# EMPLOYMENT TRIBUNALS

**Claimant** **Respondent**

**Ms C Oshodi** **v** **The Football Association Ltd**

**Heard at**: Watford Employment Tribunal
**On**: 1,2,3,4,5,8,9,10,11,deliberation 12, 15,16 July 2024
**Before:** Employment Judge Alliott
**Members:** Ms M Harris
Mr D Bean

**Appearances**
**For the Claimant:** In person
**For the Respondent:** Mr S Purnell (counsel)

# RESERVED JUDGMENT

The judgment of the tribunal is that:

1. The claimant's claims for direct discrimination or harassment on the grounds of race and/or sex, victimisation, protected disclosure detriment, automatically unfair dismissal – protected disclosure and unfair dismissal are dismissed.

# REASONS

## Introduction

1. The claimant was employed by the respondent on 3 August 2015 as a County Coach Developer. She was dismissed with effect on 30 September 2020. The reason given by the respondent for dismissal is redundancy. By a claim form presented on 21 February 2021, following a period of early conciliation from 10 October 2020 to 21 January 2021, the claimant presents complaints of direct race and/or sex discrimination, harassment on the grounds of race and/or sex, victimisation, protected disclosure detriment (whistleblowing), automatically unfair dismissal (protected disclosure, whistleblowing) and unfair dismissal. The respondent defends the claims.

## The issues

2. An agreed list of issues was produced following the CMPH held before Employment Judge Mason on 27 March 2023. At the time the claimant was represented by Mr S Swanson (a consultant) of Justice law Consultants. Mr

Swanson ceased to represent the claimant on Thursday 27 June 2024, two working days before this hearing.

3. The agreed list of issues is as follows:

**"Direct discrimination – S.13 Equality Act**

1. Did the respondent do the following acts?

(a) On the following dates, the persons listed below failed to provide the claimant with the training/support listed below:

(i) From December 2017, Andy Poole failed to provide the claimant with support to complete her UEFA Coaching Licence, in particular, by not understanding black females.

(ii) From 2017, Andy Poole and Keith Webb did not support the claimant in completing her masters degree.

(iii) From March 2020, Sarah Norris and Carolyn Round of HR did not support the claimant's training being The Executive Master in Global Sport Governance (MESGO).

(iv) From September 2018 to termination of employment, Andy Poole, Line Manager; Tony McCallum, Andy Poole's Line Manager; John Folwell and Les Howie, Tony Poole's Line Managers; Lucy Pearson, Head of the Department; Sarah Norris and Carolyn Round, Members of HR, failed to provide the claimant with training and development to take on governance roles.

(b) At a meeting on 7 December 2018, Tony McCallum and Sarah Norris accused the claimant of making unauthorised claims for expenses.

(c) Tony McCallum and Sarah Norris were unwilling to recognise cultural differences.

(d) Between August 2018 and 23 September 2019 to 18 December 2020, Tony McCallum and Sarah Norris withheld the claimant's expenses without any coherent explanation.

(e) On 7 December 2018, during an investigation meeting regarding her expenses claim, Tony McCallum and Sarah Norris asked the claimant to remove expenses claims which had previously been authorised by Andy Poole.

(f) During investigation and disciplinary meetings in November 2018, December 2018, and 27 February 2019, Andy Poole gave reasons for not authorising the claimant's expenses claims which differed from his previous reason, which was that payroll would not authorise them.

(g) During investigation and disciplinary meetings in November 2018, December 2018, and 27 February 2019: and further on 17 May 2019 and 29 July 2019 after the disciplinary allegations had been concluded, Tony McCallum chose to ignore the fact that the claimant's line manager had authorised her to purchase food from local supermarkets to prepare in advance of trips.

(h) When carrying out the investigation, Tony McCallum and Sarah Norris failed to follow the respondent's procedures by describing the claimant's actions as potential gross misconduct rather than potential misconduct.

(i) When carrying out the disciplinary process, Tony McCallum and Sarah Norris failed to follow the respondent's procedures by describing the claimant's actions as gross misconduct rather than misconduct.

(j) On 16 January 2019, Tony McCallum and Sarah Norris held a second investigation into the same conduct investigated in the first investigation.

(k) On 24 January 2019 Andy Poole harassed the claimant by attending a course the claimant was delivering and proceeded to harass the claimant about the expenses investigation; raised an issue about complaints that former FA members of staff had purportedly made about the claimant.

(l) From the outset of the investigations into the expenses allegations until the disciplinary hearing on 27 February 2019, Andy Poole failed to relieve the claimant of her duties pending the disciplinary hearing.

(m) From the outset of the investigations into the expenses allegations against the claimant, being interviewed on 7 December 2018 until the disciplinary hearing 29 February 2019, and thereafter to the PDR meeting on 29 July 2019 Andy Poole ignored the claimant's wellbeing by:

  (i) Requiring the claimant to attend investigation meetings whilst she had hospital appointments;

  (ii) Not informing the claimant that the meeting of 7 December 2018 was an investigation meeting:

  (iii) Requiring the claimant to work full-time whilst she had to compile evidence for the investigation.

  (iv) Investigating the claimant's expenses claims rather than having an informal discussion with her.

(n) On 7 February 2019, in breach of the respondent's policies, Sarah Norris wrote to the claimant, alleging abuse of the respondent's Travel and Expenses Policy, causing the claimant to fear losing her employment.

(o) On 27 March 2019, David Courell wrote to the claimant, not upholding the allegations of misconduct, but raising concerns regarding "…*other expenses that you have regularly been claiming, eg hygiene products and subsistence expenses for working from home days*."

(p) From the outset of the investigations into the expenses allegations against the claimant, being interviewed on 7 December 2018 until the disciplinary hearing 29 February 2019, to the claimant's knowledge, Tony McCallum, Sarah Norris and Andy Poole failed to investigate anyone else for breach of the Travel and Expenses Policy.

(q) On 17 May 2019, Tony McCallum displayed hostility towards the claimant by:

  (i) Questioning the claimant about her expenses claims;

(ii) Stating "*I've had enough , I don't want to know*";

(iii) Packing his laptop and belongings, mid conversation whilst the claimant was talking.

(r) On 29 July 2019, at the PDR meeting:

(i) Tony McCallum attended at the invitation of Andy Poole, who had not warned the claimant that Mr McCallum would be attending.

(ii) Tony McCallum and Andy Poole raised matters which had been addressed by the disciplinary hearing outcome.

(iii) Tony McCallum stated that he wanted to amend the claimant's expenses claims, where this matter had already been addressed by the disciplinary hearing outcome.

(iv) Tony McCallum angrily stated "*I've had enough of you again, I'm going to go to HR*."

(v) Tony McCallum bullied the claimant by stating "*Christina you are a waste of time and space*" and angrily left the meeting.

(s) On 11 September [actually October] 2019, Richard McDermott wrote to claimant, not upholding her grievance.

(t) On 12 December 2019, Lucy Pearson wrote to the claimant, not upholding her grievance appeal.

(u) On 11 September 2020, Lucy Pearson dismissed the claimant for redundancy.

(v) On 23 October 2020, Craig Donald wrote to the claimant, not upholding her appeal against dismissal.

2. Did any such acts amount to less favourable treatment?

3. Save for sub paragraphs 1(c) – (f) above, was any such less favourable treatment because of the claimant's race and/or her sex? For sub paragraphs 1(c) – (f) above, was any such less favourable treatment because of the claimant's race?

**Harassment – s.26 Equality Act**

4. Did the respondent engage in unwanted conduct? The claimant relies on the acts set out at sub paragraphs 1(a) – (v) above.

5. Save for sub paragraphs 1(c) – (f) above, was any such conduct related to the claimant's race and/or her sex? For sub paragraphs 1(c) - (f), was any such conduct related to the claimant's race?

6. Did any such conduct have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

**Victimisation – s.27 Equality Act**

7. Did the claimant do a protected act by submitting a grievance dated 1 August 2019?

8. Did the respondent subject the claimant to a detriment? The claimant relies on the acts set out at sub paragraphs 1(t) – (v) above.

9. Was the claimant subject to any such detriment because she had done a protected act?

**Protected disclosure detriment – s.47B Employment Rights Act**

10. Did the claimant disclose information? The claimant relies on the submission of a grievance dated 1 August 2019.

11. Did the claimant reasonably believe that any such disclosure was made in the public interest and tended to show that the respondent:

    (a) Was in breach of a legal obligation not to discriminate against employees; and/or

    (b) Was endangering the health and safety of the claimant by subjecting the claimant to a systematic campaign of discrimination, harassment and unfair and less favourable treatment; a hostile working environment; patronising, ostracising, marginalising, bullying, intimidating and insulting behaviour towards the claimant; as well as abuse and misuse of power through means that undermined, humiliated, and denigrated the claimant.

12. Did the respondent subject the claimant to a detriment? The claimant relies on the act set out at sub paragraph 1(t) above.

13. Was any such detriment done on the ground that the claimant made a protected disclosure?

**Automatic unfair dismissal – Protected disclosure – s.103A Employment Rights Act**

14. Was the reason, or if more than one the principal reason, for the claimant's dismissal that she made a protected disclosure?

**Ordinary unfair dismissal – s.98 Employment Rights Act**

15. What was the reason, or if more than one the principal reason, for the claimant's dismissal? The respondent relies on redundancy.

16. In dismissing the claimant, did the respondent act reasonably or unreasonably in treating redundancy as a sufficient reason for dismissal in the circumstances (including he size and administrative resources of the respondent's undertaking)?

**Jurisdiction – time limits**

17. In respect of the [claimant's] direct discrimination, victimisation and harassment claims, where any act or omission relied upon occurred prior to 11 September 2020, would it be just and equitable to extend time?

18. In respect of the [claimant's] employment Rights Act 1996 claims, where any act or omission relied upon occurred prior to 11 September 2020, was it reasonably practicable for the claimant to have presented her claims within the primary three

month time limit, and if not, did she bring her claims within such time as the tribunal considers reasonable?"

## Remedy

4. This hearing was liability alone. Given our findings the remedy issues are not recited here.

## The law

5. In his written closing submissions, Mr Purnell, on behalf of the respondent, has made extensive reference to the law and various authorities. The same are not recited here but we record that we have read his closing submissions and taken into account the legal principles advanced.

Direct discrimination

6. S.13 of the Equality Act 2010 provides as follows:-

> "13 Direct discrimination
>
> (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

7. S.23 Equality Act provides as follows:-

> "23 Comparison by reference to circumstances
>
> (1) On a comparison of cases for the purposes of section 13… there must be no material difference between the circumstances relating to each case."

8. S.123 Equality Act provides as follows:-

> "123 Time limits
>
> (1) Subject to section 140B, proceedings on a complaint within section 120 may not be brought after the end of—
>
> (a) the period of 3 months starting with the date of the act to which the complaint relates, or
>
> (b) such other period as the employment tribunal thinks just and equitable."

