EMPLOYMENT TRIBUNALS

Claimant:	**Mrs K Muddiman**		
Respondent:	**Smithers Viscient (ESG) Limited**		
Heard at:	**Leeds**	**On:**	**30 & 31 January, 1, 2, 3, 6 & 7 February, 22 & 23 May and 24 May and 23 June (deliberations) 2017**
Before:	**Employment Judge Davies**		
Members:	**Mr M Brewer** **Mrs D Ennals**		

Representation

Claimant:	**Ms A Davies, counsel**
Respondent:	**Mr W Clayton, solicitor**

JUDGMENT

1. The Claimant's claim of ordinary unfair dismissal is well-founded and succeeds. Her claim of automatically unfair dismissal for making protected disclosures is not well-founded.
2. The Claimant contributed to her dismissal by culpable conduct and it is just and equitable to reduce the basic and compensatory awards payable to her by 25%.
3. The Tribunal does not find that there is a chance that the Claimant would have been fairly dismissed in any event.
4. The Respondent unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures and it is just and equitable to increase the award payable to the Claimant by 10%.
5. The Claimant's claim of wrongful dismissal is well-founded and succeeds.
6. The Claimant's claim of being subjected to a detriment for making protected disclosures is not well-founded and is dismissed.
7. The Respondent's employer's contract claim is not well-founded and is dismissed.
8. The Respondent shall pay the Claimant a basic award in the sum of **£2137.50** (being the adjusted sum after the 25% deduction).

9. The Respondent shall pay the Claimant a compensatory award of **£17,191.96** (being the adjusted sum after the 25% deduction and the 10% uplift).

10. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply:

    a. The total monetary award payable to the Claimant for her unfair dismissal claim is £**19,329.46**
    b. The prescribed element is £**14,008.06**.
    c. The period of the prescribed element is from 23 October 2015 to 22 May 2017
    d. The difference between (1) and (2) is **£5,321.40**.

11. No damages for breach of contract (wrongful dismissal) are awarded, because the unfair dismissal compensation covers the same time period.

12. Pursuant to Rule 76(4) Employment Tribunal Rules of Procedure 2013, the Respondent shall pay the Claimant **£1,200** being the issue and hearing fees paid by her.

REASONS

1. Introduction

1.1 This was the hearing to decide claims of unfair dismissal (ordinary and automatically for making protected disclosures), being subjected to a detriment for making protected disclosures and wrongful dismissal (notice pay) brought by the Claimant, Ms K Muddiman, against her former employer, Smithers Viscient (ESG) Ltd. In addition, the Respondent brought an employer's contract claim against the Claimant. The Claimant was represented by Ms A Davies (counsel) and the Respondent by Mr W Clayton (solicitor). The hearing documents ran to more than 1000 pages and further documents were produced and admitted during the course of the hearing. The Tribunal heard evidence from the Claimant and a statement from her father, Mr A Muddiman, was taken as read. For the Respondent, the Tribunal heard evidence from Ms C Cooke (former Director of Ecotoxicology and Regulatory Services), Mr D Phillips (former Managing Director of the Respondent), Mr R Brinham (Director of Chemistry), Mr R Lally (Managing Director Smithers Viscient Information Ltd), Mr D Fairhurst (IT Manager), Ms M Dawson (Business Support Manager), Ms S Shepherd (President of Smithers Viscient in the USA) and Ms H Blakey (Human Resources Business Partner).

2. Issues

2.1 The issues to be decided were:

Protected Disclosures

2.1.1 Did the Claimant make protected disclosures within s 43B Employment Rights Act 1996 i.e. did she disclose information which, in her reasonable belief, was made in the public interest and tended to show that a person was failing to comply with a legal obligation or that the health or safety of any individual was being or was likely to be endangered, as follows:
Health and Safety Disclosures

2.1.1.1 At the disciplinary hearing in 23 October 2014 telling Mr Phillips that the Respondent was in breach of the Health and Safety at Work Act;

2.1.1.2 At that hearing saying that she had not been provided with site specific training whilst working for the Respondent;

2.1.1.3 At that hearing stating that there was no signed statement of compliance in relation to the Health and Safety at Work Act;

2.1.1.4 At that hearing stating that there were no health and safety policies and procedures in place and that none had been circulated to staff (including the fact that there was no manual);

2.1.1.5 At that hearing stating that there was still no safety signage in the laboratory, in particular no PPE signage, which was required because staff undertook activities using radio-labelled substances?

Data Retention Disclosures

2.1.1.6 In April 2015 telling Mr Phillips that the Respondent was holding data from Covance, that the Respondent should not hold any of Covance's data on its computers or network but that it still did;

2.1.1.7 Emailing Mr Phillips to forward an email from Ms Gillbanks confirming that the Respondent should not hold any Covance data;

2.1.1.8 In a management meeting in May 2015 raising the issue of Covance data being held unlawfully on the Respondent's server; and/or

2.1.1.9 In a management meeting in June 2015 raising the issue again, saying that the Respondent still held Covance data on its servers and that the Claimant was concerned that someone might use it, which would be in breach of their legal obligations?

2.1.2 If the Claimant made the health and safety disclosures, was she subjected to a detriment on the ground that she did so, as follows:

2.1.2.1 By the Respondent advertising her role in June 2015;

2.1.2.2 By the Respondent offering her a termination agreement on 5 August 2015;

2.1.2.3 By the Respondent suspending her and then embarking on a disciplinary procedure;

2.1.2.4 By the Respondent not giving her a proper opportunity to defend herself during the disciplinary procedure, in particular by not allowing access to information/discovery; subjecting her to intimidation and bullying her; allowing only limited access to her computer during which she was chaperoned and not allowed to touch the computer; and not allowing her access to financial information;

2.1.2.5 By the Respondent not handling her grievance properly and fairly;

2.1.2.6 By the Respondent not handling her subject access request made on 15 October 2015 fairly and properly;

2.1.2.7 By the Respondent not handling her appeal against dismissal fairly; and/or

2.1.2.8 By the Respondent deliberately sabotaging the offer of a job made to the Claimant by Covance?

Unfair Dismissal

2.1.3 What was the reason for the Claimant's dismissal:
- 2.1.3.1 If the Claimant made a protected disclosure was the reason or principal reason for her dismissal that she did so?
- 2.1.3.2 If not, what was the reason? Did the Respondent have a genuine belief in misconduct on her part?

2.1.4 If the reason for dismissal was misconduct, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant, having regard in particular to whether:
- 2.1.4.1 there were reasonable grounds for that belief;
- 2.1.4.2 at the time the belief was formed the Respondent had carried out a reasonable investigation in the circumstances;
- 2.1.4.3 the Respondent otherwise acted in a procedurally fair manner;
- 2.1.4.4 dismissal was within the range of reasonable responses?

2.1.5 If the Claimant's dismissal was unfair, what is the chance, if any, that she would have been fairly dismissed in any event?

2.1.6 If the Claimant was unfairly dismissed, did she cause or contribute to her dismissal by her own culpable and blameworthy conduct?

Wrongful Dismissal

2.1.7 Did the Respondent act in breach of contract by dismissing the Claimant without notice or was she in breach of contract such that the Respondent was entitled to do so?

Employer's Contract Claim

2.1.8 Did the Claimant breach her contract of employment by failing to carry out her duties with reasonable care and skill?

2.1.9 If so, did it cause the Respondent loss and how much was that loss?

ACAS Uplift

2.1.10 Did the Respondent unreasonably fail to comply with the ACAS Code on Disciplinary and Grievance Procedures and, if so, is it just and equitable to increase any award to the Claimant and by how much?

3. The Facts

3.1 The Claimant is an environmental scientist. From May 2009 she was working at Covance Laboratories Limited in Harrogate as a study director.

3.2 Study director is one of a number of roles required under the Good Laboratory Practice Regulations 1999 SI 3106/1999. We refer to those as the GLP Regulations and to Good Laboratory Practice as GLP. The GLP Regulations define the legal roles and requirements for GLP that must be followed for a research study to be certified as GLP compliant. That is important because it is relied on by regulators in approving test substances. Under the GLP Regulations test facilities carrying out regulatory studies are required to adhere to the principles of GLP. The Regulations make clear the responsibilities of test facility management ("TFM") and the study director. TFM are required to ensure that the principles of GLP are complied with. They must, among other things, ensure that a sufficient number of qualified personnel, appropriate facilities, equipment and materials are available for the timely and proper conduct of regulatory studies.

They must also ensure that records are maintained of each professional's qualifications, training and job description. Further they must ensure that there is a quality assurance programme that is itself being performed in accordance with the principles of GLP. They must also ensure that for each study an individual with the appropriate qualifications, training and experience is designated as study director before the study is initiated.

3.3 The Regulations set out the responsibilities of the study director. The study director is the single point of study control and has the responsibility for the overall conduct of the regulatory study and for its final report. Among other things the study director has to approve the study plan; ensure that study plans, amendments and standard operating procedures ("SOPs") are available to study personnel; ensure that the procedures specified in the study plan are followed; assess and document the impact of any deviations from the study plan; ensure that all raw data are fully documented and recorded; and sign and date the final report to indicate acceptance of responsibility for the validity of the data and to indicate the extent to which the study complies with the principles of GLP.

3.4 Individual study personnel working on the regulatory study also have specified responsibilities. The test facility must have a documented quality assurance ("QA") programme to ensure that regulatory studies meet the principles of GLP. QA personnel must, among other things, check the study plan for compliance with GLP; conduct inspections to assess compliance with GLP and to check that study plans and SOPs have been made available and are being followed; inspect the final report to confirm that the methods, procedures and observations are accurately and completely described and that the reported results accurately and completely reflect the raw data; promptly report any inspection results in writing to management and to the study director; and prepare and sign a statement to be included with the final report confirming that the final report reflects the raw data. Under the GLP Regulations apparatus must be properly inspected, maintained and calibrated according to SOPs.

3.5 In very brief outline, before a regulatory study is started a protocol (the study plan) is written and signed off by both the study director and TFM. The protocol may not set out the full detail of how the study is to be conducted if, for example, it refers to SOPs. The study is then conducted and data are generated. The study director prepares a draft report at the end. That draft report is considered by QA, who have the full data available as well as the draft report. At the Respondent there is also a scientific review by an internal peer. The client may also have the opportunity to comment on the draft report. This process leads to the preparation of a final report by the study director. That final report must be signed off by the study director and QA.

3.6 In June 2012 the Respondent purchased the environmental services department of Covance and the Claimant's employment transferred to the Respondent under the Transfer of Undertakings (Protection of Employment) Regulations. She transferred as a study director but in March 2013 she secured promotion to the role of business manager. The contract of employment she signed said that she was required to undertake the duties set out in her job description, which did not form part of her contract of employment. The Respondent was entitled to terminate the Claimant's employment without notice in the event of gross

misconduct or some other fundamental breach on her part. The job description shown to the Tribunal was signed much later. The Claimant accepted that it was her job description. It made clear that as business manager her function was to ensure the provision of suitable facilities, equipment and staff to allow the proper conduct of studies in compliance with the principles of GLP; to ensure that SOPs were available to all staff; and to assign to each study a suitably trained and experienced study director. She was to ensure compliance with technical quality assurance and financial performance objectives. Her essential functions included full profit and loss responsibility and undertaking appropriate training and development.

3.7 The job description did not refer to the Claimant herself carrying out the role of study director. Her evidence was that when she took on the role she did not anticipate that she would carry on study directing. However, she clearly did so and at the time of the events with which we were concerned she was study director for around 20 to 25 separate studies.

3.8 The Claimant was head of the Product Development Testing (PDT) group and was broadly speaking responsible for its financial and scientific management. At the time of the events with which the Tribunal was concerned the managing director of the Respondent was Mr David Phillips. His reporting line was to the vice president and president of the parent group Smithers Viscient based in the United States. The Claimant reported directly to Mr Phillips as did a number of other staff. They included Mrs Cooke (director of Ecotoxicology and Regulatory Services), Ms Swales, Mr Brinham (director of chemistry), Ms Dawson (business support manager) and Ms Earnshaw (QA). There were three designated test facility managers: Mr Phillips, Mrs Cooke and Ms Swales. The Claimant was not designated a test facility manager but she had formally delegated to her one part of the TFM responsibility namely the power to appoint study directors.

3.9 The Tribunal saw the Claimant's comprehensive training record. The Claimant was also the representative for PDT on the Respondent's health and safety committee. Among those who attended the health and safety committee meetings were Ms Blakey (the Respondent's only HR Business Partner), Mrs Cooke, Ms Swales and Mr Brinham.

3.10 At the time of the transfer from Covance to the Respondent, the Respondent set up its own IT systems. Inevitably study files and other data for studies that had been conducted or started at Covance were required by the Respondent and were copied onto the Respondent's systems. The Claimant said that she had a role within that. The Tribunal saw a written agreement between Covance and the Respondent. Each acknowledged that they would continue to possess information created, discovered or developed by the other. Each party would continue as sole owner of such information. Each party agreed to use the same degree of care that it normally used to protect its own information to prevent the disclosure to third parties of the information of the other party. Neither party was to make any use of such information except as required or contemplated by the terms of the agreement. In short both parties recognised that they would have in their possession one another's data and information and they undertook to take reasonable care not to disclose that information to third parties and only to use it

in the ways contemplated by the agreement. The Claimant was not aware of the terms of that agreement at the time.

3.11 Against that background, the Tribunal turns to the events at issue in these claims. They begin on 10 October 2014. The Claimant's husband was also an employee of the Respondent. On that date the Claimant and her husband brought their children into work to visit. Another employee, Mr Bowen, saw them and emailed Mr Phillips expressing his concern. He said that the children were just wearing safety spectacles not laboratory coats and that he saw them standing in the ecotoxicology/PDT main laboratory with the Claimant and her husband. He suggested that the risk assessments only covered persons over 18 years old in the laboratory environment and that if anything happened to the children the Respondent would not be covered.

3.12 Mr Phillips forwarded that email to the Claimant and her husband the same day. He said that he truly empathised with the innocent gesture but that they needed to talk about it first thing on Monday because he was at a loss to understand what they were both thinking. They did indeed speak on the Monday morning. Ultimately the Claimant was invited to a disciplinary hearing. That took place on 23 October 2014. Mr Phillips conducted the hearing and Ms Blakey was present as a note taker.

3.13 Ms Blakey's note records that the Claimant read through a pre-prepared written statement, which cited the Health and Safety at Work Act and referred to a number of sections the Claimant believed the Respondent was breaching. The note records the Claimant referring to gaps in place relating to PPE and signage. The Claimant said in her witness statement to the Tribunal that during the disciplinary hearing she raised a number of health and safety concerns in defence of the allegations against her. In particular, she said that she told Mr Phillips and Ms Blakey that she had never been provided with site specific training whilst at the Respondent, that there was no signed statement of compliance in relation to the Health and Safety at Work Act and that there were no health and safety policies and procedures in place so that none had been circulated to staff. She also said that she raised the fact that there was still no safety signage in the laboratory some seven months after working occupation began. In particular there was no PPE signage.

3.14 In his witness statement Mr Phillips acknowledged that during the course of the disciplinary hearing the Claimant had contended that the Respondent's standard of compliance with health and safety was not good enough. He could not remember all the particular allegations she had made, but he did recall her saying that the company's health and safety manual was not sufficiently comprehensive. In cross-examination he accepted that the Claimant raised issues about the Respondent's health and safety policies. He said that lots of things were raised. He accepted that she might have said that there was no signed statement of health and safety compliance and that she might have said that health and safety procedures were not in place. She had read from a sheet. He could not remember if the Claimant had said there was no safety signage, in particular no PPE signage, but she might have done so. In her evidence, Ms Blakey acknowledged that the Claimant had said a number of the things relied on. She could not recall some of the others being said. She did not think that the

Claimant had said that there was no health and safety policy statement at all or that she had not received any health and safety training at the Respondent. She referred to a day's training given to all managers including the Claimant on 22 May 2014 and she also produced draft policies said to have been in place at the time.

3.15 The outcome of the disciplinary hearing was that the Claimant was given a verbal warning that would last for six months. In the outcome letter written on 4 November 2014 Mr Phillips wrote:

> … While you clearly pointed out that our health and safety manual has some obvious gaps and there still remains considerable work to be undertaken to ensure it is fully site specific I would not disagree with you on this matter and reiterated this is very much work in progress as we transition to the new site.

3.16 The Tribunal accepted that the Claimant did indeed raise a number of the particular health and safety concerns referred to in her witness statement. The contemporaneous note made by Ms Blakey supports that, as in our view did Mr Phillips's and Ms Blakey's evidence and the letter he wrote on 4 November 2014. Those are the matters the Claimant now contends amounted to protected disclosures and we return to that below. The Claimant accepted in her evidence that she did not have in mind at the time that these were protected disclosures and that she did not give them another thought until much more recently.

3.17 Returning to the disciplinary hearing, Mr Phillips's evidence was that the Claimant did not take the criticism of her judgment at all well. He said that she became so aggressive and indignant during the hearing that her own companion, Ms Turner, broke down in tears and the hearing had to be paused. There was support for that in the notes prepared by Ms Blakey, which recorded that she had suggested adjourning the meeting for 10 minutes as it was clear that Ms Turner was getting very upset and very uncomfortable with the Claimant's aggressive and uncooperative manner. The notes record the Claimant refusing to leave the room and Ms Blakey insisting that there should be an adjournment. In cross-examination, Ms Blakey was asked what the Claimant's aggressive behaviour was. She appeared to suggest that it was her refusal to answer questions or repeatedly saying, "No comment." She did not describe any conduct that seemed to the Tribunal properly to be described as aggressive. It seemed to the Tribunal that she was really describing un-cooperative and difficult behaviour, rather than aggression.

3.18 The Claimant disputed in cross-examination that she had been aggressive. She said that she was upset. She was asked whether she had sought a witness statement from Ms Turner to confirm her version of events. She said that she was not entitled to contact the Respondent's employees. She was asked whether she had sought a witness statement from Ms Turner for the purposes of the Tribunal proceedings. She said that she had not. She was asked again and she confirmed again that she had not. She then changed her position and said that she had spoken to Ms Turner about getting a witness statement but that Ms Turner did not want to because she was worried about her job. The Tribunal noted that she had initially twice given the clear answer that she had not tried to contact Ms Turner. The Tribunal also noted Mrs Cooke's evidence. She remembered that after the Claimant had been challenged about the incident she

was very angry about the way she had been treated by Mr Phillips. Mrs Cooke said that the Claimant was quite annoyed about the whole thing and did not appear to show any sign of contrition or acceptance that she could have done something wrong. Looking at all the evidence the Tribunal found that the Claimant had been difficult and uncooperative (but not aggressive) at the disciplinary hearing.

3.19 After the disciplinary hearing the Claimant remained on the health and safety committee. Mr Brinham's evidence was that deficiencies relating to health and safety were discussed at those meetings regularly. Such matters were raised by the Claimant and others. He regarded this as still a work in progress for the Respondent's new site.

3.20 In January 2015 the Claimant signed the final report for two regulatory studies carried out for the client BASF. We refer to those as studies 692 and 693. We return to those studies in due course.

3.21 In March/April 2015 the Claimant was awarded a salary increase and invited to participate in the following year's bonus scheme.

3.22 In April or May 2015 the Claimant received a request from an external client for a duplicate of a report that related to a study conducted before the transfer to the Respondent. The Claimant says that she replied saying that she would need permission from Covance to disclose the report. The Claimant's evidence was that soon afterwards Ms Gilbanks, the QA manager at Covance, contacted her to obtain permission to provide the external client with a copy of the report. The Claimant says that Ms Gilbanks told her that the Respondent should not hold any data belonging to Covance and that she then realised for the first time that the Respondent should not have been in possession of any historical data belonging to Covance or its clients. The Claimant said that Mr Phillips came to her office, which she shared with Mrs Cooke, a short time later and reprimanded her in front of Mrs Cooke for having contacted Covance at all. She said that she was bemused and felt insulted. She said that it was clear to her that Mr Phillips was aware that the Respondent should not have held these data and that unwittingly she had let the cat out of the bag to Covance. She says that she was instructed to reply to Covance to the effect that the Respondent only held in-house data. She said that she did as she was told but felt very awkward about it. She assumed that the Respondent's server would then be cleansed of data belonging to Covance. None of the relevant emails was in evidence.

