Case No: 2300810/2018

THE EMPLOYMENT TRIBUNAL

SITTING AT:	**LONDON SOUTH**
BEFORE:	**EMPLOYMENT JUDGE K ANDREWS**
MEMBERS:	**Ms B Brown** **Ms B Leverton**

BETWEEN:

Ms J Simpson

Claimant

and

Air Business Limited

Respondent

ON:	**13 – 17 May 2019 and** **3, 4, 6 June, 22 & 23 July 2019 in chambers**

Appearances:
For the Claimant: **Miss H Platt, Counsel**
For the Respondent: **Miss H Williams, Counsel**

JUDGMENT

The claimant was unfairly dismissed although a contributory fault deduction of 60% will apply to any compensation awarded.

The claimant was not victimised.

A remedy hearing will be listed in due course.

REASONS

1. In this matter the claimant complains that she was unfairly dismissed and victimised further to her protected act of raising a grievance in June 2016.

The detriments she alleges she suffered because of that protected act are set out in the appendix to this judgment.

2. The respondent admits that the claimant was dismissed and says that the dismissal was for a substantial reason of the kind such as to justify it other than the other potentially fair reasons set out in the Employment Rights Act 1996 ('the 1996 Act'). The respondent accepts that the June 2016 grievance was a protected act but denies that the claimant was subjected to detriments as a result.

Evidence & Procedural Matters

3. For the respondent we heard evidence from:
    a. Mr D Taylor, Group IT Director;
    b. Ms L Satterthwaite, Group Head of HR; and
    c. Mr A Hall of Best Start Human Resources Ltd.

    We also heard evidence from the claimant and considered an agreed bundle and supplementary bundle of documents.

4. The matter was listed for 5 days which at commencement seemed to be ample time however various delays crept in. At the end of the second day an issue arose as to whether the contents of two 'off the record' conversations between the claimant and Ms Satterthwaite on 3 November 2016 and 1 August 2018 were in fact without prejudice and if so, should privilege be removed. Ms Satterthwaite was cross examined at that stage just on her belief as to whether the conversations were without prejudice, which she said they were, and whether any undue pressure had been applied to the claimant.

5. At the start of day 3 it was confirmed that the respondent waived privilege in respect of the 1 August 2017 conversation (and agreed a transcript prepared by the claimant of a covert recording she had made on the day) but maintained privilege for the discussion on 3 November 2016. We heard submissions from both parties and decided, for the reasons given orally after our deliberations, that there was no 'dispute' in November 2016 such as to result in the label without privilege having been properly applied to that conversation. Accordingly evidence would be heard in respect of it and Ms Satterthwaite was recalled and gave evidence as to her recollection of that conversation.

6. At the start of day 4 the respondent disclosed further email correspondence relevant to the issues. There was no compelling reason why it had not previously been disclosed but, as it was relevant to the issues and there was no significant prejudice to the claimant, they were added to the bundle. As a result however Mr Taylor had to be recalled, further delaying proceedings. At other times during the hearing the claimant also added documents to the bundle which were accepted for the same reasons.

7. Submissions on liability and remedy (limited to possible reductions due to Polkey and/or contributory fault) were heard on the afternoon of day 5.

Judgment was reserved and the Tribunal adjourned for its in chambers discussion. That discussion was first held on 3, 4 & 6 June 2019. Again, the panel had anticipated that that would be sufficient time but the allegations and evidence were such as to require very detailed consideration and unfortunately, a further adjournment was required. We were able however to complete our deliberations on 22 & 23 July 2019.

Relevant Law

8. Unfair dismissal: By section 94 of the 1996 Act an employee has the right not to be unfairly dismissed by his or her employer.

9. In this case the claimant's dismissal was admitted by the respondent and accordingly it is for the respondent to establish that the reason for the dismissal was a potentially fair one as required by section 98(1) and (2) of the 1996 Act. If the respondent establishes that then it is for the Tribunal to determine whether the dismissal was fair in all the circumstances (including the size and administrative resources of the respondent business) having regard to equity and the substantial merits of the case (section 98(4)). In applying this test the burden of proof is neutral.

10. In this case the respondent relies upon 'some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held' as the reason for the dismissal. Loss of trust and confidence between employer and employee, necessary for the employment relationship to function, can amount to some other substantive reason for dismissal (Express Medicals Ltd v Mr O'Donnell UKEAT/0263/15/DA).

11. In determining whether the dismissal was fair, the Tribunal's task is to consider all of the relevant circumstances including any process followed by the respondent. The ACAS Code of Practice on Disciplinary and Grievance Procedures, with which the Tribunal is very familiar, does not apply to a dismissal due to a breakdown in the employment relationship unless the respondent proceeded at the outset on the basis that it amounted to a disciplinary situation or involved culpable conduct or performance that requires correction or punishment. Many of the Code's principles will be relevant however as part of the general consideration of fairness. No uplift in compensation for failure to follow the Code would be appropriate however.

12. In coming to these decisions, the Tribunal must not substitute its own view for that of the respondent but to consider the respondent's decision and whether it acted reasonably by the standards of a reasonable employer.

13. If the Tribunal finds that a dismissal was unfair, it is open to it to reduce any compensatory award to reflect that the employee may have still been dismissed had the employer acted fairly (known as a Polkey reduction following Polkey v AE Dayton Services Limited (1988 ICR 142). In assessing such a reduction regard is had to the principles set out in Software 2000 Ltd v Andrews (2007 IRLR 574). In reaching its conclusion,

the Tribunal needs to consider both whether the employer could have dismissed fairly and whether it would have done so.

14. Further it is open to the Tribunal to reduce compensation if it is just and equitable to do so having regard to any blameworthy conduct of the claimant that contributed to the dismissal to any extent. This reduction can apply to both the basic and compensatory awards (section 122(2) and section 123(6) of the 1996 Act.)

15. In order to justify a specific reduction, the Tribunal has to find:
    a. culpable or blameworthy conduct of the claimant in connection with the unfair dismissal;
    b. that that conduct caused or contributed to the unfair dismissal to some extent;
    c. that it is just and equitable to make the reduction.
    (Nelson v BBC (no 2) 1979 IRLR 346)

16. As to the amount of any reduction, case law suggests that there are four appropriate categories:
    a. where the employee was wholly to blame – 100%;
    b. where the employee was largely responsible – 75%;
    c. where both parties were equally to blame – 50%;
    d. where the employee is to a much lesser degree to blame – 25%. (Hollier v Plysu 1983 IRLR 260)

17. There is a difference in the statutory wording on how to apply the reduction to the basic and compensatory awards but it is accepted that it is very likely (though not inevitable) that the reduction on the compensatory award will applied in the same or similar way to the basic (Steen v ASP Packaging Ltd 2014 ICR 56).

18. Victimisation: section 27(1) of the Equality Act 2010 ('the 2010 Act') provides that a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act. A protected act includes making an allegation (whether or not express) that A or another person has contravened the 2010 Act. The word 'because' in this context does not equate to 'but for'. Rather, the Tribunal has to determine whether the protected act materially influenced (whether consciously or unconsciously) the relevant treatment. The protected act need not be the sole reason for the detriment in question; it is sufficient if it was a significant influence on A's decision. There is no need for the claimant to rely upon a comparator to make out a claim of victimisation. Something will amount to a detriment where a reasonable person would or might take the view that the act or omission in question gives rise to some disadvantage.

19. In Martin v Devonshire (2011 ICR 352) the EAT dealt with the difference between the fact of a protected act and some feature of it as follows:

    'The question in any claim of victimisation is what was the "reason" that the respondent did the act complained of: if it was, wholly or in substantial part, that the claimant had done a protected act, he is liable for victimisation; and if not, not. In our view there will in principle

be cases where an employer has dismissed an employee (or subjected him to some other detriment) in response to the doing of a protected act (say, a complaint of discrimination) but where he can, as a matter of common sense and common justice, say that the reason for the dismissal was not the complaint as such but some feature of it which can properly be treated as separable. The most straightforward example is where the reason relied on is the *manner* of the complaint.'

20. In determining a victimisation claim, the burden of proof provisions of section 136 of the 2010 Act apply:

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

21. It is generally recognised however that it is unusual for there to be clear evidence of discrimination and that the Tribunal should expect to consider matters in accordance with these provisions and the guidance set out in Igen v Wong and others ([2005] IRLR 258) confirmed by the Court of Appeal in Madarassy v Nomura International plc ([2007] IRLR 246). It is important in assessing these matters that the totality of the evidence is considered.

Findings of Fact

22. Having assessed all the evidence, both oral and written, and submissions we find on the balance of probabilities the following to be the relevant facts.

23. The respondent is an international mailing and distribution company with approximately 400 employees. Its head office is in Hertfordshire but it also has an office in Haywards Heath with about 60 employees including those working in its online services team (OST), part of the IT function. The OST is managed by Mr K Stewart who reports to Mr Taylor. Although Ms Satterthwaite's job title suggests a large HR function in fact it comprised just her plus one assistant who, at the time, was studying for the CIPD qualification. Ms Satterthwaite is based at the head office.

24. Due to the nature of the reason for the dismissal, it is necessary to set out in more than usual detail the history of the claimant's employment. Where possible this is done in summary notwithstanding the claimant's witness statement which contained lengthy descriptions of events prior to 2016 from her perspective. It was confirmed with the parties at the commencement of the Hearing that the Tribunal would not be required to make detailed findings of fact about those earlier events and that it was noted that there was significant disagreement between them as to the accuracy of the claimant's account. Accordingly, although the claimant was not cross examined on those matters, no admission was made by the respondent in respect of her allegations.

