



EMPLOYMENT TRIBUNALS

Claimant: Ms S Free Miles

Respondent: The Royal Veterinary College

Heard at: London Central (by CVP)

On: 14, 15, 16, 17 and
18 March 2022

Before: Employment Judge H Grewal
Mr T Cook and Mr M Ferry

Representation

Claimant: Mr A Bates, Counsel

Respondent: Ms R White, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

- 1 The complaint of unfair dismissal is not well-founded;
- 2 The complaints of direct and indirect philosophical belief discrimination are not well-founded; and
- 3 The complaint of breach of contract is not well-founded.

REASONS

1 In a claim form presented on 15 October 2020 the Claimant complained of unfair dismissal, philosophical belief discrimination and breach of contract (wrongful dismissal).

The Issues

2 The issues that we had to determine were as follows.

Philosophical belief discrimination

2.1 Whether the Claimant's belief that animals' lives have innate value and that humans should not eat, wear, use for sport, experiment on or profit from animals and that humans have a moral obligation to take positive action to reduce or prevent the suffering of animals, which includes trespass on private property to expose animal suffering and the removal of suffering animals (which she called "ethical veganism") is a philosophical belief under section 10 of the Equality Act 2010;

2.2 If it is, whether the Respondent directly discriminated against her because of her philosophical belief by dismissing her;

2.3 In the alternative, whether the Respondent indirectly discriminated against the Claimant by applying a provision, criterion or practice of dismissing employees who were known or believed to be actively engaged in supporting the use of trespass and undercover filming of farms, etc and the rescue of animals found to be suffering;

Unfair dismissal

2.4 What was the principal reason for the Claimant's dismissal. The Respondent contended that it was a reason related to conduct;

2.5 If it was, whether the dismissal was fair.

Breach of contract (wrongful dismissal)

2.6 Whether the Claimant was in repudiatory breach of her contract of employment and the Respondent was entitled to dismiss her without notice.

The Law

3 Section 13(1) of the Equality Act 2010 ("EA 2010") provides,

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

Section 19 EA 2010 provides,

“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.

(2) For the purposes of subsection(1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if –

(a) A applies, or would apply, it to person with whom B does not share that characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.”

4 Religion or belief is a protected characteristic (section 4 EA 2010) and a relevant protected characteristic for the purpose of section 19. On a comparison of cases for the purposes of section 13 or section 19 there must be no material difference between the circumstances relating to each case (section 23 EA 2010). Section 10 EA 2010 provides,

“(1) Religion means any religion and a reference to religion includes a reference to a lack of religion.

(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.”

5 The Tribunal is obliged to determine claims under the Equality Act 2010 compatibly, so far as is possible, with the Claimant’s Convention rights (Human Rights Act 1998, sections 3 and 6). Article 9 of the European Convention of Human Rights provides,

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching practice and observance.

2. Freedom to manifest one’s religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or needs, or for the protection of the rights or freedom of others.”

6 In R (Williamson and others) v Secretary of State for Education and Employment [2005] 2 AC 246 Lord Nicholls in the Supreme Court said at paragraph 16,

“article 9 of the European Convention of Human Rights safeguards freedom of religion. Thus freedom is not confined to freedom to hold a religious belief. It includes the right to express and practice one’s beliefs... But under article 9 there is a difference between freedom to hold a belief and freedom to express or

“manifest” a belief. The former right, freedom of belief, is absolute. The latter right, freedom to manifest belief is qualified.”

At paragraph 23, he said,

“Everyone, therefore, is entitled to hold whatever beliefs he wishes. But when questions of “manifestation” arise, as they usually do in this type of case, a belief must satisfy some modest, objective minimum requirements.”

And at paragraph 32,

“Thus, in deciding whether the claimants’ conduct constitutes manifesting a belief in practice for the purposes of article 9 one must first identify the nature and scope of the belief. If, as here, the belief takes the form of a perceived obligation to act in a specific way, then, in principle, doing that act pursuant to that belief is itself a manifestation of that belief in practice. In such cases that act is “intimately linked to the belief.”

7 In **Eweida v United Kingdom [2013] IRLR 231** European Court of Human Rights said at paragraph 82,

“Even where the belief in question attains the required level of cogency and importance, it cannot be said that every act which is in some way inspired, motivated or influenced by it constitutes a “manifestation” of the belief. Thus, for example, acts or omission which do not directly express the belief concerned or which are only remotely connected to a precept of faith fall outside the protection of Article 9(1) ... In order to count as a “manifestation” within the meaning of Article 9, the act in question must be intimately linked to the religion or belief.”

8 In **Grainger PLC & Others v Nicholson EKEAT/0219/09** Burton J, having reviewed the authorities on Article 9, set out the limitations or criteria to be placed on the definition of “philosophical belief” for the purpose of the Regulations that were the predecessor of Equality Act 2010. The limitations were as follows:

“(i) The belief must be genuinely held.

(ii) It must be a belief and not ... an opinion or viewpoint based on the present state of information available.

(iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour.

(iv) It must attain a certain level of cogency, seriousness, cohesion and importance.

(v) It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others ...”

9 In **Forstater v CGD Europe and others [2021] IRLR 706** Choudhury J said,

“In our judgment, it is important that in applying Grainger V [criterion (v) above], Tribunals bear in mind that it is only those beliefs that would be an affront to Convention principles in a manner akin to that of pursuing totalitarianism, or advocating Nazism, or espousing violence and hatred in the gravest forms, that should be capable of being not worthy of respect in a democratic society. Beliefs that are offensive, shocking or even disturbing to others, and which fall into the less grave forms of hate speech would not be excluded from protection. However, the manifestations of such beliefs may, depending on circumstances, justifiably be restricted under art 9(2) or art 10(2) as the case may be.”

10 In **Page v NHS Trust Development Authority [2021] IRLR 391** Underhill LJ said,

“In a direct discrimination claim the essential question is whether the act complained of was done because of the protected characteristic, or, to put the same thing in another way, whether the protected characteristic was the reason for it ... It is thus necessary in every case properly to characterise the putative discriminator’s reason for acting. In the context of the protected characteristic of religion or belief the EAT case-law has recognised a distinction between (1) the case where the reason is the fact that the claimant holds and/or manifests the protected belief, and (2) the case where the reason is that the claimant has manifested that belief in some particular way to which objection could justifiably be taken. In the latter case it is the objectionable manifestation of the belief, and not the belief itself, which is treated as the reason for the act complained of.”

11 Article 1 of Protocol No.1 of the European Convention on Human Rights provides,

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

12 Under section 19(2)(d) EA 2010 in order to be proportionate a measure has to be both an appropriate means of achieving the legitimate aim and reasonably necessary in order to do so – **Homer v Chief Constable of the West Yorkshire Police [2012] IRLR 601**. In considering this section, the Tribunal has to weigh the need for the measure against the seriousness of the detriment to the disadvantaged group - **R (Elias) v Secretary of State for Defence [2006] EWCA Civ 1293**.