3.23 The Claimant's evidence is that at the next management meeting, in about May 2015, she repeated to those present, including Mr Phillips, that the Respondent should not hold Covance data. She said that Mr Phillips told the managers to instruct their staff not to send Covance data to clients or use the data for any other purposes, but that he said nothing about cleansing the servers of Covance data. The Claimant said that the exchanges were recorded by way of minutes. She said that the issue of data retention had still not been addressed by the following month. She began to feel very uncomfortable about it, but assumed it was a mere oversight and raised it again at the next management meeting in June 2015. The Claimant said that on that occasion Mr Phillips's immediate response was that he would not allocate senior resource to the sizeable task

required as the work was not revenue generating. She said that he explained in an angry and defensive matter that it would be necessary for a senior staff member to undertake the task. She said that she persisted with her belief that the matter had to be addressed and that Mr Phillips disagreed and was quite intimidating towards her. He asked the IT manager, Mr Fairhurst, if there was a quick IT fix to the problem and the answer was, "No."

3.24 Mr Phillips said in his witness statement that he had no recollection of the events described by the Claimant. He said that if the Claimant had told the external client that she had a copy of her report from 2009 on the Respondent's system, then she had failed to follow the protocol that he had repeatedly made clear to managers. That was that members of the team should not tell Covance customers that they held data within their archive. Rather, they should refer the external client to Covance to ask for the report from them. Mr Phillips said that he did not remember reprimanding the Claimant about this in her office in front of Mrs Cooke; he really did not think that he would have done so, it was not his method as a managing director to deal with issues in that way. He would have spoken to the Claimant privately. In cross-examination Mr Phillips said that he very much doubted he told the Claimant to tell Covance that the Respondent only held in-house data. He did not remember whether he had reprimanded her. He doubted it. He rarely reprimanded people. He had no recollection of a discussion with the Claimant about this matter. Mrs Cooke said that Mr Phillips had not reprimanded the Claimant in their shared office in front of her. She would have remembered if he had done so and it was not his style.

3.25 As set out above, there was an agreement between the Respondent and Covance about retained data, of which the Claimant was unaware. She was not therefore aware that the agreement reflected an acknowledgement that the Respondent would continue to hold Covance data. That is, of course, relevant to her perception that Mr Phillips thought she had "let the cat out of the bag." Mr Phillips did not deny that a conversation had taken place about this with the Claimant. He was clear in saying that he simply did not remember. The Tribunal found that there was some sort of conversation about the third party request. It may well be that Mr Phillips reminded the Claimant that she should not have told the external client that the Respondent held a copy of the report. However, we were satisfied that he did not reprimand her in an inappropriate way. We found Mrs Cooke's evidence about that persuasive. It seemed to the Tribunal that the Claimant's evidence and her perception at the time were influenced by her incorrect assumption that the Respondent should not hold any Covance data on its systems.

3.26 As regards the Claimant's contention that she raised concerns about data retention thereafter at monthly management meetings, the Tribunal heard evidence from a number of people. All of the Respondent's witnesses who gave evidence about it said that no formal minutes were taken of the management meetings. Ms Dawson, who was responsible for taking formal minutes of meetings when that was required, gave clear evidence about her understanding. It was suggested to witnesses that although there may not have been formal minutes, those present took it in turns to take the minutes and circulate them. None of the Respondent's witnesses recalled such a practice. The Tribunal was satisfied that minutes were not taken.

3.27 Mr Phillips described in his witness statement the agreement with Covance about retained data. He said that if any former customer of Covance contacted the Respondent seeking data he expected staff politely to refer them to Covance. He did not expect staff to tell third party customers that the Respondent held data within its archive. He said that on various occasions he gave clear instructions to members of the senior management team and department heads not to use Covance data for unauthorised purposes or to disclose them to anyone outside of the Respondent and to delete any Covance data that were not needed. He said that he was determined over time to ensure that all surplus Covance data were gradually deleted. This was not simple because of the way the data had been disseminated and saved across individual computers and devices. He said that he did not recall the Claimant raising the issue of Covance data at management meetings in May and June 2015. If she did, it may have been in the context of his ongoing call to managers to deal with the issue. Unfortunately most managers did not prioritise this. Mr Phillips did recall speaking to Mr Fairhurst to find out if there was a quick fix and being told that there was not.

3.28 The evidence given by the Respondent's witnesses was consistent with Mr Phillips's account. Mr Fairhurst said that when he was present at management team meetings it was always Mr Phillips who raised the question of retained data. He did so on a number of occasions. Mr Fairhurst did not recall the Claimant being particularly vocal on the subject. He agreed that the issue was not easily resolved. He said that Mr Phillips was absolutely clear that he wanted to ensure that the Respondent met its obligations under its agreement with Covance and remove data that it did not need to hold. In fact he remembered Mr Phillips asking him to email the department heads himself issuing a reminder. Mrs Cooke said in her witness statement that the entire leadership team was aware that over time they needed to delete data that had not been purchased from Covance. They knew that this would not be an easy task. They had all been told by Mr Phillips that when third party enquiries were received the individuals should be encouraged to contact Covance. Mrs Cooke recalled Mr Phillips raising the issue from time to time at management team meetings and being adamant that all surplus data should be removed. She could not remember whether the Claimant had raised the issue. She said that Mr Phillips was not irritated by the subject being raised. Mr Brinham's evidence was that this was something Mr Phillips was keen to resolve. He did recall the Claimant raising concerns about data cleansing once.

3.29 The Tribunal accepted that this was an ongoing issue. We find that Mr Phillips was conscious of the need to remove surplus Covance data from the Respondent's systems over time and that this was something he pushed at management meetings. There were regular discussions at management level. We accept that the Claimant on occasions raised the issue herself at management team meetings, but she was not a lone voice. Rather it was in the context of an ongoing debate, in which Mr Phillips was pushing managers to address the issue within their departments. It seemed to the Tribunal that the way the Claimant now characterised the discussion reflected in part a tendency to look at matters with hindsight in the light of her claims before the Tribunal. The Tribunal considered that the Claimant was presenting the evidence with a somewhat different spin from how events transpired at the time. The way in

which she now describes matters does not make sense in the light of the actual agreement between Covance and the Respondent.

3.30 In early June 2015 Mr Coveney raised a grievance against the Claimant and her husband. That grievance was investigated by Mr Brinham, who spoke to a number of relevant individuals including the Claimant and her husband. In an outcome letter dated 29 June 2015 Mr Brinham rejected the grievance in its entirety. He found no evidence to support the complaints about the Claimant. The Tribunal was struck by the fact that when Mr Phillips made reference to this in his witness statement he said that in deciding not to uphold the grievance Mr Brinham "gave the Claimant … the benefit of the doubt." In cross-examination he accepted that the Claimant was not given the benefit of the doubt - the grievance was rejected because there was no evidence to support it. That description in his witness statement did seem to the Tribunal to reflect a somewhat negative perception of the Claimant on Mr Phillips's part. We return to that below.

3.31 We turn now to the events of July 2015. The Claimant went on annual leave on 22 July 2015 leaving a member of her team, Ms Clarke, in charge of some of the studies. On 23 July 2015 Ms Clarke went to see Mrs Cooke to raise concerns. She referred to two studies for the client Agriphar, one involving coccinella (ladybirds) and the other involving a different organism, T.pyri. Mrs Cooke emailed Mr Phillips on 23 July 2015. She said that Ms Clarke had explained that they were having difficulty meeting the validity criteria for these studies. The reference to validity criteria is to the thresholds set for the control group of organisms in order for the study to be valid. For example, one criterion might be that at least 70% of the control group of organisms must survive. If that threshold was not met then the study as a whole would be invalid. Mrs Cooke told Mr Phillips that Ms Clarke's concern was that for the coccinella study the controls were not surviving. For the T.pyri study the insects were escaping. Mrs Cooke said that Ms Clarke seemed stressed and felt out of her depth. Mrs Cooke asked Mr Phillips to go to the lab on Tuesday to see if he could offer any practical advice. Mr Phillips was out of the country at the time. However, he replied the same day saying that he would gladly spend some time with Ms Clarke.

3.32 In the meantime Mrs Cooke went to look at the data. Having done so, she sent a further email to Mr Phillips on 24 July 2015. She said that as they now knew that these studies were currently running, the application of the test substance must have been made without any NPTC licence holder checking the calibration or supervising the actual spraying. The Tribunal notes at this stage that the two Agriphar studies involved the spraying of a pesticide product. In some circumstances (see further below) the calibration of spraying equipment and the application of pesticides must be carried out or supervised by a licence holder. A licence is issued in the form of a certificate of competence in use of pesticides by the National Proficiency Tests Council ("NPTC"). It was Mrs Cooke's understanding that a licence holder was required to supervise or carry out the relevant steps for the two Agriphar studies and it was this to which she referred in her email. Returning to the email, Mrs Cooke mentioned that Mr Phillips had asked the Claimant a week or two ago under whose licence the application would be carried out. She said that she had confirmed to the Claimant that this was necessary and that either she or Ms Goodband, both of whom were NPTC licence holders, would need to supervise the application. Mrs Cooke said that

she had pointed the Claimant in the direction of the NPTC website and suggested that she send at least two of her team for training. Mrs Cooke said that the Claimant had asked Ms Goodband the previous week to supervise the application. Ms Goodband had agreed and asked to be informed when she was needed. Mrs Cooke said that she now understood that the application had been performed the previous week and that neither she nor Ms Goodband had been asked to check the calibration or attend the spraying. She said that she was not sure if this was because there was a lot for the Claimant and her team to do before she went on leave and they simply forgot. Mrs Cooke wrote that she knew that Mr Phillips had "concerns on PDT quality" and had asked Ms Earnshaw to look into this. She was hoping that they would have Ms Earnshaw's feedback at their next QA/TFM meeting. Mrs Cooke said that she was most worried for Ms Clarke who was not familiar with the work and felt out of her depth. Mrs Cooke also said that from a GLP perspective she was concerned that this was a new study type for the PDT team and yet the tests were running during the two weeks the Claimant was on annual leave.

3.33 Mrs Cooke told the Tribunal that she knew Mr Phillips had asked the Claimant a about the licence because he had told her, as she was one of the three licence holders within the business. The third was Mr Phillips himself.

3.34 Mrs Cooke sent a further email to Mr Phillips on 28 July 2015. She said that she and Ms Goodband had checked through the data for the sprayer calibration and actual substance application for the two Agriphar studies (which we refer to as numbers 121 and 133). She set out a list of concerns about the calibrations including: there was no SOP or other method detailing how the calibration should be performed or had been performed; the sprayer calibrated was a standard garden sprayer fitted with the wrong nozzle; the height recorded did not indicate whether it was above ground or above the crop; if it was above ground it was too high; the way calibration had been performed was unclear - it appeared as though one calibration had been performed although three different sprayers had been used; and the calibrations had been performed by Ms Burns and had not been signed as being checked or approved by a suitably experienced member of staff or the study director in advance of the actual spray applications. As far as the applications were concerned Mrs Cooke said that there was no record of the actual sprayer used so the application of the substance could not be connected to the calibration of the sprayer. There was no description of how the application would be performed, e.g. number of passes required, cleaning between treatments, height of nozzle above crop etc. For one study the time at the start and the end of each spraying treatment was recorded. For the other study all three treatments had been bracketed with one start time and one end time. There was no way of confirming that the time taken to spray was the 14 seconds determined as required from the calibration. Mrs Cooke said that the applications had been made on Thursday 16 and Friday 17 July and that Ms Clarke and Mr Shannon had both said that it was not until after the second application that the Claimant told them they should have had Ms Goodband present. Mrs Cooke said that Ms Clarke and Mr Shannon had said that the Claimant gave Mr Shannon a brief training session on how to do the calibration/application. Mr Shannon then trained the PDT team. Mrs Cooke had now been told by Ms Clarke that these studies were repeats of ones performed last year. Mrs Cooke reported that Ms Goodband had spoken to Ms Clarke separately later on and that

Ms Clarke had told Ms Goodband that she and Mr Shannon were worried at potential repercussions from the Claimant and that it might be suggested that it was Mr Shannon/the team that did something wrong. Mrs Cooke suggested that when Mr Phillips popped down to see Ms Clarke the following afternoon it would be worth having a chat with her to get her viewpoint. He might also want to see the study files containing the sprayer calibrations and application data for himself.

3.35 Mr Phillips did go to the laboratory on his return. He said in his witness statement that after only a few minutes it became very clear to him that there were basic problems within the laboratory that he did not expect to see. He said that it also came to light that two earlier tests that had been carried out under the Claimant's control, signed off and submitted to the Environmental Protection Agency in the United States, were fatally flawed. That was a reference to studies 692 and 693. The evidence from Mr Phillips and Mrs Cooke was that concerns about those two studies emerged because Ms Clarke indicated that those studies also involved the application of pesticides by spraying. They were therefore looked into. In cross-examination Mr Phillips agreed that he was concerned about the atmosphere in the laboratory at this stage. He said that this had come from a conversation with Ms Clarke, but that what Mrs Cooke had written about potential repercussions from the Claimant would have concerned him in any event.

3.36 The position therefore was that Ms Clarke had initially raised concerns on 23 July 2015. Mrs Cooke had been to investigate and found a number of matters of concern relating to the calibration and spraying. When she discussed those with Ms Clarke, Ms Clarke mentioned the two earlier BASF studies. They were then looked into. Mr Phillips also reviewed the data and spoke to Ms Clarke. He was of the view that there were concerns about the two Agriphar studies and the two BASF studies. He also had concerns about the atmosphere in the laboratory.

3.37 When the Claimant returned from holiday on 5 August 2015 Mr Phillips had scheduled a meeting with her, which was referred to as a catch-up meeting. The meeting was attended by Mr Phillips, Ms Blakey and the Claimant. In fact it was not a catch-up meeting. The Claimant was presented with a draft compromise agreement and invited to go away and consider an offer to leave the business. She was sent home. Mr Phillips said in his witness statement that before the Claimant's return to work he held an emergency meeting with Ms Blakey and Mr Polovick, the Respondent's US HR lead. During their meeting they agreed that the Claimant should be offered an agreement rather than going through a disciplinary process. Mr Phillips said that he supported that idea because of concern about how the Claimant would react when her performance was criticised in such a serious way. His experience of the Claimant during the October 2014 disciplinary hearing influenced his judgment in that regard.

3.38 Ms Blakey dealt in her evidence with the discussion that led to the 5 August 2015 meeting. She said that as well as Mr Polovick dialling in from the US, Ms Shepherd was on the line too. The Tribunal was surprised that neither Mr Phillips nor Ms Shepherd had mentioned that. Ms Blakey said that the discussion was about the compliance issues that had arisen. She specifically said that some of the customers were in the US and that they discussed "in depth" the impact on those customers. She said that there was a discussion of the options, including

an investigation and the need to get back to the client. There was also discussion of offering the Claimant a settlement agreement. It was Mr Phillips who raised that possibility. Ms Blakey said that a decision was taken to pursue that option to avoid having to conduct a detailed investigation involving the Claimant's direct reports and peers. The focus was on the Claimant because the studies were within her business function. Ms Blakey said that the decision was not reached because the Claimant had been making health and safety or data retention disclosures. However, Ms Blakey's evidence indicated that the Respondent in the UK needed to demonstrate to the clients in the US that swift action was being taken. Undoubtedly the Claimant's removal from the business would meet that need and the Tribunal considered that this played a part in the events that followed.

3.39 We turn to deal with Mr Phillips's attitude towards the Claimant. The Respondent has a robust appraisal system involving 360° feedback. The Claimant had not received any negative feedback. We have referred above to Mr Phillips's suggestion that Mr Brinham gave the Claimant the "benefit of the doubt" when he had rejected Mr Coveney's grievance about her as being without foundation. Mr Phillips said that he had raised concerns with the Claimant about people's perceptions of her behaviours in her 2014 appraisal, but had not put training in place to address any underlying issue. Mr Phillips was asked whether the Claimant's complaints about health and safety were in his mind when he decided that she should be offered a compromise agreement on 5 August 2015. He said that the contact during the disciplinary meeting was definitely in his mind, but that her health and safety complaints had nothing to do with it. A noted above, Mrs Cooke's email of 24 July 2015 referred to Mr Phillips having concerns about PDT quality and asking Ms Earnshaw to look into them.

3.40 It did seem to the Tribunal that Mr Phillips had a somewhat negative perception of the Claimant and that this was influenced by his view that during the disciplinary meeting in October 2014 she had behaved in a confrontational manner so as to reduce her own companion to tears. We considered that this was reflected in his "benefit of the doubt" comment. However, the Tribunal accepted Mr Phillips's evidence that the Claimant's complaints about health and safety, made during the course of that meeting, did not have any bearing on his treatment of her, whether the decision to offer a settlement agreement on 5 August 2015 or any of the events that followed. There was simply nothing in any of the evidence to suggest that these health and safety complaints continued to be of any concern. Mr Phillips acknowledged them openly in the letter giving the Claimant a verbal warning. She continued on the health and safety committee. She and others continued to raise health and safety issues in that forum and the Respondent continued to address those matters. Mr Phillips frankly acknowledged that he did have in mind the way the Claimant had conducted herself and we accepted that credible explanation.

3.41 Mr Phillips said that he had no recollection of the Claimant making any disclosure about the retention of Covance data and that any such disclosure had no influence on the decision to offer the Claimant a settlement agreement or to commence a disciplinary investigation (see below). Again, the Tribunal accepted that evidence. As we have found, the Claimant was not a lone voice raising concerns about the Respondent retaining Covance data without Covance's

knowledge. Rather, Covance and the Respondent each knew that the other retained data. There was pressure, driven by Mr Phillips, to cleanse the Respondent's systems. The Claimant may have raised concerns in that context, but it was a matter that Mr Phillips was already promoting.

3.42 Accordingly, the Tribunal found that the decision to hold a meeting on 5 August 2015 at which the Claimant would be offered a compromise agreement was not influenced by the fact that she had raised concerns about health and safety in the October 2014 disciplinary meeting or by anything she may have said about the retention of Covance data in the more recent management meetings. The Tribunal did consider that the decision was affected by Mr Phillips's negative perception of the Claimant, which stemmed from the way she had conducted herself in October 2014. This, coupled with the concerns that arose as a result of Ms Clarke's discussions with Mrs Cooke and Mr Phillips and the perception that there was a need to report swift action to the clients in the US, led to the decision that a disciplinary investigation was necessary but that it should be avoided if possible by an agreed termination of the Claimant's employment. The Tribunal found that Mr Phillips had reached the point where he wanted the Claimant out of the business. However, that was not because of any health and safety concerns or data retention concerns she had raised but for these other reasons.

3.43 On 6 August 2015, while considering the settlement offer, the Claimant carried out some job searches to see what roles were available. She discovered that a role that seemed almost identical to hers had been posted by two recruitment agencies, McGinley and Non Stop Recruitment. The Non Stop post was put on the website on 9 July 2015. It was unclear when the McGinley role was advertised. The Claimant's witness statement said June 2015, although the advert itself said 27 July 2015. We do not need to resolve precisely when it was posted. The Claimant called McGinley and found out that the role was with the Respondent. She was unaware of any such vacancy at the Respondent. The Claimant considered that this was her job being advertised and that formed part of a grievance she subsequently raised. We deal with the Respondent's handling of that grievance below. The Tribunal saw the job adverts. The McGinley advert was for a senior ecotoxicology manager and there was a very substantial overlap between the description of the job role and the Claimant's job description, which she had drafted herself. There were no references to PDT; the role related to ecotoxicology. The advert from Non Stop Recruitment was also for a senior manager in ecotoxicology. It said that the role holder was expected to act and co-ordinate as a senior study director within the Environmental Services Unit, which was largely responsible for performing a broad level of ecotoxicology studies on both aquatic and terrestrial systems.

3.44 The Respondent says that the job advertised was not the Claimant's. In cross-examination, Mr Phillips said that a job in the organisation structure in 2013 had been put on hold. A decision had been taken that the job should no longer be on hold and Mrs Cooke had progressed with advertising the role of a senior manager in ecotoxicology. Mr Phillips agreed that PDT was the only department that had aquatic *and* terrestrial ecotoxicology responsibilities. The ecotoxicology department only had aquatic ecotoxicology. Mr Phillips said that as soon as the volume of work increased to a particular level, the decision was taken to integrate another employee into the business. He would sign off such decisions. This was

not a frequent occurrence. The Respondent grew only by about three or four people per year.

