EMPLOYMENT TRIBUNALS

Claimant: Miss K Grimes

Respondent: Dezrez Services Limited

HELD AT: Leeds Employment Tribunal **ON:** 16,17, 20, 21, 22 May 2019

15, 16, 17, 18 September 2020

25 September 2020 (panel deliberations)

BEFORE: Employment Judge Buckley, Mr Taj, Mr Dorman-Smith

REPRESENTATION:

Claimant: In person

Respondent: Mr Kurtis (barrister)

RESERVED JUDGMENT

The claimant's claims

1. The claim for constructive unfair dismissal **SUCCEEDS**
2. The claim for failure to make reasonable adjustments is **DISMISSED**
3. The claim for breach of contract (notice pay) **SUCCEEDS**
4. The claim for breach of contract (expenses) is **DISMISSED**

The respondent's counter-claims

5. The claim for breach of contract (expenses) **SUCCEEDS**
6. The claim for breach of contract (monies owed) **SUCCEEDS**
7. The claim for breach of contract (damage to company property) **SUCCEEDS**

8. The claim for breach of contract (unreturned company property) **SUCCEEDS**

REASONS

Summary of decision

1. The respondent acted without reasonable and proper cause in a way which was likely to destroy or seriously damage the relationship of mutual trust and confidence by removing the claimant's management responsibilities without prior consultation or agreement. The claimant resigned promptly in response to that breach and did not act in any way which affirmed the contract. The dismissal was unfair because no potentially fair reason was put forward.

2. Although not necessary to determine in the light of that conclusion, in the alternative we would have found in any event that the respondent acted without reasonable and proper cause in a way which was likely to destroy or seriously damage the relationship of mutual trust and confidence by the following acts taken together (whether taken with or without the above conduct):

    a. Failing to exercise its discretion to pay the claimant contractual sick pay
    b. Treating the claimant differently after her grievance
    c. Without reasonable grounds for doing so, describing the claimant's use of a company credit card to pay for her car tyre as fraudulent
    d. Without reasonable grounds for doing so, putting a disciplinary charge to the claimant of failing to obtain a quote for a new tyre and obtain approval for the expenditure.

3. The claimant would have been dismissed for redundancy in any event by 3 August 2018.

4. There is no chance that the claimant would have been dismissed for misconduct.

5. The respondent did not apply the following provisions critieria or practices relied upon by the claimant:

    a. Requiring the claimant to attend a disciplinary hearing and grievance appeal meeting on same day (informed of this on 18 April 2018?)
    b. Corresponding with the claimant about her company car while she was on sick leave

6. The respondent applied a practice of informing employees of disciplinary allegations in writing. This did not place the claimant at a substantial disadvantage. It would not have been reasonable to put formal disciplinary allegations other than in writing.

7. The claimant has not established on the balance of the probabilities that any of the telephone charges were wholly and exclusively incurred for business purposes.

8. The respondent is entitled to the cost of any items which the claimant did not keep safe or return in accordance with her contract.

Claims and Issues

9. The claimant brings the following claims:

The claimant's claims

1. Constructive unfair dismissal
2. Failure to make reasonable adjustments
3. Breach of contract (notice pay)
4. Breach of contract (expenses)

10. The respondent brings the following counter-claims:

The respondent's counter-claims

1. Breach of contract (expenses)
2. Breach of contract (monies owed)
3. Breach of contract (damage to company property)
4. Breach of contract (unreturned company property)

11. The issues were largely set out in the case management order of Employment Judge Cox dated 1 August 2018. They parties agreed during the hearing that one additional issue should be added (4(c) below). The issues for the tribunal to determine are therefore:

Constructive unfair dismissal

12. Did the following occur?
    a. The acts listed in paragraphs 4 and 5 of the ET1:
        i. The claimant was put on statutory sick pay rather than on full pay in March-April 2018
        ii. On 17 April 2018 the claimant was sent an email about the disciplinary allegations against her
        iii. On 18 April 2018 the claimant was required to attend a disciplinary and a grievance meeting on the same day
        iv. In March/April 2018 the respondent corresponded with the claimant about her company car while she was on sick leave
        v. In February 2018, without consultation or agreement, the respondent removed the claimant's management responsibilities and gave them to Richard Price
        vi. Justin Morris singled the claimant out to have security software installed on her laptop computer
        vii. When the claimant informed Justin Morris that she was unable to return her laptop this was classed as gross insubordination

viii. In January/February 2018 Scott Morgan-Davies accused the claimant of fraudulently claiming telephone expenses
ix. In April 2018 Vicky Richards refused the claimant's request for the grievance appeal not to be held at the respondent's headquarters