13 The onus is on the Respondent to prove the reason or the principal reason for the dismissal. A reason relating to the conduct of the employee is a potentially fair reason (section 98(1) and (2) of the Employment Rights Act 1996 (“ERA 1996”). Once the employer establishes a potentially fair reason, the Tribunal then has to consider whether dismissal is fair within the meaning of section 98(4) ERA 1996, in other words, whether the employer acted reasonably or unreasonably in all the

circumstances of the case in treating the reason established as a sufficient reason for dismissing the employee.

14 In **British Home Stores Ltd v Burchell [1978] ICR 303** the EAT held that in determining whether a conduct dismissal is fair, the Tribunal must ask itself the following three questions:

- (i) Whether the employer believed that the employee was guilty of the alleged misconduct;
- (ii) Whether the employer had in his mind reasonable grounds upon which to sustain that belief; and
- (iii) Whether, at the stage that he formed that belief, he had carried out as much investigation into the matter as was reasonable in all the circumstances of the case.

15 In determining the issue of fairness the Tribunal should also consider whether there were any substantial flaws in the procedures which were such as to render the dismissal unfair, and, finally, whether dismissal was within the band of reasonable responses open to a reasonable employer in all the circumstances of the case.

16 The case of **Iceland Frozen Foods Ltd v Jones [1982] IRLR 439**, approved by the Court of Appeal in **Post Office v Foley [2000] IRLR 827** lays down the approach that the Tribunal should adopt when answering the question posed by Section 98(4). It emphasised that in judging the reasonableness of the employer's conduct the Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer and that the function of the Tribunal is to determine whether in the particular circumstances of each case, the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted.

Evidence

17 The Claimant gave evidence in support of her claim. The following witnesses gave evidence on behalf of the Respondent – Sheila White (Hospital Administration Manager), Professor Jill Maddison and Professor Ken Smith. The documentary evidence in the case comprised about 600 pages. Having considered all the oral and documentary evidence, the Tribunal makes the following findings of fact.

Findings of fact

18 The Claimant is a veterinary nurse. She believes that animals' lives have innate value and that humans should not eat, wear, use for sport, experiment on or profit from animals and that humans have a moral obligation to take positive action to prevent or reduce the suffering of animals. She said in evidence that that included trespass on private property to expose the suffering of animals and the removal of suffering animals. She said that she supported disobeying unjust laws if it was done to expose the suffering of animals. She calls that belief "ethical veganism".

19 The Respondent is a Higher Education institution and one of the colleges of the University of London. It provides education and training in veterinary medicine and veterinary nursing. In addition to providing education, the Respondent conducts research and provides clinical services. Its research includes using animals for the benefit of animals and humans. It also has partnerships and works with abattoirs, production animal veterinary practices and food producers (including factory farms). Students at the College are required to engage with production animals, food processing and abattoirs.

20 The Claimant commenced employment with the Respondent on 10 August 2015 as a Veterinary Nurse (Clinics and Dispensary) at its Beaumont Sainsbury Animal Hospital (“BSAH”/ “the hospital”) in Camden in London.

21 From the start of her employment, the Claimant lived in a flat owned by the Respondent and located on the same site the hospital. There were a number of bedrooms in the flat. At the material time, the Claimant was the only permanent resident in the flat. It was occasionally used by other members of staff, for example, when they provided on-call cover. On 1 April 2016 the Respondent drew up an accommodation agreement. The agreement stated that when it was signed it created a binding agreement. It appears that it was never signed. The agreement stated that the Claimant “*resides in the property as licensee of the College*” and that she could “*reside in the property for so long as she is employed or notice is served for any other reason by the College and inconsideration shall pay the College.*” It stated that a rent of £340 would be paid on the first of every month. The agreement also stated that the Claimant agreed,

“8. To quit the property and leave it vacant immediately on ceasing to be employed by the Clinical Services Department or on receipt of not less than four weeks’ notice, in writing, to vacate.

...

11. In conjunction with any other residents in the property to take good care of the interior of the property including all fixtures and fittings and keep them in good and clean conditions (fair wear and tear allowed) to make good all damage not attributable to reasonable wear and tear.”

22 The Respondent had a “no pets” policy in its residential accommodation and the Claimant was well aware of that, as was evidenced by the fact that in May 2016 she sought permission for her dog to spend one night in the flat. The Respondent’s response was to reiterate that they had had a no pets policy but on that occasion, if the others in the flat did not mind, the dog could stay for one night only.

23 From the outset of her employment the Respondent was aware that the Claimant believed in ethical veganism (which it understood to mean that humans should not eat, wear, use for sport, experiment on or profit from animals) and her involvement in animal welfare issues. There were two fridges in the flat where the Claimant lived and it was agreed that no meat or animal products would be placed in the one that the Claimant used. The Claimant was involved in campaigns relating to certain breeds of dogs being identified as dangerous and was interviewed in the media in relation to that. The Respondent had no objection to the Claimant being interviewed but made it clear that on issues on which it did not have a formal position, she should

ensure that there was no reference to the Respondent or anything to identify her as being an employee of the Respondent.

24 In April 2018 the Respondent's Estates Department drew to the attention of Anne Richings (Hospital Director, BSAH) the state of cleanliness of the kitchen in the flat occupied by the Claimant and someone called Ellen. They said that their concern was that if the issues were not addressed, they would soon lead to pest related problems. Ms Richings passed on the concerns to the Claimant and Emma.

25 On 25 January 2019 the Counter Terrorism Policing unit ("CTP") sent Mr Soden, the Respondent's Head of HR, a request for the disclosure of personal data relating to the Claimant. The officer from Essex Police who had filled in the form said that he was making inquiries concerned with the prevention or detection of crime and confirmed that the data requested was needed for that purpose and that the person concerned should not be informed of the request as it would be likely to prejudice the prevention or detection of crime. It said that the Eastern and Southern CTP were,

"investigating a number of burglaries, attempted burglaries and thefts at farms and private residences across the Eastern region. It is believed these offences have been conducted by suspected splinter cell of the Animal Liberation Front (ALF)"

He stated that the Claimant had been identified as a person of interest to the investigation and the data that was sought was her home address and her employment/studies at the College.

26 Mr Soden provided the data sought to the police and made the Principal and Chief Operating Officer of the College aware of the inquiry. The Respondent was concerned about the ALF connection and alerted its Head of Security and Ms S Ready (Director of External Relations) to respond to any media inquiries. Ms Ready was also asked to monitor the Claimant's social media activities. The police also requested and were provided with the address and the floor plan of the flat which the Claimant occupied.

