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EMPLOYMENT TRIBUNALS

Claimant: Mrs S Neary

Respondent: Canary Wharf Management Ltd

Heard at: East London Hearing Centre **On:** 12-13 May 2016

Before: Employment Judge Jones (sitting alone)

Representation

Claimant: In person (Assisted by Jennifer King-Neary)

Respondent: Ms L Banerjee (Counsel)

JUDGMENT

The judgment of the Employment Tribunal is that the dismissal was fair and the claim is dismissed.

REASONS

1 The Claimant presented a complaint of unfair dismissal which the Respondent resisted.

2 The Claimant was employed by the Respondent and her last post was Control Desk Supervisor. She was dismissed on 14 August 2015 for gross misconduct.

3 The Respondent case was that the Claimant had been dismissed fairly for gross misconduct.

4 The Tribunal heard evidence from the following:

- The Claimant on her own behalf;

And from the Respondent:

- Andrew Briggs, Disciplinary Appeal Chair who heard the Claimant's first appeal

- Mark Baker, Disciplinary Hearing Manager;
- David Cooper, who heard the Claimant's second appeal

5 The Tribunal apologise to the parties for the delay in the production of these written reasons and the judgment. This was due to pressure of work and ill-health of the judge.

6 From the evidence, the Tribunal make the following findings of fact. The Tribunal has only made findings of fact on the matters that relate to the issues in this case.

Findings of fact

7 When the Claimant started work at the Respondent on 15 September 2003, she worked as a car park supervisor in the car park's department. The Claimant worked there for seven years and appeared to do well in that section where she was named "Employee of Month" for customer service in 2008. The Claimant moved to tenant services as a receptionist in October 2010.

8 In June/July 2011 the Claimant started to cover the post of supervisor of the Helpdesk. The Claimant enjoyed this post and in 2012 it became her full-time position. She became the Helpdesk Supervisor. The Claimant's hours were 8am to 5pm.

9 The Claimant had a different set of colleagues in this office from those people that she had worked with previously. It was her evidence that this new office was staffed with mainly men i.e. maintenance engineers, engineering supervisors and building managers. The retail building manager, Andrew Shrimplin, was also based in that office.

10 The Claimant's evidence was that there was constant swearing and raised voices and lots of "banter" which was both inappropriate and unprofessional. Her evidence was that the atmosphere in the engineering supervisor's mess room and that it was sometimes offensive to her as a woman. She also stated that Mr Shrimplin introduced a swear box to curb inappropriate language but that it was unsuccessful. She also confirmed that Steve Povey frequently told the engineering supervisors to stop.

11 The Claimant did not raise any grievances against anyone during this part of her employment so that this matter could be addressed by the Respondent.

12 The banter which the Claimant gave evidence of appeared to take place in the mess room which was not her office but was a room which she needed to go into in order to either give instructions or receive reports from engineers and their supervisors. They also sometimes came into her office.

13 In March 2013 the Claimant was promoted to Control Centre Supervisor. The Respondent also built an office for the staff working on the helpdesk. This office was made of glass and was built within the existing office. This reduced the noise levels considerably and would have separated the Claimant and her colleagues from the mainly male working environment in the main office.

14 The Claimant had previously worked with Mai Clarke in the car park's department and they were good friends at that time. They had seen each other outside of work with Mai Clarke visiting the Claimant's home and attending her children's birthday celebrations. Ms Clarke joined the helpdesk in May 2013. As the Control Centre Supervisor, the Claimant made changes in the way that the helpdesk was run and the work distributed.

15 The Claimant as the manager of the Helpdesk led a team of three: Rachel Kirwin, Mai Clarke and John Cook, all of whom were responsible for processing the queries that came into the retail Helpdesk. The Claimant and her team were in charge of logging all calls received from tenants and ensuring that they were passed on to the appropriate individuals. Each call would be logged on to the computer system as a report which would be closed once they received the related timesheets showing that the matter had been addressed. Tenants would regularly call the helpdesk to report issues such as light bulbs blowing, problems with waste collection or any other maintenance faults. The Claimant reported to Steve Povey, building services and projects manager.

16 One of the Claimant's direct reports, Leah Gibbs complained in a grievance submitted in May 2014 that she had been bullied by the Claimant. The Respondent investigated the grievance and the process resulted in the Claimant being subject to disciplinary proceedings. The conduct for which she was disciplined was: sending numerous emails to Mai Clarke and Leah Gibbs which contained inappropriate comments and criticisms about the Claimant's other reportees and/or other colleagues; and conducting herself unprofessionally in her role as Supervisor. Part of the Claimant's defence during the disciplinary hearing on 12 January 2015 had been that she had not been given sufficient training in regards to her role and conduct. The Respondent found that she had been trained in the following courses: Managing Difficult Situations (2014), Supervisory Training (2013), ILM Level 2 in Team Handling (2010), Introductory Certificate in Team Leading (2005), Supervisory Training (2004), and Diversity (2004).

17 In December 2014 the Claimant had two weeks annual leave and a further two weeks leave due to stress. The Claimant's evidence was that she was not sleeping due to anxiety and had been prescribed sleeping tablets. She informed Steve Povey and Andrew Shrimplin in a back to work meeting in January 2015 that she was still very stressed.

18 In or around January 2015, the Respondent issued a memo to all staff to remind them of the importance of complying with its administrative rules and procedures, including its code of business, practice and ethics, diversity and equal opportunities, harassment and customer services policies. The Respondent took the decision to remind staff of these policies because of the issues raised in the disciplinary process brought against the Claimant following Leah Gibbs' grievance.

19 Following the January 2015 memo, all employees and managers, including the Claimant, were asked to read and sign a memo to confirm that they had received and understood it. The memo also referred to specific conduct that the Respondent wished to highlight that it considered inappropriate such as offensive name calling, photos of

colleagues being displayed with inappropriate or offensive comments about people being circulated or displayed in the mess room; breaches of confidentiality between colleagues about members of staff's work performance or information discussed during confidential meeting; and what was described as inappropriate banter which could cause offence to colleagues. The Respondent stated clearly in this memorandum that such behaviour would not be tolerated and that if anyone was found guilty of such behaviour, disciplinary action would be taken.

20 On 23 February 2015 the Respondent wrote to the Claimant at the conclusion of the disciplinary process to inform her that it had been decided to issue her with a written warning for gross misconduct. There was also a recommendation that she attend a further diversity refresher training course. The written warning was to remain on the Claimant's records for 12 months.

21 On 26 February 2015 the Claimant submitted an appeal against that decision by email to David Fendley. However, the Respondent failed to address her appeal at that time.

22 It was the Claimant's evidence that relationships within the helpdesk office became strained when she returned to work after her sick leave and after she received her written warning. She distanced herself from Ms Clarke in an effort to establish a more professional relationship between them and stopped emailing her colleagues about occurrences in the office or to discuss any other colleagues. In that way, she appeared to take on board the purpose of the written warning which was to stop the kind of behaviour/conduct that had warranted it. It would appear that their friendship also ended around this time and they stopped socialising outside work.

23 On 10 March 2015 the Respondent received a formal grievance from Ms Clarke in relation to what she considered to be bullying and harassment by the Claimant. She complained of a number of incidents which she set out in the grievance that had occurred over the previous two months which she believed demonstrated the Claimant's poor work ethic and bullying and harassing behaviour towards her. She complained that the Claimant belittled her and other colleagues, that she embarrassed her in front of callers to the Helpdesk, breached confidentiality in respect of a colleague's sick leave and that she displayed negative and bullying conduct at work.

24 Ms Clarke submitted her grievance by email to Kam Di Natale of HR on 10 March 2015. Ms Di Natale forwarded it to Mr David Fendley, the Respondent's Group Personnel Manager.

25 On 11 March there was an incident between the Claimant and Mai Clarke which caused Mai Clarke to raise a further grievance against the Claimant.

26 From the statements taken from witnesses of the incident the Tribunal find that the following occurred.

27 On 11 March 2015 a contractor came to the window of the helpdesk and asked for a signature for the report he had done. Ms Clarke was at the window and informed the contractor that a supervisor would have to sign it. She went to see Steven Rose about this and he said he would come out and sign it. Ms Clarke came back into the

office to let the contractor know at which point the Claimant overheard what was being said and stated that she could sign it. This was not the procedure as far as Ms Clarke knew. Ms Clarke believed that an engineering supervisor was required to sign off the reports submitted by a contractor since the Helpdesk did not have the technical knowledge to be able to sign off the report. The Respondent confirmed in the Hearing that her understanding was correct.

28 There then ensued an argument between the Claimant and Ms Clarke in which the Claimant questioned why an engineering supervisor was required to sign the report. She was adamant that she could sign the report and that Ms Clarke was wrong.

29 Ms Clarke left the glass office to see Lee Vickers. Rachel Kirwin who was junior to Mai Clarke also went to see Lee Vickers and explaining to him that she was feeling uncomfortable in the office given the atmosphere caused by this latest discussion between the Claimant and Ms Clarke. Mr Vickers came out into the office and Ms Clarke stepped out of the Helpdesk area. The Claimant followed her out into a corridor where they could be heard by the public and contractors. The Claimant was heard screaming at Ms Clarke that she was undermining her. She told her that she should watch herself and warned her never to undermine her like that again. She informed Ms Clarke that there was going to be a meeting and that she needed to watch herself. Members of staff in the Helpdesk area and in the office heard the shouting which also caused Mr Vickers to come out into the corridor and speak to the Claimant. He heard some of the conversation and asked the Claimant not to speak like that and told her that she needed to stop. The Claimant was very angry and Ms Clarke was upset. The Claimant went into the toilets and Ms Clarke went to see David Fendley to register her complaint about the incident that had just happened. Ms Clarke was allowed to go home because she was upset.

