



# EMPLOYMENT TRIBUNALS

**Claimant:**

Ms J Russell

v

**Respondent:**

The Logic Group Holdings  
Limited

**Heard at:**

Reading

**On:** 25 to 29 September 2017

**Before:**

Employment Judge Gumbiti-Zimuto  
Members: Mrs AE Brown and Ms B Osborne

**Appearances**

**For the Claimant:** Dr A Pandya (Solicitor)

**For the Respondent:** Mr L Harris (Counsel)

## JUDGMENT

1. The claimant's complaints of unfair dismissal, age discrimination and holiday pay are not well founded and are dismissed.

## REASONS

1. At a preliminary hearing on 28 November 2016, the claimant identified the complaints that she was making as age discrimination, unfair dismissal (alleging a constructive dismissal) and a claim in respect of holiday pay. In the age discrimination claim she complained of direct discrimination and harassment.
2. During the hearing before this Tribunal, the claimant has presented no evidence or argument in support of the claim about holiday pay. The holiday pay claim has not been pursued by the claimant and is therefore dismissed for that reason.
3. The parties have agreed a list of issues to be decided. These are contained in the trial bundle A at page 48.
4. The claimant gave evidence in support of her own case. The respondent relied on the evidence of: Mr Michael John Henderson, at the relevant time employed as a Finance Manager; Mr Sean Spreadbury, Head of Finance; Mrs Anita Shee Ying Liu Harvey, Strategy and Insight Manager. The witnesses provided statements as their evidence in chief. The respondent also relied on the witness statement of Ms Sinead Robinson, the Human Resources Manager, who did not give live evidence to the Tribunal. The

parties provided us with a two Trial Bundles of documents: trial bundle A containing 517 pages of documents; and trial bundle B containing 454 pages of documents.

5. From these sources, we made the following findings of fact which we considered necessary to determine the issues in this case.
6. The respondent provides products and services including the ability to process transactions from multiple points of sale in store, online or mobile on a single platform. On the 28 November 2014, the respondent was acquired by the Barclays Group.
7. The claimant commenced employment with the respondent as a credit controller on 16 April 2007.
8. From December 2012, Mondays and Fridays she worked from home. Tuesday, Wednesday and Thursday from the respondent's offices in Fleet, Hampshire.
9. In her role, the claimant was responsible for, among other things, ensuring that all invoices were paid within their payment terms and ensuring that queries were resolved in a timely manner in order that payment may be made. The claimant's job description was produced ([A] p117).
10. In about March 2013, Mr Henderson joined the respondent as Finance Manager. At that time, the claimant reported to Mr Greg Romaine who was Finance Controller. In about March 2014, Mr Henderson was promoted to Financial Controller and the claimant reported to Mr Henderson. Following the respondent's acquisition by the Barclays Group, Mr Spreadbury became Head of Finance from December 2015.
11. The claimant contends that following the acquisition of the respondent by the Barclays Group, the volume of queries on invoices increased exponentially. This resulted in an increase in the amount of work that the claimant was required to carry out. The claimant contends that there was a significantly heavier workload for herself which became unbearable. The claimant complains that this was compounded by Mr Henderson's conduct towards her.
12. The claimant states that not only did the volume of work increase but she was required by her manager to carry out more comprehensive reporting resulting in her having yet more work. The claimant produced spreadsheet reports which went from 11 columns of information to 22 columns. There is a dispute between the claimant and the respondent as to whether this new reporting requirement in fact resulted in an increase in the claimant's workload.
13. Following a bout of flu, the claimant returned to work on about 13 February 2015. The claimant had a return to work meeting with Mr Henderson. The claimant and Mr Henderson discussed the fact that Mr Henderson wished

the claimant to produce reports, aged debtor and cashflow debtor reports, that had previously been produced by the Financial Controller. The claimant was told that she would be provided with the necessary training required to enable her to prepare the reports.

14. According to Mr Henderson the underlying data that the claimant was being asked to record in the reports remained the same, there was no increase in the claimant's input into the reports. Although the reporting format now included 22 columns, it was Mr Henderson's evidence that much of the information placed in the new reports was going to be input by others.
15. Mr Henderson pointed out during the course of the meeting that as well as handing over the aged debtor and cashflow debtors' reports, he would be looking at the suite of reports produced by the respondent with a view to reducing their numbers. It was his desire to move to electronic formats when making all reports.
16. During the meeting, they discussed the fact that the respondent's bank accounts were going to move from Lloyds Bank to Barclays Bank and it was anticipated that this was going to result in more queries and possibly extra work for the claimant.
17. Following the meeting, Mr Henderson booked a number of training sessions for the claimant. Mr Henderson who referred to making a number of appointments for the claimant to be provided training, when questioned, accepted that only one took place. However, Mr Henderson said other coaching sessions took place between him and the claimant where he provided the training he had promised on 13 February.
18. The claimant did not start to prepare the aged debtor report until late in 2015 and when she did that she was doing so with Mr Henderson's support. The claimant never took on the cashflow report as had been proposed on the 13 February 2015.
19. On 12 March 2015, the claimant and Mr Henderson met to discuss the claimant's personal development plan. At this meeting, the claimant's performance objectives for 2015 were set. Included in the objectives was: a review of the payment terms for every client and an investigation into how direct debits could work for payments received; the claimant was asked to provide a control mapping process to include every report and online file location in order that they had a record of exactly how the claimant did her role on a day to day basis; the claimant was tasked with reducing the value of invoices in query to £300,000 by August 2015 and after that to below £200,000.
20. The claimant complains about these objectives as they were not things that she could control, for example, the reduction of the number of invoices that were queried. She states that it depends on whether the client is satisfied at the level of service on each invoice and whether any service

issues were rectified by the relevant departments. She says that placing this burden on her was grossly unfair and amounted to bullying. There were factors over which she had no control which impacted on her ability to meet her objectives and she was fearful that she was being set up to fail and that she was at risk of not getting her bonus.

