



EMPLOYMENT TRIBUNALS

Claimant: Ms E. Burt

Respondent: Restek UK Ltd

Heard at: Nottingham

On:

26, 27 and 28 January 2026 and 12 and 13 March 2026. Submissions received on 3 and 4 and 10 April 2026 and deliberations 22 June 2026.

Before: Employment Judge Broughton
Members: Mr A Beveridge
Mr C Goldson

Representation

For the Claimant: In Person

For the Respondent:

26,27 and 28 January 2026: Mr Horney – consultant

12 and 13 March 2026: Mr Ushieagu – consultant

JUDGMENT

1. The claim of unfair dismissal is well founded and succeeds..
2. The claims of race discrimination, unpaid holiday pay, wrongful dismissal, unlawful deduction of wages and breach of contract, are not well founded and are dismissed.
3. The claim for unpaid expenses is dismissed on withdrawal.

REASONS

Background

1. The claimant presented her claim on 20 January 2023 following a period of ACAS early conciliation which started on 9 November 2022 with a certificate issued on 21 December 2022.
2. The claimant was employed by the respondent, as an Office Manager and then as Company Secretary, from 26 July 2018 until 17 August 2022 when she was dismissed summarily.
3. The case was initially listed for three days on 20 January to 22 January 2025. The length of hearing proved to be insufficient, in part because the respondent at the outset of the first day of the hearing made an application to strike out the claim which had to be considered. The case went part heard and was relisted for a two-day hearing on the 12th and 13 March. There was insufficient time for submissions and therefore an order was made for written submissions.

Strike Out Application

4. At the outset of the hearing, an application was made by the respondent to strike out the claim due to the claimants late disclosure.
5. The parties had produced their own separate document bundles. The claimant's bundle numbered 192 pages. The respondent's bundle numbered 382 with some additional disclosure.
6. The reasons were delivered ex tempore and are set out in this judgment in summary.

Legal Principles on Applications to Strike Out

7. An employment tribunal has the power to strike out the whole or part of the claim, response or reply to an employer's contract claim where the relevant party has failed to comply with any of the Tribunal Rules or with an order of the tribunal: rule 38(1)(c) of the Tribunal Rules 2024 or where the manner in which a party has conducted the proceedings is unreasonable.
8. The Employment Tribunal Rules 2024 (Rules) Rule 38 provides:

38.—(1) *The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds—*

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim, response or reply (or the part to be struck out).

(2) A claim, response or reply may not be struck out unless the party advancing it has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

(3) Where a response is struck out, the effect is as if no response had been presented, as set out in rule 22 (effect of non-presentation or rejection of response, or case not contested).

(4) Where a reply is struck out, the effect is as if no reply had been presented, as set out in rule 22, as modified by rule 26(2) (replying to an employer's contract claim).

9. The importance of case management orders, and the general expectation that parties engaged in tribunal litigation will comply with them, is reflected in the Presidential Guidance on General Case Management for England and Wales, which states at para 22: 'Orders are important. Non-compliance with them may lead to sanctions.'
10. In deciding whether to strike out a party's case for non-compliance with an order under rule 38(1)(c), a tribunal will have regard to the overriding objective set out in rule 3 of seeking to deal with cases fairly and justly. This requires a tribunal to consider all relevant factors, including: the magnitude of the non-compliance, whether the default was the responsibility of the party or his or her representative, what disruption, unfairness or prejudice has been caused, whether a fair hearing would still be possible, and whether striking out or some lesser remedy would be an appropriate response to the disobedience: ***Weir Valves and Controls (UK) Ltd v Armitage 2004 ICR 371, EAT.***
11. Whenever a tribunal is considering a strike-out on the ground of non-compliance with prior orders pursuant to rule 38(1)(c), it must consider whether such an order is a proportionate response to the non-compliance and this same consideration applies to strike-out applications pursuant to rule 38(1)(b) on the ground that the manner in which the proceedings have been conducted has been scandalous, unreasonable or vexatious : ***Blockbuster Entertainment Ltd v James 2006 IRLR 630, CA.***
12. In terms of failure to comply with tribunal orders, as made clear in the Blockbuster case, where a party has been conducting its side of the proceedings unreasonably, the two cardinal conditions for its exercise are either that the unreasonable conduct has taken the form of deliberate and persistent disregard of required procedural steps, or that it has made a fair trial impossible. If these conditions are fulfilled, it becomes necessary to consider whether, even so, striking out is a proportionate response.

Finding of Facts : strike out application

13. In summary, there was a case management hearing on 12 April 2023 before Employment Judge Hutchinson when the case was listed for a hearing in May 2024. The claimant was ordered to provide further particulars of the race discrimination claim by 12 May 2023 and the respondent to file an amended response by 2 June. The parties were ordered to exchange list of documents by 30 June 2023 and copies to be provided, if requested, by list by 14 July 2023. The parties were to agree the bundle by 28 July 2023. Witness statements were to be exchanged by 25 August 2023.

14. The nature of the discrimination claim was set out in further information which was provided by the claimant and the respondent made no complaint in terms of not understanding the discrimination claim.
15. There was an application by the respondent, because of the non-availability of a witness, to adjourn the hearing in May 2024. The hearing on 7 May 2024 was vacated. It was still incumbent upon the parties to comply with the case management orders in respect of the documents. The parties explained at this final hearing, that those orders were not complied with by either party.
16. There was to be a further hearing in April 2025 and that hearing was vacated due to lack of judicial resource. The claimant says that she had asked the respondent previously about providing her documents and that the respondent had indicated that it was too close to that hearing for the claimant to do so and they would not include them within the bundle. There was no follow up to the claimant's request from the respondent when the April 2025 hearing was postponed to request those documents from her.
17. In terms of what happened thereafter, according to the respondent, witness statements were not exchanged until April 2025. The Judge looked at the tribunal file and could not locate any orders from the tribunal varying the order made by Employment Judge Hutchinson at the first Preliminary hearing, therefore, exchanging witness statements until April 2025 was a failure to comply with the orders that were still in place as set by Judge Hutchinson on both sides.
18. The Tribunal heard from the claimant that she had some difficulties in terms of providing her bundle, she had provided hard copies of her documents to the tribunal but asserts that she had difficulties providing a copy to the respondent because there was an issue with her USB stick. The Tribunal Panel (Tribunal) took into account what the respondent asserted about a lack of credibility with the claimant's explanation however, the Tribunal saw correspondence from the claimant where she had written to the tribunal in April 2025 wanting to collect the hard copy documents which she had filed, and on balance the Tribunal accepted her account that she wanted to take back those copies in order to copy them and send a copy to the respondent. The Tribunal saw a further email sent from HMCTS staff at the tribunal in May 2023 stating that the bundle which had been filed by the claimant could not be located. That her documents could not be located was unfortunate, but the claimant herself accepts that there was then some further delay on her part in getting herself organised and providing the bundle and the documents to the respondent.
19. The Tribunal Panel heard about the further difficulties that the claimant says she had, namely she scanned the bundle in order to send a digital copy to the respondent but there were problems with the digital file and she ultimately provided it on 17 January 2026. There was, she accepts, delay on her part. The Tribunal Panel concluded that she could have acted with more diligence, despite the problems that she had with the USB stick and despite the problems of retrieving the physical copy she had filed with the Tribunal.
20. There was a failure to comply with the Orders by the claimant but equally it appears that there was a failure by the respondent to comply with the Orders of Judge Hutchinson in April 2023. Neither party wrote into the tribunal to request an amendment to those orders.

21. Ultimately the Tribunal reached the conclusion that given the evidence about delays, the time it took the claimant to organise a copy of her documents, (after witness statements had been exchanged in April 2025), was unreasonable. However, the Tribunal were not persuaded that this was deliberate in order to gain any tactical advantage. While the claimant failed to take sufficiently timely steps to provide her documents, the claimant had made attempts to comply with the Orders and the Panel did not form the view that her delay amounted to contemptuous default or that it amounted to a deliberate and persistent disregard for the required procedural steps.
22. The respondent did not want a postponement of the final hearing and given that this claim was first presented in 2023, to postpone it would not be in the interests of justice.
23. The Tribunal did not find on balance that there was any intent to conceal the information by the claimant, taking into account that she had reached out to the respondent about providing her documents before the April 2025 hearing and there is evidence that she had made attempts to retrieve her bundle from the tribunal.
24. The respondent had just over a week with the claimant's bundle before this final hearing commenced and whilst it was said by Mr Horney that this had put them at a disadvantage, it was not clear what forensic disadvantage this had caused and only on making further enquiries of the respondent by the Tribunal did he identify specific documents which he was said would create difficulty or prejudice if admitted into evidence.
25. Any forensic disadvantage to the respondent was not addressed in its written submissions and while Mr Horney complained that there was insufficient time for the respondent to consider in any detail the documents that have been provided, Mr Horney stated at paragraph 23 of his submission that there had been a 'close analysis' undertaken of the documents that had been disclosed by the claimant.
26. The document provided by the claimant are also largely documents which have been created by the respondent however Mr Horney did identify a screenshot of conversations at pages 191 and 192. It was not clear what the provenance of those documents were or what the relevance of those documents were. There were no witness statements from the individuals who were alleged to have sent the messages.
27. There were also two transcripts of meeting that the claimant produced, which appear to have been produced by a professional transcription service. The claimant had not provided a copy of the recordings to the respondent to check the accuracy of the transcription.
28. The first recording related to a hearing in July 2022 which the claimant attended and covertly recorded. The respondent did not record it themselves and therefore had no means to check its accuracy [CB page 45 – 57] and it is now approximately 4 years since that meeting took place. The Tribunal Panel took the view that that it would unfairly prejudice the respondent to allow this transcript to be admitted into evidence in those circumstances. The claimant also indicated that she was not sure initially whether she even wanted to disclose this document.
29. In terms of the second transcription of a meeting [page 59- 80], this is a transcription of the appeal hearing and while Mr Horney in oral submissions asserted that it is unclear

which meeting this transcription relates to, it is very clear from the content that it relates to the meeting of 30 August 2022. The Tribunal were informed by the respondent that whilst they also took a recording of this appeal hearing, they had not disclosed it, even though the claim relates to the fairness of the dismissal.

30. The Tribunal considered that it would have taken little effort by the respondent, (and they have had the document for a week), to cross-refer it to their recording and further, it is a relevant document which the respondent, without explanation, has failed themselves to disclose and thus failed to comply with an Order of the Tribunal with to respect to general disclosure. If the respondent is disadvantaged, it is in no small part a consequence of their own default. This document was admitted into evidence.
31. There were two other documents which counsel for the respondent raised as an issue. This included an email [page 15] from Mr Knight to the claimant. This is a document that Mr Knight himself sent or received and the Tribunal considered should therefore be in a position to give evidence on. There was a further email [page 14], from the Claimant to Mr James Knight (Mr J. Knight) in relation to what appeared to be a deduction that Mr J Knight made for a personal purchase. Mr J Knight is the brother of the founder of the respondent and at the relevant time, the Managing Director, Mr Timothy Knight (Mr Knight). The Tribunal considered that either the respondent was or was not aware of this purchase and was an issue Mr Knight could deal with fairly easily.
32. The Tribunal after its deliberations, provided its decision which was to refuse the application to strike out the claim. The respondent had identified a limited number of documents which may cause it some prejudice. The Tribunal Panel were not persuaded that despite delay by the claimant a fair trial was no longer possible. It is a draconian measure to strike out a claim and the respondent did not make its application in the alternative on the basis of the merits of the claim. It was important to consider whether there were any other measures more proportionate which should be taken to alleviate any prejudice and the Tribunal determined that the more proportionate response was to refuse to allow the claimant to rely upon the screenshots at pages 191 and 192 and the transcription which starts at page 45.
33. The respondent's witnesses were also given leave to produce supplemental evidence in relation to any matters arising from the late disclosure.

Amendment Application

34. The claimant made two applications at the start of the hearing to amend the claim; to include a claim for pay the contractual notice period of 6 months' notice and a breach of contract for unpaid salary for the hours that she alleges she had worked but not been paid for over a period of 4 years, from 2018 to 2022 (which she later elected to limit to the period 2019 to 2022).
35. The claimant confirmed at the outset of the hearing, that the respondent had paid the expenses she was claiming and thus confirmed that she was not pursuing that claim, and that claim is dismissed on withdrawal.
36. The applications to amend were considered under Rule 30, and in accordance with the overriding objective, applying the guidance in ***Selkent Bus Co Ltd v Moore 1996 ICR 836, EAT.***

37. The claim for backpay was not well presented. The claimant had not set out for example the hours that she states she had worked each month and not been paid for and she provided only an estimate of what she thought the claim may be worth. The claim also rests on an alleged verbal agreement which the respondent denies it had entered into with the claimant and there is no written confirmation of it.
38. There were issues therefore with regard to the merits and the manner in which the application had been presented but, further it was out of time limit. The claimant attempted to argue that it was a claim which was included in the Claim Form but, ongoing through it with her, she accepted that it was not.
39. The respondent, however, informed the Tribunal that those two applications were not opposed. After deliberating the Tribunal Panel took into account that the respondent was not seeking to oppose the applications and was not arguing any prejudice. The claims were significant in terms of their value to the claimant and the Tribunal decided, given the respondent's electing not to oppose the application, that the balance of prejudice would fall in favour of the claimant if the applications were refused taking into account that there was a significant overlap with the evidence which the Tribunal were due to hear in any event. Time limits remained an issue however to be determined.

Chronology

40. The respondent agreed to prepare a chronology which was produced to the Tribunal on 28 January 2026; however, the claimant did not agree it and the respondent confirmed that it was not neutral.

Agreed List of Issues

41. A list of issues had been presented to Judge Hutchinson at the last preliminary hearing, however a copy was not attached to the Orders and neither party were able to produce a copy of it at the hearing. There was some discussion therefore about the claims and issues on the first and second day of the hearing to ensure these were agreed.
42. In terms of the race discrimination claim on the first day of the hearing, the claimant clarified that the claim related to 4 allegations the claimant alleges were raised at the 20 July 2022 meeting, the act of suspension and the dismissal for falsification of timesheets.
43. On the 11 March, the Judge sent the parties a typed-up list of issues to reflect what had been agreed at the last hearing.
44. When the Tribunal reconvened in March 2026, the respondent had a different representative from Peninsula, Mr Chuks Ushieagu. It appeared that there had not been a particularly thorough handover of the case because Mr Ushieagu was working to the previous list of issues presented at the preliminary hearing before Judge Hutchinson and not the issues as agreed at the last hearing. Time was taken up going back over what had been discussed at the last hearing, with Mr Ushieagu initially challenging the Tribunal's right to amend the issues, when in fact the parties had agreed the changes. There was

then some further discussion with the parties claimant agreeing some further changes to the issues, including clarifying that the claim for payment for July wages. The claimant stated that her payslip showed a payment for hours for July of 75 hours while on suspension in July but her suspension should have been paid at normal hours, she stated what was 'normal' was still in debate but argues it should be 120 hours, based on 30 hours per week although she accepted that her hours were variable and thus the shortfall was 45 hours (not the 50 hours she had previously alleged).

45. The respondent provided a finalised typed up list of issues and emailed it on 13 March 2026 to the Tribunal and the parties confirmed this was agreed and is attached as an Appendix to this judgment. There was one further small amendment to the typed version the respondent produced, which was discussed during the hearing and agreed, that was a minor change to paragraph 7.1.1 to reflect that the claim is for wages due for June 2022.

Self-incrimination

46. Given that the claimant was asserting that there had been some agreement to 'bank' hours to enable her to claim student finance and be paid those at a later date, prior to the claimant giving evidence, the rule of privilege against self-incrimination was explained to her. The claimant did not make any application and chose to proceed to give evidence on this issue and answers questions put to her in cross examination.

Witnesses.

47. The claimant gave evidence and was cross examined. The respondent called Mr Knight and Mr Alan Perry, Technical Director, both produced witness statements. There was however some confusion over the relevant versions of their statements. Mr Perry swore to a statement and then midway through cross examination it transpired that the Tribunal had been given an earlier version of his statement. The correct version (running to 42 pages) which he signed on 12 March 2026 was produced and he swore to that. The claimant raised no objection.
48. Mr Knight also swore to an earlier version of his statement, this was identified after he had given evidence and the respondent produced a version dated 25 April 2025 which was admitted on 13 March 2026. The claimant did not oppose the application to admit that statement as a replacement, and he was recalled, swearing to the truth of that version of his statement. The claimant did not want to cross examine him further.
49. Mr Knight, who at the time of the hearing was semi-retired, had recruited the claimant and had been her line manager throughout her employment.
50. The claimant while cross examining Mr Perry referred to her witness statement having 39 paragraphs, the version supplied to the Tribunal had 41 paragraphs and was dated 13 March 2026 however, the claimant wished to rely on the version of the statement supplied to the Tribunal, which was unopposed by the respondent.
51. Mr Perry gave evidence under oath that he has issues with his memory because of a health issue, which was not challenged by the claimant, and the Tribunal have taken that into consideration.

Evidence

52. The claimant sent into the Tribunal on 28 January 2026 a spreadsheet of salaries but explained that she was not applying to admit it into evidence.

Findings of Fact

53. All findings are based on a balance of probabilities. All facts have been considered but this judgment only addresses those matters necessary for the determination of the issues. Pages prefixed by RB refer to the respondent's bundle of documents and those prefixed by CB to the claimant's.

Terms of the Contract of Employment

54. The claimant commenced employment with the respondent as Office Manager.
55. An offer of employment letter dated 15 June 2018 stated that the position was based on 37 ½ hours per week *"but are flexible and personal commitments can be arranged as requested."* [RB page 49].
56. The undisputed evidence of the claimant, which the Tribunal accept, is that after a couple of weeks the claimant realised she was unable to work 37.5 hours and discussed this with Mr Knight.
57. The claimant signed an employee application form dated 26th of July 2018 which provided that the basic weekly hours were 28, that the role was part-time and she would be paid an hourly rate of 9 pounds per hour.
58. The further undisputed evidence of the claimant which the Tribunal accept, is that the claimant started to apply to university to study for a degree in Business Administration and in September 2018 resigned from the respondent because of the course, difficulties travelling by public transport and because of childcare commitments. The claimant was a single parent with a young child. The claimant had a discussion with Mr Knight who agreed to provide a company vehicle.
59. What is disputed and central to the complaint, is that the claimant also alleges that she discussed with Mr Knight that the Student Loan Finance company had advised her that if she continued to work the hours she was working for the respondent, the student loan would be reduced and she alleges that it was agreed that she could work flexibly, coming into the office in the evenings and weekends and that Mr Knight had told her that she could continue to fill in her timesheet and at the end of her course, in 2 years he would review what was owed to her and payment would be made in full. It is also alleged that Mr Knight told her that he would know the hours she worked by the vehicle tracker and office CCTV. She alleges that she could only claim 16 hours per week in order to be eligible for student finance. It is alleged that Mr Knight was asked by the claimant to document this agreement in a contract but he refused.

60. A company vehicle was provided to the claimant in April 2019. Mr Knight, it is not disputed, suggested that the claimant take up the role as Company Secretary and gave persuasive evidence that he was; "*passionate*" to support her. He gave evidence that he had himself had been raised in a single parent household and he became visibly emotional when giving evidence about his attempts to support the claimant.
61. The claimant was provided with a laptop and worked flexibly, doing work for the respondent in the day, evenings and weekends around childcare and university studies.

Time Sheets

62. The respondent had contractor and agency staff and the Tribunal accept Mr Knight's unchallenged evidence that they had about 40 members of staff at the relevant time of the disciplinary proceedings. The operatives who work in the field complete and submit manual timesheets weekly, and at some point during the claimant's employment, this became monthly. It is common between the parties that part of the claimant's role involved calculating the hours of the staff on a weekly and latterly monthly basis. When the timesheets were received the claimant reconciled those against other documents, such as the vehicle tracking log and against the timesheets of other operatives, to ensure only that the times recorded were consistent. Once the claimant was satisfied that the timesheets were correct she would produce an Excel spreadsheet which would include all the hours, holidays et cetera. The Excel spreadsheet was sent to the respondent's accountant who prepared the payroll and would calculate the national insurance and tax and produce the payslips. The payslips were provided to the claimant who put those onto the banking system to be authorised by Mr Knight.
63. When the claimant first joined the respondent, the respondent retained an individual accountant called Pen, but as the business grew they instructed another firm called Stockfords. The evidence of Mr Knight was that the claimant received training from an accountant who came and trained her on the Sage software system used by the respondent.
64. The undisputed evidence of Mr Knight in cross-examination is that the claimant had ongoing access to Stockfords by telephone or could contact them via Microsoft Teams for support. Stockfords came into the office once a month to make sure the company accounts were in order.
65. The undisputed evidence of Mr Knight, which the Tribunal accept, in cross-examination, was that at the beginning of the claimant's employment, for about 4 months, he checked the hours she was working, until he felt it she could be trusted and when he was checking her hours during that period they did not exceed 37 ½ hours. The claimant was not however required to complete and submit timesheets, instead she sent the accountant a document which included all the hours claimed by the staff (after she had checked their timesheets) and included within that document a summary of her own hours that she was claiming she had worked that week/month but did not break down the hours worked each day.
66. It is not in dispute that when the claimant first started working for the respondent, the business was an SME, it was a growing business and Mr Knight was working very closely

with her day to day and therefore he was aware of the work she was doing and he knew the sort of hours she was working.

