EMPLOYMENT TRIBUNALS

Claimant Miss W.E. Norman

Respondent De Lage Langden Leasing Limited

v

Heard at: Watford

On: 5,6,7,12 and 13 November 2019
9,11,12 and 13 March 2020
In chambers: 27 and 28 April 2020

Before: Employment Judge Heal
Mr. D. Bean,
Mrs S. Goldthorpe

Appearances

For the Claimant: Mr Martin Griffiths Q.C. (pro bono; 5 November 2019 only)
Ms Alison Woods, Fellow of the Chartered Institute of Personnel and Development (from 6 November to 13 November 2019 and March 2020)

For the Respondent: Ms. H. Iyengar, counsel.

RESERVED JUDGMENT

The complaints of unfair dismissal, breach of contract and disability discrimination are dismissed.

REASONS

1. By a claim form presented on 15 January 2018 the claimant made complaints of constructive unfair dismissal, breach of contract (failure to give notice of dismissal) and disability discrimination.

2. We have had the benefit of an agreed bundle in 5 volumes running to 1418 pages. We have also heard oral evidence from the following witnesses:

Ms Louise Smith, receptionist;
Ms Natalie Homan, HR assistant, now veterinary nurse;
Ms Wendy Norman, the claimant;
Ms Chloe Read, HR business partner, now full-time mother;

Mr David Wooldridge, Regional Risk Officer;
Ms Angela Lowry, debt collector;
Mr Robert Gorman, Country HR Manager (Ireland)
Ms Tania Lyall, Country HR Manager;
Mr. Duncan Hullis, Country Manager/UK Managing Director;
Mr. Anthony O'Hara, Collections and Recoveries Manager, now in other employment.
Ms Lynn Robertson HR (maternity cover for Chloe Read).

3. All those witnesses gave evidence in chief by means of a prepared typed witness statement which we read before the witness was called, and then the witness was cross examined and re-examined in the usual way. With the consent of the parties, we took witnesses out of their natural order to accommodate their availability.

4. This hearing was originally listed for 8 days. However, this had to be reduced by one day because of lack of judicial resource and by a further two days because of counsel's availability. This was regrettable but because of the age of the case, preferable to further delay. It then became necessary to continue part heard.

Issues

5. The issues were identified by Employment Judge McNeill QC at a preliminary hearing on 11 July 2018. Those issues are as follows:

Time limits/limitation issues

6.1 There is no issue that the claimant's claim for constructive dismissal is in time.

6.2 In relation to her claims for disability discrimination:

a. Were the claimant's claims presented within the time limit set out in section 123 of the Equality Act 2010 (EQA), taking into account the date of the presentation of claim to the Tribunal and the dates shown on the early conciliation certificate?
b. Was the conduct relied on by the claimant conduct extending over a period within the meaning of section 123 (3) of the EQA, and if so, what was the last date defining the end of that period?
c. If and in so far as the disability discrimination claims or any of them are out of time, is it just and equitable to extend time?

Constructive unfair dismissal

7. Did the respondent breach the term of mutual trust and confidence in the contract of employment? The conduct relied upon by the claimant is that set out paragraphs 7-11 of her particulars of claim. The respondent accepts that if there was a breach of the term of mutual trust and confidence that constituted a repudiatory breach.

[The conduct set out at paragraph 7-11 of the particulars of claim is contained in a somewhat lengthy narrative. We pointed out to the parties at the outset of the hearing that it was difficult to distil from this narrative exactly what it was that the claimant was complaining about. Mr Griffiths QC undertook to supply us with a list of issues setting this out in 'pleaded' form. However, this appeared as part of a written opening statement which did not in fact set out the list of issues as we had hoped. Therefore,

in order to be sure that we understood exactly what was the breach of contract/treatment complained of and what was background narrative we have produced the following list of issues which we then shared with the parties in the hope of agreement.]

The claimant alleges that (retaining the original numbering):

7.1 Mr O'Hara unreasonably criticised the claimant in relation to inaccurate information Angela Lowry gave him about her potential operation, saying,

'*I don't want to know'* and '*I'm not getting involved';*

7.2. In February 2016 Mr O'Hara was unreasonably resistant and obstructive to the claimant swapping hours with colleagues to have necessary blood tests.

7.3 On several occasions Mr O'Hara unreasonably accused the claimant of using hospital appointments or blood tests as an excuse to go home early. He said or implied that the claimant was lying about appointments.

7.4 Mr O'Hara contacted the claimant's GP surgery to check its opening hours.

7.5 Between April and August 2016 Mr O Hara repeatedly told the claimant that he was her boss (and not Mr Vellinga);

7.6.1 Mr. O'Hara unreasonable resisted Mr Vellinga's recommendation that some of the claimant's accounts be transferred;

7.6.2 Mr O'Hara accused the claimant of going behind his back and of trying to undermine his authority, in relation to Mr Vellinga;

7.6.3 Mr O'Hara said that the claimant was not a team player;

7.6.4 Angela Lowry said that it was the claimant's fault that Ms Lowry could not cope with her workload as she was managing the claimant's accounts;

7.6.5 Mr O'Hara made no attempt to protect the claimant from this unfair accusation and allowed Ms Lowry to continue to blame the claimant and allowed Miss Lowry to continue to blame her in public and in team - meetings;

7.7 Mr O Hara allowed the claimant to be overloaded again by receiving back her accounts from Ms Lowry;

7.8.1 By email dated 4 April 2016 Mr O'Hara unreasonably described the claimant having considerable time off at short notice for GP and hospital appointments;

7.8.2 Mr O'Hara requested a doctor's letter to establish what was wrong with the claimant.

7.8.3 Mr O'Hara referred to the claimant as a '*wrong 'un*.'

7.9 On 9 December 2016 Mr O'Hara unreasonably criticised the claimant for her absence in relation to her brother's illness;

7.10 By email dated 16 November 2016 Mr O'Hara told HR that he was considering disciplinary action in relation to the claimant for data leaks;

7.11.1 Despite an agreed concession that staff leave early on the evening of the Christmas party on 8 December 2016 Mr O'Hara told his team to work until 5 pm;

7.11.2 When the claimant asked Mr O'Hara for approval to leave early on 8 December 2016, he shouted at her, asked why she had not asked before he left the office and then cut her off before she could explain.

7.12 At a meeting on 9 December 2016 Mr O'Hara told the claimant that he wanted her to attend a communication training course, accused her going behind his back and making a fool of herself with Mr Wooldridge, shouted at her, and made references to her time off for blood tests, accused her of not being a team player and said no one liked her. He said that other people in the office had worse problems than her and that her brother being in hospital was nothing compared with someone suffering three deaths.

7.13.1 Mr O'Hara recorded claimant's absence on the afternoon of 9 December 2016 inaccurately and deducted an incentive/holiday entitlement;

7.13.2 On 9 December 2016 Mr O'Hara unreasonably sought to prevent the claimant from going home and shouted at her.

7.14 At a meeting with Tanya Lyall of HR on 12 December 2016 Ms Lyall failed to support the claimant and did not arrange for the claimant to be managed by someone other than Mr O'Hara;

7.15 appears to be narrative.

7.16 appears to be narrative.

7.17 Mr O'Hara forwarded a customer complaint dated 28 December 2016 to Ms Lyall and Mr Wooldridge asking for their thoughts about how to deal with 'this latest complaint' about the way the client was spoken to on calls.

7.18 Mr Wooldridge and HR built a case against the claimant to give her warning without taking proper care or investigation;

7.19 appears to be narrative, is out of chronological order here, and is the same as 7.24.

7.20 On [date?] December 2016 although Ms Lyall told the claimant that others had witnessed Mr O'Hara's behaviour and that it was unacceptable, she said that it would not be possible for the claimant to be managed by someone else. She said that the claimant should '*rise above it*' and she would request a meeting with Mr O'Hara to discuss the claimant's working relationship with him.

7.21 In December 2016 Mr O'Hara told the claimant that by putting a complaint about him in writing she had, 'made it legal' and he said, 'I don't have to like you' and, 'you're not my friend'

7.22 From 3 January 2017 Mr O'Hara ignored and excluded the claimant from his social engagement with the other team members;

7.23 At a team meeting on 20 January 2017, Mr O'Hara completely blanked the claimant when she made suggestions and ignored her input.

7.24.1 On 23 January 2017 the respondent invited the claimant to a disciplinary hearing without giving her details of the allegations or the supporting documentation with the letter.

7.24.2 When the claimant asked Mr O'Hara for this information, he said that it had nothing to do with him and directed her to HR;

7.25 Chloe Read of HR gave the claimant insufficient time to prepare for her disciplinary hearing after supplying her with the supporting documentation;

7.26 and 7.27 The supporting information only consisted of the email complaints and contained no further witness statements or investigation notes;

7.28 Failed to use an informal process before calling the claimant to a disciplinary hearing;

7.29 On 24 January 2017 Chloe Read and David Wooldridge conducted a disciplinary hearing which was unfair in that:

7.29.1 Ms Read chaired the hearing;

7.29.2 Ms Read failed to take minutes of the hearing;

7.29.3 The claimant did not have an opportunity to respond to each of the allegations;

7.29.4 Ms Read issued a formal warning without adjourning to confer with Mr Wooldridge

7.29.5 Ms Read said that she did not know how the respondent's ILS system worked;

7.29.6 Ms Read and Mr Wooldridge had made up their mind before the hearing.

7.30 appears to be narrative.

[Before we heard evidence from Ms Read the claimant identified the exact complaints made about the unfairness of the disciplinary hearing as follows:

1. The disciplinary investigation letter contained no supporting evidence and no investigation notes.
2. When the claimant collected supporting documents from HR that was limited to the emails now in the bundle. It did not contain investigation notes, statements, or supporting evidence that the complaints were genuine and had been vigorously investigated before the decision to start a formal disciplinary process.
3. Denying the claimant's request for additional time to do research.
4. Failing to investigate adequately or at all;
5. Failing to take minutes of the meeting;

6. Failing to record any action points, development needs, or timescales or details of required improvements;
7. Taking insufficient time at the hearing to explore the details of the complaints;
8. Refusing the claimant's request to address the complaints;
9. Ms Read said that she did not understand the ILS system;
10. Ms Read issued a warning at the meeting, without an adjournment to consult with Mr Wooldridge;
11. Giving the claimant a warning about reputational damage which had not been discussed at the meeting;
12. Scheduling the remedial action two months after the hearing;
13. Directing the meeting at issuing a sanction without considering the cause of any problems, or support that could be offered instead of a warning.]

7.31 The decision to issue a formal written warning was unfair in that:

7.31.1 There was inadequate evidence to conclude that there had been 6 serious complaints about claimant's telephone manner;

7.31.2 The respondent found that the claimant had caused reputational damage without having put that to her at the disciplinary hearing and without adequate evidence.

7.32 appears to be a repeat of 7.31

8 The claimant agrees that this is narrative not a breach.

9. The respondent unreasonably delayed in responding to the claimant's grievance and appeal letters.

10. Robert Gorman rejected the claimant's grievance and appeal without adequately dealing with details of either and reached conclusions which were not supported by the available facts;

11.1 The respondent delayed unreasonably in dealing with the claimant's appeal against Robert Gorman's decision;

11.2 Duncan Hollis rejected the claimant's appeal but failed to deal adequately with her grounds of appeal.

Disability

12.1 The respondent accepts that the claimant has the condition of Hashimoto's thyroiditis and this is and was a long-term condition.

12.2 Did that impairment have a substantial adverse effect on the claimant's normal day-to-day activities?

Direct discrimination

13.1 Did the respondent subject the claimant to the treatment at paragraphs 7.1 – 7.32 above and also:

(Paragraph 17 of the particulars of claim appears to be about knowledge.)