21. The claimant states that when she raised these concerns, she was accused by Mr Henderson of blaming others and being negative. She says that she was told by Mr Henderson: "If you do not accept the objectives, you will be classed as a blocker".
22. Mr Henderson refers to the meeting on 12 March 2015 as a meeting at which objectives were agreed in partnership. Mr Henderson's witness statement includes the sentence: "*Setting objectives is a manner for employees to manage their performance with the support of their manager*". Mr Henderson said that he had no intention to manage the claimant out of the business. He wanted to help her progress and develop confidence and new skills. Mr Henderson talked about how they had several meetings to discuss the proposed objectives in around March and April 2015.
23. Mr Henderson says that initially the claimant said that she thought that other teams' work could impact on her own and said that she thought they could stop her reaching the suggested objectives. Mr Henderson says that he accepted that certain matters were outside of the claimant's control and agreed that those debts and queries would not be counted towards the claimant's targets as they were matters which she could not influence. Debts marked as "uncollectable" would not be counted and it was agreed that the metric would be adjusted accordingly. Mr Henderson agreed that once a query was passed to legal or commercial teams, they would take ownership of the matter and that such debts which fell into those categories would not count towards the claimant's objectives.
24. Mr Henderson says that when the claimant told him that she still thought that she could be prevented from achieving her objectives by other teams, he asked the claimant to provide him with key themes and/or specific issues that she had so that he could consider them further. Mr Henderson says that the claimant did not do so, but had the claimant suggested entirely new objectives he would have considered them. The claimant did not outline any further specific concerns. What she did was to upload the objectives to the Barclays portal herself signifying agreement to the objectives.
25. Mr Henderson denied that he had said to the claimant that if she did not agree with objectives she would be "classed as a blocker". On this point there is a simple conflict between the evidence of the claimant and Mr Henderson. We have been unable to find a way to choose between the two on this specific point.

26. The claimant and Mr Henderson agree that in about May 2015, the claimant and Mr Henderson had discussions about the rising level of invoices in query. Mr Henderson states that this was not surprising. The respondent had been acquired by Barclays Group and it was to be expected that there would be questions as a result.
27. The claimant states that she explained that dealing with the complaints and queries from these customers who were asking her why they were being invoiced when they had already questioned the service was taking up a lot of her time. The claimant stated that she was concerned that it impacted on the objective query total of £300,000 target in her PDP. The claimant says that when she tried to complain to Mr Henderson about this, he told her to “stop going on about it”.
28. Mr Henderson says that when the claimant raised this with him, he asked her to look at the queries that she was receiving and to let him know if there were any themes or consistent issues. He states that he asked the claimant to consider the types of queries she was receiving and if possible to categorise them so that the respondent could work on finding solutions. He denies that he wanted the claimant to stop talking about any difficulties she was having with the invoices. He states that if something was not working efficiently then they needed to find a productive resolution and that working efficiently was something that he was focused on during 2015 and 2016. Mr Henderson states that he had no reason to ignore the claimant’s opinions, this would have been against what he was working to achieve at the time.
29. Mr Henderson says that he suggested to the claimant that taking a negative view of people and the process was unhelpful and he asked for her suggestions about how the matter could be improved instead. He states that he explained that he did not think that her approach was in line with the Barclays values and he asked her to seek to make things better, to make suggestions, to leave things better than she found them, and he states that this was not telling the claimant to “stop going on about it”; it was the opposite – he wanted to hear positive suggestions about what could be done to resolve her concerns.
30. On this issue of dispute, the Tribunal prefer the account given by Mr Henderson. There was no sensible advantage to himself or the business by an approach which required the claimant to hide any difficulties she was experiencing. Having heard him give evidence we are satisfied that he would have been interested to find solutions to problems and so on balance we prefer his account on this issue.
31. On 22 December 2015, the claimant booked 1½ hours’ time in her work calendar to attend an appointment which might overrun. The claimant ended up being absent for an hour and 15 minutes. She states that the records show that she was out for an hour and 39 minutes. She gives an explanation for the difference as possibly being due to tailgating through the access doors and therefore her true time of return not being logged.

