EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms C Evans	**- V -**	Camden Volunteer Bureau

Heard at: London Central **On**: 22-30 November 2018

Before: Employment Judge Baty
Mrs G Bradfield
Ms L Jones

Representation:

For the Claimant: In person
For the Respondent: Mr S Heath (Chairman of Trustees)

JUDGMENT

1. The Claimant's complaint of unfair dismissal succeeds. However, the tribunal makes a reduction in the compensatory award for unfair dismissal to 4 weeks' pay under the principles in Polkey v AE Dayton. Furthermore, the tribunal makes a further reduction of 100% to both the basic and compensatory awards for unfair dismissal because of the contributory conduct of the claimant.

2. The claimant's complaints of breach of contract in respect of notice pay, direct sex discrimination and victimisation all fail.

3. The claimant's holiday pay complaint was withdrawn by the claimant and dismissed by the tribunal.

REASONS

The Complaints

1. By a claim form presented to the Employment Tribunal on 19 February 2018, the Claimant brought various complaints, all of which the respondent defended.

2. Prior to this hearing they were identified as being complaints of unfair dismissal, breach of contract in respect of notice pay, for unpaid holiday pay, direct sex discrimination and victimisation. At the start of this hearing, the parties confirmed that these were the complaints before the tribunal.

The Issues

3. At the start of the hearing, the judge went through the issues of the complaints with the parties. The judge had noted that there had been a further and better particulars ("FBP") document prepared by the claimant on the tribunal file which identified eight separate allegations of either direct sex discrimination or victimisation. The claimant confirmed that these were indeed the allegations in question. A copy of the FBPs is attached to these reasons.

4. The issues of the claim were then agreed between the parties and the judge at the start of the hearing and those issues are set out below. These were the issues for the tribunal to decide at this hearing and no others.

Unfair dismissal

1. What was the reason for the claimant's dismissal? The respondent says that the claimant was dismissed by reason of conduct.

2. Did the respondent have a genuine and reasonably held belief that the relevant misconduct took place, following such investigation as was reasonable?

3. Was the dismissal procedurally unfair?

4. Was the sanction of dismissal within the reasonable range of responses open to a reasonable employer?

5. If the dismissal was unfair, should any adjustments to compensation be made either because of contributory conduct of the claimant or under the principles in Polkey v AE Dayton?

Breach of contract

6. Was the respondent entitled to terminate the claimant's contract without notice?

Holiday pay

7. What holiday pay is due to the claimant? The claimant maintains that she is due 3.2 days pay in respect of accrued but untaken holiday pay.

Direct sex discrimination

8. Did the respondent, because of the claimant's sex, treat the claimant less favourably than it would have treated others? The allegations of less favourable treatment are as follows:

   i. the allegations at items 7 – 8 of the claimant's FBPs; and
   ii. the claimant's dismissal.

9. The claimant relies on a hypothetical comparator only.

Victimisation

10. Did the claimant do a protected act? The claimant relies on the following:

i. the paragraph in the claimant's document emailed to the board on 8 June 2017 which is point 2 under the heading "management style";

ii. her conversation in her meeting on or around 12 June 2017 with Mr Scott Heath and Ms Rebecca Coxhead; and

iii. her written grievance of October 2017.

11. If so, did the respondent subject the claimant to a detriment because the claimant did either or both of the alleged protected acts? The allegations of detriment are as follows:

i. the allegations at items 1 - 6 of the claimant's FBPs; and

ii. the claimant's dismissal.

Jurisdiction/time limits

12. It is acknowledged that the complaints of unfair dismissal, breach of contract, for holiday pay, and some of the victimisation complaints were presented to the tribunal in time.

13. In relation to the remainder of the victimisation and direct sex discrimination complaints, does the claimant prove that these complaints amount to conduct extending over a period with any in time complaints such that all of those complaints are deemed to be in time?

14. If not, is it just and equitable to extend time in relation to any of those complaints such that the tribunal has jurisdiction to hear them?

5. It was agreed that the issues concerning contributory conduct and Polkey would be considered at the liability stage; however, any other matters relating to remedy would be considered only once the tribunal had made its determinations on liability.

6. Towards the end of the claimant's evidence, the judge asked the claimant a number of questions about her holiday pay complaint. It turned out that the bulk of what she was claiming was in relation to 3 days' leave over Christmas 2017; however, the claimant acknowledged that she had been dismissed with effect from 22 December 2017, in other words before these three days could be taken. She had not therefore accrued them at the date of dismissal. Without expanding on the details, she explained that the other 0.2 days related to the way the respondent calculated holiday pay but that, in the light of the discussion regarding the three days over Christmas, she was not going to pursue her complaint just in relation to the 0.2 days. She therefore withdrew the complaint in relation to holiday pay and the tribunal dismissed it.

7. During her submissions, the claimant withdrew the allegation that her written grievance of October 2017 was a protected act (issue 10(iii) above) and the tribunal did not therefore determine it.

The Evidence

8. Witness statements were provided from the following:

For the Claimant:

The Claimant herself.

For the Respondent:

Mr Dominic Pinkney, the CEO of the respondent;

Mr Scott Heath, the chairman of the Board of Trustees of the respondent;

Ms Rebecca Coxhead, a trustee of the respondent;

Mr Alex Kenmure, a trustee of the respondent;

Ms Erin Davies, a trustee of the respondent;

Ms Catherine Gibbins, a trustee of the respondent and a volunteer at the respondent;

Ms Johanna Garner, who was at no time employed by the respondent but was a member of the panel asked to investigate the grievance raised by the claimant;

Ms Audrone Budryte, an individual with IT expertise who was asked to advise the respondent regarding the claimant's email account;

Ms Sheila Norris, an employee of the respondent;

Ms Hayley Watts, the previous CEO of the respondent, prior to Mr Pinkney; and

Mr Philip Boye-Anawomah, a former employee of the respondent.

9. All of the witness statements provided were signed. However, as detailed below, not all of the above individuals attended the tribunal to give evidence.

10. An agreed bundle numbered pages 1-525 was produced to the tribunal. By consent, various pages were added to the bundle on the morning of the second day of the hearing and further pages on the fourth morning of the hearing.

11. The tribunal read in advance the witness statements and any documents in the bundle to which they referred.

12. A timetable for cross-examination and submissions was agreed between the tribunal and the parties at the start of the hearing. This was largely adhered to. In agreeing this timetable, the tribunal was able to accommodate the fact that many of the respondent's witnesses could only attend the tribunal at particular times.

13. As noted, not all of the respondent's witnesses for whom witness statements were provided attended the hearing to give evidence. At the start of the hearing, Mr Heath confirmed that the following would be attending the hearing to give evidence: Mr Heath; Mr Pinkney; Ms Coxhead; and Mr Adkins. All of the witness statements provided (by both parties) were signed. However, the judge explained that, if a witness did not attend the hearing such that their evidence could not be tested, the tribunal may assign less weight to that evidence than if the witness in question had attended. In addition, the claimant initially suggested that it would be useful if Mr Kenmure, Ms Norris, Ms Davies and Ms Garner attended as she felt it would be useful if she questioned them. The judge also explained the conditions when a tribunal might be prepared to issue a witness order compelling an individual to attend.

14. In the light of the claimant's requests, Mr Heath confirmed that he would, therefore, ensure that Mr Kenmure and Ms Davies attended.

15. There was then some discussion regarding Ms Norris. Mr Heath said that he was not minded to call her and mentioned that she wasn't very well. The claimant also said that she was not minded to call her. As neither party wished to apply for a witness order in respect of Ms Norris, and it seemed she was unwell, the tribunal did not make a witness order and Ms Norris did not attend.

16. There was then some discussion about Ms Garner. She was not an employee of the respondent and Mr Heath was not proposing to request her to attend. The tribunal asked the claimant if she wanted to apply for a witness order in respect of Ms Garner. In the end, both parties declined to do so and asked the tribunal, once it had read the statements, to decide whether it was appropriate to make such an order. On the second morning of the hearing, having read the witness statements and having asked Mr Heath a couple of further questions regarding Ms Garner's role, the tribunal adjourned briefly to consider what to do and decided to issue a witness order in relation to Ms Garner. The reason for this was that she was involved in the grievance investigation and we considered that her evidence in relation to that was relevant to the issues and potentially important. The tribunal made a witness order; this was given to Mr Heath to serve on Ms Garner. Ms Garner attended the tribunal the following week, on the fourth day of the hearing.

17. Furthermore, although they were not documents in the respondent's possession at that time, the tribunal subsequently asked if the respondent could obtain from Ms Garner any notes she made of the interviews which she and Ms Ola Elmahdi had carried out in relation to the grievances raised by the claimant and Mr Pinkney. The respondent managed to recover these notes, and the notes taken by Ms Elmahdi of those interviews, and, by agreement, they were added to the bundle on the morning of the fourth day of the hearing. In addition,

the tribunal agreed with the parties that there should be a two hour lunch break that day in order to give the claimant time to read these notes (which extended to some 18 pages), in advance of Ms Garner giving her evidence that afternoon.