3.45 That was on the face of it a straightforward explanation of how a role came to be advertised: it was a role that had been envisaged for two years and when the business grew to a point where the role was needed Mr Phillips authorised the placing of an advert to fill it. But what is striking is that this straightforward explanation does not appear to have been given to the Claimant at the time (see further below). Mr Phillips was asked about the Non Stop advert in the course of the Claimant's subsequent grievance appeal. It was pointed out to him that the role being advertised was a role in aquatic and ecotoxicology and he agreed that PDT was the only department that had both those functions. He said at that time that the Claimant's role had not been advertised, but that they did get head hunters who picked things up, though he said that had not happened here. Mr Phillips was asked whether this was a new or existing role and whether he believed the role was within the Claimant's side of the business. Mr Phillips said that they had been looking in terrestrial; it could be an old requirement, it could be a role the Claimant was looking for in her department. Mrs Cooke dealt with ecotoxicology though aquatic was not her area.

3.46 Mr Phillips was asked in cross-examination why he did not give the simple explanation that he had approved the advertisement of a role that had been on hold for two years in the grievance appeal. He said that what he had said was a "roundabout way of saying it."

3.47 The Tribunal also saw an email from Ms Blakey to a Mr Kanji at Non Stop dated 9 July 2015. She said that their highest priority role at the moment was a senior manager ecotoxicology reporting to the director of ecotoxicology and regulatory. The person would be managing a team of study directors. She said that she would send a job description early the following week. She also asked that Mr Kanji copy any candidates to Mr Phillips and Mrs Cooke because she would be on holiday from 14 to 24 July 2015 and, "David is keen to keep momentum and may telephone interview in my absence." Mr Kanji replied the same day to confirm the instructions.

3.48 Ms Blakey was also asked about the job adverts during the course of the Claimant's grievance appeal. She said that the business had not advertised the Claimant's role at any time. She appeared to suggest that the McGinley role had been picked up by an agency looking at the Respondent's website and that it related to a job that was being advertised internally reporting to the director of ecotoxicology, Mrs Cooke. As far as the Non Stop role was concerned, Ms Blakey suggested that this might have been maternity cover for Ms Grzebisz. Ms Blakey appears to have confirmed that the Respondent had not given any job specification for a business manager in PDT. There was only one vacancy for a senior manager and that was in ecotoxicology. Ms Blakey said that this was not a new post but had been on hold in the organisation charts since Ms Blakey started in 2013. It had been activated in July 2015. That was consistent with the evidence Ms Blakey gave the Tribunal. She also produced some organograms that supported the suggestion that a role in ecotoxicology had been on hold, together with a recruitment request form signed by Mrs Cooke in July 2015. Mr Kanji was also spoken to during the course of the Claimant's grievance appeal.

He said that he had included a reference to aquatic and terrestrial systems in the job advert he issued in order to broaden the candidate pool.

3.49 The Tribunal accepted, in the light of that evidence, that a role in ecotoxicology had been on hold and was activated in July 2015. However, it was clear that the job description had drawn on the Claimant's own job description and this reflected the degree of potential overlap in the skills required to perform this role and the Claimant's role. Bearing in mind that at this very time the Respondent was contemplating the Claimant's exit from the business on an agreed basis, the Tribunal found that it was not necessarily a coincidence that the role was activated at this time. That does not mean that the outcome of any potential disciplinary process was pre-determined. Rather, at that stage the Respondent was contemplating an agreed termination of the Claimant's employment and that may have been one consideration in deciding to recruit to the new role at that time. However, there was nothing to suggest that there was any connection with the fact that the Claimant had previously raised concerns about health and safety and the Tribunal found that this played no part in the advertisement of the role.

3.50 Shortly after the meeting with the Claimant on 5 August 2015 (either later that day or the following day) Mrs Cooke was asked to carry out a formal investigation into the concerns about the four studies. In fact the investigation was widened at that stage to include the Claimant's financial reporting and her management style. Mrs Cooke told the Tribunal that the remit was broadened to include the Claimant's management style because of the concerns that had been expressed to her. She understood that she was being asked to look into the Claimant's financial reporting because Mr Phillips had concerns that this was not being done accurately. It was not clear when those concerns had arisen but it was evidently only at this stage that Mr Phillips decided to take any action to investigate them. That seemed to the Tribunal to be consistent with a wish on his part to see the Claimant out of the business.

3.51 Mrs Cooke began her investigation. It is evident that discussions relating to the proposed termination agreement were ongoing for a period, during which the Claimant remained absent from work. The Tribunal did not hear any evidence about that. There came a point on 20 August 2015 when Ms Blakey wrote to the Claimant to tell her that she was now suspended from work pending investigation into a number of serious compliance issues surrounding six studies undertaken for four clients. She was told that further investigation into financial reporting and revenue recognition, general management practices and potential costs/liability to the business might also be necessary. There was nothing to suggest that the Claimant's suspension and the instigation of disciplinary proceedings was linked to her raising of health and safety issues at the earlier disciplinary hearing. The Tribunal found that it was not. Rather, this was essentially the inevitable consequence of the view reached on 5 August 2015 that Mr Phillips no longer wanted the Claimant in the business. Evidently no compromise agreement had been reached, so the disciplinary process that had been proposed was activated. On 26 August 2015 Ms Blakey wrote again to the Claimant extending her suspension period. The Claimant replied the same day asking Ms Blakey to let her know what she was supposed to have done to warrant suspension. She said that the process was causing her a great deal of anxiety and wanted to know what the allegations were and from whom. She concluded "who knows I might

even be able to help you with your investigations." Ms Blakey replied on 27 August 2015. She said that she would be more than happy to forward the investigation report once complete to the Claimant and would contact her as and when required during the process.

3.52 On 4 September 2015 Ward Hadaway solicitors representing the Claimant wrote to the Respondent submitting a formal grievance. The letter referred to the meeting of 5 August 2015 at which it was said that Mr Phillips had told the Claimant that financial targets were not being met, that financial predictions were not accurate, that she had been generating a "bad atmosphere in the team" and that there had been complaints coming in "thick and fast." The letter said that the Claimant had not been told of any disciplinary procedure or potential investigation. The complaints set out in the grievance included the contention that the Claimant's job role had been advertised by McGinley. The letter said that the approach taken on 5 August 2015 was alarming and that since then the Respondent had continually refused to elaborate on the allegations, which had caused the Claimant increasing levels of stress and anxiety.

3.53 On 4 September 2015 Ms Blakey wrote to the Claimant requesting her to attend an investigatory meeting on 8 September 2015. No further detail of the allegations was given. Ms Blakey wrote a separate letter on 4 September 2015 to Ward Hadaway acknowledging receipt of the Claimant's grievance. Ms Blakey said that the grievance and disciplinary processes would be dealt with at the same time. On 7 September 2015 Ward Hadaway wrote to Ms Blakey. They said that the Claimant had attended her GP once again because of the anxiety caused by the Respondent. She had a fit note, which had been provided to the Respondent, signing her off work and was therefore not in a position to attend the investigatory meeting on 8 September 2015. Ward Hadaway repeated a request for detail of the allegations about the Claimant. They made clear that it was the "not knowing" that was causing the Claimant more anxiety than anything else. Ward Hadaway also wrote that it was inappropriate for Ms Blakey to communicate with the Claimant on her personal email. If they wanted to communicate with her by email they needed to provide her with a laptop. However, it was suggested that they communicate with Ward Hadaway in the first instance.

3.54 The Claimant was indeed signed off work with work related stress for 10 days from 3 September 2015. In cross-examination she explained that she did not attend the investigatory meeting because she was ill. She was severely anxious and stressed, in particular because she did not have any information about the Respondent's allegations. She was asked if there was any reason why Ms Blakey was told so late in the day about her non-attendance. She initially suggested that she was actively job seeking and had to work 37 hours per week. It was pointed out to her that she was still employed at that point and she withdrew the suggestion. That was an example of the Claimant viewing matters with hindsight and giving evidence from that perspective rather than focusing on what in fact happened at the time.

3.55 Ms Blakey wrote to Ward Hadaway on 8 September 2015. She expressed surprise at the suggestion that she should not communicate with the Claimant on her personal email. She pointed out that the Claimant used that email to

communicate with the Respondent and had not asked the Respondent not to do so. In response to the request for further detail of the allegations Ms Blakey said that the Respondent needed to conduct an investigation to further define the specifics. The Tribunal pauses to note that the Claimant had been provided with almost no information about the allegations at this stage. We have referred in some detail to the email correspondence between Mrs Cooke and Mr Phillips as early as 24 and 28 July 2015. The suggestion in early September that further investigation was required in order to provide more detail of the allegations to the Claimant seemed to the Tribunal entirely specious.

3.56 Ms Blakey went on to suggest that if the Claimant had attended the investigatory meeting she would have been provided with a copy of the report afterwards. Her responses to that report would have completed the investigation and then it would have been decided whether there was a case to answer or not. As she had not attended the investigatory meeting they would be writing to her separately with the investigation report which detailed the allegations against her and the proposed next step. It is not apparent that any consideration was given to postponing the investigation for a short period to enable the Claimant to attend a rescheduled investigatory meeting. Nor does any consideration appear to have been given to the information that it was the "not knowing" that was causing the Claimant's stress and anxiety. In cross-examination Ms Blakey was asked about this and said that the Respondent was under pressure from the Claimant to provide the full investigation report. It seemed to the Tribunal that this was a wilful misunderstanding of the Claimant's position. There was nothing to suggest that she or her representatives were pressing for the final investigation report. It was quite clear that they were simply asking to be told why the Claimant had been suspended and what was being investigated.

3.57 Ms Blakey wrote to the Claimant on 8 September 2015. She said that the investigation was now complete, save for any response the Claimant might have, and that a copy of the full report would be forwarded to her by 10 September to enable her to prepare fully for the disciplinary hearing. The letter confirmed that the Claimant was to attend a disciplinary hearing on 15 September 2015. Ms Blakey wrote that the purpose of the hearing was to discuss the Claimant's alleged misconduct surrounding a number of serious compliance issues as set out in the document to follow. There were also concerns about financial reporting of revenue recognition, general management practices and potential cost/liability to the business. Ms Blakey referred to the Claimant's fit note and proposed the "reasonable adjustments" of holding the meeting at a neutral location, allowing the Claimant to make written submissions and providing "access to any evidence you need to help you prepare for the hearing which can be sent out to you at your request once you identify the data you require." The Tribunal struggled to understand how the provision of relevant evidence could be characterised as a reasonable adjustment to deal with the Claimant's ill health. The Claimant was warned that the outcome of the hearing might include her dismissal.

3.58 The Claimant was still almost entirely ignorant of the allegations against her. She had not been asked about them and had not been provided with any detail or any documentary evidence. Despite that, she was now being told that she had to attend a disciplinary hearing the following week that might lead to her dismissal.

She was signed off with work related stress for a further period until 17 September 2015.

3.59 On 10 September 2015 Ms Blakey sent the Claimant a copy of the investigation report and accompanying witness statements. She asked the Claimant to provide details of any information she required to enable her fully to prepare for the hearing.

3.60 The investigation report was prepared by Mrs Cooke. She was asked in cross-examination about the fact that she had completed the report without having spoken to the Claimant. She said that it was not her decision. She was told that the Claimant would not be interviewed and that her report was required. She did not consider alternatives, such as asking the Claimant to answer written questions. She did not carry out any further investigations or checking of the evidence when she knew that the Claimant was not to be asked about matters.

3.61 The Tribunal read Mrs Cooke's report carefully. It set out concerns relating to six regulatory studies: numbers 692, 693, 121 and 133 and two further studies on seedling emergence (970 and 126). The Tribunal noted in particular:

3.61.1 For studies 692 and 693 Mrs Cooke said that it was a legal requirement for a trained person who held the relevant NPTC licence to perform or supervise the application of pesticides and that no licence holder had reviewed the calibration data or been present for the application in these studies. Detailed issues of concern about the study data were set out, including that the sprayer calibration was not checked or approved by the study director; that there was no SOP or other method for calibration; that there were issues with the manner of application and difficulties in referring the spray times back to the calibration that had been carried out; and that an iPhone had been used to record times. Mrs Cooke said that because of these deficiencies, the rate at which the test substance was applied could not be confirmed in either study. This meant that the end points derived from the study could not be supported and that both studies would need to be repeated.

3.61.2 For studies 121 and 133 Mrs Cooke again said that there had been a failure to comply with a legal requirement for an NPTC licence holder to be present for the application and to review the calibration data before application of the test substance. She said that the calibrations and applications were performed by laboratory personnel who were not adequately trained or signed off as competent for the tasks involved. She set out a number of deficiencies said to be present in the calibration data. Again these were detailed points of concern relating to operating procedures, calibration, the actual application of the test substance and the way in which that had been recorded. The deficiencies related to both calibration and actual spray application. In addition Mrs Cooke wrote that coccinella was a new species to the staff for which they had no prior experience. She noted that the validity criteria were not achieved in both coccinella and T.pyri studies because of a higher level of mortality and/or escapees in the control groups. Mrs Cooke said that because of the deficiencies in applying the test substance, the inability to determine the test substance application rate,

and the failure of the control validity criteria, both studies required the definitive tests to be repeated. Additional training was also required for laboratory personnel in the culture and care of coccinella.

3.61.3 For study 970 Mrs Cooke said that the definitive test began on 17 July 2015. Seedling emergence started four days later but there were concerns about that. This led Mrs Cooke and Ms Goodband to view the plants with Mr Shannon on 6 August 2015. On closer inspection it appeared that the plants had been overwatered. It appeared that the pots had been watered using a garden hose and from the top rather than the bottom. Mrs Cooke said that for seedling emergence studies watering should be performed little and often, using a watering can and watering from the bottom. The definitive study was to be repeated under the direction of another study director.

3.61.4 For study 126 the range finder study had begun on 9 July 2015. Concerns had again been raised about the state of seedling emergence and Mrs Cooke had identified the same concerns about husbandry and watering. The test was to be repeated.

3.61.5 Mrs Cooke referred to the GLP Regulations and the requirements of a study director. She said that review of the data for the six studies and information provided through interviews with PDT staff indicated that there was limited study director involvement and that data were not routinely checked by the study director in a timely manner. Further, records showed that PDT staff were not adequately trained or experienced to perform a number of key tasks and there was little if any supervision or guidance from the study director during the course of the studies. Mrs Cooke said that other concerns had been raised relating to study conduct, including a lack of SOPs to provide instruction on the care and culture of test species and conduct of studies, and incomplete training records with inadequate assessment of competence before performance of tasks in studies. In some cases Mrs Cooke said that staff were performing tasks for which there was no mention of training or assessment of competence in their training records.

3.61.6 Mrs Cooke had assessed the cost to the business of having to repeat the tests in the six studies as amounting to £155,000.

3.61.7 The report then dealt with financial management and revenue recognition. Revenue recognition is the internal process whereby revenue is notionally assigned to a study, generally on the basis of the progress made within the study. The Claimant's revenue recognition going back to June 2014 had been investigated. Mrs Cooke identified seven studies by study number where she said that the percentage revenue taken did not match the actual progress of the study. Those seven studies were referred to in a table. Mrs Cooke also wrote that she had reviewed the financial dashboard prepared by the Claimant to illustrate the studies being performed by her department together with details on current status and revenue predictions for the month. She said that the investigation indicated that the Claimant's predictions were inaccurate. The Claimant's six month forecasts were also said to be overambitious, inaccurate and unreliable.

3.61.8 The investigation report went on to deal with management practices. Mrs Cooke said that she had interviewed all members of the PDT department and the QA manager. As a result she set out a number of

concerns, including that members of the PDT team had received little or no training from the Claimant prior to being required to perform tasks in studies. Where training was provided it appeared to consist of a single demonstration from the Claimant with no supporting methodology to refer to. Staff felt they were left to sort out the studies themselves by consulting the test guidance and protocol. More than one staff member said that revenue generation appeared to be more important than adequate training. Senior staff reported being signed off by the Claimant as competent when they had no experience of the study type. People would be signed off as competent for tasks immediately before the Claimant was due to be out of the office regardless of whether they were sufficiently competent. The general consensus was that training was inadequate and training records were not reviewed regularly or kept up to date. Mrs Cooke said there was a perceived lack of SOPs or other guidance documentation throughout all the witness statements and that the Claimant was reluctant to consider issuing SOPs, to the point that staff wrote and issued them in her absence to save any comeback on her return. When concerns were raised by QA about the lack of SOPs the Claimant's response was said to be dismissive. Mrs Cooke said that there was consistent feedback that the Claimant was not actively involved in her studies, infrequently attended at critical phases and did not check data in a timely manner. QA reported that the Claimant was often dismissive of their findings and that comments raised were often inadequately or inappropriately addressed. The impression was that the Claimant always had an excuse and was reluctant to change anything she did.

3.61.9 Mrs Cooke dealt with sprayer licence requirements. She said that staff involved in studies 692 and 693 confirmed that the Claimant was aware of the requirement for an NPTC licence holder to be present or to supervise but that when there was no further mention of this the applications proceeded without a licence holder present and staff did not question it as they believed the Claimant must have discussed the requirement with Mrs Cooke. For studies 121 and 133 Mrs Cooke said that staff again confirmed that the Claimant knew that a licence holder needed to be present. All personnel involved in the calibrations and applications said that the Claimant did not mention to them that a licence holder should be present until after the last application had been completed. The general consensus was that the Claimant felt that this was not important or that she was rushing the applications through before she went on annual leave.

3.61.10 Criticisms were made of the Claimant's management style including that she was not particularly supportive to new recruits and that if a person did not meet the Claimant's desired performance she tried to remove them from the business. QA said that they struggled to work with the Claimant, they felt that she tried to belittle their experience and was confrontational, argumentative and dismissive.

3.62 Annexed to the report were notes of interviews with Ms Grzebisz, Mr Shannon, Ms Clarke, Ms Burns, Ms Earnshaw and Ms Chitikeshi. The interviews had been held at the very end of August or the start of September 2015 and the typed notes were signed a few days later. The questions as recorded were not open or

neutral. For example, witnesses were asked when they first became aware of the requirement to have a licence holder supervising the application and why they thought the applications had taken place with no licence holder to supervise. The notes included the following:

3.62.1 Ms Grzebisz said that before studies 692 and 693 had started they discussed the requirement for Mrs Cooke to be present for the dosage as the only spray licence holder during a PDT meeting. Ms Grzebisz had assumed that the Claimant and Mrs Cooke had come to some agreement and did not think to question it on dosing days. Ms Grzebisz said that the Claimant had very little involvement in some studies, that they had had very little training and had been made to feel it was their fault when things went wrong. She said that the Claimant was very reluctant to implement SOPs. She said that although the Claimant was their manager she was also very friendly with them. She suggested that this could be construed as manipulative because they felt like they were betraying her. When they raised things they hoped it would trigger Mr Phillips to look into the situation. They had raised some situations and it had put them in difficult positions. Ms Grzebisz said her own view was that when things remained in the group the Claimant's initial action would always be to shirk responsibility and try to push the blame on to others. Ms Grzebisz referred to having received support from Mr Phillips, Mrs Cooke and Mr Clarke. Ms Grzebisz said that there was never a strong study director involvement from the Claimant. She would promise to make herself available and then be conspicuous by her absence on study days. Ms Grzebisz said that she and Mrs Clarke were seen to be the most senior staff. None of them had familiarity with terrestrial. They were left to fend for themselves and they learnt as they ran studies. Ms Grzebisz suggested that the Claimant had no patience for a lot of staff and she did not put much effort into new staff. For example Mr Shannon had been dumped trying to keep his head above water and was floundering. Ms Grzebisz said that the Claimant wanted to remove Ms Chitikeshi from the business and that had it not been for Ms Grzebisz and Mrs Clarke sticking to their guns that would have happened. Ms Grzebisz said "hand on heart" we were given no training. Ms Grzebisz also said that the Claimant said more than once that if they did not make revenue difficult decisions would have to be made, implying that someone would lose their job. She said that she and Mrs Clarke would back down because they were fearful.

3.62.2 Mr Shannon was asked when he first became aware of the requirement to have a licence holder supervising the spray application. He said that the Claimant had said that they needed to make sure that Ms Goodband or Mrs Cooke was there, but he said that she had said it after spraying. He thought that the applications had taken place with no licence holder to supervise because it was being pushed through because of the time factor. Mr Shannon said that the Claimant did seem to take things on board when he raised them. He felt he was being listened to but that there were other more important priorities.

