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**ADJUDICATION OF A COMPLAINT  
UNDER THE FINANCIAL TIMES EDITORIAL CODE**

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**Adjudicator:** Christina Michalos KC,  
Editorial Complaints Commissioner, Financial Times Limited

**Complainant:** TikTok Information Technologies UK Limited

**Relevant Code Provisions:** Clause 1 (Accuracy)

**Date of Adjudication:** 25<sup>th</sup> September 2023

1. This is the adjudication of an appeal by TikTok Information Technologies UK Limited (TikTok). The appeal is against the decision of the Editor which was communicated to TikTok by email on 24 March 2023 and appealed on 3<sup>rd</sup> April 2023. As set out below, there were further submissions to me the last of which were received on 14<sup>th</sup> July 2023.
2. The appeal is a complaint of inaccuracy in relation to an article titled *TikTok accused of mishandling sexual harassment allegations* published online on 14<sup>th</sup> March 2023 at <https://www.ft.com/content/6d43008e-055d-46c1-a845-f7bdee8669f4> and in the paper on 20<sup>th</sup> March 2023.

Preliminary Procedural Matters

3. The role of the FT's Complaints Commissioner is to adjudicate on appeals that have not been resolved to the complainant's satisfaction by the relevant FT editorial department. In other words, an appeal from a 'first instance' decision by FT editorial.

4. On 3rd April 2023 TikTok appealed to me by way of a letter sent by email to the Complaints Commissioner email address. The FT's initial response to the appeal was sent to me on 21<sup>st</sup> April 2023. In respect of one of the grounds of appeal, the FT objected that one of the complaints was not raised at 'first instance'. Given that the process does normally require a first instance, I considered that (if the fact the ground had not been considered initially was an objection of the FT) the FT should be given an opportunity to make an initial decision on this ground if it wished to or if not, for it to be treated as part of the appeal.
5. The FT indicated that it did not wish to take a further first instance decision but that it did wish to make some further representations on that aspect of the appeal. TikTok was of course given the opportunity to reply to those additional representations if it wished to do.
6. I received additional representations from the FT on 4<sup>th</sup> July 2023 and further representations from TikTok in reply on 14<sup>th</sup> July 2023.

### The Complaint & Appeal

7. As indicated by the article's headline, it concerned a report that TikTok had been accused of mishandling allegations of sexual misconduct against a senior manager in London. The article referred to one woman who the FT called 'Sarah' to protect her identity who was on a fixed-term consultancy contract. Part of the article read as follows (paragraph numbers are added and relate to the position within the full article):

***“TikTok accused of mishandling sexual harassment allegations***

*Woman's employment contract terminated after internal probe into complaint about advances made by senior manager*

...

[6] *“One woman, whom we call Sarah to protect her identity, outlined a series of distressing encounters with [her boss] in late 2021 and early 2022. The FT has reviewed messages between Sarah and [her boss], her communications with TikTok, as well as with friends that corroborate aspects of her story.*

[7] *Sarah said the behaviour included being repeatedly propositioned by [her boss] in the office, at work events, over messages sent outside work hours, and two instances of inappropriate touching. Sarah said she felt unsafe and trapped in rooms alone with him, where he once tried to kiss her and on another occasion threatened to “slap her arse”.*

[8] *In early 2022, Sarah raised the issue with [her boss's] manager [...] who placed her on immediate paid suspension as the company investigated the complaint.*

...

[11] *TikTok's investigation upheld the allegation that [her boss] had made inappropriate comments and messages that fell short of its code of conduct on harassment, according to a letter seen by the FT. However, TikTok added that it found these instances occurred before Sarah and [her boss] were involved in a "consensual romantic relationship".*

[12] *Sarah denies ever having a consensual relationship with [her boss] and said she was shocked and upset by the outcome. TikTok failed to provide her with any evidence of such a relationship, she added. [Her boss] did not respond to requests for comment on whether it was his position that he had been in a consensual relationship with Sarah.*

[13] *After the outcome of the investigation, Sarah's fixed-term employment contract was terminated with a month's notice. "They realised he had left, and it did not reflect badly on TikTok anymore," she added. "I was left waiting for six months without any outcome... I did not get any justice.*

[14] *"I was scared of losing my job if I said something... and [that is what happened] in the end," she added.*

[15] *TikTok said Sarah had been hired on a fixed-term consultancy contract that had been due to expire during the investigation. Her employment was extended beyond this date, and when the probe concluded, her contract was brought to an end, it added.*

[16] *"As soon as this complaint was made, we launched a thorough investigation, including interviewing 10 different witnesses to determine facts. We are confident we took appropriate steps in response," TikTok said.*

...

