EMPLOYMENT TRIBUNALS

Claimant Ms Jasmine Williams

Respondent The London Borough of Brent

HEARD AT: WATFORD **ON**: 27 and 28 August 2020

BEFORE: Employment Judge J Lewis (sitting alone)

Representation

For the Claimant: In person

For the Respondent: Michael White (Counsel)

JUDGMENT

1. The Claimant's claims of unfair dismissal fails and is dismissed.

2. The Claimant's claim for notice pay (wrongful dismissal) succeeds and the Respondent is ordered to pay to the Claimant the sum of £1,503.80.

REASONS

1. This was a full merits hearing of the Claimant's claims of unfair dismissal and breach of contract (notice pay). I heard evidence from the Claimant and from her witness Tosin Mobee. On behalf of the Respondent, I heard evidence from Laurence Coaker (the dismissal officer and Head of the Respondent's Housing Needs Service) and from Hakeen Osinaike (the appeal officer).

2. The Claimant represented herself, having been represented by solicitors until shortly before the hearing. Given that the Claimant had only recently ceased to be represented, at the start of the hearing, and after explaining the process, I allowed the Claimant further time to consider the questions she wanted to put to the Respondent's witnesses. Before the cross-examination of the Respondent's witnesses began, on the afternoon on the first day of the hearing, I confirmed with her that she did not require further time for this.

3. The evidence was completed late on the second day of the hearing. The parties agreed that they wished to make submissions in writing. I gave

directions for written submissions by 9 September 2020, and should the parties wish to make submissions in reply that these be provided by 16 September 2020. Both parties made written submissions but not submissions in reply.

4. Following completion of the evidence I noted that two documents referred to in the Appendix of documents provided with the investigatory report had been omitted from the bundle and I gave directions for these to be provided. They were provided by an email from the Respondent, copied to the Claimant, on 9 September 2020.

THE ISSUES

5. The issues were clarified and agreed with the parties at the outset of the hearing. In relation to the unfair dismissal claim, there are the following issues:
   5.1 Whether the Respondent held a genuine belief in the Claimant's misconduct in relation to the four matters that were subject to disciplinary allegations, and were relied upon individual or collectively as the reason for dismissal.

   5.2 Whether such belief was formed on reasonable grounds

   5.3 Whether this belief was formed following a reasonable investigation within the range of reasonable responses.

   5.4 Whether the Respondent adopted a fair procedure within the range of reasonable responses;

   5.5 Whether dismissal was within a range of reasonable responses available to the Respondent.

6. One issue raised in the Claimant's statement and noted at the outset of the hearing, was whether the dismissal was unfair having regard to alleged difference in treatment of:
   6.1 Jayaraj Manickam, a Duty Officer, who had provided a reference for the Claimant and been given a written warning for having done so without authority; and
   6.2 Nomusa Machilla, who had also worked for the Respondent on reception at the same leisure centre (Bridge Park Leisure Centre), and then obtained a trained Housing Options Officer role about four or five months before the Claimant. It was said that she had not put forward her line manager at Bridge Park as a referee, and in contrast to the Claimant, had not been disciplined in relation to this.

7. In relation to the differential treatment issue I directed that the Respondent produce the warning letter to Mr Manickam, and the documentation relating to the referees put down by Ms Machilla (which it was said had previously been requested from the Respondent but not provided). The relevant documentation was produced on the second morning of the hearing.

8. In relation to remedy, the Claimant indicated that she was seeking compensation only. The following issues relating to remedy were to be considered at the same time as liability:

    8.1 Whether if a fair procedure had been followed the Claimant would or might have been dismissed or her employment terminated in any event and if so what is the chance that this would have occurred and/or by when would it have occurred.

    8.2 What if any reduction should be made to any award on the grounds that it is just and equitable to do so or on the grounds of contributory fault (in respect of any conduct prior to dismissal which was blameworthy and causatively relevant)?

9. In relation to the claim to notice pay, the issue was whether the alleged misconduct was such that the Claimant was in repudiatory breach of her contract, and in particular the implied term not without reasonable cause or excuse to act so as to destroy or seriously damage the relationship of mutual trust and confidence. Mr White confirmed at that conclusion of the hearing that the quantum of that claim was agreed in the event that the claim succeeded. Liability was disputed.

MATERIAL FACTS

Brief overview

10. The Claimant was initially employed by the Respondent from 17 March 2016 as a receptionist at Bridge Park Leisure Centre, within the Respondent's Community and Wellbeing Directorate.

11. Whilst working at Bridge Park, the Claimant applied for another role with the Respondent, as a Trainee Housing Needs Officer ("**THNO**"). She was successful in that application and commenced working in that role, reporting to Fidelis Ukwenu. However, following an initial "fact finding meeting" on 5 October 2018 conducted by Mr Ukwenu, disciplinary proceedings were then brought against her on the basis of charges that she had:

    11.1 Improperly influenced the outcome of her application for the THNO role by providing the name of a colleague as referred who she knew was not her line manager ("**Allegation 1**");
    11.2 Deliberately misled her line manager by misrepresenting facts about her job as THNO ("**Allegation 2**");
    11.3 Unreasonably cut short her notice in her role at Bridge Park by false representation ("**Allegation 3**");
    11.4 Provided a fraudulent document to the person investigating the above matters ("**Allegation 4**").

12. The allegations were investigated by Mr Ukwenu, and Allegation 4 was also investigated by the Respondent's Audit and Investigation Unit ("**AIU**"). Mr Ukwenu submitted a report dated 10 January setting out his findings that the allegations were proven and recommending that the matter be considered

formally as gross misconduct. A disciplinary hearing was then held before the Head of Housing Needs, and Mr Ukwenu's line manager, Laurence Coaker. He concluded that Allegation 2 amounted to misconduct and that each of the other allegations amounted to gross misconduct, and he decided to dismiss. The Claimant appealed on the ground of failures in the process relating to the fact finding meeting and that the disciplinary hearing should not have been conducted by Mr Ukwenu's line manager. Following an appeal hearing on 20 March 2019, the appeal was rejected by Hakeem Osinake (Operational Director, Housing).

13. I turn to address the facts relevant to the disciplinary allegations in more detail below.

Management structure and reporting lines at Bridge Park

14. Throughout the Claimant's time working at Bridge Park, the Area Manager was Catherine Fourcampre, who was the most senior employee based at Bridge Park. There were also four duty officers who had operational management responsibility for the reception and who reported to Ms Fourcampre. There were also the roles of Sales and Participation Manager and Fitness Manager, each also reporting to Ms Fourcampre. At one point there had also been the role of Centre Manager but that role was deleted.

15. A significant issue in the disciplinary proceedings subsequently brought against the Claimant related to the identity of her "line manager", and in particular whether it was Ms Fourcampre or one of the Duty Officers, Mr Manickam. The Claimant's job description as a receptionist provided that she reported to the "Duty Manager". Ms Fourcampre had removed the role of Duty Manager. There was a lack of clarity in the evidence before me as to precisely when this had occurred but in an investigatory interview on 18 October 2018 Ms Fourcampre said it had been a little over two years earlier.

16. Consistently with the removal of the Duty Manager role, Mr Manickam signed himself off as "Duty Officer". He did so when on 30 July 2018, as set out further below, he signed off a reference for the Claimant. He confirmed in an investigatory interview on 6 November 2018 that he had been employed in that role for 2 years.

17. However Mr Mobee, who joined the Respondent in December 2017 and also worked at Bridge Park signed himself of as a "Duty Manager" despite fulfilling the same role as Mr Manickam. He continued to do so until 12 November 2018 when Ms Fourcampre sent him an email asking him to change his job title to "Duty Officer" and stating it was wrong that he signed himself off as Duty Manager. His evidence was that when he first created his email signature Ms Fourcampre was sitting next to him double-checking what he did and the she instructed him to send out the email with his contact details. Given that Mr Manickam understood himself to be and signed himself off as "Duty Officer", it may be that Ms Fourcampre had failed to notice that Mr Mobee had styled himself as "Duty Manager". In any event it was not suggested that at any time Mr Manickam had signed himself as a Duty Manager.

18. Ms Fourcampre carried out the assessment of the Claimant's probation and completed probation reports on 27 May and 21 July 2016. In the report of 21 July 2016 the Claimant stated that with the help of her "line manager" she had been able to actively grow her understanding of the service to be provided. I accept the Claimant's evidence that this was a reference to Leanne Rodriguez, who was then employed as the Sale and Participation manager, and who generally worked on the same shifts as the Claimant and trained her. There was no evidence before me contradicting the evidence that it was Ms Rodriguez who had trained the Claimant and I accept it is likely that the training would indeed have been by the manager or supervisor ordinarily working the same shifts rather than the Area Manager in charge of the Centre as a whole. It makes sense that the Claimant should refer to having received support from the person specifically involved in training her. Further, as noted above, in Ms Fourcampre's investigatory interview she referred to having reorganised the team so that the reception reported to her a little over two years earlier, which was consistent with that having superseded the departure of Ms Rodriguez. It would seem to follow however that Ms Fourcampre carried out the probationary assessments even before she had deleted the Duty Manager post with the effect, she contended, that the receptionists reported directly into her.

19. From 1 February 2017 the Claimant worked part time, with shifts on Thursday, Friday and Sunday. In the disciplinary hearing she put it that she worked 90% of her shifts with the Mr Manickam. She explained in her witness evidence that it all but one Friday or Sunday a month. Any sickness absence would be reported in the first instance to the Duty Officer. If any customer had an issue with something on reception it would be taken up with the Duty Officer. It was the Duty Officer who had responsibility for the reception, and therefore supervisory responsibility for the Claimant whilst on duty.

20. It was Ms Fourcampre who would need to approve any annual leave requests. In addition the Claimant would have one to one meetings with Ms Fourcampre around every 8 weeks where they would discuss the Claimant's responsibilities (which in addition to general receptionist roles, included being coordinator of children's parties and responsibility for vending machines) and any issues that had arisen in relation to the Claimant, and her daily work and targets.

21. Ms Fourcampre was also responsible for disciplinary matters. One specific issue in relation to this was addressed in a meeting between the Claimant and Ms Fourcampre on 6 July 2018 to discuss a complaint from another manager that the Claimant had been absent from her duties on the reception desk for four hours on 17 June 2018. The Claimant was informed that her behaviour had been unacceptable and that she should ensure that any personal issues should be dealt with outside the work schedule. This was confirmed in a letter from Ms Fourcampre of 25 June 2018 which stated that no further action would be taken but the letter would remain on her personal file. It also stated that should it not be possible to deal with any personal issues outside the Claimant's work schedule:

> "… you will need to discuss it with me **as your line manager** and I will advise you as to what options are available." (emphasis added)

22. The Claimant's oral evidence was that she did not notice the reference to Ms Fourcampre in this letter, which she put down to an oversight. I return below to my conclusions in relation to that contention. Despite the express reference to Ms Fourcampre being the Claimant's line manager, no reliance was placed on this in the subsequent disciplinary proceedings brought against the Claimant. I accept the evidence of the disciplining officer, Mr Coaker, that he did not notice this reference and, consistently with this, he made no reference to it in the dismissal letter, notwithstanding that the letter was part of the pack for the disciplinary hearing .

Claimant's application for Housing role and resignation

23. Even aside from the meeting on 6 July 2018, the Claimant's relationship with Ms Fourcampre had become strained. In the investigatory interview on 1 November 2018 the Claimant said that her reason for wanting to leave Bridge Park was because of the way it was run and claimed that she had been treated very poorly by Ms Fourcampre for quite a while, that she had insulted her and been condescending to her on many occasions.

24. By an application dated 7 July 2018 the Claimant applied for the THNO role. The role had been advertised as part of a recruitment exercise run by Escalla to recruit trainees for the Housing Options Team within the Housing Needs Service, also with the Community and Wellbeing Directorate.

25. The Claimant's evidence, which I accept, was that the application was in fact made on Friday 6 July 2018, and that she could be sure it was not made on the following day as it was made whilst she was at work. Little turns on the date for present purposes. There was an issue as to whether the Respondent was entitled to infer that the choice of referees was influenced by the meeting on 6 July with Ms Fourcampre. However it was not suggested in the disciplinary process that that application had been made prior to the meeting with Ms Fourcampre. Nor was the Claimant able to say in evidence whether that was the case; her evidence was that she did not recall and that the meeting had not influenced her choice of referee. She accepted in any event that she had a poor relationship with Ms Fourcampre prior to that day.

26. The Claimant was required to put forward three referees, one of whom would be a reserve. She specified Mr Manickam and Leanne Rodriguez, and a third referee who had been a tutor at her college. She did not name Ms Fourcampre. The application specified that the referee must be a line manager or HR contact and could not be a colleague. It was not the Claimant's case that she had not noticed this. Rather her case was that she regarded Mr Manickam (and prior to him Ms Rodriguez) as her manager, being the person who she usually worked under, and to whom she reported any absence or sickness. She did not draw any distinction between being a manager and a line manager.

