.
2.3 If the reason was misconduct, did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:
2.3.1 there were reasonable grounds for that belief;
2.3.2 at the time the belief was formed the Respondent had carried out a reasonable investigation;
2.3.3 the Respondent otherwise acted in a procedurally fair manner;
and
2.3.4 dismissal was within the range of reasonable responses.

3. Remedy for unfair dismissal

3.1 Does the Claimant wish to be reinstated to their previous employment? At the time of the Preliminary Hearing for Case Management the Claimant did wish to be reinstated.
3.2 Does the Claimant wish to be re-engaged to comparable employment or other suitable employment? At the time of the Preliminary Hearing for Case Management the Claimant did not wish to be re-engaged.
3.3 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.
3.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.
3.5 What should the terms of the re-engagement order be?
3.6 If there is a compensatory award, how much should it be? The Tribunal will decide:
3.6.1 What financial losses has the dismissal caused the Claimant?
3.6.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
3.6.3 If not, for what period of loss should the Claimant be compensated?

3.6.4 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?
3.6.5 If so, should the Claimant's compensation be reduced? By how much?
3.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
3.6.7 Did the Respondent or the Claimant unreasonably fail to comply with it?
3.6.8 If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?
3.6.9 If the Claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?
3.6.10 If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?
3.6.11 Does the statutory cap of fifty-two weeks' pay or £105,707 apply?
3.7 What basic award is payable to the Claimant, if any?
3.8 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

4. Wrongful dismissal / Notice pay

4.1 The parties agree that the Claimant was not paid for her notice period.
4.2 What was the Claimant's notice period?
4.3 Was the Claimant guilty of gross misconduct?

5. Direct sex discrimination (Equality Act 2010 section 13)

5.1 Did the Respondent do the following things:

5.1.1 Subject the Claimant to disciplinary proceedings; and
5.1.2 Dismiss the Claimant on 13 July 2023?

5.2 Was that less favourable treatment?
The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.
If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.
The Claimant says they were treated worse than Lynworth Moore (Maths Tutor).
5.3 If so, was it because of sex?

6. Harassment related to race (Equality Act 2010 section 26)

The Claimant is Black and of African-Caribbean descent.
6.1 Did the Respondent do the following things:

6.1.1 On 5 May 2023, Bryony Huggett, the Local Education Manager at HMP Wandsworth, removed the Claimant from working in all prisons, including her place of work at HMP Wandsworth, on a permanent basis?
6.1.2 On 31 October 2023, by the actions of its Appeal Officer, Mr Marshall, hinder the Claimant's representative in putting across the Claimant's appeal in her Appeal Hearing against her dismissal by refusing to listen to what that representative was saying?
6.2 If so, was that unwanted conduct?
6.3 Did it relate to race?
6.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
6.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

7. Harassment related to sex (Equality Act 2010 section 26)

The Claimant is female.
7.1 Did the Respondent do the following things:
7.1.1 On 5 May 2023, Ms Huggett removed the Claimant from working in all prisons, including her place of work at HMP Wandsworth, on a permanent basis?
7.1.2 On 31 October 2023, by the actions of its Appeal Officer, Mr Marshall, hinder the Claimant's representative in putting across the Claimant's appeal in her Appeal Hearing against her dismissal by refusing to listen to what that representative was saying?
7.2 If so, was that unwanted conduct?
7.3 Did it relate to sex?
7.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
7.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

8. Victimisation (Equality Act 2010 section 27)
8.1 The Respondent accepts that the Claimant did a protected act on two occasions as follows:
8.1.1 By raising a grievance on 3 April 2023 by letter to Marina Mesholva?
8.1.2 By presenting the First Claim to the Tribunal on 6 October 2023?
8.2 Did the Respondent do the following things:
8.2.1 On 5 May 2023, Ms Huggett removed the Claimant from working in all prisons, including her place of work at HMP Wandsworth, on a permanent basis?
8.2.2 On 31 October 2023, by the actions of its Appeal Officer, Mr Marshall, hinder the Claimant's representative in putting across the Claimant's appeal in

her Appeal Hearing against her dismissal by refusing to listen to what that representative was saying?
8.3 By doing so, did it subject the Claimant to detriment?
8.4 If so, was it because the Claimant did a protected act?
8.5 Was it because the Respondent believed the Claimant had done, or might do, a protected act?

9. Remedy for discrimination or victimisation

9.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?
9.2 What financial losses has the discrimination caused the Claimant?
9.3 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
9.4 If not, for what period of loss should the Claimant be compensated?
9.5 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
9.6 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?
9.7 Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?
9.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
9.9 Did the Respondent or the Claimant unreasonably fail to comply with it?
9.10 If so is it just and equitable to increase or decrease any award payable to the Claimant?
9.11 By what proportion, up to 25%?
9.12 Should interest be awarded? How much?

10. Breach of section 10 of the Employment Relations Act 1999

10.1 Did the Respondent fail, or threaten to fail, to:
10.1.1 Permit the Claimant's companion to:
10.1.1.1 Address the hearing in order to do any or all of the following:
10.1.1.1.1 Put the worker's case;
10.1.1.1.2 Sum up that case; and/or
10.1.1.1.3 Respond on the worker's behalf to any view expressed in the hearing?
10.1.2 It is noted that the above right does not extend to requiring the Respondent to permit the Claimant's companion to:
10.1.2.1 Answer questions on the Claimant's behalf;
10.1.2.2 Address the hearing if the Claimant indicated at that hearing that she did not wish her companion to do; or
10.1.2.3 Use the powers described in 10.1.1.1 in a way that prevents the Respondent from explaining its case or prevents any other person at the hearing from making their contribution to it.

10.2 If so, what amount (not exceeding two weeks' pay, where a week's pay is subject to the statutory cap in section 227 of the Employment Rights Act 1996) does the Tribunal consider appropriate to award to the Claimant?

Findings of Fact

8. The Tribunal made the findings of fact as set out below on the evidence presented during the hearing and on the balance of probabilities.

9. The Claimant started working in HMP Wandsworth Prison in 2002. In September 2008 she qualified as a teacher. In February 2015 the Claimant transferred to the Respondent under TUPE transfer. The Claimant was employed as a full-time English teacher working at HMP Wandsworth.

10. The Respondent has a Disciplinary Policy. Within the policy it sets out the process for managing disciplinary matters. It refers also to exclusion of prison based staff, where a Governor (or equivalent) determines that allegations are serious enough to warrant the employee from being asked to refrain from site on a temporary or permanent basis. The policy sets out a potential range of disciplinary outcomes and contains a non-exhaustive list of examples of gross misconduct. It describes appeals as a process by which an employee can explain the reasons why they disagree with the outcome of a disciplinary.

11. In January 2020 the Claimant dismissed by Sally Amer, Education Manager, who found that on 17 October 2019 the Claimant made inappropriate and threatening comments to a member of staff and behaved in an inappropriate and aggressive/intimidating manner towards another member of staff. The Claimant appealed her dismissal and she was reinstated in May 2020.

12. In February 2021 the Respondent undertook a desktop review of race related Employment Tribunal claims following a complaint by the Claimant partner, Colin Hickson, following his dismissal in July 2020, that BAME staff were being targeted for dismissal. Mr. Francis Neckles said that the report had been provided to him.

13. It does not appear that the full report is included in the Bundle, as it jumps from paragraph 30 dealing with Representation that states:

    "30. Hickson, [redacted text] (all London) are all represented by [redacted text] whose conduct and style can sometimes be described as difficult, confrontational and opportunistic. This is not to say that his clients do not…

14. The next numbered paragraph is 36. The report sets out tentative and provisional conclusions, and of note to this claim are:

    "b. There is no evidence that the ETs referenced in this report are indicative of either institutionalized racism or a more specific racist

approach by individual managers. However, such a conclusion must be regarded as tentative.

c. The assertion made by CH and [redacted text] that Afro Caribbean staff are culturally more likely to be perceived as louder or more confrontational due to cultural factors does not appear to have any independent evidence to support it but it does raise the question as to the potential for unconscious bias in key decision making environments.

f. The advocacy of 3 of the cases by the same representative might suggest a deliberate attempt to seek out and pursue race related cases as a matter of commercial policy. This does not preclude any of the cases from having merit."

15. The report made a number of recommendations.

16. The Respondent, via contract, provides education and access to qualifications to prisoners. The Respondent has a contract with City & Guilds and teaches City & Guilds qualifications. The City & Guilds administrative system used by the Respondent's staff is called Walled Garden and the Respondent's staff are able to access the system via personal log in details.

17. City & Guilds have a document named "Managing cases of suspected malpractice and maladministration". The document defines malpractice and maladministration as:

"Malpractice

'Malpractice', means any act, default or practice which is a breach of the Regulations or which:

- *Gives rise to prejudice to learners; and/or*
- *Compromises public confidence in qualifications; and/or*
- *Compromises, attempts to compromise or may compromise the process of assessment, the integrity of any qualification or the validity of a result or certificate; and/or*
- *Damages the authority, reputation or credibility of any awarding body or centre or any officer, employee or agent of any awarding body or centre.*

Malpractice includes maladministration and instances of non-compliance with the regulations and requirements.

Maladministration is defined as any activity, practice or omission which results in centre or learner non-compliance with administrative regulations and requirements.

For example, persistent mistakes or poor administration within a centre resulting in the failure to keep appropriate learner assessment records."

18. The general process for managing learners is that the tutors would enroll a learner on the Respondent's internal system, the learner would then be registered with City & Guilds via Walled Garden, the learners would complete the work that would be marked by tutors and the portfolios would

then be sent for internal verification and after the internal quality assurance procedure (IQA) and if approved a claim for certification would then made.

19. The courses are often made up of units. When a unit of work has been completed, marked and undergone internal verification (IQA) it can be marked as passed and claimed, and a certificate would be issued.

20. In relation to English work, Ms. Nicky Philips was the Hub Manager, and was responsible for undertaking IQA. In October 2022 Ms. Philips was no longer working in the prison but was undertaking verification remotely. It would usually be Ms. Philips who would order certificates once IQA was completed. When a certificate arrived Veronica Fenton, Administration Manager, would inform tutors that a certificate had arrived and the tutor would collect it from their pigeon hole and pass out to the learner.

21. We find, having reviewed the evidence, including the Claimant's witness statement and the documents in the Bundle, that the Claimant was fully aware of the processes relating to marking and IQA and that portfolios were to be sent to Ms. Philips for assessment after she started working remotely.

22. On 14 October 2022 Walled Garden emailed the Claimant confirming the order of English Skills-Generic Awards for two candidates. The order number on the email is 0121488516.

23. On 14 October 2022 City & Guilds emailed Mr. Lynworth Brown, a maths tutor and colleague, confirming the order number as 0121488552 and the email refers to 1 x candidate 3847-01 English Skills – Generic Awards. There is a cost of £25.08 against this entry and 2 x candidates Functional Skills English Level.

24. There is not a confirmation order in the bundle for an order number 114423288, but on 23 June 2023, as detailed further below, City & Guilds informed the Claimant's representative that its system showed that on 14 October 2022 the Claimant's user account placed an order for three unit results for one learner and that order was numbered 114423288 and the unit results/certificates were for 3847-02 Entry Level Certificate in English Skills (Entry 3).