[25] *"Harassment of any kind in our workplace is completely unacceptable and will be met with the strongest form of disciplinary action possible," TikTok said. "We're fully confident in the rigour of our process for surfacing, investigating and taking action on any and all complaints of this nature."*

8. TikTok made an initial complaint to FT editorial by email on 17<sup>th</sup> March 2023 of inaccuracy. There were four claims which were identified to be factually wrong:

- 8.1. TikTok terminated the employment contract of a woman who made a harassment complaint.
  - 8.2. TikTok suspended the complainant, and [ had not taken other specific action that had in fact occurred].<sup>1</sup>
  - 8.3. Allegations of two instances of inappropriate touching and an attempted kiss were not upheld by TikTok because they were mishandled.
  - 8.4. TikTok's outcome communication minimised Sarah's claims on the dubious or invented basis that she and [her boss] were in a '*consensual romantic relationship*'. The article wrongly gave the impression that this was cited as a basis of a finding 'against' Sarah and in favour of her boss.
9. The FT responded on 24<sup>th</sup> March 2023 stating that it did not accept that the article was misleading or contained any significant inaccuracy so they did not intend to make any amendment or correction. In respect of the above grounds. in summary, the FT responded as follows:
- 9.1. The article made clear that the complainant was engaged on a fixed term contract, was not an employee and that TikTok's response was included in the article (ie. that her contract had been extended and was brought to an end following the investigation).
  - 9.2. The reporter had been told of the other specific action on a not for publication basis. The reasons that the complainant had been placed on paid leave were confidential and also not for publication.
  - 9.3. The allegations were accurately reported as part of what Sarah described as the behaviour experienced and did not allege they were detailed in the harassment complaint.
  - 9.4. The reference to '*a consensual romantic relationship*' was based on the outcome of the investigation as communicated to Sarah. The FT had asked TikTok to comment on the record on this issue but it had declined to do so. It was not unreasonable to include her personal denial that she had ever been in a relationship with her boss.

### **TikTok's Appeal to the Complaints Commissioner: Confidential Information**

10. In its letter of appeal, TikTok made clear that some relevant background information relating to the internal investigation is confidential. This information (which has been

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<sup>1</sup> The other action referred to was specified in the initial complaint but were identified to the FT as 'not for publication'. These do not form part of the grounds of appeal and I do not consider it necessary to detail them here.

provided to me) was provided to the FT on a not-for-publication basis prior to the article being published. I will refer to this “Not-For-Publication Information” as the “NFP Information”. The appeal letter stated “*we do not consent to reference being made to [the NFP Information] either in your adjudication or any published correction*”. In broad terms, the NFP Information relates to the protection of the integrity of the internal TikTok investigation. This wording (*to protect the integrity of the investigation*) mirrors the wording TikTok provided in its letter as a suggested form of correction. I infer from this that TikTok are content for this limited description of the NFP Information to be made public.

11. I should say, not least for the benefit of future appellants, that simply because a complainant asserts information is confidential and that they “*do not consent*” to information being included in an adjudication that it does not automatically follow that such information would be excluded from an adjudication. Ultimately, that is a matter for me and requires consideration of amongst other things: (1) whether the information is in fact actually confidential and has the necessary quality of confidentiality about it; assertion alone is not enough; (2) whether information should not be published as it could lead to the identification of confidential journalistic sources or may have other adverse consequences; (3) whether it is relevant to the adjudication and necessary to the reasoning; and (4) whether if it relevant and if is necessary to include it, that there are grounds for redaction of information or anonymity as provided for in the Guidance on Policy or Process and should be referred to the Appointments & Oversight Committee. The Guidance at paragraph 41 states that the normal rule is that adjudications shall be published openly:

*All Adjudications shall be published openly on the FT.com website, unless the Appointments & Oversight Committee determine that it would be appropriate having regard to the public interest or any private rights for any redactions to be made.*

12. I consider that here the NFP Information does have the quality of confidence about it and that it is confidential. I am also satisfied (and it is not disputed) that it was made clear to the FT that the NFP information was provided on the basis that it would not be published. Although, for reasons as set out below, the fact of that information is relevant to my decision, it is unnecessary to include the detail of that NFP Information here in such a way that redaction would need to be considered.

## **TikTok's Appeal to the Complaints Commissioner: Grounds of Appeal**

13. The appeal is on two grounds of inaccuracy namely:
  - 13.1. The article reports that Sarah's contract of employment was terminated because she had complained of sexual harassment. TikTok state this was inaccurate because Sarah was not an employee; she was on a fixed term contract that was not 'terminated'. The fact it was not renewed was not a consequence of her having complained.
  - 13.2. The article reports that Sarah was immediately suspended after making her complaint of sexual harassment – the clear implication being that she was suspended for making that complaint. TikTok state that this was significantly inaccurate because Sarah was not suspended because of her complaint of sexual harassment. She was placed on paid leave for unrelated reasons given in the NFP Information, in other words to protect the integrity of the investigation.