27. The Claimant's evidence (though not a matter explored in the disciplinary process) was that little thought or planning had gone into asking Mr Manickam to be her referee. She had simply swivelled round on her chair at work and agreed him to do so.

28. The Respondent contended that the Claimant had not specified that she was an internal candidate. However there was nothing in the form which provided for this to be specified and nor was it something that was hidden, since Mr Manickam's work (Brent Council) email address was provided. Indeed when returning the reference on 30 July 2018 he signed off as a Duty Officer for the Respondent.

29. It was part of the Claimant's evidence that she received a letter dated 8 August 2018 offering her a position with a company called Unisef Ltd in Canary Wharf as an Administration Officer. The letter was expressed to be from a John Phillips, who was stated to be HR Director of RTC Support Europe Limited. It was subsequently established within the disciplinary proceedings brought against the Claimant that this was not a genuine offer, that "RTC Support Europe Ltd" had dissolved in 2014, that there was no company that could be traced known as Unisef Ltd, that neither company was at the address stated on the letter and none of the contact details were valid. An issue in the disciplinary proceedings was whether the Claimant had been believed the document was genuine or alternatively had been party to its fabrication.

30. By a letter to Ms Fourcampre dated 16 August 2018, the Claimant gave notice of resignation, stating that she had been offered a full time position starting on 31 August 2018. She stated that she intended to take annual leave from 31 August 2018, so that 30 August 2018 would be her final day at work. However the Claimant did not have sufficient remaining annual leave to permit this. She was informed by Ms Fourcampre, when accepting her resignation on 23 August 2018, that her last day of service would be 16 September 2018. There was no dispute before me or in the disciplinary hearing that the contractual period of notice required was one month. Although I was not specifically referred to this at the hearing, I note that the written particulars of her employment provided that the notice period was as set out in paragraph 12 of the written particulars for staff on NJC conditions, and that the version of those particulars in the hearing bundle did indeed provide for a minimum of one calendar months' notice.

31. On the afternoon of Friday 17 August 2018 the Claimant received a provisional offer of appointment to the THNO role, subject to receipt of satisfactory references. Prior to this the Claimant had received a verbal offer. In oral evidence there was an issue as to whether the Claimant had received the offer prior to the letter of resignation. The Claimant's evidence was that she received a verbal offer on the same date as the written offer, and that she would not have resigned merely on the basis of a verbal offer. For the Respondent, Mr Coaker gave evidence that the practice would be to make the verbal offer prior to processing the written offer, on the basis that there would be no need to process the paperwork. Mr Ukwenu, the Hiring

Manager signed documentation authorising the Recruitment Team to proceed with the completing the online starters form on 16 August 2018. The potential significance of this issue is that if the verbal offer only came after the resignation that might support the inference that the Claimant had indeed received a prior job offer which she took to be genuine, whereas conversely if the verbal offer had been received earlier that would be consistent with the Claimant in fact having resigned in response to the THNO role. However on the evidence before me the most that can be said is that it is possible that the verbal offer could have been communicated on or prior to 16 August 2018. In any event this was not an issue addressed in the disciplinary process.

32. The Claimant did not inform Ms Fourcampre that her new job was still with the Respondent. However there was a dispute in the disciplinary proceedings, and before me, as to what she did say to her. In the investigatory interview conducted by Mr Ukwenu with Ms Fourcampre she said that she had spoken to the Claimant, on a Sunday following the resignation when they were both on shift, about where she was going. Ms Fourcampre said that they had had a detailed conversation. She said that she raised the fact that the new organisation had not contacted her about a reference, and that the Claimant said that the company she was moving to was a new company in Central London, that it had a new HR team and there would be a delay with the reference. She said that the Claimant said that she was not excited about the role she was moving to, that in the new role she could work from home, that she would be managing a team of people and that it was an administration role, and that Ms Fourcampre encouraged the Claimant by saying that perhaps she would settle into the role when she started.

33. The Claimant's position in the disciplinary process, albeit that she did not see the note of the interview with Ms Fourcampre until after the investigation report, was that none of this had been discussed and that it was a fabrication by Ms Fourcampre.

34. In the investigatory interview with Mr Manickam, on 6 November 2018, he claimed that he had only been asked to give one reference by the Claimant, whereas the Claimant claimed that she had also put him forward as a referee for the other job and had spoken to Mr Manickam about multiple jobs. He said he was never told and did not know that the job was at the Respondent, and that when he asked the Claimant about it, he was told by her that it was a private organisation and that she had got a job at Marylebone Central London. He claimed that the Claimant had said this to everyone else including Ms Fourcampre. When asked how he knew this, he said:

> "I heard it, people were saying it that Catherine and Jasmine were on duty and they had this conversation."

35. The Claimant denied that she had said these things. At her disciplinary hearing she brought rotas which she relied upon as showing that Mr Manickam was not on duty on any Sunday when the alleged discussion with Ms Fourcampre took place. She relied upon this as demonstrating that he

had been lying. I note however that it appears that Mr Manickam was saying that he had heard other people saying that they had heard Mr Fourcampre and the Claimant having this conversation, rather than saying that he had heard it directly.

36. The Claimant's evidence, both before me and in the disciplinary process, was that she had not had a conversation as such with Ms Fourcampre about her new role and had only made a sarcastic comment about it. She said that she had not had "an explicit conversation" with Ms Fourcampre about having a job in Central London. She had only had "a few seconds of silly words like 'big money, Marylebone, big PA role", to which she responded "pftt". Her case was that this was not a reference to the offer she said that she had in fact received with Unisef Ltd. It was merely a sarcastic comment.

37. In Mr Fourcampre's investigatory interview she also said that she had discussed with the Claimant her last day of work, that she did not have any further annual leave outstanding that she could use, but that it might be possible to be flexible about the finish date if she was able to do her hours, and asked her to speak to the person responsible for the rota to see if this was possible. The Claimant agreed that this aspect of the discussion did occur.

38. Having received her provisional offer of employment, the Claimant chased the Respondent's recruitment department seeking to arrange her required pre-employment check appointment. This took place on 23 August 2018. The Claimant had expected to be provided with a start date but was told that there was an issue that needed to be addressed as to start and end dates stated in one of the references. She believed this had been remedied by 24 August 2018 and the Claimant then chased to be given her start date. She subsequently sent a complaint as to how this had been dealt with. The complaint noted that the original start date for the THNO role had been 3 September 2018 and noted that she had been told that some of the other trainees were starting on 5 September 2018 [**72**]. The complaint also noted that the Claimant had sent an email on 6 September 2018 stating that her availability for work would now be from 10 September 2018. This was notwithstanding the correspondence from Ms Fourcampre which had specified a termination date at Bridge Park of 16 September 2018.

39. The Claimant made further chasing calls on 7 September 2018, and followed these up by attending the Civic Centre on 10 September 2018 and chased further on 11 September 2018. On around 11 September 2018 the Clamant received her firm offer of appointment setting out a start date of 12 September 2018. It was sent under cover of an email which stated the start date should have been 5 September 2018.

2nd Resignation Letter

40. On 11 September 2018 the Claimant then handed in a letter to Ms Fourcampre stating that:

"Due to a change of circumstances my resignation period must now draw to an immediate end."

41. The Claimant therefore resigned without notice notwithstanding the confirmation in Mr Fourcampre's letter of 23 August 2018 that her notice expired on 16 September 2018.

42. In her resignation letter the Claimant stated that she had "kindly" arranged cover for two of her three remaining shifts. Her evidence at that disciplinary hearing and before me, which I accept, was that she also arranged cover for the third shift. She also said in evidence, but not during the disciplinary process, that at the point at which she handed in her notice she had in mind a casual worker to cover the third shift and she was then able to confirm this. I do not accept that. There was no mention in the letter that she had in mind being able to cover the third shift. As is apparent from the terms of the letter, she had determined to leave with immediate effect irrespective of whether the third shift could be covered. At no stage did she inform the recruitment team relating to the Housing role that she needed to complete a period of notice before commencing her role. Indeed as noted above she had earlier indicated that she could start from 10 September 2018. The reference to "kindly" having arranged cover was at best unfortunate. It was not an act of kindness. At best it was mitigation in relation to her refusal to work out her notice period.

43. On 12 September 2018 the Claimant started her new role as a THNO still within the Respondent's Community and Wellbeing Directorate.

44. As a result of the Claimant's line manager seeing her at the Respondent's headquarters (at the Civic Centre), suspicions were raised that the recruitment process may not have been followed properly. On 2 October 2018 Mr Fourcampre conducted an investigatory interview with Mr Manickam in relation to this. Notes of the interview were included with the investigatory report provided to the Claimant for the disciplinary hearing. This was one of the two documents supplied following the hearing which had been omitted from the hearing bundle. In response to a question as to why Mr Manickam thought he was authorised to give the reference he replied that it was because the Claimant worked for him. He said that after he had received the reference, which was around 10 days after it was sent (on 30 July 2018), the Claimant had asked him whether he had received the reference for her. He had replied that he had forgotten about it and would send it. He said that he had not been aware of the procedure as to who could provide a reference until Ms Fourcampre had reminded the team about this in September (it appears from the warning letter to Mr Manickam, on 3 September 2018) and that he did not think it was a big issue as the reference came from a private company. (I add that there was no suggestion that the team present at this meeting had included reception staff). He claimed that he did not think he needed to disclose that he had provided the reference even though the team had been reminded that it would lead to disciplinary action to provide a reference when not authorised to do so as he believed that this did not apply for a private role, to which Ms Fourcampre responded that she had not said that the policy was limited to internal references.

45. As noted further below Mr Manickam's contention that he had not been told that the role was with the Council was inconsistent with evidence subsequently given by the Claimant. I address conclusions in relation to this further below. I note however that one of the contentions raised in the Respondent's written submissions, in relation to conflicts of evidence, was that Mr Manickam had no reason to lie in the context of a disciplinary investigation. However given that he had failed to disclose that he provided the reference at the September team meeting, had been told that providing an unauthorised reference would lead to disciplinary action and had sought to justify his conduct on the basis that he did not understand this applied other to an internal reference, he plainly did have a self-interest in claiming that he had not been told that the reference was for a role with the Council and (as said in the subsequent investigatory meeting) that he had not only provided one reference. It does not follow that what he said was untrue, but the Respondent's submission that he had no reason to lie is not in my view sustainable.

5 October Meeting

46. On 5 October 2018 the Claimant attended an informal fact finding meeting with her new Service Manager, Mr Ukwenu. Paragraph 7.3 of the Respondent's Disciplinary Procedure provided that employees had the right to advice and guidance at any formal stage of the disciplinary procedure and at an informal stage meeting where a decision to move the formal procedure was likely to be taken, and that there was also a right to be represented or accompanied.

47. The Claimant was not offered the right to be accompanied at the fact finding meeting. Nor was she told that it was such a meeting. In advance of the meeting Mr Ukwenu simply said words to the effect that he heard some things and asked for a quick chat to clear them up. She came up to see him that afternoon. The meeting began just after 3pm. Mr Ukwenu said he would take some notes. The Claimant asked him whether this was something for HR and he said that it was not, and was just something for him so that he could remember the conversation and because he wanted to "cover himself".

48. Although the meeting lasted no less than an hour, the notes Mr Ukwenu produced covered only about a page. The Claimant was not provided with a copy of the notes until January 2019 when she was invited to a disciplinary hearing, though as set out below he did include an extract from the notes om the subsequent investigatory meeting on 30 October 2018.

49. Mr Ukwenu's notes of the meeting recorded that when asked who her line manager had been at Bridge Park she had replied that she did not know what Mr Ukwenu meant, and that Mr Manickam had been her manager. She was recorded as saying that when Ms Fourcampre had asked her about the job she had said it was just "an admin job in Marylebone" and that she did get a job in Marylebone which she turned down and that she did not think

she needed to tell her about the job in the Civic Centre because Ms Fourcampre had never supported her.

50. By an email of 3.18pm on 5 October 2018, to a Ms Lakhani and copied to Mr Ukwenu, Mr Coaker noted that Mr Ukwenu had notified him of an irregularity of the reference provided by the Claimant and that he had appointed Mr Ukwenu to commence a formal investigation and provide a report. This followed a meeting with Mr Ukwenu. In oral evidence Mr Coaker said that this was following the fact finding meeting between Mr Ukwenu and the Claimant. However the email was sent whilst the fact finding meeting was still proceeding. I infer that Mr Coaker was incorrect in his recollection or understanding that the fact finding meeting had already taken place and that Mr Ukwenu had notified him of the issue in advance of that meeting. Mr Coaker then took the decision to proceed to appoint Mr Ukwenu which he confirmed whilst the fact finding meeting was proceeding.

51. By a letter dated 9 October 2018 the Claimant was then notified by Mr Ukwenu that he would be conducting a formal investigation under the Respondent's disciplinary procedure. At that point she was notified of Allegations 1 to 3.