67. The claimant kept her own record she says, of the hours she worked in on Excel spreadsheets, from 2018 which she stored in a file on the server but she does not allege that she produced those to Mr Knight, or the accountant prior to the disciplinary process and the Tribunal accept the evidence of Mr Knight that he was unaware that she was keeping this record of her hours.
68. The claimant cross-examined Mr Knight about her predecessor Mark Browitt, who according to the undisputed evidence of Mr Knight was his personal friend and only the second person he employed. His evidence was that Mr Browitt did not have the level of responsibility which the claimant had as Company Secretary and he needed more support from their accountant. When Mr Browitt was first employed there was only one other employee. The evidence of Mr Knight was that Mr Browitt was classed as an assistant and he did not submit timesheets. It was disputed that Mr Browitt had trained the claimant on how to prepare information for the payroll. It is accepted however that Mr Browitt remained employed for a period after the claimant joined the respondent, Mr Knight believed it was only for a couple of weeks to provide some handover but his recollection was unclear and the Tribunal accept on balance the claimant's more persuasive oral evidence that he had remained until September. The Tribunal also find that it is more likely than not that Mr Browitt did provide some guidance to the claimant about the respondent's practices in addition to support from the accountant and may well have told her that he kept a record of his own hours on an Excel timesheet but the Tribunal do not find that there is evidence that Mr Knight was aware of this.

Agreement

69. In 2018, the Tribunal accept the claimant's evidence, (Mr Knight having admittedly an unclear recollection), that she resigned in 2018 to attend university and remained with the respondent because it was agreed she could work flexibly and was provided with a car.
70. In terms of the alleged agreement that in 2018 they discussed her student finance and that there was some discussion about her being able to claim later the hours that she was actually doing, this was disputed by Mr Knight. The claimant did not put to him in cross-examination precisely what had been said, when it was supposedly agreed when she would reclaim any additional hours worked and how she would go about doing that or whether it was agreed how she would keep any record of the actual additional hours worked. The claimant's evidence about the existence of such an agreement was vague. The claimant does not assert that this was documented at all and there are no emails where this is mentioned, or where the claimant writes to confirm what extra hours she has worked or how she is recording them. Despite the time span over which it is alleged this agreement was in place, there is no reference to it in any written communications between them.
71. Mr Knight also denied when it was put to him that in 2019 he was in the office working with the claimant and that she was working 37.5 hours Monday to Friday but claiming less than that.
72. The claimant completed an Excel timesheet of her hours worked in 2019 [page 121] .

73. The bundle included payslips [RB page 156- 157] showing the following hours the claimant was paid for in 2019 (which would reflect the hours she claimed she had worked) and set against the hours she recorded on her Excel time sheet:

July 2019: 80 hours claimed / hours recorded 171 hours :

August 2019: 64 hour claimed / hours recorded: 166 hours

October 2019: 158 hours claimed / hours recorded 147.50

74. The Tribunal note that the hours she recorded do not show that she was working consistently 37.5 hours Monday to Friday, the hours per week vary e.g. Monday 3 to Friday 7 September 2019 she records 26 hours. In January 2019 she records 150 hours for the month, she worked 23 days which equates to 6.5 hours per day or 32 hours over 5 days on average. While in February it was 114.50 hours over 22 days of working which equates to 5.2 hours per day or 26 hours over 5 days. In October 2019 it appears she claimed she worked and was paid, for more hours than she recorded in her timesheets.
75. Mr Knight gave evidence which the Tribunal on balance accept, that with regards to the claim for 158 hours in October 2019, that was a busy period, and that during different quarters of the financial year the claimant's workload would increase because she was competing the management accounts and he had no cause for concern that the hours for that month were excessive. He gave undisputed evidence in cross-examination that the business grew at a rapid rate in 2019 and things were changing at pace.
76. As we shall turn to, the claimant's own evidence about the hours she claimed for June 2022 is unclear and during the investigation and disciplinary process, it changed. The claimant's Excel spreadsheet for 2022 does not include any entries for June 2022 and yet she submitted a claim for 158 hours worked.

September 2020

77. During 2020 the respondent's staff were working from home because of the restrictions imposed by the Covid pandemic, including the claimant, from September 2020.
78. There is an email from the claimant to Mr Knight on 5 September 2020 [CB page 5] in which she states:

"With you being down at Eurovia and me starting school soon, I was thinking that I should get a laptop to work from home as I will not be in the office as much leaving Mack, Dee and new estimator to their own devices"

79. Mr Knight replies asking how many days she will be out of the office Monday to Friday and the claimant replies [CB page 5] stating that it will be one full day and ½ day. It is not in dispute that the claimant provided a rota to Mr Knight to show when she was in university and thus when she was not available to come into the office.
80. The respondent formed an Employee Owner Trust (EOT) and that process started in 2020 and as part of that process all staff were issued with updated contracts of employment.

Service Agreement 2020/2021

81. The claimant was issued with a detailed service agreement (**Service Agreement**). dated 4 January 2021.
82. On 16 December 2020 (prior to signing the Service Agreement) the claimant had written asking if the 40 hours in the Service Agreement could be amended to 16 hours [CB page 6]. Mr Knight in answer to questions from the Tribunal in cross examination could not recall this but gave evidence that the claimant never worked as many as 40 hours per week and hours were never an issue because he was flexible about the hours which she worked.
83. It is common between the parties that the claimant did not normally work 40 hours per week as set out in the Service Agreement.
84. On 26 December 2020, the claimant asked to change the rate of pay to 19 pounds [CB page 6] and this was agreed.
85. The Service Agreement refers to the claimant's job title as Company Secretary, that the normal place of work is Restek House, (the respondent's business premises), and that the hours of work are variable each week and she will be paid 19 pounds per hour [RB page 55] and:
- "Para 7.1 ...You will only be paid for the hours that you work.*
...
Para 7.4 we may deduct from the pay, or any others sum owed to you, any money owed to us by you."
86. The Service Agreement was provided as part of the transition to the EOT and all employees were issued with one [RB page 55 & 61].
87. Its provisions also include:

2. Term of appointment

2.1 the Appointment shall commence on the Commencement date and shall continue subject to the remaining terms of this agreement, until terminated by either party giving the other not less than 6 months prior notice in writing....

4. Duties

4.1 You shall serve us as Company Secretary

4.2 During the appointment you shall:

- (a) act as a director of the company*
- (b) comply with the articles of association...*
- (c) abide by statutory, fiduciary or common law duties to us...*
- (h) faithfully and diligently exercise such powers and perform such duties as we may from time to time assign to you;*
- (i) comply with all reasonable and lawful directions given to you by us...*

5. Place of work

5.1 Your normal place of work is Restek House... or such other place which the Board may reasonably require the proper performance and exercise of your duties...

6. Hours of work

*6.1 your normal working days are Mondays to Fridays (inclusive). The exact start and finish times each day are flexible, **but will typically amount to at least 40 hours per week...***

7. Pay

7.1 You shall be paid £19.00 per hour. You will only be paid for the hours that you work.

7.2 You will be paid monthly in arrears on or about the last day of each month...

7.4 We may deduct from the pay, or any other sums owed to you, any money owed to us by you.

12. Holidays

12.1 Your holiday year runs between 1 January and 31st of December. if the appointment starts and finishes part way through the holiday year, your holiday entitlement during that year **shall be calculated on a pro rata basis**

12.2 You shall be entitled to 20 days paid holiday in each holiday year together with the usual public holidays...

12.5 We shall not pay you in lieu of untaken on holiday except on the termination of the Appointment. On termination we shall pay you in lieu of any accrued but untaken holiday for the holiday year in which termination takes place and any untaken days permitted to be carried forward from the preceding holiday year stop subject to clause 12.6 the amount of the payment in lieu will be calculated as 1/260th of your pay each untaken day of the entitlement.

12.6 If we have terminated or will be entitled to terminate the Appointment under clause 21 or if you have terminated the Appointment in breach of this agreement any payment due under clause 12.5 shall be limited to your statutory entitlement under the working Time regulations 1998... And any paid holidays (including paid public holidays) taken shall be deemed first to been taken in satisfaction of that statutory entitlement...

21. Termination without notice

21.1 we may also terminate the Appointment with immediate effect without notice and with no liability to make any further payment to you (other than in respect of amounts accrued due at the termination) if you:

...

(f) are guilty of any gross misconduct affecting our business:

(g) commit any serious or repeated breach or non-observance of any of the provisions of this agreement or refuse or neglect to comply with any of the Boards reasonable and lawful directions;

(h) are, the reasonable opinion of the Board, negligent and incompetent in the performance of your duties;

31: Entire Agreement

31.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties ...whether written or oral..."

Tribunal stress

88. The Company Handbook states [page 82]

"Deliberate falsification of timesheets will be regarded as a disciplinary offence and may lead to your summary dismissal."

89. The claimant in cross examination accepted that if it was proven that she had falsified the hours she had claimed, it would be fair to dismiss.

Entire Agreement Clause

90. It was put to the claimant in cross examination that the Service Agreement she signed included an entire agreement clause and thus in any event superseded any alleged agreement she made about hours prior to that.
91. The claimant accepted that she signed this Service Agreement and her evidence in chief is that she negotiated certain changes to its terms [w/s para 21] and as a result the change was made to her hourly rate of pay, but she did not challenge the entire agreement clause but she accepts she understood the effect of it.
92. The claimant in response to the Tribunal questions, confirmed that her evidence is that she and Mr Knight entered into the alleged verbal agreement before she signed the Service Agreement and that she understood the significance of signing it:

Claimant: *"I asked him to reconcile my hours before I signed the agreement but he refused. To reconcile the hours banked when I entered into the agreement, I knew I had no defence in relation to that clause."*

Judge: *"You are referring to clause 31 page 74 ?."*

Claimant: *"Yes."*

Judge: *"You knew the effect of clause 31?."*

Claimant: *"Yes, it is why I asked to fix everything before I signed it but he said I had nothing to worry about because he made all the decisions."*

...

Judge: *"When did you sign it?"*

Claimant: *"Probably January 2021."*

93. The claimant had not put this allegation to Mr Knight in cross examination about a conversation about reconciling her 'banked hours' before she signed the Service Agreement, even though she understood the need to put her case to him. The reason she gave for not having done so was because she had not thought about it at the time she was cross examining him. The claimant is an intelligent individual who represented herself capably and had put allegations around the Service Agreement directly to Mr Knight but had not raised this allegation.
94. The Tribunal find on the evidence that Mr Knight was not aware that the claimant was keeping a record of her hours worked, the claimant does not allege that she ever sent those to him so that he could see the sort of hours she was alleging she was actually working. Sending the timesheets to him would be consistent with an agreement that she would be paid for all hours she claimed she had worked. The Tribunal consider it highly unlikely that someone would agree to pay, without limitation, for hours claimed to be worked over many months but not recorded. The Tribunal also consider it unlikely that while the claimant alleges [w/s para 13] she had asked Mr Knight to confirm the agreement in writing, when Mr Knight resisted this, she was content to proceed without making at least some reference to what had been agreed in an email or letter. Over the period 2019 to 2022 there is no reference whatsoever in any documents before this Tribunal, to any such agreement. The claimant's first recorded reference to this is during the disciplinary process. But if this was the reason for claiming extra hours in June 2022, (because it was in part back pay for banked hours for previous years), why not mention that to Mr Knight when she first submitted her June hours to the accountant?

95. Even if there had been such an agreement, and the Tribunal are not p[ersuaded that there was, the Tribunal find that given the entire agreement clause she entered into as part of the Service Agreement, this would supersede that agreement, as she understood it would. That there was a discussion where she was induced (not the word the claimant uses) into signing it because of some sort of collateral agreement about the banked hours, this was never put to Mr Knight, was not mentioned in her own witness statement and the Tribunal do not find that there was any such conversation. The claimant was savvy enough to appreciate the effect of the clause and yet did not, following the alleged discussion, record it in some way.

Duplicate Payment

96. In March 2022 Mr Knight became aware that the claimant had made a duplicate payment in satisfaction of an invoice to a supplier in the sum of £14,613.36 . It was paid on 18 March 2022 but the respondent's bank statement shows that it had already previously been paid on 24 December 2021 [RB pages 323 – 325].

97. The Tribunal accept that it was the claimant's responsibility to carry out a reconciliation of supplier invoices and payments.

98. Mr Knight was concerned, the Tribunal accept, during this period that the claimant was not coming into the office regularly enough to complete a daily reconciliation of the accounts, and that when she did come in she only appeared to want to come in at weekends and evenings.

99. Mr Knight gave evidence in cross-examination, which the Tribunal accept and was not disputed, that the claimant could not access the Sage system (an integrated accounting and payment software system) unless she was in the office. Invoices were inputted and recorded on to the Sage system and a check of Sage would show if invoices had been paid or not.

100. Mr Knight would authorise the payment of invoices from the bank and it was put to him by the claimant that this was in effect a further check to ensure that she had carried out a proper reconciliation of what payments were due to be paid. However, Mr Knight did not accept that position, he relied upon her to put forward for payment invoices which needed to be paid and the Tribunal accept his evidence, that it would be inefficient for him to have to in effect do her job again before making the payment but that in any event, this was not the normal process.

101. The claimant put it to Mr Knight in cross-examination that Adrian Carr had approved the invoice for payment in March 2022. The Tribunal accept the evidence of Mr Knight under cross examination, which was not challenged by the claimant, that Mr Carr was a Contract Manager and while he would confirm that the work had been done or supplies provided and should be paid, it was not his role to carry out reconciliation and ensure there were no double payments to suppliers. It was also not disputed that Adrian Carr had no access to the Sage system to carry out any checks.

102. It appears to be common between the parties that Sage is not without its problems, if a space is typed in between the numbers of an invoice or a wrong letter inputted, then a previous payment will not flag on the system. Mr Knight's argument however, which the

Tribunal accept, is a reasonable one, is that knowing that stage was not foolproof, it was reasonable to expect the claimant to check the bank statements to ensure the invoice had not already been paid before putting it forward for payment.

103. The claimant put it to Mr Knight in cross-examination that he had himself made a duplicate payment to a supplier [CB page 37] in July 2022. In cross-examination, Mr Knight gave evidence which the claimant did not challenge and which the Tribunal accept, that this was not a duplicate payment and not made by him. A junior Quantity Surveyor employed by the respondent, duplicated an item of work which had been carried out on an invoice submitted to a council for payment. This individual was not kept on after his probationary period. None of that evidence was challenged by the claimant.
104. The Tribunal accept as a matter of fact, that the claimant had failed to carry out a proper check and put forward an invoice for payment twice, for quite a substantial sum, and further it is not in dispute that this was not immediately flagged to Mr Knight, he was only informed when the refund was received.

Accountants Investigation

105. The evidence in cross examination of Mr Knight was that the claimant needed to meet with their accountant every 2 weeks to check the accounts were reconciled but that this was not happening in 2022 because the claimant was not coming into the office during normal working hours.
106. In June 2022, all employees, including Mr Knight, completed an audit of the work they did, completing a time sheet to record the hours they actually worked to help identify where further support may be required going forward for the purposes of the EOT set up in 2021. The 2-week period covered the 13th and 20th June 2022. It is quite a detailed Audit.
107. The claimant is it not in dispute completed one of these audit timesheets (**Time Audit**) [RB pages 370 – 371].
108. It seems that Mr Knight was increasingly frustrated by the claimant not coming into work and completing the reconciliations and when she submitted a claim for her wages for June 2020 (payable in arrears) based on having worked 150 hours in June 2020 [RB page 329], he instructed the accountant to review the claimant's Time Audit for June 2022, albeit this only covered 2 weeks. The unchallenged evidence of Mr Knight in cross examination, which the Tribunal accept is that the accountant had raised with him a few months prior to June 2022, a concern about the increase in hours the claimant was claiming and apparent inconsistencies in what was being claimed. This prompted a look at the Time Audit and how it compared to what hours she claimed she had worked in June 2022.
109. The accountant worked out an average of the hours the claimant had worked from the Time Audit, which gave a figure of 96.75 hours for the month, an average of about 23 hours per week, and which suggested an over claim of circa 54 hours (equating to £1,026) [RB Page 382].
110. The claimant in cross examination took Mr Knight to a vehicle log which shows the time her company car was parked at the company office [CB 147/150] on Saturday 4 June 2022. It recorded that her vehicle was parked at the company premises for about 6 hours that day. However, the evidence of Mr Knight was that this did not mean that the claimant

was carrying out work for the respondent, she took her daughter to a class nearby which lasted a few of hours and the office is located near shops, she may have parked her car at the office during those hours but it does not mean she was in work all that time or doing work. The Tribunal also have regard to the fact that the claimant could have been carrying out university work while at the premises, she asserts that while at university she would also carry out some work for the respondent and used the company laptop for work for the respondent as well as for her university studies. Where she was physically does not necessarily mean that she is doing work for the respondent. The Time Audit was however her own record of the time she had spent.

112. The claimant in cross examination of Mr Knight asserted that the Time Audit did not allow her to record the time that she was spending working for the respondent while at university, however, not only did Mr Knight dispute this and assert that the spreadsheet allowed for this to be recorded but the Tribunal note that the claimant could have raised this when she completed the Time Audit but she did not. She also alleges that the Time Audit does not record weekend working but there is a column for Saturday and Sunday and she had not included any time.

Events of July 2022

113. Mr Knight sent an email to the claimant which is undated but the Tribunal understands to be Monday 18 July 2022, in which he told the claimant he needed her in the office all week to ensure that the respondent completed the year end with the accountant and that she needed to attend a meeting on Wednesday, 20 July at 2:30pm to discuss concerns about the accounts. He referred to this as a mandatory request and for the claimant to take this seriously and to make sure that the claimant was in the office and not working from home that day [RB page 277].
114. On Tuesday, 19 July at 6:54 pm Mr Knight sent an invitation by email to the claimant and Mr Perry to attend a financial meeting on 20 July at 2:30pm.
115. On Tuesday, 19 July 2022 at 10:05pm [RB page 275] the claimant responded stating that she had to pick up her child at 3:15 pm on 20 July and could they make the meeting earlier.
116. Mr Knight responded at 11:34 pm [RB page 274] stating that because he had a full diary he could not bring the meeting forward.
117. On Wednesday, 20 July at 4:40 am the claimant sent an email to state that she could not leave her child at school and suggested another day or conduct the meeting by Microsoft Teams [RB page 274]. Mr Knight responded on 20 July stating that it was difficult to bring the meeting forward [RB page 273]. There were some further emails from the claimant suggesting the meeting take place on 21 July or the following week which Mr Knight was not agreeable to but indicated at 8:24am that he would see if he could bring the meeting forward but could make no promises, the claimant then sent him a response which was rather brusque in its tone, at 8:57am [page 271]:

“So basically, I sit there and hope you have time for me.”

118. Mr Knight replied at 8:58am explaining that he required her to work from the office and to do the accounts before the accountant arrived and that they would have their meeting as soon as he had concluded his meeting.

119. By 11am the claimant had not been in contact again and neither had she come into the office as directed. Mr Knight therefore sent a further email on 20 July 2022 at 11:11am:

"It's 11:09 and your [sic] are still not in the office despite my request for you to be in can you please confirm why you are not in."

120. The claimant replied at 11:36 am, her response was brief, stating only; *"Because I'm finishing the work I brought home with me."*

121. Mr Knight, the Tribunal consider was becoming increasingly frustrated by her response, and there was a further terse exchange of emails.

122. Mr Knight wrote at 11:41 am: *"Cease and desist from what you are doing now and bring it into the office then, I've specifically requested for you to work in the office this week which is even more fundamental due to the year-end and our [the Tribunal understand this should read 'your'] refusal is not acceptable."*

123. Again, the claimant's response at 11:43am was unapologetic:

"Firstly, I am not refusing and secondly I have completed my part of the final accounts which I have advised serval [sic] times to you."

124. Mr. Knight responds;

"I have made many requests that you attend the office and even more pressing this month due to our financial year end and you have failed to turn up yet again without and [sic] justified substantiation, this is refusal to attend and you are now affecting my workload which is not acceptable."

125. While it may be difficult, the Tribunal accept, for the claimant to have attended the meeting in the afternoon when she was due to collect her daughter, that does not explain why she did not go into the office in the morning as she been asked to do. She had decided unilaterally to work from home instead.