TikTok also submits generally that although the word 'accused' is used in the headline and the first paragraph of the article, any reasonable reader would understand the allegation at Chase Level 1 (ie. that there is guilt rather than mere accusation).<sup>2</sup> TikTok made clear in its appeal that the focus on two grounds of appeal was not an acceptance of the decision made on the other points of complaint, nor an acceptance that the article was accurate in these respects. However, it considered it was more constructive to focus on what it considered where the breaches which had the potential to cause more serious harm to the relationship of trust between TikTok and its employees and deter the reporting of misconduct. TikTok's decision to approach the appeal in this focused way is both reasonable and commendable.

### **The FT's Response**

14. As I have noted above, in its first response of 21<sup>st</sup> April 2023, the FT objected that Ground 2 (namely that the article implied that Sarah was suspended for making her complaint) had not previously been addressed. In addition to that objection, the FT's first response can be summarised as follows:
  - 14.1. The NFP Information had been provided on the basis of deep background and not for publication. The FT say it repeatedly asked TikTok to allow it to use the NFP

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<sup>2</sup> Chase Levels are conventionally used by the Courts in libel cases to describe the three levels of defamatory meanings that derive from the case of Chase v News Group Newspapers Ltd [2002] EWCA Civ 1772: Chase level 1 means that the Claimant is guilty of the conduct in issue; . Level 2 is reasonable grounds to suspect the Claimant is guilty of the conduct in issue and Level 3 means that there is probable cause to investigate the same.

Information in a reportable way but TikTok declined. The FT therefore decided not to refer to the NFP Information. It submits this was a reasonable exercise of editorial discretion and did not render the article inaccurate or misleading.

- 14.2. The article did not report that Sarah's contract of employment was terminated because she had complained of sexual harassment. It reported accurately that "*After the outcome of the investigation, Sarah's fixed-term employment contract was terminated with a month's notice.*" It then set out how Sarah felt about the way the episode turned out for her. The FT submit that Sarah had a right to express that view and it was reasonable to report it. The article then immediately fully reported TikTok's response (namely - as set out above -: "*TikTok said Sarah had been hired on a fixed-term consultancy contract that had been due to expire during the investigation. Her employment was extended beyond this date, and when the probe concluded, her contract was brought to an end, it added. "As soon as this complaint was made, we launched a thorough investigation, including interviewing 10 different witnesses to determine facts. We are confident we took appropriate steps in response," TikTok said.*")
  - 14.3. The FT submits that it engaged in a series of contacts with TikTok throughout the preparation of the article. This included putting all Sarah's quotes - for the avoidance of doubt, using her real name - to TikTok for its response.
  - 14.4. The FT submit that the article does not adopt guilt as asserted by TikTok in its letter that this was a Chase Level 1 allegation. It is factual. It suitably reports Sarah's complaints about her experience with TikTok and is properly balanced.
15. After the FT was given the opportunity to take a fresh first instance decision in respect of Ground 2 which it declined, the main points of the further submissions the FT filed can be summarised as follows:
- 15.1. The 8<sup>th</sup> paragraph of the article which reads "*In early 2022, Sarah raised the issue with [her boss's] manager [...] who placed her on immediate paid suspension as the company investigated the complaint.*" is entirely neutral. It includes the important words that it *was paid suspension as the company investigated the complaint.* There is no express or implied criticism stated in that. Nothing could have been added about the NFP Information because that only been provided as deep background. Accordingly the 8th paragraph was stated neutrally and is not misleading, especially when the rest of the article is taken into account as context for overall meaning.
  - 15.2. The allegedly unsatisfactory (i.e. mishandled) aspects of the handling of Sarah's own complaint do not hinge on paragraph 8 and her immediate paid suspension, but instead include a number of other matters set out in paragraphs 17-19; paragraphs 11-

- 12 and Paragraphs 13-15 (that, in effect, Sarah lost her job after the probe as her contract was not renewed as she had hoped/anticipated).
- 15.3. The article is fully fair to TikTok, reflecting its position in paragraph 16: '*...“As soon as this complaint was made, we launched a thorough investigation, including interviewing 10 different witnesses to determine facts. We are confident we took appropriate steps in response,” TikTok said. ...*'
- 15.4. The article does not give any significantly misleading impression that Sarah was punitively suspended because she had made a complaint. This would be a strained and unreasonable reading of the article - both as regards paragraph 8 itself and the overall content and balanced meaning of the article as a whole.
16. The FT also say that in respect of TikTok's submission that a correction should include the following words: '*The complainant, a fixed term contractor, was later placed on paid leave, during the investigation, due to concerns that this was necessary to protect the investigation's integrity*' that:
- (a) The first half is already expressly stated within the published article; and
  - (b) The second half appears to be a case of TikTok wanting to have its cake and eat it: TikTok withheld the NFP Information and did not consent to publication. It also provided no evidence of the detail of the NFP Information and Sarah denied it. The message informing Sarah of her suspension made no reference to the NFP Information.
17. The FT submits that it seems unreasonable that TikTok should now, post-publication, be entitled to have this information published by FT, particularly in circumstances where paragraph 8 is entirely neutral and not significantly misleading, especially when it is read together with paragraph 15, which makes clear that TikTok acted reasonably by actually extending Sarah's fixed-term contract during the investigation as it had been due to expire during that period.