Investigatory Interview with Ms Fourcampre

52. As noted above, Mr Ukwenu conducted an investigatory interview with Ms Fourcampre on 18 October 2018. Ms Fourcampre stated that she had been the Claimant's line manager for a little over two years, having restructured the team and deleted a post (the duty manager role) so that reception reported to her. She stated that Mr Manickam's role involved supervising the receptionist but that he had no line management responsibilities. She relayed the conversation she said that she had had with the Claimant about her new job as set out above.

Investigatory Interview with Demi Bouanani

53. On 30 October 2018 Mr Ukwenu carried out an investigatory interview with Demi Bouanani, a Recruitment Adviser who referred to two telephone conversations she had had when the Claimant had been chasing for her start date. She stated that the Claimant had said she was an agency member of staff, and that such staff were treated as external recruits. That was not put to the Claimant in her disciplinary hearing or relied upon in the dismissal decision. I do not accept that it was correct. There was no suggested benefit of the Claimant referring to herself as an external candidate, and the email address given for Mr Manickam showed he was an employee of the Respondent.

First Investigatory Interview with the Claimant

54. Also on 30 October 2018 the Claimant had her first of two investigatory meetings with Mr Ukwenu. She was accompanied by Tosin Mobee, a Duty Officer. The Claimant was provided with notes of the meeting on 1 November 2018 and provided comments on them on 12 November 2018.

55. The Claimant stated in the meeting that her line manager was Mr Manickam. She was asked what she understood by the term line manager, and replied that it was the person who she worked under. When asked why she had sent her letter of resignation to Ms Fourcampre, she explained that she was the area manager and the person who had given the Claimant her contract when she started. She accepted that she had never had a one to one meeting with Mr Manickam over the two years she said he had managed her and that requests for leave would be made to Ms Fourcampre but said that she would notify Mr Manickam if off sick and that he would be the first point of contact for any HR or payroll problems. As noted above, she disputed that she had a conversation with Ms Fourcampre about her new job, and said she had only exchanged "a few seconds of silly words". She said that she had however told Mr Manickam that she had applied for a job in the Civic Centre in a housing role.

56. The Claimant confirmed that at the fact finding meeting she had indeed said that she had obtained a job offer in Central London which she had turned down and that, in response to Mr Ukwenu having asked whether she could confirm this, she said that she could. She clarified that this was not what she had been referring to in her passing comment to Ms Fourcampre. She said that the reference in her first resignation letter to a start date of 31 August 2018 related to the job which she had turned down. She said that she had received that offer on 13 August 2018, a couple of days before the THNO offer (which was consistent with having received the THNO verbal offer before the resignation letter of 16 August 2018). She identified the company who had made the offer as Unisef. When asked if this was UN organisation, she clarified that it was "Unisef Ltd" who she said were based in Canary Wharf. When asked what they do, she said "Admin, Diary management?" and when asked what her role would have been said it was a temporary contract doing admin and that her job title would have been "Admin officer", that she would have been paid £22,000 pa, and that she turned it down as the THNO role was more local.

57. In relation to a question as to whether the Claimant realised that she had a contract that she was meant to honour, she said:

> "No, because I had a verbal agreement to do three weeks. I didn't think it would be problematic."

58. There was no such verbal agreement to only work three weeks' notice. There had merely been an indication that it might be possible for the Claimant to leave earlier than her termination date if she made up the time by working additional shifts. She had not done so.

59. The Claimant also said that she had received a call from the recruitment team to say she was supposed to come in on 5 September 2018 and asking whether she could come in on the Thursday. She was asked whether she had told the person she was speaking to whether she had a notice period and she replied that she assumed they would know. I reject that as not

credible. She had not told anyone in the recruitment team when she had given in her notice or even that she was serving a period of notice.

60. At the end of the meeting the Claimant was given the opportunity to add any further comments. She clarified that her reason for leaving Bridge Park was because of the way it was run and what she said was her poor treatment by Ms Fourcampre, who she said insulted her and was condescending on many occasions. She explained that she had been planning to leave before she had received the Canary Wharf offer and that she had given as a referee the name of the manager who she had worked under for two years and spoke to relating to absence and sickness.

61. In response to questions from the Claimant asking for further explanation of the allegations and the process, Mr Ukwenu referred the Claimant back to the letter inviting her to the investigation meeting and said that if she remained unclear about the investigation process she should speak to HR. In the Claimant's comments on the investigation notes she contended that Mr Ukwenu had instead said that he questions she was asking did not relate to that meeting. I do not consider anything turns on this. The Claimant was made aware from the notes of the meeting produced by Mr Ukwenu that if there were questions about process she could seek advice about this from HR.

62. At various points in the meeting Mr Ukwenu put to the Claimant comments he claimed she had made in the fact finding meeting. At one point he reminded the Claimant to think about her answers, stating that he still had detailed notes of the conversation of the fact finding meeting. He had failed to supply the Claimant with a copy of those notes, and despite the fact that the Claimant made clear in the meeting that she wished to see them, she was still not provided with them until after Mr Ukwenu had provided his investigation report. He did however read out the following extract which was read out and included in the note of the investigatory meeting:

> "I gave in my resignation on the 16th of September 2018 and when she (Catherine) asked me about the job I said it was just an admin mob in Marylebone. When I told her I was leaving she said good rid, there is nothing for you here. I did get a job in Marylebone which I turned down."

63. In Mr Mobee's evidence he stated that Mr Ukwenu had displayed "bullish" behaviour towards him and that there were a lot more interjections by Mr Ukwenu than stated in the notes. I do not accept that Mr Ukwenu's responses to Mr Mobee went beyond properly reminding him of his role during the interview. Mr Ukwenu set out at the outset of the meeting that Mr Mobee and the Claimant had the right to confer but that Mr Mobee could not respond to questions on behalf of the Claimant. At several points in the meeting Mr Mobee interjected, seeking to rephrase or clarify questions. Mr Mobee reminded the Claimant and Mr Mobee that Mr Mobee's role was to support and not to rephrase Mr Ukwenu's questions or answer questions for her or ask questions on his behalf.

Investigatory Interview with Mr Manickam

64. Mr Ukwenu subsequently conducted an investigatory meeting with Mr Manickam on 6 November 2018. When initially asked if he line managed anyone, his initial response was that on duty he managed "a leisure assistant and a reception". He was then asked whether he managed anyone in the way that Ms Fourcampre managed him by conducting one to one interviews and approving leave, to which he replied that he did not. It was only at that point, after the line of questioning clarifying what was meant by line management, that he answered in the negative when asked if he line managed anyone.

65. In her investigatory meeting the Claimant had said that she had also put forward Mr Manickam as a referee for the Canary Wharf role, and had told him that she had applied for a housing role at the Civic Centre. In the interview Mr Manickam said he had only completed one reference for the Claimant. He said that he did not know why the Claimant had said that he had given a reference for another company. He said he did not know and was not told by the Claimant that she had applied for a job with the Respondent. It was not apparent from the reference form, which was from Escalla. He claimed she had told him that she had got a job as a secretary in Marylebone, and as noted above he said that this was what she had told everyone else including the Ms Fourcampre.

Provision of notes of Claimant's first interview/ Claimant's complaints

66. By an email of 1 November 2018 the Claimant was sent the notes of the investigatory meeting and asked to provide the documents identified in the notes. These included a copy of the offer letter for the job which she said she had turned down in Central London. Mr Ukwenu asked for a reply by 12 November 2018. The Claimant replied at 8pm on 12 November, providing her comments on the notes of the meeting and, amongst other documents, a scanned copy of the offer letter.

67. The Claimant's evidence was that the reason for leaving it to the last moment to reply was because she had not wanted to think about the stressful disciplinary process in the meantime. In the interim Mr Mobee emailed HR, copying in the Claimant, raising a complaint in relation to Mr Ukwenu. He complained about the way that Mr Ukwenu had approached the 5 and 30 October meetings and that Mr Ukwenu had a conflict of interest in that he had a vested interest in the outcome and had already expressed his displeasure with the Claimant, and warned that this would also invalidate findings down the line due to loyalty to Mr Ukwenu.

68. On 14 November 2018 Mr Mobee received a reply from the Interim Head of HR noting that it was quite common for a Service Manager to take on the responsibility of Investigating Officer, and that the obligation was then to carry out a thorough and detailed investigation. He noted that the Claimant would receive a detailed report in due course and be given the opportunity to

review and highlight any inaccuracies in the report. He noted that Hearing manager would have had no prior involvement in the investigation and both sides would have the opportunity to present their case.

69. The Claimant also wrote on 7 November 2018 to the Strategic Director, Community Wellbeing, Mr Porter, raising a complaint about the way that Mr Ukwenu had dealt with matters, which she said showed a lack of impartiality, and about Mr Fourcampre. Mr Porter did not reply. The appeal officer, Mr Osinaike, gave evidence that although he had not become aware of this letter until after his appeal decision, he understood that the reason for not replying was because Mr Porter had become aware that there was an ongoing disciplinary process and had thought that would cover off the issues raised. Clearly the Claimant should have been given the courtesy of a reply.

70. The complaint letter to Mr Porter went somewhat further than Mr Mobee had gone in his email to HR. The Claimant alleged that Mr Ukwenu had expressly said in the fact-finding meeting that she had lied to her manager, and lied about getting a job offer in Central London, and stated that as Ms Fourcampre was a line manager she would not lie. None of those matters were asserted in Mr Mobee's complaint letter, nor asserted in the disciplinary hearing or in the appeal hearing. The appeal officer was referred to the complaint made to HR but not to the complaint letter to Mr Porter, and it did not come to his attention until after the appeal. Mr Porter did not have a role as investigator or decision maker within the disciplinary process. He was entitled to expect that any such complaints would be brought out by the Claimant within the disciplinary process. As such I do not consider that either any failure my Mr Porter to act on these matters or his knowledge of the matters or allegations brought to his attention in the complaint letter of 7 November 2018 affect the fairness of the disciplinary process or of the decision made to dismiss.

Investigation relating to 8 August Letter

71. Having received the copy of the offer letter relating to the role with Unisef Ltd, Mr Ukwenu became concerned as to its authenticity. He referred the issue to the AIU. The searches carried out by the AIU showed no trace of Unisef Ltd either at Canary Wharf or anywhere else. The company name on the letterhead was "RTC Support Europe Ltd", and the letter purported to be from the HR Director of that company, but Company House checks showed that the company had been dissolved in 2014 and no longer existed. A search carried out showed no trace of the website for RCL on the letter. Searches showed that there was no trace of either Unisef Ltd or RTC Support Europe Ltd at the address shown on the letter. A call to the number shown on the letter went to a voicemail which did not mention any company name. Attempts were made to trace John Phillips, the signatory on the letter, but there was no trace of that name linked to RTC Support Europe Ltd.

72. The investigation established therefore that the letter was indeed not a genuine offer. That in turn begged the question as to whether the Claimant had knowingly put forward a fraudulent document or had believed it to be genuine.

73. The Claimant attended an interview with Mr Castagnetti of the AIU on 6 December 2018. She was again accompanied by Mr Mobee. Notes of the interview were not provided but the Claimant was provided with a summary of it in a report appended to the Mr Ukwenu's disciplinary investigation report. She did not take issue with the summary in that report.

74. In the course of the interview with the AIU the Claimant was told that the letter she had provided was not genuine and asked about how she had come to apply for the job. The same issue was also addressed in a further investigatory interview with Mr Ukwenu on 21 December 2018 (again accompanied by Mr Mobee). In the invitation to that meeting Mr Ukwenu added Allegation 4, that the Claimant had knowingly provided a fraudulent document to the investigator.

75. The Claimant explained in the interviews that she had told a customer at Bridge Park that she was looking for alternative work, and that the customer had said that he knew of posts in London if she wanted to give him her name and contact number, which she did. She said that she had subsequently received a call from a male purporting to be from RTC in response to her passing over her name and contact number. In evidence in the Tribunal the Claimant clarified that the customer had mentioned RTC and she had recognised the name when she received the call. The Claimant also explained in her evidence that it was widely known that the Bridge Park centre was due to close down, and so there was a likelihood that staff might be on the lookout for work.

76. The Claimant explained the job offer had been received after telephone interviews. She said that she had received three or four calls, and could not remember whether the calls were from a mobile or landline. (In her notes on the investigatory meeting of 21 December she clarified that on reflection that it was likely to have been a landline number but she could not be sure.) She said that she had spoken to different people (and before the tribunal clarified that there had been two different people that she spoke to in the calls). She said that she had been asked for her date of birth, address and National Insurance number which she had provided.

77. The Claimant explained in the investigatory interviews that she had rejected the offer in a subsequent call, and indeed that she had lost interest by the point she received the letter as by that point her applying for the job with the Respondent was progressing well. In her evidence to the Tribunal the Claimant explained that she had nevertheless resigned following the letter because she had decided to leave the Respondent anyway. She said she had been somewhat interested in the offer but very interested in the role with Respondent.

78. The note of the meeting with the AIU recorded that at one point she had been told that she would have to pay registration costs of £20, and a fee of £50 towards her training. When she declined, the male who said this hung up abruptly. In her evidence to the Tribunal, the Claimant said that these costs had initially been mentioned before the job offer was received. It was

then raised again in a call after the letter and it was then that she had declined it.