9. S.212 Equality Act:-

> "212 General interpretation
>
> (1) In this Act—
>
> …

"detriment" does not, subject to subsection (5), include conduct which amounts to harassment."

Harassment

10. S.26 Equality Act provides as follows:-

"26 Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

…

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect."

Victimisation

11. S.27 of the Equality Act provides as follows:-

"27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act."

Protected disclosure detriment

12. S.47B Employment Rights Act provides as follows:-

"47B Protected disclosures.

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

13. S.48 ERA provides as follows:-

"(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."

Automatic unfair dismissal – protected disclosure

14. S.103A of the ERA provides as follows:-

"103A Protected disclosure.

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."

Unfair dismissal

15. S.98 ERA provides:-

"98 General.

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

…

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case."

**The evidence**

16. We had a hearing bundle of 2,741 pages. In addition we had a bundle of spreadsheets.

17. We had witness statements and heard evidence from the following:

    17.1 The claimant.

    17.2 Ms Sarah Norris, HR Business Partner at the FA.

    17.3 Mr Richard McDermott, Company Secretary at the FA, who heard the claimant's grievance.

    17.4 Ms Lucy Pearson, Head of Education at the FA, who heard the claimant's appeal against the grievance outcome and a panel member of the claimant's interview for lead roles in the redundancy process.

    17.5 Mr John Folwell, Head of Grassroots Coach Development at the FA, who interviewed the claimant during the redundancy process.

    17.6 Mr Abdul Fazal, Coach Inclusion and Diversity Manager at the FA, who interviewed the claimant during the redundancy process.

    17.7 Mr Craig Donald, Chief Information Officer at the FA, who heard the claimant's appeal against redundancy.

18. We were provided with a cast list, chronology and a proposed reading list.

19. We were provided with written closing submissions from the claimant and the respondent.

**The facts**

20. The claimant was employed by the respondent on 3 August 2015 as a County Coach Developer ("CCD"). She was predominantly home based. Her role involved supporting the development of grassroots football coaches through the delivery of coach education courses and the development, mentoring and support of a team of FA tutors within Middlesex. She was largely responsible for creating her own work programme. She made "in situ" site visits to clubs and schools and would visit games and training sessions. This could involve her working in the evenings and at weekends. She would also on occasions have to travel to the FA premises at Wembley and St George's Park at Burton-on-Trent.

21. Pursuant to the claimant's contract of employment she was entitled to claim expenses. Her contract of employment provided:-

> "Expenses
>
> 12. The Company will reimburse any travelling, hotel, entertainment and other out of pocket expenses properly and reasonably incurred by the Employee in the course of performing the Employee's duties (providing that claims for

reimbursement are in accordance with the Staff Expenses Policy for the time being in force)."

22. Although the claimant maintains that there were two expenses policies, only one has been produced to us, namely the 2013 version that the claimant herself was in possession of at the time. In addition, we have been shown the draft policy that was introduced during the course of 2019.

23. The August 2013 policy provides, as relevant, as follows:-

> **"Introduction and policy statement**
>
> It is the policy of the FA Group that employees shall be reimbursed the actual cost of expenses incurred wholly, exclusively and necessarily in the performance of the duties associated with their position. Employees are expected to seek to minimise costs where possible."

And:

> **"2.1 Compliance**
>
> As an employee you are responsible for:
>
> - Ensuring that no unnecessary costs are incurred and that the FA receives good value for money;"

And

> **"3.5 Employee Subsistence Expenses**
>
> Any meal taken whilst on FA Group journeys (but not at FA Group facilities) can be reclaimed via the expense claim system. All original VAT compliant receipts must be enclosed with the expense claim form. Where employees' normal mealtime expenses are exceeded as a consequence of the requirement to travel on FA Group business and meals are not provided by The FA Group, the following maximum daily meal allowances may be claimed (the allowances are "per meal" per day and all compliant original VAT receipts must be supplied):
>
> Per meal day
>
> Breakfast: £10
> Lunch: £10
> Evening meal: £30"

24. Provision was also made for staff and business entertaining and travel which, for a car, involved a mileage rate.

25. In order to claim expenses employees would enter the details on the "Concur" system. We have some screen shots of various claims made by the claimant. The expense type had to be described, eg lunch or dinner. The transaction date and the amount claimed was entered. The receipt would be uploaded and the employee's line manager was required to approve the expense claim.

26. It is clear to us and we find that the expenses policy was not as clear as it could have been and was not properly applied by Andy Poole, the claimant's line manager. Firstly, in her statement Lucy Pearson says:

> "Prior to my involvement in Christine's appeal, I was already aware that the FA Expenses Policy was unclear in places, as I had had cause to seek my own clarification with HR. I had previously asked Sarah about the application of the policy to lunches for staff meetings away from St George's Park."

The concerns about the expenses policy were also outlined by David Courell in his emails dated 10 March 2019 (as per paragraph 95 and 96) and 25 March 2019 (as per paragraph 102)

27. Secondly, Andy Poole, did not take any account of the fact that the legitimate expenses should only be in excess of the employee's normal mealtime expenses. Thirdly, it does not appear to us that prior to April/May 2018 Andy Poole scrutinised the claimant's expenses in any great detail. The summary of Andy Poole's evidence in the investigation report states:-

> "AP has approved the claims and states that he trusted his team to follow the policy. He admitted that due to work pressures and the volume of expenses he doesn't review all claims but checks samples."

Fourthly, it was Andy Poole's evidence that:-

> "AP states that he had a discussion with CO [the claimant] about her desire to buy food from supermarkets as opposed to fast food, which he said was ok."

28. Andy Poole had been the claimant's line manager since 2016. As will be seen, the claimant was making claims for toiletries and cleaning products as well as supermarket shops for food. In addition, the claimant was claiming food whilst working from home. Given that Andy Poole had been approving these expenses for nigh on two years, we find that Andy Poole did not meaningfully review the claimant's expenses before approving them. Having made these claims and having had them approved by her line manager for a substantial period of time, we readily understand why the claimant continued making these type of claims.

29. Having heard the claimant's evidence it is clear to us that the claimant approached the issue of expenses by treating them as more analogous to an allowance. For example, on 20 September 2018 the claimant visited Sainsbury's. At 20.20 she bought a number of items for £9.15 and obtained a receipt. At 21.21 she purchased a number of items and obtained a receipt for £30.30. On the Concur system printout we have she then presented those two receipts claiming £9.15 for lunch and £30 for dinner. Given that 'lunch' was claimed at 9.20pm and the 'dinner' receipt included spaghetti, a tin of chopped tomatoes and two packs of jumbo prawns, in our judgment it would certainly have prompted a legitimate query as to whether the claimant had simply bought her groceries on the way home and cooked supper when she got there. Of course, it is the claimant's case that she purchased items from the supermarket in order to prepare meals to take with her to work the next and following days but the potential abuse of the system is clear.

30. By September 2018 the claimant had ceased claiming toiletries and cleaning products. However, a subsequent investigation by payroll produced a spreadsheet of questionable subsistence claims running back to September 2016. This shows that the claimant had been claiming body lotion, Ibuprofen, tissues, Blu Tack, Toothbrush, deodorant, Vaseline lotion, shower gel etc. The claimant was also claiming bleach, floor cleaner, Fairy Liquid, Cif cleaner etc.

31. The claimant's explanations were that she needed the cleaning products to clean equipment and the premises she was at when working and that the toiletries were for her use when she was staying away from her home. We do not need to consider whether or not the claimant actually used everything that she purchased during the course of her employment. We do find, nevertheless, that the issues were manifestly worthy of investigation.

**Direct discrimination and findings of fact**

32. We first considered our findings in respect of each of the factual allegations in the list of issues. It was only once we had made our factual findings that we went on to consider the time issue.

33. With exception of the factual allegations set out in 1(a), the direct discrimination or harassment claims, apart from the redundancy process, arise in the context of the respondent's investigation into the claimant's historic expense claims. Consequently, we have examined the material placed before us with particular care in order to understand why it was that the investigation into the claimant's expenses claims was initiated. In particular, we have looked at what evidence there is of the relationship between the claimant and Andy Poole prior to June 2018. We consider this important as we have not heard any evidence from Andy Poole.

34. Andy Poole was interviewed as part of the grievance investigation on 17 September 2019. He was asked to describe his working relationship with the claimant and replied:-

> "We had a positive working relationship up until a year ago. I was made her line manager after Tony [McCallum], as a RCDM, from that point onwards until about from last April/May our relationship was good, was positive. I supported her with her County FA work and vice versa. There weren't any issues that I was aware of."

35. The claimant described the relationship as professional.

36. The first reference we have relating to querying the claimant's expenses is on 25 June 2018. Consequently, we have looked at the evidence of the relationship prior to that.

37. We have an email to the claimant from 19 July 2017 wherein Andy Poole was grading the claimant for 2016/17 as 'A' for behaviour and 'A' for performance. The email concludes: "Well done during 2016/17".

38. We have an email from 29 September 2017 confirming that the claimant, along with others, had been put forward to complete the PG certificate over

the next 12-18 months. The PG course was a PG certificate in sports coaching from the University of Worcester.

39. We have an email dated 4 December 2017 from Andy Poole to the claimant referencing licence support.

40. We have an email dated 19 January 2018 from Andy Poole to the claimant setting out that he would check his diary and let her know which sessions he could attend to support.

41. We have an email dated 19 February 2018 from the claimant to Andy Poole thanking him for his expression of good luck as regards the UEFA B and Andy Poole's response refers to catching up next week re tutor's delivery.

42. We have an email exchange from 16 and 17 April 2018. On 16 April 2018 the claimant sent an email to Andy Poole thanking him for coming down and saying it was much appreciated and on 17 April 2018 Andy Poole replied that it was good to have seen the claimant work and concluded his feedback by congratulating her on good work.

43. We have emails from 20 April and 27 April 2018 from Andy Poole to the claimant arranging L4 support sessions.

44. We have an email exchange on 1 and 2 May 2018. On 1 May the claimant emailed Andy Poole to say "It's always good seeing you all". And on 2 May Andy Poole replied saying it was good to see the claimant and observe her delivering. The email concludes: "Very good work".

45. We have an email from 4 May 2018 with Andy Poole again arranging L4 support for the claimant.

46. In an email dated 8 May 2018 Andy Poole was asking the claimant for potential dates for an A Licence visit.

47. We find that up until issues emerged concerning the claimant's expenses the relationship between Andy Poole and the claimant was nothing other than cordial. We find that there were no tensions or difficulties arising due to the claimant being a black female.