25. 2007-2012

26. The claimant commenced employment with a predecessor business of the respondent in July 2007 and transferred into the respondent's employment on 31 May 2011. She was employed as a web developer within the OST which worked in an open plan office. She was line managed by Mr Stewart although there were three senior web developers within the team: Mr Lanceley from 2012 and Mr Trowell & Mr Clarke from 2013.

27. It is clear that the claimant was good at her job and there were no issues regarding her technical capability. Although a significant amount of the work done by a web developer is done alone, it is a necessary requirement to be able to liaise and collaborate with other team members or teams (e.g. technical or client services) as required.

28. The claimant says that her problems at work started towards the end of 2010 with colleagues bullying her. In April 2012 she raised a grievance alleging bullying by Ms Pembroke and Mr Devine. This grievance was investigated by Ms Nicholls, Fulfilment Director, who concluded that there was insufficient evidence to support the allegations. She did however suggest to the claimant that she may need support from their occupational health team but the claimant declined this. She did however have a number of meetings with Ms Daniel of HR and did not appeal the grievance outcome.

29. 2013

30. On 22 March there was an incident at an event in a bar in Haywards Heath attended by the respondent's employees. The circumstances are not entirely clear but ultimately Mr Eldridge, a web developer who left the respondent's employment shortly afterwards, threw a drink at the claimant who immediately threw one back at him. The claimant then had a heated exchange with Mr Trowell. She alleged at the time and still says that Mr Trowell also threw a drink at her but in the investigation that followed, the matter having been reported by Mr Stewart, CCTV footage was viewed which was inconclusive as to whether Mr Trowell had thrown a drink. No disciplinary action was taken in respect of these events.

31. In April Mr Devine raised a grievance against the claimant complaining that she had lied about him in her 2012 grievance and was making him feel uncomfortable at work. An investigation commenced but then Mr Devine withdrew his grievance as he was shortly due to leave the respondent (although he did later return as a contractor). The grievance process was therefore concluded without action.

32. 2014

33. In 2014 the OST was reorganised due to implementation of a new system called NextGen. As a result the claimant and others had to move desks. This led to an exchange between the claimant and Mr Stewart further to which she requested a meeting with Mr Taylor.

34. Mr Taylor made a note of that meeting held on 18 November. It is necessary to quote it in full:

> 'Asked to see me on Friday, when out of office. Meeting arranged for today at 3.00pm.
>
> Complaint about 'bullying' manner in which spoken to by Kevin when discussing desk moves. Seems that is very unsettled by desk move - feels had been making progress with a small group of people she felt comfortable speaking to, after the [illegible] incident which occurred the couple of years ago.
>
> Unsettled by change.
>
> Felt that she wasn't aware of what was happening in team as no formal communications/meetings take place on a regular basis & she feels excluded from [illegible] conversation due to impact of past incident on team.
>
> My impression
>
> She is incapable of putting behind her the long-standing grievance she feels she has. Janet cites the names of just about everyone in web team + Steve + HR in their failings to deal with the situation.
>
> I suggested that because she didn't seem able to put this historic situation behind her, it is likely that she will judge any future situation as being caused by the resulting fallout of this. Any change/move/disappointment in future she will deem to be as a consequence of this rather than an isolated incident or occurrence.
>
> I said that I would:
>
> 1) put a regular/structured meeting in place with all ONLWS services staff to ensure info communicated to all without relying on grapevine
>
> 2) speak to Kevin about his style of communication. Becoming frustrated, as he inevitably will have as a consequence of this issue for still being raised, can be interpreted as mildly aggressive or bullying behaviour
>
> I concluded meeting by saying I would take this action & [illegible] Janet that my door is open to her, as it is to all staff I am responsible for
>
> She said that it might end up with her leaving - seeking alternative employment. I didn't discourage this, but expect it is unlikely as we are now two years down the line and this hasn't happened yet.'

35. Mr Taylor accepted in his evidence that he did not follow up on those agreed actions at all and therefore cannot dispute the claimant's evidence that only two team meetings, six months apart, actually happened.

36. 2015

37. In November the claimant complained to Mr Stewart about the way Mr Lanceley had spoken to her. Mr Stewart spoke to Mr Lanceley and confirmed to the claimant that he had not intended to be aggressive and that as far as Mr Stewart was concerned the matter was concluded. The claimant sought specific confirmation that she would not be spoken to again in this way but this was not forthcoming.

38. 2016

39. In March a recruitment exercise took place for a senior web developer position within OST. The claimant applied and was interviewed by Mr Stewart and Ms Fisher (senior project manager and the claimant's former head of department in the predecessor business). The claimant was unsuccessful and Mr Lanceley was appointed.

40. In April the claimant was assigned by Mr Stewart to the NextGen project on which Mr Trowell and Mr Lanceley were the technical leads. Consequently she was required to work directly with Mr Trowell.

41. 2016 Grievance

42. On 3 June the claimant lodged a 10-page grievance (the protected act) which set out in detail wide-ranging allegations (including gender based and discriminatory harassment) against a variety of people. The claimant specifically stated that she had been subjected to a targeted, three-year campaign of ridicule, contempt and humiliation. Further that:

> 'By the end of 2013 more than 20 people around the business, including the MD, other company directors, and managers had joined in, and a number of the perpetrators had been promoted into management and senior positions were actively bullying. That figure is now 30.'

43. Ms Satterthwaite, not unreasonably given its scope, requested a meeting to clarify the grievance and that took place on 10 June. The claimant was accompanied by her union representative, Mr White, and a notetaker was also present.

44. On 10 June Ms Satterthwaite wrote to the claimant confirming that her grievance, in summary, was as follows:

> 'JS wanted to deal with the immediate issue - namely her working environment.
>
> JS wanted an understanding of the previous issues raised in April 2013 which is related to a drink throwing incident at an external gathering for a leaving party - clarification on the 2013 investigation.
>
> JS wanted recognition that the 2012 grievance had not being handled properly and further issues that had arisen since then had not been addressed.
>
> JS wanted recognition that she had been treated unfairly by the Company and that the bullying which was introduced into the company in 2010 had not been dealt with.'

45. She also advised the claimant that the matter would be investigated by an independent external HR consultant, Ms J Born of HR Initiatives Ltd. Ms Satterthwaite's evidence was that she appointed an external investigator because of the nature of the claimant's allegations and that a number of them related to the respondent's previous investigations and decisions. It was also agreed that while the grievance was investigated the claimant could work from home.

46. The claimant was invited to a grievance investigation meeting with Ms Born which ultimately happened on 28 June. The arrangement for the claimant to work from home eventually became permanent as recorded below and accordingly from June 2016 until her dismissal she did not again work in the office.

47. Ms Born investigated four main areas:
    a. the 2012 grievance process;
    b. the 2013 bar incident;
    c. the 2013 Devine grievance; and
    d. alleged bullying in the workplace.

    She considered papers provided by the claimant, requested additional documents from the respondent as she saw fit and interviewed various individuals, including the claimant, at length. In her detailed report she made relevant findings of fact (including that it was not possible to verify if Mr Trowell threw a drink at the claimant in 2013), set out her comments/observations and made various recommendations. Some of those recommendations implicitly criticised the respondent's handling of matters to date and some of her comments were explicitly critical. Appended to the report were detailed notes of the investigatory interviews. Despite these implicit and explicit criticisms, Ms Satterthwaite in her witness statement somewhat surprisingly summarised the outcome of the Born investigation as <u>not</u> criticising the respondent.

48. We note that in the investigatory meeting held by Ms Born with Mr Taylor, he observed:

    '…that Janet exhibits the characteristics of paranoia… [He] didn't try to detract her from [leaving].… [he] felt that would be the best solution as Janet cannot put it behind her and move on and he felt that would always be the case while she remains… He might have put effort in with others, but not Janet as from her point, he felt that would be the best thing for her. For the business, well it is distracting, take this process… This draws you to conclude she is perhaps not mentally as stable as should could be and does kind of back up the paranoia type argument…'

49. One of the recommendations made by Ms Born was that all line managers attend ACAS training relating to disciplinary and grievances in order to gain a better understanding of the empathy and confidentiality needed when investigating such matters. Also that managers who are likely to investigate grievances attend the ACAS investigations training course, that the bullying and harassment and equal opportunities policies be revised and circulated and that bullying and harassment training be mandatory for all staff. Ms Satterthwaite confirmed in her evidence that other than high level training for managers which included bullying and harassment, the training recommended by Ms Born was not implemented by the respondent.

50. Ms Born also strongly recommended that careful consideration be given to the support that the claimant would be offered following the grievance and her integration back into the team. She also suggested that mediation be offered but acknowledged that that very much depended on whether all the parties agreed to participate in it. She concluded her report by stating:

'I have given due consideration to Janet's diary of events and the interviews I conducted and believe that Janet herself has contributed to the alienation she feels. It would appear her work colleagues are willing to work with Janet to invest time to repair the relationship breakdown, however Janet is not.'

51. Ms Satterthwaite decided the claimant's grievance based solely on Ms Born's report. She wrote to her on 22 July setting out in detail that outcome and her reasons. That letter was read out to the claimant and discussed at a grievance outcome meeting on 26 July. During that meeting the claimant requested sight of the notes of interviews conducted by Ms Born but Ms Satterthwaite refused to disclose them.

