

THE INDUSTRIAL TRIBUNALS

CASE REF: 10239/19IT

CLAIMANT: Carol Ann Warburton

RESPONDENT: Mac-Interiors (N.I.) Ltd.

JUDGMENT

The unanimous judgment of the tribunal is:-

- i. The claimant was unfairly dismissed by the respondent. The basic and compensatory awards are reduced by 30% to reflect contributory conduct by the claimant. The respondent shall pay the claimant £5,511.44 compensation for unfair dismissal.
- ii. The respondent in breach of contract failed to provide the claimant proper notice and shall pay the claimant £1337.96 in respect of her loss.

Constitution of Tribunal:

Employment Judge: Employment Judge Bell

Members: Mr W Mitchell
Mr I Atcheson

Appearances:

The claimant was self-represented.

The respondent was represented by Ms R Best, Barrister-at-Law instructed by A & L Goodbody Solicitors.

1. The claimant complained in her claim that the respondent had unfairly dismissed her by reason of gross misconduct and had in breach of contract failed to pay her notice pay.
2. That part of the claimant's claim relating to age discrimination was not registered and claimant notified it would be treated as not having been received (per Rule 3(6) Schedule 1, The Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005 (as amended)). An extension of the period of time given for the claimant to make an application for review of that decision was granted until 23 August 2019 but as confirmed at a Case Management Discussion on 11 October 2019 the claimant did not pursue same.

3. The respondent in its response resisted the claimant's claims and contended the claimant was fairly dismissed summarily by reason of gross misconduct for breach of expected standards of conduct and accordingly contractual and statutory rights to notice pay were extinguished.
4. The substantive hearing took place from 25 - 28 February 2020 and was listed to reconvene on 2 April 2020 to allow further evidence and questions to be put in relation to the statement provided by Michelle O'Boyle in the claimant's disciplinary investigation and for closing submissions to be made.
5. On 27 March 2020 **all** proceedings before the Tribunals were postponed under guidance issued by The President of the Industrial Tribunals and the Fair Employment Tribunal under Rule 8 of Schedule 1 of The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020 having regard to restrictions announced by the Prime Minister on 23 March 2020 in respect of the Covid-19 pandemic.
6. On 13 August 2020 a Preliminary Hearing (referred to as "Review Case Management Preliminary Hearing" under further Presidential guidance issued on 11 June 2020) took place to consider the rescheduling of this part heard case, to make appropriate Case Management Orders, and to make orders to manage risk in relation to the Covid-19 pandemic and to maintain the administration of justice in accordance with Presidential Guidance and Tribunal Guidance.
7. A rescheduled in person hearing was arranged and took place on 29 and 30 September 2020.

ISSUES

8. The following issues were before the tribunal for determination:-
 - (1) Was the claimant unfairly dismissed by the respondent?
 - (2) Did the respondent in breach of contract fail to give the claimant proper notice?
If so,
 - (3) What is the claimant's loss?

EVIDENCE

9. The tribunal considered the claim, response, three agreed bundles, additional loose documentation presented for hearing in February 2020, two supplementary bundles provided for the rescheduled hearing in September 2020 (the claimant's bundle contested on grounds of relevance), witness statements of Martin Daly (Group Finance Director), Ronan McGovern (Group Commercial Director), Gloria Taylor (HR Manager), Martina McArdle (Group Finance Manager), Katie Scott (Manager of People and Change Consulting at Grant Thornton) and Anne Phillipson (Director of People and Change Consulting at Grant Thornton) on behalf of the respondent, and that of the claimant, Michelle Murphy (respondent's former Finance Assistant) and

Michelle Boyle (respondent's former Finance Manager and claimant's line manager) on behalf of the claimant, together with their sworn oral testimony (documentation amounting to over 800 pages). The tribunal considered all the evidence to which it was referred attaching weight thereto as it considered appropriate according to its relevance to the issues for determination.

FINDINGS OF FACT RELEVANT TO LIABILITY

The tribunal finds the following facts proven on a balance of probabilities:

10. The respondent is an international fit out contractor providing specialist professional construction management services with a head office in Dublin, an office in Newry and satellite offices in Birmingham and London. The respondent's board of directors is composed of seven executive and one non-executive director of which Martin Daly, Ronan McGovern and Brendan Moley, (Group Managing Director – Interiors), were based in Newry. Mr Moley was frequently out of the office, travelling and visiting sites.
11. The claimant commenced employment for the respondent on or about 2 August 2016 in the respondent's Newry office as Receptionist/Purchase Ledger Officer and her contract of employment provided for her to work at any place where the respondent had clients or prospective clients or sites and to transfer or undertake other duties within competence and within reason when considered necessary or appropriate to meet fluctuations or priorities in work demand.
12. The claimant was highly motivated and precise in her work, she expected high standards from her colleagues and had a very direct communication style.
13. The Newry office was a busy and pressurised working environment.
14. The Respondent in its Employee Handbook 2017 set out under:-

- OFFICE PROTOCOLS

'in the interests of a harmonious, efficient and enjoyable working environment all colleagues are required to read, observe and where appropriate communicate the following office protocols:

- *Open door policy to be maintained unless on a confidential call.*
- *Answer telephone calls if possible by the third ring with a polite and approachable response and in accordance with the Mac brand guidelines.*
- *Inform reception of your absence from the office and confirm alternative contact arrangements that can be shared with colleagues and third parties.*
- ...
- *Respect the needs and be sensitive to the personalities of the people around you ensuring a collaborative, positive relationship is developed*

and maintained.

- *Discourage conflict and discord through effective and positive communications and supportive, diplomatic discussion.'*

- ANTI-HARASSMENT & BULLYING POLICY and HARASSMENT & BULLYING COMPLAINTS PROCEDURE

Informal and formal procedures for use where an employee raised a belief that s/he had suffered or was suffering any form of harassment or bullying.

- NOTICE PERIODS:

'The period you are entitled to receive from the Company is:

NI and GB

0-4 years' continuous service 4 weeks

...

The company reserves the right to waiver notice periods by mutual agreement.'

- DISCIPLINARY PROCEDURE

'to ensure fair treatment for those whose job performance is below requirements and those involved in breaches of discipline' and detailed four stages of the procedure to be followed progressing from an Oral Warning, to Written Warning, Final Written Warning and ultimately Dismissal, which 'may be entered into at any of the stages' depending on the seriousness of the case and which 'Except for instances of gross misconduct, dismissal will not be the first step.'

And in particular under:

- *' Stage 4 – Dismissal*

If the employee's conduct or performance, despite warning, is still unacceptable the situation will be reviewed with the employee by his/her manager. The decision to dismiss an employee must have the agreement of a director or MD...'

- *Gross Misconduct*

'In cases of gross misconduct, summary dismissal may be the only reasonable course of action for the Company. Examples of actions which are likely to be treated as gross misconduct include:-

...

4. *Failure to maintain professional standards of conduct with clients and with co-workers.*

...

When gross misconduct is suspected the employee will normally be suspended on full pay for up to five working days to allow for an appropriate investigation of the case. This investigation will be conducted by a nominated senior manager (normally neither directly responsible for the individual, nor necessary within the employees function) to assure impartiality. This investigation will include a meeting with the employee. Following the investigation, the employee will be asked to attend a meeting with the responsible senior manager. If the investigation has upheld the case of gross misconduct, the employee will be summarily dismissed without notice or pay in lieu. The decision will be confirmed to the employee in writing and this letter will also confirm details of the appeal procedure.'

- GRIEVANCE PROCEDURE

Informal Procedure and Formal Procedures to be followed for any matter arising relating to the employee's employment about which they were dissatisfied, including any disciplinary action taken by the company.

15. Gloria Taylor commenced employment with the respondent as HR manager in October 2016.
16. In October 2016 the claimant made a complaint to Mr Daly about how another staff member, Ms Loughran had spoken to her. Ms Loughran counterclaimed difficulties with the way the claimant spoke to her. Mr Daly and Mrs Taylor noted entrenched views on both sides and difficulties around understanding of their respective duties and responsibilities. Ms Loughran was unwilling to participate in facilitated discussion with the claimant but confirmed she had not intended to cause offence. The claimant was advised of the option to make a formal complaint but declined to do so. The matter was brought to a close with both parties being required to work collaboratively together.
17. The claimant's duties included management of the respondent's purchase ledger. The claimant dealt with Republic of Ireland (ROI) accounts and Laura McCarthy (Finance Assistant and niece of Paul McKenna, the respondent's CEO) dealt with UK accounts.
18. In Quarter 1 of 2017 to help during what was an exceptionally busy period the respondent took on a temporary agency worker to act as a purchase ledger assistant (Mr Morgan) on a short term temporary basis. The claimant was tasked with showing him processes to follow. The claimant in her role in the process of reconciling supplier statements would pick up on incorrectly posted invoices and relay this information for corrections to be undertaken. The claimant picked up on numerous invoices incorrectly posted by Mr Morgan. Mrs Boyle and Mr Daly were unhappy with the accuracy of Mr Morgan's work performance and when Mrs Boyle informed him that his temporary position was not going to be continued he told her

that he felt the claimant was intimidating. Mrs Boyle raised this with the claimant. The claimant expressed surprise and upset. Mrs Boyle told the claimant to lower her tone toward Mr Morgan.

19. Mrs Boyle reported to Mrs Taylor what Mr Morgan had said regarding the claimant. Mr Morgan shortly thereafter left his temporary employment with the respondent. No formal action was taken or record kept in relation to the matter. Later disciplinary investigation interview notes with Mrs Taylor (in 2019) record, '*John Morgan confirmed Carol's treatment picking on him, constant and public criticism, humiliating grinding down in front of others. Carol had taken work from him and there was a problem with something, which looked like it was John's fault, but as Carol had taken it off him, then it was not but the blame was then passed to him. John Morgan had spoken to Michelle Boyle but did not want anything done so just raised to make me aware of it. She possibly spoke to Carol but I am unable to confirm.*'
20. In July 2017 the respondent's Newry office moved to new premises. Laura McCarthy, Clare Farrugia, Michelle Murphy (Finance Assistants) together with Aaron Magee (on Finance placement), Charlotte Rooney (Purchase Ledger Administrator maternity cover) and Lorcan Keenan (otherwise referred to in documentation as McParland, Part-time Assistant and CEO's son) sat in the central part of the new open plan office. Mr Daly, Mrs Boyle, Mrs McArdle and Mrs Taylor had offices off to one side of the open area. At the other side there was a visitor waiting area and a reception area where the claimant was located. The claimant's desk was only a short distance from Mr Daly's office. The claimant, Mrs Murphy, Ms Rooney and Mr McParland reported to Mrs Boyle. Ms Farrugia and Ms McCarthy reported to Mrs McArdle. Mrs McArdle, Mrs Boyle and Mrs Taylor all reported to Mr Daly.
21. In or around April 2018, Mrs Taylor returned to work after approximately ten weeks absence following significant illness. Mrs Boyle and the claimant were both aware of the nature of Mrs Taylor's illness and of her wish that it be kept confidential. Mrs Taylor noted upon her return the existence of clear tensions between staff members within the team in the Newry office which she felt '*from day one, toxic, devoid of any friendliness*' and considered Mrs Boyle's behaviour toward her hostile and unwelcoming.
22. Following a comment posted thereafter by Mrs Taylor on a WhatsApp discussion group (of Newry staff) intended by her as light hearted was misinterpreted as HR implying criticism of the Finance team, Mrs Boyle shut down the WhatsApp group.
23. In or around May 2018 the respondent created a new assistant HR officer position. Mrs Boyle suggested the claimant to Mrs Taylor for the position but Mrs Taylor did not consider that she would be suitable. Ultimately Ms McCarthy was appointed to assist Mrs Taylor in HR on two days per week continuing with procurement and UK purchase ledger duties the remainder of the week. When Ms McCarthy's replacement in Finance subsequently left, she was however required to return to Finance duties.
24. Following misunderstanding and mistake surrounding the allocation of seats for the attendance of staff members at an Awards event on 14 June 2018 staff relations

notably deteriorated. Subsequent to an initial email from Mrs Taylor on 28 May 2018 the claimant had asked to be taken out of a draw for available seats on 30 May 2018 but later expressed by email on 1 June 2018 a wish to attend when Mrs Taylor issued a further invitation in the belief additional seats were a possibility. The email trail was as follows:

28 May 2018

- Mrs Taylor sent an email to Newry staff members, including the claimant, confirming that the respondent was a finalist in an Awards event on 14 June 2018, that she was reserving a few seats and asked that anyone who would like to join her on the night let her know as soon as possible for her to confirm arrangements.
- The claimant replied indicating her interest in attending but asked if she could check back with Mrs Taylor.
- Mrs Taylor responded to the claimant this was not a problem, but spaces were limited and she might have to resort to pulling names from a hat.
- Mrs Taylor emailed Mr Daly asking if event ticket number restrictions could be reviewed due to the number interested in attending.

30 May 2018

- At 9:58 Mrs Taylor emailed Newry staff members including the claimant and confirmed that as she had been only allocated four seats that she thought the fairest thing to do was to put names in a hat and would ask Mr Daly to draw them out later that day.
- At 15:12 Mrs Taylor emailed staff members (including the claimant) to confirm that she was about to ask Mr Daly to pick names out of the hat.
- At 15:13 the claimant responded by email to Mrs Taylor "*Take me out of it please*".
- At 15:14 Mrs Taylor replied to the claimant "*Ok thanks Carol*".
- At 15:24 Mrs Taylor sent an email to five staff members (not including the claimant) naming those to attend the awards event in addition to herself (i.e. Valerie McNeill, Martina McArdle and Laura McCarthy).

1 June 2018

- At 13:40 Mrs Taylor emailed Newry staff members including the claimant confirming approval had been given to book a table at the awards event and "*would be brilliant to have everyone go if you're still interested? Let me know and I will make the necessary arrangements.*"
- At 13:47 the claimant replied by email "*Yes, I would love to go.*"

25. Mrs Taylor was however unable to secure further seats from the event holder and was placed on a waiting list. Mrs Taylor next made an announcement in the open plan office that she had been unsuccessful in getting more tickets for the event and considered she had effectively communicated the updated position to relevant staff members, including the claimant. The claimant was however unaware of Mrs Taylor's announcement and believed Mrs Taylor had not replied to her email of 1 June 2018 expressing her wish to attend.
26. On Thursday 14 June 2018 the claimant was still unaware who was due to attend the Awards event. Mrs Boyle referred to the email which had been sent by Mr Taylor to her on 30 May and four other staff members naming those to attend the awards event and advised the claimant that she was not included. The claimant considered that Mrs Taylor had left her out of consideration for a seat and the email sent confirming attendees. When Mr Daly later asked the claimant about the event, the claimant remarked '*I was not invited*'. The claimant's remark was subsequently relayed to Mrs Taylor. Mrs Taylor considered the claimant's remark highly inaccurate.
27. On the morning of 15 June 2018 Michelle Murphy intervened to stop Ms McArdle from making negative comments in the office, '*making little*' of the claimant. In late July 2018 Mrs Boyle by email asked Ms Murphy to detail as best she could what had been said to assist the matter being closed off by Mr Daly, Ms Murphy in response set out:
- 'Martina came out and said something along the lines about how Carol had said she wasn't invited to the awards the previous evening and I knew by her tone that she wasn't impressed with what Carol had said and I knew was going to say more however I stopped her before going any further and said I understood where Carol was coming from as there had been no communication to say who was or wasn't going to the event as a draw was supposed to be done and Carol had booked a day off and hair appointment and that I was also not aware of who was going and had not received an email either, only that it didn't affect me as I then couldn't go...'*
28. On Monday 18 June 2018 Mrs Taylor approached the claimant at her desk and spoke to her regarding the comment made. Following this exchange Mrs Taylor emailed the claimant referring to the claimant's email of 30 May 2018, '*Ref below. Just a reminder that you in fact asked to be taken out of the hat pick*'. The claimant in return presented Mrs Taylor with a copy of the claimant's email of 1 June 2020 to Mrs Taylor which had expressed her renewed wish to attend. The claimant informed Mrs Boyle that Mrs Taylor had spoken to her inappropriately at her desk in reception about the matter. Mrs Boyle later reported the matter to Mr Daly.
29. On or about 3 July 2018 Mr Daly called a meeting to address apparent friction that had arisen between the claimant and Mrs Taylor. Mrs Boyle attended as note taker. Mrs Taylor came to the meeting under the impression that it was to discuss HR staffing issues and felt completely '*blindsided*' to discover it was about her and the claimant. Mrs Taylor commented in later disciplinary investigation interview notes '*it turns out that Michelle had conducted an investigation with Carol and Michelle Murphy. 5 pages of damning notes about me came in and with all the emails about the [Awards]*.' In the words of Mr Daly a '*robust*' exchange took place between Mrs Taylor and the claimant. Mrs Taylor was extremely annoyed by how she felt the

claimant was allowed by Mr Daly to speak to her in the course of the meeting. The claimant considered that Mrs Taylor had not acknowledged failures to read her emails and to respond to the claimant. Neither Mrs Taylor nor the claimant was prepared to admit any fault but eventually to conclude matters both agreed to 'move on'.