48. We have examined how it is that the issues relating to the claimant's historic expense claims arose and how the investigation was initiated. The first mention is an email dated 25 June 2018 from Andy Poole to Mark Pakula, Grassroots Deliver Officer. This states:-

> "Subject: Re Christina Oshodi expense claim
>
> Hi further to tel conversations, some observations re her claims for April and May 2018.
>
> Please advise re guidelines via HR, appreciate Tony is on a/l"

49. Mark Pakula replied:-

> "Did you get any context from Christina when you met with her?
>
> After speaking with HR I would send back the claim because of the attached points that you have made and ask her to resubmit for the correct amounts ie minus the personal items and just items for dinner etc: not additional items like the buns x 4".

50. Andy Poole had attached to his email to Mark Pakula handwritten notes on the claimant's expense claims for April and May 2018.

51. On the back of that exchange, on 27 June 2018 Andy Poole emailed the claimant as follows:-

> "Hi, good to catch up yesterday just to follow up tel call and resubmission of above expense claims."

Andy Poole then set out a number of dates in April and May 2018 and items which he said needed consideration and further explanation. Included in the expenses queried were facewipes, personal items, cistern blocks, household and personal items and x 4 buns.

52. The investigation report from January 2019 recites as follows:-

> "Following a query raised by AP about expenses submitted by CO, the Payroll & Benefits Department conducted an audit of CO's claims. During this audit they found numerous claims dating back to September 2016 that appeared to sit outside the policy. These included claims for non-food personal items, groceries and food delivered to home address. These claims were then passed to the HR Department to investigate further."

53. On 19 November 2018 Andy Poole was interviewed as part of the investigation into the claimant's irregular expenses. The following exchanges are recorded:-

> "Q2 What direction have you given for your team in terms of expenses?
>
> AP: Not really discussed, I have referred them to the policy. Said they can claim up to the set amounts for breakfast, lunch and dinner. I have had a discussion with Christina about buying food from Tesco; she said she would prefer that to fast food, which I said was ok. I accepted that was her choice. If that's wrong I hold my hands up."

In our judgment, that confirms Andy Poole's misunderstanding/misapplication of the expenses policy, treating it as something akin to an allowance, and confirming that he allowed the claimant to buy groceries to make her own food at home for use when at work.

54. The interview notes continue:-

> "AP: Also told her that she can't claim personal items or household items on the shopping list. I spotted one and said I needed to decline it.
>
> SN: When did you have this conversation with her?

AP: Summertime, July/August. It was maybe June when she was claiming for it. She is about three months behind with claims, so may be in June's claims. I made a joke about how many Bags for Life did she need. I highlighted that she can't pay for personal items. I sample some of her claims but have not picked up previously. When identified I addressed with her.

Q3. How do you review your teams expenses?

AP: Sample a few, depends on the size of the claims. Anthony Ferguson sent more than three months together and had some receipts from March, I emailed Matt about it."

55. Anthony Ferguson was another CCD who reported to Andy Poole. Matt was Matt Hall, from Payroll.

56. We have an email from 26 November 2018 from Andy Poole to Sarah Norris and Tony McCallum. In it Andy Poole states:-

> "I had raised the claim for the casino as part of the claims made, along with the other WFH/Admin expenses – which we had discussed over the phone prior to PDR meeting and I confirmed that she was unable to claim for subsistence when WFH, after contacting Matt Hall to confirm which then highlighted the trail of items claimed for household and personal items."

57. As part of the redundancy appeal process for the claimant, Matt Hall was asked if he could recall how the irregular expense claims were flagged up to him/Tara Holliss (also from payroll). Matt Hall's response on 16 October 2020 was as follows:-

> "We do spot checks every expenses run on all categories and it was a result of a spot check we noticed items being claimed for that were outside policy such as toiletries and that the amounts claimed were at the limit, £30 for example on dinners and the receipts looked like a food shop rather than dinner to eat now for example.
>
> We then did checks on various employees who regularly claim subsistence as we realised the Concur Audit Team must not be checking the claims thoroughly."

58. We find that in about June 2018 Andy Poole started looking at the expense claims in a little more detail. We find that it was not just the claimant's expenses that were queried due to the reference to Anthony Ferguson (as it happens, Anthony Ferguson is black). We find that the enquires made by Andy Poole of payroll probably prompted the spot checks that took place later in 2018. We find that Andy Poole wasn't trying to get the claimant into trouble but was clarifying what could and could not be claimed.

59. On 9 August 2018 Andy Poole sent the claimant copies of expenses/receipts claimed in May along with his queries. One of the receipts was for four buns and two deodorants. Having seen many of the receipts submitted by the claimant in support of her expenses claims, we find that the respondent was perfectly entitled to investigate her expenses due to potential irregularities. On more than one occasion the claimant told

us in her oral evidence that it was not the investigation itself that she was complaining about but the way it had been conducted.

60. However initiated, it is clear that payroll was investigating the claimant's expenses in early November 2018. On 9 November 2018 Matt Hall sent Andy Poole an email attaching the policy around subsistence. In fact, he attached the draft revised subsistence policy that was not yet in place. Later, on 9 November 2018, Tara Holliss emailed Andy Poole as follows:-

> "Just to let you know this claim is not an isolated incident, we've had a look back at previous claims that have been paid and there are quite a few out of policy claims by the looks of things. We are going to be looking into this more thoroughly and we will not be authorising any such claims that come through in the future. Please do not approve this claim when it comes through to you."

61. On 12 November 2018 Matt Hall emailed Sarah Norris of HR as follows:-

> "Please see attached notes on Christina's claims since September 2016 until now.
>
> On the 2018 tab I have listed all the items which have been claimed under subsistence over the last 2 years which are not food and personal items.
>
> A lot of the subsistence claims are for the local Tesco near her home. There are also a number of claims which are for takeaway shops around the area she lives.
>
> For example on the latest claim that's with the Concur Audit Team there is Domino's delivery to her house for £28.23 at around 10.30pm."

62. On 13 November 2018 Sarah Norris sent an email to Tony McCallum indicating that further investigation was necessary. In the list of issues at 1(m)(iv) it is alleged that Andy Poole ignored the claimant's wellbeing by investigating the claimant's expenses claims rather than having an informal discussion with her. The investigation began on 13 November 2018 and as recited above, Andy Poole had been in dialogue with the claimant since June 2018. We find that Andy Poole did raise the issue informally at the outset. Further, we find that the investigation was initiated as a result of analysis done by payroll that was sent to HR. Consequently, issue 1(m)(iv) is not proved.

63. On 21 November 2018 Andy Poole sent the claimant an email. This included the following:-

> "Expenses;
>
> Christina, just to confirm I have been asked not to approve the latest expense claim by payroll/HR, as they were looking to gain further details and information, after CO was asked to explain some of her claims being based at working from home/admin and myself outlining that as CCDs we were unable to claim for subsistence when working from home, etc.
>
> …
>
> Also, asked re working in a coffee shop when doing admin/WFH, and if we were entitled to claim for subsistence on these occasions, and Payroll/HR explained

> that this was still classed as working from home and therefore not eligible to claim for subsistence on these occasions (if we did do this it was our choice), we could only claim if we were meeting a work colleague or another work related purpose eg meeting with Learner/CFA staff."

64. On 3 December 2018 Sarah Norris sent an email to the claimant as follows:-

> "Further to your conversations with Andy Poole, Tony McCallum and myself need to meet with you to investigate some irregularities that have been highlighted within the expense claims you have submitted."

65. The claimant was invited to an investigation meeting which was later rescheduled for 7 December 2018 at St George's Park. The list of issues at 1(m)(ii) alleges that Andy Poole ignored the claimant's wellbeing by not informing her that the meeting of 7 December 2018 was an investigation meeting. We find that the claimant was informed by Sarah Norris that the purpose of the meeting was to investigate irregularities. Consequently, we find this allegation not proved.

66. We accept that it was made clear to the claimant that she was expected to attend the meeting re-arranged for 7 December 2018. However, at no time in advance of the meeting did the claimant inform anyone that in order to do so she would have to cancel a hospital appointment. We accept Sarah Norris' evidence that the claimant was told that she should have told them in advance. In the list of issues at 1(m)(i) it is alleged that Andy Poole ignored the claimant's wellbeing by requiring the claimant to attend investigation meetings while she had hospital appointments. We find that the claimant was not required to attend the investigation meeting on 7 December 2018 whilst she had hospital appointments. The reason we find this not proved is that neither Andy Poole nor, indeed, anyone else, was aware that the claimant had a hospital appointment. Consequently, this allegation is not proved. No other instances were relied upon by the claimant.

67. We have the notes of the investigation meeting held on 7 December 2018. Sarah Norris had prepared a script and questions in advance and so the notes of the meeting are likely to be quite accurate. The opening remarks by Sarah Norris are as follows:-

> "Finance/payroll have highlighted some irregularities with your expenses as some appear to fall outside the policy. Therefore it has been passed to an appropriate manager in the department and HR to investigate further."

68. In the list of issues at 1(b) it is alleged that at this meeting Tony McCallum and Sarah Norris accused the claimant of making unauthorised claims for expenses. We find that at this stage it was merely an investigation and consequently it cannot be said that the claimant was "accused" of making unauthorised claims for expenses. Consequently, this allegation is not proved.

69. During the course of the investigation meeting on 7 December 2018 various expense claims were put to the claimant and she sought to explain them. The toiletries she explained as being necessary for when she stayed nights away. The cleaning items were for course delivery. She thought she was

entitled to claim when working from home/admin and that her manager, Andy Poole, had allowed her to purchase groceries to make up food in advance.

70. During the course of the meeting the following exchanges are recorded:-

> "SN: Why are there a lot of claims for groceries near your home?
>
> CO: There are times when I have been out and there are no shops, any way of getting a receipt. What happens in those situations is I buy food and prepare beforehand. I then end up eating in the car. Some of the food culturally I don't eat, I don't drink tea and coffee but do need hot drinks. There are a few different reasons why."

And:

> "TM: A lot of the receipts are for general groceries from supermarkets near to your home can you explain why you are claiming as subsistence meals?
>
> CO: It is food that I am eating while working. Not everything outside I can eat, I have allergies, and I get food so when I am working I can do my job. I cook and take it with me.
>
> TM: Would you consume all this food in one meal or would this be your groceries for a few days?
>
> CO: I tend to eat food of African origin, main supermarkets they don't really sell what I eat, I go to other shops to buy my weekly food."