b. The acts listed in para 8 of the ET1:

i. The respondent appointed Mrs Liddell to hear the claimant's grievance appeal (the claimant says that Mrs Liddell could not be objective because she was the wife of a board member)
ii. Without reasonable grounds for doing so, the respondent accused the claimant of making a fraudulent claim for telephone expenses and refused to reimburse her home telephone bill
iii. The respondent did not discuss with the claimant what support she might need on her return to work after sick leave
iv. The respondent persisted in its demand that she return her laptop when it knew the claimant was away from her office preparing for her disciplinary hearing
v. Without reasonable grounds for doing so, the respondent asked a tyre company whether it had sold a tyre to the claimant
vi. Without reasonable grounds for doing so, the respondent described the claimant's use of a company credit card to pay for her car tyre as fraudulent
vii. Without reasonable grounds for doing so, the respondent put a disciplinary charge to the claimant of failing to obtain a quote for a new tyre and obtain approval for the expenditure. It had never asked for this procedure to be followed before.

c. The respondent treated the claimant differently since lodging the grievance.

13. Do those matters amount to a fundamental breach of contract in that the respondent acted without reasonable cause in a manner that was calculated or likely to destroy or seriously damage the relationship of trust and confidence?

14. Is there a series of breaches?

15. When was the last fundamental breach?

16. Has the claimant waived any or all of the breaches through conduct?

17. Did the claimant resign in response to a (a series of) fundamental breach(es)?

18. Did the claimant resign promptly?

19. If the claimant was dismissed, has the respondent established a potentially fair reason for dismissal (in this case the breach of contract)?

20. Did the respondent act reasonably in all the circumstances in treating it as sufficient reason to dismiss the claimant?

21. Is there a chance that the claimant would have been fairly dismissed anyway? If so, should the claimant's compensation be reduced and by how much?

Failure to make reasonable adjustments

22. The respondent concedes that the claimant was a disabled person at the relevant times.

23. Did the respondent apply the following provision criteria or practice (PCP) generally:
    (i) Informing the claimant by email about the disciplinary allegations on 17 April 2018 (para 4.2. of CMO)
    (ii) On 18 April 2018, requiring the claimant to attend a disciplinary hearing and grievance appeal meeting on same day
    (iii) Corresponding with the claimant about her company car while she was on sick leave

24. Did the PCP put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled in that:
    (i) The claimant was traveling to meet a client at the time, the email exacerbated her stress and reduced her tolerance to pain
    (ii) The pain involved in sitting for an extended period in meetings
    (iii) The stress and anxiety caused her tolerance to pain to reduce

25. Did the respondent take such steps as were reasonable to avoid the disadvantage. The burden of proof does not lie on the claimant but it is helpful to know the adjustments asserted as reasonably required and they are:
    (i) Telling the claimant informally about the disciplinary allegations
    (ii) Just hearing the grievance and postponing the disciplinary meeting
    (iii) Not corresponding with the claimant about the company car during her absence.

26. Did the respondent not know, or could the respondent not be reasonably expected to know that the claimant had a disability or was likely to be placed at the disadvantage set out above?

Breach of contract – notice pay

27. Was claimant entitled to be paid notice pay?

Breach of contract – expenses

28. Was the claimant paid less than she was entitled to receive under her contract? The claimant claims that there is a contractual obligation to reimburse her telephone bill.

Counter-claim

29. Was the claimant in breach of contract?

30. If so what damages is the respondent entitled to?

Evidence

31. The claimant gave evidence in support of her claim. We found her evidence to be, in the main, credible and on the key issues largely consistent with contemporaneous documentation.

32. For the respondent we heard from Justin Morris, CEO; Vicky Richards, Human Resources and Freya Davies, operations director.

33. There were aspects of Justin Morris' evidence which were inconsistent either internally or with the documentation. For example, in relation to the claimant's evidence that she had attended a meeting with LSL (a potential client) he stated:

> LSL is one of the most significant customers in the UK. I didn't know you were going to that meeting. I would never endorse someone going on their own – might need a project manager to go with you, no record of it…

34. This is contrary to the email exchange in the bundle about the meeting when it was first arranged. The claimant tells Justin Morris in an email dated 27 February 2018 that she is taking 'one of the guys from LSL' out to lunch this month. She also informs him that she is meeting with LSL in London 'next week' by email dated 27 February 2018. In neither of the replies did Justin Morris raise any concerns about the claimant attending the meeting on or own.

35. We found the other respondent's witnesses to be more reliable, giving, in general, straightforward evidence and making some concessions where appropriate but there were some aspects of their evidence which we did not accept. These are referred to below where appropriate.