30. Mrs Taylor subsequently sought from Mrs Boyle a copy of her meeting notes.
31. Tensions and division in the office between staff members thereafter increased and two distinct cliques formed with the claimant, Ms Murphy and Mrs Boyle in one and Mrs Taylor, Ms McArdle, and Ms McCarthy in the other. The relationship in particular between Mrs Taylor and the claimant markedly deteriorated. In a list of day to day events and interactions which occurred thereafter behaviours were perceived by respective sides as constant nit-picking, aggression, alienation and isolation by the other. The atmosphere in the office became sour and hostile. Later disciplinary investigation interview notes with Mrs Taylor record:

'Following Carol's statement about not being invited there was conflict, gossiping and divisions within the team. The situation was fractious and I was formally diagnosed with depression and started treatment/ counselling. I will not say it is all down Carol. I thought I was coping with [illness] aftermath but probably vulnerable and still am. The mismanagement of the situation has taken me to my knees. I feel angry and believe Martin allowed it to happen.'

32. Mrs Boyle subsequently noticed Ms McArdle and Ms McCarthy on arrival to work walking past the claimant without speaking and then openly greeting other staff members. Mrs Boyle put to each of them that they had to offer pleasantries to everyone. Ms McArdle responded to Mrs Boyle that the claimant did not respect her as an accountant. Mrs Boyle appealed for Ms McArdle to help breakdown existing hostility and then raised with the claimant that Ms McArdle felt on occasions that the claimant had not shown respect and asked the claimant to make an extra effort. There was thereafter an improvement in interactions between Ms McArdle and the claimant, but not with Ms McCarthy.
33. In early July 2018 Mrs Taylor informed Mr Daly that she was considering resignation because of what she felt to be undermining behaviour from the claimant which she attributed to a failure by the claimant to move on from the Awards event. Mrs Taylor expressed annoyance to Mr Daly that the claimant's behaviour had not been challenged but did not wish any formal action to be taken.
34. Mr Daly, by his own admission was not one to enjoy confrontation and aware of increasing tensions apparent in the office between various staff members in July 2018 sought advice and met with an external HR advisor/ executive coach, at his own expense.

2 August 2018

35. Following repeated requests by Mrs Taylor, Mrs Boyle provided Mrs Taylor her meeting notes from the July meeting with the claimant. In an email to Mrs Taylor, copying in Mr Daly, Mrs Boyle set out that she trusted they would '*be fully confidential and not disclosed.... to enhance further negative vibes within the office*'.

36. Mrs Taylor replied (copying in Mr Daly):

‘Michelle – I think there have [been] quite enough ‘negative vibes’ fuelled within the office of late. The notes are for my personal use given I was cited from the professional perspective of HR Manager involved in meeting five weeks ago that they were presented at.

I may wish to follow up with you and Martin in a meeting at some point as I have some unresolved concerns.’

37. Mr Daly emailed Mrs Taylor and Mrs Boyle indicating if they wished he was available to meet the following morning and also that he intended to hold a full team meeting the next Thursday *‘with the aim of addressing ongoing issues and plotting a way forward as a team.’*

38. Mrs Taylor felt angry following her difficulty in obtaining from Mrs Boyle her meeting notes. Whilst Mrs Taylor was taking a copy of the notes some of the pages fell on the floor, the claimant picked them up and Mrs Taylor quickly recovered them from her. The claimant then approached Mrs Boyle upset by this encounter. When Mrs Boyle went to Mrs Taylor to discuss matters, Mrs Taylor questioned why Mrs Boyle had allowed issues to escalate and not reassured the claimant that she had not been excluded (from the Awards) and put to Mrs Boyle that she was failing as a manager by not curbing behaviours and appeared to be siding with the claimant.

39. Mrs Taylor later replied by email to Mr Daly and Mrs Boyle thanking Mr Daly and confirmed that Mrs Boyle had approached her earlier and they had had a full and frank conversation but that she was happy to meet again the next day.

40. Mrs Boyle later emailed Mr Daly setting out that she had later called in with Mrs Taylor to see if she had calmed down and that Mrs Taylor had expressed disappointment:

‘As we had not put Carol in check on the day of the meeting in the boardroom and she was a pure liar, she is still fuming about the whole issue and said I have completely fuelled the conflict in the office! Yes I am listening to the concerns of staff but to be perfectly honest fuelling.... This all initiated with one word applied in the office and taken out of context – hardly my petrol.

She went on to say I have failed as a colleague and I have failed as a line manager – all this coming from HR well as my line manager Martin I do believe if any constructive feedback should be thrown at me it should come from yourself not someone who is fuelled with emotion...

Tomorrow I will not be making myself available for a meeting surrounding this entire issue, because clearly Martin this issue is far from over.’

3 August 2018

41. Mr Daly sent an email to staff members notifying them of a team meeting to be held.

42. Mrs Boyle by email agreed with Mr Daly rather than him meet with Mrs Taylor that she would prefer to see what would come out of the forthcoming team meeting. Mrs Boyle set out that following Mr Daly's email that morning to the entire department the claimant had been in her office upset about how long and how far the situation had gone on- to the point of crying- and had requested time off, but would attend the meeting and:

'With the forms being photocopied yesterday her seeing her name on the paperwork and Gloria's snatching pages from her then your email this morning she is adding up it's all related ... I have said ... even I have got upset over it all and work out what time she needs both and let me know we will work around her next week. I have reassured her the meeting is for everyone and for you to put all issues to bed.'

9 August 2018

43. Mr Daly on held a team meeting of Newry staff members following which he emailed them attaching office protocols and recapped as follows:

- *Collective responsibility to ensure negative commentary and behaviours cease immediately*
- *Business standards of professionalism and behaviour as per Company handbook and office protocols are adhered to (see attached protocols doc for further reference)*
- *Performance measurement system will be used to reflect both positive and negative behaviours - not just what we do but how we do it*
- *Collective focus on delivering aims/ objectives outlined at the beginning of Service Charter on an internal basis i.e. HEART*
- *Constructive and positive dialogue to achieve the key ingredients of supportive teams – trust, respect, honesty, communication, cooperation, etc.*

Full details on team building event in Carlingford will be communicated once finalised.

As noted during the meeting I've no doubt if we focus our collective energies and attention in a positive and constructive manner we can deliver on our stated objectives.'

44. In or around August 2018 the office cleaner (mother of Ms McCarthy and sister of respondent's CEO) commented to the claimant that she needed to stop gossiping in the office, the claimant was upset by this and told Mrs Boyle that she was considering resigning. Mrs Boyle made Mr Daly aware of the incident.

45. Mrs Boyle was reliant in her role upon timely information being provided to her by HR but considered this was not being satisfactorily met and that Mrs Taylor was in clear need of a HR assistant. When Mrs Boyle raised issues she considered these

to be received by Mrs Taylor as her, '*highlighting problems*' and their working relationship deteriorated. Mrs Boyle made Mr Daly aware of issues she was experiencing and told him in September 2018 that she could not '*put up*' with Mrs Taylor's behaviour any longer.

46. In or around early September 2018 Mrs Taylor put to Mr Daly there were no incentives for change in the team and in addition to training there needed to be, '*reprisals*', in relation to conduct and staff all held accountable for their conduct.
47. Mr Daly cancelled the team building event planned to take place on 14 September 2018, concerned it could exacerbate tensions in the office.
48. On 19 September 2018 Mrs Boyle was upset after what she felt a '*very passive aggressive*' encounter with Mrs Taylor. In an email sent that morning to Mr Daly, Mrs Boyle raised her disappointment at the approach taken over a day's holiday previously verbally agreed to be given to the claimant and Mrs Taylor's behaviour by that morning, set out:

'I have had a roar of "Good Morning Michelle" shouted into my office – I am sure the entire office can witness this so I can only say is this all about point scoring because it is the first day in over 7 – 8 weeks this has been done!

*As I am even writing this email the tears are coming down my face as I am honestly feeling targeted here because I stood up for a member of staff and it is now at every opportunity a way to get at **me**, I am in Mac every morning to do my job not play games, you are not in today but to be honest Martin I cannot work her[e] today I am in no state for this toxic atmosphere.'*

Mrs Boyle indicated her distress was such that she was not fit to remain in the office and in Mr Daly's absence would seek Mr Moley's approval to go home and work from there. Mrs Boyle wrote '*this toxic atmosphere has to stop*' and then referred to contentious information and remarks made at a boardroom meeting two weeks previously whereby she was called unprofessional and disrespectful. Mrs Boyle indicated her upset at Mr Daly having left her '*on Friday to take Gloria out for a cup of tea*' whilst she had had no response at all from him on this matter. Mrs Boyle then approached Mr Moley and spoke to him about ongoing hostility in Finance and HR.

49. Mr Daly met Mrs Boyle on 20 September 2018 to discuss her letter and agreed that she take the next day off.
50. On 21 September 2018 Mrs Boyle emailed Mr Daly:

'I agreed with you yesterday I would take today off to chill due to my emotional state in work this last 2 days. I have let the events since June get the better of me.

As I said yesterday I don't want to come across weak and it's not the workload which is the cause of my upset so I will be online all day working from home and back in the office on Monday.'

51. Mr Daly responded to Mrs Boyle confirming that her health and welfare were

paramount and set out:

'You indicated at our meeting yesterday that you felt bullied- to that effect, I've attached the Company Handbook re bullying & harassment policy.

Please read same and see what next steps you would like to take.'

52. On Mrs Boyle's return back to the office, Mrs Taylor had moved to an upstairs office.
53. In late September 2018 Mr Daly met his executive coach for a second time to seek advice on increasing tensions in the office.
54. On 26 September 2018 Mr Daly announced at a staff meeting new measures to be implemented, he recapped these in an email later that day to include:
 1. *Communications workshop scheduled for Thursday 4 October at 1 PM*
 2. *Open door policy to operate in all offices, unless occupier on confidential business call*
 3. *Service charter doc to be signed by all staff and placed on display on ground floor*
 4. *Peer review:*
 - *All staff members to take part in peer review process whereby each colleague is assessed on 10 core values listed on above doc (i.e. HEART acronym)*
 - *Time period = on-going until early December*
 - *Scored/assessed in similar manner to the existing performance measurement objectives i.e. 1-5 scoring system*
 - *Abo to be included as 6th performance objective as part of overall performance measurement*
 - *Assessments to be passed to me for overall review on confidential basis.*
 - *M Daly assessments to be passed to G Taylor*
 - *Minimum average score of 3 required to avoid adverse impact on any potential year-end bonus award.'*
55. Thereafter staff members signed a mission statement confirming their aim to provide a high quality professional service to support the optimal functioning of all departments and the respondent group in accordance with HEART values (i.e. honest and helpful; engaging and encouraging; accountable and approachable; responsive and respectful; team focused and trust).

56. On 4 October 2018 a communication workshop facilitated by Ms Phillipson of Grant Thornton took place for Newry HR & Finance staff aimed at creating workplace harmony and reinforcing the importance of positive communication. In the course of the event the claimant commented upon a personal example given by the guest speaker. Mrs Taylor considered the claimant's comment inappropriate. The matter was not raised with the claimant.
57. In October 2018 Ms McCarthy told Mr Daly informally about problems she was having working alongside the claimant but did not want any action taken. Ms McCarthy later informed Mr Daly that the claimant had raised an issue about the late delivery of a company birthday card due for the claimant's husband in September 2018, for which Ms McCarthy had been responsible. Mr Daly considered this to be 'petty' behaviour by the claimant. These matters were not put to the claimant.
58. On 26 November 2018 Mr Daly forwarded to Newry staff peer review documentation for completion and return to him by 4 December 2018.
59. By email on 5 December 2018 the claimant raised that she was unhappy with use of the Performance Objective – Central Services Charter towards assessment of potential year-end bonuses and as a gauge to obtain colleagues' opinions on performance which she considered was the role of a manager, raising therein:
- *Questionnaire should be impartial, logical and rational. In view of the unfortunate level of hostility and atmosphere over the past several months I have to query the actual objective of the performance objective? I agree with you that there has been an unacceptable level of hostility in the office and I've received informal feedback from a number of staff members on the same – as noted at the meeting on 26 September, the assessment period was to allow people to re-focus on what we aspire to be i.e. HEART, in an attempt to draw a line under what has gone on before and allow people to rebuild damaged relationships*
 - *I feel this is more damaging, divisive and destructive rather than positive and helpful and is open to inaccuracy and bias based that assumptions will be made by managers other than the one's relevant manager.*
- Noted – as I also said at the meeting, it would become quite apparent, upon review, if people decided to use this exercise contrary to the intentions previously outlined'***
60. Mr Daly considered peer review results to show the claimant not to have sought to develop positive relationships with her colleagues. Formal feedback was not however provided to staff and after deliberation and seeking external HR advice Mr Daly decided not to use the results toward assessment of Christmas bonuses, instead giving everyone a bonus and a personal note in the hope of enhancing staff morale and building a positive attitude for the New Year.

61. At the start of the New Year the claimant undertook for the respondent a three week first aid training course.
62. In the last week of January 2019 Ms Rooney (who was providing maternity absence cover) raised concern with Mrs Boyle that she felt the claimant was checking her work and talking down to her, but did not want to *'make a big deal of it'*. Mrs Boyle put matters raised by Ms Rooney to the claimant, the claimant responded that she did not have the time to be checking Ms Rooney's work and in turn raised concern that urgent payments had not been getting done and when she took phone calls raising this she was only then relaying information and stressing the urgency. In response Mrs Boyle set out and advised both the claimant and Ms Rooney clearly upon the division of responsibility between them for specific purchase ledger tasks, stressed the need for both to be appreciative of help and having each other to assist and to work together to ensure that all requests were followed through. Mrs Boyle offered to meet again but Ms Rooney indicated there would be no need if matters improved.
63. By email on 2 February 2019 to the claimant and Ms Rooney, Mrs Boyle in reference to their meetings over the past week confirmed her clarification of their respective responsibilities and asked that in the approach to their external revenue audit in mid-February:
- 'please aim to improve our working relationships and I have no doubt the ledgers and our opinions of each other will improve as well.*
- Thanks for your support on this matter and if any issues with the above please feel free to speak to me at any time.*
- Please note I would prefer the content of this email to remain PRIVATE & CONFIDENTIAL and on speaking to you both this week that it was your wishes also, therefore I confirm that this will go no further than the three of us.'*
64. Mrs Boyle reviewed matters with Ms Rooney a week later and understood from Ms Rooney's feedback that matters with the claimant were fully resolved and both *'getting on great'*.
65. Mrs Boyle at no point when she spoke with the claimant regarding how her interactions with Mr Morgan (in early 2017), Ms McArdle (in Summer 2018) and Ms Rooney (in January 2019) had been perceived negatively by them warned the claimant that failure to adjust her behaviour/ further issue with a staff member would result in formal action as a next step. Mrs Boyle did not consider the claimant's behaviour problematic, just different. The claimant at no stage considered the matters raised to be other than minor differences in perceptions and did not consider that her job could be in potentially jeopardy if she failed to change her behaviour.
66. In February 2019 Laura McCarthy formally moved from Finance to HR.