13.1.1 failing to attempt to discuss reasonable adjustments with the claimant after she disclosed her disability in December 2016;

13.1.2 giving the claimant a written warning;

(Paragraph 21 of the particulars of claim appears to be largely a repeat of 7.1)

13.1.3. Mr O'Hara failed to notify HR of the disadvantage caused by the claimant's disability;

Paragraph 24. appears to be narrative

Paragraph 25 appears to be a repeat.

EQA, section 15: discrimination arising from disability

14.1 the claimant relies on the needs to undergo regular blood tests as the 'something arising' in consequence of her disability.

14.2 did the respondent subject the claimant to or any of the above alleged unfavourable treatment, alleged at paragraph 7-11, ~~17~~, 20, ~~21~~, ~~24~~ and ~~25~~ of the particulars of claim?

14.3 was the reason for such treatment the 'something arising' in consequence of the claimant's disability?

14.4 Did the respondent have actual or constructive knowledge of the claimant's disability, and if so, when?

14.5 If so, was the respondent's treatment of the claimant a proportionate means of achieving a legitimate aim? The legitimate aim relied on by the respondent was to have sufficient people attending at work to run an efficient organisation.

EQA, section 19: indirect disability discrimination

15.1 Did the respondent apply the following provision, criterion and/or practice (the PCP) generally, namely general requirement to be in the office between 9 am to 5 pm or 8 am to 4 pm?

15.2 Did the application of the PCP put the claimant at a particular disadvantage compared to any of the respondent's employees who were not disabled. The claimant says it prevented her from attending blood tests that were crucial to allow proper monitoring of her condition.

15.3 If so, can the respondent show that the treatment was a proportionate means of achieving a legitimate aim? The legitimate aim relied on is the same as that in relation to the section 13 claim.

EQA, section 21: Failure to make reasonable adjustments

16.1 Did the respondent apply the following provision, criterion and/or practice (the PCP) generally, namely general requirements to be in the office between 9 am to 5 pm or 8 am to 4 pm?

16.2 did the application of the PCP put the claimant as a substantial disadvantage? The claimant says that it prevented her from attending blood tests that were crucial to allow proper monitoring of her condition. The respondent disputes that it did so prevent her.

16.3 Was the respondent aware that the claimant:

a. Was disabled by reason of her Hashimoto's thyroiditis;
b. would be likely to have been subjected to a substantial disadvantage because of her disability?

16.4 what adjustments would it have been reasonable for the respondent to make in order to mitigate the disadvantage suffered by the claimant as a result of her disability? The reasonable adjustment contended for is to allow greater flexibility to the claimant in her working hours.

16.5 did the respondent failed to make such reasonable adjustments?

EQA section 26: Harassment

17.1 Did Mr O'Hara engage in conduct described in paragraphs 7.1, 7.2, 7.3, 7.9 and 7.12 the particulars of claim?

17.2 If so, was that unwanted conduct?

17.3 If so, did it relate to the claimant's disability?

17.4 Did such conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant? Taking into account (effect only):

a. The claimant's perception.
b. The other circumstances of the case; and
c. Whether it was reasonable for the conduct to have that effect.

EQA Section 27: victimisation.

18.1 The claimant relies on an email to Tanya Lyall of 11 December 2016, a written grievance sent on 27 January 2017 and her appeal letter of 27 February 2017 as protected acts.

18.2 Did any of those communications to the respondent amount to a protected act?

18.3 If so, did the respondent subject the claimant to detriment? The claimant relies on:

a. The issuing of disciplinary proceedings;
b. The disciplinary sanction;

c. The rejection of her grievance;
d. the rejection of her disciplinary appeal; and
e. the rejection of her grievance appeal.

as relevant documents.

Concise statement of the Law

19. So far as is relevant section 95 of the 1996 Act provides:

95 Circumstances in which an employee is dismissed

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) only if)—

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

(b) [he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or]

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

20. To succeed in establishing a claim under section 95(1)(c) the claimant must show that the employer is guilty of a fundamental or repudiatory breach of the contract of employment. Behaviour that is merely unreasonable is not enough. The test is not one of whether the employer was acting outside the range of reasonable responses, but the question is whether, considered objectively, there was a breach of a fundamental term of the employment by the employer.

21. Although unreasonableness on the part of the employer is not enough an employee may rely upon the "implied term of trust and confidence". Properly stated the term implied is "*the employer shall not without reasonable and proper cause conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."*

22. The duty not to undermine trust and confidence is capable of applying to a series of acts which individually might not themselves be breaches of contract.

23. The particular incident which causes the employee to leave may in itself be insufficient to justify her taking that action, but when viewed against a background of such incidents it may be considered sufficient by the tribunal to warrant their treating the resignation as a constructive dismissal. It may be the 'last straw' which causes the employee to terminate a deteriorating relationship. The question is, does the cumulative series of acts, taken together, amount to a breach of the implied term?

24. The employee must leave in response to the breach of contract, which may mean the tribunal deciding whether it was *an* effective (but not necessarily the sole

or *the* effective) cause of the resignation. Accordingly, if an employee leaves both in order to commence new employment and in response to a repudiatory breach, the existence of the concurrent reasons will not prevent a constructive dismissal arising. What is necessary is that the employee resigned in response, *at least in part*, to the fundamental breach by the employer. Elias P (as he then was) in Abbey Cars (West Horndon) Ltd v Ford EAT 0472/07 commented that 'the crucial question is whether the repudiatory breach played a part in the dismissal', going on to observe that even if the employee leaves for 'a whole host of reasons', he or she can claim that he or she has been constructively dismissed if the repudiatory breach is one of the factors relied upon.

25. There is *no* legal requirement that the departing employee must tell the employer of the reason for leaving, however.

26. A repudiatory breach is not capable of being remedied so as to preclude acceptance. The wronged party has an unfettered choice of whether to treat the breach as terminal, regardless of his reason or motive for so doing. All the defaulting party can do is to invite affirmation by making amends.

27. The fact that a dismissal is constructive (within sub-section (2)(*c*)) does not of itself mean that it will be held to have been unfair (though in practice that will often be the case); we must still go on to consider fairness in the normal way.

Disability Discrimination

28. It is for the claimant to prove that she has a disability. Section 6 of the EQA 2010 provides that a person has a disability if she 'has a physical or mental impairment', and *the impairment* has a 'substantial and long-term adverse effect' on the person's 'ability to carry out normal day-to-day activities'.

29. What a tribunal has to consider is an adverse effect, and that it is an adverse effect not upon her carrying out normal day-to-day activities but upon her ability to do so. Because the effect is adverse, the focus of a tribunal must necessarily be upon that which a claimant maintains she cannot do as a result of her physical or mental impairment. Once she has established that there is an effect, that it is adverse and that it is an effect upon her ability to carry out normal day-to-day activities, a tribunal has then to assess whether that is or is not substantial. Here, however, we have to bear in mind the definition of substantial which is contained in section 212(1) of the Act. It means more than minor or trivial.

30. It is incumbent on a claimant to provide evidence to the tribunal of the activities it is claimed she is less able to carry out and to show that this is because of the impairment relied upon.

Burden of proof

31. We have reminded ourselves in particular of the principles set out in the annex to the Court of Appeal's judgment in Igen Ltd v Wong [2005] EWCA Civ 142, [2005] IRLR 258:

32. Expanding on that, it is the claimant who must establish her case to an initial level. Once she does so, the burden transfers to the respondent to prove, on the balance of probabilities, *no discrimination whatsoever*. The shifting in the burden of proof simply recognises the fact that there are problems of proof facing a claimant which it would be very difficult to overcome if she had at all stages to satisfy the tribunal on the balance of probabilities that certain treatment had been by reason of the protected characteristic. What then, is that initial level that the claimant must prove?

33. In answering that we remind ourselves that it is unusual to find direct evidence of unlawful discrimination. Few employers will be prepared to admit such discrimination even to themselves.

34. We have to make findings of primary fact on the balance of probability on the basis of the evidence we have heard. From those findings, the focus of our analysis must at all times be the question whether we can *properly and fairly* infer unlawful discrimination.

35. In deciding whether there is enough to shift the burden of proof to the respondent, it will always be necessary to have regard to the choice of comparator (where one is required), actual or hypothetical, and to ensure that he or she has relevant circumstances which are the *'same, or not materially different'* as those of the claimant.

36. Facts adduced by way of explanations do not come into whether the first stage is met. The claimant, however, must prove the facts on which he or she places reliance for the drawing of the inference of discrimination, actually happened. This means, for example, that if the complainant's case is based on particular words or conduct by the respondent employer, he or she must prove (on the balance of probabilities) that such words were uttered or that the conduct did actually take place, not just that this might have been so. Simply showing that conduct is unreasonable or unfair would not, by itself, be enough to trigger the transfer of the burden of proof.

37. If unreasonable conduct therefore occurs alongside other indications (such as under-representation of a group in the workplace, or failure on the part of the respondent to comply with internal rules or procedures designed to ensure non-discriminatory conduct) that there is or might be discrimination on a prohibited ground, then a tribunal should find that enough has been done to shift the burden onto the respondent to show that its treatment of the claimant had nothing to do with the prohibited ground. However, if there is no rational reason proffered for the unreasonable treatment of the claimant, that may be sufficient to give rise to an inference of discrimination.

39. It was pointed out by Lord Nicholls in *Shamoon v Chief Constable of the RUC* [2003] ICR 337 (at paragraphs 7–12) that sometimes it will not be possible to decide whether there is less favourable treatment without deciding *'the reason why'*.

40. Some cases arise (See *Martin v Devonshire's Solicitors* [2011] ICR 352 EAT paragraphs 38 - 39) in which there is no room for doubt as to the employer's

motivation: if we are in a position to make positive findings on the evidence one way or the other, the burden of proof does not come into play.

Harassment and victimisation

41. It is not enough for the claimant to assert that she was disabled; in order to gain the protection of the 2010 Act so as to pursue a claim of harassment, she has first to establish that she is or was a disabled person, as defined by s 6 (*Peninsula Business Services Ltd v Baker* [2017] IRLR 394).

42. Our approach to a victimisation claim must be different. The Act requires us to ask whether the claimant has done, or was suspected, of doing a protected act. However, in order to read this provision so as to be consistent with the Equal Treatment Directive, it should be asked more simply whether the claimant has been subject to a detriment 'because of a protected act'. We consider this means that the claimant does not herself have to have a disability. The primary object of the victimisation provisions is to ensure that an employee is not penalised or prejudiced because she has taken steps to exercise her EQA rights.

Facts

Credit

43. We have worked through the issues and facts, weighing up in each case what was more likely to have happened than not. We have not accepted the evidence of one side or the other entirely as accurate. However, we have not found the claimant to be a reliable historian. In particular, her evidence does not match that of her GP's notes. We bear in mind in fairness to her that she does have a series of health and personal issues which may have coloured her views of events.

Background

44. The respondent is a limited company engaged in business to business lending. Some of its customers are sole traders and partnerships, but it does not lend to consumers. When it leases equipment to a business, it describes that business as a 'customer' and the vendor or dealer who introduces the customer is described as a 'partner'.

45. The claimant started work for the respondent on 1 September 2013.

46. The respondent has a Collections and Recovery ('C&R') team in which the claimant worked. Mr Tony O'Hara was the C&R manager. There were two strands to the respondent's business: customers who paid by direct debit and the other customers who did not pay unless the C&R department took action. Different members of the C&R team looked after different customers. It was necessary however to have sufficient cover available in the team to pick up the telephones throughout the day. The claimant looked after the NHS accounts amongst others, including National Grid, Microsoft and Technogym.

47. The respondent's C&R department worked on the basis of two shifts: 8am to 4pm and 9am to 5pm. The claimant worked 9am to 5pm. Angela Lowry worked on the 8.00am to 4pm shift. Staff within the C&R team were allowed by Mr O'Hara to swap shifts generally as long as there was adequate cover to answer the telephones until 5pm.

