EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001308/2025 and 8001309/2025

Held in Dundee on 2, 3, 4 December 2025

Employment Judge I McFatridge

Mr K Khokhar	**First Claimant** **Represented by:** **Mr J Lawson,** **Solicitor**
Ms L Miller	**Second Claimant** **Represented by:** **Mr J Lawson,** **Solicitor**
British Telecommunications Plc	**Respondent** **Represented by:** **Ms E Burns,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that

1. The first claimant Kasam Khokhar was unfairly dismissed by the respondent. The respondent shall pay him the sum of Twenty six thousand Three hundred and Ninety Five Pounds and Ninety four pence (£26,395.94) as compensation therefor.

2. The second claimant Lynsey Miller was unfairly dismissed by the respondent. The respondent shall pay to Ms Miller the sum of Thirty One Thousand, Five Hundred and Fifty three pounds and four pence (31,553.04) in compensation therefor.

REASONS

1. The claimants each submitted ET1 claims to the Tribunal following the termination of their employment with the respondent. In each case they claimed that they had been unfairly dismissed and the respondent submitted a response in which they denied the claims, stating that the

dismissal was on grounds of gross misconduct and was procedurally and substantively fair. An Employment Judge decided that it would be appropriate to hear both claims together. The hearing was initially set down to take place over five days commencing on 1 December. In the event the Tribunal was unable to commence on 1 December for operational reasons but commenced on 2 December and concluded on 4 December. At the hearing evidence was led on behalf of the respondent from Kate Cummings who had carried out the disciplinary hearing in relation to Mr Khokhar and Lucy Haighway who had heard the appeal against dismissal by Mr Khokhar, Michael Aitken who carried out the disciplinary hearing in respect of Ms Miller and Jeremy Smitham who heard Ms Miller's appeal against dismissal. Ms Haighway, Mr Aitken and Mr Smitham all gave their evidence over CVP, Ms Cummings gave her evidence in person. Thereafter, both claimants gave evidence in person. A joint bundle of documents was lodged by the parties which is referred to by page number in the judgment below. On the first day of the hearing the claimants' representative successfully argued that a further document be lodged which comprised a recent judgment of the Employment Tribunal in the case of Jack Caird against the respondent which arose from similar circumstances to the present cases. This was lodged at pages 569-577. On the last day the respondent's representative also asked that an additional document be lodged and after discussion I ordered that they be permitted to do so. This document was numbered 578-580. The claimants' representative then successfully argued that Mr Khokhar be recalled to give evidence and he gave brief evidence in relation to the content of this document. On the basis of the evidence and the productions I found the following essential facts relevant to the case before me to be proved or agreed.

Findings in fact

2. The respondent provides telecommunication services. Both claimants worked for the respondent until their dismissal. Mr Khokhar commenced his employment with the respondent on or about 27 November 2006. During his employment he held various roles as a customer facing adviser. Latterly he worked as a Tier 2 Level Technical Customer Advisor. As such, his role was to advise customers who had issues and take ownership of these cases until they were resolved. He mainly worked in broadband and other value added services. He worked as part of a team. Up until around July 2024 he had worked for a particular team leader's team for around seven years. Unfortunately, towards the end of this period he began to suffer from stress as a result of what he saw as an unjustified failure to be promoted to a more senior role. He approached a senior manager and said that he felt held back in his current role. He was helping his team leader a lot but was not receiving the recognition which he felt he should get. He had previously indicated a desire to move

more towards coaching and development and although his previous team leader had indicated that this would be facilitated, nothing had happened. As a result of that it was agreed that it would be helpful if Mr. Khokhar changed teams and Mr Khokhar came to work in the team run by Ms Miller in or about July 2024.

3. Ms Miller commenced employment with the respondent in or about October 2006. She initially started as a Customer Advisor advising customers on the telephone but in or around 2009 she was promoted to Team Leader. As team leader her job was to lead, inspire and motivate a team which contained around 19 customer advisors. Her job was to ensure the team met their KPIs and try to get the best out of people. As well as having direct responsibility for her own team Ms Miller as team leader would also have managerial responsibility for other customer advisors at periods such as weekends or out of hours when other managers were not working. For example if she worked on a weekend she may be responsible for all of the customer advisors working in the call centre that weekend.

4. Ms Miller was seen as a high flyer within the respondent. She was extremely conscientious and obtained multiple forms of recognition from the respondent over the years. She was given temporary roles managing call centres in Belfast because of her acknowledged skills. In the autumn of 2024 she won a trip to Portugal for obtaining a BT excellence award. She was only the third person within the whole of BT to win an excellence award for continuous improvement. Her achievements were known throughout BT. She was a manager who was given “exceptional” accreditation for a period of three years’ running.

5. Ms Miller spent a lot of time and effort trying to get the best out of her team. She made sure that the team organised nights out together, Christmas present rotas and so on. Ms Miller reported directly to the Call Centre Manager Mr Donaldson.

6. Initially the respondent ran their Dundee call centres from offices in Bell Street however the lease of this building ran out in 2022. The plan was to move their call centre operations to a newly built building at Greenmarket, Dundee however there were various delays in completing the building and the call centre teams did not move in there until around December 2024. During the period from the closure of Bell Street until the opening of the Greenmarket the teams were split off with many individual team members working from home, others worked from other premises operated by the respondent at Dundee House.

7. Initially when the teams operated from Bell Street the individual team members would be in proximity with each other and could chat about work related and other issues verbally. During the Covid pandemic a substantial number of team members started working from home and from

this period onwards the team members tended to use Microsoft Teams to chat with each other. Microsoft Teams and other messaging systems were central to the respondent's operations. Typically, a team member when working would have one or two screens in front of them and could have up to 30 messaging applications running at the same time. One of these would normally be the Teams chat which was dedicated to team issues. Over the period since Covid and especially after the closure of Bell Street when the team were geographically spread out the Teams chat became the way in which practically all personal discourse between the team members was conducted.

8. Usually if a team member said something on the Teams chat then a notification would appear on each operator's screen. The operators could either open it or not. Sometimes they would be working on other windows in the screen and not open it but if they opened it they would then be free to respond. The use of Teams for the purpose of general conversation amongst the team was something which simply grew up. At no time did the respondent provide any guidance or instruction to team members as to how the teams chat should be used. In any event, Ms Miller was on maternity leave during the pandemic and the use of teams was something which started during her leave and was simply a fait accompli when she returned from maternity leave. There was no specific instruction given at any point to employees as to what the acceptable use policy was. The respondent has various policies which can be accessed by employees on their intranet, some of these were lodged. Their current Standards of Behaviour policy was lodged at pages 405-417. Paragraph 2 on page 407 sets out what the expected level of behaviour is but only does so in extremely vague terms. It contains 10 bullet points which are set out in extremely general terms such as "Protect our brands and company image and reputation, always treat others how would you expect to be treated by not using harsh or abusive language and always act in a reasonable manner, try to have a positive impact on communities around us and minimise any negative impact on the environment." (page 407)

9. On page 408 there is a substantial list of bullet points setting out issues which are said to be gross misconduct. These include:-

    - "Any behaviour, either at work or externally that could have a negative impact on our business, brand or reputation (including doing something obscene, indecent or malicious) or that has significant negative impact on your role.
    - Serious misuse of our systems, like email, intranet, internet and equipment, eg mobile phone/laptop (including breaches of the acceptable use, internet, social media or phone policies).