18. Although Mr Heath had said that Mr Adkins would be attending the tribunal to give evidence, the tribunal on reading through the witness statements noticed that there was no witness statement provided by him. However, when asked by the tribunal, Mr Heath identified the signed letter from Mr Adkins at page 478 of the bundle as being his witness evidence (as did Mr Adkins when he came to give his evidence at the tribunal) and the tribunal proceeded on that basis.

19. The individuals who actually attended the tribunal to give evidence were therefore (in this order of giving evidence): the claimant; Ms Davies; Mr Heath; Mr Adkins; Ms Coxhead; Mr Kenmure; Ms Garner; and Mr Pinkney.

20. Both parties made oral submissions. The Tribunal then adjourned to consider its decision and delivered its decision orally on the final morning of the hearing. Written reasons were then requested by both parties.

The Law

Direct Sex Discrimination

21. Under section 13(1) of the Equality Act 2010 (the Act), a person (A) discriminates against another person (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. This is commonly referred to as direct discrimination. Sex is a protected characteristic in relation to direct discrimination.

22. For the purposes of the comparison required in relation to direct discrimination between B and an actual or hypothetical comparator, there must be no material difference between the circumstances relating to B and the comparator.

Victimisation

23. Section 27 of the Act provides that a person (A) discriminates against another person (B) if A subjects B to a detriment because B does a protected act or A believes that B has done or may do a protected act. Protected acts include: the bringing of proceedings under the Act; doing any other thing for the purposes of or in connection with the Act; and making an allegation, whether express or not, that A or another person has contravened the Act.

24. Under section 39(4)(c) and (d) of the Act, an employer must not victimise an employee of his by dismissing that employee or subjecting her to any other detriment. The making of the protected act need not be the sole or principal reason for the dismissal or detriment in order to amount to an act of victimisation. It is enough if it has a “significant influence” on the employer’s decision to

dismiss. The Court of Appeal in Igen Limited and Others v Wong [2005] ICR 931 confirmed that a "significant influence" is one that is merely "more than trivial"

25. In respect of the above provisions, the burden of proof rests initially on the employee to prove on the balance of probabilities facts from which the tribunal could decide in the absence of any other explanation that the employer did contravene this provision. To do so the employee must show something more than merely that she was subjected to detrimental treatment by the employer and that she had the relevant protected characteristic/did a protected act, as the case may be. If the employee can establish this, the burden of proof shifts to the employer to show that on the balance of probabilities it did not contravene that provision. If the employer is unable to do so we must hold that the provision was contravened. However, where the tribunal is able to make clear positive findings one way or another, it is not obliged to adopt the burden of proof set out above.

Time extensions and continuing acts

26. The Act provides that a complaint under the Act may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates (subject to any adjustments as a result of ACAS early conciliation) or such other period as the tribunal thinks just and equitable.

27. It further provides that conduct extending over a period is to be treated as done at the end of the period and that a failure to do something is to be treated as occurring when the person in question decided on it.

28. In Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96 CA, the Court of Appeal stated that, in determining whether there was "an act extending over a period", as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed, the focus should be on the substance of the complaints that the employer was responsible for an ongoing situation or a continuing state of affairs. The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as the indicia of "an act extending over a period". The burden is on the claimant to prove, either by direct evidence or by inference from primary facts, that alleged incidents of discrimination were linked to one another and were evidence of a continuing discriminatory state of affairs covered by the concept of "an act extending over a period".

29. As to whether it is just and equitable to extend time, it is for the claimant to persuade the tribunal that it is just and equitable to do so and the exercise of the discretion is thus the exception rather than the rule. There is no presumption that time will be extended, see Robertson v Bexley Community Centre [2003] IRLR 434 CA. This is, however, the exercise of a wide, general discretion.

Unfair Dismissal

30. The tribunal has to decide whether the employer had a reason for the dismissal which was one of the potentially fair reasons for dismissal within s 98(1) and (2) of the Employment Rights Act 1996 ("ERA") and whether it had a genuine belief in that reason. Conduct is such a potentially fair reason. The burden of proof here rests on the employer who must persuade the tribunal that it had a genuine belief that the employee committed the relevant misconduct and that belief was the reason for dismissal.

31. The tribunal refers itself to the principles, in relation to conduct dismissals, in British Home Stores v Burchell [1978] IRLR 379, namely that the employer must have a genuine and reasonably held belief that the relevant misconduct took place, following such investigation as was reasonable.

32. The tribunal has to decide whether it is satisfied, in all the circumstances (including the size and administrative resources of the employer), that the employer acted reasonably in treating the potentially fair reason as a sufficient reason to dismiss the employee. The tribunal refers itself here to s 98(4) of the ERA and directs itself that the burden of proof in respect of this matter is neutral and that it must determine it in accordance with equity and the substantial merits of the case. It is useful to regard this matter as consisting of two separate issues, namely:

1. Whether the employer adopted a fair procedure. This will include a reasonable investigation with, almost invariably, a hearing at which the employee, knowing in advance (so as to be able to come suitably prepared) the charges or problems which are to be dealt with, has the opportunity to put their case and to answer the evidence obtained by the employer; and

2. Whether dismissal was a reasonable sanction in the circumstances of the case. That is, whether the employer acted within the band of reasonable responses in imposing it. The tribunal is aware of the need to avoid substituting its own opinion as to how a business should be run for that of the employer. However, it sits as an industrial jury to provide, partly from its own knowledge, an objective consideration of what is or is not reasonable in the circumstances, that is, what a reasonable employer could reasonably have done. This is likely to include having regard to matters from the employee's point of view: on the facts of the case, has the employee objectively suffered an injustice? It is trite law that a reasonable employer will bear in mind, when making a decision, factors such as the employee's length of service, previous disciplinary record, declared intentions in respect of reform and so on.

33. In respect of these issues, the tribunal must also bear in mind the provisions of the relevant ACAS Code of Practice 2015 on Disciplinary and Grievance Procedures to take into account any relevant provision thereof. Failure to follow any provisions of the Code does not, in itself, render a dismissal unfair, but it is something the tribunal will take into account in respect of both

liability and any compensation. If the claimant succeeds, the compensatory award may be increased by 0-25% for any failures by the employer or decreased by 0-25% for any failures on the claimant's part.

34. Where there is a suggestion that the employee has by her conduct caused or contributed to her dismissal, further and different matters arise for consideration. In particular, the tribunal must be satisfied on the balance of probabilities that the employee did commit the act of misconduct relied upon by the employer. Thereafter issues as to the percentage of such contribution must be determined.

35. Under the case of Polkey v AE Dayton [1987] IRLR 503 HL, where the dismissal is unfair due to a procedural reason but the tribunal considers that an employee would still have been dismissed, even if a fair procedure had been followed, it may reduce the normal amount of compensation by a percentage representing the chance that the employee would still have lost her employment.

Breach of contract (notice pay)

36. Where the respondent claims that it was entitled to terminate the contract without notice, it is for the respondent to prove on the balance of probabilities that the circumstances existed, for example gross misconduct on the part of the claimant, which entitled it to do so.

Findings of Fact

37. We make the following findings of fact. In doing so, we do not repeat all of the evidence, even where it is disputed, but confine our findings to those necessary to determine the agreed issues.

38. The respondent is a small charity which promotes and brokers volunteering. It has only a handful of employees (roughly 3-5). This includes its chief executive, Mr Dominic Pinkney (who joined at the end of July 2015).

39. Mr Pinkney, who is also chief executive of another charity, was contracted to work two days a week for the respondent. When he first joined, his first task was to ensure the respondent's financial survival.

40. The respondent is overseen by a Board of Trustees, the chairman of whom is Mr Scott Heath. The vice-chairman is Ms Rebecca Coxhead. The other trustees are Ms Erin Davies, Mr Alex Kenmure and Ms Catherine Gibbins (who also volunteers operationally for the respondent). The trustees are volunteers and have "day jobs" of their own.

41. The respondent is not well resourced and does not have the funds necessary to pay for extensive external legal advice. The respondent does not have an HR Officer or HR Department or an internal legal officer.

42. The claimant had an association with the respondent going back to 2010. She had worked for the respondent previously on various short-term

contracts. However, her continuous employment with the respondent for the purposes of these proceedings started on 10 February 2015. Whilst her employment contract states that she has continuous employment from November 2012, the claimant acknowledged that in legal terms this was a mistake and that her continuous employment started on 10 February 2015, with which the respondent agrees. We, therefore, find that the claimant's continuous employment with the respondent did begin on 10 February 2015 and that, by the time of the date of the dismissal with effect from 22 December 2017, she had accrued two complete years' continuous employment.

43. As evidenced by the claimant's employment contract, it is agreed that, other than in circumstances of gross misconduct, the claimant was entitled to 6 weeks' notice of termination of employment from the respondent.

44. The claimant was the manager of the respondent's "Team Up" service, a chargeable not-for-profit service helping businesses to volunteer in the Camden community. The service was launched in early 2016 as a self-sustaining income generating activity as the respondent's main funding from Camden Council had dropped by over 50% to just under £44,000. The Team Up service was and remains an important part of the respondent's strategy to grow and develop as an organisation.

45. The claimant had two main work colleagues at the respondent, Ms Sheila Norris and Ms Rupal Karia. However, the Team Up aspect of the respondent's activities was the claimant's responsibility.