71. In her oral evidence the claimant explained that culturally she did not eat meat with blood.

72. We understand that the points made by the claimant as above are the issue raised in issue 1(c) alleging that Tony McCallum and Sarah Norris were unwilling to recognise cultural differences. The claimant appears to be suggesting that due to cultural dietary requirements she could not claim for lunch and dinner in the conventional sense and was required to shop for groceries due to the specialist nature of her dietary needs. In addition, the claimant referenced to having to fast during lent. Again, we take the implication to be that the claimant could not claim for meals at conventional times but needed to make arrangements to eat at other times. Having looked at a large number of the claimant's till receipts we can discern no pattern of specialist cultural foods being purchased. The claimant was shopping at Sainsbury's and Tesco and ordering takeaway food from Domino's Pizzas, Kentucky Fried Chicken etc. The claimant's explanation is not borne out by the expenses we have seen. Further, the fact is, as recited in the investigation report, that Andy Poole agreed that he had approved the claimant buying groceries to make up food for when she was at work. As such she had actually been accommodated with any cultural issues that may have arisen. There are one or two handwritten invoices that may reflect specialist cultural food purchases but our understanding is that these were queried not because of the nature of what had been bought but because there was no VAT number and they were handwritten. We find

that the claimant raising 'cultural issues' or differences is unconvincing. The overwhelming majority of the food purchased by the claimant was ordinary mainstream food from major supermarkets. We find that Tony McCallum and Sarah Norris were not unwilling to recognise cultural differences. We accept the evidence of Sarah Norris that they did take it into account. However, we find that, justifiably, they were sceptical as to the relevance of cultural differences when assessing whether or not the claims made by the claimant fell within the expenses policy. To an extent the problem was that Andy Poole had agreed that she could buy groceries to make up food for later which demonstrated that he did not necessarily understand the policy terribly well. Consequently, we find issue 1(c) not proved.

73. Issue 1(e) asserts that at the 7 December 2018 meeting Tony McCallum and Sarah Norris asked the claimant to remove expenses claims which had previously been authorised by Andy Poole. In her evidence Sarah Norris could not recall whether or not she had made such a request. It is not referenced in the notes of the meeting or in her follow up email. Nevertheless, Sarah Norris asserts that if she had referenced this she would have asked the claimant to remove any expenses which were obviously wrong. However, our understanding is that the expenses being referred to had not been previously authorised by Andy Poole. Andy Poole had challenged the April/May 2018 expenses and had not approved them. Whilst the investigation looked at expense claims as far back as 2016, our understanding is that there was no suggestion that the claimant should have to repay expenses already paid to her. Consequently, if the claimant was asked to remove expenses claims, these related to ones which were pending. This was confirmed in a later email from Sarah Norris to the claimant dated 16 January 2019 wherein she sates:-

> "In terms of the expenses outstanding I appreciate that you will want these paid as soon as possible. Due to the prolonged process we have therefore asked Andy to review these in detail and to approve any that he is happy fall in line with the policy. Those that don't he will return so you can amend and resubmit."

Consequently, we find issue 1(e) not proved.

74. Issue 1(d) asserts that between August 2018 and 18 December 2020 Tony McCallum and Sarah Norris withheld the claimant's expenses without any coherent explanation. As recited above, the withholding of the claimant's expenses was at the direction of Matt Hall and the Payroll Department. There was a coherent explanation of this which was communicated to the claimant by Andy Poole in an email dated 21 November 2018 as set out above. The coherent explanation was that certain of the claimant's claims fell outside the expenses policy. It is clear to us that something of an impasse developed between the claimant and, in particular, Andy Poole, Tony McCallum and Sarah Norris concerning her expenses. The claimant was adamant that she had explained why she was entitled to the expenses she had claimed and management was adamant that certain of her expenses could not be justified under the expenses policy. The claimant asserts that management was not listening to her but, equally, management was asserting that the claimant was unwilling to address the expenses claims she was putting in and remove those that could not be justified. We

find that it was not Tony McCallum and Sarah Norris who were withholding the claimant's expenses. It was payroll who were withholding it pending approval by Andy Poole and/or Tony McCallum. As such, we find issue 1(d) not proved.

75. Issue 1(f) alleges that during investigation and disciplinary meetings in November 2018, December 2018 and 27 February 2019 Andy Poole gave reasons for not authorising the claimant's expenses claim which differed from his previous reason, which was that payroll would not authorise them. At the PDR meeting in November 2018, as set out in the email dated 21 November 2018, Andy Poole gave the reason for the withholding of the claimant's expenses as being due to a request from Payroll/HR. There is no reference to the reason for the claimant's expenses being withheld in the notes of the investigation meeting on 7 December 2018. Andy Poole was not at the investigation meeting on 7 December 2018 or the disciplinary hearing on 27 February 2019. In any event, the claimant has not pointed to any different reasons for the withholding of her expenses being advanced by anyone. Consequently, Issue 1(f) is found not proved.

76. Following the investigation meeting on 7 December 2018 the claimant was given a list of expenses that were being queried. The claimant responded with her answers to the questions on 12 January 2019. Once again the claimant was giving her reasons for making the claims which included her interpretation of the Working From Home policy. She acknowledged that one dinner receipt for 29 September 2018 had been submitted in error as it was not her bill.

77. Tony McCallum and Sarah Norris wanted to follow up these responses and a meeting was arranged for 16 January 2019. When arranged the claimant's diary was, apparently, vacant but by 12 January the claimant had arranged some work events and indicated that she could not attend the meeting on 16 January 2019 which went ahead in her absence. Issue 1(j) alleges that on 16 January 2019 Tony McCallum and Sarah Norris held a second investigation into the same conduct investigated in the first investigation. We find that this was not a second investigation but a follow up investigation following the 7 December 2018 investigation meeting. Consequently, we find issue 1(j) not proved.

78. On 18 January 2019 the claimant was sent further questions arising out of the meeting that had taken place on 16 January 2019. The claimant in her answers reiterated that Andy Poole had authorised her to claim meals when she was working from home and that she was entitled to claim non-food items that were needed for her to do her job.

79. Issue 1(k) alleges that on 24 January 2019 Andy Poole harassed the claimant by attending a course the claimant was delivering and proceeded to harass the claimant about the expenses investigation and raised an issue about complaints that former FA members of staff had purportedly made about the claimant. On 24 January 2019 Andy Poole attended a course the claimant was delivering in order to observe a coach called Rashid. That was Andy Poole's job. We find that attending that event was not harassment of the claimant. Following the meeting on 24 January Andy

Poole made a note. This records that he did not discuss expenses with the claimant whilst watching Rashid. Andy Poole accepts that he raised the expenses issue with the claimant over lunch. His note records the following:-

> "CO comments when asked what she didn't like about my stance and I was being unreasonable, she outlined that she felt the tone in which she had been asked for information was not appropriate and she indicated I was being biased and not supporting her, and what could be claimed for was not entirely clear?
>
> I raised concerns at this point and asked if CO needed any help and if she was alright? And I tried to explain that my understanding was that these expense claims were not valid and would need to be adjusted – and hopefully the current investigation would help clarify what could and could not be claimed for moving forward."

80. It was also confirmed that the claimant was doing her A licence and PG Cert courses and it emerged that she was also doing an EBM Programme which she said she was doing in her own time.

81. Given the ongoing nature of the expenses investigation, we find that it was not unreasonable for Andy Poole to raise the issue of the claimant's expenses and ask her about them. Consequently, we find that Andy Poole did not harass the claimant about the expenses investigation. In our judgment, an additional issue is that in all probability Andy Poole was realising that he had been historically approving expenses that he should not have been. The reference to raising historic complaints has been taken out of context. Andy Poole's note makes clear that when he raised issues concerning communications the claimant asked for an example. It was in that context that he referred to the claimant's late/non-replies to someone at the FA going back to the previous October/November. We find that this was in response to the claimant's query and was not harassment. Consequently, we find issue 1(k) not proved.

82. Issue 1(l) alleges that from the outset of the investigation into the expenses allegations until the disciplinary hearing on 27 February 2019 Andy Poole failed to relieve the claimant of her duties pending the disciplinary hearing. We take an allegation of a failure to do something as importing into it an obligation to do that which it is alleged was not done. We do not treat this as an allegation that the claimant should have been suspended on full pay pending the disciplinary hearing. In any event, such a course of action would have been wholly inappropriate in the circumstances given that the Acas guidance on disciplinary proceedings regards suspension as an exceptional step to take. We have no doubt that answering the various queries raised by the respondent concerning the claimant's expenses would have involved her in time and effort in coordinating her answers. That said, it is clear to us that the claimant did not request any time off in order to deal with the matter. In the circumstances, we find that there was no duty on Andy Poole to relieve the claimant of her duties pending the disciplinary hearing. Consequently, we find issue 1(l) not proved. Essentially the same allegation is made in issue 1(m)(iii) which alleges that Andy Poole ignored the claimant's wellbeing by requiring her to work fulltime whilst she had to

compile evidence for the investigation. We find that Andy Poole did not ignore the claimant's wellbeing. For the same reasons we find this allegation not proved.

83. In due course the investigation report was produced. It was written by Sarah Norris notwithstanding that the investigator was principally Tony McCallum. Sarah Norris explained that she wrote it as she had greater experience than Tony McCallum. The report recorded Andy Poole's evidence that he was not properly reviewing the expenses, that he allowed his team to claim for subsistence in the evenings if they were staying away or had been working all day and then went into a club in the evening and that he had allowed the claimant to buy food from supermarkets. Nevertheless, the recommendation of the investigation report was as follows:-

> "Considering the above it is the conclusion of the investigating manager that there is evidence to suggest that there may have been abuse of the expenses policy by the employee. Whereby they have claimed food for meals when working from home, claimed supermarket groceries as dinner which appears to relate to more than the meal claimed for; and claimed non-food items including cleaning products and personal toiletries. Therefore the recommendation is that the matter is referred to a disciplinary hearing."

84. Later in 2020 Tony McCallum is recorded as distancing himself from the report which he said he had not seen. Notwithstanding this, we have an email dated 25 January 2019 from Sarah Norris to Tony McCallum indicating that she would send a copy of the report to him for review as soon as she had completed it. We do not have an email indicating that that took place but on 31 January 2019 Sarah Norris emailed Tony McCallum telling him to have a conversation with the claimant to tell her that the investigation had been completed, that the respondent believed there may have been an abuse of the expenses policy and that the matter was going to be referred to a disciplinary hearing. Tony McCallum replied on 1 February 2019 indicating that he had had the conversation with the claimant. We find that Tony McCallum was more fully informed that he subsequently acknowledged.

85. We note in passing that, as set out in Sarah Norris' witness statement:-

> "It appeared Andy did not have particularly close oversight on the expenses he was approving for Christina, or, indeed the others in his team he was responsible for approving."

86. Further, it would appear that Andy Poole was approving expenses that were outside the expenses policy as far as payroll was concerned. We note that the investigation report did not make any recommendations in terms of dealing with Andy Poole.

87. Issue 1(h) alleges that when carrying out the investigation Tony McCallum and Sarah Norris failed to follow the respondent's procedures by describing the claimant's actions as potential gross misconduct rather than potential misconduct. Further, issue 1(i) alleges that when carrying out the disciplinary process, Tony McCallum and Sarah Norris failed to follow the

respondent's procedures by describing the claimant's actions as gross misconduct rather than misconduct. In addition, issue 1(n) alleges that on 7 February 2019, in breach of the respondent's policies, Sarah Norris wrote to the claimant, alleging abuse of the respondent's Travel & Expenses Policy, causing the claimant to fear losing her employment.