3.62.3 Ms Clarke was asked about studies 121 and 133. She said that she was signed off in the training records but had never actually done an aged residue study before and did not have experience in coccinella. She said that she did express her concerns about overseeing the

studies in the Claimant's absence but that the Claimant had told her that the main part of the coccinella study would be when she was back in the business. Ms Clarke said that the Claimant had done a small presentation on coccinella studies and also did an aged residue training session with Ms Clarke and Mr Shannon before the study started. Ms Clarke said that she had raised concerns informally with the Claimant on a number of occasions. She had not raised them with any one more senior because she would not have felt comfortable if the Claimant had found out. Ms Clarke agreed that the Claimant had mentioned the requirement to have a licence holder supervising the spray application for studies 692 and 693. Ms Clarke said that she did not really think it was that important as they had always done it that way and the Claimant never made a fuss about it. Ms Clarke expressed the view that the spray applications had taken place with no licence holder to supervise because the Claimant believed she was doing it right and did not need to ask anyone to supervise. Ms Clarke said that she had had concerns about other members of the team undertaking tasks that they had not been sufficiently trained for on many occasions. Ms Clarke said that generally she and Ms Grzebisz had felt that something would happen eventually. She said there was frustration and stress because they wanted to make it work. It was difficult to raise issues as the team were close and they were made to feel that they had divided loyalty to their manager because the Claimant encouraged a closer friendship.

3.62.4 Ms Burns had been involved with studies 121 and 133. She said that she did not feel confident that she knew what she was doing. The Claimant was on leave and they just fumbled along. Ms Burns said that her training records were kept with Ms Clarke. She was working under the guidance of Ms Clarke and Mr Shannon and did not read the SOP. Ms Burns said that the Claimant was not very approachable and that she fumbled along. She said it was difficult for her to comment. She said, "Erica [Grzebisz], Amy [Clarke] and Matthew [Shannon] had meetings". Ms Burns said that the amount of work the Claimant had left when she went on holiday was unbelievable and that they were "a bit miffed."

3.62.5 Ms Chitikeshi was involved in the seedling emergence studies. She said that she had helped Tom. She was just shadowing and was not told how to water correctly. If she had issues she would normally go to Ms Clarke or the study director. The Claimant was always approachable but there was not much training.

3.62.6 Different questions were asked of Ms Earnshaw from QA. She had been involved in some of the QA reviews of the six studies that were being investigated. She was asked whether she felt that the comments she had raised with the Claimant had been accepted and addressed by her. She said that they were often not adequately or appropriately addressed. The impression she received was that the Claimant was quite dismissive. Sometimes she recognised that QA had a point but would not own up to it in the audit responses. Ms Earnshaw was asked whether she had received support from the Claimant when raising queries about study conduct in PDT. She said that it would be easy to say, "No" but she did not think issues were always raised and given the attention that they should have had. She referred to an inconsistent

approach from QA, which had not helped with addressing issues in PDT. She said more than once that the Claimant was not supportive towards the QA auditors and was dismissive of their comments. Her view was that the PDT protocols were not always sufficiently detailed. Ms Earnshaw described the Claimant as confrontational, argumentative and quite dismissive of Ms Earnshaw's knowledge and understanding.

3.63 Mrs Cooke was questioned in detail in cross-examination about her investigation. Her answers included the following:

3.63.1 When she carried out her investigation into studies 692 and 693 she had the raw data, the final report and the audit for the draft report. None of those documents were annexed to her investigation report. She had asked Ms Earnshaw about the comments in the audit but this was not recorded in the notes of Ms Earnshaw's interview. Mrs Cooke had not investigated Ms Earnshaw's statement that QA comments were not adequately addressed by the Claimant. She acknowledged that if QA had found failures they should have been addressed before QA signed the final report. She accepted that if Ms Earnshaw thought that comments had not been adequately addressed she ought to have raised it at the time with the study director and then with TFM. Ms Earnshaw had herself carried out the QA audit for one of the BASF studies. Mrs Cooke had spoken to her about it when she was looking at the data and pulling her report together, but there was no record of their discussion. She did not ask any questions that specific because it was done some time after they discovered the concerns but added, "I already knew her response from talking to her." Mrs Cooke had not investigated why Ms Earnshaw's response appeared to be inconsistent with the fact that she had signed off the QA audit for one of the studies.

3.63.2 For studies 121 and 133 Mrs Cooke acknowledged that the staff knew there were serious concerns about the validity of the studies. She accepted that they might have believed that their own conduct would be under scrutiny. She accepted that the Claimant had never certified these studies as GLP compliant. She acknowledged that Ms Goodband had been asked to be involved in the spraying as a licence holder. She accepted that the Claimant had not herself performed the calibrations or the application of the test substance. Mrs Cooke accepted that Mr Shannon had told her that he had been told that Ms Goodband should be present for the application. Mrs Cooke pointed out that Mr Shannon had said that this was after the application. It was put to Mrs Cooke that she could not decide if that was correct because she had not spoken to the Claimant. She said that she spoke to other staff who had confirmed Mr Shannon's account. When asked which staff, she said she had checked with Ms Burns. There was no reference to it in the notes of Ms Burns's interview. When this was drawn to Mrs Cooke's attention she said that she did recall Ms Burns saying it. When asked why it was not recorded in the interview she said that it was a separate conversation not part of the interview. There was no note of any separate investigatory conversation with Ms Burns. Mrs Cooke agreed that the control groups had not met the relevant validity criteria and that the studies would have failed for that reason in any event.

3.63.3 Mrs Cooke had not interviewed Ms Goodband to ask whether she had subsequently been spoken to about supervising the calibration or application of the test substance.

3.63.4 Mrs Cooke agreed that the error in both seedling emergence studies was in the crop husbandry. She agreed that this had taken place while the Claimant was away. She was asked how she was able to conclude that this was because of a failure to provide appropriate training by the Claimant. She said that Ms Chitikeshi had indicated that she thought that she was doing it right. She agreed that Ms Chitikeshi's role had been to work under Tom's supervision and that Tom had left the business while the Claimant was on holiday. Mrs Cooke believed that a watering method had been left before the Claimant went on annual leave. She was asked what the Claimant had done that was blameworthy. She said that she should have checked before she went away that the people responsible for watering the plants knew what they were doing. She was asked whether the Claimant had been entitled to assume that Tom, whose competence was not in doubt, would, while supervising Ms Chitikeshi over a course of a week, ensure that she understood the very basic principle of watering plants from the bottom and not overwatering them. Mrs Cooke accepted that possibly the Claimant was entitled to make such an assumption.

3.63.5 It was the finance group who put together the spreadsheet on financial revenue reporting set out in the investigation report. That spreadsheet referred to studies by study number only. Mrs Cooke did not match the study numbers with study names. She accepted that she could not tell from that information whether any studies had been transferred to the Claimant from previous study directors. Mrs Cooke accepted that Ms Grzebisz had had a period of absence and that her studies had been transferred to the Claimant during that period. It was not possible to tell from the study numbers whether these were such studies.

3.63.6 Mrs Cooke was asked what the basis was for her conclusion that PDT forecasts were overambitious. She said that it was a mixture of the finance department and talking to the study directors. She acknowledged that this was not recorded in investigation interviews.

3.63.7 Mrs Cooke was asked about her conclusions that staff had not been adequately trained. She said that some staff had said that they were not competent when they had been signed off to carry out particular tasks. Mrs Cooke said that she had looked at the training records. It was drawn to her attention that when staff were signed off as competent to carry out a task they always countersigned to indicate their competency. She was asked whether she had addressed the dilemma that staff who were telling her that they had been signed off when they were not competent had themselves signed to say they were competent. She had not. She acknowledged that the staff might consider that their own conduct was under scrutiny. Mrs Cooke had not drawn up a list of the deficiencies in training that showed which staff members had not been adequately trained in which subjects. She had looked at the competence checklists, and she accepted that these were only one of the nine items that formed part of an individual's training record. She said that this was the only place where she would see if individuals had been signed off as competent for particular tasks. It

was put to her that if the criticism was that someone had been signed off as competent when they were not, one matter that might be relevant was a list of the training courses they had attended. She accepted that that would be relevant.

3.63.8 By way of example Mrs Cooke was shown the competence checklist for Mr Shannon. That showed that he had been signed as competent with T.pyri and coccinella and had countersigned. Mrs Cooke accepted that without a list of where the deficiencies were for particular staff members it was difficult for the Claimant to see what the criticisms were and to answer them.

3.63.9 Mrs Cooke agreed that studies 121 and 133 were transferred to her from 6 August 2015. Given that she had identified a need for additional training in her report, she accepted that one would expect to see a record of such training being given and signed off in the relevant staff training records. She was asked how she had addressed the deficiencies in training after 6 August 2015. She said that NPTC training had been organised and that a SOP had been written for sprayer calibration and application. As regards working with the particular organisms, she said that Ms Grzebisz and Ms Clarke had done studies and had "developed training from working with the organisms." Mrs Cooke was asked to consider Ms Burns's competence checklist. That showed that on 17 July 2015 Ms Clarke had started training Ms Burns on coccinella care. She had signed her as competent on different parts on 17 and 20 July 2015. Later in the month she had signed her as competent at a higher level. She had also signed her as competent in the care of T.pyri. Mrs Cooke acknowledged that when interviewed Ms Clarke said that she had been signed as competent in the care of coccinella and T.pyri when she did not feel that she was. It was suggested to Mrs Cooke that there must have been an issue to probe if, at precisely the same time, Ms Clarke was herself training other staff and signing them off as competent. She accepted that there was. There was no evidence to suggest that any investigation into that had been carried out. Mrs Cooke also accepted that Ms Burns did not have direct involvement with the Claimant, she reported to Ms Clarke. She admitted that she had not checked to see that Ms Burns had in fact been trained by Ms Clarke. Mrs Cooke was asked whether she had asked Ms Burns's line manager, Ms Clarke, for an explanation about alleged shortcomings in Ms Burns's training. Mrs Cooke said that she had interviewed Ms Clarke. It was quite clear that she had not explored this issue with her. Indeed Mrs Cooke plainly had not looked in any detail at the training records so as to assess the validity of the concerns being expressed by the staff or whether there was inconsistency between what they were saying and what the records revealed.

3.63.10 Mrs Cooke accepted that in the Claimant's absence there was a level of concern in the department. The studies that had been left in Ms Clarke's care were failing and Ms Clarke was concerned that this might be seen as her fault.

3.64 When she completed her investigation report Mrs Cooke gave it to Mr Phillips and asked what steps should be taken next. Mr Phillips said that in his view it

warranted disciplinary action because of the GLP non-compliance. A decision was therefore taken to progress to a disciplinary hearing.

3.65 On 17 September 2015 the Claimant was signed off for a further week with work related stress. She was still suspended in any event. The investigation report had been sent to her on 10 September 2015, five days before the disciplinary hearing was originally due to take place (although it had evidently been postponed by this stage). On 18 September 2015 Ward Hadaway wrote to Ms Blakey. They asked why it was that no investigation meeting was now to be held with the Claimant and whether her grievance was to be dealt with. They requested further information and asked a series of questions about the investigation. The material requested included the relevant dose calculations and checks for studies 692 and 693. The Claimant asked for full access to her files, PDT study files, SharePoint access, and IT access generally so she could confirm dates and identify emails and relevant documents in order to be able to respond to the investigation report. She asked for a copy of her calendar for the period covered by the investigation report, her appraisals, the draft and final revenue recognition spreadsheets for 2014 and 2015 and information relating to the studies cited as being financially inaccurate.

3.66 The Claimant was referred to occupational health. Ms Blakey wrote to Ward Hadaway on 19 September 2015 informing them that an appointment had been arranged for 24 September 2015. On 24 September 2015 they wrote to Ms Blakey to explain that the invitation had arrived with the Claimant just before midday on 22 September 2015. They said that while the Claimant was content to attend an occupational health appointment, the time arranged was not convenient because she already had an appointment with her GP. Ms Blakey replied the same day expressing disappointment that having had two days' notice of the appointment the Claimant had "elected to inform us" that she would not be attending four minutes before the appointment. Ms Blakey said that the Respondent "viewed this and her refusal to attend investigatory and disciplinary meetings as deliberately obstructive to the process." She said that an alternative appointment had been arranged for 1 October 2015. Ward Hadaway confirmed the following day that she would attend. They indicated that they looked forward to receiving the requested documents so that the Claimant could properly prepare for the disciplinary hearing.

3.67 Ms Blakey wrote to Ward Hadaway on 29 September 2015. She addressed the procedural questions that had been raised. Among other things she said that "on provision of the full investigation report the investigating officer elected to progress to a disciplinary hearing." That was different from the evidence Mr Phillips gave that it was his decision to progress to a disciplinary hearing. Ms Blakey suggested that because the Claimant had asked for a copy of the full investigation report the process had been changed so that no investigatory meeting was to be held with her. Ms Blakey denied that the Claimant had been refused access to a laptop, while at the same time acknowledging that her company laptop had been left on 5 August 2015 at the Respondent's request so that her manager could access it. In response to her request for full access to her files, PDT study files and so on Ms Blakey wrote that the Claimant had been offered access to the company systems relevant to preparing her case but "to date she has not asked for such access." The Tribunal considered that the

request in the Ward Hadaway letter of 18 September 2015 was precisely a request for access to the company systems. Ms Blakey said that documents relevant to financial revenue reporting were highly confidential and that the Respondent was not willing to provide them unless their relevance could be justified. In her oral evidence Ms Blakey was asked why there was a concern about confidentiality, given that the revenue reporting documents at issue had been drafted by the Claimant herself, who remained an employee of the Respondent. Ms Blakey was unable to give a clear answer. What was clear was that Ms Blakey was being instructed from the US that she should not disclose any financial data. She referred to the fact that there were discussions with the clients. It appeared to the Tribunal that Ms Blakey simply followed the instructions she was given. It did not appear that she considered whether disciplinary allegations relating to the Claimant's revenue reporting could be fairly proceeded with in those circumstances, or gave HR advice about what was required for a fair procedure. However, there was nothing to suggest that the reason for this was that the Claimant had raised health and safety concerns at the earlier disciplinary hearing and the Tribunal found that it was not. In her letter Ms Blakey offered to arrange supervised access to the Respondent's IT systems.

3.68 The Claimant attended an occupational health appointment on 1 October 2015. The occupational health nurse reported the same day that the Claimant's absence was likely to persist throughout the disciplinary process or until an agreement could be reached that both parties were satisfied with. There was no prior history of an underlying medical condition. The Claimant was keen to reach a resolution but in order to do so she required access to the list of requested documents from the organisation to allow her to respond fully to the allegations made. The nurse suggested that an arrangement could be made to undertake that task in a neutral environment which might assist with bringing the matter to a swift conclusion. The nurse also said that the Claimant was happy to attend a meeting off site and was willing to progress with the disciplinary hearing, but that given her current state the Respondent might wish to consider that the hearing was conducted by an independent party.

3.69 Ms Blakey wrote to the Claimant on 6 October 2015. She said that the Claimant could have supervised access to her email account, calendar and personal drive for two hours on 9 October. The Claimant was then invited to attend a disciplinary hearing the following Monday. That hearing was to be chaired by Mr Brinham. The purpose of the hearing was said to be to discuss the Claimant's alleged misconduct surrounding a number of serious compliance issues as set out in the investigation report and also further areas of concern namely financial reporting and revenue recognition, general management practices and potential cost/liability to the business.

3.70 Ward Hadaway responded the same day. They said that the Claimant still had not been provided with all of the information and documentation she required, in particular the relevant study files, training records and SharePoint where the SOPs and master schedule were contained. The letter said that two hours' IT access would not be sufficient. They requested that the Claimant's father accompany her to the disciplinary hearing. They also asked for confirmation that the Claimant would be able to question all the witnesses and Mrs Cooke.

3.71 On 8 October 2015 Ms Blakey replied. She said that the Claimant was now to be allowed three hours to access the IT system. She suggested that the Respondent had "previously offered untimed, unbarred access to the company IT systems during normal office hours or out of office hours which your client has declined." She said that the Respondent would not allow the Claimant's father to accompany her to the disciplinary hearing because of the risk of exposure of highly sensitive confidential information to a third party. She appeared to suggest that the Claimant's husband might accompany her. She said that the Respondent felt that the Claimant was "prevaricating and delaying the disciplinary process" and suggested that part of the reason for this view was that the Claimant "would not attend any investigatory meeting." Ms Blakey said that the hearing would take place on 12 October 2015, when the Claimant could ask for such supporting documents as the Respondent felt were relevant.

3.72 The Tribunal was surprised by the repeated references in Ms Blakey's correspondence to the Claimant's refusal to attend an investigatory meeting. The Claimant had declined to attend an investigatory meeting once, at a time when she was signed as unfit for work by a doctor. She had not refused to attend any investigatory meeting nor had she refused on more than one occasion. The Respondent had simply chosen to complete the investigation report rather than delaying to enable the Claimant to be interviewed. This reflected a more general approach by Ms Blakey. The Tribunal was surprised by the tone of much of her correspondence, given that she was an experienced HR representative. For example, references to deliberate obstruction and to prevarication appeared to the Tribunal to be wholly unwarranted. Even in her evidence to the Tribunal, Ms Blakey appeared very unwilling to see matters from the Claimant's perspective – for example why she was asking for access to documents and her computer, and the impact of her ill heath was. Ms Blakey may have been acting on legal advice. The Tribunal also considered that her perception of the Claimant as having been aggressive at the earlier disciplinary hearing may also have influenced her approach. However, that did not relate to the fact that the Claimant was raising health and safety concerns and the Tribunal found that this did not play a part in Ms Blakey's handling of these procedural matters.

3.73 The Claimant was signed off for a further two weeks with work related stress on 8 October 2015. On 9 October 2015 the Claimant's representatives responded to Ms Blakey. Among other things they argued that the refusal to allow the Claimant's father to accompany her was unfair and said that it was totally unreasonable to suggest that the Claimant be accompanied by her husband. The Respondent was again urged to delay the disciplinary hearing, given that the Claimant would have less than 10 working hours between accessing the IT systems and the disciplinary hearing. In a letter of the same date Ms Blakey refused to delay the disciplinary process. She pointed out that given the content of the occupational health report the absence was likely to persist throughout the disciplinary process. She also said that the Claimant had had the investigation report since 10 September 2015.

3.74 On 9 October 2015 the Claimant had approximately three hours' IT access supervised by Mr Fairhurst. She was able to access some materials, for example her own inbox. She was not actually permitted to touch the computer; Mr

Fairhurst did the actual typing and searching. Furthermore, Mr Fairhurst told her that she was not permitted to access any financial information.

3.75 In cross-examination Mr Phillips was asked about whether he had been involved in the arrangements for the Claimant to access her laptop. He said that he was not involved in the particular details. He went on to add, "Almost not at all, I was aware it was happening not the details." By contrast, Mr Fairhurst was asked who decided how the Claimant was to have IT access and said, "I was instructed by Mr Phillips." Mr Fairhurst was a straightforward witness who had had a limited involvement and plainly had a clear recollection of the events with which he had been involved. The Tribunal accepted his evidence. In those circumstances it seemed to the Tribunal that Mr Phillips's answer was inaccurate. Nonetheless, for the same reasons as those explored above, the Tribunal found that this had nothing to do with any health and safety issues the Claimant had previously raised.

3.76 The disciplinary hearing took place on 12 October 2015. It was chaired by Mr Brinham. Ms Fern from HR took notes. The Claimant attended with her father but Mr Brinham did not allow him to come into the hearing. Mrs Cooke was also present but the Claimant objected and Mrs Cooke left the room. She returned at the end for the Claimant to ask her a few questions.

3.77 Mr Brinham had prepared questions for the Claimant in advance of the disciplinary hearing. His evidence to the Tribunal was that he needed expert help from Mrs Cooke to draft the questions and that they went back and forth between Mrs Cooke and him several times. He described this as "essential". Mrs Cooke said that she had not helped Mr Brinham to draft the questions. When she was reminded of Mr Brinham's oral evidence, she said that she did not help in generating the questions though she did help with the technical aspects. She said there had been at most a couple of conversations between them. It was clear that Mrs Cooke had played a role in formulating the questions and that from Mr Brinham's perspective that was an essential role. That seemed to the Tribunal to reflect Mr Brinham's reliance more generally on Mrs Cooke, which was reflected in his approach to her investigation report.