46. Mr Pinkney had been warned by his predecessor, Ms Hayley Watts, that the claimant was difficult to deal with. However, his working relationship with the claimant was generally fine until the early part of 2017. Mr Pinkney did, however, have concerns about how the claimant was performing in relation to Team Up and he was concerned about her commitment to it.

47. On 22 February 2017, Mr Pinkney sent an email to the claimant, Ms Norris and Ms Karia about how to approach a meeting with the trustees that evening. He would have preferred to have spoken to them about it face-to-face but was not in the office at that time. Whilst the email was well-intentioned and aimed to ensure a positive and constructive approach at the trustee meeting (which duly happened), Mr Pinkney concedes that it could have come across as a little patronising. All three employees did in fact find it patronising.

48. However, the claimant chose to email Mr Pinkney, copying in her colleagues, in relation to this email. We have read her email. It is rude, patronising and insubordinate towards Mr Pinkney. It also contains insulting comments, referring to Ms Gibbins, who was one of the trustees, as a "stirry little volunteer".

49. On 23 February 2017, Mr Pinkney sat down with the claimant and had an informal chat with her to ask her if her heart was really in the Team Up business model. He emphasised that income generation was critical to the respondent's survival. He said that he had got the feeling that she would prefer it

if Team Up was a council funded project rather than having to ask businesses for money and said that, if that was the case, then she should say so as they could then look to make some changes and perhaps move her into another role. (The claimant has suggested at this tribunal that this was a threat to dismiss her; however, we do not find that it was; this was simply Mr Pinkney trying to ascertain if the claimant's heart was in Team Up (which was an important project to the respondent) and, if not, whether they could explore the possibility of her doing something else.) However, Mr Pinkney thought the claimant responded well and he was impressed by how enthusiastic and committed she appeared to be to the Team Up business model.

50. We have seen other examples in the bundle of emails sent by the claimant to Mr Pinkney which are verging on rude and sarcastic. One example, from 9 May 2017, is in relation to a workshop organised for the House of Fraser, the timing of which the claimant rearranged, contradicting what Mr Pinkney had arranged with them. The claimant's email to Mr Pinkney regarding this matter included:

"I guess the lesson is don't sign me up to deliver complicated community projects without discussing it with me first."

51. On 22 May 2017, the claimant submitted an application on behalf of the respondent to the Big Lottery Fund. She did not get the permission of the chief executive before doing so, as she should have done. The claimant maintained at this tribunal that she did not know she needed this permission. However, we do not accept that. Firstly, the claimant has many years of experience and should know this. Furthermore, in a subsequent interview with Mr Heath and Ms Coxhead on 12 June 2017, the claimant asked for permission from them to submit bids on behalf of the respondent (a permission which Mr Heath and Ms Coxhead refused); that request is indicative of someone who knows that the status quo is that she needs to ask for permission before submitting a bid. We, therefore, consider that the claimant submitted this bid knowing that she should have first got permission from Mr Pinkney to do so.

52. In addition, the bid document contained the personal details and information of Ms Gibbins, the trustee whose name the claimant inserted in the bid document as the "senior contact" for the application. She did this without obtaining Ms Gibbins' permission to insert her personal details. The claimant acknowledged at this tribunal that she should not have done this.

53. Mr Pinkney did not discover that the claimant had submitted this bid until the respondent received confirmation that the application had been rejected (by a letter of 22 June 2017, which Mr Pinkney first saw on 28 June 2017). Mr Pinkney apologised to Ms Gibbins for this and, some weeks later, the claimant did too.

54. Mr Pinkney had some concerns with some of the emails which the claimant had sent in response to organisations which had made enquiries of the respondent about volunteering. From his experience, he suggested to the claimant that she should include certain pieces of information which it would be important for such organisations to know about what their potential involvement

with the respondent would require, for example that there was a charge for volunteering to cover costs. He did so to try to improve the quality and usefulness of the claimant's replies with a view to assisting in generating income. He did not, as the claimant has alleged at this hearing, tell her to use a standard form "template" in her email replies.

55. Mr Pinkney was of the view that the respondent should use company logos in its material. The claimant was unhappy with this approach.

56. On 30 May 2017, Mr Pinkney held the usual Tuesday morning team meeting with the staff (the claimant, Ms Norris, and Ms Karia). The team expressed a number of legitimate things that they were not happy about (for example, concerns that there were no new projects, not enough bids going in and being paid late).

57. At that meeting, the claimant also stated to Mr Pinkney that "we have lost faith in you". It was not clear to him if she was actually speaking for the whole team or just for herself, although he suspected the latter. We have seen the contemporaneous notes taken by Ms Garner and Ms Elmahdi from the interviews with Ms Norris and Ms Karia in the subsequent grievance investigation in November 2017 (which we quote more fully later on). Ms Norris states that, in the 30 May 2017 meeting, the claimant stated that she wanted Mr Pinkney gone and stated that both Ms Norris and Ms Karia agreed; Ms Norris then makes clear that she did not want Mr Pinkney gone and that her complaint was about late pay. Ms Karia stated that at the 30 May 2017 meeting the claimant said that Mr Pinkney should leave. Mr Pinkney, in his evidence before this tribunal, stated that the claimant certainly said that "we have lost faith in you" but that he did not think that she had specifically stated that he should leave. However, when questioned, he speculated that Ms Norris and Ms Karia could have been mistaken and could have interpreted the statement about losing faith as a suggestion that Mr Pinkney should leave; or, alternatively, that he could have been mistaken in his recollection. The grievance interviews were carried out in November 2017, nearer to the events in question, and the accounts of Ms Norris and Ms Karia are clear and corroborate each other. Therefore, on the balance of probabilities, we consider that the claimant did state at that meeting that Mr Pinkney should leave. We further find that, on the balance of probabilities, the claimant presented that proposal as one which all three team members supported when in fact it was her proposal only.

58. Mr Pinkney was planning to send Mr Heath an email in relation to these matters raised. However, before he could do so, the claimant sent him an email on 1 June 2017. It contains the following:

"I want to be fair and straightforward with you, so you know where I stand.

The staff team have lost faith in your management, and we want you to go.

…

I don't want a big fight. I don't want to list the issues and collate the evidence, I don't want to have to humiliate you to the board and beyond. I would like you to resign and be the hero.

It's up to you. We can discuss further on Tuesday.

PS this email not shared with or discussed with other staff."

59. Mr Pinkney therefore wrote to Mr Heath on 2 June 2017, explaining in detail the issues raised in the team meeting and the threatening email which the claimant had sent.

60. Mr Heath discussed the matter with Ms Coxhead. They decided that the best course of action would be a fact-finding investigation. They felt that to understand the situation they needed to speak to the whole team. They agreed to interview them all separately with the objective of generating recommendations that would mean that they wouldn't have to change the organisation (in other words, without the organisation having to lose either Mr Pinkney or the claimant) as it was a critical time and the last thing they felt they needed was to have to recruit.

61. In the meantime, on 8 June 2017, the claimant submitted to Mr Heath and Ms Coxhead a document headed "Issues for discussion around Dominic's leadership of VCC". It is a six page document containing a succession of criticisms of Mr Pinkney.

62. At the second paragraph, under the heading "management style", the document states:

"Dom has adopted an authoritarian "because I say so" style of management with us. Any questions or challenges … are met with fudging, prevarication and ultimately silenced with a display of anger. We are gentle voluntary sector females and much as I dislike admitting it, this strategy does cow us."

63. Mr Heath and Ms Coxhead interviewed Ms Norris, the claimant, Ms Karia, Mr Pinkney and Ms Gibbins. With the exception of their not being happy with Mr Pinkney's email of 22 February 2017, Ms Norris and Ms Karia did not raise any concerns about Mr Pinkney's management style.

64. The claimant was interviewed on 12 June 2017. In that interview she stated that Mr Pinkney had become nasty and had been lying and manipulating; that he was fudging and lying; that (without providing any evidence) she was worried that he was going to steal clients from the respondent; that he was lying and got aggressive when challenged; that he was incompetent; that he was not delivering to the client and had no corporate nouse and was damaging the respondent's reputation; that she didn't trust him and that he was dishonest and getting nasty; and that she believed, moving forward, that the team could manage itself without him and that they would live up to their potential. She confirmed, however, that she did not feel unsafe in work.

65. The claimant stated that she had a "tribunal standard" email that Mr Pinkney had sent, which she believed provided an example of the behaviour that she didn't like. She stated that she had been through the tribunal process before so she knew what to look out for. Mr Heath understood that as being her suggesting that she would be willing to take matters with the respondent that far.

66. When asked what her ideal outcome of the process was, the claimant suggested that the respondent should have a co-directorship where Mr Pinkney was relieved of his post.

67. In her interview, the claimant referred to a templated response to clients which she said Mr Pinkney had told her to use and there was a short discussion about it.

