EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondent**
Ms S Warner		Foreign Commonwealth and Development Office

Heard at: London Central **On**: 13, 14, 15, 18 and 19 October 2021 and (in chambers on 20 and 22 October 2021)

Before: Employment Judge H Stout
Tribunal Member S Plummer
Tribunal Member S Campbell

Representations
For the claimant: Mr Changez Khan (counsel)
For the respondent: Ms Jennifer Gray (counsel)

JUDGMENT

The unanimous judgment of the Tribunal is that the Respondent contravened the Equality Act 2010 by directly discriminating against the Claimant because of her race contrary to sections 13 and 39(2)(d) as set out in this judgment.

REASONS

1. Ms Warner (the Claimant) has been employed for 33 years as a civil servant, and since 1988 she has worked for the Respondent in what is now called the Foreign, Commonwealth and Development Office (FCDO), but which at the time material to the claim was known as the Department for International Development (DFID). In these proceedings she brings claims for direct race discrimination under ss 13 and 39(2)(d) of the Equality Act 2010 (EA 2010) in respect of the handling of a disciplinary process against her, and associated matters.

The type of hearing

2. This has been a remote electronic hearing by video (Cloud Video Platform) under Rule 46.

3. The public was invited to observe via a notice on Courtserve.net. Some members of the public joined. There were some minor difficulties with participants' internet connections which were resolved satisfactorily during the course of the hearing.

4. The participants were told that it is an offence to record the proceedings. The participants who gave evidence confirmed that when giving evidence they were not assisted by another party off camera.

The issues

5. The issues to be determined were agreed at a Preliminary Hearing before Employment Judge Davidson on 14 September 2021 as follows. Some were withdrawn by the Claimant at the end of the hearing and these are indicated in the list below by struck-through text:-

Jurisdiction

(1) Insofar as any of the acts or omissions are prima facie out of time:

a. Do they form part of a continuing act or a state of affairs?

b. Alternatively, is it just and equitable to extend time under s.123 EqA 2010?

Direct discrimination, s.13 EqA 2010

(2) Did the Respondent subject the Claimant to the following treatment:

a. On or around 18 November 2019, choosing to instigate a formal investigation into the Claimant without any prior warning or opportunity for informal discussion.

b. On or around 18 November 2019, drafting three counts of Serious Misconduct without first properly considering or testing the evidence for each of them.

c. Retrospectively characterising the Claimant's decision to terminate YAF's grant as improper, despite having supported it at the time.

d. On 27 November 2019, requiring the Claimant to attend an investigation interview while withholding key information and evidence about the particular accusations against her.

e. Conducting an unjustified intrusive investigation into the Claimant's sex life.

f. Devaluing and dismissing the Claimant's opinion over alleged corruption and financial mismanagement at YAF.

g. Believing rumours regarding the claimant spread by Antonette Grant and Ekanem Bassey.

h. Inaccurately recording the notes of the Claimant's investigatory interview to support a preconceived narrative.

i. Denying the Claimant the opportunity to check the accuracy of those same notes.

j. In December 2019, failing to take seriously the Claimant's concerns over her safety and her particular concern that YAF had been monitoring her personally at her home.

~~k. In January 2020, Alex Stevens attempting to block the Claimant's pre-approved assignment to Ghana by mischaracterising it as "personal".~~

l. Concluding the investigation without allowing the Claimant a proper opportunity to comment on evidence given by others against her.

m. By 20 February 2020, Alex Stevens and Gail Warrander producing a slanted investigation report, which painted a picture of the Claimant as "hostile" and "aggressive" and elevated the issues from Serious Misconduct to Gross Misconduct.

~~n. From 20 February to 20 April 2020, withholding the investigation report from the Claimant.~~

~~o. Deliberately drawing out the investigation, over a period of 6 months, with the intention of harming the Claimant.~~

p. On 6 May 2020, Christopher Pycroft adopting a badgering approach at the Claimant's disciplinary hearing.

~~q. Withholding minutes of the disciplinary hearing from the Claimant until after the decision had already been made against her.~~

r. On 18 May 2020, issuing the Claimant with a 12-month final written warning.

~~s. On 26 May 2020, Chris Pycroft dismissing the Claimant's complaint against Alex Stevens (re: Ghana) without proper investigation, or speaking to the Claimant.~~

t. In May 2020, Chris Pycroft dismissing the Claimant's grievance against Ekanem Bassey and Antonette Grant (re: malicious rumours) without proper investigation, or speaking to the Claimant.

u. From 29 May to 10 August 2020, Debbie Palmer failing as part of the appeals process to properly investigate the Claimant's complaint that her investigation and disciplinary process had been racially biased.

v. On 10 August 2020, Debbie Palmer downgrading the Claimant's Final Written Warning to a First Written Warning, instead of removing any warning, and allowing that downgraded warning to remain effective for the balance of the term provided for the Final Written Warning, i.e. until 18 May 2021.

w. From 10 August 2020 to date, Debbie Palmer failing to follow through on her promise to address with the Nigerian office the acknowledged failings in its handling of the Claimant's disciplinary process.

y. Throughout the disciplinary process failing to provide the Claimant with proper support, both in terms of her wellbeing and her personal security.

z. From March 2020 until February 2021, being excluded and existing outside any team or management arrangement

(3) In so doing did the Respondent treat the Claimant less favourably than it would have treated a hypothetical comparator? The Claimant says the comparator is:

a. a White civil servant;
b. with comparable experience and a comparable service record to the Claimant (32 years flawless service including 16 years overseas);

c. with comparable expertise (a technical expert in corruption and the Senior Responsible Owner of ACORN).

(4) Was this less favourable treatment on grounds of the Claimant's race?

Remedy

(5) If the Tribunal finds discrimination in any respect what is the appropriate remedy in terms of:

a. Declaratory relief

b. Recommendations

c. Compensation for financial and non-financial losses?

6. It was further determined by Employment Judge Davidson that this hearing would be to determine liability only.

7. At this hearing, Ms Gray suggested in Closing Submissions that Issue (z) extended beyond the limits of the pleaded case insofar as it post-dates the submission of the claim on 20 November 2020. However, the issue in this form was identified at the hearing before EJ Goodman on 25 March 2021, at which EJ Goodman recorded that the Respondent did not suggest that a formal application to amend needed to be made. In the light of that, Ms Gray accepted that no formal application is needed (or, at least, that insofar as a formal application is needed, she does not resist it). We consider that the claim does need formally to be amended, but in the light of the history of the drawing up of the List of Issues and EJ Goodman's order, the only fair thing to do at this stage is to permit the amendment of the claim so as to include the identified List of Issues.

The Evidence and Hearing

8. We explained to the parties at the outset that we would only read the pages in the bundle which were referred to in the parties' statements and skeleton arguments and to which we were referred in the course of the hearing. We did so. We also admitted into evidence a large number of additional documents which were produced by the Respondent in the course of the hearing in response to orders that we made.

9. The Respondent's witnesses (apart from Ms Palmer) gave evidence from Nigeria. We were unaware that they were located in Nigeria until mid-way through the hearing. At this point, we informed the parties that the onus is on them to ensure that witnesses are lawfully permitted to give video evidence from foreign countries, and that the Tribunal should have been notified. We provided the parties with the email address of the part of the Respondent that advises on such matters (sopenquiries@fco.gov.uk). In the course of the hearing, advice was received from that address to the effect that it is lawful

for witnesses to give video evidence from Nigeria to courts in the United Kingdom. The advisor was not sure about the position of Tribunals, but we are prepared to accept that the position is (on the balance of probabilities) the same.

10. We explained our reasons for various case management decisions carefully as we went along.

The facts

11. We have considered all the oral evidence and the documentary evidence in the bundle to which we were referred. The facts that we have found to be material to our conclusions are as follows. If we do not mention a particular fact in this judgment, it does not mean we have not taken it into account. All our findings of fact are made on the balance of probabilities.

Background

12. The Claimant has been employed for 33 years as a civil servant, and since 1988 she has worked for the Respondent in what was then DFID. On 1 July 2017 the Claimant moved to Abuja, Nigeria to take up a post in DFID Nigeria in the Governance, Conflict and Social Development Team as a Senior Governance Adviser (SGA), leading on governance and anti-corruption portfolios. She was also the Senior Responsible Officer (SRO) for the Anti-Corruption in Nigeria (ACORN) Programme. It was whilst she was in that role that most of the events that are the subject of her claim in these proceedings occurred. She left DFID in March 2020 and was what is known as a 'contingent liability' for the department until she commenced her current role as a Senior Governance Adviser in the Office for Conflict, Stabilization and Mediation in February 2021.

13. The purpose of the ACORN programme was to help Nigeria tackle endemic corruption by providing technical assistance and grants to both government and civil society organisations (CSOs). The programme was valued at £20m and the Claimant's role as SRO was to ensure that foreign aid grants given by the UK Government to local Nigerian partner organisations were being properly spent. One of the CSOs that was a recipient of grant funding was Youth Alive Foundation (YAF). They had been awarded an accountable grant of £2m starting in July 2017, just before the Claimant took up her post.

The people involved

14. The Claimant took over the SRO role from Ekanem Bassey. Antonette Grant was a Governance Adviser in the department. Both Ms Bassey and Ms Grant had been directly involved in the procurement process that resulted in a grant award to YAF. Julia Patrick-Ogbu was a Programme Officer who worked with

the Claimant. Sam Achimugu was a Programme Manager who worked with the Claimant.

15. The Claimant's line manager at all material times was Alex Stevens. They had a good relationship prior to the events that are the subject of this claim.

16. Dr Christopher Pycroft was Head of Office for DFID Nigeria at the material time, Mr Stevens' line manager and the Claimant's Countersigning Officer. He and the Claimant had little direct contact prior to the events of this claim. John Primrose was Deputy Head of Office. Richard Freed was the Commercial Adviser. Dr Pycroft had been involved in a number of disciplinary cases with DFID, including as a Decision Manager in three cases including this one.

17. Gail Warrander is an A1 Private Sector Adviser who joined DFID in September 2011. She was formerly a solicitor in the United Kingdom. She joined DFID Nigeria in August 2019.

18. Debbie Palmer is an Associate Professional Officer employed in UK DFID but with responsibility for overseeing the UK Government's work in 32 countries across Africa, including managing operations across 27 UK embassies, leading a team of around 15000 people and accountability for approximately £1 billion expenditure per year. She was Head of Office when the Claimant first joined DFID Nigeria, moving on to her current role in May 2019. Ms Palmer has been involved in eight or ten misconduct investigations in the past ten years, including as Investigation Officer, Decision Officer and Appeals Officer, and as the person accused.

19. Allan Curran is a Case Manager in the HR Advisory Team, based in Scotland.

20. Dr Udy Okon is the Executive Director of YAF. Chris Anyim was YAF's Head of Operations until July/August 2019, when he resigned (after being suspended) and was replaced by Ifeoma Nwosu.

<u>Background equalities information</u>

21. The Claimant is Black, as are Ms Grant, Ms Patrick-Ogbu, Ms Bassey, Mr Achimugu, Dr Okon, Mr Anyim and Ms Nwosu. All the other individuals identified above were White. The Claimant gave evidence that all the staff in the DFID Abuja team who were more senior to the Claimant were White. While we understand that this was the Claimant's perception, we accept Ms Palmer's more detailed evidence that of a seven member senior leadership team (SLT) in Nigeria in 2017, two were Black. In 2018 this changed when colleagues 'rotated' into new roles, but Ms Palmer asked the Claimant to 'step up' for about six months to cover a team leader role and thus she became a member of the SLT, along with another Black female. When the Claimant 'stepped down' again there was one Black person on the SLT. A photo of the DFID Leadership on an Away Day in 2018 shows that senior managers were overwhelmingly White, a point which Dr Pycroft accepted. BAME individuals as at 31 March 2021 made up 16.91% of all UK based FCDO Staff, but there

were proportionately many more BAME staff in lower grades (eg 19.96% and 28.10% at HEO and EO grades respectively) than in the Senior Civil Service (8.28%).

22. In DFID Nigeria it is relatively common for White employees to be married to Black people and to have mixed race children. Ms Palmer said that was the case for four White male members of her SLT. Each of the Respondent's witnesses gave evidence (which we accept) that in general terms they viewed themselves as living and working in a diverse culture where people were treated as individuals without assumptions or stereotyping based on race.

23. Ms Palmer also gave oral evidence, which we accept, that in the last two years she has been involved in four cases of allegations of serious or gross misconduct including this one. The others involved one White woman and two White men, all triggered by rumours about personal relationships and in two cases it resulted in dismissal of the staff member concerned and in the third case it was a final written warning.

24. An article by the Race Network within DFID describes how in August 2019 the DFID internal magazine, Insight, promoted its adoption of a new Sexual Harassment policy with the image of a Black hand aggressively grasping a White hand. Many DFID staff complained and the image was taken down, but replaced a few weeks later with an image of a Black man walking behind a White woman with question marks around her and the text *"What keeps us safe and secure? Speak up"*. Dr Pycroft was asked about these images in cross-examination. He identified what was 'wrong' with the images as being that they portrayed Black men as aggressors in a stereotyped way. We agree.

25. The Claimant also gave anecdotal evidence (which we have no reason to doubt) that in a previous posting a White junior colleague had said to her that she was surprised to see that her children were Black rather than mixed race (which the Claimant took to indicate that the colleague assumed she had to be married to a White man to get to her professional position). In a performance assessment in early 2019 Ms Palmer told the Claimant that she was *"not visible enough"*, when the Claimant felt that Nigerian staff considered her to be one of the most visible and accessible colleagues.

<u>The Respondent's Conflicts policy and enforcement of it</u>

26. The Respondent has a policy on Conflicts of Interest and Gifts and Hospitality (the Conflicts Policy). The version we have in the bundle was published in 2014. It states that the Policy is *"supported by DFID's Code of Conduct and the Standards of Propriety set out in the Blue Book"*. Ms Palmer gave evidence, which we accept, that in 2016/2017, following a number of conflicts issues and adverse publicity, the Respondent had taken steps to re-publicise the Policy and provide additional training on it, and that the Claimant would have received this training. The Policy is particularly important for the Respondent given that much of its work involves making grants of public money to third party organisations

27. The Policy defines a Conflict of Interest (COI) as follows at [3.1]:-

> **3. What Is a Conflict of Interest?**
>
> 3.1 A Conflict of Interest arises where an employee has a private or personal interest which may, or could be perceived to compromise their ability to do their job. Actual, potential (could develop) or perceived (could be considered likely) Conflicts of Interest can arise across all areas of our work. Conflicts may be of a personal, financial or political nature.

28. Further guidance on what constitutes a COI is set out at [4]:

> **4. Deciding Whether There Is a Conflict of Interest**
>
> 4.1 In deciding whether a Conflict of Interest exits, you should consider whether the interest (private or personal) is likely or could appear to interfere with your, or an employee's, objective judgement when undertaking your duties.
>
> 4.2 **Personal Interests**
>
> 4.2.1 DFID recognises that employees will develop relationships, friendships and contacts in their personal and working lives that may influence their objectivity. The majority of these relationships will not give rise to any concern and can be regarded as a private matter.
>
> 4.2.2 However, a Conflict of Interest arises where one party in the relationship can grant the other an unfair advantage or disadvantage or can exert improper influence over a decision relating to the other. This might attract perceptions of bias and unfair treatment where, for example, you:
> • make or significantly influence any decisions about the other party in the relationship, such as selection for employment/promotion, pay and grading, performance management, discipline, access to opportunities and resources or the awarding of contracts for goods and services;
> • have responsibility for the direct or indirect supervision of the other party.

29. The Policy provides ([4.1]) that it is for the individual in the first instance to judge whether there is a COI that must be declared. If so, the individual must disclose it to their line manager ([10.1]). Ms Palmer gave evidence that good practice was to disclose to the line manager in cases of doubt, and this is reflected in Annex A of the Policy which provides that it is 'best practice' for employees to *"make a declaration, even if you are uncertain if it's an actual or potential [CoI]"*. The Conflicts Policy provides a procedure whereby every six months every employee is required to update their register of COIs on the Hospitality and Girfts, Register of Interests Database (HAGRID), although if a COI arises, the Policy requires the employee to register it in between those six month intervals ([10.3]). It emphasises ([9.1]) the importance of registering COIs on HAGRID for maintaining public confidence and protecting integrity of DFID and its staff. The policy provides that failure to make a declaration on HAGRID of a COI (actual, potential or perceived) will result in disciplinary action ([15.1]).