Training workshop 8 February 2019

67. On Friday 8 February 2019 a team training event facilitated by Sophie Irwin and Ms Phillipson both of Grant Thornton took place at a local hotel attended by ten Newry Finance & HR staff members. The event appeared to have gone well. In a discussion toward the close of the event Mrs Boyle commented that they needed to inject an element of fun back into the team, Mrs Taylor agreed adding they should have more *love to the mix*, whereupon the claimant made a noise. Mrs Boyle later recorded in her note of events (which she provided to Mr Daly and Ms Irwin):

'we were discuss[ing] words we felt should improve our team....Gloria added...we should have more love to the mix. At this point I heard a sound coming from Carol's direction at this point I was unsure of the sound... but I recall saying to myself "OMG Carol did you really make that noise" the room was [quiet] as we were all listening to Gloria and I was at that point looking at Gloria therefore I did not see any expression or motion from Carol. It was obvious to me that Gloria felt it was directed at her and I sensed this (for anyone who has been privy to the deterioration of the relationship between Carol and Gloria this past few months) as Gloria responded with the comment "well this may not work [for] everyone" tone changed at this point.'

68. When they broke for lunch Mrs Boyle suggested that Mrs Taylor move up the lunch table to take a seat available opposite the claimant but then remarked, *'unless that makes you feel uncomfortable'*. Mrs Taylor subsequently received a telephone call which necessitated her immediate return to the office.
69. Whilst Mrs Boyle and Ms McArdle were later waiting for Mr Daly to return together to the office, Mrs Boyle asked Mrs McArdle what she had thought about the training. Ms McArdle responded with a *'confused face'*. In her later notes Mrs Boyle recorded that she replied that *'it was good and at least things are coming to the surface'*, and in disciplinary investigation interview notes that *'I knew straightaway she was referring to Carol sound and I asked her what did she think. She said she seen Carol snigger and roll her eyes I said to her well if that is the case it was not good enough especially surrounding the reason we were there.'*
70. On bringing Mrs Taylor's lunch back to the office for her Mrs Boyle expressed concern that her comment had had something to do with Mrs Taylor leaving. Mrs Taylor confirmed it had not and asked what Mrs Boyle had thought of the event. Mrs Taylor then put to Mrs Boyle that the claimant had disrespected her by laughing when she was talking and had been noticed by everyone in the room including the speakers. Mrs Taylor informed Mrs Boyle she had not wanted to sit next to the claimant at lunch and the claimant's body language toward her had been aggressive. Mrs Boyle (as set out in her later notes) agreed *'on the untimely action made by Carol when Gloria was talking'* but stated she was sure it was not intended in a negative manner and offered to ask the claimant to come and explain if it would help and claimant prepared to do so. Mrs Taylor agreed.
71. Mrs Boyle put to the claimant what Mrs Taylor thought had happened, the claimant immediately left Mrs Boyle's office returning with her handbag and showed Mrs Boyle medication that she was on, told Mrs Boyle she had a bad cough and was no way laughing at Mrs Taylor. Mrs Boyle suggested the claimant explain this

to Mrs Taylor but the claimant became upset and went directly instead to speak with Mr Daly whereupon she relayed to him what had been said, denied having laughed and indicated that she was suffering from a cough. The claimant was upset and allowed to go home early.

72. Mr Daly approached Mrs Taylor. Mrs Taylor was annoyed that Mrs Boyle had escalated the matter by approaching the claimant but adamant that she had been laughed at and that Mrs Boyle had expressed disgust and annoyance at the claimant's behaviour before going to speak with the claimant.
73. On return to work on Monday 11 February 2019 the claimant requested from Mrs Boyle a copy of her personnel file. Mrs Boyle relayed the claimant's request to Mr Daly.
74. The claimant had a clear disciplinary record.
75. On 11 February 2019 Mrs Taylor verbally confirmed to Mr Daly that she wanted her complaint about the claimant's behaviour addressed. Mrs Taylor as per her evidence put to Mr Daly that she could not endure the claimant's behaviour any longer and did not wish to work with her any further.
76. On 13 February 2019 Mr Daly emailed the claimant requesting further to their conversation on Friday afternoon that she attend at a meeting on 15 February 2019 with him and Ms Irwin and that *'it would be helpful to further discuss your perception and understanding of the issue as reported so that I can fully understand the situation.'*
77. The claimant by email of 14 February 2019 requested the exact nature of the complaint made. Mr Daly replied that *'a member of staff raised a concern with me that I would like to investigate further... that Gloria felt your action/response to her suggestions and input at the team development session left her feeling embarrassed and undermined- in particular she believes that you laughed at her suggestion towards the end of the meeting'*.
78. On 15 February 2019 Mr Daly and Ms Irwin met staff for an informal fact finding process around Mrs Taylor's complaint. At the meeting attended by the claimant accompanied by Mrs Boyle, Mr Daly confirmed the meeting was not disciplinary but purely fact-finding to establish what had taken place and outlined Mrs Taylor had raised a complaint that she felt undermined/embarrassed/humiliated during the team training and there were several issues to be discussed. Ms Irwin confirmed that she would assist with the process. Mr Daly clarified that the complaint centred around one issue that one particular comment was made and that Mrs Taylor felt that the claimant was making expressions or eye rolling when she spoke or making facial expressions in the training meeting. The claimant referred to having been stunned and astounded on first hearing the allegation, denied sniggering or laughing, and asked Mrs Boyle and Mr Daly if they had heard her do so, both replied *no*. Ms Irwin asked the claimant if she remembered Mrs Taylor saying something like *'Love yourself'* and what her reaction had been. The claimant's reply recorded in meeting notes was - *'I wasn't sniggering or laughing ... I cleared my throat'*. Ms Irwin then put that she *'was at the training also and had heard something that could have been perceived as laughter, that she did look at that point'* and

asked the claimant *'if she would tend to be an expressive person as she had noticed that in that meeting [the claimant] tended to be quite expressive and might that be what was happening on the day'* also that she *'was interested in [the claimant's] and [Mrs Taylor's] relationship as that might explain possible banter and that she had asked Anne [Phillipson] if [the claimant] and [Mrs Taylor] were friends on the way home as she had wondered if this was an 'in joke''*.

79. On Monday 18 February 2019 the claimant went home early from work unwell.
80. Ms Rooney tendered her resignation prior to the end of the maternity absence she was covering. On 18 February 2019 Mrs Taylor emailed Ms Rooney to formally acknowledge her resignation and offered to conduct an exit interview with her on 20 February 2019 (her last day).
81. The claimant remained off work on the 19 February 2019.
82. On or about 20 February 2019 the claimant submitted a written formal grievance complaint against Mrs Taylor (dated 19 February 2019) to Mrs Boyle regarding allegations made against the claimant arising out of the training event on 8 February 2019, alleging harassment and bullying of the claimant by Mrs Taylor over a sustained period of time. The claimant raised therein concerns about the impartiality of the informal fact finding process due to the involvement of Ms Irwin who appeared to have taken part in a discussion regarding the claimant on 8 February 2019 after the team meeting before entering the restaurant [at lunchtime], that Mr Daly was aware of this, and that Ms Irwin should not have attended the informal meeting and should be replaced.
83. On the morning of 20 February 2019 Mr Daly emailed Mrs Taylor seeking an update on her proposed meeting with Ms Rooney and confirmed Ms Irwin was due in that and the next morning. Mrs Taylor replied that she was just about to conduct it.
84. By email on 20 February 2019 Mr Daly acknowledged the claimant's letter delivered to Ms Irwin by Mrs Boyle and confirmed they were still conducting interviews as part of the initial investigation discussed the previous week and would respond with a course of action in the coming days. Mr Daly sought to clarify with the claimant some of her comments.
85. After conducting the exit interview with Ms Rooney, Mrs Taylor emailed Mr Daly setting out:

'she has indicated that the difficulties with Carol were a factor in her decision to leave. She actively went after a new job and there appears to have been a tipping point that brought her to this decision. Her new employers were an existing contact who she decided to contact about possible opportunities. She states this would not have happened had she not been experiencing reported problems with Carol. Aside from this one issue she has enjoyed her time with Mac and spoke highly of the business and the line manager support she received'.
86. By email dated 21 February 2019 the claimant reiterated to Mr Daly her reasons for not wishing to meet Ms Irwin again setting out *'I feel the meeting last Friday was not*

impartial based on statements made during the course of the meeting.'

The claimant subsequently agreed to a meeting on receipt of confirmation that Ms Irwin's attendance would be just to take notes and meeting sought to clarify one particular paragraph.

22 February 2019

87. At 10:35 on Mr Daly confirmed by email to the claimant that independent HR consultant Simon Carson would hear her grievance. Mr Carson later that day emailed the claimant inviting her to attend a grievance meeting on 27 February 2019.
88. That afternoon the claimant accompanied by Mrs Boyle met with Mr Daly and Ms Irwin. Mr Daly asked why the claimant thought a discussion had taken place. The claimant referred to the comment recorded in Mrs Boyle's notes (of 8 February 2019) that her '*laughing*' was '*noticed by everyone in the room*' which she considered indicated there was a general consensus and that it was discussed and deemed that she had laughed, she believed this was after the team meeting before the restaurant and continued into the restaurant from Mrs Taylor's remarks about her '*aggressiveness*'. The claimant referred to Ms Irwin's comments at the meeting on 15 February 2019 that she *had thought the claimant and Mrs Taylor were friends* and that was *why the claimant laughed and Ms Irwin mentioned it to Anne Phillipson*. Mr Daly interjected that was discussed by Ms Phillipson and Ms Irwin in the car on the way home. The claimant replied that she was not aware of that and had understood it to have been discussed just after the team meeting, the comment made having implied a discussion. The claimant reiterated that she felt Ms Irwin could not be impartial because she was part of conducting the seminar and should be replaced. The claimant put that she had been found guilty before the fact-finding mission had even started given Ms Irwin's two statements, *that she saw the claimant laughing* and that the claimant *was very expressive*. The claimant queried whether she was under observation and singled out, no response was made and the meeting ended.
89. Mr Daly's informal fact finding meetings ended that day. Mr Daly considered that the claimant's behaviour was impacting detrimentally upon a number of staff members, had led Ms Rooney to resign and to Mrs Taylor considering resigning. Mr Daly reported his findings to Mr McKenna. Mr McGovern was also made aware of matters.
90. On 25 February 2019 Mr McKenna called the claimant to the boardroom. Mr McGovern was also present. Mr McKenna informed the claimant of her immediate suspension pending a formal investigation into allegations against her.
91. Shortly thereafter Mr McKenna called Newry staff members together and made an announcement regarding the claimant's departure. We find more probable as contended by the respondent, as contained in the Claimant's own witness statement and as per the evidence of Mrs Boyle that Mr McKenna stated that the claimant had been *suspended* (rather than *sacked* - as per the evidence of Mrs Murphy and later submitted by the claimant) and if anyone had complaints or felt the claimant had behaved inappropriately toward them, to go to Mrs Taylor. The

announcement caused considerable upset and shock amongst staff members.

92. Mrs Boyle approached Mr Daly and expressed surprise at the claimant's suspension. We find credible Mrs Boyle's evidence that Mr Daly responded '*I know where your priorities lie, get on board*'.
93. Mr McKenna thereafter wrote to the claimant and confirmed her suspension. The full allegations were set out as follows:

'We commenced an informal fact-finding process on 15 February 2019 to fully understand what had taken place in light of the complaints which had been received from Gloria Taylor (HR manager). She alleged that you had, inter alia, laughed at her comment during training in what was perceived by her as an inappropriate manner and was also of the opinion that you had been rolling your eyes and making faces when she spoke during training.

We completed our formal investigations on Friday, 22 February 2019 and having reviewed information that came to light during this process, came to the conclusion that a number of separate serious allegations had been made by individuals regarding your conduct in the workplace.

Due to the serious nature of what was alleged, we believe this warrants further investigation under our disciplinary procedure and a precautionary suspension to allow that investigation to take place.

For that reason we have now suspended our fact-finding informal process and commenced a formal process.

The following allegations are now being investigated under our disciplinary policy by an independent panel:

- *That one member of staff cited your behaviour towards them as the primary reason for deciding to leave the business*
- *That two members of staff felt that you regularly undermined them*
- *That one member of staff has felt your treatment of them and behaviour towards them has contributed to ill health issues*
- *That on the basis of the informal fact-finding investigation, at least three employees have indicated that they felt you reacted inappropriately towards Gloria Taylor during the aforementioned training*
- *That one member of staff has said they have contemplated resignation on the basis of your treatment of them.*

Due to the serious nature of the issues which have come to our attention, and the need for independent and impartial investigations to take place, I informed you that you were being suspended while investigations were completed.

...

We are treating this matter in the strictest confidence and we ask that you do the same.

Discussions should only involve me and your chosen companion to make sure the process is fair and everyone involved is treated with respect.

Please find enclosed a copy of the disciplinary policy which also contains details of your right to accompaniment.'

Formal Investigation

94. The respondent instructed external HR advisors Grant Thornton to commence a formal investigation. Orla Carolan and Katie Scott conducted investigatory interviews with twenty four staff members over 28 February 2019 and 4 March 2019. In each interview Ms Carolan asked the interview questions and Ms Scott took notes on her laptop from which she later compiled interview notes into a set format, reviewed them with Ms Carolan and then forwarded them to interviewees for their review, comment and/or changes. Requested amendments and additions were incorporated and final versions of interview notes were forwarded for approval as an accurate summary of each interviewee's evidence. In relation to Mrs Boyle's interview notes, three versions were reviewed and amended before she ultimately approved by email on 6 March 2019 the last version sent to her, as accurate, and in respect of which she commented, '*A few grammar items but to be honest the content is spot on...*'.
95. Negative perceptions of the claimant's behaviour and specifically in relation to the training event were recorded in investigatory interview statements obtained from Ms McCarthy, Mr Magee, Lorcan Keenan, Ms Rooney, Ms McArdle and Mrs Taylor (specifically referred to by the respondent at hearing), including as follows:

Ms McCarthy

'Carol says things in a manner (forceful way) it is the way it is said not what she says.'

'Her behaviour is like a chipping block, small things because more annoying'

'The whole day – Carol had her back to me but I could see Carol trying to make eye contact to Michelle every time Gloria and even Anne spoke...

Gloria made a comment on what was learnt from day. They all needed to be more understanding that everyone is busy and under pressure. Carol laughed/ scoffed/ sniggered – I heard Carol...

'It seemed directed at Gloria. She did start to cough after, but it was clear what had happened.'

Mr Magee

'I was not aware people were considering resigning. My relationship with Carol has been good, she has been a nice person with me. At times I have witnessed she has not been as nice to other people. She is not as nice to the girls. Can be quite sharp with her answers.'

'Yes – was not completely sure if a cough or a snigger. I am on the fence with it. If it was a snigger it is not good as it was a team event.'

Lorcan Keenan

'Yes I have observed a few occasions. Answering the phones [o]n one occasion, Laura's line was ringing she stated 'are you going to answer that' the manner was abrupt and rude.

There was one direct instance she didn't treat me fairly. She is in charge of the petty cash which pays me. One time I was underpaid and went in on the next week and mentioned being underpaid. Carol's response was are you sure nobody else would have lifted it. (Paul McKenna is my father). I do not like confrontation but it wasn't resolved, so I spoke to Martin and that was the end of it.

She would count money (my wages) after that at my desk in front of colleagues which I felt was undermining. After a while it stopped so perhaps someone spoke to her. I didn't feel I could say to her about it being 'Paul's son' and I tried to avoid office politics.