3.78 The prepared questions were very open and general. They did not deal with the detail of the allegations against the Claimant. Rather they tended to ask about matters such as roles and responsibilities and protocols and processes more generally. In the disciplinary hearing Mr Brinham went through the questions in turn. The written notes of the hearing suggest that some of the Claimant's answers were a little prickly, but the context was important. The Claimant had not been provided with the underlying documentation and she was not being asked about the detail of allegations. For example, Mr Brinham asked, "Please explain your responsibilities as a manager with regards to the training, practical and administrative, of your employees." The Claimant asked Mr Brinham to be more specific. She said that these types of open-ended questions, which "could form the basis of a text book" were difficult to answer. She said that the meeting "felt more like a job interview than a hearing into specific allegations." The Tribunal could well understand that.

3.79 The record of the disciplinary hearing does not demonstrate the allegations being probed to find out what had happened and whether the Claimant was culpable. That is unsurprising as Mr Brinham said in his witness statement that as far as he recalled the Claimant did not specifically challenge the facts found by Mrs Cooke in her investigation report but chose instead to attempt to justify her actions. He agreed in cross-examination that he had approached the matter on the basis that the Claimant agreed the underlying factual content of the investigation report. That was an incorrect premise. The Claimant's general position was that she could not answer the allegations because she did not have the underlying documentation. It was not that she accepted Mrs Cooke's factual findings. The Claimant made clear repeatedly during the hearing that she needed documentation in order to address particular points.

3.80 Even when the Claimant was in a position to indicate during the course of the disciplinary hearing that she disagreed with Mrs Cooke's findings, the evidence indicates that Mr Brinham did not explore that with her. On some matters he carried out further investigations after the hearing, but there were difficulties with that too.

3.81 By way of example of some of these matters:

3.81.1 There was a discussion at the disciplinary hearing of whether an NPTC licence was required for the studies under investigation. Mr Brinham was asked whether he had understood that the Claimant was disagreeing with the suggestion that an NPTC licence was required. He said that Mrs Cooke's report said that a licence was needed and that he did not believe that the Claimant disagreed with that. His attention was drawn to the notes of the disciplinary hearing where the Claimant plainly disagreed with that and he then said, "I believe the Claimant knew she needed an NPTC licence." In cross-examination, Mr Brinham accepted that at the disciplinary hearing he understood that the Claimant was saying that having now looked into the matter, she did not think that a licence was required. However, he said that he looked at the relevant Code of Practice after the disciplinary hearing and concluded that a licence was required. Mr Brinham was then asked to look at the Code of Practice and it was put to him that in fact no licence was required. He agreed. He was not able to explain to the Tribunal the basis for his evidence that he had reached the opposite conclusion at the time. Mr Brinham said that he also spoke to Ms Swales and Mrs Cooke, who were NPTC licence holders. He kept no notes of those conversations and the Claimant was not told about them.

3.81.2 One of Mr Brinham's prepared questions was about what written methodology or standard operating procedures ("SOPs") the Claimant would expect to be in place. He was reminded in evidence that the Claimant had not been provided with the relevant SOPs and other documentation for the studies that were being investigated. Mr Brinham's answer was that the Claimant would have been responsible for putting them together in the first place. He was asked whether he thought it was appropriate to have the documents there so that they could be discussed in detail. His answer was that the Claimant issued the protocols and he would expect her to be familiar with them. He was simply asking her what she would expect to be present. It was put to Mr

Brinham that there was no discussion of what was in fact in place and whether that was adequate. He said that he wanted to clarify that the Claimant was aware of what should be in place. He was asked why that was relevant and his answer was, "I believed there were not sufficient SOPs in place." He was therefore asked where in the disciplinary hearing he had explored that with the Claimant. He accepted that he had not done so.

3.81.3 Mr Brinham accepted that he had not explored with the Claimant whether her actions in respect of any of the six studies being investigated were compliant with her responsibilities as a study director.

3.81.4 Mr Brinham was aware that the Claimant wanted the witnesses who had been questioned during the investigation to attend the disciplinary hearing. He said that he thought it was fair for the Claimant to question them "provided they agreed." After the disciplinary hearing Mr Brinham asked a number of the individuals whether they would be prepared to be interviewed by the Claimant and told them that they were under no obligation. They all declined. When it was put to Mr Brinham that a management instruction could have been given, he said that the individuals were under no requirement. Mr Brinham did not question the individuals about their statements. It was put to him that in those circumstances he was not in a position to decide that the Claimant's evidence was "dishonest." He referred to the fact that five or six people had signed witness statements and that there was "commonality" about study director involvement, management style and so on. Mr Brinham accepted that the Claimant had not been asked about the specifics of those individuals' witness statements. Mr Brinham accepted that the individuals might have been concerned that they could be investigated next, because as study personnel they had certain responsibilities. He said that he believed they had been properly questioned. It was put to him that he had relied on Mrs Cooke's investigation to determine the matter. He agreed and added that the witness statements were quite explicit and detailed and "not open to interpretation." Mr Brinham was asked what the concerns were about the Claimant's management style. He said it was an "important aspect." For him the question was did the staff have sufficient training and supervision? He said, "The answer to that I think is no." It was put to Mr Brinham that he had not given the Claimant the chance to answer that question. He said, "I did not assume, I had five witness statements."

3.81.5 Mr Brinham was asked why the Claimant had not been supplied with the information about the underlying studies. He said "I'd expect her to know the studies intimately". He was asked whether he was saying that he expected the Claimant to know the details of calibrations carried out three months and 12 months earlier. He said, "I'd expect her to know if people had been trained and if it was not GLP compliant." Mr Brinham accepted that for one study alone the documentation could sometimes be a couple of lever arch files in size.

3.81.6 At one stage in the hearing Mr Brinham asked the Claimant why she had decided it was necessary to put certain employees on performance improvement plans (PIPs). The Claimant said that that should be documented in HR records. She gave an account based on her memory of how Ms McDougall had come to be on a PIP. She said that Ms

Grzebisz was Ms Chitikeshi's line manager and that it was her decision to put Ms Chitikeshi on a PIP. She also explained that Mr Shannon's probation had been extended as a result of feedback from others and that he had passed his probation following significant improvement. Mr Brinham was asked if he had checked what the Claimant said. He said that his concern was the general management culture and that this was investigated in the witness statements. He was asked why the Claimant's version of events was not investigated. He said, "I didn't feel I needed to because I was aware from the witness statements and other feedback what the management culture was in PDT."

3.81.7 Mr Brinham asked the Claimant about financial management and revenue recognition. He did not ask any specific questions relating to the studies for which anomalies had apparently been identified by Mrs Cooke in her investigation report. Rather he asked the Claimant about her understanding of the process for recognising revenues. The Claimant's answer was that the process had changed over time and that she needed access to documents to reconstruct it. She pointed out that she had been denied access to any financial information and was not in a position to answer. Mr Brinham was asked why he had not asked the Claimant about the specific concerns Mrs Cooke had identified. He said that he did not believe that there was a straightforward explanation. The information was "very clear and unambiguous." There was "no reasonable explanation" that he could see. It was then pointed out to Mr Brinham that the Claimant's later appeal on this ground had been partly upheld, on the basis that some of the data were inaccurate (see below). It was put to Mr Brinham that the information must have been wrong in respect of that study. His answer was, "No. Indeed, perhaps, yes."

3.82 Mr Brinham said that he had discussed the Claimant's request for access to financial information with Mr Phillips. Mr Phillips was reluctant to share sensitive information. Mr Brinham believed that discussion had taken place before the disciplinary hearing. His evidence was inconsistent with Mr Phillips's evidence. He said that he had not personally taken any decisions about the Claimant's requests for information. He explicitly said that he had not communicated to Mr Brinham about financial data. He had given instructions to Ms Blakey to escalate any information requests she was unsure of to the HR lead in the States, Michael Polovick. Mr Phillips's evidence was consistent with Ms Blakey's oral evidence. The Tribunal accepted that Mr Phillips's general position was that such requests should be referred to Mr Polovick, but we were satisfied that there had been a conversation to this effect between Mr Brinham and Mr Phillips.

3.83 Immediately after the disciplinary hearing, Mr Brinham turned to the Claimant's grievance. Essentially the Claimant ran through the substance of her complaint and Mr Brinham undertook to go away and look into it. He did not ask the Claimant any questions.

3.84 As noted above the Claimant's grievance letter had referred to the fact that she had made an enquiry with McGinley about a job vacancy which appeared to her to have been her own job. Mr Brinham was asked whether he had seen the McGinley job advert to which the Claimant referred. He said that he saw a job description that HR had put on the Respondent's website, which was for a role

within ecotoxicology reporting to Mrs Cooke. He spoke to HR and they reassured him that no other job description had been posted. Mr Brinham said that all he did with the job description was to satisfy himself that it was not the Claimant's job. Mr Brinham did not understand that the Claimant had seen this role advertised in two places. His understanding was the Claimant was saying that the Respondent had advertised her role. He did not know exactly where. He did not ask the Claimant and he did not ask her whether she had a copy of the advert to which she was referring.

3.85 As for the rest of the grievance Mr Brinham's essentially ran through the chronology of events to satisfy himself that actions had not been taken with undue haste. He talked to HR and he wrote down a chronology with Ms Blakey. He was asked why there was such a difference in his approach to the Claimant's grievance compared to the approach he had taken to Mr Coveney's grievance. For that grievance he had interviewed the Claimant and her husband in detail. He said that he did not see a reason to do that as far as the Claimant's grievance was concerned. He thought his actions were enough. For Mr Coveney, he needed to talk to people because the grievance was about people's behaviour.

3.86 The Claimant did not at any stage during the disciplinary or grievance hearing suggest the reason action was being taken against her was because she had made protected disclosures.

3.87 Following the disciplinary hearing Mr Brinham sent the Claimant some further documents. They included competency check lists for four individuals and dose calculations and checks for the six studies, but not the dashboard and revenue information for the studies about which there were financial concerns, nor electronic and hard copy study files for the six impugned studies or study contracts for those studies. Mr Brinham asked for the Claimant's comments in writing by midday on Monday 19 October 2015. In fact the information was sent in two separate packages. The Claimant received the first package on 16 October 2015. She was unaware that there was a second package and did not realise that a delivery she had missed was a further package from the Respondent. She only collected it after the deadline for responding.

3.88 Mr Brinham evidently carried out further investigations. He referred to conversations with various people – for example, he said that he spoke to other department heads and neither of them felt too busy or that they had an unreasonable workload. The Claimant was not provided with any notes of those discussions. When searching for documents requested by the Claimant, Mr Brinham discovered emails relating to the need for an NPTC licence holder to be involved. He referred to an email sent by the Claimant to an external provider, Ms Cope, on 13 July 2015 asking about training in pesticide use and hand held spray application for her staff. Ms Cope replied the same day with some information. Her email included the comment that when using pesticides or buying pesticides in the workplace staff must hold the NPTC assessments.

3.89 Mr Brinham wrote to the Claimant on 15 October 2015 with the outcome to her grievance. He did not uphold it. He dealt with concerns about the discussion that had taken place on 5 August 2015. He said that he had reviewed the chronology of events to date and the correspondence and did not uphold the

Claimant's grievance about delay. As far as the Claimant's complaint about having her job role advertised was concerned Mr Brinham said that he had confirmed with Ms Blakey that she did not give any job specification to McGinley. The role that was advertised on the company's website was a role reporting to Mrs Cooke and fell into the ecotoxicology department. That role had been in the current organisational chart since the restructure and on hold until August 2015. No recruitment agency had been instructed to search for the role at that stage. Mr Brinham suggested that recruiters were aware from the company website that they were recruiting for a senior manager in ecotoxicology.

3.90 The same day, 15 October 2015, the Claimant submitted a subject access request ("SAR") to Ms Blakey.

3.91 On 19 October 2015 at 4.25pm the Claimant emailed Mr Brinham in response to the documentation she had received following the disciplinary hearing. She questioned what further comments she should make given that the disciplinary hearing had now taken place and that she had wanted the documentation in order to answer the allegations against her. She also pointed out that she had been given insufficient time to respond.

3.92 On 22 October 2015 the Claimant emailed Ms Fern to appeal the outcome of her grievance. On the same day, Mr Brinham wrote to her dismissing her for gross misconduct with effect from 23 October 2015. It was evident that he did not take into account that she said in her email of 19 October 2015 that she did not have sufficient time to deal with the documents that Mr Brinham had provided. Mr Brinham's conclusions included:

3.92.1 She was aware of the requirement for an NPTC licence holder to be present or to supervise the application of the test substance. For studies 121 and 133 that was demonstrated by the Claimant's email to Ms Cope on 13 July 2015 and Ms Cope's response (which were enclosed). In addition, Ms Grzebisz and Ms Clarke had confirmed that she knew about the requirement in advance of studies 692 and 693. Statements from Mr Shannon, Ms Burns and Ms Clarke showed that the Claimant had trained Mr Shannon. Ms Goodband had confirmed that she offered the Claimant assistance for studies 121 and 133, but it was only after the last application on 17 July 2015 that she told staff of the NPTC requirement, which was confirmed by Mr Shannon.

3.92.2 In respect of Ms Swales's involvement, Mr Brinham wrote, "*Sharon Swales has confirmed that you did talk with her about your studies prior to going on leave. However, Amy Clarke indicated that she had been told by you that the PDT team knew how to work with the Agriphar age residue studies suggesting Sharon's input would not be required whilst you were away. This was manifestly not the case and again I find this account of yours to be dishonest…."*

3.92.3 Mr Brinham wrote that the Claimant had acknowledged that she was the study director for the six studies under investigation and was therefore responsible for them being GLP compliant and that they should be fully reproducible. He said, "This was not the case for the four studies listed above since the quantity of TA applied cannot be calculated from the raw data."

3.92.4 Mr Brinham found that the Claimant's workload was comparable to that of other department heads.

3.92.5 Mr Brinham found that the Claimant did not need TFM delegation to carry out her role, and that her answer in the disciplinary hearing that how she managed her staff depended on how she was being managed, "lacks responsibility on your part … [and] was evasive."

3.92.6 Mr Brinham found, based on Ms Clarke's statement, that the Claimant did not take previous experience and knowledge into account before signing off study directors to carry out specific studies.

3.92.7 Mr Brinham found that the protocols for the impugned studies were scant and did not provide details regarding sprayer calibration and application. There was no SOP and as a result the staff did not have sufficient documentation to refer to. That was a failure to meet acceptable management practices.

3.92.8 The witness statements showed that the Claimant could be unsupportive and confrontational and that she provided insufficient training. One example related to the training given to Mr Shannon and Ms Chitikeshi in use of a hand held sprayer.

3.92.9 The Claimant should be familiar with the process of revenue recognition. The investigation report highlighted a number of studies where her revenue recognition was "clearly at variance" from the accepted process. Mr Brinham said that the Claimant had acknowledged this in the disciplinary hearing. Mr Brinham did not accept that the Claimant was under undue pressure to meet commercial targets.

3.92.10 The estimated cost to the business of the Claimant's failures was £155,310.

3.93 Mr Brinham said that having considered the Claimant's length of service, disciplinary record and mitigating factors, he had decided that she should be dismissed for gross misconduct. There was no evidence of any discussion with the Claimant of any mitigating factors. Mr Brinham went on to say that the Claimant had been "unhelpful" and "disruptive" to the whole disciplinary process, in particular her "failure to attend the investigatory meeting" and her refusal to receive correspondence from the company unless it was by post or via her representative.

3.94 In cross-examination, Mr Brinham was asked about his decision to dismiss the Claimant. He gave the following relevant evidence:

3.94.1 His decision was based on the premise that the NPTC licence requirement was a regulatory one.

3.94.2 He was asked about the rather opaque paragraph in which he found that the Claimant had been dishonest. He was unable to give the Tribunal any clear explanation of what dishonest statement the Claimant had made. He appeared to suggest that the Claimant had dishonestly implied that the team had been told to defer to Ms Swales, but he accepted that the Claimant had asked Ms Swales to oversee her studies in her absence.

3.94.3 Mr Brinham accepted that the Claimant had only signed to say that two of the studies were GLP compliant.

3.94.4 As regards his rejection of the Claimant's position that her workload was excessive, Mr Brinham said that he knew what the Claimant's workload

was because he was a departmental manager himself. He spoke to others in the business and they said their workload was comparable. There was no reason the Claimant should be different. Mr Brinham was asked how many studies those others had Study Director responsibility for. He did not know. He thought he had looked into it at the time but he had not kept any notes.

3.94.5 As regards his findings about the Claimant's management style, Mr Brinham said that he did not look at the witnesses' appraisals or check the information the Claimant had provided about PIPs. He said, "I didn't see it as particularly relevant. The material element was the witness statements." He said that he did not check with HR whether any issues had been raised but that his impression from talking with HR was that there were management issues. He said that Ms Blakey told him so.

3.94.6 As regards his finding that the Claimant was not under undue commercial pressure, Mr Brinham said that he asked Mr Phillips about it. His view was that the Claimant's targets were acceptable. There was no note of that discussion. Mr Brinham could not recall what other issues they discussed. He could not recall if Mr Phillips expressed concerns about the Claimant. This happened after the disciplinary hearing. This evidence was inconsistent with Mr Brinham's witness statement, in which he said that he only recalled one conversation with Mr Phillips after the disciplinary hearing, which was about when his decision would be ready. He insisted that Mr Phillips had not been involved in his decision.

3.94.7 In his witness statement Mr Brinham said that when it came to sanction, he considered a number of examples of misconduct from the disciplinary procedure to be relevant, including fraud. In cross-examination he said that he did not consider fraud to be relevant. He was asked why he had referred to it in his witness statement and he said that it was "misleading" and "a mistake."

3.94.8 Mr Brinham was asked why he had decided the Claimant should be summarily dismissed. He said that it was because of the seriousness of signing off two studies as GLP compliant. He did not consider retraining or removing the Claimant's role as Study Director. He took into account "workload" as a mitigating factor but "didn't find the others compelling." He did not think that the Claimant's good record and the fact that she was responsible for 25 studies should have led to a different outcome because of the "liability to the company and the client."

3.94.9 Mr Brinham said that there was never a suggestion or inference that the focus was on the Claimant leaving the business. He would not have accepted that. He "absolutely" did not get the impression that the Claimant's concerns about health and safety or data retention were in play.

3.95 It was not suggested to Mr Brinham that he did not genuinely believe that the Claimant was guilty of misconduct. Rather, it was effectively being suggested to him that he had been influenced by others (who themselves were concerned about the health and safety or data disclosures). The Tribunal noted the inconsistency in Mr Brinham's evidence about how many times he spoke to Mr Phillips during the course of the disciplinary process. Nonetheless, he was clear and insistent that Mr Phillips had not been involved in his decision and the

Tribunal accepted that Mr Brinham was not persuaded to dismiss the Claimant. He genuinely believed that she was guilty of misconduct.

3.96 The Claimant made a detailed appeal against her dismissal on 6 November 2015. The grounds of appeal included:

3.96.1 She had only received half of the further documentation before the deadline. Mr Brinham had not replied to her email.

3.96.2 She was not aware of the licence requirement until 13 July 2015 (although she now disputed whether there was such a requirement at all). She had not been trained on the need for such a licence holder to be involved. She was too busy between 13 July 2015 and 17 July 2015 to address the issue. She did speak to Ms Goodband to ask for her help on the morning of 17 July 2015 and told her team of this. A member of PDT had been told of the requirement for Ms Goodband to supervise. This had evidently not been passed on to Mr Shannon.

3.96.3 Ms Clarke's witness statement said nothing about being instructed to discuss study issues with Ms Swales. Ms Swales had not been interviewed. The approach to witnesses was selective.

3.96.4 The Claimant was unable to answer the point about Ms Clarke's competency statements because she had not been given copies of her training records.

3.96.5 The Claimant's personal circumstances were not taken into account, including her workload. Other department heads did not have the study directing workload she had. She was unable to verify various matters because she could not speak to any witnesses.

3.96.6 Provision of SOPs was the responsibility of TFM, not the Claimant. This matter had not been properly investigated.