### **TikTok's Reply to the Further Submissions**

18. TikTok responded as follows, again in summary:
- 18.1. As stated in TikTok's original email, Sarah had been placed on leave not because she had made a complaint of sexual harassment but for good reasons as contained within the NFP Information which were known to the FT. TikTok had indicated that it would prefer to resolve the matter amicably rather than escalate it. However, the FT's



first instance response rejecting the complaint its entirety did not deal with TikTok's point that the article suggested she was inappropriately suspended from her employment in order to penalise her for lodging a complaint.

- 18.2. The complaint is not that the article omitted to say that Sarah was placed on leave following the NFP Information. The complaint is that the article inaccurately alleges that TikTok victimised Sarah by placing her on immediate suspension as soon as she made her complaint for the sole reason she had raised complaints of sexual harassment by her superior.
- 18.3. Paragraph 8 of the article is inaccurate and extremely damaging. The use of the word 'immediate' is factually wrong and leaves no room for any other explanation for the so-called 'suspension' – with no time between complaint and 'suspension' for any intervening event justifying placing Sarah on paid leave.
- 18.4. TikTok say that the FT in its submissions does not suggest that it has evidence that Sarah was immediately suspended for making her complaint. TikTok contend that the FT appears to be saying that this false and damaging impression was the inescapable consequence of the fact it did not have permission to publish the NFP Information provided by TikTok to demonstrate its falsity. TikTok contend that this is no answer because (a) it is clearly not right: the FT's were more than capable of avoiding the imputation which arose from that paragraph; and (b) although the FT says that Sarah denied that this was ever raised with her, it does not follow that it was entitled to disregard the explanation TikTok had given pre-publication as untrue.
- 18.5. As regards the meaning of the article, the FT's argument that the mishandling of the sexual harassment allegations relates only to matters excluding the two most damaging allegations of mishandling and victimisation (suspension and termination of employment of Sarah) is an artificial reading of the article. It dissociates paragraph 8 from the headline and attributes no significance to that paragraph at all despite it being the opening mention of how the supposedly mishandled allegations were dealt with. TikTok dispute that the matters that the FT rely on as the real basis for the allegation of mishandling Sarah's complaint support that contention for a number of reasons which I do not need to set out here in full but include that the purpose of a reference to a consensual relationship was only to record that Sarah was not in a consensual relationship with the accused individual at the relevant time.
- 18.6. The FT's submission that that only the accuracy of the first sentence of paragraph 13 should be considered in relation to the termination of Sarah's employment ignores the content and impact of the rest of the article including the headline, standfirst text, and

paragraphs 13 and 14. Taken as a whole, the article means that Sarah was victimised and dismissed from her employment following the investigation of her complaint notwithstanding the fact that her complaint was upheld. TikTok say that the use of the words “employment contract” is inaccurate because Sarah did not have an ‘employment’ contract. She was not an employee. She was engaged under a fixed term consultancy contract. The FT’s insistence on wrongly referring Sarah as an employee in the article undermined TikTok’s response, which the FT knew or ought to have known was factually correct.

- 18.7. TikTok continued to pay Sarah for a further five months after her fixed term consultancy contract ended. Far from victimising Sarah, TikTok took the decision to continue to pay her at her normal monthly rate, on provision of an invoice, after her contract came to an end, without requiring her to provide services, in order for her to be able to participate in the investigation and as an act of support. When the investigation concluded, TikTok paid a further month’s fees as a gesture of good will. The FT were aware of all of this.
- 18.8. The FT’s suggestion that ‘in normal circumstances she had a reasonable expectation that she would have been offered an extension, or new contract, as is common in the case of such short-term contracts in the media business’ is not what the article says and is simply wrong. She could have had no such expectation on the facts of the case and past history.

### Adjudication

19. Clause 1 of the Editors’ Code of Practice deals with accuracy and provides:

*i) The Press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text.*

*ii) A significant inaccuracy, misleading statement or distortion must be corrected, promptly and with due prominence, and — where appropriate — an apology published. In cases involving IPSO, due prominence should be as required by the regulator.*

*iii) A fair opportunity to reply to significant inaccuracies should be given, when reasonably called for.*

*iv) The Press, while free to editorialise and campaign, must distinguish clearly between comment, conjecture and fact.*

20. As Clause 1 i) and ii) make, clear breaches of the Code requirement for accuracy cover both factual inaccuracy (ie. provable factually wrong) and also publications which are misleading.