I noticed her treatment toward Charlotte, a few occasions when she asked for something, she would then repeatedly asked her several times in 5 minutes even though Charlotte had asked for some time to get what she had asked for.'

Ms Rooney

'The way Carol spoke to me was in an abrupt way. At the start I could cope as it is her way. The way she spoke to me compared to everyone else it was apparent it was zoned in on me, it got a bit intense.

Her tone of voice very sharp, but not as much to other people...

I do like Mac, one negative thing is Carol situation ...

I wanted to be a quantity surveyor ... I would have stayed at Mac to be a quantity surveyor ... I decided to try finance as may be a link into a quantity surveying job I would have stuck it out if the atmosphere was better to the end of the maternity – the issues were an nudge to leave.'

'She seemed more cordial to other people, seemed more professional with others. She made me feel uncomfortable. It has not all been bad, last few weeks have been all good. But I would be anxious to approach her.'

'her way of speaking down, it makes people feel they can do no right. She is nice to some not to all, she is not a bad person.'

Ms McArdle

'I interact on a daily basis with Carol ... Carol can be abrupt and rude in her approach to you and make you fe[e]l that you should do things her way'

'I was looking at Gloria as she spoke which resulted in Carol being in my direct line of sight. She had previously been making faces and eye rolling and I know that once Gloria said spread the love she laughed. She quickly realised what she had done and had tried to cover it up with a cough, she then coughed another couple of times before the end of the event to make it appear she had coughed but there hasn't been anything prior to the laugh.'

Mrs Taylor

'Right until May/June 2018 there were no issues, at best professional sometimes abrupt and sharp. I was aware of bullying complaints about Carol...'

'.... John Morgan confirmed he left because of Carol's treatment picking on him, constant and public criticism, humiliating grinding down in front of others.'

'There was immediately a divide in the room. I was behind Carol but could see her side profile. Carol was attempting to make eye contact and trying to engage Michelle Boyle. However, the day went really well and I made an observation about the pressure cooker like environment that had been described by the team that day and how it demonstrated how resilient as a team we are. I noted that a lot of our time is directed to customers and not a lot to ourselves and suggested that we become a little more selfish in this respect. At that point Carol sniggered in a clearly condescending and ... sarcastic manner. I was again embarrassed in front of colleagues and third party facilitators.'

'I feel that if this ever gets resolved there is a serious need for management upscaling. I feel the situation has gone beyond remediation and that Carol's behaviours are entrenched and accountability never accepted by her or Michelle. Carol refuses to accept there [are] any issues, and does not acknowledge the impact of her behaviours. Carol has triggered a serious health issue that has needed medical intervention. She has systematically eroded all trust and chance of an honest and trusting relationship. She has lied on several occasions and that has never been managed.'

If Carol returns I would need to leave. I do not wish to work with Carol any further. I believe Carol is hell bent on tribunal case and with an exemplary 30 year record under my belt I do not intend to allow my career to be sullied in that way... I am not prepared to go to tribunal – I will not stay and allow that to happen.'

96. Mr Daly when interviewed was asked if the claimant had received feedback about her communication style, he responded that she tended not to receive feedback well and not done so in relation to tone and manner in connection with Ms Loughran (in 2017) then stating *'this is the construction industry so this is how it is at times'*. Mr Daly confirmed he had not witnessed inappropriate behaviour by the claimant towards Mrs Taylor at the recent training event, also:

'I am aware of previous friction and ongoing friction between them with each party tending to blame the other. Bar the meeting I tend to keep a close ear out on the direct verbal interaction between them and had not heard of anything untoward since then- ie last July ... apart from an incident where Gloria felt that Carol and...Michelle Boyle, were discussing Gloria behind her back- a claim which both disputed.

Following the ... Awards I received a tart response about the invitation mix up-in my opinion it was a miscommunication about who was invited and should have been left at that.'

'I thought prior to what I now know that she conducted herself professionally most of the time. I was aware she could be sharp and abrupt. My experience/tolerance of sharp and abrupt might be different to other people...'

97. The claimant was not interviewed as part of the investigatory process conducted by Ms Carolan and Ms Scott.
98. An investigator's summary report was compiled based upon final approved interview notes. In summary, findings and recommendations therein included:

- **Allegation 1:** *That Charlotte Rooney cited the claimant's treatment of her as being a main consideration in her decision to leave the business.*

Findings: It was not a main consideration but part of a decision to look for other work and she may have stayed but for the environment in the office. Mrs Boyle had attempted to solve the issue of Ms Rooney feeling the claimant 'nit-picked' her work and zoned in on her, but the situation did not appear to have been fully rectified.

Recommendation: The claimant be given opportunity to respond to the fact her behaviour had been reported as having a negative impact on Charlotte Rooney's experience of work life in Mac.

- **Allegation 2:** *That Charlotte Rooney and Laura McCarthy felt that Carol had regularly undermined them in the course of their work.*

Findings: Statements by a number of employees suggested the claimant's interactions and behaviour had the potential to cause upset, anxiety and a difficult working environment with some staff refusing to call into the office. When issues were brought to Mrs Boyle she on occasion suggested a need for change in the approach of the individual involved. No evidence was heard

of suggestion having been made to the claimant of a need to change her approach.

Recommendation: The claimant be given opportunity to respond to:-

- The fact that four members of staff felt undermined by her actions towards them and a number of staff had commented on her general demeanour to include reports she could be ‘sharp’ and ‘curt’, ‘aggressive’, ‘extremely sharp’, ‘not a people person’, ‘unprofessional’, ‘giving short answers’ and was ‘a bit rude’.
- Allegations that she had ‘shouted’ at staff when the phones were ringing and the perception that she felt she could speak to people ‘in any way she sees fit’.
- **Allegation 4:** *That Martina McArdle, Laura McCarthy and Gloria Taylor believe the claimant laughed at a comment Gloria Taylor made during training.*

Findings: A number of staff were convinced the claimant had laughed at Mrs Taylor’s comment. That Mrs Boyle’s comment to Mrs Taylor at the lunch table ‘*unless that makes you uncomfortable*’ suggested some understanding of something having affected Mrs Taylor in the training. That the relationship between the claimant and Mrs Taylor had broken down and hence if laughter or sniggering did take place it was most likely not a friendly supportive laugh.

Recommendation: The claimant be given an opportunity to respond directly to the points: –

- 1) That 3 members of staff believe she laughed during the training event.
 - 2) That the claimant’s manager sought to understand from another manager what they saw.
 - 3) That the claimant’s manager had a concern about asking Mrs Taylor to sit beside the claimant after the training.
 - 4) That the relationship appears to have already broken down prior to the training event and other employees seem aware of same (to include the claimant’s manager), on the basis other employees had understood this to be the claimant’s reaction to something she disagreed with, which appears to be commonplace in Mrs Taylor’s and the claimant’s relationship.
- **Allegation 5:** *That Mrs Taylor had stated she had considered resigning on one occasion due to the claimant’s treatment of her.*

Findings: It was a real possibility that Mrs Taylor may have considered resignation as she reported feeling ‘humiliated’ during training event. It was also possible that the general environment and relationship with Mrs Boyle may also have been a contributory factor.

Recommendation: the claimant be given opportunity to respond to:-

- The fact her actions prior to and during the training event may have impacted Mrs Taylor's experience of work to the point that she considered leaving the business.
- Whether her actions in the workplace as noted by a number of staff, may have contributed to a work environment that was difficult for Mrs Taylor to work in.

In conclusion it was recommended that a separate panel consider whether a disciplinary hearing was required in order to give the claimant an opportunity to make a full response to the summarised allegations.

99. On 27 February 2019 the claimant accompanied by Mrs Boyle attended a grievance meeting with Mr Carson which lasted 2 ½ hours.
100. On 1 March 2019 Mr Carson interviewed Ms McCarthy, Mr Daly, Ms Murphy, Stephen Pentony, Mrs Boyle and Mrs Taylor.
101. By email of 4 March 2019 Mr Daly set out in an email to Mr Carson further to their discussion '*context into steps taken to try and address on-going issues within the team*', referring therein to '*several meetings with various people (predominantly Michelle, Gloria and Carol)*' two full team meetings, planned team – bonding day cancelled due to ongoing friction between various staff members, external professional advice sought in late September from which the peer/360° review originated, communications workshop in October and then engagement with Grant Thornton at the beginning of December when it became apparent significant issues still existed, leading to a first scheduled session on 8 February 2019 from which the investigation and grievance process had stemmed.
102. On 4 March 2019 Mr Carson interviewed Ms McArdle.
103. In his grievance report of 7 March 2019 Mr Carson confirmed his decision not to uphold the claimant's grievance setting out therein:

'My finding is that no harassment or bullying occurred. Many of the items related appear to involve normal everyday work activities. There appears to be a high level of suspicion and misunderstanding. Sensitivities seem extremely high to a point where offence is caused or taken and a difficult problem then exists. Whilst I can see how genuinely upset both individuals are I believe this is in essence a major falling out between two individuals to the point where they have difficulty working together. This is having a deep effect not only on those individuals but is [no] doubt affecting their colleagues and perhaps the wider company. Both Carol and Gloria feel that they are under constant scrutiny and aggression from the other. It is usually possible for employees who do not see eye to eye to maintain a professional relationship but the evidence of the past 9 months calls into some doubt whether this will be possible. The company has made huge efforts to try to facilitate change and the resolution but unless employees change their behaviour meaningful change will not occur.'

104. On 7 March 2019 Mr Daly emailed the claimant attaching a disciplinary hearing invitation letter from Mr McKenna required the claimant to attend a disciplinary hearing on 11 March 2019 in relation to *an allegation of inappropriate behaviour at a training event on 8 February 2019 and a number of other serious concerns that were reported during the course of their informal investigations*. Mr McKenna referred to as enclosed the Disciplinary Policy, Disciplinary Investigatory Report and Investigation Minutes and allegations as follows:

- *That your behaviour has had a negative impact on Charlotte Rooney's experience of working life in Mac.*
- *That a number of staff in addition to Gloria (Laura, Martina, Lorcan, Charlotte) have felt undermined by your actions towards them i.e. the manner in which you have spoken to them or actions taken.*
- *That staff have described your behaviour in the office as 'sharp', 'curt', 'aggressive', 'extremely sharp' and 'a bit rude'*
- *That your treatment of Gloria Taylor following your perceived exclusion from an event and during a time when she was recuperating from a serious illness appears to have had an adverse impact on her health.*
- *That it appears highly likely that you laughed at Gloria Taylor during a training event causing her to feel humiliated and embarrassed (confirmed by 3 members of staff).*
- *That your actions towards Gloria Taylor over the last few months appeared to have created a difficult working environment and may have caused her to consider leaving the business.*

Mr McKenna advised that in accordance with the disciplinary policy, as contained within the employee handbook, *'the offences outlined above are deemed to be gross misconduct offences (i.e. failure to maintain professional standards of conduct with clients and with co-workers and/ or threatening intimidating harassing or coercing other employees or clients)'*.

105. The disciplinary hearing was re-arranged and took place on 14 March 2019 and claimant's suspension extended to that date. Mr McKenna on confirming the new date advised the claimant *'in order to ensure a fair and objective process, I have asked Anne Philipson to assist with the process, and she will attend a meeting with us'*.

106. On 11 March 2019 the claimant confirmed to the respondent her wish to appeal her grievance outcome based on *'inaccuracies and omissions therein'*.

107. Mr Daly on 12 March 2019 emailed the claimant copying in Mr McKenna and Mr McGovern confirming that Mr McKenna had asked him to respond to the claimant's earlier email regarding the disciplinary hearing and set out:

'Anne Philipson will assist with the meeting and note taking, the meeting will be chaired by Ronan McGovern. I note your comment about Anne's initial

involvement in the training event which is correct as she delivered team development half-day workshop.

Anne has not had any further involvement with the business, been privy to or taken part in any other investigations or grievance process following this date’.

108. Mr McGovern as per his evidence had *‘little exposure to the claimant but had heard people say she could be curt and was aware of one member of the team in Dublin reluctant to phone the Newry office because of how sharp she was over the phone and began to get an impression that she treated him differently than others because he was a director of business.’*

Disciplinary Hearing

109. On 14 March 2019 the claimant accompanied by Michael Keenan her trade union representative, attended a disciplinary hearing with Mr McGovern and Ms Philipson. The meeting ran for over 3 ½ hours with 10 pages of notes recorded of questions and answers put in relation to the 6 allegations made. In summary, in respect of:

Allegation 1: The claimant denied that her behaviour and interactions had had a negative impact and contributed to Ms Rooney’s decision to look for further work; believed her dealings were professional at all times and anything she did for the best of the company; did not understand why Ms Rooney had reported her behaviour to Mrs Boyle; and was not aware of Lauren, Aaron or Laura having noted her behaviour towards Ms Rooney/feeling it inappropriate; considered that she treated everyone the same and if Laura was responsible for HR she should have reported it. The claimant queried no one having said anything for 2 ½ years and remarkable they had all come up at same time. The claimant confirmed that Mrs Boyle and she had discussed with Ms Rooney their interactions and Ms Rooney happy at that; also her job was partly to check on Ms Rooney’s work. On being asked how she communicated the fact that someone had made a mistake the claimant confirmed she had many years of experience of working with people, treated everyone the same and ‘maybe precise in what I say’. The claimant confirmed that minor mistakes were addressed by her with Ms Rooney at her desk or through email and that major mistakes (serious issues) were brought to Mrs Boyle. The claimant pointed out that not everyone had made negative points.

Allegation 2: The claimant’s did not accept that her approach, body language, tone or volume could have caused people to feel undermined and put forward that Mr Daly, Mrs Boyle, Mrs McArdle or Mrs Taylor would have noticed had she been unprofessional. Mr Keenan, sought specifics. Mr McGovern said it was a pattern of behaviour. Mr Keenan expressed concern at no specifics being provided and put forward that the claimant was just being professional. The claimant stated she had worked there for 2½ years and had not changed. The claimant referred to a change in her dealings with Ms McCarthy since June; she felt there had been a contrived effort to undermine her; she had limited dealings with Ms Rooney; had not undermined Lorcan; and she considered resigning after the June event due to isolation. Mr Keenan asked who in the Dublin office had been afraid to call into the Newry office and when they had been spoken to in the investigation, no response was recorded in the notes. The claimant on being asked whether she took advice or

instruction from anyone other than Mrs Boyle (i.e. if Mrs McArdle pointed out a mistake or issue could the claimant respect her position in the business and take action based on that?) pointed out that Mrs Boyle had never spoken to her about her tone, other than regarding Ms Rooney. The claimant denied counting Lorcan's wages out in front of him but put that after an allegation that he was short-changed, to cover herself, did so silently to him, at his desk when no one else was in the office, and more often at her own desk. The claimant was asked whether she understood why Lorcan would find this humiliating, she put she had done so since he started and no one had raised it before. Mr Keenan asked why Lorcan had not reported it. The claimant was asked whether she had sent an email to Mrs Taylor when the birthday card for her husband was late even though Ms McCarthy had confirmed it had been posted. The claimant said she did not remember speaking to Ms McCarthy about it, commented that HR were very blasé about sending cards on time, her husband's did not arrive for one week and she spoke to Mrs Taylor to enquire whether they still did cards. The claimant denied she shouted at staff when the phones were ringing and put that if she raised her voice it was to ask someone to pick up the phone; denied speaking to people in any way she saw fit but treated everyone the same. Mr Keenan asked why all these comments were coming out but Mrs Boyle not act or speak to the claimant? Mr Keenan queried that statements regarding Mr Morgan had come from a third party and whether validity was confirmed. The claimant commented Mr Morgan had been uncooperative, not good at his job, insubordinate and made major mistakes; Mrs Taylor's intentions were to undermine/discredit her; she was being used as pincushion by HR; and 'toxic nature' of Ms McCarthy should be queried. The claimant stated she could be direct and precise, which is subjective, and took extreme care with timesheets.