30. The Respondent has provided statistics on its enforcement of the Conflicts Policy. In 2020 the Claimant was the only person in a workforce of 17,000 employees to be given any sanction for failure to declare a conflict or

perceived confict. In 2019 one case was investigated, but no warning issued. Ms Palmer explained this statistic by saying that most issues regarding COIs would be resolved between the individual and their line manager.

31. We were provided with some examples of the operation of the Conflicts policy in relation to employees other than the Claimant, as follows:-

    a. Ms Bassey had a cousin who was employed by YAF. She failed to declare this on HAGRID and was given an informal warning following the disciplinary investigation into the Claimant.
    b. Ms Grant knew about Ms Bassey's cousin working for YAF and also failed to recognise that this was a conflict that needed to be recorded.
    c. On 8 November 2019 a picture was posted on Instagram by someone called Sina Fagbenrobyron (who works for Adam Smith International) of Mr Stevens and four other men with the caption *"@dfidnigeria old boys night out"*. The picture shows Mr Stevens drinking with Bob Arnott (who works for the British Council), Mr Fagbenrobyron and other representatives of Adam Smith International. Mr Stevens did not disclose on HAGRID a relationship with either Mr Fagbenrobyron or Mr Arnott. He said he did not have a 'relationship' with Mr Fagbenrobyron as that was the only occasion he met him and he did not know there was a photograph. He did know Mr Arnott, and his children play football most weeks with Mr Arnott's children, but he thought it was clear to his line manager that he knew Mr Arnott. He also did not think that Mr Arnott was bidding for any work from DFID and he regarded British Council generally as 'part of the family'. However, he accepted in cross-examination that it does in fact bid for DFID grants sometimes, which (we find) would potentially put the relationship in the declarable category. Mr Stevens did make a number of other disclosures on HAGRID of various connections including other connections with Adam Smith International through his wife and directly.
    d. Dr Pycroft also accepted that he knew Mr Arnott as a minor acquaintance 20 years ago, and that he and his wife had more recently attended a dinner with two other couples including Mr Arnott and his wife, but had not declared that on HAGRID.

<u>The Respondent's Disciplinary Policies</u>

32. The Respondent has a suite of policies dealing with misconduct cases and how they should be handled. The relevant points we take from those are as follows:-

    a. The Respondent's misconduct policies provide, in cases that are not straightforward, for a three-stage process of Investigation, Disciplinary Meeting and Appeal (**756**, [40] ff).

    b. *"Anonymous allegations"* may require an initial informal stage or risk assessment where the allegation is put to the employee informally to see if they have a satisfactory explanation before proceeding to a

formal investigation. This is because the Respondent has a *"duty to protect employees from malicious reporting"* (**744**, [19]-[21]).

c. Minor misconduct may only require an informal discussion (**754**, [29]).

d. Employees are assured *"You will not be treated as guilty of misconduct before the fact-gathering/investigation is completed and you have been given the opportunity to present your case, including any mitigating factors at the meeting. Only then will a decision be made as to whether you have committed misconduct or not."* (**762**, Q2).

e. It is for the Line Manager to make an initial decision about the seriousness of the allegations (**752-753**) and to appoint an Investigation Manager. The line manager will normally appoint themselves as Decision Manager (**756**, [41]), but not if they are implicated in the allegation of misconduct (**757**, [49]).

f. Line managers in receipt of allegations must seek to categorise the level of misconduct being alleged by reference to the policies. The level of misconduct may change during the process (**745**, [4]-[5]).

g. *"Serious misconduct"* is one level down from *"gross misconduct"* and may include *"failure to follow departmental policy/procedure"* and *"some breaches of the Civil Service Code*" (**747**). *"Gross misconduct"* may include *"action or behaviours that undermine public confidence in the impartiality and/or integrity of the public service"*.

h. The *"aim of the investigation is to collect and record the facts necessary to decide whether there is a case to answer or not"* (**756**, [40]). The Investigation Report must be *"comprehensive, accurate and be an objective and fair assessment"* (**743**, [14]).

i. If the Investigation Report recommends there is a case to answer, the Decision Manager should check the report is reasonable and meets the terms of reference (**756**, [43]). If there is a case to answer the Decision Manager must send the report and witness statements to the employee and invite them to a meeting and must *"set out the allegations"* (**757**, [47]).

j. The Decision Manager must decide whether the alleged misconduct occurred (**757**, [50]) and, if it did, decide on the appropriate sanction.

k. A First written warning is *"Appropriate in some instances of minor misconduct".* A Final written warning is *"Usually appropriate … when the misconduct is serious"*. Warnings are normally valid for 12 months (**758,** [60]).

l. The employee has the right to appeal and must be invited to a meeting to discuss the appeal. *"At the meeting, the Appeal Manager should examine the decision-making process and the sanction given and decide whether these were reasonable. They should not reconsider the case in detail. If new evidence is made available the Appeal Manager should consider any impact this may have on the final decision."* (**760**, [69]-[70]).

m. *"Normally each case will be reviewed by a senior manager if it is not resolved after 40 working days"* (**768**, Q1).

The YAF grant and the Claimant's management of it

33. YAF was one of the CSOs in receipt of grant funding as part of the ACORN programme. YAF had been selected for funding of 'up to £2m' in July 2017 shortly before the Claimant took over as SRO. YAF had accordingly been selected by the previous team, which included Ms Bassey, Ms Grant and Mr Achimugu.

34. The Claimant gave evidence, which we accept as it is unchallenged and consistent with the documentation we have, that when she took over as SRO there were allegations that the procurement process had been manipulated in favour of YAF. Such allegations were not uncommon and the Claimant did not explore them at that stage. YAF had no prior experience of anti-corruption work, no prior experience of managing a grant of this scale and was almost wholly dependent on the DFID grant with no other funding. The Claimant concentrated on holding YAF to account and seeking to strengthen its governance capacity.

35. The Claimant gave oral evidence to us, which we accept as it has been her consistent position and is supported by the evidence of other witnesses, that it was her practice to work closely with all CSOs for which she was responsible, and that she did invite such people to her home. In her witness statement she explained that this was because she was not comfortable socialising in the "ex-pat" environment of the diplomatic social club "Village One" where her White colleagues tended to socialise. She preferred to meet people at home or elsewhere. She would invite contractors to her Christmas parties and birthday parties (a point that Ms Bassey confirmed in her later investigation interview: FB/126). Mr Stevens gave evidence to the effect that this was not normal practice. He said that normally direct involvement with grant partners would consist of a quarterly meeting, attendance at events, the annual review and occasional field trip to see the work being done, although he acknowledged that the extent of direct involvement would depend on the relationship with the particular grant partner. However, Ms Palmer in her supplementary statement confirmed that the Claimant's approach was *"unusual amongst her peers in that she focused most of her time and energies on managing in detail her grantee partners [and] … was extremely diligent in managing these partners … but this focus came at the exclusion of broader cross-office leadership and management work"*. This

was the (conscious) basis for Ms Palmer's comment in a performance assessment in 2019 that the Claimant was *"not visible enough"*, which the Claimant relies on in these proceedings as evidence of discriminatory attitude.

36. The Claimant's position was that there were a number of individuals in the CSO organisations for which she was responsible with whom she worked closely and saw on a social basis and that among these was Mr Anyim, Head of Operations at YAF. In her witness statement she said that he came to her home, but so did other male visitors on as frequent a basis. She did not declare any of these relationships on HAGRID. We deal later with the more detailed evidence in relation to the Claimant's connection with Mr Anyim as it emerged in the course of the events with which we are concerned, but we note for present purposes that we do not accept the Claimant's evidence that other visitors were as frequent as Mr Anyim because in the course of the later investigation Ms Warrander (at the Claimant's suggestion) viewed the logbooks for the Claimant's residence and found that Mr Anyim had been much more frequently than anyone else. However, although the logbooks are in the Respondent's possession, would in our judgment fall within the terms of standard disclosure, and Ms Warrander had recommended to the Respondent's legal team that they be disclosed, the Respondent has not disclosed them. On ordinary principles of fairness, that non-disclosure would mean that the Tribunal could draw inferences against the Respondent as to the content of the logs. However, we note that the Claimant has not requested them (despite making other disclosure applications). If she disputed the Respondent's evidence regarding the logs in any significant respect, we would have expected her to request disclosure. In the circumstances, given that neither party has sought to rely on the logs, we confine our findings at this point to the bare fact that Mr Anyim was the most frequent visitor to the Claimant's home, but make no further findings about the log contents. We add that we have considered carefully whether the Claimant's failure to acknowledge in her witness statement that Mr Anyim was her most frequent visitor during this period should lead us to regard her as an unreliable witness, but we have concluded it does not because: (i) in general, we have found the Claimant to be a reliable witness whose account has remained consistent throughout both the internal investigation and this hearing; and (ii) the Claimant was not in her witness statement saying that Mr Anyim was not the most frequent visitor, just that other male visitors generally (i.e. all male visitors, not any particular individual) were just as frequent, a point which is not contradicted by any evidence before us.

37. Organisations in receipt of grant funding were subject to regular audit by DFID. An audit of YAF in January/February 2019 raised some governance concerns. In March 2019 the Claimant instructed Julia Patrick-Ogbu to run 'spot checks' on the CSOs for whose grants she was responsible. Ms Patrick-Ogbu was busy at that time and the Claimant did not chase her to carry out this work. We accept this evidence of the Claimant because, as noted further below, this is the timeline that the Claimant has consistently given in the documentation that we have seen and it is not contradicted in that document

by any of the Claimant's correspondents who would have been in a position to contradict it (eg Dr Okon, Mr Achimugu, Ms Patrick-Ogbu).

38. According to her evidence to the later investigation, in late May/early June Ms Grant heard a rumour from another grant partner that the Claimant was having an affair with Mr Anyim. She raised this with the Claimant, who denied it. Ms Grant's evidence to the investigation was that the Claimant immediately said that this must have come from someone at YAF who did not want her to be doing her job since she had done the audit at YAF and seen problems. The Claimant's recollection was that this conversation took place following the second audit feedback meeting June 2019 (i.e. 'late June') and that Ms Grant alleged that the Claimant was also sleeping with other grant partners and made other allegations about her family including her daughter which she detailed in her later report of 5 October 2019. The Claimant said that after asking around as to who had heard the rumours she put them down to malicious gossip. However, the conversation made her wonder whether there had been something improper about the original decision to award the grant to YAF, and Ms Grant's involvement in that.

39. Insofar as there are differences between the Claimant's and Ms Grant's accounts of this conversation, we prefer the Claimant's, both because she has given evidence to the Tribunal in the course of which this part of her evidence was maintained, but also because we do not think that what the Claimant put in her later report of 5 October 2019 about this conversation (see below) could have been made up by her. The "rumours" that she sets out there are so specific and varied that they must have been those conveyed to her by Ms Grant on this occasion. The number and scope of the rumours conveyed at this stage also goes some way to explaining what we have concluded below was the Claimant's clear error of judgment in not recognising the specific risk of perception of conflict of interest arising from her relationship with Mr Anyim. From the Claimant's perspective, the allegation about Mr Anyim was at this stage simply one of a number of rumours that she considered to be untrue so it is understandable to an extent that she did not react to the Mr Anyim rumour as she might have done had it been the only rumour presented.

40. On 17 June 2019 Mr Anyim was suspended by Dr Okon for what Dr Okon later described to DFID as *"insubordination"*. The Claimant's comments on the notes of the later interview with Dr Okon on 4 October 2019 indicate that the Claimant learned of Mr Anyim's suspension when she called him to discuss a work issue and he said that he had been suspended unfairly and the Claimant asked him whether he could take the matter up with YAF's Board, to which he replied, sarcastically, *"What Board?"*. The Claimant then reminded Ms Patrick-Ogbu of the need to do spot checks on YAF.

41. Ms Patrick-Ogbu then duly called YAF Board Members to carry out spot checks about meeting dates and programme activities. Some of them declined to answer her questions. Dr Okon later explained this on the basis that they were *"cautious not to share information with unknown persons"*, but

we note that this behaviour by YAF Board Members could reasonably be viewed as suspicious.

42. Early in the morning of 25 June 2019 the Claimant emailed Mr Stevens indicating that although her planned departure date from DFID Nigeria was July 2020, she would like to move sooner rather than later, possibly early first quarter of 2020. The Claimant did not explain, and was not asked in the course of oral evidence, why it was on this day that she decided to bring forward her leaving date.

43. Later on 25 June 2019 the Claimant emailed Dr Okon to *"flag again my concerns about YAF's soundness as a 1st Tier Partner with DFID"*. She referred to Mr Anyim's formal notification to DFID of his suspension. She pointed out that as Executive Director it was Dr Okon's responsibility to notify DFID of any changes to key personnel paid for by DFID (as Mr Anyim was) and alluded to Dr Okon's previous failure to notify of the departure of another key member of staff. She asked for evidence of the expertise of other members of staff. She explained that Ms Patrick-Ogbu had started 'reaching out' to YAF's Board Members the previous week in preparation for audit follow-up on YAF in the coming weeks and concluded by reminding Dr Okon that she had raised staffing concerns months ago in the audit feedback meeting so that she was sure the issues would not come as a surprise.

44. Dr Okon responded providing further information and thanking the Claimant for her counsel and advice. On 30 June 2019 Dr Okon emailed again, on this occasion querying why it appeared that YAF was facing *"increased scrutiny and sanctions since Chris was suspended two weeks ago"*. She contradicted the Claimant's statement that Mr Anyim was 'the focal point' for DFID and made clear that she considered that was her role. The subsequent correspondence in this email chain (TB/165-175) shows the Claimant focusing on a number of aspects of YAF's organisation, not just Mr Anyim's suspension, although it is clear that she is concerned about the suspension and states that suspension should not happen without prior written warnings. The Claimant further refers on a number of occasions in this correspondence to an additional scrutiny process having started in March 2019 without this being contradicted by Dr Okon or Ms Patrick-Ogbu or Mr Achimugu. Dr Okon even refers to having provided an organogram in April 2019 in response to a previous request from the Claimant, which supports the Claimant's position that she had been raising concerns about YAF prior to Mr Anyim's suspension in June 2019.

45. On 5 July 2019 Mr Anyim resigned from YAF.

46. In July 2019 the Claimant discussed some of her concerns about YAF with her team (Mr Achimugu and Ms Patrick-Ogbu) and it was decided at Mr Achimugu's suggestion to move YAF from a 'Tier 1' to a 'Tier 2' organisation. The Claimant says, and we accept, that Mr Achimugu warned her that *"people can get hurt for closing grants in Nigeria"*. Moving YAF from Tier 1 to Tier 2 would mean that rather than receiving funding direct from DFID, they would receive it via a third party organisation with more robust governance.

Action Aid Nigeria (AAN) was identified as the potential third party. This proposal was also discussed in detail with Mr Stevens, although in his witness statement (maintained under cross-examination), Mr Stevens said that he understood the discussion to be about reorganisation of the ACORN programme generally rather than specific to YAF, and that the move to Tier 2 related to a discussion earlier in the year about trying to reduce the number of first tier partners. Mr Stevens said that at this point the Claimant had not raised with him any specific concerns about YAF's financial management or governance. We do not wholly accept Mr Stevens' evidence on this point as in his interview with Ms Warrander on 28 November 2019, in notes approved by Mr Stevens, he is recorded as saying that he *"isn't close to first or second-tier partners"* and that the Claimant *"had **verbally said … that she was concerned about YAF's performance and management** and wanted to move YAF to second-tier partner through ActionAid, and that this was **also** part of an effort to consolidate civil society grantees in ACORN into a more manageable amount"* (emphasis added). The notes also record that Mr Stevens *"was aware there were issues after the audit – [the Claimant] was working on the detail of these (and Alex would not have expected to have been informed) but [he] was not aware that further exploration of issues had led to deeper concerns …".* It is thus clear that the Claimant did mention to Mr Stevens in general terms that she was concerned about YAF's performance and management as part of the reason for moving them to Tier 2. The Claimant did not assert that she had discussed these concerns with Mr Stevens in any detail. Her view (like that of Mr Stevens) was that those matters were for her to manage and the only thing discussed in detail with Mr Stevens was the proposed move to Tier 2. Richard Freed (Commercial Adviser) also agreed the decision.