79. When asked how she contacted the company she explained that she had not done so. She explained that she had given her referee details (Leanne Rodriguez and Mr Manickam) over the phone.

80. It was put to the Claimant by Mr Ukwenu that Mr Manickam said the Claimant had only spoken to him about one job. The Claimant's reply was that she had spoken to Mr Manickam about multiple jobs. She explained that her assertion that Mr Manickam had then provided a reference was based on the assumption that he must have done so given that she had received the job offer.

81. The Claimant was unable to name either of the people who she said had called her about the job offer. She was asked if she had a record on her phone of the call having been received, but explained that she had since changed phone and had changed her SIM card (ie that she had a new number) and had not transferred across any of the previous data. I note that there was other contemporaneous documentation in the bundle showing that the Claimant had changed her telephone and had a new number around this time. The Claimant explained in evidence to the Tribunal that it was her understanding that numbers could not be traced because it was a pay as you go phone. The AIU investigation report itself noted that the AIU had not made any attempts to retrieve the information from the telecommunications provider.

82. The Claimant was asked by the AIU if she could identify the male at Bridge Park to whom she had handed her name and contact number. She explained that she knew the customer by sight only. She did arrange to meet with Mr Mobee at the site but did not recognise the customer and was unable to identify him. The Claimant explained in her evidence to the Tribunal that although she had seen the individual on various occasions over the time that she had been working at Bridge Park, there was no record kept of people who attended the site who were not members, eg if they attended for events arranged at the site.

83. The AIU report concluded that the letter provided was not genuine but that there was insufficient evidence that the Claimant had knowingly supplied a false document. However it added that there was significant concern that the Claimant's explanations relating to the offer could not be corroborated and appeared unlikely, that her explanation about changing her telephone without transferring her data seemed implausible and that on the Claimant's account she had passed significant personal details to at least one unknown man without any face to face meeting or completing any formal registration process with the recruitment agency (being a reference to RTC).

Mr Ukwenu's Investigation Report

84. Mr Ukwenu's findings and conclusions were set out in a report dated 10 January 2019. Mr Ukwenu concluded that each of the four allegations had

been made out and that they amounted to gross misconduct. He also emphasised a concern as to the Claimant's trustworthiness in the light of her frontline job role in the Housing Needs services, working with some of Brent's vulnerable residents.

Disciplinary hearing

85. By a letter from Mr Ukwenu dated 10 January 2019 the Claimant was invited to a disciplinary hearing in relation to Allegations 1 to 4, and she was provided with a copy of the investigation report and enclosed documents. She was informed of her right to call witnesses and to be accompanied at the hearing.

86. On 23 January 2019 the Claimant attended the disciplinary hearing chaired by Mr Coaker, who was Mr Ukwenu's line manager. The case against the Claimant was presented by Mr Ukwenu. Amongst other matters, Mr Ukwenu argued that at the fact-finding meeting the Claimant had said that she had a conversation with Ms Fourcampre that she was getting a job in Marylebone, but that she had later changed her statement and said that she never had a conversation with Ms Fourcampre about getting a job in Central London.

87. As foreshadowed in the notice of the hearing, Mr Ukwenu called Mr Castagnetti of the AIU as a witness. He confirmed that the letter from RTC was not genuine. He was asked whether he could state on the balance of probabilities that the letter was either produced by the Claimant or that she had it produced to support misrepresentations. He replied that he would not be prepared to give evidence on that.

88. Mr Ukwenu advanced a case that Ms Manickam had heard the alleged conversation between the claimant and Ms Fourcampre about her new job. As noted above, as part of Mr Mobee's presentation of the case for the Claimant he produced rotas showing that the Mr Manickam had not been on duty on either of the Sundays after the Claimant's resignation when she was on duty with Ms Fourcampre. The Claimant also raised the fact that she had not been told that the meeting on 5 October was a fact-finding meeting, had not been given the opportunity to be represented and had been told that the notes being taken by Mr Ukwenu were just for his remembrance and not for HR. She also explained that the distinction between Duty Officer and Duty Manager was never made, that she did 90% of her shifts with him and saw him as her manager.

89. By a letter dated 31 January 2019, the Claimant was informed that all four of the allegations had been upheld and involved breaches of the Respondent's Code of Conduct policy. Allegations 1, 3 and 4 were all regarded as gross misconduct and allegation 2 as misconduct. The Claimant was summarily dismissed. I address the findings further in the Discussion section below.

Appeal

90. The Claimant appealed by letter dated 14 February 2019 on the grounds that the disciplinary policy had not be been correctly followed and this had a

material impact on the outcome. The letter highlighted that she had not been informed that the "chat" on 5 October was to be a fact-finding meeting or of her right to be represented at the meeting, and that Mr Coaker was not an independent person given that he was Mr Ukwenu's line manager.

91. The appeal hearing took place on 20 March 2019, chaired by Mr Osinaike, the Operational Director, Housing. The Respondent's case was presented by Mr Coaker.

92. By a letter dated 27 March 2019 the Claimant was informed that the appeal was rejected. As regards the complaint about the meeting on 5 October 2018 he concluded that under section 7.3 of the Council's disciplinary procedure the Claimant should have been given the opportunity to be represented because, as an experienced manager, Mr Ukwenu should have realised that the answers given could lead to a formal investigation. However he concluded that this did not invalidate the decision. First he rejected the Claimant's contention made at the disciplinary hearing that three of the four allegations would not have materialised had she been given the opportunity for representation because the acts that gave rise to them existed prior to the meeting or were discovered as part of the formal investigation. Secondly he accepted Mr Coaker's contention that in arriving at his decision to dismiss he only concerned himself with evidence submitted as part of the formal investigation and at the hearing.

93. In relation to the ground of appeal relating Mr Coaker being the dismissing officer, Mr Osinaike noted that the allegation at the hearing was that Mr Coaker and Mr Ukwenu were friends. He noted that the evidence cited in support of this was that they had been seen laughing and joking together in the office. Mr Osinaike had been referred in the appeal hearing to the complaint sent by Mr Mobee to HR, which Mr Osinaike had then obtained and reviewed following the hearing.

94. In rejecting this aspect of the appeal, Mr Osinaike noted that the Claimant had been asked if she had any evidence to support the contention that the relationship between Mr Ukwenu and Mr Coaker went beyond that of a line manger relationship, such as socialising outside work, and that she had confirmed that she had no such evidence. He noted that Mr Coker had worked with Mr Ukwenu for about ten years and had built a good working relationship but that apart from the odd Christmas dinner he never socialised with Mr Ukwenu and would not describe them as friends. Mr Osinaike accepted Mr Coaker's assertion that although he believed that Mr Ukwenu had integrity, his decision was only influenced by the facts of the case as presented and that the relationship with Mr Ukwenu had no bearing on the decision. He accepted the assertion in the letter from the Interim Head of HR on 14 November 2018 that it was quite common for the Service Manager to take on the role of investigating officer in cases within their specific areas of work and recorded that he was satisfied that the investigation was not in any way influenced by Mr Coaker, that it was appropriate for Mr Coaker to chair the disciplinary hearing and that the decision was based solely on the facts as presented.

95. The decision letter also noted that as the Claimant did not believe the allegations raised against her were legitimate, she did not proffer any mitigation and that there was none for him to consider. There was a dispute in evidence before me as to whether the Claimant was invited to offer any mitigation. Mr Osinaike said he would have done so in accordance with his usual practice, and noted that he had conducted around two previous appeals for the Respondent and three to four in his previous role. However given that he had no direct recollection of saying this and that it was not mentioned in the notes, I do not accept that it was said.

96. In the event I do not consider that anything turns on this. The matters that the Claimant said she would have raised were not in reality matters of mitigation, and given the conclusions reached on the substantive appeal grounds could not have altered the decision to uphold the appeal. The Claimant identified five matters in evidence which she said she would have raised if invited to raise mitigation. First that she was not advised about the process. As to this, Mr Osinaike was satisfied that she had been sufficiently informed about the process. I note also that she had been informed by Mr Ukwenu that she could raise any issues about the process with HR. Secondly she was said that she would have raised that she had not been told who originated the complaints. It is difficult to see how that would have provided mitigation and in any event Mr Osinaike was satisfied that the investigation report made clear how the investigation arose. Third the Claimant said that she was not told she could put in her own statements and instead relied on notes made by others. Again, that was not really a matter of mitigation, and in any event Mr Osinaike was satisfied that she had been given every opportunity, including at the disciplinary hearing to put in her own statement. Fourth she said that she would have raised that she had been assumed not to be telling the truth and that there was no objectivity. However that was in substance a challenge to the fairness of the process and the conclusions, and would have been a substantive ground of appeal rather than a matter of mitigation. Finally the Claimant said that she would have referred to the fact that she had raised a grievance and simply been told that the matter was in safe hands. However that response related to the concern raised by Mr Mobee with HR, which Mr Osinaike had considered.

Alleged differential treatment

97. As noted above, the Claimant relied before me (but not in the disciplinary proceedings) on two allegations of inconsistent treatment. One of these was that if it was the case that a reference should not have been given, Mr Manickam had also been involved in giving the reference and despite being more senior than the Claimant he had only been given a first written warning for this. In relation to this, the Respondent produced a letter of 11 July 2019 setting out the outcome of a disciplinary hearing which had dealt with this amongst other matters. There were allegations that Mr Manickam had failed to follow the reference guidance for managers and provided an unauthorised reference, that he had provided inaccurate information and that that he had failed to notify an appropriate manager that he had done so.

98. I accept that this was not properly comparable. The finding in Mr Manickam's case was that there had been a lack of care in failing to make himself familiar with the reference guidance and in relation to the information provided. By contrast in substance the finding in the Claimant's case was that there had been a lack of honesty. It was found that there had been a breach of the Council's Code of Conduct requiring that employees be open and honest when completing the application form, that the Claimant did not genuinely believe that Mr Manickam was her line manager but that, knowing that the reference had to be from her line manager, she wilfully provided the reference of someone who she did not genuinely believe to be her line manager. In substance the allegation was that she had deliberately misled the Respondent and so improperly influenced her appointment. I also note that it was the registration form completed by the Claimant which stated that the referee needed to be a line manager or HR contact rather than a colleague, and that this was not stated in the reference form which Mr Manickam completed.

99. The second matter relied upon in relation to differential treatment was that Nomusa Machilla had not been disciplined even though she had also not put forward Ms Fourcampre as a referee, despite the fact that she had also worked on reception at the same leisure centre prior to being appointed to the THNO role. However on the face of the documentation disclosed by the Respondent it appears that Ms Machilla's position was not properly comparable. At the time of her application she had two jobs and had put forward as a referee her line manager in relation to her other job. It was not a matter of deliberately putting forward someone who was not her line manager as her line manager, which in substance was the allegation upheld against the Claimant.

RELEVANT LAW

100. In determining whether the dismissal was fair or unfair the following principles apply:

100.1 The Respondent must establish that it had a genuine belief in the misconduct.

100.2 I should consider whether that belief was formed on reasonable grounds, following a reasonable investigation and a fair procedure.

100.3 It is not for me to substitute my decision for that of the employer. Nor is it for me on the issue of fairness of dismissal to introduce my own findings of fact as to the Claimant's conduct. Both in relation to the substantive decision and in the procedure and investigation followed, there may be a range of reasonable responses.

100.4 The focus must be on what the employer did and whether what it decided, following a reasonable investigation, fell within the band of reasonable responses which an employer may adopt (*Nugent Care v Boardman* EAT/0277/09, 25 May 2010, at para 27). The Tribunal's role is to examine the conclusions reached by the employer and to consider,

objectively, whether those conclusions could reasonably have been made on the evidence presented. The Tribunal must avoid substituting its own evaluation of witnesses or the evidence for that of the employer: *Morgan v Electrolux Limited* [1991] IRLR 89 (CA).

100.5 The relevant circumstances include the gravity of the charges and their potential effect on the employee, and there should be a focus on potential evidence as that may exculpate or point to innocence as well as evidence pointing to the allegations being made out.

100.6 The focus is on the state of mind of the dismissing and appeal officers, together with such further information as ought to have been ascertained by a reasonable investigation: see *Orr v Milton Keynes Council* [2011] IRLR 317 (CA).

100.7 In applying the statutory test it is necessary to take into account the whole of the disciplinary process including the appeal stage. As explained in *Taylor v OCS Group Limited* [2006] IRLR 613 at para 47, that the Tribunal:

> "should consider the fairness of the whole of the disciplinary process. If they find that an early stage of the process was defective and unfair in some way, they will want to examine any subsequent proceeding with particular care. But their purpose in so doing will not be to determine whether it amounted to a rehearing or a review but to determine whether, due to the fairness or unfairness of the procedures adopted, the thoroughness or lack of it of the process and the open-mindedness (or not) of the decision-maker, the overall process was fair, notwithstanding any deficiencies at the early stage."