Allegation 3: The claimant disagreed that her manner could be 'curt', 'aggressive' 'extremely sharp' and 'a bit rude' and put she was a professional. Of four proposed questions recorded in the notes, only the first was put to the claimant. The notes thereafter record, '(at this point many of the following questions were not asked, since she denies ever being rude)'.

Allegation 4: Mr Keenan queried whether this was a medical opinion; commented that when someone returns to work after being off sick they will be sensitive and feel low; and asked what the ill health was. Mr McGovern refused to divulge any further information. The claimant was asked whether she felt the ongoing resentment she held towards Mrs Taylor following her perceived exclusion from the Awards event impacted on her ability to interact professionally with Mrs Taylor. The claimant stated that she took umbrage to Mrs Taylor's comments, she referred to having visited Mrs Taylor in hospital at which point Mrs Taylor had disclosed the nature of her illness and which the claimant had kept in confidence. The claimant stated that this was inaccurate and unwarranted slur and Mrs Taylor had other issues along with which returning to work too early had contributed to her ill-health. Regarding the Awards the claimant pointed out Mrs Taylor had not read her email for 13 days; she had been the subject of discussion at the event; Mrs McArdle had 'slammed' her in the office; Mr Daly had told her that Mrs McArdle 'slandered' her; the next morning there was a hostile environment in the office; Mrs Taylor approached her aggressively at reception to say that she was lying; the claimant told Mrs Boyle; they confronted Mrs Taylor, had 2-3 meetings and Mrs Taylor was aggressive ever since then; and the claimant alienated. The claimant confirmed she was aware Mrs Taylor had been off at the start of the year with a serious illness.

The claimant was asked whether she felt her reaction to this event was justified if it was known that it was a mistake and that she had initially said no and then changed her mind, noting that Mrs Boyle agreed it was a mistake and did not think Mrs Taylor intended it, and claimant asked why it continued to be a significant issue for her. The claimant disagreed it was a mistake, pointed out the draw for tickets was supposed to happen on the ground floor, but did not; she sent an email on 1 June, the event was two weeks later, but that Mrs Taylor did not read it; she was not even included in the email letting everyone know who was going; and Mrs Taylor had missed two of her emails. The claimant was asked whether she believed that ongoing difficulties in relationships at work, particularly where recuperating from a serious illness, had potential to impact on someone's health. The claimant said she was happy to let it go and move on; that the incident had marked a change in their relationship and referred to the incident at the photocopier where Mrs Taylor snatched papers out of her hand.

Allegation 5: The claimant denied having laughed at Mrs Taylor; questioned how the 'other two' could have seen her and Mrs Taylor behind her; that Mrs McArdle had first said 'snigger', then changed it to a laugh; Mr Daly had not seen her laugh; Ms Irwin was supposed to be impartial but accused her of laughing. Mr Keenan stated Mrs Taylor was sensitive. The claimant said it was unfair to think more probable that she had laughed because it appeared she already had an issue with Mrs Taylor and their relationship already broken down. Mr Keenan questioned the comment 'the panel are convinced'. The claimant remarked she had been 'blissfully unaware' as to how sensitive Mrs Taylor was but that Mrs Boyle knew and Mrs Boyle's behaviour because of this. The claimant in response to being asked whether she accepted this and other actions may have contributed to a work environment that was difficult for Mrs Taylor to work in replied that it would not have mattered what she did, Mrs Taylor would have found fault; denied having laughed at Mrs Taylor; pointed out she received her Christmas bonus so respondent must have been happy; had appraisals in July and December; had been there for 2 ½ years and her demeanour never mentioned in her appraisals. The claimant put that she had considered resigning due to Ms McCarthy, Mrs McArdle and Mrs Taylor's hostility towards her and had never experienced that level of viciousness in all her years of working.

Allegation 6: the claimant disagreed her actions towards Mrs Taylor had created a difficult working environment for Mrs Taylor to such an extent that she considered leaving the business. The claimant contended Mrs Taylor's own behaviour was the reason she had difficulties; Mrs Taylor had not moved on and her health issues were for her to deal with. It was put to the claimant that the respondent was concerned that this was the second time resignation (i.e. Ms Rooney and Mrs Taylor) had been considered and linked to the claimant and asked why she thought this was the case. Mr Keenan questioned if Mrs Taylor had made anyone aware of this. Mr McGovern replied that Mrs Taylor had spoken to Mr Daly. The claimant asked if Mr Daly had spoken to Mrs Taylor and reversed her decision was that not a reason to come to speak to her, pointing out that she was not aware of Mrs Taylor's intention to resign. Mr McGovern stated '*that's two instances of employees resigning*'. The claimant said that she was the one person who visited Mrs Taylor in hospital and helped her with her child being bullied, that she thought the situation was medical, work, and family related and did not see how Mrs Taylor had justification to blame her; that she was an adult and her choice.

The claimant put that there was a real possibility Mrs Taylor was using this as an opportunity; Mrs Taylor should have addressed issues after the training event; behaviours since June from Ms McCarthy, Mrs Taylor and Mrs McArdle had been intolerable. The claimant questioned the scope of the investigation undertaken; matters all having arisen at the same time; where the investigation against Mrs Taylor was and seemed like *'let's get Carol'*. Mr Keenan put there should have been a team meeting after the allegations came out, commented that people feel aggrieved but do not have to like everyone they work with and there should not have been an investigation. The claimant raised that Ms McCarthy's reference to a statement by the claimant made at previous training made her feel like she was under scrutiny. Regarding the Awards event, Mrs Taylor's inability to deal with the fact that she was wrong, her behaviour had deteriorated since then and a series of nit-picking everything the claimant did since had made the claimant want to resign. The claimant raised that since she had been interviewed it appeared others had been given the opportunity to *'go wider'*. The claimant put she had worked there for 2½ years and nothing said; she had been victimised and a conspiracy contrived against her by Mrs McArdle, Mrs Taylor, and Ms McCarthy; she sought a fair and unbiased hearing; and had an unblemished record. The claimant stated that it was a highly *'toxic and hostile work environment'* and Mr Keenan stated *'I feel the best way forward would be to bring in a team of mediators, find the issues rather than target individuals. Problems won't be solved by removing one individual.'* The hearing was then adjourned for no more than 20 minutes. The hearing notes record:

'Ronan and Anne discussed the evidence provided for 20 – 30 minutes.

It was decided there was enough evidence of 'failure to maintain professional standards of conduct with co-workers' which is gross misconduct.'

Mr McGovern as per his evidence considered the claimant to have shown no remorse during the disciplinary hearing, but instead to have blamed others for her actions, to have a *'head mistress'* way about her although no *'manager'* status and to think she could talk to people and treat people in a manner which did not fall within her remit.

110. The claimant and her representative were brought back in and Mr McGovern confirmed the claimant's summary dismissal and right of appeal.
111. On 15 March 2019 Mr Daly and Ms Philipson held a disciplinary hearing with Mrs Boyle. Allegations put against her included:

Failing to take seriously repetitive or serious concerns raised in relation to your team member (direct report) Carol Warburton.

Do you feel that you acted impartially towards those who brought complaints in order to deal with the issues in a professional manner?

112. On 18 March 2019, the claimant wrote to Mr McKenna further to her email of 11 March 2019 setting out in detail reasons for her grievance appeal.
113. On 19 March 2019 the claimant wrote to Mr McKenna to appeal the verbal dismissal

decision given as unfair, biased, and unjustified; the investigation not properly conducted displaying inaccurate/untrue information; and hearing unfair. The claimant raised that she had not received a dismissal letter, copy minutes as requested nor details of an appeal hearing.

114. On 20 March 2019 Mr McGovern wrote to the claimant further to the disciplinary hearing to confirm *'our conclusion as delivered verbally on that date'* and set out *'our findings regarding each point'*. In relation to the allegations made, these included:-

That your behaviour has had a negative impact on Charlotte Rooney's experience of working life in Mac.

'Our findings however centre around Charlotte's statement that she finds Carol's manner to be 'very domineering, nit-picking at everything I did', and whilst we know this was eventually dealt with by Michelle Boyle and somewhat repaired, we are convinced that your behaviour did have a negative effect on Charlotte's experience of working life in Mac.'

That a number of staff in addition to Gloria (Laura, Martina, Lorcan, Charlotte) felt undermined actions towards them i.e. the manner in which you have spoken to them or actions taken.

'In addition, we find it concerning that you have chosen to criticise co-workers as an explanation for your behaviour including;

"John Morgan was uncooperative, he was not good at his job"

"Gloria's intentions were to undermine me"

"Charlotte's attention to detail wasn't great"

We would comment that this further outlines your approach to your team i.e. you believe your behaviour and actions are warranted because of your perception of their underperformance. We take the view that this is wholly unacceptable as an explanation for your actions.

We refer back to investigation minutes which note that "Charlotte sent me a text saying she couldn't take it anymore" and "Carol appears to believe she can speak to people in any way that she sees fit" and "Carol has a cut throat communication style, it is aggressive, it can make people feel close to tears".

We also note that you have obviously complained to your manager about how people speak to you and she has asked those people to change how they interact with you; however it appears you have not felt the need to reciprocate this.

Our findings on this matter therefore are that you have regularly spoken to, shouted at, complained about, found faults and ignored correction or advice given by Martina, Laura, Charlotte and Lorcan which had the effect of making them feel undermined.'

That staff have described your behaviour in the office as ‘sharp’, ‘curt’, ‘aggressive’, ‘extremely sharp’ and ‘a bit rude’

‘It is our consideration that your perception of professionalism is not what the business expects or reasonably requires of its staff. Indeed our investigation with those impacted by your actions would suggest that your actions and interactions with people were entirely averse to professional standards expected and on regular occasions bordered on the offensive.’

That your treatment of Gloria Taylor following your perceived exclusion from an event and during a time when she was recuperating from a serious illness, appears to have had an adverse impact on her health

‘We note that you do not see a link between your interactions with Gloria Taylor and her health and also note that you have cited other reasons as contributing to this. We are unsure how you became aware of other issues and are concerned that any level of empathy toward Gloria either concerning her son’s issues or her own health issues seems to have completely disappeared when you felt excluded from the ...awards.

In relation to the ... Awards... you stated “I don’t agree this was a mistake, she missed 2 of my emails, Gloria Taylor didn’t read her email for 13 days, I was the subject of discussion at the event” “Gloria Taylor approached me aggressively at reception to say I was lying”.

While an investigation continues into these issues, it is suffice on our part to acknowledge that your relationship with Gloria Taylor had broken down, that any understanding or empathy offered when you did visit her at hospital came to an abrupt halt and that the relationship [w]as not restored.

Whilst there may have been other issues going on for Gloria Taylor at that time, we are deeply disappointed that you would allow what has generally been accepted as a mistake to cause a breakdown and continued ill feeling towards her and believe you had it within your power to let this go but chose not to. For that reason we believe your actions are not in line with professional standards expected by our team members and particularly in light of our recent team charter which highlighted the following as behaviours to be demonstrated: Honesty, Helpfulness, Engaging, Encouraging, Accountable, Approachable, Responsive, Respectful, Team-focused and Trustworthy (HEART).

That it appears highly likely that you laughed at Gloria Taylor during a training event causing her to feel humiliated and embarrassed (confirmed by three members of staff)

We do not agree that Gloria Taylor is ‘ultra-sensitive’ nor do we feel this is a good explanation for why she raised a complaint that she believed you laughed at her. It is our opinion that any reasonable individual would have felt embarrassed, humiliated and offended in such a context.

We also note that your defence is largely based on your perceived opinion of Gloria Taylor in this instance i.e. that she is more sensitive than most and do not find this to be a good defence.

On the basis of all available evidence and your response during the hearing, we are convinced that you laughed at Gloria Taylor, that this was to some degree a mocking laugh and a symptom of the poor view you had of her in her role.

In regard to your additional statements on this issue i.e. you received your Christmas bonus so “they must have been happy” and “my appraisals never mention my demeanour, this warrants further investigation regarding management input and appraisal systems and will continue beyond this investigation.’

That your actions towards Gloria Taylor over the last few months appear to have created a difficult working environment and may have caused her to consider leaving the business.

‘We therefore confirm that your actions toward Gloria Taylor caused a difficult working environment on her return to the business however do not believe that you[r] actions alone caused her to consider leaving the business.

CONCLUSION

On the basis of our findings in relation to the 5 allegations above, it is our finding that you failed to maintain professional standards of conduct with co-workers, and that your actions have intimidated other employees.

According to our disciplinary policy these incidents individually or cumulatively amount to gross misconduct. Moreover, we would confirm that it is our opinion that your actions have broken our trust and confidence in relation to your ability to interact professionally with our team and in accordance with the express and implied duties imposed on you within the contract of employment. Regrettably we feel your action and lack of acceptance or contrition amount to an irremediable and gross breach of contract.’

115. By letter of 5 March 2019 Mr Daly acknowledged receipt of the claimant’s grievance appeal correspondence of 11 and 18 March 2019 and confirmed he would deal with it by way of a review all information submitted by her by 29 March 2019, following which he would investigate the matter and make a full response.
116. On 20 March 2019 the claimant sent a 16 page letter to Mr McKenna elaborating upon her reasons for appealing the grievance report as ‘*biased and flawed*’, concluding with her belief that not all options were reviewed, and closed minds and unwillingness to deal with the real issues very destructive.
117. Mr Daly on 25 March 2019 wrote to the claimant acknowledging receipt of her disciplinary appeal and confirmed it would be heard by him on 1 April 2019 accompanied by Chris McCavana from Grant Thornton as a note taker. The appeal

hearing was thereafter rescheduled and took place on 5 April 2019. The claimant attended accompanied by Mr Keenan. The claimant read out an 8 page letter of appeal (dated 4 April 2019 addressed to Mr McKenna, a copy of which she then provided to Mr Daly).

118. By email to Mr Daly of 11 April 2019 the claimant put that she had raised points at her disciplinary meeting which Mr McGovern had said he would investigate and respond to and these items were omitted from the minutes which she considered were '*detached, incomplete/ insufficient*'. The claimant set out that the decision to dismiss had been given within a 15 minute time frame, not the 30 minutes adjournment stated in the minutes and clear there was no investigation or review of these items before a final decision was made to dismiss her. The claimant, in summary, listed:

- 1. The date Ms McCarthy moved into HR;
- 2. A disputed conversation with Mrs Taylor regarding a confidential payroll file;
- 3. The timeframe of her alleged undermining conduct;
- 4. Who in Dublin was afraid to call Newry and dates;
- 5. Whether Mr Morgan was interviewed;
- 6. Inappropriate comments by Mr McGovern as to 'young' ages of staff which Mr Keenan had queried the relevance of;
- 7. The noted answer was incorrect– the claimant never having had occasion to report anyone to Mrs Taylor, any issues were brought to her line manager;
- 8. Whether allegation 4 was based on a medical opinion;
- 9. Incorrectly recorded answer to Allegation 4 Q3- the claimant having indicated initially she was going;
- 10. Allegation 6 Q2 Mr Keenan had requested further detail upon Mr McGovern's response that Mr Daly had been aware that a second resignation had been a consideration.

119. By letter dated 11 April 2019 Mr Daly upheld the original grievance outcome in summary setting out in respect of:

Charlotte Rooney: that he had no reason to believe she would lie about the fact the claimant's treatment of her contributed to her decision to leave the business nor collusion between her, Mrs Taylor, Ms McCarthy and McArdle.

Timing of incidents: on becoming aware of several concerns they had sought to understand if there was substance or pattern; and the timing of Ms Rooney leaving officially on 15 March 2019 could not have been contrived, having applied for a role

before this.

Interaction with four others: Notes and conversations with Michelle Boyle supported she was aware of issues staff had raised about the claimant up to the period in December 2018 when Ms Rooney raised concerns and on that basis believed the claimant fully aware of the issues.

Helpfulness, professionalism and efficiency: the issue was that this was not apparent all of the time.