68. The claimant's case is that, in this interview, she said something to the effect that treatment of her by Mr Pinkney was because she was female. However, there is nothing in Ms Coxhead's contemporaneous summary notes of the meeting to this effect. Furthermore, Mr Heath and Ms Coxhead, in evidence before this tribunal, were clear that they did not recall the claimant suggesting that any of Mr Pinkney's alleged behaviour was because she was a woman. Finally, the claimant's own evidence on this issue was very vague: she was not sure what she did say; at times she was unsure whether she said anything to the effect that treatment was because of her sex or not; and at other times she was putting it to the respondent's witnesses that, even if she didn't say that the treatment was because of her sex, they should have interpreted it that way. In the light of the uncertainty in the claimant's evidence and the clarity and corroboration of the respondent's evidence, we find on the balance of probabilities that the claimant did not state that Mr Pinkney's alleged treatment of her was because she was a woman or any words to that effect.

69. The final interview which Mr Heath and Ms Coxhead conducted was with Mr Pinkney. He said that the claimant was difficult. However, despite this, he said that the best situation would be for her to stay at the respondent and be successful in her role. He also raised concerns about the claimant's interactions with some customers and key stakeholders and thought some of her communications could be inappropriate. This led to the decision about setting up the "mirror account" of the claimant's email referred to below.

70. Mr Heath and Ms Coxhead interviewed Ms Gibbins. Although she was not an employee of the respondent, she was, as well as being a trustee, a volunteer and therefore worked closely with the staff team. Ms Gibbins told them that she was actively avoiding going into the office when the claimant was present, as she did not feel comfortable around her. She recognised that the staff weren't happy with some operational issues (especially reliability of being paid) but she felt the claimant's response was disproportionate and that she was being nasty towards people.

71. In the meantime, the claimant took exception to something Mr Pinkney did in relation to House of Fraser. Without going into the details, the claimant suggested that Mr Pinkney was undermining her when, in reality, he was not. She wrote an email of 15 June 2017 to Mr Heath and Ms Coxhead complaining about Mr Pinkney and criticising him vociferously. The email concludes:

"No disrespect, but the man is a consummate idiot.

I hope I didn't alarm you or misrepresent myself when I referred to this as "tribunal standard" - I'm sure you know my intentions don't lie there. I just find dealing with him and the baffling reality he insists on inhabiting is like madness -facts, evidence of the law are a lifeline of sanity for me at the moment. Laughter is better than a headache."

72. In an email of 26 June 2017 to the claimant, Mr Pinkney stated that he was increasingly concerned by the claimant's work and communications, citing an email sent to him by the claimant as evidence. The email goes through a number of issues. We reference it because the claimant spent a great deal of time in cross-examination of Mr Pinkney suggesting that what was set out in this email was harassing and bullying behaviour by him to her. We do not agree that it is. Mr Pinkney is addressing workplace matters which are of concern to him and which, in his capacity as chief executive, is entitled to do. Whilst the email contained criticisms of the claimant, they are reasoned criticisms and are not matters which amount to bullying and harassment.

73. In fact, we have seen many emails in the bundle from Mr Pinkney to the claimant. There is nothing in any of them which we consider could amount to bullying and harassment; by contrast, his communications are measured and focused on business-related issues and appear to be trying to assist the claimant in doing her job better. The worst that can be levelled against Mr Pinkney in this respect is the 22 February 2017 email to the team which, as he admits himself, could be taken (and indeed was taken) as slightly patronising.

74. Following their interviews with staff, Mr Heath and Ms Coxhead had been working on a recommendations document based on the interviews, which they duly produced in a "Chair's report". This was a detailed document which contained 22 recommendations going forwards. It was issued in mid July 2017. It is focused on trying to assist going forward.

75. At one point, the report notes a brochure used for a recent Team Up proposal which included one or two organisations whose logos the respondent did not have permission to use. Mr Heath and Ms Coxhead requested as a matter of urgency that any logos which should not be there should be removed instantly.

76. When Mr Heath spoke to the claimant about the recommendations, he also, based on the claimant's assertion to him that Mr Pinkney had asked her to use a template in relation to replies to email enquiries, asked her to use the template which Mr Pinkney recommended, and at least try it for a period. He explained to her, when taking her through the recommendation document on 25 July 2017, that this was to help build trust between her and Mr Pinkney and that, if she used some of his advice, and they had something to discuss that was constructive and work-related, it should help rebuild bridges.

77. The claimant duly started including the sort of information which Mr Pinkney had recommended in her email replies to enquiries. We have seen a number of examples of these in the bundle. Many contain similar information, albeit they are tailored to the individual client.

78. As noted, Mr Pinkney had raised concerns about the claimant's interactions with some customers and key stakeholders and considered that some of her communications could be inappropriate. Furthermore, on 28 June 2017, he had learned that the claimant had submitted the bid to the Big Lottery Fund without his permission and had included in that bid the personal details of Ms Gibbins without obtaining her permission first. He spoke to Mr Heath about this on 29 June 2017.

79. In the light of this and other communications, Mr Heath considered that it would be reasonable to monitor the claimant's email. He was of the view that, if an organisation had good reason to do so, that was a reasonable thing to do. Mr Heath decided that, in the light of the state of the relationship between Mr Pinkney and the claimant, it would not be appropriate for Mr Pinkney to do so and that he should be the only one to do so. He asked Mr Pinkney to contact Mr Ashley Adkins, the director of Prism Labs Ltd ("Prism"), which provided IT support for the respondent. Prism owned and supported, as part of its IT support agreement with the respondent, the claimant's email address. Mr Adkins gave evidence that the only person who had access to the claimant's email address was himself and that no member of the respondent's staff, trustees, volunteers, or anyone else at Prism had access to it whilst the claimant was employed by the respondent. Mr Adkins has the technological know-how to know this and we have no reason to doubt his evidence and therefore accept it.

80. Mr Adkins explained that it would be possible to create a "mirror account" for the claimant's email account. That meant that all messages sent and received on the claimant's account to date would be copied across to a new address to which Mr Heath, and Mr Heath only, would have access, and that any future messages would be auto-forwarded to this account. However, there was no means of Mr Heath influencing or changing the claimant's main email account. This was duly set up. It was in place from roughly 7 July 2017 onwards.

81. Mr Heath, in the light of the concerns raised in particular about the submitting of the Big Lottery Fund bid without permission, performed a search of the claimant's emails. He discovered an email between the claimant and Mr Pete Hitchins (and no one else) where the claimant suggested she take the respondent out of the invoicing to reduce the amount of money that the respondent made from the activity. Mr Heath forwarded this to Mr Pinkney to discuss at a disciplinary investigation meeting with the claimant which took place on 26 July 2017. When this email was raised at this meeting, the claimant realised, from Mr Pinkney being aware of it, that someone had been able to view her emails.

82. The claimant attended a disciplinary investigation meeting of 26 July 2017 with Mr Pinkney. Mr Kenmure, one of the trustees, was also there as an observer and notetaker. There was discussion of many work-related issues, including the bid that was submitted without permission and other matters. The claimant showed willingness to change behaviour. Furthermore, Ms Gibbins had not put in a complaint about the use of her personal details in the bid. The result of the meeting was that, as reflected in the notes of the meeting, both parties

resolved to work on matters and have more positive communications and relationships going forward. No disciplinary action was taken.

83. No further issues arose until October 2017. The claimant had been obliged to produce a board report as usual, on this occasion on 4 October 2017. This was of poor quality and the board of trustees, on 11 October 2017, asked her to rewrite it (which she did, submitting it again on 17 October 2017).

84. However, her original board report also made the following reference:

"Since August, we have been replying to Internet enquiries using the template - businesses seem to find it off-putting as no one has replied to the template email."

This was not in fact correct in itself: at this tribunal we were taken to 12 emails containing the standard information. Three of them had generated replies; furthermore, the claimant had delayed for many weeks in putting in her reply to 3 of the others, which was far more likely to be the reason for there being no response than the use of the standard information.

85. However, when Mr Pinkney read this entry in the claimant's board report, this was the first time he became aware of the claimant saying that she needed to use, or rather want to stop using, template text for responses to enquiries; it was also the first time he had seen reference to the use of a "template". He therefore asked the claimant about it. She explained that what she described as the "template trial" had been agreed with Mr Heath in July 2017. Mr Pinkney was not aware of this. The claimant has alleged at this tribunal that Mr Pinkney was not telling the truth in denying to her that he had asked her to use a template. However, he was telling the truth; he had not asked her to do this but, rather, Mr Heath had.

86. On 5 October 2017, the claimant emailed Mr Heath as follows:

"I just wanted to let you know that, as agreed at our meeting in July, I've spent the last two months using Dominic's template to respond to Team Up Internet enquiries.

When you received my board report, reporting that our new business pipeline had dried up and requesting permission to stop using the template, Dominic wrote that "no one has said your email replies must be a template" - I do recall emails from him insisting I use the template, but perhaps this initiative came from you. Either way, I took his words as formal permission to stop using the template, and just wanted to let you know that I had honoured our agreement to use them for two months.…"

87. On the morning of Tuesday, 24 October 2017 at the respondent's office, Mr Pinkney had a conversation with Ms Gibbins. Ms Norris and Ms Karia were out of the office at the time. Ms Gibbins thought that they were alone in the office and did not realise that the claimant was working quietly in the back room. Ms Gibbins was discussing with Mr Pinkney the respondent's trustee meeting that had taken place on 10 October 2017; she told him how the trustees were not happy with the claimant's board report and with her work. Mr Pinkney silently signalled to Ms Gibbins that the claimant was sitting less than 5 metres away in the other room (which had the door open, albeit Ms Gibbins could not see the

claimant). Ms Gibbins then stopped talking about this and the discussion moved on. The claimant came out a little while afterwards. She did not say anything.