101. If it is determined that the dismissal was unfair, the following considerations apply in relation to any reduction for contributory fault:

101.1 It is necessary to make findings of fact as to the Claimant's conduct, but care is needed not to allow any such findings to infect my assessment of the issue as to whether dismissal was unfair: *London Ambulance Service NHS Trust v Small [2009] IRLR 563 (CA).*

101.2 Contributory fault may lead to a reduction in arrears of pay if there is an order for reinstatement or re-engagement.

101.3 The Claimant indicated that in the event that she succeeds in her claim she would be seeking compensation only. In that event, contributory fault may lead to a reduction in the basic and compensatory awards.

101.4 In relation to the basic award, pursuant to s.122(2) ERA, if I consider that any conduct of the Claimant before dismissal was such that it would be just and equitable to reduce the basic award to any extent, I should reduce the award by that amount.

101.5 In relation to the compensatory award, pursuant to s.123(6) ERA if I find that the dismissal was to any extent caused or contributed to by

any action of the Claimant, I must (not may) reduce the amount of the compensatory award by such proportion as I consider just and equitable having regard to that finding.

101.6 Conduct will not entail a reduction in the award unless it (a) is culpable or blameworthy and (b) caused or contributed to the dismissal: *Nelson v BBC (No.2)* [1980] ICR 110 (CA). It is necessary to take a broad commonsense view of the situation, deciding what if any part the employee's conduct played in causing or contributing to the dismissal and then, in the light of that finding, assessing the reduction to be made: *Hollier v Plysu Limited* [1983] IRLR 260 (CA). In the EAT in *Hollier* four general categories were put forward: ranging from 100% (totally to blame), 75% (largely to blame), 50% (employer and employee equally to blame) and 25% (slightly to blame). Whilst these are helpful yardsticks, I am not bound to those four alternatives, and the extent of any deduction is "a matter of impression, opinion and discretion": *Hollier* per Stephenson LJ at para 19.

102. In addition to, and distinct from, any reduction for contributory fault, I should consider whether it is just and equitable to make a reduction to compensation under s.123(1) ERA on the basis of a chance that the Claimant might in any event have been fairly dismissed.

103. In relation to the claim for notice pay, the issue is not whether the dismissal fell within the range of reasonable responses, but rather whether the Claimant was in repudiatory breach of her contract, such that the Respondent was entitled to dismiss without notice. In particular it was agreed that the issue is whether the Claimant was in breach of the implied term that she should not without reasonable cause or excuse act in a manner such as the destroy or seriously damage the relationship of trust and confidence.

DISCUSSION

A. Unfair Dismissal

(1) Allegation 2

104. I address first the issues in relation to unfair dismissal. It is convenient to consider first Allegation 2. Although unlike the other allegations the conclusion reached by Mr Coaker in relation to this was that it was only misconduct rather than gross misconduct, it was in relation to this allegation that there was the starkest difference in the versions as to what was said, as between the Claimant and Ms Fourcampre and Mr Manickam, and to some extent between the Claimant and Mr Ukwenu.

105. The case against the Claimant was that she had deliberately misled Ms Fourcampre as to the role she was moving to. What was alleged to have been said to Ms Fourcampre, according to her version of events, was not merely a passing sarcastic comment but was part of a detailed conversation in which she had talked about the new role and expressed her lack of

excitement about it. On Ms Fourcampre's version of what was said, the Claimant has not only actively misled her about her next job, but also thrown her off the trail in relation to the reference by explaining the absence of any approach on the basis that there was a new HR team. Again, that was wholly consistent with the claim that there had only been a sarcastic passing comment about the new job.

106. I accept that in the light of the evidence gathered from Ms Fourcampre and Mr Manickam, and notwithstanding that as noted above Mr Manickam had a self-interest in playing down what he was told by the Claimant and the number of times he was asked to be a referee, it would have been available for Mr Coaker to prefer their account of events in preference to that put forward by the Claimant. As noted above, the evidence as to the rotas did not establish that Mr Manickam's evidence was not truthful; the note of his investigatory interview indicates that he did not claim to have been present during the alleged conversation between Ms Fourcampre and the Claimant. Further, although the Claimant had not been shown the statements made by Ms Fourcampre and Mr Manickam during the investigatory stage, she was provided with them prior to the disciplinary hearing and had the opportunity to answer them at that stage. Further, it could readily be inferred that the Claimant did not want to inform Ms Fourcampre where she was going next. Even on her own case, albeit she said sarcastically, she had given a false answer. The fact that Mr Manickam also stated that he had been told by the Claimant that she had got a job in Central London, and that this was what the Claimant had said to everybody else, provided support for view that this was the story that the Claimant was giving and was not merely a one off sarcastic comment made to Ms Fourcampre.

107. However Mr Coaker's rejection of the Claimant's account of events was founded on a fundamental misunderstanding of the case she was advancing. Mr Coaker began by noting that during the fact finding meeting on 5 October the Claimant had said that she had told Ms Fourcampre that she had secured a job in Marylebone, and he contrasted this with the case advanced on 30 October 2018 that she had never had a conversation with Ms Fourcampre about having a job in Central London. There was no recognition or consideration of the Claimant's explanation, as set out in her comments on the investigatory interview, that the notes of the 5 October 2018 meeting had not correctly captured what she had said in this respect and that although she had made a comment about a job in Marylebone, or Central London, this was only as a joking or sarcastic offhand comment and not as part of a serious explanation as to her next job. On her case there was no inconsistency with what she had said to Mr Ukwenu. Mr Coaker failed to appreciate or take this into account.

108. Mr Coaker then proceeded to emphasise that the Claimant had gone to some lengths in the disciplinary hearing to produce copies of rotas which he said were relied upon to show that the Claimant and Ms Fourcampre had not worked together on a Sunday shift and so the conversation could not have taken place. That misunderstood the point that had been made by reference to the rotas, which as ought to have been apparent from the notes of the disciplinary hearing, was instead that, contrary to the case advanced by Mr

Ukwenu that Mr Manickam had heard the conversation, it was shown that he had not been present.

109. Mr Coaker then proceeded to emphasise that there had been an inconsistency between this and what the Claimant said in her summing up, when she had said that she "had in fact had a 'sarcastic' conversation" with Ms Fourcampre when she had told her that she had secured a "swanky" new job in Central London. In fact the Claimant's comment in summing up was fully consistent with her case as set out in the investigatory meeting. That is confirmed by the notes of the disciplinary hearing which record that the Claimant said that she made a "sarcastic comment 'big job, loads of money" and did not give Ms Fourcampre any details of where she was going and did not feel that she had to do so. Similarly in the meeting with the AIU (at para 3.13) she had said that it was only said as a passing comment which was not meant to be believed.

110. In relation to the appeal, Mr Osinaike suggested in evidence that he had taken this part of the decision to merely be setting out alternative accounts without Mr Coaker choosing between them. I do not accept that was a reasonable view of Mr Coaker's findings, which not only upheld Allegation 2 but also proceeded to criticise the Claimant for seeking to undermine the account provided by Ms Fourcampre.

111. It was against the context of the perceived inconsistencies, and in particular the incorrect perception that the Claimant had changed her position in her summing up, that Mr Coaker found that there had been a breach of the Council's Code of Conduct in lying to or deceiving her manager. Given that the conclusion was based on a misunderstanding of the Claimant's case, and a failure to pay proper attention to and so to consider the case being advanced not only at the hearing but also in her comments on the investigatory meeting, I do not accept that Mr Croaker acted fairly in reaching that conclusion.

112. In one sense Allegation 2 played a minor part in the decision to dismiss because, contrary to the position adopted in the investigatory report, it was treated as entailing misconduct rather than gross misconduct. However one relevant consideration which I have taken into account in addressing the approach to the other allegations is whether the conclusion reached in relation to them, and fairness overall, is undermined by the flawed approach to Allegation 2 and its impact on the Claimant's credibility.

(2) Allegation 1

113. I turn to Allegation 1. I note that whereas the Duty Officers, including Mr Manickam, were reminded in September 2018 that they could not give references and it was an disciplinary offence to do so, the Claimant was not party to that meeting and that the Claimant had not been specifically warned that it was a disciplinary offence to put forward someone else as a referee. The significance of this is potentially two-fold. First, it might be relevant to whether it was reasonable to believe it was permissible to put forward a Duty Officer as a referee. However it was not the Claimant's contention that she

was unaware that her referees should either be a line manager or an HR contact. Secondly, the absence of any warning that putting forward someone other than the line manager was regarded as a serious matter that could lead to disciplinary action is relevant in relation to the sanction of dismissal and whether it fell within the range of reasonable responses. However that is to be considered in the light of the findings of wrongdoing taken as a whole to which I return below.

114. Further, whilst the Claimant asserted that the references but forward could not have influenced the outcome as there were five processes to go through, those processes did not negate the importance of a good or bad reference. In her written submissions the Claimant argued that she had no control over Mr Manickam and so no scope for positive bias. However the inference was not that she was able to control the reference given by Mr Manickam, but that having just been subjected to criticism by Ms Fourcampre, and perceiving that she had a strained relationship with her, that she did not want a reference to be given by Ms Fourcampre.

115. On balance I accept that Mr Coaker was entitled to conclude that the Claimant was aware that Ms Fourcampre was her line manager and that she instead put forward Mr Manickam knowing this was not permitted. I note that in rejecting the Claimant's contention that she genuinely considered Mr Manickam rather than Ms Fourcampre to be her line manager, and that she had provided his details as her referee in good faith, Mr Coaker placed reliance in particular on the following matters:

    115.1 All the Claimant's formal correspondence regarding her resignation, notice period and outstanding leave was with Ms Fourcampre. He also noted that the Claimant had confirmed that Ms Fourcampre conducted all her one to one meetings and approved her annual leave, that the letter of appointment asked her to report to Mr Fourcampre and that the probation review meetings were completed by her.

    115.2 The Claimant had not stated during the investigation that the reference to reporting to the Duty Manager on the job description had influenced her thinking but instead had relied upon the fact that Mr Manickam was her first point of contact for any HR, payroll or sickness absence issues. However that would only be the case when they were on duty together, whereas the Claimant had accepted that this was not always the case, albeit that she said it was the case 90% of the time.

116. It is not for me on the issue of unfair dismissal to substitute my assessment of the weight to be given to these matters provided that Mr Coaker's approach was within the range of reasonable responses. I accept that he was entitled to give weight to these matters. He was entitled to give considerable weight to the fact that all the formal correspondence in relation to resignation (twice) and notice period was sent to Ms Fourcampre. The formal letter of 25 July 2018 also brought home that disciplinary matters were dealt with by Ms Fourcampre (even aside from the fact that Mr Coaker did not notice the express reference to being the Claimant's line manager), and in the AIU report the Claimant had acknowledged that Ms Fourcampre

conducted return to work interviews after sickness, performance appraisals and such like. In short Mr Coaker was entitled to conclude that the functions of a line manager were conducted by Ms Fourcampre.

117. Since the matters relied upon by the Claimant were the incidences of day to day operational management, Mr Coaker was entitled to give weight to the fact that even on the Claimant's own case the duty managers with whom she worked would not always be constant. The logic of her position was to equate line management with the person responsible for day to day management on her shift. On that basis there would be a different line manager for at least one shift a month. Yet it was not the Claimant's contention that she had more than one line manager.

118. That was not necessarily determinative because the issue was as to the Claimant's genuine belief. Whilst there might be a flaw in her logic as to who was her line manager, it did not necessarily follow, against the context where there was no evidence of an express communication to the Claimant that her line manager was Ms Fourcampre (prior to the letter of 25 July 2018), that she could not genuinely have identified the immediate manager who usually worked on the same shift. However, taken together with the other factors relied upon by Mr Coaker, I accept that his conclusion was open to him, within the range of reasonable responses. This was set against the context of the coincidence between the time when Mr Manickam was put forward as a referee and when Mr Fourcampre spoke to the Claimant about her behaviour, and the inference, in part on the basis of the Claimant's own comments as to the nature of the relationship, that the Claimant would not have wanted a reference to come from Ms Fourcampre.

119. In reaching this conclusion I have taken into account the fact that, as highlighted in the Claimant's submissions in the reference from Ms Rodriguez she said that she managed the Claimant until she left the Respondent on 28 July 2017, although I note that this does not make clear whether it was a reference to operational management on shift or line management. I have also taken into account Ms Fourcampre's evidence that her reference in the 20 week probation report to her line manager was to Ms Rodriguez. I note that in the notes of the disciplinary hearing Mr Mobee is recorded as having pointed out that the probation form did not state that Ms Fourcampre was the Claimant's line manager, which appears to indicate that he answered the assumption to the contrary in the investigator's report. However the focus of the disciplinary allegation was on whether Mr Manickam rather than Ms Rodriguez, who held a different job title to him, was regarded as the Claimant's line manager. The notes of the disciplinary hearing do not indicate that the contention that the probation form did not refer to Ms Fourcampre, and the implications if it referred to Ms Rodriguez, and any argument as to why that impacted on the position of Mr Manickam, was developed further at the disciplinary hearing. Nor was there any evidence before me to that effect. Nor was it then raised on the appeal. In all it does not seem to me that the issue as to the position whilst Ms Rodriguez was present takes Mr Coaker's conclusion and the matters he took into account outside the range of reasonable responses that were available to him.

