

IN THE INDUSTRIAL TRIBUNAL

Case No. Ind Tri 21/2016

BETWEEN:

HONOR HANCOCK

Complainant

-AND-

CORAL INTERACTIVE (GIBRALTAR) LIMITED

Respondent

DECISION

The decision of the Tribunal is that the Complainant's complaint that the Respondent contravened the Employment (Bullying at Work) Act 2014 is not well founded and fails.

Chairperson: Gabrielle O'Hagan

For the Complainant: Christopher Blunt of Counsel, instructed by Phillips Barristers & Solicitors

For the Respondent: Christian Rocca, of Counsel, instructed by Isolas

History of the proceedings

1. The Respondent is an online gambling company. The Complainant was employed by the Respondent as a Senior Partnership Manager from 23 November 2015 until 5 April 2016 when her employment was terminated summarily. The Complainant appealed with the appeal decision being given on 8 June 2016.
2. The Complainant filed an Originating Application on 1 July 2016 making claims: for unfair dismissal; under the Employment (Bullying at Work) Act 2014 ("the Act"); under the Working Time Act 1999; and under the Equal Opportunities Act 2006. No particulars of the claims were provided.

3. The Respondent, in its Notice of Appearance filed on 14 July 2016 with Grounds of Resistance dated 12 July 2016, stated that the Complainant was dismissed for gross misconduct and that she did not have the required continuity of service to bring a claim for unfair dismissal. It also required better particulars of the Complainant's other claims.
4. By an Order made at a Preliminary Hearing on 31 August 2016, the Complainant having given notice of the abandonment of all of her claims save for her claim under the Act, inter alia, the other claims made in the Originating Application were dismissed. The Complainant was Ordered to file and serve full particulars of her surviving claim (under the Act) and the Respondent to file and serve full particulars in response.
5. In her Particulars of Complaint dated 14 October 2016, the Complainant avers that she was: (i) subjected to bullying in breach of the Act on 9, 11, 16 and 18 March 2016; and (ii) subjected to victimisation in breach of the Act, namely, that as a result of a complaint by her to the Respondent's Head of Human Resources ("HR"), she suffered less favourable treatment in the form of a withdrawal of support in her attempt to deal with the issues surrounding the performance of an employee, an undermining of her authority as line manager on 18 March 2016, her suspension on 21 March 2016 based on alleged misconduct 10 and 12 days previously which had not been raised with her in the intervening period, an unfair investigation and disciplinary process and dismissal and an unfair appeal process and decision.
6. A pre-trial review Hearing took place on 15 March 2017. The substantive Hearing was originally listed to start on 19 June 2017, but, following applications first by the Respondent alone and subsequently by the parties by consent, was re-listed twice and eventually took place on 22, 25, 26 and 29 September 2017.
7. The Tribunal heard evidence from the Complainant and 8 employees and one former employee of the Respondent.
8. On 5 October 2017, the Complainant made an application for a stay of judgment for the parties to agree alleged outstanding issues in relation to disclosure, which was opposed by the Respondent and which I dismissed at an interim Hearing on 16 November 2017, primarily because, with regard to the manner in which the application had been made, I did not consider that a stay was in the interests of justice at such a late stage in the proceedings. During that interim Hearing, Phillips Barristers & Solicitors came off the record for the Complainant.

Disclosure

9. Throughout the pre-Hearing proceedings and the Hearing, and by way of the Complainant's application resulting in the interim Hearing on 16 November 2017, issues were raised by the Complainant in relation to the Respondent's disclosure. The Complainant alleged that there was a significant amount of material which was not disclosed by the Respondent, which should have been. The Respondent denied all such allegations. It had carried out its search and provided copy disclosure electronically, and then (at the Complainant's request) carried out 3 further searches

electronically using different search terms and provided further copy disclosure. It took the position that the Complainant/her Counsel had not been able to identify the documents in question through no fault of the Respondent, and that they had been provided.

10. I advised the parties during the Hearing and at the interim Hearing on 16 November 2017 that it was within my discretion to draw inferences if I considered that I did not have before me evidence which I would have expected to see which might assist my considerations.
11. At the end of the first day of the Hearing (a Friday), I made a specific disclosure Order requiring, inter alia, that the Complainant produce by 2.30 pm on the following Monday a list of documents allegedly not disclosed by the Respondent. On the Monday afternoon, in the interests of avoiding delay, the Complainant, having failed to comply with the Order, requested to withdraw her application for specific disclosure - on the basis that I would be able to draw inferences from omissions in the Respondent's disclosure. The Respondent objected on the ground that there were no omissions. I made an Order that the previous Order would fall away but that there was nothing in the material which had been disclosed from which I could draw any inferences in respect of the Respondent's disclosure.
12. I made no other findings on the Respondent's disclosure exercise; I was not requested to do so. I did consider, as I stated at the Hearing and at the interim Hearing on 16 November 2017, that I would have expected to have seen in the Hearing Bundle significantly more Respondent internal correspondence. The Respondent assured me that this had been disclosed to the extent it existed. This does not explain why it was not included within the Hearing Bundle, however.

The Law

The Employment (Bullying at Work) Act 2014 ("the Act")

13. Section 4 of the Act defines "bullying" as follows:-

"Meaning of bullying.

4.(1) A person ("A") subjects another person ("B") to bullying where A engages in conduct which has the purpose or effect of causing B to be alarmed, distressed, humiliated or intimidated.

(2) In subsection (1) the reference to conduct includes—

(a) persistent behaviour which is offensive, intimidating, abusive, malicious or insulting;

(b) persistent unjustified criticism;

(c) punishment imposed without justification;

(d) changes in the duties or responsibilities of B to B's detriment without reasonable justification.

(3) Bullying does not include reasonable action taken by an employer relating to the management and direction of the employee or the employee's employment."

14. Under Section 6(1) of the Act: *"An employer (A) must not, in relation to employment by A, subject an employee (B) to bullying."*

15. Section 6(5) provides:-

"An employer will not be in contravention of subsection (1) in relation to a complaint of bullying where he can show—

(a) that at the time of the act or acts complained of—

(i) he had in force a Bullying at Work Policy in accordance with the Schedule; and

(ii) he has taken all reasonable steps to implement and enforce the Bullying at Work Policy; and

(b) as soon as reasonably practicable, he takes all steps as are reasonably necessary to remedy any loss, damage or other detriment suffered by the complainant as a result of the act or acts of which he complains."

16. Section 5 of the Act defines "victimisation" as follows:-

"Meaning of victimisation.

5.(1) A person ("A") victimises another person ("B") if A treats B less favourably than A treats or would treat other persons in the same circumstances and does so by reason of the fact that, or by reason of A's knowledge or suspicion that, B has—

(a) brought or intended to bring, or intends to bring, proceedings under this Act;

(b) given or intended to give, or intends to give, evidence or information in connection with proceedings under this Act;

(c) otherwise done, intended to do, or intends to do, any other thing under or by reference to this Act;

(d) has alleged or intended to allege, or intends to allege that A or any other person has contravened this Act."

17. Section 7 provides:-

"An employer (A) must not subject an employee of A's (B) to victimisation—

(a) as to B's terms of employment;

- (b) *in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;*
- (c) *by dismissing B;*
- (d) *by subjecting B to any other detriment."*

18. Under Section 10 of the Act:-

"Burden of proof":

"Where, on the hearing of the complaint, the complainant proves facts from which the Tribunal could, apart from this section, conclude in the absence of an adequate explanation that the respondent has contravened this Act, the Tribunal shall uphold the complaint, unless the respondent proves that he did not contravene this Act."

19. The standard of proof in the Tribunal is on the balance of probabilities, in other words, whether something was more likely than not.

Interpretation of the Act

20. Outside the Act, no statutory definition of bullying exists; and there is no equivalent of the Act in the law of England and Wales ("E&W") – it is a Gibraltar-born animal. There is also no guidance to be drawn from previous case law on the Act, as this is the first case to reach the Decision stage. During the Hearing, I encouraged both Counsel to provide assistance with the interpretation of bullying and also victimisation under the Act. In respect of victimisation, Counsel agreed that there was no requirement that the employee has to make express reference to the Act. It was also not disputed that the less favourable treatment can be suffered before or after proceedings under the Act are alleged or a complainant takes any action by reference to the Act.

21. Bullying allegations are often included as part of claims under the E&W and also Gibraltar discrimination and anti-harassment legislation. In addition, bullying issues often arise in the context of employment claims involving breach of the implied mutual duty of trust and confidence and for personal injury.

22. The 4 sentiments specifically prescribed in Section 4(1) of the Act are strong ones. They are not defined, but in my view their ordinary meanings include –

- **alarmed** – frightened;
- **distressed** - deeply upset;
- **humiliated** – made to feel ashamed, stupid; and
- **intimidated** - coerced, frightened, especially with threats.