20+ people interviewed: They believed it vital to speak to a broad range of people in the business, positive comments about being organised, meticulous and working efficiently were not ignored but larger number reported negative interactions such as being 'sharp and curt', having a 'cut throat communication style', being extremely sharp', 'can be quite sharp in her answers', and 'she's not a people person'.

I was never spoken to about my alleged demeanour: It was demonstrated by the claimant's accounts of meetings with Ms Rooney, Mrs Taylor and Mr Morgan that she had been notified of issues which Mrs Boyle had been made aware of, but no attempt apparent by the claimant to interact more positively.

Counting out money: He did not believe this was an intentional act to cause upset.

Mrs Taylor's ill health: He believed the claimant's treatment of Mrs Taylor did continue and could have had an adverse impact on her health based upon Mrs Taylor having apologised, the claimant accepted and agreed to move on (regarding the Awards event) but then stated in the disciplinary hearing she did not believe it a mistake and Mrs Taylor had missed two of her emails and again raised in a grievance leading him to agree with the panel's finding that empathy for Mrs Taylor was not apparent.

Alleged Laugh: He was convinced more probable that the claimant had laughed rather than cleared her throat or coughed during the team training. Coupled with her poor relationship with Mrs Taylor and ongoing running down of the HR department and their work suggested it may have been a 'mocking' rather than supportive or collaborative; and this further supported by evidence given by the claimant during the process in terms of her view of Mrs Taylor and her ability as a HR manager.

"My manager asking another member of staff about what they witnessed on the day is incorrect": Based upon comments of Mrs Boyle and Mrs McArdle he concurred that Mrs Boyle did speak to Mrs McArdle before leaving the hotel.

Gloria Taylor is 'ultra-sensitive': whilst accepting Mrs Taylor had had a lot to deal with personally he concurred with the panel's finding on investigation information and based on his experience of working with Mrs Taylor that she was not ultra-sensitive and not acceptable justification for her upset.

"I was going to resign from my position with Mac": this was not brought to his attention. Mrs Boyle had confirmed the most pertinent occasion (the claimant had considered leaving) was after the Awards, and Mrs Boyle approached Mrs McArdle and Ms McCarthy about not offering pleasantries after which Mrs Boyle felt Ms McArdle changed but not Ms McCarthy but claimant did not raise a grievance

regarding the situation until after the fact finding meeting and threatened resignation then.

“Gloria Taylor has consistently harassed and bullied me”: this had been dealt with by a separate process and appeal.

“None of the individuals brought any of the allegations to my manager”:

It was clear they were and claimant involved in a number of internal meetings regarding same.

“I would ask the panel to name and list the positive remarks and comments received by staff member and external suppliers to me as it is inconceivable during two and half years of employment with Mac that no one has ever complimented me on all of the above, both internally and externally”: He had personally found her work of a high standard and could not fault her attention to detail but investigations had found her to have shown on several occasions a lack of professionalism, toward some in her team, particularly in recent times and on one occasion acted in a manner that cause another member of staff to feel publically embarrassed and humiliated, and could not be tolerated.

Questions raised re Panel: *‘For the avoidance of doubt, the disciplinary panel was made up of Ronan McGovern and Anne Phillipson, Anne attended as a note taker.’* He then referred to and responded to the points raised in the claimant’s letter of 11 April 2019 such that.

- 1. Ms McCarthy moved temporarily to HR in July 2018;
- 2. It was difficult to understand what context this comment was made.
- 3. Answered previously in his correspondence.
- 4. They had spoken to the witness who made the statement, they had named the individual (in Dublin) but did not wish to name them in this report.
- 5. Mr Morgan was not interviewed, he left in May 2017, several witnesses raised this as a concern;
- 6. Mr McGovern queried the claimant’s approach to staff either just in or having left university who should not be expected to know as much as those with life experience.
- 7. Her comment appeared to be an addition to the notes issued.
- 8. They would not in any circumstances disclose personal details regarding a staff member’s medical condition to another and certain it had been investigated and established as a reason for concern.
- 9. The correction was accepted.
- 10. The intent/context of the query was not understood, but a situation where it occurred, would be treated with the utmost seriousness.

Mr Daly concluded that the claimant had at no point prior to raising a grievance indicated to him that she was feeling bullied by Mrs Taylor, but only raised this once a complaint was raised by Mrs Taylor regarding the claimant's behaviour at the training event; and he had found no reason to disagree with the original grievance report.

120. By letter dated 25 April 2019 Mr Daly confirmed to the claimant his decision to uphold the original finding of the disciplinary panel. In addition he highlighted '*that it greatly concerns me that I believe evidence proves that you laughed at a manager during a training event. Had that been a one-off event, or had you admitted the issue and shown some contrition, then I may have been prepared to overlook the same. Equally, my concern is that the issue was not isolated and regrettably, you have undoubtedly served us well in the past- such conduct cannot erase or exclude inappropriate and unprofessional or intimidating conduct now*' and he agreed that her actions had fundamentally broken trust regarding her ability to interact professionally with their team.
121. By a nine page letter of dated 25 April 2019 to Mr Daly the claimant challenged the grievance appeal outcome per his letter of 11 April 2019. Mr Daly responded on 2 May 2019 that the current grievance process had concluded but that they would investigate internally the additional matters raised in her letter.
122. On 9 May 2019 claimant wrote a six page letter to Mr Daly rejecting his findings and disciplinary appeal outcome per his letter of 25 April 2019.
123. By letter dated 16 May 2019 Mr Daly responded to the claimant's letters of 25 April 2019 regarding the grievance appeal outcome and 9 May 2019 regarding the disciplinary appeal outcome setting out that he was satisfied much of what she had outlined had already been dealt with substantively and comprehensively in the investigations in relation to the alleged misconduct and grievance raised. Mr Daly specifically addressed therein and rejected, allegations of Mr McGovern having made a discriminatory comment (to the effect that staff may have not have felt able to raise issues because they were young); that Sophie Irwin had accused the claimant outright/ decision had already been made; and that the new panel did not interview the claimant which Mr Daly set out was because they had concluded they had sufficient information contained within the fact-finding minutes on which to base their investigations and the claimant given full opportunity to make a response on all issues raised during the disciplinary hearing. Response statements from Mr McGovern, Ms Irwin and Ms Phillipson were enclosed.
124. The claimant presented her claim to the Office of the Industrial Tribunals on 1 June 2019.
125. In preparation for the substantive hearing of this case the respondent sought from Grant Thornton copies of investigatory witness interview notes previously provided to them. Ms Carolan had since left Grant Thornton and Ms Phillipson in dealing with the request made, identified in error and forwarded earlier drafts rather than the correct final approved notes. Correct versions of those differing to statements included in initial hearing bundles were provided in the supplementary bundle presented by the respondent for the re-convened substantive hearing. The tribunal

is satisfied on balance that correct final approved interview notes were before decision makers Mr McGovern and Mr Daly in relation to the claimant's disciplinary and appeal processes.

126. The claimant in seeking a witness order to compel the attendance of Mrs Boyle to give evidence set out in her application by email dated 13 February 2020, 'Mrs Boyle will confirm that at no time were any complaints ever made known to her or me regarding alleged behaviour over 2.5 years', also that she would state 'the appalling fabrication of evidence, lies and completely unfounded allegations regarding my alleged conduct.' It is accepted that Mrs Boyle did not discuss with the claimant her proposed evidence. Mrs Boyle's attendances at the substantive hearing in February and reconvened hearing were compelled under witness order.

RELEVANT LAW

Unfair dismissal

127. Under Article 126 of the Employment Rights (Northern Ireland) Order 1996 [ERO] an employee has the right not to be unfairly dismissed by his employer.
128. The Employment (Northern Ireland) Order 2003 [EO] at Schedule 1 sets out Statutory Dismissal and Disciplinary Procedures [SDDP] to be followed as a bare minimum where applicable, by an employer contemplating dismissal or taking disciplinary action against an employee. The standard procedure in summary consists of three steps requiring an employer to provide an employee at Step 1 with a written statement of grounds for action and an invitation to a meeting, at Step 2 a meeting and at Step 3 an appeal.
129. Under Article 130A (1) ERO an employee who is dismissed shall be regarded as unfairly dismissed if one of the SDDP applies in relation to the dismissal procedure, it has not been completed, and, the non-completion of the procedure is wholly or mainly attributable to a failure by an employer to comply with its requirement.
130. Otherwise, Article 130 ERO sets out how the question of whether a dismissal is ('ordinarily') fair or unfair is to be determined, as follows:-

"(1) In determining for the purposes of this part whether the dismissal of an employee is fair or unfair it is for the employer to show:-

- (a) the reason (or if more than one the principal reason) for the dismissal, and*
- (b) that it is either a reason falling within paragraph (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

Reasons falling within Paragraph (2) include at Article 130(b) if it relates to the conduct of the employee.

131. Under Article 130(4) ERO where the employer has fulfilled the requirements of Paragraph (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)
- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
 - (b) shall be determined in accordance with equity and the substantial merits of the case.
132. In assessing reasonableness a failure by the employer to follow a procedure in relation to the dismissal of an employee (other than the SDDP) shall not be regarded as by itself making the employer's action unreasonable if he shows (on the balance of probabilities) that he would have decided to dismiss the employee if he had followed the procedure (Article 130A (2) **ERO**).
133. The Northern Ireland Court of Appeal in **Rogan v South Eastern Health & Social Care Trust [2009] NICA 47** approved the earlier decision of Court in **Dobbin v Citybus Ltd [2008] NICA 42** where the Court held:-
- (49) *The correct approach to [equivalent GB legislation] was settled in two principal cases – **British Home Stores v Burchell [1980] ICR 303** and **Iceland Frozen Foods Ltd v Jones [1983] ICR 17** and explained and refined, principally in the judgements of Mummery LJ, in two further cases **Foley v Post Office** and **HSBC Bank PLC (formerly Midland Bank) v Madden reported at [2000] ICR 1283** (two appeals heard together) and **J Sainsbury v Hitt [2003] ICR 111**.*
- (50) *In **Iceland Frozen Foods**, Browne-Wilkinson J offered the following guidance:-*
- 'Since the present state of the law can only be found by going through a number of different authorities, it may be convenient if we should seek to summarise the present law. We consider that the authorities establish that in law the correct approach for the industrial tribunal to adopt in answering the question posed by [equivalent GB legislation] is as follows:-*
- (1) *the starting point should always be the words of [equivalent GB legislation] themselves;*
 - (2) *in applying the section an industrial tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the industrial tribunal) consider the dismissal to be fair;*
 - (3) *in judging the reasonableness of the employer's conduct an industrial tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;*

- (4) *in many, though not all, cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, and another quite reasonably take another;*
- (5) *the function of an industrial tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case, the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair; if the dismissal falls outside the band it is unfair.'*
- (51) *To that may be added the remarks of Arnold J in **British Home Stores** where in the context of a misconduct case he stated:-*

'What the Tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question (usually, though not necessarily, dishonest conduct) entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, it must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. It is the employer who manages to discharge the onus of demonstrating those three matters, we think, who must not be examined further. It is not relevant, as we think, that the Tribunal would themselves have shared that view in those circumstances. It is not relevant, as we think, for the Tribunal to examine the quality of the material which the employer had before them, for instance to see whether it was the sort of material, objectively considered, which would lead to a certain conclusion on the balance of probabilities, or whether it was the sort of material which would lead to the same conclusion only upon the basis of being "sure", as it is now said more normally in a criminal context, or, to use the more old fashioned term such as to put the matter beyond reasonable doubt. The test, and the test all the way through is reasonableness; and certainly, as it seems to us, a conclusion on the balance of probabilities will in any surmisable circumstance be a reasonable conclusion.'

134. In **Fuller v London Borough at Brent [2011] JEWCA Civ 267** LJ Mummery in relation to the concept of the 'range or band of reasonable responses' set out 'That favourite form of words is not a statutory or mandatory. Its appearance in most ET judgements in unfair dismissal is a reassurance of objectivity.'

135. In the split decision of **Connolly v Western Health and Social Care Trust [2017] NICA**, Deeny LJ in the majority decision emphasised the importance alongside the range test of applying the *statutory test as a whole*, setting out:-

'The interpretation of what, in this jurisdiction, is Article 130 (4) (a) of the 1996 Order has been fixed by a series appellate courts over the years, i.e. that whether an employer acted reasonably or unreasonably is to be addressed as whether an employer acted within a band of available decisions for a reasonable employer even if not the decision the tribunal would have made. That test, expressed in various ways, is too long established to be altered by this court, and in any event has persuasive arguments in favour of it. But it is necessary for tribunal is to read it alongside the statutory provision of equal status in Article 130 (4) (b) i.e. that that decision 'shall be determined in accordance with equity and the substantial merits of the case'. ...'

136. In the minority decision, Gillen LJ at Paragraph 28(i) – (xvi) identified relevant general principles governing interpretation of the ERO, his formulation of which was not disputed in any way by the majority decision, and covers the procedure which should be adopted by an industrial tribunal in assessing the fairness of a misconduct dismissal:

- (i) *The starting point is the words of Article 130(4) of the 1996 Order.*
- (ii) *The Tribunal has to decide whether the employer who discharged the employee on grounds of misconduct entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct.*
- (iii) *Therefore there must in the first place be established a belief on the part of the employer.*
- (iv) *The employer must show that he or she had reasonable grounds for so believing.*
- (v) *The employer, at the stage he/she formed the belief, must have carried out as much investigation into the matter as was reasonable. It is important that an employer takes seriously the responsibility to conduct a fair investigation.*
- (vi) *The Tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the Industrial Tribunal) consider that the dismissal to be fair.*
- (vii) *In judging the reasonableness of the employer's conduct an Industrial Tribunal must not substitute its decision as to what was the right*

course to adopt for that of the employer.

- (viii) In many, though not all, cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view and another, quite reasonably, take another.*
- (ix) The function of the Industrial Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair; if the dismissal falls outside the band it is unfair.*
- (x) A Tribunal however must ensure that it does not require such a high degree of unreasonableness to be shown that nothing short of a perverse decision to dismiss can be held to be unfair within the relevant legislation.*
- (xi) Gross misconduct justifying dismissal must amount to a repudiation of the contract of employment by the employee. The disobedience must at least have the quality that it is wilful. It connotes a deliberate flouting of the essential contractual conditions.*
- (xii) More will be expected of a reasonable employer where the allegations of misconduct and the consequences to the employee if they are proven are particularly serious.*
- (xiii) In looking at whether dismissal was an appropriate sanction, the question is not whether some lesser sanction would, in the employer's view, have been appropriate, but rather whether dismissal was within the band of reasonable responses that an employer could reasonably make in the circumstances. The fact that other employers might reasonably have been more lenient is irrelevant (see the decision of the Court of Appeal in *British Leyland (UK) Ltd v Swift* [1981] IRLR 91, *Gair v Bevan Harris Limited* [1983] IRLR 368 and *Harvey on Industrial Relations and Employment Law* at [975].*
- (xiv) The conduct must be capable of amounting to gross misconduct.*
- (xv) The employer must have a reasonable belief that the employee has committed such misconduct.*
- (xvi) The character of the misconduct should not be determined solely by the employer's own analysis subject only to reasonableness. What is gross misconduct is a mixed question of law and fact. That will be so when the question falls to be considered in the context of the reasonableness of the sanction.'*

137. In ***Reilly v Sandwell Metropolitan Borough Council* [2018] UK SC 16** Lady Hale, set out that the case might have presented an opportunity for the Supreme Court 'to consider two points of law of general public importance which have not been raised

at this level before, the second being, *' whether the approach to be taken by a tribunal to an employer's decisions, both as to the facts under section 98(1) to (3) of the Employment Rights Act 1996 [GB equivalent legislation] first laid down by the Employment Appeal Tribunal in British Home stores Ltd v Burchell [1978] ICR 303 and definitively endorsed by the Court of Appeal in Foley v Post Office [2000] ICR 1283, is correct.'* Lady Hale went on however to acknowledge the long standing of the Burchell test, difficulties inherent in challenging it at this stage, that no argument had been heard in relation thereto and it follows that the *'law remains as it has been for the last 40 years and I express no view about whether that is correct'*.