- Seriously breaching our Standards of Behaviour policy (including breaking the rules on conflict of interest, offering or receiving a bribe, anti-corruption and bribery).
- Unacceptable behaviour towards customers or colleagues (including but not limited to being rude, knowingly mis-selling goods or services, avoiding taking customer calls, inappropriate or unauthorised customer call release).
- Serious breaches to our Diversity and Inclusion policy, including discriminating against or harassing colleagues or customers."

At the end of the list it states that the list is not exhaustive (page 409). There is a section on use of company systems and services at page 412 which states:-

> "Our company computer system is vital to the operation of our business and contains lots of highly confidential information which could seriously damage our business if it were disclosed. Therefore it's really important that our information and information systems are protected. Please ensure you read and understand our Information security policies in relation to Acceptable Use and BT Security Policies."

There is a section on use of e-mail and other communication platforms, internet and social media sites which states:-

> "We want to support and encourage all ways of working and bring people closer together to help them communicate, but it's important that we protect the reputation of our company, brands and confidential information. Therefore it's important that we have rules in place to define how we went you to use these systems and how the company will monitor usage. Our Security Policies and Standards/Specifications in relation to acceptable use outline what you can and can't do so it's important you read and understand these and BT Security Policies."

In section 13 which deals with the rules on intranet and internet usage at work it states:-

> "Accessing, searching for, browsing, downloading, storing or forwarding material whether word, image or audio, or allowing a third party to do the same, which is, or could be considered to be:
>
> - Obscene
> - Offensive
> - Sexual
> - Sexist
> - Racist
> - Illegal

- Violent
- Politically offensive
- Drugs related
- An act that may bring the company or individuals into disrepute
- Use of systems in working time that wastes company time or takes up excessive bandwidth."

In addition to the document on Standards there are other documents which set out a disciplinary policy and a document known as the Code. These documents were on the intranet.

10. As noted above Ms Miller saw her job as trying to get the best out of her team. She was aware that at least one of the team members often needed to vent off or let off steam after a particularly difficult call. When the team were all in physical proximity to each other she would see this and allow him to vent and try to defuse his stress. She often used humour for this purpose. When communication moved on to Microsoft Teams she tended to follow the same pattern by allowing this individual to let off steam in his written comments on Teams.

11. In or around January 2025 a report was made that expressed concerns and allegations around the misuse of BT communications platforms at the Dundee contact centre. The BT Corporate Investigations team carried out an investigation and looked at Teams messages between 1 October 2024 and 9 January 2025. No evidence was led in relation to this report and it is unclear what the initial circulation was. Copies of what bore to be the report individualised for each claimant were lodged and are to be found at pages 199-203 in respect of Mr Khokhar and pages 335-339 in respect of Ms Miller. The report is understood to have been based on certain key word searches carried out by the Corporate Communications team electronically looking at Teams messages over a three month period. No-one at the Dundee call centre appears to have been involved in any of the investigation which led up to this report.

12. In respect of Mr Khokhar the report identified one key document being a transcript of a Teams chat which had taken place on 22 October 2024 at 9:55am. It mentions the various participants in the chat at page 200 and then goes on to state that one of the participants mentioned a colleague namely A and goes on to state:-

> "A conversation then takes place between Mr KHOKHAR, Mr L and Ms MILLER where A is berated and Mr L states "HERE I'D LOVE TO BOOT A FULL FORCE IN THE FANNY". Ms MILLER replies "DOO IT" to which Mr L replies "YOU JUST CANNAE BOOT A WOMAN FULL FORCE IN THE FUD NOWADAYS. WORLD'S GONE WOKE. I MISS THE GOOD OLD DAYS WHERE YOU CAN BELT A LASSIE FOR BEING LIPPY.

> Ms MILLER replies “I CAN”. The conversation continues and Mr KHOKHAR replies to the original message posted by Mr L stating “SECOND THAT OOPS I NEVER SAID THAT HA HA HA”.”

The report refers to various appendices one of which is said to contain the full text of the exchange and the other contains a list of the key word searches carried out. The report notes in respect of Mr Khokhar at page 202:-

> “Following the investigation findings, it is recommended that HR / Line of Business assess the contents of this Report and its supporting documentation in order to assess whether Mr KHOKHAR has a misconduct case to answer in respect of breaching the following BT Policies and Procedures –
>
> - Our Code
>
> We support, respect and appreciate each other
>
> - Standards of Behaviour
>
> Inappropriate behaviour
>
> misuse of systems
>
> - Security Standards
>
> Acceptable use of BT assets
>
> It is also recommended that HR conduct an educational piece of work within the Contact Centre covering appropriate language and behaviour within the workplace.”

13. In respect of Ms Miller the report contained exactly the same narrative of events as for Mr Khokhar. It also referred to an additional conversation on 6 December 2024 involving Ms Miller, which allegation does not appear to have been taken further. The box for “NEXT STEPS & RECOMMENDATIONS” contained identical language to that for Mr Khokhar. Although the report does not mention the specific teams chat the comments were on it is clear that the comments were made on a teams chat which was only used by members of Ms Miller’s team. In particular Ms A who was the subject of comment was not a member of that chat and would have no access to it and there was absolutely no evidence that she was aware of anything said on that chat.

14. On 13 January 2025 the claimant, Mr Khokhar, was finishing his shift. Mr J Donaldson the Manager of the call centre came and tapped him on the shoulder and asked him to come for a meeting. Mr Donaldson told Mr Khokhar that it was about comments made on Teams. He read the comments out to Mr Khokhar. He showed Mr Khokhar the messages. The document only contained what Mr Khokhar appeared to have said and did not contain any context. He told the claimant he was suspended. Mr Khokhar was extremely upset by this. He was then escorted from the

building. Mr Khokhar was not asked for any comments on what he was supposed to have said nor did he make any. Following the meeting Mr Khokhar was given a formal letter confirming his suspension (pages185-186). This confirmed that she was not permitted to enter any company premises or contact any colleagues or customers without the agreement of his manager. His company pass card and PC had been removed and his access to company systems had been suspended. Mr Donaldson produced a very brief note of the meeting which is lodged at pages 193-195. This is headed Investigation Meeting despite the fact that the precise allegations against the claimant were not mentioned nor was Mr Khokhar asked for any comment on the allegations. All that is said about the allegation is that "The incident detailed in the evidence gathered so far occurred at 09:55 on 22/10/2024." In Section 4 of the document it stated:-

> "The evidence provided by BT Security is clearly a serious breach of our Standards of Behaviour policy.
> Given the seriousness of the allegations Kaz Khokhar has been suspended from Duty in order to protected the integrity of the investigation.
>
> I recommend that this case is progressed as gross misconduct under the company's disciplinary procedure."

The decision as to whether the allegation be treated as misconduct or gross misconduct appears to have been made by Mr Donaldson. Although reference is made to protecting the integrity of the investigation no evidence was led about any investigation whatsoever taking place after the suspension.