Investigation Meeting: 20 July 2022

126. In the claimant's evidence in chief [w/s paragraph 25] the claimant states that Mr Knight had invited her to a finance meeting at 2:30pm [RB page 276] but that when she arrived at the office at 12pm she was told by Mr Knight not to turn on her computer on but go straight to the boardroom. Mr Perry was also present. The meeting was as it transpired an investigation meeting and when the claimant realised this, she objected to the lack of warning, was not prepared to continue with it at that point but after picking up her child from school and dropping her at an activity, the claimant went back to the office and the meeting resumed.

127. In cross examination the claimant confirmed that her child attends this activity, which is close to the respondent's office, 3 or 4 times a week from between 2 to 3 hours and 6 hours on Saturdays, but that she is not allowed to remain with her and will use that time to work from the office.
128. Mr Perry, in cross examination, was referred to the respondent's notes of this meeting [RB page 279] where he is acting as chair however, in cross examination he claimed he had no idea what the meeting was going to be about, believing it to be a finance meeting, although he conceded that he was struggling to recall and accepted that in his record of the meeting he is the one who outlined the reason for the meeting.
129. The Tribunal on balance find that Mr Perry had been told in advance that Mr Knight intended to conduct an investigation meeting with the claimant and that Mr Perry would chair it.
130. It was put to Mr Perry in cross examination that the notes did not include reference to raising with the claimant alleged complaints from other staff about her, to which he did not state there had been no complaints but:

"I can only assume they were not addressed at this point."

131. The claimant put it to Mr Perry that the reference to an *"investigation into the allegations made against you"* in the letter sent afterwards confirming suspension [RB page 280] was a reference to complaints from other staff, but Mr Perry believed this to be a reference to the 3 allegations which were discussed and referred to in the written record [RB page 279]. The claimant did not put it to Mr Perry or Mr Knight what the complaints from other staff were which were discussed with her. In her evidence in chief, she states that what was raised was that a member of staff had resigned due to an email she had sent and other members of staff feeling that as the person responsible for HR matters, she was unapproachable [w/s para 26] but that the email was not produced and no reasons were given for why she was seen to be unapproachable. The claimant does not assert that these matters were not raised with Mr Knight but that they were raised with her because she is Black.
132. The Tribunal find that these issues were mentioned in the meeting. There is a document in which it appears Mr Knight set out some concerns [RB pages 296- 297] and where he refers to the general style and tone of the claimant's communications, including a WhatsApp message sent to a member of staff who had handed in his resignation. It is noted that: *"RB is the head of HR and her conduct is not professional and opens Restek up to claims for misconduct by other members of staff."*
133. The claimant had covertly recorded this hearing on 20 July 2022 [CB page 45] however this was a document that the Tribunal did not allow into evidence. All the respondent produced was in effect a summary note of what had taken place at that meeting [RB page 279]. This note records that the meeting centred around the following allegations:

58.1 The continual refusal to attend the office when having been requested to do so.

58.2 Making payments to suppliers over the previous weekend when she had been specifically instructed by Mr Knight not to make any payments due to cash flow problems.

58.3 Duplicate payments made to suppliers and in one instance how this overpayment was not brought to the attention of Mr Knight until the supplier made the repayment.

134. It was noted that in relation to the first allegation of refusal to attend the office, the claimant replied by saying that she accepted that she had not attended the office on the occasions when she felt that her presence was not needed and she was able to work from home.
135. In terms of the second allegation, it records that the claimant did not accept the allegation because she felt the payments needed to be made. Through questioning during the tribunal hearing, it became apparent that this issue related to the purchase by the claimant of an office chair which she accepts she had been told not to purchase but went ahead and bought it anyway.
136. In relation to the last allegation, it records that the claimant accepted that the overpayment was made. However, the details of which supplier had been overpaid were, Mr Knight confirmed in cross examination, not specifically identified at this stage as the respondent was still investigating. He had however been aware of this duplicated payment he confirmed in answer to questions from the Tribunal since 18 March 2022.
137. The note records that the respondent placed the claimant on suspension for four weeks and that during this period the respondent would allow her to retain her company car and laptop in order that management could contact her but she was asked to return office keys and any financial paperwork.
138. The claimant put it to Mr Perry in cross examination, that there was no reason to suspend her, that not attending the office did not warrant suspension and regarding paying suppliers, Mr Knight could have removed her access to the bank account. It was clear that Mr Perry really had had no say in the suspension. In cross examination Mr Perry stated that the decision was taken on advice of Peninsula and "possibly" they may have considered alternatives to suspension but he could not recall. Mr Knight in his evidence in chief does not address the need for suspension.
139. The claimant's account of this meeting is set out in her evidence in chief [w/s paragraph 25 to 28], and she refers to being questioned about various incidents including not attending the office when requested, misuse of the company credit card and also she says she was advised that a member of staff had resigned due to an email she had sent to them as well as other members of staff feeling as the HR person that she was unapproachable.
140. The claimant asserts, (which is not captured in the respondent's notes), that during the meeting she had stated that on the day she had been asked to come in by Mr Knight her schedule (which it is not in dispute had been provided to Mr Knight) showed that she was in University and the time the meeting was scheduled was around school pickup and that meetings had been moved previously.
141. In terms of the misuse of the company credit card, (in respect of the office chair), the claimant defends her actions by asserting that having an office chair is a legal requirement.

142. The claimant also alleges [w/s paragraph 28], again not recorded in the respondent's note, that she stated that many other employees perform these acts and questioned why was the only one "taken to this level". She does not allege that she referred to race discrimination in the meeting but in her statement alleges that this was something on her mind; *"at this time, I could not understand how the black girl could be reprimanded in this way when all of the staff members who perform these acts previously did not even get a warning on the employee records..."*

143. The claimant in her evidence in chief refers to the suspension letter which was sent out after the meeting on 20 July. She does not allege that the content of the letter did not reflect the meeting but complains that [w/s paragraph 29]:

"However, in the suspension letter they cited misuse of credit and gross misconduct for not attending work when requested for reasons to suspend me. Although I disagreed with their conclusion of misuse and attendance at work as these incidents had taken place and I did not see how this justified the need for suspension as I could not delete the credit card usage and the credit card could be taken away from me."

144. The Tribunal accept the claimant's evidence that from 20 July 2022 her access to the server, Sage and the financial systems was terminated. Mr Knight could not confirm the date access was terminated but on balance the Tribunal accept the claimant's evidence. The Tribunal also accept Mr Knight's evidence that at this stage they were still in discussion with their accountant about the claimant's hours and had not yet raised this with her.

145. The suspension letter [RB page 280] does not refer to consideration of any alternative duties the claimant could perform being considered (and discounted), it is not alleged there was any discussion or explanation of this to the claimant and Mr Knight does not set out in his evidence in chief what consideration he gave to this.

Sending Hostile Emails

Comparators

146. In submissions the claimant [w/s page 9] states that: *"Two white colleagues Denise Moon and Adrian Carr were accused of hostile or inappropriate workplace communication that reportedly contributed to employees leaving the organisation These concerns were raised with senior management. Respondent Mr Knight . No investigation, suspension, or disciplinary action followed their acts. By contrast the Claimant was accused of an inappropriate tone in communications. No evidence was ever provided and the allegation was later dropped, yet she was nevertheless suspended as part of the disciplinary process, "*

147. The claimant however never put these allegations during cross examination to Mr Knight or Mr Perry. She never put the allegation to them that she raised these issues with senior management and nor did she put it to them that there was any difference in treatment between her and anyone else or explore the circumstances of these comparators.

148. While the claimant had identified Adran Carr and Denise Moon as comparators in the list of issues, the claimant did not put any of this evidence to Mr Knight or Mr Perry and had not included this within in her own evidence in chief. It was not put to the respondent witnesses that this was an act of race discrimination, and nor did she put it to them that this was a reason for her suspension, investigation or dismissal in her cross examination of them.
149. In her evidence in chief the claimant mentions briefly [w/s para 26] what was discussed about this at the; “...they also advised a member of staff resigned due to an email I had sent to them as well as other members of staff feeling as the HR person, I am unapproachable.” She does not deny being the ‘HR person’ but complains in her statement [w/s para 27] that the email was not provided or the reason given for why she was considered unapproachable.
150. However, in cross examination the claimant was referred to a message from Ms Moon Bid Manager (who is White), who worked for the respondent [CB page 7], who had it seems posted something on another employee’s Instagram account, and the claimant gave evidence that she was telephoned by the employee’s wife who reported how upset the employee and his daughter were by the post. The claimant gave evidence that she telephoned Mr Knight or sent him a text, she could not recall which, but no action was taken regarding Ms Moon’s alleged conduct. The claimant accepted however that she had not put any of this to Mr Knight when cross examining him and thus the Tribunal had not heard his account of what if anything had been reported to him or whether, given the claimant was the HR person, he considered it was for the claimant to deal with it. There was no evidence about what similarity if any there was with any email the claimant had sent, (which she had also not questioned Mr Knight about in cross examination), and the one sent by Ms Moon. The claimant explained that because it was not mentioned in the respondent’s record of the hearing or suspension letter [page 279 and 280] and because she did not have any evidence to support her allegation, she had not been sure whether she could pursue it, thus she had not done so when cross examining Mr Knight. Her evidence is that sending hostile messages was not mentioned to her again after this meeting on 20 July.
151. The Tribunal heard no evidence about what alleged hostile or inappropriate communications Mr Carr had sent.

Suspension letter: 21st of July 2022

152. Mr Perry sent a letter to the claimant dated 21 July 2022 which is headed “*Allegation of Misconduct/Gross Misconduct – suspension*” [RB page 280] and includes the following statement:

“I therefore believe that you have falsified your timesheets and claim to be paid for approximately 80 hours more than you of work for the month of June, further investigations are ongoing for previous months following[the claimants] unsubstantiated claim from the second investigation meeting that she is not claimant hours worked through her employment.”

Deduction

153. Mr Knight gave evidence in cross-examination that while the issue of overclaiming hours had not yet been addressed with the claimant (it was not mentioned at the meeting on 20 July), and it was still being investigated, nonetheless he confirmed that £1026 was deducted from the wages paid to her at the end of July for the hours overclaimed in June [RB page 201]. In response to questions from the Tribunal about when he would have given instructions for that deduction to have been made, his evidence was it would have been given in time for the accountant to prepare the payroll for the last working day of the month and therefore it would have been the day before the last day of the month or a few days before. The Tribunal find therefore on his own evidence, that it is more likely than not that he had decided, and authorised the deduction, before meeting again with the claimant on 28 July 2022 which is when he first raised this allegation with her. This suggests that Mr Knight had already formed an opinion, before putting the allegations to her on 28 July, that the claimant had overstated the hours worked in June and he acted on that belief to recover the alleged overpayment.

Investigation meeting 28 July 2022

154. The respondent produced a transcript of the taped meeting they Mr Knight and Mr Perry held with the claimant on 28 July 2022, [RB page 281 -294] which capture a conversation between Mr Knight and Mr Perry after the claimant had left the meeting.

155. The claimant does not dispute the accuracy of the notes in respect of that part she attended.

156. Mr Perry appeared to be chairing the meeting and started by asking the claimant when she last carried out a reconciliation of supplier and payroll ledgers, and she confirmed that it was at the time of the last tax return in April 2022.

157. Following questions about the reconciliation process, the claimant confirmed that the last time that she had inputted invoices from suppliers and the payments made to the suppliers, was three weeks before the meeting.

158. Later during the hearing, Mr Knight put it to the claimant that their accountant had checked and that the last full reconciliation was on 4 May 2022, circa three months before and the last supplier payment that was inputted was on 4 May. Mr Knight put it to the claimant that the failure to input supplier invoices onto Sage explains why there had been duplicate payments made to suppliers [RB page 287]. The claimant did not dispute the date when the last reconciliation was carried by her but asserted that she had asked Mr Knight to send her the bank statements to complete the reconciliation, he had sent them however she could not open the email. Mr Knight states that she had only sent the email saying she could not open his email in the previous month.

159. The claimant was now asked, at this meeting, about the hours that she had claimed she had worked in June 2022. It was put to the claimant that the respondent did not appear to have any records submitted for the hours that she worked in April, May and June 2022. The claimant explained that on the computer system in the HR folder under her name, there are timesheets she had compiled from when she first started employment with the respondent, up until 2022. The claimant put it to Mr Knight in cross examination that the timesheets were kept on the respondent's server and that she directed him to where to

find them at this meeting on 28 July. Mr Knight could not recall this however the Tribunal accept that the claimant had directed the respondent to the timesheets because there is reference to looking at the timesheets in the transcript .

160. The time sheet headed "Working Days 2022" [RB page 136] records the following hours:

January: **46.75**

Payslips showing hours claimed [RB 142]: **46 hours**

February: 68

Payslips showing hours claimed [RB page 142]: 140 hours

March: 50.25

Payslips showing hours claimed [RB page]: 80 hours

April : 74

Payslips showing hours claimed [RB page 141]:87.25 hours

May: 58

Payslip showing hours claimed [RB page 140]:87.50 hours

June : no hours recorded - 150 hours claimed)

161. The average of the first 5 months was therefore 50.4 hours recorded for the month or 12.6 hours per week. The claimant at the hearing on 28 July 2022 stated that the hours on her spreadsheet related to only the hours on the vehicle tracker and not the hours she worked from home; *"choose a date in May, go into the vehicle log and, yeah. And then you should see that those hours match that"* and [RB page 283] she stated that ; *"So I add 40 hours on top of that."*

162. The claimant in cross examination gave evidence that the time sheet for 2018 [RB page 120] would be accurate because she had just joined the respondent and was not attending university and was working full time at that stage. The Tribunal consider therefore that the 2018 timesheet would have been of no assistance in assessing the legitimacy of her 2022 hours.

163. With respect to the time sheet for 2019 [RB age 121], in cross examination the claimant stated that this included *"everything"* i.e. vehicle tracker time and other time. The time sheet for 2020 [RB page 128] she gave evidence included all her time, not only vehicle tracker time. These time sheets, from 2019 onwards, would only be helpful the Tribunal consider, if the respondent accepted that using the vehicle log to record her hours and then `adding on 40 hours`, was an accurate way to assess the actual hours she spent working.

164. In 2022 the claimant it seems changed how she was recording her time and put down only vehicle tracker time because she gave evidence that ; *"I wanted to have a discussion with Mr Knight about homeworking hours."*

“...from November 2021 to June 2022 I wanted to discuss that I found it difficult to track my hours because I was working from home and at college. I wanted to discuss if we could come to an agreement for claiming hours – the hours I was doing at college. The intention was to go through emails and everything for January 2022 or whatever month and see if could be a standard claim... take an average and say maximum I can claim”

165. The claimant complains that the respondent should have, during the investigation, gone through her emails and vehicle tracker log to work out what hours she would have worked.

166. It was put to the claimant in cross examination that she did not complete the June 2022 Excel timesheet but submitted the equivalent of 37.5 hours per week for payment which would be a full time equivalent role although that she also gave evidence that she worked while she was studying because; *“I am always studying”*. This evidence, the Tribunal find, would imply that even when her vehicle shows she is at the respondent’s office, she is studying while she is there.

167. The Tribunal do not see what help previous time sheets would have provided, given the claimant’s own evidence in cross examination, is that she found it difficult to track her own hours and was *“always studying”*.

168. In cross examination the claimant now added to what had been said about banking hours and claimed that it had been discussed that when she worked weekends and evenings, that time would be banked:

Judge: *“So the agreement was purely to do with the weekend working?”*

Claimant: *“Yes and evenings”*.

169. However, for example, the timesheet for April 2020 [RB page 128] records 170.25 hours plus weekend working hours of 9.5 hours. The payslip for April 2020 refers to 74 hours which are the hours claimed [RB Page 153]. If the banked hours were only weekend working that would equate to only 9.5 hours. If the rest of the hours was evening work, that’s the majority of the hours worked however, the timesheet does not identify the time of the day the hours were worked (the spreadsheet only records a total number of hours for each day) , and if she is not distinguishing evening work in her timesheet, how can she know which hours to bank and which hours to claim?

170. In terms of what she records, at the 28 July 2022 meeting the claimant does not allege that she records and banks evening and weekend work and claims the rest:

“These are the vehicle hours. And basically, during the week I work..., say I do like two hours a week, so what’s that? 10 hours? So, I add an extra 40 hours on top of that.”

171. The claimant is then asked by Mr Knight how she arrived at 37.5 hours a week for June 2022. Rather than confirming that those hours equate to what is on the vehicle log plus 10 hours a week, the claimant now gives another explanation;

“Well, as you remember, you know, we haven’t paid me before, since I started working. Yeah? If you remember what we did.”

172. The claimant now alleges in the meeting, that if the respondent were to go through her payslips and timesheets, they will see that the hours that she has accumulated (as recorded on the timesheets) have not been paid to her. It appears that Mr Knight is confused because he points out that the hours for May and March 2022 that she had been paid for, are in excess of what she has recorded on her timesheet, which according to her is a fair reflection of the hours actually worked.

173. For May 2022, the claimant claimed and was paid, for 64 hours worked but recorded less hours on her timesheets i.e. 58 hours. In March 2022 she recorded 50.25 and was paid 64 hours. If the hours on her timesheet were vehicle tracker hours only, she has not added on 2 hours per day and nor has she limited her claim to 16 hours per week .

174. The claimant now alleges in this meeting;

“... You and I’d agreed that in order for me to allow to stay on benefits, yeah, that that is what we were going to do.”

175. Mr Knight states he has no recollection of any conversation about this but points out that her rate of pay had been moved from 9 pounds an hour to 19 an hour (which was the Tribunal note from January 2021) when she became part-time and when the EOT happened, to which she replies:

*“Yes, what I’m saying to you, **as previous years.**” Tribunal stress*

176. The claimant goes on to state that what she is saying is that she has not been paid from **2018 to 2021** (i.e. not in 2022) in full for the hours that she worked during that period and that those hours are still owed to her, and states [RB page 286]:

*“..so, when I had, like I said, when I had initially started and I told Tim that I was going to leave Restack... before I started school, he said, Renee, as long as you keep track of your hours, you can take those hours. That was the agreement we had. **So, to me, my understanding was those hours will always be due to be.**” Tribunal stress*

177. The claimant therefore was not alleging that this agreement extended into 2022 (or it seems past the date of her rate of pay increasing to 19 per hour) and yet what she was recording for 2022 was still not matching what she was claiming, or matching vehicle tracker hours, or vehicle trackers hours plus 2 extra hours per day.

178. In cross examination, the claimant alleged that the respondent should have given her, during the investigation a week to complete the June 2022 timesheet, even though she had submitted her claim already for 150 hours, which the Tribunal considers, makes little sense given her own evidence that she was having difficulties keeping track of her hours. How would she now be able to work out her hours accurately and if she could, why did she not do that before submitting her time sheet? The claimant in cross examination suggested that she could have used the vehicle tracker and gone through emails to work out how much time she is likely to have spent working, which suggests that she had not carried out that exercise before submitting her claim for wages in June 2022. The Tribunal,

however, do not accept that such an exercise would have enabled the claimant to provide a sensible assessment of time spent.

179. The transcript of the meeting records Mr Perry carrying on a discussion after the claimant had left the meeting with Mr Knight, with Mr Knight stating that the agreement around banking hours to enable the claimant to claim student finance is 'ludicrous' and that what the claimant is alleging would appear to amount to tax fraud.

180. There is then a discussion between them about the failure to carry out reconciliations and Mr Knight states that the claimant has not performed in the job and raises the prospect of going down the gross negligence route. Mr Perry comments that the duplication of the payment to the supplier would not be classed; *"as gross negligence, unfortunately."* This language does suggest a predetermined view of what they consider the outcome should be as do a number of other comments made by Mr Knight including:

"...she's got nothing to lose and everything to gain, she's obviously going to be unemployed..."

"...there won't be any evidence or anything of that actually saying she had a verbal conversation with me four years ago..."

Pension letter

181. On 29 July 2022 a letter was sent to the claimant from NEST pension stating that the claimant was no longer contributing to NEST through her employer and sets out 3 possible reasons for that, including that her employment had ended. The claimant chose to ask Mr Perry but not Mr Knight about this letter and Mr Perry had no knowledge about it. The Tribunal accept that this was not something Mr Perry within his role would have knowledge of. The claimant does not allege that she followed this up with NEST or the respondent at the time and did not ask Mr Knight about the letter in cross examination (who gave his evidence before Mr Perry). This letter was referred to in the claimant's evidence in chief [w/s para 35] however it would be unfair in the absence of it being put to Mr Knight that the respondent had stopped making contributions because they had intended to dismiss her to draw adverse inferences from this letter that the decision had been made to dismiss by this stage (rather than because, as the letter refers out to, the claimant may have elected not to make further payments into the scheme).