138. Thus the statutory test, underpinned by the range of reasonable responses test, is the approach the tribunal must adopt. The range test provides a double check that in applying the statutory test, which sets out the remit and function of this statutory tribunal, the tribunal has avoided substituting its own view, on what it would have done in the relevant circumstances, for the decision of the employer.
139. ***Taylor v OCS Group Ltd [2006] IRLR 613 CA*** provides authority that procedural defects in the initial disciplinary hearing may be remedied on appeal provided that in all the circumstances the later stages of the procedure are sufficient to cure the earlier unfairness. It is for the tribunal to consider whether the overall process was fair, notwithstanding deficiencies at an early stage, in particular giving consideration to the thoroughness and open-mindedness of the decision maker.
140. In ***Turner v Vestric Ltd [1980] ICR 528*** the EAT held that where a dismissal was due to a breakdown in a working relationship it is necessary to ascertain whether the employers had taken reasonable steps to try to improve the relationship and to establish that the dismissal was not unfair, the employers had to show not only that there had been a breakdown but that the breakdown was irremediable.
141. In ***W Brooks & Son v Skinner [1984] IRLR 379*** the EAT held whether or not an employer is justified in treating a particular matter of conduct as sufficient to justify dismissal must include the question whether, in a particular case, the employee knew that his conduct would merit summary dismissal. Though there is much conduct which an employee will know will result in instant dismissal, there are also instances of conduct, particularly those which have been dealt with in other ways at other times by the employer, which the employee may well consider will not merit summary dismissal.
142. Where an industrial tribunal finds that the grounds of a complaint of unfair dismissal are well-founded the Orders it may make by way of remedy are set out at Article 146 ERO and include reinstatement, or re-engagement, and otherwise compensation. How compensation is to be calculated is set out at Articles 152 to 161.
143. Under Articles 156(2) ERO: *'Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.'*
144. The starting point for the calculation of the compensatory award is Article 157 (1)

ERO: '(1) Subject to the provisions of this Article and Articles 158, 160 and 161, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer'. The compensatory award should not be increased out of sympathy for the claimant or to express disapproval of the respondent. The onus is on the respondent to show the claimant as unreasonable in the steps taken or not taken to mitigate his loss.

145. Article 157(6) ERO provides "Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding. The tribunal must firstly, consider whether the claimant was guilty of blameworthy conduct that contributed to the employer's decision to dismiss; and, secondly, whether it is just and equitable to reduce the award by a percentage to reflect the extent of the contributory fault. The test is whether the claimant's behaviour was perverse, foolish or 'bloody-minded' or unreasonable in the circumstances. If contributory fault is found both the compensatory and basic awards may be reduced and the percentage deduction can go as high as 100% [*Dalzell v McIlvenna* CRN: 1799/13]. In *GM McFall & Co Ltd v Curran [1981] IRLR 453* the Court of Appeal (NI) determined that, as a general rule, any deductions from the basic and compensatory award should be the same.
146. The case of *Polkey v Dayton Services LTD 1987 3 All ER 974 HL* makes it clear that, if a dismissal is procedurally defective, then that dismissal is unfair but the tribunal has a discretion to reduce any compensatory award by any percentage up to 100% if following the procedures correctly would have made no difference to the outcome. There can be no Polkey deductions of the basic award.
147. The overriding duty imposed on a tribunal on a finding of unfair dismissal is to award compensation which is just and equitable in the circumstances.
148. The Labour Relations Agency Code of Practice on dealing with disciplinary and grievance issues sets out what constitutes good employment practice and reasonable behaviour for both employers and employees, including at:

Paragraph 14

An employer at the time of taking informal action may take the view that where there is a failure to improve formal action will be the next step. In such circumstances the employer, at the time of taking the informal action, should orally inform the employee of this view. If informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered to be too serious to be classed as minor, employers should take formal action.

Paragraph 20

Following the meeting, and after a period of reflection, the employer must decide whether the allegations are upheld and if disciplinary action is justified or not ...

Where it is decided that disciplinary action is justified the employer will need to consider what form this should take. Before making any decision the employer should take account of the employees disciplinary and general record, length of service, actions taken in any previous similar case within the organisation, the explanations given by the employee and – most important of all – whether the severity of any intended disciplinary action is proportionate and reasonable in all the circumstances. In considering the circumstances employer should take account of, in particular, the extent to which standards have been breached.

Paragraph 21

Examples of actions the employer might choose to take are set out in paragraphs 22 – 29. It is normally good practice to give employees at least one chance to improve their conduct or performance before they are issued with a final written warning. However, if an employee's misconduct or unsatisfactory performance – or its continuance – is sufficiently serious, for example because it is having, or is likely to have, a serious harmful effect on the organisation, it may be appropriate to move directly to a final written warning. In cases of gross misconduct, the employer may decide to dismiss for a first offence of a particular kind. Further guidance in dealing with Gross misconduct set out at paragraph 38 – 39.

Paragraph 50

A more senior manager not previously involved with the case should hear the appeal. Where a person at the most senior management level has already been involved with the case and there is a manager of the same status who has not, the appeal should be heard by the latter. In the event that neither of these is possible and the same manager who took the disciplinary action, unavoidably, has to hear the appeal, that manager should act as impartially as possible. Records and notes of the original disciplinary meeting should be made available to the person hearing the appeal where that person had no previous involvement.

Paragraph 61

Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms and are best decided by organisations in the light of their own particular circumstances. Such acts, whilst they occur only once, might be said to strike at the very root or heart of a contract of employment such as to destroy the essential bond of trust and confidence between the parties to the contract...

Paragraph 62

Disciplinary procedures should not be seen primarily as a means of imposing sanctions but rather as a way of encouraging improvement or modifying the behaviour of employees whose conduct or performance is unsatisfactory. Some organisations may prefer to have separate procedures for dealing with issues of conduct and capability. Large organisations may also have separate procedures to deal with other issues such as harassment and bullying which incorporate statutory requirements relating to discipline and dismissal.

Notice

149. Minimum notice entitlements are required to be given by an employer or employee to terminate the contract of employment under Article 118 ERO save where the contract is terminable without notice by reason of the conduct of the other party.
150. Gross misconduct is misconduct by the employee so serious that it completely undermines the employer's trust and confidence in the employee to perform his duties. Conduct must amount to such a wilful disobedience of an order, such a deliberate disregard of the conditions of service, as justified the employer in the circumstances summarily dismissing. It must be sufficiently serious and injurious to the relationship between the employer and employee.
151. Under the Industrial Tribunal Extension of Jurisdiction Order (Northern Ireland) 1994 an employee may bring a claim for damages for breach of his contract of employment or for a sum due under that contract, or any other contract connected with his employment, before an industrial tribunal if the claim arises out of or is outstanding on termination of his employment.
152. Dismissal without notice will be in breach of contract unless the employer is entitled to dismiss summarily. This right arises when the employee commits a repudiatory breach of contract as a result of which the employer may treat the contract as discharged by the breach. At common law, terms implied into the contract of employment include terms of trust and confidence and to provide loyal service and an employer is entitled to dismiss his employee without notice for gross misconduct. What the tribunal thinks objectively probably occurred (whilst not relevant to unfair dismissal) is relevant to wrongful dismissal and whether the tribunal considers misconduct amounting to a breach actually occurred.

AUTHORITIES

153. The following authorities were referred to by the respondent and have been taken into consideration by the tribunal:

BHS Ltd v Burchell [1978] IRLR 379 EAT

Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23

Fuller v London Borough of Brent [2011] EWCA Civ 267

UCATT v Brain [1981] IRLR 244

Turner v Vestric [1980] ICR 528

W Brooks & Son v Skinner [1984] IRLR 379 EAT

Parker Foundry Ltd V Slack [1992] IRLR 11

W Devis & Sons Ltd v Atkins [1977] 2 All ER 321

Jagex Ltd v McCambridge [2020] IRLR 187/ UKEAT/0041/19/LA

Grundy (Teddington) UK Ltd v Willis [1976] ICR 323

Rolls- Royce Ltd v Walpole [1980] IRLR 343

British Leyland (UK) Ltd v Swift [1981] IRLR

Iceland Frozen Foods Ltd v Jones [1982] IRLR 439

Rogan v South Eastern Health & Social Care Trust [2009] NICA 47

Salford Royal NHS Foundation Trust v Roldan [2010] IRLR 721

SUMISSIONS AND APPLYING THE LAW TO FACTS FOUND

154. It was the claimant's case that her dismissal was both procedurally and substantively unfair in summary contending that she had made herself a target on raising a formal grievance against Mrs Taylor supported by her suspension taking place three days later albeit seventeen days from the alleged behaviour complained of against her by Mrs Taylor having passed, that she had always made the case that she was clearing her throat; that the informal fact finding was used to build a case against her; that her grievance was not treated in the same way as Mrs Taylor's complaint; that the disciplinary process was not conducted objectively or impartially and her 'side' not heard because no-one wanted to hear it and the timing of the allegations raised against her supported collusion by staff members to get rid of her.
155. The respondent contended that the absence of any 'conspiracy type' theory was assured by involvement of external HR advisors and claimant's dismissal substantively fair based on the respondent's reasonable belief in the allegations upheld against her (based on reasonable grounds after reasonable investigation), and reasonable to consider the working relationship between the claimant and many other staff members irremediable and dismissal the only available sanction because of the seriousness of the allegations ; clear witness evidence; risk of further upset to members of staff ; breach of the respondent's protocol which had been highlighted and reinforced to the claimant on numerous occasions; and lack of acceptance or contrition by the claimant, that the respondent could not be assured the claimant would change her behaviour.

Credibility

156. The tribunal rejects the contention that the respondent's witnesses were nothing but straightforward and honest in their evidence, but considered in particular that of Mr Daly evasive and Mrs Taylor's somewhat exaggerated. Ms Scott and Ms Philipson it is accepted were truthful in their accounts and that incorrect notes provided in the tribunal bundle arose from genuine clerical mistake rather than conspiracy.
157. It is accepted that doubt is also cast on the credibility of the claimant's evidence by:-
- the basis upon which a witness order for Mrs Boyle was sought - to vouch 'that at no time were any complaints ever made known to her or me regarding alleged behaviour over 2.5 years', Mrs Boyle having accepted at

hearing that she was approached by a number of staff about the claimant's behaviour – we note however that no *formal complaint* was previously raised nor action taken against the claimant under the respondent's available procedures;

- the claimant continuing to maintaining at hearing that she was *not invited* to the News Awards event in the face of emails presented to the contrary.

158. Mrs Boyle featured heavily in the case. She was a reluctant witness whose attendance was compelled by witness order. The tribunal found her straight forward and honest in her evidence supported by documentary evidence. Mrs Boyle acknowledged matters were raised with her by staff members relating to the claimant but disputed their magnitude and any suggestion they were not dealt with proportionately / resolved at the time. The respondent contended that Mrs Boyle had faced a disciplinary action as a result of the lack of her dealing with these issues (the outcome was not referred to). We are not persuaded that Mrs Boyle sought to minimise the matters raised so as not to reflect badly upon her as a manager but consider rather that she was genuine in her evidence.
159. Evidence of Ms Murphy on behalf of the claimant was not challenged on cross-examination and is accepted save for her recollection of the announcement of the claimant as having been sacked rather than suspended which clashes in particular with the evidence of Mrs Boyle and which the tribunal overall prefer.
160. The nature of the noise made by the claimant following Mrs Taylor's comment at the February event was in dispute. It is not for the tribunal for the purpose of the unfair dismissal complaint to determine what it thinks in fact happened but rather to assess the reasonableness of the respondent's belief. The claimant put that she always had made the case that she had cleared her throat. Ms Best contended this was not so and first put during the course of the substantive hearing, we note however this was the explanation recorded as put by the claimant to Mr Daly and Ms Irwin in the initial 'informal' fact finding interview.

Was the dismissal automatically unfair for failure to comply with statutory minimum dismissal procedures?

161. There was no complaint from the claimant that the statutory minimum disciplinary and dismissal procedures were breached and tribunal is satisfied that the respondent complied fully with statutory minimum dismissal procedure in Schedule 1 of the 2003 order.

What was the reason for dismissal?

162. The tribunal is satisfied that the respondent's genuine reason for the claimant's dismissal was related to her behaviour towards other staff members. Conduct is a potentially fair reason for a dismissal under the ERO.

Procedural and substantive unfairness

163. Consideration of procedural fairness and substantive fairness can become intertwined and blurred. The important question for the tribunal in determining

fairness is the statutory test under Article 130 (4) ERO.

164. We are not persuaded as contended by the claimant that the whole investigatory and disciplinary process against her was entirely unwarranted and unreasonable. We accept that Mrs Taylor made a verbal complaint about the claimant's behaviour toward her at the February training event and asked Mr Daly that her complaint be pursued. We accept that Mr Daly could have sought to defuse the situation, albeit not clear whether Mrs Taylor would have been receptive and in any event he did not seek to do so and embarked upon on a fact finding process. We consider that it was reasonable and warranted that the respondent seek to investigate and address the matter.
165. The respondent we accept did not at the outset comply with its own disciplinary procedure or thereafter with the LRA code of practice (Paragraph 50). The Respondent's disciplinary procedure provided for an investigation to be conducted by an independent manager not within the employee's function, so as to assure impartiality. Mr Daly was responsible for the management of the ongoing and notably deteriorating working relations amongst numerous HR and Finance staff and specifically difficulties between the claimant and Mrs Taylor - in relation to which Mrs Taylor had told him in summer 2018 she was contemplating resigning. Mrs Taylor attributed Mr Daly's *'mismanagement of the situation'* to have allowed matters to fester and grow and was angry with him for allowing this to happen. Mr Daly on his evidence was aware of problems expressed to him by Ms McCarthy in October 2018 as experienced with the claimant, but never put to the claimant for comment, and he considered the claimant to have been *'petty'* in her behaviour toward Ms McCarthy in querying of the late delivery of a company birthday card for which Ms McCarthy was responsible. Mr Daly was present at the February training event when the alleged conduct took place which gave rise to Mrs Taylor's complaint albeit did not himself notice anything untoward. All of these matters compromised Mr Daly's impartiality. Mr Daly's conduct of the initial fact finding investigation as the director of Finance, the function within which the claimant worked, was clearly contrary to the respondent's agreed disciplinary procedure and did not ensure impartiality in the handling thereof.
166. It was not however Mr Daly's involvement, rather that of Ms Irwin, that the claimant raised objection to at the initial fact finding stage due to Ms Irwin's previous involvement facilitating training and comments made during interview which the claimant believed indicative of a predetermined view against her. On completion of the initial fact finding Mr Daly reached a view that the claimant's behaviour was impacting on other staff members and reported his findings to Mr McKenna. It is accepted that Mrs Taylor's complaint and the initial fact finding interviews conducted preceded the submission by the claimant of her grievance relating to Mrs Taylor. It is also accepted that Ms Irwin was privy to the claimant's grievance in its conveyance via her from Mrs Boyle to Mr Daly. We are not persuaded however that the claimant in raising the grievance made herself a 'target' or triggered her suspension but that the decision to suspend was made in response to Mr Daly reporting to Mr McKenna after initial interviews his view that the claimant's behaviour was impacting upon other staff members. We are not persuaded in light of the role of the claimant and matters raised that Mr McKenna's decision at that stage to suspend the claimant so as to prevent potential interference with witnesses whilst allegations were investigated was disproportionate.