3.96.7 The Claimant was not responsible for Ms Chitikeshi's training records. While the printed sheet for Mr Shannon did not hold information for hand-held spray applications, that was an oversight and did not mean that he had not been trained. Records could be reconstructed from study data, but she did not have access to the relevant material to enable her to do so.

3.96.8 While she disagreed with the portrayal of her as a manager, she was unable to counter the allegation, because she had not been allowed to speak to her own witnesses nor to question the others.

3.96.9 She was unable to defend the allegation about revenue recognition because she did not have access to the relevant information. She thought that one study had been allocated to her before the relevant rules came into place and was, in any event, Ms Grzebisz's study until recently. There might be similar explanations for other studies, but she did not have the information.

3.96.10 She had been treated inconsistently compared with other senior colleagues. She said that one had breached GLP law, one Study Director had been uncontactable during a whole study and that Mr Brinham himself had not declared revenues correctly, and that none had been disciplined.

3.96.11 She said that she had raised breach of data protection laws with Mr Phillips repeatedly and (for the first time) wondered whether that was the real reason for wanting to get rid of her.

3.96.12 She queried the extent to which the outcome had been driven and the letter drafted by Ms Blakey rather than Mr Brinham.

3.97 On 24 November 2015 Ms Blakey provided a response to the Claimant's SAR. Some but not all of the documents requested were provided. Ms Blakey's evidence was that none of the matters raised by the Claimant at the disciplinary hearing in October 2014 were in her mind when she answered the request, and that those actions had no influence over the way she treated the Claimant. She had taken legal advice when answering the SAR. Her understanding was that she needed to go through electronic filing systems and personal files. Her handwritten notes of the meeting on 5 August 2016 were not in the Claimant's personnel file, they were in Ms Blakey's notebooks, which she had not searched for the purposes of the SAR. In cross-examination it was not suggested to her that documents had been withheld because the Claimant had raised concerns about health and safety. The Tribunal found that they were not.

3.98 The Claimant's appeal against dismissal and against the outcome of her grievance was dealt with by Mr Lally. He is Managing Director of a different part of the Smithers Group in the UK. He confirmed that he was carrying out a review, not a re-hearing. Before the hearing took place, Mr Lally had a video conference call with Ms Blakey, Mrs Cooke, Mr Brinham and Mr Phillips. No notes were kept, but it was clear from Mr Lally's evidence that, for example, Mr Brinham explained the adverse findings he had made about the Claimant.

3.99 An appeal hearing took place on 26 November 2015. The Tribunal saw a detailed transcript. The Claimant attended with a trade union representative, Mr Rushworth. Mr Lally went through her grounds of appeal with her in detail, although they did not have the underlying documentation in front of them. After the hearing, Mr Lally video interviewed Mr Phillips, Ms Blakey, Mr Brinham, Mrs Cooke, Ms Swales and Ms Clarke. Although notes were kept, they were not provided to the Claimant. Mr Lally wrote to the Claimant on 11 December 2015 rejecting her appeals. His findings included the following:

3.99.1 Mr Lally recorded the Claimant's position being that she was not aware of the requirement for a spray licence until 13 July 2015. She said that she should have been trained and questioned whether a licence was in fact required. Mr Lally said that "as referenced in the decision letter" the Claimant did know of the requirement before studies 692 and 693 took place. He said that was "further evidenced" by an email from the Claimant to Ms Clarke and Ms Grzebisz on 27 March 2014 in relation to the BASF studies. He had confirmed that in discussions with Mrs Cooke and Ms Clarke, and understood the context of spray licences for these studies from discussions with Ms Swales. Ms Swales confirmed that the Claimant did speak to her before going on holiday in July 2015 in case there were any problems with the studies. Nobody approached Ms Swales and Ms Swales "felt that the Claimant had not given her the full facts to make an informed decision about the state of the studies." She felt that the "wool had been pulled over her eyes in relation to the spray application not being done properly and that the studies were invalid from start to finish."

3.99.2 Mr Lally had seen Ms Clarke's training records. He confirmed that the Claimant was the signing manager. He was not clear why the records had not been provided to the Claimant.

3.99.3 Mr Lally had seen correspondence from the relevant clients expressing frustration. He had "verified with Ms Swales" that the study failures were fundamental and invalidated the work undertaken.

3.99.4 Mr Lally did not see the relevance of the Claimant's busy schedule and he did not see the comparison with other department heads.

3.99.5 As regards provision of SOPs and training, Mr Lally found, "the investigation report highlights failings … over and above the points the Claimant raises." He said that Ms Clarke had "confirmed to me" that she felt she was signed off to perform tasks before she was truly able and that this was the Claimant's general approach.

3.99.6 Mr Lally had investigated the Claimant's points about one of the studies where there were concerns about revenue recognition and concluded that it should be removed from the table. He had verified that the other studies started in 2014 and that the data presented to the investigation were accurate. He did not believe there was a need to review the financial information beyond what had been provided in the investigation.

3.99.7 Mr Lally believed that the Respondent should have been able to email the Claimant. He felt that some of her solicitor's requests had caused delay, but likewise some of the partial responses from the Respondent had not been helpful.

3.99.8 Mr Lally did not consider that consistency with other employees was relevant. He said that Mr Phillips had told him that the Claimant's case highlighted several areas of concern "not one-off errors which have and can occur in any business."

3.100 As regards the Claimant's grievance appeal, Mr Lally believed that the meeting on 5 August 2015 could have been planned and handled better. He did not accept that Ms Blakey wrote the grievance outcome letter. He had investigated the job advertisement by discussing the NonStop advert with Mr Kanji, the recruitment consultant. Mr Kanji had told him that Ms Blakey instructed him to initiate a search for a senior manager ecotoxicology on 9 July 2015. He had added reference to aquatic and terrestrial systems to broaden the candidate pool. Mr Lally had reviewed the organisation charts, which showed the role being on hold in July and recruited in August 2015. He accepted that the advert was for a role in a different part of the business.

3.101 Mr Lally's witness statement went further than his decision letter. He said that in suggesting that Ms Blakey was controlling the process to get rid of her, the Claimant was "grasping at straws." He described his conversations with Ms Swales and Ms Clarke, whose evidence he had evidently accepted in full. He said that his investigations satisfied him that the Claimant was fully aware of all the relevant requirements and that she "deliberately" chose not to carry them out. Mr Lally explained that the issue relating to spray licences was of "fundamental importance." From his discussions with Mrs Cooke, Ms Swales and Ms Clarke, he was satisfied that the Claimant was not telling him the truth about this. This "totally contradicted" the Claimant's case that she was not aware before 13 July 2015, so he had "no difficulty" in rejecting that part of her case. He too felt that the Claimant was trying to "pull the wool over his eyes." Mr Lally's evidence was that the Claimant's workload was "no more demanding than others employed … at a similar level" and that this felt like an excuse to blame others for the Claimant's "deliberate failings." Mr Lally said that the Claimant was "less than

honest" throughout the appeal process. She "attempted to delay the proceedings, confused and muddied the waters and challenged the company's processes at every turn."

3.102 It is clear that Mr Lally regarded the spray licence issue as fundamental. He said in cross-examination that that was what he understood to be the gross misconduct. His evidence was that when he spoke to Mrs Cooke after the appeal hearing she provided him with a copy of the email dated 27 March 2014 referred to in his decision letter. That was an email from the Claimant to Ms Grzebisz and Ms Clarke about what became studies 692 and 693. In that email the Claimant wrote that they could only do the studies in the Covance greenhouses "so would rely on [Mrs Cooke] dosing (as none of us have spray licences yet.)" He did not discuss that email with the Claimant before reaching his decision, although he described it in re-examination as "very important". In answer to questions from the Tribunal, Mr Lally said that he did not understand that the Claimant had told Mr Brinham that there was a difference between a handheld sprayer and a pressure sprayer. He did not understand that her position was that the 27 March 2014 email referred to a pressure sprayer whereas the later studies used handheld sprayers. He did not ask her "because the email represented a clear awareness of the requirement for a licence." He did not think he needed to ask the Claimant about it or find out her explanation, before reaching a finding that she was dishonest, because the email was "conclusive."

3.103 In cross-examination Mr Lally was asked about Mr Brinham's finding that the Claimant was dishonest about her conversation with Ms Swales. He confirmed that Ms Swales had told him that the Claimant had spoken to her before she went on holiday. She said that nobody approached her. In the appeal hearing the Claimant had told Mr Lally that she also spoke to Ms Goodband directly and asked her to supervise the spraying, and that the team were aware she had done so. For whatever reason they went ahead without her. In cross-examination Mr Lally said that he accepted that the Claimant had spoken to Ms Goodband.

3.104 As regards revenue reporting, Mr Lally accepted that Ms Grzebisz's studies had been transferred to the Claimant when Ms Grzebisz went on maternity leave. In those cases, the Claimant would not have had responsibility for revenue reporting throughout. Mr Lally accepted that the Claimant could not give him an explanation in respect of revenue reporting because she did not have the information. Mr Lally accepted that the Claimant had raised the point that there were difficulties with revenue reporting in the chemistry department. He was not aware of any disciplinary action being taken. He had spoken to Ms Swales about it. He did not verify the nature of the issues in chemistry.

3.105 Mr Lally was asked about the Claimant's point that other people who had been in breach of GLP had not been disciplined. Mr Lally said that he did not think it was relevant. He did ask Mr Phillips, who led him to understand that those individuals had committed one-off errors. He accepted that he had no understanding of what Mr Mumford had done, apart from the fact that it led to a GLP breach. He did not find out whether Mr Mumford or Mr Lewis had been disciplined.

3.106 Mr Lally was asked about his finding that Ms Clarke had been signed as competent for areas she did not feel she was competent for. It was put to him that she had countersigned the training record and that the Claimant's case was that she had never said that she did not feel competent. He said that it was the Claimant's fault because Ms Clarke had said that she felt pressured to sign and had confirmed that to him in their conversation after the appeal hearing. He was asked whether he had explored this with the Claimant. He said that he did not go through it with her in the appeal hearing. The Claimant had had Ms Clarke's witness statement and had the chance to raise questions. All he was doing was finding out what Ms Clarke said and asking, "Did it stack up?"

3.107 It was pointed out to Mr Lally in cross-examination that the protocol for study 121 had been signed off by Mrs Cooke and for study 133 by Mr Phillips. He did not know that at the time. He knew that TFM would sign off the protocol but he understood that the Study Director was key so did not see a need to look into this. He knew that the final report would be reviewed by QA. He did not have any information about that process. He accepted that if there were fundamental errors, it would be reasonable to expect that QA should notice them. He did not look at the QA reports because he did not think he would learn a lot more. Mr Lally agreed that, while the Claimant had some dose calculations, she did not have the data behind them or information about the application process. She was being expected to remember detail from months ago. He said that he reviewed Mrs Cooke's findings and "verified them" with Ms Swales.

3.108 With respect to his finding that the Claimant's role was no different from other Heads of Department, Mr Lally accepted that he did not check what their study directing load was.

3.109 Mr Lally was asked about the job adverts. He said that he had found that a role was advertised before 5 August 2015, but that he accepted Mr Kanji's account of that. He accepted that the Claimant had referred to two separate adverts. He did not look into the McGinley advert.

3.110 Mr Lally was asked in evidence about the rather sweeping criticisms of the Claimant in his witness statement. He said that his references to the Claimant attempting to delay the proceedings related to the one occasion on which she had not attended the investigation meeting. He saw the OH report and did not question its content, but he still believed that the Claimant had attempted to delay: "It was quite clear to me." The reference to the Claimant challenging the processes at every turn was to her requesting that her father be allowed to attend the disciplinary hearing and to requesting that Ms Blakey did not email her. He understood that the reason was because the Claimant was distressed by receiving these emails on her personal email at that time. He thought it was unfair that the Claimant sent emails from that account and he did not see any difference between sending emails at a time of her choosing, and the anxiety of turning on her email fearing that she might have received one from work.

3.111 As noted above, the Claimant's appeal document speculated about whether the reason for her dismissal was that she had raised concerns about data protection. Mr Lally said that she did not stress that point during the appeal hearing and that Mr Rushworth did not refer to it in summing up at the end. He rejected the

suggestion that this lay behind the Claimant's dismissal. Mr Lally said that he did not follow this up. It was not put to Mr Lally that his own handling of the disciplinary and grievance appeals was affected by the fact that the Claimant had raised concerns about health and safety or data protection. Nor was it suggested that he had been influenced or persuaded by Mr Phillips or Ms Blakey. His evidence was that he did not discuss health and safety complaints or data protection with Mr Phillips. That is consistent with the notes of their conversation. The Tribunal had no hesitation in finding that Mr Lally was not influenced by any alleged protected disclosure.

3.112 The Claimant's effective date of termination was 23 October 2015.

3.113 The Tribunal heard evidence about the comparators the Claimant had referred to in her appeal against dismissal. In cross-examination Mr Phillips accepted that Mr Mumford had failed properly to calibrate a mass-spectrometer and that this could have affected a broad range of studies. Mr Mumford had failed to follow the SOP. No disciplinary action was taken. The affected studies were assessed. None of them were final and the data were verified retrospectively. He was asked how that affected the culpability of what Mr Mumford had done and he said that it did not. As far as Mr Lewis was concerned, Mr Phillips said that he had signed for a delivery of radioactive material without checking the amount delivered. The amount signed for was more than the amount delivered. Regulatory authorities had to be involved because this was radioactive material. No disciplinary action was taken; it was dealt with informally at a review. Mr Phillips said that the difference in the Claimant's case was the range of issues.

3.114 Following her dismissal the Claimant applied for and was offered a new job at Covance. Her offer letter was dated 5 December 2015 and the proposed start date was 5 January 2016. On 14 December 2015 a member of the PES team carrying out screening checks emailed the Claimant asking if they could contact the Respondent (contrary to the instruction in the Claimant's application form). The Claimant replied that she would prefer them not to. She provided references and contact details for her two previous employers. The reply from the PES team on 14 December 2015 said that they "completely understood" that she did not wish the Respondent to be contacted. They asked if she had received any benefits since she left the Respondent in October, and the Claimant replied to confirm that she had. On 17 December 2015 Covance emailed the Claimant to say that all checks were complete and to confirm the start date. Then, on 29 December 2015, Covance wrote to the Claimant withdrawing the job offer. The letter, provided during the course of the Tribunal proceedings, said that the Claimant had failed to provide permission for her previous employer to be contacted and had failed to disclose at interview that she was no longer employed by the Respondent and had then provided information to show that she was receiving jobseekers allowance at that time. It was the Claimant's case that Mr Phillips deliberately sabotaged the offer of an employment at Covance, because she had made protected disclosures about health and safety. She accepted that she had no direct evidence of that; it was circumstantial based on the emails set out above.

3.115 It was put to Mr Phillips that it was generally known at the Respondent that the Claimant had a job offer from Covance. He said that was where he heard it. He

said that Covance HR did not contact him and he did not discuss the Claimant with anyone at Covance. Mr Phillips's wife worked at Covance. He said that he did not recollect discussing the Claimant's job offer with her.

3.116 The Tribunal could well understand the Claimant's disquiet, given the sequence of emails set out above. However, there was simply nothing in the evidence to justify the inference that Mr Phillips had been responsible for the withdrawal of the job offer, or that it had anything to do with health and safety disclosures. It was the Claimant's case that it was widely known at the Respondent that she had a job offer at Covance. No doubt, given the history between the two companies, there were many connections between individuals at the two workplaces. Somebody may have said something that led to the position being re-visited, but there was no evidence to suggest that Mr Phillips did so.

3.117 We turn to the facts relevant to the Respondent's claim for damages against the Claimant. It claimed damages in relation to studies 121 and 133 only. Ms Shepherd gave evidence on this. She relied on the Claimant's job description as the basis for express terms of her contract. In cross-examination, she accepted that she did not know if the job description formed part of the contract. The contract itself made clear that it did not.

3.118 Ms Shepherd said that she had reviewed the data thoroughly for files 123 and 133. In cross-examination she accepted that the control validity criteria for those two studies had not been met (because of the mortality/escape rate in the control groups). She accepted that even if the calibration and spray licencing issues had not arisen, the studies would have had to be repeated once the control validity criteria were not met. The Tribunal asked Ms Shepherd how, if at all, the Claimant's alleged failures affected the control validity criteria. She said that was "undetermined." She did not know what caused the control organisms not to survive.

4. Further findings of fact: contributory fault, wrongful dismissal and *Polkey*

4.1 For the purposes of contributory fault, *Polkey* and wrongful dismissal only, it is necessary for the Tribunal to make findings about whether the Claimant in fact committed misconduct. In closing submissions Mr Clayton said that the matters relied on by the Respondent as amounting to gross misconduct/culpable conduct were:

- 4.1.1 conducting studies in breach of GLP by failing to ensure that studies 692, 693, 121 and 133 were carried out by staff suitably trained in the use of sprayers and failing to ensure the calibration was supervised by a licence holder;
- 4.1.2 failing to ensure the data in those studies were collected so as to allow reproducibility;
- 4.1.3 signing a certificate of compliance for studies 692 and 693 when she knew or ought to have known the studies were not GLP compliant; and
- 4.1.4 failing to ensure that there were SOPs for calibration.

4.2 Mr Clayton said that the Respondent relied on Mrs Cooke's investigation report and witness statements, the email exchanges between Mrs Cooke and Mr Phillips in July 2015 and the email of 27 March 2014.

4.3 The Tribunal was not provided with the relevant study files in full. We did not hear evidence from the witnesses questioned by Mrs Cooke.

4.4 The Respondent's starting point was that there was a legal requirement for an NPTC licence holder to supervise the spraying in these four studies, and that the failure to do so was in breach of GLP. Although that appears to have been the parties' understanding at the time of the studies, by the time of the disciplinary hearing the Claimant was clearly questioning whether a licence was in fact required. Nobody carried out any further research, beyond asking the existing licence holders. Even by the time of the Tribunal, neither party made proper reference to the legislation said to be relevant, which we understood to be the Control of Pesticides Regulations. One part of those Regulations was included within the supplementary file, but it was not clear whether it took into account more recent amendments, and it was incomplete. Relevant definitions were not included. Neither party made legal submissions about these Regulations. The Tribunal was referred to a Code of Practice. The Claimant's case was that the flow charts within that Code of Practice demonstrated that no licence was in fact required. That appeared on the face of it to be correct. Mr Brinham agreed in cross-examination. Mr Clayton submitted that the Respondent's position was supported by a report made by the MHRA, who investigated the studies after the event. The Tribunal did not consider that the MHRA report supported the view that there was a legal requirement to have a licence holder present. The MHRA report referred to one of the issues being that the application was not performed or supervised by an NPTC spray licence holder, and described that as "a facility requirement" adding that it is a legal requirement for "most people who are spraying with professional pesticides." There was no evidence that the test substances were "professional pesticides." Mrs Cooke said that she did not know if the substances were licensed pesticides. On the basis of that material the Tribunal was not satisfied that there was a legal requirement for an NPTC licence holder to supervise the calibration and spraying of the test substances involved in these studies.

4.5 The Claimant's evidence was that she studied relevant OECD guidelines before devising the study protocols. She had responsibility within her job description for producing SOPs but under GLP that was a responsibility of TFM, so she could not sign them. Her understanding now was that no NPTC licence was required for any of the four studies. At the time of studies 692 and 693 she (wrongly) thought that a licence was required for use of a compressed air spraying system. She did not think that a licence was required if a hand held sprayer was used. It had originally been intended to use a compressed air system for these studies but it was missing, so they decided to use hand held sprayers instead. She had explained this at the disciplinary hearing. When she wrote the email of 27 March 2014, she was referring to use of a compressed air system. She had not been asked about that email at the time of her dismissal. She had herself operated the sprayer and recorded the data for studies 692 and 693. The data did not specify the baseline for the spraying height, but it was standard that height above ground was used unless otherwise stated. She had used an iPhone to record times, but this was recorded as a deviation within a filenote, in compliance with GLP. In the spray record documentation presented at the Tribunal, relevant pages showing calculations were missing.