Invitation to disciplinary hearing

182. The claimant was then contacted and invited to a disciplinary hearing on 3 August 2022 [RB page 301].

183. The claimant was sent a number of documents including a copy of the disciplinary rules and procedure, the investigation meeting minutes, the second investigation meeting minutes, Time Audit spreadsheet, and suspension letter.

184. The claimant was informed that a number of matters will be discussed and these were to include;

109.1 continual refusal to attend the office when requested to do so by email from Mr Knight on 18 July 2022.

109.2 continuing to make payments to suppliers despite been told not to.

109.3 numerous duplicate payments to suppliers.

109.4 falsified timesheets and a claim to be paid for approximately 80 hours more than she had worked.

Mr Perry

185. The claimant was informed that an external consultant from Peninsula will chair the hearing and conduct any further investigations before making recommendations and that she had the right to be accompanied [RB page 302]

Further investigation

186. The evidence of Mr Knight in cross examination was that after the claimant had shown them the timesheets she had saved on the server at the 28 July meeting, the accountants identified that the payslips for 2022 showed that the claimant had sought payment for more hours than she had herself recorded in the timesheets [RB page 136] excluding January 2022, and there was no reference or identification in the timesheets of banked hours. The claimant disputes however that this further investigation was carried out and there is no record of the comparison having been undertaken until the appeal. On balance the Tribunal find that further analysis was carried out but only at the appeal stage as referred to in the appeal outcome letter [RB page 259]. Mr Perry confirmed in cross examination that any analysis was not provided at the disciplinary stage, the only analysis related to the Time Audit.

Disciplinary hearing 3rd August 2022

187. The hearing then took place with the claimant on 3 August 2022. The meeting was conducted on behalf of the respondent by a consultant, Ms Hegan.
188. Following the hearing, at 9:21 pm on 3 August 2022, the claimant sent to Ms Hegan some additional evidence that she had been working more hours than time shown in the Time Audit [RB page 39]. This included [RB page 23 – 35] a tracker log for her company car for 17, 23 and 22 June 2022, a short one sentence email the claimant sent out on 22 June, and one-word emails sent on 13, 14, 22 June and 20 June. These would not be mentioned in Ms Hegan's report and the Tribunal infer from that that they were not considered. However, the Tribunal note that the emails do not evidence any significant work undertaken and the respondent's position is that vehicle tracker information is not an accurate or appropriate record of actual hours worked. The Tribunal accept that while the tracker log may validate that a site worker was on site or may indicate more to the point if they are not, that is different from calculating the hours actually spent in an office working particularly when the claimant is coming in at weekends and evenings and potentially doing work for university rather than work for the respondent.

189. In this meeting the claimant now puts forward another explanation for the hours she claimed in June 2022, namely that it is because June is a 5-week month [RB page 220].
190. Ms Hegan would complete her report on 12 August 2022 but before completing her report an email is sent to her from Mr Perry on 11 August 2022 [RB page 243]. There is no further meeting with the claimant and she therefore had no opportunity to comment on the information given in this email.
191. In this email Mr Perry provides some additional information following on from some of the claimant's points raised in the disciplinary hearing. He states that he can confirm that there was never an agreement in place for the claimant to work from home over the last 4 years. He goes on to state that she never had the ability to perform her role at home as all of the accounting software and information was held on a desktop computer in the office. During Covid when it was a requirement to work from home, the claimant was allowed like everyone else to work from home and provided with a laptop however when the government lifted the restriction in January, the claimant was instructed to return to the office like the rest of the staff.
192. Mr Perry also states that the claimant never brought any concerns over cash flow to Mr Knight or to him.
193. Mr Perry also goes on to state that her claim that she could reclaim banked hours was false.
194. Mr Perry also points out that June has only two extra working days and that "*we also believe that she had fraudulently claimed additional hours in February 2022*". He also goes on to state that "*we also believe*" that their investigation has uncovered fraudulent claims for expenses with no receipts.
195. The Tribunal note there are serious issues with regards to the information that Mr Perry provides to the consultant. This information is not shared with the claimant. Mr Perry is clearly indicating that both he and Mr Knight have already formed a belief in the guilt of the claimant. Further, in answer to questions from the Tribunal, it was clear that Mr Perry was in no position to know what the claimant's working arrangements were, he had no line management responsibility for the claimant and he was in no position to state categorically that there was no verbal agreement between the claimant and Mr Knight whether regards to homeworking or reclaiming of hours but does not explain that to Ms Hegan. This email was sent the day before Ms Hegan provided her report and recommendations and as she did not give evidence, the Tribunal have heard no evidence about the extent to which the information in this email played a part in her decision making and recommendations.

Failure to follow reasonable management instruction on 18 July 2022 to attend the office

196. In relation to this allegation about not complying with the instruction on 18 July to attend the office, the claimant denied that she had refused to attend the office, she referred to Mr Knight having her schedule and being aware of when she attends university. The claimant accepts, according to the notes of the meeting however (which she does not dispute before this Tribunal), that she had not explained to Mr Knight that this was the reason why she was not attending work. The Tribunal find that it is clear from their email exchange on 19

and 20 July, that she does not say she is attending university but that she had decided unilaterally to do work for the respondent from home.

197. The claimant in the meeting stated that she had been attending work late in the afternoons, after picking up her daughter from school, so that her daughter could attend an activity which is located next to the office. The activity lasts for two or three hours. She refers to this arrangement having been in place for two years and accepts that Mr Knight had told her that he wanted to see her in the office more but that she had told him that as soon as she finished her university work, she would come back to the office but now her focus is on her studies. The Tribunal find that there was a growing tension between the flexibility she had been given and what the respondent increasingly wanted/needed from her in terms of attendance in the office.
198. In terms of recommendations, Ms Hegan [RB page 218] notes that the claimant has been mainly allowed to work from home after Covid and cares for her daughter and providing some notice to her to attend the office would be beneficial to arrange adequate childcare at least. On balance, she concludes that while it is reasonable to expect an employee to follow a management instruction (and refers to the employee handbook page 27) and upholds the allegation, she does not agree that this is gross misconduct but misconduct and recommends a letter of concern is sent.

Continued payments to suppliers

199. The notes record the claimant stating to Ms Hegan that she does not have authorisation to pay invoices but does have access to the company credit card, she confirmed that she recalled a conversation with Mr Knight telling her not to make payments without authorisation and accepted she had bought a chair when he had told her not to do so. It does appear that there was an informality in the claimant's communications with Mr Knight which may have been the product of how small the business was when she joined and how closely they had previously worked. In the email exchange about the chair, the claimant offers no apology for buying something without his permission.
200. The exchange of emails about the chair took place on 16 July 2022. In the first Mr Knight asked the claimant whether payments on the company credit card at IKEA are genuine and if so why she is using the card at IKEA without his permission. Initially she only replies to confirm that the payment is correct and offers no further information. She is then asked what they relate to and she states it is uniform and a chair. Mr Knight asks who the chair is for and the claimant says that is for her as he keeps taking hers and he appears incredulous at the explanation:

"So, you just spent hundred £114 without consulting me because I've used your chair!"
[RB page 229]

201. The claimant does not apologise:

"No, I have brought [bought] another chair because I cannot come to work and have no place to sit and work."

202. Mr Knight took no further action at this point and nor did he indicate an intention to do so.

203. The recommendation by Ms Hegan is that this is not treated as gross misconduct but misconduct and to deal with it by a written warning.

Numerous duplicate payments to suppliers and failing to inform T Knight.

204. The focus of the discussion about duplicate payments is about one payment. The claimant explained that she recalled a conversation with the supplier who been paid twice and confirmed that she did not mention it to Mr Knight at the time. The claimant also referred to another double payment to a garage that was storing a company van but states that she has no authority to make payments and only inputs the payments onto the backline system.

205. The claimant alleges in this meeting that with respect to these allegations:

“Management are only bringing up these issues because she doesn’t attend the office and that these issues are over six months old, that management are bundling all these things together.” [RB page 219] Tribunal stress

206. The claimant does not allege that this disciplinary process has anything to do with being Black but clearly believes the real issue is that she is not coming into the office as much as Mr Knight wants her to.

207. Ms Hegan recommends that there is insufficient evidence to support that these errors amount to conduct rather than capability issues and recommends that the capability procedure is followed.

Falsification of Timesheet

208. The claimant at this meeting is recorded as stating that in terms of the hours that she claimed for June 2022 [RB page 220] they are based on the vehicle tracker records (which show the hours the claimant’s vehicle was parked at the respondent’s premises) and the hours she works from home. She also states that excessive hours for June were because June has five working weeks and maintains that the claim for 80 hours is correct. She notes that Mr Knight did not highlight the issue when paying the payroll.

209. The claimant also stated however, as recorded, that she does not in fact keep a track of all the hours she works for the respondent.

210. Ms Hegan’s conclusions are that based on the evidence and information provided, the hours claimed by the claimant in the timesheet for June 2022 or higher than previous months by 65 hours and the claimant states the reason for this is because it is a five week month but she notes that in the investigation meeting in July, the claimant had stated that she had banked hours not claimed and had submitted those in June . She also notes that Mr Perry states there have never been an arrangement for her to bank her hours. The report also notes that the claimant works flexible hours around school commitments and does not keep track of the hours worked. Ms Hegan concludes on balance that given that the claimant herself admitted that she does not keep track of the worked hours and that the extra hours are excessive in comparison to other months, that she finds that there has been a deliberate falsification of timesheets which should be treated as gross misconduct and in line with the company handbook at page 5.

211. It is recommended that the claimant is summarily dismissed without notice on the grounds of gross misconduct for falsifying timesheets and over claiming the hours she had worked.

Pay Advances

212. In cross examination of Mr Perry on the 12 March 2026, the claimant put it to him that Mr Knight had regularly given her advances on her pay. Mr Perry gave evidence that he had no knowledge of that however in his evidence in chief (w/s para 25) he states that throughout her employment, Mr Knight had helped her financially by giving her regular 'subs' prior to pay day and Christmas bonuses well beyond that provided to others. However, in cross examination he gave evidence that he had been told this by Mr Knight and that he saw information in the accounts however he was vague about when he was shown and what he saw. However, there are payslips [RB pages 143,142,145] which confirm that the claimant was paid advances of between £100 and £200, however on each payslip it clearly separates out the advance payment from her wages and it is identified clearly as an 'Advance'. It was put to Mr Perry by the claimant in cross examination, that in June 2022 the claimant has asked for additional money to pay for her school/college course and this had been approved by Mr Knight. This was not put to Mr Knight when he gave his evidence and the claimant did not mention this during the investigation and disciplinary process. There is also no reference to an 'Advance' on the payslip for June. The claimant put this point only to Mr Perry in cross examination:

Claimant: "...it is not uncommon to ask Mr Knight to give me additional money and he did... I went back and did a detailed analysis which showed the hours – would see I had done the hours even though Mr Knight had given me the money."

213. The impression of the Tribunal was that the claimant was trying to cover all bases, alleging that the extra payment was an advance while still maintaining she had done the hours anyway, even though she had no record of what hours she had worked for June and was struggling to accurately record her hours.
214. The Tribunal attempted to get clarity during the hearing, about what her position is now and did not find her responses convincing:

Judge : "What is your claim now - are you saying Mr Knight agreed to give you a payment in the June payroll?"

Claimant: "Yes."

Judge: "What do you say he agreed to give you?"

Claimant: "The 150 hours."

Judge: "How many extra hours did he agree to give you?"

Claimant [pause]

Judge : "What do you say he gave you extra?"

Claimant: *"It is complicated, how it worked, there were 3 ways."*

215. The claimant was unable to provide a clear answer to what should have been a simple question i.e. had she had done the hours, had she had been given an advance, or had she had included what she had alleged to be banked hours.

216. At 1£9 per hour the Tribunal note this would equate to an advance of £2,850, for the full 150 hours, or if her hours were similar to what she had claimed for in May 2022, (which was 87.5 hours), that would still be an advance of £1,187.50. However, all the previous advances as set out in the bundle, were fairly nominal, between £100 and £200. The Tribunal also take into account that if there was an agreement to recover banked hours, why did the claimant not simply ask for those hours to count as a repayment of banked hours rather than as advances of wages?

217. In cross examination the claimant then added to her evidence by alleging that it was agreed that when she was paid advances these would be deducted from the hours she was owed. The claimant's evidence appeared to evolve during the course of the hearing and indeed this issue of advances and offsetting is not mentioned in her evidence in chief, was not put to Mr Knight and was not mentioned during the investigation and disciplinary process. In her evidence in chief [w/s para 23] she alleges that Mr Knight had queried the hours she had already claimed for June 2022 and in response she had said she needed money to pay for her daughter to attend summer camps, she does not allege that he had agreed to pay her 150 hours as an advance or agreed to treat this as banked hours. If the claimant genuinely had an agreement to recover banked hours why did she not mention it then?

"At this time, Mr Knight queried why I was claiming that many hours, I had explained that I was struggling and with schools out I needed to pay for camps for my daughter to attend. At which time, he approved the payment."

218. The claimant was also vague in cross examination when she was asked about the Service Agreement which refers to working 40 hours. When it was put to her that she did not work 40 hours she gave a rather confused answer:

Claimant: "I'm 50/50 on that."

Judge: "What do you mean?"

Claimant: "I felt I worked the 40 hours."

Judge : "So why do you say 50/50?"

Claimant: "I did not always work 40 hours." Tribunal stress

219. In cross examination, near the close of the tribunal hearing, the claimant gave evidence that she worked out the 150 hours she claimed for in June 2022 by vehicle tracker times but also by emails that she wrote. Depending on the gaps in between, she calculated the time from the time she sent the first email in the day to the time she sent the last email. That would mean that she was assuming that for the whole time in between emails, she

was carrying out the respondent's, however her evidence had been that she was 'always studying' and combining study with doing work for the respondent.

220. The claimant in her evidence in chief did not allege that she had kept on her Excel spreadsheet a running total of hours owed which had been deleted by the respondent from the spreadsheets included within the bundle or that she had been told by Mr Knight to deduct the advances of any running total she was keeping on her Excel timesheets of the hours owed to her. The claimant mentioned this only when being questioned about the advance payments during cross examination and why she had not asked Mr Knight to instead pay some of the hours owed to her. The claimant only then alleged that Mr Knight told her to deduct those hours off what the respondent owed her. The claimant did not put this allegation to Mr Knight, she did put to him that at the end of the columns in her spreadsheets there was a column where she had tallied up the hours which had been removed, she did not put to him that he had paid advances to be deducted from the hours owed. Mr Knight expressed confusion, giving evidence that it was the claimant who had provided the timesheets during the investigation process from her laptop which she had kept. The claimant did not put it to Mr Knight that the tally was of hours owed, but only that the column tallied the hours. The Tribunal do not find that the claimant has established that the respondent doctored her timesheets. If there was a formula to provide a total number of hours worked, the Tribunal cannot see how on the information set out in the other columns, it would be able to distinguish between banked and claimed hours. There is no column representing advances paid or deductions generally. In any event, the claimant's own evidence is that once she had the laptop, it became difficult to track her own hours hence she alleges she used vehicle tracker information and it seems added on an amount she considered to be reasonable for what she 'felt' she had worked that month. The data is therefore only as reliable as the method by which it is collated.

Dismissal

221. Mr Perry wrote confirming the decision to dismiss without holding any kind of further meeting with the claimant to listen to, for example, any further mitigation she may want to put forward.
222. A letter was sent to the claimant in the name of Mr Perry and signed by him on 17 August 2022 dismissing her from their employment. It clearly gives the impression the Tribunal find that the decision was taken by Mr Perry and not by Mr Knight [page 245].
223. The letter attaches the report from Peninsula and states;
- "Having carefully considered the report of their findings and recommendations, it is my decision to summary dismiss you on the grounds of gross misconduct for falsifying timesheets and claiming for hours you did not work." Tribunal stress***
224. The letter states that the claimant is not entitled to notice or pay in lieu of notice and that she has the right to appeal against this decision and if should want to do so she should write to Mr Perry within five working days.
225. Mr Knight in cross examination denied that the claimant had been dismissed for anything other than falsification of timesheets.

February 2022

226. The Tribunal did ask Mr Knight about the fact that in February 2022 the claimant's payslip showed that she had been paid for 140 hours. The evidence of Mr Knight was that this did "*set off flags*" however he did not raise those hours with the claimant at the time because he was working away and he was not in a position to run due diligence and payroll. While he says he was concerned at the hours she claimed to have worked that month, he made the decision that; "*someone was better than none*". He gave evidence that although he was not satisfied with her explanation at the time for having claimed to have worked 140 hours in February 2022, he paid it anyway. He did not refer the matter to his accountant and he confirmed that he did not intend to do anything about this at the time;

"Not at that point, no I pick my battles. I was working days and nights in the job transferring the business."

227. The claimant had therefore the Tribunal find, potentially overstated the hours that she had worked in February 2022, Mr Knight was aware of it, he had not accepted her explanation as satisfactory and yet because he was busy, he took no action. In effect the Tribunal find, he turned a blind eye to what the claimant had done and what he suspected to be an exaggerated claim because he needed her in the business. This begs the question, what changed in July 2022 when the claimant made a similar claim?

228. In answer to questions from the Tribunal, Mr Knight confirmed that it was important for the claimant to come into the office and meet with the accountant when he asked her in July 2022 because it was their financial year end. He was asked by the Tribunal whether it would have made a difference to the action that was taken if she had come in when he asked her and had been more cooperative:

Judge: "*If she had come in, would you have done what you did?*"

Mr Knight: "*No, if she had come into the office and explained and reconciled it and explained why the hours were what they are, but she did not come in.*"

Judge: "*If she had come in on 20 July, would you have taken the action you did?*"

Mr Knight : "*I was from a single-parent family with six kids, we bent over backwards for the claimant and she abused the trust.*"

229. To gain clarity Mr Knight was asked again by the Tribunal what he would have done had the claimant said that she understood he needed her in the office more and was willing to come in more regularly, whether he would have acted differently, to which he answered;

Mr T Knight: "*Difficult to say, lots of scenarios, the claimant made it very difficult for me, that was a point where it became untenable. I could not make excuses for her, falsifying records **and refusing to come in**, she was seemingly being treated more favourably, **it was a combination of all of them.**" Tribunal stress.*

230. The Tribunal also asked Mr Knight about his decision to ask the claimant to come in to help complete the financial year end after she had made what he considered to be an overclaim for the work that she had worked in June, to which he gave evidence that he

had no choice because they had no access to the system to help him complete the year end.

Appeal

231. Mr Perry in answer to questions from the Tribunal explained that there was a Contracts Manager in the business who was at the same level of seniority as him and who carries out disciplinary and grievances for the foreman and site operatives and he could think of no reason why he could not have conducted the investigation or disciplinary stage of the process.
232. The Tribunal find that while Mr Perry was 'chaired' the investigation meeting, was presented as having considered the recommendations and decided on dismissal and would 'chair' the appeal, he did not in fact make any decisions.
233. The claimant wrote on 21 August 2022 appealing the decision. The claimant in essence and summary, complained that during the investigation a hypothetical spreadsheet was used to demonstrate the time she had worked and that it was an inaccurate hypothesise of her working hours [RB page 248].
234. On 25 August 2022 [RB Page 257] the claimant wrote to Mr Perry stating that she wanted the hearing to be recorded and that Mr Knight not be present and asked that she had access to her Excel timesheets for the past 4 years. Just before the hearing started the claimant was given time sheets for the last 2 years [RB page 120, 121, 128,136] including the one for 2022. Mr Perry accepted in cross examination that given these were only handed to her at the start of the appeal she probably had not been given sufficient time to prepare on reflection, for the hearing.
235. Mr Perry responded to the claimant's request for an appeal hearing, on 23 August [RB page 250] stating that he would hear her appeal on 24 August.
236. The claimant clarified the grounds of her appeal at the hearing. She complained that in arriving at the decision that she had over claimed hours, the respondent had relied upon a summary based on two timesheets, the Time Audits, and the schedule that she had provided to Mr Knight confirming when she was at school and based on that information her hours for June had been estimated. The claimant complained that it was a hypothetical calculation which is why she had requested timesheets for the last four years because those would show that there was no consistency in the time that she had worked.
237. It was pointed out to the claimant that she had been asked in the investigation meeting why her hours were so high in June 2022 and the reason she had given was not that she had worked the hours, but that she had a verbal agreement with Mr Knight that she could bank hours and claim payment for them at a later date. It was also pointed out to her that at the disciplinary with Ms Hegan she had given a different explanation, namely that June was a five-week working month. The claimant's response was not to deny that she had given two different explanations, in fact she accepted that she had but questioned what investigation the respondent had carried out:

Claimant : *"Okay, so then my response to that is just did you guys investigate further? I've given two different explanations. Have you guys taken the initiative to go a look back to it?"* [CB page 61] Tribunal stress

238. The view it seems of the claimant at the time and indeed during this hearing, was that the respondent had to prove she had not done the hours, rather than make a finding on a balance of probabilities.