52. In summary, Ms Satterthwaite adopted all of Ms Born's findings. The only point she found in the claimant's favour was, in relation to the 2013 bar incident, that the respondent had not fully communicated the outcome of the investigation and that this had in part contributed to a difficult working environment although she also found that this had been heightened by the claimant's own subsequent actions. She said that the respondent could offer more support in this regard. Also, in respect of the general allegation of bullying and harassment, although not upheld, Ms Satterthwaite said that she would:

'… ensure there is more support to help you transition back into the workplace successfully and draw a line under this situation. All employees interviewed have indicated that they would be willing to support the mediation process with you, in order to help you feel more comfortable in the team and once again the company will support a course of counselling should you wish to pursue this opportunity. Again there are learns from this process and they will be addressed with training and guidance to the executive team on completion of this process.

I appreciate the time and emotional energy this process has taken and I apologise that you feel you have not been supported or able to address these points to your satisfaction previously. The changes to processes and subsequent training that will be introduced will address the learns highlighted. The offer of mediation and counselling to support your position in the workplace will remain open and we will take your position into account when implementing.'

The claimant was informed of her right to appeal and that the appeal hearing manager would be Mr P Ions, Group Finance Director.

53. On 2 August the claimant appealed the grievance outcome. She set out reasons why she did not agree with the outcome of each section and repeated her request for a copy of Ms Born's report and 'all other documented evidence'.

54. Mr Ions sent a copy of the report to the claimant on 16 August. He stated that the respondent was under no legal obligation to provide it but in the interest of assisting her was willing to do so (less the appendices). He stated that there was enough information in the report for her to understand the investigation and the outcome reached. We find the respondent's approach of limiting disclosure to the claimant unfortunate and, in all the circumstances especially the general recommendations of Ms Born, unhelpful.

55. The appeal meeting took place on 21 September and worked through in detail the points raised in the claimant's appeal letter.

56. On 27 September the claimant wrote to Mr Ions requesting certain clarifications and asking him to take a number of points into consideration when reaching his outcome. It is clear both from the contents of the appeal meeting and the claimant's subsequent letter that she considered there remained many instances since 2011 where she had been unfairly treated and wanted the respondent to deal with all of those matters.

57. Mr Ions investigated, or had investigated on his behalf, various points arising from the appeal. He did a thorough job and engaged with the substance of the points raised by the claimant both at the hearing and in her subsequent letter although, not unreasonably, did not reach a conclusion on every point of detail that she had raised. He did specifically state that the conclusion reached in 2013 that Mr Trowell had not thrown a drink at the claimant was entirely justified. He wrote to the claimant on 7 October setting out his actions and conclusions in respect of each point she had raised. He advised that in summary, other than in respect of the concessions already made by Ms Satterthwaite, the appeal was not upheld and that that exhausted the grievance process. He also proposed that she continue to work from home as he believed that was working satisfactorily. Also that it would be useful to arrange a meeting between the claimant and HR (initially) as a matter of priority to determine what other actions could be beneficial in terms of taking things forward.

58. <u>2016/2017 post grievance correspondence</u>

59. Towards the end of October the claimant had a disagreement with Mr Lanceley arising out of what she said was his failure to understand her work and his role in deciding what she was expected to do. She complained to Mr Stewart who replied on 27 October that he had hoped they had found a workable solution and that although she was doing a degree of lone working there was also a requirement for collaboration with other team members and that employees are expected to follow legitimate management instructions. He suggested a meeting, with the support of HR, to iron out difficulties and set some clear guidelines for lone working. The terms of this email were reasonable and not, as the claimant alleges, insulting. It was, in all the circumstances, legitimately copied to Ms Satterthwaite and we do not conclude that Mr Stewart wrote it under her guidance. Even if he did, it was a reasonable email to send at the time and it would have been reasonable for him to obtain advice and guidance from HR.

60. In her reply to Mr Stewart on 28 October the claimant made it clear that no workable solution had been found from her point of view. She specifically referred to 'historical issues' and stated that she was being forced to work with an individual who threw a drink in her face (a reference to Mr Trowell). This was a very clear indication that at that point, notwithstanding the outcome of her grievance appeal, the claimant was not willing to draw a line and move forward but was still, unprompted, referring back to the 2013 incident.

61. The claimant had a short period of sick leave from 25 to 28 October due to stress at work.

62. On 3 November a meeting was held between Ms Satterthwaite, the claimant and Mr White (who would not normally attend such a meeting but in all the circumstances and in particular the claimant's recent stress absence, this was agreed). Ms Satterthwaite introduced the meeting as a 'moving forward' meeting as suggested by Mr Ions at the end of the grievance process. She said the agenda included clarifying the claimant's place of work and the team she was working with, looking at potential mediation, counselling, other support that could be offered and any other suggestions that might come up. In reply the claimant stated that she wanted to see all the documentary evidence from the grievance as she was very unhappy with some of the things she had heard through that process. Ms Satterthwaite said that they needed to move on from the grievance. The claimant said, 'well we can't' and that failure to release the information from the grievance process was a sticking point for her.

63. The meeting then moved on to discuss the claimant's issues. It became apparent that she continued to have significant relationship problems with a variety of individuals. In particular she referred to the issues she had been having with Mr Lanceley, stated that her relationship with Mr Stewart was a lost cause, that she felt she was held in contempt by certain individuals and, later, that she felt she had no career prospects in the respondent. Ms Satterthwaite also later repeated that she would not go back over the grievance as it was closed to which the claimant said:

    'But it's not closed though. It's current…these are the relationships that we're talking about. They're very damaged.'

64. At various times during the meeting Mr White tried to direct the claimant to say what she wanted in terms of future relationships and what could be done to move the situation on. At one point in response, the claimant said that in an ideal world she would like to be made redundant but Ms Satterthwaite said this was not possible because the team was growing.

65. They then discussed the possibility of changing team and the claimant said that the only option she could think of was moving into the business systems team (BST). Ms Satterthwaite said she would investigate whether there was an opportunity for that to happen. The transcript (provided by the claimant) shows that during that meeting Ms Satterthwaite did not block her moving to the BST as alleged by the claimant. Rather she agreed to ask whether it could happen but that she could not guarantee it as the OST were adamant that they were getting good work from the claimant and needed her on the NextGen team. The claimant also confirmed that she preferred to work from home and asked about the terms for that including what expenses would be paid if she relocated. Ms Satterthwaite referred to the existence of policy and that if other employees were paid expenses in those circumstances they would do the same for the claimant but that would be discussed should that situation arise.

66. Towards the end of the meeting there was a discussion about the possibility of mediation. At first the claimant was resistant as she believed people had been dishonest about what had happened and that they would have to be honest for there to be any possibility of mediation. Later in the meeting Mr White encouraged her to think again about mediation, which led to an explanation as to what it would involve. The claimant again said her concern was that individuals had made it clear that they are going to deny things that 'we all know are true'. At Mr White's suggestion it was agreed that Ms Satterthwaite would enquire about setting up an initial meeting just between the claimant and a mediator so that she could better understand the process. It was also agreed that the claimant and Ms Satterthwaite would meet monthly 'to touch base'

67. At the end of this meeting there was an off the record conversation between the parties during which Ms Satterthwaite made an offer of compensation to the claimant if she accepted termination of employment. That offer was confirmed by email the following day to remain open to 5pm on 7 November (the next working day) but that was extended at the claimant's request to 14 November. Ms Satterthwaite, not unreasonably, advised the claimant that whilst negotiations continued there would be no further investigation or discussion of alternative ways forward. The claimant's counsel clarified that the pressure alleged in detriment 2 came from the timing of the 3 November meeting rather than what was said at it. We find that there was nothing inappropriate in Ms Satterthwaite exploring this option especially as the claimant had said during the meeting that she would like to leave on redundancy terms.

68. The claimant did not accept the offer and it lapsed. At that point it would be reasonable to expect the respondent to again start investigating other options as to ways forward.

69. Ms Satterthwaite wrote to the claimant on 29 November in a letter headed 'Next Steps' confirming that the working from home arrangement would be permanent, that she would continue to report to Mr Stewart and that she would need to comply with the attached Online Service Developers Responsibilities document (otherwise referred to as the working guidelines document). That document was drafted within the OST team and included reasonable working guidelines. It was approved by Ms Satterthwaite and Mr Taylor and produced in September 2016 and communicated to the team. Its purpose was to clarify roles and responsibilities in light of issues that had arisen within the team. The fact that some aspects of the document were included specifically because of issues that had arisen with the claimant was a reasonable management approach. It does not mean that it was drafted with the purpose of commencing disciplinary proceedings against her as she alleges and we do not find that to be the case.

70. Ms Satterthwaite also repeated that the grievance documents the claimant had requested would not be disclosed (as doing so would not help her put past events behind her) and that she was exploring mediation and would revert to her shortly with details of that. Further that if they were to move forward the claimant had to act professionally and to comply with any

reasonable management instructions and a refusal to do so would be a potential disciplinary matter. Ms Satterthwaite specifically referred to a concern raised by the claimant about having to copy team members in to emails and stated:

> 'If we are to move forward, we need you to operate professionally and more importantly we need you to comply with any reasonable management instructions that are issued by Kevin or a senior team member… A refusal to comply with such instructions is insubordination, and therefore a potential disciplinary matter, so I really would urge you to work with me in moving matters forward and I ask assistance and cooperation in this respect.'

71. The letter did not refer to the agreement reached at the 3 November meeting that Ms Satterthwaite would investigate the claimant moving to the BST. Her evidence was that she considered it and discussed it with the team but there were no vacancies. We find that Ms Satterthwaite did not give this possible solution sufficient consideration at this stage. There is no evidence, for example, of emails between her and the BST manager exploring the possibility of staff moves to accommodate the claimant. At a meeting in August 2017 between the claimant and Mr Batchelor of the BST, he stated that the team had lost staff in 2015 and November 2016 and described it as under resourced. This suggests that there was at least the possibility of something been done to accommodate the claimant in the BST if an effort had been made and perhaps some creativity of approach.

72. Ms Satterthwaite accepted in cross examination that the reason she wrote the letter dated 29 November was that she wanted the claimant to stop talking about the issues she had raised in her grievance. When asked if that was therefore a detriment she said 'I guess so' and then when it was put to her that the reason was absolutely linked to the grievance she said 'yes because it keeps coming up.' Further when it was put to her that she would not have sent the letter if there had been no 2016 grievance she said 'there would have been no need to'.

73. The claimant wrote a lengthy reply to Ms Satterthwaite on 20 December. She was clearly pursuing the disclosure of documentary evidence. She also confirmed she was willing to participate in mediation but stated that she would:

> '…expect colleagues to demonstrate their sincerity in this process by acknowledging their role in the events which have caused the current breakdown in working relationships.'

Further, in the context of Ms Satterthwaite's warning about potential insubordination, she made detailed complaints about matters that had arisen since the grievance appeal outcome but also then referred back again in detail to matters that predated it. It is very clear that the claimant was not willing to draw a line under the events dealt with by the grievance process.

74. Ms Satterthwaite replied on 4 January 2017 expressly declining to comment on matters dealt with by the grievance and replying only to any new points. On the question of mediation she said that she now realised it had been offered several years before when certain members of staff had been

reluctant to participate and they had recently confirmed they remained unwilling to mediate. Ms Satterthwaite's evidence was that she had been told by Ms Nicholls about the previous offer and she had confirmed the current position herself with Mr Stewart, Mr Trowell and Mr Lanceley. In contrast the claimant says that the transcript of the meeting between Ms Born and Mr Trowell (which she has seen post-employment through disclosure) shows that in fact Mr Trowell had been willing to mediate in 2013 but that he said the claimant had then not been willing - which she disputes as she says mediation never came up.

75. Ms Satterthwaite also referred to her earlier statement about possible disciplinary action. She said:

> '… I do want to stress that the inclusion of that was not intended to upset you but to make you aware that the situation is now quite serious, in the sense that we really need to move forward and I really need your assistance in ensuring that happens. I wanted to make you aware of potentially the route we may have to consider if the situation does not improve but, please be assured that the company's intention here is purely to find a solution, for you to put this matter behind you and create an effective and harmonious working environment in your department. I will do everything I can to help and support you but we do need your commitment.'

76. The claimant replied to Ms Satterthwaite on 23 January 2017. This was largely repetitive of issues already raised - including references to the drink throwing in 2013 and the situation remaining unresolved, which is further evidence of the claimant refusing or being unable to move on – but she also asked to be advised when her contract would be amended to that of permanent homeworker. That formal amendment to the claimant's contract was sent to her on 6 February together with a copy of the respondent's homeworking policy which was first drafted by Ms Satterthwaite in 2014 but updated in November 2016. It states that homeworkers will receive the same terms and conditions as office-based employees carrying out the same or similar work and that all travel costs and expenses incurred by homeworkers attending the workplace are the responsibility of the employee. We find that there was no unreasonable delay by Ms Satterthwaite in providing the formal amendment. When she was chased she responded promptly and the reason for delay from November was administrative in nature. In respect of homeworking, the claimant compares herself to Mr C Edwards and Mr C Pike. The respondent accepts that there was a difference in the terms offered to the claimant with their terms, but says they were employed on a different basis, namely that from the outset of their employment they were remote workers and accordingly were entitled to specific expenses. We accept the respondent's explanation as accurate.

77. Also in that letter the claimant asked:

> 'If the company cannot offer mediation, please can you advise how the company intends to repair working relationships.'

78. Ms Satterthwaite replied to the claimant on 27 February. Quite reasonably she again limited her reply to matters that she felt had not already been addressed. With regard to mediation she confirmed that the other parties involved were unwilling to enter the process and that it would be difficult for

her to persuade them otherwise. She did not refer to the agreed action to set up a meeting between the claimant and a potential mediator. She repeated that she was open to exploring other options (including meeting with the claimant's managers which she had previously declined) and asked for her or her union representative's thoughts.

79. In March 2017 an issue arose regarding the claimant amending her sickness record on the 6th of that month, in respect of her absence in October 2016, to state that the reason for the work-related stress was due to a breakdown in working relationships. Mr Stewart brought this to the attention of Ms Satterthwaite and indicated that he would like to raise a grievance against the claimant as he did not believe that the situation would ever go away. He also asked for clarification about the proposed meeting to confirm a way forward. Ms Satterthwaite asked how the working relationship was going to which Mr Stewart said it was 'fine', confirming that they communicated by email and occasionally by phone and that she was not working on NextGen (and therefore not with Mr Trowell/Mr Lanceley) due to 'delays and conflicts'. Once he understood there was a context to the sickness record amendment (the exchange of letters between the claimant and Ms Satterthwaite) he confirmed that he did not want to pursue a grievance. Ms Satterthwaite confirmed to him that she had made it clear to the claimant that:

> '…any further progression of the issues relating to the grievance will constitute the need for a disciplinary investigation and potential disciplinary action.'

80. <u>Summer 2017</u>

81. On 2 June at 14.48 Mr Trowell emailed the claimant, copied to Mr Stewart and Mr Lanceley, asking her to review a document. He said it would not take much time and asked:

> '…if you can squeeze in this before the end of the day please?
>
> Many thanks'

82. The claimant replied that she doubted she would have time to achieve anything else that day other than the priority she had already been set. Mr Trowell replied that if she could take the time to review the document 'it would be appreciated'. The claimant replied repeating, albeit briefly, what she had earlier said about her existing deadlines.

83. On 5 June Mr Lanceley emailed the claimant, copying in the others, asking her to treat the review of the document as a top priority and said:

> '…the next email I received from you I expect to be that of the review being completed.
>
> After that can you then explain why the review… was not done by 10:30 as was requested.'

84. The claimant then complained by email to Mr Stewart, saying she was too upset by Mr Lanceley's attitude to work and asked him to ensure she did not receive any more emails from Mr Lanceley that morning. Shortly thereafter she left work due to stress saying that she could not and should not be expected to work under 'these conditions'. She completed a self-certificate

for the resulting 3-day absence citing work related stress caused by bullying behaviours at work. Mr Stewart informed Ms Satterthwaite who advised that he should start a capability process with the claimant but he did not do so.

85. We find that the initial request by Mr Trowell was in line with the working guidelines and was expressed in pleasant and reasonable terms. Mr Lanceley did escalate the tone but only after claimant had not done what she had been asked to do by people entitled to ask her to do it.

86. On 4 July Ms Satterthwaite asked the claimant to meet on 18 July to discuss how she was finding working from home and also her recent reason for absence. She also referred to not having been able to meet for some time indicating that the planned monthly meetings between them had not been happening. In reply on 10 July the claimant confirmed that working from home was her preferred option and also that she could not meet at such short notice (mistakenly thinking the meeting was on the following day) and that she wanted to take advice before meeting for reasons including the fact that Mr Trowell had thrown a drink at her in 2013, again indicating that she was unable to move on from that incident. Once her mistake had been corrected the claimant confirmed that she could meet on the 18th but then subsequently asked for a postponement as she needed time to prepare. On 14 July Ms Satterthwaite declined that request as the 18th was the only time she had available in the next two weeks to travel to Haywards Heath.

87. On 17 July the claimant confirmed that she would not be able to attend the meeting the following day as she would be travelling to attend a funeral. Ms Satterthwaite asked for confirmation when the claimant decided to attend a funeral which was provided. In an email on 18 July Ms Satterthwaite set out why she felt that the claimant's approach to the meeting/non-attendance had been very disappointing. She stated that as the claimant had had no other appointments in her diary at the time she made the request to meet, it was reasonable to expect her to attend and that non-attendance could be taken as disregarding a direct management instruction. She confirmed that her next available slot was 1 August and asked the claimant to book that into her diary.

88. That meeting was held as planned and during it Ms Satterthwaite confirmed that the earlier threat of possible insubordination charges was related to the claimant's repeated references back to matters dealt with (in the respondent's eyes) by the grievance process. In her evidence Ms Satterthwaite confirmed that she made that threat because the claimant was going over the same ground consistently, that that ground had been investigated and there was no new evidence. She acknowledged that this included the grievance that had included allegations of sexual harassment and discrimination.

89. The claimant again made it clear that she did not accept that the 2013 incident had been properly investigated at the time and had not been remedied by the 2016 grievance investigation which she did not accept was impartial. She said that the underlying problem not being resolved had set up the current situation. Ms Satterthwaite expressly asked the claimant

more than once if she could move forward with her employment. She eventually said she could but not if she was being threatened with insubordination. They also discussed in detail the dispute between the claimant and Mr Lanceley in June during which Ms Satterthwaite said that, as her senior, Mr Lanceley was within his rights to ask her to change her priorities and get a job done but also that the claimant's position in that exchange had been reasonable. Ms Satterthwaite continued to try and find ways to move forward but ultimately that part of the meeting ended with no resolution.

90. Another off the record conversation followed which was covertly recorded by the claimant and we had the transcript before us. Possible terms for terminating the claimant's employment on an increased package from that previously offered were discussed and the claimant was given 10 days to consider it. The claimant alleges that during this exchange, after Ms Satterthwaite had talked about them both taking legal advice if the offer was refused, she silently mouthed that they would 'find another way'. Ms Satterthwaite emphatically denied that she had done so. At the conclusion of the off the record meeting Ms Satterthwaite said to the claimant:

> 'I don't want you to be unhappy at work, Janet. I really don't. I'm not sure how I can resolve the issue. I will talk to the individuals in the meantime though, because there is no guarantee that you'll take the settlement. And make them aware of the issues that you raised.'

and the meeting finished with a very good-natured chat between them about holidays and other personal issues.

91. We find that Ms Satterthwaite did not silently mouth the threat as alleged by the claimant. Ms Satterthwaite was unaware that she was being recorded so there was no reason for her to silently mouth anything plus the claimant did not react as we would expect her to if she had been threatened, especially as she knew it was being recorded. Further, such a threat is inconsistent with the claimant chatting in a very friendly manner with Ms Satterthwaite at the end of the meeting shortly afterwards.

92. On 28 August Mr Stewart emailed the team stating that during his forthcoming absence and at any other time, the senior team take on responsibility of managing the OST and that this meant they could change priorities and change tasks. In all the circumstances, this was a reasonable managerial decision and instruction and, although it was more likely than not as a result of recent issues with the claimant not accepting instructions from certain individuals, was not directed at engineering an insubordination charge against her. Rather, it was to clarify the hierarchy and seek to avoid conflict arising.

93. On 30 August the claimant notified Mr Lanceley that she was unwell and would not be at work. On 4 September 2017 she was signed off work by her GP for 3 weeks and subsequently on or around 2 October she confirmed to Mr Stewart that the reason for this absence was work related stress and the reason for it was that:

'HR are refusing to resolve and actively exacerbating an existing breakdown in working relations and this is causing stress.'

94. Dismissal process

95. On 10 October Ms Satterthwaite sent the claimant an invite to a formal meeting with Mr Taylor as:

'…we are becoming concerned that the relationship between you, your colleagues and the Company may have broken down to such an extent that we might have reached a position where the situation is irreconcilable.'

She set out a chronology of relevant events culminating in the reason given for the claimant's absence in September. She made it clear that a possible outcome of the meeting could be termination of employment and that the claimant had the right to be accompanied.

96. That meeting took place on 1 November 2017. Mr Taylor and Ms Satterthwaite were present as was the claimant who was accompanied by her union representative.

97. In his introduction to the meeting Mr Taylor set out that he expected the meeting to take 'about an hour' after which he and Ms Satterthwaite would discuss the feedback received and come back with a suggested course of action. Ms Satterthwaite's evidence was that she was present as a notetaker and just to support Mr Taylor but given Mr Taylor's opening remarks and his evidence that he discussed the case with her during the adjournment, we find that Ms Satterthwaite had at least some influence on, and role in, the decision making process.

98. Also at the outset of the meeting Mr Taylor invited the claimant to acknowledge that she had previously stated that the relationship between her and the respondent had broken down. She denied that and clarified that the relationship had broken down with specific individuals. At that point Ms Satterthwaite identified that she was one of those individuals.

99. The claimant went on to say that in her view the respondent had created the current situation. At her union representative's urging, the claimant then outlined what she saw as possible ways forward. First, staying in the OST but not being assigned to the NextGen project. Second, if that was not available, then a transfer to the BST where she said there was no history of conflict and they were stretched for resource. Mr Taylor asked her to confirm that she felt a move of team would address the situation and she said that she thought it would.

100. Mr Taylor then referred to what he believed was a real reluctance by the claimant to put the long, ongoing issue behind her. The claimant said she thought that was unfair as the company had 'admitted it'. Mr Taylor asked her what specifically she would say had been denied and then admitted. This led into a discussion about historic matters after which Mr Taylor again sought to focus on to how they could move forward and summarised it as the team move. He asked if there was anything else that she would like to

raise and she said just potentially redundancy and home working on the same terms as other employees, for example Mr Pyke and Calvin. After having checked with Ms Satterthwaite if there was anything further she wished to raise, Mr Taylor adjourned the meeting.

101. During that adjournment Mr Taylor, with Ms Satterthwaite present, called the respondent's legal advisers (on speakerphone and Ms Satterthwaite, in her own words, 'chipped in') and he reviewed documentation. In the later dismissal letter there is a reference to him speaking to Ms Nicholls 'after the meeting' about the 2012 grievance - it is not clear whether this was during the adjournment - in any event there is no evidence of Mr Taylor making any other enquiries.

102. On resumption of the meeting, Mr Taylor said it seemed clear to him that there was not a way to move forward within the existing team. He said in reality it was not an option for her to not be assigned to the NextGen team because there would be a general migration to that platform which would be the only offering available to clients moving forward. Further, irrespective of the migration, the reality was that the management structure was such that she would not be able to not have intermittent communication with Mr Trowell and Mr Lanceley. As far as the possible move to BST was concerned, he said there were no vacancies and none were anticipated there. Finally redundancy was not an option as the respondent still had a need for a web developer in the position that she held.

103. Consequently, it was necessary to terminate her employment on notice. Ms Satterthwaite, in response to a question from the union representative, confirmed:

> 'We are terminating on the grounds that we can't move forward with the employment… relationship as it is because we just have problems as we move forward all the time, or try to move forward.
>
> And, we've, we've tried to find solutions.'

104. Mr Taylor wrote to the claimant on 8 November confirming the decision to dismiss and the reasons why he believed that the status quo could not continue including that she was unable to look forward and that the situation was impacting on her health and well-being as well as on the operation of the business. Further, that the relationship issues went beyond her direct team and extended to others including HR. Accordingly he felt that taking no action was not an option and then set out the potential options discussed and why staying in OST was not an option nor a transfer to BST as there were no vacancies. He did say that had there been vacancies, that would have been a potentially viable solution. Finally, he confirmed why redundancy was not available. He also set out, as a related point, why the respondent was unable to pay her as a remote worker on the same basis as other the two other employees she had mentioned in the meeting.

105. He stated that he had no doubt that there was a breakdown in the relationship between the claimant, her colleagues and the respondent and that they could not continue with the status quo. Further, that he had no

reason to think that a warning or any sanction less than dismissal would not be futile. He said he was satisfied that the respondent had tried to work with her to resolve matters and in the absence of any viable alternative there was no option other than to terminate. The claimant was advised of her right to appeal.

106. The claimant did appeal by letter dated 14 November 2016 (sic). In the second paragraph she said:

> 'The company was aware and has acknowledged that working relationships with specific individuals had broken down and has done nothing to repair them. Forcing those same working relationships on me under threat of disciplinary action for insubordination was unfair, made difficult situation worse, and created additional stress. The cumulative stress of working under these conditions and pressure to settle has affected my health and ultimately resulted in my dismissal. The dismissal was unfair and unnecessary.'

107. She then went on to set out possible ways forward including separation of line management within the OST, transfer to BST, remote working on the same terms as other UK-based remote workers and redundancy.

108. The solicitors advising the respondent arranged for Mr Hall to meet Ms Satterthwaite with a view to him conducting the appeal. During that preliminary meeting Ms Satterthwaite gave an overview of the situation to Mr Hall so that terms could be agreed between them. The claimant was critical of this approach but we find that it was reasonable.

109. Best Start wrote to the claimant on 8 December inviting her to an appeal hearing with Mr Hall on 13 December and advising her of her right to be accompanied.

110. A pack of papers (though not including the respondent's HR policies or notes of the 2016 grievance meeting or the dismissal meeting) were sent to Mr Hall. In advance of meeting the claimant he chose to read only the dismissal and appeal letters.

111. The appeal hearing took place as planned on 13 December 2017 and the claimant was again accompanied by a representative. We had the benefit of a very lengthy typed transcript of the recording made of that meeting. Whilst this gives us the benefit of an accurate record of what was said, like most transcripts, it can be difficult to read and contains many obvious inaccuracies as to the words actually used. These difficulties are compounded by often incorrect identification of the speaker. The claimant produced her own 43-page version of the transcript which was better formatted and easier to read. We worked, as the parties did during the hearing, from the claimant's version but in our deliberations, we cross checked any specific statements we believed to be relevant with the respondent's transcript.

112. At the start of the appeal Mr Hall indicated that the loose structure he would like to adopt was working through the claimant's appeal letter. He first asked her if she agreed that there had been a breakdown in working relationships. She said that there had been breakdowns with specific

individuals and although not named it is clear from what she said that she was referring to Mr Trowell. This led to a detailed account by the claimant, at the request of Mr Hall, and discussion with him of her view of events from 2008 onwards. That account takes up the best part of 14 pages of close-type in small font of the respondent's transcript.

113. At that point Mr Hall tried to move the meeting on to establish exactly which working relationships the claimant accepted had broken down and to discuss alternative ways forward. The claimant accepted that if the respondent had decided to organise its OST with Mr Trowell and Mr Lanceley as senior web developers, then it was not viable or tenable for her to work in that team if she could not work independently (respondent's transcript) or if she had to work under them (claimant's transcript). Later in the meeting the claimant confirmed that in her view the breakdown in relationship was with Mr Trowell and Mr Devine, who did not work in OST, and not Mr Lanceley. She also stated that she worked really well with other colleagues, including Mr Stewart, and clients. Also that she felt it was unfair for Ms Satterthwaite to have referred to a breakdown with herself during the dismissal meeting as she should be able to be honest in her self-certificate without fearing dismissal.

114. Mr Hall then moved the conversation on to exploring the alternatives to dismissal. First, whether there could be a clear separation of line management in the OST. In summary the claimant was arguing that it would have been possible for the respondent to continue to allow her to report from home directly to Mr Stewart and that the migration of the whole team to NextGen - Mr Taylor's reason for discounting this approach - would take some time, maybe up to 2 years and that in the meantime not only would her employment have continued but the situation could fundamentally change e.g. by Mr Trowell leaving the respondent.

115. This led to a detailed discussion about the June 2017 incident where the claimant was set priorities by Mr Trowell and the role of senior web developers. During that discussion the claimant stated that she believed the change to reporting lines (set out in the working guidelines document) had been made to put her in a position of insubordination. That belief, even if genuinely held by the claimant, was not - in all the circumstances - reasonable.

116. They then discussed the second option of transferring to the BST and the respondent's position that there were no vacancies. The claimant said that she found the head of that team far easier to work with than Mr Lanceley and that in August 2017 he had told her he was desperate for resource. Also that at that time the team was using a contractor. The claimant gave a detailed explanation of why the respondent's explanation of why there were no vacancies due to forthcoming changes was inaccurate and that there may be future redundancies but not in the BST. Mr Hall acknowledged that this was a technical area that was difficult to understand. The claimant's position in summary was that there was an opportunity for her to be moved to the BST even if temporarily. Also at the very end of the meeting the claimant raised an issue as to whether a swap could be arranged with

someone in the BST willing to swap with her, therefore in theory not affecting headcount. Mr Hall said he would investigate that.

117. They then discussed the claimant's suggestion of working remotely on the same terms as other UK remote workers but she acknowledged that this would not have dealt with her issue of having to work with Mr Trowell and Mr Lanceley. Finally they discussed the possibility of redundancy.

118. At the very end of the meeting the claimant confirmed that the two people she had a problem working with were Mr Trowell and Mr Devine. Mr Hall confirmed that he would conduct some further investigation, wanting to speak to 'a number of people' including Mr Taylor and Mr Stewart if he 'could get hold of him' before making his decision.

119. Following the appeal hearing Mr Hall conducted a thorough review of all the documentation he had been given. He carried out no new investigation of his own other than a telephone interview with Ms Satterthwaite, he thought for maybe half an hour but no notes were made, and also speaking to Mr Taylor, again there are no notes of that discussion. There is no evidence that he tried to contact Mr Stewart.

120. Mr Hall sent the claimant a lengthy appeal outcome letter and set out in detail his factual findings and overall conclusion on each section of her appeal letter. It is clear that the appeal was a review not a rehearing.

121. In respect of the issue of whether there had been a breakdown in working relationships, Mr Hall set out a number of relevant conclusions:

> 'Therefore, whilst you claim that it has been failings by the company to address the previous grievance which has led to the breakdown in relationships, I believe that you were equally culpable in respect of the continued angst due to your inability to accept the outcome of the 2012 grievance…and to move on from the past accusations and allegations.'

and:

> 'I believe your continuing grievance about these historic matters, and your inability to accept the outcomes of appropriate investigations, is the ongoing cause of the issues with workplace relations that you have experienced over the years…'

and:

> '...this sequence of email communications taking place over a period of 4 months following the grievance appeal outcome letter demonstrates that you had not accepted the findings of the grievance proceedings… The fact that you continued to raise the same, as well as additional, complaints about colleagues throughout this entire period, despite there being no evidence for any of your allegations, further demonstrates that you are unable to move on from and get past these historic events. Even whilst working from home this trend continued and your correspondence… made it clear that you would not be able to work positively with a number of colleagues with whom effective interaction would be essential for effective fulfilment of your duties.'…

and in relation to the email exchanges in June 2017:

> '… your resulting stress related sickness due to a seemingly innocuous workplace exchange demonstrates that there has been an 'irreconcilable breakdown in the working

relationship between yourself, your colleagues and the Company.' The sheer number of colleagues that you have implicated over the years… even after formal investigations and grievances did not find evidence of such behaviour, undoubtedly led to a situation where you were unable to work effectively with a number of your colleagues. [The working from home arrangement] … was not sufficient to resolve the relationship problems… A subsequent email exchange [with Ms Satterthwaite] …ended in conflict and indicated that the breakdown in relationships had extended beyond your direct technical team members but also to back office functions.'

122. He also noted the number of grievances that had been submitted or threatened against the claimant by her colleagues, in particular her line manager, and that the claimant's attitude to possible mediation had also been unhelpful, even if her colleagues had been willing to participate.

123. Mr Hall's letter then went on to consider the alternatives to dismissal that were discussed at the appeal meeting. With regard to separation of line management within the OST, he agreed with Mr Taylor's conclusion that this was not a viable option. He also, reasonably, discounted the suggestion to defer the decision as it was possible that team changes might make this a viable option because:

'…matters have dragged on for long enough and there is little virtue in deferring this decision for a few weeks or months on the off chance that colleagues…might resign or move elsewhere…'

124. On the transfer to BST option, he accepted Mr Taylor's position that he had considered this during the adjournment of the disciplinary hearing and concluded there were no vacancies in the team. In any event Mr Hall's conclusion was that even if there were vacancies, there was 'too much history, too much ill feeling and too much entrenchment' for her to carry out another role in the respondent. Given Mr Taylor's own view expressed in the dismissal letter that in fact that may have been viable, this conclusion seems unreasonable especially in the absence of proper investigation of this by Mr Hall. As to the claimant's late suggestion of a swap, he discounted this because this would require forcing someone else to swap although her suggestion had in fact in effect been to look for a voluntary swap.

125. Finally he then discounted the options of remote working on different terms, as it would not resolve the underlying issues, and redundancy as her role was not in fact redundant.

126. In overall summary in rejecting the appeal he said:

'I believe that Duncan Taylor's assessment that none of these [proposals] were viable is fair and reasonable. I also agree that due to the events and circumstances culminating in 'the breakdown', continuing with the status quo was also not an option. Therefore, without a reasonable alternative, the decision to terminate your employment was appropriate.'…

Conclusions

127. Victimisation

128. As recorded above, the respondent accepts that the claimant's grievance dated 3 June 2016 was a protected act. In deciding whether each of the allegations of victimisation is well founded we have considered first whether the claimant has proved facts from which we could conclude there has been a contravention of the 2010 Act (including whether the allegation could amount to a detriment). Where she has, we then considered whether the respondent has shown that their actions were not materially or significantly influenced by the protected act. In summary we conclude that all of the claims of victimisation fail. We set out below our analysis of why in respect of each alleged detriment.

129. Detriment 1

a. As found above Ms Satterthwaite did instruct the OST management to draft the working guidelines document but its purpose was to clarify roles and responsibilities in light of issues that had arisen in the team. Its purpose was not to place the claimant on a disciplinary warning. Accordingly the claimant has not proved facts from which we could conclude there has been a contravention of the Act and the burden of proof does not pass to the respondent to show that its actions were not materially or significantly influenced by the protected act. Even if the burden had passed, we are satisfied that the respondent was not materially or significantly influenced by the grievance but was responding to the difficulties within the team as exposed by the grievance.

b. & c. The claimant has not proved facts from which we could conclude there has been a contravention of the Act and accordingly the burden of proof does not pass to the respondent.

130. Detriment 2

a. & b. The claimant has not proved facts from which we could conclude there has been a contravention of the Act and accordingly the burden of proof does not pass to the respondent.

131. Detriment 3

a. & b. The claimant has proved facts from which we could conclude there has been a contravention of the Act, namely that the claimant was required to work with Mr Trowell and Mr Lanceley and the letter of 29 November 2016 did warn her of potential disciplinary action for non-compliance etc and that did amount to a detriment (although it was not in itself punitive, unfounded or unfair). Accordingly the burden of proof passes to the respondent to show that its actions were not materially or significantly influenced by the protected act. It has done that however as these instructions were in accordance with

the working guidelines (already found to be reasonable) and although the grievance was very relevant background, it was the claimant's frequent referral to the content of the grievance and her refusal to accept the outcome that influenced Ms Satterthwaite, not the fact of the grievance being raised in the first place (comparable to the distinction identified in Martin v Devonshire between the fact of a grievance and the manner of raising it).

132. Detriment 4

a. & c. The claimant has proved facts from which we could conclude there has been a contravention of the Act, namely that she was denied remote working on the same terms as other employees and that could amount to a detriment. Accordingly the burden of proof passes to the respondent to show that its actions were not materially or significantly influenced by the protected act. It has done that however as the circumstances of the claimant and her comparators were different, in particular that they were originally employed as remote workers, and that was the reason why the claimant's request was refused.

b. The claimant has proved facts from which we could conclude there has been a contravention of the Act, namely that there was a delay in providing the claimant with a formal amendment to her contract and that could amount to a detriment. Accordingly the burden of proof passes to the respondent to show that its actions were not materially or significantly influenced by the protected act. It has done that however as the claimant was working from home from June 2016 and Ms Satterthwaite confirmed that this would be a permanent arrangement on 29 November 2016. When the claimant chased at the end of January 2017 for the formal amendment to her contract, it was provided on 6 February 2017. The 4-month delay was of an administrative nature and not because of the protected act.

133. Detriment 5

The claimant has not proved the fact of the detriment as drafted (as no threat of insubordination was made in Ms Satterthwaite's email dated 18 July 2017) but she has proved that Ms Satterthwaite implicitly threated disciplinary action in that letter (for disregarding a management instruction) - an obvious detriment. In all the circumstances (the claimant being unavailable due to a funeral) we could conclude that there had been a contravention of the Act. Accordingly the burden of proof passes to the respondent to show that its actions were not materially or significantly influenced by the protected act. It has done that however as although the tone of the email was heavy handed and shows Ms Satterthwaite's frustration with the claimant, it was in the context of previous postponements by the claimant and a lack of openness/flexibility by her in arranging the meeting. We find that the tone and implicit threat was not materially

or significantly influenced by the protected act but by the claimant's general approach to working relationships.

134. Detriment 6

a. The claimant has proved facts from which we could conclude there has been a contravention of the Act, namely that Ms Satterthwaite did threaten her with insubordination if she continued to refer to matters raised in her grievance and that would amount to a detriment. Accordingly the burden of proof passes to the respondent to show that its actions were not materially or significantly influenced by the protected act. Ms Satterthwaite's evidence was clear that the reason for the threat was not that the claimant had done the protected act but that once that grievance had concluded the claimant not only did not accept the outcome but repeatedly referred to the underlying events. We accept that evidence and agree that Ms Satterthwaite was not materially or significantly influenced by the protected act. As she herself said in evidence, if there had been no grievance there would have been no need to make the threat but that amounts to a 'but for' approach to the question of causality which would be incorrect.

b. & c. The claimant has not proved facts from which we could conclude there has been a contravention of the Act and accordingly the burden of proof does not pass to the respondent.

135. Detriment 7

The claimant has not proved facts from which we could conclude there has been a contravention of the Act and accordingly the burden of proof does not pass to the respondent.

136. Detriment 8

The claimant has proved facts from which we could conclude there has been a contravention of the Act, namely that she was dismissed, clearly a detriment, having raised a very relevant grievance. Accordingly the burden of proof passes to the respondent to show that its actions were not materially or significantly influenced by the protected act. It has done that however as we find that the reason for the dismissal by Mr Taylor was what he genuinely and reasonably believed to be an irretrievable breakdown in working relationships. Although we have found below that he should not have been the decision maker, that was because of his interaction with the claimant in 2014 and the views he expressed then and in 2016. Further, as with detriment 6(a), the fact of the grievance was very relevant context to the decision to dismiss but it was the claimant's refusal to move on from the grievance that was the material and significant influence on Mr Taylor.

137. Unfair dismissal

138. General observations: in considering the fairness or otherwise of the claimant's dismissal, there was a responsibility on the respondent to ensure that it had not contributed to the underlying difficulties in relationships or, if it had, had then done everything it reasonably could be expected to do to have remedied that contribution. Further, it had a responsibility to manage the situation, again as far as it reasonably could, to prevent the working relationships deteriorating further and to take reasonable steps to try to avoid a breakdown.

139. We also recognise that there was a responsibility on the claimant to behave reasonably and in accordance with the terms of her contract of employment and to play her part in seeking to maintain good working relationships with her colleagues/employer.

140. Once the respondent decided to go down a formal route of considering the claimant's employment position, it then had a responsibility to follow a fair procedure. Additionally to consider all reasonable alternatives to dismissal especially in light of the claimant's length of service and the fact that it was recognised that she was good at her job and was, in all other respects, performing well.

141. As the length of time taken in chambers indicates, we found this a far from straightforward case to determine, particularly with regards to the claim of unfair dismissal. We reminded ourselves more than once that we had to consider what was undoubtedly a very difficult situation for all involved in the round, avoid taking an overly technical approach with the benefit of hindsight and not fall into the trap of substituting our own view.

142. The reason for dismissal: we are satisfied that the reason for the dismissal was what the respondent genuinely believed to be a breakdown in the relationship between it and the claimant. The reason was spelt out in the letter to the claimant inviting her to what turned out to be a dismissal meeting and is also reflected in the dismissal letter. The evidence of Mr Taylor and Ms Satterthwaite also supports that finding. We reject the claimant's submission that the real reason for her dismissal was conduct.

143. Reasonableness of belief: as to the reasonableness of that belief, we conclude that there was sufficient evidence before Mr Taylor to come to that view notwithstanding an absence of any investigation by him after the dismissal meeting (e.g. he did not seek views from the claimant's team or Mr Stewart as to the state of their working relationship). The claimant herself referred on various occasions over a long period of time (up to and including at the dismissal appeal hearing) to a breakdown in working relations with various people including HR who, in October 2017 she believed were actively exacerbating an existing breakdown in working relations and causing her stress. Counsel for the respondent detailed at paragraph 17 of her written submissions many of those examples. We considered other matters that could show that despite these statements, in fact the relationship between the claimant and her employer (as opposed to

specific individuals) had not irretrievably broken down - Counsel for the claimant included at paragraph 2.4 of her written submissions relevant examples. The established pattern however was that although the claimant worked well in isolation, when her work required contact with certain individuals within her own team this frequently resulted in refusal to cooperate, conflict, unpleasantness, actual or threatened grievances and sometimes sick leave on the part of the claimant. In these circumstances, the belief that the relationship between the claimant and her employer had broken down, when looked at it in the round in November 2017, was reasonable.

144. Reasonableness of dismissal as outcome: as stated above, however, in assessing whether dismissal was a reasonable response to that situation consideration has to be given to the respondent's responsibility, or otherwise, for that situation developing and steps taken or not taken by it to manage that situation.

145. As found by Ms Born, there were some flaws in the conduct of the respondent prior to 2016 which would have contributed to the difficult working relationship but the claimant also contributed to those difficulties by her actions. This difficulty was compounded by the respondent not always being transparent with the claimant e.g. by not disclosing the transcripts of interviews to her when requested which they could have done, albeit redacted if necessary.

146. The outcome of the Born grievance however was a clear and reasonable finding that there was no proof either way as to whether Mr Trowell threw a drink at the claimant in 2013. If the claimant chose to remain in the respondent's employment then she had a responsibility, even though she did not agree with that finding, to accept it and move on. She was unable to do so however and thereafter repeatedly referred to it even when not asked about it (which we accept she was during the dismissal process), for example, in her email to Mr Stewart on 28 October 2016 and in her letters to Ms Satterthwaite on 20 December 2016, 23 January 2017 and 4 July 2017.

147. It was reasonable for the respondent to regard conclusion of the 2016 grievance as a point from which they were entitled to expect the claimant to draw a line and move on as long as the respondent played their part by doing what they should as a reasonable employer. It is in this respect that we consider the respondent failed and potentially missed opportunities to improve the situation as follows:

    a. Ms Born made specific recommendations in the grievance outcome including training which was not fully implemented. Also, that careful consideration be given to the support to be offered to the claimant post grievance and suggested mediation be offered. Ms Satterthwaite confirmed in her letter of 22 July 2016 that support and mediation would be offered. Counselling was also offered which the claimant chose not to pursue. We deal with mediation below but in terms of general support there was no evidence before us of specific

or proactive steps taken by the respondent to give/offer this other than general statements of well meaning.

b. In Mr Ions's grievance appeal outcome letter of 7 October 2016 he suggested that there should be a meeting between the claimant and HR 'as a matter of priority'. That did not happen. Instead a disagreement arose between the claimant and Mr Lanceley towards the end of that month and as a result Mr Stewart also suggested a meeting with HR. His suggestion of lone working guidelines also arose out of that disagreement. Ms Satterthwaite then had a meeting with the claimant and her representative on 3 November. Although a delay between 7 October and 3 November is not in itself extreme, in the circumstances at the time it was too long.

c. One outcome of the 3 November 2016 meeting was an agreement that the claimant and Ms Satterthwaite would meet monthly. This did not happen. (We note that this unfortunately seems to repeat the failure by Mr Stewart to organise regular meetings with the claimant as suggested by Mr Taylor in 2014.)

d. The claimant raised the possibility of transferring into the BST at the 3 November meeting. As above we have not found that Ms Satterthwaite blocked such a move but she did not give it sufficient consideration either. Ms Satterthwaite's explanation at the time was that the claimant was doing a good job on NextGen. In normal circumstances it would of course be completely reasonable for an employer to refuse to transfer an employee between teams if they are needed in their current team. In these circumstances however, whilst that was still in itself a reasonable approach, there was all the more responsibility on the respondent to do what they could to ensure staying in the current team worked for the claimant (again recognising the claimant's own responsibilities in that regard).

e. Mediation was also discussed at the 3 November meeting. The respective positions of the claimant's colleagues as to whether they were or were not interested in participating in mediation and how that changed, or not, at different times is a matter of some complexity. The claimant certainly did not accept the respondent's position on that and there was at least some ambiguity as to the accurate position. However, by the time of the meeting Ms Satterthwaite was under the impression that the colleagues were willing but the claimant was only even possibly willing if those colleagues accepted that they were at fault. In such circumstances it would be reasonable for Ms Satterthwaite to conclude that there was no point in setting up mediation. However, at Mr White's suggestion (and to his credit he seemed to work hard during the meeting to bring the claimant on side to this) it was agreed that Ms Satterthwaite would enquire about setting up an initial meeting with a mediator just with the claimant so that she could better understand the process. Ms Satterthwaite did not do this however and indeed it was not mentioned by Ms Satterthwaite in her letter of 29 November setting out the next steps

following the meeting. It was not until the following January that she became aware, on her evidence, that the colleagues were not willing to participate. There was no logical explanation therefore for a meeting with the mediator not being pursued before then.

(We also note that even on the respondent's case, the colleagues were willing to participate in July 2016 which makes the delay in pursuing mediation as suggested by Ms Born in July 2016, all the more concerning. It seems that at that stage it may have had some traction - at least with the colleagues.)

f. Ms Satterthwaite repeated statements of support and a desire to find a solution in her letters of 4 January & 27 February 2017 and at the 1 August meeting. She did not however make any specific/constructive suggestions as to what the respondent could do.

148. On the other hand, the respondent did allow the claimant to work from home, at first as a temporary measure but then permanently. The claimant was happy with this arrangement but it was clearly not a constructive way of addressing the underlying issues. Indeed it may have inadvertently contributed to the problems persisting by increasing the claimant's isolation from the team. Also, to its credit the respondent did engage independent third parties at appropriate stages (but counter productively, in the case of Ms Born, did not implement her recommendations). It is also clear that the claimant's attitude to mediation at the time of dismissal was still that there was little point in offering it.

149. Overall therefore we find that there were opportunities missed by the respondent to take steps that may have ameliorated the situation and that is relevant when deciding if dismissal was the appropriate response. It is of course impossible to know what may have happened differently, if anything, if those opportunities had been taken or taken earlier but they are matters of concern. We emphasise our recognition that the claimant's behaviour at times was unreasonable and unhelpful (see our conclusions below on contributory fault) and at times took up significant management time - both operational and HR.

150. Further, whether the respondent's consideration or otherwise of alternatives to dismissal was reasonable also falls to be examined. Mr Taylor reasonably rejected the option of keeping the claimant in the OST but not assigning her to NextGen because all clients would be migrating to that platform (Ms Satterthwaite confirmed that this would be by Easter 2018). He also said however that a move to BST was unavailable as it had no vacancies. This was not sufficiently explored in November 2016 by Ms Satterthwaite when it was first raised by the claimant and this was also the case at the time of dismissal. As redundancy was not available (which was a reasonable conclusion) he concluded that dismissal was the only available option.

151. Mr Taylor did not give any consideration to mediation as an alternative to dismissal. This would have been reasonable for the reasons given above but for Ms Satterthwaite having said that she would set up a meeting with a mediator for the claimant. It is not clear if Mr Taylor knew that she had agreed to do that, but on balance we conclude not especially as Ms Satterthwaite was advising him and it is unlikely that she would draw his attention to this either because she knew it was an omission or she believed it was irrelevant.

152. For these reasons - both the respondent bearing some responsibility for the breakdown in relationship and a failure to consider sufficiently alternatives to dismissal - we conclude that the respondent's decision to dismiss the claimant in response to their reasonably held belief that the working relationship had broken down, was not reasonable.

153. Fairness of process: further, we have serious concerns about the procedure followed by the respondent in making that decision to dismiss. First, we find that it was inappropriate for Ms Satterthwaite to be present at the dismissal meeting and involved in the decision making process. Given that the letter inviting the claimant to the meeting expressly referred to her allegation that HR was exacerbating the breakdown and that that was in effect a reference to Ms Satterthwaite, she should have stepped aside and had no further involvement. We recognise that the respondent's HR function was small and there was no obvious alternative to her available internally, but the respondent could and should have sourced independent HR assistance (as they had previously done and did again on the appeal). Further, it is clear from the correspondence, and Ms Satterthwaite acknowledged in her evidence, that by then she was becoming frustrated with the claimant e.g. the correspondence between them in July 2018 re attending a review meeting and the claimant delaying it due to a funeral.

154. Further, we conclude that it was inappropriate for Mr Taylor to be the self-appointed decision maker on dismissal due to the comments he made about the claimant in November 2014 (in particular what he wrote under 'My Impression' and his comment that he did not discourage her from leaving, indicating that he would be happy for her to leave) and, more recently, to Ms Born in her grievance investigation in 2016 (in particular his speculation about her mental state and his opinion that her moving on might be the best solution and that he was not willing to put the effort in with her). These indicate a closed mind and, in that context, we note his stated intention at the outset of the formal meeting that he expected it to last about an hour which - given the subject matter - seems surprising.

155. For these reasons therefore, both substantive and procedural, we find that the decision to dismiss by Mr Taylor was unfair. Further, we find that that unfairness was not cured by Mr Hall's appeal. Although we find that Mr Hall was as independent and impartial as he could be, the appeal was a review not a rehearing, which limits it capacity to remedy such issues. Although it was reasonable for him to have a meeting with Ms Satterthwaite in advance of the appeal hearing in order to understand the scope and agree terms, we note that all the enquiries he made after the hearing were with

her and Mr Taylor (despite telling the claimant that he would carry out investigations and try to speak to Mr Stewart). His enquiries therefore about possible alternatives to dismissal were made only with Mr Taylor who had made the decision that there were no such alternatives in the first place.

156. Mr Hall did not seem to be aware of, or consider, the failings in the respondent's approach that we have identified above (e.g. failure to hold monthly meetings, Ms Satterthwaite not arranging the mediator meeting) nor did he properly investigate or consider the claimant's suggestion of a job swap with someone in BST (despite acknowledging in the appeal that it was a difficult area that required investigation).

157. We also find that Mr Hall did not give proper or sufficient consideration to the claimant's statement in the second paragraph of her letter of appeal that the respondent had done nothing to repair the broken working relationships. Mr Hall did not explore this statement with the claimant in the appeal meeting (we acknowledge that she could bring this up herself and she was represented) nor does he ask Mr Taylor about that.

158. Accordingly we conclude that the claimant's dismissal was unfair.

159. A hearing will be listed to consider the appropriate remedy for the claimant. Both parties made submissions at the liability hearing on possible Polkey and contributory fault deductions and we are therefore able to make our findings on that at this stage.

160. As far as Polkey is concerned, the flaw of Mr Taylor and Ms Satterthwaite being involved in the decision to dismiss is a significant one. We are not able, on the evidence before us, to reach any conclusion as to whether, absent that flaw, the decision to dismiss would have been made, or was likely to be made, in any event. This would involve speculating as to who else would have been a fair person to make that decision, how they would have conducted the process and what decision they may have made. Such a finding would simply be too speculative and accordingly there will be no Polkey reduction to any compensation awarded to the claimant.

161. We do conclude, however, that reflect the claimant's own blameworthy conduct directly contributed to her dismissal in that she:

a. showed a lack of willingness to invest time to repair working relationships as identified by Ms Born in 2016 and thereafter;

b. refused to accept the outcome of the 2016 grievance, draw a line and move on as evidenced by her statements (unprompted by the respondent) at meetings on 3 November 2016 and 1 August 2017 as well as statements in her emails dated 20 December 2016, 23 January 2017 and 10 July 2017. This refusal led to very difficult working relationships and took up very significant amounts of managerial time; and

c. refused in practice in June 2017 and August/September 2017 (by going sick) to carry out a reasonable management instruction to take direction from senior web developers.

162. We assess that the claimant was slightly more to blame than the respondent for the state of affairs that resulted in her dismissal, but the respondent also had a not insignificant responsibility given their failures in managing the situation as set out above. Accordingly we assess the appropriate reduction to be 60% to both the basic and compensatory awards.

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Employment Judge K Andrews
Date: 11 September 2019

Appendix – the claimant's statement of detriments

Detriment 1:

a. Ms Satterthwaite instructed the senior web developers to create a set of working guidelines for the purpose of placing the claimant on a disciplinary warning for insubordination
b. Ms Satterthwaite encouraging Mr Trowell and Mr Lanceley to assert their authority over the claimant
c. The claimant receiving an insulting email from her line manager written under guidance from Ms Satterthwaite that the claimant was picking and choosing which projects she wished to work on

Detriment 2:

a. Ms Satterthwaite at a meeting on 3 November 2016 blocked the claimant's request to transfer to the BST
b. Ms Satterthwaite at a meeting on 3 November 2016 pressurised the claimant to leave the business

Detriment 3:

a. Ms Satterthwaite's letter of 29 November 2016 warning the claimant of potential disciplinary action for insubordination for non-compliance with the working guidelines or with management instructions from senior web developers, despite the fact that she did not take management instructions from senior web developers but rather her line manager, such warning being punitive, unfounded and unfair
b. After November 2016 requiring the claimant to work with Mr Trowell and Mr Lanceley under the threat of disciplinary action for insubordination as per the letter referred to above

Detriment 4:

a. denying the claimant remote working on the same terms as are available to other employees such that the claimant was on less favourable terms than already extended to others who had not made a protected act
b. A delay of 4 months in relation to the contractual amendment further to the 2016 appeal manager having proposed permanent home working
c. Specifically on 6 February 2017 the claimant received a contractual amendment to her home worker status which was on less favourable terms referred to above

Detriment 5:

Ms Satterthwaite threatening the claimant with insubordination for asking to rearrange a meeting to a mutually convenient time in July 2017

Detriment 6:

a. Ms Satterthwaite on 1 August 2017 saying about the reason for the insubordination warnings was to make the claimant drop her grievance
b. Failing to deal with the antagonistic behaviour of Mr Trowell and Mr Lanceley in June 2017 including Ms Satterthwaite suggesting that Mr

Trowell and Mr Lanceley deputise for the claimant's line manager and were legitimately changing the claimant's business priorities, which was not the case

c. Ms Satterthwaite on 1 August 2017 threatened that the claimant would be dismissed if she did not leave

Detriment 7:

After August 2017 rearranging the claimant's reporting lines such that the claimant then worked directly for Mr Trowell and Mr Lanceley whereas previously the claimant had worked alongside them in order to engineer an insubordination charge against the claimant

Detriment 8:

The claimant's dismissal on 1 November 2017