23. Save for the Section 4(2) bullying conduct examples, Section 4(1) also does not define, limit or qualify the word "*conduct*". I consider that the employer's conduct should be assessed subjectively and can be an isolated action or manner of behaviour or a series of actions or manner of behaviour. Although the employer's

conduct may be unintentional, I also consider that the conduct must be of sufficient force and I think will generally carry some element of injustice – in order to cause (or be intended to cause) the serious adverse sentiments prescribed in Section 4(1). This is confirmed by the 4 Section 4(2) bullying conduct examples, 3 of which involve conduct towards the victim which is without justification, including "(c) *punishment imposed without justification*". I also consider that the conduct in question will often carry an element of an abuse or misuse of power, and this is reflected in Section 4(1) of the Act by use of the verb "*subjects*" and by the examples of bullying provided in Section 4(2).

24. All that is required under Section 4(1) of the Act is that the bully's conduct has "*the effect of causing*" the victim to be alarmed, distressed, humiliated or intimidated and the alleged bully's intent may therefore be irrelevant when assessing the effect of the conduct complained about. But there is a line of E&W authority, with which I agree, that when assessing "effect" it is unlikely to be the case that the purpose of the counter-party is completely irrelevant, since the context in which a statement is made or an act undertaken is likely to be material and relevant to assessing effect.
25. Further, I find that, depending upon the circumstances, a dismissal may constitute bullying under the Act: I agree with the arguments of Counsel for the Complainant on this issue, that Parliament cannot have intended that dismissals effected in breach of the Act should be lawful. Section 4(3) of the Act, "*Bullying does not include reasonable action taken by an employer relating to the management and direction of the employee or the employee's employment*", is in my view the necessary correlative exclusion, since it must be that many employees facing a performance, disciplinary or dismissal process will feel some degree of alarm, distress, humiliation and/or intimidation. Without Section 4(3), employers would be exposed to claims under the Act whenever taking disciplinary/dismissal action in respect of employees. I note however that such action must still be "reasonable" on the part of the employer to benefit from the Section 4(3) exclusion.
26. The Respondent did not try to invoke the Section 6(5) Bullying at Work Policy defence because its position is that the Complainant did not make a complaint to it as referred to in that Section. Accordingly, I shall leave consideration of the defence for another case and to another of my fellow Chairpersons.

The facts

27. 8 February 2016: another employee of the Respondent, Mr Tom Hanrahan, was transferred to the Complainant's department and she became his line manager. The Complainant says that Mr Hanrahan failed to take her management instructions, "*was often tardy*" and resisted regular one-to-one meetings with her, which were new to him. The Complainant quickly referred the issue to her line manager, Mr Alexis Zamboglou. In its Grounds of Resistance, the Respondent does not deny this and says that the Complainant caused the conflict with Mr Hanrahan by trying to micromanage him, which he did not need; and that Mr Zamboglou met with both individuals on a number of occasions to try and improve the situation. The Respondent says that Mr Zamboglou: "*continually sought to try and provide assistance and support to the Complainant*".

28. 22 February 2016: the Complainant passed her probation period.
29. 9 March 2016: in her Particulars of Complaint, the Complainant alleges that Mr Hanrahan shouted at her in a one-to-one meeting, which caused her to feel alarmed, intimidated and distressed, that she reported this to Mr Zamboglou and they discussed (by Skype messages) how best to deal with the matter, including the option of the issue of a verbal warning to Mr Hanrahan. The Skype messages between the Complainant and Mr Zamboglou on 9 March 2016 put into evidence do not in fact refer to this incident, but in fact appear to have preceded it. The Complainant's first message in fact refers to a message from Mr Hanrahan in which he says he cannot attend certain meetings and says only: "*The Tom issue is escalating. would you mind if we have a quick chat? I want to give him a verbal warning*".
30. The Complainant says in her Witness Statement that she "*reported this shouting incident*" to Mr Zamboglou in a meeting on 11 March 2016 and that she was going to suggest putting Mr Hanrahan on a performance review as an alternative to a verbal warning. She also says in her Particulars of Complaint that the incident was never dealt with appropriately or at all.
31. The Respondent alleges in its Grounds of Resistance that the Complainant told Mr Zamboglou that both individuals had been shouting, albeit that this was started by Mr Hanrahan; and that Mr Zamboglou "*offered his continuing support for the Complainant and gave her the option of pursuing the matter against [Mr Hanrahan] as a disciplinary*", but the Complainant said that she did not wish to pursue this. This is reflected in Mr Zamboglou's Witness Statement with the additional comment that: "*Of course, if I thought Thomas had verbally attacked Honor I would have immediately referred the matter to Human Resources myself but as it was, Honor said that they had both been arguing and shouting at each other.*" He said in oral evidence that he at no stage felt that the Complainant felt alarmed, distressed, humiliated or intimidated by this incident. He denied that the Complainant was frightened or that that he perceived any kind of threat, but rather that she seemed "*uncomfortable*".
32. Michael McGrath, whom the Complainant also line managed, and with whom she had a positive relationship, said in his Witness Statement that he "*never noticed*" that there were any issues between Mr Hanrahan and the Complainant. The Complainant alleged in oral evidence that Mr McGrath was lying when he said this (having been shown a copy of her Witness Statement), which Mr McGrath himself denied in oral evidence. Mr McGrath said in oral evidence that the Complainant had in fact complained about things Mr Hanrahan had not done or had done not to her standard.
33. The Complainant says in her Witness Statement that Mr Hanrahan apologised to her towards the end of the meeting and that after the meeting she immediately followed up for him an issue concerning his revised contract, which he had complained about in the meeting; nor was it in dispute that Mr Hanrahan suggested going for a drink. In oral evidence, the Complainant said that she also suggested that she and Mr Hanrahan might go for a round of golf in order to try to resolve their issues and clear the air. The messages between the Complainant and Mr Hanrahan on 9 and 10

March 2016 make no reference to the incident and do not evidence anything other than quite friendly business correspondence between the two.

34. In his evidence, Mr Hanrahan denies that there was any shouting at all, but rather a heated discussion, "*a bit of a tiff, but nothing more than that*", due to the Complainant having made a mistake with sending out a brief, which left Mr Hanrahan feeling "*frustrated*".
35. What did not emerge from any of the evidence was that the Complainant was particularly disconcerted by this incident, either at the time or later. In the document prepared by the Complainant for her appeal, entitled "*Disciplinary Appeal Hearing – Honor Hancock*" dated 12 May 2016, the Complainant describes the incident, but gives no indication that she experienced any alarm, distress, humiliation or intimidation. The only possible indication that the Complainant had felt any discomfort as a result of the incident is a message from the Complainant to Mr Zamboglou 5 days later on 14 March 2016 stating: *I don't think it's a good idea for me to have my one 2 one with him on my own this Wednesday morning. I don't want to be in meetings with him without witnesses*", but she does not explain the reasons for this. If this was because she felt alarmed, distressed, humiliated or intimidated by the 9 March 2016 incident with Mr Hanrahan, this does not appear at all consistent with her suggestion to him at the end of the meeting that they go for a round of golf together (presumably, a one-on-one experience). In cross-examination, the Complainant acknowledged that she was concerned by the grievances which she was subsequently told (on 11 March 2016) that Mr Hanrahan had against her.
36. The propensity of the evidence on this incident described above, including the Complainant's own, that it ended with her suggesting going for a round of golf with Mr Hanrahan, leaves me in no doubt that the Complainant did not experience any alarm, distress, humiliation or intimidation at all as a result of the alleged shouting incident.
37. The allegation that the Respondent was somehow at fault for not dealing with the incident seems to me to be ill conceived, since, as Mr Hanrahan's line manager, it would surely be for her to initiate any necessary steps. But, when asked by Mr Zamboglou, she said that she did not wish to pursue disciplinary proceedings against Mr Hanrahan as a consequence and appeared to be continuing to focus on how to resolve his perceived performance issues.
38. 9 March 2016: one of the 3 disciplinary complaints subsequently put to the Complainant by the Respondent was that the Complainant fell asleep in a meeting on 9 March 2016. Mr Zamboglou says in his Witness Statement that, although he himself had not noticed this despite being in the meeting (he said that this was because he was seated directly next to the Complainant), he had received some informal reports. The Complainant denies the allegation, but says that, even if it had been true, it "*could be forgiven by a reasonable employer*" of an employee who was working and travelling for work as much as she was. During the Hearing, the Complainant developed a contention that this incident never happened and that it was part of the "sham" investigation/disciplinary process instigated against her (which I consider in detail below).