**First Ground of Appeal: The article inaccurately reports that Sarah’s contract of employment was terminated because she had complained of sexual harassment which was is inaccurate because (a) she was on a fixed term consultancy contract and not an employee and that was not ‘terminated’ and (b) the fact it was not renewed was not a consequence of her having complained.**

21. Both Grounds have at their core the meaning of the article. Although an appeal to the Complaints’ Commissioner is not a legal process, it is right that a system of regulation which is intended to balance the rights of individuals, including corporate bodies, with the rights of the press should reflect applicable legal principles and when appropriate have regard to the civil law, not least for consistency and fairness. The FT Editorial Complaints Guidance on Policy & Process provides as much at paragraph 35.
22. The legal principles for determining the meaning of an article are well established: see *Koutsogiannis v Random House Group* [2019] EWHC 48 (QB) *Jeynes v News Magazines Ltd* [2008] at EWCA Civ 130 [14]. The governing principle is reasonableness and the intention of the publisher is irrelevant. The key question is what a hypothetical reasonable reader would understand the article to mean. Over-elaborate analysis and a too literal approach to the task should both be avoided. The law provides that the publication must be read as a whole including headlines and body of the text and any 'bane and antidote' taken together. I bear in mind that many readers of newspaper articles, whether online or in print, are likely to be read at a degree of speed and are unlikely to spend time analysing wording or sentence structure.
23. I do not consider that this is a case of pure factual inaccuracy either in respect of the appeal concerning (a) not an employee/ fixed term consultancy or (b) non-renewal being a consequence of the sexual harassment complaint. I am of this view because in respect of (a) the article at paragraph 15 states that TikTok had said Sarah had been hired on fixed term consultancy contract and paragraph 13 also makes reference to ‘a fixed term employment contract’. In respect of (b), as the FT submit, the article did not report that Sarah’s contract of employment was terminated because she had complained of sexual harassment. The words used at paragraph 13 were “*After the outcome of the investigation, Sarah’s fixed-term employment contract was terminated with a month’s notice.*” The article does not state in terms the

inaccuracies referred to in TikTok's first Ground so it is question of whether the article is inaccurate on the basis that it misleading.

24. I take TikTok's point that the words employment 'employment contract' are used in various places in the article in relation to Sarah - in the standfirst/subdeck, paragraphs 13 and 15 and paragraph 14 refers to her being scared of 'losing her job'. However, it is the case that the entire article has to be read together including any 'bane and antidote'. It is also the case that the hypothetical reasonable reader will not read an article with the same degree of analysis as a lawyer and is not to be treated as a person avid for scandal.
25. In my view, from the perspective of the reasonable reader, the important point is that the contract was one of a 'fixed-term'. The worker's relationship with TikTok was not represented as standard open-ended employee relationship. Although a lawyer would be more inclined to read the word 'employment' in a legalistic way (focusing on the distinction between true employees and independent contractors) a lay reader would not be so analytical or prescriptive in my judgment. The article does make clear that Sarah was on a fixed-term contract in both paragraph 13 and 14. It also includes both Sarah's view of the outcome expressed in her words and clearly her account (paragraph 14) and TikTok's statement that the contract would expired during the investigation but was extended beyond that date. I consider that it is balanced as it includes both parties' positions. I understand that from TikTok's perspective that the subdeck text immediately below the headline ("*Woman's employment contract terminated after internal probe into complaint about advances made by senior manager*") at first glance could arguably be said to give a different impression. However, the well-established approach of the civil law is that the meaning of the article is not derived from an intense focus on a headline or subdeck or single sentences or even paragraphs. The meaning is derived from considering all of the text together.
26. I do not accept TikTok's submission that taken as whole, the article means that Sarah was victimised and dismissed from her employment following the investigation of her complaint notwithstanding the fact that her complaint was upheld. This is too strained a meaning in my assessment. It is to completely ignore the fact that TikTok's position is set out clearly in paragraph 15. To arrive at TikTok's meaning and also conclude a Chase Level 1 meaning of 'guilt', a reader would have to be unduly cynical and totally disregard TikTok's statement. It would also be to disregard the overall sense of the article which was as the headline indicates, presented in terms of 'TikTok accused' (my emphasis) and 'allegations'. A reader could only really arrive at the view that TikTok were guilty of victimising Sarah by terminating her

contract because of her complaint by concluding that either TikTok were lying when they gave their statement [as set out in paragraph 15 - that “*Sarah had been hired on a fixed-term consultancy contract that had been due to expire during the investigation. Her employment was extended beyond this date, and when the probe concluded, her contract was brought to an end, it added.*”] or the company was deluding itself. Both of these conclusions would be unreasonable because there is no factual basis to support either. Particularly in the light of the fact that the article records that Sarah’s complaint was upheld, this would require quite a leap of unwarranted suspicion by the reader. It is also important to remember that the article also states that (1) TikTok’s investigation upheld the allegation that the behaviour in issue had fallen short of its code of conduct on harassment (paragraph 11); (2) there was a thorough investigation involving interviews with ten witnesses (paragraph 16) and (3) that her boss had resigned and left the company (paragraphs 10 & 13). These facts are not consistent with a rational conclusion that Sarah was being victimised as a result of her complaint or not treated fairly; if that were the case, one would expect the complaint to be dismissed out of hand and the account of the accused to be preferred over the victim. That is not what happened and not what the article suggests.