88. The claimant was asked during her evidence before the tribunal whether she overheard this conversation. She said that she did not.

89. Mr Pinkney was also asked about the conversation. His view was that, given how close the claimant was and that Ms Gibbins was speaking at a normal volume (not having lowered her voice), he considered that the claimant would have heard that conversation. When asked what the percentage likelihood of her having heard it was, he said "99%".

90. However, principally because of the timing and nature of the grievance submitted by the claimant only a week after this incident (which we refer to in the paragraphs below), we prefer Mr Pinkney's evidence and find that, on the balance of probabilities, the claimant did overhear what Ms Gibbins said. First, Mr Pinkney's account of the geography of the room and what Ms Gibbins said and how loud she said it was not challenged by the claimant; when the tribunal asked him about the incident, he gave evidence consistent with his witness statement and evidence which we found to be credible; we did think that, given those factors, it was likely that the claimant heard what Ms Gibbins said, particularly as it was about her specifically. Furthermore, there was before us no evidence, since the meetings in July 2017 and the outcome of Mr Pinkney and the claimant trying to resolve matters and work on relationships going forward, of any problems of any nature until the October 2017 board report and the claimant's email of 5 October 2017 regarding the "template" issue. As is evident from the claimant's email of 5 October 2017, which is quoted above, that was not an issue which appeared to be of great concern to her at that point (her email to Mr Heath reads more as her communicating to him why she is no longer going to use the standard information going forwards, which she never wanted to do in the first place); it does not indicate any problems with what Mr Pinkney said in denying that he asked her to use a template and certainly does not suggest that any of his behaviour amounts to bullying or harassment. There is no evidence before us, therefore, of anything which would cause the claimant to submit a lengthy seven page grievance making serious allegations of bullying and harassment, absent a different trigger. That trigger, we find, was her learning on 24 October 2017 not only that the trustees were not happy with her board report but also that they were not happy with her work in general. We therefore find that, on the balance of probabilities, this knowledge triggered the claimant to make a pre-emptive strike of issuing the grievance before any further action might be taken against her in relation to her performance and, in doing so, she attempted again, consistent with her earlier efforts, to have Mr Pinkney removed. The period of one week between 24 October 2017 and the submission of the grievance on 31 October 2017 was enough time for her to put together the lengthy document which was her grievance.

91. As noted, on 31 October 2017, the claimant submitted a written grievance to the board of the respondent. The grievance extends to some seven pages. It is expressed at the start to be a grievance regarding:

"your failure to act within your duty of care and take any measures to stop Dominic Pinkney from bullying and harassing the staff of VCC when it was reported to you in June 2017. This failure to act has effectively given him licence to continue his bullying and harassing behaviour, with the inevitable consequence that it has escalated to intolerable levels."

92. The grievance then goes on to make allegations of bullying and harassment but does not contain evidence to substantiate this. It also includes an allegation that Mr Pinkney had been deleting the claimant's emails with the knowledge and collusion of at least one board member. It contains extreme unsubstantiated allegations, such as that the respondent has "become corrupt". It also states that the claimant didn't feel physically comfortable alone with Mr Pinkney any more.

93. Having noted this latter point, Mr Heath contacted Mr Pinkney and asked him not to go into the office or contact the claimant until he had spoken to the board to determine the next course of action.

94. On 1 November 2017, the claimant emailed Mr Heath, accusing Mr Pinkney (without evidence) of "prowling around in my email account again this morning and he has seen your response (he moved it into the bin)".

95. As the grievance contained no evidence or significant detail in relation to the allegations about Mr Pinkney, the board asked the claimant if she could set out a complaint specifically about Mr Pinkney so that they could investigate it. The board also decided that the complaint should be investigated by someone external, albeit it was too expensive to get paid external help.

96. On 9 November 2017, the claimant submitted a "grievance against Dominic Pinkney". This document is half a page long. It is scarce on detail. It contains the following allegations:

"An ongoing campaign of bullying and harassment towards me that started in earnest in February 2017 and has escalated ever since.

Abusing his (perfectly legitimate) access to my work email account to delete abusive emails he sent me.

Engineering the "template trial" which harmed our business, deleting the emails in which he insisted on it, forgetting the conversations we had about it, presumably in an attempt to scapegoat me for sabotaging Team Up."

No evidence was supplied to substantiate these allegations.

97. On 10 November 2017, Mr Pinkney submitted a grievance, alleging bullying and harassment by the claimant. Specifically, he maintained that the claimant had made very serious allegations against him of bullying, harassing and abusing her and that they were not only false, but deliberately false, vexatious allegations with the intent of his losing his position and damaging his professional and personal reputation. He referenced the claimant's accusations and threatening behaviour where she threatened to humiliate him to the board of trustees and beyond and that she would write a report that would haunt him forever (the 1 June 2017 email), a threat which he maintained she had now

carried out. He then went on to set out examples. His grievance is 21 pages long, including its appendices.

98. The board considered what action to take. In the absence of external legal advice, Ms Coxhead contacted ACAS. She was particularly concerned about the claimant's allegation that she did not feel safe in relation to Mr Pinkney. Having taken advice from ACAS, the board decided to suspend the claimant with pay until the investigation concluded; the primary reason for this was so that she did not come into contact with Mr Pinkney.

99. Through a friend of his, Mr Heath managed to find two people who were between jobs and willing to volunteer their time to investigate the grievances. One was Ms Elmahdi, who was an HR professional. The other was Ms Garner, who was an investment banker but who had managed teams and dealt with disputes between team members previously. Mr Heath had met Ms Elmahdi once before and had met Ms Garner on a number of previous occasions. Neither of them knew either the claimant or Mr Pinkney. The board agreed that they were suitable panellists.

100. Ms Coxhead's email of 26 November 2017 to the claimant in relation to the claimant's upcoming interview with Ms Garner and Ms Elmahdi includes the following:

"I can confirm that you will be meeting the mediators on Tuesday 28 November at 10.00 at the VCC offices. You will be meeting with Jo Garner and Ola Elmahdi."

This is incorrect, as Ms Garner and Ms Elmahdi were not mediators; they were carrying out fact-finding investigations for the purposes of the grievances raised by the claimant and Mr Pinkney. Whilst we do not suggest that Ms Coxhead's description of them as mediators was intended to mislead, it was nevertheless incorrect and misleading.

101. Ms Elmahdi and Ms Garner carried out investigatory interviews with the claimant, Ms Norris, Ms Karia and Mr Pinkney. As noted, we have seen their notes of these interviews. Their notes corroborate each other.

102. Ms Garner's notes of the interview with Ms Norris contain the following:

"Staff meeting … CE said that she wanted DP gone and that Sheila and Rupal agreed … Sheila did <u>not</u> want DP gone - her complaint was relay to pay.

Every conv with CE involves her saying "we need to get rid of DP" … Makes SN feel like she doesn't want to speak to CE … SN doesn't share CE's views … Small office makes it difficult to avoid … SN wanted to work with DP to resolve issues … CE trying to influence SN re DP

CE was getting personal in the meeting - SN thought bizarre

no one wants to work with CE … CE creates a toxic environment

CE holds grudges, loss of perspective, victim

SN says problem is with CE not DP

bullying & harassment coming from CE

good working relationship with Rupal & Dom

SN feels CE has a plot to get rid of DP."

103. Ms Garner's notes of the interview with Ms Karia contain the following:

"Felt uncomfortable when CE said that RK, SN & CE could do DP's job

The "ignoring" part of CE & DP is impacting office atmos and dynamics

Good relationship with SN … Good relationship with CE … Hands off manager DP - lets you get on with it

Mediation will need to be managed (although it was implied that CE was "victim")

Hasn't witnessed any bullying or harassment in the office

CE's comment re DP should go made RK feel uncomfortable. She thinks she may have spoken to CE about it afterwards"

104. In evidence, Ms Garner explained that it was very difficult to get answers from Ms Karia and that, perhaps understandably, she didn't want to get involved or take sides or to be there at all. Ms Garner said that the reference to mediation was about one possible outcome to the grievance process which, before they gathered all the evidence, was something they considered may be an option. She said that the reference above to the claimant being a "victim" was something that Ms Karia was told by the claimant and was not Ms Karia's opinion.

105. Ms Elmahdi and Ms Garner also recommended to the board that they should get an independent review to ascertain whether there was any proof that the claimant's emails had been removed or deleted without her permission. Ms Davies, who works for an IT company, albeit she is not an IT expert herself, therefore put out a call on her internal work social media (a Google plus channel with over 1000 people) asking if there was anyone who understood Google mail access and could answer a quick question for a charity issue. She received a reply from Ms Audrone Budryte, a degree apprentice specialising in data security, who had been a Google administrator in her previous job. Ms Garner and Ms Elmahdi were happy with her credentials. Mr Adkins confirmed that he had never given Mr Pinkney or indeed anyone else a password for the claimant's account. He sent over a screenshot of all the access logs for the claimant's mailbox and from this Ms Budryte was asked to confirm whether she could see any suspicious activity on the account. Due to her previous experience, she knew exactly where to look. She confirmed that, if Mr Pinkney did not have the claimant's password nor was a mailbox delegate (which he was not), along with the fact that there were no suspicious logs on the claimant's account, there could be no possibility of Mr Pinkney having entered the claimant's account. She also confirmed that, as regards the mirror account, because the emails were being forwarded on to another account, that would not affect the claimant's primary mailbox in any way.