39. No Witness Statements were put in by the Respondent for the persons who had made the informal reports. These were also anonymised during the disciplinary proceedings. At the Complainant's request, the Respondent called to give evidence at the Hearing one of the report-makers: Ms Georgina Gomez. Ms Gomez was very clear that she had indeed seen the Complainant falling asleep in a meeting, that she had spoken to Mr Zamboglou about it the same week because, she said, she wanted to make sure the Complainant was "okay", and that sometime afterwards, Mr Zamboglou and Serena Jassal (HR Business Partner) had asked her into a short meeting to confirm what she had seen.
40. I did not find either Ms Gomez' or the Complainant's oral evidence on this issue very persuasive. Ms Gomez failed to make clear why she had taken it upon herself to report a colleague in this manner. However, on the balance of probabilities, namely 2 reports (albeit anonymised) corroborating each other, I find it more likely than not that the Complainant did fall asleep at the meeting in question and this was reported to Mr Zamboglou.
41. 11 March 2016: in her Particulars of Complaint, the Complainant alleges that Mr Zamboglou told her that Mr Hanrahan was to be transferred (although this never happened). In its Grounds of Resistance, the Respondent denies this, although it admits that the Complainant raised with Mr Zamboglou the possibility of Mr Hanrahan transferring, which is confirmed by Mr Zamboglou in his Witness Statement. The February 2016 email correspondence on the subject put into evidence shows that all parties were well aware that Mr Hanrahan had asked to leave the Complainant's department but had been told there was not an alternative position available and he had then been given his options resulting therefrom. In cross-examination, Mr Zamboglou admitted that the email correspondence records the correct position and that his recollection of this issue was "*wrong*".
42. 11 March 2016: the Complainant alleges in her Particulars of Complaint that on the same day, she went to the HR Department to discuss a recruitment matter and she requested a copy of the Respondent's Disciplinary & Grievance Policy. She was consequently, according to the Complainant, invited into a meeting room by Ms Katie Hirst, the Respondent's Head of HR, who asked her why she had requested the Policy. The Complainant says that Ms Hirst then:
- (i) without reasonable basis, accused her of making threats against Mr Hanrahan because she was looking to issue Mr Hanrahan with a verbal warning;
 - (ii) without reasonable basis and in a derogatory tone, accused her of being emotional;
 - (iii) having only just met the Complainant and without any explanation, described her as being a "fiery red";
 - (iv) suggested that the Complainant and Mr Hanrahan should take an "insight personality test" and discuss each other's weaknesses, which the Complainant refused as she did not wish to "*allow her subordinate to discuss her "weaknesses"*";
 - (v) said twice that Mr Hanrahan had raised a grievance against the Complainant, but not formally in writing; and

- (vi) said that the Complainant would not be believed over Mr Hanrahan as he had been working for the Respondent for much longer than the Complainant, which the Complainant says was intimidatory and threatening and was an attempt by Ms Hirst to pressure the Complainant into withdrawing her grievance against Mr Hanrahan.
43. The Complainant alleges that Ms Hirst thereby bullied the Complainant, since Ms Hirst was in a position of authority and all of these statements had no reasonable basis, were unreasonable and/or unjustified; and had the purpose and/or effect of causing the Complainant to feel alarmed, intimidated and distressed.
44. In her Witness Statement, the Complainant describes the meeting as: "*not friendly or supportive to begin with. KH was hostile and attacking me*". She goes on to say that, as a result of the Complainant trying to diffuse it, "*the hostility of the meeting had mellowed*" eventually. Mr Zamboglou subsequently joined the meeting (at Ms Hirst's request) and, according to the Complainant, a discussion of ways to manage Mr Hanrahan's performance ensued. Mr Zamboglou: "*requested that he wanted to put TH on performance review ... KH was due to meet with TH on Tuesday 15 March, and I was to compile a list of tasks and documents which TH had not delivered to me*" prior to that meeting. "*I concluded the meeting with summarising my emotions – 'if you want me to describe my emotions now, I am 'worried' for the results and I am 'exhausted'*".
45. The Respondent's description of this meeting in its Grounds of Resistance is entirely different. It says that, having only had the opportunity to meet the Complainant at her induction, Ms Hirst asked the Complainant how she was and that the Complainant responded by informing her of the issue with Mr Hanrahan and that she wished to issue him with a verbal warning. In Ms Hirst's Witness Statement (and confirmed by her in oral evidence), she says that the Complainant told her that she had in fact already issued the verbal warning and that, as a result, Ms Hirst asked the Complainant into a meeting room to have a discussion, as usual practice was for HR to be involved in all disciplinary matters and also because Ms Hirst wished to clarify whether the Complainant had preceded the warning by any investigation. Ms Hirst went on to say that she tried to explain to the Complainant the importance of following the Respondent's Disciplinary & Grievance Policy in conjunction with HR, the fact that a verbal warning did not form part of the Policy, and that she recommended that, as the Complainant had not followed the Policy, it might be better to consider informal approaches as an initial step. According to the Respondent, Ms Hirst also suggested using the "Discovery Insights" tool, which the Respondent uses throughout the organisation, with the objective of assisting the Complainant and Mr Hanrahan to work better together. The Respondent denies that any threats or any of the prejudicial comments alleged by the Complainant were made by Ms Hirst and states that the meeting was "*friendly and supportive*".
46. In respect of Mr Hanrahan's alleged grievance against the Complainant, the Respondent states only that Mr Hanrahan had advised the HR Department that he wished to raise a grievance against the Complainant, but had not proceeded to do so. Mr Hanrahan said in evidence that he had spoken to Ms Hirst about the fact that he found the Complainant difficult to work with and other possible roles

for him in the company. He also said that Ms Hirst had advised him that the Complainant had reported to her that he had shouted at her in a meeting, which he was surprised to hear since he thought that they had had "a heated conversation and nothing more".

47. The Respondent denies that Ms Hirst told the Complainant that Mr Hanrahan would be believed over her: "*simply due to his time with the Company. [Ms Hirst] made it clear that she was there to offer support*".
48. The differences in the accounts between the Respondent's Grounds of Resistance and Ms Hirst's Witness Statement, most notably: the late admission that Ms Hirst had invited the Complainant into a meeting room; the fact that Ms Hirst says, contradicting the Grounds of Resistance, that the Complainant told her that she had already issued Mr Hanrahan with a verbal warning, but no witness, including the Complainant, Mr Hanrahan himself or Mr Zamboglou, gave evidence that the Complainant had done so; and also the Grounds of Resistance description of the meeting as "*friendly and supportive*" which contrasts strongly with Ms Hirst's evidence that she felt that the Complainant was not listening to her and that she had to remind her "*repeatedly*" and "*kept advising*" her of process (showing some frustration at least), all raise questions about the reliability of Ms Hirst's evidence in respect of this incident.
49. Other inconsistencies in connection with this incident emerged in evidence, stemming I think from a confusion between the Complainant's option of either filing a grievance or initiating disciplinary proceedings against Mr Hanrahan, based on the 9 March 2016 alleged shouting incident, neither of which options she pursued, the Complainant's concerns about managing Mr Hanrahan's performance, and Mr Hanrahan's own alleged complaint/grievance against the Complainant. The Complainant's position is that she at no stage did or intended to pursue a grievance against Mr Hanrahan. But then it cannot be the case, as alleged by the Complainant, that Ms Hirst would have acted in a way aimed at pressurising the Complainant to withdraw such a grievance. It is in my view more likely that the Complainant raised with Ms Hirst the possibility of issuing Mr Hanrahan with a verbal warning (which would be consistent with her asking for the Respondent's Disciplinary & Grievance Policy) and that a discussion of this then occurred. The Complainant and Ms Hirst agree on some of the broad subjects discussed (the Discovery Insights tool and the Complainant's handling of Mr Hanrahan), although not the way in which they were raised or the details, I consider that neither woman had an unflawed recollection of this meeting and that in both cases the recollection was perhaps unconsciously distorted with hindsight.
50. What was clear was the Complainant's own description of her emotions at the end of the 11 March 2016 meeting with Ms Hirst, most notably that (beyond a bald statement that she felt the prescribed Section 4(1) emotions) there was no indication of her feeling alarm, distress, humiliation or intimidation. She did not at the meeting convey to Ms Hirst (or later Mr Zamboglou when he joined) any indication of negative emotions. When cross-examined, the Complainant was asked why she had not filed a complaint against Ms Hirst if she had as a result of the meeting experienced alarm, distress, humiliation or intimidation. She replied

that she was too busy and too tired and she wanted to avoid any contact with Ms Hirst. The nature of her feelings is most strongly put in her Witness Statement: *"quite low and stressed, and now feeling increasingly unsupported by my employers with regards to the TH situation"*. I find that, although the Complainant evidently felt worried, pessimistic and unsupported, particularly as regards how to handle Mr Hanrahan, she did not experience any stronger emotion even approaching alarm, distress, humiliation or intimidation.

51. 11 March 2016: another of the 3 disciplinary complaints subsequently put to the Complainant by the Respondent was that she was *"under the influence of alcohol"* at work on 11 March 2016 – *"two members of staff witnessed [the Complainant] smelling strongly of alcohol after arriving late at work"* (as described in the Respondent's disciplinary hearing invitation letter dated 23 March 2016). Mr Zamboglou says in his Witness Statement that he had *"smelt alcohol strongly on her breath"* during his first meeting with the Complainant that morning after she had arrived 90 minutes late, explained that she had had a late night as she had split up with her boyfriend, seemed upset and even *"more emotional"* than usual and *"was even behaving like she was a bit, as I would put it, tipsy"*. He goes on to say that at another meeting later that day with other managers, he *"noticed that she continued to smell strongly of alcohol"* and that another attendee also commented on it.
52. Mr Hanrahan said in evidence that he recalled *"one day"* when, having been out of the office for several hours, the Complainant returned and he *"could smell a strong odour of alcohol on her"*. However, he did not report this, thinking it was *"not really for me to report my manager"* and that he would not *"throw Honor under a bus like that"*.
53. Mr McGrath states in his Witness Statement that he does not recall the Complainant smelling of alcohol on that day, when he saw her briefly. In oral evidence, he said that he had never smelled alcohol on the Complainant. Ms Hirst said in evidence that she did not remember the Complainant smelling of alcohol on 11 March 2016.
54. The Complainant points out in her Witness Statement that she had 4 meetings with Mr Zamboglou and 2 meetings with HR on that day and no mention was made at any of them of her being under the influence or smelling of alcohol. Nor was she asked to go home, as she quite rightly points out would have been the response of a reasonable line manager in such circumstances.
55. Mr Zamboglou said in his very credible evidence that he had not made a report immediately *"due to the circumstances and personal issues that the Complainant was experiencing"*, because he knew that she was upset and he was trying to be supportive. He also said that the Complainant did her job on the day. After one of the meetings they attended together he told her, *"well done"*. He also sent her an email that evening praising her for *"excellent work this week"*. As was raised several times in the evidence of various witnesses, this period was also one of the busiest times of year for many of the Respondent's employees, being *"Cheltenham Week"*.

56. But Mr Zamboglou admitted in evidence and in his Witness Statement that, with hindsight, he should have acted sooner and he knew it was a "very serious matter to attend work smelling of alcohol".
57. That may be the case, but it leaves open the likelihood that on 11 March 2016 Mr Zamboglou did not genuinely believe that the Complainant was committing a gross misconduct offence, which he later decided should be investigated as such, given that he did not raise this with the Complainant informally or formally on the day or at least shortly thereafter, and instead chose to send her a congratulatory email for her work at the end of the day. Having said that, I found Mr Zamboglou's evidence for the most part credible and consistent and I consider it most probable that he thought that the Complainant had smelled of alcohol on 11 March 2016, but that at that time he did not view it as sufficiently serious for him to take action. It was only later when he decided to initiate the investigation process against the Complainant that he decided with hindsight that this did amount to an actionable disciplinary offence and he decided to add this into the other misconduct complaints against the Complainant.
58. Had this been an unfair dismissal claim by the Complainant, then Mr Zamboglou's delay in this regard might well have led the Complainant to a procedural victory. But the delay, however ill-considered (as admitted by Mr Zamboglou), does not in my finding amount to or support the Complainant's claims of bullying and victimisation under the Act.
59. The Complainant's complaints that Mr Zamboglou has not himself faced disciplinary proceedings for not immediately reporting her alleged gross misconduct, itself a gross misconduct offence under the Respondent's Disciplinary & Grievance Policy, is ill-conceived. Another employee's disciplinary status has in my view no bearing on the Complainant's claim to have been bullied and victimised under the Act. In any event, Ms Jassal confirmed in evidence that disciplinary action against Mr Zamboglou had been considered in this regard (but not pursued).
60. 11, 14, 18 & 23 March 2016: the third disciplinary complaint subsequently put to the Complainant by the Respondent was that her attendance "had reached an unacceptable level" in that she had been between 50 minutes to 2½ hours late on these 4 days. It was not in dispute that Mr Zamboglou permitted some flexibility on punctuality. The Complainant did not dispute this complaint, save for one day when she said she had not been late.
61. 14 March 2016: an allegation was made by the Complainant that Mr Hanrahan made a Facebook request to tag one of his friends on the Complainant's Facebook page. Mr Hanrahan could not recall this in cross-examination. It was not established from the Complainant's rather unclear evidence or the submissions made by her Counsel on this subject, how this amounted to an act of bullying or victimisation under the Act.
62. 14 March 2016: the Complainant alleges in her Particulars of Complaint that, at the request of Mr Zamboglou and Ms Hirst, the Complainant provided documentary evidence of Mr Hanrahan's performance failings. In its Grounds of

Resistance, the Respondent denies that it had made this request, on the basis that there were no performance issues with Mr Hanrahan and the Complainant had decided not to pursue disciplinary proceedings after the alleged shouting incident on 9 March 2016. Mr Zamboglou also says in his Witness Statement that he had not requested the copy emails, which it is not disputed were provided to him by the Complainant, but he did review them, speak to the Complainant and suggest that the Complainant should speak to HR if she felt a formal procedure were necessary.

63. The evidence on this was not conclusive either way. In a Skype conversation on 9 March 2016, Mr Zamboglou asked the Complainant to "*drop me a mail or Skype with the background*" to a message from Mr Hanrahan to the Complainant which concerned her. On 14 March 2016, the Complainant certainly told Mr Zamboglou that she had compiled a list and printouts of all work outstanding from Mr Hanrahan, and that Mr Zamboglou replied, without querying why she had done this, that he had looked at these and would follow up with Ms Hirst the following day "*after her conversation*" with Mr Hanrahan. But it is not clear whether the Complainant had undertaken this on request or off her own bat. Mr Zamboglou's oral evidence on this did not seem as prepared as the rest of his evidence. At one stage, he implied that the conversation referred to was to discuss the issue between the Complainant and Ms Hirst, but he had not been informed of this yet and subsequently in his evidence he said that the meeting was in fact between Mr Hanrahan and Ms Hirst.
64. Ms Hirst, in line with the Respondent's position on the issue, states in her Witness Statement: "*I did not ask Honor to provide documentary evidence as to Thomas' failings*". A few paragraphs later however she describes a subsequent meeting when she says that she and Mr Zamboglou "*asked [the Complainant] to be more specific about how she felt Thomas underperformed in his role*". I think it entirely understandable that the Complainant took this to include her providing the emails to Mr Zamboglou, as described above.
65. Although such considerations make the Complainant's version of this incident more plausible than Mr Zamboglou's and Ms Hirst's, this incident could not amount to and was not pleaded as an alleged act of bullying or victimisation.
66. 16 March 2016: it is not in dispute that the Complainant and Ms Hirst had a further discussion initially quite amicably about Mr Hanrahan and also the Discovery Insights tool. However, the Complainant alleges in her Particulars of Complaint that she also: "*took the opportunity to tell Ms Hirst that she was unhappy with the way Ms Hirst had treated her on the 11th March 2016. The Complainant indicated that it would be her preferred route to resolve her grievance informally with [Ms Hirst] directly rather than approach Ms Hirst's Line Manager. ... The Complainant then explained to Ms Hirst that in the 11th March 2016 meeting she felt intimidated by being: (i) Psycho-analysed and described as a "Fiery Red" (ii) told that she would not be believed over Mr Hanrahan simply because he had been working for the company for a much longer period of time*". In her Witness Statement, the Complainant also says that she told Ms Hirst that she was "*unhappy*" because she felt that she "*was under attack and unsupported by her*". The Complainant says that she additionally raised another complaint

about the 11 March 2016 meeting, namely, that Ms Hirst had mentioned to her problems with colleagues of the Complainant, which she felt was unprofessional.

67. The Complainant states that in response Ms Hirst sought to further intimidate her and thereby bullied her by: (a) unjustifiably intimidating her by stating that she had a propensity to raise grievances against senior employees; and (b) incorrectly stating that she had raised complaints against Mr Zamboglou as well as against the Respondent's Director of Marketing, which statements had the purpose or effect of causing her to feel alarmed, intimidated and distressed. In her Witness Statement, the Complainant says that she replied to Ms Hirst that she had not made such complaints and that she: *"told KH not to come between my line manager AZ and me by inventing problems that did not exist"*. She says that she also told Ms Hirst that she did not have a complaint against the Director of Marketing.
68. In her Witness Statement, the Complainant says that she then returned to her desk and immediately reported to Mr Zamboglou her discussion with Ms Hirst. She says that she knew that she: *"was visibly shaken by KH's repeated demeanour towards me ... and I was aware that my voice was also shaking ... I said to Alexis that I felt that KH was trying to drive a wedge between us and between myself"* and the Director of Marketing. *"I ended my brief report to Alexis by saying "I don't know what her issues are but she's making trouble for me"*.
69. In his Witness Statement, Mr Zamboglou makes no reference to this, but only that he and the Complainant had discussed Ms Hirst's suggestion that the Complainant consider using the Discovery Insights tool and the Complainant's unwillingness to do so due to not wanting to be "psychoanalysed". Mr Zamboglou also comments that he too was a "fiery red" on the test.
70. In its Grounds of Resistance, the Respondent states that it was during this discussion that Ms Hirst referred to herself as being a "fiery red", in the context of the Discovery Insights tool which had identified Ms Hirst as having a "red" management style; and that Ms Hirst: *"advised the Complainant that she could perhaps see a little of the same management style exercised by the Complainant. At no stage was the Complainant psychoanalysed or told that only [Mr Hanrahan] would be believed"*. The Respondent alleges that the Complainant then went on to put general complaints about Mr Hanrahan, Mr Zamboglou and the Respondent and Ms Hirst asked her to specify the nature of these complaints.
71. Ms Hirst describes the meeting in her Witness Statement as calm and friendly, which opened in a quite sociable manner and moved on to a discussion about the Discovery Insights Tool, with Ms Hirst sharing with the Complainant her own beneficial experience of using it. She said in cross-examination that she felt that this was *"a really good conversation"*, *"a healthy conversation"* and that she felt that she and the Complainant were building a relationship.
72. Ms Hirst categorically denies that during this meeting or at any time did the Complainant raise any grievance about her or tell her that she was unhappy with her treatment by Ms Hirst, given that, she says, she had only provided the Complainant with support and advice. She says that if the Complainant had

raised a grievance, against her or against Mr Zamboglou or the Director of Marketing, this would have been dealt with under the Respondent's grievance policy.

73. Ms Hirst also denies that she put any pressure on the Complainant, made threats or accusations, called her a "fiery red", or told her that Mr Hanrahan would be believed over her.
74. Ms Hirst presented in evidence as an experienced and very calm HR professional. For the most part, she gave consistent evidence, including that she at no stage on 16 March 2016 made any of the prejudicial statements alleged by the Complainant, but that instead she and the Complainant discussed various issues the Complainant had with her colleagues which the Complainant had raised.
75. However, some ambiguities did arise from the evidence, for example, Mr Hanrahan said in cross-examination that he had spoken unofficially to Ms Hirst (at that time he did not know Ms Jassal) about the Complainant and that he was surprised when she told him that the Complainant had made a complaint about him, but Ms Hirst makes no mention in her Witness Statement of telling Mr Hanrahan this. In respect of the Complainant's allegation that Ms Hirst called her a "fiery red", Ms Hirst says: "*I thought we shared some personality attributes*" and "*could see that Honor was perhaps someone rather like myself, who can be...*". I consider that the Complainant could quite well have understood from this that Ms Hirst was indeed telling the Complainant that her Discovery Insights profile would be like Ms Hirst's - fiery red – as the Complainant alleges and Ms Hirst denies. But these points were not put to Ms Hirst in cross-examination and Ms Hirst was not given the opportunity to explain them.
76. The Complainant's alleged reaction to this meeting was somewhat undermined by the evidence. This includes an email sent by the Complainant to Ms Hirst the same afternoon attaching a report from a tool apparently similar to the Discovery Insights tool, which the Complainant says she had told Ms Hirst during the meeting she would send to her. In her email, she makes no other comment or reference to the meeting. Save for her own evidence in one sentence of her Witness Statement on being visibly shaken and her voice shaking following the meeting, no evidence was produced which established that she experienced any emotion as a result, save for frustration at Ms Hirst allegedly wrongfully accusing her of making complaints.
77. On the available evidence before me, I find that the Complainant was not alarmed, distressed, humiliated or intimidated by the discussion with Ms Hirst on 16 March 2016, which she had after all instigated.
78. 17–18 March 2016: in her Witness Statement, the Complainant alleges that various individuals then commenced a conspiracy aimed at having her dismissed. I address this separately below.

79. 18 March 2016: the Complainant alleges in her Particulars of Complaint that she became aware that Mr Hanrahan had been given work instructions of which she was not aware, "*wholly contrary to protocol and practice*", and that this was bullying in that it undermined her authority, as she no longer had direct control over her "*direct report*", and had the purpose or effect of causing her to feel alarmed, intimidated and distressed. In her oral evidence, she added that she was threatened by this incident because it occurred against the background of her various reports that Mr Hanrahan was not performing in her own team.
80. The Respondent in its Grounds of Resistance accepts that Mr Hanrahan may have been given work instructions by another line manager, but says that this was not an uncommon, indeed quite frequent, event and that it is surprised that this would make the Complainant feel undermined. This is reflected by Mr Zamboglou's Witness Statement.
81. It seems to me more likely than not that employees were not restricted to taking instructions from only their line manager. Even if this were not the case, I find it unlikely that such an incident would have caused the Complainant anything more than some frustration or annoyance inherent in most jobs from time to time, and certainly not alarm, distress, humiliation or intimidation (even bearing in mind the Complainant's background frustration with Mr Hanrahan). Indeed, in her Witness Statement, the Complainant describes the emotion she experienced in this regard as no higher than: "*I was surprised that I was not made aware of these tasks*" and she re-stated her experience of surprise in her oral evidence.
82. 21 March 2016: Mr Zamboglou went to see Ms Jassal, as the HR Business Partner for his area of business, to "*investigate the issues*" with the Complainant. Ms Jassal assisted and advised on the procedure to be followed. An investigation meeting was arranged later that day chaired by Mr Zamboglou and the Complainant was suspended pending investigation by Mr Zamboglou - for lateness, falling asleep in a meeting and smelling of alcohol at work.
83. Ms Jassal says in her Witness Statement: "*I became involved with Honor when there was a disciplinary matter raised by her manager Alexis Zamboglou ... I supported the investigation of the issues raised by Alexis. I supported the entire disciplinary process. My Line Manager Katie was not involved. I initially met with Alexis on 21 March 2016 to discuss the allegations and he explained that there were a few disciplinary issues*". They then discussed these, including Ms Jassal advising Mr Zamboglou that he should have dealt with the alleged alcohol incident at the time. Mr Zamboglou told her that he had wanted to support the Complainant and expected that it was a "*one-off*", but in Ms Jassal's opinion the delay may have resulted from Mr Zamboglou not having been faced with such issues previously. In cross-examination, Ms Jassal said that she was disappointed by Mr Zamboglou's delay and that she raised this with him. She said that Mr Zamboglou himself would admit that this had been a "*bad call*".
84. Ms Jassal continues in her Witness Statement to describe how, following some repeated late arrivals and the Complainant reportedly falling asleep in a meeting, Mr Zamboglou: "*felt that he had offered Honor a great deal of support during the*

short time she had been employed at this time but he had reached the point whereby he felt the issues had to be addressed".

85. In his Witness Statement, Mr Zamboglou describes his attitude to employee lateness as flexible "*as long as the problem did not become too persistent or more serious*", when it would be managed by HR under the Respondent's disciplinary policy. On listening to Mr Zamboglou, it seemed to me that it was in the end the Complainant's lateness which broke the camel's back and that, combined with the alleged alcohol and falling asleep incidents in the same short period of time, his patience was at an end. He could not see the Complainant's attitude and commitment improving, rather the opposite. This is reflected by his comment to the Complainant in the investigation meeting on 21 November 2016: "*... your conduct in general has been unacceptable, really poor*".
86. Ms Jassal notes in her Witness Statement that during the investigatory meeting the Complainant: "*became increasingly nervous ... as she was advised of all the issues. In my experience this is not an uncommon reaction for employees in this situation ... she was disappointed that Alexis was investigating these matters.*"
87. The notes of the investigation meeting record that the Complainant told Mr Zamboglou: "*I am shocked and have felt for the last 2/3 weeks that someone's got it in for me*". But she did not elaborate or follow this up; instead she returned to the alcohol allegation. Mr Zamboglou said in cross-examination (quite plausibly) that he did not pick up on this comment.
88. As regards the investigation meeting, despite the Complainant experiencing "shock", in my view this in itself did not amount to an act of bullying or victimisation, since she appears to mean that she was shocked at finding herself in an investigation meeting, rather than in response to an alleged bullying act. The Respondent can in any event rely upon the Section 4(3) carve-out in this regard, the investigation meeting being a necessary and reasonable part of the disciplinary process, which should not be deemed unlawful as a result only of an employee's adverse reaction to it.
89. Ms Jassal goes on in her Witness Statement to describe her continued involvement in the process, including that once Mr Zamboglou had concluded his investigation and was satisfied that there was sufficient evidence to proceed to disciplinary proceedings, he "*was no longer involved in the process and I appointed an independent disciplinary hearing manager, Gareth Crook*". Mr Zamboglou similarly says in his Witness Statement that after he concluded that there was a disciplinary case for the Complainant to answer, "*the matter was handed over to Serena to arrange. I played no further part in the disciplinary process*".
90. 23 March 2016: the Respondent invited the Complainant to a disciplinary hearing to consider the allegations against her of being at work under the influence of alcohol on 11 March 2016, unacceptable attendance levels on 11, 14, 18 and 21 March 2016 and falling asleep at a meeting on 9 March 2016.