25. The Claimant, in oral evidence, said the email order represented her enrolling two learners on Walled Garden, not claiming a certificate. She says this was enrolling because there was no cost attached, and certificates had a cost. By enrolling she was registering learners with City & Guilds via Walled Garden. Later in her oral evidence the Claimant said that her colleague, Mr. Brown, told the Claimant that he was claiming certificates for his learners, who were also her learners, but that she told him not to order for her.

26. The Claimant's oral evidence during the hearing on what took place on 14 October 2022 was not clear, and was not in line in

what has been set out as having been said by the Claimantat the time as set out in the contemporaneous documents.

27. On the balance of probabilities, taking into account all the evidence that the Tribunal was directed to, including the oral evidence and later documents from City & Guilds, the Tribubal find that on 14 October 2022 the Claimant made two entries via Walled Garden, and at least one order was for units passed/certification.

28. On 25 October 2022 three certificates for qualification 3847-02 progression units for functional skills units (English) arrived at the prison. It is not clear if all three certificates related to one learner or more than one learner, but noting the internal prison report submitted the following day it appears the Claimant handed certificates to at least two learners, possibly three.

29. The Claimant went to the office on 26 October 2022 and Veronica Fenton – Administration Manager – told the Claimant there were three certificates in her pigeon hole. Ms. Fenton says the Claimant told her that she had been practicing claiming certificates. The Claimant does not accept she said that to Ms. Fenton. The Tribunal were unable to make a clear finding of fact on whether this was said or not, but do not consider it necessary to do so in order to determine the issues in this case.

30. In oral evidence, the Claimant said that she told Ms. Fenton that she hadn't ordered the certificates and that Ms. Fenton told her to distribute the certificates to learners. There is no record of Ms. Fenton allegedly telling the Claimant to hand out the certificates in the Claimant's witness statement and this does not accord with the note of Ms. Fenton's investigation interview. Again, we do not consider it necessary to reach a determinative finding as, in any event, we find that the Claimant handed out two certificates to two of her learners.

31. Ms. Huggett – Local Education Manager - became aware of the situation and made initial enquiries with Ms. Fenton and Karen Rose, Group Quality Manager. Later the same day Ms. Huggett asked the Claimant about three progression unit certificates claimed on 14 October 2022.

32. The Respondent was concerned that the certificates had been claimed but that the learners did not appear to have gone through the internal marking and assessment and IQA process.

33. Ms. Huggett requested sight of all of the relevant learners' work and the Claimant's Walled Garden access (the online administration service for tasks such as registering learners and booking end-point assessments) was revoked until a full investigation had taken place.

34. At 5:23pm on 26 October 2022 Ms. Huggett emailed the Claimant, the full email has been considered but only part is copied below for brevity:

"It has been brought to my attention that you have claimed 5 units from City & Guilds for Functional Skills English units. Please can you confirm that these portfolios were IV'd, and that they were passed? I need to see all five of the portfolios – please can you bring them to me as a matter of urgency.

Additionally, I have been given copies of the certificates as Admin have notified me that two of the three learners names are incorrect.

They therefore need retrieving from these learners and returning to Admin, as they are invalid if they do not match given names. The qualifications for those men are therefore null and void until replacements certificates are issued.

However, it is imperative that I see these portfolios before replacement certificates are claimed. *Claiming certificates without following the correct procedures is potentially fraudulent, and I need to meet with you urgently tomorrow to ascertain the circumstances around these claims. There are potentially serious consequences including City & Guilds sanctions if this has happened."*

35. The email was copied into Corine Baker, and she replied to Ms. Huggett and the Claimant on 27 October 2022 and within the email stated:

"This is very serious and something will have to report to C&G if we haven't followed the right processes. We will also have to report this to our National Quality Manager, Karen Rose, who oversees AO compliance."

36. There is a document at page 258 of the Bundle that outlines a number of conversations that occurred between Ms. Huggett and the Claimant between 26 October and 3 November 2022 about the Claimant's learners and what had been claimed. The Claimant does not accept the discussions as recorded in the document took place and says the document was fabricated. On balance, the Tribunal find that Ms. Huggett did speak to the Claimant on 26 October 2022, and subsequently as set out in the note. The Tribunal do not find the document was fabricated.

37. On 27 October 2022 Ms. Huggett submitted a suspected centre staff maladministration and malpractice form to City & Guilds. This was form was completed after initial discussions took place.

38. On 28 October 2022, Ms. Fenton submitted a Prison Internal Intelligence Report. Within the form she stated:

"Martine Fontenelle from the education department had mentioned to me that she had been practicing how to claim certificates for three of her learners on the City and Guilds website. I have since found out that she had fraudulently claimed exam unit certificates for three learners. My line manager (Bryony Huggett) has since found out that the three learners

listed below did not completed the work that was required of them and all their portfolios would have failed an IV inspection. The three learners who received the certificates were:

A

B

C

This is concerning as it demonstrates that Martine was overly advantating particular learners and by-passing existing systems. I asked Mr. [names removed by Employment Judge] and Mr. if they had received their Englis certificates from Martine, and they said that she had given it to them. I asked them if they can give them back to me as their names were back to front and it would not be a legitimate certificate. I am waiting for the to bring them back when they next attend education."

39. On 14 November 2022 the Claimant was sent a letter inviting Claimant to attend an investigation meeting. The allegations were:

    (a) *Malpractice in end of point assessments in October 2022 for three City & Guilds English and mathematics qualifications 3847-02.*

    (b) *Actions that allow learners to have an unfair advantage or causes a learner to be disadvantaged*

    (c) *Maladministration by claiming for three City and Guilds 3847-02 certificates on 14/10/2022 where there is no or insufficient evidence to support certification.*

40. On 16 November 2022 the Claimant attended an investigation meeting conducted by Sally Amer, Local Education Manager. The Claimant was accompanied by a colleague, Donavan McGrath and notes were taken by Janet Raynai. The Claimant did not agree with the minutes and made amends, which were added, together with additional comments/observations from Ms. Amer. At the start of the meeting Ms. Amer explained the definitions of maladministration and malpractice and discussed the allegations that were being considered.

41. The investigation was not solely in relation to the Claimant's actions but was to try and ascertain what had happened on 14 October 2022.

42. The Claimant's comments at the meeting are not entirely clear and sometimes difficult to follow. The full note of the meeting was considered.

43. During the investigation interview the Claimant said that all the learners work was completed and marked before the certificates were claimed. The amendments the Claimant later sought to add

seek create the picture that the Claimant was enrolling learners, not claiming for completed work.

44. On balance, reading the investigation interview notes as a whole, the statements made by the Claimant can be read as understanding that she said to Ms. Amer that she understood the learners work had been completed and that she had claimed a certificate for one of the learners and Mr. Brown had claimed certificates for two learners. However, it also appears the Claimant admitted, early in the meeting, that the three shouldn't have been claimed, and she made a mistake, and referred to 10% sample marking.

    "Those 3 that got claimed and shouldn't have got claimed. This was an innocent mistake. At the time I believed that 10% sampling was in place".

45. Also on 16 November 2022 Ms. Amer interviewed Mr. Brown, Ms. Huggett and Ms. Fenton.

46. Ms. Amer was seeking to ascertain what had happened on 14 October 2022 and following her investigation interviews she sought assistance from colleagues in contacting City & Guilds to ascertain precisely who had claimed/ordered what and on what dates.

47. On 23 November 2022 the Respondent, specifically Sharon McDermott – Contract Manager London, considered the Claimant's situation and recommended that the Claimant be suspended.

48. Ms. McDermott, in an email dated 23 November 2022 to Shamila Anjum, Aimee Tolen, Martina Meshlov, Bryony Huggett, Corine Baker and Karen Rose, copied to Annick Platt said:

    "The investigation, report and recommendations made by Sally Amer we are all in agreement with.

    I cannot stress the seriousness of this in regards to Malpractice and the implications of not acting in a decisive and firm manner. The management of our reputational damage to both our ongoing relationship with City and Guilds and the potential backlash from the Prison is crucial.

    We cannot just offer ongoing support and training here – I believe this will not appease the awarding body. We also have ongoing work demonstrating support given for ongoing concerns is not impactful for this member of staff.

    I would like to consider suspension, on full pay until process is completed as the first action and would look to consider dismissal. The ongoing concerns regarding her capability continue and she appears to be deliberately adding to the risk.

    Equally, I am unclear, if she is banned by City and Guilds, how she could do the job she is employed to do. If we have to consider re-deployment opportunities then space from suspension would be helpful too.

Can we urgently meet to discuss or can you agree my suggested action as I need to demonstrate response to both the Awarding body and HMP Wandsworth."

49. Ms. Platt approved the suspension, following discussion, in an email dated 24 November 2022.

50. On 24 November 2022 Ms. Huggett met with the Claimant and informed her that she had been suspended. Ms. Huggett went through the suspension letter with the Claimant. During the discussion the minutes record the Claimant as making the following comments:

"it was sad it had come to this and that she hadn't done anything wrong. She said she just sat in a room with Lynworth and "he asked if I could claim and I said yes."

"MF said it was innocent She didn't think it would come to this. She did this to help the department."

"BH BH said that she breached process and that claiming is out of her remit.

MF MF said she did this to keep the department going.

BH BH said this is a problem and it's hindered the good flow of the department.

BH BH read out the first part of the letter word for word.

MF MF said the portfolios were completed and the guys had signed them off. But she acknowledged that she shouldn't have claimed. "I know what you're saying. I shouldn't have claimed."

51. We find the comments as set out above and recorded in the minutes were made.

52. The Claimant was provided with a suspension letter and it contained the same allegations as set out in the invitation to the investigation meeting.

"(a) Malpractice in end of point assessments in October 2022 for three City & Guilds English and mathematics qualifications 3847-02.

(b) Actions that allow learners to have an unfair advantage or causes a learner to be disadvantaged

(c) Maladministration by claiming for three City and Guilds 3847-02 certificates on 14/10/2022 where there is no or insufficient evidence to support certification."

53. The letter also explained a further meeting may be arranged and that her suspension was on full pay.

54. A later letter refers to an email being sent from Ms. Huggett 24 November 2022 to the prison. We were not directed to any such email in the bundle.

55. On 29 November 2022 Karen Rose, Group Quality Manager, sent an email to Ms. McDermott, Ms. Anjum, Ms. Tole and Ms. Platt. In the email she reports that she had a call the previous Friday with City & Guilds and was told by Dan Walesek that the Claimant had claimed all the certificates. She reports in the email, and includes an email from Mr. Walesek that states the Claimant submitted Order 114423288 and Mr. Brown submitted order 114423405 , and that she had asked Mr. Walesek for more specific information. Within the email it states: *"Therefore MF has claimed certificates on that day and Sally's first instincts were correct."* We noted that this email followed the investigation meetings, in which the Claimant admitted to claiming and in the context of Ms. Amer wishing to obtain clarification from City & Guilds in relation to claims.

56. Ms. Amer complete her final investigation report on 21 December 2022. The report is detailed and contains 25 appendices. It runs from page 239 to 535 in the Bundle. As part of the investigation process Ms. Amer interviewed Ms. Huggett – Local Education Manager, Mr. Brown – Tutor Functional Skill, Ms. Fenton – Administration Manager and the Claimant.