32. The following day, the claimant was called into an unscheduled meeting by Mr Henderson. The claimant describes how Mr Henderson spent 20 minutes “repeatedly” berating her for the additional absence.
33. Mr Henderson was asked about this. His evidence was that on 22 December 2015, during the claimant’s absence, he received an enquiry from Mr Spreadbury. Mr Henderson says that although he was working from home he was able to answer Mr Spreadbury’s question. Mr Henderson has no recollection of a meeting with the claimant on the following day to discuss the matter specifically. He also denies “repeatedly” berated the claimant for 20 minutes about the incident. Mr Henderson says that his concern would have been to reinforce the requirement that he should know the whereabouts of the claimant and that she should inform him if she was taking an extended break.
34. The two versions of events are not easily reconcilable. We prefer the claimant’s account which is clear that there was a meeting on the 23 December 2015. The Tribunal also consider that it is likely that the matter would have been referred to by Mr Henderson even if only in passing. The issues that Mr Henderson would have been concerned to reinforce, the requirement that Mr Henderson should know the whereabouts of the claimant and that the claimant should inform Mr Henderson if she was taking an extended break are all directly on point on this matter and it is likely that in making these points to the claimant Mr Henderson may have appeared to the claimant to be “repeatedly” berating her.
35. On 10 January 2016, the claimant’s car tyre burst. She contacted a garage to replace the tyre. The garage was not able to attend her until Tuesday 12 January. On Monday 11 January, a day that the claimant works from home, she made a number of attempts to call Mr Henderson on the telephone. Eventually she sent him a text message asking him to call her. When he did call her, she explained what her position was and told Mr Henderson that she would not be in work the following day, the Tuesday, which is a day she would be working in the office at Fleet. Later in the day, the claimant sent a text photo of the tyre of her car to Mr Henderson. Mr Henderson’s text in response was asking the claimant if she could come into work using her other car, a 17 year old BMW which is rarely used by the claimant. The claimant’s response was that she could not attend in the other car because the car was not insured for commuting, and it would be very expensive in relation to mileage. The position was left that the claimant would return to the office on the Wednesday.
36. On Wednesday 13 January 2016 at about 5.00 pm, the claimant states that she was called into an unscheduled meeting which lasted for about half an hour. Mr Henderson agrees that a meeting took place with the claimant at about that time. Mr Henderson’s version of events is that he and the claimant had a brief meeting to discuss an impending audit. He denies that it was a meeting to discuss the fact that the claimant had been working from home on the previous day. The claimant says that during the

course of this meeting, one of the things that Mr Henderson said to her was that if she lived closer she could have taken the train and come into work on the Tuesday. Mr Henderson says that the topic of the claimant being away on 12 January 2016 was raised by the claimant. Mr Henderson says that he did not raise it and he would not have done so. We note however that in his witness statement Mr Henderson states that it was his view that the claimant could have done more to come in to the office but she was reluctant to do so. He says that it was not something that he was going to force the issue with her about. The view of the Tribunal is that however it was expressed, however it came about, Mr Henderson made clear that he thought the claimant could have come in to work on the Tuesday although he was not expressly critical of the claimant for not doing so.

37. On 21 January 2016, Mr Henderson came out of a meeting with Mr Spreadbury and approached the claimant's desk in the open plan office. Mr Henderson was in an agitated manner and asked the claimant whether she had updated the report. He then went on to ask her what she had worked on for the six days after Christmas. The claimant complains that no-one else was spoken to in this manner by Mr Henderson.
38. Mr Henderson says that before Christmas he had asked the claimant to update a particular report: the client spreadsheet. The claimant had not done so and during a regular one-to-one meeting in January, he reminded her to do so. This is something which the claimant disputes. She says that this explanation is a lie.
39. Mr Henderson says that the claimant and he had discussed the cash receipt book at about the same time. He states that the claimant kept a handwritten tally. He had developed an Excel file and that during the meeting, he had asked the claimant to update the file. However, the claimant told him that she had not done so and had instead updated her manuscript record. Mr Henderson states that he did ask the claimant what she had been working on in late December; he states that as her line manager, he was responsible for managing her workload and ensuring that she was prioritising appropriately; he states that he had to understand what the claimant was working on at any given time and he would have had similar conversations with every other member of his team.
40. Insofar as there is a conflict between the claimant and Mr Henderson about the meeting on 21 January and the manner in which Mr Henderson spoke to the claimant on that occasion, we are satisfied that in speaking to the claimant, Mr Henderson was seeking to deal with a genuine work issue which concerned the way that the claimant prepared reports and his perception that the claimant was not following his instructions. At the same time the claimant had been making additional efforts in order to comply with Mr Henderson's instructions felt that she was being got at by Mr Henderson who was setting her up to fail. We do not accept that the claimant's perception was an accurate reflection of what Mr Henderson intended.

41. On 26 January 2016, the claimant had a medical appointment. Her witness statement describes this as an urgent medical appointment. The appointment had been placed in her diary some six days before the appointment date. On the day of the appointment, the claimant worked through lunch and left at 5.30. The following day she arrived in the office at about 7.20 and says that during the day she was criticised in the open office environment for not giving a week's notice of the medical appointment. The claimant says she had not only told Mr Henderson that she had the medical appointment but it was an emergency.
42. Mr Henderson has no recollection of the incident in the way that the claimant describes. He states that he does not recall criticising the claimant after attending a medical appointment, or for taking time off for such a medical appointment, or failing to give sufficient notice in respect of a medical appointment.
43. The claimant relies on an email that was sent to her by Mr Spreadbury. This was an email sent on 28 January 2016 which dealt with a number of matters including flexible working. These matters had been discussed in her performance development plan review. The email includes the following line: "Flexible working: two days from home can continue providing three days are spent in the office (9-5) with prior notice (a week) given for any known appointments." This document follows a PD review meeting which took place on 27 January. It does not record the incident that the claimant complains of directly but it appears to refer to the need to give one week notice for appointments.
44. The claimant's PD review process began with a meeting on 4 November 2015 between her and Mr Henderson. She says that it lasted for four hours. Mr Henderson denies any meeting with the claimant which lasted four hours. The claimant when questioned stated that they started in one room and moved into another room after two hours, she explained that as the reason why the printout showing times that her security is logged does not show her presence in one location for four hours.
45. During the meeting Mr Henderson explained that he disliked the claimant taking her annual leave in blocks of one and two days rather than in full weeks. He was insisting that by the claimant taking annual leave in one and two day blocks she created a lack of continuity. The claimant describes the entire PDP review meeting as negative. She says she was heavily criticised for not achieving her objectives; she was told that she would not be receiving a bonus as her performance rating would show "needs improvement".
46. Following the PDP review meeting, Mr Henderson made a comment, in writing, that "the ability to work from home two days a week attending a number of fishing competitions all of which at times has put a strain on Joan's workload". The claimant objected to the comment. The claimant told Mr Henderson that in her previous eight years with the Logic Group

and throughout her career, she had never had a bad PDP or appraisal and she felt that it was completely unfair and unwarranted.