91. 1 April 2016: the disciplinary hearing was held, chaired by Mr Crook. Ms Jassal continued to give HR support and acted as a note-taker. Ms Jassal says in her Witness Statement: *"At no stage during the disciplinary did Honor make any suggestion that she felt she had been bullied or victimised. Honor was focused on responding to the allegations."* Mr Crook, who presented consistently as a truthful and transparent witness, set out in his Witness Statement and confirmed in his oral evidence how he approached the disciplinary hearing and the decision he took (including a consideration of the nature of the allegations, the evidence and the representations made by the Complainant), all of which seemed entirely reasonable and impartial. The detailed 3-page dismissal letter from Mr Crook dated 5 April 2016 also evidences his eminently reasonable conclusions based on the evidence, including, for example, that after the hearing he asked Mr Zamboglou to explain why he had sent the congratulatory email to the Complainant on the evening of the alleged alcohol incident. Mr Zamboglou told him that he had sympathised with the Complainant and sent the email to try to help motivate her, which Mr Smith found was an acceptable explanation.
92. In respect of whether the Complainant made any complaint of bullying, the disciplinary hearing notes record that the Complainant at one stage repeated what she had said at the investigation meeting, that *"someone has it in for me"*. Mr Crook did query this with the Complainant and she responded: *"I have felt like all I have had to do for weeks was defend myself"*, but she did not elaborate any further and Mr Crook then returned to the alcohol complaint and neither the Complainant nor Mr Crook made an further mention of it. Mr Crook did not view this statement as a complaint of bullying: *"at no stage did Honor raise a suggestion that she had been bullied in any way by anyone or that the disciplinary process was only commenced as a result of a desire to bully her"*. Mr Crook says that any such allegation would have been treated seriously and fully investigated.
93. 4 April 2016: Mr Crook telephoned the Complainant to advise her of his decision that she should be dismissed. Ms Jassal says in her Witness Statement that this was the decision made by Mr Crook following the further discussion between him and Mr Zamboglou and general discussion with Ms Jassal of the sanction. She also says that the Complainant replied that she would appeal the decision and that there was a conspiracy against her; someone was trying to *"get her"*. Mr Crook says in his Witness Statement that the Complainant accused him of having pre-determined the matter, which Mr Crook says he assured her was not the case; and the Complainant said that she would appeal and so open Pandora's box, without any further explanation. This was in my view a threat, an expression of anger rather than of alarm, distress, humiliation or intimidation.
94. It may be that, had this been an unfair dismissal claim by the Complainant, then whether the penalty imposed was within the range of reasonable employer responses might have become an issue (bearing in mind as well Mr Zamboglou's delay in raising the alcohol complaint). On the other hand, given that Mr Crook had found on the material before him that all of the complaints had been made out, the Complainant might have had difficulties with this. This was not an unfair dismissal claim however and Mr Crook's handling of the disciplinary seems to me to have been far from an act of bullying or victimisation under the Act.

95. 5 April 2016: letter from the Respondent to the Complainant confirming summary dismissal with immediate effect. I raised with Mr Crook whether he had himself written the dismissal letter dated 5 April 2016, since this did not appear to be drafted by a non-HR or employment law specialist, and he states expressly in his Witness Statement: *I confirm that I alone took the decision to dismiss*". Mr Crook explained that he had received guidance and assistance on the procedure from Ms Jassal, including on what could constitute misconduct and gross misconduct, as this was his first experience of conducting a disciplinary process, but he was adamant that it was not true that Ms Jassal had told him what to decide or guided him towards the outcome. He said that he had been comfortable that the contents of the letter were true and accurate. There was nothing before me that gave me any reason to doubt any of Mr Crook's evidence.
96. 12 May 2016: the Complainant having appealed the dismissal decision, Ms Jassal asked Mr Anthony Smith to hear the appeal. Ms Jassal continued to give HR support and acted as a note-taker. Ms Jassal says in her Witness Statement that the Complainant again focussed on responding to the allegations against her. In addition, *"Honor did say that there was a conspiracy against her"*. Mr Smith says in his Witness Statement that he felt that the Complainant was simply re-iterating her denials of the complaints made against her at the disciplinary hearing (as well as complaining about Mr Hanrahan), rather than giving reasons for appealing the disciplinary decision. *"Honor maintained that there was a conspiracy against her and said that people wanted her out of the business. Honor just made blank allegations but did not try to explain what she meant. ... There was no doubt in my mind that Honor felt aggrieved and this was perfectly understandable. I was clear that my role was to determine whether the decision to summarily dismiss Honor was fair and reasonable in the circumstances. I felt that there was sufficient evidence to support each disciplinary allegation and that Honor was not able to provide sufficient explanations or evidence to the contrary"*.
97. Following the appeal hearing, the dismissal was upheld by Mr Smith. This was communicated to the Complainant in person on 8 June 2016 by letter. Ms Jassal says in her Witness Statement: *"Honor was very angry. Honor said to me that I personally had made her feel suicidal which I told Honor was unfair. I was of course completely shocked to hear this and I said to Honor that I simply did not believe that this was the case."* This accusation was never explained by the Complainant and I was at a loss to understand how Ms Jassal could have provoked such a sentiment in the Complainant on the evidence before me. I find that this was in all probability a somewhat melodramatic expression of pure anger and frustration by the Complainant in response to her disciplinary process/dismissal, rather than a genuine expression of suicidal thoughts.
98. However, I accept that the Complainant did view the appeal process as forming part of the conspiracy against her. She says that this allegation was reiterated by her during the appeal but was not investigated. She also says that she was not granted access to colleagues who would give statements in her favour, the Respondent did not request the attendance of persons whom she had requested to attend the hearing, the Respondent did not assist her to find a person to

accompany her at the appeal hearing and the Respondent refused her request that the appeal hearing be recorded.

99. I find that these kinds of allegations in respect of the appeal are ill-judged as they show that the Complainant does not appear to have understood the requirements for a disciplinary appeal process, including that this is usually not conducted by way of a re-hearing (with witness evidence etc.), but rather by way of a review of whether the first disciplinary process as a whole was fair. The Respondent's Disciplinary & Grievance Policy requires that: "*a summary of all the evidence and notes from the previous meeting will be considered and the manager who took the disciplinary action may also be interviewed as appropriate*".
100. Mr Smith's evidence was unambiguous and in my consideration entirely transparent. He had chaired other employee appeals in the past and knew what was expected of him, which in his view was not to repeat the disciplinary hearing, but to consider whether there had been a reason for the dismissal and whether process had been followed. He said in oral evidence that he was very comfortable that he had reviewed, and was comfortable with, the reasons for the dismissal and the process followed at the disciplinary hearing, and that nothing had changed since then.
101. He said in evidence that he had discussed the outcome of the appeal with Ms Jassal, but not the outcome decision. He also said that he would have provided his conclusions to HR at the end of the appeal hearing, Ms Jassal would have drafted the appeal decision letter, and if Mr Smith was happy with it, he would sign it for issue.
102. In respect of the delay in Mr Zamboglou raising the alcohol issue with the Complainant and the fact that he allowed her to continue working, Mr Smith said in evidence that that should not have happened, that Mr Zamboglou should have taken affirmative action immediately and that he (Mr Smith) had subsequently recommended to HR that Mr Zamboglou should receive some coaching.
103. Although Mr Smith had some sympathy for the Complainant for being dismissed, there was nothing in the material he reviewed or the statements made by the Complainant which gave him any cause to believe that the dismissal process had not been fairly carried out. He recalled that the Complainant had referred more than once to there being a conspiracy against her, but this in his view was unconnected to the disciplinary process and decision he was reviewing, and was one of a number of allegations made by the Complainant, which did not seem to have a direct bearing on the underlying disciplinary/dismissal. "*My view was that naturally Honor was aggrieved by her dismissal and had decided that rather it being her own behaviour that had led to the loss of her role it had to be a conspiracy.*" His approach was quite clear: "*I felt that the issues she raised concerning her workplace were irrelevant to the disciplinary matter itself.*"
104. Mr Smith's dismissal letter reflects the evidence he gave: "*I am confident the disciplinary process was conducted correctly and fairly ... I am satisfied that there*

[was] no significant new evidence that contradicts the statements provided by four employees and therefore has no impact [on] the decision made”.

105. The Complainant's allegations about the defects in the appeal process, although potentially relevant to an unfair dismissal case, have no bearing on a claim under the Act without anything more. Save for the suicidal feeling accusation against Ms Jassal discussed above, the Complainant does not herself refer in evidence to experiencing any of the prescribed emotions as a result of the appeal process on its own.