57. In short, Ms. Amer reached the view that the Claimant had claimed English certificates for two learners and Mr. Brown had claimed a certificate for one learner. She found the IQA process had not been undertaken for any of the three learners. She found that the Claimant had asked Mr. Brown to claim for her learners, that Mr. Brown had not claimed English certificates previously and had assumed IQA had been undertaken. She found that the learners portfolios had not been competed to a pass standard.

58. On 22 December 2022 Ms. Amer sent the Claimant a letter saying that the investigation has concluded that the case would move to a disciplinary and that a disciplinary meeting would be arranged. A disciplinary process also commenced for Mr. Brown.

59. On 4 January 2023 the Claimant met with Ms. McDermott. The Claimant was accompanied by Mr. Payne. Ms. McDermott told the Claimant that the Respondent was required to give notice of suspected malpractice to City & Guilds and that City & Guilds would also run its own process, which would run simultaneously to the Respondent's own disciplinary process. Ms. McDermott offered the Claimant opportunity to make a verbal statement within the meeting or a written statement, that was required by the following day, and the deadline was set by City & Guilds. The Claimant did not give a statement within the meeting. Ms. McDermott explained the possible range of outcomes.

60. On 7 February 2023 City & Guilds malpractice panel sat and determined that, based on the Respondent's investigation report, that the Claimant had claimed certificates for two learners and

Mr. Brown had claimed a certificate for one learner. City & Guilds issued the Claimant with a two year exclusion from teaching City & Guilds qualifications. The Claimant was notified in an outcome letter dated 9 February 2023.

61. On 17 February 2023 Ms. McDermott sent the Claimant the outcome letter from City & Guilds. On 20 February 2023 the Claimant, via her union representative, sent a complaint letter to City & Guilds.

62. On 17 March 2023 Martina Meshlova, Deputy Lot Manager, sent the Claimant a letter inviting her to attend disciplinary meeting. Ms. Meshlova had been assigned to conduct the disciplinary hearing. The letter scheduled the meeting for 27 March 2023, set out the three allegations as per the previous letters, explained that the Respondent considered the allegations were gross misconduct due to their seriousness. The letter was provided with a summary of the investigation findings.

63. Within the letter it stated:

"The hearing will be held in accordance with the company's disciplinary procedure. The seriousness of the allegations could result in a sanction up to and including dismissal. This is an indication of the seriousness of the allegation and in no way predetermines the outcome of the hearing.

You are entitled to be accompanied by a trade union representative or a work colleague at the meeting in accordance with our disciplinary procedure. If you wish to bring representation to the meeting, please let me know their name at your earliest convenience."

64. On 23 March 2023 City & Guilds wrote to the Claimant P571. The letter sought to reply to the Claimant's letters, as sent by Mr. Neckles her trade union representative dated 20 February and 17 March 2023. Within the letter it stated:

"We can confirm that, on the basis of the available evidence presented to City & Guilds by the Centre from the investigation into the suspected malpractice, City & Guilds agreed with the findings/conclusion of the investigation report (which included with it supporting documentation) submitted to City & Guilds by the Centre, that your member had committed malpractice by knowingly claiming certificates for learners without the evidence to support the certification and in breach of requirements for certification and sampling."

65. On 2 April 2023, the Claimant, via Mr. Neckles – her trade union representative, submitted a grievance to Ms. Meshlova. The email attaching the grievance asked for the disciplinary hearing that was scheduled to take place on 3 April 2023, the following day, to be stayed. The grievance letter was just over a page long and cited Ms. McDermott, Ms. Huggett, Ms. Amer, Ms. Baker, Ms. Rose and Ms. Fenton.

66. Within the grievance it said the text as set out below, but also stated it was not an exhaustive list of her complaints and there would be further particularization.

"ii. I have been subjected to a bias and unfair disciplinary process thus far, which if not corrected, will have a significant and negative outcome resulting in her summary dismissal, which is alleged has been contrived and planned through the concerted efforts of the above-named employees employed by the organisation. This unfairness must be rectified prior to the commencement and conclusion of the disciplinary hearing of 3/4/2023.

iii. That there was not a full, proper, and reasonable investigation carried out by the investigating officer in accordance with the contractual disciplinary procedure and the applicable ACAS Code of Practice, which I believe was administered against me as a revengeful act for failing to achieve my summary dismissal on a previous occasion."

67. The Claimant sent further particulars of her grievance.

68. The Claimant objected to Ms. Meshlova chairing the disciplinary hearing and the Respondent agreed to a change in the chair and the date was also put back to enable the grievance to be dealt with and accommodate the Claimant's representative's attendance.

69. On 4 April 2023 Ms. Meshlova conducted a disciplinary hearing with Mr. Brown as part of the disciplinary process regarding his actions. In the meeting Mr. Brown said that the Claimant told him she had forgotten how to claim and asked him to show her and so they went onto his system and he demonstrated how to do a claim. He said he clicked and claimed for one 1 English. He said that the Claimant said she had more to claim and she was having problems doing so but he had somewhere he needed to be so could not stay with her. He explained that during the next two weeks, his leave, that the events bothered him and on returning from annual leave he went to Ms. Huggett and explained what had happened.

70. Ms. Meshlova sent Mr. Brown a disciplinary outcome letter on 6 April 2023. The outcome set out the allegations against Mr. Brown as being:

"· Malpractice in end of point assessments in October 2022 for City & Guilds English and mathematics qualification 3847-02.

- *Actions that allow learners to have an unfair advantage or causes a learner to be disadvantaged.*
- *Maladministration by claiming for City & Guilds 3847-02 certificates on 14/10/2022 where there is no or insufficient evidence to support certification."*

71. The letter explained that it was Ms. Amer who had investigated

the allegations. In short, Ms. Meshlova found that Mr. Brown had:

"claimed for the learner certificate in good faith believing you were helping a colleague and trusting that they had followed all the correct policies and procedures. However, you failed to follow the established process and did not verify this yourself before making the claim. I am satisfied that you knew this was the appropriate process.

I don't find any evidence that you benefitted from making this claim, nor did you make this claim with intent to mislead the awarding body - City and Guilds. However, a learner was disadvantaged by your actions as a result."

72. Ms. Meshlova set out what she considered to be two mitigating factors. Firstly, that following his return to work from leave Mr. Brown notified Ms. Huggett about events on 14 October 2022 and secondly that he was under pressure and distracted due commencing leave to attend two funerals. Ms. Meshlova issued Mr. Brown with a first written warning.

73. On 3 May 2023 Brian Mansaray, Local Counter Corruption Manager - Security Department - HMP Wandsworth, sent Ms. Huggett a letter explaining that the Claimant had been permanently excluded from working in any prison. Within the letter it stated:

"We received email confirmation from you on the 24th of November 2022, with regards to Miss Martine Fontenelle being under investigation and currently suspended for malpractice, claiming certificates/disadvantaging learners.

You confirm that the outcome of the initial investigation suggests that malpractice has been observed.

A decision has been made to exclude Martine Fontenelle from the HMPPS estate locations. This exclusion applies permanently with immediate effect.

We must consider the overall safety and security of HMPPS and in this case we consider that a fundamental breach of security and trust between the Miss Martine Fontenelle and HMPPS has broken down.

Miss Fontenelle can make representations against the exclusion through Novus as the main contractor. Any written statement and evidence they wish to submit must be collated and sent to you for despatch to the Approvals and Compliance Team. No individual representations will be considered direct to the prison establishment or business unit."

74. The letter also sets out further details of how the Claimant could challenge the decision.

75. Ms. Huggett sent the letter onto the Claimant, in an email dated 17 May 2023. Within the forwarding email Ms. Huggett said:

"I have received the attached exclusion paperwork from HMPPS Wandsworth, details of which are within the letter.

I note that the appeal date is the 23rd May 2023 – please liaise directly with Brian Mansaray should you wish to pursue an appeal.

As I understand, you are still currently suspended pending disciplinary proceedings. I have copied in the case work team for reference.

I appreciate that this must be upsetting news. I would like to encourage you to reach out to our employee assistance line who can offer support. PAM Assist: 0800 882 4102 or www.pamassist.co.uk

If you have any immediate queries, please do not hesitate to contact me."

76. On 6 June 2023 Mr. Byrne, Director of Youth Justice, wrote to the Claimant explaining that a combined disciplinary and grievance hearing would take place on 13 June 2023. The letter set out the disciplinary allegations:

    Allegation 1 : Malpractice in end of point assessments in October 2022 for City & Guilds English and mathematics qualification 3847-02

    Allegation 2: Actions that allow learners to have an unfair advantage or causes a learner to be disadvantaged

    Allegation 3: Maladministration by claiming for City & Guilds 3847-02 certificates on 14th October 2022 where there was no or insufficient evidence to support certification

77. The letter also contained the same information as the initial invitation dated 17 March 2023. The reference to maths was inaccurate for the Claimant and applied to Mr. Brown's disciplinary process.

78. The Claimant's representative prepared lengthy submissions in relation to the disciplinary and grievance and submitted them shortly before the hearing.

79. On 13 June 2023 the Claimant attended a combined disciplinary and grievance hearing. The hearing was chaired by Mr. Bryne, Ms. Meshlova was a notetaker and Ms. Collete Nerini, People Relations Partner was also in attendance. Mr. Neckles accompanied the Claimant.

80. The meeting started at 9.50am and concluded at 1.25pm. The meeting was detailed and the Claimant had a full opportunity to put her position forward.

81. Following the meeting Mr. Byrne's spoke with Ms. Huggett and Ms. Rose and he also reviewed investigation relating to Mr. Brown and the grievance and disciplinary submission documents prepared by the Claimant's union.

82. On 23 June 2023 City & Guilds wrote to the Claimant, via Mr. Neckles P647, with an outcome of her appeal against the penalty applied by City & Guilds.

83. Mr. Byrne did not see the letter from City & Guilds dated 23 June 2023 before reaching his decision.

84. On 13 July 2023 Mr. Bryne sent the Claimant an outcome letter.The letter runs to eight pages and the notes of the meeting were attached to the letter. The letter sets out Mr. Byrne's findings in relation to each of the three disciplinary allegations. It is evident from reading the outcome that Mr. Byrne considered the documents available to him.

85. In relation to the first allegation – *"Malpractice in end of point assessments in October 2022 for City & Guilds English and mathematics qualification 3847-02"* - Mr. Bryne concluded that there was evidence supporting the allegation. In short, he concluded that the Claimant understood the IQA process.

86. In relation to the second allegation – "*Actions that allow learners to have an unfair advantage or causes a learner to be disadvantaged"* Mr. Bryne concluded that the Claimant was aware that the three learners in question had not been through the IQA process and that a claim for learners was made through the Claimant's Walled Garden account by the Claimant knowing IQA hadn't been properly undertaken and that these gave the learners an unfair advantage. He also found the Claimant handed out the certificates with the knowledge the work had not been completed or verified and this was malpractice and the subsequent withdrawal of the certificates which disadvantaged them.

87. In relation to the third allegation – *"Maladministration by claiming for City & Guilds 3847-02 certificates on 14/10/2022 where there is no or insufficient evidence to support certification"* – Mr. Bryne's found that the Claimant understood the process for claiming work but that she chose to submit without evidence that the learners had passed the qualification as the work had not been marked as set out in the city and guilds marking and assessment policy and had not been internally verified. Mr. Bryne found it was maladministration to claim work where there is insufficient evidence to support the learners achieving the qualification.