47. Mr Henderson's evidence is that the claimant and he had a meeting on 4 November. The meeting did not last for four hours. He produced the claimant's security pass log records to show it had not lasted that length of time. In the meeting he informed the claimant that he thought a grade of needs improvement was appropriate because the claimant was not meeting her objectives. Following the meeting additional objectives were completed by the claimant and following discussions with Mr Spreadbury, the rating of the claimant was amended to a rating of "good".
48. Mr Henderson says that in completing the claimant's PD record he tried to respond to matters that the claimant had raised with him during the meeting and as a result he made the comment which reads: "I acknowledge Joan's point around work/life balance. However, I do believe I have worked with you to ensure there is balance. The ability to work from home two days a week attending a number of fishing competitions all of which at times has put a strain on Joan's workload and we will need to sit down and agree expectations for 2016 within the objective setting to ensure continuity with debt chasing." Mr Henderson was aware that the claimant attended fishing competitions. He was supportive of this, in 2015 he had approved all the claimant's holiday requests to ensure that she could attend a variety of events. He had concerns about how to balance the claimant's working pattern and her leave, with the needs of the business. He had concerns about the claimant's ability to meet her objectives. During the holiday year of 2015/2016 the claimant took 23 days out of her 26 days annual leave entitlement between April to September 2015. The leave year runs from 1 April to 31 March.
49. During the claimant's absences, other team members assist by covering the claimant's work. Mr Henderson had to cover the claimant's work. By taking the majority of her leave in a short period, the claimant had very little leave available for the remaining six months of the year. Taking so much leave in a short time in one and two-day blocks also made it difficult for the claimant to focus on parts of her work, there was inconsistency in chasing when the claimant was regularly out of the office. Mr Henderson stated that the business needed a consistent credit controller to produce reports as required and chase payment of invoices. Short intermittent periods of leave made it difficult for the claimant to do this.
50. The claimant arranged a meeting with Mr Spreadbury on 9 November 2015. Mr Spreadbury has no recollection of the meeting taking place. During her meeting with Mr Spreadbury, the claimant mentioned that she felt that her personal goals were being obstructed by obstacles being put in the way by Mr Henderson. Mr Spreadbury said that it is up to individual managers to run their departments. The claimant told Mr Spreadbury that she was being victimised, set up to fail, and that the respondent wanted her out. Mr Spreadbury said that what the claimant said was a very serious allegation but then did nothing else.

51. Mr Spreadbury did not remember a meeting taking place on 9 November 2015. He recalled a meeting with the claimant at about that time at the end of which he felt the issues that the claimant had raised had been resolved. He said he would not have left matters unresolved.
52. On 3 December 2015, Mr Spreadbury sent an email to HR. The purpose of the email was to change the claimant's grade from "needs improvement" to "good". In order to justify that, the email attached a number of documents to summarise the facts and explain why the change in the grade had been made by Mr Spreadbury and Mr Henderson.
53. On 27 January, the claimant met with Mr Henderson and Mr Spreadbury to discuss objectives for 2016. They discussed the claimant's holiday. Mr Spreadbury supported Mr Henderson's view that the claimant's leave should be in blocks of ten days or five days in respect of half of her leave and that the remainder of the leave could be taken in one and two day blocks.
54. Following the meeting, Mr Spreadbury sent the claimant an email setting out his expectations around her working days, holidays and objectives (referred to above at paragraph 43). At this stage the claimant was expressing no objection to her objectives.
55. At a meeting with Mr Henderson and Mr Spreadbury on 31 March 2016, the claimant complains that she was criticised for the structure of the report that she had produced to Mr Henderson's specifications. During the course of the meeting, Mr Spreadbury had asked the claimant for some information. This information would have been available on the old report format but on Mr Henderson's new format of report was not available.
56. The claimant says: "they asked me if I agreed to prepare the spreadsheets in a format which was a 15 pages spreadsheet". The claimant agreed even though the new format would result in her having to take extra time to complete.
57. The account given of the meeting on 31 March by Mr Henderson and Mr Spreadbury is very different. Mr Henderson says that on 31 March, he met with the claimant and Mr Spreadbury to discuss the credit control process. He denies that he and Mr Spreadbury criticised the claimant for the structure of the report that she had produced. Mr Henderson says that since 2015, he had been pressing the claimant to adopt reports in Excel with filters which would enable them to provide clear and concise reporting as needed but the claimant was not following his instructions.
58. Mr Henderson says that the 31 March meeting was collaborative and that they explored the detail of what the reports needed to contain to ensure that they were fit for purpose and how they could be collated efficiently. Mr Henderson says that the claimant's views were invaluable and were taken into account. They agreed several changes to the process, it was a

productive meeting where everyone's point of view was explored before they agreed an approach for the credit control process.