Disciplinary & Grievance Policy

106. After Ms Hirst allegedly told the Complainant on 11 March 2016 that a verbal warning was not an available disciplinary penalty under the Respondent's Disciplinary & Grievance Policy, the Complainant's position is that Ms Hirst then realised that she was mistaken and that the Policy was as a result of this revised to exclude verbal warnings around the time of the Complainant's disciplinary process/dismissal.
107. At the Hearing, the Respondent agreed to produce Ms Sarah Noon (HR Business Partner, HR Operations Manager), the employee who was responsible for revisions to the Respondent's policies, to give evidence. She explained in evidence, and I had no reason to disbelieve her, that revisions take place fairly regularly, generally due to a change of law or regulation, that she had started a review in November 2015, that Ms Hirst would generally sign off on them as part of her role but neither Ms Hirst nor Ms Jassal would have been responsible for giving instructions to commence a review, and that there was nothing exceptional about the one to which the Complainant had referred. She had not received any instructions from Ms Hirst in this regard.
108. The Complainant remained unhappy about the lack of disclosed evidence on this issue, in particular, logs showing the changes and the instructions relation to them (which were originally promised by Ms Hirst at the Hearing).
109. On the available evidence, on the balance of probabilities, I find that deletion of the verbal warning process from the Respondent's Disciplinary & Grievance Policy was not instigated by Ms Hirst and/or as part of the alleged conspiracy against the Complainant.

Conspiracy

110. During the Hearing, the Complainant developed her claim that, as a result of her meeting with Ms Hirst on 16 March 2016 and in particular her telling Ms Hirst that she objected to the way Ms Hirst had treated her on 11 March 2016, Ms Hirst and various other individuals then commenced a conspiracy aimed at having her dismissed. In cross-examination, she said that these included Mr Hanrahan, Mr Zamboglou, Ms Hirst, Mr Crook, Mr Smith, Ms Jassal and another employee, Raymond Doyle (who did not give evidence). The Complainant's position is that the whole disciplinary process, including the suspension and investigation, was a

"sham", instigated in order to neutralise her ability to raise legitimate issues in respect of Ms Hirst. *"The disciplinary process was instigated in order to silence me"*, there was a conspiracy, and she had been *"framed"*. As a result of this, the Complainant says that she felt bullied, harassed and alarmed, intimidated, victimised and considerably distressed.

111. In her oral evidence, the Complainant said that there were 2 conspiracies or 2 stages to it, the first involving some or all of Mr Hanrahan, Ms Hirst and Mr Zamboglou (and possibly Ms Jassal), and the second involving some or all of the individuals she had mentioned.
112. In her Witness Statement, the Complainant emphasises her belief that it was as a result of the 16 March 2016 meeting, in particular the Complainant telling Ms Hirst that she had a grievance against her but wished to resolve it informally if possible, causing Ms Hirst to believe that the Complainant posed a threat to her by challenging her behaviour, that Ms Hirst decided to suggest (untruthfully) that the Complainant had made a complaint about Mr Zamboglou in order to persuade him to instigate the disciplinary investigation process against her. In her Particulars of Complaint, she had made a more limited allegation that, after 16 March 2016, the Respondent withdrew its support of her attempts to handle Mr Hanrahan's performance issues. The more serious allegation is made again in her Witness Statement: *"I do believe that following my altercation with KH on Wednesday 16 March, AZ and herself decided to take advantage of the company's disciplinary procedure in order to bully me, and accuse me of gross misconduct and which they thought they did not need evidence to prove my guilt in a company disciplinary procedure, in order to dismiss me ..."*.
113. The Complainant believed that the conspiracy began almost immediately after the 16 March 2016 meeting with Ms Hirst. She says that on 17 and 18 March 2016 there was a bad atmosphere, that Mr Zamboglou was suddenly not communicating with her in his usual manner, that at least one of her colleagues was looking for faults to report back to HR (including one accusing her of being racist towards the Irish and another using a brusque tone with her when questioning her about a project), that Mr Zamboglou issued an invitation to team drinks in order to *"solidify the case against me in a drinking environment"*, and that she saw Ms Jassal and Mr Smith talking to Mr Zamboglou.
114. According to Mr Zamboglou, he decided to escalate to HR his complaints about the Complainant on 21 March 2016, which is when he went to see Ms Jassal. Mr Zamboglou states expressly in his Witness Statement: *"I did not discuss the investigation at any stage with Katie Hirst as I had no reason to do so"*. I note the wording of this statement. He might more naturally have said that he did not discuss the Complainant with Ms Hirst, or his grounds for initiating the investigation, but this was not put to Mr Zamboglou in cross-examination. Mr Zamboglou's oral evidence was that the first he had heard of the Complainant's complaints against Ms Hirst and the Complainant's alleged complaint against him (which the Complainant denies) was that day of the Hearing, which would mean that he had not at any time prior to the Hearing been advised of the details of the Complainant's claims, or been provided with any of the claim documentation, including when preparing his Witness Statement. I find this not very credible and

Mr Zamboglou in my view lost some credibility in needlessly making this statement.

115. Ms Hirst says in her Witness Statement that she *"was not specifically involved at any level with Honor's disciplinary"*, which was handled by Ms Jassal, although she was informed of the suspension and sent a copy of the subsequent disciplinary hearing invitation letter. This was because she does not become involved in disciplinary matters unless they involve heads of department and/or senior management.
116. As described above, Ms Jassal says in her Witness Statement: *"I became involved with Honor when there was a disciplinary matter raised by her manager Alexis Zamboglou ...I supported the investigation of the issues raised by Alexis. I supported the entire disciplinary process. My Line Manager Katie was not involved. I initially met with Alexis on 21 March 2016 to discuss the allegations and he explained that there were a few disciplinary issues"*.
117. As described above, the notes of the investigation meeting on 21 March 2016 record that at that meeting the Complainant told Mr Zamboglou: *"I am shocked and have felt for the last 2/3 weeks that someone's got it in for me"*. But she did not elaborate or follow this up; instead she returned to the alcohol allegation. Mr Zamboglou said in cross-examination (quite plausibly) that he did not pick up on this comment.
118. Mr Crook was adamant that it was not true that Ms Jassal had told him what to decide or guided him towards the outcome of the disciplinary hearing.
119. When asked whether someone had spoken to Mr Crook and told him to dismiss her, the Complainant agreed and said that this would have been Ms Jassal. When asked why Ms Jassal would do such a thing, the Complainant said that this would have been part of Ms Jassal's job – to get rid of troublemakers. The Complainant had no explanation for why Mr Crook, who apparently had no axe to grind with the Complainant, would have taken part in a conspiracy with the serious end-result of her dismissal. There was nothing before me that gave me any reason to doubt any of Mr Crook's evidence.
120. During her appeal meeting, the Complainant told Mr Smith that, although she considered him to be independent, she was concerned that she had seen Mr Crook and Ms Jassal speaking to Mr Zamboglou. The Complainant had been given and took the opportunity at the appeal hearing and in her document entitled *"Disciplinary Appeal Hearing – Honor Hancock"* dated 12 May 2016 to raise her allegations against Ms Hirst and she did. However, she clearly had herself not yet hardened her view on this issue even by the time of making manuscript revisions on the hearing notes, as she wrote: *"When did disciplinary start? Wed 16th I was late twice by then. Was it Katie issue? Boxing cancelled? Tom situation? Merger?"*. I can only conclude from this that at that time, the Complainant recognised that there were a number of possible grounds for the instigation of the disciplinary process, not all of them motivated by the sinister reasons she later decided upon.

Findings

121. In respect of the second part of the alleged conspiracy, the disciplinary process (from the investigation meeting to the conclusion of the appeal), with the exception of the allegations about a colleague calling the Complainant racist, another using a brusque tone with her, and team drinks being arranged as some kind of trap set for her, all of which I ignore as being too far-fetched, all of the consistent and convincing evidence given by Ms Jassal, Mr Crook and Mr Smith was that a normal disciplinary process was undertaken, which was handled reasonably and as sympathetically as possible. There may have been minor failings in the procedure followed at the various stages, but there was no indication that either Mr Crook or Mr Smith had any contact with Ms Hirst, through Ms Jassal or otherwise, in respect of the Complainant, nor, as was put to various of the witnesses in cross-examination, that Ms Hirst, possibly through Ms Jassal and/or Mr Zamboglou, was communicating with or giving instructions to Mr Crook or Mr Smith, nor that they were involved in a pre-planned campaign or even discussion aimed at dismissing the Complainant. The Complainant was unable to and did not proffer any explanation for why Mr Smith or Mr Crook, with no apparent axe to grind with the Complainant, would have taken part in such a conspiracy with the weighty end-result of the termination of her employment.
122. As described above, I was given absolutely no reason to doubt that Mr Crook and Mr Smith undertook their obligations and duties in the disciplinary and appeal process in any way other than reasonably, responsibly, competently and entirely impartially.
123. I agree with Ms Jassal's Witness Statement: "*I am content that the disciplinary process ... was commenced based on serious allegations which did need to be answered*".
124. Ms Hirst suffered a bereavement on 1 April 2016, the day of the disciplinary hearing and was out of Gibraltar from about 23 March 2016 and thereafter.
125. As for Mr Hanrahan, Ms Hirst, Mr Zamboglou (and possibly Ms Jassal) and the alleged first part of the conspiracy (the decision to orchestrate the investigation/disciplinary process against the Complainant), in respect of Mr Hanrahan, there was no evidence to support the allegation that Mr Hanrahan had any involvement in any part of the alleged conspiracy and this was not even put to him in cross-examination.
126. However, I note the fact that the Hearing Bundle did not include any relevant email or other correspondence emanating from HR and also that there were a handful of inconsistencies in the evidence of Ms Hirst and Mr Zamboglou (described above). Against this background, I have considered the possibility that Ms Hirst, Mr Zamboglou and/or Ms Jassal discussed the Complainant after the 16 March 2016 meeting (so that there was no documentary evidence) and the possibility that a decision was taken, which involved Ms Hirst, despite her contrary evidence, to initiate the investigation/disciplinary process against the Complainant. I also considered the possibility that Ms Hirst deliberately and untruthfully told Mr Zamboglou that the Complainant had made a complaint

against him to prompt him into starting the investigation/ disciplinary process against the Complainant.