Medical history and evidence

48. On 27 March 2012 the claimant was first diagnosed with hypothyroidism by her GP. She had been feeling tired for weeks. She had put on weight, lacked energy and had poor concentration.

49. Two days later the claimant presented with palpitations and breathlessness. The GP referred her to a heart specialist.

50. The claimant saw a consultant endocrinologist, Dr Steer, on 10 April 2012. He described her as having a constellation of non-specific symptoms. She had normal thyroid function tests but positive thyroid peroxidase antibodies and a strong family history of hypothyroidism. An outpatient medication referral letter dated 10 April 2012 and signed by Dr Steer diagnoses or gives his impression at least of subclinical hypothyroidism.

50. On 23 April 2012 the GP diagnosed Hashimoto's disease, which the claimant explained to us is an autoimmune disease. This was the first diagnosis.

51. The claimant went to see a private endocrinologist, Dr Qureshi on 23 April 2012. He recorded that she had a history of tiredness, weight gain, sore throat, painful thyroid, frequent bowel movements and feeling unwell for 5-6 years. He noted Dr Steer's findings. Dr Qureshi recorded that recent investigations showed borderline abnormal thyroid function.

52. The claimant's evidence to us was that her condition did not affect her ability to perform her role. It was managed well with Thyroxine and regular review with her GP and consultants.

53. The claimant saw her endocrinologist again in late January 2013. He increased her dose of thyroxine. Her thyroid was inflamed.

54. The claimant returned to her GP about her Hashimoto's disease on 15 April 2013. There was a difficult consultation because the claimant was angry that the GP did not have the correspondence.

55. On 16 April 2013 Dr Steer recorded that the claimant was now 'vitamin D replete' and said that his clinic would see her in three months' time.

56. By letter dated 30 July 2013 Dr Steer discharged the claimant into the care of her GP. He suggested repeating her bone profile and thyroid function on an annual basis. This was the last time the claimant had a hospital appointment with an endocrinologist.

57. The GP recorded many symptoms, including dry skin, menstrual issues, digestive problems and weight loss. It is not clear which if any of these symptoms was attributed to Hashimoto's disease.

58. The claimant continued to visit her GP with a variety of problems: including problems relating to her skin, digestive system, back, chest pain, and restless leg syndrome.

59. On 5 August 2014 the claimant told her GP that she got leg cramps when she was undertreated for her thyroid condition.

60. On 22 August 2014 the claimant told the GP that she felt as she did when first diagnosed with Hashimoto's: she felt generally under the weather. There were thyroid function tests in September 2014.

61. The claimant subsequently visited her GP with a problem with her big toe in October 2014.

62. The claimant continued to visit her GP with a variety of problems, mainly gynaecological and gastro-enterological issues and also headaches through 2015 and 2016. She had surgery unrelated to the Hashimoto's disease.

63 On 4 April 2016 the claimant attended a walk-in clinic complaining of tenderness around her neck. The GP noted a history of Hashimoto's disease. The claimant had some nasal irritation and a problem with her toenail.

64. On 2 December 2016 the GP noted usual symptoms of chronic sinusitis.

65. In early January 2017 the GP began to note problems of stress at work. Subsequently through early 2017 the GP noted a panic attack, stress and anxiety. The claimant complained of back pain in July 2017. It appears that had a mechanical cause. She continued to complain of stress through August 2017.

66. By letter dated 1 August 2017 Dr Tench, a Consultant Rheumatologist wrote to the claimant's GP saying that the claimant had a long history of diffuse spinal pain with symptoms worsening recently. He noted a past history of Hashimoto's diagnosed in 2012. She had also been diagnosed with asthma and had sinus inflammation. She had a history of chest pain and panic attacks. Dr Tench suspected that her symptoms related to fibromyalgia.

67. By further letter dated 4 August Dr Tench repeated,

'*I suspect a lot of this lady's symptoms relate to fibromyalgia … however she also describes quite significant early morning stiffness and I wonder whether there might be an inflammatory component'*. He noted a past history of auto-immune thyroid disease. He had given her a steroid injection. Dr Tench did not link the fibromyalgia or morning stiffness to the Hashimoto's disease.

68. On 30 August 2017 the claimant's GP recorded a diagnosis of 'PMR': polymyalgia rheumatica. The GP made no link between PMR and Hashimoto's disease.

69. The GP notes continue to record problems at work involving litigation and stress. There is no mention at this stage of Hashimoto's disease or its symptoms. There is mention of a diagnosis of polymyalgia rheumatica, anxiety and stress on 21 September 2017. There is an entry recording a bad back on 2 November 2017 which is the date the claimant's employment terminated.

Events

70. When the claimant needed a blood test, the GP supplied her with a form. She would collect this from her GP's surgery in Hampstead. She did not have to have an appointment with the GP to collect the form, although of course if she had other health concerns, then she might do so. She would then take it to the Royal Free Hospital in Belsize Park for the test itself. In practice the claimant used to try to collect the form and have the test on the same day. However, she accepted that there was no medical reason why she had to do both on the same day.

71. The claimant's GP surgery was open on some days at 8am and some days at 9am. On Mondays it closed at 8pm. It was not open at the weekends.

72. The claimant then lived in Belsize Park, and worked for the respondent in Watford. She drove to and from work.

73. Adults could have blood tests at the Royal Free Hospital on Monday to Friday from 7.30am to 5.30pm and then also on Saturday from 9.00am to 1.00pm.

74. The claimant had appointments for blood tests for thyroid function on 22 October 2013, 12 July 2014, 16 September 2014, 29 September 2014 and 17 October 2014. She had no problem leaving work or swapping shifts to attend for those tests.

75. By letter dated 5 November 2014, Dr Steer referred to the claimant's hypothyroidism. he said, 'Apart from the fact that she seems to be having an awful lot of TSH measurements made all of which were entirely normal and suggest adequate thyroid replacement therapy, I can see nothing of concern. With regards to the patient's diarrhoea I can't really see a mechanism by which her thyroid condition could be implicated…..As she has had three TSH measurements measured in as many months all of which were within this range I would not recommend further measurement for 6 to 12 months.'

76. As the claimant points out she had also had major bowel surgery, so she was having a lot of tests at this time.

77. The claimant had a further blood test on 23 March 2015. She had no problem getting time off for this test.

78. In August 2015 Ms Lowry asked the claimant for a loan of £500. The claimant declined and directed Ms Lowry to HR. For Ms Lowry's part, the rejection did not have

any bearing on what she saw as a friendship with the claimant. We have accepted Ms Lowry's evidence that she did not know anything about the claimant's operation and Mr O'Hara did not know about the request for a loan. We therefore reject the claimant's evidence that Mr O'Hara became accusatory and aggressive towards her *as a result.* If he said, 'I don't want to know' in response to the claimant trying to tell him about the loan, we think it more likely than not that that was simply because he did not want to know about the loan request and did not want to become involved.

79. On 7 January 2016 the claimant asked her manager, Tony O'Hara to be allowed to swap shifts with her colleague Mahmood so that she could leave early at 3.30pm on Friday 15 January to go with her daughter to a very important hospital appointment.

80. Mr O'Hara replied on 8 January 2016 that it was too late to say no even if he wanted to. He asked the claimant to give him as much notice as possible next time. (This appointment was of course nothing to do with the claimant's own medical condition.)

81. By email dated 11 February 2016 the claimant wrote to Mr O'Hara that her colleague Mahmood had agreed to swap shifts with her to accommodate an appointment at short notice on Friday 12 February 2016, so that she would work from 8 to 4pm and Mahmood would work form 9am to 5pm.

82. By email dated 11 February 2016 Mr O'Hara replied, copying in Mahmood:

'*When did you find out about the appointment? Once again its too late for me to say no, even if I wanted to.*

Mahmood

You will be on your own from 4-5pm.'

83. The claimant replied, on 12 February 2016,

'*Sorry it was only yesterday,*

As I got a call from the doctor about needing a blood test.'

84. Mr O'Hara replied,

'*A blood test does not really sound urgent…couldn't it of waited until Monday*?'

85. The claimant further replied,

''*I have to have a blood test every three months as I am on medication*

If there is something wrong it has to be repeated as I am on medication for an auto immune disease.

The medication has to be altered accordingly

I have yellowing to the whites of my eyes which is of concern so they were able to fit me in tonight so I thought it would be OK with you.'

86. The GP's notes show that the claimant had attended her GP on 18 January 2016. A thyroid test request had been made on that occasion. The claimant accepted that a form had been waiting there for her from 18 January. However, the claimant did not collect it.

87. There is then no GP's note for 11 or 12 February 2016 at all. The claimant accepted that she did not in fact have a blood test on that day. She speculated that perhaps she was unable to get to the GP to collect the form in time. She could not explain why, if it was urgent, she did not collect the form on the following Monday.

88. The next note records results of a thyroid function test on 13 March 2016 and no action was required.

89. We note that there is no evidence of a consultant or GP saying that the claimant needed to have blood tests for her thyroid condition every three months.

90. The records show that the claimant was not in fact having three monthly thyroid blood tests at this time.

91. By email dated 18 March 2016 the claimant asked Mr O'Hara if she could leave early on 31 March 2016 for a hospital appointment at 4.15pm.

Mr O'Hara replied, '*OK*.'

92. Mr O'Hara was concerned about the frequency of requests made by the claimant, including last minute requests to leave early to attend medical appointments. He noted that these requests tended to be for a Friday. He was conscious of a degree of unhappiness within the C&R team about the claimant's early departures from work, especially given her tendency to arrive for work late and return from lunch breaks late. It was in this context and for this reason that he asked her for a letter from her GP to explain the need for her times away from work.

93. By email dated 31 March 2016 the claimant therefore wrote to her GP asking the GP to draft a letter saying,

'*Additionally please can you ask him if he can arrange a letter to be drafted as I am having increasing difficulties with my employer to obtain time off for blood tests and consultations.*

I would ask you to draft the letter to read:

'Wendy Norman has to have regular blood tests and has to be monitored regularly as she has an autoimmune condition and her medication has to be closely monitored.'

Once I receive this letter I will be able to pass it to my employer and this will assist me with attending blood tests within the times requested by the GP and regular check ups with the Doctor.

If you can tell the Doctor that I had to delay the blood test he recently requested as my employer advised it was difficult to authorise the time off without a letter. My employer has advised me that if I provide the above letter this will assist me with getting the time off authorised in the future.'

94. Accordingly, the GP's surgery produced a letter dated 1 April 2016 saying,

'*I am writing in relation to Wendy Norman our patient for a long time now. As you may know she has an autoimmune medical condition amongst other conditions, which require regular blood testing, sometimes required at short notice, and is on medication which needs close monitoring. I can also confirm she attends hospital for various clinics and follow-up appointments*.'

95. The claimant gave that letter to Mr O'Hara on 4 April 2016 who sent a copy to HR for her file by email dated 4 April 2016 saying,

'*Hi*

Please see attached letter from Wendy's GP.
I asked for this as Wendy has taken considerable time off lately at short notice for GP and Hospital Appointments.'

96. On 7 April 2016 Tina Belsen, an Internal Account Manager reported an operational risk arising out of an incident where it appears an agreement had come to an end, but a direct debit collection had nonetheless been made. The email reporting the risk says that 'Wendy'' in collections made a mistake and had requested an urgent refund could be made. The email adds the comment, '*the worry is that she says this happened before due to ILS system!*'

97. On 14 April 2016 an exchange of emails between Michelle Carter (asset sales) and Liz Barber (country operations manager) discussed concerns about customer complaints from the NHS and lease advisers complaining about the tone and aggressiveness of the claimant over the telephone. It was also said that the claimant confused situations and as a result, customers requested to deal with Michelle Carter directly.

98. It appears from same exchange that there were unspecified concerns about Tony O'Hara.

99. On 25 May 2016 Mr O'Hara told the claimant about an incident in which one dealer invoice had been taken from a customer's bank account. This had been reported as an operational risk. He noted that it was not the first time this has happened. He asked the claimant to think of any training she might require to prevent this from happening again.