30 On 12 March, the following day, David Fendley held a meeting with the Claimant and Steve Povey, Building Services and Projects Manager who was also the Claimant's line manager. During that meeting, Mr Fendley informed the Claimant that he had had a report about the exchange between the Claimant and Mai Clarke on the previous day and that it had been agreed with retail management that it was appropriate in the circumstances to suspend the Claimant pending a full and thorough disciplinary investigation. He confirmed that the suspension was with full pay. The Claimant was reassured that no decision had yet been made on the issue and that the Respondent was aware that this was a difficult situation for her and that they wanted to address matters as soon as possible. In order to give her as much time as possible to prepare for an investigation meeting she was given notice that it was likely that this would be conducted on the following Tuesday. In the interim, the Claimant was not to contact any members of staff or to come on to the Canary Wharf estate.

31 The suspension meeting was followed by a letter sent by courier on 13 March confirming her suspension with full pay following an allegation of misconduct. The misconduct referred to was that the Claimant had behaved in an intimidating and bullying manner towards Mai Clarke on 11 March including following Mai Clarke out of the office into the corridor and shouting at her in a public area. The date for the investigation meeting was confirmed as 17 March 2015.

32 On 16 March, Lee Vickers gave a statement confirming that the procedure was that an engineering supervisor should be contacted to sign the job sheets presented by contractors at the Helpdesk. His evidence was that Ms Clarke had informed him on the day that she followed that procedure by trying to contact David Smith for a signature once the contractor appeared at the Helpdesk window requesting that his job sheet be signed. The Claimant snatched the job sheet off Mai Clarke and angrily snapped at her that she would sign it and sort it out. Lee Vickers went into the helpdesk area to remind the Claimant of the procedure. After he spoke to her the Claimant went out into the corridor and shouted at Mai Clarke. Mr Vickers confirmed that he went into the corridor once he heard the Claimant shouting at Mai Clarke in an aggressive confrontational manner repeatedly saying: "Do not undermine me". He did not hear anything else. He also confirmed that the Claimant stopped when she realised that he was present and that once the Claimant stopped shouting at her, and went into the ladies toilet, Ms Clarke was visibly upset/crying and distressed and requested to go home. This was agreed.

33 Lastly, Mr Vickers confirmed that just before this event took place, Rachel Kirwin had approached him to air her concerns over the way in which the Claimant was talking to Mai Clarke and he had asked Ms Kirwin to make a statement of her concerns.

34 The Respondent addressed the two grievances presented by Mai Clarke in two separate procedures. The second grievance regarding the incident on 11 March was addressed first in that the investigation was conducted immediately. This investigation was conducted by Steve Povey and Penny Bradshaw. On 11 March statements were taken from David Fendley, Rachel Kirwin Retail Helpdesk Assistant, the Claimant, and Candice Johnson. The Claimant was suspended on 12 March as already stated. Mr Vickers' statement was taken on 16 March as already referred to above.

35 On 17 March the Respondent conducted an investigation meeting with the Claimant in regard to the incident on 11 March. The Claimant confirmed in her evidence to the Tribunal that she had the opportunity to give her version of events during that investigation meeting.

36 The Claimant confirmed that her voice had been raised when she spoke to Ms Clarke in the public corridor. She confirmed that it could have been perceived that she was shouting at Ms Clarke. She confirmed that Ms Clarke asked her to come into the office so they could talk about the matter but that she refused to do so and went into the toilets. The Claimant confirmed that she should not have acted in the way that she had and stated that she was feeling isolated and that she was very upset. She asked for mediation to be put in place and to manage the relationship between herself and Mai Clarke and that she needed support from management to manage what she considered to be challenging staff. She felt that the Respondent were doing wrong by continuing to discipline her for these matters.

37 Steve Povey and Penny Bradshaw then conducted further disciplinary investigation witness interviews with Lee Vickers, Rachel Kirwin and with Mai Clarke.

38 On 31 March 2015, Steve Povey and Penny Bradshaw wrote to David Fendley recommending that the Claimant should be disciplined for gross misconduct in relation to her intimidating and bullying behaviour towards Mai Clarke on Wednesday 11 March. It was noted in particular, that this included following Mai out of the office into the corridor and shouting at her in this public area.

39 On 8 April by letter from David Fendley the Claimant was invited to a disciplinary hearing to answer the allegation of gross misconduct in relation to the incident that occurred on 11 March. Mr Fendley was to conduct that disciplinary hearing that was set for 15 April 2015. The invitation letter referred to the parts of the company's administrative rules and procedures that the Claimant's conduct was alleged to have breached. She was given copies of all the witness statements and witness interview notes that the Respondent sought to rely on. The Claimant was informed that the allegations were extremely serious and that she should be aware that her job may be in jeopardy. The Claimant was advised of her right to be accompanied.

40 At the same time, the Respondent was also investigating the grievance that had been submitted on 10 March. On 17 March, the Respondent conducted the Stage 1 grievance meeting with Mai Clarke as she had asked for the first grievance to be conducted in a formal manner in accordance with the Respondent's procedures. Jim Duncan conducted this process with the assistance of Lorna Campbell of the Respondent's HR. Mr Duncan was the retail building manager. Mai Clarke was accompanied during that meeting. Ms Clarke set out her concerns in relation to her working relationship with the Claimant and how she considered that it had deteriorated over the previous two months.

41 The Claimant's evidence at the hearing was that the Respondent should not have taken Ms Clarke's evidence as an accurate record of their working relationship. In the minutes of the meeting on 17 March, Ms Clarke is recorded as saying that although people thought that she was close to the Claimant, that was not true and that they had only been out once or twice and that she would sometimes have a drink with the Claimant and her partner, if he came on to the estate. The Claimant's case was that this was not true and that they had socialised much more extensively than that, including Ms Clarke attending the Claimant's daughter's birthday parties.

42 The Respondent accepted that they had been friends and that their relationship appeared to have deteriorated after the Claimant's return from her sick leave in or around January 2015. The exact details of their previous friendship was not a relevant consideration. None of the Respondent's officers appeared to know why that relationship had broken down but it was confirmed that it had.

43 Mr Duncan then met with Rachel Kirwin, the other helpdesk assistant, on 24 March 2015 to explore the issues raised by Ms Clarke in her first grievance. Ms Kirwin was not told that it was Ms Clarke's grievance that was being investigated but that the Respondent was investigating a grievance by a member of the retail team. She was asked to provide further details on the statement that she had already given and asked about the relationships between staff on the helpdesk.

44 Ms Kirwin gave examples of inappropriate conduct by the Claimant towards her and instances where she felt that the Claimant had been unhelpful, had not been supportive, and of her inappropriate conduct in the office.

45 On 27 March Mr Duncan interviewed the Claimant. The Claimant was informed that the meeting had been arranged following a formal grievance submitted by Mai Clarke. The meeting was to investigate the grievance and to give the Claimant an opportunity to respond to the allegations. The Claimant was reminded that there was also a live disciplinary investigation being carried out by Penny Bradshaw but that the two processes were separate. The Claimant had opportunity to comment on all the allegations made by Mai Clarke. The Claimant referred to the change in her relationship with Mai Clarke and also with Rachel Kirwin. She stated that this was due to her following the advice given by management when she returned to work after her sickness after the disciplinary that arose out of Leah Gibbs' complaint. She stated that she had been advised that she had to establish a professional relationship with her colleagues and that she needed to distance herself away from Ms Clarke who had previously been her friend and that Ms Clarke had not liked this.

46 The Claimant made counter accusations about Mai Clarke's conduct, that she had been uncooperative, had complained and had undermined her in the presence of contractors or other junior staff.

47 Mr Duncan interviewed David Smith who confirmed that there had been obvious tension between the Claimant and Mai Clarke in the office although he had not heard anything that could describe as banter. He spoke to Steven Goodey who confirmed that he had not heard any banter that would have caused him any concern and who commented that the helpdesk was more efficient since the Claimant had taken over. He also interviewed John Cook who stated that the Claimant was authoritarian and a bit controlling but that they had worked out their differences and there was no issue between them. He confirmed that he had not heard the Claimant making any derogatory remarks although he also did confirm that the Claimant made fun of him. He considered that it was likely that the Claimant made fun of him when he was not there but had not done so in his presence. He confirmed that the Claimant did interrupt when Ms Clarke was at the window dealing with contractors or other customers and that she would also do so when Ms Clarke was on the phone dealing with a query.

48 On 14 April Mr Duncan interviewed Ms Candice Johnson who confirmed that the atmosphere on the desk changed after Christmas 2014. She confirmed that the Claimant had referred to John Hadley as "thick". She also confirmed that the banter between staff had lessened since everyone signed the memo that had been issued in January. Also on 14 April Mr Duncan interviewed Lee Vickers. Mr Vickers confirmed that although the Claimant and Mai Clarke's relationship had been good before Christmas it was no longer friendly thereafter. He confirmed that the Claimant had removed herself or had become more removed in herself in the last few months. He was unable to confirm the language used within the office. He was able to confirm that while the Claimant was off sick Mai Clarke had run the desk efficiently including training Rachel Kirwin.

49 On 21 April Jim Duncan of the Respondent interviewed John Hadley, Steven Rose, Lisa Grinnell on 28 April. Rachel Kirwin was re-interviewed on 22 May.

50 At the start of the interviews conducted by Jim Duncan into the 10 March grievance, the witnesses were told that a grievance had been issued by a member of staff in the Retail team and asked general questions about the atmosphere and the relationships between people working there.

51 At the end of the investigation into the 10 March grievance, Jim Duncan on behalf of himself and Lorna Campbell wrote to Mai Clarke on 22 May 2015 to inform her of the outcome of her grievance. They upheld Ms Clarke's grievance. They decided that there were a number of points in her grievance that needed to be taken up with the Claimant. They did so in six of the ten points raised in the original grievance submitted on 10 March. They proposed to take one point up with the Management team and there were three points about which they not going to take any further action.

52 In the interim, the Claimant attended a disciplinary hearing on 15 April 2015 into the 11 March incident. She had been informed that the allegations against her were extremely serious and that she should be aware that her job may be in jeopardy. She faced an allegation of gross misconduct relating to the incident on 11 March in which she was alleged to have behaved in an intimidating and bullying manner towards Mai Clarke which included following Mai out of the office into the corridor and shouting at her in the public area. The Claimant was informed of her right to be accompanied and the statements and she had been provided with witness interview notes with the letter of invitation.