88. Mr. Byrne considered if there were any mitigating factors, in particular the basis of her grievance complaint.

89. In relation to the grievance, Mr. Byrne had considered the grievance allegations in groupings, as summarised below, and set out his reasoning:

Grievance Point 5 to Point 12 - *It is MFs belief that the individuals are all part of a collective, vexatious, and malicious pursuit of a summary dismissal* - not upheld.

Grievance Point 14 to Point 52 - *(BH) There was no transitional phase or contingency plan to deal with the plan in the absence of a Hub Manager overseeing functional skills and ESOL, nor was there any communication on how the area would move forward when NP left* – not upheld.

Grievance Point 53 to Point 97 - *Sally Amer's, Education Manager appropriateness as Investigating Officer* – not upheld.

Grievance Point 98 – Point 118 - *That Sharon McDermott, Lot Manager knowingly interfered with the direction of investigation* – not upheld.

90. Grievance Point 119 – 131 - *By carbon copying managers that Karen Rose, Group Quality Manager influenced the outcome of the C&G investigation* – not upheld.

    Point 132 – Point 139 - *Corine Baker, Quality Manager was compliant in an improper IQA process at HMP Wandsworth* – not upheld.

    Point 140 – Point 155 - *Veronica Fenton, Administration Manager, participated in the malicious advancement of the allegations of malpractice due to her personal feelings towards MF* - not upheld.

    Point 156 to 178 – not upheld.

91. The outcome letter explained that the Claimant's grievance was not upheld and that Mr. Bryne concluded that the Claimant's actions constituted gross misconduct. He explained that he considered her conduct fell below the standards expected of teachers and fell within several of the examples of gross misconduct set out in the Disciplinary Policy:

    "My conclusion is that it was clear that you understood the internal processes for the claiming of learners work from the Awarding Organisation City & Guilds and chose not to follow these processes, which were clearly communicated to you and colleagues throughout the period as Nicola Phillips as your Hub Manager and following her leaving. It was clear that you chose to ignore these processes which are in place to safeguard teachers, their learners, their education department, their employer, and the awarding organisation.

    Therefore, I do find that the evidence supports that your conduct falls well below the standards expected of teachers as outlined in the Department for Education teachers' standards, Education Teaching Foundation Professional Standards for Teachers and

our own LTE Group Value of Integrity.

The LTE Groups disciplinary policy clearly states the action which

warrant Gross Misconduct include:

- *Taking part in activities which may bring the organisation into disrepute or placing the LTE Group at risk of having its reputation damaged.*
- *Breach of any third party's security rules and procedures, including a failure to report a breach.*
- *Action which destroys the relationship of trust and between employee and employer*

I believe your actions constitute Gross Misconduct under the LTE Groups disciplinary policy."

92. Mr. Bryne considered the sanction, and whether a lesser sanction should apply, but determined that in view of all his findings, including the awareness of the Claimant regarding the appropriate procedures he determined that the appropriate sanction was dismissal. Mr. Bryne made his decision independently based on the information available to him. Mr. Bryne was aware that Mr. Brown had been issued with a first written warning as the outcome of his disciplinary hearing, but considered the situations to be different and had noted that it was found that Mr. Brown had thought the learner work had been completed, that he was trying to help a colleague and that he informed management of the situation when he returned to work from leave.

93. On 24 July 2023 the Claimant submitted an appeal in relation to the outcome of her dismissal and grievance hearing.

94. On 6 October 2023 the Claimant presented her first claim to the Employment Tribunal.

95. On 20 October 2023 the Claimant was sent an invitation to an appeal meeting.

96. On 31 October 2023 an appeal meeting took place. The appeal officer conducting the meeting was Jamie Marshall – Group IT Director and a notetaker, Mr. Allan Mwamba, was provided by the Respondent. The Claimant was accompanied by Mr. John Neckles, her trade union representative. This is a different Mr. Neckles to the Francis Neckles that was a witness in this claim. Mr. Francis Neckles had attended the disciplinary hearing. The bundle contained a typed transcript of the entire appeal hearing. The appeal hearing lasted 2 hours and 7 minutes, including adjournments.

97. Mr. Marshall opened the hearing by outlining that he was going to go through the points in the notice of appeal and wanted to hear what the Claimant had to say. He stated that he would confirm his

findings in writing at a later date. John Neckles sought to clarify whether the appeal was a review of the disciplinary decision or a rehearing. There was discussion about roles and Mr. Marshall stated:

"*Can I ask why you seem to be taking, trying to take control of the meeting. I'm here to hear from Martine. You're here to help her not to represent her."*

98. John Neckles challenged Mr. Marshall about his role and cited Section 10 Employment Relations Act 1999.

99. Mr. Marshall confirmed that the appeal hearing was a review, not a re-hearing.

100. The meeting progressed with John Neckles talking at length about the basis of the appeal. Mr. Marshall said he would like to ask the Claimant some questions. The following exchange took place:

"JM so Martine... I'd like to hear in your own words, why do you believe you've got grounds for appeal?

JN Sorry, I must interject. I have no objections you asking questions on the factual basis of a dismissal. But in regards to the grounds of appeal itself, and how that will be articulated to you. I have been instructed to do that on her behalf.

JM No, I want Martine to answer my questions, please. I want you to be quiet now and (OK JN), I want Martine to answer my questions.

JN And I say again, I have no objections…

JM If you keep interrupting me, I'll ask you to leave the room

JN Okay. You're simply very aggressive. If for some reason I don't understand why.

JM Because since you've come in here… … and you're very calm and controlled manner, you've done nothing but try and take over the meeting, and stop Martine from answer my question to you that allowed me to answer any questions you keep asking permission. On this occasion. I've not given you permission to continue speaking. Why ask permission if you're going to ignore it? Can I ask Martine some questions? Please?"

101. The exchange continued in similar terms, with John Neckles explaining that the Claimant should answer factual questions and he was instructed to answer questions about the grounds of appeal.

102. After a break Mr. Marshall asked the Claimant to explain in her own words why she didn't believe she committed malpractice. He then continued to ask questions about the events on 14 October 2022 and then moved to asking why she felt there was an unfair process. At this point John Neckles told the Claimant she was not following his advice and said

that Mr. Marshall was asking her to explain the grounds of appeal, which was his job to do. Mr. Marshall said he wanted to hear from the Claimant as it was her appeal.

103. A further exchange between Mr. Marshall and John Neckles about his role took place and Mr. Marshall said he considered Mr. Neckles kept interjecting and said to the Claimant *"I just want to hear your story of why you believe what you've put in your appeal letter is true."* Mr. Marshall said his objection was not to John Neckles speaking but to him not allowing the Claimant to speak.

104. John Neckles commented that he felt Mr. Marshall had an issue with him and was concerned about his ability to be objective in the process. Mr. Marshall then told Mr. Neckles to go ahead. John Neckles then spoke for what appears to be around 10 minutes. Mr. Marshall then asked the Claimant some questions. He sought to explain, on numerous occasions, that he wanted to hear from the Claimant why she felt she had been treated poorly and that he wasn't a lawyer and the appeal hearing wasn't a court case. At almost an hour into the hearing only appeal point 1 had been partially discussed. Mr. Marshall asked John Neckles to continue setting out the grounds of appeal but asked him not to cite legal grounds and cases as it wasn't helpful as he wasn't a lawyer. Mr. Marshall emphasized he wanted to make progress and hear the Claimants appeal and why she felt she shouldn't have been dismissed.

105. Mr. Marshall asked John Neckles to articulate the grievance grounds clearly and succinctly. The following exchange then took place:

"JN What language am I using that you do not understand? I speak in English. What language?

JM why are you being aggressive now?

JN I'm not being . Wow, I'm being aggressive. How am I being aggressive to you right now?

JM You're raising your voice to me

JN Oh, that is something that Caucasian people tend to say about black people when their tone of voice is slightly raised. And you're being aggressive and I find that very offensive. I find that very offensive. Okay, I have not been aggressive to you what I'm seeking to do. Are you accusing me of being racist? My friend you just accused me of being aggressive in the language that I'm using because I raise my voice. Do you understand our cultural awareness works? Do you know when people of colour tend to communicate? They tend to me more animated than Caucasian people. Why do you thin that as me being aggressive? I don't understand."

106. Mr. Marshall told the Claimant he was feeling very uncomfortable and felt John Neckles had accused him of being a racist and would break to make call.

107. After returning from a break Mr. Marshall said that good progress had not been made and that he considered John Neckles had been disruptive. He put forward three options for how to continue:
- continue the hearing without John Neckles present as her representative
- reconvene with a different representative
- the Claimant provide written submissions.

108. He said he would look as best as possible at the evidence to see if there is evidence to overturn.

109. The Claimant said she wished to continue with John Neckles. He explained that wasn't an option and repeated the options. She said she would leave it and the meeting was then ended with the Claimant saying she would take legal advice on options.

110. The notes of the minutes, as transcribed record discussions by both parties when the other side is out of the room. The discussions between John Neckles and the Claimant include comments on how the events at the meeting could be used in her tribunal claim. The comments between Mr. Marhsall and the notetaker toward the end of the meeting indicated that there were areas Mr. Marshall was planning to look into further.

111. On 2 November 2023 Mr. Marshall wrote to the Claimant summarising his perspective of the hearing and the position. The letter closed by stating:

"I am extremely concerned about the conduct of your representative, particularly the way he engaged with you during the meeting and in breaks, when both myself and the note taker, Alain Mwamba, could hear your representative shouting at you.

Given what I witnessed, I don't believe that your representative is supporting you constructively or allowing you to engage in your own appeal process. The behaviour we witnessed is not professional or respectful and I am not willing to expose you, myself or a colleague, to these behaviours again. I encourage you to seek alternative representation if you wish to continue our discussions regarding the points of your appeal.

Alternatively, as outlined above, if you choose to move forward with your current representative, you may make any submission in writing, and I can carry out a desktop exercise to review the key points outlined below or any alternative points that you may wish to propose:

…

I am eager to understand why you feel the decision to dismiss you was unfair and fully discuss and consider your points of view, so would be grateful if you could take some time to consider how you wish to proceed and confirm to me no later than 7 November 2023 which approach you would prefer…"

112. On 6 November 2023 the Claimant emailed Mr. Marshall stating that she needed an audio recording of the meeting to enable her to reply to the letter dated 2 November. Mr. Marshall sent the Claimant an email on 10 November 2023 with a link to enable her to access the recording.

113. On 27 November 2023 the Claimant wrote to the Respondent, with her position of the matter and confirming that her representative had put forward her appeal case in a way that had been authorised by the Claimant and that she wished for the meeting to be reconvened with her representative, John Neckles present.

114. Mr. Marshall replied to the Claimant on 14 December 2023 and said in view of her letter the appeal would be conducted as a desktop/written exercise and requested that the Claimant submit in writing all of the points that she wished to be considered by 22 December 2023.

115. In a letter dated 20 December 2023 City & Guilds wrote to Ms. Rose and confirmed the Claimant remained barred despite it now being clear the Claimant had claimed for one learner, not two, it did not alter the conclusions of the investigation or first malpractice hearing.