100. On 31 May 2016, Andrea Thomas of NHS Wales sent an email to the respondent complaining about a phone call with the claimant in which she said the claimant did not get back to her after she had raised a query and then telephoned and

was extremely rude to Ms Thomas on the telephone. Ms Thomas told the claimant that she was being rude.

101. This complaint was referred to Mr O'Hara on 1 June 2016 and he asked the claimant for her comments. She replied,

'I can't remember much about the call but I do recollect she did not want to speak to me as it was the end of month. I do not believe that I was rude but I may have been forceful bearing in mind the age and level of arrears. I am sorry that I someone has complained about me, and will take on board the comments for future'

102. In the late spring or early summer of 2016, Michael Vellinga came to the respondent's Watford office from one of the European offices, to do some work within his speciality of 'Continuous Improvement'. His focus was on the entire UK business.

103. One aspect of that work was an issue with communications between departments within a group of accounts, including some of the claimant's accounts. Mr Vellinga was successful in smoothing over this issue.

104. Mr O'Hara did not agree with everything Mr Vellinga did, in part because he thought Mr Vellinga made recommendations without fully understanding the dynamic of the office. Mr Vellinga was an improvement expert, not a collections expert. However, Mr O'Hara did maintain a professional relationship with Mr Vellinga and did implement recommendations of his which he found useful. Of Mr Vellinga's action plan of 30-36 recommendations, the respondent took about 10 on board as action points.

105. On 20 June 2016, the claimant had a hospital appointment at 4.30pm and therefore needed to leave at 3.30pm. Therefore, she had arrived at work for 8.30pm. The claimant was not prevented from attending this appointment. (She says that she was made to feel that she was a nuisance.)

106. On 21 July 2016 Michael Vellinga wrote to David Wooldridge saying amongst other things that the claimant was doing both the Microsoft and NHS trust accounts at the same time. This he said was 'clearly an overload' and he did not understand why Mr O'Hara decided to have the claimant handle both and let her continue to struggle along with it. He also said that had been complaints about heated conversations by collectors and confusing/strong demanding payment emails. This he said was a coaching and training path that required leadership from Mr O'Hara.

107. Mr O'Hara was not copied into this email and there was not a discussion about the claimant's workload with him at the time. It was Mr Wooldridge who resisted it: he wrote back to Mr Vellinga by email on 3 August 2016 saying that he did not agree with the suggestion and did not agree that the claimant was – or someone of her experience would be - overloaded. Instead Mr Wooldridge suggested focussing on fixing a particular problem that was creating extra work for the claimant.

108. In July 2016 the claimant's KPI results were good; which is some further indication that she was not overloaded. She was dealing with the same workload as her predecessor in the role.

109. At some point however some of the claimant's accounts were re-allocated to Ms Lowry: these were the Construction Transportation Infrastructure ('CTI') accounts. Ms Lowry did not feel that it was the claimant's fault that these were allocated to her and she did not therefore say that it was the claimant's fault that she could not manage her workload in public or in team meetings. They came to Ms Lowry, she worked on them for a while and then Mr O'Hara took them off her and gave them to someone else but Ms Lowry did not know to whom.

110. By email dated 27 July 2016 a procurement apprentice for NHS Gloucestershire complained about the claimant. It appears that the claimant had refused a request to work through a number of leases in order to find serial numbers. Mr O'Hara seems to have taken the view that the request by the apprentice was unnecessary however he asked for the claimant's comments by email the following day and added,

'*This is now 4th complaint by customers that has been registered against you this year, and you must try to ensure that you are seen to be helpful on the phone, and not obstructive in any way, regardless of how unnecessary the request for information may seem*.'

111. The claimant replied that she was just trying to reduce the workload as she was having so many queries of this nature.

112. By email dated 7 September 2016 Michelle Carter wrote to Adrian Trombetta passing on to him a complaint from a client called Technogym. The complaint was that the claimant had spoken to a lady called Mitch at Technogym. Mitch was upset that the claimant had been rude and aggressive to her and although Mitch did not wish to get the claimant in trouble, she asked that the claimant would not speak her or use again the same tone when she called her. Ms Carter said Mitch tended to see the best in everyone and was extremely nice.

113. Mr O'Hara passed this complaint on to the claimant and asked whether she recalled it. The claimant did not recall it and asked for the debtor number which Mr O'Hara sent to her on 12 September.

114. By email dated 29 September 2016 the claimant wrote to Mr O'Hara making an emergency request for holiday from 12 to 14 October. She said that this was because her mother was going into hospital, and the claimant needed to take her as well as support her with her younger brother who was disabled.

115. Mr O'Hara replied on the same day he had referred this to David Wooldridge to decide because he would have to manage the department with 3 people away.

116. Mr O'Hara replied further on the same date Mr Wooldridge had approved the request although the department would be left short staffed so it was unlikely that the claimant's work would be covered.

117. On 6 October 2016 claimant attended her GP with a first complaint about nosebleeds. The GP referred her for blood tests, including a thyroid function test.

118. On 24 October 2016 the claimant was late for an appointment with her GP and therefore missed the appointment. However, she asked for the blood forms to be reprinted. The records show that she had the blood tests done on 30 December 2016 and the results were returned on 31 December.

119. On 27 October 2016 the claimant received a telephone call from a hospital to say that her brother was deteriorating. Her brother had sustained a brain injury and his condition was critical. Therefore, the claimant went to see him. In an email Mr O'Hara records that the claimant was very emotional and clearly not coping with the situation.

120. However, he also told the claimant that he could not continue to offer compassionate leave and she would need to use her holiday for any more days off to visit the hospital. The claimant decided that her sister would stay with their brother and therefore the claimant would continue working.

121. On 28 October 2016 the claimant requested to be allowed to go to a hospital appointment 2 November at 3pm. She forwarded the email exchange with the clinic to Mr O'Hara, thereby showing that she had initially requested an appointment after 6 pm. After the email exchanges in which Mr O'Hara (properly) raised and discussed concerns about the claimant's pre-existing commitments on that day, and the claimant came back to him with alternative appointment times, Mr O'Hara agreed for the claimant to attend the appointment.

122. On 11 November 2016 the claimant's management review showed a '100% score' which is some further indication that the claimant was not 'clearly overloaded' and was managing her workload.

124. The claimant needed time off to 'recharge'. She therefore asked Mr O'Hara for a chance to go away for a week around 25 November 2016. Although the respondent's policy was to allow no more than two people in the team the away at one time and on 25 November already three people were to be away, Mr O'Hara allowed claimant's request.

125. On 15 November 2016 a customer raised a complaint that arose because of a 'data breach'.

126. By email dated 16 November 2016, Mr O'Hara wrote to HR:

'*Regrettably, I am considering the need for formal disciplinary action against Wendy (Verbal Warning?) there have been several instances of data leeks this year, with the latest incident being discussed in today's LRC. Relevant emails are attached, I have spoken to Wendy about this latest incident and advised that I am considering escalating further.'*

127. Mr O'Hara was considering disciplinary action because the respondent takes data leaks very seriously. This leak was reported to the Local Risk Committee which is a regular meeting of senior managers to discuss risk issues. However, by email dated 17 November 2016 Chloe Read wrote to the claimant saying,

'*Wendy*

Following on from our meeting this afternoon regarding the email data breach, taken into account the mitigating circumstances of your brother being in hospital I can confirm that the company has decided to take no formal disciplinary action. However, as it is the third occasion this has happened this year, we will have no option but to move forward with formal disciplinary action if this was to happen again.'

128 On 6 December 2016 Mr O'Hara wrote to Ms Read saying that he had had to speak to the claimant. She had now received 4 complaints from customers about her telephone manner; the last two complaints had been received in the last 6 weeks. The claimant disputed the complaints and without telephone recording Mr O'Hara had no way of confirming either account. He had discussed the need for training with her and had identified a source of training.

129 The respondent's Christmas party was booked for 8 December 2016. The claimant was due to work 9am to 5pm that day. Other female staff members invited her to join them getting ready for the party at 4pm.

130. On 7 December Mr O'Hara had a meeting with the C&R team and told them that unless there was a company-wide agreement that everyone could leave early for the party, then each member of the team should work their normal hours. Those who worked until 4pm usually could go at that time, but those who worked until 5pm usually should work until 5pm. He wanted to ensure that there were sufficient numbers of staff to cover the phones, since customers had not been told that there would be early closure that day.

131. On 7 December after Mr O'Hara had left at his usual time of 4pm, the claimant spoke to Mr Wooldridge about leaving early on 8 December. He did not tell her that there was a company-wide concession to allow staff to leave early for the party: there was no such concession.

132. The claimant telephoned Mr O'Hara on 7 December to ask if it would be acceptable for her to leave early on the evening of the party, but he reasserted that her hours were from 9am-5pm. The claimant did not mention to Mr O'Hara that she had spoken to Mr Wooldridge about leaving early. Mr O'Hara felt frustrated because he did not see why the claimant could not have asked him while he was at work. She waited, he thought, until he was in his own time and then 'phoned him within an hour of his leaving. It was not a conversation he wanted to have in his own time. Mr O'Hara has a medical condition that means he cannot shout. He did not shout. He says that the claimant was argumentative and raised her voice. We think it likely therefore that even if he did not shout, he probably did allow his annoyance to show in the way he spoke to her and probably raised his voice in order to be heard.

133. On 8 December the claimant was sitting at her desk after 4pm when Mr Wooldridge said to her something along the lines of, 'surprised you have not gone yet.' The claimant replied that Mr O'Hara said she could not leave early. Mr Wooldridge is likely to have replied something along the lines of, 'fair enough'.

134. At 4.45 pm on the same day Russ Diggins of Technogym telephoned Michele Carter and complained that the claimant had 'been screaming' at the Technogym accounts department. When the accounts department asked the claimant to contact Ms Carter, the claimant refused and continued to '*shout and scream'* at them. The call was passed to Russ Diggins who calmed the claimant down and told her to contact Ms Carter which the claimant then did. Technogym are a prompt payer and an important vendor for the respondent.

135. We, with Mr Wooldridge, doubt whether the claimant was actually 'shouting and screaming', because this would have been heard and commented on in the C&R office. However, the words used are an indicator that the claimant was speaking unprofessionally and emotively and that this upset the person from Technogym accounts department.

136. On Friday 9 December 2016 a difficult meeting took place between Mr O'Hara and the claimant. The claimant was upset about the Christmas party and thought Mr O'Hara had been unreasonable in refusing to let her leave early. She told Mr O'Hara about her conversation with Mr Wooldridge. Mr O'Hara felt frustrated by this: he felt the claimant had been asking people about the issue until she got the answer she wanted to hear and was trying to cause problems. It was not put to him that he actually said this, but if he did it was because he thought she had done so.

137. Mr O'Hara raised with the claimant 4 instances of customer/vendor complaints that year. He said that as a result HR had agreed a budget for the claimant to attend 'effective collections communications' training in March 2017. He stressed to her that the respondent did not wish to see further complaints received, otherwise it would have to consider formal improvement/disciplinary procedures.

138. Mr O'Hara may have discussed with the claimant whether there were any factors contributing to the complaints although if he did this was not best forum for that enquiry given the atmosphere of the meeting. Each was frustrated with the other. Both Mr O'Hara and the claimant were upset from the outset of this meeting. We do not think it likely that his email written shortly after the meeting conveys the real flavour of their discussion.

139. He went on to discuss team working: the negative perception that her colleagues in the Risk Department and other departments had of the claimant. He said that he advised her that this must change, and she must consider the impact of her actions on others.

140. Mr O'Hara did tell the claimant that she was not a team player in terms, however we do not find that he said in terms, 'no-one likes you'. We think it likely that he used some euphemism such as that the team had a negative perception of her and that led the claimant to leave the discussion with the impression that he had told her that no-one liked her.