53 The meeting had been chaired by David Fendley and Mike Shepherd, building manager. The Claimant attended unaccompanied. The Claimant confirmed that she was happy to proceed without accompaniment. They discussed the incident that had occurred on 11 March 2015. The Claimant was asked whether she had shouted at Mai Clarke during the incident and the Claimant confirmed that her voice was raised, that she had a loud voice and that it could be construed that she was shouting back. She was unable to say why she had chosen not to have the conversation in private i.e. an office. It was noted in the meeting that the Claimant and Mai Clarke had been friends. She also stated that she had previously spoken to Steve Povey about Mai Clarke and informed him that Ms Clarke kept undermining her. She confirmed that she had not raised issues directly with Mai Clarke but that she had been advised to keep a diary of any incidents and had failed to do so.

54 The Claimant confirmed that she refused Mai Clarke's offer to go and discuss the matter together more privately rather than talk in the corridor. She stated that she was upset. The Claimant also confirmed that following the incident she had not apologised to Ms Clarke.

55 At the end of the meeting, Mr Fendley asked the Claimant if she had any mitigation to offer. The Claimant confirmed that she took full responsibility for the incident. She stated that it had been her fault and that she should not have acted like that. She felt that there had been lots of provocation and she did not understand why she was no longer friends with Mai Clarke or why their friendship had ended.

56 On 8 May 2015, Mr Fendley wrote to the Claimant setting out the Respondent's decision on her disciplinary hearing. Mr Fendley listed the courses that the Claimant had been on which led them to expect her to be able to complete the tasks necessary to do her job. The dismissal letter confirmed that the Claimant had admitted in the disciplinary hearing that she may have shouted at Mai Clarke in the corridor and that she did so because she felt undermined. The letter recorded that the other witnesses supported Mai Clarke's belief that it was appropriate that engineering supervisors authorise contractor's worksheets as opposed to Helpdesk staff and that Mai's actions were justified and not an attempt to undermine the Claimant. Also that Lee Vickers' account supported Mai Clarke's recollection of the incident.

57 The Respondent confirmed that it had taken into account the fact that the Claimant was on a current written warning for sending Mai Clarke and Leah Gibbs inappropriate comments and criticisms about other reportees and other colleagues via various emails and because her approach to situations whilst in a role as a supervisor could be perceived as unprofessional.

58 The written warning that had been given to her as a sanction in February 2015 was not due to expire until 22 February 2016. The Respondent also considered that the Claimant's current role as Control Centre Supervisor meant that it was her job to ensure the smooth running of the very busy retail helpdesk. She was tasked with ensuring that she got the best performance out of her team and also that she made customer care paramount.

59 Mr Fendley considered that the Claimant had behaved in an intimidating and bullying manner towards Mai Clarke who was one of her reportees. She had done so in a corridor, outside her office by shouting at her in this public area.

60 He considered, taking all that into consideration and given that the Claimant had a live written warning for gross misconduct regarding unacceptable behaviour as a supervisor in relation to her reportees; that her actions constituted gross misconduct and that therefore, summary dismissal was the most appropriate outcome. It was Mr Fendley's decision that she should be dismissed for gross misconduct in relation to the incident on 11 March. The Claimant's employment was terminated with immediate effect from 8 May.

61 By an email dated 13 May the Claimant appealed against the decision to terminate her employment. The Claimant disputed the Respondent's conclusions on the event on 11 March. She also wanted the Respondent to take into account what she considered to be mitigating circumstances leading up to the incident on 11 March.

62 The Claimant also considered that the written warning that had been instituted in February 2015 ought not to have influenced the decision on this most recent disciplinary matter. She informed the Respondent that she had appealed against that written warning by sending an email to David Fendley on 26 February 2015 and that it had not been actioned. In those circumstances, the Claimant considered that it should not have been taken into account so as to lead the Respondent to dismiss her on this occasion.

63 Andrew Briggs, Project Executive was appointed to hear the Claimant's appeal against dismissal. Andrew Briggs was a senior manager within the Respondent. He had no prior knowledge of the Claimant and had not worked with her or interacted with her prior to conducting her disciplinary appeal. David Fendley asked him to conduct the appeal.

64 The appeal meeting was scheduled for 21 May 2015. Mr Briggs had an opportunity to read the Claimant's appeal letter of 13 May 2015 in preparation for the appeal. He wanted to meet the Claimant's appeal and hear her explanation of the reasons why she considered the decision to dismiss her to be incorrect, before reading the other documents. He did not discuss the facts of the case with anyone before the appeal meeting and therefore had no prior knowledge of the history.

65 On the day before the appeal meeting, Penny Bradshaw, Deputy Group Personnel Manager, spoke to him to make him aware that the previous disciplinary sanction issued to the Claimant (the final written warning from February 2015) should be entirely disregarded. She stated that the Claimant's appeal against that warning which she lodged with the Respondent in February had not been dealt with at the time but had now been dealt with.

66 Having now seen the email correspondence between the Claimant and the Respondent about this matter the Tribunal finds that the Claimant was initially told, once she informed the Respondent that it had failed to deal with her earlier appeal; that an appeal hearing would be set up to hear it. The Claimant objected to this way of proceeding. She considered that any panel set up to hear that appeal at that time would not be fair and would be influenced by the subsequent dismissal. The Respondent then proposed two ways of approaching the matter. Either that the person who hears her appeal against dismissal could also consider the appeal lodged against the written warning in February; or alternatively, that the appeal on 26 February would be accepted and the written warning reduced to a verbal warning which the person conducting the appeal against dismissal could take into account. The Claimant objected to both of those proposals and suggested instead that the original disciplinary action against her should be dropped. She would then proceed to the dismissal appeal hearing with a clean slate. The Respondent agreed to that proposal and that is what Penny Bradshaw told Mr Briggs on the day before the appeal.

67 On the day of the appeal, the Claimant informed Mr Briggs that she wished for the entire process of her previous grievances and disciplinary matters to be reviewed as she believed that there was a plan to exit her from the company. She asked Mr Briggs to review and consider the previous disciplinary case relating to Leah Gibbs' grievance. Because of her request, Mr Briggs adjourned the hearing and reviewed all of the processes followed to date in relation to the Claimant. It was at this point that he read all the documentation relating to the Claimant. He created a timeline based on the documents reviewed which would assist him in understanding the event leading up to the appeal that he had to decide. In looking at the history, Mr Briggs noted Leah Gibbs' grievance in May 2014 and the process through which the Respondent investigated and dealt with it. Also, he briefly looked at Mai Clarke's first grievance on 10 March 2015 and the way in which that was addressed. However he did not delve into the details of the grievance at that time but did become aware of it subsequently in preparation for the Tribunal hearing.

68 In the timeline that he prepared he made a note of questions or issues that he hoped to be able to answer during the process such as a query as to what support the Claimant had been given, apparent contradictions between statements and whether or not the Claimant had been ostracised. Mr Briggs confirmed in his live evidence that at this point he had not come to any conclusions but made these notes to assist him in the course of dealing with the appeal.

69 Mr Briggs then familiarised himself with the documents surrounding the incident on 11 March. He came away with the following points: that Mai Clarke had been correct in the procedure which she was following that the contractors' form needed to be signed by an engineering supervisor who would have the technical abilities to be able to assess the contents of the form. He concluded that the Claimant had interjected between Mai Clarke and the contractor to repeatedly state that as a supervisor, she would be able to sign the permit. Mai Clarke was unhappy with that interjection and spoke with Lee Vickers who subsequently confirmed that Mai's position was correct and spoke to the Claimant to remind her about the procedure. The Claimant confronted Mai Clarke in the corridor which was a semi-public area accessible by both customers and colleagues. It was not possible to identify precisely what had been said between the two but a number of witnesses observed the heated discussion which involved shouting. Ms Clarke's grievance suggested that the Claimant had shouted at her. Lee Vickers managed to defuse the situation and Mai Clarke left in a very upset state.

70 During the appeal meeting, Mr Briggs went through the Claimant's appeal points with her and she confirmed the following: that the incident in the corridor should not have been considered as gross misconduct because it was not sufficiently serious; that there were mitigating circumstances which had not been taken into account; that it was all a lie; that she had felt undermined by Mai Clarke; and that there was procedural inaccuracy which undermined the original written warning and therefore meant that it should not have been taken into account to make this a matter appropriate for dismissal.

71 After the meeting, the Claimant sent further information to Mr Briggs that she wanted him to consider as part of her appeal. Mr Briggs read all the documents and factored them into his decision-making.

72 Once he had familiarised himself with all the documentation and information in this case he wrote to the Claimant on 23 June setting out his decision. He firstly dealt with the previous written warning and confirmed that as he had been told that it had been withdrawn, he was not going to take it into account. However, as the Claimant insisted he should consider the background to the Written Warning he did so and also considered the incidents which formed the basis for it and the disciplinary process leading up to it. Having considered the background documents he confirmed that the emails that the Claimant sent to Mai Clarke/Leah Gibbs were inappropriate and demonstrated that the Claimant had a general behavioural and attitude problem in relation to Leah Gibbs. He queried why a historic comment that the Claimant had allegedly made to Graham Moffatt was included in the investigation leading up to the Written Warning when it occurred some time before and when it had already been reported to Steve Povey and no action had been taken. He confirmed that historic

events can be helpful in getting an overall picture of a person's general attitude and behaviour and in that context historic incidents may be helpful. However as the Respondent had withdrawn the Written Warning he made no further comment.

73 Turning to the events of 11 March, he concluded that the Claimant's interjection between Mai Clarke and the contractor could be construed as aggressive and undermining to Mai Clarke. Also, that the discussion in the public area was inappropriate and as a supervisor, it was essential for the Claimant to exercise restraint.

74 He also considered that although it was apparent that the relationship between the Claimant and Mai Clarke had deteriorated, this was not valid justification for the incident. Mr Briggs acknowledged in his letter that it was apparent to him that there seemed to be very little in the way of a support mechanism for the Claimant through the management chain in the way of meetings and formal discussions. At the same time, he noted that the Claimant had failed to address any concerns she had in a structured way or by raising matters through the proper channels.