27 At about 6 a.m. on 6 February 2019 Counter Terrorism police went to the Claimant's flat and arrested her. The police searched the flat and seized a number of items, including an unwell turkey that was found in the flat. The police arranged for the turkey to be collected by the RSPCA. The Claimant was taken to the police station. Ms Richings made inquiries about the turkey and it appeared that it had been brought to the hospital (BSAH) on 27 December 2018 and that it had ulcerated infections and was unable to stand.

28 Later that evening Ms Richings updated her colleagues on the situation. She said that the Claimant was due to be released within the next half hour. She was not going to be charged at that time and would remain under investigation. She would be suspended pending an investigation into the matters that had led to her arrest and would have to vacate the flat but the Respondent would offer her alternative accommodation. After the Claimant was released that night, she went to her flat at BSAH at about 10.40 p.m. Ms Richings told her that she could not stay in the flat but said that the Respondent would provide her with alternative accommodation if she

wanted it. The Claimant said that she would prefer to stay with friends. Ms Richings also told her that she would be suspended while the matter was investigated. She helped the Claimant packed some items and loaned her some cash to get transport and food that night.

29 The following day Ms Richings sent the Claimant a letter suspending her on full pay. She said that there was evidence to suggest that the Claimant was under investigation with the police for a possible criminal matter and that the Respondent regarded it as a serious matter, which could possibly amount to gross misconduct. She said that she would conduct an investigation and at the end of the investigation a decision would be made as to whether a disciplinary hearing should be convened. In the email, to which the letter was attached, Ms Richings repeated the offer of alternative accommodation. She said that the estates team had identified two possible options for the Claimant.

30 On the same morning V Baldry, a veterinary surgeon, working at the hospital sent Ms Richings an email about the turkey. She said that on 27 December she had been asked by the Claimant to examine a turkey and a chicken which had been rescued and were under her temporary care and ownership prior to being transferred to an animal sanctuary belonging to her friend. She had examined both birds at the hospital and had prescribed medication. She had documented her clinical notes on the file of the person to whom the birds were to be transferred. She had examined the birds a few days later in the Claimant's flat. Her notes of 27 December had recorded that the turkey had been "*rescued from farm as unable to sell as unwilling to stand.*" In terms of treatment plan, she had recorded, "*Concerned about prognosis. Plan to start AB and pain relief, assess response in next 2-3 days, ini then need to consider euthanasia*" [sic]. On 31 December she had noted that the signs were still poor and that she would recheck in 3-4 days but would stop the treatment if it was not standing/making good progress.

31 The Respondent's Disciplinary Procedure provides,

"The College will consider if it is appropriate to continue with disciplinary action in circumstances where the Police are investigating. It may be necessary to take such disciplinary action before the outcome of a Police investigation or other legal proceedings is known. Alternatively, it may be appropriate to suspend them until the conclusion of such proceedings."

The Respondent delayed starting its investigation because it was hoping to receive further information from the police. After some time had elapsed and no further information had been provided, it decided to start its disciplinary investigation. Ms Richings asked Sheila White, Hospital Administration Manager, whether she would conduct the investigation and on 25 March Ms White agreed to do so. On 4 April Ms Richings and HR met with Ms White to discuss the scope of the investigation.

32 However, the investigation was paused soon after that because on 11 April the police contacted Ms Richings and said that they wanted to speak to her and other employees about the turkey and some medication that had been found in the Claimant's flat. They also wanted to look at documents relating to the treatment of

the turkey. They suggested meeting with her towards the end of April//beginning of May.

33 On 16 May the police interviewed V Baldry and N Stapleton, Veterinary Surgeons working at the hospital. Ms Richings and Mr Browne from HR attended the interviews as observers. Ms Baldry repeated what she had told Ms Richings on 7 February and what was recorded in her clinical notes. She said that the Claimant might have said that it was a rescue turkey from a farm and said that you could tell that it was a meat bird from a farm chain. She said that its survival prospects were 50/50. She said that she knew the turkey should not have been in the Claimant's flat as it was against the rules but the welfare of the turkey was not being compromised. Ms Stapleton said that she had seen the Claimant when she had been arrested on 6 February and the Claimant had asked her to look after the turkey, who was called Dorothy. Ms Stapleton had entered clinical notes of her treatment of the turkey on the Respondent's system on 6 February. She had done so after Ms Richings had said to her that she had tried to find records about the turkey on the Respondent's system but had been unable to. She said that she had first treated the turkey on 3 January 2019 in the Claimant's flat. She said that the turkey had come from a farm and the Claimant was rehabilitating it so that it could go to a sanctuary. She found it difficult to comment on turkey's chance of a full recovery as she had never been asked to look after a production animal before.

34 The Respondent waited for some time to see what was happening with the police investigation. However, there was no information from the police as to when their investigation might conclude, and at the end of June 2019 Ms Richings and Mr Browne decided to proceed with their internal investigation. They decided that they would initially interview three persons – Ms Ready, Ms Baldry and Ms Stapleton. On 26 June they invited Ms Ready to an investigation interview. They said that they were investigating whether the Claimant had damaged the reputation of the College and breached the College's Social Media Policy.

35 Ms White interviewed Ms Ready on 16 July 2019. Ms Ready said that she had been aware that the Claimant was supporting causes, such as "Justice for fighting dogs", on which the Respondent did not have a position. The Claimant had been asked to ensure that there was nothing to link her with the Respondent on her postings on social media on these issues. They had been monitoring the Claimant's social media channels since then. She said that there was social media footage where it appeared that the Claimant had broken into abattoirs as part of her campaign against animal slaughter. She said that there was a potential risk to the damage of the reputation of the Respondent if the Claimant were to be convicted following the police investigation and if it were found that stolen animals had been kept in her flat and other staff had been complicit in the concealment.

36 Ms Stapleton and Ms Baldry were invited to an interview with Ms White and they were told that she was conducting an investigation into a turkey found in the Claimant's flat at BSAH. Ms Stapleton refused to attend the interview. Ms White interviewed Ms Baldry on 5 August 2019. Ms Baldry repeated what she had said to the police. She said that understood that it was not permitted to keep animals in the BSAH residential premises but she had not told management about the turkey in the Claimant's flat. Her understanding had been that it was there for a short period of

time and she had not wanted to get the Claimant into trouble. She identified the medication found in the Claimant's flat as something that she had dispensed for a parrot on 14 December 2018. The parrot had been admitted into the hospital and had died the next day. She could not explain how the medication had ended up in the Claimant's flat. She said that the normal process when an animal died was to put the medication into the Disposal Waste bin.

37 On 14 August 2019 Mr Browne wrote to the Claimant. He apologised for the length of time that she had been suspended from work. He said that the delay was due to the fact that they had originally been waiting for the police investigation to conclude but after a certain passage of time had decided that it was in the best interests of all involved if they started their internal investigation. He advised her that she would be invited to an investigatory meeting shortly. The Claimant responded on 29 August that since the investigation had started she had developed "*significant mental health concerns*" and did not feel capable of going through another "*traumatic experience*" at that time. Mr Browne told her that he would refer her to Occupational Health ("OH") who, among other things, would be asked to advise on when she would be well enough to participate in the Respondent's internal investigation.

38 The Claimant was referred to OH and on 8 October 2019 Mr Browne received the OH report. The OH advice was that the Claimant did not appear to meet the definition of disability in Equality Act 2010 and was fit to attend and take part in formal and informal meetings with certain provisos which were set out.

39 On 24 October Mr Browne asked the police whether they had any information that that might be relevant to their internal investigation, in particular, any evidence that showed the Claimant participating in any activities that put the Respondent at risk or potential risk of reputational damage. The police responded by providing a number of links – the Claimant's LinkedIn account which identified her as an employee of the Respondent, the Claimant's Instagram account on which the police said there were videos and pictures that highlighted the Claimant's opinions on the more militant end of the animal rights movement and showed her as being at a number of farm incursions in the UK and abroad with an organisation called "Meat the Victims" and her Twitter account which showed images of animals that she said had been rescued and were probably being housed in her room at her place of work.

40 On 22 November the Claimant was invited to an investigation meeting on 29 November. She was informed that the investigation was into whether she had been in breach of any internal procedures in the matters leading up to her arrest and her social media postings since then which might put at risk the reputation of the Respondent. As a result of the Claimant saying that she did not have sufficient time to get a trade union representative to accompany her and objecting to the venue, the meeting was rescheduled and took place on 12 December 2019.

41 The Claimant was not accompanied at the meeting. The Claimant refused to answer a question about what other animals she had kept in her flat at BSAH. She said that the turkey was owned by a friend of hers (Mrs Webster) and she was helping her friend by looking after the turkey as it was not well. She knew that she was not allowed to have animals in her flat but had felt that she had to do something as otherwise the turkey would have died. She said that the damage to the flat had

been caused a long time before and had not been caused by her. She did not know anything about the medication that had been found in her flat. The Claimant was asked about posts that she had put on social media relating to animals that were treated at the hospital and whether she had got the owners' consent to use the pictures of their animals. She said that she had got some consent forms signed and they were in the "consults" drawer in room 5. She said that she was not a member of any animal liberation or animal pressure groups. She said that there was a distinction between protests and illegal activities. She said that she had stopped protesting the previous month. She was shown pictures of protests that she had posted on social media, including with a group known as "Meat the Victims". The Claimant acknowledged that they were controversial but said that she had not been arrested for any of the activities on those postings. She said that "Meat the Victims" was action that was planned.

42 On 12 February Mr Browne informed the Claimant that Ms White was in the process of reviewing the evidence gathered so far and would then commence writing the investigation report.

43 On 27 February 2020 the Counter Terrorism Policing unit in Suffolk submitted another request for the disclosure of personal data relating to the Claimant. It said that they were making enquiries concerned with the prevention or detection of crime and the prosecution or apprehension of offenders. It gave the same information as the previous request made in January 2019 but added,

"The investigation is now at an advanced stage and evidence uncovered to date appears to link Shakira Miles to offence locations and stolen animals. There is reason to believe that Miles has provided treatment to stolen pigs and potentially administered soluble medication."

44 There was a delay in writing the investigation report. This was mainly attributable to the national lockdown introduced in March 2020 as a result of the Coronavirus pandemic. Ms White was heavily involved in redesigning the day to day operations of the hospital, which included reducing numbers of staff and clients on site while maintaining service and providing care for sick and injured animals. It was a big operation and impacted heavily on the workload of those involved.

45 The investigation report was concluded on 27 May 2020. The body of the report comprised 12 pages and the appendices ran to nearly 150 pages. We summarise below the allegations investigated and the evidence referred to in respect of them in the report:

(1) Potential involvement in illegal activities resulting in her arrest on College premises on 6 February 2009 and the potential risk to the College's reputation from this activity and the resulting arrest.

The evidence consisted of the information provided by the police, the arrest, the questions about the origin of the turkey seized by the police and the potential damage to the reputation of the Respondent if the Claimant were to be charged and convicted. There was also reference to the evidence of the Claimant's social media posts. That evidence is also relevant to allegation 6 and we set it out there.

(2) Breach of BSAH clinical procedures and veterinary regulations regarding care of patients, through the undocumented provision of care for an unwell turkey (Dorothy Webster) in her RVC accommodation, including breaching of the BSAH 'no pets' accommodation policy.

As the turkey was not owned by the Claimant, was on the Respondent's premises and treated by the Respondent's vets, it was considered to be in the Respondent's care for the duration of its time in the flat. The investigation showed that there was a lack of clinical history, documented owner consent and hospitalisation sheets for the turkey. Although it was the responsibility of the veterinary surgeons to secure this documentation, the Claimant also had a professional responsibility as a veterinary nurse to ensure that it was done. The Claimant had had the turkey in the flat although she was aware of the Respondent's no pets policy and there was evidence to show that she had on two other occasions had animal in the flat without permission.

(3) Breach of clause 11 of her accommodation agreement by not taking good care of the interior of the property by keeping all fixtures and fittings in good condition and free of damage not attributable to reasonable wear and tear.

There were pieces of damaged furniture and fixtures and a general level of uncleanliness in the flat. The Claimant had said that she was not aware of how the damage had come to be caused and she might have reported it to the maintenance man. That was not the correct process for reporting damage to the flat. As the Claimant was the only permanent tenant in the flat she was responsible for reporting any damage.

(4) Breach of BSAH procedure and veterinary regulations by having possession of and potentially administering Doxycycline POM-V medication prescribed to another patient, to an animal in her possession, without prescription from a veterinary surgeon.

This related to the medication found in the fridge in the Claimant's flat which had been prescribed for the parrot on 20 December 2018.

(5) Breach of the College's Social Media policy, including posting of photos and videos of BSAH patients on her social media without written records of owner consent and misrepresentation of herself online and the associated risk of damage to the College's reputation.

The first part of this allegation related to 14 posts on the Claimant's personal social media of animals being treated at the hospital. It was not possible to identify all the animals, but in respect of those that had been identified there was no record that the owners' consent had been obtained to use the pictures of their pets. The Respondent's Social Media Policy (section 4.4(b)) states,

"Staff must not post anything (e.g. comments or images) related to their colleagues, or the College's students, clients, patients, business partners,

suppliers, vendors or other stakeholders without their/(an owner's) prior written permission.

The second part related to the Claimant's profile on globalanimnalnetwork.org in which it appeared that the Claimant was purporting to be an expert in several fields in which she was not an expert and the description of the Claimant on Instagram as a "Veterinarian" which suggested that she was a veterinary surgeon.

(6) Potential association with extreme animal rights groups and involvements in animal rights protests that are potentially against College interests and may include illegal activity, such as trespass onto private property/business and the associated risk of damage to the College's reputation and partnerships.

This allegation relied on CTP's personal data requests and the Claimant's own social media accounts which showed her engaging in multiple, potentially illegal actions. These included postings of the Claimant, wearing a Meat the Victims T-shirt, holding a piglet at a location in Barcelona under the heading "Meat the Victims – "One has a moral responsibility to disobey unjust laws", the Claimant being involved in actions carried out by "Meat the Victims" in Mataro, Spain, screenshots of the Claimant's Facebook page on 27 August 2019 of animals rights activists breaking into an abattoir, a photograph of Bekegem protest at a duck farm, posts showing Meat the Victims action at a pig farm and the Claimant removing a piglet, screenshot of a Sun article about a raid on a farm in Spain showing a picture of a rabbit with the words "*one of the babies receiving immediate medical care from our amazing vet@shakirafree*", a screenshot of Meat the Victims website describing the organisation as "*a new generation of the growing community of citizens willing to disobey unjust laws together to abolish animal exploitation*" and screenshots of a Channel 4 documentary called "How to steal pigs and influence people" in which the Claimant featured.

These activities could potentially be in breach of the following provisions of the Respondent's Social Media Policy –

"4.2 (a)... staff should also avoid social media communications that might be misconstrued in a way that could damage the College's business reputation, even indirectly."

"4.2 (c) Staff are personally responsible for what they communicate in social media. Staff should remember that what they publish might be available to be read by a wider audience (including the College itself, future employers and social acquaintances) for a long time. Staff should keep this in mind before posting concerns."

"4.4 (a) Staff must not post anything that their colleagues or the College's students, clients, business partners, suppliers, vendors or other stakeholders would find offensive, including discriminatory comments, insults or obscenities."

46 The investigation report concluded that there was evidence to support the above allegations which could amount to misconduct and gross misconduct and

recommended that a disciplinary hearing be held to consider all the allegations.

47 On 28 May 2020 Mr Browne invited the Claimant to attend a disciplinary hearing on 9 June 2020. The six allegations in the investigation report were set out as the allegations to be determined at the hearing. The Claimant was sent a copy of the investigation report with all its appendices. The Claimant was informed that the hearing would be conducted by Professor Jill Maddison. She was advised of her right to be accompanied and told that she could adduce evidence if she wished to do so.

48 On 4 June 2020 the Claimant applied for the hearing to be adjourned because of difficult personal circumstances (relating to domestic violence) that had left her homeless. The hearing was postponed to 16 June 2020 at 10.30 a.m. The Claimant was warned that if she did not attend the rescheduled hearing it might be conducted in her absence. She was asked to confirm her attendance by 11 June 2020. The Claimant did not do so. On 12 June Mr Browne contacted the Claimant again and later that day the Claimant confirmed the date.

49 The Claimant did not attend the hearing at 10.30. Professor Maddison waited until 10.45 for the Claimant to join the hearing. The hearing was taking place via "Zoom Meetings" video conference. Professor Maddison decided to proceed with the hearing in the Claimant's absence. The hearing had already been adjourned once and it had been made clear to the Claimant that if she did not attend the postponed hearing it might proceed in her absence. The Claimant had not provided any explanation for her non-attendance. Ms White presented the case against the Claimant. Professor Maddison adjourned the hearing at 11.30 to consider the evidence and gave her decision at 11.45. She did not uphold allegations 1 and 4. Allegation 1 was not upheld on the basis that arrest was not presumption of guilt as a person was innocent until proven guilty. Allegation 4 was not upheld as the flat in which the Claimant lived did not have a lock and the fridge was kept in a communal area to which others had access. She upheld allegations 2, 3, 5 and 6. In respect of allegation 2 she concluded that the treatment of the turkey had not been documented in clinical records including hospitalisation sheets in compliance with BSHA procedures and the RVCS Code of Conduct for Registered Veterinary Nurses. Allegation 3 was upheld on the basis of the damage to the wall and carpet in the flat which the Claimant had not reported. She upheld allegation 5 because she found that the Claimant had posted photos without the owners' consent and had posed as a vet. She concluded that that was dishonest and a serious breach of the RVC's Behaviour Framework, BSAH procedure and the RCVS Code of Conduct for Registered Veterinary Nurses. In respect of allegation 6 she concluded that there was sufficient evidence in the social media posts of the Claimant's association with extreme animal rights' groups and with illegal activity, such as trespass onto private property/businesses and the associated risk of damage to the College's reputation and partnership. She deemed allegations 2, 5 and 6 to be gross misconduct and allegation 3 to be misconduct. Her conclusion was that the summary dismissal was the appropriate sanction for three counts of gross misconduct. The Respondent's Disciplinary Procedure gives serious breach of the Social Media Policy that damages the College's reputation or seriously puts at risk the business of the College as an example of gross misconduct which can result in summary dismissal.

50 Mr Browne sent the Claimant an email on the same day to tell her that the hearing had gone ahead in her absence. The Claimant responded that she had made an error with the date and had thought that the hearing was on 19 June. She explained how she was under extreme pressure because of her difficult personal circumstances. She asked for her case to be reconsidered. Mr Browne responded that the case had been concluded but that she would be afforded a right of appeal.

51 On 17 June Professor Maddison sent the Claimant the outcome letter. In that letter she set out in more detail why she had upheld or not upheld the various allegations. She informed the Claimant that her decision was to dismiss her summarily with effect from 17 June 2020. She attached the notes of the disciplinary hearing and advised the Claimant of her right to appeal.

52 The Respondent's Disciplinary Procedure provides,

"In reaching a decision, those hearing an appeal may consider:

- *Whether serious procedural errors have materially contributed to the outcome of the proceedings against which the appeal has been lodged.*

OR

- *The coming to light of new information, which was not available at the disciplinary hearing.*

OR

- *Whether the outcome of the disciplinary hearing was in some way perverse.*

The function of the appeal is not to conduct a full rehearing of the facts of the case, though it is inevitable that reference will have to be made to the earlier disciplinary hearing."