141. He had in mind that the claimant did not help others with their accounts, that she wanted to leave early and tended to arrive late and be late back from lunch, as well as her general timekeeping. He had given the claimant examples of her lack of team working. The claimant agreed with Mr O'Hara about this at the time. She and Mr

O'Hara had discussed the subject before, and the issue of team working had appeared in her appraisals.

142. We find that Mr O'Hara was upset that the claimant had approached Mr Wooldridge about leaving early for the Christmas party. Whether or not he used the exact words, 'you made a fool of yourself with Mr Wooldridge', he said something to the claimant that conveyed his feeling that he had been undermined by that approach and that conveyed to the claimant the impression that her approach had been foolish.

143. The claimant raised the issue of how much time off she was given over her brother's illness compared to others. In response Mr O'Hara compared her situation to those of other people's bereavements, which he thought were worse because the claimant's brother did recover.

144. They also discussed the fact that Mr O'Hara remained the claimant's line manager and day to day matters - such as the claimant wishing to leave early - must be discussed with him in the first instance and not with senior management without his knowledge. If she disagreed with any decision of Mr O'Hara's then the claimant was free to escalate matters to senior management or the HR department.

145. We do not find that Mr O'Hara actually shouted at the claimant in this meeting. We note that he cannot shout, but do not think that completely answers the point, given that witnesses before us often raise allegations of 'shouting' which on careful probing turn out to be allegations of raising of tone or voice. We think it likely that given his own upset and desire to be heard, Mr O'Hara did raise his voice during this meeting.

146. The claimant's witness statement places her allegation that Mr O'Hara said, 'I don't have to like you' and 'I hate my boss' at this meeting although her list of issues seems to place it at the subsequent 20 January meeting. As Mr O'Hara says, the context is important, especially where he lacks a clear recollection of the event. We accept his evidence that if he said this or something similar, it was probably in an attempt to place their relationship in its professional context and to separate it from personal feelings.

147. The claimant felt upset after the meeting. She went to HR and saw Natalie Homan. Ms Homan told her to speak to Mr O'Hara and see if she could take a half day off. There is no indication that Mr O'Hara knew about this conversation. As result the claimant sent an email to Mr O'Hara that she did not feel well enough to work that day. Mr. O'Hara then asked the claimant to speak to him in private. He raised his voice, as did the claimant. He wanted to discourage the claimant from going home. He was frustrated by her desire to go home; it was clear that she was not unwell but was 'put out' by their earlier conversation. He said she should take an early lunch, calm down and get on with her work. Ms Homan heard the raised voices and went into the room to say that she could hear them. She said that this needed to stop.

148. The claimant went home for the rest of the day. No absence was recorded for her for this part day.

149. Over the weekend, on 11 December the claimant sent a lengthy email to Tanya Lyall setting out her perception of the events from 7-9 December. Although the email

contained several complaints about Mr O'Hara it did not complain that he made it difficult for her to attend hospital appointments.

150. Ms Lyall was struck that the claimant had been so upset as to write over the weekend. She therefore arranged to see the claimant on Monday 12 December.

151. Initially Ms Lyall attempted to have a joint meeting with the claimant and Mr O'Hara present. However, this was awkward and stilted and so Ms Lyall asked Mr O'Hara to leave. On her own with the claimant, Ms Lyall could see that she was very upset. She told her that she was taking the situation seriously and asked if the claimant wanted her email of 11 December treated as a formal grievance. However, the claimant wanted it treated informally.

152. At that time and hearing only the claimant's perceptions, Ms Lyall became very engaged with the claimant's account. She tried also to help the claimant to see how things might look to Mr O'Hara. She said, 'he is what he is' and 'you know what he is like' because as she knew, Mr O'Hara could be very 'black and white' in his approach. He would take the view that if one person was allowed to leave early, everyone had to. She asked the claimant what she could do to support her and the claimant asked to report to another manager. However, there was only one manager in C&R, so Ms Lyall was unable to accommodate this request. It would not have been practical for the claimant to report to Mr Wooldridge.

153. Ms Lyall told the claimant that she could go home if she felt too upset to work that day, although she also said that she could go back to her desk if she felt that would help her to recover from the incident. By the end of the meeting that claimant was more cheerful and able to laugh. After the meeting the claimant told Natalie Homan how well Ms Lyall had managed the situation.

154. After the meeting the claimant and Mr O'Hara had a discussion about the way forward. We accept Mr O'Hara's evidence that he did not say, 'you have made it legal': we think that 'rebuff' is unlikely given that on the claimant's own account he and she were attempting to find a way to move forward in the new year. He did try to stress that their relationship was professional. It is unclear exactly when this meeting took place: it may have been the same meeting as that referred to on 20 December below.

155. Meanwhile on 12 December 2016 HR booked a place for the claimant on a course called 'effective collections communication' at a cost of £440 to be held on 2 March 2016.

156. On 12 December 2016 Michelle Carter sent an email to Mr O'Hara asking him to log the verbal complaint from Technogym. Mr O' Hara promised to look into it and forwarded the email exchange to Tanya Lyall.

157. Mr O' Hara had checked the system notes but although the claimant had recorded the fact of the conversation, she had not recorded any confrontation. The respondent does not have call recording for technical reasons. Mr O'Hara noted to Ms Lyall that this was now the fifth complaint received involving the claimant.

158. On 15 December 2016 Ms Lyall forwarded the claimant's 11 December email to Mr Wooldridge. She said, amongst other things, in her covering email,

'*I am treating this as an informal complaint. Clearly, I have to treat this seriously as there are some serious accusations here about the way she is treated and if this continues she could potentially have a case for bullying and harassment or even constructive dismissal*.'

159. The claimant has placed emphasis on this email during the course of this hearing. However, we do not read it as accepting the truth or likelihood of the claimant's allegations, but as a warning of the seriousness and possible outcome if the accusations proved correct. The words, 'accusations' and 'potentially' show us that the conclusions are conditional on the accusations being proved correct.

160. On about 20 December 2016 Mr O'Hara spoke to the claimant and apologised to her if during any conversation she had felt that he was disrespectful or aggressive towards her but anything he said had not been intended that way. She told him that she felt isolated from the team and admitted being partly to blame for this. They agreed that any matters Mr O'Hara decided were 'firstly based on the overall team, and not individuals' although he tried to accommodate all members of the team fairly. The claimant recognised that she had work to do to re-integrate herself with the team. They made a commitment to move forward and to put the matter behind them.

161. Mr O'Hara told Ms Lyall of this conversation in an email dated 20 December.

162. On 21 December Mr Wooldridge noted to Mr O'Hara and Ms Lyall that the call with Technogym had taken place at 4.45 on the day of the Christmas party: so they knew that the claimant was, 'not in a good place at the time.' He and Ms Lyall had therefore decided not to make a 'big deal' put of the matter. Mr Wooldridge considered the claimant to be good on the telephone from what he had overheard. The claimant had been adamant that she had never shouted at anyone, although she had accepted that her communication must have been lacking in some way for Technogym to complain. Mr Wooldridge was hopeful that there would not be a repetition and had told the claimant to ensure that there would not be.

163. On 22 December 2016 a Mr Thompson of 'Let's Connect' contacted Pat O'Cavanagh. Mr Thompson had received a complaint from National Grid about the way the respondent was handling their account. Part of that complaint was about the way they were spoken to on calls.

164. The National Grid account was one of the claimant's accounts. The records showed that the claimant had made a relevant call on 22 December 2016, the day after Mr Wooldridge had spoken to her. The subject of the call was recorded on the respondent's system but there was no record of a confrontation.

165. Mr O'Hara thought, given the events around the Christmas party, the 9 December meeting and the complaint by the claimant to Ms Lyall that it was best if the latest complaint was dealt with by someone other than himself. He therefore forwarded it to Ms Lyall and Mr Wooldridge. He did not therefore have a separate meeting with the claimant to establish the facts.

166. Mr Wooldridge thought that HR should advise on the matter, but his 'inclination' on 28 December 2016 was for the claimant to be given a formal warning.

167. Ms Chloe Read wrote by email to Mr O'Hara on 20 January 2017: she had been discussing with Mr Wooldridge the complaints about the claimant and, so as to get, '*our ducks in a row'* for a forthcoming meeting, she asked Mr O'Hara for details of the other complaints prior to the Technogym complaint. By the expression, 'ducks in a row' she says that she meant that she wanted to have all the information and evidence possible, that the respondent had a timeline and to make sure that everyone involved had the same information. We do not consider that the expression 'ducks in a row' sheds light on whether the respondent had made up its mind in advance of the meeting: we look to other evidence to inform us about that.

168. Ms Read made the decision to call the claimant to a disciplinary meeting. She made this decision once she had all the information about the complaints and after discussion with Mr Wooldridge and probably also with Mr O'Hara. The reason why she did so was because she was concerned about the complaints received about the claimant.

169. At a team meeting (i.e. a 'huddle' on the open floor in the open office) on 20 January 2017, the claimant upset several team members with comments that while she had been away, her work had not been covered properly and people had not been doing her work. She said that her work had been given back to her and the work was not done properly. This upset Angela Lowry. Mr O' Hara thought that this was an inappropriate forum to make such remarks and that if there was some disagreement between the team it should have been raised in private not in the open floor space. He said that to the claimant and Ms Lowry later in a private room. If he appeared to the claimant to 'blank' her comments when she made them, this was his reason. Ms Lowry did not say that it was the claimant's fault that she (Ms Lowry) could not manage her workload because she was managing the claimant's accounts. Ms Lowry was tending to be emotional at this meeting because she was concerned about a private family matter and not concerned about the accounts.

170. On 23 January 2017 Mr O'Hara gave the claimant a letter inviting her to a formal meeting on Tuesday 24 January 2017 under the respondent's disciplinary procedure. The letter told the claimant of her right to be accompanied.

171 When she received the letter, the claimant was very distressed. Ms Louise Smith saw that distress and agreed to go with her to the disciplinary meeting.

172. By email dated 23 January 2017 at 13.45 the claimant asked Ms Read to provide a copy of the customer complaints registered against her. She added that although she knew that the company policy was for 24 hours' notice of the meeting, she requested a postponement to allow her to review the notes and prepare.

173. Ms Read replied at 14.00 saying that she had already emailed (at 13.47) to say that the paperwork was ready for collection. She said the meeting would go ahead because 24 hours was long enough to look over the paperwork. This paperwork was limited to the emails of and about complaints from customers that we have seen in the

bundle. The respondent did not contact the customers themselves to interview them about what had happened because of the risk of commercial damage to the relationships.

174. The meeting took place on 24 January 2017. It was attended by Chloe Read of HR, Mr Wooldridge, the claimant and Ms Smith.

175. The claimant did not make a request to access the respondent's company systems ('ILS'). She was not suspended from work and had access to the system herself. Ms Read did not herself understand ILS or how it worked. She confirmed this at the hearing.

176. Ms Read was aware that the claimant had an autoimmune condition, through Natalie Homan.

177. Before the meeting Ms Read and Mr Wooldridge discussed the case at length. They were both of the view that, unless the claimant produced some new evidence or mitigation then the evidence led them to think a formal warning was the appropriate sanction. They both confirmed to us that they had formed a view of the likely result before the meeting, but this was provisional on the situation remaining as it appeared.

178. The respondent very rarely receives complaints and seldom conducts disciplinary hearings. As a result, Mr Wooldridge had not conducted such a hearing before and lacked confidence. This problem was exacerbated by the fact that he liked the claimant.

179. Therefore, Ms Read took over the running of the meeting. As a result, she was not able to take notes.

180. We find on balance that the respondent's main concern at the meeting was the latest complaint from Let's Connect which had not previously been discussed with the claimant. The previous complaints, which had been discussed with her, formed the background. The meeting lasted about 30 minutes.

181. The claimant said that she wanted to look at the respondent's systems to see if she could find out more information about why the customers had complained because she did not recognise having done anything that would justify complaint. Ms Read told her that she had had an opportunity to check these things before the meeting.

182. In general, the claimant's approach in the hearing was that it was the nature of the role that there would be complaints. However, Mr Wooldridge thought that if that were the case, then the claimant's colleagues would also be receiving complaints but they were not.

183. Insofar as it is important, it seems likely that the claimant did experience a nosebleed during the meeting, but we find that it was so mild that Ms Read and Mr Wooldridge did not notice or have forgotten it.

184. There was a discussion of the claimant's development needs and training. Ms Read thought that the course already booked was an appropriate course of action because it was the earliest course available and in the meantime the claimant's line manager and Mr Wooldridge were aware of the issue. Any informal support could be given within the C&R department pending the course.

185. Ms Read had a real sympathy for the claimant. She had noticed that the claimant's body language was always anxious and knew that she had had some personal problems e.g. with her brother being unwell. She had learnt from Ms Lyall about the claimant's deteriorating relationship with Mr O'Hara but did not consider that had an effect on the claimant's performance, because of the timeline of complaints. Despite her anxious demeanour, in the hearing the claimant was composed and ready to defend herself.

186. Ms Read and Mr Wooldridge were not influenced however by the issue with Mr O'Hara in deciding to proceed with disciplinary action against the claimant.

187. Given the nature of the complaints we find that it was inevitable that the respondent's reputation was discussed at the meeting, as Ms Read says. It is inherent in the nature of the complaints that they risked damage to the respondent's reputation.

188. At the end of the hearing Ms Read felt independently that the claimant had not put forward any defence or mitigation that changed their perception of the situation. Ms Read did not adjourn to discuss the matter with Mr Wooldridge. We consider that she continued perhaps out of inexperience but without regard to Mr Wooldridge. However, although we think he would have stopped her had he felt the need to discuss matters before proceeding we also doubt that he would have had time to do this in the circumstances. The fact that he did not urgently stop her is an indication that he did in fact agree. They both knew that, in the absence of any evidence from the claimant to change their view of the situation, their expected outcome was a written warning. Ms Read took the actual decision to issue a written warning but Mr Wooldridge concurred with it.

189. They issued that warning because they hoped that the claimant would improve her performance in response to it. They were worried about the potential for damage to the respondent's reputation if the claimant continued to cause customers to complain. Although Mr Wooldridge was sceptical about whether the claimant had really 'screamed' or 'shouted', the fact was that the respondent had now received 6 complaints from customers all about the claimant in circumstances where the respondent rarely received complaints about staff. That showed that there was real evidence of a problem with the claimant's performance and telephone manner. The claimant had not responded to informal attempts to improve her performance. It was important to move to a more formal level of discipline to encourage her to improve if that lay within her power.

190. The respondent did not check the ILS system to investigate the complaints: it was not a system that would have yielded information about the manner of the telephone calls. They also took the view that the claimant could have checked the system herself in the time available had she thought there was likely to be evidence on the system.

191. On 25 January 2017 the claimant was absent from work because she was ill. She did not return to work. Her GP diagnosed a 'stress related problem.'

192. By letter dated 27 January 2017 Ms Read confirmed the outcome of the meeting to the claimant. The claimant was given a written warning for misconduct which would stay live on her file for 12 months and then automatically expire, however any further act of misconduct while the warning was live on the file could result in a further final written warning. The claimant was reminded of the training in March and told of her right of appeal within 5 days.

193. Ms Read extended the time to appeal until the claimant returned to work in view of the claimant's ill health.

194. The claimant submitted a 10-page appeal on 27 February 2017 (although she had not in fact returned to work).

195. The appeal said that the claimant believed that the decision to take disciplinary action against her was as a direct result of the email she sent on 11 December 2016 to Tanya Lyall complaining about Mr O'Hara.

196. Also, on 27 February 2017 the claimant submitted a 9-page grievance to Duncan Hullis.

197. On receipt of these documents the respondent set about identifying a suitable person to deal with the grievance and appeal. Mr Gorman was head of HR in Ireland and as such had the necessary independence and experience. However, Mr Gorman was already very busy. He returned from annual leave shortly before 3 April 2017 but because of commitments to the annual process of finalising appraisals for the entire company as well as the related pay reviews and bonus awards, he was unable quickly to deal with the very complex issues raised by the claimant.

198. Mr Gorman was sent both the grievance and the appeal together with an 'addendum' to those documents. He read through and cross referenced the documents. He was also supplied with lengthy documentation by the respondent, including witness statements. He worked through the allegations made and decided that there was no evidence to support the allegation that the disciplinary process was instigated by Mr O'Hara or was connected at all to the allegations of bullying that the claimant raised against him. He considered that the disciplinary process was set in train solely because of the complaints from customers. He thought that 6 separate complaints were an unacceptable level of complaints in relation to one staff member. He thought that the claimant had been clearly warned of the risk of formal improvement/disciplinary procedures. He thought that there were sufficient grounds for the respondent to invoke its disciplinary procedures and that a written warning was an appropriate level of sanction. These were the 'reason why', he did not support the grievance and rejected the appeal. He recommended that the claimant attend the effective collections communications training course.

199. Mr Gorman notified the claimant of his decisions on 8 June 2017.

200. On 4 July 2017 the claimant began without prejudice discussions via her solicitor. [We have heard nothing about the content of these discussions.]

201. The claimant appealed Mr Gorman's grievance outcome by an 8-page letter dated 27 July 2017. An appeal committed was set up consisting of Martin Frank and Vijay Shah who were independent of the HR professionals who were the subject of the grievance. Mr Hullis selected his panel members for their objectivity and analytical skills.

202. Both Mr Frank and Mr Shah had pre-existing workloads. They invested time in producing their report over the summer holiday period. It is dated 12 September 2017. They then discussed it with Mr Hullis for an hour and a half while he probed their findings carefully. Mr Shah and Mr Frank agreed with Mr Gorman's decision and recommended that the appeal was rejected. The final decision was for Mr Hullis as managing director.

203. Mr Shah and Mr Frank considered, on the evidence of the C&R team that Mr O'Hara's management style was 'robust' but found no evidence of bullying. They found that he did not at any time deny the claimant's requests to attend hospital appointments or grant compassionate leave. They found no evidence that Mr O'Hara had contacted the GP's surgery. They thought that the disciplinary action against the claimant was reasonable and found no evidence of an involvement by Mr O'Hara in the decision to commence the process. They thought that 6 complaints showed an unacceptable pattern of behaviour, especially given that no other collector had received a single complaint. They did not accept that the disciplinary proceedings breached the ACAS Code. They considered that the claimant's assertions that the complaints were the result of systemic failures were contradicted by the absence of complaints against others. Although they had seen statements from colleagues confirming that they had seen the claimant upset after an exchange with Mr O'Hara, they had no witness evidence to the actual exchanges between them. They considered that HR did offer the claimant support and did all that could reasonable have been expected. They found no evidence to support the claimant's assertions that HR had not been impartial.

204. These findings are consistent with the evidence that we have heard and the conclusions we have reached independently. We consider that the report shows that the reason why the appeal was rejected was for the reasons set out within the report. Mr Hullis accepted and endorsed those reasons and the report was sent out on 22 September.

205. Meanwhile, on 9 August 2017 the respondent applied for PHI benefits on behalf of the claimant.

206. By letter dated 22 September 2017 Mr Hullis rejected the claimant's grievance appeal.

207. We are satisfied on the email evidence that the claimant received this document on 29 September as she says.

208. The claimant received notification of the rejection of her PHI claim on or before 31 October 2017.

209. On 2 November 2017, the claimant resigned.

210. On these facts we find that the claimant resigned several weeks after receiving the 29 September letter and not in response to it. On the balance of probability, the claimant resigned in response to the refusal of her PHI claim.

Analysis

211. We have found it helpful to analyse this case using the structure and questions set out in the list of issues. We set out the issues in italics for ease of reference.

Constructive unfair dismissal

5.*1 Did the respondent breach the term of mutual trust and confidence in the contract of employment? The conduct relied upon by the claimant is that set out paragraphs 7-11 of her particulars of claim. The respondent accepts that if there was a breach of the term of mutual trust and confidence that constituted a repudiatory breach.*

The claimant alleges that:

7.1 Mr O'Hara unreasonably criticised the claimant in relation to inaccurate information Angela Lowry gave him about her potential operation, saying,

'I don't want to know' and 'I'm not getting involved';

212. We have accepted Ms Lowry's evidence that she did ask the claimant for a loan, but Mr O'Hara did not know about it. We have found that if Mr O'Hara did say the words quoted that is likely to have been because he did not want to be involved in a personal situation between two members of staff. As manager of a department with work to do he had reasonable and proper cause for taking that view and expressing it.

7.2. In February 2016 Mr O'Hara was unreasonably resistant and obstructive to the claimant swapping hours with colleagues to have necessary blood tests.

213. We have worked carefully through the claimant's requests to swap hours. On 7 January 2016 the claimant asked to swap hours on the following day: she did so as she acknowledged, at short notice. This was to go with her daughter to a hospital appointment, so it was not for the claimant's own blood test.

214. The incident in February was a request made on 11 February 2016 to swap hours on the following day, so also on very short notice. Mr O'Hara's response makes it clear that he was annoyed because of the late notice and because the request was made so late that he had no choice in the matter.

215. Therefore, there was one incident. Mr O'Hara was not unreasonably resistant to the swapping of hours (which he allowed) but reasonably annoyed at the repeated late notice which put him in a position in which he had no choice in the matter.

7.3 On several occasions Mr O'Hara unreasonably accused the claimant of using hospital appointments or blood tests as an excuse to go home early. He said or implied that the claimant was lying about appointments.

216. Mr. O'Hara did not make this accusation as a matter of fact, although if we were wrong about that, the evidence suggests that he would have had some evidence for making the suggestion. There are occasions when the claimant has asked to leave for a blood test, but the GP's notes do not corroborate her request.

7.4 Mr O'Hara contacted the claimant's GP surgery to check its opening hours.

217. Mr O'Hara did not contact the surgery to check its opening hours.

7.5 Between April and August 2016 Mr O'Hara repeatedly told the claimant that he was her boss (and not Mr Vellinga);

218. Mr O'Hara accepted that this was possible, and we have found that he did say it. We think it is self-evidently true and is equally self-evidently an assertion of his authority in circumstances where he felt that authority challenged and undermined. Given what we have heard of Mr Vellinga and the claimant's tendency to seek support against her line manager, we think he had reasonable and proper cause to reassert that he was the claimant's manager.

7.6.1 Mr. O'Hara unreasonably resisted Mr Vellinga's recommendation that some of the claimant's accounts be transferred;

219. The respondent did not take on board all or indeed many of Mr Vellinga's recommendations. As Mr O'Hara knew, the claimant's predecessor had coped with her workload. (Her successor did so as well, although he would not have known this at the relevant time.) Mr O'Hara (and indeed Mr Wooldridge who was the person who resisted the recommendation) believed on reasonable grounds that the claimant was not in fact overloaded. That being the case either manager had reasonable and proper cause for not implementing the recommendation.

7.6.2 Mr O'Hara accused the claimant of going behind his back and of trying to undermine his authority, in relation to Mr Vellinga;

220. We think this relates to Mr Wooldridge and indeed it was corrected by the parties in submissions. We think Mr O'Hara felt that the claimant had 'gone behind his back' to Mr Wooldridge, because she had done so in that she had spoken to Mr Wooldridge about leaving early for the Christmas party after Mr O'Hara had told her that she could not. If he said this, he had reasonable and proper cause for doing so because it appeared to him from what she said, that that is what she had done.

7.6.3 Mr O'Hara said that the claimant was not a team player;

221. Mr O'Hara did say this at the meeting on 9 December. He had reasonable and proper cause for saying it, given his reasonable perception that the claimant did not help others and given her timekeeping issues and tendency to arrive late and leave early.