106. Having received this report, Ms Garner and Ms Elmahdi liaised with each other. They provided an assessment on 21 December 2017 on a conference call to Mr Heath, on which two of the other trustees were also present. During that call, they stated that they had found no evidence to uphold the claimant's claims and that they believed that they were made with the intention of trying to force Mr Pinkney to resign. Furthermore, they stated that they agreed that Mr Pinkney's claims were legitimate. No written report was produced of their findings in relation to the grievances.

107. On the call, two options were discussed. The first of these was the possibility of offering the claimant a second chance. Ms Elmahdi stated that to do this properly there would need to be another manager to deal with her performance and that typically these kinds of arrangements would result in an employee moving to another office; however, as a small charity with five part-time staff (at the time) this was not feasible, let alone desirable. The second option was, recognising the severity of the claims made by the claimant, that the claimant should be dismissed for gross misconduct. Mr Scott considered this was a fair response. He decided therefore to dismiss the claimant summarily with immediate effect. He drafted a dismissal letter, which Ms Elmahdi commented on before Mr Heath finalised it. The letter was sent on 22 December 2017 and received on the same date. The claimant's dismissal took effect from 22 December 2017.

108. The claimant was not invited to a disciplinary hearing in relation to the allegations for which she was dismissed. The outcome of her grievance was communicated in the letter of 22 December 2017 (albeit without any detailed reasoning for the outcome), along with confirmation of her dismissal for gross misconduct. As to the reasons for dismissal, the letter states:

"The panel found that this grievance is true based on gross misconduct and insubordinate behaviour, by making malicious or unfounded allegations of a serious nature by CE:

- Falsely accusing Dominic Pinkney of manipulating emails, which has been proven by external IT consultants (please see attached documents);

- The threatening tone of your communications with Dominic; and other acts set to undermine Dominic, such as the application of bids without his knowledge."

"Making malicious or unfounded allegations of a serious nature" is an example of gross misconduct set out in the respondent's disciplinary policy.

109. Mr Heath was asked about what specifically he regarded as insubordinate behaviour and which communications he was referring to. He identified nine separate passages in the claimant's grievance which he said amounted to unfounded allegations; and various of the email communications from the claimant which we have referred to.

110. The dismissal letter identified that the claimant had a right to appeal. The claimant appealed the decision on 3 January 2018. On 22 January 2018, the appeal hearing took place. The appeal was before a panel chaired by Ms Coxhead and comprising also Ms Davies and Mr Kenmure. Mr Heath attended

the appeal hearing as representative of the respondent. The panel applied the appeal section of the respondent's disciplinary procedure. They did not conduct the appeal by way of a "rehearing"; rather, it was for the claimant to provide evidence which might lead them to overturn the original decision to dismiss.

111. The claimant did not provide any evidence which the panel considered warranted overruling Mr Heath's decision to dismiss. The claimant did not provide any evidence which substantiated her grievances against Mr Pinkney.

112. The panel therefore turned down her appeal.

113. During the appeal hearing, the claimant learned for the first time that the respondent had created the duplicate "mirror account", and that it had a duplicate of everything that the claimant had sent or received. Mr Heath explained that no one had gone in and deleted any of the claimant's emails. He explained that Mr Pinkney did not have access to the mirror account but that, rather, he was the one who had access to the mirror account.

114. At the preliminary hearing of 4 May 2018 in front of Employment Judge Goodman, the claimant stated that Mr Pinkney was not the one who had deleted her emails and that it was, in fact, Mr Heath who had done this; she stated that she realised at the dismissal appeal hearing that Mr Heath had done this. Judge Goodman asked what had been revealed and the claimant told the court that Mr Heath had told her using his eyes that he had deleted the emails. However, the notes of the appeal meeting (which are a transcript of a recording of that meeting and therefore a true record) record that Mr Heath specifically stated that people had not "gone in there and deleted stuff".

115. At this hearing, in her oral evidence, the claimant's position shifted again and she alleged that Mr Adkins had, under the instructions of someone at the respondent, deleted her emails (thereby implying a conspiracy involving Mr Adkins and one or more people at the respondent).

116. When questioned by the tribunal about the nature of the deleted emails, which the claimant had previously alleged to have been examples of bullying and harassment of her by Mr Pinkney, the claimant stated that the majority of them concerned the "template trial" issue (as the claimant described it) which we have referred to above.

117. The mirror account to which Mr Heath had access contains all of the emails sent and received by the claimant since around 7 July 2017, together with anything that was already in her inbox and sent items as at the date the mirror account was set up (around 7 July 2017). At this hearing, the claimant for the first time gave evidence that the majority of the alleged deleted emails had been deleted prior to 7 July 2017.

118. Because of the basic nature of the Google package which the respondent uses (which is not unusual for small enterprises), it is not possible at any given point to search back material which has been deleted from an inbox/sent items in any period prior to 30 days prior to the date of the search. As

the issue of the respondent checking whether the claimant's email account had been tampered with only arose in December 2017, it was not possible to carry out a search as to whether any emails had been deleted from the claimant's account in any period earlier than 30 days prior to then. It was, however, possible to see what was in the claimant's inbox via the mirror account but the mirror account would not show any items deleted from the claimant's account prior to when it was set up (around 7 July 2017).

Conclusions on the issues

119. We make the following conclusions, applying the law to the facts found in relation to the agreed issues.

Victimisation

Protected acts

120. We consider first the two remaining alleged protected acts relied on by the claimant at paragraph 10 of the list of issues.

121. We have quoted in full in our findings the protected act relied on in relation to the document emailed by the claimant on 8 June 2017. The paragraph in question alleges that Mr Pinkney adopted an authoritarian style of management. It then goes on to state that the claimant and her colleagues are "gentle voluntary sector females and much as I dislike admitting it, this strategy does cow us". In other words, it states that the effect of Mr Pinkney's alleged treatment is that the claimant and her female colleagues are "cowed"; it does not state that Mr Pinkney adopted an authoritarian style because the claimant and her colleagues were female and certainly does not allege that he would not behave in the same way were they male. This is not therefore an allegation that Mr Pinkney has contravened the Act by doing something because of the claimant's sex. It simply records the effect of his alleged treatment. This does not, therefore, amount to a protected act.

122. As to the other alleged protected act, relating to the meeting with Mr Heath and Ms Coxhead on 12 June 2017, we have found that the claimant did not state to them that Mr Pinkney's alleged treatment of her was because she was a woman or any words to that effect. There was, therefore, no protected act.

123. As neither of the alleged protected acts relied on by the claimant were indeed protected acts, all of the victimisation complaints fail.

Alleged detriments

124. Whilst it is not, therefore, strictly necessary to go through the alleged victimisation detriments at paragraphs 1-6 of the schedule, we do so for completeness' sake.

125. Allegation 6: as we have found, neither Mr Heath nor Mr Pinkney (nor anybody else) deleted emails from the claimant's work email. This allegation of detrimental treatment is not therefore made out.

126. Allegation 5: the respondent did decide to monitor the claimant's emails by setting up the mirror account with effect from around 7 July 2017. Only Mr Heath was able to view the claimant's emails via this mirror account. Furthermore, the decision to do so was not, as the claimant maintains in this allegation, an attempt to find incriminating evidence to use in the Chair's report; rather, as we have found, it was to monitor the claimant's emails because of her having submitted the Big Lottery Fund bid without authority and other emails which were of concern to Mr Pinkney and Mr Heath; it was therefore done for a legitimate reason. It was not done because of any of the alleged protected acts relied on by the claimant. Therefore, even if these acts had been found to be protected acts, this allegation would still have failed.

127. Allegation 4: the respondent did not fail to take reasonable steps to address and take action regarding the claimant's complaint of 8 June 2017 regarding Mr Pinkney. Specifically, Mr Heath and Ms Coxhead carried out a fact-finding exercise, interviewing all the staff, including interviewing the claimant on 12 June 2017; they then produced the detailed Chair's report containing various recommendations in mid-July 2017 in order to try and help resolve the situation going forwards. There was therefore no unreasonable failure to take steps to address the matter. This allegation of detrimental treatment is not therefore made out.

128. Allegation 3: as we have found, Mr Pinkney did not order the claimant to do a "template trial". He simply suggested, for the benefit of the claimant and the respondent's business, that she include certain standard information in her replies to email enquiries. This only morphed into the suggestion that Mr Pinkney had ordered her to use a template when the claimant herself told Mr Heath that this had happened. It was then Mr Heath who suggested that, if Mr Pinkney had indeed ordered this, the claimant should comply with it. Therefore, when Mr Pinkney subsequently told the claimant that he had not ordered her to use a template, he was telling the truth. There was therefore no detrimental treatment and this allegation is not made out. In any event, the fact that Mr Pinkney told her that he had not ordered her to use a template was because it was true; it was nothing to do with either of the alleged protected acts.