75 In the Tribunal Hearing, Mr Briggs confirmed that it was possible that the Claimant had been somewhat undermined by Mai Clarke but even if that were true it was not justification for the way that the Claimant behaved given that she was a supervisor. He questioned why there had been an interjection in the first place as the matter that presented itself at the Helpdesk that day was a straightforward issue which had not necessitated an aggressive interjection by the Claimant. Even though there was a query about how the payment system had been communicated to the Claimant, he concluded that Mai Clarke was technically correct and the Claimant was incorrect and ought to have conducted herself differently. He considered that although it was difficult to determine whose accounts of the facts were correct, it was apparently that Lee Vickers' intervention was required to defuse the situation in the corridor. He had satisfied himself that there was no written record of the Claimant ever having formalised any concerns she had about Ms Clarke through the correct procedural channels prior to Ms Clarke's grievances.

76 The Claimant had said during the appeal hearing that she believed Andrew Shrimplin was trying to orchestrate her dismissal. Mr Briggs looked into this matter and confirmed that he could not see that Mr Shrimplin had been involved in any of the disciplinary panels throughout the various procedures against the Claimant and so could not have actually influenced this disciplinary outcome. Mr Shrimplin had been involved in the investigation of Leah Gibbs' grievance but had not been involved on the disciplinary panels for either the first or second disciplinary process. He did not find any evidence to back up the Claimant's belief that a case was being made against her.

77 Mr Briggs considered all these matters in deciding the Claimant's appeal. He decided that the previous written warning issued on 23 February 2015 had been a contributing factor towards her dismissal. As it had subsequently been withdrawn the only matter that remained was the grievance brought by Mai Clarke in relation to the incident on 11 March. Although he considered that it was serious enough to amount to gross misconduct he felt that dismissal would have been inappropriate for that single instance if the Claimant was considered to have a clean disciplinary record. It was for those reasons that he decided to reinstate the Claimant and reduce the dismissal sanction to a final written warning.

78 As the Claimant had been dismissed at the time that the grievance outcome had been sent to Mai Clarke on 22 May, the Respondent took no action on Mr Duncan's recommendation that aspects of her conduct towards Mai Clarke needed to be addressed formally with her. The Claimant had been summarily dismissed on 8 May 2015.

79 After Mr Briggs' decision to reinstate the Claimant following her successful appeal against dismissal, the Respondent decided to take action on the issues of her conduct highlighted in Ms Clarke's grievance. Those matters identified in Mr Duncan's letter to Mai Clarke had to be taken up with the Claimant as they were serious, could be considered misconduct and had not been addressed in the disciplinary process arising out of the incident on 11 March 2015.

80 On 23 June the Respondent wrote to her to confirm that her appeal against dismissal had been successful and that her sanction had been downgraded to a final written warning. Also on the same day, the Claimant was suspended as this was the start of disciplinary action against her in relation to matters arising out of Mai Clarke's first grievance submitted on 10 March.

81 The Respondent wrote a separate letter to the Claimant to confirm this. The Claimant was informed that although she had been reinstated by Mr Briggs, she was not to attend work and to consider herself immediately suspended. Prior to this letter the Claimant had not been given any information concerning the outcome of Mai Clarke's grievance and it would not have been expected that the Respondent would do so. They would have only written to the person who brought the grievance. However, having been interviewed as part of the investigation of the grievance, she was aware that Ms Clarke had raised a grievance against her and the matters that it concerned.

82 In the letter of 23 June the Claimant was invited to a disciplinary hearing to take place on Monday 29 June. The Claimant was informed of the eight points to be considered at that disciplinary hearing. They were all either part of Mai Clarke's grievance or arose out of the investigation of that grievance. Those were as follows:-

- 82.1 The Claimant had disclosed Alison Rowe's private and confidential medical information to her reportees.
- 82.2 On or around January 2015, the Claimant shouted at an engineering supervisor calling him "thick" and "stupid".
- 82.3 The Claimant ridiculed her reportee by sharing her mistake with her peer and laughing at her in the open office.
- 82.4 The Claimant raised her voice and displayed an aggressive tone towards Mai Clarke during a conversation about an e-cigarette.
- 82.5 The Claimant unjustifiably criticised her reportee's performance in the open office i.e. by undermining and interrupting her during calls/interactions to comment on the advice she was providing and to question her advice.

- 82.6 The Claimant unfairly distributed overtime work amongst her reportees and failed to respond to Mai Clarke's concerns regarding her workload.
- 82.7 The Claimant inappropriately encouraged Mai Clarke to leave the department in front of her peer, and
- 82.8 The Claimant provided misleading information during a formal meeting by saying that Mai Clarke had performance issues and was insubordinate whereas those matters had not been raised with management or with Ms Clarke and no evidence was provided to support those allegations.

83 The letter informed the Claimant that if proved, the allegations would amount to a breach of the company's administrative rules and procedures, particularly the section entitled Code of Business Practices and Ethics the section on Gross Misconduct and therefore could result in her job being put in jeopardy. The Claimant was reminded that she was currently on a final written warning following Andrew Briggs' decision to reinstate her.

84 The letter enclosed witness statements from Mai Clarke, Rachel Kirwin, John Cook, Candice Johnson, Lee Vickers, Lisa Grinnell and Andrew Shrimplin, all gleaned as part of the investigation, a copy of the Claimant's statement and her Performance Appraisal dated 25 November 2014; and a copy of the memo dated 12 January 2015 that she had signed. At that time the Claimant was not provided with copies of the statement taken from John Hadley, Steve Goodey or David Smith. John Hadley's statement was given to Mr Fendley as part of the investigation into the 11 March incident and not in relation to the grievance. Steve Goodey's and David Smith's statements were obtained during the investigation of Ms Clarke's grievance but they were not relevant to the issues that were to be considered at the disciplinary hearing. Mr Baker did not have these witness statements either.

85 The Claimant was informed of the terms of her suspension including that she was not to come on to Canary Wharf estate as a whole. The Claimant was also offered an opportunity to talk to Jim Duncan about the outcome of Mai Clarke's grievance.

86 The Claimant was signed off sick for two weeks on 26 June 2015 because of low mood and stress at work. As a result, the disciplinary hearing could not take place on 29 June as previously scheduled. The Claimant was invited to a reorganised disciplinary hearing on 13 July.

87 On 24 June, the Claimant raised a grievance which she forwarded to Lorna Campbell of personnel and copied to Jim Duncan. In her grievance, she referred to Mai Clarke's behaviour, attitude and general conduct towards her since her return to work in January 2015. She alleged that Ms Clarke had lied and fabricated events in order to add weight to her complaints. The Claimant also addressed each of the disciplinary allegations in turn. She alleged in her grievance that the statements which the Respondent had obtained from other employees were a character assassination on her and that it was the second effort to exit her from the Respondent's employment.

88 The Respondent emailed the Claimant on 26 June and stated that as most of the points raised in the grievance related to the allegations which were going to be considered at the disciplinary hearing it would be more appropriate for these all to be discussed together during the disciplinary hearing. The Claimant agreed to this suggested course.

89 The Claimant's disciplinary hearing took place on 20 July 2015.

90 The disciplinary hearing was conducted by Mark Baker who was employed by the Respondent as a Quality Control and Training Manager. Mr Baker was an experienced manager having conducted numerous disciplinary investigations previously.

91 David Fendley, Group Personnel Manager, asked Mr Baker to conduct this disciplinary hearing. Lorna Campbell, Personnel Officer, briefed Mr Baker on the events leading up to the disciplinary hearing. Mr Baker had not had previous contact with the Claimant before conducting this disciplinary hearing.

92 The disciplinary hearing was set for 20 July 2015. Before conducting the hearing, Mr Baker read all the documentation provided to him which were identical to the documents sent to the Claimant with the invitation letter. He noted that the Claimant had been given an opportunity through the invitation letter to speak to Jim Duncan about his findings in the grievance investigation. She had not taken up that offer. That opportunity was given to the Claimant again in the exchange of email between Lorna Campbell and the Claimant when they were discussing the Claimant's grievance. The Claimant was informed that Mr Duncan had investigated the points that she had raised in her meeting when she gave a witness statement as part of the grievance investigation; she was asked whether she would like to discuss the outcome of the grievance with him. The Claimant did not take up that offer.

93 Mr Baker and Mr Duncan were on the same level of management. However, Mr Baker did not discuss the matter with Mr Duncan beforehand and he came to the disciplinary hearing having only read the documents that had been sent to the Claimant with her invitation.

94 At the disciplinary hearing, Mr Baker was assisted by Lorna Campbell from personnel. The Claimant attended the disciplinary hearing with Aileen Flannery, Leading Security Officer, as her companion. Ms Campbell's primary role was as note-taker though she also provided support to Mr Baker from an HR perspective. Although the decision letter makes reference to 'we' at various points, Mr Baker confirmed in his witness statement that the decision as to the outcome of the disciplinary hearing rested solely with Mr Baker. This was not challenged.

95 The disciplinary hearing related solely to the issues raised in Mai Clarke's grievance of 10 March 2015. The Respondent distilled eight allegations against the Claimant from that grievance and from Mr Duncan's findings and conclusion on the grievance. Those are the allegations set out above. All eight were discussed in the disciplinary hearing and the Claimant was given an opportunity to put her case in respect of each. Mr Baker understood that they all were allegations of intimidation and bullying by the Claimant.

96 Mr Baker considered all the evidence gathered from the witness statements prepared as part of the investigatory process together with the notes of the disciplinary hearing and the further interviews that he conducted as referred to below. He satisfied himself that the process was fair and that the Claimant had been given an opportunity to respond to the allegations brought against her. He discussed his views with Lorna Campbell but then went on to make the decision on his own.

97 He first of all considered whether or not the Respondent should have done a separate investigation following the investigation that Jim Duncan conducted into Mai Clarke's grievance. He considered that Jim Duncan had conducted a robust investigation into Mai Clarke's grievance and that the investigation was in essence, an investigation into the Claimant's conduct. He considered that a very detailed investigation had taken place and that it was not necessary for the people who had been interviewed as part of the grievance investigation to be interviewed once again on the same matters, under the heading of a disciplinary investigation. It would have meant asking the same people the same questions on the same matters. The Claimant had been interviewed as part of that process and so had been given the opportunity to respond to the allegations while the Respondent was still at the investigation stage. For those reasons, Mr Baker was satisfied that a fair process had been followed.