88. As might be expected the respondent has a disciplinary procedure. Gross misconduct includes:-

- Dishonesty
- Violent, abusive or intimidating conduct
- Fraud

89. We have seen no reference to Tony McCallum and Sarah Norris alleging that the claimant's actions were potential gross misconduct either during the investigation process or during the disciplinary process. Even if there had been such a reference, we find that it would not have been in breach of the respondent's procedures due to the fact that irregular expense claims could constitute dishonesty and/or fraud. Consequently, we find issues 1(h) and 1(i) not proved.

90. On 7 February 2019 Sarah Norris wrote to the claimant inviting her to a formal disciplinary hearing on Wednesday 20 February 2019. The claimant was notified that the hearing was in order to discuss the following:-

> "• Alleged abuse of the FA Travel and Expenses policy, whereby you have claimed food for meals when working from home, claimed supermarket groceries as dinner/lunch which appear to relate to more than the meal claimed for; and claimed non-food items including (but not limited to) cleaning products and personal toiletries.
>
> The purpose of this meeting is to give you the opportunity to explain your case and to provide any further information about the alleged gross misconduct."

91. The claimant was informed that the potential outcome of the meeting was disciplinary action up to and including dismissal.

92. Clearly Sarah Norris did write to the claimant alleging abuse of the respondent's Travel & Expenses Policy and we accept that that caused the claimant to fear losing her employment. However, we find that that letter was not in breach of the respondent's policies, it was in accordance with the respondent's policies. Consequently, we find issue 1(n) not proved.

93. One of the complaints made by the claimant in her oral evidence was that when Tony McCallum was disciplined, his actions arising out of the meeting on 29 July 2019 were characterised as unprofessional conduct and the invitation to his disciplinary hearing only alleged misconduct and the potential outcome was disciplinary action up to and including a final written warning. In our judgment, the conduct of Tony McCallum at the meeting on 29 July 2019 was more akin to abuse or intimidating conduct. As such, we were concerned that Tony McCallum's actions were only characterised as misconduct. The reasons advanced for characterising it as only

misconduct, namely that he had been accused of being dishonest by the claimant, was frustrated and contrite seemed to us to have been issues of mitigation that should have been advanced in the context of a gross misconduct hearing. It does appear to us that there was a difference in treatment between the claimant and Tony McCallum. However, it is not for us to rewrite the list of issues.

94. The claimant's disciplinary hearing was conducted by David Courell, Head of Business Management, and Laurence Adams, Senior HR Business Partner. The claimant does not make any direct complaint about the conduct of the disciplinary hearing.

95. It is clear to us that David Courell paid close attention to the issues that the claimant was raising. We have an email sent by David Courell on 10 March 2019 to Mr Mark Burrows (Deputy Chief Executive Officer at the FA) and Rachel Brace (HR Director at the FA). This states as follows;_

> "Sorry I wish it was an easy one but Laurence and I could do with your guidance on something:
>
> The case
>
> - Laurence and I have recently completed a disciplinary hearing for a County Coach Developer accused of abusing the expenses policy (claiming while WFH – when contractually home based, expensing personal hygiene products, maximising allowances in supermarkets etc).
>
> - As the hearing manager I considered all the evidence and my initial recommendation was that the case should not be considered for gross misconduct (which was on the table but in my view was excessive due to the infringement being facilitated by her line manager) but that the penalty should be either First or Final warning – the severity to be based on HR/Legal guidance".

96. There then follows a redacted section, no doubt on the basis that it contained legal advice. The email goes on:-

> "• So on the balance of the guidance received I would **revise my initial recommendation and proceed with no warning** which although not the most just outcome I think the risks associated with pursuing the alternative outweigh the benefits for the organisation.
>
> The culture
>
> - So why am I coming to you both? Well this case actually relates to a bigger question for the organisation (in particular SGP).
>
> - I understand from Laurence that there is a culture of abusing expenses/cost codes particular in SGP across all teams – expensing stays, meals eg booking them to any random event/course that is happening when they have no cause to.

- Mark I have rolled you into this consideration as HR feel that Finance play a key role in this as they set the expenses policy and act as the gatekeepers of the system Concur.

- This has been discussed locally in SGP on multiple occasions with conversations between the HR and Finance Team, as a result some tighter processes have been proposed, but a full audit and investigation is what is needed, capacity constraints have inhibited this to date.

- Meanwhile there also appears to be a limited appetite from the Payroll Team to carry out team wide investigations, possibly due to capacity constraints again.

- So finally the question I have for you is that before I rule on this individual case which regretfully would be for the "No Warning" I wanted to check to see if you are in agreement before I proceed as the alternative could be the start of a long and challenging journey for the organisation."

97. On 8 March 2019 Laurence Adams emailed the claimant to inform her that the issue was not being considered as a potential case of gross misconduct and that consequently one of the possible sanctions would not be summary dismissal.

98. On 11 March 2019 Laurence Adams emailed the claimant to inform her of the situation as follows:-

> "As a result of concerns that this issue has brought to light, we intend to pause the final decision on your hearing and therefore, the issue of any disciplinary sanction, to enable us to investigate the bigger picture surrounding the procedure of expenses claims within the Coach Development Team.
>
> We are keen that you understand that we are listening to the response and justification you gave to the allegations made against you and as a result, it is important that we have the complete set of facts available to us."

99. Clearly David Courell followed up with payroll as in an email dated 12 March 2019 he states:-

> "Latest from the Payroll Team is:
>
> - The case: They are disappointed that Concur did not pick up on certain elements ie hygiene products and have flagged with them. They are still in absolute disbelief at how the employee in question interpreted the policy but if they had to rule on it immediately they would fall on the risk averse side of a simple caution and tighten up the process so it doesn't happen again."

100. As part of the investigation of the wider picture five other individuals suggested by Sarah Norris were investigated by Payroll. The outcome was reported in an email dated 20 March 2019 from David Courell to Laurence Adams. This states:-

> "Payroll have come back with the findings as attached. In summary having reviewed all claims for 6 individuals **over the last 12 months** there has been limited breaches. There are a handful of incidences of supermarket shopping or restaurants close to home for two individuals but these don't appear to be on the same frequency or scale as Christina's infringements. [Individual 1] (£76 of questionable expenses over the twelve months) and [Individual 2] – both who funnily report to the same line manager as Christina."

101. The email goes on to reference potential investigation of Andy Poole and the two other individuals.

102. On 25 March 2019 David Courell wrote to the claimant as follows:-

> "I refer to the disciplinary hearing heard on 27 February 2019, relating to your alleged abuse of the FA Travel & Expenses Policy.
>
> I am pleased to confirm that the organisation has decided that no formal disciplinary action will be taken against you on this occasion.
>
> In summary of my findings from the hearing, it is important that the following points are captured:
>
> - Certain expenses such as cleaning products appear to have been validly and properly incurred;
> - Serious concerns remain about other expenses that you have regularly been claiming, eg hygiene products and subsistence expenses for working from home days – and I am not fully satisfied that you did not knowingly claim for inappropriate/invalid expenses;
> - However, it is recognised that there may be a wider issue here, ie that there may be a misapplication and/or misunderstanding of the expenses policy across certain parts of the organization – and that it will be recommended that this is to be addressed moving forward;
>
> Accordingly, in light of this, it has been decided that, notwithstanding the concerns that remain about the expenses that have been claimed, the allegation shall not be upheld and no further action shall be taken.
>
> I must make you aware that, moving forwards, you are not to regard expenses such as hygiene products and subsistence expenses for working from home days to be reimbursable under the policy and that such expenses will not be approved in the future."

103. As such, issue 1(o) is found proved.

104. We have gone on to consider whether that was less favourable treatment. We have taken as a comparator a hypothetical male and/or male or female white colleague who had the same history of expense claims and was giving the same explanations as the claimant. In our judgment, such a hypothetical comparator would have been treated in exactly the same way by David Courell. We have seen ample evidence to justify the concerns

relating to the claimant claiming hygiene products and subsistence expenses for working from home days.

105. Following the disciplinary hearing outcome the claimant emailed Laurence Adams stating that she had not been paid expenses since August 2018 and asking what was going on. Laurence Adams replied to the claimant confirming that the disciplinary process was most definitely concluded, that the Travel & Expenses Policy was being clarified and that he would work with the Concur and FA Expenses Team to start to release the permissible expenses claimed by the claimant since August 2018.

106. On 17 April 2019 Laurence Adams emailed the claimant to inform her that he had instructed Andy Poole to approve as much of her expenses as he could for payment. We find that the claimant was made aware following the disciplinary process that her expenses were still going to be scrutinised. Further, we find that this was a legitimate exercise for management to take.

107. Issue 1(p) alleges that from the outset of the investigation into the expenses allegations until 29 February 2019 (should be 27 February 2019) Tony McCallum, Sarah Norris and Andy Poole failed to investigate anyone else for breach of the Travel & Expenses Policy. It is accepted by the respondent that during that period no one else was investigated. As such, issue 1(p) is found proved.

108. We have not taken this as an allegation relating to not investigating Andy Poole for the incorrect application of the policy and wrongly approving some of his team's expenses. Andy Poole is included in the list of managers complained about.

109. We have gone on to consider whether that was less favourable treatment. We have taken as the comparator a hypothetical male and/or male or female white colleague who had the same history of expense claims and was offering the same explanations. We find that such a comparator would have been treated in exactly the same way. At that stage there was no reason for those three individuals to investigate anyone else for breach of the Travel & Expenses Policy. Of course, subsequent to the disciplinary hearing on 27 February 2019, once wider issues had been identified, five other individuals were investigated.

110. On 17 April 2019 Laurence Adams instructed Andy Poole as follows:-

> "Please can you go through her outstanding expense claims (I think they go back to August 2018) and approve all of the items that you are happy with.
>
> Decline any others and let her know that you are happy to discuss them with her, but if need be, you can refer any queries to me for review."

111. On 23 April 2019 Andy Poole reported to Laurence Adams, Sarah Norris and Tony McCallum as follows:-

> "Hi, I have reviewed the claims I still have in Concur claims for approval, for August and September 2018, which I'd been asked to put on hold by Finance/Payroll, since the investigation started.

> After my review, I am unable to approve these claims because they include receipts for admin/WFH (Working From Home) and a number of shopping receipts like the ones attached, claims which don't match calendar entries, and receipts for home delivery eg Domino's Pizza.
>
> …
>
> Christina also submitted claims for October and November 2018, and these claims had similar items included and were returned, but yet October and November have not been resubmitted by Christina."