239. The claimant asked Mr Perry whether there is evidence to show that she "*definitely*" did not work 150 hours that month. This is despite the fact that the claimant had already accepted that she was having difficulty recording her hours and despite claiming 150 hours (which was exceptional in terms of the hours she had claimed previously), when she had not carried out a reconciliation of the company accounts for 3 months. She had recorded time on her time sheets according to the vehicle tracker times and it seems adding on hours with no reference to any real analysis of work done. The timesheets were not an accurate record either of the hours she had actually spent working, and given she had not claimed for those hours, had never been subject to any level of scrutiny.

240. It was explained to the claimant that one of the reasons behind the decision to dismiss was the claimant's own admission, in the investigative meeting and disciplinary hearing, that she had not carried out a number of fundamental duties since May, namely inputting invoices onto the Sage system and completing reconciliations and the claimant had not provided evidence to corroborate the working hours that she had claimed.

241. The claimant did not refute what was put to her but attempted to put the onus back on to the respondent to prove that she did not work the hours claimed:

Claimant: *"Yes, but at the same time, you guys haven't provided any information. to say that I didn't work those hours. You guys are just saying based on the tasks completed..."* [CB page 61] Tribunal stress

242. The claimant had not been provided with copies of her timesheets stored on the server, for the last four years but was asked to explain the relevance of those and she claims in the appeal hearing, that they would show that from 2018 through to 2022 there was no consistent pattern in terms of the hours that she worked and that some weeks she worked more and some weeks less. Her point is that therefore the respondent could not reliably use an estimate or average of 22 hours per week [CB page 61].

243. Mr Perry does not dispute that the timesheets may show no consistent hours but he restates that the claimant has not carried out any reconciliation since May, which the claimant accepts but argues that is not her fault, and that the claimant has already told them that she does not keep a record of the hours she works from home, which she again confirms: *"...because I have 24/7 access to everything, so I can work at any minute, any day."* [CB page 62].

244. The Excel timesheets she had completed would therefore not assist in showing the actual hours worked.

245. In terms of her allegation that she worked more hours in June because it was a longer working month, Mr Perry puts it to her that June consists of 21 working days and that May was 22 working days and yet she had recorded 87.5 hours. April was 21 working days and

she recorded 87.25. The claimant does not dispute any of this but now reverts back to the allegations of an agreement over banked hours:

Claimant: *"Well, if you wanna go back their [there]. As we stated before, because of my student finance that I am on, I'm only allowed to work a certain amount of hours. Tim has agreed that that was the hours that I can claim."* [page 63]

246. In cross examination the claimant stated that the student loan company did not know what hours she had to reduce her hours to but at the time she told them that she was doing about 30 hours per week and they had told her that this was too many hours but she was later told she could work up to 16 hours. She took out a student loan in 2019. The course started in February 2019 and she had finance for the first two terms up to July 2019. She had no student loan for the 3rd term to September 2019 to December 2019 and then transferred another course in September 2019 which ended in July 2020. The claimant then moved to study at another college in September 2020 to July 2022, she had part student loan for September 2020 to July 2021 and had no student loan from that period. She had no student loan in 2022. Therefore, for the period 2022, when she was not claiming any student finance, there was no reason to have claimed less than the hours she was actually working.

247. Mr Perry attempts to elicit at the appeal hearing from the claimant what her actual explanation is for the hours she had claimed in June 2022, whether it is that there was a verbal agreement in place with Mr Knight to bank hours and she included some of those hours or whether it is that she actually worked more hours because it was a five-week month. At this point the claimant appears to settle on an argument that she actually worked the hours she was claiming, which the Tribunal note fails therefore to explain why she raised the existence of a verbal agreement at all and what relevance that had to the allegations:

Mr Perry: *"So what definitive reasoning are you giving then for the hours?"*

Claimant: *"The hours, I worked the hours, yes I don't keep a detailed record of the hours that I work for him because I consistently work for him at any point at any time. Because I have access to it 24/7, so I can do it at any point in time..."*

And:

Claimant: *"I can understand why you could think it's excessive because I've been claiming previously 80 hours. Yes, I can understand that point but my explanation to you is what proof can you provide that I didn't do the 150 hours. Can you guys literally demonstrate to me that I can't do those 150 hours or that I didn't do those 150 hours?..."* Tribunal stress [Page 65]

248. Much later in the meeting Mr Perry informs the claimant that when she repeatedly asked about seeing previous spreadsheets held on the hard drive, that the respondent has been having IT issues hence they cannot all be provided. The claimant asks why the appeal hearing was not deferred until they can give her the timesheets she requested and Mr Perry explains that this is because in his opinion; *"we don't deem this is effectively new information"* and *"because effectively we believe, or I believe, it will demonstrate effectively the same timeline. It won't justify 150 hours."* [page 75]

249. The claimant had been told that the appeal was a review of the decision to dismiss and what she is asking to do is to produce new information or additional information. The Tribunal note however that the claimant had raised the issue of the timesheets she stored on the system prior to the disciplinary hearing.

250. The claimant disputes at this hearing that the Time Audit she had completed for the two weeks in June 2022 was accurate because she did not do it in detail [RB page 67] and asserts that having access to her emails would show the work that she had done. Mr Perry informs her that the respondent has the emails and can see the emails that were sent and they do not demonstrate 150 hours' worth of work.

Mr Perry: *"so if you're looking at the two weeks that you have initially for the 20th week commencing in the week of the 13th, you've recorded, I think, 19 hours or 19 ¼ hours. So, you're saying that in the remaining two weeks or the remaining 11 days, you did approximately 135 hours bearing in mind when you take into consideration your college time is the same. And we've obviously seen another time log of emails that were sent and received and so on."*

Claimant: *"Yeah"*. [RB page 68]

251. The time log of emails was not provided to the claimant.

252. The claimant still maintains however at the appeal that she had an agreement about banked hours which is why she claimed fewer hours in previous months but accepts that this was not documented and denies that if true, it amounts to benefit fraud:

Claimant: *"... It's not benefit, were not doing benefit fraud, it's student finance, not benefit fraud."* [CB page 76]

253. There is then some discussion about the claimant failing to return her laptop and that the respondent is engaging agents to recover it. The claimant is not prepared to continue to discuss the return of the laptop while the meeting is recorded and it appears from the notes that Mr Perry tells her that their recording as stopped however, the claimant continued to covertly record the conversation. The discussion continues into the car park, after the official meeting as ended. (The respondent did not seek to argue that this part of the recording was inadmissible). Mr Perry informs the claimant that Mr Knight intends to inform HMRC that the claimant has personal use of the company car and will therefore be liable to tax, this appears to the Tribunal to be vindictive and indeed Mr Perry is recorded as saying to the claimant [CB page 80];

Mr Perry: *"Because of this, Rene, and dragging this out, he is going to go after you."*

Claimant: *"I'm going after Tim."*

Mr Perry: *"He's going to go after you"*.

254. Mr Perry in cross examination stated that what he meant was that Mr Knight would defend the respondent and 'go after' the claimant legally. The claimant does not seek to argue that it meant anything other than that and indeed she replies with a similar threat about legal action.

255. To threaten an employee with retaliatory action however because they have defended disciplinary action by appealing, (which the Tribunal consider is what was meant by the claimant “dragging this out”) is unreasonable conduct and if intended to deter an employee from issuing Tribunal proceedings, may render a fair trial not possible and could lead to the striking out of any defence. The claimant does not however make that allegation or argument and clearly despite the threat, issued proceedings.

16 September 2022

256. Mr Perry wrote to the claimant on 16 September 2022 stating that during the appeal hearing the claimant expressed the view that their decision did not reflect the actual hours she had worked and consequently further investigations had been carried out which included analysing previous timesheet data.
257. There is no further meeting with the claimant to put this information to her but it is confirmed that the original decision stands.
258. The Tribunal consider however that it is clear from the comments that Mr Perry made at the conclusion of the appeal hearing in the car park, that regardless of what the timesheets may have shown, the decision would not have been overturned.
259. Mr Perry stated in the letter of dismissal that it was his decision to dismiss, and in his appeal letter now states [page 260];

“Having given the matter for consideration, I am now writing to confirm the original decision taken by Timothy Knight stands...” Tribunal stress

260. Mr Perry gave unchallenged evidence, which the Tribunal accept, that from 1 October 2020 he was employed by the respondent as Technical Sales Manager and that he had no responsibility for staff, his role was to develop and grow sales and no one reported into him, he had no oversight of HR or finance and his line manager was Mr Knight. In cross examination he confirmed that he had no direct oversight over the claimant’s work. He has 30 years of previous experience in management during which he had conducted disciplinary investigations but no formal training. In cross examination he gave evidence that his role in terms of the situation with the claimant was to be the lead person for the investigation but not to gather the evidence, the accountant carried out the investigation and he did not personally interview any staff, that Mr Knight may have given him the questions to ask. When it was put to him who during the first and second investigation meeting was the decision maker, he stated:

“The Managing Director, it was Mr Knight.”

261. When asked who made the decision at the disciplinary hearing, his evidence during cross examination, was equally unequivocal:

“It was Mr Knight. in conversation with Peninsula. All the information was in discussion or lead back to Mr Knight, in conjunction with Peninsula giving HR support ”

262. When asked during cross examination, who made the decision at the appeal stage , Mr Perry gave evidence that it was:

“ In conjunction with advice from Peninsula, and ultimately, Mr Knight”.

263. The Tribunal asked Mr Perry to clarify whether Mr Knight made the decision at the appeal stage, to which he confirmed that he did, reiterating that he was Mr Perry's line manager.

Judge: “ It was not your decision whether to uphold the appeal or not?”

Mr Perry: “It was Mr Knight's final decision, once he got feedback from Peninsula.”

264. Mr Perry confirmed that while the dismissal letter stated it had been his decision to dismiss, in fact he had been given the instruction by Mr Knight and Peninsula. He repeated that it was not his decision to dismiss and he had been instructed to complete the letter by Peninsula [RB page 245].

265. He also gave evidence that he knew nothing about any agreement about the claimant banking hours and in fact he was not working for the respondent at that time. He also confirmed that he had no real awareness of the hours the claimant worked because he was often out of the hours and would have only intermittent contact with her.

266. The Tribunal find that Mr Knight was the key witness in the disciplinary case against the claimant, he was the one who the claimant claimed had made an agreement with her about banked hours and as her line manager gave evidence about her working arrangements and failure to carry out reconciliations, made duplicate payments etc. Mr Knight was involved in the investigation process with Mr Perry, and the Tribunal find that he had a very clear opinion before the investigation by Peninsula that the claimant had overclaimed her hours. Mr Knight made the decision to dismiss and he made the decision to refuse the appeal but he put Mr Perry in the position where it would look to the claimant as if Mr Perry was introducing some independence into the process, however that was not the case. The Tribunal appreciate that Mr Knight may have taken this course of action on advice.

Findings of Fact : Recording Time

267. Mr Knight gave evidence in cross examination, that the respondent do not use vehicle trackers to record time but do use it as a way to check any apparent inconsistencies but in terms of the claimant, she could have driven into work, left the car, and gone shopping in Ripley or taken her daughter to her activity and while the claimant denies that she would stay with her daughter or even drive there (because it is a short distance from the office), the Tribunal accept that it is not a reliable measure of the time she was actually working in the office doing work for the respondent. Her own evidence is that she was always studying.

268. The evidence of Mr Knight under cross examination was that while he could have had access to the information on the claimant's vehicle tracker he did not look at it because he did not consider it would be useful nor in accordance with company policy to use it for that purpose. The Company Handbook [RB page 119] states that a purpose of the tracker is to verify its movements, it does not provide that it will be used to record hours of work for

payment purposes and the Tribunal consider that to use it for that purpose therefore may well be unreasonable and a potential breach of data protection unless that it is made clear to employees that it will be used to help calculate their wages.

CCTV

269. The claimant in evidence during this hearing raised an issue about CCTV and that this could have been viewed to check the hours she worked. The undisputed evidence in cross examination of Mr Knight is that it is possible to download the CCTV but he believes it is deleted after 48 hours however he would have had to sit and look through a month's worth of CCTV to find out how long the claimant was in the office but in any event it would not show the work she was doing at her desk, thus it would not establish if she was doing university study or work for the respondent even if she was physically in the office. He would only cover the entrance to the office and show the times she came and left.

270. The Tribunal find that the claimant was trusted to claim for the work that she did. She worked from home and university and outside normal working hours however she clearly did not keep an accurate record of the time that she was working, she did not set aside specific times each day to dedicate to the respondent's work but worked around other commitments. The claimant does not allege that she raised with Mr Knight that she was struggling to record her time, although she alleges that she had planned to do so and ask for a fixed salary rather than an hourly rate of pay.

Comparator

Dale Hawkes

271. It was put to Mr Knight in cross examination that Mr Dale Hawkes (who it is accepted is White), [CB page 3] had on 18 December 2019 sent an email to the claimant stating:

"I've used the card to pay for personal things. Could you deduct it from my wage please."

272. Mr Knight gave undisputed evidence which the Tribunal accept, that Mr Hawkes was in a different position to the claimant, he was someone that worked 'on the tools' i.e. he was a labourer. He gave further unchallenged evidence that unlike the claimant, who could spend up to £5000 on the company account, Mr Hawkes had far less delegated financial autonomy. Mr Hawkes had a credit card which had a limited amount he was able to spend to be used for food or fuel. Mr Hawkes occasionally used it for other personal items such as underwear when he was working away from home and the arrangement was that he would let the respondent know if he had used the credit card to purchase any personal items he needed and ask for it to be deducted from his wages. The Tribunal accept the respondent's position that the circumstances involving Mr Hawkes are materially different. It is not alleged that Mr Hawkes was being dishonest or underhand, he was informing the respondent that he had spent some money on the company credit card which needed to be taken from his wages.

273. The Tribunal consider that Mr Hawkes is not a suitable comparator and further there is no value in Mr Hawkes as an evidential comparator given the differences in their roles and the circumstances surrounding the payments.

Gary Dawson

274. The Tribunal heard unchallenged evidence from Mr Knight in cross examination, which the Tribunal accept, that in terms of the example the claimant gave concerning Mr Dawson's misuse of the company credit card, that he was a trainee labourer who took his partner out for a meal and paid for it on the company credit card without authorisation and he was dismissed for that. That Mr Dawson was dismissed for using the company credit card without authorisation, was not challenged by the claimant.

James Knight

275. According to the unchallenged evidence in cross examination of Mr Knight, which the Tribunal accept, James Knight is his brother and held the position of Operations Director (albeit his title was not always Operations Director).
276. The claimant referred to an email James Knight sent to her on 23 April 2022 [CB page 14]:

"Don't forget to deduct £213 for personal purchase on the company card."

277. Mr Knight gave evidence that his brother would request prior approval to make certain payments on the company credit card and this would have been one of those occasions.
278. The Tribunal have regard to the fact that James Knight is reminding the claimant in this email to deduct from his wages the personal purchase. The claimant did not put it to Mr Knight in cross examination, that James Knight was asking for the deduction to be made because it had been discovered that he had made a purchase without prior authorisation.
279. Mr Knight gave evidence that the situation with regards to the claimant purchasing the office chair was very different, in that the claimant was refused permission but bought it anyway. The claimant does not identify any comparator who had similarly been expressly told not to incur expenses on the business account who regardless went ahead and did so anyway.
280. The claimant accepted, when cross-examining Mr Knight, that he had instructed her not to buy the chair but she had bought it anyway because she considered she needed one for work.

Over claim by labourers

281. The claimant put it to Mr Knight in cross examination that all the labourers would over claim the time that they had worked and she made specific reference to Nick Collier, Mr Hudson and Mr Bray, all of whom Mr Knight accepted are White.

Andy Bray

282. The claimant put it to Mr Knight that Mr Bray, who was salaried, overclaimed the hours that he worked.

283. Mr Knight gave unchallenged evidence under cross-examination, which the Tribunal accept, that when a number of the labourers moved from hourly paid to salaried, the claimant had informed Mr Knight that they were still claiming overtime and he had left it to the claimant to reconcile their timesheets. He accepted that there was a period of about three months where some operatives who were not sure what they could claim and during this transitional period the claimant was explaining to them how to complete their timesheets correctly [CB para 15/16].

284. This evidence was not disputed by the claimant and further it was not alleged by the claimant that these individuals were disguising the claim for overtime payments somehow. This is, the Tribunal find, very different from someone in a position of trust who did not have to complete timesheets but was trusted to accurately submit the hours she had worked and who is believed to have deliberately falsified the actual hours worked.

Christopher Hudson

285. The claimant relied on an email [CB page 15] Adrian Carr had sent an email to her on 26 April 2022 at 2:48 pm, authorising overtime of 3 hours for Mr Hudson and where an email was sent from Mr Knight in response, in which he stated that Mr Carr was not acting in the best interests of the company. However, on closer inspection during cross-examination, the claimant accepted that Mr Knight's email had been sent at 1:51 pm and therefore could not have been a response to Mr Carr approving the overtime. The claimant chose not to question Mr Knight further or pursue this line of questioning further.

286. The Tribunal do not find on the evidence that the claimant has established that Mr Hudson was not entitled to the 3 hours overtime which Mr Carr was authorising.

287. In cross examination the claimant confirmed that she did not know whether anyone else would have been investigated if they had been overpaid because normally the timesheets were checked and rectified by the claimant herself, before any payments were made.

Unpaid Holiday

288. The claimant put it to Mr Perry that paragraph 12.2 of the Service Agreement [RB page 64] does not state that holiday will be pro rata, it states that the claimant is entitled to 20 days plus bank holidays.

289. The Tribunal note paragraph 12. 1 does provides that if the appointment finishes part way through the holiday year (1 January to 31 December), holiday entitlement will be calculated on a pro rata basis however the claimant appeared to be asserting that what she should be paid should be based on 'full' time days.

290. The claimant argued that according to the government website [RB page 376] she was entitled to 20 days holiday calculated from 1 January 2022 to the termination date and that the respondent had calculated her entitlement at 80.4 hours based on 22 hours per week but that she believes that she was entitled to 20 days (i.e. not based on part-time hours) which would mean she was entitled to 16 days.

291. In cross examination the claimant however gave evidence that she was not claiming £798 for unpaid holiday anymore but had not worked out what she was owed but believed it was 17.6 days for the period 1 January to 17 August 2022.
292. The claimant explained that when obtaining a calculation from the government website, she had entered 20 days holiday entitlement and inputted that she did **not** work irregular hours and thus the advice from the website was that her entitlement should be based on days not hours per week.
293. The respondent had calculated her entitlement at 80.4 hours (based on the average they had taken from the Time Audit) and that she had been overpaid because she had been paid (which is not disputed) the equivalent in accrued annual leave of 98.76 hours.
294. The claimant accepted that she did not normally work 40 hours per week or had any 'normal' hours of work but indicated that 30 hours should have been used to calculate her accrued leave but without reference to any analysis or clear explanation of why.

Breach of contract

295. In terms of the claim for £10,000 for hours worked and not paid (i.e. the alleged banked hours), in cross examination the claimant gave evidence that she could not confirm what was owed because a reconciliation was needed; *"I did not keep track of the hours."*

Judge: *"How have you arrived at £10,000?"*

Claimant: *"I don't know."*

After employment

296. It was put to Mr Perry, but not Mr Knight, that she had applied for jobs but had been told that the respondent had refused to confirm the dates of employment. Mr Perry gave evidence which the Tribunal accept, that he had no knowledge of that. The claimant had made reference in her witness statement to applying for new jobs and although the word reference is missing, appears to complain [w/s para 41] that a reference had not been provided and refers to a company, but does not identify the company, but complaining that the respondent would not confirm her period of work. There is no reference to any evidence in the bundle and the claimant had not identified the company or companies who had requested a reference and never put the allegation to Mr Knight. The Tribunal find that the claimant has not established that no reference was provided or an incomplete reference.

Legal principles

Unfair Dismissal

297. The starting point is section 98 of the Employment Rights Act 1996 (ERA) which provides that:

(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—

.....

(b) relates to the conduct of the employee,

.....

(3) In subsection (2)(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) 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.

The reason for dismissal

298. A 'reason for dismissal' has been described as 'a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee': **Abernethy v Mott, Hay and Anderson 1974 ICR 323, CA.**
299. What a tribunal must not do is put itself in the position of the employer and consider how it would have responded to the established reason for dismissal: **Foley v Post Office; HSBC Bank plc (formerly Midland Bank plc) v Madden 2000 ICR 1283, CA.**
300. **CRO Ports London Ltd v Wiltshire EAT 0344/14:** what is relevant is the evidence available to the employer at the time of dismissal.
301. In **Gallacher v Abellio Scotrail Ltd EAT 0027/19** On appeal, the EAT held that this was a rare case where the tribunal was entitled to reach the conclusion that a dismissal procedure could be dispensed with because it was reasonably considered by the employer to be futile in the circumstances.

Reason for dismissal

302. In **Royal Mail Group Ltd v Jhuti 2020 ICR 731, SC**, the Court held that, when a tribunal is required to determine 'the reason (or, if more than one, the principal reason) for the dismissal', it is bound by the decision in **Orr v Milton Keynes Council 2011 ICR 704, CA**, to consider 'only the mental processes of the person or persons who was or were authorised to, and did, take the decision to dismiss'. The Supreme Court noted that, when an employment tribunal searches for the reason for a dismissal, it generally only needs to look at the reason given by the appointed decision-maker. However, where a manager has some responsibility for the conduct of the disciplinary inquiry, it might also be

necessary to attribute the manager's knowledge to the employer, even if this is not shared by the decision-maker. Furthermore, when a manager with no such responsibility (but who is nonetheless above the employee in the hierarchy) hides the real reason for dismissal from the decision-maker behind an invented reason it is a court's duty to penetrate through the invention rather than to allow it also to infect its own determination.

303. **Uddin v London Borough of Ealing EAT 0165/19** EAT was of the view that the Supreme Court in *Jhuti* established that the knowledge or conduct of a person other than the person who actually decides to dismiss could be relevant under both S.98(1) (reason for dismissal) and (4) reasonableness of dismissal.

Conduct

304. In relation to conduct dismissals the leading authority on fairness is the case of **BHS v Burchell [1978] IRLR 379**, which sets out a three-part test.
305. **Iceland Frozen Foods Ltd v Jones [1982] IRLR 439**: the test which the tribunal must apply is whether dismissal was within the band of reasonable responses that a reasonable employer in the circumstances might have adopted.

More than one reason

306. **Smith v Glasgow City District Council 1987 ICR 796, HL**. The House of Lords held that the tribunal had found that one serious charge against the employee was neither established in fact nor believed to be true on reasonable grounds. The Council had failed to show what the principal reason for dismissal was and, in any case, it was not shown that the charge which was not established was neither the principal reason for dismissal nor formed part of the principal reason. Since what was at least an important part of the reason for dismissal was not made out at all, the tribunal should have found that the Council had failed to show a reason and that the employee's dismissal was consequently unfair.
307. In **Robinson v Combat Stress EAT 0310/14** The tribunal should have considered not what it would have been reasonable and fair for an employer to have thought, but what the employer actually thought and whether, having regard to the totality of its reasons, dismissal was reasonable.
308. **Broecker v Metroline Travel Ltd EAT 0124/16 MT Ltd** : Held that the employee was dismissed for all the strands on which the employer relied, not for one or two. It was nothing to the point to consider what MT Ltd would have been entitled to do if it had not acted unreasonably in relying on two of the examples of 'misconduct' which it did in fact rely on.
309. If, however, the employer is alleging different grounds for dismissal and that each ground justified dismissal independently of the others, it will be sufficient if at least one of the grounds is established : **Carlin v St Cuthbert's Co-operative Association Ltd 1974 IRLR 188, NIRC**.
310. It is for the employer to show, on the balance of probabilities, that the principal reason was one of the potentially fair reasons, and it is then open to the employee to adduce some evidence that casts doubt on whether the reason put forward by the employer was indeed the real reason for dismissal. If this happens, the employer will have to satisfy the tribunal

that its proposed reason was in fact the genuine reason relied on at the time of dismissal.
London Borough of Brent v Finch EAT 0418/11

311. ***Kuzel v Roche Products Ltd 2008 ICR 799, CA***. The Court there held: ‘.... *As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side.*’

Disciplinary hearing

312. The range of reasonable responses’ test applies both to the decision to dismiss and to the procedure by which that decision is reached: ***Sainsbury’s Supermarkets Ltd –v- Hitt [2003] IRLR 23.***
313. The House of Lords’ decision in ***Polkey v AE Dayton Services Ltd 1988 ICR 142, HL*** establishes procedural fairness as an integral part of the reasonableness test under S.98(4).
314. When determining the question of reasonableness, the tribunal should have regard to the procedures set out in the ACAS Code.
315. ***Taylor v OCS Group Ltd 2006 ICR 1602, CA*** and ***D’Silva v Manchester Metropolitan University and ors EAT 0328/16***: the EAT upheld an employment tribunal’s conclusion that a flaw in the disciplinary process that rendered it ‘not ideal’ did not render the dismissal unfair.

Appeal

316. ***West Midlands Co-operative Society Ltd v Tipton 1986 ICR 192, HL*** :the employer’s actions at the appeal stage are relevant to the reasonableness of the whole dismissal process.

Contributory fault

317. Section 123(6) of the Employment Rights Act 1996 (ERA) states 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.*’
318. There is an equivalent provision for reduction of the basic award contained in S.122(2) ERA which provides merely that; “*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*”
319. ***Nelson v BBC (No.2) 1980 ICR 110, CA***: provided guidance on the three factors to be satisfied if the tribunal is to find contributory conduct.

Race Discrimination claim

320. Section 136 Equality Act 2010 sets out the burden of proof which applies in case of discrimination:

“(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.”

321. The burden is on the claimant at the first stage to establish evidence that could realistically suggest that there could suggest that discrimination has occurred. The claimant must prove facts from which a reasonable tribunal could conclude unlawful discrimination in the absence of an adequate explanation, whether the claimant was treated less favourably than an actual comparator Ms Makuch or hypothetical younger comparator. As set out in **Madarassy v Nomura International plc** the burden of proof does not shift to the respondent simply upon proof of difference in status and treatment, that is insufficient without more to establish a prima facie case. All evidence, including that from the respondent, may be considered at the first stage except the absence of an adequate explanation.

322. Lord Justice Mummery in **Madarassy v Nomura International plc 2007 ICR 867, CA**, where he stated: *‘The bare facts of a difference in status and a difference in treatment 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.’*

323. Less favourable treatment has to be proven on the balance of probabilities.

324. In **Denman v Commission for Equality and Human Rights and ors 2010 EWCA Civ 1279, CA**, Lord Justice Sedley accepted the approach in **Madarassy v Nomura International plc** (above) that something more than a mere finding of less favourable treatment is required before the burden of proof shifts onto the employer. Nevertheless, his Lordship made the important point that ‘the “more” which is needed to create a claim requiring an answer need not be a great deal. In some instances, it will be furnished by non-response, or an evasive or untruthful answer, to a statutory questionnaire. In other instances, it may be furnished by the context in which the act has allegedly occurred.’

325. The fact that the claimant has been subjected to unreasonable treatment is not, of itself, sufficient as a basis for an inference of discrimination so as to cause the burden of proof to shift: **Glasgow City Council v Zafar 1998 ICR 120, HL**, their Lordships held that an employment tribunal had not been entitled to draw an inference of less favourable treatment on the ground of race from the fact that the employer had acted unreasonably in dismissing the employee.

326. In **Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong 2005 ICR 931, CA**, Lord Justice Peter Gibson accepted that it was open to the employment tribunal on the facts of that case to draw an inference of discrimination from unexplained unreasonable conduct on the part of the employer, but he cautioned

tribunals 'against too readily inferring unlawful discrimination on a prohibited ground merely from unreasonable conduct where there is no evidence of other discriminatory behaviour on such ground'.

327. In ***Efobi v Royal Mail Group Ltd 2021 ICR 1263, SC***: It had been established in Zafar that it did not matter if the employer had acted for an unfair or discreditable reason, provided the reason had nothing to do with the protected characteristic, and the Supreme Court in *Efobi* considered that the change of wording in S.136(2) to refer to 'any other explanation' was intended to make this clearer.

328. This does not mean, however, that the finding of unreasonable treatment is entirely irrelevant to the question whether an inference of discrimination should be drawn. In ***Bahl v Law Society 2003 IRLR 640, EAT***, Mr Justice Elias stated: 'The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given than it would if the treatment were reasonable. In short, it goes to credibility. If the tribunal does not accept the reason given by the alleged discriminator, it may be open to it to infer discrimination. But it will depend upon why it has *rejected* the reason that he has given, and whether the primary facts it finds provide another and cogent explanation for the conduct.'

329. Elias P in *Laing v Manchester City Council and anor 2006 ICR 1519, EAT*, emphasised that 'the process of drawing an inference of discrimination... is a matter for factual assessment and... [is] situation-specific'.

Direct discrimination

330. Section 13 EqA sets out the definition of 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.

331. Section 23 EQA provides that on a comparison of cases there must be no material difference between the circumstances relating to each case.

332. Detriment is established if treatment is of a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment: ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL***, and particularly in the judgment of Lord Hope at paras 33-35.

333. The Tribunal have reminded itself of the guidance in ***Field v Steve Pye and Co. (KL) Limited and Others [2022] EAT 68***. In ***Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases 2005 ICR 931, CA, the Court of Appeal*** the court set out guidance the approach to be taken to the burden of proof.

Unlawful deduction of wages

334. The applicable statutory provision is section 13 ERA:

13 Right not to suffer unauthorised deductions.

- (1) An employer shall not make a deduction from wages of a worker employed by him unless—
- (a) the deduction is required or authorised to be made by virtue of a statutory provision **or a relevant provision of the worker's contract**, or
 - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
- (2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—
- (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
 - (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.
- (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages **properly payable** by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.
- (4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion...

23 Complaints to employment tribunals.

- (1) A worker may present a complaint to an employment tribunal—
- (2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—
- (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or
 - (b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.
- (3) Where a complaint is brought under this section in respect of—
- (a) a series of deductions or payments, or
 - (b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates, the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.
- (4) where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

335. The core dispute in this case is whether the wages were 'properly payable.'

336. In **Bear Scotland Ltd v Fulton and anor; Hertel (UK) Ltd and anor v Woods and ors (Secretary of State for Business, Innovation and Skills intervening) 2015 ICR 221, EAT**, Mr Justice Langstaff, then President of the EAT, held that whether there is a 'series' of deductions is a question of fact, requiring a sufficient factual and temporal link between the underpayments. This, he said, meant that there must be a sufficient similarity

of subject matter, so that each event is factually linked, and a sufficient frequency of repetition.

337. Section 23(4A), which was inserted into the ERA by the Deduction from Wages (Limitation) Regulations 2014 SI 2014/3322 (DWLR), imposes a two-year limit on the backdating of unlawful deduction from wages claims presented on or after 1 July 2015. This means that a claimant can now only claim in respect of a series of deductions going back two years.

Breach of contract claim

338. The contractual jurisdiction of employment tribunals is governed by S.3 of the Employment Tribunals Act 1996 (ETA), together with the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623 ('the Order') or, in Scotland, the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 SI 1994/1624. A contractual claim can only be heard by a tribunal under these provisions where the claim arises or is outstanding on the termination of the employee's employment and relates to any of the following: (i) a claim for damages for breach of the contract of employment or other contract connected with employment; (ii) a claim for a sum due under such a contract; or (iii) a claim for the recovery of a sum in pursuance of any enactment relating to the terms or performance of such a contract : Article 3 of the Order and S.3(2) ETA.

Wrongful dismissal

339. Dismissal without notice (or with inadequate notice) is wrongful i.e. is a breach by the employer, unless the employer can show that summary dismissal was justified because of the employee's repudiatory breach of contract. A court or tribunal must be satisfied, on the balance of probabilities, that there was an actual repudiation of the contract by the employee. It is not enough for an employer to prove that it had a reasonable belief that the employee was guilty of gross misconduct. This is a different standard from that required of employers resisting a claim of unfair dismissal, where reasonable belief may suffice.
340. The question of whether an employee is in repudiatory breach is a matter of fact, the employer's motivation for wanting to summarily dismiss is effectively irrelevant: **Williams v Leeds United Football Club 2015 IRLR 383, QBD, LUFC**: The Court stated that where there has been a repudiatory breach by the employee that has not been waived or affirmed by the employer, 'the employer is not prevented from relying on that breach as justifying summary dismissal because it had itself decided to breach its contractual obligations or was looking for a reason to justify dismissal or was motivated by its own financial interests'.
341. The Supreme Court reviewed the law on dishonesty in **Ivey v Genting Casinos (UK) Ltd (t/a Crockfords Club) 2018 AC 391, SC**, a non-employment case involving a contract between a gambler and a casino. The Court noted that, in the field of criminal law, a two-stage test had emerged from the case of *R v Ghosh 1982 QB 1053, CA*. According to that test, there are two aspects to dishonesty: one objective, one subjective. First, one must decide whether according to the ordinary standards of reasonable and honest people what was done was dishonest. Secondly, one must consider whether the person concerned must have realised that what he or she was doing was by those standards dishonest. In civil matters, however, the courts had applied a purely objective test; if conduct is dishonest

by ordinary standards, it is irrelevant that the person accused of dishonesty does not view it as such.

342. If the employer finds out after the employee has been dismissed that the employee was guilty of a fundamental breach of contract which would have justified summary dismissal, the employer can rely on this to rebut a claim of wrongful dismissal: ***Boston Deep Sea Fishing and Ice Co v Ansell 1888 39 ChD 339, CA.***

343. An employer faced with a repudiatory breach of contract by an employee can choose to waive that breach and affirm the contract. This does not necessarily require any positive action on the employer's part, as it may be taken to have acquiesced and affirmed the contract if it fails to respond to the breach: ***Bartholomew v LK Group Ltd 2003 2 WLUK 835, QBD,***

Submissions

344. The parties filed submissions on 3 and 4 April 2026 and further comments filed by 10 April 2026. Those have been fully considered and are not repeated here but addressed throughout the judgment.

Conclusions

Unfair dismissal

Was the claimant dismissed?

345. The claim was issued on 20 January 2023 following ACAS early conciliation from 9 November 2022 to 21 December 2022.

346. It is not in dispute between the parties that the claimant was dismissed on 17 August 2022 [RB Page 245].

347. The primary 3-month time limit would have expired on 19 November 2023. The ACAS conciliation period extended the time limit pursuant to section 207B ERA to 21 January 2023. The claim was issued in time.

348. The respondent's case is that the claimant was dismissed for falsifying timesheets and claiming hours that she did not work and this was the reason given in the letter of dismissal. That this is the sole reason relied upon is also confirmed in the respondent's written submissions (paragraph 8).

349. Conduct is a potentially fair reason for dismissal pursuant to section 98 (2)(b) ERA 1996.

350. The Tribunal conclude that for the reasons set out in the findings of fact, falsifying the time sheets was considered by the respondent, to amount to gross misconduct and this

was a reason for the dismissal of the claimant. However, the Tribunal do not conclude that falsifying the time sheets for June 2022, was genuinely the sole or principal reason.

351. The claimant herself expressed the belief in the disciplinary meeting with Ms Hegan, (as set out above in the findings of fact), that the real reason for the disciplinary was because Mr Knight wanted her to come into the office more [RB Page 219]. Mr Knight in his evidence, referred to it being a combination of not coming not the office and falsifying the timesheet.
352. The Tribunal conclude that a reason for dismissal was Mr Knight's growing frustration that the claimant was resistant to coming into the office and he saw that as increasingly problematic and impacting on the business, not least because of the difficulties caused by delays in timely reconciliation of the accounts. The claimant's own evidence is that she had made it clear to him that she would come into the office more but not until she had completed her university studies.
353. The Tribunal take note of the answers Mr Knight gave to the Tribunal's questions around whether he would have taken the same action had the claimant responded more positively to his instruction to come into the office when asked on 20 July 2022 but also the fact that while he was aware of the June claim for wages, he was still on 18 and 19 July wanting the claimant to help with the financial year end and he had on a previous occasion, in February 2022, turned a blind eye to what he suspected was an overstatement of her hours because he needed her in the business.
354. The Tribunal consider that the belief that the claimant had overstated her hours for June 2022, was a genuine reason but it was not the only reason, contrary to what the respondent had claimed at the time and still maintains. What is relevant is not what Peninsula recommended the respondent do but what was operating on the decision maker's mind at the time the decision to dismiss was taken and the decision maker was Mr Knight.
355. The Tribunal conclude that Mr Knight wanted to terminate the claimant's employment because of a combination of factors and that the resistance to coming into the office was more likely than not the main reason for the decision to dismiss or if it was a combination of that and the belief that she was also now exaggerating the hours that she was working for the business, it was the cumulative effect of those two issues that lead Mr Knight to form the belief that the position had become untenable.
356. The respondent does not allege that not coming into the office was the reason or even a reason for dismissal and it is not their case that her refusal to come into the office justified dismissal independently of any other ground or as a combination of that and the belief in the overclaimed hours and it is nothing to the point to consider what the respondent would have been entitled to do if it had not acted because of a combination of those two factors: ***Carlin v St Cuthbert's Co-operative Association Ltd 1974 IRLR 188, NIRC and Broecker v Metroline Travel Ltd EAT 0124/16 MT Ltd***

Did the respondent have a reasonable belief that the claimant committed the misconduct.

357. In terms of the claim for 150 hours pay in June 2022, the Tribunal has no hesitation in concluding that the respondent had formed a genuine belief on reasonable grounds that the claimant had put in a claim for hours which exceeded those which she had actually worked: applying **BHS v Burchell**.
358. The claimant herself admitted that she could not keep an accurate record of her time and accepted at the appeal that she understood why the respondent would think that the hours that she had claimed looked excessive. The claimant's view however appeared to be then, and in the prosecution of her claim, that unless the respondent can prove that she did not work the hours claimed, they cannot dismiss for that reason. However, that is not the case. What the respondent must show is only that their investigation and belief was within the band of reasonable responses.
359. The claimant gave multiple reasons as set out in the findings of fact for why she claimed so many hours; that she worked them and it was a long month, that she was owed banked hours and/or that it was an advance of wages. The inconsistency in her explanations, gave weight to their belief that the claimant had not worked the hours she claimed.
360. The claimant's evidence that she was struggling financially (which is why she alleges she asked for an advance on her wages), would explain the motive for what she did but however the Tribunal do not accept as credible her evidence that there had been any agreement on this occasion to pay her an advance.

Decision Maker

361. In terms of the investigation carried out, the claimant was required to complete her own Time Audit and the Tribunal consider that this provided a more reliable indication of the time she was spending on work for the respondent. It broke down the time she spent in some detail unlike the timesheets she kept, which simply attributed a number of hours.
362. The claimant did not in evidence during the investigation, give any reason why the time she claimed to have worked in June 2022 was so much greater than the time she had claimed in the previous months (80 hours in March, 87.25 hours in April and 87.50 hours in May 2022).
363. The respondent's accountant carried out a simple analysis of the likely average hours actually worked and estimated that a legitimate claim would be 96 hours for a 21 day working month. That figure is fairly consistent with her claims for March, April and May 2022.
364. The Tribunal do not consider that it was outside the band of reasonable responses not to attempt to locate and watch hours of CCTV footage. The claimant carried out work away from the office and the CCTV would not show whether she was actually working for the respondent or doing university work when she was in the office (sometimes while waiting to collect her daughter). Likewise, the times shown on her vehicle tracker for when she parked the car at the respondent's office would not confirm that she was working. The Tribunal do not consider that it was outside the band of reasonable responses to not take that evidence into account.

365. The most reliable data the respondent had, was the claimant's own detailed record of the hours she spent working over a 2-week period in June 2022 (the Time Audit).
366. It was a flaw not to provide the claimant with access to all the timesheets she requested and the email log reviewed at the appeal, before concluding the disciplinary process and appeal. While not ideal the Tribunal are not persuaded however that this alone would have rendered the dismissal unfair because this information, based on her own evidence during the investigation and disciplinary process, was unlikely to be of any assistance.
367. The claimant was not regularly coming into work, she explained the sudden increase in hours as compared to the previous months on its being a longer month, but as established in the investigation this was not a plausible explanation.
368. It was within the band of reasonable responses to rely upon the Time Audit and the claimant was given the chance to explain why this was unreliable however; her explanations were not convincing. Had she not been able to enter all the time she spent working for the respondent onto the Time Audit spreadsheet, she did not raise this at the time she filled it in and nor had she completed her own Excel timesheet for that month.
369. While there were some flaws in the process, overall the investigation the Tribunal conclude that it was within the band of reasonable responses: ***Taylor v OCS Group Ltd 2006 ICR 1602, CA*** and ***D'Silva v Manchester Metropolitan University and ors EAT 0328/16***

Disciplinary hearing

370. In her submissions the claimant complains that she was not given the right to be accompanied to the disciplinary hearing. The right to be accompanied applies to the disciplinary hearing however the claimant did not raise this with the witnesses during cross examination (and does not appear to assert in submissions that she made a request which was denied).
371. The notes of the meeting with Peninsula on 3 August 2022 [RB page 214], (and the claimant did not at the hearing take issue with this entry) records that :
- " KH confirmed that RB had received a formal invitation to the hearing within the necessary time frames . It was observed that they attended in the absence of a companion and wished to check that they were happy to continue without one, it was confirmed that they were and the meeting continued as schedule"*
372. The Tribunal conclude that the claimant has not established that a request to be accompanied was refused.
373. The claimant had completed the Time Audit and when interviewed at the disciplinary hearing gave a varying account of why she had claimed 150 hours and her varying and inconsistent explanations and her own statement in this meeting that she did not keep track of her all the hours she worked, gave reasonable grounds for forming a belief that the claimant had overstated her hours.