98 Having listened to the Claimant's explanation of the allegations put to her and cross referred that to the witness evidence and the further evidence taken from Steve Povey, John Hadley and Andrew Shrimplin after the disciplinary hearing, he decided, on the balance of probabilities, that he favoured the consistent accounts given by several of the Claimant's colleague's interviews rather than the Claimant's version of events.

99 The Tribunal will now set out the allegations and the Claimant's response to each, with Mr Baker's conclusion in respect of each following the disciplinary hearing and his additional investigations.

100 The first allegation was that the Claimant had divulged private and confidential medical information concerning Alison Rowe which she had seen on Steve Povey's Outlook calendar on the Respondent's intranet. The Claimant's seniority gave her access to this information on the shared computer and she divulged this to the team in the office for no good reason. The Claimant accepted that she had done this but stated that her actions were not intentional and also that the calendar was accessible to other staff and that others within the office had been discussing Ms Rowe's medical situation. However, she was unable to provide names and instances when this had occurred.

101 Following the disciplinary hearing, Mr Baker spoke with Steve Povey about this and other matters raised in the disciplinary hearing on 22 July 2015. Mr Povey confirmed that only senior members of staff i.e. engineering supervisors and the Claimant would have had access to the contents of his calendar.

102 Mr Baker concluded that the personal information of any member of staff should not be discussed and especially by someone of the Claimant's level of experience and seniority. He felt that the Claimant should have known this. Mr Povey should not have needed to have marked the calendar entry as private to stop the Claimant from doing so.

103 The second allegation was that the Claimant had shouted at John Hadley, Engineering Supervisor in January 2015 and had referred to him as "thick" and "stupid". The Claimant asked why this was being considered as part of her disciplinary as it had not been raised in Mai Clarke's grievance. The Respondent confirmed that this had been highlighted by a number of the Claimant's colleagues when they were interviewed as part of the grievance investigation. The Claimant's explanation for this was that she had light "banter" with some supervisors. The Claimant contented that there were other colleagues who she believed had also acted unprofessionally. Mr Baker did not consider that that was relevant as it was the Claimant's conduct that had been complained about. The Claimant showed Mr Baker copies of entries on Facebook and Twitter, including photographs, which showed herself and other members of staff engaging in conduct after work which she considered was equivalent. Mr Baker considered, after looking at the information that the Claimant provided that although he was not happy that some of the events had occurred on work premises, they had taken place outside working hours and were not relevant to the allegation against her. He concluded that as a supervisor, he would expect the Claimant to set an example for her team and maintain a professional working environment at all times.

104 Following the disciplinary hearing he met with Andrew Shrimplin on 27 July and Mr Shrimplin confirmed that he had heard the Claimant speak in a raised voice and aggressive tone in the office and that it would be a typical comment for the Claimant to make to have referred to John Hadley as "thick" and "stupid" although he had not actually heard her say it.

105 Mr Baker interviewed John Hadley on 10 August 2015. They could not meet earlier because of Mr Hadley's holidays. Mr Hadley confirmed that it was likely that the Claimant had called him "thick" and "stupid" although he would not have found this offensive. He referred to the Claimant as being "loose tongued" and that her comments could be construed as inappropriate. He had not complained about this.

106 Mr Baker concluded that the behaviour covered by the second allegation was wholly inappropriate and amounted to abuse and intimidation towards her colleague.

107 The third allegation concerned an instance where 2015 when the Claimant had apparently ridiculed her team member, Rachel Kirwin in the open office, because of her poor spelling of a customer's name. The Claimant recalled the event but stated that it was merely a joke and that at the time, Ms Kirwin had not complained. Following the disciplinary hearing, Mr Baker looked at the statements that had been taken in relation to this incident from the other members of the team.

108 He found that Mr Kirwin's statement and that of another witness supported the allegation that the Claimant had spoken to her in that way and that Ms Kirwin had asked her not to speak to her like that. He concluded that as a Supervisor, in a position of responsibility, the Claimant was expected to maintain a professional working

relationship with her subordinates. He concluded that the evidence did not support her position that this was all a joke and that instead he considered her conduct to have been unprofessional and that it caused distress and embarrassment to Ms Kirwin.

109 The fourth allegation discussed was that the Claimant had raised her voice and acted in an aggressive manner towards Mai Clarke during a conversation about an e-cigarette. The Claimant did not recall this incident and stated that even if there had been a conversation, she would not have acted aggressively towards Mai Clarke. In considering this allegation, Mr Baker consulted the statements provided by members of the team to see what they said about it.

110 Having read witness statements from two of the Claimant's colleagues he concluded that the Claimant acted inappropriately towards her subordinate on this occasion.

111 In relation to the fifth allegation, they discussed the allegation that the Claimant had on a number of occasions interrupted Mai Clarke when she was on phone calls to customers and had criticised her performance in front of colleagues which had resulted in Ms Clarke feeling that her abilities were undermined. The Claimant denied that she had behaved in such a manner and explained that she only interrupted calls where she had more information about a particular matter than the operator on the call. She stated that her method of interrupting calls was not negative and was in view of fulfilling the needs of the business.

112 Mr Baker considered that every member of the retail helpdesk would have individual responsibility for answering calls in dealing with queries whether from engineers, tenant contractors or customers and also addressing any queries raised in person at the window to the office. There had been no suggestion previously that there were any issues with Ms Clarke's performance of her role. Mr Baker was particularly concerned about the way that the Claimant was sharing her knowledge and that she may have been doing it inappropriately. This is another matter that he decided to consult the interview notes after the hearing to determine whether the Claimant's position was corroborated by her colleague's comments.

113 In Mr Baker's second interview with Andrew Shrimplin on 27 July, he confirmed that he had witnessed the Claimant undermining Mai Clarke on a previous occasion which he felt was unprofessional. He recalled having discussed with the Claimant that she felt that Mai Clarke was undermining her and had informed the Claimant how she should deal with it.

114 There was evidence that the Claimant had not only interrupted Mai Clarke's calls and whilst she was dealing with customers at the window but that she had also interrupted other members of the department when they were on calls. He concluded that doing so was belittling, disrespectful and indicated a lack of office etiquette.

115 The sixth allegation discussed at the disciplinary hearing was in relation to Ms Clarke's assertion that the Claimant did not distribute the workload and overtime hours fairly among her subordinates and that the Claimant failed to address Ms Clarke's concerns in this regard. The Claimant stated that she had never distributed overtime and that Ms Clarke had never approached her specifically to discuss concerns regarding her workload.

116 He concluded that there was evidence that the Claimant had not communicated properly with her subordinates about who was going to cover when she was on leave or addressed issues of overtime or other complaints about workload; which was failing in her duty to address and resolve these issues.

117 The seventh allegation was that the Claimant had informed Ms Clarke about the job vacancy elsewhere in the company and in doing so had encouraged her to leave the department. It was alleged that this conversation took place in front of Rachel Kirwin. The Claimant agreed that she had done so but that asserted that she was simply communicating opportunities for progress within the company to Ms Clarke and that in any event, Ms Kirwin was not present at the time of this conversation.

118 After consulting the interview notes produced from the investigation, Mr Baker found that the Claimant's colleagues confirmed that she had raised the availability of alternative positions on a number of occasions to Mai Clarke in the presence of her colleagues. Mr Baker concluded that even if the Claimant's intention was to support Ms Clarke's ambitions as she said, she ought to have had the conversation in private rather than in the presence of colleagues. He concluded that this was inappropriate in an open office.

119 The last allegation was that during the disciplinary hearing was that the Claimant had provided misleading information during a formal meeting where she had stated that Mai Clarke had performance issues even though this had never been raised previously with Mai Clarke or with senior management. The Claimant informed Mr Baker in their meeting on 20 July that she had approached Andrew Shrimplin regarding Ms Clarke's attitude. The Claimant contended that her discussion with Mr Shrimplin had never been followed up. She also claimed that she had reported instances of Ms Clarke's insubordination to David Fendley in HR. However she was unsure if this had been progressed either. She said that she had not followed this up as she was suspended herself a couple of weeks later.

120 The Claimant confirmed that she never held a formal meeting with Mai Clarke to let her know and to document any concerns she had about her conduct.

121 This was another matter that Steve Povey was able to comment on in his interview with Mr Baker. Mr Povey could not recall the Claimant specifically raising any issues involving inappropriate behaviour or insubordination from her staff. He confirmed that if the Claimant had any issues with her team, he would have expected her to deal with them in the first instance in any event. He was not aware of Mai Clarke having spoken about her career progression either inside or outside the retail department, save for in her appraisal.

122 The first email the Claimant ever sent setting out concerns about Mai Clarke was on 12 March which was the same day she had been suspended for allegations of gross misconduct arising out of the incident that occurred on 11 March.

123 Mr Baker concluded that the Claimant had a number of years experience as a supervisor and had received training and as such the Respondent would expect her to know that any concerns must be documented in writing and that she had failed to do

so. Had she raised these matters with her immediate managers and not been satisfied by their response she could have brought it to the attention of the Group Personnel Manager and had failed to do so.

124 After consulting her training record Mr Baker decided that the Claimant had received the training set out above and that it was reasonable to expect someone in her position to be responsible for the management of her team and to act in a professional manner. She had instead made numerous, serious errors of judgment which had resulted in a complete loss of trust and confidence in her management ability. He considered that the Claimant had failed to understand and perceive how her behaviour could be construed by others, which was not due to a lack of training; and that this caused him concern.

125 Mr Baker took into account that she had an existing Final Written Warning on her records for gross misconduct. He considered that some of the allegations in relation to her treatment of Mr Hadley, Ms Clarke and Ms Kirwin related to inappropriate behaviour and he did not see how, in those circumstances, she could return to her role.

126 As all eight allegations were found against the Claimant Mr Baker concluded, taking into consideration the existing Final Written Warning, that she had committed gross misconduct. It was Mr Baker's decision that in those circumstances, it was appropriate to dismiss the Claimant for gross misconduct. She was dismissed as of 14 August and was not paid any notice pay.