27. The overall impression given by the article is that Sarah, who was working on a fixed term contract, felt that her contract was not renewed as a result of her complaint but that TikTok’s position was that the contract had been due to run its course and had in fact been extended to until the investigation concluded. I do not consider there is inaccuracy in the form of being misleading; it reflects the position in a balanced way. Sarah is entitled to hold the opinion that she otherwise might have had her contract renewed had she not complained; that is just her view and not presented as fact. Any reader would be aware that a personal view is just that – a personal, sometimes self-biased, opinion. Importantly, paragraph 14 is immediately followed by TikTok’s statement by way of balance. Taken as a whole, the article does not adopt Sarah’s words as its own and it is editorially totally neutral on the basis upon which the contract was ended. The subdeck alone cannot override the meaning of the whole. I consider that the references in the submissions as to whether or not Sarah would have had a reasonable expectation that she would have been offered an extension, or new contract are irrelevant because the article makes no reference to these matters.
28. My conclusion on Ground 1 therefore is that the article is not significantly misleading and taking it in its entirety it does not bear the meaning that, as a matter of fact, the non-renewal

of Sarah's fixed term contract was as a consequence of her having complained or that she was a normal 'employee' who was victimised by being dismissed.

29. I should add that if I had found that the article was misleading as to Sarah's employment status, I would not have found this 'significant' enough to justify correction or clarification, because of the clear reference to the fact of a fixed-term.

**Second Ground of Appeal: The article inaccurately reports that Sarah was immediately suspended after making her complaint of sexual harassment and implies that she was suspended for making that complaint. In fact, she was placed on paid leave for entirely separate reasons given in the NFP Information, in other words to protect the integrity of the investigation.**

30. The same principles as regards meaning apply in respect of the second ground. As noted, the meaning is an objective meaning and therefore the intention of the publisher is irrelevant). The general rule in defamation law in a litigation context is that words are treated as having a single meaning even though people might in fact read them differently. This rule had historically been held not to apply for the purposes of Reynolds privilege (a type of qualified privilege for responsible journalism since abolished by s.4(4) of the Defamation Act 2013 and subsumed). In *Jameel v Wall Street Journal Europe SPRL* [2004] EWHC 37 (QB) at [70] – [73] Eady J said:

*“Where defamatory words are genuinely ambiguous, in the sense that they may readily convey different meanings to different ‘ordinary reasonable readers’ then the court may take into account such other meaning or meanings when considering privilege. ... If a journalist genuinely did not appreciate that the words could carry a certain defamatory implication, he could hardly be criticised for not checking it out ...*

*[in] determining whether it was reasonable or responsible not to have made further pre-publication checks, it might well be relevant to consider how the journalist understood the allegations he was making and, if he genuinely thought the words bore no defamatory imputation at all, it would be difficult to criticise him for not addressing such a meaning for the purpose of checks or (say) giving an opportunity to comment upon it.”*

31. In *Bonnick v Morris* [2002] UKPC 31, the Committee of the Privy Council (“JCPC”) said of this principle:

*“This should not be pressed too far. ... In the normal course a responsible journalist can be expected to perceive the meaning an ordinary, reasonable reader is likely to give his article. Moreover, even if the words are highly susceptible of another meaning, a responsible journalist will not disregard a defamatory meaning which is obviously one possible meaning of the article in question. Questions of degree arise here.”*

In other words, when looking at meaning in relation to journalism, there is scope for a greater degree of flexibility.

32. The submissions on this Ground are directly largely to paragraph 8 of the article: *“In early 2022, Sarah raised the issue with [her boss’s] manager [...] who placed her on immediate paid suspension as the company investigated the complaint.”* The FT say this is neutral; TikTok say the use of the word ‘immediate’ is factually wrong and leaves no room for any other explanation for the so-called ‘suspension’ – with no time between complaint and ‘suspension’ for any intervening event justifying placing Sarah on paid leave. In other words, that in context it wrongly reads as if TikTok victimised Sarah by placing her on immediate suspension as soon as she made her complaint for the sole reason she had raised complaints of sexual harassment by her superior.
33. The FT’s position needs to be seen in context in particular:
  - 33.1. That an explanation for why Sarah was suspended was to be found in the NFP Information which TikTok had identified as not for publication;
  - 33.2. The FT say it repeatedly asked TikTok to allow it to use the NFP Information in a reportable way but TikTok declined. The FT therefore took the decision not to refer to the NFP Information.
  - 33.3. The wording now put forward in the suggested correction by TikTok which is a very broad brush summary of the NFP Information (*“due to concerns that this was necessary to protect the investigation’s integrity”*) had not previously been agreed to. TikTok’s position prior to publication was that it would not consent to the publication of the NFP Information at all. Indeed, it still does not consent to publication of the detail of that information. That is no criticism of TikTok; it is confidential information that it is entitled to elect to withhold from publication if it wishes to do so; but it is important context for the publication in issue.