112. On 10 May 2019 Andy Poole emailed the claimant to say:-

> "Just to confirm I've received your expense claims today for October, November, December and January 2019.
>
> Will look to review during the next couple of days – and you should have received your claims for August and September, which I was asked to re-review recently, which I have asked for you to review and resubmit."

113. On 13 May 2019 issues arose concerning handwritten receipts without VAT numbers on the receipts. It is clear to us and we find that during this period Andy Poole was doing what he had been instructed to do, namely scrutinise the expense claims and approve those that he felt were within the policy.

114. On 9 April 2019 Tony McCallum had emailed the claimant saying that he would like a follow up meeting now that the expenses investigation had been concluded. The claimant and Tony McCallum arranged to meet at London Paddington Station, at the Hilton, on 17 May 2019. In response to an email from the claimant asking what the meeting was about Tony McCallum stated that it was to look at working practice.

115. Issue 1(q) alleges that on 17 May 2019, Tony McCallum displayed hostility towards the claimant by:

> "(i) Questioning the claimant about her expenses claims;
>
> (ii) Stating "*I've had enough , I don't want to know*";
>
> (iii) Packing his laptop and belongings, mid conversation whilst the claimant was talking.

116. In her witness statement the claimant describes this meeting as follows:-

> "I attended this meeting which was in a public space in a hotel. Tony was extremely rude to me in public. Storming out when I was speaking to him and shouting "I've had enough of you"."

117. In the grievance hearing heard on 2 September 2019 the claimant described it as follows:-

> "So, I go to the meeting with Tony, during the meeting Tony literally starts packing his bag out of frustration and said he is leaving and packing his bag."

And later

> "We met at Paddington, literally we were having a conversation and he packed his bags and said "I'm leaving". I said "Are you serious we're two adults we're having a conversation, why are you leaving halfway through while I am talking? Basically, he then unpacked and continued.
>
> RM: So he didn't leave?
>
> CO: No"

118. In the grievance hearing on 2 September 2019 the claimant stated:-

> "Laurence Adams, HR Representative at the disciplinary has gone back and to me and said it is concluded, everything has been finalised there was no formal action being taken against you. I said for me for it to be concluded why haven't I still not been paid my expenses? I still haven't been paid my expenses, make me understand how that concludes the process.
>
> He's adamant that no its different, they're not the same thing so I should have a follow up meeting. So, I go to the meeting with Tony, during the meeting Tony literally starts packing his bag out of frustration and said he's leaving and packing his bag."

119. In oral evidence the claimant accepted that Tony McCallum had not stormed out.

120. On 17 September 2019 Tony McCallum had a grievance investigation meeting with Richard McDermott. He stated:-

> "I didn't vent any frustration with her at Paddington, just said if this is not worth doing then I'll go. She said it shouldn't be like this. I said I know this isn't how it should be, I'm here for a reason to try and understand, its not a formal meeting, it's not a complaint."

121. In her oral evidence the claimant agreed that she made no complaint following this incident until the grievance on 22 August 2019. She stated that Tony McCallum did not like some of the responses she gave.

122. We find that at the meeting on 17 May 2019 Tony McCallum did question the claimant about her expense claims. We do not find that this was displaying hostility towards the claimant. We find that against the background of the continuing investigation into the claimant's expenses, it was legitimate for Andy Poole's line manager to see if he could sort the matter out with the claimant. Accordingly, issue 1(q)(i) is not proved.

123. The contemporaneous records of the claimant and Tony McCallum both reference Tony McCallum saying he would leave. We find the contemporaneous records are likely to be more accurate than the recollection the claimant has set out in her witness statement. We find that the claimant has not proved that Tony McCallum stated "I've had enough. I don't want to know". Consequently, we find that issue 1(q)(ii) has not been proved.

124. We find that having said words to the effect that he was leaving, Tony McCallum probably packed up his laptop and belongings mid conversation

whilst the claimant was talking. As the claimant explained in the grievance, once she had challenged him he unpacked and continued with the meeting. Consequently, we find issue 1(q)(iii) proved.

125. We have gone on to consider whether that was less favourable treatment. We have taken a hypothetical comparator being a male and/or male or female white colleague with a similar expenses history to the claimant who was offering the same excuses and continuing to insist that following the disciplinary outcome she was entitled to be paid her expenses. We find that any such hypothetical comparator would have been treated exactly the same. We find that Tony McCallum's actions were, as the claimant has characterised it, out of frustration rather than having anything to do with her race or gender.

126. Issue 1(r) alleges five matters of complaint arising out of the 29 July 2019 PDR meeting.

127. We have been taken to an email dated 19 June 2019 wherein Andy Poole was requesting guidance on moving forward with the claimant's PDR because, as of that date, she had not uploaded any information to the PDR Google file. The response from Kim Hyde, Professional Development Lead, was that in the current context she would suggest that Tony (McCallum) supported Andy Poole with the claimant at this stage. An email from Tony McCallum dated 18 July confirmed to Andy Poole and Kim Hyde that he had spoken with Sarah Norris of HR and agreed to facilitate the meeting on 29th with the comment that they could deal with the outstanding expenses issues and complete the PDR process at the same time.**"**

128. On 10 July 2019 Andy Poole emailed Tony McCallum copying in Sarah Norris stating:-

> "I am happy to review the line management structure, with regard to Christina Oshodi and [individual 1] moving into next year 2019/20, please confirm your thoughts regarding you taking on this responsibility – it would seem Christina, especially, does not want to listen or take advice in relation to work programme, communication updates and on-going issue related to Christina's expense claims.
>
> …
>
> Tony/Sarah, please advise, and any suggestions of how to end this process would be appreciated, due to what we discussed, this has been a "drain" on my energies and wellbeing over the last 6-12 months ."

129. In our judgment, this probably explains the involvement of Tony McCallum in arranging the meeting for 29 July 2019.

130. The meeting was held at Middlesex FA. Following the meeting the claimant put in a grievance dated 1 August 2019 and both Tony McCallum and Andy Poole were interviewed on 2 and 5 August 2019 respectively.

131. We find that Tony McCallum did attend the PDR meeting at the invitation of Andy Poole who had not warned the claimant that Tony McCallum would be attending. Lucy Pearson in her oral evidence accepted that the presence of Tony McCallum was unannounced but that she told us that she had concluded that it was not intended as an ambush. She accepted that it could have made the claimant feel vulnerable. Accordingly, issue 1(r)(i) is proved.

132. We went on to consider whether that was less favourable treatment. We took a hypothetical comparator being a male and/or male or female white colleague with a similar expenses history who had provided the same explanations and who was continuing to contend she should be paid her expenses as the disciplinary process had been concluded. We find that Tony McCallum attending the meeting without forewarning was not less favourable treatment. It was an example of poor management and nothing else.

133. We find that Tony McCallum and Andy Poole raised matters which had been addressed by the disciplinary hearing outcome. It is notable that in her grievance dated 1 August 2019 the claimant asserts that:-

> "It appears Tony does not accept the findings of the disciplinary outcome which was decided by David Courell Head of Business Management."

134. It is correct to say that the disciplinary outcome letter does not refer to the existing expenses claims continuing to be checked by the claimant's line manager. However, it was made clear to the claimant subsequent to the conclusion of the disciplinary process that that is what would happen. Tony McCallum and Andy Poole had been directed to scrutinise the claimant's expenses and only approve those which fell within the policy. It was in that context they raised the expenses issue at the PDR meeting. Consequently, we find that issue 1(r)(ii) is proved.

135. We went on to consider whether that was less favourable treatment. We took a hypothetical comparator being a male and/or male or female white colleague. We find that a hypothetical comparator would have been treated in exactly the same way.

136. In her grievance dated 1 August 2019 the claimant states:-

> "Tony then interjected by saying they were going to clarify the expenses matter, without waiting for a response he stated telling me that he wanted the amendments to my expenses claims Andy had sent me changed on my expense claims and return by 31 August 2019."

137. In the investigation meeting with Tony McCallum he puts it as follows:-

> "… I led on discussing the expenses, where we were at and what was next. I said based on a conversation I had with Matt Hall I would give CO one month to make the changes to on the ones that had been sent back to her to amend and if that wasn't done we would remove the bits that were outside the policy and pay the rest. She didn't agree with that…"

138. Consequently, we find that Tony McCallum did state that he wanted to amend the claimant's expenses claims. However, we do not find that this matter had already been addressed by the disciplinary hearing outcome. The issue of the claimant's expenses had been left very much open. Consequently, issue 1(r)(iii) is not proved.

139. In her grievance the claimant specifically refers to Tony McCallum angrily interrupting the claimant and saying "I've had enough of you again, I'm going to go to HR". And "Christina you are a waste of time and space". This has been accepted by Tony McCallum. Consequently, we find issues 1(r)(iv) and (v) are proved. We find that the comments were made angrily and constituted bullying given that Tony McCallum was in a much more senior position than the claimant.

140. We have gone on to consider whether that was less favourable treatment. Once again, we have taken a hypothetical male and/or male or female white comparator. Whilst we accept that there may have been an element of frustration and a reaction to being accused of dishonesty as far as Tony McCallum is concerned, we find that Tony McCallum would not have treated a white male colleague in similar circumstances in the same way. We accept that a simple difference in treatment does not necessarily lead to a conclusion of discrimination on the grounds of race or sex. However, we have considered carefully the fact that Andy Poole was not subjected to any form of investigation in circumstances where he had consistently either failed to scrutinise properly expenses claims made by the claimant or approved expenses that were contrary to the expenses policy. Further, we have noted that Tony McCallum was, in our judgment, undercharged with mere misconduct arising out of this incident. Further, we find that Tony McCallum, due to his previous interaction with the claimant on 17 May 2019, was aware of the claimant speaking out and insisting that she was entitled to the expenses that she had submitted and that the disciplinary process had been concluded thus entitling her to her expenses. We find that Tony McCallum lacked the managerial skill to deal properly with a confrontational situation and that unconscious bias against a black female motivated his reaction. Consequently, we find that issues 1(r)(iv) and (v) were less favourable treatment on the grounds of the claimant's race and gender.

141. On 2 September 2019 Richard McDermott held the claimant's grievance hearing. The claimant was represented by Mr Knowles-Olowu, Union Rep. The notes of the grievance hearing are 18 pages long. The hearing lasted from 2.30 until 4.30pm. In our judgment, the meeting covered not only the matters raised by the claimant in her written grievance but also further matters that she raised at the hearing. We find that the grievance hearing was thorough and fair.

142. On 11 October 2019 (not 11 September 2019) Richard McDermott wrote to the claimant with the grievance outcome. It is not correct that he did not uphold her grievance. Mr McDermott upheld the grievance as regards the conduct of Tony McCallum in the meeting of 29 July 2019. Save for this, it is correct that Mr McDermott did not uphold the claimant's grievance. Consequently, as drafted we find that issue 1(s) is not proved.