59. The claimant left the meeting extremely upset. She described how when leaving for home she sat in her car taking time to compose herself before driving home. The following day the claimant worked from home. Over the weekend the claimant became ill, she had chest pains, anxiety, high blood pressure and was not being able to sleep. The claimant sought medical advice and was subsequently signed off work with work-related stress. The claimant did not return to work.
60. On 26 May 2016, the claimant made a request for her personnel file. On 8 July, she raised a grievance. The claimant was notified that Mrs Liu Harvey was to consider her grievance. She was informed of this on 27 July. A grievance meeting was arranged to take place on 2 August.
61. On 9 August, Mrs Liu Harvey told the claimant that she would not be able to provide her with an outcome to her grievance, explaining that she had investigations to carry out and that she was going to be away for a period of leave.
62. On 16 August 2016, the claimant resigned her employment. The resignation letter stated:

“As you know, I filed a formal written employee Grievance to your attention on 8 July 2016.

I assumed that the Grievance would be reviewed with serious consideration based on the gravity of the issues raised in the document. In good faith, I did attend a meeting as requested by Logic Group representatives on 2 August, 2016 at Barclaycard offices in Northampton to discuss the Grievance. At that meeting, I responded to all questions with utmost sincerity and accuracy.

I have now been advised, that the review of the Grievance will be delayed until at least early September 2016 by which time the matter will have been under consideration for at least two months. This significant delay is in addition to the unusually long wait which I encountered when I requested my personnel file from the company on 26 May, 2016 yet I did not receive the file until 29 July, 2016. As evidence by these delays. The Logic Group does not attach much seriousness to my requests or concerns.

As stressed in the grievance submission, I feel I have been undermined and set up to fail by the new regime at Barclaycard. The impact on my health and wellbeing has been significant and following a consultation with my doctor I have no alternative than to resign and for the sake of my health.

Further, the manner in which the request for my Personnel File was handled as well as the extreme delay in the review of my Grievance is the last straw and leads me to the point where I have lost faith in the Logic Group.

Accordingly, please accept this letter as My formal Notice of Resignation from my employment with the Logic Group to take effect based on the provisions of my Employment Contract and Statutory requirements.”

63. The claimant’s employment with the respondent came to an end on 16 September 2016.
64. The respondent’s grievance procedure provides that within 20 working days of receiving the complaint, a grievance meeting will be set up. In the claimant’s case, the grievance meeting was set up to take place on the nineteenth day. Normally, the grievance procedure requires the investigations to be completed within 20 working days which would have been on 30 August. In this case, Mrs Liu Harvey was away on leave for a period of two weeks from 15 to 29 August and the grievance outcome was not provided to the claimant until after the termination of her employment on 3 October 2016.
65. The claimant’s grievances were not upheld by Mrs Harvey.
66. The age range of employees in the finance team when Barclays Group acquired the respondent was 33 to 63. The claimant was the oldest employee. As of the 31 March 2017 the range of the employees in the finance team was between the ages of 36 and 60.

### **The law**

67. An employee has the right not to be unfairly dismissed by his employer.
68. An employee is dismissed by his employer if the employee terminates the contract under which she is employed (with or without notice) in circumstances in which she is entitled to terminate it without notice by reason of the employer’s conduct.
69. In Western Excavating (ECC) v Sharp [1978] 1QB 761 it was stated that: “If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed... the conduct must ... be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains; for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract.”

70. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.
71. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract. The very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship.
72. The test of whether there has been a breach of the implied term of trust and confidence is objective.
73. A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents.
74. In determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within subsection (2) of section 98 of the Employment Rights act 1996 or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. Where the employer has shown a potentially fair reason, the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case
75. Age is a protected characteristic. A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.
76. An employer (A) must not discriminate against an employee of A's (B) by dismissing B; alternatively by subjecting B to any other detriment.
77. Section 136 of the Equality Act 2010 provides that in proceedings relating to a contravention of the Act. If there are facts from which a Tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the Tribunal must hold that the contravention occurred. This does not apply if (A) shows that A did not contravene the provision. Guidance on the application of this provision is given in Madarassy v Nomura International [2007] ICR 867. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination. "Could

conclude" must mean that "a reasonable tribunal could properly conclude" from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of ... discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint.

78. The issues that the Tribunal has had to decide in this case are:
- 78.1. Whether the claimant's complaints of direct age discrimination and harassment related to age have been presented within the time limit for the presentation of complaints. If not, whether it is just and equitable to extend time to consider those complaints.
  - 78.2. In respect of the direct discrimination allegations, whether Kelly Burfoot, Leanne Gardner and John Watt are appropriate comparators for the purposes of the claimant's case.
  - 78.3. Whether the matters listed following occurred and if so whether they are acts of less favourable treatment on the grounds of age and/or unwanted conduct related to the claimant's age which had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.
  - 78.4. The claimant being advised in an unscheduled meeting on 16 February 2015 that she would be given extra work;
  - 78.5. On 12 March 2015, the claimant receiving objectives that were dependent on other departments;
  - 78.6. On 12 March 2015, the claimant being told that if she did not accept the objectives, she would be "classed as a blocker";
  - 78.7. The claimant being told to "stop going on about it" in May 2015 after she had raised the issue of the increase in queries;
  - 78.8. On 23 December 2015, the claimant being admonished for taking an additional 15 minutes on her lunch break on 22 December 2015;
  - 78.9. The claimant being invited to an unscheduled meeting at 5.00 pm on 13 January 2016 to discuss (a) request to work from home on 11 January 2016 and (b) an extended lunch break taken by the claimant on 22 December 2015;
  - 78.10. On 21 January 2016, the claimant being asked for three updated reports and questions in relation to what she had worked on before Christmas 2015;