120. I have considered whether my conclusions on this issue are affected by the flaws I have found in relation to Allegation 2. I conclude that is not the case. I accept however that the matters taken into account by Mr Coaker on this issue were discrete from those considered in relation to Allegation 2. He did not rest his conclusion on the broader credibility issues which arose from finding that the Claimant had subsequently deliberately deceived Ms Fourcampre as to her new job.

(3) Allegation 3

121. Turning to Allegation 3, on any view the Claimant had plainly acted in breach of contract in resigning with immediate effect on 11 September 2018. Mr Coaker noted in his decision that the investigation had found no evidence of a verbal agreement with Ms Fourcampre to leave earlier by working extra shifts. In one respect it might be said that this overlooked the fact that on Ms Fourcampre's own account there had been discussion about the possibility of leaving early if extra shifts were worked. In the Claimant's written submissions she argued that there was a failure to consider that her understanding of the scope for flexibility led her to believe that three weeks was agreed. However even if there had been the possibility of bringing forward the date by working additional shifts, that did not arise because the Claimant had not worked the additional shifts and there had been no agreement to bring forward the expressly specified termination date, set in accordance with the Claimant's contractual terms. In those circumstances I accept that Mr Coaker was entitled to conclude that the Claimant was fully aware of her obligation to work up to 16 September and had refused to do so. Indeed this was the obvious conclusion, and nor can it plausibly be said to have been influenced by the flaws in the approach to Allegation 2.

122. Further, as Mr Coaker noted, in an email sent by the Claimant to the Recruitment Team on 9 September 2018 the Claimant had stated that she was available to start on Monday 10 September 2018. That would have been put forward knowing full well that the Claimant had not worked the additional shifts required, and without any indication either to the Recruitment team that there was an obligation to work out notice, or any request to Ms Fourcampre to be released from the notice period.

123. It was open the Claimant to explain the position to Ms Fourcampre and ask to be released early. She did not do so and instead presented Ms Fourcampre with a fait accompli that she was leaving with immediate effect. Irrespective of the findings in relation to the other allegations Mr Coaker was entitled to regard the reference to a change of circumstances as being misleading. It implied that the Claimant had no choice but to leave given the change of circumstances, whereas the reality she had been pushing for that date, had indicated that she was free from 10 September 2018 when she knew that not to be the case and had not revealed that she had a notice period to serve.

124. The Claimant contended that she was being punished twice as she had also had her pay reduced to reflect that she had not worked the additional shifts.

There was no merit in that contention. Clearly she had no entitlement to be paid for work she had not done. That was not an answer to the allegation of misconduct in refusing to serve out her notice. Under the Disciplinary Procedure a serious breach of the code of conduct was identified as an instance of gross misconduct. The Code of Conduct included an obligation to agree in advance with the manager any absence and not to deceive the manager. Here she had chosen not to serve her notice in breach of the requirement to do so.

125. It was however necessary to give consideration to any mitigating factors. Notwithstanding the unfortunate use of language in the Claimant's statement that she had "kindly" arranged cover, if as she claimed the Claimant had in fact arranged for the additional shifts to be covered, and the Respondent had therefore not been left short-staffed, that was a relevant factor to be taken into account by way of mitigation. In the decision letter Mr Coaker noted the Claimant's contention that she had made arrangements with one of the Duty Managers to cover the third outstanding shift, but noted that there had been no reference to this in investigation. A fair reading of the decision letter is that on this basis Mr Coaker rejected the claim to have covered the third shift. It was not reasonable to do so without making further enquiries as to whether the Claimant had in fact arranged to cover the third shift, and in circumstances where the notes of the investigation meetings indicate that the Claimant had not been asked about having arranged cover for the shifts.

126. It was also necessary to take into account the reasons for the Claimant's departure. Mr Coaker assumed that this was because the Claimant had had enough of the receptionist role. He made no further investigation in relation to this. In fact the Claimant's concern was that she did not want to miss out on training in her new role, against the context that others had already started. That was not necessarily a compelling answer. Certainly it did not justify providing Ms Fourcampre with a fait accompli without either seeking permission to leave early or informing the Housing/ recruitment team of the notice requirements and checking whether there would be any problem in starting slightly later rather than pushing for an early start. But it was relevant to consider the reasons for leaving and whether it was due to a genuine and conscientious belief in the need not to miss out on training rather than simply not being willing to comply with her contractual obligations.

127. At most however these were matters going to mitigation in relation to what was on any view a breach of contract. They were potentially relevant as to whether this allegation of itself was a sufficient basis to dismiss. However their significance falls away if the conclusions fell to considered alongside upholding Allegation 1 and 4 given the seriousness of those matters taken together, or indeed Allegation 4 alone.

(4) Allegation 4

128. I turn to Allegation 4. Although only added in the course of the investigation, this was the most serious of the four allegations. Further, the allegation had been investigated by the AIU rather than only by Mr Ukwenu.

129. The AIU report noted that there was insufficient evidence that the Claimant had knowingly supplied a false document, and in the disciplinary hearing itself Mr Castagnetti was unable to give evidence as to whether the letter had knowingly been falsified by the Claimant. However that conclusion was qualified by the observation that the Claimant's explanations "cannot be corroborated at this time and do appear unlikely." As such I do not accept that it was necessarily unreasonable for Mr Coaker or Mr Ukwenu to depart from the view that there was insufficient evidence and to form a view as to whether the explanation was so implausible that it should be rejected.

130. Clearly in the light of the AIU's findings Mr Coaker was entitled to proceed on the basis that the 8 August 2018 was not genuine. He proceeded to consider the key issue of whether the Claimant had believed that the letter was genuine and had provided it in good faith. His conclusion that on the balance of probability she was aware that it was not genuine was reached on the basis of his finding that the Claimant's account, taken as a whole, was not plausible.

131. I turn to the matters on which, cumulatively, Mr Coaker gave particular weight in support of that conclusion:

    131.1 The Claimant had not been able to give the name of the male customer who she said had told her that he knew of posts in London and to whom she said she had given her contact details. This was despite the fact that he was said to be a regular customer. Indeed in the disciplinary hearing she said that he was not a random customer who came in about once a week and that she had known him for about 2 years by his face. The Claimant's evidence was that her inability to identify the customer was because there were people who would attend the Centre without being members or to give their identity. However it was not suggested that this explanation was given during the disciplinary process. In any event Mr Coaker was in my view entitled to give weight to this as one part of the cumulative picture, where there were several people with whom on her account she had been in contact about the job offer but was not able to identify any of them.

    131.2 The Claimant said that she had received several calls, which she put at 3 or 4, from different people purporting represent RTC Support Europe, and these included telephone interviews, but again she could not identify the names of anyone to whom she spoke. The Claimant said in evidence that this was to be seen in the context that there was nothing memorable about the calls and she had been applying for many jobs at the time. But even if she had raised that at the time, Mr Coaker was entitled to view this in the context that these were telephone interviews for a job which, when offered (on her case), had led her to then put in her resignation. He was also entitled to take this together with the notable lack of corroboration or information the Claimant was able to provide about her contacts with RTC or the regular customer. (In the Respondent's submissions emphasis was also placed on the contrast with the Claimant's ability to recall names for the purposes of

her complaint about the recruitment team relating to the role with the Respondent. I leave that to one side for present purposes as it was not a factor relied upon by Mr Coaker or indeed in the investigation report.)

131.3 Mr Coaker did not believe that the Claimant would have handed over sensitive personal data like her date of birth and National Insurance number to someone who she did not know over the telephone (and also did not know the name of the person to whom she had given this information). This was a factor on which Mr Coaker placed particular emphasis in his oral evidence.

131.4 The Claimant had said that she was unable to evidence the calls on the basis that she had since changed her phone and had not transferred any data. Taken by itself I do not consider that it was reasonable to place reliance on this without further investigation given that there was no further enquiry as to what data was on the phone nor as to whether information could be obtained from the telecommunications provider. However the absence of any evidence of the calls was one part of the picture where the Claimant was unable to provide any information to corroborate her account.

131.5 The Claimant had never completed any form or registration or application form for the role or with RTC, who she said she understood to be the job search agency, and had never had any other written communication with them other than the offer letter. I accept that Mr Coaker was entitled to take this into account where there was a lack of material to support the Claimant's account and as part of the cumulative picture calling the plausibility into question. The Claimant's oral evidence was that she took reassurance from the fact that she said that the customer had mentioned RTC. However that was not something she said was raised in the disciplinary hearing, and Mr Coaker was in any event still entitled to regard it as surprising that the Claimant did not find it strange that RTC should be looking for work for her without any registration or application process with them.

131.6 The Claimant had advised Mr Ukwenu during the investigation that the same people who provided references for the THNO role also provided references for the job in Central London, whereas Mr Manickam stated that he had only provided a reference in response to the request by Escalla. Again if correct by itself that could not be conclusive. If the job offer was not genuine, then it might also be that the referees would not have been approached. But equally if there was indeed a scam, it might be regarded as surprising that steps were not taken to maintain the pretence by seeking references. In any event, I accept it was part of the cumulative picture to which Mr Coaker was entitled to have regard where there was a lack of support for the Claimant's account of events.

132. In the investigation report the point was also made that it was not plausible that the Claimant had made no attempt to look up either RTC Support Europe Limited or Unisef, and that a cursory Google search would have

revealed that they did not exist. Nor had she visited the website – which would have revealed that it did not exist. In the Claimant's evidence she said that she was in any event losing interest in the job and was put off to some extent by the training fee and was in any event more interested in the job with the Respondent. She said in the interview with the AIU that she had lost interest by the time she received the job offer. But that made it all the more surprising that the Claimant should be prompted to resign by the 8 August letter. The Claimant's case, as stated in her first investigation interview, was that she had been looking to resign in any event. However that did not explain why the Claimant should be prompted by the letter to resign without looking further into anything about the company and to do so, on her case, on the basis of giving a start date in the new role by reference to the Canary Wharf job.

133. I also note that the Claimant's evidence before the Tribunal was that the resignation could not have been in response to the offer from the Respondent because even if she had had the verbal offer by 16 August (which she denied) she would not have resigned merely in response to a verbal offer and would need something in writing. That was inconsistent with her contention that she would have resigned anyway aside from the job offer of 8 August, and her reliance on this as explaining why there were no further enquiries made about the company she was moving to. However the contention that the Claimant would not have resigned only in response to a verbal offer from the Respondent was not in any event a matter raised in the disciplinary proceedings (and therefore not a matter to be taken into account in relation to fairness of dismissal).

134. It was put to the Claimant, and submitted on behalf of the Respondent, that it was in any event inherently implausible that so much effort would be put into obtaining such small payments (a total of £70), and all the more so where there was no working email address or contact details to which to send the money and the businesses mentioned had no presence at the business address given. That was not a point identified by Mr Coaker as part of his reasoning. Whilst it has some logical force, if there was indeed a scam that leaves open the question of what would have been done to set arrangements to collect the money when this came to be demanded (which it had not been prior to the job offer) or what further steps might have been taken to demand further money as the scam developed.

135. The Claimant's contention was that it would have made no sense for her to put forward a fraudulent document. Her own case was that she had only said a few sarcastic words to Mr Fourcampre and had not in fact been referring to the job offer with Unisef. She argued that it would make no sense to go to the trouble and risk of providing a fraudulent letter for what was a side show. It would in any event have made more sense simply to say that she could not find the letter if there was none. However once the Claimant had mentioned in her 5 October 2018 meeting that she had in fact received a job offer which prompted her resignation she was set on a route where, if that was not the case, her credibility was undermined. When pressed about this in the meeting on 30 October 2018 she provided further details and when asked had said that she could evidence what she had said.

As such whether or not it had been necessary to mention the other job offer, and whether with hindsight it would have been better simply to say that the Claimant no longer had the offer or that it had been lost, she had a clear motive to provide the letter to back up what she had said.

136. In all I accept that there were reasonable grounds on which, despite the seriousness of the allegation, it was available to Mr Coaker to reject the Claimant's explanation as not plausible and to uphold the allegation. The Claimant's account entailed that she was not put on notice by the absence of any written communication form or registration with RTC other than the offer letter, that she made no effort to look up anything about RTC or Unisef or even to look at its website, that a regular customer had been involved, and that she could not recall the identity of anyone to whom she had spoken, and had nothing to evidence the contact which led up to or followed the letter of 8 August. It is not permissible for me to substitute my assessment, and weight I would attribute to factors taken into account by Mr Coaker, provided as I accept his assessment fell within the range of reasonable responses

137. I have given careful consideration to whether that conclusion is affected by the potential impact on the Claimant's credibility arising from Mr Coaker's flawed approach to Allegation 2. I accept however that Mr Coaker's conclusion was focussed on the particular factors relating to the plausibility of the explanation relating to the job offer. I note that when it came to considering the sanction Mr Coaker did consider in the round the allegations and significant inconsistencies in the Claimant's account. But by the nature of Allegation 4, and the emphasis on the responsibilities in the role of THNO, it inevitably followed that if upheld dismissal would be found to be the appropriate sanction even with a clean disciplinary record.