127. But there was no evidence of any kind put before me to support such a contention and none was elicited in the process of cross-examination. In addition, the evidence that there was no concerted decision (or even discussion) was corroborated by all of the Respondent's witnesses without hesitation. Both Ms Hirst and Mr Zamboglou consistently maintained in cross-examination that they did not communicate at all on the subject of the Complainant; and Ms Jassal said that she had not discussed with Ms Hirst any problems with the Complainant or removing the Complainant from the business. Ms Jassal also consistently said that she did not receive from anyone and did not give to anyone instructions in relation to the matter, but merely played her normal advisory role.
128. There was in the end no evidence, other than that given by the Complainant (which was uncorroborated), that Ms Hirst had been involved in the instigation of the investigation/disciplinary process against the Complainant, in bad faith or at all; and other witnesses supported this, and on that basis I find that it is more likely than not that Ms Hirst was not so involved.
129. Although, like Mr Smith, I understand the Complainant's frustration at the commencement of the disciplinary process, as she saw it as a result of (and so soon after) the 16 March 2016 meeting with Ms Hirst, she was simply not able to proffer any evidence in support of this claim. She was not herself certain of the claim at the time of making her manuscript notes on the minutes of the appeal hearing, as noted above. All of Mr Zamboglou, Ms Hirst, Mr Crook, Mr Smith and Ms Jassal robustly and consistently denied the existence of a conspiracy and the creation of a sham disciplinary process. I was given no reason to disbelieve them. Overall, I consider it inherently less likely than not that any 2 or more of these individuals, all of whom presented as highly ambitious, committed and busy professionals, would have come together and expressly agreed to act together in the way alleged by the Complainant; and that they would then have maintained this to the point of their giving evidence on oath in the Tribunal.

Conclusions

Bullying

130. I find that, in respect of each element of her bullying claim, the hurdle which the Complainant did not succeed in overcoming was proving that she had suffered any of the emotions prescribed by Section 4(1) of the Act: alarm, distress, humiliation or intimidation. Save for her own, the Complainant did not put in any evidence in this regard, for example, from third parties (family members, colleagues, for example) who could corroborate that she had suffered any of the prescribed emotions; and there was no supporting evidence in writing, such as written communications if only from the Complainant herself substantiating that she had at any time experienced the required negative reactions. The closest she managed to get was her own evidence that after the 16 March 2016 meeting with Ms Hirst, she was shaking, as was her voice, when she returned to her desk

and spoke to Mr Zamboglou, but this was not corroborated by Mr Zamboglou. In oral evidence, the Complainant did develop her position on this issue, but, save for unelaborated statements that she did experience, alarm, distress, humiliation and intimidation, the emotions she described were far from at the level of intensity of these emotions. For example, in re-examination by her own Counsel, the Complainant described her emotions during the disciplinary process as: "*completely unsupported ... on my own ...backed into a corner ... helpless to defend*" herself. The emotion she referred to most frequently in evidence was "surprise" and she clearly experienced anger and frustration. Perhaps because of the Complainant's evident own strength of character and professionalism, there was insufficient indication that she had been emotionally affected as prescribed by the Act by the events leading up to and surrounding the termination of her employment. For this reason, I find that the Complainant's claim that the Respondent bullied her in breach of the Act must fail.

131. Had the Complainant succeeded in surmounting this hurdle, I accept that, as per Section 4(2) of the Act, "*punishment imposed without justification*", one of the statutory examples of bullying, would include a conspiracy to commence and the undertaking of a sham investigation/disciplinary/dismissal process, as claimed by the Complainant. However, dismissing an employee (preceded by a disciplinary process) on its own cannot amount to bullying conduct if: (i) the employee did not thereby experience alarm, distress, humiliation or intimidation; or (ii) the process was justified; or (iii) the process was reasonable action under the exclusionary Section 4(3) of the Act. Thus, even if I had found (which I have not) that the investigation/disciplinary/dismissal process in respect of the Complainant was suggested, prompted or engineered by Ms Hirst (whether alone or in conjunction with other employees) for her own reasons, in bad faith (for example, in order to remove the potential problems for her which the Complainant might cause), and if I had also found (which I have not) that the Complainant experienced at least one of the prescribed emotions in Section 4(1) of the Act, if the investigation/disciplinary/dismissal process actually commenced was in the event based on one or more real and reasonable grounds (i.e. was not a sham) and was conducted reasonably – and I have found above that this was the case – then the investigation/disciplinary/dismissal process would in any event fall under Section 4(3) of the Act and so would not constitute bullying under the Act. The fact that the Respondent may have welcomed the opportunity to dismiss the Complainant does not render the dismissal objectionable so long as the dismissal was for fair and reasonable reasons, which were the operative reasons, and not a pretext or sham. I have found above that I consider this to be the case.

132. Leaving aside the issue of the investigation/disciplinary/dismissal process, there is also the issue of whether there were individual instances of bullying. It was claimed that each or all of the incidents on 9, 11, 14, 16 and 18 March 2016 constituted bullying under Section 4 of the Act. As set out in chronological detail above, I find that none of those incidents caused or had the purpose of causing the Complainant alarm, distress, humiliation or intimidation in breach of the Act. The Complainant said in evidence that, depending upon the nature of an issue experienced by one of her team members, she would encourage them to try to resolve it directly or report it as a formal grievance. In this case, she did not do the latter, and I can only infer that the nature of her issue in each case was

therefore not sufficiently serious. In respect of the 9 March 2016 alleged shouting incident, for example, the Complainant said that she at no stage intended to, and did not, pursue a grievance against Mr Hanrahan. I find that, had the Complainant experienced any of the emotions required to prove her bullying claim under the Act, she would surely have at least contemplated filing a formal grievance as a result of this alleged incident. The Complainant did say that she had raised an informal grievance on 16 March 2016 at her meeting with Ms Hirst, but she also said that she raised the 11 March 2016 issues with Ms Hirst as an alternative to taking this up with Ms Hirst's line manager, in other words that she was trying to resolve the issues directly, rather than by way of grievance. Had the Complainant viewed any of the incidents on 9, 11, 14, 16 and 18 March 2016 as sufficiently serious to have caused her to feel any of the prescribed emotions in breach of the Act, then she surely would have raised a grievance at the time, or at least would have articulated a complaint to someone sufficiently strongly for there to be evidence that there had been such a breach of the Act.

133. For these reasons, as particularised in detail above, I find that the Complainant has not proved facts from which I could conclude that the Respondent has contravened Section 6 of the Act.

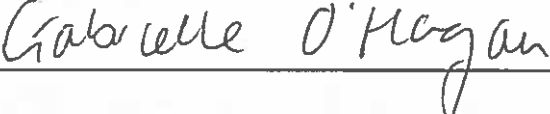
Victimisation

134. Very little was before me by way of pleadings or evidence in respect of the Complainant's victimisation claim under Section 7 of the Act. Subsections (c) and (d) of Section 5(1) of the Act could give rise to a cause of action for the Complainant: subjecting an employee to less favourable treatment if done by the employer by reason of the fact that, or by reason of the employer's knowledge or suspicion that, the employee has:

(c) otherwise done, intended to do, or intends to do, any other thing under or by reference to the Act;

(d) alleged or intended to allege, or intends to allege that there has been contravention of the Act.

135. It was submitted by the Complainant that these subsections would bite due to her allegedly less favourable treatment by the Respondent consequent on her allegedly complaining to Ms Hirst of conduct by Ms Hirst in contravention of the Act. However, as I have found above, the Complainant has not discharged the burden of proof that there was any connection between the encounters between Ms Hirst and the Complainant and the events leading up to the investigation/disciplinary/dismissal process and/or the process itself. As such, I find that the Respondent has not contravened Section 7 of the Act.



Gabrielle O'Hagan, Chairperson

18 December 2017