116. The Claimant wrote to Mr. Marshall on 21 December 2023 setting out her unhappiness at what she considered to be a unilateral decision to undertake a desktop exercise and that she felt he was seeking to frustrate her appeal. The letter concluded that the Claimant considered Mr. Marshall had already made his mind up and they had nothing further to add.

117. Mr. Marshall wrote to the Claimant again on 29 January 2024 and requested any further submissions by 2 February 2024.

118. On 2 February 2024 the Claimant wrote to Mr. Marshall and said the grounds of her appeal were set out in the document she sent on 24 June 2023, but that the grounds would be particularized and advanced by her union representative, John Neckles, in accordance with section 10 of the Employment Relations Act 1999, and repeated her objections to a desk top review.

119. It was not possible for Mr. Marshall to continue the appeal process due to absence from work due to ill-health and the appeal was passed to Ms. Annick Platt – National Director of Operations. The Claimant was told that Ms. Platt would take over the appeal process on 30 May 2024. The letter offered the Claimant the opportunity to attend an appeal hearing and set out a number of potential dates. The letter addressed the conduct of John Neckles but informed the Claimant that the she could attend a meeting with John Neckles as her representative if she wished. She did also set out the remit of a representative and said if any

concerns about behaviour arose that the Respondent reserved the right to undertake a desktop review.

120. On 10 June 2024 the Claimant's trade union representative wrote to Ms. Platt and acknowledged the offer of an appeal but said the Claimant had opted not to proceed with the appeal process due to:

The Respondent referring to John Neckles conduct led her to believe a fair, competent and equal footed process would not be undertaken;

The offer of appeal being 7 months after the original appeal hearing was unacceptable;

That the appointment of Ms. Platt was not appropriate as she was the line manager of the Regional Manager cited in the Claimant's grievance and that she would not be impartial.

121. The letter said the Claimant felt the relationship was irreparable.

122. On 27 June 2024, Sarah Mousawi, Head of ER and Reward, wrote to the Claimant's representative and explained the appeal was being entered into in good faith by the Respondent and a full and fair process would be undertaken and that Ms. Platt was considered an appropriate and impartial chair. The letter closed by stating:

"We remain open to an in-person appeal and would welcome the input of Ms. Fontenelle. If your member does still wish to attend, please could you confirm this in writing to us by Wednesday 3 July 2024. If we do not receive confirmation by this date, we will proceed with the appeal based on the information and paperwork available to date and Ms. Platt will write to confirm an outcome in writing."

123. The Claimant did not respond to the letter, accordingly, Ms. Platt undertook an appeal review on the papers. Ms. Platt considered the grounds of appeal and sent outcome letter on 22 October 2024. Ms. Platt concluded that there was no unfairness to the Claimant by a paper review as the Claimant had opportunity to attend a meeting and there was substantial documents and submissions available to her. She concluded that the Claimant's conduct met the definition of gross misconduct. She considered the situation of Mr. Brown to consider if the difference in treatment was due to any discriminatory factors. She concluded that outcome with regard to Mr Brown was due to differing factual circumstances and approach taken by ap Mr. Brown and not because of any discriminatory factor, including sex. Ms. Platt confirmed the decision to dismiss was upheld.

The Law

Unfair dismissal

124. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that she was dismissed by the Respondent under section 95, but in this case the Respondent admits that it dismissed the Claimant (within section 95(1)(a) of the Employment Rights Act on 11 May 2021.

94.— The right.

(1) An employee has the right not to be unfairly dismissed by his employer.

(2) Subsection (1) has effect subject to the following provisions of this Part (in particular sections 108 to 110) and to the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 (in particular sections 237 to 239).

125. Section 98 of the Employment Rights Act 1996 deals with the fairness of dismissal. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the Respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the Respondent acted fairly or unfairly in dismissing for that reason.

126. Section 98(4) then deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and shall be determined in accordance with the substantial merits of the case.

98.— General.

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

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

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

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

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

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
(3) In subsection (2)(a)—
(a) "capability" , in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
(b) "qualifications" , in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.
(4) [Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case.
(6) [Subsection (4)]4[is]5 subject to—
(a) [sections 98A to 107]6 of this Act, and
(b) [sections 152, 153, 238 and 238A of the Trade Union and Labour Relations (Consolidation) Act 1992]7 (dismissal on ground of trade union membership or activities or in connection with industrial action).

127. In misconduct dismissal there is well-established guidance for Tribunals on fairness within section 98(4) in the decisions of *Burchell v British Home Stores Lrd IRLR 379 and Post Office v Foley 200 IRLR 827.* The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer *(Iceland Frozen Foods Limited v Jones 1982 IRLR 439, Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23, and London Ambulance Service NHS Trust v Small 2009 IRLR 563).*

128. In relation to the reason for dismissal, in *Abernethy v Mott, Hay & Anderson [1974] ICR 323* it was held: "A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee".

129. Where a decision is made for more than one reasons, the Tribunal is obliged to identify the principal reason. The Tribunal is not restricted to

finding the reason is that relied upon by the employer, or that argued for the employee, the Tribunal can make its own determination on the reason for dismissal.

Polkey

130. We agreed with the parties that if we concluded that the Claimant had been unfairly dismissed, we should consider whether any adjustment should be made to the compensation on the grounds that if a fair process had been followed by the Respondent in dealing with the Claimant's case, the Claimant might have been fairly dismissed.

131. Where a dismissal is unfair on procedural grounds, the Tribunal must also consider whether, by virtue of *Polkey v AE Dayton Services [1987] IRLR 503, HL*, there should be any reduction in compensation to reflect the chance that the claimant would still have been dismissed had fair procedures been followed.

132. The law in this respect is set down in the cases of *Polkey v AE Dayton Services Ltd [1987] UKHL 8, Software 2000 Ltd v Andrews [2007] ICR 825; W Devis & Sons Ltd v Atkins [1977] 3 All ER 40; and Crédit Agricole Corporate and Investment Bank v Wardle [2011] IRLR 604*.

Contributory Fault

133. We also agreed with the parties that if the Claimant had been unfairly dismissed, we would address the issue of contributory fault, which inevitably arises on the facts of this case.

134. The Tribunal may reduce the basic or compensatory awards for culpable conduct in the slightly different circumstances set out in sections 122(2) and 123(6) of the Employment Rights Act 1996. Section 122(2) provides as follows:

"Where the Tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Tribunal shall reduce or further reduce that amount accordingly."

135. Section 123(6) then provides that:

"Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding."

Notice pay/wrongful dismissal

136. An employer is entitled to terminate an employee's employment without notice if the employee is in fundamental breach of contract. This will be the case if the employee commits an act of gross misconduct. If the

employee was not in fundamental breach of contract, the contract can only lawfully be terminated by the giving of notice in accordance with the contract or, if the contract so provided, by a payment in lieu of notice.

137. A claim of breach of contract must be presented within 3 months beginning with the effective date of termination (subject to any extension because of the effect of early conciliation) unless it was not reasonably practicable to do so, in which case it must be submitted within what the Tribunal considers to be a reasonable period thereafter.

Direct sex discrimination

138. Section 13 Equality Act 2010 states:

13 Direct discrimination

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

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

(6) If the protected characteristic is sex—

(a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;

(b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.

(7) Subsection (6)(a) does not apply for the purposes of Part 5 (work).

(8) This section is subject to sections 17(6) and 18(7).

139. Section 136 of the Equality Act 2010 states:

136 Burden of proof

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

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

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

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

(5) This section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to—

(a) an employment tribunal;

(b) the Asylum and Immigration Tribunal;

(c) the Special Immigration Appeals Commission;

(d) the First-tier Tribunal;

(e) the Education Tribunal for Wales;

(f) the First-tier Tribunal for Scotland Health and Education Chamber.

140. Under section 13(1) of the Equality Act 2010 read with section 11, direct discrimination takes place where a person treats the claimant less favourably because of sex than that person treats or would treat others.

141. Under section 23(1), when a comparison is made, there must be no material difference between the circumstances relating to each case.

142. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of sex. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the claimant was treated as they were. (*Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11; [2003] IRLR 285).*

143. Decisions are frequently reached for more than one reason. Provided the protected characteristic had a significant influence on the outcome, discrimination is made out. (*Nagarajan v London Regional Transport [1999] IRLR 572, HL*).

144. The case law recognises that very little discrimination today is overt or even deliberate. Witnesses can even be unconsciously prejudiced.

145. There are two stages to the burden of proof test as set out in section 136 of the Equality Act 2010.

Stage 1: There must be primary facts from which the tribunal could decide – in the absence of any other explanation, that discrimination took place. The burden of proof is on the claimant (*Ayodele v (1) Citylink Ltd (2) Napier [2018] IRLR 114, CA; Royal Mail Group Ltd v Efobi [2021] UKSC 22*). This is sometimes referred to as proving a prima facie case. If this happens, the burden of proof shifts to the respondent.

Stage 2: The respondent must then prove that it did not discriminate against the claimant.

146. In other words, where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent. It is then for the respondent to prove that it did not commit, or as the case may be, is not to be treated as having committed, that act.

147. The burden of proof provisions requires careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or another. (*Hewage v Grampian Health Board [2012] IRLR 870, SC.)*

148. Guidelines on the burden of proof were set out by the Court of Appeal in *Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258.* Once the burden of proof has shifted, it is then for the respondents to prove that they did not commit the act of discrimination. To discharge that burden it is necessary for the respondents to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the protected characteristic, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive. Since the facts necessary to prove an explanation would normally be in the possession of the respondents, a tribunal would normally expect cogent evidence to discharge that burden of proof.

149. The Court of Appeal in *Madarassy*, a case brought under the then Sex Discrimination Act 1975, states: *'The burden of proof does not shift to the employer simply on the claimant establishing a difference in status (e.g. sex) and a difference in treatment. Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the respondent had committed an unlawful act of discrimination.*

150. A false explanation for the less favourable treatment added to a difference in treatment and a difference in sex can constitute the 'something more' required to shift the burden of proof. *(The Solicitors Regulation Authority v Mitchell UKEAT/0497/12.)*

151. In *Glasgow City Council v Zafar 1998 ICR 120, HL*, Lord Browne-Wilkinson said that in the context of a discrimination claim *'the conduct of a hypothetical reasonable employer is irrelevant. The alleged discriminator may or may not be a reasonable employer. If he is not a reasonable employer he might well have treated another employee in just the same unsatisfactory way as he treated the complainant, in which case he would not have treated the complainant "less favourably".*' He approved the words of Lord Morison, who delivered the judgment of the Court of Session, that *'it cannot be inferred, let alone presumed, only from the fact that an employer has acted unreasonably towards one employee, that he would have acted reasonably if he had been dealing with another in the same circumstances'.* It follows that mere unreasonableness may not be enough to found an inference of discrimination. Unfair treatment itself is not discriminatory.

152. In *Amnesty International v Ahmed UKEAT/0447/08/ZT* the EAT stated, paragraph 36, *"…the ultimate question – is – necessarily – what was the ground of the treatment complained of (or – if you prefer – the reason why it occurred)…".*

153. Evidence of discriminatory conduct and attitudes in an organization may be probative in deciding whether alleged discrimination occurred: *Chief Constable of Greater Manchester Police v Bailey [2017] EWCA Civ 425.*

<u>Harassment</u>

154. Section 26 Equality Act 2010

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b)t he conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

- *age;*
- *disability;*
- *gender reassignment;*
- *race;*
- *religion or belief;*
- *sex;*
- *sexual orientation.*

155. Although harassment is similar to direct discrimination it covers actions “related to” a protected characteristic, which goes further than “because of”.