- 78.11. The claimant being criticised in an open plan office for not giving one week's notice regarding a medical appointment;
  - 78.12. On 27 January, the claimant being criticised for taking an additional 15-minute lunch break on 22 December 2015;
  - 78.13. A comment in the claimant's performance development plan stating "the ability to work from home two days a week attending a number of fishing competitions all of which at times has put a strain on Joan's workload" and a four hour performance meeting;
  - 78.14. A one-to-one meeting on 31 March 2016 being used as a forum to criticise the claimant for the structure of a report she had produced;
  - 78.15. The claimant not receiving a copy of her personnel file until 29 July 2016 and being advised on 9 August 2016 that the outcome of the grievance would be delayed until after 30 August 2016.
79. The Tribunal has to determine whether the claimant was dismissed and if she was dismissed whether the dismissal was unfair.
80. The Tribunal has to determine whether the claimant is entitled to damages in respect of an alleged breach of contract on 9 August 2016 by the claimant being told that she should not anticipate an outcome to her grievance until after 30 August 2016.

## **Conclusions**

81. **The claimant being advised in an unscheduled meeting on 16 February 2015 she would be given extra work.** The claimant complains that this matter amounted to direct discrimination on the ground of age and harassment related to age. At a meeting on 16 February the claimant was told that she was going to be given more work in the form of four reports. There is no allegation that the meeting took place because of age. The meeting was a return to work meeting following a period of absence from work. Mr Henderson explained that he had taken on more work as a result of the increase in the scope of his role following the takeover by the Barclay Group. He needed to delegate tasks. In accordance with this need to delegate, what Mr Henderson did was inform the claimant that she would be required to take on drafting some reports that had previously been completed by Mr Henderson as the Financial Controller.
82. The Tribunal has concluded that the evidence does not lead to conclusions of less favourable treatment of the claimant. There is no evidence from which are able to conclude that when compared to any of the named comparators the claimant was treated less favourably. We accept evidence given by Mr Henderson that he was trying to organise the work that needed to be done. The tasks that he was asking the claimant to carry out were within the reasonable remit of the claimant's role.

83. The claimant complains that this requirement to prepare the extra reports resulted in extra work in circumstances where she was already working many hours in excess of her contracted hours. Mr Henderson considered that while there would be some extra work. The new Excel format of the reports that he was asking the claimant to prepare would in time reduce the time spent on reports.
84. Having considered the evidence, we are not satisfied that there is evidence from which we could conclude that the claimant was treated less favourably. There is no evidence that the claimant's treatment was on the grounds of her age. The evidence given by Mr Henderson about the age range of the respondent's employees on 28 November 2014 compared with 31 March 2017 does not give a suggestion of age discrimination taking place.
85. The Tribunal has considered whether the matters complained of in respect of this issue related to the claimant's age. The Tribunal is satisfied that the evidence does not support such a conclusion. In requiring the claimant to prepare additional reports which were within the remit of her role that Mr Henderson was wanting the claimant to carry out the work she was required to do, he was not engaged in unwanted conduct which had the purpose or effect of violating her dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.
86. **On 12 March 2015 receiving objectives that were dependent on other departments.** The claimant makes a complaint about this matter as an allegation of direct age discrimination only. The claimant was asked to reduce the value of invoices in query to £300k by August 2015 and then to below £200k and to keep debtor days to below 55 days. The claimant contends that the reduction in invoices that were queried, and debtor days was not within her control. She complains that placing this burden on her was grossly unfair and "nothing more than bullying".
87. The claimant was 18 years older than anyone else in Finance. She says no-one else was treated the way she was. Mr Henderson states that he worked with other employees, set them objectives, and had similar meetings to those he had with the claimant. Mr Henderson accepted that for the claimant to achieve the objectives around reducing the overdue debt balance and the number of debtor days required the claimant to work with other teams such as the accounts and sales teams. Mr Henderson took account of the fact that some queries and debts should not count against the claimant's targets; for example, when they passed to the commercial or legal teams.
88. The claimant was not treated less favourably. She was treated in the same way as others in being set objectives. The objectives were not set by reference to her age. There are no facts from which we could conclude that the claimant's age was a factor in setting the objectives.

89. **On 12 March 2015, the claimant being told that if she did not accept the objectives she would be classed as a blocker.** Mr Henderson denies that he said that the claimant would be considered a blocker if she did not accept the objectives. The claimant was certain it was said. There is no independent evidence from which the Tribunal was able to find an answer as to whether the statement alleged was made in the way alleged by the claimant. We are not satisfied it has been shown on a balance of probabilities the comment was made by Mr Henderson. The Tribunal has been unable to determine which of two apparently credible witnesses was correct in relation to this matter. The burden being on the claimant to establish that the incident occurred.
90. **The claimant being told to “stop going on about it” in May 2015 after the claimant had raised the issue of the increase in queries regarding invoices.** We similarly are not satisfied that it has been proved on a balance of probabilities that the claimant was told to “stop going on about it”. We accept the evidence of Mr Henderson that the takeover of the respondent by Barclay Group resulted in an increase in queries. Mr Henderson advised the claimant to let him know if there were any themes or consistent issues arising. We note the claimant’s position that when she did this it was then that Mr Henderson told her to “stop going on about it”. We have not been able to conclude that the claimant is correct in relation to this as the burden rests on the claimant to prove that this incident occurred. We are not satisfied that this matter has been established by the claimant.
91. **On 23 December 2015, the claimant being admonished for taking an additional 15 minutes on her lunch break on 22 December 2015.** The Tribunal is satisfied that the claimant was admonished on 23 December 2015 for taking an additional 15 minutes on her lunch break on 22 December. We prefer the claimant’s account on this incident because the general tenor of Mr Henderson’s evidence makes it likely that he would have raised the issue with the claimant. Mr Henderson expected any member of staff to let him know if they planned to be out of the office for any extended period and on this occasion the claimant had not done so.
92. The Tribunal however have not been able to find evidence of a difference in treatment of the claimant to a comparator. Mr Henderson said he would have done the same with a person of a different age or age group. No evidence of a situation where he failed to do so was put to us. We are satisfied that the claimant’s age was not a factor in his raising the matter as he did on 23 December 2015. The Tribunal has not been able to conclude that there was any harassment as alleged. In acting as he did we are satisfied that Mr Henderson did not engage in unwanted conduct related to age, and the conduct did not have the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
93. **The claimant being invited to an unscheduled meeting at 5.00 pm on 13 January 2016 to discuss the claimant’s request to work from home**