34. The FT were therefore placed in somewhat of a difficult position. It is correct Sarah was placed on paid suspension and that this occurred after she had made a complaint of sexual harassment. The article states that and is factually accurate so far as it goes. However, the reasons for that suspension were not because she had made a complaint of sexual harassment but for wholly separate but related reasons in the NFP Information – namely ‘*to protect the investigation’s integrity*’. Yet the FT was prohibited from giving even that watered down description, because TikTok were adopting a position that the NFP Information was not for publication at all. I fully appreciate why the FT adopted the wording they did and I do consider that at that time, given TikTok’s position, it was an understandable exercise of editorial discretion. To not mention the fact of the suspension would be to leave out a relevant and material fact but giving any detail as to why there was a suspension was impossible given there was no consent from TikTok to use the NFP Information.
35. The question for me now though is whether in the light of the full facts the article is inaccurate in the way outlined in Ground 2. If it is ‘factually inaccurate’ or ‘misleading inaccurate’, it is inaccurate or misleading. Inaccurate or misleading articles need to be corrected or clarified, whatever the reasons for that inaccuracy. The issue is rectification of inaccuracy. This includes circumstances where it is without fault on behalf of the publisher or where if a complainant had adopted a different position prior to publication, the matter could have been addressed differently.
36. My finding is that the article is misleading in the way set out in Ground 2 for the following reasons. I agree with the submissions of TikTok that the impression given by the wording in context is that Sarah was suspended *because* she had made a complaint of sexual harassment. The wording (my emphasis) is:

*“In early 2022, Sarah raised the issue with [her boss’s] manager [...] who placed her on immediate paid suspension as the company investigated the complaint.”*

I accept TikTok’s submission that the use of the word ‘immediate’ leaves no room for any other explanation for the so-called ‘suspension’. On the face of it, there is no time between complaint and ‘suspension’ for any intervening event justifying placing Sarah on paid leave and the article makes no suggestion of any other reason. I also take into account the context of paragraph 8 – it is within an article the entirety of which is about allegations of TikTok mishandling sexual harassment allegations and also expresses the opinion of Sarah that she was scared of losing her job if she said anything. The meaning of paragraph 8 as it sits within



the whole article is that the raising of the issue with her boss's manager immediately led to her being placed on paid suspension as the company investigated the complaint. It is a reasonable inference that this suspension was due to and directly related to the complaint. This is misleading in the light of the NFP Information. I disagree that this is a strained meaning; it is a logical and reasonable reading of that sentence in context - although it is not the black letter, literal meaning which is silent as to the reason for suspension.

37. I note that the FT argue that TikTok provided no evidence of the detail of the NFP Information and it had been denied by Sarah. However, as TikTok submit, the NFP Information contained TikTok's explanation which had been provided to the FT pre-publication. It is not for me to resolve contested facts in the underlying subject matter; my concern is with the Code and alleged breaches. In those circumstances, publishing the wording in Paragraph 8 was misleading for the reasons I have given above because it gave the impression the suspension and the complaint were directly and temporally connected. I accept that a subsidiary meaning that passage is capable of bearing is that that TikTok victimised Sarah by placing her on immediate suspension as soon as she made her complaint for the sole reason she had raised complaints of sexual harassment by her superior.
38. Although this is not a defamation case, by analogy with the *Bonnick* principles set out above, it is fair to say that if journalist genuinely did not appreciate that the words could carry a certain implication, he or she could hardly be criticised for not addressing it. My view is that because TikTok withheld the NFP Information from publication, the FT were always going to find it extremely difficult to write about this issue in a way that avoided the imputation that the suspension was causally unconnected to the complaint itself. To not mention the fact of the suspension would be to leave out a relevant and material fact that is a central part of the subject matter and be misleading in a different way. However, giving any detail as to actually why there was a suspension was impossible because there was no consent from TikTok to use the NFP Information. It would also not be accurate to state for example '*suspended for unrelated reasons*' because the reasons related to the integrity of the investigation. Thus they were not unrelated. Such a statement begs even more questions and is potentially inaccurate or misleading as regards Sarah in respect of the reasons for her suspension. For example, it may have given rise to an unwarranted implication or reader suspicion that Sarah had been suspended for wholly unconnected reasons such as gross misconduct which was not the case. Even a bare statement that Sarah was suspended during the investigation – again without explanation – still invites the inference it was because of the fact of a

complaint. It is only now that TikTok has indicated that it agrees to the publication of the wording “*that this was necessary to protect the investigation's integrity*” that a potential solution presents itself. It is much harder for a journalist to assess what is potentially misleading than what is untrue particularly when faced with limitations about what can and cannot be said.