4.6 The Tribunal saw the protocol and QA audits for these studies. Ms Swales signed the protocol. She did not identify any deficiency. The QA audits made lengthy and detailed comments, following a review of the data and draft report. For study 692, the use of an iPhone was noted as a "minor" documentation matter. The Claimant commented in the relevant section that a deviation had been noted. No other shortcomings of relevance to the criticisms made by Mrs Cooke were noted. For study 693, Ms Earnshaw had noted the use of the iPhone as a timer as a "minor SOP compliance" issue. She also raised within the "minor SOP compliance" category, questions about where the criteria for the spray runs were documented and whether the acceptability of the sprayer calibration had been checked and accepted at the time of dosing. No other shortcomings relevant to the criticism made by Mrs Cooke were noted. Nobody said that the data were not reproducible. The Tribunal saw the filenote issued by the Claimant at the time about the use of the iPhone. Mrs Cooke confirmed that a minor comment was one that was "not of real significance for GLP." She said that the audit reports were sent to TFM and that the final report should not be signed off until the issues raised by QA were addressed.

4.7 In her evidence to the Tribunal, Mrs Cooke said that the fundamental problem with these studies was that no NPTC licence holder was involved and that because of study deficiencies it was not possible to calculate the amount of test substance applied. Mrs Cooke accepted that she carried out the internal scientific review of these studies at the time they were carried out. The Tribunal did not see any evidence that she raised any such concerns at the time.

4.8 The Tribunal noted that the Respondent alerted the authorities to the concerns about these studies and that the MHRA carried out an investigation. Mrs Cooke's evidence was that she went through her investigation report and her findings with the MHRA auditor. She and the auditor were in the conference room together. The Inspection report indicates that the inspector looked at studies 692 and 693 as well as two other studies. For those other studies, no issues that would affect GLP compliance were identified. The inspector indicated that as well as reviewing the investigation report, he reviewed the associated raw data, training and equipment records. For studies 692 and 693 he agreed with what were said to be the Respondent's conclusions as to the root causes/contributing factors, namely:

4.8.1 Lack of training within the department for the new technique;
4.8.2 Over-confidence of study director;
4.8.3 Deficiencies in QA auditing performance; and
4.8.4 Inappropriate responses to audit comments.

4.9 The Inspector said that the main reason the studies were invalidated was because it was impossible to establish from the details recorded of the spray application how much test item had been applied to the test systems. The Inspector concluded, presumably on the basis of information from Mrs Cooke, that the Claimant was aware of the requirement for a licence holder to be present and that a number of licence holders had told her that they were available to assist, but "for reasons that were not clear, the study director decided to ignore this requirement and the offers of help." The Inspector concluded that the issue arose from a lack of experience with the test system, compounded by lack of

suitable SOPs. Further, the Inspector referred to the QA audits, and said that it was "of concern" that management failed to appreciate or notice the potential significance of the comments made by QA.

4.10 In the light of that evidence, for studies 692 and 693 the Tribunal was not satisfied on the balance of probabilities that the Claimant was culpable as alleged. As indicated, while the parties had a different understanding at the time, we have found that there was no requirement for an NPTC licence holder to be involved. The Tribunal was not provided with the full study data. The Claimant said that relevant pages were missing and there was no basis to dispute that. At no stage has the Claimant been provided with the full file, to enable her to explain the basis on which she says the results were reproducible. In assessing the contention that they were not, the Tribunal has taken into account that at the time the studies were completed and signed off, nobody suggested that they were fundamentally flawed or not reproducible. Specific issues were identified by QA, but were categorised as minor. No issue was taken with the Claimant's response to those issues. Mrs Cooke carried out a scientific review at the time and there is no indication that she identified any concern about what she now says were fundamental flaws and a lack of reproducibility. The studies were signed off by TFM. Despite specific attention being drawn to some of these matters in the QA comments, TFM did not identify any problem. The MHRA report did provide support for the Respondent's conclusions, but it was not clear on the evidence available to what extent the inspector independently reviewed the data and to what extent he relied on the investigation report and what Mrs Cooke told him. In all those circumstances, the Tribunal was not satisfied on a balance of probabilities that the studies were carried out in breach of GLP, that the Claimant failed to ensure that they were or that she wrongly signed compliance certificates.

4.11 For studies 121 and 133, the protocols were signed by Mr Phillips and Mrs Cooke. The Claimant said again that her understanding at the time, from Mr Phillips, was that the NPTC licence requirement related to high pressure systems only. It was only late in the day that she was told by him (she now understood wrongly) that these studies would require an NPTC licence holder to be present. In cross-examination she was reminded that she told Mr Brinham at the disciplinary hearing that she was only told this on the morning of the last spray application, which was too late. Her attention was drawn to the email exchange of 13 July 2016 referred to above, and it was suggested to her that what she told Mr Brinham was dishonest. She disagreed. She said that at that time she did not have the underlying documentation. While she could now see that there had been an email exchange on 13 July 2016, she did not have that to cross refer to at the disciplinary hearing. Having now seen the documentation, she said that she found out about the requirement at very short notice. She was very busy at that time, but she spoke to Mrs Cooke and Ms Goodband and asked Ms Goodband to supervise the calibration and application. Mrs Cooke accepted in cross-examination that the three of them had a conversation and agreed that Ms Goodband would assist in that way.

4.12 The Claimant's evidence to the Tribunal was that she told Ms Clarke, who was supervising the studies, that she should organise the workload so that a licence holder was present. The Tribunal did not hear evidence from Ms Clarke. The notes of her interview with Mrs Cooke do not explicitly address that point. The

Claimant also told Mr Shannon. His evidence to Mrs Cooke was that he was only told this on the last day, but the Tribunal did not hear evidence from him.

4.13 The Claimant pointed out that she was not present when the calibration and spraying took place. She accepted on the basis of the underlying documentation shown to her that there were fundamental flaws, but she pointed out that she had never reviewed the study or claimed GLP compliance for it.

4.14 The Claimant's evidence to the Tribunal, which was not challenged, was that Mr Phillips insisted that she take on these studies, at short notice, despite her pre-booked annual leave. It was then difficult to book time in the glasshouses for them. She clearly had a heavy study directing workload and Ms Blakey accepted in evidence that if she had known that the Claimant had been raising this with Mr Phillips, it would "absolutely" have changed her view about the Claimant's workload.

4.15 Looking at all the evidence, the Tribunal found on the balance of probabilities that the Claimant had some culpability in respect of studies 121 and 133. We find on the balance of probabilities that she did not tell the team before spraying started of the need to ensure that Ms Goodband supervised. The first time she suggested that she had said told Ms Clarke appeared to be at the Tribunal. She did not give that explanation during the disciplinary process. Indeed, as noted, she gave incorrect evidence about being unaware herself until the last day at the disciplinary hearing. While that was not necessarily dishonest, it did in the Tribunal's view again reflect a tendency to give an account based on arguing the case with hindsight, rather than simply recalling and recounting what happened. In addition, while the Claimant had lined up Ms Goodband to supervise the spray application, it appears that Ms Goodband was not in fact asked to do so. Finally, Mr Shannon's version of events at the time was that he was told on the last day. We attach limited weight to that, but it does add some support. Taking all those matters into account, the Tribunal found that the Claimant missed out one step, namely remembering to tell the team about the need to have Ms Goodband supervise the spray calibration and application. We find that was culpable not because an NPTC licence was in fact required, but because it evidently contributed to a failure to ensure that the spraying, calibration and recording were properly done. The Claimant accepted that there were fundamental flaws in that respect (albeit she never claimed GLP compliance). It seemed to the Tribunal that this represented a lack of appropriate supervision from her or, in her absence, Ms Goodband. Of course, the impact of those shortcomings was limited by the subsequent failure of the control validity criteria, and the Claimant might well have been in a position to take swift action to remedy both aspects, if she had returned to work on return from annual leave. The Tribunal found that while this was culpable, particularly in view of her heavy workload and the fact that she had been obliged to take on these studies at short notice, it was not gross misconduct. It was an oversight.

4.16 The Tribunal had limited evidence about staff training. There were the general comments made by the witnesses when interviewed by Mrs Cooke, but, as Mrs Cooke's answers in cross-examination made clear, they had not been probed in any detail and there was, potentially, reason to doubt what was said. It did not seem to the Tribunal that, by themselves, they supported a conclusion that on the

matters in issue the Claimant failed to ensure staff were appropriately trained. We saw parts of the training records of Mr Shannon, Ms Burns and Ms Chitikeshi. Again, that was not sufficient to reach any reliable conclusion about the training given. The training sheets did indicate that Ms Burns had training in hand held spraying but not Mr Shannon. The Claimant accepted that, but she said that this did not mean he was untrained. The study file might record the training carried out and it would have been possible for her to complete the training record retrospectively. The Tribunal was not satisfied on the evidence before it that the Claimant had failed to carry out appropriate training.

4.17 The last alleged area of culpability is for failure to ensure that there was an SOP for sprayer calibration. While in GLP terms this was a TFM responsibility, the Claimant accepted that it was part of her job role. It clearly was, and the Tribunal had no doubt that as a senior study director and head of department, she had a key responsibility in the provision of SOPs. It seemed to us that this was an issue on which a SOP was plainly required. There were detailed and prescriptive requirements to ensure that calibration and spraying were properly performed, and the very purpose of an SOP is to make sure that there are clear instructions in such situations. It was not solely her responsibility, and it was not picked up by others involved in reviewing studies 692 and 693 (or approving the protocols for 121 and 133). Nonetheless, the Tribunal considered that there should have been an SOP covering this and that the Claimant should have taken steps to ensure that there was. The failure to do so was culpable. If there had been an SOP, the fundamental flaws in studies 121 and 133 might have been prevented.

5. Law

Protected disclosures

5.1 Protected disclosures are dealt with in s 43A to 43L Employment Rights Act 1996. By virtue of s 43B, a qualifying disclosure means a disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more prescribed matters. Those include, that a criminal offence is being committed, that a person has failed, is failing or is likely to fail to comply with a legal obligation to which he is subject; and that the health or safety of any individual has been, is being or is likely to be endangered. A qualifying disclosure made in good faith to a worker's employer is, by virtue of s 43C and 43A, a protected disclosure.

5.2 A qualifying disclosure must involve a disclosure of information, not merely the making of an allegation: see *Cavendish Munro Professional Risks Management v Geduld* [2010] ICR 325. Furthermore, a reasonable belief means that the worker must subjectively hold that belief, but that it must be, in the Tribunal's view, objectively reasonable: see *Babula v Waltham Forest College* [2007] ICR 1026 CA.

5.3 Under s 47B Employment Rights Act 1996 a worker has the right not to be subjected to a detriment by any act or deliberate failure to act done on the ground that he or she has made a protected disclosure. Something is done "on the ground" that the worker made a protected disclosure if it is a "material factor" in the decision to do the act. The decision must be in no sense whatsoever

because of the protected disclosure: see e.g. *Fecitt and others v NHS Manchester* [2012] IRLR 64 CA.

Dismissal

5.4 So far as unfair dismissal is concerned, the right not to be unfairly dismissed is dealt with by s 94 and 98 Employment Rights Act 1996. By virtue of s 103A Employment Rights Act 1996, an employee who is dismissed is to be regarded as unfairly dismissed if the reason or principal reason for the dismissal is that the employee made a protected disclosure. That is a different and higher threshold from the one that applies in a claim of being subjected to a detriment for making a protected disclosure, as the Court of Appeal in *Fecitt* confirmed.

5.5 The reason or principal reason for dismissal is a question of fact to be determined by a Tribunal as a matter of direct evidence or by inference from primary facts established by evidence. The reason for dismissal consists of a set of facts which operated on the mind of the employer when dismissing the employee. They are within the employer's knowledge and in this case it is for the employer to show the reason or principal reason for the dismissal. The proper approach is set out in the case of *Kuzel v Roche Products Ltd* [2008] ICR 799 CA.

5.6 It is well-established that in a claim for unfair dismissal based on a dismissal for misconduct, the issues to be determined having regard to s 98 are: did the employer have a genuine belief in misconduct; was that belief based on reasonable grounds; and when the belief was formed had the employer carried out such investigation as was reasonable in all the circumstances: see *British Home Stores Ltd v Burchell* [1980] ICR 303. Furthermore, the question for the Tribunal is whether dismissal was within the range of reasonable responses open to the employer. The range of reasonable responses test applies to all aspects of the decision to dismiss including the procedure followed: see *Foley v Post Office; HSBC v Madden* [2000] ICR 1293 *Sainsbury's Supermarkets v Hitt* [2003] IRLR 23. The cases make clear that there is no rule of law that requires an employee to be given the chance to cross-examine witnesses as part of a fair procedure. The touchstone is reasonableness and, while there may be cases in which fairness does require it, cross-examination of complainants by the employee is generally regarded as the exception rather than the rule: *Santamera v Express Cargo Forwarding* [2003] IRLR 273.

5.7 We emphasise, therefore, that with respect to the unfair dismissal claim, it is not for the Tribunal to substitute its view for that of the Respondent. The Tribunal's role is not to decide whether the Claimant was guilty of the conduct alleged, but to consider whether the Respondent believed that she was, based on reasonable grounds and following a reasonable investigation.

5.8 As regards the remedy for unfair dismissal, a basic award is payable under s 122 and a compensatory award under s 123 of the Employment Rights Act. Pursuant to s 122(2) and s 123(6), both the basic and compensatory awards may be reduced because of conduct by the employee. Under s 123(6) the relevant conduct must be culpable or blameworthy; it must actually have caused or contributed to the dismissal; and it must be just and equitable to reduce the

award by the proportion specified: see *Nelson v BBC (No 2)* [1980] ICR 110 CA. By contrast, the basic award can be reduced where conduct of the Claimant before the dismissal makes that just and equitable. There is no requirement that the conduct should have caused or contributed to the dismissal. In *Hollier v Plysu* [1983] IRLR 260 the EAT suggested broad categories of reductions: 100% where the employee is wholly to blame; 75% where the employee is mainly to blame; 50% where the employee is equally to blame and 25% where the employee is slightly to blame.

5.9 Where the Tribunal considers that there is a chance that the employee would have been fairly dismissed in any event, then the compensation awarded may be reduced accordingly: *Polkey v A E Dayton Services Ltd* [1987] 3 All ER 974. Guidance on how to approach that issue is set out in the case of *Software 2000 Ltd v Andrews* [2007] IRLR 568.

5.10 The ACAS Code of Practice on Disciplinary and Grievance Procedures is relevant and the Tribunal has had regard to it. Under s 207A and schedule A2 Trade Union and Labour Relations (Consolidation) Act 1992, where an employer or an employee has unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures, a Tribunal determining a claim under s 111 of the Employment Rights Act 1996 may (respectively) increase or decrease any award by up to 25% if it considers it just and equitable to do so.

Wrongful dismissal

5.11 As regards a claim for notice pay (wrongful dismissal), if an employer acts in breach of contract in dismissing an employee summarily, that is a wrongful dismissal and the employee will be able to recover damages in respect of the failure to give notice. However, a summary dismissal is not a wrongful dismissal where the employer can show that summary dismissal was justified because of the employee's breach of contract. Misconduct by an employee may amount to such a breach. Just as in the case of contributory fault in unfair dismissal, the employer cannot rely on misconduct that occurred after the dismissal to justify a summary dismissal, though it can rely on conduct that occurred before the dismissal, but which it only discovered afterwards: *Boston Deep Sea Fishing & Ice Co Ltd v Ansell* (1888) 39 Ch 339.

6. Determination of the claims

6.1 In this case we have made detailed findings of fact. The extensive documentation, detailed nature of the allegations that formed the subject of the disciplinary proceedings and detailed nature of the claims before us has required that. Further, many of the issues to be determined are essentially factual ones, e.g. the reason for dismissal and the grounds for subjecting to detriment. Against the context of the detailed findings of fact, we turn to the issues in this case, which we can address more briefly.

Protected Disclosures

6.2 The Tribunal found that the Claimant did make protected disclosures relating to health and safety. The findings of fact above deal with the matters raised by the

Claimant on 23 October 2014. There is no question that she raised concerns about breach of the Health and Safety at Work Act, failures relating to PPE and signage and shortcomings in the health and safety manual. There is some conflict about the other matters, but we do not need to resolve that – it is clear that she disclosed information about shortcomings in health and safety, including, at least, the above matters. Further, the Tribunal accepted that, in the Claimant's reasonable belief, this tended to show that the Respondent was failing to comply with a legal obligation (i.e. its obligations under the Health and Safety at Work Act) and that health and safety was or was likely to be endangered.

6.3 The Tribunal had some doubts about whether, in the Claimant's reasonable belief, the disclosure was made in the public interest. Fundamentally, the concerns were being raised in a disciplinary hearing as a means of "defence" against the allegation levelled at the Claimant. Her response to the criticism of her for bringing her children into the laboratory was to say that the Respondent was in breach of its health and safety obligations too. To a considerable extent, that was in the Claimant's private interest. However, in particular given the Claimant's ongoing role on the health and safety committee thereafter, and given the nature of the concerns raised, the Tribunal was prepared to accept that in part the disclosures were, in the Claimant's reasonable belief, also in the public interest. The Claimant did therefore make protected disclosures concerning health and safety.

6.4 However, the Tribunal found that she did not make protected disclosures regarding data retention. The Tribunal did not accept the Claimant's account of the discussion in April 2015. It was not shown any email to Mr Phillips forwarding Ms Gillbanks's email. The detailed findings of fact above make clear that the Claimant did not disclose to Mr Phillips the information that the Respondent was holding Covance data or that it should not do so. She may have raised that at management meetings, but in doing so she did not disclose information. This was a subject that Mr Phillips himself was repeatedly raising and pursuing and her contributions were in the context of that ongoing discussion. Any suggestion that the Respondent was acting unlawfully was not information, it was an incorrect assumption by the Claimant. Even if the Claimant had disclosed information, the Tribunal did not consider that in her reasonable belief this was in the public interest. Rather, again, it was a defensive response to what she regarded as Mr Phillips's criticism of her for telling the external client that the Respondent had a copy of the report. In circumstances where Mr Phillips was already regularly raising the matter and trying to ensure that progress was made, the Claimant did not reasonably believe that that her comments were made in the public interest.

6.5 The next question is whether the Claimant was subjected to a detriment done on the ground that she had made the health and safety disclosures. This is fundamentally a question of fact: were the matters complained of done "in any sense whatsoever" because of the protected disclosures? The Tribunal has made detailed findings of fact about each of the alleged detriments, explaining in each case our finding that none of them was done, in any sense whatsoever, because the Claimant had made health and safety disclosures. In short:

6.5.1 It was not the Claimant's role that was advertised. The decision to advertise the role in ecotoxicology was not influenced by the fact the Claimant had made protected disclosures.

6.5.2 The Claimant was offered a termination agreement on 5 August 2016. That reflected Mr Phillips's negative perception of her, wish to see her out of the business and need to satisfy the US client that swift action was being taken, but the Claimant's protected disclosures did not play any part in that.

6.5.3 The decision to suspend her and embark on a disciplinary procedure was the consequence of that decision, in the absence of a compromise agreement. It was not because she had made protected disclosures.

6.5.4 There were shortcomings in the disciplinary process, including failures to provide documentation and correspondence that was inappropriate in tone from Ms Blakey. The Claimant's access to her computer was limited and she was not allowed to touch it. No financial information was provided to her. That was all detrimental treatment of her. Ms Blakey's approach may have been influenced by her own perception that the Claimant acted aggressively at the disciplinary hearing in October 2014, but it was not related to the fact that the Claimant raised health and safety concerns on that occasion. Mr Phillips's approach likewise may have been influenced by his negative perception of the Claimant, but that was not because she raised health and safety concerns.

6.5.5 Mr Brinham dealt with the Claimant's grievance. There was nothing to suggest that he was aware that the Claimant made health and safety disclosures in October 2014, nor that the outcome of the grievance was affected by that. Nor was Mr Lally's handling of the grievance appeal.

6.5.6 Ms Blakey handled the Claimant's SAR in accordance with legal advice. Her handling of it was not influenced at all by the fact that the Claimant made health and safety disclosures.

6.5.7 There were shortcomings in the handling of the Claimant's appeal against dismissal. However, Mr Lally was not influenced by the fact that the Claimant made health and safety disclosures.

6.5.8 The evidence did not support a finding that the Respondent deliberately sabotaged the offer of a job made to the Claimant by Covance, nor that the making of health and safety disclosures had anything to do with that.

Unfair Dismissal

6.6 That brings us to the unfair dismissal claim. The first question is: what was the reason for the Claimant's dismissal? That, too, is a question of fact and has been dealt with as such.