47. On 23 July 2019 the Claimant placed YAF on a Performance Improvement Plan (PIP) requiring the organisation to take certain steps regarding Management Capability, Governance and Oversight and Financial Management Capability. The Claimant saw this as formalising the areas of concern she had raised in emails and she did not inform Mr Stevens that she had done this as she would have done if it had been a PIP about improving delivery. Mr Stevens told us in oral evidence that he considered he should have been told about any PIP, but we find this is belied by the way he responded to Dr Okon's complaint about the termination of the accountable grant on 30 September 2019 when in replying to the complaint he simply said that the Claimant would let Dr Okon know about the evaluation of the PIP, without even going to ask the Claimant about it before replying. That, in our judgment, makes it clear that Mr Stevens did regard the detail of concerns about grant partners such as the Claimant had about YAF to be matters for her to deal with (including that PIP), without reporting to him. The Claimant at this time also began to ask questions about the original decision to award the grant to YAF.

48. On 16 August 2019 the Claimant held a meeting with Dr Okon and Board Members. The notes of that meeting set out the Claimant's concerns about various matters including the Board of YAF, the involvement of family members in the organisation and the use by the organisation of a

subcontractor called Insignia also involving members of Dr Okon's family on the Board, which (so far as she was concerned) had not been notified to DFID and in respect of whom it was unclear how the subcontract had been awarded. The Insignia issue had (so far as the Claimant was aware) come to light on 9 August 2019 and the Claimant had discussed it with Fraud Focal Point Mr Achimugu and Ms Patrick-Ogbu and they had agreed to invite Dr Okon's comments. These concerns about possible fraud were not shared by the Claimant with Mr Stevens or anyone else at the time.

49. On 24 September 2019 the Claimant was in touch with Dr Okon by WhatsApp and confirmed that DFID's position remained the same on ending the Tier 1 grant arrangement, and that she was waiting to hear from AAN on the Tier 2 arrangement.

50. As part of the proposal to move YAF to a Tier 2 organisation under the auspices of AAN, it was necessary for AAN to carry out its own audit of YAF, referred to as a "PAM Assessment". This was completed and sent to the Claimant and then YAF on 25 September 2019. Although the outcome of the PAM Assessment was that AAN was willing to partner with YAF, the Assessment did raise a large number of concerns about YAF, including as to its vision, organisation, record-keeping and decision-making processes.

51. On 29 September 2019 Ifeoma Nwosu, the newly appointed Programs Manager at YAF, emailed AAN, copying in the Claimant and Mr Stevens and others, responding to AAN's criticisms. Ms Nwosu's response document concluded by raising concerns that AAN's assessment had been shared with DFID, asserting that there should be *"Mutual Respect, Trust and Honesty"* in order for there to be a partnership and that accordingly YAF would not be partnering with AAN. Mr Stevens emailed the Claimant and Ms Patrick-Ogbu shortly after receipt of this saying *"Doesn't bode well for a future partnership …"*. The Claimant responded to Mr Stevens *"Yes, we have been managing this carefully for some months. I will issue the Notification to cease the Accountable Grant this week"*. To Ms Nwosu she wrote that she had not commented on AAN's report and would not do so as it was a matter between AAN and YAF, but noted *"These matters have been discussed at length over the past few months, including with YAF's Board Members and well documented"*.

52. On 30 September 2019 the Claimant emailed Dr Okon, copying in Mr Stevens and others, as follows. We set out the whole email as it assumed some importance in the subsequent investigation:

> Dear Udy,
> I am writing regarding the Accountable Grant Arrangement between the UK Department for International Development and the Youth Alive Foundation (YAF) under the Anti-Corruption in Nigeria Programme (ACORN). This Grant was originally Two Million Pound sterling (£2,000,000.00) and subsequently increased to Two Million, Three hundred and forty eight thousand Pound Sterling (£2,348,000.00) to support the implementation of YAF's Youth Participation Against Corruption (YPAC) Project. Following, DFID's first Annual Audit in February 2019, I stated my concerns about YAF's governance & oversight; management capacity and financial management. These concerns were

> discussed with you and Board Members at length and details well-documented in earlier correspondence.
> **This notification provides up to three months' notice of DFID's decision to terminate this Accountable Grant Arrangement, by December 2019.** This may happen earlier, if all matters, including the final close down audit are concluded. Within this period, we wlll discuss and agree close down processes; asset review and return; audit of the grant and invoicing to DFID and any outstanding financial obligations, which we will process and pay. Over the past few months we have focused on working through matters involving the Independent Corrupt Practices Commission as a key government beneficiary of YPACs support, including transition arrangements. I am now waiting for YAF to submit the final account for its support to ICPC.
> Until the Grant has formally ended, we will continue to pay salaries of staff and admin charges, but not project activities. As Executive Director, your salary will be adjusted as stated in earlier correspondence.
> I wish you success in your future endeavours and many thanks for YAF's contributions to ACORN.
> Copied to Mr Ekon Akpan (YAF's Board Chairman)
> Regards
> Sonia Warner

53. This email was described as *"quite aggressive"* by Mr Stevens in his interview with Ms Warrander (and Ms Warrander's Investigation Report) because of its use of bold, very formal language and giving *"the impression that we were sacking YAF and wanted nothing more to do with them, when in the alternative we were bringing them on as tier 2 partner"*. Mr Stevens felt that *"this could have been handled better with a more personal email with better use of language as YAF were a long-standing partner and had achieved some good results. None of this was recognised and so I thought the email was unnecessarily forceful"*. We disagree. The email was not *"quite aggressive"*. The email begins with preamble about the history of the issue. The language in this paragraph could have been more conciliatory. However, the bold strikes us as being used appropriately to ensure that the important point of termination is not missed in a wordy email. The language is formal, but it is a necessary formal communication. The terms of grant may not have required any notice to be given, but fair dealing did require such a notice and Mr Stevens knew the Claimant was going to issue notice as she had told him the day before. There is indication of flexibility in process in the paragraph following the bold font. The Claimant concludes by wishing YAF success and thanking them for their contributions, so this element is not omitted as Mr Stevens suggested. It is correct that the email does not mention the proposal to move to Tier 2, which would have softened the email considerably to the eye of someone unfamiliar with the case, but as is apparent from the previous WhatsApp communication and the exchange with Ms Nwosu regarding the AAN PAM Assessment, YAF was well aware of the proposal to move them to Tier 2 under AAN and wholly opposed to it. In those circumstances, we consider it was better to omit reference to it as it was an inflammatory topic.

54. Dr Okon replied to the termination email the same afternoon with a "Statement of Facts" complaining about the decision. We note that in this email Dr Okon does not acknowledge that any concerns were raised about governance prior to 20 June 2019, but suggests that an 'investigative process' began from June 2019 with Ms Patrick-Ogbu's requests for

documentation. Dr Okon refers to the PIP (which is how Mr Stevens first hears about it) and suggests that YAF ought to have been given time to remedy the issues identified in the PIP before the grant was terminated. Dr Okon makes no mention at all of the proposal for YAF to move to Tier 2 under AAN, or of AAN's PAM Assessment. Nor does Dr Okon make any allegation against the Claimant personally in this email, although knowing that Dr Okon had previously alleged in June 2019 that the Claimant was in some way retaliating because of what Dr Okon alleged to be her relationship with Mr Anyim, it is clear that this email is framed by reference to that allegation.

55. Mr Stevens replied 45 minutes later, without discussing Dr Okon's email with the Claimant, but copying her and others in, stating that the closure of the grant *"was a decision that Sonia did discuss in detail with me and is a decision which I support"*, pointing out that under the grant terms support can be stopped at any time, the 3 months' notice that had been given was not a requirement, the request from Ms Patrick-Ogbu for documentation was to ensure funds were being used properly and part of due diligence and that he was sure the Claimant would be able to answer the other questions, including as to the evaluation of the PIP. Mr Stevens then requested for his email to be saved and emailed Mr Primrose to say *"no reason for you to get involved here but we can brief you if you want"*. We note that Mr Stevens' two emails here make it clear that Mr Stevens did not consider there was any need to escalate the decisions made regarding YAF up to this point even to Mr Primrose as Deputy Head of Office, let alone Dr Pycroft as Head of Office.

56. On 2 October 2019 Ms Grant and Ms Bassey approached Mr Primrose and informed him that there were rumours that the Claimant was having an affair with Mr Anyim, that they were concerned this was bringing DFID into disrepute, that they had raised it with the Claimant who had denied it and started to accuse them of wrongdoing in relation to awarding the grant in the first place and that they felt that the closeness between the Claimant and Mr Anyim was related to the closure of the grant programme.

57. Mr Primrose then spoke to Mr Stevens. Mr Stevens in his witness statement said that after this he had a 1-2-1 meeting with the Claimant on a 'safeguarding' basis because he thought the rumours were malicious. However, it is clear from Mr Stevens' subsequent email of 8 October 2019 to Mr Primrose, Dr Pycroft and Mr Ahmad that *"unprompted"* at this meeting the Claimant verbally disclosed to him the rumours that she had heard previously and denied them. It was not therefore a meeting at which Mr Stevens' informed the Claimant of any allegations. It has also been the Claimant's consistent position that it was she who took her concerns both about the rumours and about YAF more generally to Mr Stevens and Mr Primrose and not the other way round. This is reinforced by the Claimant's contemporaneous emails over the next week where she sends material to Mr Stevens without referring to having been asked for it, and from her appeal letter which makes this point explicitly. We therefore accept the Claimant's evidence on this. This was not therefore a situation of the Claimant reacting to a challenge from senior management, but a situation where the Claimant came forward with her concerns about YAF.

58. On 2 October 2019 the Claimant sent Mr Stevens a copy of her notes from the 16 August 2019 meeting with YAF and on 3 October 2019 the Claimant forwarded Mr Stevens a copy of the due diligence report completed at the time the grant was awarded to YAF, with multiple comments on it from her raising concerns about the grant award. She explained that *"The weakness in YAF's systems exposed during the first audit and subsequent malicious rumours being spread about me and my family (instigated by YAF, which I can prove and facilitated by some DFID colleagues) caused me to revisit the procurement and due diligence processes".* In particular, she highlighted in her email and in the attached document that when the grant was awarded YAF had a liability of *"just £222.22"* in its audited account, specifically identifying this in her comments as being that they had *"just over £200 in their bank account"*. This was incorrect as liability refers to debt not money in the bank. Balance brought forward for the year on the audited accounts was in fact about £6,148.61.

59. On 4 October 2019 Mr Primrose and Mr Stevens met with Dr Okon in a hotel lobby. Mr Stevens took notes of the meeting. At this meeting Dr Okon said that she had asked Mr Anyim in December 2018 to resign due to his relationship with the Claimant, that YAF had faced increased scrutiny from the Claimant since Mr Anyim's suspension in June 2019, that Mr Anyim told her that the Claimant had suggested he resign, that subsequently the Claimant stopped payments to the organisation so that salaries were not paid July-September, that she Dr Okon had sought to speak to the Claimant about her relationship with Mr Anyim, but the Claimant had denied it, that Mr Anyim had helped with the Claimant's birthday party in May 2018 and *"acted like the host"*, that her driver had reported that *"something was going on"* as he had seen Mr Anyim go in and out of her bedroom when he was delivering food. She said that Mr Anyim *"'stays the night' and signs in as Prince on the V4 register [ie. the security log for the Claimant's accommodation]"*. She made a specific allegation that Mr Anyim had stayed the night on 11 June.

60. Following the meeting with Dr Okon on 4 October 2019 Dr Okon sent Mr Primrose some WhatsApp messages and photos and Mr Primrose showed these to Mr Stevens. This included a photo of the Claimant, the Claimant's daughter and Mr Anyim in one photo that Mr Stevens considered demonstrated *"some form of close personal relationship, whether or not sexual"*. The Respondent never showed these messages or pictures to the Claimant, and has not disclosed the WhatsApp messages or the photo and Mr Stevens was not able to recall the content any further. (Mr Stevens was unsure of the date on which Mr Primrose showed him the photos. We derive the date from the fact that in Mr Primrose's investigation interview on 11 December 2019 he said that he received photos from Dr Okon after this meeting and does not mention having received any before.)

61. On 5 October 2019 the Claimant sent Mr Stevens a 17-page 'Report on YAF Issues'. In this she said that she had lost confidence in colleagues who she felt may have colluded with YAF, that rumours were *"baseless"* and a *"smear campaign orchestrated to intimidate me because of concern that I would find*

out about Insignia Development Consultancy Services Ltd". She said that she did not feel worried about her personal safety and security at present, but as she lived alone she felt she could be vulnerable to 'backlash'. She argued that YAF should not have been awarded the grant, and explained her reasons for closing the grant, including that there were numerous problems with its governance, fraud concerns with Insignia and managing the grant was taking up a disproportionate amount of time. She raised concerns about colleagues' actions, in particular Mr Achimugu, Ms Bassey and Ms Grant. She set out the rumours she had heard from Ms Grant in late June, which included allegations about her family and her sleeping with more people, not just Mr Anyim. She explained that she felt that the rumours were connected with YAF and so began investigating. She stated that Dr Okon had told her that she and Mr Anyim had been romantically involved prior to the grant, and that Dr Okon had accused her on 16 August 2019 of being romantically involved with Mr Anyim which the Claimant denied. She accepted that she and Mr Anyim had *"hung out at Jabi Lake on a few occasions"*, but added that she socialised with lots of people. Mr Stevens did not acknowledge the Claimant's email until she prompted him on 20 November 2019 after the formal investigation started.

62. The Claimant was asked in cross-examination why she had not raised her fraud concerns with Reporting Concerns (the Respondent's whistleblowing line). The Claimant said that she had not because she had not had an opportunity. She said that when the issue with Insignia first came to light there was no evidence of fraud, but the matter required investigating, and it was only after YAF refused the Tier 2 arrangement that she felt it necessary to report. She then reported to Mr Stevens and she understood that Mr Primrose and Mr Stevens were going to raise it with Reporting Concerns. We accept the Claimant's evidence on this as it is consistent with her interview with Ms Warrander on 28 November 2019, her written comments on the Investigation Report and what she said at the disciplinary meeting. It is also plausible. The documents that we have show that although the Claimant had concerns about the management and governance of YAF from June/July 2019 onwards (concerns that were shared by AAN when they carried out the PAM Assessment), YAF's refusal to partner with AAN and reaction to the termination of the grant was a significant escalation and it is understandable that these events crystallized the Claimant's concerns and convinced her that matters needed to be escalated.

63. On 6 October 2019, Mr Primrose emailed Reporting Concerns, 'flagging' the case as 'complex'. He set out Dr Okon's and the Claimant's sides of the story and provided the Claimant's documents and the notes of the meeting with Dr Okon. He identified the issues as potentially being fraud, safeguarding, programme management conduct overall, relationships within the Claimant's team, the conduct of the Claimant herself and the 'reputational angle'. From this point on the Claimant was removed from work on the YAF workstream.

64. On 8 October 2019 there was a discussion between Mr Stevens, Mr Primrose and two people from Reporting Concerns (Craig Dillon and Jim MacPherson, a Senior Counter Fraud Specialist) and afterwards Mr Stevens emailed a

note of the meeting to Dr Pycroft. The email records that Mr Dillon and Mr MacPherson were concerned that they had already got a statement from the Claimant, but Mr Stevens stated that *"We noted that she had unprompted disclosed rumours and denied their voracity verbally"* before that was done. There was no recommendation at that stage for formal disciplinary action, they were asked whether they had 'appetite' to investigate the Claimant's relationship with Mr Anyim and Mr Stevens suggested that *"regardless of the nature of the relationship it was clear it was close and should have been disclosed"*. A follow-up email from Mr MacPherson on 11 October 2019 (FB/11-12) adds that there is currently no evidence of fraud, but that the Insignia issue required further investigation. He repeated the point about how it would have been better to wait to obtain the Claimant's version of events once further information had been obtained and 'fact checked'. He noted that the Claimant vehemently denied a romantic relationship and agreed that it was not appropriate to investigate that at this time. He recommended an urgent financial audit of YAF, a review of the Claimant's decision to put YAF on a PIP and end the grant, that the Claimant be spoken to about the importance of making HAGRID declarations and to liaise with HR as to whether disciplinary action should be taken. We note here that it is clear from Mr MacPherson's email that the 'norm' in cases of failure to declare a COI on HAGRID so far as he was concerned was an informal discussion.