156. When considering whether a claimant’s dignity has been violated or an intimidating, hostile, degrading humiliating or offensive environment has been created, it must be kept in mind that it is not enough that the conduct was simply upsetting.

157. When considering effect it must be considered whether it was reasonable for the conduct to have had the effect taking in to account both a claimant’s perception and the overall circumstances.

Victimisation

158. Section 27 Equality Act 2010 states:

Victimisation

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

(a) B does a protected act, or

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

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

(a) bringing proceedings under this Act;

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

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

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

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

159. The law on victimisation is designed to ensure that employees can raise concerns about discrimination without fear of repercussions. Victimisation has a specific legal meaning.

160. A claimant is protected when he or she complains about discrimination even if they are wrong and there has been no discrimination. However, a claimant is not protected if they made an allegation in bad faith, namely they did not really believe it was discrimination.

161. In considering the link between the protected act and the detriment a Tribunal needs to consider how to interpret the word ‘because’ in section 27. The law requires more than a ‘but for’ link: it is not enough to say that, if the claimant had not made the complaints, then the bad treatment would not have happened.

162. The Tribunal must consider what was in the mind of the decision maker, consciously or subconsciously. *Chief Constable of West Yorkshire v Khan [2001] ICR 1065 HL* suggests must find the ‘core reason’ or the ‘real reason’ for the act or omission. The Equality and Human Rights Commission Code at paragraph 9.10 also makes it clear that the protected act need not be the only reason for the decision.

163. The person who subjects a claimant to a detriment needs to have known that the claimant did the protected act.

164. The EHRC Employment Code, contains a useful summary of treatment that may amount to a 'detriment', which explains that detriment can be a range of treatment.

"Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage. This could include being rejected for promotion, denied an opportunity to represent the organisation at external events, excluded from opportunities to train, or overlooked in the allocation of discretionary bonuses or performance-related awards… A detriment might also include a threat made to the complainant which they take seriously and it is reasonable for them to take it seriously. There is no need to demonstrate physical or economic consequences. However, an unjustified sense of grievance alone would not be enough to establish detriment".

Section 10 of the Employment Relations Act 1999

165. The section is set out below:

10 Right to be accompanied.

(1) This section applies where a worker—

(a) is required or invited by his employer to attend a disciplinary or grievance hearing, and

(b) reasonably requests to be accompanied at the hearing.

(2A) Where this section applies, the employer must permit the worker to be accompanied at the hearing by one companion who—

(a) is chosen by the worker; and

(b) is within subsection (3).

(2B) The employer must permit the worker's companion to—

(a) address the hearing in order to do any or all of the following—

(i) put the worker's case;

(ii) sum up that case;

(iii) respond on the worker's behalf to any view expressed at the hearing;

(b) confer with the worker during the hearing.

(2C) Subsection (2B) does not require the employer to permit the worker's companion to—

(a) answer questions on behalf of the worker;

(b) address the hearing if the worker indicates at it that he does not wish his companion to do so; or

(c) use the powers conferred by that subsection in a way that prevents the employer from explaining his case or prevents any other person at the hearing from making his contribution to it.

(3) A person is within this subsection if he is—

(a) employed by a trade union of which he is an official within the meaning of sections 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992,

(b) an official of a trade union (within that meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings, or

(c) another of the employer's workers.

(4) If—

(a) a worker has a right under this section to be accompanied at a hearing,

(b) his chosen companion will not be available at the time proposed for the hearing by the employer, and

(c) the worker proposes an alternative time which satisfies subsection (5),

the employer must postpone the hearing to the time proposed by the worker.

(5) An alternative time must—

(a) be reasonable, and

(b) fall before the end of the period of five working days beginning with the first working day after the day proposed by the employer.

(6) An employer shall permit a worker to take time off during working hours for the purpose of accompanying another of the employer's workers in accordance with a request under subsection (1)(b).

(7) Sections 168(3) and (4), 169 and 171 to 173 of the Trade Union and Labour Relations (Consolidation) Act 1992 (time off for carrying out trade union duties) shall apply in relation to subsection (6) above as they apply in relation to section 168(1) of that Act.

Conclusions

166. The Tribunal's conclusions are unanimous and based on the findings of fact as set out above.

167. In reaching the conclusions the Tribunal considered in full the oral submissions made by the parties and by applied the relevant law to the facts as found.

Unfair dismissal

168. The context and background to the dismissal is important, and therefore the Tribunal made findings of fact as required. However, the issues for determination are clearly set out under the section headed Issues above.

169. It is accepted the Claimant was dismissed without notice on 13 July 2022.

Reason for dismissal

170. The first issue for determination was: what was the reason for dismissal?

171. In closing submissions Mr. Webster, on behalf of the Claimant, conceded that the reason for dismissal was conduct and that this was a potentially fair reason within section 98(2)(b) of the Employment Rights Act 1996. It was therefore not necessary for the Tribunal to make a determination, but for completeness, we did consider the reason to be conduct.

172. Although Mr. Webster accepted the reason for dismissal was conduct, the Tribunal felt it important to note that the Claimant's witness statement, at paragraph 114, states: *"I draw the Tribunal to paragraph 24 of this statement and the supporting evidence, which I believe was the real reason why they dismissed me."* Paragraph 24 states:

"As Ms Amer was the Disciplinary Officer in a previous matter, which led to me to being unfairly dismissed in January 2020 and then reinstated in May 2020, I was not only upset and uncomfortable with being investigated for malpractice but also acutely aware of Ms Amer's approach in undertaking such a process. I had contributed to a complaint about her behaviour as the Disciplinary Officer, which led to a wider internal report that look into how Black and Ethnic Minority staff were treated in the workplace by white senior management in February 2021. From my perspective, Ms Amer would not be and was not an impartial adjudicator in investigating these allegations."

173. Mr. Francis Neckles' witness statement, with reference to the reason for dismissal, said at paragraph 33:

"These aforementioned facts of this case led me solely to believe that the Claimant's dismissal was not about malpractice that the cause for her treatment by the Respondent was simply due to her membership of the PTSC Union, and her reinstatement back into the Respondent's employment in May 2020 after being unfair dismissed by the Investigating Officer, who was then acting as the Disciplinary Officer in January 2020."

174. We reminded ourselves that the Claimant has advanced that her dismissal was discriminatory on the grounds of sex, not the above reasons.

175. As it is accepted that there is a potentially fair reason for dismissing the Claimant, the next legal issue for consideration is that set out in section 98(4) of the Employment Rights Act 1996. This provision always bears repeating:

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

(a) depended on whether in the circumstances (including the size and administrative resources of the employers undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and
(b) shall be determined in accordance with the equity and the substantial merits of the case."

176. The test of fairness is tied into the reason for dismissal, which is conduct. It also considers the size and resources of the Respondent, in this case the Respondent is a large national employer. A further key point is that the test looks at whether the employer acted reasonably or unreasonably. This effectively imports a "band of reasonable responses" test. The question is whether this employer acted reasonably given the reason for dismissal. It is not for us to substitute our view on what the Respondent should or should not have done.

177. When considering fairness in conduct dismissals the correct approach is set out in British Homes Stores v Burchell [1980] ICR 3030 and Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23. We must also have regard to the ACAS Code of Practice on Discipline and Grievance Procedures 2015 (the Code).

Did the Respondent have a genuine belief the Claimant had committed misconduct and were there reasonable grounds for that belief?

178. The next issue for determination is: did the Respondent have a genuine belief that the Claimant had committed misconduct and were there reasonable grounds for that belief?

179. The Tribunal concluded that the Respondent did have a genuine belief based on reasonable grounds. Mr. Bryne considered the documentary evidence available, and heard directly from the Claimant and discussed her behaviour, and the Claimant's views on what took place, with her. Mr. Bryne also undertook further follow up after the disciplinary hearing.

180. As set out in the outcome letter, Mr. Bryne formed his belief that the Claimant's actions constituted malpractice, that her actions led initially to

advantage and then disadvantage to learners and that her actions also constituted maladministration. Mr. Bryne therefore considered the Claimant had committed gross misconduct.

181. At the time of both the dismissal, and appeal review, the decision makers had reviewed the documentary evidence available (including the detailed investigation report), considered the Claimant's case, both the detailed written submissions and oral comments made at the disciplinary hearing. The decision maker took into account the context of the situation and the Claimant's behavior in view of what was known to her about the processes of marking and claiming.

182. The evidence from Mr. Bryne was clear on why he dismissed the Claimant, and aligned with the reason set out in the outcome letter. Ms. Platt's evidence on why the appeal was not upheld was also clear, and her evidence was not challenged.

183. The Tribunal conclude that a finding of misconduct was within the band of reasonable responses and there were reasonable grounds for the belief.

Did the Respondent carry out a reasonable investigation?

184. Again, this issue, being whether at the time the belief of misconduct was formed had the Respondent had carried out a reasonable investigation is a question of the band of reasonable responses.

185. The Claimant contends that a reasonable investigation was not undertaken. Part of Mr. Webster's submissions were that the allegations were broad and Ms. Amer was an inappropriate and biased investigator as she had previously dismissed the Claimant in 2020.

186. In relation to the investigation report, the Tribunal considered it to be detailed and thorough. Ms. Amer spoke to a number of people in seeking to ascertain what took place in relation to claims for the Claimant's English learners on 14 October 2022 and she sought to obtain information from City & Guilds.

187. The report includes the investigation meeting notes, which set out what both the Claimant and Mr. Brown told Ms. Amer.

188. The Tribunal did not consider there to be any evidence that Ms. Amer was biased in any way through the investigation process. We note the Respondent is large employer and there may have been other employees who could have undertaken the investigation, but having reviewed the evidence, it did not consider this factor rendered the investigation unreasonable.

189. Further, the Tribunal were not directed to any evidence that the Claimant raised any concerns about Ms. Amer conducting the investigation at the time of the investigation. She only raised this subsequently, on 20 February 2023.

190. As noted above, Mr. Bryne also undertook further investigation after his discussions with the Claimant at the disciplinary and grievance meeting.

191. The Respondent's Disciplinary Procedure sets out a sensible guide for managing disciplinary matters, including investigations.

192. The ACAS Code of Practice on Disciplinary and Grievance Procedures, at paragraph 5, under the heading "Establish the facts of each case" states:

b. "5. It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing."

193. The Code itself gives an employer flexibility in how to approach an investigation. The extent and form of an investigation will vary depending on the facts of a case. The holding of an investigation meeting is not a mandatory requirement, but in many cases will be required. In other cases, the investigation will only involve an employer collating relevant evidence.

194. It is also noted that at paragraph 6 the Code states: "In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing."

195. This provision is to ensure impartiality. In this case there was a separate investigating officer and disciplinary officer and a separate investigation meeting took place.

196. The legal test is that an employer must hold such investigation as "is reasonable in the circumstances". We conclude the investigation in this case was.

Did Respondent otherwise act in a procedurally fair manner?