(5) Reasonableness of the investigation and procedure

138. I turn to the remaining issues in relation to whether the Respondent followed a reasonable investigation and a reasonable procedure.

(a) 5 October meeting

139. I accept that there was a procedural failing in relation to the approach to the first fact-finding meeting and that it was in breach of the Respondent's own policy. Not only was the Claimant denied representation, but the notes of the meeting were withheld for three months. An important extract was set out in the notes of the investigation meeting but it was important for the Claimant to be able to see this in the context of the full note of the meeting. When the notes were produced they were in very short form and the opportunity to correct them whilst the meeting was fresh in the Claimant's mind had been lost. The contention that no reliance was placed on what was alleged to have been said in the meeting was inconsistent with the reliance placed on the 5 October notes in the decision letter in relation to Allegation 2.

140. The issue was not remedied on the appeal. I accept that in the appeal Mr Osinaike sought clarification as to why what was said to have occurred at the initial hearing affected what had happened in the remainder of the process.

However in order to explain this it was necessary for the Claimant to deal with the substance of the findings in the remainder of the process, and in particular the reliance placed on inconsistencies said to have arisen in comparing what was said in the initial meeting and subsequently. The Claimant and Mr Mobee were unable to do so on the basis that they were stopped from straying into the substance of the case against her.

141. Further I do not accept that it was sufficient for Mr Osinaike to proceed simply on the basis that he accepted Mr Croaker's assertion that he relied on what was said in the formal part of the process rather than on what was stated in the fact finding meeting. It was apparent on the face of the dismissal decision that the Mr Croaker had placed emphasis on a perceived inconsistency between what was said at the fact-finding meeting and subsequently, as was clear from the first paragraph under the conclusion as to allegation 2. In those circumstances it was necessary to test with Mr Croaker how that was to be reconciled with his assertion that he had not relied on what was said in the 5 October meeting, and to explain the conclusion sought as a consequence.

142. I do not however accept that the Claimant's contention that three out of the four allegations would not have arisen but for the way the 5 October meeting was handled. So far as concerned allegation 2, even if there had not been confusion as to what the Claimant was saying had been said to Ms Fourcampre, there would still have been a conflict between the Claimant's account and that of Ms Fourcampre (and Mr Manickam). There would still have remained the issues as to the referee put forward and the failure to work notice. In addition questions about the first resignation letter at a formal investigation meeting would still have been likely to lead to the Claimant indicating that the resignation had been in response to a different job if it was the case that there had genuinely been another job offer and the letter of 8 August was believed to be genuine. If that was not the case, the procedural failure in relation to the informal fact-finding meeting could not excuse knowing production of a fabricated document.

143. Whilst it was therefore going too far to say that the allegations would not have arisen, it was important that the Claimant and Mr Mobee be able to develop their argument in connection with this. That would in turn have been likely to focus on the reliance placed on alleged inconsistencies arising out of what was alleged to have been said at that meeting.

144. I do not however accept that the procedural failings relating to the 5 October meeting were such that the procedure followed as a whole or the decision to dismiss was unfair. The disputed issue which arose from the 5 October notes concerned what the Claimant had said to Mr Ukwenu as to having obtained a job in Marylebone, which potentially impacted on Allegation 2 given the finding as to inconsistent accounts. I have addressed above the question of whether the finding as to Allegation 2 impacts on the other findings.

(b) Mr Ukwenu's involvement

145. I turn to the allegation that Mr Ukwenu was not an appropriate person to conduct the investigation because of the partiality that he showed in the process. I do not accept that the dismissal was rendered unfair on this basis. The matters set out in Mr Mobee's grievance letter entailed Mr Ukwenu explaining why the allegations were regarded as potentially serious, given the reliance placed on references and the openness he would expect from those reporting to him. Neither that, nor the assertion that it was said that if the Claimant had a letter evidencing the other job offer that this would not exonerate her, was inconsistent with diligently investigating the allegations. So far as concerns the meeting on 30 October 2018, the Claimant had an opportunity to provide her comments on the notes. In all I do not consider that it was unreasonable for the Respondent to proceed on the basis that it was fair for Mr Ukwenu to continue as investigator, with the decision ultimately to be made by the Hearing manager.

146. As noted above, the Claimant went somewhat further in her letter of 7 November 2018 where she alleged that Mr Ukwenu had expressly accused her of lying to her manager and said that a line manager would not lie. However this is not something that was raised with someone who was involved in the disciplinary process. Further whilst it showed scepticism by Mr Ukwenu expressed at the outset, it did not follow that there was a deficiency in the investigation then carried out. The assessment of the evidence remained a matter for the Hearing Officer. Nor was it suggested that there were further matters which Mr Ukwenu should have investigated or other witnesses she should have interviewed.

(c) Mr Coaker's role

147. I turn to the contention that the process was unfair in having Mr Coaker as the hearing manager. I note that the Respondent's Disciplinary Policy provides that the disciplinary person must be employed by an "independent person" (para 4.1). There is provision that in a case which may result in dismissal the hearing officer must not be a manager below Head of Services, but no provision that it must be a manager from a different department.

148. As noted above, the email from Mr Coaker stating that Ukwenu had been appointed to commence a formal investigation was sent at 3.18pm on 5 October. That would indicate that the decision to appoint Mr Ukwenu was made by Mr Coaker before the fact-finding meeting had concluded. If so I do not consider that it follows that there was any pre-determination of the investigation, rather than a recognition that the matters raised would require investigation. It would tend to undermine the argument made by Mr Coaker and Mr Ukwenu in support of there being no need for representation at the fact finding meeting that it was not yet known that there would be a disciplinary investigation. However that argument was rejected on appeal in any event. Further, although the email confirming Mr Ukwenu's appoint was sent whilst Mr Ukwenu was still in the fact finding meeting, it is not clear that Mr Ukwenu had been informed of that decision before the meeting.

149. I also accept that there was no adequate evidence produced in the appeal to indicate that there was a social relationship beyond the relationship with Mr Ukwenu as his line manager. Given that line management relationship and the allegations as to how the investigation had been conducted by Mr Ukwenu and the complaint raised about this it would have been better for the hearing to be conducted by someone from outside the service. However, taking into account that there is no general requirement for this under the Respondent's policy, I do not accept that the failure to do so was such as to be outside the range of reasonable responses.

(6) Conclusion in relation to unfair dismissal

150. Whilst I have concluded that the decision would have been unfair if it had relied only on Allegation 2 (which in any event was not found to involve only misconduct rather than gross misconduct), the position is otherwise when taking into account Allegations 1, 3 and 4. I accept that the Respondent held a genuine belief in the alleged wrongdoing. The flaws in relation to the investigation and procedure which I have found fall to be considered in the context of the substantive findings (see *Taylor v OCS Group Limited* [2006] IRLR 613). On that basis I accept that, taking together Allegations 1, 3 and 4 the decision to dismiss fell within the range of reasonable responses and was made on reasonable grounds, following a reasonable investigation and a reasonable procedure. I would not have accepted that was the case on the basis of Allegation 3 alone in the light of the failure fully to consider mitigating factors and also because I consider that the fact of having arranged cover for all shifts was significant mitigation. Nor would I have been satisfied that Allegation 1 taken by itself would suffice given the absence of any warning that to put forward a manager rather than the line manager would be regarded as misconduct, let alone sufficiently serious misconduct as to amount to gross misconduct. However taking the conclusions as a whole which I have found were available to Mr Coaker, including Allegation 4, I accept that dismissal was a permissible sanction, and that this would have been so whatever weight was given to the mitigating factors I have found should have been taken into account in relation to Allegation 3.

B. Wrongful dismissal (notice pay)

151. I turn to the claim for notice pay (wrongful dismissal). I am concerned here with my findings as to what occurred on the balance of probabilities (rather than whether the Respondent acted within the range of reasonable responses) and whether on the basis of those findings the Claimant was in repudiatory breach of contract.

(1) Allegations 2

152. In relation to Allegation 2, I have not heard evidence from either Ms Fourcampre or Mr Manickam. I also take into account that for the reasons noted above, Mr Manickam had a self-interest in protecting his own position and the possibility that this may have influenced his evidence. So far as concerns Ms Fourcampre I take into account that she had reason to be angry with the Claimant given that (a) she had presented her with a fait accompli in

leaving without notice, (b) she had specifically emphasised to the Claimant in the letter of 25 July 2018 that she was the Claimant's line manager and, I accept, would have believed that any reference should have been given by her but had instead been bypassed, and (c) even on the Claimant's version of events had not been told that the Claimant was moving to another job with the Respondent and had been told, albeit the Claimant said sarcastically, that she was moving to a job in Central London. I therefore do not wholly accept the Respondent's submission that she had no possible motive to lie in the context of a disciplinary investigation.

153. Having taken those matters into account, I nevertheless consider it is more likely than not that the Claimant did have a discussion with Ms Fourcampre along the lines of that set out on page 2 of the investigatory meeting with her. Part of the context was Ms Fourcampre's clear understanding was that she was the Claimant's line manager, as emphasised in the letter of 25 July 2018. She would have expected that she would need to be contacted for a reference from any prospective new employer. At a team meeting on 3 September with at least the Duty Officers (but not the receptionists) she emphasised the policy in relation to references and that breaching this would be a disciplinary matter. The Claimant accepted that there was a conversation with Ms Fourcampre when they were on shift together which at least reflected the last part of Ms Fourcampre's account relating to the possibility of being able to terminate her employment earlier if she was able to work the required hours on the rota within the time she wanted to leave. I was not provided with the date of the Sunday shift when this discussion took place. However it is apparent from the Claimant's email to Ms Fourcampre of 23 August 2018 providing a temporary phone number on which she could be contacted, they had not yet spoken about the resignation by that date. As such the discussion could not have been before Sunday 26 August 2018, just 8 days before Ms Fourcampre specifically emphasised in a team meeting the Council policy in relation to provision of references.

154. Against that context I consider it is inherently likely that in the conversation on the Sunday shift, or otherwise at some other point when they spoke following receipt of the Claimant's resignation, Ms Fourcampre would have asked the Claimant about the new job and raised the issue of a reference and noted that she had not yet been contacted about a reference.

155. I am not persuaded by the Claimant's contention that it would not have made sense to mislead Ms Fourcampre about having a job in the Civic Centre or about a reference being delayed because of the likelihood that Ms Fourcampre would see her when she was working at the Civic Centre. That is equally consistent with the fact that the Claimant had not fully thought through the risks associated with not being straight with Ms Fourcampre. I note also that on Ms Fourcampre's account of what was said in the discussion the Claimant had said that she was losing interest in the Central London job. That left wriggle room to be able to say subsequently that she had not taken that job and had instead take up the role with at the Civic Centre. In fact, whatever the position as to whether the Claimant had received another job offer, by the time the Claimant and Mr Fourcampre had

a discussion following the Claimant's resignation she had already decided to take up the Housing role and not the other offer.

156. I am also satisfied that the Claimant did not want to share with Ms Fourcampre any details as to her new job, and did not want her to know that she would be remaining with the Council. Her own evidence was that she did not see the need to do so. Further, when it came to her 2nd resignation the obvious course would otherwise have been to explain to Mr Fourcampre why she needed to leave with immediate effect by reference to the role she would be taking up still with the Respondent. However she avoided doing so.

157. As to Mr Manickam's statement, whilst allowing for the risk that his statement was affected by self-interest give the prospective disciplinary action against him relating to the reference, Ms Fourcampre's account of events gathers some further support from his statement with Mr Manickam. He also said that the Claimant had told him that she had got a job as a secretary in Marylebone, Central London and that this is what she had told everybody else.

158. In all I accept that there was a discussion with Ms Fourcampre along the lines of that set out in the investigatory interview in which the Claimant told her, falsely, that the new job was with in Central London, that there was a new HR team and would be a delay with the reference. That was a breach of the obligation under the Code of Conduct to "never lie to, deceive" managers. An aggravating factor was that the Claimant then sought to play this down in the subsequent investigation, claiming falsely that that there had merely been a passing comment made sarcastically.

(2) Allegation 1

159. Turning to Allegation 1, I accept that the Claimant did not want to put forward Ms Fourcampre as a referee given their strained relationship and belief as to the negative comments that she may make about the Claimant. It is likely that this was starkly reinforced by the meeting on 6 June 2018. It does not however necessarily follow that the Claimant was aware that it was impermissible to put forward Mr Manickam as a referee, or that she did not regard him as her manager (and did not differentiate between this and being her line manager). I am not satisfied that at the time that the Claimant put forward Mr Manickam as a referee she did so knowing and believing that this was impermissible because he was not her line manager.