Decision to commence disciplinary investigation

65. There was a meeting between Mr Stevens, Mr Primrose, Dr Pycroft and Mr Curran to discuss next steps at which it was decided that an investigation needed to be carried out. It was decided that Dr Pycroft would be the Decision Manager and not Mr Stevens (the Claimant's line manager) as provided for in the Respondent's policies. Dr Pycroft said he did this because it was usual for the Head of Office to carry out this role notwithstanding what was said in the policy. Ms Warrander was appointed as the Investigative Officer. It was felt, in particular by Mr Primrose and Mr Curran, that given the relationship allegation it would be good for a woman to do the investigation. Joanna Francis, a Black woman, was appointed to assist Ms Warrander as note taker.

66. Dr Pycroft drafted a letter appointing Ms Warrander as the investigator. The letter identified 12 witnesses that she was recommended to interview. The letter (which was among the documents disclosed by the Respondent after the start of the hearing in response to the Tribunal's order) set out the three allegations to be investigated as follows:-

    (1) That Sonia failed to declare a clear conflict of interest owing to a close personal relationship with Chris Enyim, an employee in first tier partner organisation Youth Alive Foundation (YAF), under the ACORN programme which Sonia was the Senior Responsible Owner for.
    (2) That owing to this conflict of interest influence Sonia decided to terminate YAF's Accountable Grant following the resignation of Chris Anyim following a deterioration of his relationship with YAF.

(3) Sonia failed to follow standard procedures to report to the Head of Office your concerns about YAF's financial management and governance arrangements that could have exposed DFID to fraud, or to inform the Head of Office that you would be terminating YAF's Accountable Grant, exposing DFID to potential action for breach of contract.

67. Dr Pycroft provided 'background' to each allegation in the letter, including the following regarding the first allegation: "*Allegations have been made that Sonia was in more than a friendship-based relationship with Chris, but this has been denied by Sonia. Regardless it is clear that Sonia and Chris were at least close friends and spent time with each other outside of work. This was not declared formally on HAGRID or informally to management."* The letter thus in effect informed the Investigating Manager that the Decision Manager considered that the first allegation was already made out, that the Claimant had breached the Conflicts Policy and was thus guilty of misconduct. In this respect, it reflected Mr Stevens' view as expressed in the meeting with Reporting Concerns on 8 October 2019.

68. Ms Warrander denied that this letter had influenced her approach at all. She said that she began the investigation very sympathetic to the Claimant, as a woman at the same grade as herself who was facing allegations about her private life. However, whether she was sympathetic or not, we find that Dr Pycroft's pre-determination of the first allegation did affect Ms Warrander's approach. She did not in the investigation interview with the Claimant question her at all (according to the notes) about whether the Claimant had a relationship with Mr Anyim that met the definition in the Conflicts policy, or why the Claimant had not considered it necessary to declare that relationship under the policy. We return to this point in our conclusions below.

69. We further note that the third allegation was an allegation of failure to follow 'standard procedures' to report to Dr Pycroft himself. This allegation was formulated by Dr Pycroft and not by YAF although Dr Pycroft refused to accept that when questioned. The Respondent has at no point identified what those 'standard procedures' were and it appears to us from the emails from Mr Stevens' of 30 September 2019 (as already noted) that it is not 'standard procedure' for general concerns on governance or grant termination to be escalated even to the Deputy Head of Office, let alone the Head of Office. Possible fraud is different. The Respondent has procedures for reporting fraud concerns.

70. On 18 November 2019 the Claimant was sent a letter by Dr Pycroft advising her that Ms Warrander had been appointed to investigate the above three allegations. The letter stated that the allegations were being treated as 'Serious Misconduct'.

<u>Investigation interview 27 November 2019</u>

71. Ms Warrander began her investigation by arranging a meeting with the Claimant. By letter of 21 November 2018 she invited the Claimant to a meeting on 27 November 2018.

72. By letter of 21 November 2018 the Claimant sent Dr Pycroft a letter entitled 'Formal Complaint of Bullying and Harassment against Udy Okon and Ekanem Bassey' in which she accused them of orchestrating a 'smear campaign' because they felt the Claimant was in danger of uncovering their 'collusion' with regard to the award of the grant.

73. By letter of 24 November 2018 the Claimant wrote to Ms Warrander emphasising the importance of conducting the investigation fairly without discrimination. She asked for clarity as to who was making the disciplinary allegations, particularly allegation (3) and whether this was an allegation by YAF or DFID. She expressed concern about the failure to respond to her 5 October 2019 report, and stated that she felt DFID had a 'case to answer' for negligence in awarding the grant in the first place and then expecting her to *"assume responsibility for the [potential] fraudulent actions of my predecessor(s)"*. In this letter the Claimant referred to herself as a 'whistleblower', which phrase was picked up and discussed internally by the Respondent's HR and witnesses, but has played no further part in this case. The tenor of the internal correspondence we have seen was that if the Claimant was planning to take the matter to Tribunal that should make no difference to the way they handled the case.

74. The investigation meeting with the Claimant took place on 27 November 2018. In accordance with the Respondent's normal procedures, the Claimant was not provided with any documents by Ms Warrander before or at that meeting. Ms Francis took notes of the meeting. Unlike the notes of the investigation meetings with other witnesses that followed (of which there were 15) the Claimant was not given an opportunity to review these notes before they were sent to her with the final report in April 2020. The notes of the meeting, which we accept as being broadly accurate, show that the Claimant went through the history of her concerns about YAF in a way that was consistent with the accounts she had given previously in writing. She is also recorded as repeating her knowledge of the rumours about her having an affair with Mr Anyim, which she said was untrue. The Claimant understood Ms Warrander at the end of the meeting to indicate that there would be a further meeting later in the investigation, and Ms Warrander indicated she recalled that too, so we accept this was what was said, although it does not appear in the notes.

75. The Claimant suggested in oral evidence under cross-examination that the minutes of this meeting on 27 November 2018 had been 'doctored' and that she said at this meeting that in hindsight all of her relationships with contractors she saw informally, including Mr Anyim, should have been declared on HAGRID, but this had not been recorded in the notes. However, we find that the Claimant was at this point mistaken. It is clear from paragraph 48 of her witness statement that her recollection immediately prior to this Tribunal hearing was that she first made this concession at the disciplinary

interview on 6 May on the advice of her trade union representative (although we note that the concession in fact first appears in her email of 25 April 2020, but nothing turns on this difference). We find that the Conflicts policy was not actually discussed at the 27 November meeting at all. It was not raised by Ms Warrander or the Claimant. Given that this ought to have been the focus of the first allegation that was unfortunate, but Ms Warrander's failure to ask about this was (as we have already found) at least in part the result of this aspect of the allegation having been predetermined by Dr Pycroft in the letter commissioning the investigation. Although the Claimant in fairness should have been provided with the notes of the meeting to review as other witnesses were, there is no evidence that they were deliberately 'doctored' as the Claimant suggests.

76. Following the meeting on 29 November 2019 the Claimant provided an additional timeline to Ms Warrander about YAF by email and provided Ms Warrander with a link to the YAF Vault Folder (the Respondent's electronic storage facility). She also requested a copy of Dr Okon's statement and emailed Ms Warrander with 61 questions about the investigation and matters she wished Ms Warrander to consider. We observe that this was a lot of questions, but they were expressed temperately.

77. After checking with HR, Ms Warrander provided the Claimant with the notes of the meeting with Dr Okon of 4 October 2019 on 3 December 2019.

3 December 2019 discussion

78. On 3 December 2019 there was a meeting between Mr Primrose, Ms Warrander, Mr MacPherson and Mr Curran at which they discussed the position with the investigation. Mr MacPherson sent an email after the meeting confirming what was discussed. He records his view that at that point there is no evidence of fraud but that the Claimant's complaints do raise possible *"fraud red flags"*, including as a result of Ms Bassey's close relationship with Dr Okon, YAF's financial position at the award of the grant (*"£222 in their bank account"*) and as a result of Ms Bassey's cousin working for YAF. He notes however that they would 'hold fire' in addressing the concerns against Ms Bassey.

79. On 4 December 2019 the Claimant emailed a response to the notes of Dr Okon's 4 October 2019 meeting writing that Dr Okon's statement is *"hilarious, but also very concerning at the same time"*. She expressed concern that although Dr Okon had indicated that she knew what was happening at the Claimant's home and apparently had access to the Village 4 logbook (for entrance to the area where the Claimant lived), no one had taken any action or recognised the security risk to her even though she had flagged this previously in her 5 October 2019 report. She stated that she had taken steps to obtain legal advice. Regarding the allegation that Mr Anyim *"stays over"*, she said that the last time she remembered Mr Anyim being at her house in the early morning was in Christmas 2018. She wrote: "*We went to clubs and came back around 6am in the morning, I think on two occasions. I can barely*

remember much as this was a year ago. There was another random occasion maybe when Chris had a personal crisis but I cannot remember the exact date. Apart from this Chris has not "stays over" (sic) at my house regular as Udy is implying. The pattern of Chris' visits to my house are random, like many friends/colleagues - check the security logbook. Chris has never "stays over" at my house for extended periods; even the weekend, regularly or recently which in my view would imply the kind of relationship Udy is suggesting. I have not been to Chris' house and actually have no idea where he lives. My pattern of engagement with Chris has not changed between when he was employed with YAF and after he left YAF - check logbook. This is very upsetting to me." In her comments on the statement itself she added *"I would encourage the office to review the security log and security arrangements … Many male friends/colleagues come and go from my house. I see nothing unusual in this. I have also had male friends visiting for up to a week. Chris coming to V4 was [in] open view, like all my other visitors, which shows I have absolutely nothing to hide"*.

80. Following these developments, Ms Warrander understood that she was as part of her investigation to consider whether the YAF grant was improperly awarded, whether Ms Bassey had bullied and harassed the Claimant, whether the Claimant's safety was compromised and whether the Claimant's concerns about YAF were being properly addressed in the audit. She did not consider that it was for her to investigate the fraud allegations, however. That was being dealt with separately by Reporting Concerns (although they never actually produced a conclusion).

<u>December 2019 – safety concerns/YAF monitoring</u>

81. The Claimant herself then took up her security concern with Matt Caney asking what the visitor log showed about Mr Anyim's visit on 11 June 2019, and also how anyone had got hold of this information. Mr Caney replied on 5 December 2019 providing a copy of a logbook extract that confirmed that Mr Anyim visited the Claimant from 0730-2230 on 11 June 2019 and therefore did not stay overnight. Although this showed that Mr Anyim had been with her all day from early in the morning until late at night the Claimant forwarded it to Ms Warrander and Mr Curran stating that it showed *"Udy is lying"*. We observe that the Claimant's actions at this point show that her focus was on proving that the allegations that she had been having an affair with Mr Anyim and that he stayed over night were untrue. She was evidently not at all concerned about revealing to colleagues that Mr Anyim had spent the whole day at her home, thus demonstrating her openness about the extent of her friendship with him (and also the extent of her misjudgment in not declaring this on HAGRID). Ms Warrander reassured her that all of Dr Okon's statement required verification and she was keeping an open mind. Ms Warner replied that she appreciated this but felt strongly that *"some very basic verifications could have been done by the office before I was subjected to this stressful and distracting investigation for serious misconduct"*.

82. On 17 December 2019 Mr Curran had a wellbeing call with the Claimant at which she raised concerns about the progress of the investigation and that she no longer felt trusted as a senior adviser. He asked someone from management to call her to reassure that she was still part of the team.

83. On 18 December 2019 Dr Pycroft emailed Mr Curran and Ms Warrander stating that he had been *"keeping a close eye on developments on all the cases"*. He said he had also spoken to Mr Stevens about the Claimant having effectively 'disengaged' from the office to the extent that performance improvement procedures would have been required were it not for the investigation. He expressed suspicion that the Claimant may have instructed lawyers.

84. Ms Warrander then proceeded with her interviews of the other 15 witnesses, both internal witnesses and external witnesses (YAF employees and the CEO of AAN). The Claimant in her witness statement complained that external witnesses were approached in a way that humiliated her. Although Ms Warrander confirmed in oral evidence that she has an 'example' of the invites sent to external witnesses, this was not disclosed by the Respondent. Interviews of all witnesses apart from Dr Okon took place between 28 November 2019 and 18 December 2021. The interview with Dr Okon took place in January 2020.

85. As part of her investigation Ms Warrender also obtained copies of the V4 logs as the Claimant had suggested she should. As already noted above, these have not been disclosed by the Respondent and in the circumstances, we take the logs as indicating that Mr Anyim visited the Claimant's home a lot more frequently than any other individual, but make no more findings about the logs' contents.

86. Ms Warrander said in oral evidence that what she saw in the logs was 'jaw-dropping' and 'the clincher' so far as she was concerned. She counted that between September 2018 and August 2019 Mr Anyim had visited the Claimant at home 57 times (i.e. on average slightly more than once a week). In oral evidence she said that several of the visits had been overnight but when she put this in the draft report Mr Curran had asked for details and as she was pressed for time she deleted the reference to overnight stays before finalising the report. The Respondent disclosed the draft report for the first time during the hearing from which we can see that the original version of the report noted that *"On a couple of occasions there does seem to have been an overnight stay"* and puts in the example of one on 20-21 November 2018. The final version of the report as sent to the Claimant included the example but not the explicit reference to overnights, simply recording: *"The V4 Logs show that between September 2018 and August 2019 Chris visited Sonia fifty seven (57) times, mostly in the evenings from 1800-1930 until 2200-0030, although sometimes for long periods during a weekend day. There is only one other visitor (hard to read) who visits several times during this period – a Tetu (hard to read name) who visits 4-5 times during this period."*

87. Ms Warrander also obtained as part of her investigation WhatsApp extracts between the Claimant and Dr Okon, between Ms Grant and Dr Okon and between Dr Okon and Mr Anyim.

88. Ms Warrander did not hold a second investigation meeting with the Claimant to give her a chance to answer any points of concern arising from the 15 witness interviews, the logs or the WhatsApp messages. The first time that the Claimant saw any of this material was when she was sent the investigation report on 20 April 2020. Ms Warrander said that she did not hold a second investigation meeting because of pressure of work prior to February 2020 and thereafter because she was dealing with the Covid pandemic, with its associated requirements for staff to relocate back to the UK. When asked why if she had not had any opportunity to have a second interview as promised she had not highlighted this in the report, she said that she had highlighted it to Mr Curran in a verbal conversation. However, we find that the truth of the matter here is that Ms Warrander, despite her background as a lawyer, did not think about (or forgot about) holding a second interview with the Claimant. Had she been conscious of the need to do this to ensure fairness, we find that notwithstanding her work pressures the report would have been qualified, making clear that the Claimant had not yet had an opportunity to comment on the evidence of other witnesses, on the logs or WhatsApps or anything other than the notes of the interview with Dr Okon on 4 October 2019. As it is, as we note further below, the report is drafted in such a way as to suggest (wrongly) that it constitutes conclusions reached after the case has been put to the Claimant and she has 'continued to deny' matters.

<u>January 2020 – assignment to Ghana</u>

89. In January 2020 the Claimant returned to London but continued working for the Respondent. She returned early to provide support for her daughter. In late January the Claimant had been due to spend two weeks in Ghana doing a project for DFID Ghana. In December this had been reduced to three days in late January. Mr Stevens took a hard line on this, refusing to give the Claimant permission to go because he felt that if she was able to travel out of the UK she ought to travel to Nigeria to complete handover there rather than doing a new project for DFID Ghana. He wrote to his counterparts in Ghana that he wanted to *"apologise for having to pull Sonia's involvement in the 10% work she had planned in Ghana"* because the Team lacks capacity and he wants to protect time she can spend away from the UK for Nigeria. The Ghana counterpart replied: *"This is terrible news. Sonia's engagement was not a typical cadre 10% piece. She was due to be part of a two-person team undertaking scoping for a highly sensitive and important piece of work for which she was uniquely well-qualified given her history in Ghana. I have spent an inordinate amount of time convincing a sceptical HMRC of the value of Sonia's involvement in the scoping visit, and we have postponed the visit twice to accommodate Sonia's dates, to the detriment of our relationship with HMRC. With Sonia unable to travel to Ghana this week we have had to start the visit without her, but having to cancel her engagement altogether is a*

terrible blow as it is now too late for us to contract someone external to do this piece of work for us. Can you not reconsider? We're talking about 5 days." Mr Stevens resisted the Claimant going to Ghana until 10pm the night before she was due to travel, and then gave in.