15. The respondent uses an electronic HR system called Empower. Following the meeting the Empower system sent a message to Kate Cummings, a Manager with the respondent based in Glasgow and asked her if she had availability to do a series of disciplinary investigations in Dundee. There were in fact 12 disciplinary hearings held in total including Mr Khokhar and Ms Miller. Ms Cummings was assigned six of these. The respondent then sent an invitation letter to Mr Khokhar inviting him to a disciplinary meeting. The letter was drafted as a template. Ms Cummings made the decision that the disciplinary hearing take place in person. The decision that the allegations constituted gross misconduct had already been made by Mr Donaldson and was not revisited by Ms Cummings. The letter of invite was lodged (page 196-198). The allegation was stated to be:-

> "**Serious breach of our Standards of Behaviour Policy**
> **Serious Breach of our Diversity and Inclusion Policy**
> **Serious misuse of our systems in that:**
> Following a team wide investigation carried out by our security team, it was discovered that in October 2024, you made comments

within a work Teams chat could be deemed as inciting violence and hate against a fellow BT employee."

There was attached two screenshots. These are at pages 183 and 184. In addition to the comment highlighted in the Investigation team's report there was a screenshot of another comment made by the claimant which was in response to a comment about A made by Mr. M slightly earlier in the exchange. M – "she honestly needs to be reporting to the crown, the fact she gets paid to do what she does on calls is a sin". The claimant is then reported as saying "No playing the game huh Kick her in the Baws big man!" There is then the screenshot where he is replying to L's comment that "Here I'd love to boot A full force in the fanny eh" and Mr Khokhar responded "second that Oops I never said that ha ha ha". Along with the letter there was also produced copies of the respondent's disciplinary policy and procedure (pages 418-438), the standards of behaviour policy (pages 402-404), the misconduct investigation report (pages 193-194), the respondent's diversity and inclusion policy (pages 439-447) and the two screen captures mentioned. No copy of the respondent's document referred to as Our Code was sent to the claimant. Although available on the respondent's intranet Mr Khokhar's authorisation to use the intranet had been cancelled on his suspension and he was unable to access any of these documents himself. On receipt of the letter he contacted the respondent seeking access to the full text of the WhatsApp conversation and this was provided. At some stage an email was sent to him which contained further electronic copies of the various policies including the Code but the claimant was unable to open this because of the fact that his authorisation had been revoked.

16. The disciplinary meeting took place on Friday 31 January 2025 between Mr Cummings and Mr Khokhar and lasted 18 minutes. The claimant was not represented or accompanied at the meeting although he had previously been told that he could bring either a union official or a fellow employee. The claimant felt hampered in asking a fellow employee to accompany him since he had been specifically told at the suspension meeting that he must not contact any of his fellow employees and this had been repeated in the letter of suspension sent to him. At the beginning of the meeting however in response to a direct question from Ms Cummings he said that he was happy to proceed unaccompanied. A minute of the meeting was lodged (pages 223-227). During the meeting Mr Khokhar made clear his position that in hindsight he considered that what he had said was inappropriate and that he had had a shock and would definitely not be making this type of comment again. It was his position however that it was not gross misconduct. He said that it had been banter and that he had not intended to offend anyone. There was a discussion about whether the claimant should have reported the inappropriate comments being made by others using the BT Speak Up which is a confidential internal process whereby employees can report misconduct by their fellow

employees. During the meeting Ms Cummings said that the claimant's comments had a diversity and inclusion perspective despite the fact that the allegations did not refer to this (page 226). The claimant responded that he would not entertain harassing colleagues and that he would use Teams in a professional capacity but that one could vent within reason. At the end of the meeting the claimant was told that the decision would be communicated to him in due course.

17. The claimant was then invited back to a further meeting where he was advised that he was being dismissed. Ms Cummings sent him a letter of dismissal dated 12 February 2025 which confirmed his dismissal. Under reasons for the dismissal the letter stated:-

> "The reason/s for your dismissal for gross misconduct was a result of your conduct.
>
> My reasons for this decision are shown in the attached rationale. In reaching this decision I've taken into account the mitigation put forward and due to the seriousness of the misconduct I have also considered all the possible alternatives such as a lesser sanction when making my decision to summarily dismiss you for gross misconduct."

The letter of dismissal is contained at pages 231-232. The discipline rationale is dated 31 January and is contained at pages 228-229. The reasons for dismissal were given as:-

> "Following a team wide investigation carried out by our security team, it was discovered that in October 2024, you made comments within a work Teams chat could be deemed as inciting violence and hate against a fellow BT employee.
>
> These allegations are in breach of the following:
> **Serious breach of our Standards of Behaviour Policy**
> **Serious Breach of our Diversity and Inclusion Policy**
> **Serious misuse of our systems**".

It was noted that the reasons for dismissal are different from the allegations which were put to Mr Khokhar in his invitation letter. He then went on to state:-

> "In summary my findings regarding these allegations are that your conduct is unacceptable and does constitute a serious breach of our Standards of Behaviour Policy, a Breach of our Diversity and Inclusion Policy and serious misuse of our systems. BT takes a zero tolerance approach to all forms of discrimination, bullying or harassment. I acknowledge your length of service and previous record, but this does not detract from the seriousness of your misconduct. I also acknowledge your mitigations; however, I do not

believe this justifies your conduct. I find your conduct to be unacceptable and is a serious breach of trust and confidence in the working relationship. We expect you to always conduct yourself in line with the requirements listed below no matter the situation.

- Always treat others how you would expect to be treated by not using harsh or abusive language and always act in a reasonable manner.
- We treat each other with dignity and respect, so that everyone feels able to be themselves.
- We expect everyone to lead by example and to take action when they see or hear language or behaviour that doesn't meet our high expectations.
- We make sure that there is no place for discrimination, bullying or harassment and we take a zero-tolerance approach if we discover it. The high standards we set extend beyond what happens at work and include how we use social media.
- We'll treat everybody with dignity and respect. We'll encourage and celebrate diversity and inclusion and do all we can to remove barriers in the workplace, so everyone can fully and fairly achieve their potential.
- Make sure everyone can work without fear of discrimination or inequality.
- Always work to the best of your ability, and act in the best interests of the company."

The bullet points mentioned are those listed in BT's Code which was lodged at pages 448-461. When she came to her decision Ms Cummings had particular regard to pages 11 and 12 of the Code (pages 458-459).The code is the only document which refers to zero tolerance. The Code was the document which was not sent to Mr Khokhar prior to the meeting and which he had no opportunity of accessing following his suspension.

18. In his letter of dismissal the claimant was given the opportunity to appeal. He duly appealed and his letter of appeal was sent to Ms Cummings who then entered it into the system and an Appeal Manager Ms Lucy Haighway was appointed to deal with the appeal. Ms Haighway was a senior manager based in Gloucester. As it happens there were 12 appeals against dismissal from the disciplinary findings relating from the corporate investigation in Dundee. Ms Haighway was allocated six of these appeals and another manager Mr Smitham was allocated the other six. Prior to hearing the appeal Ms Haighway familiarised herself with the documentation in the case. She also had a discussion with Mr Smitham about the approach they would take to the appeals. A decision was made that those who were what Mr Smitham described as innocent bystanders i.e. those who had been involved in the discussion but had not personally

said anything offensive would not be treated as being guilty of gross misconduct. Her understanding of the position was that the respondent took a zero tolerance approach and that in particular they take allegations of harassment, bullying and discrimination very seriously. It was her understanding that if the company considered anyone had broken these rules then it was a case of gross misconduct and would result in dismissal. She also proceeded on the basis that all employees had understanding of all of the policies and guidelines.