**on 11 January 2016 and extended lunch taken by the claimant on 22 December 2015.** The Tribunal accepts that Mr Henderson and the claimant discussed the claimant's absence from work on 12 January 2016. We are also satisfied that Mr Henderson expressed his view that he thought the claimant could have come to work on Tuesday 12 January but was not expressly critical of the claimant. We do not consider that the claimant was treated less favourably by Mr Henderson in this regard. Mr Henderson was expressing his view of what the claimant could have done. He was not motivated by her age in making his comments. They were not related to the claimant's age. The claimant has not been able to show that she was treated less favourably on the grounds of age. We are not satisfied the claimant was treated in this way related to age. The Tribunal does not consider that when Mr Henderson discussed the matter with the claimant on 12 January 2016 his conduct had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

94. **On 21 January 2016, the claimant being asked for three updated reports and questions in relation to what she had worked on before Christmas 2015.** Mr Henderson accepts that before Christmas he had asked the claimant to update a report, the client spreadsheet. He states that the claimant had not done so and so during a regular one-to-one meeting in January he had reminded her to do so. The claimant's complaint is that on 21 January 2016, she was asked for three updated reports and questioned in relation to what she had worked on before Christmas 2015. The claimant disputes this.
95. The conclusion of the Tribunal however was that in speaking to the claimant on 21 January 2015 and the manner in which he spoke to her, Mr Henderson was seeking to deal with a genuine work issue which concerned the way which the claimant had prepared reports and his perception that the claimant was not following his instructions. We accept that this may have been a fraught conversation because at around this time, the claimant had been making additional efforts in order to comply with the instructions that Mr Henderson had given her. She may well have felt that she was being got at by Mr Henderson which would have fuelled her anxiety and feelings that she was being set up to fail by him.
96. We are not satisfied that it has been shown that in the way the claimant was treated she was treated less favourably than a real comparator. Mr Henderson was addressing his genuine concerns about the claimant's work. There is no basis for us to conclude that a hypothetical comparator would have been treated differently. We are not satisfied that there are facts from which we can conclude that the claimant's age was a factor. We do not consider that it was related to the claimant's age.
97. The Tribunal does not consider that the conduct complained of had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

98. **The claimant being criticised in an open plan office for not giving one week's notice regarding a medical appointment.** The evidence of the claimant is clear. She says she was criticised regarding a medical appointment. Mr Henderson does not specifically recall the incident, but in any event, it is said by the respondent that the matter was not a significant issue and Mr Henderson was not being critical of the claimant. He simply would have needed to know where the claimant was.

99. The claimant relies on an email sent to her by Mr Spreadbury on 28 January. The relevant part of the email reads as follows:

“Flexible Working: Two days from home can continue providing three days are spent in the office (9-5) with prior notice (a week) given for any known appointments.”

The claimant says that this supports her contention that the matter was being raised in a way which sought to emphasise the medical appointment. The respondent's position is that in fact the evidence does not support the claimant's case at all and it is said that the points that are raised by Mr Spreadbury in the email arise out of the discussions that the claimant had at the performance review meeting.

100. The Tribunal does not find that the claimant was treated in this way by Mr Henderson for a reason related to age. An issue had arisen and Mr Henderson set out his expectations of the claimant.

101. There is no indication from the evidence of less favourable treatment when compared with any known comparator. There is no basis from which we are able to conclude that a hypothetical comparator would have been treated differently or more favourably in the same circumstances.

102. The Tribunal does not consider that this matter has been shown to be related to the claimant's age. We are not satisfied that in raising the matter in the way that he did, Mr Henderson's conduct had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

103. **On 27 January 2016, being criticised for taking an additional 15-minute lunch break on 22 December 2015.** The claimant met with Mr Spreadbury and Mr Henderson to discuss the claimant's performance objectives on 27 January 2016. During this meeting, the claimant contends that she was told by Mr Henderson that she was “always having lunch appointments when others are not”. Mr Henderson denies that he criticised the claimant about taking an extended lunch on 22 December 2015. He states that he expressed the view in his evidence that he was happy for the claimant to work flexibly. It is not clear from the evidence that the incident occurred as the claimant alleges. The claimant has the burden of proving the less favourable treatment alleged. We are not satisfied on the

evidence we heard that it has been established that the claimant has been treated less favourably as alleged.