53 On 29 June counsel, who represented the Claimant at the hearing before us, applied for an extension of time to appeal as the Claimant had not received the outcome letter until 27 June 2020. The time for appealing was extended to 6 July 2020. The Claimant appealed on 6 July on the grounds that the procedure had been unfair, the decision had been perverse, dismissal was outside the band of reasonable responses and there was new evidence available. She said that she had been unable to attend the hearing because she was suffering from an episode of serious mental ill health, had had to flee from domestic violence and was homeless. The new evidence related to allegation 2 and was a letter from J Webster. Ms Webster said that she was known locally as someone who took on animals in need, especially animals who would otherwise be put down. Dorothy (the turkey) was one such animal. As she was looking after two other turkeys at the time she had asked the Claimant, who was a close personal friend, to look after her. The Claimant said that she was not looking after the turkey in a professional capacity but in a personal capacity. Since the turkey was not her patient she was under no obligation to keep medical notes on her. The Respondent's veterinary surgeons who provided treatment to the turkey were acting in their professional capacity and they should have kept clinical notes. She had not concealed the turkey in her flat but accepted that she had been in breach of the Respondent's no pets policy. In respect of allegation 3 she said that the damage to the flat had pre-dated her moving into the

flat, the Respondent was aware of the damage and hence it was reasonable for her to refrain from reporting it. In respect of the first part of allegation 5 she said that it had always been her practice to ensure that consent was obtained from the owners and the Respondent had not told her in respect of which of the posts consent had not been obtained. She said that she had not claimed to be an expert in the various fields on the globalanimalnetwork.org website and had never held herself out as a vet.

54 The Claimant's grounds of appeal on allegation 6 were as follows. It was wrong to conclude that removing suffering animals so as to provide them with urgently required veterinary treatment or humane euthanasia would be considered theft. The criminal law recognised the defence of "necessity" and in any event it would not be theft to remove the animal unless the person removing it had an intention to permanently deprive the owner of it. She accepted that she had on occasion provided animal welfare assistance to animal rights campaigners carrying out covert filming investigations at farms where it was believed that animal welfare standards might not be complied with. When the campaigners came across animals that were clearly experiencing significant suffering, they sometimes felt compelled to remove such animals. In such circumstances, her nearby presence enabled her to provide prompt help to the suffering animal once it had been removed from the site. She was not a member of "Meat the Victims". She did not promote any illegal activities although she recognised that animal rights activists sometimes infringed private law rights (e.g. by trespassing). She said that she was supportive of veganism as an ethical philosophy, including the philosophy of animal liberation. She sometimes manifested her belief on social media. That was legitimate and protected under the Equality Act 2010 and the right to freedom of expression in the European Convention of Human Rights. She had never sought to link that in any way with the Respondent or mentioned the Respondent in that context. These were activities that she carried out in her private capacity and in her free time.

55 Professor Maddison provided a written response to the Claimant's grounds of appeal.

56 The appeal hearing was initially due to take place on 12 August 2020 but it was postponed because the Claimant's trade union representative was unwell and unable to attend. The appeal was heard on 7 September 2020 by Professor Ken Smith. The Claimant was represented by a trade union representative. The hearing lasted nearly 1 hour 45 minutes.

57 Professor Smith sent the Claimant the outcome of the appeal on 18 September 2020. His conclusions on the various allegation were as follows:

Allegation 2 – Having considered the new evidence (the letter from Ms Webster) he was satisfied that the Claimant was caring for Dorothy the turkey as an agent for the owner rather than in a professional capacity as a veterinary nurse. As such he did not expect her to make clinical notes and she was not in breach of the Respondent's Practice Standards or the Code of Professional Conduct for Veterinary Nurses. She was, however, in breach of the Respondent's 'no pets' policy for its residential accommodation. That part of the allegation was upheld but it constituted misconduct and not gross misconduct.

Allegation 3 – He conclude that the Claimant had had the accommodation agreement and that she was in breach of it. He upheld the allegation and that it constitutes misconduct.

Allegation 5 – He said that the Claimant had been provided in the investigation report appendices with copies of all the screenshots of BSAH patients that were the subject of the social media posts. The Claimant had not provided any evidence to prove that she had obtained written consent from the pet owners before posting the images on her social media platforms. No consent from or other written records had been found despite a search having been conducted. Failure to obtain written consent was a serious breach of the Respondent’s Social Media Policy. He also upheld the other two parts of this allegation. He upheld the allegation and considered that that constituted gross misconduct.

Allegation 6 – He recognised the Claimant’s right to support, promote and identify with veganism and her right to promote her ethical and political beliefs, providing that she did so lawfully. Likewise he recognised her right to be involved outside of work in lawful activities that promoted animal welfare, even if such views might cause offence to others. That having been said, the evidence showed that the Claimant had engaged in activities which involved trespassing and the theft/removal of animals from private property, she had been identified as being part of and promoting the activities of “Meat the Victims”, an animal activist group that openly endorsed the breaking of law and had she had been identified with the caption “How to steal pigs and influence people.” He concluded that her actions were likely to bring the profession into disrepute and undermine public confidence. The Veterinary Nurse Code of Conduct stated that veterinary nurses must not engage in activity that would be likely to bring the profession into disrepute or undermine public confidence in the professions. Furthermore, they constituted a serious breach of the Respondent’s Social Media Policy and her actions risked bringing the Respondent into disrepute. Her social media posts could have been seen by individuals who would have recognised her as an employee of the Respondent. He concluded that those actions constituted gross misconduct. He upheld the decision to dismiss her on 17 June 2020.

58 In cross-examination the Claimant said that she had been charged with criminal offences of conspiracy in connection with animal rights activities in Suffolk and was going to be tried at the Crown Court in August. I reminded the Claimant of her right not to answer any questions in this hearing if to do so would expose her to proceedings or to a penalty in the criminal courts. We also adjourned the hearing for the Claimant to consider her position and to confer with her counsel as to whether happy for this hearing to proceed. Following the adjournment, the Claimant said that the conspiracy charges did not relate to any of the evidence in this case and there was no overlap of evidence between this case and the criminal case and she was happy to proceed with this case.

Conclusions

Philosophical belief discrimination

59 From the start of the Claimant's employment in August 2015 until her arrest on 6 February 2019 the Respondent was aware of the Claimant's ethical veganism, which it understood to be her belief that humans should not eat, wear, use for sport, experiment on or profit for animals, and her involvement in animal welfare issues. It had no difficulty with that save for asking her to ensure that when she expressed any views on issues on which it did not have a formal position she should not be identifiable as an employee of the Respondent. The Respondent took no action against the Claimant because of her veganism; it supported her to the extent that it could, such as by telling the other occupants in the flat not to put animal products in the fridge that she used. The Claimant did not inform the Respondent that her ethical veganism extended to believing that she had a moral obligation to take positive action to reduce or prevent the suffering of animals even if that involved acting unlawfully.