374. The disciplinary process was however flawed in that Mr Perry provided in effect witness evidence by way of additional evidence in his 11 August email [RB page 243] which was never shared with the claimant, she was not given the chance to comment and Mr Perry was in truth giving evidence on behalf of Mr Knight about matters of which he had no personal knowledge. As he admitted before this hearing, he had no knowledge about the hours she worked and he could not say her evidence about a verbal agreement was false because he was not even employed at the time. He also introduced wholly new allegations about falsification of expenses and her hours worked in February, which as Ms Hegan did not give evidence, the Tribunal do not know to what extent this may have influenced her when making her recommendations, she does not respond stating that she is discounting those allegations albeit they are not referenced in her report. However ultimately, Ms Hegan was not the decision maker. Ms Hegan also appears not to have taken into account, the evidence the claimant sent to her after the hearing or give her the chance to put forward further evidence.
375. What then happens is that Mr Perry, (without conducting a further hearing to consider any mitigation or the matters he set out in his email to Ms Hegan), dismissed the claimant. However, while Mr Perry fronts the disciplinary, Mr Knight is the real decision maker hiding behind the façade that Mr Perry is responsible for making the decision.
376. Mr Knight had the Tribunal conclude, made up his mind that he wanted the claimant's employment to end before the disciplinary hearing, that was clear from the discussion with Mr Perry after the 28 July 2022 meeting and the comments he made and the fact that he instructed the accountant to make a deduction from her wages to reflect the alleged overclaimed hours, before the disciplinary hearing.
377. The appeal itself did not remedy the procedural failings. Mr Knight had made the decision to dismiss and there was no prospect the Tribunal find of the decision being overturned, and indeed Mr Perry warned the claimant that because she had taken it that far to appeal, Mr Knight was coming 'after her'.
378. The respondent failed to engage with the core issues of fairness in its submissions, focusing on the procedure which was followed and the facts there had been various meetings.

ACAS Code

379. In terms of the ACAS Code on disciplinary and grievance procedures, it provides that in misconduct cases, where practicable, different people should carry out the investigation and disciplinary procedures (para 6) and the appeal should be dealt with impartially and wherever possible by a manager who has not been previously involved (para 27). That guidance was not complied with.

Was dismissal within the range of reasonable responses.

380. While dismissal for inflating her timesheets may have justified dismissal of itself (within the band of reasonable responses), the Tribunal conclude that in truth this was not the sole or alone the principal reason for her dismissal.
381. The Tribunal conclude that the genuine reason was a combination of the claimant not coming into the office as regularly as Mr Knight felt she needed to along with overstating

her hours 150 hours of work, while at the same time important matters were not being taken care of (i.e. timely and thorough reconciliations leading to duplicate payments). However, Mr Knight had previously overlooked what he believed may have been a similar overstatement of her hours in February 2022 but by June/July he saw her lack of presence in the office and resistance to changing that situation, as creating significant risk for the business.

382. The Tribunal consider that the flexibility the claimant had been allowed, in terms of working from home, had created expectations which Mr Knight was struggling to manage and dismissal presented a more straight forward and more immediate solution than the one recommended by Peninsula.

Polkey

383. The Tribunal have considered the submissions of the parties on Polkey.
384. The Tribunal consider that it is far too speculative to apply a percentage chance of the claimant being dismissed for the sole or principal reason of inflating her timesheet, not least given the fact that she had done so on a previous occasion and no action had been taken. The unfairness was not simply procedural. Mr Knight controlled the investigation; he made the decision to dismiss and the decision to refuse the appeal and his mind was closed at the appeal stage to overturing the decision (and in fact he was aggravated by the claimant pursuing an appeal). The claimant was not told the genuine reason for dismissal. The dismissal was substantively and procedurally unfair
385. The Tribunal do not consider therefore that this is a case where it is appropriate to apply a Polkey deduction.

Contributory Fault

386. This is a case however where the Tribunal consider that contributory fault plays a significant part.
387. One of the reasons for dismissal was the Tribunal accept the alleged inflating of hours and the Tribunal accept that there were reasonable grounds for that belief.
388. The Tribunal accept that putting in a false claim for hours worked would ordinarily justify summary dismissal. That this is a serious offence is supported by the Company Handbook. Further, the claimant accepted herself in cross examination, that if she had done this, it would warrant summary dismissal. Not only do the Tribunal conclude that the respondent at the time of dismissal had a reasonable belief that this is what the claimant had done but the Tribunal conclude (see wrongful dismissal section below) that on a balance of probabilities, based on the evidence it has heard, that this is what she had done. More likely than not because she had financial pressures at the time and she had done this before in February 2022 and Mr Knight had approved the payment with no consequences.
389. Applying ordinary standards, the Tribunal consider that such conduct was dishonest.
390. The claimant did not present as a credible witness during the hearing with respect to the alleged overclaim and the Tribunal conclude that she did not work the 150 hours and

it is more likely than not that she worked closer to the hours estimated by the accountant based on her own Time Audit.

391. The disciplinary and appeal process were fundamentally flawed and the dismissal was both procedurally and substantively unfair however the claimant's own conduct in inflating her time sheet, significantly contributed to her dismissal.
392. The conduct is for the Tribunal to establish and subsequently evaluate. The Tribunal is not constrained when evaluating culpability by the employer's view of the wrongfulness of the conduct. As the EAT noted in **Steen, Steen v ASP Packaging Ltd 2014 ICR 56, EAT**; *'it is the tribunal's view alone which matters'*.
393. The Tribunal conclude that the claimant's conduct in claiming more hours than she worked was both culpable and blameworthy conduct and contributed to the dismissal.
394. The Tribunal conclude that the claimant had on the evidence inflated her hours, that there was no verbal agreement to allow her to bank hours, that there had been no agreement to pay her 150 hours (or any additional payment for June) as some sort of advance payment but that because she had some financial concerns she claimed significantly more hours than she had worked. This was blameworthy and culpable behaviour, it contributed to her dismissal and it is just and equitable to reduce the compensatory and basic award to reflect how significant this was to the decision to dismiss.
395. Further, the claimant's conduct during the internal investigation and disciplinary process was also blameworthy. Rather than explain that she had financial worries and apologise, she came up with various explanations which the Tribunal consider were not true and which contributed to the respondent's view that the working relationship was untenable, including the allegation that Mr Knight had been complicit in some sort of fraudulent arrangement.
396. The Tribunal however invite further submissions from the parties on the appropriate reduction to the compensation and will consider those at the remedy hearing to be listed.

Wrongful dismissal / Notice Pay

397. It is not in dispute between the parties that the claimant's contractual notice period was six months and that she was summarily dismissed.
398. An action for wrongful dismissal is based on a common law action based on breach of contract, the reasonableness of an employer's actions is irrelevant, the consideration is whether the employment contract has been breached which is a factual question. It is for the Tribunal to determine on the evidence presented to it whether the claimant is guilty of conduct so serious as to amount to a repudiatory breach of the contract of employment entitling the employer to summarily terminate the contract.

399. The claimant's written submissions are brief on this point [page 7]. She submits that the respondent has not produced evidence that the inaccuracy was deliberate.
400. The Tribunal have little difficulty in finding that the claimant's inflation of her timesheet was an attempt to obtain monies from the respondent that she knew she was not entitled to and that this was deliberate.
401. At no point during this hearing or during the internal proceedings, did the claimant allege that the time she had inputted was a mistake or an error. The claimant gave various explanations none of which the Tribunal conclude were credible.
402. The claimant's conduct was so serious that it gave rise to a repudiatory breach of the contract of employment, the implied term of mutual trust and confidence.
403. The claimant alleges in respect of the discrimination claim, that other employees did it but were not dismissed. The issue of comparators is set out in the findings of fact but in any event, the claimant's culpability is not excused by the culpability of others and further, she was the Company Secretary, she was in a position of trust, responsible for ensuring other staff did not submit inaccurate or false claims for payment of wages.
404. The claimant asserts in her submissions that the Student Finance England Guidance (section 5.3) states that employment income earned while studying does not need to be declared and on that basis the claimant reasonably believed that banking hours for later payment was entirely permissible. This guidance and her belief based on it, was only raised in her submissions. This was never part of her evidence during the internal proceedings or during the tribunal hearing, it is new evidence for which no application has been made to admit it. It was not the claimant's evidence that she understood that she did not need to declare her income but even if it had been, that does not explain why she therefore felt she needed to 'bank' hours. The claimant states in her witness statement [paragraph 12] that she had been advised that to not lose student finance, she could only claim up to 16 hours per week. This attempt to introduce new evidence in submissions is disregarded but in any event, would not assist the claimant.
405. The claimant's claim for wrongful dismissal is therefore not well founded and is dismissed.
406. The claimant committed a serious offence by putting in a false claim for payment. This was not as she claims in submissions, some sort of mistake, it was deliberate and not least given her position of trust, it amounted to a repudiatory breach.

Direct race discrimination (Equality Act 2010 section 13)

Did the respondent do the following things:

During the investigation meeting on 20 July 2022 put to the claimant allegations of:

4.2.1. Spending money on a chair without permission

Conduct

407. The Tribunal find that spending money on a chair without permission was mentioned during the investigation on 20 July 2022 [page 279].

Less Favourable Treatment

Comparators

408. For the reasons set out in the findings of fact, the Tribunal do not find that the claimant has identified any suitable or evidential comparators.

On the grounds of race

409. Less favourable treatment has to be proved on the balance of probabilities. The Tribunal must consider however the conscious or unconscious motivation of the putative discriminator and the Tribunal has considered the conduct of the respondent during the investigation, disciplinary and appeal process and considered with respect generally to the claims of direct discrimination, whether because of that conduct (which it has found to be unreasonable), it is appropriate to infer that discrimination has taken place (see below).
410. The Tribunal conclude that the claimant did, as she accepts, purchase the chair without authorisation and while she may have considered she needed a chair, she did not seek to address that further with Mr Knight but took it upon herself to purchase it in direct opposition to his instruction.
411. The Tribunal do not consider that to raise this with her during the initial investigation meeting was unreasonable and nor has it been established by the claimant that an actual comparator, in not materially different circumstances, (namely someone in her position and who was at that time being investigated for other and more serious offences) has been (or would be) treated differently.

On the prohibited ground

412. It is for the claimant to prove, on the balance of probabilities, facts from which the Tribunal could conclude, (in the absence of an adequate explanation), that the respondent has committed an act of discrimination. If the claimant does not prove such facts, the claim will fail.
413. The Tribunal have considered the respondent's conduct more broadly and whether given the unreasonableness of as set out in the findings of facts around the dismissal process, it would be appropriate to draw an adverse inference. The Tribunal is mindful that in deciding whether there are such facts, it is important to bear in mind that it is unusual to find direct evidence of discrimination and in many cases the discrimination will not be intentional and the outcome will usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.
414. While the respondent's conduct was unreasonable in terms of the dismissal as set out above, such that it rendered the dismissal unfair and breached the ACAS Code, the Tribunal have to consider whether the unreasonableness of the respondent's conduct means that the claimant has established a prima facie case of discrimination which

reverses the burden of proof. This is dealt with below when considering the claims in their entirety in the absence of actual comparators or direct evidence of discrimination.

415. Of itself and without such inference, there is no evidence to support a finding that the claimant was treated less favourably and further, less favourably because she is Black.

4.2.2. Falsifying timesheets

Conduct

416. The Tribunal find that falsifying timesheets was **not** mentioned on 20 July. It was not in fact mentioned until later on 28 July.
417. The conduct therefore has not been proven and the claim is dismissed.

4.2.3 Sending hostile emails

Conduct

418. The Tribunal find that sending hostile emails was mentioned in the 20 July 2022 meeting as set out in the findings of fact.

Less Favourable Treatment

Comparators

419. The claimant did not put forward any evidence or cross examine the respondent witnesses about any potential comparable conduct by Mr Carr. In terms of Ms Moon, the claimant chose not to pursue the allegation around the comparable conduct of Ms Moon in her cross examination of Mr Knight but she was asked about it in cross examination and this was the only evidence presented to the Tribunal. As set out in the findings of fact, it is not alleged by the claimant that Ms Moon held the same or similar senior position as the claimant or that she or Mr Carr, had any HR responsibility.
420. The Tribunal do not find on the evidence, (for reasons set out the findings of fact), that it has been established that either of these individuals are suitable comparators on the limited evidence presented but further what has been established is a difference in their roles which is material in that the claimant's HR role was central to the concern which was mentioned about the potential risk to the business, and she does not dispute that she had HR responsibilities or that this was a relevant consideration.
421. The claimant in her response to the respondent's submissions [para 110] submits that Ms Moon and Mr Carr displayed similar or greater levels of assertiveness in the workplace but fails to address her failure to provide evidence about Mr Carr's alleged hostility or her decision not to pursue these allegations in her cross examination of Mr Knight.
422. The Tribunal also take note of the terse messages the claimant sent to Mr Knight and consider it reasonable to draw an inference from that style of communication that it is more

likely than not that she may have been equally terse with staff more junior to her at times. In any event the claimant did not assert or put to the witnesses that such negative feedback had in fact not been received.

The reason for the treatment

423. The complaints by staff were raised but not pursued beyond the suspension meeting and it is clear that this was not the respondent's primary concern
424. The Tribunal consider that this issue was raised as part of a package of concerns about the claimant's conduct which were being addressed at the same time but do not find that there is evidence from which to infer that this had anything to do with the fact that the claimant is Black, based on the primary findings of fact.
425. While the claimant did not know which email was being referred to she did not actually explicitly deny that she may have sent emails which may have been perceived as 'hostile' but refers in submissions to others having done so and no action having been taken.
426. There is no evidence from which to draw an inference to support a finding that raising this issue had anything to do with the claimant's race (other than potentially an inference because of the respondent's conduct during the disciplinary and appeal process generally which is addressed below).

4.2.4. Duplication of payment to a supplier

Conduct

427. The Tribunal, as set out in the findings of fact, find that the duplication of payments was mentioned at the meeting on 20 July .

Less Favourable Treatment

Comparator

428. The claimant identified Mr Knight himself as a comparator. However, as set out in the findings of fact the alleged error was not made by Mr Knight but a junior Quantity Surveyor who was not retained by the business.
429. The claimant has not identified a suitable or helpful evidential comparator.
430. The claimant was responsible for reconciling payments and invoices, and the duplicate payment in question was a significant sum of money. While as set out in the findings of fact, the Sage system was not foolproof, the claimant had not taken appropriate steps to check whether the payment had been made and raising this mistake with her has to be seen in the context of other concerns about her conduct and performance at this time.

The reason for the treatment

431. There is no evidence from which to draw an inference to support a finding that raising this issue had anything to do with the claimant's race. The claimant admits she paid a significant invoice twice and this was raised with her in the context of other concerns about her conduct and performance at a time when Mr Knight (the claimant herself accepts this in the meeting with Ms Hegan) was unhappy that she was not coming into the office and the duplicated payments were connected to the concerns about a failure to carry out a regular reconciliation of the accounts. It was the Tribunal consider, understandable and reasonable to raise this concern with her .

4.2.2 The act of suspension

Less Favourable Treatment

Comparator

432. The claimant does not identify an actual or evidential comparator.
433. The Tribunal consider that the respondent did not consider in any meaningful way whether it was necessary to suspend the claimant however, the Tribunal accept that the respondent was investigating at the claim whether she had falsified a claim for 150 hours which if established, would amount to a serious act of misconduct.

The reason for the treatment

434. The claimant had however given Mr Knight previous cause for concern with a claim for hours worked in February 2022 but because he needed her in the business, he took no action at that time.
435. The Tribunal accept that given the absence of any real consideration of whether it was necessary to suspend rather than prevent her access to the company's finances, the decision was unreasonable but there is no evidence that in not materially different circumstances, the same decision would not have been taken with a White employee in the same or similar position of trust as the claimant.

4.2.3 The act of dismissal

Less Favourable Treatment

Comparator

436. The claimant identifies a number of comparators who she submits provided inaccurate time sheets, as set out in the findings of fact.
437. None of those individuals were in a comparable position to the claimant in that the claimant was in a more senior role and a position of trust, with duties which included ensuring financial reconciliation.
438. The undisputed evidence of Mr Knight was that the operatives were moved from hourly paid to salaried workers and that this caused a degree of confusion over a period of

transition and it was the claimant's job to check their claims and explain when overtime could not be claimed. The finding of fact set out why these comparators are not suitable or helpful evidentially.

The reason for the treatment

439. In ***Martin v Devonshires Solicitors 2011 ICR 352, EAT*** Underhill P had stressed that while *'the burden of proof provisions in discrimination cases... are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination — generally, that is, facts about the respondent's motivation... they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law'*.
440. In ***Hewage v Grampian Health Board 2012 ICR 1054, SC***, Lord Hope similarly made it clear that the statutory burden of proof provisions only have a role to play where there is room for doubt as to the facts necessary to establish discrimination, but that, in a case where the tribunal is in a position to make positive findings on the evidence one way or another as to whether the claimant was discriminated against on the alleged protected ground, they have no relevance.
441. The Tribunal when determining not only this allegation, but all the allegations of direct discrimination, have considered the extent to which it may be appropriate to draw an inference adverse to the respondent from the way in which the suspension, disciplinary and appeal process was conducted, (which was unreasonable and a breach of the ACAS Code). The respondent does not engage with this in submissions, maintaining that the process was procedurally correct and in line with the ACAS Code (but that even if it was not, it would have made no difference to the outcome, which is not on point but relevant to the Polkey argument).
442. The Tribunal take into account the conduct of Mr Knight generally towards the claimant. Mr Knight had recruited the claimant and he encouraged her to progress and promoted her to Company Secretary. He supported the claimant, allowing her to work flexibly, he wanted to support her as a single parent and gave her advances of wages when she asked for them. He also arranged for her to have a company car and provided a laptop so that she could work from home and work around her studies. It was clear to the Tribunal that he had trusted her and was keen to support her career development.
443. The Tribunal conclude that while Mr Knight even turned a blind eye to what he suspected to be an inflated claim for wages in February 2022, there was a growing frustration that the flexibility he had given the claimant was now impacting the business to an unreasonable level, mistakes were being made, reconciliations were not being done in a timely fashion and this came to a head in July 2022 when Mr Knight began to form the view that the working relationship was no longer workable.
444. The Tribunal have considered in relation to each act of direct discrimination, whether it is appropriate to draw an adverse inference from the unfair way in which the disciplinary process was conducted, including the failure to be transparent to the claimant about the reasons why Mr Knight wanted to end her employment. However, no matter how unfair it was, the Tribunal accept that Mr Knight was motivated to dismiss her because she was

not willing to work more regularly from the office while trying to claim more wages than she was entitled to.

445. The claimant did not come to that first meeting on 20 July 2022 expressing any appreciation of the impact her absence was having on the business and showing any willingness to commit to more time in the office, if she had, the Tribunal consider that Mr Knight may well have not proceeded further with the process. On 28 July the claimant sought to justify a claim for 150 hours in the context of serious concerns about the amount of time and attention she was actually giving to the business.
446. The claimant herself mentioned to Ms Hegan, not that she thought the disciplinary process had anything to do with her race, but that she considered it was all about the time she spent in the office. The Tribunal consider that the claimant knew then what the real reason for the treatment was.
447. The claimant did not put to Mr Perry that his conduct had anything to do with her race but in any event, the Tribunal have found that he was not the decision maker, it is the conscious or subconscious motivation of Mr Knight which is relevant.
448. The Tribunal consider that the burden of proof does not come into the equation because it is in a position to make a positive finding on the evidence about Mr Knights' motivation but even if the burden of proof had shifted, the Tribunal conclude in any event, that the claimant's race played no part whatsoever in the treatment of which she complains (LOI 4.2.1 , 4.2.2 and 4.2.3).
449. The complaints of race discrimination are not well founded and are dismissed.

Jurisdiction

450. In terms of the allegations which relate to 20 July 2022, a period of three months less one day from that date is 19th of October 2022. ACAS conciliation did not start until 9 November 2022 (with the claim form presented on 20 January 2023).
451. Unless it forms a continuing act, the acts which relate to 20 July 2022 are outside the primary time-limit subject to any just and equitable extension.