6.7 As set out above, the basis of the Claimant's case that the reason or principal reason for her dismissal was that she made protected disclosures, was that Mr Brinham was persuaded or influenced by Mr Phillips. The Tribunal rejected that. We found as a matter of fact that Mr Brinham was not persuaded by Mr Phillips to dismiss the Claimant. Rather, he genuinely believed that she was guilty of misconduct. That was the reason for her dismissal.

6.8 We turn then to the question whether the Respondent acted reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant. It is important to bear in mind that the "range of reasonable responses" approach

applies to the procedure as well as to the outcome. Further, Mr Clayton reminded the Tribunal that the Respondent should not be held to the standards of legal representatives in a Tribunal hearing. The reasonableness of its approach should not be judged against the standard of the impressive and detailed examination carried out by Ms Davies in this case. The Respondent must be judged on the basis that it is a business carrying out scientific research. The Tribunal accepted that, and kept those principles in mind. Nonetheless, we had no hesitation in finding that the Respondent did not act reasonably in all the circumstances in treating misconduct as a sufficient reason to dismiss the Claimant. Its approach was outside the range of what was reasonable and no reasonable employer would have dismissed the Claimant in these circumstances.

6.9 Again, we have made detailed findings of fact above, giving examples of the particular criticisms we make. In the light of those findings, the fundamental shortcomings in the Respondent's approach can be identified as follows:

6.9.1 Mrs Cooke's investigation was largely one-sided and demonstrated a tendency not to seek out evidence that might exculpate the Claimant, only evidence that incriminated her. The witnesses questioned by Mrs Cooke were asked leading questions, in general terms. Their answers were not probed or cross-checked against the documents. See for example her approach to Ms Earnshaw and the QA process, to the crop husbandry issues and to training.

6.9.2 Mrs Cooke held other discussions with witnesses, such as Ms Earnshaw and Ms Burns, which were not documented but on which she placed reliance. The Claimant did not know what they said and was not in a position to challenge it.

6.9.3 The Claimant was not interviewed during the course of the investigation. That was not Mrs Cooke's decision. Ms Blakey incorrectly suggested that the Claimant was refusing to attend an interview, when she had once indicated that she was not fit to attend an interview at a time when she was indeed signed off work. No thought appears to have been given to whether the interview might be postponed for a few days, or whether the Claimant might be asked to give written answers. While there is no absolute requirement to interview the employee, in this case complex and varied allegations were being made and in the Tribunal's view it was not reasonable to decide not to interview the Claimant simply because she had been unfit to attend on one occasion.

6.9.4 In the context that the Claimant was not interviewed, it was all the more important for her to be provided with information about the allegations against her. Despite the fact that they were well known at an early stage, almost no information about them was provided to her. We have described Ms Blakey's suggestion that further investigation was required in order to define the allegations as "specious." No reasonable explanation for failing to provide the Claimant with a basic explanation of why she had been suspended and what was being investigated was provided.

6.9.5 The Claimant was eventually provided with the investigation report and she then understood what the allegations against her were. It was only at that stage, now some months since she had last been in work, that she could begin to respond to the allegations. However, she was not provided

with the evidence that she reasonably required in order to do so. These were allegations being made in general terms, but they could only be answered by dealing with specifics: e.g. the specifics of the studies; the specifics of the training carried out; the specifics of her management style; the specifics of her financial revenue reporting and so on. Before the disciplinary hearing she was not provided with the raw data, final reports and audit documentation that Mrs Cooke had looked at when carrying out her investigation. She did not have the training records, SOPs or study files. Indeed, all she had was the investigation report and witness statements. The three hours' access to her computer, via Mr Fairhurst, was insufficient. No reasonable explanation for failing to provide her with the information relevant to financial revenue reporting was provided at the time or to the Tribunal given that this was information the Claimant had herself compiled.

6.9.6 Mr Brinham's approach was fundamentally flawed. He approached the disciplinary hearing on the incorrect assumption that the Claimant accepted the factual matters set out in the investigation report and that the only matter for him to determine was whether she was culpable. He had been heavily influenced in deciding what questions to ask by the investigating officer and he deferred to her expertise, rather than forming his own judgment.

6.9.7 Mr Brinham did not probe the allegations or the Claimant's response to them factually. He asked general questions that were not designed to find out what had actually happened. For example, he formed the view that there were insufficient SOPs but he did not ask the Claimant about that. He did not explore with her whether her actions for any of the six studies satisfied her responsibilities as study director. This was of particular significance because the Claimant had not been asked about the allegations at the investigation stage.

6.9.8 No consideration was given to issuing a management instruction to witnesses to attend and be questioned. While oral questioning of witnesses is not a requirement, the witnesses had been questioned in a leading and general way by Mrs Cooke. Further, there were conflicts between what they said and what the Claimant said. While it might be reasonable to decide not to allow cross-examination at the hearing, it would then be necessary to ensure that any findings took due account of the fact that their accounts were untested and obtained through leading questions. Mr Brinham did not do so. Indeed, he said that their statements were "not open to interpretation."

6.9.9 The Claimant's answers and explanations, for example about PIPs, were dismissed by Mr Brinham without investigation. Her points about revenue recognition were dismissed on the basis that the information in the investigation report was "very clear and unambiguous" and that he did not believe there could be an explanation.

6.9.10 Mr Brinham carried out further investigations after the disciplinary hearing but did not record them or provide records to the Claimant. She did not know about the evidence being relied on and did not have the chance to challenge it.

6.9.11 Some information was provided to the Claimant after the disciplinary hearing but it was still inadequate. She was not provided with the revenue recognition information, nor the study files for the impugned studies. It

was not reasonable to expect her to defend herself against these detailed criticisms relating to the conduct of the studies without access to the study files. Further, she received the information on Friday (in part) and was required to respond by midday the next working day. Mr Brinham did not take into account her response, sent four hours late, indicating that she needed more time and questioning what was now required.

6.9.12 In view of those fundamental shortcomings Mr Brinham's belief in the Claimant's misconduct was not based on reasonable grounds. In short, an investigation was carried out without the Claimant's input. Mr Brinham incorrectly assumed that the Claimant accepted the matters set out in the report that followed, and conducted the disciplinary hearing on that basis. The Claimant did not have access to the information necessary to defend herself and still did not have a proper opportunity to give her version of events. Mr Brinham relied on evidence of which she was unaware.

6.9.13 Mr Brinham was unable to explain to the Tribunal what he found to be dishonest on the Claimant's part.

6.9.14 These matters were not put right at the appeal stage. Mr Lally did not carry out a re-hearing, so the Claimant still was not given an opportunity to give her version of events, by reference to all the relevant documentation.

6.9.15 The appeal started with Mr Lally holding a video discussion with the investigating officer, dismissing officer and others, which included discussion of Mr Brinham's findings. That risked his view being influenced before he heard the appeal. A number of his actions suggested that thereafter he, too, was somewhat one-sided in his approach, for example the suggestion that he was deciding whether what Ms Clarke said "stacked up" rather than looking at the Claimant's explanation. That seemed to the Tribunal to be reflected in the sweeping criticisms he made of the Claimant in his witness statement, which did not withstand close scrutiny.

6.9.16 Mr Lally evidently placed reliance on discussions with Ms Swales and others, outside of the appeal hearing, of which the Claimant was unaware and on which she had no opportunity to comment. Indeed, he purported to make findings of dishonesty based on those conversations, without putting to the Claimant that she was being dishonest (and despite the fact that he was not carrying out a re-hearing). It was wholly unclear what Mr Lally regarded as the Claimant's dishonesty.

6.9.17 Mr Lally regarded the spray issue as fundamental. On this, his decision was based to a significant extent on a copy of the email of 27 March 2014, which he did not discuss with the Claimant. He regarded that email as conclusive and did not think he needed to ask the Claimant for an explanation. He did not realise that the Claimant's position at the disciplinary hearing was that there was a difference between a handheld sprayer and a pressurised sprayer, nor did he realise that the Claimant said that the 27 March 2014 email referred to a pressurised sprayer.

6.9.18 Mr Lally's approach to whether the Claimant was treated consistently with other employees was inadequate. He said that he did not think this was relevant. To the extent that he investigated, he simply accepted Mr Phillips's assertion that others had committed one-off errors. He had no understanding what Mr Mumford and Mr Lewis had done or of the nature of the issues with revenue reporting for which Mr Brinham was responsible. Consistency of treatment with other employees is relevant to

whether an employer acts reasonably. On the Tribunal's findings, the conduct of Mr Mumford and Mr Lewis was serious. Mr Mumford's had the potential to affect any study that used the mass spectrometer. It was merely fortuitous that it did not. Mr Lewis's involved a failure properly to account for a radio-labelled substance, with obviously serious potential repercussions.

6.10 The Tribunal reminded itself again that the investigation and disciplinary process were different from legal proceedings and that the Respondent should not be held to that standard. Further, there was evidently an attempt to carry out a proper process. This is, however, a substantial organisation and one with a dedicated HR function. It was evidently also receiving legal advice. In any event, the shortcomings identified above, particularly when taken together, are not minor points of detail. They are fundamental failures in the investigation and disciplinary process that meant the Claimant did not have a proper chance to answer the allegations. It was not enough simply to point to the investigation report and the witness statements that accompanied it as justifying findings of misconduct. No reasonable employer would have dismissed the Claimant in those circumstances. The claim of unfair dismissal succeeds.

Polkey and contributory fault

6.11 The next question is whether there is a chance the Claimant would have been fairly dismissed in any event. The proper approach is set out in *Software 2000 Ltd.* Tribunals are reminded that they must evaluate the evidence before them and properly consider whether there is a chance that the individual would have been fairly dismissed. In this case the Tribunal was not satisfied on a balance of probabilities that there was a chance that Claimant would have been fairly dismissed in any event.

6.12 The starting point for the whole process, as we have found, was a decision to seek to remove the Claimant from the business in part because of Mr Phillips's view of her, in part to satisfy the US that action was being taken. That would have been the backdrop to any disciplinary process. Dismissal for those reasons would not have been fair. The process that was followed was, as we have found, flawed at every stage. If the Claimant had been told swiftly about the problems identified, and given the chance to go through the files and explain her position, it is likely there would have been a clearer understanding of what had happened and why at an earlier stage. The statements by the witnesses would not simply have been taken at face value. There might have been a more careful assessment of whether supervision by an NPTC licence holder was required and more careful assessment of all the relevant documents. At the disciplinary stage, Mr Brinham would not have proceeded on the fundamentally flawed premise that the Claimant accepted the factual findings made by Mrs Cooke. He would have properly probed the allegations and taken into account the Claimant's answers, based on access to relevant documentation. The Tribunal has found that there were shortcomings by the Claimant, but not amounting to gross misconduct. A fair process might have led to similar findings. The treatment of Mr Lewis and Mr Mumford suggests that shortcomings of that kind do not normally lead to dismissal. Mr Brinham and Mr Lally did not give evidence about what they would have done in those circumstances. Given those features, and the wide-ranging shortcomings in the process that was followed, the Tribunal was not persuaded

on the evidence that there was a chance that the Claimant would have been fairly dismissed in any event.

6.13 However, the Tribunal did find that the Claimant contributed to her dismissal. We have set out above our findings of culpable conduct on her part. We have found that she did forget to tell the team that Ms Goodband should supervise the spray calibration and application for studies 121 and 133 until the last day of spraying. Further, she did fail to take steps to ensure that there was a SOP in place addressing those matters. The Claimant accepted that there were fundamental flaws in what the team had done. She, as study director, was responsible for the overall conduct of the study. The fundamental flaws suggest that the team were not properly prepared to carry out the spraying and the Claimant was to some extent responsible for this. We noted that she was obliged to take the study on at short notice and had a heavy study directing workload, which she had been raising with Mr Phillips for some time. In those circumstances, while not amounting to gross misconduct, the Tribunal found that this was a significant shortcoming on the Claimant's part. We found that it was appropriate to reduce both her basic and compensatory awards as a result and that the appropriate deduction was 25%. That reflected the fact that she was slightly to blame.

Wrongful Dismissal

6.14 The Tribunal has found that the Claimant did not commit gross misconduct for the reasons set out above. Accordingly, the Respondent was in breach of contract by dismissing her without notice.

6.15 The Claimant did not seek a separate award of damages in respect of her notice period and no separate award is made.

Employer's Contract Claim

6.16 It is not necessary for the Tribunal to decide whether the Claimant breached her contract by failing to carry out her duties with reasonable care and skill. In closing submissions Mr Clayton accepted that if the Tribunal found as a fact that studies 121 and 133 would have had to be repeated in any event because of the failure to satisfy the control validity criteria, the employer's contract claim must fail. In view of Ms Shepherd's evidence, a finding that the studies would have to have been repeated in any event was inevitable. Accordingly, even if the Claimant had been in breach of contract it did not cause the Respondent any loss, because the two studies on which the employer's contract claim was based would have had to be repeated in any event.

ACAS Uplift

6.17 The last question is whether the Respondent unreasonably failed to comply with the ACAS Code on Disciplinary and Grievance Procedures and, if so, whether it is just and equitable to increase any award to the Claimant and by how much.

6.18 The Tribunal found that there was some unreasonable non-compliance with the ACAS Code. First, we found that the matters set out above amounted to unreasonable failure to comply with paragraph 5. Paragraph 5 requires the employer to carry out "necessary investigations … to establish the facts of the case." It makes clear that in some cases this will "require" an investigatory meeting with the employee before proceeding to any disciplinary hearing. The

Tribunal considered that the Respondent did not carry out the necessary investigations to establish the facts of the case and that this was unreasonable. In particular, Mrs Cooke carried out a one-sided investigation, failing to seek out evidence that might exculpate the Claimant and the Claimant was not interviewed or questioned in any way. The decision not to interview the Claimant was unreasonable. Rather than considering whether the meeting could be postponed in view of the Claimant's ill health or whether she could be asked written questions, Ms Blakey unfairly characterised her as refusing to attend an investigatory meeting and decided that no such meeting should take place.

6.19 Secondly, the Tribunal found that there was unreasonable failure to comply with paragraph 12. That requires the holding of a disciplinary hearing at which the employer should go through the evidence that has been gathered and allow the employee to set out their case and answer the allegations. They should be given an opportunity to raise points about information provided by witnesses. Here, Mr Brinham did not go through the evidence and allow the Claimant to set out her case and answer the allegations, because he was proceedings on the baseless assumption that she accepted the facts as set out by Mrs Cooke. That was plainly unreasonable. Further, the Claimant was not in a position to answer the allegations because she did not have the relevant documentation. Paragraph 9 makes clear that it is normally appropriate to provide copies of any written evidence. This was unreasonable. The Claimant made repeated requests for relevant documents. She plainly could not answer the detailed allegations without those documents and it was unreasonable not to provide them.

6.20 The Respondent is a substantial organisation with a dedicated HR function and access to legal advice throughout. The Tribunal considered it was appropriate to increase the compensation due to the Claimant in those circumstances. This was not a case of wholesale non-compliance with the ACAS Code. There was an attempt to comply – the basic steps required were followed – but that attempt was flawed. In those circumstances, the Tribunal considered that the appropriate level of uplift was 10%.

7. Remedy

7.1 We turn to the question of remedy. The Claimant got a new job starting on 5 July 2016. She works in Snaith four days per week and from home one day per week. The parties agreed a number of the underlying figures, as follows:

7.1.1	Basic award:	£**2850**
7.1.2	Loss of earnings to 22 May 2017:	**£45,091.80**
7.1.3	Loss of bonus to 22 May 2017:	**£1,031.88**
7.1.4	Loss of pension to 22 May 2017:	**£1,672.17**
7.1.5	Earnings from new employment to 22 May 2017:	**£30,816.38**

7.2 The Claimant also sought to recover compensation for loss of childcare vouchers to the date of the Tribunal hearing. However, the Tribunal found that this was not a recoverable loss. It is right that the Claimant was not receiving the voucher, worth approximately £243, but equally, during that period, she was not (with the odd exception) paying childcare costs. The fact that the voucher scheme operates by way of salary sacrifice does not change that. The question is

whether the Claimant suffered a financial loss by not receiving the childcare voucher. She did not, because she did not incur childcare costs.

7.3 The Claimant's total net losses to the date of the remedy hearing are therefore **£16,979.47** (£45,091.80 + £1,031.88 + £1,672.17 = £47,795.85 - £30,816.38).

7.4 As regards future losses, the parties were agreed that the appropriate period to compensate the Claimant for future losses was 26 weeks. They also agreed that the difference between her past earnings and her future earnings for that period was **£330.66**, but there were two further areas of dispute.

7.5 First, the Claimant incurs significant additional travel expenses in commuting to Snaith rather than the Harrogate. Allowing for the difference in journey lengths and the fact that she now works one day per week from home, she travels an extra 336 miles per week. The Claimant said that she should be compensated on the basis of the HMRC rate of 45 pence per mile. She said that this takes into account not only the actual cost of fuel, but the additional wear and tear to her car. She said, for example, that she has gone from one service per year to two services per year. The Respondent argued that she should be compensated solely on the basis of the actual additional fuel cost incurred. The Tribunal preferred the Claimant's approach. The loss she has suffered goes beyond the mere cost of the fuel and does cover matters such as wear and tear on the car and servicing costs. The HMRC rate of 45 pence per mile is calculated to take those matters into account and the Tribunal considers that to be the appropriate level of compensation. The total loss relating to the additional travel expenses is therefore 336 x £0.45 = £151.20 per week. Although the parties agreed that the future losses should cover 26 weeks, the Claimant will not incur losses associated with travel expenses when she takes annual leave, bank holidays and so on. The Tribunal therefore calculated this part of the loss for a period of 23 weeks rather than 26. The total loss on that basis is 23 x £151.20 = £3,500.60.

7.6 The other element that was not agreed related to the fact that the Claimant gets a free lunch at her new employer. She receives that on working days. When she worked at the Respondent she used to spend £3.50 per day on lunch (taking advantage of a particular meal deal). The benefit to her of the free lunch is therefore 4 (working days per week) x 23 (approximate working weeks) x £3.50 = £322.

7.7 The Claimant's total net future losses are therefore £330.66 + £3,500.60 - £322 = **£3,509.26**.

7.8 There is one remaining matter, which is compensation for loss of statutory employment rights. The Respondent said that the appropriate figure was £300, the Claimant said £350. The Claimant had 6 years' continuous service and net weekly pay of £549.90. Her statutory employment rights were relatively valuable. She must work for two years in order to accrue some of those rights again. In those circumstances, the Tribunal considered that the higher figure of **£350** was appropriate to compensate for those losses.

7.9 Reductions for contributory fault and for unreasonable failure to comply with the ACAS Code of Practice must then be applied, and we turn to that next. Applying the relevant legislation, the ACAS uplift must be made before the deduction for contributory fault. The adjusted figures are therefore:

Basic award: £2850 x 0.75 = **£2137.50**

Net loss to date of hearing = £16,979.47 x 1.1 x 0.75 = **£14,008.06**

Future loss of earnings plus loss of statutory rights = £3859.26 x 1.1 x 0.75 = **£3183.90**.

7.10 The total monetary award payable to the Claimant for her unfair dismissal claim is therefore **£19,329.46** (i.e. £2137.50 + £14,008.06 + £3183.90). The Employment Protection (Recoupment of Benefits) Regulations 1996 apply. The effect of those Regulations is that the Secretary of State may recoup the benefits paid to the Claimant (or the prescribed element if less) by serving a notice on the Respondent within 21 days from when the Tribunal's decision is sent to the parties or as soon as practicable thereafter. The effect of the notice is that the Respondent must pay the recoupable amount to the Secretary of State and the balance of the prescribed element to the Claimant. Accordingly, the Respondent is not obliged to pay the prescribed element of compensation to the Claimant until either the Secretary of State has served a recoupment notice on it, or the Secretary of State has notified it in writing that it does not intend to do so. The prescribed element is any amount ordered to be paid and calculated under s 123 Employment Rights Act 1996 in respect of compensation for loss of wages before the conclusion of the Tribunal proceedings, i.e. **£14,008.06**.

7.11 The Respondent conceded that if the Claimant succeeded in any part of her claim, the Tribunal ought to make a costs order in respect of the issue and hearing fees paid by her, which amounted to **£1,200**. The Tribunal considered that concession was rightly made. The Claimant has succeeded in her unfair dismissal claim and we have made an order accordingly.

Employment Judge Davies

Date: ***28 June 2017***