127 Mr Baker decided against dismissing the Claimant with notice given that he considered that all the allegations collectively amounted to gross misconduct. He considered that the conduct displayed by the Claimant raised serious concerns over her management style and severely violated the guiding principals underpinning the Respondent's code of business practice and ethics which the Claimant signed when she joined the company and again on 12 January 2015.

128 Lorna Campbell prepared the dismissal letter for him which Mr Baker reviewed and approved before it was sent to the Claimant together with notes of the interviews conducted with her. The Claimant was notified of her right of appeal. The letter to the Claimant was dated 14 August 2015 and notified her that she was dismissed with immediate effect.

129 On 19 August 2015, the Claimant wrote by email to David Fendley to lodge her appeal against the decision to dismiss her. She referred to each of the eight allegations that had been found against her and disputed them. The Claimant repeated the explanations that she had previously provided in the investigation meeting and in the disciplinary hearing.

130 She also added an allegation that Mai Clarke had sought assistance from someone in the Respondent's personnel department when drafting her grievance and that she found this odd. She alleged that there had been collusion between managers in the process leading up to her dismissal. This was a reference to an email from Mai Clarke to Kam Di Natale on 10 March to which she attached a draft copy of her grievance and asked her to *"let me know if all is ok or if anything else needs to be added."*

131 She referred again to a complaint she had made in a meeting held in July 2014 with Kam Di Natale and Andy Shrimplin to discuss the grievance raised by Leah Gibbs; that a colleague had made a comment to her which she found to be offensive and which had caused the customer who overheard it to complain. She complained that it had not been addressed. The Claimant had not made a complaint at the time but had only raised it when she was challenged about the matters raised in Ms Gibbs' grievance.

132 The Claimant was informed that the appeal hearing will be conducted on 10 September 2015 by David Cooper, Associate Director. The Claimant was advised of her right to be accompanied and that she would be given the opportunity to make any representations she wished to at this meeting.

133 By email dated 4 September, the Claimant informed the Respondent that she did not intend to attend the hearing and that the Respondent should proceed in her absence.

134 David Cooper was an Associate Director of Financial Planning. He had been employed by the Respondent for a number of years. Mr Cooper had experience of disciplinary appeals prior to his involvement in the Claimant's matter. At least one of those was during this employment.

135 When he was asked to chair the appeal Mr Cooper had not had any interactions with the Claimant, her colleagues or Mark Baker and so was sufficiently independent to conduct an appeal hearing.

136 Mr Cooper considered the Claimant's appeal email before conducting the hearing. He distilled the points in her appeal into the following points:-

136.1 That Canary Wharf staff had colluded to build a case against her;

136.2 That Mai Clarke had been undermining her position prior to the grievance;

136.3 That she did not agree with the interpretation of events cited in the original findings and her views had not been taken into account; and

136.4 That many of the comments contributed to her were no more than "banter" to which others did not take offence.

137 Mr Cooper prepared a set of questions in advance for the appeal hearing which he wanted to put to the Claimant based on the grounds of her appeal. He was informed by Penny Bradshaw of Personnel that it was unlikely that the Claimant would attend the appeal hearing as she had stated that she would not do so. However, Mr Cooper decided to prepare for a hearing just in case the Claimant decided to. Mr Cooper and Ms Bradshaw waited in the room for the Claimant to attend but she did not and so Mr Cooper held a meeting in her absence. He discussed the matter with Penny Bradshaw as was recorded in the notes of the meeting.

138 Ms Bradshaw filled Mr Cooper in on the background and provided him with a copy of the disciplinary hearing file which contained all the information collected during the grievance and disciplinary procedure.

139 Mr Cooper was then left to consider the Claimant's appeal on his own. He firstly read through the entire file to understand the process that had been followed leading up to the Claimant's dismissal, looked to identify any particular issues and/or any inconsistencies.

140 He considered that the two most important parts of the appeal were the Claimant's allegation that the company had been conspiring against her and that there had been collusion with the objective of having her removed from her post; and the allegation that the process was unfair. He decided that it was important for him to check that the various members of the company that had been involved at all stages of her process had acted appropriately and that any questions that she raised had been addressed.

141 The Claimant was provided with copies of the statements from Mr Hadley, Mr Goodey and Mr Smith attached to an email dated 13 October 2015 from Penny Bradshaw. In her response emails she suggested that Mr Cooper may want to interview John Hadley as she considered that he had not corroborated the Respondent's case that she called him "thick" and "stupid". Mr Cooper did not consider that he needed to re-interview Mr Hadley and considered this matter in the light of all the evidence before him and not only on Mr Hadley's statement.

142 Once Mr Cooper had considered all the documents he decided that he wished to conduct a number of investigatory interviews as part of his conduct of the Claimant's appeal. Mr Baker met with Kam Di Natale in Personnel on 14 October 2015 which was the earliest that he could meet her given the demands of his workload and that of Ms Di Natale and Ms Bradshaw. He wanted to speak to her about Mai Clarke sending her grievance to her and asking whether there was anything else she needed to add. Ms Di Natale confirmed that Ms Clarke came to see her with Lee Vickers on 22 February because she was unhappy about the way that the Claimant was treating her. They advised her that she could either address her concerns by speaking directly to the Claimant or to the Claimant's line manager or by formally submitting a grievance. Ms Clarke had then put her grievance in writing and sent it to Ms Di Natale. Ms Di Natale confirmed that she had been on holiday when the email came in and when she got back she had simply sent it on the Mr Fendley and confirmed that in an email to Ms Clarke. She confirmed that it would not have been appropriate for her to have added/changed anything in Ms Clarke's grievance and that she had not done so.

143 Ms Di Natale confirmed that, contrary to the Claimant's suspicions, she did not believe that Ms Clarke had spoken to others about her grievance. She was also unaware as to why Ms Clarke had asked her to comment on her grievance and stated that Lorna Campbell had arranged the grievance meeting and that she had not had any further involvement in the matter thereafter.

144 Ms Di Natale was also able to provide information on the issues the Claimant raised in her appeal about an inappropriate calendar on the wall in the engineering mess room and the allegedly sexist comment that had been made to her by another

manager. Ms Di Natale later confirmed that these issues had been investigated. It had first been raised by the Claimant in July 2014 in a meeting with Ms Di Natale and Mr Shrimplin held to investigate Leah Gibbs' grievance. The manager had been spoken to after the meeting and denied making the comment. In September 2014 at another meeting held as part of the process of addressing Leah Gibbs' grievance the Claimant had been asked about his conduct and had confirmed that it was no longer relevant and the behaviour had not continued. The Respondent decided to address the issues of conduct in the office by issuing the memo in January 2015 and getting staff and managers to sign it.

145 Ms Di Natale sent Mr Cooper further information about grievances raised by other members of the Claimant's team about the Claimant's alleged bullying and inappropriate behaviour.

146 Mr Baker interviewed Steve Povey on 16 October. Mr Baker asked him about the disclosure of the colleague's medical information which the Claimant had said was a regular occurrence within the department. Mr Povey denied that this was correct. He confirmed that when someone was absent, supervisors and personnel would be advised but that they should not have disclosed the information any further. The Claimant's allegation that she had overheard others talking about medical information when she was making tea was put to Mr Povey. He confirmed that when someone is absent the reporting procedure is that supervisors and personnel need to be advised. If the Claimant had received such information she should not have been discussing it with anyone else other than people at her level.

147 Mr Povey confirmed that the January 2015 memo had been sent to all retail staff and that it had come out of the issues raised by Leah Gibbs in the grievance that she raised as she was leaving. He was also aware of an inappropriate calendar that had been put up in the mess room which had been taken down. Management wanted to remind everyone of the standard of behaviour expected of them and so Andrew Shrimplin had spoken to staff in the department about acceptable behaviour in the workplace which had then been followed up by the memo. Mr Povey also confirmed that prior to the memo the Claimant had raised the issue of a colleague making sexist comments about her during the investigation into Leah Gibbs' grievance which had been looked into and the person concerned spoken to and reminded that such comments were not appropriate or acceptable as such, her complaint had been taken seriously.

148 Mr Povey confirmed that Mai Clarke had not spoken to him before lodging her grievance and that he was only made aware of it by HR after it had been submitted. He confirmed also that the Claimant had not raised any concerns with him about Mai Clarke's intimidating behaviour towards her, on her return to work.

149 As part of his consideration of the Claimant's appeal, Mr Cooper also checked to see whether the Claimant had been given the correct feedback and appropriate training. He asked Penny Bradshaw to look at the Claimant's training records. She checked and confirmed that the Claimant had attended a number of courses that would have covered the required standards of office and management behaviour including courses on Managing Difficult Situations in 2014 and Diversity training in 2015 which had included a section on bullying behaviour.

150 He also noted that her 2013/2014 performance appraisal notes documented that she had been spoken to about her people management style. It was noted that she had some issue with staff moral that needed to be addressed. Elsewhere in the form it stated although the Helpdesk was moving forward under the Claimant's leadership, the Claimant needed to look to build a strong team by ensuring that they were all valued equally and to gain their trust. She was awarded the lowest mark in the category *Leading Others*. In the category of *People Management* it stated that issues had arisen which needed addressing and that the Claimant must maintain a professional distance from her staff and ensure balanced professional conduct when dealing with staff.

151 Mr Cooper considered the Claimant's grounds of appeal in detail. He did not find any evidence that the Claimant had been undermined by Mai Clarke. He considered that a number of witnesses indicated that in confrontations between Mai Clarke and the Claimant, Ms Clarke would be clearly upset but generally remained the calmer of the two.

152 He felt that the Claimant's allegations with regard to the calendar and the alleged sexist comment made to her by a male manager had been disingenuous. If she had specific allegations then she had failed to raise them at the time that they occurred and had only raised them when she was herself under scrutiny and in trouble with the Respondent.

153 He found no evidence of collusion among witnesses. For example, he found that although John Hadley and John Cook independently stated that they had not found Sonia's comments offensive, there was a great deal of agreement that others might have done so and that the Claimant could be sharp or rude and potentially "inappropriate".