167. Mr McGovern was informed about matters relating to the claimant and present when she was called to the boardroom by Mr McKenna and suspended. Whilst the claimant was not informed of additional allegations being investigated against her at the time of suspension beyond the alleged laugh at Mrs Taylor, she was shortly afterwards advised fully of the extended allegations in the letter sent confirming her suspension and again in the later disciplinary hearing invitation.
168. Mr McKenna on announcing the claimant's suspension to Newry staff, despite the initial allegation against the claimant arising from Mrs Taylor and the claimant having lodged a bullying and harassment complaint three days previously against Mrs Taylor, directed staff to speak with Mrs Taylor with any concerns they had regarding the claimant's behaviour. We accept this gives an impression of Mr McKenna '*endorsing*' Mrs Taylor.
169. The respondent thereafter appointed external HR advisors to investigate and report upon allegations arising out of the initial fact finding that the claimant's behaviour was impacting upon other staff members. The respondent submitted that impartiality was assured by the use of outsiders who did not know the claimant, to investigate and report. The claimant alleged '*cross-overs*' with HR advisors being on the same external HR team as those with previous associations with the respondent or involvement at other stages of the disciplinary and grievance processes. The claimant contended investigatory interview questions were drafted by Ms Irwin whose involvement in the initial fact finding she had objected to and who was on the same external HR team as investigators Ms Carolan and Ms Scott. We are not persuaded on balance that the objectivity and impartiality of Ms Carolan or Ms Scott was adversely impacted by these '*cross-overs*'.
170. The respondent (albeit not otherwise a general legal requirement) then failed to comply with its own disciplinary procedure to invite the claimant to a meeting as part of the formal investigation prior to the respondent proceeding to a disciplinary hearing. Accordingly the disciplinary hearing was the first opportunity the claimant had to respond to the extended allegations then made against her and unsurprisingly in contesting them raised for the first time a number of matters upon which Mr McGovern was unable to respond conclusively or confirmed as under investigation. The investigation process is important not only in enabling the employer to discover the relevant facts to enable him to reach a decision whether or not an offence has been committed, but also if properly conducted secures fairness to the employee by providing an opportunity to respond the allegations made and if relevant raise any substantive defence and furthermore even if misconduct is established provides an opportunity for any factors which might mitigate the offence to be put forward and affect the appropriate sanction. A reasonable investigation should focus no less on any potential evidence that may exculpate or at least point towards the innocence of the employee as on that directed towards proving the allegations. Mr McGovern had no experience or training in disciplinary matters. As per his evidence he had already begun to form the view of the claimant as '*curt*' and to treat him- as a director- differently to others. After a very lengthy disciplinary hearing and only a relatively brief adjournment Mr McGovern concluded the claimant had shown no remorse, instead blaming others for her actions; to have a '*head mistress*' way about her although no '*manager*' status; and to think she could talk to and treat people in a manner which did not fall within her remit and

proceeded to confirm his decision to summarily dismiss the claimant. No reflection was communicated by Mr McGovern at that stage to the claimant upon in particular the matters she then raised on appeal as still outstanding. Even accepting a genuine belief by Mr McGovern in the conduct alleged, his haste in acting upon it, without any apparent hesitation to consider postponement for reflection or further enquiry upon matters raised by the claimant for the first time at hearing does not suggest an open mind, nor at that stage meets the remainder of the Burchell test.

171. When the claimant appealed her dismissal, Mr Daly assumed the role of final decision maker on appeal despite his prior involvement in the initial fact finding carried out in response to Mrs Taylor's complaint and from which he had already formed a view that the claimant's behaviour was impacting upon other staff. Mr Daly in handling the claimant's appeal of the disciplinary decision and grievance outcome responded to matters raised as outstanding and not previously addressed by McGovern before proceeding to a decision, we are not however assured that he was impartial and open-minded, his renewed involvement at the appeal stage was contrary to recommended good industrial practice (Paragraph 50 LRA Code) and negated procedural fairness and removal of bias secured by the intervening introduction of external HR advisors to conduct the formal investigation and report thereon.
172. The respondent is a large company operating internationally with seven executive and one non-executive director on its board. It has four offices, one being in Dublin. Board directors included Mr Moley who was based in Newry. The tribunal is not persuaded that it was not feasible for the respondent to have arranged for a director, without any involvement, to have acted instead of Mr Daly in the initial investigation in accordance with its own procedures and at the very least in the disciplinary appeal hearing in accordance with good industrial relations practice, to ensure impartiality.
173. It is accepted that Mr Daly's involvement on many levels meant there was a clear lack of independence and impartiality, was contrary to good industrial practice and overall that the claimant was not afforded an impartial and transparent disciplinary process.
174. Ms Best contended that the dismissal was substantively fair based on the decision-makers having held a reasonable belief in the claimant's guilt of the alleged misconduct on reasonable grounds following reasonable investigation founded upon the investigatory interview statements from Ms McCarthy, Mr Magee, Lorcan Keenan, Ms Rooney, Ms McArdle and Mrs Taylor supporting the claimant having laughed or made a derogatory sound towards Mrs Taylor at the training event; had behaved inappropriately in the office towards her colleagues with behaviour described as '*sharp*' '*curt*' '*aggressive*' '*extremely sharp*' and '*a bit rude*'; and dismissal the only reasonable sanction set against the seriousness of the allegations ; clear witness evidence; risk of further upset to members of staff ; breach of the respondent's protocol which had been highlighted and reinforced to the claimant on numerous occasions; and lack of acceptance or contrition by the claimant such that there could there no assurance to the respondent that things would change if the claimant was allowed to remain in employment (further supported by the claimant continued stance at hearing that she was '*innocent of the allegations*') and reasonable to consider the working relationship irremediable.

175. A particularly busy period in 2017 had required the respondent to bring in a temporary ledger assistant to help keep up with work to be done in Finance. Mrs Boyle considered Mrs Taylor under resourced in HR. A HR assistant was sought in May 2018 to help her and whilst Ms McCarthy was moved part time from Finance to assist in HR, she was required to return to Finance when her replacement left, before ultimately being moved full time to HR. The Newry office was busy and pressurised. Mrs Taylor on her return to work in April 2018 noted a hostile working environment in the office which she described as '*from day one, toxic, devoid of any friendliness*'. The issue of difficult working relations was recognised by Mr Daly as existing across the office between numerous staff members including evident growing tensions between Mrs Taylor and Mrs Boyle. Following Summer 2018 Mrs Taylor put to Mr Daly that she considered there to be no incentives for change in the team and in addition to training there needed to be '*reprisals*' in relation to conduct and staff all held accountable for their conduct. This and apparent tensions throughout the office prompted Mr Daly to seek external HR advice and coaching in September 2018 at his own expense as to how best manage conflict in the office. The attempts Mr Daly made thereafter to address negative behaviours were approached in a positive collaborative manner to avoid causing further upset, measures were presented as aimed generally at all staff in Finance and HR to try to improve overall communication and workplace harmony with no staff member individually singled out or specifically warned of imminent disciplinary consequences in the absence of their individual improvement.
176. Whilst negative perceptions of the claimant's behaviour were raised with Mrs Boyle by Mr Morgan in early 2017, Ms McArdle in Summer 2018 and Ms Rooney in early 2019, Mrs Boyle did not consider the claimant's behaviour to be problematic, just to be different, and she sought to resolve matters informally at source without further aggravating the already tense working environment. Mrs Boyle clearly did not consider necessary and did not communicate to the claimant any form of warning - informal or formal, oral or written to the effect that formal disciplinary action would be warranted if there was any further reported negative perception of her behaviour. The external HR investigators in the formal investigatory report noted that '*no evidence was heard of suggestion having been made to the claimant of a need to change her approach*' and the respondent based on a view of Mrs Boyle not having done so thereafter pursued a disciplinary allegation against her of '*Failing to take seriously repetitive or serious concerns raised in relation to the your team member (direct report)..*'. Mr Daly when asked in investigatory interview if the claimant had received feedback about her communication style, responded that she tended not to receive feedback well referring then to her not accepting same regarding tone and manner in relation to Ms Loughran (in 2017) and he stated '*this is the construction industry so this is how it is at times*'.
177. On commencement of her employment the claimant received the respondent's handbook setting out its four stage disciplinary procedure and examples of conduct that would merit summary dismissal. The LRA Code of practice recommends that disciplinary procedures should not be seen primarily as a means of imposing sanctions but rather as a way of encouraging improvement or modifying the behaviour of employees whose conduct or performance is unsatisfactory. The respondent referred to multiple measures taken to try to address the toxic working relations existing between the claimant, Mrs Taylor and at least four other staff

members in the Newry office. We note formal feedback was not given on peer to peer reviews; Mr Daly did not communicate to the claimant issues raised by Ms McCarthy with him in October 2018 to provide opportunity to address perceived issues; nor did he share with the claimant his opinion formed in December 2018 following peer reviews that she had not embraced HEART values but instead a Christmas bonus was paid to all and encouraging notes sent. Adherence to the HEART principles by staff members was not seen to be enforced. The claimant held a clear disciplinary record. The claimant was aware of the tensions in the office and steps introduced by the respondent these were however presented as aimed at everyone to improve general communication and harmony throughout the office. No use was made by the respondent before proceeding to dismissal of available stages under its disciplinary procedure to give the claimant opportunity to appreciate her individual need to change, to encourage her to modify her behaviour and most significantly realise that failure to do so could have the consequence of summary dismissal. The claimant considered her communication style to be professional, her manner, tone and approach to be the same toward all, she was unaware of the existence or impact of negative perceptions of interactions with her upon Ms McCarthy and Mrs Taylor. The claimant accordingly did not consider her individual conduct / failure by her to interact more positively with her colleagues would merit summary dismissal.

178. Whilst Mr Daly may have held a reasonable belief in the claimant having behaved in the ways alleged and that there was breakdown in the working relationship at the very least between her and Mrs Taylor, we do not consider, illustrated by the disciplinary action then taken against Mrs Boyle, that he held a genuine or reasonable belief that the claimant was aware on foot of previous matters raised by staff with Mrs Boyle that her job could be in jeopardy and are not persuaded that the respondent had taken reasonable steps to try and improve the relationship between the claimant and other staff members. We do not consider Mr Daly's consideration of the above factors (listed at paragraph 155) and conclusion based thereon that the situation was irremediable and dismissal the only available sanction fell within the band of reasonable responses of a reasonable employer. We are unanimous that the sanction of dismissal was disproportionate and one that no reasonable employer could have imposed in the circumstances.
179. We consider the claimant's dismissal fell outside the band of reasonable responses of a reasonable employer in terms of both procedure and penalty.
180. Applying the statutory test the tribunal find the respondent acted unreasonably in treating the claimant's conduct as a sufficient reason for dismissing her and her dismissal was unfair.

FACTS AND CONCLUSIONS RELEVANT TO REMEDY FOR UNFAIR DISMISSAL

181. The effective date of termination (EDT) was 14 March 2019 at which time the claimant had 2 complete years continuous employment during which she was aged more than 41 years old. As agreed by parties the claimant's average weekly gross pay was £403.85 being £334.49 net.
182. The claimant also benefitted from health insurance to the net value of £112.09 per month.

183. The claimant within two weeks of her dismissal secured and began temporary employment which has since been made permanent.
184. Disregarding the contractual notice period for which compensation is provided below, payslips produced show the claimant to have earned in the period thereafter from week ending 19 April 2019 (inclusive) to end August 2020 a total of £19,643.60 net in her new employment (over that 71 week period) being on average £276.67 net per week. No payslip for September 2020 was available at the hearing date. The average weekly difference in pay between the claimant's former and new employment was (£334.49 - £ 276.67=) £ 57.82 net per week.
185. The claimant on being made aware of how her behaviour had been perceived negatively by Ms Rooney had been able to adjust her approach toward her and greatly improve their working relations to Ms Rooney's satisfaction.
186. The object of the compensatory award is to compensate employees for financial loss which flows directly from the dismissal in so far as it is attributable to action taken by the employer, compensation does not automatically follow from the termination of employment to the last day of hearing. It was contended for the respondent that it should not be held responsible for interim loss incurred by the claimant for the period of delay arising from the pandemic between April and September 2020 in reconvening the substantive hearing and furthermore that the claimant had failed to mitigate ongoing loss by seeking employment at higher rate of pay. The delay arising from the pandemic we note was not of the claimant's making either. The claimant we consider acted reasonably in significantly mitigating her immediate loss by promptly securing temporary new employment albeit at a lower rate of pay and which employment has since been made permanent. There is no evidence before the tribunal to support that the claimant has since then failed unreasonably to mitigate her continuing loss of the shortfall. The claimant also sought compensation for her anticipated future loss arising from the shortfall between her new and former earnings. Taking into consideration the point at which the employee might have otherwise been expected to obtain an equivalent job we consider it just and equitable in all the circumstances to make an award for the shortfall in the claimant's earnings up to the reconvened hearing date but no future anticipated loss thereafter.
187. The tribunal is not persuaded on the evidence adduced that absent procedural flaws there would have been no difference to the outcome such that a Polkey deduction to the compensatory award is appropriate but consider that the claimant's employment would otherwise have continued indefinitely.
188. The claimant appreciably felt excluded in circumstances where the non- availability of further seats and names of the Award event attendees was not clearly communicated directly to her following expression of her renewed wish to attend, although she did not seek either to resolve any uncertainty by approaching Mrs Taylor directly for clarification before the event was due to take place. The claimant in any event agreed to 'move on' from conflict with Mrs Taylor surrounding the matter, but is apparent did not in fact do so. At hearing the claimant still maintained that she was 'not invited' to the Awards event by Mrs Taylor despite emails clearly to the contrary. It appears that resentment was carried forward by the claimant

toward Mrs Taylor and that this was perceived by Mrs Taylor and negatively impacted upon their continuing interactions, fuelling an onward deterioration in their working relations and adding considerably to tensions and conflict already existing in the office with other staff members. We consider the claimant's behaviour in this respect was unreasonable and blameworthy conduct which contributed to the respondent's decision to dismiss her. We find it is just and equitable to reduce the basic and compensatory awards by 30 % to reflect the extent of the claimant's contributory fault.

189. The tribunal awards compensation for unfair dismissal as follows:-

Basic award

£403.85 x 1.5 x 2= **£1,211.55**

Compensatory Award

Immediate Loss of Earnings

To date of reconvened hearing (excluding notice period compensated for below),

Say 76 weeks @ [£334.49 - £ 276.67] = **£4,394.32**

Loss of Health insurance

EDT to hearing

Say 18 months @ £112.09 = **£ 2017.62**

Loss of Statutory Rights **£ 250**

30% Contributory Conduct deduction **- £ 2,362.05**

Total **£ 5,511.44**

NOTICE PAY

190. We are not satisfied that the claimant having laughed at or made a derogatory sound directed toward Mrs Taylor at the February training event has been proven as a fact.

191. The claimant was unaware of the degree of upset her manner and tone was causing Mrs Taylor and Ms McCarthy or wider negative perceptions thereof by a number of colleagues.

192. We do not consider on balance that the respondent was contractually entitled to summarily terminate the claimant's contract of employment for gross misconduct based cumulatively or singularly upon the allegations relied upon as amounting to a wilful and deliberate breach of essential contractual terms so serious as to repudiate its trust and confidence in her future ability to perform her duties.
193. We find the respondent failed in breach of contract to give the claimant proper notice of termination in respect of which she has incurred a loss of 4 weeks net pay. The respondent shall pay the claimant **£ 1,337.96** in respect of her loss.

CONCLUSION

194. The tribunal is unanimous in its decision that the respondent in the circumstances (including the size and administrative resources of the respondent's undertaking) and determined in accordance with equity and the substantial merits of the case acted unreasonably in treating the claimant's conduct as a sufficient reason for dismissing her and the dismissal unfair. The claimant was responsible for unreasonable and blameworthy conduct which contributed to the respondent's decision to dismiss her such that it is just and equitable to reduce the basic and compensatory awards by 30 %. The respondent shall pay the claimant **£5,511.44** compensation for unfair dismissal.
195. The claimant's claim for notice pay is well founded and respondent shall pay the claimant **£1,337.96** in respect her thereof.
196. The claimant did not claim benefits after her employment ended and recoupment provisions do not apply.
197. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990.

Employment Judge: *M. Bell*

Date and place of hearing: **25, 26, 27 & 28 February and 29 & 30 September 2020, Belfast.**

Date decision recorded in register and issued to parties: