



EMPLOYMENT TRIBUNALS

Claimant: Mrs H. Long

Respondent: Gravity Credit Control Limited

Heard at: Birmingham

On: 8 - 10 January 2018
and 6 February 2018 (reserved)

Before: Employment Judge Hindmarch

Representation

Claimant: Ms. K. Anderson - Counsel

Respondent: Mr Islam-Choudhury – Counsel

RESERVED DECISION JUDGMENT

1. The complaint of disability discrimination is dismissed and withdrawn
2. The complaint of unfair dismissal is well-founded and is upheld. The Claimant is awarded a basic award of £927.18 and a compensatory award of £3486.94.
3. The complaint of wrongful dismissal is well founded and is upheld however no damages are awarded.

REASONS

1. By an ET1 filed on the 15 March 2017, the Claimant brought claims of disability discrimination, unfair dismissal and wrongful dismissal. By an ET3 filed on the 13 April 2017, the Respondent expressed its intention to defend all such claims.
2. The Claims came before me for Hearing on the 08-10 January 2018 inclusive. I reserved Judgment to the 6 February 2018. The Claimant was represented by Counsel Ms. Anderson and the Respondent by Counsel Mr Islam-Choudhury. The Claimant gave evidence in support of her claims. The Respondent had four Witnesses, two Directors of the Respondent business, Ms. Crawford and Mr Rice and two employees Mrs

Daws and Mrs Dickinson. There was an agreed bundle of documents, an agreed chronology and a list of issues.

3. At the outset of proceedings, the Claimant withdrew her disability discrimination claim which I dismissed on withdrawal.
4. On day two of the hearing the Respondent conceded that the dismissal had been unfair.
5. The Claimant indicated that she suffered from stress and anxiety and might require breaks and I explained the Tribunal would afford such breaks as and when necessary.
6. I identified the issues as follows:-

a. Unfair Dismissal Remedy Only

1. Given the Respondent's concession of unfair dismissal, what compensation is the Claimant entitled to receive having regard to the losses that the Claimant has suffered and will suffer? (The Claimant does not seek an Order for re-instatement or re-engagement)
2. Should there be any reduction of any award on the basis of contributory fault and/or Polkey and/or failure to mitigate loss.
3. Should the Claimant be awarded an uplift to take into account any alleged failure by the Respondent to follow the ACAS Code of Practice. This was argued by the Claimant both in relation to the grievance and to the dismissal?

b. Wrongful Dismissal

Was the Respondent entitled to dismiss the Claimant for gross misconduct or should she have been provided with notice of dismissal?

Findings of Fact

7. The Claimant was employed by the Respondent as a part-time Credit Controller from the 06 January 2014 to the 07 December 2016. The Respondent accepted dismissing the Claimant. The Respondent is a small business with six employees offering credit control solutions to clients. The Claimant's date of birth is 08 January 1961 and the parties agreed her monthly gross salary was £1,339.26 and net salary £1,174.79. The Claimant's contract of employment with the Respondent was at pages 115d -115g of the bundle. At Clause 9 it provided "The length of notice which you are entitled to receive from the Company is four weeks".
8. In 2016, the Respondent became aware that the Claimant's father, who was ill with cancer and lived in Northampton, health was deteriorating. Ms. Crawford for the Respondent told the Tribunal that she assured the Claimant that she could have time off about a month before the 18

September 2016 and that Ms. Crawford understood that might not be convenient to the Respondent's business.

9. On the evening of Sunday 18 September 2016, the Claimant left a voicemail message on Ms. Crawford's mobile telephone stating that she was likely to need some time off the following week. The following day Monday 19th September 2016 the Claimant attended work as usual. Ms. Crawford proposed to her that she and her Co-Director Mr Rice have a meeting with the Claimant at 2pm later that day to discuss what leave she might need. It appeared that Mr Rice made some minutes of that meeting which appeared in the bundle at pages 115H-115I. There was discussion regarding the Claimant coming into work the following morning on the 20 September, but then taking leave from lunchtime onwards for the rest of the week (there was a dispute between the parties as to how much of this might be holiday or unpaid leave, but nevertheless there was an agreement that leave would be taken in order to care for the Claimant's father). Mr Rice and Ms. Crawford went on to discuss possible changes to the Claimant's client accounts which might occur during her absence, in particular there was mention of a client Obex. There was a dispute between the parties as to exactly what the Claimant said when informed of these potential changes, but it is not in dispute that she on her own account was surprised, concerned and anxious. She was described as tearful for the rest of the day.
10. The meeting was relatively short and the Claimant returned to her desk leaving work at the usual time at 5pm. The Respondent says that that very evening as a result of a number of matters which I set out below, they decided to conduct an investigation into the Claimant's conduct. The first of such matters was what the Respondent believed was an unreasonable overreaction to the Claimant being informed which she would possibly have some client accounts taken from her. The second was the Respondent's view that the Claimant had done very little work for the rest of the afternoon and on leaving had removed a cuddly toy and her mug from her desk. The Claimant accepted taking home the toy as it was giving her comfort in her distressed state. Thirdly the Claimant had failed to respond to an email sent to her ten minutes before the meeting at 2pm reminding her about the office Christmas party. In cross-examination, Ms. Crawford accepted that the Claimant was not the only employee who had not responded. Finally, a short while after leaving work, a matter of minutes, the Claimant had posted on her Facebook Profile "same shit, different faces", a copy of the post was in the bundle at page 104. Later that night the Claimant also blocked and deleted Ms. Crawford as a Facebook friend.
11. The Directors therefore decided a formal investigation should be commenced on the basis that they believed that Mrs Long would not be returning to work.
12. The following morning the Claimant did not in fact attend work. Such was her upset at the discussion regarding client accounts which the Claimant described as her "tipping point", it adding to her daughter's illness and her father's illness and her marital issues at the time, on the evening of 19 September the Claimant contacted her GP and was asked to call again

the following morning when she would be offered an appointment.

13. On the morning of the 20 September 2016 at 8.38am the Claimant sent a text to Ms. Crawford stating “got a Doctor appointment at 9am”. Ms. Crawford responded at 10am with two texts “are you ok” and “hi I need to know you are ok as it’s over an hour since your Doctor’s appointment. Please reply.”
14. The Respondent’s Staff Handbook was at pages 93 – 99 of the bundle. In the introduction section, at page 93 it states “the handbook and any subsequent memos and policy documents form part of your contract of employment.” Sickness absence is dealt with at Section 3F, page 94C and provides as follows:- “If you are unable to attend work due to sickness or injury, your Line Manager must be notified as to the nature of your absence by a telephone call before your normal start time or as soon thereafter as possible on the first day of absence, if possible indicating your date of return. During prolonged periods of absence, your Manager should be regularly kept informed of progress and the expected date of return.”
15. It was common ground between the parties that the Claimant’s entitlement to sick pay was statutory sick pay only. It was also common ground that whilst the aforementioned process referred to notifying Management by telephone calls, texts were acceptable and had been utilised by the Claimant and others in the past.
16. Ms. Crawford told the Tribunal that she was concerned about the Claimant’s lack of communication on the morning of the 20 September. She asserted the Claimant had not said that she was sick and had not said the nature of her absence and that it was common courtesy to do so. Ms. Crawford accepted that she did not telephone the Claimant herself but rather drove her car to the Claimant’s home at 9.50am and waited before texting her at 10am. Ms. Crawford accepted that at 10.13am the Claimant responded to her text page 116-117 of the bundle stating “hello they’ve booked me in with a Nurse Practitioner so saw them and I was told I needed to see a Doctor so I had to wait. I have a sick note so David will pop it in in the next couple of days”. Ms. Crawford responded, “so what time did you see the Doctor Hil and what’s wrong? I will pick up sick note on way home tonight.” The Claimant responded “not sure what time I was called. I was with the Nurse for some time then was put on an emergency list to see the Doctor. David will drop it into work”. Ms. Crawford responded “I will need it today then Hil please? so that I can sort client cover as this is a bit of a surprise after yesterday”.
17. Within the bundle were the Claimant’s GP Notes. These have an entry for 20 September 2016, page 42 of the bundle, “life stresses – got on top of her. Father dying, work and family issue”. There is a further entry that a sick note was issued, with the diagnosis of stress and duration of 20 September 2016 to 04 October 2016.

18. During cross-examination of the Claimant, Mr Islam-Choudhury put it to her that the real reason for her sick note was that she had taken time off to assist with her father's ill-health. The Claimant accepted that she spent the rest of the week looking after her father but did not return to care for her father again until the end of December 2016. Whilst she arranged some care for him she did not care for him personally. It was put to her that she had exaggerated the issues with the GP to get time off to see her father, but the Respondent had already agreed the leave in the meeting on the 19 December. The sick note was in the bundle at page 115U. The GP recorded "will not need to assess your fitness for work again". When asked what was wrong by Ms. Crawford by text, the Claimant had not said stress nor that the sick note was for two weeks. The Claimant answered that her first symptom of stress was to stop functioning and that she felt bombarded by the texts received. She accepted that she had failed to communicate the nature of the illness or length of the illness by text.

19. The Claimant's husband delivered the sick note to the Respondent on the 22 September 2016. The Respondent was thus aware that the Claimant was suffering from stress and would be absent until the 04 October. Before receipt of the sick note and having simply exchanged texts on the morning of the 20 September, Ms. Crawford in her Witness Statement said that she consulted with her Solicitor and in oral evidence herself and Mr Rice said that she took advice from HR Advisors. She took advice and prepared a letter to the Claimant at page 119 of the bundle. That letter stated "on the matter of your non-attendance this morning, we are sorry to hear that you are sick, although there was no mention of this by you in our meeting yesterday. As you stated by text message, you have been signed off from work by your Doctor, you have not however communicated the nature of your illness or how long you are signed off for. We must refer you to our company terms and conditions at Section 3F with regard to notification of absence which refers to notification by calls/telephone and must indicate a date of return.

Can you please confirm we will have your Doctor's note urgently and indicating the reason for your sickness and when you intend to return to work".

20. Ms. Crawford prepared a statement as part of her investigation page 120 of the bundle confirming not only did she visit the Claimant's home address on the 20 September, but she did so on a further two occasions on the 21 September and again in the evening of the 22 September. On each occasion she recorded the Claimant's car was not on her drive, presumably because the Claimant was away attending to her father.

21. The sick note expired on the 04 October 2016. The Claimant had pre-booked holiday that week. When the Claimant did not attend work on the 05 October, Ms. Crawford sent her a text at 18.38 "Hello Hillary, hope you are feeling better. Can you confirm you are taking holiday this week, please? Thanks!" The following morning on the 06 October, the Claimant responded by text "Hello Caron. I have a Doctor's note until the 19th. They wanted to make it until the 31st, but I would rather see how I am". The Respondent received the sick note later that day.

22. In evidence Ms. Crawford claimed that the sick note had arrived two days late and that the Respondent had lost two days work, but accepted that she had expected the Claimant to have been on holiday in any event. She nevertheless confirmed that her investigation was ongoing albeit whilst the Respondent took HR advice, it chose not to speak to occupational health or to the Claimant's own GP about her health and prognosis. The Claimant's GP's records at page 42 of the bundle confirm that there was a telephone consultation on the 05 October and a further sick note was issued with a diagnosis of stress from the 04 – 10 October 2016 inclusive.
23. In evidence Ms. Crawford said that the Respondent did not in fact engage temporary staff as it was not relevant to the business needs at the time. Nevertheless, the Claimant was causing a problem with her lack of communication and the gaps in her sickness certificates.
24. On the 14 October 2016, whilst still certified absent, the Claimant emailed the Respondent page 123 of the bundle. The email was sent to Ms. Crawford and stated "as you're aware I am currently suffering from stress and depression and I am writing this after receiving some advice.

I feel that although I do have a lot going on in my personal life, our last meeting also contributed to this condition.

You and Simon were both aware of my previous experience with an employer over the death of my Mother and fears of this happening again due to my Dad's illness". The Claimant made reference to the discussion regarding client accounts that had taken place on the 19 September and asked the Respondent to clarify what her workload would be on her return to work.

25. The reference to the Claimant's previous experience with the employer was referred to in Ms. Crawford's evidence when she stated in her Witness Statement that she had carried out background checks on the Claimant's application for work for the Respondent and had viewed her public Facebook page noting that her status had changed since she had left her previous job voluntarily on the 20 December 2013 stating "Hillary has now left the building".
26. The circumstances of the Claimant's departure from her previous job were put to her in cross-examination by the Respondent's Counsel. The questioning appeared to be to making a number of points. The first was that the Claimant was prepared to leave work without having secured another job, which she accepted in the case of her previous employment, and that on doing so, she had written a Facebook post that suggested that she was unhappy with that job, which was said to add cogency to the Respondent's argument that the Claimant's Facebook post on the evening of the 19 September 2016 was a similar set of circumstances.

27. Ms. Crawford composed a reply to the Claimant's email by letter of the 17 October 2016 pages 124-125 of the bundle and sought to answer the Claimant's questions about her workload. The second sick note as already said expired on the 19 October. On that day, Ms. Crawford texted the Claimant "Hello Hillary how are things? I haven't had a reply to my letter and also with regard to requesting confirmation as to whether you are coming back into work tomorrow? Can we expect you at 9.am? Look forward to seeing you."
28. The Claimant responded, "I have had a message from the Doctor asking me to contact them tomorrow. I will need to speak to them first and will let you know the outcome. I did try to speak to them today instead, but was told to call tomorrow." The Claimant therefore did not attend for work the next day and at 18.08pm sent a text to Ms. Crawford "just got back. I have another note until 03 November". Again the GP notes at page 42 and confirm that on the 20 October a new sick note was issued with a diagnosis of stress, duration 20 October 2016 – 03 November 2016 inclusive.
29. The third sick note was therefore due to expire on 3 November 2016. The Claimant would have been due at work on the 04 November and did not make contact with the Respondent that day. Neither did the Respondent contact the Claimant. After the weekend on 07 November, the Claimant emailed the Respondent at 9.02am "Hello Caron, I am waiting to hear about going to the Doctors today". Ms Crawford did not reply and at 13.18pm the Claimant sent a second text "I have a continuing sick note that I will arrange to be delivered".
30. In her evidence Ms. Crawford confirmed that by the time she had received the Claimant's text at 9.02am on 7 November 2016 she had already composed a letter to the Claimant which she chose to send in any event. A copy of the letter is at page 126 of the bundle. The letter purports to invite the Claimant to a Disciplinary Hearing on the 09 November "for being absent without authorisation and continuing to contravene our company terms and conditions as previously advised." The letter also referred to the Claimant's posts on social media and the standard of her work and performance in the weeks prior to her absence. There was no evidence in support of the allegations by way of witness statements or documentation sent with that letter. Ms. Crawford confirmed that she hand-delivered the letter. This is the first time the Respondent had raised with the Claimant any concerns about social media posts. It transpired this referred not only to the Facebook post made on the evening of the 19 September "same shit different managers", but also the fact that unknown or unnamed employees had shown Ms. Crawford a social media post demonstrating the Claimant was partying, described by Ms. Crawford as "employees were covering her workload whilst she was living it up" and the Claimant apparently having a profile on a dating site whilst absent. Nevertheless, details of the particular offending social media activity were not enclosed within the letter of the 07 November. Ms. Crawford simply said that the Respondent had "evidence of which we would wish to present and discuss further".

31. On the same day, 07 November 2016, the Claimant sent two letters to the Respondent at pages 128-129 of the bundle. The first stated she was unable due to illness to attend the Disciplinary Hearing on the 09 November and asking for a later date. The second essentially purported to raise a grievance regarding the Respondent's handling of her sickness absence and what she viewed as intimidation and harassment, despite providing sick notes. The Claimant also complained of the lack of personal contact on the part of the Respondent. The Claimant's medical records at page 42 of the bundle show that there was a new sick note described as an "administration note" issued from the 04 – 18 November 2016. There is a further entry on the 08 November 2016 which appears to have been an appointment at the surgery and the record is "employers have summoned her to a disciplinary. They think I should be at work. Has been to ACAS and Citizens Advice. Advice given." It was put to the Claimant when she sent the text to Ms. Crawford on the morning of 07 November; she already had had contact with the GP on the 04 November and had her sick note. The Claimant's explanation was that she telephoned the Doctors on the 04 November hoping to see them, but had to ring on the 07 November to chase up and the surgery said the sick note had already been produced. The Claimant's evidence was that she spoke to the Practice Manager on the 07 November and was so upset, an appointment was made for her on the 08 November which is consistent with the GP's notes.
32. On the 8 November 2016, Ms. Crawford wrote to the Claimant page 130 of the bundle agreeing to re-arrange the Disciplinary Hearing and proposing a new date of Friday 11 November. Ms. Crawford reminded the Claimant she had a right to be accompanied by a work colleague or trade union representative and then stated "if you feel you cannot attend the new time and date, then it would be held in your absence". She stated that the content of the second letter (the grievance letter) would be discussed at the Disciplinary Hearing.
33. It appears that the Post Office was unable to deliver the letter to the Claimant and Ms. Crawford wrote to her again on the 08 November proposing an alternative Disciplinary Hearing date of the 16 November. On the 11 November, the Claimant sent an email to Ms. Crawford pages 132-133 of the bundle stating that she would need to be accompanied as her Doctor had advised her that she was not fit to represent herself. Ms. Crawford responded to say as the Hearing had been arranged for the third time, it would need to go ahead and that the Claimant had the right to be accompanied by a colleague or trade union representative, but no other person.
34. On the 14 November, the Claimant sent three letters to the Respondent pages 133-137 of the bundle. The Claimant sought to answer the allegations that had been set out by the Respondent in its Disciplinary Invitation Letter, the Claimant sought to have her grievance separated from her Disciplinary Hearing and have someone other than Ms. Crawford present and the Claimant expressed her concern that she had neither a trade union representative nor was she comfortable asking any of her colleagues to assist.

The Claimant sent the aforementioned letters both by Recorded Delivery and by email.

35. On the 16 November 2016, the Respondent sent two letters to the Claimant, pages 143-144 of the bundle. In the letters the Respondent agreed to postpone the Disciplinary Hearing and re-schedule it for the 22 November. The Respondent also agreed to postpone the Grievance Hearing, but said as the subject of the grievance was connected to the disciplinary proceedings, the grievance would be heard first with the Disciplinary Hearing being heard immediately afterwards.
36. On the 18 November 2016 the Claimant was further signed off work sick. Her GP records page 42 of the bundle state "seeking extension of sick note, Father terminally ill, note extended". The sick note was for stress and was given for a period of a calendar month to the 18 December 2016.
37. On the 18 November 2016 the Claimant spoke to Maureen Daws a colleague as to whether she would be her accompanying person at the Disciplinary and Grievance Hearings on the 22 November. I heard evidence from Maureen Daws and it was clear that whilst she agreed to do this, she did not fully understand the role, and was reluctant to become involved, which is not surprising in the circumstances. Both Maureen Daws and Jean Dickinson had not seen the Facebook posts and denied being the employees who had brought these to the attention of Ms Crawford.
38. On the 21 November 2016 the Claimant emailed a letter to the Respondent indicating she would not be attending the Grievance and Disciplinary Hearings arranged for the following day. The Claimant again asserted it was unreasonable to hold the two meetings on the same day and further and most importantly, asserted that she had not received any disciplinary investigation report or documentation other than the initial invitation to the Disciplinary Hearing date (the letter of 07 November).
39. On the 30 November 2016, the Respondent hand-delivered a letter to the Claimant's home address enclosing its Investigation Report. That Investigation Report for the first time alerted the Claimant to the fact that the Respondent had been carrying out what the Claimant viewed as surveillance upon her, namely, Ms. Crawford sitting outside her home address in her car and the Respondent checking the Claimant's social media accounts.
40. The Claimant had the benefit of legal advice and spoke to her advisors and decided that she needed to report Ms Crawford to the Police. She did so on the 01 December 2016 when she gave a witness statement to the Police pages 149-152 of the bundle.

41. The Disciplinary and Grievance Hearings were due to be heard on the 07 December 2016. On the 06 December, the Claimant emailed the Respondent advising she was not well enough to attend and provided the Respondent with her GP contact details should they wish to contact him, page 155 of the bundle. Ms. Crawford and Mr Rice conducted both the Grievance and the Disciplinary Hearing together on 7th December. They did so in the Claimant's absence. Mr Rice produced a document entitled Grievance Preliminary Investigation, pages 153 – 154 of the bundle and the combined minutes of the Grievance and Disciplinary Hearing were at pages 156-157. The decision in relation to the Disciplinary and Grievance matters was in writing and signed by Ms. Crawford, although it was a joint decision, and is at pages 158-160 of the bundle.
42. In summary, the allegations were as follows:- “You failed to initially advise nature of illness and continually throughout your illness failed to regularly inform your Manager of your progress without being prompted to do so..... Notification was also late on the majority of occasions. It is deemed that your social media post and comments negatively effect the Company's reputation and that of a Director. The standard of your work was declining including outline calls made, reports not being completed and lack of appropriate decision making. Your social media post and online activity does not indicate that on the balance of probabilities you were not fit enough to attend a meeting with the company. Purposeful withdrawing from attending work, detailed evidence, witness statements and actions with regard to events leading up to your absence.
43. The Claimant was summarily dismissed for actions of both misconduct and gross misconduct.
44. Ms. Crawford received a call from the Police on the 05 December asking that she attend Worcester Police Station for interview on the 08 December. She did so. The Police decided to take no action against Ms. Crawford. This was confirmed in an email from the Police to Ms. Crawford on the 12 February 2017 page 175 of the bundle “I can confirm the matter of harassment against yourself has been investigated and taken no further. It was deemed the actions you took were reasonable steps in view of your own investigation into Hillary's conduct whilst being employed by yourself. To clarify, checking on the welfare of a member of your staff, who is off sick, and providing that employee with relevant material required was part of an internal disciplinary enquiry, and therefore the crime was not made out”.
45. The Claimant prepared a letter dated 09 December 2016 setting out her appeal against dismissal. The sickness matters are well documented, but the Claimant for the first time answered in relation to the social media posts stating that she had made no mention of the Respondent, its Directors, management, employees, products or services and that looking at her dating website profile, a search conducted by Mr Rice, was an invasion of her privacy. The Claimant requested that her appeal be dealt with in writing.

46. The decision maker in relation to the appeal was Mr Rice who had been involved at the first stage. He wrote to the Claimant on the 10 January 2017 pages 171-174 of the bundle dismissing her appeal.
47. The Claimant saw her GP on the 07 December 2016 and the GP's notes page 41 of the bundle record "having major problems at work, PT has involved the police and her insurance company (Legal Aid) will stop. Dad continues to be terminally ill, has weeks to live. PT weeping and clearly distressed."
48. A further sick note was issued to the Claimant on the 19 December for the period 17 December – 16 January 2017 with the diagnosis of stress.
49. The Claimant remains on sick leave to today's date. On the 18 January 2017 the Claimant was issued with another sick note for stress. On the 20 February 2017 the Claimant was issued with a sick note for stress and bereavement as her father had passed away. On the 17 March 2017 the diagnosis on the sick note issued on that date was bereavement. The Claimant was cross-examined as to whether she was suffering from stress at that time or whether the real reason for absence at that time was bereavement. The Claimant said the stress was continuing. The GP's records at page 41 of the bundle note that on the 13 April 2017 the sick note was reissued for stress as the DWP would not accept bereavement for more than two weeks. On the 28 April 2017 a further sick note was issued for stress and the medical records end there.
50. Under Cross-Examination the Claimant confirmed that she was still unable to work through sickness and that she had just finished Cognitive Behavioral Therapy (CBT) in December 2017. She said she had made no job applications. She stated she was too unwell because of the Respondent's treatment of her including the surveillance. She is using CBT mindfulness tapes, family support and is taking small steps towards recovery. She has been in receipt of non-means tested state benefits.
51. It was put to the Claimant that she had time off when her Mother died in 2009. The Claimant was cross-examined in relation to a letter at page 79 of the bundle where she had written to her Doctor asking to "please provide another sick note as I am unsure how long I will need to be here (with my Mother)" The suggestion was put to the Claimant that she used sick notes to get carers leave. I find the Doctor was prepared to issue those notes and having sick or dying parents must in itself be extremely stressful. It was also put to the Claimant she was lying to her employer at that time find that she was not. The Claimant had taken 2-3 months off when her mother died in 2009.
52. It was agreed by the parties that when on sick leave the Claimant received statutory sick pay only.

Claimant's Submissions

The following paragraphs set out the Claimant's Counsel's detailed oral submissions:

53. The Claimant's Counsel referred me to the medical report of Dr Sandford at pages 196-206 of the bundle. This was a joint expert report for the purpose of determining whether the Claimant was a disabled person, for the purpose of the Equality Act 2010 during these proceedings. The Report is dated 21 August 2017. At page 192 of the bundle the Claimant had explained to Dr Sandford that the events of the 19 September 2016 were a "tipping point".
54. At page 193 the Claimant had told Dr. Sandford that she felt harassed receiving five text messages from Caron Crawford on the 20 September 2016. The Claimant reported that she went on the 20 September 2016 to Northampton for a few days but her husband had to drive her car back as she was not well enough to do so. She reported having occasional visits to Northampton to see her father. She reported that most administrative tasks regarding her father's estate has been done by her brother. At page 203 she reported being assisted by her husband in travelling to Northampton and caring for a family member.
55. At page 203 Dr Sandford reported "As a general rule, I would encourage people who go off work for depressive and/or anxiety disorders to seek an early meeting with their employer who will discuss the likely time the treatment will take and an early return to work, probably through a graded programme.

As a general guide, I would have thought no more than one or two weeks off work before some sort of meeting is held would have been beneficial in this case."
56. The Claimant accepted there had been two social events that she had attended since September 2016. One was a family event in Wales which relates, she said, to the social media post about returning to bed at 3.30 am.
57. At page 195 of the bundle the Claimant reported that the illness had dragged on much longer than on previous occasions.
58. Dr. Sandford asked the Claimant about returning to work. At the date of his report she felt she could not do so, but Ms. Anderson made the point that she fought for her job right up to the appeal against dismissal.
59. Dr. Sandford reported at paragraph 9.5.5 of his report "with regard to her past employment, she said if it hadn't ended in the way it did, maybe it would be different".
60. At page 197 of the bundle Dr. Sandford gave his medical opinion that the Claimant is suffering from a psychiatric disorder best described as mixed anxiety and depression disorder. It is not severe but described as fair to moderate.

61. At page 198 of the bundle Dr. Sandford recorded “it is of course possible that the Claimant has exaggerated the level of disability that has arisen from her difficulties ... I can neither confirm or refute the account given to me by the Claimant, although the account is not dissimilar to that which often presents in psychiatric practice.”
62. At page 199 of the bundle Dr. Sandford said “the account is not that dissimilar to what one sees in normal psychiatric practice. I can neither refute nor confirm that her account is true. It is however believable.” On the same page, he stated “in my opinion the type of condition of which she suffers is likely to have a relapsing and remitting course, and will also vary in severity, often dependent on life events.”
63. Dr. Sandford in his report discusses the treatment received by the Claimant. “The treatment I would recommend would be a programme of graded activity and engagement. By this I mean she should be encouraged to do activities, including things that she enjoys. These should be planned in a graded way in such as she should challenge herself to do more things over time for example, building up the distances that she drives, starting to go shopping on her own and regaining confidence. It is a concern to me that this ongoing dispute with her employer may have discouraged her from taking these important steps in improving her condition. Under normal circumstances, one would hope that a graded return to work would have occurred by now.”
64. He stated at page 201 “In my opinion, one of the most significant factors that would improve her mental health would be an end to this dispute with her employer” and this is repeated at page 204. “I think it is unlikely there will be any significant improvement in her condition until this matter is resolved.”
65. At page 201 Dr. Sandford reported “Ultimately, the issue is to whether her condition did or did not significantly interfere in her ability to undertake employment, to some extent rests on whether one accepts the Claimant’s account of its severity, particularly its initial severity in September and October 2016.”
66. At page 202 Dr. Sandford stated “in my opinion, the level of impairment that she was suffering would not have interfered in her ability to participate in a disciplinary process. However, the associated anxiety for such a process meant that she would have reasonably required support to go through this”. He continued: “In my opinion, the nature and degree of the Claimant’s illness is such that one would have expected her to be able to attend meetings at her workplace. However she would find these meetings distressing. A particular factor in this case is the Claimant’s claim that the Respondent was an unreasonable employer and that they harassed her. She reports that this made her particularly anxious and uncomfortable regarding attending workplace meetings, and particularly about being represented.”
67. In Ms. Anderson’s submission there was no reason to suppose the Claimants GP might have had a different opinion to that as set out above.
68. The Claimant’s submission about the Respondent’s behaviour was that it

made her uncomfortable. The text messages on the 20 September 2016 were oppressive and over the top. The Claimant may not have been aware that Ms. Crawford had come to her house to see if her car was there at that time, however the 17 October letter was not sympathetic. The Claimant on the 14 October had said she was distressed but there was no offer of a meeting. The letter of the 07 November was out-of-the-blue with a threat of dismissal being oppressive to be sent during sick leave with stress. There was no early meeting offered by the Respondent. It formed an irrational view on the 19 September that it would not be dissuaded from that the Claimant had left the business. In Miss Anderson's submissions the Respondent's case that the Claimant had 'purposefully withdrawn' from work was 'bizarre'.

69. Ms. Anderson referred to Dr. Sandford's report at page 205, "It is possible that people can have acute stress reactions and "fall apart" very quickly and very suddenly. However this is not the norm. Furthermore this is not what is claimed by the Claimant, who said she had a period of deteriorating mental health prior to leaving work in September 2016."
70. When asked at paragraph 26, page 205, if the Claimant is considered to have a mental impairment, was it likely to prevent her from securing future alternative work Dr. Sandford answered "I do not think it will and we would hope that her condition would improve and she will be able to return to work." Ms. Anderson noted that Dr Sandford's report was dated August 2017 and was in the future tense.
71. On the same page, at paragraph 27. Dr. Sandford said "I think her likeliness to return to work would depend on (1) the success of the treatment she is currently having (2) the introduction of further treatment, perhaps anti-depressants and (3) importantly, the resolution of stress factors including the current Employment Tribunal which is clearly causing her distress."
72. Ms Anderson then made submissions in relation to the ACAS Code. She said this might have been a case when an investigatory meeting would be sensible before the letter of the 07 November was sent. The Claimant could have been asked about the issues were giving rise to concern on the part of the Respondent. Instead they wrote to her on the 07 November warning her of dismissal, which clearly was going to cause distress.
73. Under the ACAS Code paragraph 9, an employee should be notified of a Respondent's intention to hold a disciplinary hearing in writing with information and copies of evidence. No evidence was provided on the 07 November. The language of that letter would have left any employee extremely unclear and concerned. It was not until the 30 November when the Claimant prompted this and after numerous cancellations, the Claimant was given the Investigation Report. Indeed, even with that Report, it was still unclear what the charges were.
74. Paragraph 11 of the ACAS Code provides that an employer should allow an employee reasonable time to prepare for a hearing. The Investigation Report was provided on the 30 November and was very long. The Claimant was off sick and the time set for the Disciplinary Hearing did not give her enough time to respond.

75. Paragraph 19 of the ACAS Code refers to warnings but none were given in this case.
76. Paragraph 24 of the ACAS Code states that the disciplinary rules should give examples, but the rules in this case did not do so and were not in relation to the areas on which the employer relied in this case.
77. Paragraph 27 of the ACAS Code provides that the appeal should be dealt with impartially. Mr Rice dealt with the appeal and was present in the decision making in relation to the first stage. He sent a covering letter with the Investigation Report.
78. Turning to the ACAS Code dealing with grievances at paragraph 31, the Claimant had raised a grievance and she asked for a manager other than Ms. Crawford. She requested meeting without unreasonable delay, but the issues really was the holding of the Grievance Hearing in tandem with the Disciplinary Hearing. It would have been appropriate to suspend the Disciplinary Hearing to hear the Grievance Hearing.
79. The allegation that the Claimant procured sick notes falsely was not pleaded by the Respondent and the Respondent has accepted it is not disputing the accuracy of the sick notes. The questioning in cross-examination focused on the letter on the Claimant's GP's file regarding sickness absence when her mother was ill. Miss Anderson asked whether the Respondent was seriously suggesting the Claimant wrote to the GP and said could you give me a sick note, I am not sick but want to care for my mother and the GP gave a note on that basis. Miss Anderson submitted that the GP notes are clear that the consultation on the 20 September 2016 resulted in the issue of a sick note for stress.
80. The Claimant's behavior on the 19 September 2016 was unusual and the removal of her client account of Obex was the trigger. The Respondent was aware the Claimant's father was ill and deteriorating. There was a dispute of fact about whether she took her mug home as a matter of course but she does accept she took home her toy. She said she was comforted by it, but two hours after the meeting and before leaving work, her mental health deteriorated. The Respondent seems to be saying, there was no intention to return to work, but the Claimant then continued to submit notes and engage with the employer in the process. The Claimant behaved as someone who considered herself still employed by the Respondent. The sickness policy refers to the employee informing the employer as to the nature of absence, not of the nature of the illness.
81. As regards the 19 October 2016 text contact, the Respondents case was that the Claimant lied about the message from the Doctor. The allegation is made on the basis of what the GP's do and do not record. The inference that the Claimant lied is a very grave inference to draw. On the 03 November there was no contact from the Claimant on that date but there was none from Ms. Crawford. The Claimant texted on the 07 November. Again, it is alleged the Claimant lied about GP appointments. There was a delay in producing the sick note from the 20 November to the 28 November, but the Disciplinary Proceedings had started. There may have been days where the Claimant did not call before 9am before the

expiry of a sick note, but this is not misconduct nor a fundamental breach. There was no fault on the Claimant's part that contributed to dismissal. If the Judge finds contributory fault it should be 5% or less. The context is that if it really were a serious matter, the Respondent would have made it clear at an earlier stage.

82. On the Facebook post on the 19 September, there was no evidence the Claimant's account was linked to the Respondent. Ms. Crawford's evidence was that she saw herself that the Claimant had mentioned "working for Gravity" although it has since been removed, but she arranged to have the screenshot of the post, but not of the link. There was no evidence that any member of staff thought the posts were about the Respondent. Three members of staff were interviewed in the investigation report and none deal with this. Only Mr Rice, Ms. Crawford and the Claimant were at the meeting on the 19 September and only they would know the Claimant was upset and that her post might refer to them. There was no evidence of damage to the Respondent's reputation
83. It is not a fundamental breach of contract for an employee to raise a complaint with the Police. The GP notes recorded the Claimant as weeping and distressed. The Respondent was aware of the allegation by the 05 December but did not refer to it in the minutes or the dismissal letter. The fact that the Claimant appealed the dismissal is contrary to the Respondent's allegation that the Claimant must have decided to leave at the time she went to the Police.
84. On the issue of Polkey and sickness absence, the Claimant has been ill for a long time. Dr. Sandford clearly connected it with the dispute. It would not have happened if the Claimant had not been dismissed. When her mother died, she was off two to three months. Nothing can change the fact that the Claimant lost her father in January 2017. The Claimant would have been back to work possibly before that and then shortly after the death.
85. Ms. Anderson agreed that she could not dispute the legal tests as set out in the Respondents skeleton argument

Respondent's Submissions

The following is a summary of the Respondent's Counsel's submissions which were given orally and were set out in writing. Where the Respondent's counsel set out any relevant law in his written submission this is referred to below under heading 'the Law'.

86. Part way through cross-examination of the Claimant, Mr Islam-Choudhury, at the start of day three of the hearing stated that the Respondent was not suggesting that the Claimant was not sick from the 20 September to the 07 December 2016, but rather that she lied about her reason for being sick, knowing that she was on sick leave to get carers leave, and that she was dishonest in the manner in which she conducted herself in relation to the sickness absence. He indicated this would go to the contributory conduct on the unfair dismissal compensation point.

87. The Respondent conceded the Claimant was unfairly dismissed, however contended that she was not entitled to any basic or compensatory award because (a) she contributed to her dismissal by her deliberate obstructive behaviour in respect of her sickness absence and other conduct. (b) there should be a Polkey reduction limited to her losses to December 2016 or February 2017 at the latest when she would have been dismissed for capability for long term sickness absence. And (c) She has failed to mitigate her loss.
88. In the Respondents submission much of the issues relied on the Tribunal making adverse findings about the Claimants credibility. The Respondent alleged the Claimant had deliberately lied in evidence that the Respondents witnesses should be preferred.
89. The Respondent's case is that everything was fine between the Claimant and Respondent until there was mention of removing a client account (Obex) from the Claimant. There was a cordial discussion about compassionate leave following which there was a discussion about the Obex account, where the Claimant became upset and the Respondent's case is she decided she did not want to work there any longer. Her motivations and actions from the 19 September 2016 were to do with that decision. Prior to that there was a good working relationship. There was a Facebook post that evening and the obvious answer was the Claimant was sounding off against her Manager because she was unhappy and went on to block her. The onus was on the Claimant to notify absence. She was deliberately seeking to be obstructive.
90. The text message she sent on the 07 November was entirely misleading. She said she was going to the Doctor, but she knew she had seen the Doctor on the 04 November. She never anticipated the Doctor's records would catch her out.
91. On the 19 October the Claimant said the Doctor left her a message but there was no entry on the GP records. She accepted in cross-examination that she was in breach of the Respondents sickness policy. If they were innocent breaches it would be disproportionate for the Employer to take the steps that it did, but those steps were designed to cause trouble for the Respondent.
92. When asked about the 07 November, the Claimant said she went to see the Practice Manager and this is nowhere in her Witness Statement. When pressed she had no answer why it was not in her statement. Her discussion with Mrs Daws was also missing from her Witness Statement which was a key piece of evidence. The matter of her reporting Ms Crawford to the police is missing from her Witness Statement. Going to the police was evidence that Claimant had abandoned her job. The Claimant has not asserted the Respondent's witnesses were lying.

93. In 2009, the Claimant was in a place where she felt able to ask for sick notes to get carers leave and that goes to her credibility. Her motivations were in bad faith. It boils down to the Claimant acting in bad faith and if so, she contributed to the dismissal.
94. In the Respondent's submission there could be any reason to reduce the basic award. To reduce the compensatory award there has been a causal link between the conduct and reason for dismissal. The Respondent accepts the Claimant was legitimately on sick leave, but her conduct around that leave and her communication in dealings with the Respondent was in bad faith and she lied in evidence. There is considerable contributory fault on both counts.
95. Dr. Sandford cannot discount the possibility the Claimant has exaggerated matters. A lot of what he said depends on the Claimant's credibility.
96. Both Mr Rice and the Claimant seemed to think that three months absence was a reasonable period before dismissal. The business is a micro business with 75% revenue being spent on salaries. It would have been entirely reasonable to have had a dismissal after three months absence on sick leave. The Claimant had previous such experience, in that in 2009 with a previous employer, having been off only three months and not being given a permanent contract.
97. The bereavement would have occurred in any event. It is a huge intervening event. The employer cannot be liable for that. If the Claimant had been suffering from bereavement, she would have been gone by February 2017. The Polkey reduction either bites in December 2016 or at the latest February 2017 when bereavement is the new reason for absence.
98. Dr. Sandford said in August 2017 she should have been able to do some work, but she has made no effort whatsoever. The burden is on the Respondent to show she has failed to mitigate her loss. She should have taken some steps at least by now.
99. In the Respondents submissions this case involves a small employer and a dispute between the manager and an individual arising out of an Investigation Report being supplied. The report is not different to lots of reports the Tribunal will see. The Claimant gave a witness statement to the police saying she was happy to support any prosecution and signed it. No employee with any real desire to return to work would do that. It was a very damaging thing to do when there are only six people in the office. If it was done in bad faith to do away with the disciplinary process, it was entirely her fault the relationship came to an end.
100. In her email of the 14 October 2016 the Claimant mainly talks about Obex. On the 17 October Ms. Crawford said not to worry. What the Claimant wanted was the Obex account. Her behavior was a matter of trust and confidence.
101. The Respondent invited me to make a deduction of 50-100% for contributory fault, due to the Claimants conduct.

102. The Respondent invited me to reduce any award based on what would have happened in the absence of an unfair dismissal, a Polkey deduction. In the Respondents submission the Claimant went on sick leave on 20 September 2016 and cautions at the hearing to be unfit to work. The Tribunal should accept the Respondent's evidence that a small business such as its business would have fairly dismissed for capability after 3 months from 20 September 2016 i.e. by 20 December 2016. The Respondent also asserted that the sick notes reasons for absent changed from stress to bereavement on 20 February 2017 and that any absence from that date should not be attributed to the Respondents treatment of the Claimant. Therefore the Claimant would have been fairly dismissed by February 2017.
103. On the issue of wrongful dismissal in the Respondents submission the Claimant should not succeed on the basis that her conduct put her in repudiatory breach of the contract such behavior was sufficiently serious to justify dismissal.

The Law

104. The Respondent conceded that the Claimant was unfairly dismissed.
105. The Claimant seeks a basic and compensatory award.
106. S119 Employment Rights Act 200 provides for the amount of any basic award and the calculation therefor.
107. S122 Employment Rights Act 10996 deals with the circumstances where the basic award might be reduced and provides as follows.
- “(2) Where the Tribunal considers that any conduct of the complainant before the dismissal was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Tribunal shall reduce or further reduce that amount accordingly.”*
108. S123 Employment Rights Act provides for the making of a compensatory award. This award shall be *“such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss suffered by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer”*.
109. S123(4) provides *“In ascertaining the loss referred to in subsection (1) the Tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales...”*
110. S123(6) provides *“Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding”*.

111. S207 A Trade Union and Labour Relations (Consolidation) Act 1992 provides:

“ If in the case of proceedings to which this section applies, it appears to the Employment Tribunal that

- (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,*
- (b) the Employer has failed to copy with that Code in relation to that matter and,*
- (c) that failure was unreasonable the Employment Tribunal may, if it considers just and equitable in all the circumstances to do so, increase any award by no more than 25%.”*

112. In submissions the Respondents Counsel referred me to the case of Portsmouth Hospital v Corbin (2017) UKEAT/01636/16 which provides guidance on dealing with any reductions to the basic and compensatory awards. That case in turn referred to the EAT decision in Stean v ASP Packaging Ltd (2014) ICR 56.

“10. The two sections are subtly different. The latter calls for a finding of causation. Did the action which is mentioned in section 123(6) cause or contribute to the dismissal to any extent? That question does not have to be addressed in dealing with any reduction in respect of the basic award. The only question posed there is whether it is just and equitable to reduce or further reduce the amount of the basic award to any extent. Both sections involve a consideration of what it is just and equitable to do.

11. The application of those sections to any question of compensation arising from a finding of unfair dismissal requires to a tribunal to address the following: (1) it must identify the conduct which is said to give rise to possible contributory fault: (2) having identified that it must ask whether that conduct is blameworthy.

12. It should be noted in answering this second question that in unfair dismissal cases the focus of a tribunal on questions of liability is on the employer’s behavior, centrally its reasons for dismissal. It does not matter if the employer dismissed an employee for something which the employee did not actually do, so long as the employer genuinely thought that he had done so. But on inquiry in respect of contributory fault is a different one. The question is not what the employer did. The focus is on what the employee did. It is not on the employer’s assessment of how wrongful that act was; the answer depends on what the employee actually did or failed to do, which is a matter of fact for the employment tribunal to establish and which, once established, it is for the employment tribunal to evaluate. The tribunal is not constrained in the least when doing so by the employer’s view of the wrongfulness of the conduct. It is the tribunal’s view alone which matters.

13. (3) *The tribunal must ask for the purpose of section 123(6) if the conduct which it has identified and which it considers blameworthy caused or contributed to the dismissal to any extent. If it did not do so to any extent, there can be no reduction on the footing of section 123 (6), no matter how blameworthy in other respects the tribunal might think the conduct to have been. If it did cause or contribute to the dismissal to any extent, then the tribunal moves to the next question, (4).*

14. *this, question (4), is to what extent the award should be reduced and to what extent it is just and equitable to reduce it. A separate question arises in respect of section 122 where the tribunal has to ask whether it is just and equitable to reduce the amount of the basic award to any extent. It is very likely, but not inevitable, that what a tribunal concludes is a just and equitable basis for the reduction of the compensatory award will also have the same or a similar effect in respect of the basic award, but it does not have to do so."*

Conclusion

113. I have made detailed findings of fact. Those findings do not support any conclusion that the Claimant was guilty of any conduct that could be deemed such that would allow me to reduce any award made to her on the basis of such conduct. There was no conduct on the part of the Claimant which either contributed to her dismissal or was blameworthy. There was no conduct that would render it just and equitable to reduce the award.

114. The Claimant had a number of personal issues causing her upset as at the 19th September 2016. She told Dr Sandford this. Nevertheless she sought through proper channels to agree leave with her employer so that she should go and care for her father during that week. Somewhat unsympathetically, and in light of Mrs Crawford's knowledge of the Claimant's father's illness, the Respondent took it upon itself to tell the Claimant that on her return from work her main client might be removed from her. Whilst I accept the Respondent's evidence that its staff did not 'own' clients, the delivery of this information was said by the Claimant, and supported by Dr Sandford, as being the 'tipping point' causing her to be tearful at work and to call her GP's practice in the evening. The Respondent then compounded the problem. Rather than treating the Claimant sympathetically it bombarded her with text messages the following day about her absence. This was in circumstances where she had followed the Respondent's sickness absence procedure as best as she could by texting Mrs Crawford before the start of the working day giving the nature of her absence 'got a Doctor appointment at 9am'. Even on the 16th September it was the Respondent's evidence it had formed the view the Claimant would not be returning and began an 'investigation' into the Claimant's conduct. In my view it formed this view irrationally based on its knowledge of the Claimant leaving her prior employment, the circumstances of which were not on all fours at all, and because the Claimant had, amongst other things which I find irrelevant, posted 'same shit, different day' on Facebook and blocked Mrs Crawford as a Facebook friend.

115. The Respondent, no doubt in light of its view that the Claimant would not be returning, then set out chasing the Claimant as to her absence, the reason for such absence and her likely return. Against this background it continued an investigation into her conduct resulting in an invitation to a disciplinary hearing on 7th November, barely 3 weeks into the properly certified sickness absence. In the Respondents counsel submissions he asked me to find the Respondent naïve and inexperienced yet both directors gave evidence they had taken advice from solicitors and HR advisors.
116. The Respondents position is that the Claimant was not credible, in fact that she lied in a number of ways. Firstly it was argued that the Claimant lied to the Respondent, claiming her reason for absence was not sick leave but rather carers leave. Secondly that she was dishonest in the way she conducted herself during her sickness absence. I do not agree with either point. The Claimants sick notes throughout the onset of sick leave to dismissal refer to 'stress'. The first GP note on 20th September makes no mention of carers leave. The Claimant was clear in her evidence that whilst she did travel to visit her father week commencing 19th September she did not care for him beyond that time. In her text messages exchanged with Mrs Crawford at no stage did the Claimant suggest that she was absent for any reason other than in accordance with her sick notes. I cannot find that she was dishonest in her conduct during her sickness absence. Yes there were sometimes delays in informing Mrs Crawford whether she would be returning on the expiry of a sick note but this is not at all uncommon and is against a backdrop of the Respondent having been the 'trigger' for the onset of stress leading to sick leave and an employer moving swiftly onto disciplinary proceedings.
117. On the basis of the Claimants alleged conduct, summarized as lying to her employer and/or failing to follow the sickness absence procedure during her absence I do not find this amounted to any reason to reduce the awards. Firstly, for the reasons given in the findings of fact, I do not find the Claimant ever lied. I have already said she was late sometimes in keeping her employer abreast of her continuing absence and/or in supplying fit notes. In particular the Respondent sought to argue the Claimant had lied when texting Mrs Crawford on the 7th November. I have found that she did not. The evidence she gave was consistent with GP notes.
118. The Respondent also sought to argue other issues in relation to the Claimants conduct both before dismissal and during the conduct of proceedings. The Claimant admitted posting 'same shit, different faces' on Facebook very soon after leaving work on the 19th September although could not recall doing it at the time. It is a leap to suggest I should find that was misconduct on the Claimants part. She was tearful and stressed and the post may well have been about the Respondent however the Claimants evidence was that her account did not identify her as working for the Respondent and the Respondent could not produce any witness who had seen the post (other than Mrs Crawford who attributed the post as to being about herself) or who believed it concerned the Claimants relationship with the Respondent or its directors. Similarly the only person who seemed to know she had been blocked as a Facebook friend of the Claimant was Mrs Crawford.

119. The Claimant accepted taking her cuddly toy home from her desk and explained it gave her comfort. I accept that and so not find it to be a conduct issue in any way. Neither do I accept that any comment she may have made when being informed of the possible reward of the Obex account nor failing to reply to an invitation to a works Christmas Party were conduct matters.
120. I do not find the Claimants statement to the police was in any way contributory conduct. She was unaware until she received the investigation report that Mrs Crawford had been to her home one a number of occasions to check up on her, or that the Respondent had been viewing her social media pages. She took legal advice and was told to speak to the police. This is again against a backdrop of stress.
121. I therefore do not find there was any conduct on the part of the Claimant that should reduce either the basic or compensatory award. For the same reasons I find the Claimant was wrongfully dismissed.
122. On the subject of the Polkey reduction I do agree in part with the Respondents submissions. It is a matter of fact, and a significant intervening act, that in January 2017 the Claimants father sadly passed away. The doctors notes record on 20th February 2017 that a sick note was provided at the time for 'stress and bereavement'. The Claimant was unfairly dismissed summarily on 7th December 2017. By 20th February 2017 she was unable to work on an account of her bereavement. Given the previous absence when the Claimants mother passed away, I find that she would have most likely been absent due to her fathers death for 3 months. I further accept, given the size of the Respondents small undertaking it would have been able to fairly dismiss after those 3 months by reason of the absence. Mr Rice made this point in his evidence and the Claimant did not disagree when it was put to her in cross examination.
123. So my findings the Respondent would have fairly been able to dismiss the Claimant by 20th February 2017 but would have had to give notice. The notice required by the contract was 4 weeks. The Claimant remains on sick leave to todays date and I find she would have been on sick leave during her notice period and that she would have been in receipt of statutory pay throughout this period. As her notice period is in excess of her statutory notice entitlement the Claimant would have only received sick pay during his period. Given she was in fact in receipt of equivalent state benefits no compensation for wrongful dismissal falls due. (S88 (1) and 89 (1) Employment Rights Act 1996).
124. The Claimant is entitled to be compensated at her usual rate of pay from the date of the unfair dismissal to the date of bereavement, I find this date as the date of the first sick note for bereavement of 20th February 2017. I compensate the Claimant in full for this period given and find the Claimant was on sick leave from 19th September through to the bereavement on account of the Respondents treatment of her, but I only compensate her for losses flowing the dismissal and not before hand.

125. On the subject of an uplift in relation to breach of the ACAS Code, I find there were breaches making any uplift just and equitable. Despite having advice the Respondent did not send the supporting documentation with the initial invitation to the disciplinary hearing and had to be asked by the Claimant to do this. Both directors were involved in both the grievance and disciplinary hearing, and one of them (Mr Rice) was also involved in the appeal hearing. Mrs Crawford was involved at the grievance stage, certifying the two and in circumstances where the Claimant had quite reasonably asked that Mrs Crawford not be involved in the grievance. In my view the appropriate uplift is 10%.

126. The sums awarded to the Claimant are therefore as follows:-

- a) Basic award. The Claimant was 55 years at dismissal and had 2 years continuous service. The multiplier is 3 and the weekly gross pay was £309.06. The basic award is thus £927.18.
- b) Compensatory award. The Claimant is entitled to full pay from 7th December 2016 to 20th February 2017, a period of 10 weeks 4days. Her weekly net salary was £271.11 so I award her the sum of £2819.54. I also award £350 for her loss of statutory rights. I uplift this total by 10% to a total of £3486.94

Employment Judge Hindmarch

Date 15 March 2018