19. The zero tolerance approach is a reference to page 12 of the Code (page 459) which states:-

> "We make sure that there is no place for discrimination, bullying or harassment and we take a zero-tolerance approach if we discover it. The high standards we set extend beyond what happens at work and include how we use social media."

20. The claimant's letter of appeal was lodged at page 233. The grounds of appeal were:-

> "1. Sanction of Gross Misconduct too severe
> 2. Mitigating factors such as 17 year length of service/clean record, good performance, my character and stress factors due to suspension not fully taken into account
> 3. No rationale given as to why my comment amounts to Gross Misconduct
> 4. I do not think my background of team movement has been fully considered to be a reasonable mitigation
> 5. The misinterpretation of my explanation surrounding BT Speak Up policy"

Ms Haighway drafted a letter of invitation to the appeal meeting which was lodged at pages 236-237. Prior to the meeting as well as talking to Mr Smitham Ms Haighway also contacted Ms Cummings to obtain copies of various documents being the full BT security investigation, the full transcript and recording of the meetings which had not been included in the pack she had already received.

21. The meeting took place on 6 March. The meeting was recorded and a transcript was lodged (pages 245-280). During the appeal the claimant was able to go in to some of the background. He stated that A was not someone who was known to him. He said that he had spoken to her over the years on calls maybe a couple of times but that he would not be able to recognise her. He referred to difficulties he has had in his previous team and that he had been off with stress. His position was that part of the reason he had commented was that he was seeking to bond with the new team.

22. Following the meeting Ms Haighway considered her decision and decided not to uphold the appeal but to confirm the decision that the claimant be dismissed for gross misconduct. The claimant was advised of this in a letter dated 21 March. The reasons were contained in a rationale document dated 6 March which was attached. Miss Haighway saw her role as not being to remake the decision but to look at the decision made by the Disciplinary Manager and decide whether it was in line with BT's policies. Her view was that the claimant was guilty of gross misconduct and referred to those parts of the definition which state that it is:-

> "a serious offence which leads to a breakdown of the trust which we've placed in you as an employee. It's a breach of your contract of employment. It also includes serious misconduct which is likely to have a negative impact on our business, brand or reputation. Acts of gross misconduct may lead to summary dismissal (being dismissed without notice or payment in lieu of notice), and includes the following examples:
>
> - Serious breaches to our Diversity and Inclusion policy, including discriminating against, bullying or harassing colleagues or customers.
>
> - Any behaviour, either at work or externally that could have a negative impact on our business, brand or reputation (including doing something obscene, indecent or malicious) or that has significant negative impact on your role.
>
> - Serious misuse of our systems, like email, intranet, internet and equipment, e.g. mobile phone/laptop (including breaches of the acceptable use, internet, social media or phone policies).
>
> I conclude that your comments do fit within the definitions above."

23. In Ms Miller's case the claimant attended work on Tuesday 14 January 2025. She had not been at work on the Monday since over the weekend she had been the Duty Manager in charge of the call centre. On arriving she was just in the process of getting out her laptop when she was approached by Mr Donaldson who said he needed to speak to her for a moment. He took Ms Miller into a room and handed her a piece of paper which contained an extract of the Teams conversation between her and BL. It would appear that it only referred to the teams chat in October which was the same one that Mr Khokhar had been charged with. For whatever reason there was no reference to the teams chat on 6 December which had also been mentioned in the report from corporate services. As noted above this comment was never mentioned again. He asked her if she remembered it and she said she did not. He did not ask her anything more about the conversation or give her any opportunity to comment. Ms Miller

became extremely upset. Although the meeting lasted 20 minutes for around 15 minutes of this she was upset and crying. She felt horrified at having been suspended having never been in any trouble before and having been what she and BT had previously considered to be a model employee.

24. Following the meeting Ms Miller was given a formal letter confirming her suspension (pages 323-324). This confirmed that she was not permitted to enter any company premises or contact any colleagues or customers without the agreement of her manager. Her company pass card and PC had been removed and her access to company systems had been suspended (pages 323-324). On 17 January Ms Miller wrote to Mr Donaldson with a number of questions (page 326). Mr Donaldson responded on the same day (page 325). He said that all evidence such as the screenshots would be provided to her by the Disciplinary Manager during the disciplinary process.

25. Following the meeting Mr Donaldson compiled a misconduct investigation report (pages 328-329). He referred to the evidence as being the UK Standards of behaviour policy, Standards of behaviour procedure, the Discipline procedure, Our Code and a Screenshot of the Microsoft Teams Chat. He produced notes of the investigation meeting (pages 330-331). This gives no details of the incident other than that the evidence gathered so far occurred at 10:17 on 22 October 2024. A summary of facts and Investigating Manager's recommendation in box 4 was identical to that in Mr Khokhar's case.

26. The respondent allocated Mr Mike Aitken, a manager based in Glasgow to carry out the disciplinary in respect of Ms Miller. Mr Aitken was given an additional five cases arising from the corporate investigation in Dundee to do the hearings. Mr Aitken had met Ms Miller before as they were sometimes all on the same calls together. It was not a close working relationship but he did know who she was and knew her record. The respondent's HR department drafted the letter of invite to a disciplinary hearing which was lodged at page 333 and sent to the claimant on 23 January inviting her to a hearing to take place on 30 January in Dundee. The allegations were:-

> "**Serious breach of our Standards of Behaviour Policy**
>
> **Serious misuse of our systems in that:**
>
> Following a team wide investigation carried out by our security team, it was discovered that on 22nd October 2024, you made an inappropriate comment about a colleague which could be deemed as inciting violence."

The letter was lodged (page 333-334). Attached to the letter was a copy of the Disciplinary policy and procedure, the Standards of Behaviour policy

and procedure, the Misconduct Investigation Report and the Screen shot evidence (page 363). The exchange on page 363 was as follows:-

> "BL – Here I'd love to boot A full force in the fanny eh.
>
> Lynsey Miller – doo it
>
> BL – You just cannae boot a woman in the fud nowadays. World's gone woke. I miss the good old days where you could belt a lassie for being lippy.
>
> L Miller – I can
>
> BL – Ahhh the '60s, what a time to be alive."

Ms Miller was not sent a copy of The Code nor was she sent a copy of the Diversity and Inclusion Policy.

27. Ms Miller duly attended the meeting on 30 January. She arranged for Michelle Millar a colleague to accompany her. At the beginning of the meeting Mr Aitken said to her that when he had first been told that he would be dealing with a number of disciplinaries emanating from the Dundee office he thought about who he knew in Dundee and was about to phone her to ask her about it when he realised that she was one of the people mentioned in the allegations. The meeting lasted 27 minutes. The transcript of the meeting was provided (pages 370-376). There was also a record of the meeting prepared from this by Mr Aitken (pages 364-367). During the meeting the claimant acknowledged that her comments had been inappropriate and unprofessional. She said that the matter had occurred on a Saturday when everyone was remote working and was the chat for everyone on tier 2 that day. She said she knew the individual who made the first comment (BL). She said she knew that he was very stressed because he had a difficult call which in his view was due to A having mishandled matters. He knew that this person often turned to humour to try and deflect his stress. She had tried to use humour to deflect his stress back at him and in hindsight this was completely inappropriate and wrong. She felt she had let herself down. She said there was never any intention to follow through with the comment. She had worked with BL eight years. She did not see how it could possibly be construed as inciting violence. It was an inappropriate comment. She knew A and had absolutely no issues with her. She had been helping A with a complaint the previous weekend when she had been acting Centre Manager. She agreed it was a stupid moment and that she would be horrified if A had seen these comments. She was not in the chat and would not have had the opportunity to see them. She mentioned her excellent service over the years. She said that in October when the comment was made the team were stressed around call volumes and she was also going through a difficult person time getting divorced and there were issues with her ex-

husband. She also handed to Mr Aitken a copy of an email which she had sent to all members of her team on 19 November 2024 labelled IM etiquette. This document was lodged (page 322). This had been sent by the claimant to her team well before she was aware of any investigations being carried out. It stated:-

> "Hey Guys,
> With so much focus on the quality of transfers from GBS into Tier 2 especially the likes of Alison Mackenzie and Jamie Mac reviewing screen recording for calls.
> I need something from you all and its non negotiable I'm afraid, swearing in team chats needs to stop. I like a good curse as much as the rest of you, but its time to get creative with the language folks we have been very lucky so far that this has not been flagged. Lets make sure we aren't on any poo lists."

28. Following the meeting Mr Aitken decided that Ms Miller should be dismissed. He wrote to the claimant on 12 February 2025 confirming that she was to be dismissed and enclosing his rationale. In his rationale he has noted that he considered that she had breached the Standards of Behaviour and stated:-

> "BT's policy on our Standards of Behaviour and on Inclusion and Diversity are clear on what is expected from everyone who works for BT and what is deemed as an act of misconduct. It asks that employees:
>
> - Work with honesty, integrity and in a way that supports our company brand values
> - Always treat others how you would expect to be treated by not using harsh or abusive language and always act in a reasonable manner.
>
> Gross Misconduct is termed as an offense that leads to a breakdown of the trust placed upon an employee. In this instance, I find that you have breached our Standards of Behaviour and committed Gross Misconduct in the following matters
>
> - Acts of bullying and harassment
> - Serious misuse of our systems
> - Unacceptable behaviour towards customers or colleagues
>
> While I have considered the option of additional training and learning combined with a lesser sanction such as demotion, given the serious nature of the comment and that BT operates a zero tolerance approach to this behaviour, I am satisfied that this clearly falls with the Gross Misconduct terms. As such I feel the decision

> to move to summarily dismiss you from the employment of BT is justified."

29. The claimant was advised of her right of appeal and wrote to Mr Aitken on 17 February 2025 confirming that she wished to exercise this (page 382). In her appeal she set out her belief that the disciplinary outcome was too severe and did not illustrate full consideration had been given to the factors raised at the meeting in particular her length of unblemished service, her full career history and contribution to the company, her achievements and the overarching context of her personal stress and particular strain of the day in question. She agreed that she had made an ill-judged flippant comment which she could guarantee would never occur again.

30. The claimant was duly invited to an appeal meeting which took place on 11 March. Ms Miller's appeal was allocated to Mr Smitham who carried out six of the 12 appeals against dismissal arising from the corporate investigation report into the use of Teams messaging at Dundee. Mr Smitham did not uphold any of the six appeals which he was dealing with. The claimant duly attended the appeal meeting on 11 March. Notes of the meeting were produced (pages 395-398). Following the meeting the notes on pages 395-397 were sent to the claimant for approval. The claimant wrote to Mr Smitham on 19 March indicating that there were various points missed out. She noted that the notes did not cover fully the point she had made that everyone was remote working and that the Teams chat was the only way that people could vent after a difficult call. She went on to say that if she had created a culture of bullying, harassment and negative environment then her team would have imploded. She said that no team could be so successful if that was the culture that she had allowed to happen. She also said that if she had allowed a negative environment to continue then why this hadn't been raised before (page 399). On 8 April 2025 Mr Smitham sent the claimant the outcome. As with the other five appeals he did not uphold the appeal and the decision to dismiss for gross misconduct was confirmed. He enclosed a copy of his rationale which is found at pages 389-393. In this rationale he went through the various key points of the appeal and set out why he did not accept this. He noted that the claimant felt that she had developed a positive team culture however he stated that:-

> "A positive team culture does not involve the use of language or sentiment that threatens violence to a work colleague. Under no circumstances, even as a 'one-off' is that acceptable. BT has a zero tolerance approach to this behaviour and in not challenging the behaviour and to be seen by your team to be encouraging that behaviour and inciting violence, you are giving permission for it to continue."

31. Following the termination of her employment Ms Miller was successful in obtaining new employment from 1 May 2025. She received a net weekly wage in her new employment of £510.43 as opposed to her net weekly wage of £646.97 (£807.69 gross) which she received whilst employed by the respondent. In her employment with the respondent the respondent paid weekly pension contributions of £121.15. The pension contributions in her new employment were £30.77. Although the claimant is earning less in her current employment than she received previously she feels that she wishes to stay there as there is scope for promotion and has already received some recognition for her contribution. The claimant is carer for her two young children and as a result receives Income Support in addition to her pay. She has been in receipt of Income Support from the date of dismissal to the date of the Tribunal.

32. Following the termination of his employment with the respondent Mr Khokhar started new employment on 24 March 2025 however this employment ended on or about 3 October 2025. In his employment with the respondent Mr Khokhar received a gross weekly wage of £700 which equated to a net wage of £570.51 per week. In addition, the respondent paid an employer's pension contribution of £106.44 per week. In his new employment the claimant was paid a net weekly wage of £475.75. In his new employment his employers pay a weekly pension contribution of £17.18. Mr Khokhar did not claim any benefits following his dismissal.

Observations on the evidence

33. In this case there was really very little if any difference between the evidence of the parties as to the basic facts of what had occurred. The issue for the Tribunal essentially turned on the way the facts were to be interpreted. Both claimants were good witnesses who readily accepted that they had let themselves down and that the comments they made were inappropriate. I had no hesitation in accepting their evidence as both credible and reliable. They were the only witnesses of fact in relation to the investigation stage of the process since Mr MacDougall who had according to the respondent been charged with carrying out the investigation did not give evidence. I accepted their evidence that effectively they were asked no questions about what had occurred or the background and given no opportunity to put their side of things before the decision was made that they be charged with gross misconduct.

34. The respondent's agent was heavily critical of the credibility and reliability of each of the respondent's witnesses and I would have to say that I entirely agree with his categorisation that all of these witnesses were not being honest when they said that they had approached matters with an open mind.

35. It is not at all uncommon for claimants in unfair dismissal cases to state that the various managers tasked with dealing with the investigation

disciplinary or appeals stage approached matters with a closed mind. In this case however I considered that matters went very far beyond a simple allegation. On the basis of the evidence before me I felt there was little doubt that the decisionmakers had approached matters with a completely closed mind. They all seemed to believe that because there was no dispute that the claimants had made the comments then dismissal was the only possible outcome. Ms Cummings in particular demonstrated in her evidence that she was simply not prepared to consider any alternatives. I agree with the claimant's representative's submission that she was not prepared to answer questions which were simple and put to her in an easy manner. She appeared to take personally any suggestion which did not agree with her alleged view of the conduct. She was extremely combative and sought to answer questions in a way which would shut down any criticism and support her decision. She was not prepared to entertain the suggestion that Mr Khokhar's comment had been made with a view to being amusing or lighthearted. She said it was quite clearly a serious invocation to carry out violence on a colleague. She was not prepared to accept the clear written evidence that the letter of invitation to the claimant did not obtain allegations of bullying, discrimination or harassment and was not prepared to give any answer when it was put to her that neither were these allegations put to him at the disciplinary hearing.

36. Whilst not quite so combative as Ms Cummings Ms Haighway herself also showed a completely closed mind in her evidence. Her evidence was that she had no hesitation in believing that Mr Khokhar's words were a serious invocation to violence. She considered that the charges against him related to discrimination, bullying and harassment. It was her view that the respondent had a zero tolerance policy in respect of discrimination, bullying and harassment and that this would always be gross misconduct. Although at pains to state that she had considered other remedies, it appeared to me that she had not. At times even in her evidence in chief she appeared to conflate a finding of gross misconduct with a decision to dismiss.

37. With regard to the managers who dealt with Ms Miller the position was essentially the same. Although they were keen to make protestations that they had approached matters with an open mind this was not in my view something that was supported by either the other extrinsic evidence or indeed their general approach. Ms Haighway in her evidence had stated that she had deliberately spoken to Mr Smitham in advance of the first of the appeal hearings so that they could agree how matters would be dealt with. Mr Smitham was less forthcoming and did not volunteer this information but once he had been led to it said that it was only so that they could agree their definition of gross misconduct. He agreed with Ms Haighway that their decision had been that only people who were actively involved in the chat rather than those who he termed innocent bystanders

would be liable to be dismissed. Ms Haighway had said that they would receive a lesser penalty whilst Mr Smitham's position was that they would not be found guilty of gross misconduct. Both said that the reason was so that they could establish consistency. I'm afraid it appeared to me that both of the appeal managers had quite clearly predetermined what they would be doing prior to the appeal hearing. Like Ms Cummings, Mr Aitken was not prepared to entertain the suggestion that the remarks had been made other than in full seriousness. He also was of the view that the respondent had a zero tolerance approach to any breach of the Standards of Conduct. His view was that he accepted that Ms Miller had good record and extensive length of service but as he put it "if you threaten a colleague it pushes length of service out the window" as regards the suggestion that the colleague she responded to was simply venting his position was that whilst one can let off steam, threatening a colleague was "not on". He accepted that the colleague had not lodged a complaint but said this was because she had been entirely unaware of the exchange. In examination in chief when specifically asked if gross misconduct always led to dismissal he said that all of the gross misconduct ones he dealt with led to a dismissal although to some extent he retreated from this position in cross examination.

Discussion and decision

Issues

38. The sole issue to be determined in each case was whether or not each claimant had been unfairly dismissed by the respondent. Whilst the background was the same, each claimant had had different personnel involved in their internal processes and given that they fulfilled different roles in the company the situation was different for each of them and after setting out the law on the subject I will therefore deal with each case separately albeit the overall background was similar and indeed my conclusions on the way they were treated in each case is similar albeit different personnel were involved.

39. The right not to be unfairly dismissed is contained in Part X of the Employment Rights Act 1996. Section 98 of that Act states:-

> "(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."

In this case it was effectively common ground between the parties that the reason for dismissal related to the conduct of each party which is a potentially fair reason for dismissal being a reason within section 98(2)(b) of the said Act. Section 98(4) then goes on to state

> "(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is unfair 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."

40. The well-known case of ***Burchell v British Home Stores Ltd*** sets out in general terms the approach which a Tribunal is required to take to the question posed by section 98.4. In the respondent's submissions they correctly summarised the questions the Tribunal required to pose to itself as being

> "a. Did the Respondent have a genuine belief in the Claimant's misconduct as alleged?
> b. Did it form that belief on reasonable grounds, having conducted as much of an investigation was reasonable in the circumstances?
> c. Did the Respondent act within a band of reasonable responses?
> d. Was the investigation within the range of reasonable investigations?
> e. If the decision to dismiss was within the range of reasonable responses, did the Respondent follow a fair procedure?"

The parties referred to the well-known line of authority comprising

> "British Home Stores Ltd v Burchell [1978] IRLR 379;
> Iceland Frozen Foods Ltd v Jones [1983] ICR 17;
> Sainsbury's Supermarkets Limited v Hitt [2003] IRLR 23; and
> The Post Office v Foley and HSBC Bank plc v Madden [2000] EWCA Civ 3030."

The claimant also helpfully led me to the recent case of Sharkey v Lloyds Bank plc UKEATS/0005/15 which provides a helpful summary of the general approach.

Mr Khokhar

41. In relation to Mr Khokhar the claimant was critical of the procedure adopted and the fact that although it was accepted the claimant was

dismissed for a reason relating to his conduct, there was a complete failure by the respondent to accurately and consistently set out precisely what it was they were alleging the claimant had done. I agree with the claimant's representative that the allegations put to Mr Khokhar in the invite letter were vague in relation to which part of the policy was being breached. The claimant was informed that the allegation was inciting violence and hate. The outcome rationale did not make any reference to inciting violence or hate but instead referred to breaches of the policy on discrimination, harassment and bullying and the alleged belief of each decision maker that gross misconduct would be an appropriate label since the respondent had set out a zero tolerance approach in relation to this. Quite apart from the fact that the code mentioning the zero tolerance approach was not provided to Mr Khokhar in a form which he could access during the process it is clear that the section of the code which relates to zero tolerance relates to diversity and inclusion pages on the intranet. This is clear from page 459 where it states that

- "We each have a personal responsibility to make sure the way we talk to each other and how we behave is inclusive. From the services we provide, the products we design to the documents we create, we make sure everything is accessible. By its very nature, inclusion applies to everyone and has no connection to hierarchy or role in our business.

- When we have questions, we ask our manager first. Or we head to the diversity and inclusion pages on the intranet to find out more about our People Networks and learn about the actions we take to create a truly inclusive and welcoming environment and experience at work."