7.6.4 Angela Lowry said that it was the claimant's fault that Ms Lowry could not cope with her workload as she was managing the claimant's accounts;

222. Angela Lowry did not say this.

7.6.5 Mr O'Hara made no attempt to protect the claimant from this unfair accusation and allowed Ms Lowry to continue to blame the claimant and allowed Miss Lowry to continue to blame her in public and in team - meetings;

223. Because Ms Lowry did not say what is alleged in issue 7.6.4 it follows that Mr O'Hara did not fail to protect the claimant.

7.7 Mr O'Hara allowed the claimant to be overloaded again by receiving back her accounts from Ms Lowry;

224. We have found as a fact that the claimant was not overloaded.

7.8.1 By email dated 4 April 2016 Mr O'Hara unreasonably described the claimant having considerable time off at short notice for GP and hospital appointments;

225. Mr O'Hara's email is factually incorrect in that it says that she took *time off*, although the claimant did not in fact take *time off* for GP and hospital appointments. Instead she swapped shifts. We note however that the claimant's own email to her GP uses exactly the same terminology, in which case it cannot be said to be unreasonable. In both cases it appears to be a sensible form of shorthand to describe the situation. No issue was taken in cross examination with the word, 'considerable' and in any event we think that word fairly reflects the situation.

7.8.2 Mr O'Hara requested a doctor's letter to establish what was wrong with the claimant.

226. Mr O'Hara requested the doctor's letter for the reasons we have set out in our findings of fact. He was concerned that the claimant was asking to leave work with some frequency and without giving much notice, and he had the impression that a number of the requests were for a Friday. He was concerned about the effect of this on the team. We see a degree of scepticism in Mr O'Hara's thinking about the requests to leave early and on the evidence before him, we consider that such scepticism was reasonable. He was the claimant's line manager and as such had reasonable and proper cause to double check that she had good reason for her requests.

7.8.3 Mr O'Hara referred to the claimant as a 'wrong 'un.'

227. We find that Mr O'Hara did not use this expression.

7.9 On 9 December 2016 Mr O'Hara unreasonably criticised the claimant for her absence in relation to her brother's illness;

228. Our findings show that what Mr O'Hara in fact said was a reasonable response to a complaint by the claimant about the amount of time she was given off compared with others when her brother was ill. Mr O'Hara said in reply that her situation was

different in that her brother did recover while others suffered bereavements. We think he had reasonable and proper cause for responding as he did.

7.10 By email dated 16 November 2016 Mr O'Hara told HR that he was considering disciplinary action in relation to the claimant for data leaks;

229. Mr O'Hara had reasonable and proper cause for considering disciplinary action in this context. In general, data leaks were taken seriously by the respondent and the one in November 2016 had been reported to the Local Risk Committee. It was appropriate to consider disciplinary action for such a potentially serious matter, even though the claimant was treated leniently on this occasion.

7.11.1 Despite an agreed concession that staff leave early on the evening of the Christmas party on 8 December 2016 Mr O'Hara told his team to work until 5pm;

230. There was not an agreed concession that staff could leave early, and in any event, Mr O'Hara was reasonable in insisting that the C&R team work to their usual time. Customers had not been told that the respondent would close early that day and he had to ensure that the telephones were covered.

7.11.2 When the claimant asked Mr O'Hara for approval to leave early on 8 December 2016, he shouted at her, asked why she had not asked before he left the office and then cut her off before she could explain.

231. We have not found that Mr O'Hara actually shouted at the claimant (this was not put to him) however we consider that he probably showed his annoyance and raised his voice: because she raised her voice with him and was argumentative. He had reason to feel annoyance given that she could have raised the issue with him before he left, and she had called him in his 'own time'.

7.12 At a meeting on 9 December 2016 Mr O'Hara told the claimant that he wanted her to attend a communication training course, accused her of going behind his back and making a fool of herself with Mr Wooldridge, shouted at her, and made references to her time off for blood tests, accused her of not being a team player and said no one liked her. He said that other people in the office had worse problems than her and that her brother being in hospital was nothing compared with someone suffering three deaths.

232. Mr O'Hara told the claimant that he wanted her to go on a communications course because there had been a number of complaints from different customers complaining about her telephone manner. The claimant's witness statement did not say that Mr O'Hara referred to her having time off for blood tests so we leave this to one side. Mr O'Hara did say that the claimant was not a team player for the reasons we have already set out above. He did not say that no-one liked her but did say that the team had a negative perception of her because they had that perception. They had that perception because the claimant did not help others and had noticeable time keeping failings. He compared her brother's illness to the bereavements of others because she raised the issue herself and complained about the time off she had compared to others. Mr O'Hara therefore had reasonable and proper cause for saying what he did.

233. However, we consider that the claimant's concern is not only with what he said but the way he said it. Mr O' Hara was not dealing with his stressed member of staff with the degree of calm, sensitivity and maturity that the claimant wanted and expected. We consider that he lacked accomplishment and control in his management style.

7.13.1 Mr. O'Hara recorded claimant's absence on the afternoon of 9 December 2016 inaccurately and deducted an incentive/holiday entitlement;

234. No absence was recorded for the claimant at all on 9 December 2016.

7.13.2 On 9 December 2016 Mr O'Hara unreasonably sought to prevent the claimant from going home and shouted at her.

235. Mr O' Hara did not shout but raised his voice. He did not want the claimant to go home in the context that he did not know that going home had been discussed with HR. It was not unreasonable in the circumstances for a manager to try to encourage a member of staff who was upset but not ill to stay at work. We consider that his management style was lacking in that he should not have raised his voice.

7.14 At a meeting with Tanya Lyall of HR on 12 December 2016 Ms Lyall failed to support the claimant and did not arrange for the claimant to be managed by someone other than Mr O'Hara;

236. Our findings of fact show that Ms Lyall was supportive of the claimant at this meeting. When it proved difficult to have a meeting with both the claimant and Mr O'Hara, it was Mr O'Hara who was sent away, not the claimant. Ms Lyall was sensitive to the claimant's upset, took the situation seriously and explored treating the complaint as a formal grievance. She engaged with the claimant's account, tried to help the claimant to see the other side too, asked the claimant what she could do to support her and allowed her to go home. The claimant herself told Ms Homan how well Ms Lyall managed the situation.

237. Ms Lyall could not however arrange for someone else to manage the claimant because Mr O'Hara was the only manager in the C&R department, so she had reasonable and proper cause for the approach she took.

7.15 appears to be narrative.

7.16 appears to be narrative.

7.17 Mr O'Hara forwarded a customer complaint dated 28 December 2016 to Ms Lyall and Mr Wooldridge asking for their thoughts about how to deal with 'this latest complaint' about the way the client was spoken to on calls.

238. Mr O'Hara was dealing with a situation in which the claimant had a background of making mistakes and also of customer complaints. It was not usual to receive so many complaints and therefore he had reasonable and proper cause to be concerned and to begin to think that some action should be taken. However, the relationship between himself and the claimant had been under strain and so he took a decision to

send the complaint to Tanya Lyall to consider. This was the action of a reasonable manager and he had good cause to do this.

7.18 Mr Wooldridge and HR built a case against the claimant to give her a warning without taking proper care or investigation;

239. The evidence shows that Mr Wooldridge and HR were not 'building a case' but genuinely seeking evidence. Had they been 'building a case' they would not have started by trying to solve the problem with training; they would not have so easily made allowances for the claimant in relation to the complaint from 8 December and Mr Wooldridge might not have let that incident go with an informal verbal warning. Ms Read's 'ducks in a row' email of 20 January shows that she was making sure that all was appropriately gathered together. She asked Mr O'Hara to check the notes of the conversation on the system (which he did). The emails about the complaints were gathered together. The respondent took a decision that it was not appropriate to contact the customers and vendors: those individuals already took the view that they had received poor treatment from the respondent and the respondent had reasonable and proper cause for wishing not to exacerbate that. The respondent took the view that 6 complaints amounted to strong evidence against the claimant. We consider that they had good reason for that given that complaints against C&R staff are very rare and these complaints were from unconnected individuals. That being the case it was a reasonable approach to set up a meeting with the claimant to see what she said about the matter: whether there was a defence or mitigation.

7.19 appears to be narrative, is out of chronological order here, and is the same as 7.24.

7.20 On 12 December 2016 although Ms Lyall told the claimant that others had witnessed Mr O'Hara's behaviour and that it was unacceptable, she said that it would not be possible for the claimant to be managed by someone else. She said that the claimant should 'rise above it' and she would request a meeting with Mr O'Hara to discuss the claimant's working relationship with him.

240. We have already dealt with this allegation in part above, insofar as it raises a complaint about the claimant being managed by someone other than Mr O'Hara. It was not put to Ms Lyall that she said that the claimant should, 'rise above it' or that others had seen his behaviour and it was unacceptable (the claimant's own witness statement puts this latter allegation differently) , but it was put that she said, 'he is what he is' and 'you know what he is like.' Ms Lyall accepted that she might have said this, and we have found that she did. We find that in context these are the remarks of a manager trying to help the claimant see how Mr O'Hara might view the situation, i.e. that he would take the view that if one left early, all should be able to do so. We have not accepted the claimant's interpretation of this meeting.

7.21 In December 2016 Mr O'Hara told the claimant that by putting a complaint about him in writing she had, 'made it legal' and he said, 'I don't have to like you' and, 'you're not my friend'

241. Our findings of fact show that Mr O'Hara did not say that the claimant had, 'made it legal'. However he expressed the other remarks, they were in the context of attempting to put the relationship on a professional not personal footing. As the claimant's line manager, Mr O'Hara had reasonable and proper cause for doing this.

7.22 From 3 January 2017 Mr O'Hara ignored and excluded the claimant from his social engagement with the other team members;

242. This point was not distinctly put to Mr O'Hara: he was not asked whether he ignored and excluded the claimant from 3 January 2017. He did say however, and we accept that he included the claimant generally in office 'banter and chit chat' but sometimes she did not feel sociable and did not want to get involved. We are not able to find on that evidence that he ignored her and excluded her from 3 January 2017. We think it is more likely on the evidence we have that she withdrew herself and he did not intrude on her.

7.23 At a team meeting on 20 January 2017, Mr O'Hara completely blanked the claimant when she made suggestions and ignored her input.

243. Our findings show that the claimant raised criticism of her team members inappropriately at this meeting. We think that Mr O'Hara properly avoided being drawn by those remarks because he thought they should be raised privately.

7.24.1 On 23 January 2017 the respondent invited the claimant to a disciplinary hearing without giving her details of the allegations or the supporting documentation with the letter.

244. The details of the allegations and supporting documentation were given to the claimant in the pack which she collected from Ms Read on 23 January 2017. It is common ground that the pack contained the emails about the complaints which we have seen in our bundle. The claimant was therefore told of the case which she had to meet and the evidence against her before the hearing. It seems to us irrelevant that this was not done in or with the letter itself.

7.24.2 When the claimant asked Mr O'Hara for this information, he said that it had nothing to do with him and directed her to HR;

245. In saying this Mr O'Hara was simply stating the fact that the matter was not in his hands but was in HR's hands. He had properly distanced himself from it for the reasons we have already set out.

7.25 Chloe Read of HR gave the claimant insufficient time to prepare for her disciplinary hearing after supplying her with the supporting documentation;

246. The evidence consisted of a small number of emails evidencing the complaints. This was done to make sure that the claimant had all the information available to the decision makers. The claimant was already familiar with 5 out of the 6 of complaints. It was straightforward evidence which would not have taken the claimant long to absorb. She had access to the ILS system if she thought it helpful to explore it. The issues were simple: had the complaints been made, as a fact? If so, was there any explanation or mitigation? The respondent's own procedure allows for 24 hours to

prepare. The respondent adhered to its procedure in this respect. Where a case is simple there is real benefit in dealing with it quickly so as to reach a solution to any problem.