160. I take into account that this was the Claimant's first permanent job since leaving school, and the lack of evidence of any clear communication as to the Claimant's line manager prior to the letter of 25 June 2018 and that the job description provided that the Claimant reported to the Duty Manager. I take on board the point made by Mr Coaker that the Claimant was not always on the same shift as Mr Manickam. Indeed I note from the letter of 25 July 2018 that there could sometimes be more than one manager on shift with the Claimant on a single shift. I do not however given this the same weight as attributed by Mr Coaker. I am willing to accept that there was

sufficient ambiguity around who was the line manager, and indeed what was meant by being a line manager in the lack of clear instruction about this (prior to the 25 July 2018 letter), that the Claimant believed that it was Mr Manickam as the manager who in practical terms for 90% of shifts was her immediate manager on a day to day basis. I take into account my finding that when the Claimant referred to her line manager in the 20 week probation report she was referring to Ms Rodriguez. It follows that she did not regard the fact that it was Ms Fourcampre who completed the reports as necessarily meaning that she was the line manager.

161. I accept there was not a great deal of thought involved in the Claimant turning to Mr Manickam to mention that she was putting him forward as a referee, as to the distinction between being a manager or line manager. There may have been an element of convenience or wishful thinking in not going to Ms Fourcampre, but I am not satisfied that it was a matter of knowingly seeking to pass off Mr Manickam as line manager knowing that he was not someone who she could put forward as referee.

162. Whatever the position prior to the letter of 25 July 2018, it was made expressly clear in that letter that Ms Fourcampre was the Claimant's line manager, and a distinction was drawn in the letter between the manager on shift and the line manager. I do not accept the Claimant's evidence that she did not notice this. The Claimant offered no explanation as to why she would have missed this other than to say that it was an oversight. The express emphasis that Ms Fourcampre was the line manager is also in my view to be seen in the context of the discussion about a disciplinary matter and written confirmation of this in the letter of 25 July 2018, which itself reinforced what was expressly said about Ms Fourcampre being the line manager. The subsequent formal correspondence addressed to Ms Fourcampre in relation to resignation (twice) and discussion over notice is also consistent with recognition by this stage that she was the Claimant's line manager.

163. It would in any event have been clear from the conversation with Ms Fourcampre after the Claimant's resignation that she expected that any reference request would be directed towards her. By that stage the Claimant had been expressly told and was aware that Ms Fourcampre was the line manager. Rather than being open that Mr Manickam had provided a reference she chose to provide Ms Fourcampre with a false story designed to put her off the trail.

164. I accept therefore that the Claimant was aware that Ms Fourcampre was her line manager following receipt of the letter of 25 July 2018 and by the time of the discussion that I have found took place with Ms Fourcampre when she was asked about a reference. It does not in my view follow that she was aware that she appreciated that it was impermissible to have chosen to put forward Mr Manickam as her referee, as a person who was usually on her shift as her manager and who she regarded as able to comment on her work, rather than Ms Fourcampre or that it was misconduct to do so. I take into account that the only mention of the fact that the referee had to be the line manager was in the small print in the form Registration Form. There was no evidence of any communication to her as to the importance of the correct

selection of referee or that to choose an incorrect referee would be regarded as misconduct, let alone serious misconduct – indeed the form itself provided for the alternative of putting forward an HR contact.

165. So far as concerns the subsequent discussion which I have found took place with Ms Fourcampre, I accept that it would have been apparent that Ms Fourcampre expected to be approached for a reference, and that the Claimant did not want to put her forward. I also accept that the Claimant did not want Ms Fourcampre to know at that time that her new job was with the Respondent and was distrustful of her and what she might say about her as regard the Housing role, and that what she said was designed to put Ms Fourcampre off the trail. It does not follow that she appreciated at that stage that Mr Manickam could not provide her reference or that, if he could not, it was misconduct to put him forward as a referee, given that she regarded him as someone properly able to speak to her performance and the person who was usually the manager on shift with her, and in the absence of any warning as to who could provide a reference (other than the small print in the registration form) or that putting forward someone other than the person who by this stage she knew to be her line manager was regarded as misconduct, let alone serious misconduct.

166. I therefore do not accept that Allegation 1 was made out. I also accept, that it was the Claimant's genuine view that she was under no obligation to tell Ms Fourcampre that she was moving to another role with the Respondent and that she genuinely regarded Mr Manickam as in a position to provide a fair and informed reference as to her performance. I also accept that whilst she distrusted Ms Fourcampre, and what she might say about her in relation to the Housing role, it was not a matter of seeking to mislead the Respondent in the reference provided; she believed that Mr Manickam was in a position to give a fair view of her performance. That did not excuse being untruthful and positively misleading Ms Fourcampre about her next role and the reference, but it provides context and an element of mitigation.

(3) Allegation 3

167. Turning to Allegation 3, clearly the Claimant was in breach of contract in refusing to work her last three shifts. If the Claimant wanted to avoid delay in starting her new role, her proper course was to explain this to Ms Fourcampre and request permission. She did not do so and instead presented her with a fait accompli. I do not accept that she held a genuine belief that she was entitled to do so. She was fully aware that the discussion in relation to possibly leaving earlier was conditioned on working the additional shifts before the leaving date which she had not done. An aggravating factor was the assertion that there had been a change of circumstances when in reality she had been pushing for her start date and already said that she would be able to start work on 10 September 2018 without being in a position to know for certain that she could arrange cover for her shifts.

168. There was however in my view significant mitigation in the fact that the Claimant did arrange cover for all her remaining shifts and that it was only a

short period until the end of her notice period. It was not a case of leaving her employer in the lurch, being short-staffed on the reception, albeit that the Claimant had determined to leave without notice irrespective of whether the third shift could be covered. I also accept that her reasons for leaving when she did was out of genuine concern not to miss out on her training in her new role where, although it would only be a matter of a few days, she was concerned that she was already running late in being able to start. As against that the proper way in which to address the concern was to be open with Ms Fourcampre as to the concern and seek permission to leave in the light of this.

(4) Allegation 4

169. On balance I am not satisfied that that the allegation of knowingly putting forward or falsifying the 8 August 2018 letter is well founded. The evidence to that effect is essentially circumstantial. It was indeed surprising that the Claimant did not make further enquiries about Unisef, but I accept that can be placed in the context of her lack of experience. I accept her evidence that she was in any event seeking to leave, and that whilst receipt of the offer prompted her to take the step of resigning, she quickly moved on to focus on the THNO offer which she received either on the same day or the day after her first resignation letter. As noted above the fact that she had changed her phone is supported by contemporaneous correspondence and I do not accept that it is so implausible that data was not transferred across. I accept that at first blush it appears that on her account a great deal of effort went into seeking payment of small sums. But if the letter was fraudulent it would not be wholly surprising if small sums were sought in the first instance so as not to put the Claimant off, with a view to developing the scam if the Claimant was reeled in. Nor do I regard it as wholly implausible that, having regard to her relative inexperience, and her understanding that she had been put in contact with RTC by someone she had seen around the Leisure Centre, that she naively passed personal data over the phone.

(5) Conclusions in relation to notice pay

170. Taking the above factors together I do not accept that Allegations 1 or 4 were made out. So far as concerns Allegation 3 whilst there was misconduct in presenting Ms Fourcampre with a fait accompli, there was in my view significant mitigation in that the Claimant did in the event arrange cover for all her shift. I would not have regarded that as sufficient to justify summary dismissal.

171. More difficult is the issue of there was sufficiently serious misconduct taking Allegation 3 together with my findings as to Allegation 2 and what was said during the investigation, albeit in a context where the Claimant was faced with allegations of having committed gross misconduct in relation to the reference put forward where she considered she had done nothing wrong in the reference put forward. Whilst the Respondent treated Allegation 2 as only amounting to misconduct, I accept that it is not bound by that finding and for the purposes of considering wrongful dismissal the issue is whether objectively either by itself or taken together with my other findings it

constituted a repudiatory breach. I also accept that the Respondent was also entitled to take into account the nature of the Claimant's role in the Housing Needs Office, as a public servant dealing with vulnerable service users, and where high degree of trust was required. As against that I accept that what was said to Ms Fourcampre was against the context that the Claimant genuinely did not regard herself as being under an obligation to tell Mr Fourcampre as to where she was going next, and also did not consider that she had done anything wrong in putting forward Mr Manickam as a referee but was distrustful of Ms Fourcampre. That did not excuse her conduct but provides an element of context and I accept some element of mitigation.

172. Standing back the misconduct I have found relates to Allegation 3 (where the outstanding shifts were however covered), and Allegation 2 in so far as it concerned misleading Ms Fourcampre about the Claimant's new role and then as to what was said about this in the investigation. Whilst I am satisfied that cumulatively there was serious misconduct, against the context of a clean disciplinary record and the mitigating factors I have identified, in all the circumstances I am not satisfied that this amounted to sufficiently serious misconduct as to amount to a repudiatory breach of contract whether by virtue of being a breach of the implied term of trust and confidence or otherwise having regard to the Code of Conduct. The claim of breach of contract in relation to dismissal without notice (ie wrongful dismissal) therefore succeeds and in relation to this the Respondent is ordered to pay the Claimant the sum of £1,503.80.

C. Chance of dismissal in any event and contributory fault

173. In the light of my finding that the Claimant was not unfairly dismissed, the question of contributory fault and whether the Claimant would have been fairly dismissed in any event does not arise. However had I found that the dismissal was unfair I would have concluded that it is highly likely that a fair procedure and consideration of the issues would have resulted in a fair dismissal in any event within the same time frame. In overview:

    173.1 I accept that there was material from which, had Mr Coaker not made the errors in his approach that I have found above in relation to Allegation 2, and had there not been the flawed approach to the meeting on 5 October 2018, he could still have reached the same conclusion in relation to that allegation. He was presented with conflicting accounts of what had been said, and with Mr Manickam's account providing support for Ms Fourcampre. Given those accounts provided by Ms Fourcampre and Mr Manickam, and the Claimant's conduct which indicated that she did not want to reveal to Ms Fourcampre that she was moving to another role with the Council, I consider it is likely that this would still have been the conclusion reached by Mr Coaker.

    173.2 In relation to Allegation 1, whilst I am not satisfied that the Claimant deliberately put forward someone who she knew could not properly be her referee, I accept that there was material from which had

Mr Coaker could have upheld this charge having regard to the evidence of the strained relationship, the proximity with the meeting of 6 June, the practice of one to one meetings with Ms Fourcampre and the correspondence with her in relation to resignation and the evidence of the Claimant's concern not to alert Ms Fourcampre to her new job and the fact that the immediate manager on duty was not always Mr Manickam. Again I consider it is likely that he would have reached the same conclusion. If I had concluded that the conclusion on this issue had been rendered unfair by the errors in the approach to Allegation 2, for the reasons set out above I consider it is likely that he would have reached the same conclusion as to that allegation in any event. Even if Mr Coaker did not find Allegation 1 was made out at the time when Mr Manickam was first put forward, I consider it is quite likely, notwithstanding my conclusions as to this, that he would have found that at least by the time of the discussion with Ms Fourcampre after her resignation the Claimant was aware that her line manager was Ms Fourcampre, having been specifically informed of this and been asked about a reference. He may well have found (contrary to my conclusion above) that she was aware at that stage that Mr Manickam should not have been put forward as a referee. He was in any event likely to have found that the Claimant gave a false story to Ms Fourcampre to put her off the trail and subsequently was untruthful with those dealing with the disciplinary process That would have fallen to be considered alongside the findings as to the other allegations.

173.3 In relation to Allegation 3 clearly there was misconduct in leaving without notice. There were factors to be taken into account by way of mitigation, but it was open to Mr Coaker to regard this as being a serious breach of duty and he was likely to have done so. I am not satisfied that it would have been open to him to regard it as being sufficiently serious of itself to amount to gross misconduct, but it would have been an additional element of misconduct to be taken into account alongside the other matters.

173.4 As to Allegation 4, I have noted above that there were matters from which Mr Coaker could have concluded that the Claimant's account was not plausible and found that she had put forward a falsified document. Taken together with the differences in evidence between the Claimant and Ms Fourcampre and Mr Mackinam, I consider that it is quite likely that the Respondent would have reached the same conclusion, and would not have accepted that the Claimant's conduct could be explained by lack of experience or waning interest in the Unisef role by comparison to the THNO role.

174. Taking these matters together I consider that it is highly likely that Mr Coaker would have fairly reached the same conclusion had he fairly considered all relevant considerations. As such, even before making a reduction to the compensatory award in relation to contributory fault I would have concluded that a substantial reduction to the compensatory award, of around 75%, to reflect the strong likelihood that the Claimant would have been dismissed in any event. In addition, for the reasons set out above in relation to the notice

pay claim, had I found the dismissal was unfair, there would also have been a substantial reduction for contributory fault in relation to the basic and compensatory awards.

Conclusion

175. Accordingly the claims in relation to unfair dismissal and notice pay fail and are dismissed.

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Employment Judge, Watford
19 October 2020

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS

Notes

Public access to employment tribunal decisions Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.