60 The Claimant was suspended and made the subject of a disciplinary investigation following her arrest on the Respondent's premises and the police informing the Respondent that they were interested in her in connection with their investigations into burglaries and thefts at farms which they believed had been conducted by a suspected splinter cell of the Animal Liberation Front. The Respondent was sufficiently concerned about the Claimant's possible involvement with ALF and in these activities to alert its Head of Security and its Director of External Relations. The concerns were about the risk of violence to the Respondent because of its activities and the risk of damage to its reputation. The Respondent took the actions that it did because it was concerned about the actions in which the Claimant might have been involved. It did not do so because of any belief that she had.

61 The Claimant was dismissed because the Respondent believed that some of her conduct had amounted to gross misconduct. At the conclusion of the appeal process the dismissal was upheld on the basis that allegations 5 and 6 had been substantiated and amounted to gross misconduct. Allegation 5 had nothing do with the Claimant's ethical veganism. Allegation 6 related to the activities of the Claimant publicised on social media. These showed the Claimant being engaged in activities which included trespassing on private property and removing animals from that property in circumstances which would probably amount to theft. They showed her as being a part of and/or promoting the activities of "Meat the Victims", which identified itself as a "*growing community of citizens willing to disobey unjust laws*". It showed her as appearing in a programme entitled "How to steal pigs and influence people." The Respondent is an organisation that conducts animal research and works with food production units and abattoirs. It dismissed the Claimant because she was engaged in and/or associated with unlawful actions which she publicised. She also had a social media presence as an employee of the Respondent. Her actions were potentially damaging to the Respondent's reputation, its relationships with its partners and its work.

62 The Respondent dismissed the Claimant because of her actions – the unlawful activities in which she participated, the association with and support of an

organisation that advocated disobeying laws and the fact that she publicised both those matters.

63 Under Article 9 of ECHR everyone has the right to freedom of thought and religion and the right to manifest that thought or religion. We considered whether the Claimant's belief, as defined by her, and the actions that she took in accordance with that belief (the manifestation of the belief) are protected as a philosophical belief under section 10 of the Equality Act 2010, applied in a way that is compatible with Article 9 of the European Convention on Human Rights. Had the Claimant's belief been limited to the belief that humans should not eat, wear, use for sport, experiment on or profit from animals, we would have had no reservation in concluding that it satisfied the Grainger test and was a philosophical belief. We might have reached the same conclusion had the moral obligation to take positive action to reduce or prevent the suffering of animals been limited lawful action, such as protests and demonstrations. The Claimant's belief, however, goes further than that. It includes trespassing on the private property of others and removing their property and acting in contravention of the law.

64 We considered the Claimant's belief and manifestation of it together as the belief took the form of an obligation to act in a specific way, and it is, therefore, difficult to separate the acts done from the belief itself. The actions are an integral part of the belief. The manifestations of a belief are restricted both under Article 9 of ECHR and the Grainger criteria. We concluded that a belief to take actions that are unlawful (either contrary to civil or criminal law) and to interfere with the property rights of others does not satisfy the fifth element of the Grainger test. It cannot be worthy of respect in a democratic society. The laws of this country are made by its democratically elected representative and have to be observed by all citizens. It is not open to individuals to decide which laws are worthy of respect and which are unjust and can be disobeyed. Any belief that advocates or makes such actions obligatory is not worthy of respect in a democratic society. We concluded that the Claimant's belief that she was morally obliged to take positive action to prevent or reduce the suffering of animals, which included trespass and removal of animals and its manifestation was not a philosophical belief under section 10 of the Equality Act 2010.

65 We also concluded that the Claimant's actions were not a manifestation of her belief that humans should not eat, wear, use for sport, experiment on or profit from animals (the part of her belief that would amount to a philosophical belief). Not every act that is in some way inspired, motivated or influenced by the belief constitutes a "manifestation" of the belief. The acts must be intimately linked with the belief. There was not a sufficiently close and direct nexus between her actions and the underlying belief. If we are wrong in that conclusion and the Claimant's actions were a manifestation of the belief (as set out at the start of this paragraph), we would have concluded that they were an objectionable or inappropriate manifestation of it, and that the Claimant had been dismissed for manifesting her belief in a way that was inappropriate and objectionable. She was not dismissed because she believed that humans should not eat, wear, use for sport, experiment on or profit from animals.

66 We concluded that for the reasons given above the Claimant's complaint of direct discrimination was not well-founded.

67 We considered next the complaint of indirect discrimination. It was not in dispute that the Respondent applied a practice of dismissing employees who were known or believed to be actively engaged in supporting the use of trespass and the removal of animals found to be suffering. That practice put persons who believed that they had a moral obligation to take such actions at a particular disadvantage when compared with persons who did not have that belief. We have concluded that such a belief is not a “philosophical belief” under section 10 of the Equality Act 2010 and, therefore, does not enjoy the protection of that Act. There was no evidence before us that the practice of dismissing employees who engaged in such conduct puts persons who believe that humans should not eat, wear, use for sport, experiment on or profit from animals at a particular disadvantage when compared with persons who do not share that belief. There was no evidence of what percentage of persons with such a belief engaged in the activities in which the Claimant was engaged or of the percentage of persons who did not have that belief who engaged in such activities.

68 if we had concluded that the practice had a disproportionate impact on those who believed that humans should not eat, wear, use for sport, experiment on or profit from animals, we would have concluded that the Respondent had shown that it was a proportionate means of achieving a legitimate aim. The Respondent’s legitimate aim was to protect its interests, staff and reputation. The Respondent needs to have a good and effective working relationship with food producers (including factory farms), abattoirs and animal-based research facilities. Those relationships are essential for the promotion and maintenance of animal welfare standards in the lawful activities in those facilities and in the training and education of veterinary professionals. Were it known that a members of the Respondent’s staff was engaged in unlawful activities related to those facilities, those relationships would be put under great strain and potentially lost. The Respondent’s practice prevented the Claimant and those who shared her belief that humans should not eat, wear, use for sport, experiment on or profit from animals from engaging in unlawful activities to prevent or reduce the suffering of animals. They were, however, free to manifest that belief in many other lawful ways. The Respondent’s need to protect its relationships with those organisations for the benefit of animals and its members outweighed the Claimant’s need to advance her belief by unlawful actions.

Unfair Dismissal

69 The Respondent dismissed the Claimant because it believed that she had been associated with and promoted the activities of an animal activist group that endorsed the breaking of law and she had engaged in activities which included trespass and removal/theft of animals and that she had publicised such activities, she had posted on social media pictures of pets treated at the hospital without their owners’ consent, she had appeared on website as having expertise in areas in which she did not have expertise, she had presented herself as a veterinarian, she had been in breach of the Respondent’s “no vets” policy in its residential accommodation and she had been in breach of her accommodation agreement. Those are matters related to conduct. The last two of those matters were found (at the end of the process) to constitute misconduct and it was clear that the Claimant would not have been dismissed for those two matters alone.