197. Again, both the ACAS Code and the Respondent's own Disciplinary Policy are relevant in considering this issue. The key points are:

That an employer acting fairly will give sufficient details of the allegations and the evidence being considered in enough time before the disciplinary hearing;

The employee is permitted to be accompanied by a fellow worker or trade union representative;

The employer must consider whether or not disciplinary or any other action is justified and inform the employee in writing;

The employee has a fair chance to set out their case at a disciplinary hearing; and

That the employee is offered the right of appeal.

198. The Tribunal conclude that on balance, the Respondent did act in a procedurally fair manner.

199. The Respondent investigated in a proportionate way.

200. The Claimant was notified of the allegations against her. The Tribunal note that it is submitted that the Claimant contends that she was not clear on the allegations against her. The allegations remained the same throughout the investigation and disciplinary invitation letters, hence the erroneous reference to Maths in the disciplinary invitation letter as that flowed from the investigation stages when the actions of Mr. Brown were also being considered.

201. In the Tribunal's view, the allegations are clearly set out in the invitation letters to both the investigation and disciplinary meetings. Further, at the start of both those meetings Ms. Amer and Mr. Bryne discussed the allegations with the Claimant, and the Claimant responded. The notes of the meeting do not demonstrate that there was any confusion on the Claimant's part about the allegations.

202. The invitation to the disciplinary hearing gave clear information about potential consequences and informed the Claimant of her right to be accompanied, indeed she was accompanied by this trade union representative. The Tribunal also noted that the Claimant was accompanied by a companion or representative at each stage (although there is further comment on the appeal process below).

203. A disciplinary hearing was held with an independent manager, and the Claimant had a full opportunity to present her position. Mr. Bryne considered the background context to the Claimant's conduct in full and considered if there were any mitigating factors. Mr. Bryne did not make any decision until after the disciplinary hearing, and until he had made further enquiries.

204. Mr. Byrne considered the outcome of Mr. Brown's disciplinary hearing, and determined that there were distinguishing features which justified the imposition of a different sanction.

205. The Claimant submits that the outcome was predetermined and referred to the email sent by Ms. Webster which referred to Ms. Amer's "first instincts". We consider that the context of the email was important. This email was sent to relay information provided from City & Guilds following the investigation interviews, in which the Claimant had admitted to making a claim. We did not consider there was any evidence of any predetermined outcome, and as not above, Mr. Bryne's evidence was clear – he, and he alone - made the decision to dismiss.

206. The Claimant was informed of the outcome in writing. The outcome letter was clear and set out the decision.

207. The Claimant was offered the right to appeal, and did appeal. Further conclusions regarding the appeal are set out in relation to the section 10 complaint below. Although there was some considerable delay, eventually a full and detailed consideration took place at the appeal stage. We do not consider the late appeal, and the way the appeal progress developed, rendered the process unfair.

208. Finally, considering section 98(4) in totality, if all the above tests have been met, the Tribunal must consider whether dismissal was within the range of reasonable responses. It is important to restate that the Tribunal must not substitute its view, it must consider if dismissal was one of the options open to the Respondent.

209. Given the reasonable finding that the Claimant had committed an act of gross misconduct, in line with the defined examples of gross misconduct within the Disciplinary Policy, and noting the process in totality and that the Respondent had considered whether there were any mitigating factors, and decided that an alternative sanction was not appropriate, the Tribunal conclude the Respondent's decision to dismiss the Claimant fell within a range of reasonable responses.

210. The Claimant's complaint of unfair dismissal fails.

211. As the Tribunal found that the Claimant was fairly dismissed, it did not go on to consider Polkey or contributory fault.

Wrongful dismissal

212. The Claimant was dismissed without notice. The Tribunal were not directed to any contract of employment, but in submissions Mr. Webster said her entitlement was to one months' notice.

213. When dealing with a wrongful dismissal claim, the Tribunal must consider whether the Claimant fundamentally breached the contract of employment by an act of gross misconduct, or whether she did something so serious that entitled the Respondent to dismiss without notice.

214. In distinction to a claim of ordinary unfair dismissal where the focus is on the reasonableness of managements decisions, and immaterial to what decision the Tribunal would have reached, in this issue the Tribunal must decide whether the Claimant was guilty of conduct serious enough to entitle the Respondent to terminate the employment without notice.

215. As noted above, the Respondent does have a Disciplinary Policy, and it does set out examples of gross misconduct, but they are examples and it is not an exhaustive list. Further, it is clear that the Claimant was aware of the correct processes for marking, verifying and claiming work for learners. For some, unclear reason, on 14 October 2022 the Claimant chose not to follow those procedures.

216. The Tribunal econclude that, on an objective assessment, on the balance of probabilities, the Claimant's actions, in claiming unmarked work, and requesting/permitting Mr. Brown to claim for unmarked work for English learners was sufficiently serious to amount to a fundamental breach entitling the Respondent to dismiss the Claimant without notice.

217. The Tribunal dealt with the section 10 complaint next.

Section 10 - Employment Relations Act 1999

218. The full content of the transcript of the appeal meeting on 31 October 2023 and the findings of facts relating to appeal matters have been kept in mind.

219. The submissions made by Mr. Webster were minimal. In short, he submitted that Mr. Marshall took the view he could not continue the appeal meeting with Mr. Neckles but that he wouldn't allow Mr. Neckles to answer questions on the Claimant's behalf or make submissions or put/present the claim for her and that he terminated the meeting and an appeal happened later in a different way.

220. The Tribunal also reminded itself on the content of the Particulars of Claim in this respect.

221. The allegation as framed, in the list of issues, does not specify the precise basis of the claim, and in particular it does not set out when and how the Respondent was said to have failed, or threatened to fail, to permit John Neckles to put or sum up the Claimant's case or respond on the Claimant's behalf to any view expressed during the course of the appeal hearing on 31 October 2022, before it ended.

222. The appeal hearing started off tense and with a terse dialogue about the role of John Neckles. It is evident that Mr. Marshall wished to hear directly from the Claimant. The Tribunal considered that Mr. Marshall could have opened the meeting in a better way and managed the early conversations with John Neckles in a more conciliatory manner. Mr. Marshall, as noted in the transcript, asked John Neckles to stop speaking when he felt that the Claimant was being prevented from speaking but he did so in an abrupt manner at times. It appears that Mr. Marshall was seeking to not let John Neckles control the hearing.

223. The Tribunal conclude that John Neckles was, after some discussion, able to start explaining the grounds of appeal.

224. The Tribunal do not consider the appeal hearing got to the point of any submissions being made.

225. Mr. Webster, on behalf of the Claimant, has not specified precisely what the Claimant's case is in relation to being prevented to make submissions or sum up or put the case whilst the hearing was ongoing.

226. The Tribunal note the meeting, although lasting over 2 hours, was in the early stages of discussion due to the early stages of disagreement and adjournment and what had happened of substance was that John Neckles was seeking to explaining some of the grounds of appeal and Mr. Marshal was asking some questions of the Claimant.

227. The Tribunal understood the key thrust of the argument at the center of the section 10 complaint was that John Neckles was prevented from addressing the hearing by the fact that the hearing was ended and the Claimant was told that John Neckles would not be permitted to continue in the appeal hearing on 31 October 2022 and would not be permitted to attend a reconvened appeal hearing with Mr. Marshall.

228. Accordingly, on the basis any allegations of what happened during the meeting (if there is such an allegation) remained unclear to the Tribunal it did not reached any firm conclusions on whether the Respondent failed to permit John Neckles to address the hearing in order to put or sum up the case whilst the hearing on 31 October 2022 was ongoing.

229. However, the Tribunal do set out below our conclusions in relation to Mr. Marshall telling the Claimant that he would not continue with the appeal hearing with John Neckles present.

230. The Tribunal do consider that Mr. Marshall clearly told the Claimant that he would not undertake an appeal with John Neckles as her representative. However, this came shortly after John Neckles had made a racist allegation about Mr. Marshall.

231. The Tribunal paid careful attention to the whole of section 10, in particular noted section 1 states:

> (1)This section applies where a worker—
>
> (a) is required or invited by his employer to attend a disciplinary or grievance hearing, and
>
> (b) reasonably requests to be accompanied at the hearing.

232. There were no arguments advanced that the request for John Neckles to attend after Mr. Marshall set out the three options for moving forward was reasonable or otherwise.

233. However, the Tribunal consider section 1 is a gateway for all section 10 claims.

234. On balance, the Tribunal do not consider that the Claimant requesting that John Neckles be permitted to accompany her at the appeal hearing on 31 October 2022, or a reconvened hearing, with Mr Marshall was reasonable in view of the allegations of racism that John Neckles made. The Tribunal consider it was at this point that Mr. Marshall felt he could not continue the hearing with John Neckles present. The Tribunal note that that it was not John Neckles who attended the disciplinary hearing, but it was Francis Neckles, the witness in this case, who accompanied the Claimant at the disciplinary hearing and wrote the significant majority of correspondence and that it was likely that Francis Neckles could have accompanied the Claimant at a reconvened appeal hearing.

235. Equally, the Tribunal also noted that one option would have been for the Respondent to have replaced Mr. Marshall with another appeal manager at this time. This did not happen and Mr. Marshall intended to move to a paper review. There is no legislation setting out how appeals must be undertaken, but the Code implies a hearing is best practice.

236. However, due to unrelated events, namely Mr. Marshall's extended sickness absence, the appeal was, as a matter of fact, passed to Ms. Platt to deal with, although this was some 7 months later. Ms. Platt, in writing, specifically informed the Claimant that John Neckles could accompany the Claimant to an appeal hearing with her. In the same letter she set out a number of possible dates and reminded the Claimant of the role of a companion.

237. However, the Claimant declined the offer of attending an appeal hearing with Ms. Platt.

238. On balance, taking all into account all of the unique and unusual factual circumstances, the Tribunal does not consider there was a breach of section 10. The Claimant's request for John Neckles to accompany her following John Neckles comments that Mr. Marshall considered to be a racist allegation and three options was not reasonable and therefore the remaining provisions of section 10 did not come into play and further, when told he could attend an appeal hearing with a different manager the opportunity was declined by the Claimant.

Direct Sex Discrimination

239. The Tribunal considered each allegation separately. The Tribunal considered whether there were any overarching inferences that could be

drawn from the evidence in relation to all the allegations of sex discrimination, and did not consider there was any.

240. The Claimant makes two allegations of less favourable treatment:

Firstly, she alleges that she was subjected to disciplinary proceedings; and Secondly, that she was dismissed on 13 July 2023.

241. As a matter of fact, as set out above in the findings of facts, it is clear that the Respondent did initiate disciplinary proceedings following Ms. Amer's investigation report and it did dismiss the Claimant on 13 July 2023. We consider that both initiating disciplinary proceedings and dismissal constitute less favourable treatment. Accordingly, as things happened as a matter of fact the Tribunal went on consider whether they were because of sex.

242. The Tribunal kept in mind all the evidence, and the submissions.

243. In relation to disciplinary proceedings, both the Claimant and Mr. Brown, her named male comparator, were the subject of disciplinary proceedings. Following Ms. Amer's investigation, both the Claimant and Mr. Brown were required to attend a disciplinary meeting in order for the Respondent to consider the allegations against them.