39. Although I disagree on meaning for the reasons I have set out, I see why it is that the FT considered the wording that was used reflected the facts in a more neutral way than it in fact did and it felt that its hands were tied given TikTok’s position in respect of the NFP Information. I do not consider this is a case where there was a failure to take care prior to publication within the meaning of Clause 1.1.
40. Clause 1.2 requires me to consider if, even though there was no failure prior to publication, whether failure or refusal to correct or clarify is a code breach. As I have said, from the FT’s perspective, I can see why it was submitted that paragraph 8 bore a neutral meaning and that it contends that this seems to be a case of TikTok wanting to have its cake and eat it: TikTok withheld the NFP Information and did not consent to publication but now consents to a limited description of the NFP Information being published. Ultimately though this is about accuracy. Once the subsidiary meaning was drawn to their attention by TikTok, the FT could have chosen to correct or clarify the aspect of paragraph 8 that TikTok contended was misleading on a neutral basis without compromising its position, by analogy ‘without admission of liability’ as it were. In fairness to the FT, it should be recorded that although TikTok first raised this matter via email on 17<sup>th</sup> March 2023 (prior to publication of the hard copy edition), it did not articulate ground 2 quite in the way it has done on appeal. However, as set out above, the FT were given the opportunity to take a first instance decision on Ground 2. I consider that there was a breach of Clause 1.2 and that a correction or clarification in respect of Ground 2 ought to have been published once TikTok’s concerns were drawn to the FT’s attention.
41. Having upheld the complaint under Ground 2, I must now consider what remedial action if any should be required.
42. The breach of the Code has partly arisen due to the difficulty arising in relation to the NFP Information and the lack of consent to publication. The position has changed in that there is consent to publication of the wording that the suspension “*was necessary to protect the investigation's integrity*”. This was therefore not a case where there is inaccuracy due to any

significant failure in the newsgathering process or a failure of journalistic standards. On balance, I do not feel that it would be fair to the FT to require it to apologise as it had repeatedly asked TikTok to allow it to use the NFP Information in a reportable way but TikTok declined.

43. Taking all these factors into account, my conclusion is that a correction is the appropriate remedy. I have described it as a correction but it probably more accurately described as a clarifying correction because the central literal meaning (Sarah was placed on paid suspension) is factually correct. However, it is not as simplistic as a pure clarification because as I have found subsidiary meaning is that she was suspended because she had complained. I direct that the online version of the First Article should be updated to amend paragraph 8 as follows or words to similar effect; the word immediate should not be included. (The words and omitted words in square brackets are only for the purposes of avoiding including unnecessary personal names in this adjudication and are not intended to suggest amendment of those parts which can remain as it stands).

*In early 2022, Sarah raised the issue with [her boss's] manager [...] who, according to TikTok placed her on paid suspension as the company investigated the complaint due to concerns that this was necessary to protect the investigation's integrity.*

*Foonote*

*This article has been updated following an adjudication of the Financial Times Editorial Complaints Commissioner (with link) who directed that it should be amended to make clear that Sarah was not suspended because she made a complaint and TikTok clarified that Sarah was placed on paid suspension due to concerns that this was necessary to protect the investigation's integrity.*<sup>3</sup>

The fact that the article has been updated should be referenced at the bottom of the online version and state that this followed an appeal to and adjudication of the Financial Times Editorial Complaints Commissioner. A link to this adjudication should be included once it is available.

44. I direct that a clarifying correction should also be published in print on the Letters page in the following or broadly similar terms in keeping with the style of the Corrections column:

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<sup>3</sup> The wording of the directed correction was amended following an appeal by the Editor to the FT Appointments and Oversight Committee under Paragraph 24 of the FT's Editorial Complaints Guidance on Policy and Process. The underlined text shows the directed correction as amended by the Committee.

Correction

On 20 March 2023 we reported that TikTok had placed a fixed term contractor on immediate paid suspension as it investigated her complaint of sexual harassment. In an adjudication, the Financial Times Editorial Complaints Commissioner has directed an amendment to the article to make clear that the individual was not suspended because she made a complaint and TikTok clarified she was placed on paid leave during the investigation due to concerns that this was necessary to protect the investigation's integrity.<sup>4</sup>

Christina Michalos KC  
Editorial Complaints Commissioner  
Financial Times  
25<sup>th</sup> September 2023

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<sup>4</sup> The wording of the directed correction was amended following an appeal by the Editor to the FT Appointments and Oversight Committee under Paragraph 24 of the FT's Editorial Complaints Guidance on Policy and Process. The underlined text shows the amended correction as approved by the Committee.