42. The difficulty for the respondent of course is that Mr Khokhar did not face an allegation that was written down stating that he had breached the Diversity and Inclusion policy albeit a copy was sent to him by Ms Cummings. The allegation was inciting violence and hate. The finding was that he had breached diversity and inclusion by engaging in bullying, harassment and discrimination. The unchallenged fact which he mentioned at the appeal hearing which was that he had absolutely no idea who A was and would not therefore know whether or if she had any protected characteristics. It may well have been something which he could have made more of had he faced this allegation squarely. The fact of the matter is that he was charged with inciting violence and his position in response to that was that he hadn't because the remarks he made were quite clearly intended to be jocular and humorous although he now accepted they were entirely inappropriate. His position at the disciplinary was that no-one looking at the matter properly could possibly conclude that he had intended the remark to "kick A in the baws" (a woman) was to be taken seriously. Had the allegations been framed properly in line with

the gloss that Ms Cummings sought to put on matters at the end of the process then he would have at least had the opportunity of defending any suggestion that the remarks amounted to bullying, harassment and discrimination. We note the reference by the claimant's representative to the case of ***Strouthos v London Underground [2004] IRLR 636*** the importance if an employee should be found guilty if he is found guilty at all only of a charge which is put to him. In the case of Mr Khokhar this was not put to him.

43. From the outset therefore it is my view that the respondent's process was fundamentally flawed. With regard to the issue of whether or not the respondent had a genuine belief in the claimant's misconduct, my view in having heard the evidence is that despite their protestations to the contrary neither Ms Cummings nor Ms Haighway had any genuine belief that Mr. Khokhar intended by his remarks to incite violence. I had no doubt that Ms Cummings and Ms Haighway deprecated the remarks that Mr Khokhar made and indeed he deprecated them himself and accepted that he had let himself down. It is my view that if the two managers had a genuine belief that Mr Khokhar had been intending to incite violence then they would not have gone down the rabbit hole of trying to bring in the discrimination and inclusion policy and finding him guilty of allegations which had not been put to him.

44. If however I am wrong in this then I have absolutely no doubt that the respondent fell down at the second aspect of the test which is that in my view no reasonable employer on the basis of the evidence could possibly have reached the conclusion that Mr Khokhar was genuinely trying to incite violence against a colleague by his remarks. His explanation that he had only recently joined the team and was trying to ingratiate himself by being one of the boys had very much a ring of truth about it. It would have done so with the respondent's managers had they kept an open mind. The background here was that the team were working remotely from each other. It was common ground that dealing with members of the public on the telephone, particularly members of the public whose internet is not working, can be extremely stressful and there is sometimes a need to vent after a call. Ms Miller as an experienced manager had been allowing this during the previous 18 years of her extremely successful career in the organisation. Ms Miller was simply trying to react in a humorous way and "talk the other employee down". Mr. Khokhar simply responded to this by trying to be humorous himself. In my view it would be entirely outwith the range of responses of any reasonable employer to treat the acknowledged remarks as a genuine incitement to violence.

45. With regard to the quality of the investigation in this case the difficulty is that I heard no evidence whatsoever from anyone involved in the investigation. The respondent did helpfully lodge a copy of the key words which were used by corporate services to search the record of Teams

calls. Apart from that one has no real idea how the investigation progressed. It was clear from the evidence that the so-called Investigating Manager had really done no investigating whatsoever. Mr Khokhar had not been asked any questions about what happened and nothing he said has been recorded in the record of investigation. Apart from meeting with the claimant Ms Cummings' investigation appears to have been confined to looking through BT's policies albeit including ones which had not been sent to Mr Khokhar. I consider that any reasonable employer faced with a situation like this would have taken steps at the outset to investigate the background to how Teams had come to be used within the team. A reasonable employer would have looked at what training, if any, had been given to members of staff about acceptable use and indeed what the acceptable use policy was. The policy documents provided by the respondent appear to say little other than complete generalities. Any reasonable employer would have considered it reasonable to investigate how Teams was being used and whether indeed it was being used to vent after difficult calls. They may consider it relevant to look at background of how long people had been working from home and how long the team were working remotely from each other. None of this was investigated by the respondent.

46. Another somewhat strange issue in this case is that the original report in respect of Mr. Khokhar only contained one allegation whilst it is clear that the process proceeded on the basis of two allegations. This contrasts with the position of Ms Miller where the report started with two allegations but the process then went on to only consider one. The complete opacity of the respondent's decsionmaking during what they described as the investigation stage does not assist their cause.

47. Whilst the respondent's view appears to have been that because there was evidence there in black and white of what had been said in the Teams chat and because the claimants had never at any point denied their responsibility for the words were said to have been used then there was no need for anything else. In my view this was incorrect. There was a complete failure to explore Mr Khokhar's mitigation and a complete failure to explore what the culture in the Teams chat was that he had been introduced to when he joined the team a few months previously. I would also agree with the claimant's position that in having failed to investigate the background the respondent failed to truly understand the context of the comments and the intentions involved and took a completely closed off view.

48. On the issue of whether the decision to dismiss was within the range of reasonable responses I entirely accept the respondent's position that it is not for the Tribunal to substitute its own view for that of the employer. If the employer wished to take the view that anything at all said in a Teams chat was inappropriate and lead to a finding of gross misconduct and likely

dismissal that would be a matter for the respondent. That is however not the case here. They had not provided any training at all in relation to teams chats, a fact acknowledged in the management services report which recommended that such training be organised. The claimants' position is that the remarks were inappropriate but that no reasonable employer in those circumstances would have dismissed. In my view the claimants' position is entirely correct. The respondent's witnesses all made much of their belief that the respondent had a zero tolerance approach to any kind of bullying, harassment or discrimination. Mr Aitken went even further and said that they had a zero tolerance approach to any breaches of their standards of behaviour albeit this is not reflected on what the document says. The fact of the matter is however that in Mr Khokhar's case he was not charged with any breach of their policy on discrimination, bullying or harassment. If he had been there were a number of defences which he could have put up, the main one being that it is difficult to bully someone when they are entirely unaware of the bullying and it is difficult to discriminate against someone when you do not know them and have no idea what, if any, protected characteristics they have. In this case, Mr Khokhar was guilty of making two remarks which were considered to be inappropriate. Interestingly, only one of these remarks was highlighted in the original corporate report however it does appear that at some stage another remark was added. Both were equally inappropriate which is in a context where he had only just joined the team and where he had had absolutely no training in what was an appropriate and inappropriate use of the team chat facility. The lack of training was specifically acknowledged in the Corporate Services Report where it states that HR should start a process of education so that employees know what is acceptable and unacceptable. In my view in the absence of this then no reasonable employer would have dismissed the claimant simply for making these remarks given all of the background circumstances of the case. In my view Mr Khokhar's dismissal was both substantively and procedurally unfair.

Ms Miller

49. With regard to Ms Miller the legal position is essentially the same and many of the criticisms I have made of the disciplinary decision and appeal decision in relation to Mr Khokhar equally apply to her. Once again my view is that although they repeated this several times at the hearing neither of the two managers had any genuine belief that Ms Miller's remarks were designed or likely to incite violence against a colleague. If I am wrong about this and they did genuinely hold that belief then in my view they were completely unreasonable in holding that belief. I maintain that no reasonable employer would have decided that the four words spoken by Ms Miller would have that effect. In Ms Miller's case there is slightly more correlation between the allegations she faced and the reason for dismissal than in Mr Khokhar's case albeit on the evidence of both

managers other matters not forming part of the allegation were taken into account. The managers also appear to have formed the view that Ms Miller was facing an allegation that her comments were showing a poor example to her team. In his rationale document Mr Aitken acknowledges that Ms Miller had assured him that he would never have followed up with action on her comments. He stated:-

> "I need to take into account the impact that your comments may have had on the people included in the group chat and this could be construed by any of them as management giving approval for making these comments and potentially inciting violence against a BT colleague."