90. The Claimant complained about his conduct ('unfair treatment by my line manager') to Reporting Concerns on 25 January 2020. She begins her email by saying that the actual issue has been resolved (i.e. she was permitted to go to Ghana) but she complains about Mr Stevens' prior handling of the issues. Her complaint was acknowledged but not investigated. It appears from Mr Curran's email of 23 April 2020 (FB/26) that this is because she mentioned the word 'resolved', although it is in fact clear from the email that she was raising a matter that needed investigation. When it was raised with him, Mr Curran suggested that it only be investigated if the Claimant wanted it to be after the main investigation. The Claimant was never given this option.

Investigation outcome

91. In February 2020 Ms Warrander produced a first draft of her investigation report and sent it to Mr Curran and Dr Pycroft. Mr Curran provided comments on it and sent his comments to Ms Warrander and Dr Pycroft. Ms Warrander in her draft report had upgraded the level of charge to 'Gross Misconduct', which she said in evidence (and we accept) was an error on her part. Nonetheless, it set off a discussion. Mr Curran in his email of 12 March 2020 wrote: *"I assume we are disciplining [the Claimant] for not disclosing a conflict of interest, serious enough but does it amount to Gross Misconduct?"* He questioned whether the Claimant should not be treated equally with Ms Bassey and Ms Grant who were just going to face informal action for Ms Bassey's failure to disclose (and Ms Grant's failure to recognise) Ms Bassey's conflict of interest with her cousin working for YAF. Mr Curran added: *"[The Claimant] totally denies that there was a close friendship with Chris but othe r people including Chris alluded there was, is this enough even though she has denied it on a few occasions for gross misconduct"*. Dr Pycroft responded that in his view the distinction between the Claimant's case and that of Ms Bassey's and Ms Grant's is that the COI risk materialised and was perceived as an actual conflict of interest. He added that for him, *"The kicker comes with the continual denial of the offense despite compelling evidence"*. He asked Mr Curran 'how DFID/HMG views lying'. Mr Curran responded to the effect that lying could mean it might be appropriate to dismiss. All this was copied to Ms Warrander who declined to express a view regarding the Claimant in writing but said that she would speak to Mr Curran on the telephone.

92. On 18 March 2020 the Claimant complained to Ravi Chand about the fact that the investigation was still ongoing after 4 months with no end in sight and expressed disappointment that it did not look as if it would be finished by the time she was due to leave DFID on 31 March 2020.

93. Ms Warrander then finalised her report, leaving in the reference to Gross Misconduct so that when this was sent to the Claimant on 20 April 2020 it appeared to her that the level of seriousness had been upgraded from Serious to Gross Misconduct. The important elements of the report from our perspective, and our findings and observations in relation to them are as follows:-

    a. Ms Warrander concluded that there was *"at the very least a close relationship between [the Claimant] and Mr Anyim"*. In oral evidence she accepted that she included the words *"at the very least"* because she considered that there might have been a romantic relationship between them, although she did not need to reach a concluded view on that.
    b. The relationship had not been declared on HAGRID and a *"key factor"* in making it declarable was *"the sharing of detailed information by [Mr Anyim] about YAF to the Claimant"*. Ms Warrander confirmed in cross-examination that she had based this comment on a WhatsApp exchange between Dr Okon and Mr Anyim that does not on its face appear to have anything to do with the Claimant. She was unable to point to the evidence that had led her to conclude that this WhatsApp showed Mr Anyim had shared detailed information about YAF with the Claimant and we find that Ms Warrander made an assumption about the content of this message for which she had no proper evidence.
    c. Ms Warrander concluded *"[The Claimant] has continued to deny this relationship, instead referring to [Mr Anyim's] visits as random with other friends"*. We note that Ms Warrander here fails to distinguish between the alleged romantic relationship (which the Claimant was denying) and the platonic relationship which is apparent from the evidence the Claimant had provided to Ms Warrander (eg about her birthday parties, 'hanging out' at Jabi Lake, Mr Anyim visiting her home including all day from 7.30am to 10pm on 11 June, etc). Ms Warrander's reference to 'continued to deny' also suggests in the context of the report that the Claimant has 'continued to deny' in the face of all the evidence of the report when in fact the Claimant had not been given a chance to respond to most of that material.
    d. That the COI would fairly be perceived by YAF as potentially affecting the Claimant's judgment and this affected DFID's reputation.
    e. That the COI did not in fact influence the Claimant's behaviour toward YAF to the detriment of DFID, that although she engaged in 'micro-management' the issues the Claimant raised around governance, financial management etc had been appropriate, although she had been over-zealous (our word) in investigating YAF and too ready to make allegations against YAF and her colleagues. There had been *"an uptick"* in the Claimant's scrutiny of YAF after July 2019 compared with earlier periods. (We deal with the reasonableness or otherwise of this section of the report in our Conclusions.)
    f. That the Claimant had not discussed the decision to terminate the grant with senior management. (We observe this finding is incorrect

as the Claimant had discussed it with Mr Stevens and he had not suggested more senior management needed to be involved.)

g. Ms Warrander concluded that it was not possible to establish whether Dr Okon had a relationship with Mr Anyim which may have coloured Dr Okon's opinion of the Claimant and the complaint. She noted that this was *"asserted by [the Claimant] but denied by [Mr Anyim]"* even though Mr Anyim's interview notes actually include a specific allegation that Dr Okon was 'stalking' him and was vindictive if she ever saw him with another woman.
h. That the Claimant had failed to make any filing or notification of any of the potential fraud and safeguarding issues to the Reporting Concerns team in contravention of DFID requirements, which make clear that employees should not seek to investigate possible fraud themselves but should report immediately to Reporting Concerns. Mr Achimugu (Fraud Liaison Officer) had also not escalated the issue. (We note at this point that in our judgment, this conclusion was somewhat harsh given our findings as set out above that the Claimant's concerns about YAF had genuinely only crystallized once YAF refused to partner with AAN and the Claimant thereafter did raise her concerns *"unprompted"* with senior management.)
i. That insofar as she considered the fraud/safeguarding issues the Claimant had raised there was nothing significant in them and the Claimant had made errors in her reading of the financial information from the time of the grant award.
j. That Ms Bassey had a COI which should have been declared on HAGRID because her cousin worked for YAF and that this should be dealt with informally.
k. That the Claimant's safety and welfare was not compromised by DFID.
l. On the Claimant's complaint of harassment against Ms Bassey and Dr Okon, Ms Warrander concluded in one sentence in relation to Ms Bassey that she could *"find no evidence"* although *"the behaviours between [the Claimant and Ms Bassey could have been better"*. She did not set out any findings in relation to the complaint against Dr Okon (who was not, of course, an employee of DFID).

94. On the original three allegations, Ms Warrander found a case to answer only in relation to the first allegation, i.e. (1) that Sonia failed to declare a clear conflict of interest owing to a close personal relationship with Chris Enyim, an employee in first tier partner organisation Youth Alive Foundation (YAF), under the ACORN programme which Sonia was the Senior Responsible Owner for. Ms Warrander found 'no case to answer' on the second and third allegations, i.e. (2) that owing to this conflict of interest influence Sonia decided to terminate YAF's Accountable Grant following the resignation of Chris Anyim following a deterioration of his relationship with YAF; and (3) Sonia failed to follow standard procedures to report to the Head of Office your concerns about YAF's financial management and governance arrangements that could have exposed DFID to fraud, or to inform the Head of Office that you would be terminating YAF's Accountable Grant, exposing DFID to potential action for breach of contract.

95. Ms Warrander in her report also added that: *"After the investigation started, Sonia herself took quite a hostile stance – unhelpfully continuing to deny the relationship, conflict of issue concerns and questioning many issues and picking points on all documents"*. We acknowledge that Ms Warrander was under a degree of stress as a result of work pressure at the time and this may have affected her perception of the Claimant's communications, which were lengthy and therefore no doubt difficult to absorb and deal with. However, this notwithstanding we find her criticisms of the Claimant to be too strong. There is no doubt that the Claimant ought to have recognised that her relationship with Mr Anyim (as she accepted it to be and described it herself) fell within the terms of paragraph 4.2.2 of the Conflicts Policy and therefore should have been declared on HAGRID. This is because Mr Anyim was someone whose salary was fully funded by DFID and over whom the Claimant as SRO could exercise influence as described in that paragraph in relation to such matters as his selection for employment/promotion, discipline and pay. That the Claimant had this power is apparent from her emails to Dr Okon regarding Mr Anyim and other employees in terms of just those matters. However, this simple COI was not the focus of Ms Warrander's investigation (although it should have been a proper part of it). Ms Warrander did not discuss the issue of the simple COI with the Claimant at the investigation interview so it ill-behoves her to criticise the Claimant for failing to acknowledge it at that stage. The Claimant also did not 'continue to deny the relationship' as Ms Warrander suggests. Her written documents acknowledge the friendship between them and many social meetings. What she was denying, and has continued to deny, is that she was having an affair or sexual relationship with Mr Anyim. She also maintained that her relationship with Mr Anyim had not influenced her handling of the YAF grant, and she was ultimately vindicated on that point by Ms Warrander, so her defence on that point cannot be said to be 'unhelpful' either. Finally, someone who is accused as the Claimant was of serious misconduct on three counts will normally seek to defend themselves, sometimes at length. The Claimant did so, and did so reasonably given the seriousness of the allegations and the length of time that the investigation took. It was inappropriate to describe her position as a 'hostile stance'.

6 May 2020 - Disciplinary hearing

96. The Investigation Report was sent to the Claimant under cover of a letter from Dr Pycroft of 20 April 2020. According to the Respondent's disciplinary policies (and basic principles of fairness) this letter ought to have identified which allegations were going to be considered at the disciplinary hearing. The letter identified the allegations that were going to be considered at the hearing as being the first two allegations that had been set out by Dr Pycroft at the outset in the Investigation Letter. This was notwithstanding the fact that Ms Warrander had not found there was a case to answer on the second allegation. The letter made clear that the alleged misconduct was now being regarded as either Serious or Gross, reflecting (we find) Dr Pycroft's discussion with Mr Curran about the possibility that the Claimant was lying.

97. By email of 25 April 2020 the Claimant emailed Dr Pycroft and Mr Curran complaining that Ms Warrander's report had not dealt properly with her complaint of bullying and harassment. The table that the Claimant includes in this email states in the last box: *"[The Claimant] also feels that her relationship with [Mr Anyim], whilst with hindsight should have been declared on Hagrid, she has never as the investigator states 'denied the relationship' and feels it was actually a catalyst for unlocking these potential frauds"*.

98. The Claimant also made detailed comments on the Investigation Report, which we have considered as part of the Claimant's evidence in these proceedings. It is unclear whether these were provided to Dr Pycroft. They were provided to Ms Palmer as part of the Claimant's appeal.

99. By email of 5 May 2020 the Claimant's trade union representative emailed stating that he and the Claimant felt that the disciplinary hearing ought to be considered by a senior colleague from outside DFID to ensure that the process was fair, but Dr Pycroft considered that as Head of DFID it was appropriate for him to carry on in the role of decision maker as it was 'standard practice' for disciplinary procedures (a position he maintained even when it was put to him by Ms Gray that the policy states it is the line manager).

100. The disciplinary hearing took place on 6 May 2020. The Claimant attended with her trade union representative. Dr Pycroft was there as Decision Manager and Mr Curran as HR / notetaker. The notes of the meeting show that Dr Pycroft set out the allegations as being the original first allegation, and an allegation that looks a bit like the third allegation, but is different. The Claimant's trade union representative pointed out that the allegations Dr Pycroft had mentioned went beyond what was set out in the investigation report. There was then some discussion about what allegations were being considered.

101. Dr Pycroft then took the Claimant through the matters that he apparently considered important. He did not ask the Claimant openly for her responses to the investigation report, but noted that there was enough evidence in the report about the allegations and proceeded to put to her his view of what the SRO role was and what she had failed to do in terms of registering concerns on Hagrid. He said she had a *"significant blind spot"* regarding Mr Anyim.

102. Regarding the SRO's duty to report a COI, the Claimant accepted in hindsight (as advised by her trade union representative) that *"it was an error in my part",* but said that COI came up only after she closed the grant. Dr Pycroft then emphasised the importance of registering on HAGRID, to which her trade union representative again responded that it was an error of judgment on her part. The Claimant explained that she has lots of friends and did not see her relationship with Mr Anyim as a COI, although *"in hindsight"* she accepted she should have done. The Claimant was then asked about why she had not raised suspected fraud with Reporting Concerns. She said that it had not really jumped out at her, it was only when the pieces came together at the end of September when YAF did not want the 2nd tier arrangement that

it all came to a head and she spoke to Mr Primrose and Mr Stevens about it at the beginning of October and then she understood that they were going to take it to Reporting Concerns. Dr Pycroft clarified that the fraud part was still with Reporting Concerns and there had been no formal outcome from that. The Claimant also raised at the meeting her grievance about bullying and harassment by Ms Bassey and Dr Okon. The meeting closed with the Claimant's trade union representative indicating he was 'content with the process today'.

103. The Claimant was unhappy with the notes of the 6 May 2020 meeting and provided an annotated version.

Disciplinary decision – final written warning

104. On 18 May 2020 Dr Pycroft wrote to the Claimant informing her of the outcome. His letter notes the Claimant's acceptance that, with hindsight, there was a COI that should have been declared. He then noted that the Investigation Report had found a case to answer on the first allegation (as it had) and that it had found a case to answer on a further allegation which looks like an amalgam of the second and third allegations but this time expressed as: *"The investigation into whether the alleged COI influenced decisions that you made in your role as SRO for the ACORN programme – particularly concerning reporting a suspected fraud to Reporting Concerns and appropriately escalating to DFI Nigeria senior managers decisions to change the contracting relationship with YAF that created a potential fiduciary and reputational risk for DFID Nigeria"*. As already noted, Ms Warrander had not found a case to answer on the second allegation. She had found that the Claimant had failed to report her fraud concerns as required by DFID procedures, and that she should have realised the seriousness of the situation earlier and escalated her concerns and the termination decision to senior management, but at the disciplinary meeting Dr Pycroft only put the first part of that allegation to the Claimant (ie. about reporting fraud concerns). He did not put the second part of the allegation about the Claimant not having escalated to senior managers the decision to move YAF to Tier 2. He did not therefore consider the Claimant's answer to that which was that the decision to move YAF to Tier 2 had been discussed in detail with Mr Stevens as her line manager and he had not considered it necessary to escalate it further either.

105. In the outcome letter Dr Pycroft stated: *"I find the allegations of serious misconduct related to the undeclared Conflict of Interest and the fiduciary and reputational risks this created for DFID Nigeria to be substantiated and therefore issue you with a Final Written Warning"*. Our reading of this is that Dr Pycroft was stating that he had found all the allegations to be made out as he identified them to be in this letter and as he, partly wrongly, said had been found to be 'cases to answer' in the Investigation Report. That is why he gave a Final Written Warning rather than a lesser warning, and we infer that dismissal was not the option because he had not in the end pursued his concerns that the Claimant was lying. He did not deal with the Claimant's

bullying and harassment complaint. He provided no further reasoning. The letter is two pages long.

Appeal against final written warning

106. The Claimant appealed by letter of 29 May 2020. In her appeal letter she made clear that she fully accepted there would be a penalty for the error she made in failing to declare a potential COI on HAGRID which may have resulted in reputational risks to DFID, but she contended that the process had been unfair and the outcome too harsh. She made clear that she had not during the investigation been provided with any evidence apart from the notes of the meetings with Dr Okon on 4 October 2019. She complained again about the potential compromise of her security with her not being told until 8 weeks after line managers knew that Dr Okon had obtained information about visitors to her home. She set out explicitly and in detail why she considered that the process had been infected by racial considerations, identifying the principal points that she has relied on in these proceedings. In her appeal letter she also alleged sex discrimination.