70 We then considered whether the dismissal was fair – whether the process that had been followed was fair, whether the Respondent had conducted a reasonable investigation and had reasonable grounds to believe that the Claimant had been guilty of the misconduct alleged and whether dismissal was within the band of reasonable responses.

71 We concluded that at the time the Respondent dismissed the Claimant it had carried out as much investigation as was reasonable in all the circumstances and that it had reasonable grounds to believe that the Claimant had done the actions that were alleged against her. Ms White had conducted an investigation which had involved interviewing the Claimant and others and looking at documentary and other evidence. She produced a comprehensive report and attached to that all the evidence in support of the allegations. That evidence ran to nearly 150 pages. The Claimant's disciplinary hearing was adjourned once at her request but went ahead on the second occasion when she did not attend and had not contacted the Respondent before the hearing to seek an adjournment or provide any explanation for her non-attendance. She was given the opportunity to challenge the outcome at the appeal hearing.

72 It was said on behalf of the Claimant that Ms White had not conducted a proper investigation but had sought to build a strong case against the Claimant to secure her dismissal. We do not accept that. Ms White conducted as thorough an investigation as she could. She set out as allegations all the matters that raised concerns about the Claimant's conduct and indicated that she might not have been guilty of misconduct. Many of the facts set out in her report were ultimately not in dispute – the social media posts that showed the Claimant engaged in various activities, the pictures of the animals treated at the hospital on the Claimant's social media, the fact that the Claimant had had the turkey in her flat and that that had contravened the Respondent's policy. It is accepted that some of the allegations were not that serious, for example, the Claimant not reporting the damage to the flat, and that the evidence on some matters was inconclusive, such as the medication found in the fridge in the Claimant's flat. However, Ms White was not reaching any conclusion on those matters. She was setting out matters that needed to be looked at further. That the process was fair is demonstrated by the fact that some allegations were found not to be substantiated at the disciplinary hearing (without any input from the Claimant at that hearing) and that the Claimant's appeal was upheld in relation to one allegation.

73 It was also submitted on behalf of the Claimant that it had emerged from the oral evidence of Professors Madison and Smith that *“a key reason for deciding that it was necessary to dismiss the Claimant was a concern that she might pose a direct risk to the RVC, such as taking or facilitating some form of direct actions against it”*. It was said that that made the dismissal unfair because this “key reason” for dismissing the Claimant was a concern that had never been communicated to or discussed with her. The Claimant's summary of their oral evidence is not a fair or accurate reflection of what they said. Professor Maddison's evidence was that having an employee involved in extreme animal rights groups posed a serious reputational and material risk to the Respondent. She said that one aspect was the Respondent's commercial relationships but there was also the physical damage to property, people and animals. She said that because they did research they were potentially targets for

animal rights activists. She said that the Claimant might have discovered that there were things within the Respondent that she did not support. She said that there was a reputational and material risk to the Respondent of the Claimant's association with the activities of extreme animal rights groups. It could affect their commercial relationships and if those relationships were lost, the education of their students would be impaired. She later said that it was not specifically about what the Claimant might do but the groups that have strong views about animal research done by RVC. It was not about the Claimant as an individual but what the groups that she was associating with were capable of. Professor Smith spoke his concerns about unlawful activities relating to things that RVC and its clients do. He said that they ran teaching farms, had partnerships with abattoirs and engaged in animal research. He said that if the Claimant felt it right to trespass on abattoirs or farms, why would a farm belonging to the Respondent or an abattoir that was a client of the Respondent be any different. He said that he had very specific concerns about her involvement in extreme animal rights groups and for the welfare of their employees, students and clients. We do not accept that they said that a key reason for her dismissal was a concern that she might take or facilitate some direct action against the Respondent. The concern was that her association with such groups posed a number of risks for the Respondent, one of which was that such groups might take actions against the Respondent or its clients.

74 The concerns about the Claimant's association with such groups were raised with her. When Ms White interviewed her she had asked her whether she thought it was appropriate for RVC employees to participate in animal rights protests that might involve illegal activity. She saw shown and asked to comment on her social media posts where Ms White said it appeared that she participating in activities that could damage the reputation of RVC. The investigation report referred to her activities being "against College interest" and the risk of damage to the Claimant's relationship and partnerships. That was repeated in Professor Maddison's outcome letter. We do not consider that it would have made any difference to the outcome if the Respondent had explicitly stated that the kind of groups with which the Claimant was involved might target the Respondent and the Claimant had had an opportunity to address that.

75 It was also submitted on behalf of the Claimant that neither Professor Maddison nor Professor Smith had considered an alternative to dismissal having found allegation 5 and 6 to be substantiated. We accept that there is no reference to Professor Maddison considering alternatives in the notes of the disciplinary hearing or in her outcome letter. In the outcome letter she said that she had found that the Claimant had committed three acts of gross misconduct and that they were serious breaches of the Respondent's procedures, especially as they put the reputation of the College at risk. We accept her evidence that she concluded that in light of the nature and severity of the allegations that she had found to be provided, she felt that there was no alternative to dismissal. Professor Smith upheld the decision to dismiss because he concluded that the Claimant's actions in relation to allegation 5 and 6 were not compatible with her work, were in breach of the Respondent's Social Media Policy and risked bringing the Respondent into disrepute. We are satisfied that they both took the view that on the facts of this case, there was no alternative to dismissal. The Claimant did not accept that she had done anything wrong or give the Respondent any assurance that she would not undertake any such activities in the

future. We concluded that in all the circumstances of this case the Respondent acted reasonably in treating the misconduct it had found as a sufficient reason for dismissing the Claimant.

Wrongful Dismissal

76 We find that the Claimant was engaged in activities which involved trespassing on private property and removing animals from that property in circumstances which would probably amount to theft. She supported and/or promoted the activities of “Meat the Victims”, which identified itself as a “*growing community of citizens willing to disobey unjust laws*”. She appeared in a programme entitled “How to steal pigs and influence people.” She publicised all these activities on social media. It is easy to identify her on these posts as an employee of the Respondent as she also has a social media presence as an employee of the Respondent. The Respondent is an organisation that conducts animal research and works with food production units and abattoirs. Her actions were potentially damaging to the Respondent’s reputation, its relationships with its partners and its work. The Claimant’s activities in those circumstances amounted to gross misconduct and were a repudiatory breach of her contract of employment. The Respondent was entitled under her contract to dismiss her without notice.

Employment Judge

Date: 30th May 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

30th May 2022.

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FOR THE TRIBUNAL OFFICE