As in Mr Khokhar's case it appeared to me that the management witnesses having realised that they were facing some difficulty in maintaining their initial position that they genuinely believed Ms Miller was inciting violence sought to bolster the decision by bringing in other matters which they considered relevant but which had not formed part of the charges against her.

50. As in the case of Mr Khokhar there was absolutely no investigation of any of the mitigation put forward by Ms Miller which included the fact that she was under considerable personal stress at the time due to her domestic circumstances. Indeed Mr Aitken's comments on mitigation appear to be that because he had decided that she was inciting violence then nothing else really mattered. With regard to mitigation, Ms Miller's position in evidence at the hearing was that she had been on maternity leave during the beginning of the Covid pandemic when the use of Teams had become established for the purposes of teams chat. As a result she was not in any position to say what training or guidance had been given at the time and she had not received any training or guidance since then. It was clearly something which a reasonable employer would have felt it important to look into.

51. With regard to the issue of whether dismissal was within the band of reasonable responses my decision is that like Mr Khokhar the decision to dismiss Ms Miller in all the circumstances of the case was entirely outwith the band. In my view no reasonable employer would have done this. She was clearly a high performing employee who had let herself down on one occasion. She readily acknowledged that the chat was unacceptable and indeed had provided evidence in the form of the email sent on 19 November that this was something which she had decided was going a bit too far and should be reined in. An interesting example of the complete closed mindedness of the respondent's approach was that when this was put to Mr Smitham in evidence he was extremely dismissive and critical that Ms Miller had adopted a light tone in her email.

52. I consider that like Mr Khokhar the dismissal of Ms Miller was both procedurally and substantively unfair.

Contribution

53. Interestingly, the respondent in their submission did not make any application for reduction of award on grounds either of ***Polkey*** or of contribution. I shall therefore deal with the matter briefly. With regard to ***Polkey*** I consider that in the case of each claimant the dismissal was substantively unfair as well as procedurally unfair. Had a fair procedure been carried out then in my view it would still have been entirely outwith the range of reasonable responses for the claimants to have been dismissed. Indeed had a fair procedure been carried out one would hope that the respondent would have realised this and not dismissed in the first place. With regard to contribution, I note the terms of section 122 of the Employment Rights Act 1996 which relates to the criteria for reducing a basic award if the Tribunal considers that any conduct of the complainant before the dismissal was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent and section 123 which 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 proportions as it considers just and equitable having regard to that finding. In my view the conduct of each of the claimants was not sufficient to amount to culpable and blameworthy conduct that would render it just and equitable to reduce the basic or compensatory award and accordingly I would make no deduction to either award on the basis of contributory fault.

54. With regard to Mr Khokhar the claimant produced a Schedule of Loss. He appears to have found work relatively quickly but was no longer in employment by the time of the Tribunal. There was no suggestion by the claimant that the respondent's obligation to pay compensation should recommence on the basis of his full wage loss after his new employment ceased. I do however accept that in order tp properly compensate for the loss suffered it would be appropriate to proceed on the basis that his new employment would have continued and he continued to suffer loss due to the fact that his new employment, and indeed any other new employment he received, would carry a lower salary and lower pension contribution than that he suffered whilst employed by the respondent. Mr Khokhar had 18 years' complete service during one of which he was over the age of 41. He is therefore entitled to a basic award of 18.5 weeks' pay. His weekly wage is taken at £700 which was the statutory maximum giving a basic award of £12,950.

55. So far as the compensatory award is concerned he received no pay for the period from 12 February 2025 which was the effective date of termination until the start date of his new employment on 24 March 2025. He therefore lost six weeks' pay at £570.51 net per week amounting to

£3423.06. In his new employment he earned £103.88 per week less than he did whilst employed by the respondent. Although his new employment appears to have ceased in or about October I would agree with the claimant's calculation in that any other new employment which he is likely to get will be at a similar rate to the employment which he obtained in March 2025 rather than at the higher rate he was paid whilst working for the respondent. I therefore consider that it is appropriate that he receive this differential of £103.88 for the whole period up to 12 February 2026 which is the anniversary of his dismissal. I consider that this is the best possible estimate of his likely wage loss over this period. This therefore amounts to £4778.48.

56. With regard to pension loss the claimant based their calculation of this on the basis of the employer contributions lost by the claimant. This amounts to £638.44 for the six weeks during which he was unemployed up to 24 March 2025. After that, using the same logic as for wage loss the claimant was losing £89.26 being the differential between the pension contributions of the respondent and his new employer (or any likely new employer) which amounts to £4105.96. The claimant sought the sum of £500 in respect of loss of statutory rights. I consider this appropriate in the circumstances particularly given that as a matter of fact the claimant has lost his job in circumstances where he no longer has statutory rights. This gives a total figure of compensation for Mr Khokhar of £26,395.94. Mr Khokhar did not claim any recoupable benefits and therefore the recoupment regulations do not apply.

57. With regard to Ms Miller the claimant produced a Schedule of Loss and I found the figures on this to be accurate. Ms Miller had 18 years' service during two years of which she was over the age of 41. She is therefore entitled to 19 weeks' pay at the capped amount of £700 per week amounting to £13,300. With regard to the compensatory award she is entitled to her full lost weekly net wage for the period from 12 February 2025 the date of dismissal until the start of her new employment on 1 May 2025. This amounts to 11 weeks at £646.97 which equals £7116.67. Since she started her new employment she is paid £136.54 per week less than she was paid whilst in the employment of the respondent. The respondent's representative indicated that in their view the finding of new employment should be taken as an act which breaks causation and that she should not receive any compensation for this differential. I disagreed with that approach. There was no suggestion in evidence that Ms Miller had not sought to mitigate her loss as best she could. She had obtained a job which paid less than she earned with the respondent. I specifically asked her whether she was looking for other work and she responded quite frankly that she was not because although she was paid less than her previous salary at the moment she had ambition and there were definite prospects with her new employer which might lead to her obtaining higher wages in the future. In my view it was entirely reasonable for her

to take these steps and having found new employment to concentrate on trying to do well in that new employment rather than continue to seek something better paying. The differential is £136.54 per week and the claimant is entitled to £5598.14 in respect of her wage loss for the period from 1 May 2025 until 12 February 2026 being the yearly anniversary of her unfair dismissal. With regard to pension loss the claimant is entitled to her full lost employer contributions for the first 11 weeks when she was unemployed amounting to £1332.65 (11 x 121.15). Thereafter, the position is that her previous employers paid a contribution of £121.15 per week whilst her new employer pays £30.77 per week. The differential is £90.38 and the claimant is entitled to payment of this for the period of 41 weeks amounting to £3705.58. I agreed with the claimant that it was appropriate to award the sum of £500 for loss of statutory rights. This gives a total of £31,553.04.

58. The recoupment regulations do apply to Ms Miller since she has been in receipt of recoupable benefits during the period from 12 February onwards. The prescribed element is £12,714.81 and relates to the period between 12 February 2025 and 12 February 2026. The monetary award exceeds the prescribed element by £18,838.23

Date sent to parties **24 December 2025**