104. **A comment in the claimant's performance development plan stating the ability to work from home two days a week, attending a number of fishing competitions, all of which at times has "put a strain on Joan's workload" and a four-hour performance meeting.**
105. The claimant alleges that the comment made shows that she was treated less favourably and/or harassed related to age. Mr Henderson expressed his concern about the claimant's working pattern. He explained how in the holiday year 2015/2016 the claimant took 23 out of 26 days' annual leave in the first six months taken in one/two day blocks. This had consequences in that there was a need to provide cover for the claimant's work and also meant that in the last six months of the year she had very limited leave available to her. The comment in the personal development addresses those issues head on. It is not in our view related to the claimant's age. We have not been able to conclude that there is evidence of the claimant being treated less favourably in comparison to any comparators.
106. In respect of the conduct alleged, we are not satisfied that the conduct had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.
107. **A one-to-one meeting on 31 March 2016 being used as a forum to criticise the claimant for the structure of a report she had produced.** The claimant was asked by Mr Henderson to adopt a new format for preparing her reports. Mr Henderson's view was that the claimant was reluctant to take on board what was being asked of her. The discussion with the claimant in the personal development review was in part directed to this issue. It was addressed at one-to-one meetings. Mr Henderson's account is very different from the claimant's about how this matter was addressed at meetings. Mr Henderson speaks of a collaborative approach and the offer of support for the claimant in carrying out the work as being directed by Mr Henderson.
108. We accept the evidence given by Mr Henderson. The claimant in Mr Henderson's view had not engaged with the ways of working he had suggested. We note that the claimant did at various times work towards achieving the targets set by Mr Henderson. We have not been able to find that in respect of these matters that the claimant was treated less favourably or that the claimant was treated in this way because of her age. There is in our view no conduct that has the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant established.
109. **Not receiving a copy of her personnel file until 29 July 2016 and being advised on 9 August 2016 that the outcome of the grievance would be delayed until 30 August 2016.** The claimant made a request

for her personnel file on 26 May 2016. It is unexplained why the claimant was not provided with a copy of her personnel file on 29 July 2016. Mrs Harvey contends that she was open about the progress of the grievance investigation. There is no evidence that points to age being a factor in the way that she considered the claimant's grievance. There was a delay in dealing with the grievance but the grievance was detailed and would take time to be resolved by the respondent. There is nothing in the evidence that points to the claimant being treated less favourably than any comparator. There is in our view no evidence to support a finding that the conduct in providing the claimant with her personnel file on 29 July was related to the protected characteristic of the claimant's age or that the conduct had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

110. Although in this case the claimant complains of age discrimination, we note that in the presentation of the case, age is only mentioned in passing and the way that it is expressed is that the claimant was "older" than others. There was no evidence from which we were able to form an assessment as to whether the individuals named in the list of issues as comparators were properly to be considered as comparators in relation to the complaint of direct age discrimination.
111. The conclusion of the Tribunal is that the claimant's complaints of direct discrimination on the grounds of age and harassment related to age are not well founded and are dismissed.
112. The Tribunal has found that there was a delay in dealing with the grievance and that the claimant was criticised in some respects by Mr Henderson. For example, she was criticised in respect of the medical appointment. The Tribunal has found that the claimant was provided with extra work. The Tribunal has found that the claimant was set objectives during the personal development review. The Tribunal has found that in the personal development review, there were comments made in respect of how the claimant took her holiday.
113. The Tribunal is satisfied that the claimant has shown that these things occurred. However, the Tribunal is not satisfied that they establish a repudiatory breach of contract. The events referred to by the claimant are in themselves matters which properly form part of the interaction that the claimant would have with her manager in a work environment of this nature. Having heard the evidence of Mr Henderson we consider that it is more likely than not that Mr Henderson would have approached all these issues in a professional manner even where he was being critical.
114. The respondent was guilty of delay in dealing with the claimant's request for her personnel file. However, even though this is unexplained, we consider that this was not a repudiatory breach of contract.

115. Insofar as the grievance is concerned, we note the delay in dealing with the grievance by the respondent. However, in our view, it is explained by the nature of the grievance raised by the claimant and of note is the fact that Mrs Harvey kept the claimant informed as to the progress of the grievance.
116. The claimant was spoken to by Mr Henderson about her medical appointment. We accept that was done but we do not consider that raising the topic with the claimant was a breach of contract or that the manner in which the matter was raised by Mr Henderson was a breach of contract.
117. In respect of the ways that Mr Henderson dealt with the claimant's personal development review and addressed issues about the preparation of reports, we see no basis for concluding that this behaviour was a breach of contract.
118. The claimant describes an increase in her work; the claimant was given extra reports to prepare that had previously been prepared by the Financial Controller, that is, Mr Henderson. We note that the claimant contends that Mr Henderson played down the amount of extra work that the claimant had to do. However, we have not been able to conclude that the respondent acted without reasonable and proper cause so as to act in a way that destroys trust and confidence by these actions.
119. We have attempted to view the circumstances as a whole looking at all the matters alleged and asked ourselves whether the cumulative effect and taking a global view allows for a conclusion that there was a breach of contract or alternatively that it shows the claimant was subjected to discrimination on the grounds of her age. We have not been able to conclude that it does.
120. The claimant was not dismissed by the respondent; the claimant resigned her employment.
121. There was no breach of contract by the respondent.
122. The conclusion of the Tribunal is that the claimant's complaints are not well founded, and the claim should be dismissed.

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Employment Judge Gumbiti-Zimuto

Date: 27 November 2017

Judgment and Reasons

Sent to the parties on: 8 December 2017

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For the Tribunal Office