107. Ms Palmer was appointed as Appeal Manager and the appeal meeting took place on 29 July 2020. The notes of the appeal meeting show that Ms Palmer questioned the Claimant openly on aspects of her appeal, including the race discrimination elements. On the first allegation and registration on HAGRID the Claimant said that if Mr Anyim should have been declared on HAGRID, so should 20 other people and Ms Palmer made clear that if that was the case, they should have been. The notes reveal that Ms Palmer was (understandably given the way the allegations had been dealt with by Dr Pycroft) confused as to what the allegations were, identifying them as being: (i) failure to declare the COI; (ii) reputational risk; and (iii) failure to escalate concerns (points she repeated in the outcome letter). With the allegations identified like that, Ms Palmer took it that the Claimant had admitted not just the first but also the second allegation, whereas in fact the second allegation was the one in respect of which Ms Warrander had found 'no case to answer'. At the meeting they also discussed the Claimant's concerns about Mr Stevens' treatment of her regarding the trip to Ghana. The meeting was long and thorough. The Claimant expressed how she felt there had been a breakdown of trust with her colleagues and Ms Palmer was sympathetic. Towards the end Ms Palmer took the time to say that she felt the Claimant was *"a very talented, experienced governance adviser"* and she valued her skills and experience, hard work and talent. She also alluded to the point about 'visibility' she had made to the Claimant previously, saying that 'everyone can trip up' and that it would be important not to be *"too downward and deep in your focus and the way you spend your time, and the way you manage project partners, but also looking up and out and communicating with colleagues"*.

108. Following the meeting, Ms Palmer spoke to Mr Stevens. She did not take notes of that meeting, but what he said she fed into the appeal outcome letter.

109. In a careful five-page letter of 7 August 2020 Ms Palmer informed the Claimant that she had decided to partly uphold her appeal, give the Claimant 'the benefit of the doubt' and downgrade the sanction to a first written warning. In the letter she explained that, having spoken to Mr Stevens, she still considered that the Claimant had not been open enough with him about the issues with YAF, including failing to tell him about her friendship with Mr Anyim and that he had fallen out with his employer and resigned. She also explained that it would not have been realistic or appropriate for there to be an informal conversation before the investigation started, and that it was normal for an employee not to be provided with evidence before the first investigation interview. (Ms Palmer also gave convincing evidence, which we accept, that this was exactly what happened to her when she was investigated previously.) Ms Palmer considered that Mr Stevens had dealt appropriately with the Ghana trip. However, she did find that the Claimant had been insufficiently supported during the investigation process and that her concerns about her security at home should have been looked at more promptly by Mr Stevens and Mr Primrose. Regarding the Claimant's discrimination complaints she noted that the Claimant had not identified any actual comparator. She concluded: *"I am of the view that having heard the allegation from Udy, the reputational and fiscal risks this presented were so serious that John and Alex felt it appropriate to escalate them. In my view, if the same set of circumstances had been presented involving a white man, the outcome would have been the same. With that in mind, I do not think you have provided enough evidence to support your allegation that you were discriminated against on the basis of your race and gender in this situation."* She concluded with words of support and advice as she had at the appeal meeting.

110. Ms Palmer did not interview any other witnesses, even in relation to the allegation of discrimination. She explained in oral evidence that this is because her task was to review the decision, that she would not ordinarily interview witnesses at the appeal stage and that it would only have been if the Claimant had put forward a stronger case that she would have spoken to Ms Warrander and Dr Pycroft about this. In particular, she did not consider that the use of the two words *"hostile"* and *"aggressive"* that the Claimant had referred to was enough in the context of the whole case to indicate discriminatory attitude. She said that she would not have looked into the discrimination further unless there was something *"out of kilter"* with other such cases. She did not feel it met the threshold. We accept that those were her conscious reasons for not investigating further. We put to Ms Palmer whether she had considered that the aspects of the appeal she upheld (i.e. in relation to lack of support for the Claimant and failure to take sufficient care for her personal safety) might, together with the other matters on which the Claimant relied, indicate that the Claimant had been 'othered' on racial lines, but Ms Palmer said that it had not struck her that way.

Subsequent events

111. After the appeal hearing, Ms Palmer spoke to Mr Stevens and reflected with him on the role he had played and how he could have offered more support

to the Claimant. Ms Palmer also had a conversation with Dr Pycroft along similar lines, and discussed with him and Mr Primrose the shortcomings she had identified in care for the Claimant's security. She also took steps to ensure that in other misconduct cases in FCDO Africa Directorates strong wellbeing support is put in place through a nominated lead.

112. After the Claimant formally left DFID Nigeria on 31 March 2020 she became a "contingent liability" as she had no alternative post to go to until February 2021 when she started in a new post in FCDO. During this time she was only offered work twice, once by Mr Stevens in December 2020 when she was asked to make herself available for on-call Christmas cover rather than take leave as she wished to do, and once by Sam Waldock (who does not otherwise feature in this case). She contrasted her situation with that of Cathy Welch, a White colleague who while on contingent liability was provided with several projects. Ms Palmer told us, and we accept, that Ms Welch was on contingent liability for much longer than the Claimant (February 2019 to May 2021) and during that time she was 'surged' into Covid work and Operation Yellowhammer (which was related to Brexit). She was also left with no work for months at a time. Further, following DFID's merger with the FCO in September 2020 the department was seeking to 'shrink' and there was a moratorium on promotion so there was less work available.

113. The Claimant commenced these proceedings on 20 November 2020. The reason she did not file a Tribunal claim earlier was because she trusted DFID's internal processes and hoped they would work out fairly. It was only after she had the appeal outcome and race discrimination was not recognised that she decided to bring the claim in order, as she put it in her witness statement, to *"stand against racism for the benefit of my organisation, where I have invested 33 years"*. We accept that these were her reasons for not commencing the claim earlier, even though she was in receipt of legal advice during the disciplinary process.

Conclusions

Direct race discrimination: the law

114. Under ss 13(1) and 39(2)(d) of the Equality Act 2010 (EA 2010), we must determine whether the Respondent, by subjecting her to any detriment, discriminated against the Claimant by treating her less favourably than it treats or would treat others because of a protected characteristic. The protected characteristic relied on by the Claimant is her race.

115. A detriment is something that a reasonable worker in the Claimant's position would or might consider to be to their disadvantage in the circumstances in which they thereafter have to work. Something may be a detriment even if there are no physical or economic consequences for the Claimant, but an unjustified sense of grievance is not a detriment: see *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11, [2003] ICR 337

at [34]-[35] *per* Lord Hope and at [104]-[105] *per* Lord Scott. (Lord Nicholls ([15]), Lord Hutton ([91]) and Lord Rodger ([123) agreed with Lord Hope.)

116. 'Less favourable treatment' requires that the complainant be treated less favourably than a comparator is or would be. A person is a valid comparator if they would have been treated more favourably in materially the same circumstances (s 23(1) EA 2010). However, we may also consider how a hypothetical comparator would have been treated.

117. The Tribunal must determine *"what, consciously or unconsciously, was the reason"* for the treatment (*Chief Constable of West Yorkshire Police v Khan* [2001] UKHL 48, [2001] ICR 1065 at [29] *per* Lord Nicholls). The protected characteristic must be a material (i.e non-trivial) influence or factor in the reason for the treatment (*Nagarajan v London Regional Transport* [1999] ICR 877, as explained in *Villalba v Merrill Lynch & Co Inc* [2007] ICR 469 at [78]-[82]). It must be remembered that discrimination is often unconscious. The individual may not be aware of their prejudices (*cf Glasgow City Council v Zafar* [1997] 1 WLR 1695, HL at 1664) and the discrimination may not be ill-intentioned but based on an assumption (*cf King v Great Britain-China Centre* [1992] ICR 516, CA at 528).

118. If a decision-maker's reason for treatment of an employee is not influenced by a protected characteristic, but the decision-maker relies on the views or actions of another employee which are tainted by discrimination, it does not follow (without more) that the decision-maker discriminated against the individual: *CLFIS (UK) Ltd v Reynolds* [2015] EWCA Civ 439, [2015] ICR 1010 especially at [33] *per* Underhill LJ. What matters is what was in the mind of the individual taking the decision. It is also important to remember that only an individual natural person can discriminate under the EA 2010; the employer will be liable for that individual's actions, but the legislation does not create liability for the employer organisation unless there is an individual who has discriminated. As Underhill LJ explained in that case at [36]:

> 36. … I believe that it is fundamental to the scheme of the legislation that liability can only attach to an employer where an individual employee or agent for whose act he is responsible has done an act which satisfies the definition of discrimination. That means that the individual employee who did the act complained of must himself have been motivated by the protected characteristic. I see no basis on which his act can be said to be discriminatory on the basis of someone else's motivation. If it were otherwise very unfair consequences would follow. I can see the attraction, even if it is rather rough-and-ready, of putting X's act and Y's motivation together for the purpose of rendering E liable: after all, he is the employer of both. But the trouble is that, because of the way [what is now the EA 2010 works], rendering E liable would make X liable too …. To spell it out: (a) E would be liable for X's act of dismissing C because X did the act in the course of his employment and—assuming we are applying the composite approach—that act was influenced by Y's discriminatorily-motivated report. (b) X would be an employee for whose discriminatory act E was liable under [EA 2010, s 109] and would accordingly be deemed by [EA 2010, s 110] to have aided the doing of that act and would be personally liable. It would be quite unjust for X to be liable to C where he personally was innocent of any discriminatory motivation.

119. However, in that case the Court of Appeal also observed, that where a decision is taken jointly by more than one decision-maker, a discriminatory motivation on the part of one decision-maker will taint the whole decision: ibid at [32].

120. In relation to all these matters, the burden of proof is on the Claimant initially under s 136(1) EA 2010 to establish facts from which the Tribunal could decide, in the absence of any other explanation, that the Respondent has acted unlawfully. This requires more than that there is a difference in treatment and a difference in protected characteristic (*Madarassy v Nomura International plc* [2007] EWCA Civ 33, [2007] ICR 867 at [56]). There must be evidence from which it could be concluded that the protected characteristic was part of the reason for the treatment. The burden then passes to the Respondent under s 136(3) to show that the treatment was not discriminatory: *Wong v Igen Ltd* [2005] EWCA Civ 142, [2005] ICR 931. The Supreme Court has recently confirmed that this remains the correct approach: *Efobi v Royal Mail Group Ltd* [2021] UKSC 33, [2021] 1 WLR 3863.

121. This does not mean that there is any need for a Tribunal to apply the burden of proof provisions formulaically. In appropriate cases, where the Tribunal is in a position to make positive findings on the evidence one way or another, the Tribunal may move straight to the question of the reason for the treatment: *Hewage v Grampian Health Board* [2012] UKSC 37, [2012] ICR 1054 at [32] *per* Lord Hope. In all cases, it is important to consider each individual allegation of discrimination separately and not take a blanket approach (*Essex County Council v Jarrett* UKEAT/0045/15/MC at paragraph 32), but equally the Tribunal must also stand back and consider whether any inference of discrimination should be drawn taking all the evidence in the round: *Qureshi v Victoria University of Manchester* [2001] ICR 863 *per* Mummery J at 874C-H and 875C-H.

122. We have also directed ourselves to *Bahl v Law Society* [2003] IRLR 640, in which Gibson LJ provided helpful guidance on the approach to unreasonableness in a discrimination context as follows:

> 98. Accordingly, to the extent that the tribunal found discriminatory treatment from unreasonable treatment alone, their reasoning would be flawed and the finding of discrimination could not stand. That is the clear ratio of *Zafar* and that decision remains unaffected by *Anya*.
>
> **The relevance of unreasonable treatment**
>
> 99. That is not to say that the fact that an employer has acted unreasonably is of no relevance whatsoever. The fundamental question is why the alleged discriminator acted as he did. If what he does is reasonable then the reason is likely to be non-discriminatory. In general a person has good non-discriminatory reasons for doing what is reasonable. This is not inevitably so since sometimes there is a choice between a range of reasonable conduct and it is of course logically possible the discriminator might take the less favourable option for someone who is say black or a female and the more favourable for someone who is white or male. But the tribunal would need to have very cogent evidence before inferring that someone who has acted in a reasonable way is guilty of unlawful discrimination.

> 100. By contrast, where the alleged discriminator acts unreasonably then a tribunal will want to know why he has acted in that way. If he gives a non-discriminatory explanation which the tribunal considers to be honestly given, then that is likely to be a full answer to any discrimination claim. It need not be, because it is possible that he is subconsciously influenced by unlawful discriminatory considerations. But again, there should be proper evidence from which such an inference can be drawn. It cannot be enough merely that the victim is a member of a minority group. This would be to commit the error identified above in connection with the *Zafar* case: the inference of discrimination would be based on no more than the fact that others sometimes discriminate unlawfully against minority groups.
>
> 101. The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given than it would if the treatment were reasonable. In short, it goes to credibility. If the tribunal does not accept the reason given by the alleged discriminator, it may be open to it to infer discrimination But it will depend upon why it has rejected the reason that he has given, and whether the primary facts it finds provide another and cogent explanation for the conduct. Persons who have not in fact discriminated on the proscribed grounds may nonetheless sometimes give a false reason for the behaviour. They may rightly consider, for example, that the true reason casts them in a less favourable light, perhaps because it discloses incompetence or insensitivity. If the findings of the tribunal suggest that there is such an explanation, then the fact that the alleged discriminator has been less than frank in the witness box when giving evidence will provide little, if any, evidence to support a finding of unlawful discrimination itself.

123. The Respondent has also referred us to *Network Rail Infrastructure v Griffiths-Henry* [2006] IRLR 865 at [22] where Elias J observed:

> "(I)t is crucial that the Tribunal at the second stage is simply concerned with the reason why the employer acted as he did. If there is a genuine non-discriminatory reason, at least in the absence of clear factors justifying a finding of unconscious discrimination, that is the end of the matter. It would obviously be unjust and inappropriate to find discrimination simply because an explanation given by the employer for the difference in treatment is not one which the Tribunal considers objectively to be justified or reasonable. If that were so, an employer who selected [for redundancy] by adopting unacceptable criteria or applied them inconsistently could, for that reason alone, then potentially be liable for a whole range of discrimination claims in addition to the unfair dismissal claim. That would plainly be absurd. Unfairness is not itself sufficient to establish discrimination on grounds of race or sex, as the courts have recently had cause to observe on many occasions: see *Bahl* and the House of Lords decision in *Glasgow City Council v Zafar* [1998] ICR 120."

<u>Direct race discrimination: overview of conclusions</u>

124. We have considered the Claimant's claims by reference to the legal principles set out above. We have found this to be a difficult and finely-balanced case. We proceeded by considering each of the Claimant's allegations individually, but also by standing back and considering them all 'in the round'. Ultimately, for the reasons we set out below, we have been able to reach firm conclusions that in relation to most (but not all) of the Claimant's allegations she was treated less favourably by Mr Stevens, Ms Warrander and Dr Pycroft because of her race than her hypothetical comparator would have been.

125. The Claimant identified her hypothetical comparator as being a White civil servant with comparable experience and service record (32 years including 16 years overseas) with comparable expertise (a technical expert in corruption and the SRO of ACORN). In relation to each of the allegations we have considered how this hypothetical comparator would have been treated if they were in the same circumstances as the Claimant was in relation to each allegation. In relation to each allegation our reasoning below focuses on the individual allegations, but in each case where we have concluded that the Claimant's race played a material part in the reason for the treatment, we have also taken into account the other allegations.

126. We emphasise that the discrimination that we have found proved was unconscious, not conscious discrimination. There was no overt malice or discriminatory attitude toward the Claimant on the part of Mr Stevens, Ms Warrander or Dr Pycroft. However, in overview, we have found that the Claimant was treated with an unwarranted degree of suspicion, that unfair assumptions were made about her, that minds were closed, that she was treated unfairly in the disciplinary process, which took an unreasonably long time during which she was not provided with sufficient support, and that insufficient care was taken for her personal safety. The explanations that we received from the Respondent for this treatment were not just poor or unreasonable excuses. They simply did not adequately explain the degree of unfairness and unreasonableness in the treatment and we infer that the missing part of the explanation is the Claimant's race. The Claimant was 'pushed away', 'disowned' or 'othered' during the disciplinary process in a way that we consider would not have happened were she a White civil servant with equivalent length of service and experience.

127. We reach that conclusion for the reasons set out in this overview section, and also in relation to each of the individual allegations below. We have reached that conclusion as a matter of fact in this case without recourse to the burden of proof. However, if we had needed to have recourse to the burden of proof, we would have found that with the combination of the unreasonable treatment and the racial elements that we identify below, the Claimant discharged the initial burden on her under s 136 of the EA 2010, and that the Respondent failed to provide a non-discriminatory explanation for that treatment, such that s 136 of the EA 2010 would have compelled us to find that race was the reason.