154 The witness statements were comprehensive with a range of opinions expressed, suggesting that a formal investigation had been undertaken and that a range of opinions had been sought and expressed, which went against any idea of there being collusion. Mr Cooper confirmed that he did not find any evidence of leading questions or anything that suggested that any conclusions had been reached before the disciplinary hearing.

155 After his interview with Kam Di Natale, he concluded that there was no doubt that Ms Clarke had contacted personnel inappropriately but that Ms Di Natale had not responded to this request and had not colluded with Ms Clarke in the formulation of her grievance.

156 He noted also that the Claimant had continued to receive training, which demonstrated that the Respondent's ongoing commitment to her development.

157 Mr Cooper concluded that the disciplinary hearing and the associated evidence surrounded it was clear and had addressed all of the Claimant's concerns and questions. He was content with the procedure that had been followed and that Mr Baker had considered all the points carefully and concluded reasonably that the Claimant had committed gross misconduct. In relation to the Claimant's appeal, he felt

that issues she raised had already been dealt with and that they were not substantiated by the evidence. He carefully considered the new points that she raised such as Mai Clarke's email to Kam Di Natale and reached the conclusion that it did not affect the basis upon which Mr Baker had decided to terminate the Claimant's contract.

158 In arriving at his decision on the Claimant's appeal, Mr Cooper was of the opinion that the allegations against the Claimant amounted to gross misconduct and not merely misconduct; because of the collective impact of all the issues. As he confirmed in the Tribunal Hearing, any of the individual issues would probably not have been sufficient to merit a summary dismissal on the basis of gross misconduct but when taken collectively, there was significant evidence of bullying, lack of judgment, and miscommunication on the Claimant's part in various instances which collectively resulted in gross misconduct. It was his judgment that even if she had not been on a final written warning, she would have been dismissed for gross misconduct on the basis of all the allegations against her.

159 Mr Cooper considered all the options available to him including reinstating the Claimant but in the circumstances, he did not feel it was appropriate to do so.

160 He wrote to the Claimant on 30 October confirming his decision on her appeal. In that letter, he addressed each of her points of appeal separately. He confirmed the findings made by the initial disciplinary hearing and also added the conclusions that he had come to following his further investigations. Mr Cooper demonstrated in his evidence that he had carefully considered the Claimant's appeal and the processes that had been followed by the Respondent in dealing with the concerns around her conduct. He had meticulously assessed the evidence, considered the documents, considered all her appeal points and independently arrived at a decision on her appeal.

161 Mr Cooper came to the conclusion that the majority of the findings reached at the disciplinary hearing were fair and that the various points the Claimant raised during that process had been given due and careful consideration. He followed up on the additional issues that the Claimant raised as detailed in the letter. He confirmed that the Respondent would take the opportunity to remind colleagues that the sharing of private medical information within the team is entirely unacceptable, unless prior approval to do so had been obtained. He also confirmed that he had found no evidence of either a concerted campaign to exit the Claimant from the organisation or any mitigating circumstances that justified her behaviour in the various instances raised in the dismissal letter. Although Mr Cooper disagreed in some respects with the findings of the disciplinary hearing, he upheld the majority and the essence of all the allegations and confirmed the Claimant's dismissal.

162 In the Respondent's Administrative Rules and Procedures there was a Harassment Policy. That document was in the Tribunal bundle and defined bullying as offensive, intimidating, malicious or insulting behaviour, or an abuse or misuse of power intended to undermine, humiliate, denigrate or injure a colleague. It went on to say that bullying does not include legitimate and constructive criticism or performance or behaviour, an occasionally raised voice or an argument.

163 In the notes from the disciplinary hearing in January 2014 arising out of Leah Gibbs' grievance it is noted that the Respondent was going to do what it could to support the Claimant with training. The notes show that there was some discussion about the Claimant requiring support in her role as a supervisor. The Tribunal note that before that hearing the Claimant had been given training by attendance on the Managing Difficult Situations course later in 2014 and after that hearing she went on Diversity training in 2015 which included a section on bullying behaviour. Looking at the Claimant's record of training the Tribunal find that over the years the Claimant had been given training on Supervision, Developing yourself, Team Leading, Teamwork and Leadership and Managing Difficult Situations.

Law

164 The Claimant confirmed that she had sought advice from a lawyer in November about the law in her case. We discussed the law relating to unfair dismissal and Ms Banerjee had prepared a skeleton argument which the Claimant had been given before the start of the Hearing.

165 The law relating to unfair dismissal is contained in section 98 of the Employment Rights Act 1996 in addition to relevant case law. The employer has to show the reason for dismissal, and that it is a reason falling within subsection (2) i.e. that it relates to the conduct of the employee (as in this case) and that it is fair and reasonable to dismiss the Claimant for that reason. In determining whether or not it is fair and reasonable to do so, the Tribunal shall consider equity and the substantial merits of the particular case and the particular circumstances.

166 The law was clarified in the case of *British Home Stores Ltd v Burchell* [1978] IRLR 379. In that case it was stated that in order to satisfy the requirements of section 98(1) of the ERA the Respondent must demonstrate that:-

166.1 it believe the Claimant was guilty of misconduct;

166.2 it had reasonable grounds upon which to sustain that belief;

166.3 at the stage at which it formed that belief on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances of the case.

167 The Tribunal is not required to put itself in the Respondent's place but to determine whether in the particular circumstances, the decision to dismiss the Claimant fell within a band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair; if the dismissal falls outside the band it is unfair (*Iceland Frozen Foods v Jones* [1982] IRLR 439).

168 Even if an employee is found to have committed gross misconduct dismissal is not a foregone conclusion. The Tribunal also has to consider whether in these particular circumstances dismissal was within the band of reasonable responses that the Respondent could have had to the misconduct the Claimant committed.

169 In this particular case, the Respondent rely on a previous final written warning given to the Claimant as forming part of the factual matrix leading to her dismissal. In the case of *Davies v Sandwell Metropolitan Borough Council*, referred to the Tribunal by the Respondent [2011] UKEAT 0416/10/130, the EAT looked at the particular circumstances in which a Tribunal can consider the circumstances around the issue of the final written warning. Mummery LJ at the EAT said the following:

“First, the guiding principle in determining whether a dismissal is fair or unfair in cases where there has been a prior final warning does not originate in the cases, which are but instances of the application of s98(4) to particular sets of facts. The broad test laid down in s98(4) is whether, in the particular case, it was reasonable for the employer to treat the conduct reason, taken together with the circumstances of the final written warning, as sufficient to dismiss the claimant.

Secondly, in answering that question, it is not the function of the ET to reopen the final warning and rule on an issue raised by the claimant as to whether the final warning should, or should not, have been issued and whether it was a legally valid warning or a ‘nullity’. The function of the ET is to apply the objective statutory test of reasonableness to determine whether the final warning was a circumstance, which a reasonable employer could reasonably take into account in the decision to dismiss the claimant for subsequent misconduct.

Thirdly, it is relevant for the ET to consider whether the final warning was issued in good faith, whether there were prima facie grounds for following the final warning procedure and whether it was manifestly inappropriate to issue the warning. They are material factors in assessing the reasonableness of the decision to dismiss by reference to, inter alia, the circumstances of the final warning.”

170 The Respondent submitted that the Claimant accepted in the Hearing that conduct was the reason for her dismissal and that the Respondent had based their decisions on the evidence before it. It was also submitted that the Claimant had not identified anyone that the Respondent ought to have interviewed and had not. The Claimant agreed that there had been an incident on 11 March and the Respondent were entitled to deal with it in the way that they saw fit as long as they did so fairly and following an investigation.

171 It was submitted that the individual allegations against the Claimant taken together made it possible for the Respondent to come to the conclusion that this was a manager who could not be left on her own to complete her duties and manage her team. It was fair to come to the conclusion that she had committed gross misconduct and that dismissal was appropriate.

172 The Claimant submitted that this was the end of a two year long campaign against her. She had previously complained about a highly sexist remark and although the investigations on that matter lasted a year it was not dealt with satisfactorily and left her feeling unappreciated. She complained that she worked in a “politically correct” office and that she had been picked on and made an example of.

173 The Claimant complained that the Respondent had never enquired why her relationship with Mai Clarke was strained. She submitted that her allegations were untrue or had been exaggerated to her detriment. It was the Claimant's belief that following her month off due to her ill-health Mai Clarke's attitude towards her changed and that this caused difficulties in their working relationship and that therefore it was unfair for the Respondent to have dismissed her.

174 The Claimant criticised the Respondent's process. She considered that the witness statements were contradictory and should not have been relied on. She submitted that witness statements that supported her were withheld by the Respondent and only came to light when she requested her data. Also, that Andrew Shrimplin had influenced a witness and that this adversely affected her. She considered that it had been unfair that she heard nothing more about the first grievance issued in March until 4 months later when she was suspended for it. She believed that the Respondent had taken the time to build a case against her and that it was unfair.

Decision

175 The first issue for the Tribunal is what was the reason for the Claimant's dismissal?

176 The Tribunal conclude that the Claimant was dismissed because of gross misconduct. Although the Claimant alleges that there was concerted action between managers to get rid of her, there was no evidence of this. The Claimant had no evidence that the Respondent's managers did not believe that she had committed misconduct and there was no evidence of an alleged plot to exit her from the business.

177 The Claimant did not deny the conduct which was found against her in relation to the eight allegations for which she was dismissed except that she sought to explain them by either alleging that others also behaved inappropriately or that those who could have been offended by her comments were not actually offended. This did not address the Respondent's issue which was that the Claimant had behaved inappropriately given her role as a supervisor and her responsibility for managing her team.

178 The Claimant had firstly been given a final written warning for acting inappropriately by shouting at a subordinate in a public space on 11 March 2015. Although a grievance had been brought against her on 10 March, that investigation was not brought into disciplinary proceedings until after the instigation of the final written warning. Through disciplinary proceedings resulting from the grievance investigation, she was found to have breached confidentiality, called a colleague thick and stupid, ridiculed a direct report, raised her voice in an aggressive manner towards a report, belittled her colleagues, unfairly distributed work; inappropriately encouraged an individual to leave the department and failed to address performance issues appropriately.