Submission

452. The respondent briefly submits that there has been no application by the claimant for the Tribunal to consider whether it was just and equitable to extend time and she has not advanced any reason why time should be extended and as the burden is on the claimant to convince the tribunal that it is just and equitable to extend time pursuant to **Robertson v Bexley community centre (t/a leisure link) 2003 WL 182029**, time should not be extended.
453. The claimant makes brief submissions on a continuing act and whether it is just and equitable to extend time in her response to the respondent's submission (para 9 – 16). The claimant briefly argues that the acts of alleged discrimination form a continuing act up to dismissal. In terms of a just and equitable extensions she submits that she was unrepresented at the time of filing the claim, refers to the mental health impact [RB page

152] and having to deal post dismissal with the respondent's unwillingness to provide a reference and financial hardship.

454. As set out in the findings of fact, the claimant has not established the allegation about the reference. The claimant did not address in her evidence in chief the impact on her mental health.
455. The issue of whether section 123 (3)(a) Equality Act 2010 applies is a matter of jurisdiction. The Tribunal conclude that the events from 20 June to dismissal, form part of a course of continuing conduct. They relate to the investigation of the same events, with the hearing on 3 August 2022 covering a number of the same allegations as were put to her on 20 July and ultimately the outcome was communicated on 17 August 2022. The acts complained of essentially relate to the same issues about performance/conduct, and throughout the decision maker was the same individual, Mr Knight. This amounted to a continuing state of affairs.
456. The Tribunal conclude that from 20 July 2022 to 17 August 2022, the acts amount to a continuing course of conduct, looking at the substance of the complaints and applying the guidance in ***Hale v Brighton and Sussex University Hospitals NHS Trust EAT 0342/16***, and ***Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530, CA***. In Hendricks the Court of Appeal made it clear that it is not appropriate for employment tribunals to take too literal an approach to the question of what amounts to 'continuing acts' by focusing on whether the concepts of 'policy, rule, scheme, regime or practice' fit the facts of the particular case.
457. In any event, the Tribunal would extend time on just and equitable grounds, taking into account all the circumstances including the length of the delay, the lack of pleaded prejudice by the respondent and the close connection between the different acts of discrimination.

Holiday pay

458. The Working Time Regulations 1998 (WTR) were amended in 2024 by the Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023 SI 2023/1426 ('the 2023 Amendment Regulations') to make specific provision for the annual leave entitlement of 'irregular hours' and 'part-year' workers. However, although the 2023 Amendment Regulations came into force on 1 January 2024, the new provisions governing holiday accrual and rolled-up holiday pay for irregular hours and part-year workers apply only to leave years beginning on or after 1 April 2024.
459. The WTR 1998 apply and provide that a worker has the right to receive a payment in lieu of unused annual leave on the termination of their employment: Regulation 14.
460. Regulation 16 (1) WTR provide that a worker is entitled to be paid at the rate of a week's pay in respect of each week of annual leave to which he is entitled under Reg 13 or Reg 13A. A week's pay is to be calculated in accordance with sections 221- 224 ERA.
461. What are normal working hours depending on whether the worker's remuneration varies with the amount of work done or not.

462. It is not in dispute that the claimant was paid an hourly rate of £19 for the hours she worked and that her hours varied. The Tribunal conclude that the claimant's entitlement falls to be measured under section 224 ERA which requires the average remuneration to be calculated over a period of time, it had been 12 weeks but was amended to 52 from 6 April 2020.
463. The claimant claimed (as recorded in the list of issues) £798 representing the 56 hours she claims she worked in June 2022. The respondent accepts that it had not included those hours when calculating her outstanding leave entitlement.
464. On the first day of the hearing when clarifying her claim, the claimant confirmed that she was paid all the accrued annual leave due to her apart from an amount equivalent to the 56 disputed hours and that her claim was contingent, she understood, on the Tribunal finding that she was entitled to be paid the full 150 hours which she had claimed she had worked in June 2022.
465. During her oral evidence however, the claimant informed the Tribunal that she was no longer claiming £798, however she was unable to clearly explain what amount she was now claiming she was owed. The claimant had attempted to obtain a calculation by using the government website which she said calculated her outstanding entitlement to be 17.6 days for the period 1 January to 17 August 2022 but based on her working regular hours.
466. The respondent had calculated her statutory entitlement based on their calculation of her average hours using the information on the Time Audit of 22.875 hours per week, which according to the government website meant that she had an entitlement to 80.4 hours [RB page 376 and 227]. The claimant did not dispute the calculation based on the information they had inputted or that the respondent had paid the claimant a total of 98.67 days holiday from January 2022 to 17 August 2022 i.e. in excess of the calculation they had obtained from the government website.
467. The claimant argues in her submissions that her entitlement should have been worked out not based on her hours and not pro rata. She argues that the wording of the Service Agreement means that she should have been paid **20 full days** annual leave plus bank holidays.
468. It remains unclear what sum the claimant is actually claiming and she does not identify the actual amount she says she is owed if it is not the £798. While the claimant disputes that the respondent should have applied the average hours from the Time Audit and maintains that her entitlement is to **20 full days** she does not identify how many hours she says is a 'full day'.
469. The Service Agreement provides (and in practice) the claimant has always been paid based on the hours that she works and she accepted in her evidence, that those hours were variable. There were no 'normal' working hours or days.
470. If her entitlement is based on a 52-week reference period (because her hours were irregular), the claimant does not set out what she calculates the average to be, given that she also disputes that she was paid for the hours she actually worked.

471. The claimant provides no further clarity within her submissions and the respondent submits that in the absence of any other reliable information from the claimant of how she calculates the applicable hours/days, the information provided by the respondent taken from the government website should be accepted [RB Page 276- 2378].
472. While the claimant in evidence suggested an average of 30 hours per week, she provided nor rationale for this and as set out below, that average does not appear to be supported by the time she claimed over the 52-week period prior to dismissal, discounting the disputed June invoice. The claimant could not explain how she had arrived at the figure of 30 hours per week.
473. The claimant case remains unclear. She has not provided a calculation to support her claim for, what she alleges her average hours to have been for the purposes of section 224 ERA and her claim to the 150 hours she says she worked in June, is not in any event, well founded.
474. The claim is not well founded and is dismissed.

Unauthorised deductions: LOI 7

Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

Were the wages paid to the claimant for June 2022 less than the wages she should have been paid? The claimant claims it was £1074: 7.1.1

475. The claimant in submission refers to a number of case authorities: **Cantor Fitzgerald International claimant Callaghan [1999] IRLR 172, Autoclenz Ltd =, Belcher [2011] UKSC 41, Secession Ltd v Bellinger [2010] IRLR 924 which have been considered**
476. The Tribunal find that the claimant has not established that she worked the 150 hours claimed in June 2022. This is not a sum which was properly payable to her. There is no merit in the argument which she advances in submissions, that she was denied payment for work the respondent authorised, encouraged and benefitted from. The claimant claimed for work the Tribunal conclude, which she simply did not do.
477. The claimant, as the respondent addresses in submissions, gave evidence that she did not record her hours for June and had explained during the disciplinary process that she cannot accurately record her hours.
478. Section 13 ERA only applies to wages which are 'properly payable'. The Tribunal do not find that the claimant has established as set out in the findings of fact, that the wages deducted were in fact properly payable.
479. Further the claimant entered into the Service Agreement prior to the deduction and it states at clause 7.4 that the respondent may deduct from her pay any sums owed to the respondent by the claimant [page 62]. The Tribunal find that the claimant had no claim to the full 150 hours and that on balance the accountant's assessment established what her hours were on a balance of probabilities and they had the right to reclaim the hours.

480. The deduction was made in July 2022. The claim was brought out of time pursuant to section 23 (4) ERA. The claimant did not provide evidence as to why it was not reasonably practicable to have presented the claim in time. This is a stricter test than what is just and equitable: In **Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA**, the Court of Appeal concluded that it means something like reasonably feasible. The claimant is clearly an intelligent individual able to conduct her own research and present sensible and relevant legal arguments and submissions. The claimant has not provided evidence to support a finding that it was not reasonably practicable to present the claim in time.
481. The claim was brought out of time but in any event, it is not well founded and is dismissed.

Were the wages paid to the claimant for July 2022 less than the wages she should have been paid? The claimant claims it was equivalent of 45 hours at £19 per hour: LOI 7.1.2

482. The claimant was suspended on 21 July 2022. She was told that she was suspended on normal pay. The difficulty is that the claimant did not have 'normal' pay, she worked, by her own admission, variable hours.
483. It appears from the documents that the accountant worked out [RB page 314] (using an average of 94.63 hours per month), a weekly average of £21.84. Hence the payment in July of £1,659.84.
484. The claimant at the hearing on 12 March 2026 clarified that her claim, in respect of LOI 7.1.2, is that she had been paid 75 hours for July according to the payslip [RB page 201] but the suspension letter stated that she would be paid 'normal pay'. The claimant complains that she was not paid her normal pay however, she conceded that what was her "*normal pay*" is in dispute.
485. When the Tribunal asked the claimant to clarify further her claim and what she was alleging was her 'normal pay', she suggested 120 hours. When she was asked how she arrived at that figure, she informed the Tribunal that it was based on 30 hours per week but there appeared to be no clear rationale for that figure. She was unable to explain why she was suggesting 30 hours, saying only: "*... my hours were variable, so I have based it on that.*"
486. The claimant confirmed that she was therefore claiming 120 hours less the 75 she was paid, leaving a shortfall of 45 hours.
487. The claimant never put to the witnesses that she was underpaid by 45 hours.
488. The respondent does not deal with this in submissions.
489. The claimant in submissions refers to a number of cases: **Delaney v Staples [1992]**, **Kocur v Angard Staffing Solutions Ltd [2019] EWCA Civ 1185**, **Bamsey v Albion Engineering [2004] EWCA Civ 359**.
490. In submissions the claimant effectively makes two points:

1. That the respondent should follow the 52-week statutory reference period and not base the calculation on the Time Audit.

491. The claimant's claim, as clarified by her during the hearing on 12 March 2026, was that her claim was based on normal hours of 30 hours per week however she did not produce any evidence or analysis to support that figure. From the outset the claimant appeared uncertain about her claim, which changed from an initial claim of 54 to 45 hours. The claimant now appears to argue that there should be a calculation based on an average taken over 52 weeks but has not produced a figure for that average.
492. If the Tribunal look at the 12 payslips from June 2021 to May 2022 (before the disputed June 2022 payslip) [RB Pages 146-140] that appears to average out at 66.31 hours average per month (less than she was paid). The claimant did not put forward any alternative figure as an average.

2. The she was only paid for 4 weeks despite June pay period ending on 27 June 2022 so she was underpaid by 1 week.

493. In terms of the second point, this is an attempt to introduce new evidence. This evidence is not set out in her evidence in chief, and it was never put by her to the respondent witnesses. When the Tribunal discussed the list of issues with the parties at the hearing on 12 March, the claimant made no mention of a being underpaid by a week. The payslip itself for June 2022 [RB Page 140] does not identify that it is paid up to 27 June 2022, it refers to a process date of 30 June 2022. The Tribunal heard no evidence about the 'process date' or any 1-week shortfall.
494. The Service Agreement states that her start and finish times are flexible but "*typically*" will amount to at least 40 hours per week. The claimant's own evidence is that in practice she did not work 40 hours every week and she did not when discussing her claim or in submissions, claim that 40 hours should have been used to measure her hours.
495. The claimant has not established her claim for an additional 45 hours; her claim is not well founded and is dismissed..

Were the wages paid to the claimant for the 4-year period prior to dismissal [limited to a 2-year cap] not paid? circa £10,000: LOI 7.1.3 and 8

496. The Tribunal will address these two claims together, because they relate in essence to the same claim, namely a claim for unpaid wages which the claimant alleges she banked (with the section 13 claim subject to the 2-year backdating provisions pursuant to section 23 (4A) ERA) and a breach of contract claim based on the alleged agreement that she could bank her hours and would be paid for them at a later date.
497. In submissions, the claimant states that once she had a company laptop which she used for university and for work, the distinction between work and study time became harder to record, hence she claims that she had intended to speak to Mr Knight about agreeing a fixed wage/salary.
498. The claimant submits that the Excel timesheets she had kept included a column tallying the hours owed to her and this has been removed by the respondent and submits that this

is contrary to their statutory obligations under the ERA and Working Time Regulations. In terms of the alleging doctoring of the timesheets to remove a column of tallied hours, this has not been proven. The claimant does not set out which of the regulations or sections she alleges to be relevant but raises this in her submissions in response and with specific reference to, the respondent's submission relating to the claim for £10,000 (Paragraph 136 of the claimant's comments). It is not clear what the claimant alleges the relevance of this to be, she is not alleging that she was not paid in accordance with the national minimum wage (where record keeping is relevant in an appeal against an enforcement notice by HMRC). The Tribunal have concluded that the claimant was paid for the hours she claimed she had worked. The respondent trusted her to record her own hours and submit a claim for those. That may have been naive on their part, given she was hourly paid and worked flexibly, but she had not informed Mr Knight that she had any difficulty tracking and recording the time she spent working for the respondent (although she says she planned to tell him this) and Mr Knight had trusted her to submit legitimate claims. The Tribunal do not consider that it is appropriate to draw any adverse inference from the failure to keep their own records of the time she was spending or that the statutory provisions apply to these claims pursued as claims under section 13 and/or breach of contract for deductions which were made.

499. In terms of the student finance position, the claimant claims that any illegality would be 'minor, technical and entirely of the respondent's making': **Patel v Mirza 2017 AC 467**. The Tribunal invited the parties to make submissions on the Mirza case should the Tribunal conclude there was an agreement to bank hours. The Tribunal have concluded however that no such agreement existed and therefore Mirza has no application.
500. For reasons set out in the findings of fact, the Tribunal conclude that there was never a verbal agreement that the claimant would be paid for additional hours she worked which she would bank. The Tribunal find that the evidence does not support a finding that such an agreement was entered into, but even if it had, the claimant knowingly entered into the Service Agreement which expressly superseded any previous agreements, including verbal ones and as set out in the findings of fact, the claimant understood the implications of entering into that agreement but nonetheless did so.
501. In any event, the claimant cannot properly quantify her claim and has failed to set out how she has arrived at the figure of £10,000. On her own case she is unable to identify accurately the additional hours she worked and appears to have settled on a figure without being able to evidence it in submissions (para 138), she states that it is based on patterns of unpaid hours, repeated discrepancies between hours worked and paid, the respondent's own admission that the claimant did not records hours in June 2022 in the way she had previously and the alleged verbal agreement that she would be paid for hours she had worked.
502. The Tribunal conclude that the claimant has not established that the alleged unpaid wages claimed for the purposes of section 13 ERA were properly payable or that there was in fact any agreement to pay her the banked hours which was breached
503. Any claim for unpaid wages in respect of an alleged contract which existed prior to January 2021 would have been brought significantly out of time in any event (circa 20 months from April 2021 to January 2023). If the claim relates to a later date when the sums fell due, it is not clear from the claimant's evidence, when the alleged unpaid hours were due to be paid but in any event, the Service Agreement entered into in January 2021,

superseded any alleged prior verbal agreement. The claimant does not address in evidence or submissions why it was not reasonably practicable to present the claim in time.

504. This claims were brought out of time but in any event are not well founded and are dismissed.

Remedy

505. Case management direction on remedy with respect to the successful claim of unfair dismissal will follow. The parties are to come prepared to give submissions on contributory fault.

Appendix

The Issues

1. The issues the Tribunal will decide are set out below.

1. **Unfair dismissal**

1.1 Was the claimant dismissed?

What was the reason or principal reason for dismissal – was it for falsifying timesheets and claiming payment for approximately 80 hours more than the claimant worked

1.2 Was it a potentially fair reason?

1.3 Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant, including following a fair procedure?

1.4 The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.

1.5 If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:

1.5.1 there were reasonable grounds for that belief;

1.5.2 at the time the belief was formed the respondent had carried out a reasonable investigation;

1.5.3 the respondent otherwise acted in a procedurally fair manner;

1.5.4 dismissal was within the range of reasonable responses.

2. **Remedy for unfair dismissal**

2.1 Does the claimant wish to be reinstated to their previous employment?

2.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?

2.3 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.

2.4 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.

- 2.5 What should the terms of the re-engagement order be?
- 2.6 If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 2.6.1 What financial losses has the dismissal caused the claimant?
 - 2.6.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - 2.6.3 If not, for what period of loss should the claimant be compensated?
 - 2.6.4 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?
 - 2.6.5 If so, should the claimant's compensation be reduced? By how much?
 - 2.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 2.6.7 Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach]?
 - 2.6.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
 - 2.6.9 If the claimant was unfairly dismissed, did s/s/he cause or contribute to dismissal by blameworthy conduct?
 - 2.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
 - 2.6.11 Does the statutory cap of fifty-two weeks' pay apply?
- 2.7 What basic award is payable to the claimant, if any?
- 2.8 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?
- 3. **Wrongful dismissal / Notice Pay**
 - 3.1 The claimant's notice period was 6 months
 - 3.2 Was the claimant paid for that notice period?
 - 3.3 If not, was the claimant guilty of gross misconduct? Did the claimant do something so serious that the respondent was entitled to dismiss without notice?
- 4. **Direct race discrimination (Equality Act 2010 section 13)**

- 4.1 Description of race: the claimant defines her race as Black
- 4.2 Did the respondent do the following things:
 - 4.2.1 During the investigation meeting on 20 July 2022 put to the claimant allegations of:
 - 4.2.1.1 Spending money on a chair without permission
 - 4.2.1.2 Falsifying timesheets
 - 4.2.1.3 Sending hostile emails
 - 4.2.1.4 Duplication of payment to a supplier
 - 4.2.2 The act of suspension
 - 4.2.3 The act of dismissal
- 4.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else – a “**comparator**” – 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 s/s/he was treated worse than someone else would have been treated.
- 4.4 The claimant says :
 - 4.4.1 David Hawkes, Gary Dawson, James Knight: spending money without permission
 - 4.4.2 Nick Collier, Christopher Hudson, Andy Bray: Falsification of timesheets
 - 4.4.3 Denie Moor, Adrian Carr: Tone of emails
 - 4.4.4 Timothy Knight: Duplication of payments.
- 4.5 If so, was it because of race?
- 4.6 Did the respondent’s treatment amount to a detriment?
- 5. **Remedy for discrimination**
 - 5.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
 - 5.2 What financial losses has the discrimination caused the claimant?

- 5.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- 5.4 If not, for what period of loss should the claimant be compensated?
- 5.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
- 5.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
- 5.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- 5.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 5.9 Did the respondent or the claimant unreasonably fail to comply with it by [specify breach]?
- 5.10 If so is it just and equitable to increase or decrease any award payable to the claimant?
- 5.11 By what proportion, up to 25%?
- 5.12 Should interest be awarded? How much?

6. **Holiday Pay (Working Time Regulations 1998)**

- 6.1 Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when their employment ended?
- 6.2 What was the claimant's leave year?
- 6.3 How much of the leave year had passed when the claimant's employment ended?
- 6.4 How much leave had accrued for the year by that date?
- 6.5 How much paid leave had the claimant taken in the year?
- 6.6 How many days remain unpaid? The claimant alleges that she was entitled to **£798 for the 56 hours she worked in June 2022** which the respondent says she did not work.
- 6.7 What is the relevant daily rate of pay?

7. **Unauthorised deductions**

- 7.1 Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

- 7.1.1 Were the wages paid to the claimant in July 2022 for June wages less than the wages she should have been paid? The claimant claims it was **£1026**.
- 7.1.2 Were the wages paid to the claimant for July 2022 less than the wages she should have been paid ? The claimant claims the difference of 45 hours at £19 per hour.
- 7.1.3 Were the wages paid to the claimant for the period from 1 January 2019 (which was the amendment allowed) up to August 2022 not paid [subject to 2-year cap] ? circa £10,0000.
- 7.2 Were the sums properly payable to the claimant?
- 7.3 Was any deduction required or authorised by statute?
- 7.4 Was any deduction required or authorised by a written term of the contract?
- 7.5 Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?
- 7.6 Did the claimant agree in writing to the deduction before it was made?
- 7.7 How much is the claimant owed?
- 8. **Breach of Contract**
 - 8.1 Did this claim arise or was it outstanding when the claimant's employment ended?
 - 8.2 Did the respondent do the following:
 - 8.2.1 Were the wages paid to the claimant for the period from 1 January 2019 to August 2022 [no cap] not paid: circa £10,0000?
 - 8.3 Was that a breach of contract?
 - 8.4 How much should the claimant be awarded as damages?

Approved by:

Employment Judge Broughton

Date: 1 September 2026

JUDGMENT SENT TO THE PARTIES ON

...27 September 2026.....

...Farhan Sheikh.....

FOR THE TRIBUNAL OFFICE

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