129. Allegation 2: the decision not to uphold the claimant's complaints and/or grievance against Mr Pinkney was because, on the evidence, they were not substantiated (the reasons for which we will return to later in relation to the unfair dismissal complaint). It was nothing to do with the alleged protected acts. Therefore, even if those acts had been found to be protected acts, this allegation would still have failed.

130. Dismissal: for reasons we will come to in relation to the unfair dismissal complaint, Mr Heath's decision to dismiss the claimant was nothing to do with the alleged protected acts. Even if the acts relied on had been found to be protected acts, this allegation would also have failed.

131. In summary, all of the victimisation complaints fail.

Direct Sex Discrimination

132. Allegation 8: Mr Pinkney and the claimant had differing views about the use of logos. Furthermore, in the July 2017 Chair's report, Mr Heath and Ms Coxhead requested as a matter of urgency that, in relation to a brochure, any logos which should not be there should be removed instantly. This is therefore simply a matter of a difference of opinion between Mr Pinkney and the claimant as to how logos should be used; it does not amount to unfavourable treatment of the claimant. Even if Mr Pinkney was wrong to use logos in the way that he did (and we express no view as to whether he was wrong or right to do so), that is a question of his business decision and is not an action which is because of the claimant and certainly not because of the claimant's sex. This complaint therefore fails.

133. Allegation 7: this allegation is that at times Mr Pinkney communicated with the claimant in a less favourable manner than he would have communicated with a man. As we have found above, we have seen a great deal of evidence of Mr Pinkney's written communication with the claimant. His emails are measured and professional and very often try to assist the claimant in doing her job better. Whilst at times he is critical of the claimant, any criticism is linked to the business and what the claimant is or isn't doing; none of it has anything to do with her gender. Furthermore, we have not seen any evidence other than assertion that Mr Pinkney communicated to the claimant orally in a detrimental way, let alone that he did so in any way because of the claimant's gender. This complaint therefore fails.

134. Dismissal: for reasons we will come to in relation to the unfair dismissal complaint, Mr Heath's decision to dismiss the claimant was nothing to do with the claimant's sex. This allegation therefore fails.

135. In summary, therefore, all of the complaints of direct sex discrimination fail.

Time Limits

136. The claimant contacted ACAS on 28 December 2017; ACAS early conciliation ended on 28 January 2018; and the claim was presented on 19 February 2018. Therefore, any allegation of sex discrimination/victimisation where the relevant act/failure is said to have taken place more than three months prior to 28 December 2017 (in other words prior to 29 September 2017) is prima facie out of time. Allegations 4, 5 and 8 are therefore prima facie the out of time; the rest, as pleaded in the schedule of allegations, were presented in time.

137. As there was no successful in time complaint, there is nothing for these out of time complaints to attach to so as to be able to amount to conduct extending over a period such that the earlier acts would be treated as being in time.

138. Furthermore, the claimant has provided no evidence as to why it would be just and equitable for the tribunal to extend time in relation to these acts (and the burden of proof is on her to do so). We therefore find that it would not be just and equitable to extend time and that the tribunal does not have jurisdiction to hear the complaints at allegations 4, 5 and 8 anyway.

Unfair Dismissal

139. The reason for the claimant's dismissal was conduct. Specifically, as recorded in the dismissal letter, Mr Heath, following the outcome of the investigation into the grievances brought by the claimant and Mr Pinkney, found that the claimant had committed gross misconduct and insubordinate behaviour by making malicious or unfounded allegations of a serious nature; specifically falsely accusing Mr Pinkney of manipulating emails; the threatening tone of her communications with Mr Pinkney; and other acts set to undermine him, such as making the bid application without his knowledge. When he was asked to expand on this in his evidence, he identified nine separate passages in the claimant's grievance which he said amounted to, and which did amount to, unfounded allegations. As we will come to when we consider the reasonableness of his belief below, there was plenty of evidence which led him to come to this belief. For the moment, suffice it to say that his belief that the claimant had committed this misconduct was genuine.

140. We turn to the reasonableness of the investigation prior to Mr Heath coming to this belief.

141. First, the decision to appoint Ms Garner and Ms Elmahdi was a reasonable one. The respondent is a small organisation without resources; it reasonably considered that it should get someone external to conduct the investigation into the grievances in those circumstances; it was reasonable to look for someone to do so on a pro bono basis given its resourcing issues; Ms Garner and Ms Elmahdi were not part of the organisation; they had relevant experience for conducting an investigation; although Mr Heath had, through his friend, met Ms Elmahdi once and Ms Garner on a number of occasions, we do not consider that, in the light of the above, it was unreasonable to use them, particularly as, crucially, they did not know either the claimant or Mr Pinkney.

142. Ms Garner and Ms Elmahdi carried out interviews with the four relevant staff. It has not been suggested that they failed to interview anyone they should have done, nor do we find that that was the case. The notes of their interviews show that they asked relevant questions and obtained relevant information in relation to the issues raised by the grievances. The scope of their investigation was not therefore unreasonable.

143. The decision to obtain expert help in relation to the IT issue was a sensible one. We do not consider that it was unreasonable, again in the circumstances of an organisation without resources which is quite reasonably seeking assistance on a pro bono basis, for Ms Davies to have obtained that assistance in the way she did. She did not specifically choose Ms Budryte;

rather, Ms Budryte replied to a general email which went to over 1000 others. Furthermore, Ms Budryte had relevant experience and it was therefore reasonable for the board to appoint her to carry out this task.

144. Ms Garner and Ms Elmahdi liaised regarding their conclusions and communicated these to Mr Heath in the telephone conference. The conclusions which they reached were, in the light of the evidence, not unreasonable.

145. In short, therefore, we consider that the investigation which took place was reasonable.

146. We turn therefore to whether Mr Heath had a reasonable belief that the misconduct took place. There is no dispute that the claimant submitted the Big Lottery Fund bid without permission. There is no dispute that the claimant alleged that Mr Pinkney had deleted her emails and the IT report, together with the evidence of Mr Adkins that Mr Pinkney did not have access to the claimant's email account, demonstrated that Mr Pinkney could not have deleted her emails; this allegation was therefore a serious allegation which was unfounded. We have seen numerous examples of correspondence from the claimant in the bundle which is insubordinate towards Mr Pinkney (for example her "consummate idiot" email of 15 June 2017) and/or threatening, not least of which is her email of 1 June 2017 advising him to resign failing which she would "humiliate you to the board and beyond". The claimant provided no evidence to support the very serious allegations she made in relation to Mr Pinkney in her grievance, which is indicative that there was no substance to these allegations and that they were unfounded. Furthermore, the very powerful evidence obtained in the investigation from Ms Karia and in particular Ms Norris clearly indicated that the claimant was frequently telling them that she wanted to get rid of Mr Pinkney, that the bullying and harassment was coming from the claimant (and not Mr Pinkney), that the claimant told Mr Pinkney in the 30 May 2017 meeting that she wanted him to go, and that the claimant had a plot to get rid of Mr Pinkney. On 12 June 2017, the claimant told Mr Heath and Ms Coxhead that she believed that the team could manage itself without Mr Pinkney and, when asked what her ideal outcome of the process was, she suggested that the respondent should have a co-directorship where Mr Pinkney was relieved of his post. In the light of that evidence, it was reasonable for Mr Scott to conclude that the claimant's allegations in her grievance were not only unfounded but that her real purpose was to have Mr Pinkney removed. Mr Scott therefore had a reasonable belief that the misconduct had taken place.

147. We turn to the issue of whether the dismissal was procedurally fair.

148. The respondent decided to suspend the claimant on full pay. The primary reason for doing so was concern for her safety, given that she had flagged this in her grievance. The respondent took advice from ACAS on the matter and ACAS agreed that suspending the claimant in the circumstances was appropriate. Given the above, and that the claimant would inevitably encounter Mr Pinkney if she was in the office, we do not consider that it was unreasonable to suspend her on full pay in the circumstances.

149. However, there were a number of significant procedural failings in relation to the dismissal.

150. First, in relation to the grievance, no reasoning for the grievance outcome was given, either to the claimant or, so far as we are aware, to Mr Pinkney. The dismissal letter confirms that the claimant's grievance has not been upheld but goes into virtually no detail beyond this as to the reasoning why. The claimant, and indeed anyone bringing a grievance, would have a legitimate expectation to be told why her grievance was not successful.

151. Even more crucially, no disciplinary hearing was held before the claimant was informed that she had been dismissed. The allegations for which she was dismissed were never put to her before her dismissal, nor was she warned that this was a disciplinary matter, nor was she warned that her job might be at risk and that she might be dismissed. She was never presented with the evidence of misconduct which the respondent had gathered, and which it relied on in relation to her dismissal, in particular the notes of the investigation meetings which had taken place and any other documentary evidence relied on by the respondent. She was not therefore in a position to know what the case was against her (or even that there was a case against her), let alone to have the opportunity to put her side of the case prior to a decision being taken, or to make any arguments about what sanction should be appropriate in the event that the respondent considered misconduct to be proven. These are fundamental procedural flaws, as well as serious breaches of the ACAS Code on Disciplinary and Grievance Procedures and of the respondent's own disciplinary procedure.