244. In relation to the dismissal, Mr. Bryne, in his witness statement, specifically set out that the Claimant's sex had nothing to do with his decision to dismiss. This evidence was not challenged, and we do not consider any clear case of sex discrimination was put to Mr. Bryne in cross examination.

245. Further, as noted in the conclusions in relation to unfair dismissal above, the Claimant says she feels the reason she was dismissed was due to Ms. Amer having previously dismissed her and her contributing to a race investigation and Mr. Neckles says it was because his trade union was representing her. Neither make any reference to sex.

246. The Tribunal considered whether the Claimant had discharged the burden on her to show evidence from which the Tribunal could reasonably conclude that proceeding to a disciplinary process and dismissing her was 'because of" sex.

247. The Tribunal concluded that there was no evidence sufficient to discharge the burden on the Claimant. There was no evidence from which the Tribunal could reasonably conclude that the Claimant's sex was the reason why the Claimant was subjected to a disciplinary process and dismissed. There is no prima facie case of sex discrimination.

248. The Tribunal considered the reason why the disciplinary process was commenced. The Tribunal concluded that the reason why the process was commenced was because the Respondent had concerns that the Claimant may have committed maladministration, disadvantaged learners and committed malpractice following Ms. Amer's investigation and that it was appropriate to consider the events on 14 October 2022, and related consequences, further.

249. The Tribunal considered the reason why the Claimant was dismissed, and concluded that she was dismissed for the reasons explained in relation to the unfair dismissal complaint, namely Mr. Byrne found that she had committed gross misconduct as her actions were considered to amount to maladministration, disadvantaging learners and malpractice.

250. There is no evidence, direct or which could be inferred, to infer that and of the Respondent's employees had a discriminatory attitude towards women.

251. The Claimant has failed to show that the Respondent treated her less favourably than Mr. Brown or a hypothetical comparator. The Tribunal have not considered in detail whether or not Mr. Brown was an appropriate comparator as a prima facie case was not made out, but did consider that there were distinguishing circumstances that meant Mr. Brown was given a warning and not dismissed.

252. The Tribunal did not consider there to be something more in this case that shifted the burden of proof to the Respondent.

253. If the Tribunal are wrong on this, and the burden of proof shifted to the Respondent, it considered there was a non-discriminatory explanation, namely that set out above, that the Respondent needed to consider the allegations at a disciplinary hearing and the Claimant was dismissed having been found to have committed gross misconduct.

Harassment related to sex and race

254. The factual allegations of harassment in this case are the same for both the complaints of sex and race harassment. Accordingly, we have addressed them together.

255. As noted above, the Tribunal did not consider there to be overarching inferences that could be drawn from the evidence in relation sex discrimination, and further it did not consider there to be any inferences in relation to race, and this specifically took into account the contents of the May 2021 report.

256. The Claimant alleges that she was harassed on two different dates, as set out below:

On 5 May 2023, Bryony Huggett, the Local Education Manager at HMP Wandsworth, removed the Claimant from working in all prisons, including her place of work at HMP Wandsworth, on a permanent basis; and

On 31 October 2023, by the actions of its Appeal Officer, Mr Marshall, hinder the Claimant's representative in putting across the Claimant's appeal in her Appeal Hearing against her dismissal by refusing to listen to what that representative was saying.

257. Dealing firstly with the allegation that on 5 May 2023, Bryony Huggett, the Local Education Manager at HMP Wandsworth, removed the Claimant from working in all prisons, including her place of work at HMP Wandsworth, on a permanent basis.

258. The Tribunal considered the allegation as precisely framed.

259. As set out in the findings of fact, on 3 May 2023 Brian Mansaray , Local Counter Corruption Manager - Security Department - HMP Wandsworth sent Ms. Huggett a letter explaining that the Claimant had been permanently excluded from working in any prison. Ms. Huggett did not make the decision to exclude the Claimant from working in any prison, and did not have the authority to make such a decision. The decision was made by the prisons service.

260. Accordingly, as this allegation was not found to have happened as a matter of fact, the alleged harassment in this allegation is not made out, and the complaint fails.

261. For completeness, we note that in submissions, the Claimant accepted that Ms. Huggett had not excluded the Claimant from working at prisons but argued that she had caused the exclusion. This argument was centered on the basis that the letter from Mr. Mansaray refers to an email purportedly sent to the prison from Ms. Huggett.

"We received email confirmation from you on the 24th of November 2022, with regards to Miss Martine Fontenelle being under investigation and currently suspended for malpractice, claiming certificates/disadvantaging learners.

You confirm that the outcome of the initial investigation suggests that malpractice has been observed."

262. The was no application to amend the allegation, and therefore the position remains that the allegation, as set out, fails.

263. The second allegation of harassment is that on 31 October 2023, by the actions of its Appeal Officer, Mr. Marshall, hindered the Claimant's representative in putting across the Claimant's appeal in her Appeal

Hearing against her dismissal by refusing to listen to what that representative was saying.

264. The underlined text is the Tribunal's emphasis. Again, the Tribunal considered the allegation as framed. The conclusions in relation to the section 10 complaint do overlap, in some respects, with this allegation.

265. The Tribunal found the engagement between Mr. Neckles and Mr. Marhsall at the start of the meeting was strained, and Mr. Marshall did not wish to allow John Neckles to control or dominate the hearing and wanted to hear more from the Claimant. Mr. Marshall did tell John Neckles to be quiet and not speak on several occasions, and was relatively abrupt, but the meeting then got into a better flow and John Neckles was allowed, at some length in parts, to explain the Claimant's grounds of appeal. We find that, factually, in parts John Neckles was not allowed to speak and in other parts he was - in particular in starting to set out the grounds of appeal, although the hearing did not progress far beyond this. At times, Mr. Marshall asked John Neckles to be succinct and not be legalistic.

266. On balance, during the hearing, the Tribunal do consider there was some "hindering" of John Neckles, in the ordinary sense of the word, and that this amounted to unwanted conduct.

267. The Tribunal therefore went on to consider whether the conduct was related to sex or race.

268. The Tribunal conclude that the treatment of John Neckles by Mr. Marshall during the appeal hearing, was in no way related to sex or race.

269. It is not clear which sex is relied on, the Claimant's or John Neckles, but that does not matter.

270. The Tribunal consider, based on the transcript, that Mr. Marshall was not entirely clear on the role of a companion or the specific provisions of section 10 (we note he is not a lawyer) and that his conduct was fueled by a lack of understanding of the precise remit of a companion but also fundamentally by a real concern about not letting John Neckles lead the meeting.

271. The Tribunal conclude that the partial hindering in the appeal hearing on 31 October 2023 was for the reasons set out above, namely Mr. Marshall wanted to keep control of the meeting, had managed the meeting in a less than conciliatory way in relation to John Neckles and wasn't entirely clear on the remit of a companion. None of this has anything to do with sex or race, on the evidence presented.

272. If the Tribunal are wrong on that, it went on to consider whether the Respondent intended the conduct to violate the Claimant's dignity or create an intimidating, hostile, degrading, humiliating or offence environment for the Claimant. The Tribunal conclude that there was no such purpose or intention. The Tribunal conclude that Mr. Marshall was trying to manage the meeting.

273. The Tribunal understands that the treatment at the meeting, John Neckles being partially hindered, may have been upsetting for the Claimant. However, it has not been able to conclude on the evidence presented that the conduct reasonably had the effect of violating the Claimant's dignity or create an intimidating, hostile, degrading, humiliating or offence environment for the Claimant.

274. The partial hindering at the appeal hearing on 31 October 2023 was not sex or race related harassment and the complaint fails.

275. For completeness, the Tribunal note the allegation doesn't make any reference to the hearing ending, or subsequent events, and therefore we have not considered subsequent events that, but solely in the appeal hearing. The allegation does not specify precisely when Mr. Marshall was alleged to have hindered and refused to listen to John Neckles, or how.

276. The Tribunal kept in mind that following Mr. Marshall considering that John Neckles made a racist allegation against him Mr. Marshall did not feel comfortable to continue with the hearing with John Neckles present. Although this, in effect, ended the meeting on 31 October 2023, this does not appear to be the basis of the complaint as pleaded or set out in the list of issues. However, for completeness, the Tribunal note that Mr. Marshall did not wish to continue with the meeting because he felt uncomfortable and bullied. The Tribunal do not consider this was related to sex in anyway. Although it notes the comment made by John Neckles had a race element, the Tribunal consider the three options put forward were not related to race, but due to Mr. Marshall feeling uncomfortable continuing.

277. The allegations of race and sex harassment fail.

Victimisation

278. The Claimant says she did two protected acts, the first in raising a grievance on 3 April 2023 by letter to Marina Mesholva and the second by presenting the First Claim to the Tribunal on 6 October 2023.

279. The Respondent accepts that both the alleged protected acts do constitute protected acts.

280. The detriment the Claimant relies on is the same two factual allegations as alleged to be acts of sex and race harassment:

281. The Claimant alleges that the detriment is:

On 5 May 2023, Ms Huggett removed the Claimant from working in all prisons, including her place of work at HMP Wandsworth, on a permanent basis; and

On 31 October 2023, by the actions of its Appeal Officer, Mr Marshall, hinder the Claimant's representative in putting across the Claimant's appeal in her Appeal Hearing against her dismissal by refusing to listen to what that representative was saying.

282. In dealing with the alleged detriment of 5 May 2023, the Tribunal have considered the allegation as precisely framed.

283. The Tribunal noted this only related to the first protected act. However, as this was not found to have happened as a matter of fact, the alleged detriment in this allegation is not made out.

284. For completeness, as above, it was noted that in submissions, the Claimant accepted that Ms. Huggett had not excluded the Claimant from working at prisons but argued that she had caused it. However, there was no application to amend the allegation.

285. In relation the alleged detriment on 31 October 2023, again the allegation has been considered as framed, and although not repeated here there is some overlap with the conclusions in relation to the harassment complaint.

286. However, in his witness statement Mr. Marshall stated that he was aware the Claimant's grievance but had not read it at that time, but had read the outcome of Mr. Bryne. He also stated that his actions in the meeting were not influenced by the fact the Claimant had lodged a grievance. In relation to the lodging of the Employment Tribunal claim Mr. Marhsall said the claim was not sent to the Respondent until 8 November 2023, and therefore he had no knowledge of the claim on 31 October 2023. The Tribunal accept that during the appeal hearing Mr. Marshall was not aware of the first employment tribunal claim.

287. As set out above, the Tribunal considered Mr. Marshall partially hindered John Neckles during the hearing, and consider this to be detriment.

288. However, the Tribunal do not consider the reason for any of Mr. Marshall's conduct during the appeal hearing was in anyway related to the fact the Claimant had done any or all of the protected acts but was

because Mr. Marhsall was seeking to not allow John Neckles to lead the meeting and was not entirely clear on the companions remit.

289. The same conclusions and observations about the reasons for Mr. Marshall behavior towards John Neckles at the hearing as per the harassment claim apply. We see no causative link with either of the protected acts.

290. As none of the discrimination complaints were upheld the Tribunal did not go on to consider time limits as it was not necessary to do so.

Approved by:

Employment Judge Cawthray

1 September 2025

JUDGMENT SENT TO THE PARTIES ON

9 SEPTEMBER 2025

O.Miranda
FOR THE TRIBUNAL OFFICE