128. In reaching these conclusions, we have taken account of the Respondent's evidence about the multi-ethnic environment in which they live and work, but it is nonetheless the case that BAME individuals are significantly under-represented in the upper ranks of the Respondent and, in any event, even if an organisation is ethnically diverse, it does not follow that there cannot be discrimination. That must be particularly so in this organisation given that we have seen evidence of failure by HR to appreciate the inappropriateness of perpetuating racial stereotypes in an internal magazine article on sexual harassment – not once, but twice.

129. We have also taken into account the fact that there were other Black men and women involved in the circumstances that led to the disciplinary process, in particular Dr Okon, Mr Anyim, Ms Bassey, Ms Grant, Ms Patrick-Ogbu and Mr Achimugu. However, in this case this factor has contributed to rather than detracted from our conclusion that race played a part in the Respondent's treatment of the Claimant.

130. This is because the issues that erupted at the end of September 2019 arose from conflict and tensions within a group of Black people. Those Black people were both within and without the Respondent's organisation, but the allegations centred on YAF, which was a Black-run organisation external to the Respondent. The investigation was an investigation by White people into allegations made by Black people against other Black people, and included not only the allegation that the Claimant had been having an affair with a YAF employee, but also that Ms Bassey had a cousin working for YAF. Black people employed by the Respondent were thus being linked with the external organisation. These facts do not of themselves mean that race affected the way that the allegations were dealt with, but in this case we infer that the reason the Claimant was treated so unreasonably was in part because of a subconscious 'us and them' attitude on the part of Mr Stevens, Ms Warrander and Dr Pycroft. We find that the Claimant was, throughout, treated by the Respondent as part of 'them' rather than 'us'. She was, as we put it to the Respondent's witnesses at the hearing, 'othered'. A degree of (non-racial) 'othering' happens almost every time an employee is accused of misconduct by an organisation, but in this case the 'othering' went beyond the norm, and we infer that the reason for this was because of the racial divide opened up by the investigation.

131. A particularly telling element of the picture in this respect was the Respondent's careless attitude to the Claimant's security in relation to Dr Okon's monitoring of her movements in her home: we infer that this was in part because the Claimant, as a Black person, was seen as being part of the same community as Dr Okon, and thus not recognised as being at risk from her as she would have been if she had been White.

132. Another part of the reason why Mr Stevens, Ms Warrander and Dr Pycroft distanced themselves so readily and quickly from the Claimant, viewed her with such suspicion and provided her with so little support is in our judgment because of what Mr Khan has referred to in these proceedings as the stereotype of 'the promiscuous Black woman' and/or (as Mr Khan also put it) because of a greater readiness to believe that the Claimant was having an affair with Mr Anyim because they were of the same race. We infer that either or both of these racial factors have played a part in the readiness to believe the worst of the Claimant.

133. A further aspect of the 'othering' of the Claimant, and racial stereotyping of her as a Black person, is the use in the disciplinary investigation report of the language of *"aggressive"* and *"hostile"* to describe the Claimant's actions. We have in our findings of fact (at paragraphs 53 and 95) explained why we consider those terms were unwarranted. They are words of some significance

because of the stereotypical assumption that Black people are more aggressive – a stereotype that the Respondent's HR department unfortunately reinforced twice in the internal magazine around this time. The fact that many staff at the Respondent were able to recognise that stereotype when it was presented in as blunt a way as it was by the Respondent's HR department does not mean that they cannot subsconciously fall into that stereotype trap in their own thinking, and we find that this has happened in this case.

134. In short, we find that had the same allegations been levelled by the same Black people at the Claimant's hypothetical White comparator, they would not have been treated as unfavourably by Mr Stevens, Dr Pycroft and Ms Warrander as the Claimant was.

135. We now address the individual allegations, retaining the lettering from the List of Issues, although a number of the allegations in the List of Issues were withdrawn by the Claimant in closing submissions and are therefore not dealt with.

a. On or around 18 November 2019, choosing to instigate a formal investigation into the Claimant without any prior warning or opportunity for informal discussion.

136. It is accepted by the Respondent that there was no prior warning or opportunity for informal discussion before the commencement of the formal investigation. The Claimant contends that the failure to afford her this opportunity was race discrimination.

137. Although there was some suggestion from the Claimant during the hearing that the *"rumours"* were anonymous allegations and accordingly should have been subject to risk assessment in accordance with the Respondent's disciplinary policies prior to any formal procedure commencing, this point was not pursued in the Claimant's closing submissions. For completeness we note that although the rumours were first brought to the Claimant's attention as anonymous allegations by Ms Grant, by the time that the question of disciplinary proceedings arose they were not anonymous, but were being made by Dr Okon, Ms Grant and Ms Bassey.

138. Instead, the Claimant argued that the norm at the Respondent was for issues of breach of the Conflicts Policy to be dealt with by way of an informal discussion and that this is why there should have been an informal discussion first. In this respect, we agree with the Claimant that the norm at the Respondent is for failure to declare a COI on HAGRID to be dealt with informally. That was Ms Palmer's evidence to explain the very low numbers of disciplinaries/investigations involving the Conflicts policy at the Respondent. That was also evident from Mr McPherson's email of 11 October 2019 where he appears to have assumed that what he, Mr Stevens and Dr Pycroft were at that point regarding as a clear breach of the Conflicts Policy by the Claimant would be dealt with by way of an informal chat. It is also

evident from the the fact that both Ms Bassey and Ms Grant were dealt with informally following Ms Warrander's investigation even though Ms Bassey had failed to declare a conflict in relation to her cousin being employed by YAF.

139. Although it is accepted by the Respondent that the Claimant was not given the benefit of an informal discussion before the formal investigation commenced, we do note that the Claimant provided a statement on 5 October 2019 in advance of the investigation starting, so that it could be said that the Claimant did in fact have an informal opportunity to put her case. However, we consider that this was not a replacement for an informal stage at which someone (the Claimant's line manager) sat down, put the Conflicts Policy to her and gave her an opportunity to agree (or not agree) that the relationship should have been declared. We are mindful that Ms Warrander in oral evidence was clear that if the Claimant had admitted the simple breach of the Conflicts policy at the outset, the wider investigation would not have been necessary. As such, it is unfortunate that the Claimant was not given the usual informal opportunity to make that admission.

140. However, the Respondent's position, in outline, is that in the Claimant's case it was appropriate to proceed straight to a formal investigation because the potential COI had 'manifested' itself as an actual problem as a result of the decision to close YAF's grant and Dr Okon's complaint about that.

141. We find that, given the way matters escalated at the beginning of the October 2019, and the multiplicity of issues that were raised both by the Claimant, Ms Grant/Ms Bassey and Dr Okon, it was reasonable in principle for the Respondent to proceed straight to a formal investigation without prior informal discussion. What was being alleged in substance by Dr Okon, Ms Grant and Ms Bassey was not just that the Claimant had a COI that she had failed to declare but that she had actually been influenced by that COI in closing the YAF grant. That was a serious allegation that merited formal investigation. We do not find there is any gap here that requires further explanation or which would lead us to draw any inference that there was less favourable treatment because of race.

b. On or around 18 November 2019, drafting three counts of Serious Misconduct without first properly considering or testing the evidence for each of them.

142. To an extent, this allegation follows on from the first. Since we accept that there was no discrimination in the decision to proceed to an informal investigation, we also accept that there was no discrimination in principle in drawing up allegations without 'testing the evidence for each of them' since that is the nature of commencing a formal process: allegations are drawn up which are then 'tested' through the process of investigation. However, that does not mean that there is no 'threshold' to be crossed before an allegation should be made the subject of a formal investigation. In this case, we have found ourselves troubled by the nature of the allegations that were drawn up and we find that the Claimant's race influenced Dr Pycroft in his drawing up

of the allegations. We draw that inference in the light of matters set out in the overview section above and because of three specific factors connected with the drawing up of the allegations:-

143. First, a breach of natural justice and the Respondent's policy: it is apparent from Dr Pycroft's letter appointing Ms Warrander as investigator that he had already decided that the Claimant had failed to declare a COI in respect of Mr Anyim on HAGRID in breach of the Conflicts Policy. He was thus treating her as guilty of misconduct before the investigation had started in breach of the Respondent's policies (see paragraph 32.d above). Even though we recognise that it is clear that the Claimant ought to have made a HAGRID declaration for Mr Anyim when one looks at the terms of the Conflicts Policy (see our paragraph 95 above), it is apparent from the evidence we have heard in this case (eg in relation to Ms Bassey and her cousin, and Mr Stevens and Dr Pycroft re Bob Arnott) that in practice it is not as clear to the Respondent's employees as it should be when a HAGRID declaration needs to be made and, in accordance with the Respondent's own policy and basic principles of fairness, the Claimant should have been presumed innocent until she had a chance to put her side of the case. While this unreasonable treatment alone would not lead us to infer that the Claimant's race played a part, in combination with other factors, it does.

144. The second specific factor in relation to the drawing up of the allegations is that in our judgment the allegations called for an unnecessary investigation into the Claimant's sex life on the basis of flimsy evidence. We reach that conclusion as follows: Dr Pycroft thought it was clear that the Claimant was 'guilty' of what we might term a 'simple breach' of the Conflicts Policy (i.e. a failure to declare a potential COI falling within the terms of paragraph 4.4.2), so it is apparent that what he was instructing be investigated was the first part of his comment in that letter on this first allegation, i.e. whether the Claimant was in a *"more than friendship-based relationship with Chris"*. It was that which he noted the Claimant denied and thus that which this letter instructs be investigated. The letter appointing the investigator thus amounts to an instruction by Dr Pycroft that there should be an investigation into the Claimant's sex life. Dr Pycroft does not acknowledge that this was the effect of his letter, but the drafting of this letter does seem to have affected the course of the investigation, because an investigation into the Claimant's sex life is essentially the exercise on which Ms Warrander embarked. That is shown by the fact that Ms Warrander did not in her only investigation meeting with the Claimant seek to discuss with her the 'simple breach' at all, but let the Claimant talk in terms that focused on the Claimant's understanding that the allegation is that she was having an affair with Mr Anyim. Nor does Ms Warrander treat the Claimant's acknowledgment of her friendship and social acquaintance with Mr Anyim as being sufficient to 'prove' the charge (although it does), but embarks on further investigation of the logbooks, the information in which leads her in her own mind to conclude that there might have been a sexual relationship between them. She then drafts an investigation report that insinuates that (by using the words *"at the very least close friends"*), notwithstanding that by that stage Ms Warrander had realised that whether or not the Claimant was having a *"more than friendship-based relationship with*

Chris" was irrelevant to the question of whether there had been misconduct. Further, it is significant that the Claimant also perceived the investigation at the time as being an investigation into her sex life and described it as such in her allegations in these proceedings, even though she had not seen Dr Pycroft's letter until the second day of the hearing.

145. At the point that Dr Pycroft drew up the allegations the evidence that the Claimant was having an affair with Chris was very limited, being a photo and WhatsApp messages (which have never been disclosed), and Dr Okon's and Ms Bassey's/Ms Grant's allegations, which he knew the Claimant denied. Given that the Respondent ultimately accepted it was irrelevant to misconduct whether or not the Claimant was having an affair with Chris, we would expect a clear explanation from Dr Pycroft as to why he in effect instructed an unnecessary investigation into the Claimant's sex life on the basis of such limited evidence. However, Dr Pycroft did not even recognise that this was what he had done, so no explanation has been forthcoming. We find that, subconsciously, the Claimant's race has played a part here in Dr Pycroft's thinking and that this is the missing element that explains the treatment. We find that Dr Pycroft was subconsciously influenced by the racial factors that we have identified in our overview of the allegations above.

146. The third factor specific to this allegation concerns the drawing up of the third allegation. In the third allegation, drawn up by Dr Pycroft himself, he accuses the Claimant of misconduct in not reporting concerns about YAF's financial management or the decision to terminate the Accountable Grant to him personally. He does so even though the standard procedure would be for these matters to be reported to the line manager, not to Dr Pycroft personally. The Conflicts policy requires discussion with line managers and Mr Stevens' own handling of the termination of the Accountable Grant, and forwarding of the email on 30 September 2019 to John Primrose, show that concerns regarding management and termination of grant are normally handled at line manager level. However, in drawing up the third allegation, Dr Pycroft elevates the allegation and overstates the case in a way that is unreasonable. Again this factor would not on its own lead us to draw an inference of race discrimination, but in combination with other factors it does.

147. Putting all these matters together, we conclude that the Claimant was less favourably treated because of her race in the drawing up of the allegations by Dr Pycroft.

c. Retrospectively characterising the Claimant's decision to terminate YAF's grant as improper, despite having supported it at the time.

148. We begin by noting that Ms Warrander's conclusion was that the Claimant had not done anything improper in terminating the grant, save that Ms Warrander (wrongly) found that the Claimant had not discussed it with senior management at all, when in fact she had discussed it with Mr Stevens as he has always accepted. However, this allegation is directed at Mr Stevens' move from a position at 30 September 2019 of completely supporting the

decision to terminate the grant, and not initially being at all concerned to see reference to YAF having been put on a PIP by the Claimant in Dr Okon's email of that date (a point evidenced by the fact that he refers to the PIP in his reply to Dr Okon in supportive terms before even asking the Claimant about it), to describing the Claimant's termination email as *"quite aggressive"*.

149. We find that the Claimant's race has played a part here. In our findings of fact we have explained why we consider that the description of this email as *"quite aggressive"* was unreasonable (see paragraph 53). That Mr Stevens described it like this is thus therefore part of the unreasonable conduct that has overall contributed to our inference that the Claimant's race has influenced the Respondent's treatment of her. Further, as already noted in the overview section above, the word *"aggressive"* is significant because of the stereotypical assumption that Black people are more aggressive. In this case, in combination with the other factors we have identified, we find that Mr Stevens' use of language here also reveals the racial element to the unreasonable treatment of the Claimant.

d. On 27 November 2019, requiring the Claimant to attend an investigation interview while withholding key information and evidence about the particular accusations against her.

150. We do not find that there was anything unreasonable in this and it is not race discrimination either. It is relatively common practice for the first interview in an investigation process to be undertaken before disclosure of documentary evidence, Ms Palmer confirmed this was the norm at the Respondent and the Respondent's procedures do not require anything different.

e. Conducting an unjustified intrusive investigation into the Claimant's sex life.

151. We find this allegation to be made out for the reasons set out at paragraphs 144-145 above.

f. Devaluing and dismissing the Claimant's opinion over alleged corruption and financial mismanagement at YAF.

152. We find this allegation to be made out. We consider that the Claimant's opinion over alleged corruption and financial management at YAF was looked at by Ms Warrander superficially and with unwarranted suspicion. Ms Warrander seems to have taken the view that the Claimant was 'laying false trails' in order to divert attention from what Ms Warrander viewed as the Claimant's own misconduct. In her witness statement at paragraph 57 Ms Warrander indicates that at the outset she considered that the Claimant was raising important points that should not be dismissed but that ultimately she concluded that *"many of the Claimant's allegations were based on information taken out of context"* and that it *"appeared as though the Claimant had a personal agenda, was upset and stressed about the dismissal of Mr Anyim*

and her judgment about YAF was clouded". This is not quite what she said in her report at the time, but her conclusions in the report reflect the view she has expressed in the witness statement. Those conclusions are in our judgment flawed for a number of reasons as follows:-

a. They were reached without putting any of the points on which she relies to the Claimant. Because Ms Warrander undertook her investigation into the Claimant's allegations only after her single investigation interview with the Claimant, she never saw or considered the Claimant's answers to her points as set out in the Claimant's commentary on the version of the report that we have in the bundle.

b. They are conclusions formed with the benefit of hindsight, without any consideration as to what was known to the Claimant at the time (such as whether the Claimant was aware that Insignia was in the Delivery Chain Map emailed on 18 March 2019 – her position as it appears from her comments on the investigation report is that she was not). It is what was known to the Claimant at the time that was relevant to the question of whether the Claimant was justified in raising concerns about YAF.

c. Ms Warrander in her report was overly focused on the Claimant's errors in her analysis of the financial information known about YAF at the outset of the grant. She failed to look at the bigger picture which included that: (i) YAF had at the outset been acknowledged as financially insecure, hence the decision to release the grant only in small tranches (so how insecure really did not make much difference to the point the Claimant was making); (ii) Mr Stevens gave evidence in the investigation that he shared the Claimant's view that Insignia was *"deeply suspicious"*; and (iii) Ms Warrander in her report overlooked that AAN was also critical of YAF's governance arrangements, and YAF opted out of partnering with AAN as a result, which also provided in our judgment reasonable grounds for suspicion of YAF as it could reasonably appear from that that they had 'something to hide'.

d. Ms Warrander in her report concluded that the Claimant *"engaged in micro-management beyond the oversight role associated with her SRO position"* without apparently considering whether this was how the Claimant dealt with all grant partners, which was a necessary element to consider in the context of assessing whether the Claimant had 'retaliated' against YAF in some way. (In fact, we note that there is evidence that the Claimant was generally more 'hands on' than other SROs as that was Ms Palmer's view of her work: see paragraph 32 above).