143. Nevertheless, we have considered this allegation on the basis that Richard McDermott did not uphold all but one of her grievances. In the circumstances we have gone on to consider whether that is less favourable treatment. Once again, we have considered a hypothetical male and/or male or female white colleague in not materially different circumstances to the claimant. In our judgment, such a comparator would have been treated exactly the same. The grievance outcome letter is reasoned and reasonable.

144. On 21 October 2019 the claimant appealed the grievance outcome. The grievance outcome appeal was heard by Lucy Pearson on 20 November 2019 and the claimant was again represented by Trevor Knowles-Olowu. The appeal hearing notes are 22 pages long. The hearing lasted from 3.20 until 6.44 in the evening.

145. On 12 December 2019 Lucy Pearson wrote to the claimant not upholding her grievance appeal. Consequently, issue 1(t) is proved.

146. We have gone on to consider whether that was less favourable treatment. Again, we have taken a hypothetical male and/or male or female white comparator. We have carefully considered the evidence of Lucy Pearson who we found to be an impressive and credible witness. We find that she conducted the grievance appeal thoroughly and fairly. The grievance appeal outcome letter is reasoned and reasonable. We find that a comparator would not have been treated any differently.

147. Issue 1(g) alleges that during the investigation and disciplinary meetings in November 2018, December 2018, and 27 February 2019; and further on 17 May 2019 and 29 July 2019 after the disciplinary allegations had been concluded, Tony McCallum chose to ignore the fact that the claimant's line manager had authorised her to purchase food from local supermarkets to prepare in advance of trips. As already concluded, we have found that the fact that Andy Poole had authorised the claimant to purchase food from local supermarkets was taken into account during the course of the investigation and disciplinary meetings up to 27 February 2019. It is correct that Tony McCallum continued to challenge some of the claimant's expenses in the meetings on 17 May and 29 July 2019 on the basis that payroll were contenting they were outside the expenses policy. We find that Tony McCallum was always aware that the claimant's line manager had authorised her to purchase food from local supermarkets to prepare in advance of trips. We do not find that Tony McCallum ignored that on its own but was challenging expenses that did not appear to fall within the policy notwithstanding Andy Poole's authorisation. Accordingly, we find issue 1(g) not proved.

148. Issue 1(a) alleges four instances of the respondent failing to provide the claimant with training/support.

149. It is alleged that from December 2017 Andy Poole failed to provide the claimant with support to complete her UEFA Coaching Licence, in particular, by not understanding black females. We have already set out specific instances of Andy Pole supporting the claimant to compete her UEFA A

Coaching Licence, including observations and feedback. The claimant's witness statement suggests that this was after 29 July 2019 meeting. However, the claimant was absent from work on long-term sickness absence for five months between 31 July 2019 and 2 January 2020. Upon the claimant's return to work in January 2020 her line manager was Keith Webb and, of course, in March 2020 the country went into lockdown due to covid. Consequently, we do not find that there was any failure by Andy Poole to support the claimant. Issue 1(a)(i) is not proved. We do not understand the reference to not understanding black females.

150. It is alleged that from 2017 Andy Poole and Keith Webb did not support the claimant in completing her master's degree. As already recorded, the claimant was supported and funded to complete a postgraduate qualification at the University of Worcester – the PG Certificate. The claimant stated in oral evidence that she had completed the PG Certificate by the time she went off sick in July 2019 and referred to not being able to go to her graduation ceremony. In the claimant's reply to the grievance appeal outcome letter dated 27 December 2019, the claimant states:-

> "I have requested on my PDR for a few years to complete my master's, similar to other colleagues. This season should have been the season I started my masters, like a number of other colleagues have commenced their master's after the last two seasons but this has not been the case."

151. In a reply dated 13 January 2020 sent to the claimant by Carolyn Round, Head of HR, it is stated:-

> "You have not applied for a place on our master's course over the last two years. If this is something you wish us to consider you will need to make an application in the normal way."

152. From the evidence placed before us we do not find that there was a failure to provide the claimant with support in completing a master's degree. Consequently, issue 1(a)(ii) is not proved.

153. It is alleged that from March 2020 Sarah Norris and Carolyn Round of HR did not support the claimant's training being the Executive Masters in Global Sport Governance (MESGO). On 4 March 2020 the claimant sent an email to her then line manager, Keith Webb, stating:-

> "In the return to work meeting I had with you and Carolyn I highlighted a course that I would like to complete as part of my personal and professional development, the course is the Executive Master's in Global Sport Governance. This is a course endorsed by UEFA, the course starts in September but the application deadline is this March. The tuition fees are €19,800 (including academic learning material, lunches and transfers within the cities visited). Pease note that the tuition fees do not include travel and accommodation expenses. Attached is a scholarship form from UEFA for Association members that will cover part or all of the tuition fees, which there is a section on page 5 that needs to be signed from the employer."

154. Keith Webb passed the application to John Fullwell.

155. The evidence from John Folwell was as follows:-

> "I was very surprised that Christina had applied for this course as it was aimed at Director level. It was the sort of course that was targeted at people of senior management team level like Lucy, as the head of FA Education, or Mark as CEO. It would have been inappropriate for Christina or anyone else at her level to have done it. I emailed Keith to explain my concerns and asked him for more information about the course and what professional development support Christina had already received."

156. On 12 March 2020 Carolyn Round emailed John Folwell stating that she had checked the position with UEFA and that the programme had been developed for the National Association's top executives (presidents, general secretaries) and senior staff (directors and key personnel).

157. The claimant suggested that her enquiries had indicated that, even though she was not of a seniority that the course was aimed at, as part of positive action her understanding is that she could have attended the course. However, we find that this was not put to Mr Folwell at the time. Further, we note that the claimant at that time had yet to complete her UEFA A licence qualification. We find that Mr Folwell decided that a combination of expense, the fact that the course was not aimed at the claimant's seniority level and that it was not training or development that was needed for the claimant to do her role as a County Coach Developer meant that the respondent would not support her in her application. The scholarship application form required a section to be competed by the line manager stating that the application was supported. It was not supported. Consequently, we find that issue 1(a)(iii) did not constitute a failure to provide the claimant with training/support on the basis that the refusal to support her on the MESGO course was a reasonable management decision and there was no duty to provide the training or support. Even if the allegation is read as 'did not' rather than 'failed,' then we find that a hypothetical male and/or male or female white comparator would have been treated exactly the same.

158. Issue 1(a)(iv) is very general and alleges Andy Poole, Tony MacCallum, John Folwell, Les Howey, Lucy Pearson, Sarah Norris and Carolyn Round all failed to provide the claimant with training and development to take on governance roles. This appears to be a catch-all allegation that lacks specifics. As already found, the claimant was supported with her UEFA A Licence and PG Cert courses. Further, the claimant was, in her own time, completing Effective Board Management training. We find that there was no failure to provide the claimant with training and development to take on governance roles. Accordingly, issue 1(a)(iv) is not proved. Even if the allegation is read as 'did not' rather than 'failed,' then we find that a hypothetical male and/or male or female white comparator would have been treated exactly the same.

**Harassment**

159. We have gone on to consider the harassment claims in light of the facts we have found proved.

160. In addressing the issue of "unwanted" conduct we have treated "unwanted" as essentially the same as "unwelcome" or "uninvited" and that the conduct is to be unwanted by the employee, ie, that this should largely be assessed subjectively. Further, that the unwanted conduct in question has to have the purpose of effect of violating Bs dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for his or her. In deciding whether conduct has the effect set out, we must take into account the perception of the claimant, the other circumstances of the case and whether it is reasonable for the conduct to have that effect. Lastly, the unwanted conduct must be "related to a relevant protected characteristic".

161. We find that issue 1(o) was unwanted conduct from the claimant's perspective. We find that it was not related to the claimant's sex or race. We find it was related to the claimant's numerous questionable expense claims.

162. We find that issue 1(p) was not unwanted conduct. At no time was the claimant suggesting that others had been claiming expenses similar to the claims the claimant had been making.

163. We find that issue 1(q)(ii) was unwanted conduct from the claimant's perspective. We find that it was not related to the claimant's sex or race. We find it was related to Tony McCullum's continued frustration with the claimant's continued insistence that her expense claims were legitimate.

164. We find that issues 1(r)(i) and (ii) were unwanted conduct from the claimant's perspective. We find that they were not related to the claimant's sex and/or race. We find that they were related to Andy Poole requesting support from his line manager, poor management and a legitimate attempt to sort out the expenses issue.

165. We find that issues 1(r)(iv) and (v) were unwanted conduct from the claimant's perspective. For the same reasons as under the direct discrimination claim we find that the conduct was related to the claimant's sex and race.

166. We find that the conduct had the purpose and effect of violating the claimant's dignity and creating a hostile and offensive environment for her.

167. We find that issues 1(s) and (t) were unwanted conduct from the claimant's perspective. We find that the conduct was not related to the claimant's sex or race. For the same reasons as under the discrimination claim we find that the grievance outcome and grievance appeal outcome were decisions properly and reasonably arrived at.

**Victimisation**

168. It is common ground that the claimant did a protected act by submitting a grievance dated 1 August 2019. Accordingly, we find that she did.

169. It is accepted by the respondent that issues 1(t), (u) and (v) are proved. We find that those were detriments.

170. Our conclusions of any causal link are set out at the end of the redundancy section.

**Protected disclosure detriment**

171. It is common ground that the claimant did disclose information in her grievance dated 1 August 2019 that tended to show that the respondent was in breach of a legal obligation not to discriminate against the claimant and that the health and safety the claimant and colleagues was likely to be endangered. As such, we find that the claimant did make protected disclosures.

172. We find that issue 1(t) was a detriment.

173. Our conclusions on any causal connection are set out at the conclusion of the redundancy section.

**Automatic unfair dismissal – protected disclosure**

174. Our conclusions on the reasons for dismissal are set out at the conclusion of the redundancy section.

**Unfair dismissal**

175. On 23 March 2020 the UK entered into covid lockdown. This had a severe adverse financial impact on the respondent. It was announced that the FA would need to make significant cuts to its costs and that each division would be tasked with reducing its budget across head count and activity. The announcement was made to all staff in June 2020. There was a reduction the education budget in the region of £3.5 million. The decision was taken to place at risk of redundancy the entire National Coach Development Business Division. All 34 County Coach Developer roles and 7 Regional Coach Mentor Officer roles were to be deleted from the organisation. In each of the 2 sections there were to be 16 new Coach Development Officer roles.

176. We find that the requirement of the respondent for employees to carry out County Coach Developer roles ceased and that consequently, there was a genuine redundancy situation.

177. On 29 June 2020, the claimant was written to informing her that she was at risk of redundancy.

178. The respondent instituted not only an organisation-wide group collective consultation process but also a division specific collective consultation process. Employee reps were elected for both collective consultation processes.