7.26 and 7.27 The supporting information only consisted of the email complaints and contained no further witness statements or investigation notes;

247. This is correct. No witness statements were taken: the respondent decided against contacting customers and vendors who had already had a bad experience. The respondent had reasonable and proper cause for this. It is a commercial organisation conducting the difficult work of pressing for payment. It had a commercial reputation to safeguard.

248. The respondent undertook little investigation apart from gathering the emails, because there was little to be done. Checks had been made of conversation notes at the time complaints came in, but the claimant had not recorded a note of any confrontation. There was no call recording.

7.28 Failed to use an informal process before calling the claimant to a disciplinary hearing;

249. The respondent did use an informal process before calling the claimant to a disciplinary hearing. Mr O'Hara wrote to the claimant on 27 July 2016. (The 17 November 2016 email from Chloe Read is not wholly relevant because it is about data leaks). Mr O'Hara spoke to the claimant a little more formally on 9 December 2016 when there were 4 complaints known about the claimant. Mr Wooldridge then spoke to the claimant informally on 21 December 2016 when there were 5 complaints known. However, the next day the claimant caused yet another complaint. The informal approach was used, but without success. The fact that this was not documented under the procedure does not reduce its value as an informal means of warning the claimant about her behaviour so that she could improve.

7.29 On 24 January 2017 Chloe Read and David Wooldridge conducted a disciplinary hearing which was unfair in that:

7.29.1 Ms Read chaired the hearing;

7.29.2 Ms Read failed to take minutes of the hearing;

7.29.3 The claimant did not have an opportunity to respond to each of the allegations;

7.29.4 Ms Read issued a formal warning without adjourning to confer with Mr Wooldridge

7.29.5 Ms Read said that she did not know how the respondent's ILS system worked;

7.29.6 Ms Read and Mr Wooldridge had made up their mind before the hearing.

7.30 appears to be narrative.

before we heard evidence from Ms Read the claimant identified the exact complaints made about the unfairness of the disciplinary hearing as follows:

1. The disciplinary investigation letter contained no supporting evidence and no investigation notes.
2. When the claimant collected supporting documents from HR that was limited to the emails now in the bundle. It did not contain investigation notes, statements, or supporting evidence that the complaints were genuine and had been vigorously investigated before the decision to start a formal disciplinary process.
3. Denying the claimant's request for additional time to do research.
4. Failing to investigate adequately or at all;
5. Failing to take minutes of the meeting;
6, Failing to record any action points, development needs, or timescales or details of required improvements;
7. Taking insufficient time at the hearing to explore the details of the complaints;
8. Refusing the claimant's request to address the complaints;
9. Ms Read said that she did not understand the ILS system;
10. Ms Read issued a warning at the meeting, without an adjournment to consult with Mr Wooldridge;
11. Giving the claimant a warning about reputational damage which had not been discussed at the meeting;
12. Scheduling the remedial action two months after the hearing;
13. Directing the meeting at issuing a sanction without considering the cause of any problems, or support that could be offered instead of a warning.

250. Miss Read did chair the hearing: this was because Mr Wooldridge proved unable to do so, due to inexperience and his own liking for the claimant. She was therefore unable to take notes because she could not 'chair' and write at the same time. The claimant did have an opportunity to respond to the allegations. The claimant had been sent the evidence; the hearing was an opportunity for her to put forward her response. Although anxious, she was calm and had prepared notes which she used (which we have not been shown.) Ms Read and Mr Wooldridge did not adjourn to consider the result because they had discussed in advance what they thought the outcome should be if they heard no new evidence or mitigation from the claimant. They had not finally made up their minds before the hearing: they had formed a provisional view which was open to change. Ms Read did not know how the ILS system worked and said so. It was not necessary for her -any more than it has been for us – to know how the system worked. The complaints were about the claimant's telephone manner and were self-explanatory. The warning does refer to 'reputational damage' and we have found that this was discussed at the meeting.

251. The training course was scheduled when it was because that was the earliest date it was available. The claimant was told clearly in the outcome letter that the warning would stay live on her file for 12 months: any further misconduct in that time might result in a final written warning. The claimant knew therefore what she had to do to improve, and the timescale.

252. The point about additional time for the hearing is dealt with above.

253. The respondent had already attempted an informal approach and it had already booked remedial training, so that if it were to consider other options, it would be considering options up the scale of severity.

7.31 The decision to issue a formal written warning was unfair in that:

7.31.1 There was inadequate evidence to conclude that there had been 6 serious complaints about claimant's telephone manner;

7.31.2 The respondent found that the claimant had caused reputational damage without having put that to her at the disciplinary hearing and without adequate evidence.

7.32 appears to be a repeat of 7.31

254. The 6 separate complaints were themselves strong evidence of the fact of complaints and that there was a problem with the claimant's telephone manner. We have found that reputational damage was inherent in the allegations and was discussed at the hearing.

8 The claimant agrees that this is narrative not a breach.

9. The respondent unreasonably delayed in responding to the claimant's grievance and appeal letters.

255. There was a delay in dealing with the claimant's grievance and appeal. However, each document from the claimant was lengthy and detailed. The respondent appointed Mr Gorman to deal with them: he had the necessary seniority, independence and experience to handle the grievance and appeal. Being senior however Mr Gorman was also busy, and the delay was caused by the pressure of his own already pressurised workload, the detail of the claimant's complaints and his own meticulous approach. We consider in the circumstances that the delay was not unreasonable.

10. Robert Gorman rejected the claimant's grievance and appeal without adequately dealing with details of either and reached conclusions which were not supported by the available facts;

256. Mr Gorman worked through the claimant's allegations in detail, considered the evidence and reached conclusions that were supported by the facts before him.

11.1 The respondent delayed unreasonably in dealing with the claimant's appeal against Robert Gorman's decision;

257. We do not consider that slightly less than two months is an unreasonable time for two senior and busy employees to produce a report into complex matters over the summer holiday period.

11.2 Duncan Hullis rejected the claimant's appeal but failed to deal adequately with her grounds of appeal.

258. In cross examination of Mr Hullis the matter which the claimant said had been omitted was that Mr Hullis had not dealt with the claimant's allegations about breaches of the ACAS code in relation to the disciplinary hearing. She said that Mr Gorman had concluded that that the ACAS code had been followed. He had not responded to the claimant's points about specific breaches.

259. In this she is correct: Mr Hullis responded to this allegation with one line:

'We do not accept that the disciplinary proceedings against Ms Norman breached any part of the ACAS Code.'

260. Given the unusual features of the disciplinary hearing, it would have been better had this point been analysed further in the appeal and dealt with squarely. On the evidence before Mr Hullis, including Chloe Read's statement, there was not a breach of the Code, albeit there were some unexpected features, such as the hearing being conducted by Ms Read, the lack of an adjournment and the lack of notes.

261. However given that those features did not reveal any clear breach of the Code in this case, we do not consider that the failure to address them in an appeal to a grievance outcome amounts to conduct evincing an intention not to be bound by the terms of the contract. This is not a repudiatory breach of contract.

262. We have reached some conclusions that are critical of Mr O'Hara's management of the claimant during December 2016. He did raise his voice. He did lose patience with her. He did so in circumstances in which he found the claimant's own behaviour frustrating and unreasonable: with some good reason. The claimant's own behaviour is something we consider we have to factor into our findings about his reactions to her. We consider that because she was behaving in demanding and not entirely mature ways about the Christmas party, that affects the way her manager's behaviour should be seen: viewed objectively. Viewed objectively in that context, we consider that his behaviour in raising his voice and losing patience falls in the category of unreasonable management but not into the category of behaviour that destroys or seriously damages the relationship of confidence and trust.

263. For the remainder of our findings either we have not found the facts to be as the claimant alleges or we have found that there has been reasonable and proper cause for the respondent's actions, or that the respondent has not by its actions evinced an intention not to be bound by the contract. Taking everything together we do not consider that the matters proved amount to a fundamental or any breach of contract.

264. In any event we have found too that the claimant resigned in response to the refusal of her PPI application.

265. For the same reasons the complaint of breach of contract fails. The respondent did not dismiss the claimant and therefore did not dismiss her in breach of contract.

Disability

12.1 The respondent accepts that the claimant has the condition of Hashimoto's thyroiditis and this is and was a long-term condition.

12.2 Did that impairment have a substantial adverse effect on the claimant's normal day-to-day activities?

266. The claimant has failed to prove this. The sole impairment relied upon as a disability is Hashimoto's disease. We have worked through the medical evidence before us with care. It is clear that as well as Hashimoto's disease the claimant had been diagnosed with or investigated for a number of other conditions none of which are claimed as disabilities in these proceedings: polymyalgia rheumatica, fibromyalgia, a heart condition, sinus problems, a bad back, a condition that required bowel surgery and also stress and anxiety. The claimant's witness statement does not deal with the effect of the relevant impairment on her day to day activities. Her impact statement is a statement of the impact of the alleged discrimination on her, not of the impact of her impairment on her day to day activities. We have no separate medical report which tells us what the adverse effect of the impairment on the claimant's day to day activities would be. The evidence before us is therefore limited.

267. During submissions we asked the claimant's representative to identify the medical evidence which linked the Hashimoto's disease to the claimant's pain and fibromyalgia or other conditions. She directed us to p579 in the bundle which lists the claimant's ongoing symptoms of stress, raised blood pressure, vasovagal episodes and panic attacks. She had consulted a cardiologist and was undergoing investigations. She had consulted an ENT surgeon due to sinus problems and she told the GP that the ENT specialist had said her sinus problems could potentially be due to a lowered immune system. The GP noted that she has an autoimmune condition, Hashimoto's. The GP suspected a likely element of stress. The claimant had consistently said that it was all attributed to work. We do not consider that this document answers our concern.

268. Although we suspect it possible that some combination at least of these conditions may have had a substantial adverse effect on the claimant's normal day to day activities, this case is focussed on *Hashimoto's disease* as the relevant impairment. That is how the claimant has put her claim and it is what the respondent has come to answer. We are lay people when it comes to medicine and without medical evidence to inform us, we do not have the evidence to decide whether Hashimoto's disease on its own had a substantial adverse effect on the claimant's normal day to day activities.

269. In those circumstances we are unable to find that the claimant is a person with a disability within the meaning of the Equality Act 2010. For that reason alone, the majority of the complaint of disability discrimination fails.

270. We look at victimisation separately because we do not consider that this falls away with the failure to prove disability.

271. The claimant's email to Ms Lyall on 11 December 2016 is not a protected act: as the claimant agreed in evidence, it does not mention Hashimoto's disease or disability. It makes no complaint that could amount to a protected act. In any event, our findings show that the 'reason why' the disciplinary proceedings and sanction were issued against the claimant was because of the respondent's genuine concern about the number of complaints being made against her, not because of any protected act.

272. We do not consider that the appeal of 27 February 2017 amounts to a protected act. It does mention the claimant's health and does complain of lack of support from the respondent and bullying by Mr O'Hara but does not expressly or impliedly allege a breach of the 2010 Act.

273. The grievance of 27 February 2017 also refers to Hashimoto's disease and the claimant's health. It complains about unfairness in the disciplinary process and bullying by Mr O'Hara. It does refer to Hashimoto's disease and to a need to have blood tests every 6 weeks. In this document the claimant does say that Mr O'Hara has repeatedly made it difficult for her to manage this and has been obstructive and confrontational when she has needed to attend a clinic. We consider that this is a protected act: it impliedly alleges a failure to make a reasonable adjustment. The claimant also makes an allegation about his contacting her GP and requiring a letter from her GP.

274. However, our findings show that the subsequent acts of the respondent said to be because of the protected acts alleged were not carried out for that reason but for the reasons we have set out.

275. For all of those reasons the claims are not well founded.

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Employment Judge Heal

Date: ……1 May 2020……..

Sent to the parties on: ....2 June 2020.....

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For the Tribunal Office