153. We therefore find that Ms Warrander's treatment of the Claimant's opinion over alleged corruption and financial management was unfair and unreasonable. There is no specifically racial element to this allegation, but

because it is part of the pattern of unreasonable conduct that has led us to draw an inference of race discrimination for the reasons set out in the overview section above, we find that this treatment was also race discrimination.

g. Believing rumours regarding the claimant spread by Antonette Grant and Ekanem Bassey.

154. In our judgment this allegation adds nothing to allegations we have already dealt with concerning the investigation into the Claimant's sex life. We make no separate finding of discrimination in relation to this allegation.

h. Inaccurately recording the notes of the Claimant's investigatory interview to support a preconceived narrative.

155. The notes were not inaccurately recorded. This allegation fails on the facts for the reasons we have set out at paragraph 75.

i. Denying the Claimant the opportunity to check the accuracy of those same notes.

156. The Claimant was in this respect treated differently to every other witness in the investigation. As most of the other witnesses were Black that does not itself indicate less favourable treatment because of race, but the Claimant's circumstances were not the same as other witnesses. She was the person accused. It was more important that she be given an opportunity to check her notes than it was for other witnesses. Ms Warrander's explanation for failing to provide the Claimant with this opportunity was essentially the same as for her failure to carry out a second investigation interview with the Claimant. For the reasons set out at paragraph 88, we find that pressure of work does not explain why Ms Warrander failed to do this at any point between 27 November 2019 and April 2020. What really happened was that she did not think (or forgot) about the need to treat the Claimant fairly. The failure to give her the same opportunity as was given to other witnesses to check the interview notes was unreasonable. It was disrespectful to the Claimant, reflective of Ms Warrander having closed her mind to the Claimant's case and symptomatic of the racial 'othering' that we find occurred. In short, the Claimant was in this respect treated less favourably than her hypothetical White comparator would have been. This allegation is made out.

j. In December 2019, failing to take seriously the Claimant's concerns over her safety and her particular concern that YAF had been monitoring her personally at her home.

157. Ms Palmer at the appeal stage considered that Mr Stevens and Mr Primrose had not acted sufficiently promptly when the Claimant raised this concern with

them. We agree. We also find that there was a failure by them to recognise the security concern about access to and observation of the Claimant's home that was implicit in the information provided by Dr Okon in the first place. As Mr Achimugu said to the Claimant, *"people can get hurt for closing grants in Nigeria"*. The failure to recognise or take seriously the potential threat to the Claimant from an aggrieved organisation monitoring her home is, as we have already set out in the overview section, indicative of the Respondent viewing the Claimant, as a Black person, as being part of the same community as Dr Okon, and thus not recognising the risk to her that we consider the Respondent would have done for her hypothetical White comparator. This allegation is made out.

l. Concluding the investigation without allowing the Claimant a proper opportunity to comment on evidence given by others against her.

158. The failure to give the Claimant a second interview was not a breach of the Respondent's policy, and in principle an employer can fairly conduct a disciplinary process in which there is no second investigation interview, but instead the evidence from the investigation is presented to the 'accused' prior to the disciplinary meeting itself and then the disciplinary meeting is the stage at which the employee is given an opportunity to respond to the evidence gathered in the investigation before conclusions are reached.

159. That did not happen in this case. Despite the large number of witnesses interviewed, and the additional documentary evidence obtained, following 27 November 2019, all of which fairness required that the Claimant be given an opportunity to comment on before any conclusions were reached, Ms Warrander (as we have already noted) drafted the investigation report as if it was the conclusion of a process in which the Claimant had been given that opportunity. (That is how it comes across notwithstanding that she used the terminology of finding a 'case to answer'.) We find as a fact that she did not highlight to Mr Curran or Dr Pycroft that she had failed to accord the Claimant the basic fairness of an opportunity to comment on the evidence she had gathered. As a result, Dr Pycroft approached the disciplinary meeting as if what was set out in Ms Warrander's report could properly be relied on as the conclusions reached following a fair investigatory process, referring to it as containing 'enough evidence' and taking the Claimant to task on the nature of her role rather than giving her an open opportunity to say what she wanted to say about the report. In his decision letter he then set out Ms Warrander's findings that there were 'cases to answer' as if they were actual findings and added no further reasoning of his own to indicate why he found them to be 'substantiated'.

160. In the circumstances, we find that it was unfair and unreasonable of Ms Warrander to conclude the investigation by writing the report in the way that she did without giving the Claimant an opportunity to comment on any of the evidence. For the reasons set out at paragraph 88, we find that pressure of work does not explain why Ms Warrander did this. What really happened was that she did not think (or forgot) about the need to treat the Claimant fairly. As

with the failure to give the Claimant an opportunity to check the notes of her interview, it was disrespectful to the Claimant, reflective of Ms Warrander having closed her mind to the Claimant's case and symptomatic of the racial 'othering' that we find occurred. In short, the Claimant was in this respect treated less favourably than her hypothetical White comparator would have been. This allegation is made out.

m. By 20 February 2020, Gail Warrander producing a slanted investigation report, which painted a picture of the Claimant as "hostile" and "aggressive" and elevated the issues from Serious Misconduct to Gross Misconduct.

161. This allegation has several elements to it, most of which we have dealt with already. Although we accept that Ms Warrander's apparent elevation of the allegations to Gross Misconduct was (on her part) an error, we find that Ms Warrander did produce a 'slanted' investigation report. It was 'slanted' in several respects: (i) because the Claimant had not been given an opportunity to comment on the evidence collected during the investigation; (ii) because it was dismissive of the Claimant's concerns about YAF; (iii) because it insinuated that the Claimant was having an affair with Mr Anyim without giving her a chance to comment on the evidence on which that was based; (iv) because of the other problems with it we have identified at paragraph 93 above; and (v) because it unwarrantedly used the language of *"hostile"* and *"aggressive"* (see paragraphs 53 and 95 above) which is indicative of racial stereotyping for the reasons set out in the overview section. In short, it was an unreasonable and unfair report written by a mind that was closed to the Claimant's case. We find that part of the reason for this is that the Claimant's race subconsciously played a part in Ms Warrander's approach to the investigation for the reasons set out in the overview section. This allegation is made out.

p. On 6 May 2020, Christopher Pycroft adopting a badgering approach at the Claimant's disciplinary hearing.

162. We find this allegation to be made out. As already noted above, Dr Pycroft's approach to the hearing was not an open one. He began from the basis that there was sufficient evidence in the investigation report, and he took the Claimant to task on her role and duties as an SRO without giving her an open opportunity to respond to the report. The overall impression is of an 'interview with the Headteacher' than a disciplinary meeting conducted with an open mind. His approach was unreasonable. It was the product of a mind that was closed to the Claimant's case, and which was overly suspicious of the Claimant. His prior email exchanges with Mr Curran make clear that he personally thought she was lying. That attitude comes across in his approach to the hearing. We would not have used the word 'badgering' ourselves, but we understand what the Claimant means and the allegation is made out. We do not think that the fact that the Claimant's union representative confirmed at the end of the meeting that they were happy with the process in any way detracts from the impression we have formed of Dr Pycroft's conduct of the

meeting. It would have been very awkward indeed for the Claimant or her union representative to have concluded the meeting by making this sort of complaint about Dr Pycroft's conduct of it and we are not surprised they did not. Although there is no specific racial element to this particular allegation, for the reasons we set out in the overview section, we find that this is a further element of the unreasonable treatment of the Claimant which, when taken together with the other evidence, leads us to infer that this was less favourable treatment because of her race.

r. On 18 May 2020, issuing the Claimant with a 12-month final written warning.

163. It follows from our findings above that this decision was based on an unfair and unreasonable investigation, which inevitably flaws the decision, but there was further unfairness and unreasonableness at the decision-making stage too. As set out in our findings at paragraphs 0-105, Dr Pycroft appears wrongly to have thought that Ms Warrander had found a case to answer on the second allegation when she had not. He also restated the allegations in the decision letter in a way that was materially unfair as he had not put to the Claimant at the disciplinary hearing the second part of the allegation that he upheld about the Claimant not having escalated to senior managers the decision to move YAF to Tier 2. He did not therefore consider the Claimant's answer to that which was that the decision to move YAF to Tier 2 had been discussed in detail with Mr Stevens as her line manager and he had not considered it necessary to escalate it further either. Ultimately, the allegations that he relies on in the dismissal letter that are properly founded on the report rather than misreadings of it come down to the failure to declare the COI on HAGRID (something normally dealt with by the Respondent informally) and the failure to report her fraud concerns earlier to senior managers. We are not satisfied that the latter allegation is sufficient justification or explanation for Dr Pycroft moving up two levels on the Respondent's procedures from the normal informal handling of a failure to declare a COI to a Final Written Warning. Quite apart from the errors and elements of unfairness apparent on the face of the decision letter, there is a strong sense that the decision to issue a Final Written Warning rather than a lesser sanction was because Dr Pycroft suspected that the Claimant was lying or, at any rate, guilty of more misconduct than had ultimately been upheld. For the reasons set out in the overview section we infer that the reason for this unfair and unreasonable treatment, and suspicion of the Claimant, is connected with the Claimant's race. We do not think a hypothetical White comparator would have been treated this way.

t. In May 2020, Chris Pycroft dismissing the Claimant's grievance against Ekanem Bassey and Antonette Grant (re: malicious rumours) without proper investigation, or speaking to the Claimant.

164. The Claimant's grievance against Ms Bassey and Ms Grant was dismissed by Ms Warrander in the report in one sentence and was not dealt with by Dr Pycroft at all despite the Claimant raising it at the disciplinary meeting. This is

further unreasonable conduct symptomatic of the dismissive way that the Claimant was being treated by the Respondent and the 'othering' that has occurred. For the reasons set out in the overview section, we infer that the Claimant's race has materially influenced Ms Warrander's and Dr Pycroft's treatment of the Claimant in this respect.

u. From 29 May to 10 August 2020, Debbie Palmer failing as part of the appeals process to properly investigate the Claimant's complaint that her investigation and disciplinary process had been racially biased.

165. Ms Palmer did consider the Claimant's complaints of race and sex discrimination as part of the appeal process. She questioned her sensitively on these matters in the appeal meeting and addressed the allegations in the report. We accept her evidence that it is not normal on appeal to interview further witnesses and that the reason she did not do so in this case in relation to the discrimination allegations was because she genuinely considered that there was not enough to suggest that the Claimant had been less favourably treated because of her race (or sex). Although we have, with the benefit of a full Tribunal hearing, reached the conclusion that the Claimant was discriminated against because of her race, we do not consider that Ms Palmer acted unreasonably in not recognising this, or investigating the allegations further, as part of the appeal. While there were more clues to discrimination than the words *"aggressive"* and *"hostile"* on which Ms Palmer focused, there is a limit to what can reasonably be expected of an internal appeal process. In general terms, we find that Ms Palmer approached the appeal thoroughly, conscientiously and we were impressed both with the conduct of the appeal hearing (as reflected in the notes) and the careful, thoughtful decision letter that she produced. Perhaps more importantly, to the extent that Ms Palmer approached the allegations of discrimination with scepticism, we find ourselves unable to imagine that she would have taken any different approach to allegations of racism by a person of any other race (or indeed allegations of any other form of discrimination). We further find that Ms Palmer's comments about the Claimant not being 'visible enough' were her genuine views founded in objective evidence that she was able to describe both in her previous appraisal of the Claimant and in the appeal meeting. We do not find the Claimant's race played a part in her forming that view of the Claimant. Nor do we find that her confusion over the allegations against the Claimant is indicative in her case of any discriminatory element, but is rather a product of the confusion over the allegations that had been created by Dr Pycroft's careless and discriminatory approach at the first stage of the process. As such, we find that Ms Palmer's failure to carry out further investigation of the discrimination allegations as part of the appeal did not constitute race discrimination.

v. On 10 August 2020, Debbie Palmer downgrading the Claimant's Final Written Warning to a First Written Warning, instead of removing any warning, and

allowing that downgraded warning to remain effective for the balance of the term provided for the Final Written Warning, i.e. until 18 May 2021.

166. For the reasons set out above, we do not consider that race discrimination played a part in Ms Palmer's conduct of the appeal, and we do not consider that it played a part in her decision to downgrade the sanction to a First Written Warning rather than removing the warning altogether. The Claimant in her appeal letter had accepted there should be some sanction and the degree of misjudgment on her part in relation to failure to declare this particular COI on Hagrid was in our view significant, plus the circumstances in which the failure came to light had occasioned reputational risk for the Respondent so some warning was appropriate. An informal warning would still have been an option, but a First Written Warning is not an unreasonable outcome and we are satisfied that the Claimant's race played no material part in Ms Palmer's thinking.

w. From 10 August 2020 to date, Debbie Palmer failing to follow through on her promise to address with the Nigerian office the acknowledged failings in its handling of the Claimant's disciplinary process.

167. This allegation is not made out on the facts because Ms Palmer did take those steps: see paragraph 111 above.

y. Throughout the disciplinary process failing to provide the Claimant with proper support, both in terms of her wellbeing and her personal security.

168. Ms Palmer found that the Claimant had not been provided with proper support during the process in terms of her wellbeing and her personal security, and we agree. We have also made further findings in relation to her personal security above. To these elements, we add that we find that the length of time that the process took, from November 2019 to May 2020 was unreasonable. The last witness interview was in January, but the report was not sent to the Claimant until 6 May 2020. The pressure of work on Ms Warrander partly explains this delay, as does the advent of the Covid pandemic. We accept that this was a busy period, but we find that this does not wholly explain the delay either in producing the report or sending it to the Claimant. We find that there was in this delay a lack of care for the Claimant's well-being that is again symptomatic of the 'othering' that we have identified. We find that the treatment of the Claimant in all these respects was influenced by her race for the reasons that we have set out in the overview section above.

z. From March 2020 until February 2021, being excluded and existing outside any team or management arrangement

169. We find that work was available during this period, including in relation to Operation Yellowhammer and the Covid response, but the Claimant was not offered that work, whereas Cathy Welch was. While the circumstances of

Cathy Welch were not materially the same as the Claimant's (since she was a contingent liability for much longer and not subject to disciplinary proceedings for part of that period), what is clear is that there was work available which could have been offered to the Claimant but was not. We find that this was because relations between the Claimant and her team had broken down as a result of the disciplinary process and the way the allegations were handled by Ms Warrander, Mr Stevens and Dr Pycroft. For the reasons set out above, we find that the way in which the Claimant was treated by them during that process, and the extent to which she was 'othered' by them, not supported and thus 'pushed away' from the team was related to her race. In reaching that conclusion we have not overlooked Dr Pycroft's and Mr Stevens' view that it was the Claimant who distanced herself from the office following the raising of the allegations, but we find that it was the Respondent's treatment of her which was the operative cause in the breakdown of relations rather than the Claimant's actions. Since the Claimant's race played a material part in the breakdown in relations, it follows in our judgment that it also played a material part in the failure to offer her more work during the time that she was a contingent liability. This too was therefore race discrimination.

Time limits

170. The discrimination that we have found proved above amounts in our judgment to a continuous course of conduct that began in November 2018 and was ongoing at the point that the Claimant commenced these proceedings in November 2020. As such, the claim is in time and no issue as to time limits arises.

Overall conclusion

171. The unanimous judgment of the Tribunal is that the Respondent contravened the Equality Act 2010 by directly discriminating against the Claimant because of her race contrary to ss 13 and 39(2)(d) as set out in this judgment.

172. The issues in relation to remedy will be determined at the Remedy Hearing currently listed for 10 February 2021 (time estimate 1 day).

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Employment Judge Stout

24 November 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

26 November 2021

FOR THE TRIBUNAL OFFICE

Where reasons for any case management decision were given orally at the hearing, written reasons will not be provided unless they are asked for by a request in writing presented by any party under Rule 62(3) within 14 days of the sending of this judgment.