179. A group consultation proposal produced by the respondent contains the following:-

> "We are proposing to make 124 positions redundant. Because we halted recruitment the day we left the offices we are able to take 42 vacant positions out

of the structure, which means that we are proposing to remove 82 roles from the organisation."

180. Of the 82, 37 were to come from education.

181. The consultation proposal set out that group consultation would involve consultation on, amongst other things, "the method of selecting individuals for redundancy or contractual changes".

182. In the section: "Proposed method of selecting those for redundancy" the following is set out:

> ""(a) Where several roles performing the same or similar work are proposed to be reduced in number, all of the employees within these roles will be placed in a selection pool to determine who should be retained for the remaining roles. It is proposed that each employee will be rated by their line manager against a set of competencies which are laid out at the end of this section and will be discussed as part of **group** consultation. In addition to these more generic competencies employees will also be rated against technical competence (skills/knowledge). It is proposed that there will be at least two and up to four technical competencies that will be discussed as part of divisional consultation."
>
> "(c) Where a new role has been proposed, or in some cases 2 or more roles combined, employees whose current role and skills most closely lend themselves to the new role will be placed in a closed selection pool. This means that other employees in different roles cannot apply. People in this pool will be required to **interview** with the line manager/director for the role to determine who will be retained."

183. The respondent conducted group consultation on 6 July, 13 July and 20 July 2020. Education Division consultation took place on 14 July and 22 July 2020.

184. During the collective consultation process the respondent undertook a 70/30 assessment comparing the old County Coach Developer role with the new Coach development Office role. It was determined that there was a change in excess of 30%. In oral evidence Sarah Norris and John Folwell gave evidence that the principal differences were as follows:-

184.1 Coach Development Officers would not be undertaking course delivery which had been the main focus of the County Coach Developer role.

184.2 CDOs were regional rather than single county and this involved working with a wider set of partners and stakeholders.

184.3 There was a specific focus on either the women's & girls' game or diversity & inclusion rather than general coaching.

184.4 The CDOs would have responsibility for a team of Coach Mentors which had previously not been part of the County Coach Developer role.

185. We accept that evidence and find that the new roles were significantly different to the existing County Coach Developer roles.

186. It appears that the proposal to ring fence 18 new roles within Grassroots Coach Development for those at risk in the current team and that selection for the new roles would be via interview was agreed, or at least not challenged, by employee reps during consultation.

187. The four core FA competencies under section (a) of the group consultation proposal (para.182 above) were; Influence and Impact, Accountability, Collaboration, and Delivery. It was proposed that there should be scoring of 1-5.

188. Notwithstanding the breakdown of competencies and the scoring system, in our judgment, as applied, the assessments and scoring were fundamentally subjective. On the one hand the pool for redundancy and selectin criteria was straightforward given that the entire 41 strong team were to be made redundant. As such, the lack of objective selection criteria can be justified. However, 18 roles were to be ringfenced and, as such, a selection exercise had to be undertaken to see which of the proposed redundant employees were to retain their contracts of employment.

189. In light of our finding that the Coach Development Officer role was different to the existing County Coach Developer role, we find that a lack of objectivity in the selection criteria for the new role did not render the redundancy procedure unfair. We have taken into account the IDS Employment Law Handbook "Redundancy" at 8.183:

> "Objectivity required?
>
> It should be noted that, when considering employees for alternative employment, it would seem that there is no need to adopt the strict objectivity that is so important in the process of selection for redundancy."

And, at 8.184:

> "Similar findings to that in Akzo was subsequently reached by other divisions of the EAT in the following cases:
>
> - Darlington Memorial Hospital NHS Trust v Edwards and another EAT 678/95: An Employment Tribunal found dismissals for redundancy unfair because, in offering alternative employment, the employer had not followed similar principles of fairness to those that apply to selection for redundancy. The EAT overturned this decision on the same grounds as Akzo. However, it added some gloss to that decision, noting that the employer is at least obliged to conduct the selection process in good faith and give proper consideration to the redundant employee's applications.
>
> - Look Ahead Housing and Care Ltd v Odili and another EAT 0437/07: In written tests and interview for alternative posts, O and M fell well short of the required mark, but an Employment Tribunal considered that the employer ought to have offered them the post because, among other factors, it had failed to take into account their past performance and because the interview process was subjective. The EAT overturned the

> tribunal's decision. The evidence did not entitle the tribunal to find that the jobs were so similar that any reasonable employer would have had regard to past performance. It also became too embroiled in the interview process. The EAT recognised that an interview process is always going to be to some extent a subjective exercise, but the evidence was that there had been a discussion beforehand about the questions to be posed and the kind of answers that the employer was looking for."

And at 8.179

> "However, whilst the strict objectivity required when selecting for redundancy is not necessary in relation to offering alternative employment, a degree of objectivity is nevertheless important."

190. The claimant attended individual consultation meetings on 30 July, 10 September and 14 September 2020. Save for the ringfenced roles of two National Leads and 16 Coach Development Officers, the claimant did not apply for any other roles.

191. On 14 August 2020, the claimant was interviewed by Lucy Pearson, Audrey Cooper and Abdul "Butch" Fazal. The interview consisted of a short presentation task and followed by questions based on the presentation and then competencies/behavioural and technical questions.

192. In her evidence, Lucy Pearson characterised the claimant's performance as relatively good but not stellar. It was felt that she did not include enough detail about working at scale and on a national level. For each of the lead roles the claimant ranked 7th out of 10 applicants and 4th out of 6 applicants.

193. The claimant was interviewed on 19 August for the Coach Development Officer role by John Folwell, Abdul "Butch" Fazal and Roger Davies. Mr Folwell's evidence was that the claimant's performance in the CDO roles interview was much worse than her performance in the lead roles interview.

194. For the two teams she ranked 25th out of 34 for one and 19th out of 28 for the other.

195. We found the evidence of Abdul Fazal impressive and compelling. Abdul Fazal had joined the FA as a County Coach Developer and, as such, knew the claimant's role. In August 2018 he was promoted to Coach Inclusion and Diversity Manager. His role specifically included addressing the significant underrepresentation of coaches from ethnically diverse backgrounds and/or females. In addition, Abdul Fazal knew the claimant quite well.

196. Abdul Fazal told us in his evidence that prior to joining the FA he had been a thorn in their side for two decades. He was a co-founder of Black/Asian Coaching Association (BACA) and he challenged the FA over a lack of diversity and in order to support ethnically diverse coaches.

197. We have no hesitation in finding that if the interview process had in any way been influenced by the claimant's race or sex or, indeed, had she been

unfairly marked down then Abdul Fazal would not have stood idly by and would have taken firm action.

198. We find that the reason for dismissal was redundancy. We find that the claimant was warned, consulted both collectively and individually and given every opportunity to apply for vacancies. We find that the interview process for the ringfenced roles in grassroots coaching was fair and that she failed on merit. As such, we find the redundancy process was fair in all the circumstances.

199. The claimant's employment ceased on 30 September 2020.

200. On 21 September 2020 the claimant appealed her redundancy. The claimant's appeal was heard on 5 October 2020 by Mr Craig Donald and Ms Amina Graham, a black female barrister specialising in safeguarding and equality law. As part of the appeal process, Amina Graham along with Caroline Smith, Head of HR at Wembley, reinterviewed John Folwell, Lucy Pearson, Audrey Cooper, Abdul Fazal, Roger Davies, Caroline Round and Sarah Norris. We find that the appeal process was robust and fair. The only issue of concern was that some of those who had been successful in being appointed to Coach Development Officer roles had been announced before the appeals had been determined. That is clearly regrettable as it might suggest that any appeal was doomed to failure as, in the event of a successful appeal, presumably someone else would have to be made redundant. However, we find that that did not render the appeal unfair.

201. We find that the claimant's dismissal was fair in all the circumstances. We find that issues 1(u) and 1(v) are found proved. As such, we have gone on to consider whether that was less favourable treatment. We have taken a hypothetical male and/or male or female white collegaue who had performed similarly in interview for the ringfenced roles and had not applied for any other roles at the FA. We find that such a comparator would have been treated in exactly the same way.

202. We find that for the victimisation claim the detriments, issues 1(t)-(v), were not because the claimant had done a protected act.

203. For the protected disclosure detriments, we find that the detriment 1(t) was not on the grounds that the claimant had made a protected disclosure.

204. For the automatically unfair dismissal claim, we find that the principal reason for the claimant's dismissal was redundancy and not that she had made a protected disclosure.

**Time limits**

205. The claimant presented her claim form on 21 February 2021. The period of early conciliation was from 10 December 2020 until 21 January 2021. As such, any act or omission which occurred prior to 11 September 2020 is prima facie out of time.

206. We have found that the events surrounding the redundancy process and the claimant's termination of employment were not related to the claimant's race and/or colour. As such, they do not constitute a course of continuous conduct and/or a series of connected events.

207. The direct discrimination and harassment that we have found proved relates to an incident on 29 July 2019. Time for presenting a claim in relation to that incident would have expired on 28 October 2019. The claim is therefore approximately 10 months 2 weeks out of time.

208. At both the grievance hearing and the grievance appeal the claimant had assistance and representation from her trade union representative.

209. In the claimant's grievance dated 1 August 2019 she specifically references the Equality Act 2010 alleging unlawful discrimination on the grounds of her race, religion or gender and alleges harassment.

210. On 27 December 2019 the claimant sent a "reply to grievance appeal outcome letter" in which she states:-

> "Now that the internal process has concluded, I am aware that if I want this to be looked into further then it will go externally from the organisation. I have every confidence that if I was to take the case further that I would be in a strong position to win a case."

211. We find that the claimant was, at all material times, fully aware of her rights to bring a claim to the employment tribunal and that she had access to relevant advice in so far as time limits were concerned.

212. When the claimant was asked why she had not brought an employment tribunal claim sooner she stated: "When you speak out you get targeted", "A lot of evidence was not disclosed" and that "as race discrimination was hard to prove she was in limbo".

213. Whilst the claimant's explanations may well be understandable, we find that she made a conscious decision not to bring an employment tribunal case. We find that it would have been reasonable for her to have waited until her grievance appeal was finally determined. In the event that the claimant had brought a claim within three months of the appeal outcome, namely by 11 March 2020, then we would have considered it equitable to extend time. However, Parliament decreed that claims should be brought within three months and that the considerations the claimant took into account would potentially apply to everyone considering bringing a claim whilst remaining in employment. In the circumstance, we consider that it would not be just and equitable to extend time after 11 March 2020, Consequently, the direct discrimination and/or harassment found must be dismissed.

214. For the above reasons the claimant's claims are all dismissed.

_____

Employment Judge Alliott

Date: 17 September 2024……..

Sent to the parties on:
1 October 2024.....

…….....
For the Tribunal Office

**Recording and Transcription**
Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/