179 It is this Tribunal's judgment that the Claimant was dismissed for gross misconduct. The Respondent found that the charges arising out of Mai Clarke's grievance taken collectively amounted to gross misconduct. Mr Baker's decision was that it was gross misconduct and that taken together with the final written warning, it

was appropriate to dismiss the Claimant summarily. Mr Cooper conducted the appeal hearing and decided on further investigation that even without consideration of the final written warning, the Claimant could be dismissed for gross misconduct on the matters found following the disciplinary hearing on the eight allegations that came out of Mai Clarke's grievance.

180 It is the Tribunal's judgment that it was for those reasons that the Claimant was dismissed.

181 Did the Respondent have reasonable grounds on which to sustain their belief that the Claimant was guilty of gross misconduct?

182 It is this Tribunal's judgment that the managers who conducted the disciplinary and appeal hearings into the Claimant's misconduct believed that she was guilty of gross misconduct.

183 The Respondent had statements from all relevant members of staff in relation to the matters considered at the disciplinary hearing conducted by Mr Baker. Mr Duncan had interviewed everyone in the Claimant's team and all the relevant managers. The Claimant has not pointed to anyone who was not interviewed who ought to have been interviewed. Should the Respondent have re-interviewed the witnesses when the matter proceeded to a disciplinary process? Mr Duncan conducted a thorough investigation of the matters raised by Ms Clarke in her grievance and the Claimant was told in her meeting with Ms Campbell and Mr Duncan that it was being held to investigate Ms Clarke's grievance. Both Mr Baker and Mr Cooper undertook further interviews to clarify any gaps there might have been in the evidence or to satisfy themselves of various issues that the Claimant raised either in the disciplinary hearing or in her appeal. They did not however re-interview witnesses to put every point of disagreement that the Claimant had with the evidence. It was appropriate for them to take into account what the Claimant said, as against what the witnesses said and come to a conclusion as to who they believe on that evidence. This was a reasonable investigation into the allegations against the Claimant.

184 The statements that the Claimant did not have for the disciplinary hearing were not ones that were relied on by the Respondent and did not go to any of the allegations except John Hadley's and Mr Cooper did take his evidence into account along with that of everyone else.

185 Both Mr Baker and Mr Cooper were thorough in their consideration of the Claimant's disciplinary process and her appeal. They both wanted to ensure that they considered fully the case against her and her responses to the allegations. They were aware that the Claimant was a longstanding member of staff and a senior employee and that there would be serious consequences for her if this went against her. They both took their duties seriously.

186 There was no indication that either of them had been influenced by any other manager in coming to their decisions.

187 The Claimant did not point to any documents relevant to the allegations which ought to have been considered which were not considered.

188 It is this Tribunal's judgment that the Respondent had sufficient evidence on which to base its conclusion that the Claimant had committed gross misconduct when she shouted at Mai Clarke in the corridor on 11 March. Also, there was sufficient evidence from a reasonable investigation that she had committed gross misconduct in relation to the 8 charges that she faced in the disciplinary process started on 23 June 2015.

189 It is this Tribunal's judgment, that the Respondent conducted a reasonable investigation process in relation to the 11 March incident which resulted in the Final Written Warning and also into the grievance raised by Mai Clarke on 10 March.

190 There was no evidence to support the Claimant's contention that there was a wider plan to exit her from the business. On the contrary, the Respondent was prepared to disregard the final written warning imposed following Leah Gibbs' grievance rather than deal with the appeal against it when the Claimant rightly pointed out at the start of the Briggs' process that it had not yet been addressed. In this Tribunal's judgment it was unlikely that the Respondent would have reinstated her and given her a Final Written Warning at that stage if its intention was to dismiss her. Mr Briggs was not aware of or involved in the decision to initiate the second disciplinary and therefore his decision to issue a Final Written Warning was not part of any wider plan to exit the Claimant from the business.

191 In this Tribunal's judgment, the Final Written Warning was validly issued given the incident that caused it. The Respondent demonstrated that it conducted a thorough investigation into the incident that occurred on 11 March. The Claimant admitted that her conduct had been inappropriate. Lee Vickers who had seen part of the incident provided a statement on the day of the incident, at the start of the investigation. Ms Clarke had asked her to continue the discussion in the office and she had refused. The Claimant had received sufficient training in managing difficult situations at work and Diversity to know the proper way to handle such matters – whether or not she perceived Ms Clarke to have been wrong in her understanding of the procedure they had been discussing. She failed to do so without good reason. The Claimant did not deny that she shouted as Ms Clarke and as Mr Baker found there was no reason for her to have done so.

192 Having withdrawn the written warning from the earlier process, Mr Briggs was left with the incident that occurred on 11 March. It was his judgment that the Claimant's conduct that day amounted to gross misconduct but he decided that as it was a sole incident in an otherwise clean disciplinary record, it would not be appropriate to dismiss her. This was a reasonable decision for him to come to.

193 It is this Tribunal's judgment that the Final Written Warning issued by Mr Briggs was issued in good faith and it was appropriate in all the circumstances for it to have been issued.

194 The Respondent had not taken action on the 10 March grievance apart from investigating it up until the Claimant's appeal was heard. The Respondent has shown that this was because at the time Mr Duncan completed his investigation of the 10 March grievance the Claimant was dismissed. There would have been no point in

starting disciplinary proceedings against her after her dismissal. In addition although Mai Clarke raised two grievances against the Claimant, they arose out of different circumstances and so it was reasonable for them to be investigated separately.

195 The Respondent conducted a fair process in relation to the Claimant's disciplinary proceedings arising out of the grievance raised on 10 March. The Claimant was given an opportunity to have a companion at every meeting and took this opportunity on occasion. She was given the opportunity to review the notes of each meeting and confirm their accuracy and/or make amendments which she took up on occasion.

196 At each meeting, the Claimant was given the opportunity to say what she wanted and those comments were noted. The Claimant's appeal was rearranged to suit her availability and it was her choice not to attend that meeting and she indicated to the Respondent that it could continue the hearing in her absence. The Claimant was given the same information as the hearing manager well in advance of each hearing. Each hearing was conducted by an independent impartial hearing manager who had no previous contact with her or with any of the other individuals involved.

197 The Claimant states she had previous issues with Mai Clarke which the Respondent had not addressed. However, any issues that she had with the Claimant whether they were mentioned verbally to Mr Povey or any other manager had not been escalated before the incident on 11 March. Also, given that the Claimant was a senior manager and Ms Clarke's supervisor, even if she had issues with Mai Clarke, the appropriate way to address those was by raising a grievance and/or taking those up with Mai Clarke as part of her appraisal and supervision process rather than by addressing it in a stand up row with her in a corridor or by belittling her in front of colleagues.

198 The Claimant also alleged that Mr Shrimplin had been involved in orchestrating her dismissal. There was no evidence of this in the documents or in the hearing. Mr Shrimplin had been involved in investigating Leah Gibbs' grievance but that did not form any part of the sanction against her. The allegation in regards to Mr Shrimplin's involvement was dropped during the disciplinary meeting with the Claimant on 12 January. That related to the alleged comment the Claimant made to Graham Moffatt. The final written warning which was given to the Claimant as a result of the Leah Gibbs' grievance was entirely disregarded in this process. Mr Shrimplin was interviewed in relation to the July disciplinary process but his evidence was not central to Mr Baker's decision. He played no other part. There was no evidence of Mr Shrimplin influencing the decision-makers in the Claimant's disciplinary or appeal hearings.

199 The Respondent did fail to address her appeal against the written warning imposed in February 2015 but once she pointed that out the Respondent agreed to disregard the final written warning completely and it played no further part in the process. The Claimant did not point to any other failure to follow the internal processes in the Tribunal hearing.

200 It is therefore this Tribunal's judgment that the investigation conducted by the Respondent into the 10 March allegations was appropriate and reasonable in the circumstances. It was reasonable for the Respondent to rely on Mr Duncan's evidence rather than conduct a whole new investigation which would have required all the witnesses to be re-interviewed with the same questions. Mr Baker and Mr Cooper re-interviewed specific people where they had specific queries on their evidence.

201 In this Tribunal's judgment Mr Baker had sufficient evidence upon which to base his judgment that the Claimant had committed gross misconduct in that she had behaved inappropriately, and not befitting her position as supervisor and manager with the Respondent's organisation in relation to the eight allegations raised against her following Mai Clarke's grievance.

202 The last question for the Tribunal was whether or not the decision to dismiss the Claimant was reasonable in the circumstances.

203 In Mr Baker's judgment, the Claimant had made numerous, serious errors of judgment which had resulted in a complete loss of trust and confidence in her management ability. This was conduct that the Respondent considered went to the heart of their employment relationship with her. They were no longer able to trust her to discharge her responsibilities appropriately.

204 The Respondent accepted that the second allegation that related to calling the engineering manager thick and stupid had happened sometime before the disciplinary process. Also, that Mr Hadley had not lodged a complaint about it and it was not part of Ms Clarke's grievance. However, the Respondent was entitled to take seriously an allegation that a supervisor was in the habit of belittling and speaking inappropriately to colleagues. It was reasonable for the Respondent to consider whether this was the conduct it expected of a Supervisor in the Claimant's position, especially when she had signed the memo issued on 12 January 2015.

205 This matter together with the other allegations proven against the Claimant, demonstrated a pattern of behaviour which meant that the Claimant was not, despite her training and her experience in the job, able to perform the role of supervisor of the helpdesk to the required standard any longer. It was a combination of the allegations as a whole which made this gross misconduct and made summary dismissal a reasonable sanction.

206 It was the Tribunal's judgment that given the Claimant's position, given the conduct found against her, and given her inability to provide a satisfactory defence for the conduct, that dismissal was an appropriate sanction for gross misconduct. The Claimant had a live final written warning against her for a serious matter and the allegations against her were similar serious matters of conduct over a period of time and poor judgment in executing her job as supervisor on the helpdesk. This was not a one-off incident.

207 It is this Tribunal's judgment that it was reasonable in those circumstances for the Respondent to terminate her employment on the grounds of gross misconduct.

208 The Claimant's complaint fails and is hereby dismissed.

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Employment Judge Jones

21 October 2016