152. The appeal was carried out in accordance with the appeal section of the respondent's disciplinary procedure. However, it was not carried out as a "rehearing" and the burden was left on the claimant to show why the decision to dismiss should be overturned. There is nothing wrong with that so long as there has been a proper disciplinary hearing first; however, in this case there was no such disciplinary hearing; indeed there was no disciplinary hearing at all. Therefore, the appeal, as it was carried out, could not remedy the earlier failings.

153. In the light of that, and whilst we appreciate that the respondent did its best in the context of its resources to deal with the matter in a way it thought fair, these serious procedural failings render the dismissal unfair and the claimant's complaint of unfair dismissal succeeds.

154. Turning to the issue of sanction, the seriousness of the charges certainly amounted to gross misconduct, as defined in the respondent's disciplinary procedure and generally. We note that Mr Heath did consider whether it would be possible to give the claimant a second chance. However, not unreasonably, he concluded that this was not appropriate: the misconduct was of a serious nature; it was a small office and the claimant could not be moved to another office away from Mr Pinkney; it would be very difficult for Mr Pinkney to continue working with the claimant after she had made these unfounded allegations against him; the other employees, in particular Ms Norris, regarded the claimant as creating a toxic environment and did not want to work with her; and even Ms Gibbins, the trustee who also volunteered, actively avoided going into the office

when the claimant was present because she did not feel comfortable around her. In these circumstances, it was entirely reasonable for Mr Heath not to take this option and to conclude that summary dismissal was the appropriate option. The dismissal was, therefore, well within the range of reasonable responses.

155. In her submissions, the claimant suggested that giving her a role in a new venture which Mr Pinkney was trying to establish called "Camden Giving" was an alternative to dismissal which the respondent should have considered. However, this suggestion came out of the blue in her submissions. We have no evidence as to what such a role would entail and where an employee working in it would be located. Furthermore, we do not know whether it was available at the time when the claimant was dismissed. Crucially, it was never suggested to Mr Heath, the decision-maker, in his cross-examination that this was an alternative which he could and should have considered. We do not, therefore, find that it was unreasonable of him not to consider it.

Polkey

156. The dismissal was unfair because of the procedural failings we have identified above. However, we consider that, had the claimant been invited to a disciplinary hearing at which she was given the opportunity to address the charges against her, the outcome would have been the same. We note that in the interim, the claimant has at this tribunal had the opportunity to present any evidence which she has in relation to these matters, but nothing has been produced which impacts upon the reasonableness of the decision made by Mr Heath. We consider that, had she been invited to a hearing, it may have taken a little longer for her to be fairly dismissed, but she would have been fairly dismissed in due course; we consider that it would have taken an extra four weeks for this to occur. We therefore make a reduction in any compensatory award under the principles in Polkey, such that any compensatory award is limited to 4 weeks' pay.

Contributory conduct

157. We turn to the question of whether the claimant through her conduct contributed to her dismissal and, if so, the extent to which she did.

158. First, we reiterate all the conclusions we made above regarding why Mr Heath's belief that the claimant had committed misconduct was reasonable. In addition, we emphasise again the plethora of evidence of the claimant repeatedly seeking to have Mr Pinkney removed. We find that that, just as it was the motivation for many of her earlier actions set out in our findings of fact above, was also the motivation for her raising her grievance in October 2017. In addition, and in relation to the timing of that grievance, we refer to our finding that she overheard Ms Gibbins saying on 24 October 2017 that the board was not happy with her report and was not happy with her work; the knowledge of these performance concerns was the trigger for her taking the action when she took it, in other words a pre-emptive strike prior to any perceived action the respondent might take in relation to her performance. The claimant did not have to do this; it

was entirely her own decision and it entirely contributed to her dismissal; had she not taken this course of action, she would not have been dismissed.

159. We therefore find that the claimant did carry out the misconduct in question and that not only did the claimant's conduct contribute to her dismissal but that it contributed entirely to her dismissal. We therefore consider it appropriate to make a 100% reduction in both the basic and compensatory awards for unfair dismissal.

Breach of Contract (Notice Pay)

160. As noted, we have found that the claimant did carry out the misconduct in question. This amounted to gross misconduct, both under the respondent's disciplinary policy and generally, regardless of the specific references in the policy. The respondent was therefore entitled to terminate the claimant's employment contract without notice. There was therefore no breach of contract. The breach of contract complaint therefore fails.

Remedy

161. As the claimant's unfair dismissal complaint had succeeded, the judge explained the remedies of reinstatement and re-engagement. Both parties stated that they did not want the claimant to be reinstated or re-engaged and the matter was not therefore pursued further.

162. In the light of the findings we made regarding Polkey and contributory conduct, no order for compensation for unfair dismissal was made and there was no requirement for a remedies hearing.

163. At the end of the hearing, the judge asked the parties if there was anything else they want to raise. Both parties said no. The judge therefore said that he would make no further order and the hearing concluded.

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Employment Judge Baty

Dated:. 30 November 2018

Judgment and Reasons sent to the parties on:

3 December 2018

For the Tribunal Office

2200842/2018 Evans v Camden Volunteer Bureau — Table of Allegations

No.	Date and Time	Person	What They Said/Did	Location	Respondent's Response	Tribunal's Observations
1.	22 December 2017	Scott Heath and/or the Members of the Independence Grievance Panel and/or The Members of the Board of Trustees who attended the meeting on 21 December 2017	The Claimant claims that the decision to dismiss her was victimisation in breach of Section 27 Equality Act 2010 and Section 39 Equality Act 2010.	The decision was conveyed in a letter dated 22 December 2017		
2.	22 December 2017	Scott Heath and/or the Members of the Independence Grievance Panel and/or The Members of the Board of Trustees who attended the meeting on 21 December 2017	The Claimant claims that the decision to not uphold her complaints and/or grievance against Dominic Pinkney of 9 November 2017 was victimisation in breach of Section 27 Equality Act 2010 and Section 39 Equality Act 2010.	The decision was conveyed in a letter dated 22 December 2017		
3.	2 October 2017	Dominic Pinkney	The Claimant claims that the claim by Dominic Pinkney that he had not ordered the template trial was victimisation in breach of Section 27 Equality Act 2010 and Section 39 Equality Act 2010.	Email exchange 2 October 2017 and 2,700 word board report dated 18 October 2017		

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4.	18 July 2017	Scott Heath and/or Rebecca Coxhead (Vice-Chair) and/or Alex Kenmure, who were involved in compiling and delivering the "Chair's report into organisational concerns at Volunteer Centre Camden"	The Claimant claims that the failure to take reasonable steps to address and take action regarding her complaints of 8 June 2017 regarding Dominic Pinkney was victimisation in breach of Section 27 Equality Act 2010 and Section 39 Equality Act 2010.	The decision was conveyed in the report dated 18 July 2017		
5.	29 June 2017 & 7 July 2017 and on dates when monitoring took place	Scott Heath and Dominic Pinkney arranging for Scott to have access to the Claimant's email account	The Claimant claims that the decision to monitor her work email account, and the monitoring itself, was an attempt to find incriminating evidence to use in the "Chair's report" and that this was victimisation in breach of Section 27 Equality Act 2010 and Section 39 Equality Act 2010.			
6.	Various dates in 2017 to be determined – the Claimant reserves the right to provide	Scott Health and/or Dominic Pinkney	The Claimant claims that the deletion from her work email account by Scott Health and/or Dominic Pinkney of a number of emails which had been sent to her by Dominic			

	further details in relation to this allegation in the light of the findings of the expert report to be provided by Kroll following an investigation into the Respondent's email system		Pinkney which she contends contained abusive content and evidence of his insistence on the template trial and other emails the Claimant sent to Scott Heath at his request evidencing Dominic Pinkney's discrimination was victimisation in breach of Section 27 Equality Act 2010 and Section 39 Equality Act 2010.			
7.	Ongoing for the less favourable communication which was reported on 8 June 2017	Scott Heath and Rebecca Coxhead	The claimant contends that Dominic Pinkney at times communicated with her in a less favourable manner than he would have communicated to a man, and that she accepted this as a condition of employment. The Claimant contends that she reported this to the board on 8 June, and that was an allegation, although not express that she had been discriminated against under the Equality Act 2010, and as such is a Protected Act.	This allegation was made in the document "Issues" emailed on 8 June		

8.	Ongoing – various dates when marketing was discussed from April 16 to July 17, including after 26 April 17 re Y&R proposal and 30 May 2017 when Dominic called the client to check the Claimant had accurately reported their lack of permission	Dominic Pinkney	The Claimant claims that Dominic Pinkney repeatedly refused to believe the Claimant's repeated statement that VCC should not be using corporate logos without permission in client proposals and marketing. However, the Claimant contends that Dominic ceased using these logos after being instructed to do so by Scott Heath in the Chair's report dated 18 July 2017. The Claimant relies on Scott Heath as a comparator and contends that Dominic's refusal to believe the Claimant was direct discrimination in breach of Section 13 and Section 39 of the Equality Act 2010.			