Findings of fact

36. We have divided the findings of fact into:

A Before the claimant gave notice of termination
B During the notice period
C After termination without notice
D Additional findings relevant to knowledge of disability
E Additional findings relevant to the counter claim

A Before the claimant gave notice of termination

37. The respondent develops and provides online sales, letting and property management software to estate agencies. As well as developing and selling the product they provide ongoing technical support to customers.

38. The claimant started her employment with the respondent on 6 October 2014 until her resignation with effect from 24 April 2018. She was employed as a sales director. She worked predominantly from home.

39. We find that the claimant's letter of resignation dated 19 April 2018 (p453) sets out her reasons for resigning:

I am writing to inform you that I am resigning with notice as I feel you have given me no choice in light of my recent experiences detailed as followed:

- You fundamentally changed my job description without prior consultation and therefore are in breach of contract
- You didn't adhere to grievance procedures and changed my appeal date without justification, both the grievance and disciplinary were not related matters
- Although I complained about Laura Liddell not being impartial to conduct my grievance procedure you ignored this request
- you have bullied, victimised and harassed me since I have lodged my grievance
- You accused me of fraudulently claiming my expenses
- You made my work environment a hostile one
- Whilst off sick due to work related stress and chronic pain you continued to harass me and I had to ask you to stop
- You attempted to take benefits away from me, the car
- You didn't give me the support I needed for the job whilst coming back after a period of stress a legal requirement of Health and Safety
- You discriminated against me due to my disability
- You treated me different from fellow employees when asking me to bring my equipment in to install GDPR software
- You proceeded to harass me when I was given time to prepare for my disciplinary
- You refused to pay my expenses
- You have made 2 serious allegations against me and commenced disciplinary proceedings something I strenuously deny and will provide proof at a later date
- You continued throughout the period since I raised the grievance to cause me unnecessary stress and failed to manage this stress, breaching health and safety guidelines
- You have treated me differently since lodging the grievance

It is clear to me that there is a breach of trust and confidence between employer and employee so you have given me no option but to resign I feel due to constructive dismissal.

…

40. She resigned with immediate effect during her notice period by email dated 24 April 2018 (p484) stating that since she lodged her grievance it has been clear that there has been an erosion of the implied term of mutual trust and confidence, finalised by the letter sent on 20 April 2018.

41. The claimant's contract of employment states (p30):

6.1 A full Job Description, which may be amended from time to time as your career with the Employer develops, is attached at Schedule One.

6.2 Your job title must be read in conjunction with your job description and should not be construed to limit or make constraints on your duties. Please note this does not define absolutely or limit the work, which you may be required to do which may be anything within your capabilities required by the Employer from time to time.

42. The claimant's job description is annexed to her contract of employment (p42). It states the main purpose of the sales director role as follows:

The Sales Director will lead & manage a team of 3 full time area sales managers. They will be responsible for introducing our brand new product to the estate agency market whilst increasing penetration within target sectors throughout the UK and internationally.

A key part of the role will be to strategically develop the market whilst ensuring that the company maintains the level of quality and number of sales predefined by yourself and the board.

43. The job description then sets out ten key tasks and responsibilities:

- Presenting to Board level/Enterprise customers
- Building relationships with key industry decision makers.
- Managing, coaching and training the sales to team and ensuring the sales team hit ambitious targets
- Responsible for the whole sales process, identify solutions and conduct demonstrations.
- Driving sales, negotiating and closing deals whilst also assisting and taking responsibility for the rest of the team.
- Work with the sales team and board on the development of account strategies aimed at increasing revenue opportunities
- Define and implement innovative sales strategies for launch of new product including enterprise sales.
- To work closely with the Marketing Department on Sales promotions
- To manage Sales CRM solutions
- To adhere to health and safety policies and quality management processes.

44. Although the job description refers to the claimant leading and managing 3 full time area sales managers, the sales team in March 2017 included only Steve Aston, a Regional Sales Manager, who was managed by the claimant.

45. In 2016 Richard Price stated work for the respondent as client director. He was at the same level as the claimant.

46. On 22 March 2017 the claimant attended a meeting in Celtic Manor (a hotel and conference centre) with Justin Morris and Ross Liddell (operations director). At this meeting it was agreed that the more administrative aspects of managing Steve Aston would be handled by 'HQ' (in practice by Ross Liddell or Barry Nichols-Grey). This is reflected in the email exchange between the claimant and Justin Morris following the meeting.

47. The claimant's focus on estate agencies with 5 or more branches was also discussed at this meeting, although we accept the claimant's evidence that she had already been focusing on the larger agencies. Agencies with 4 or less branches were handled by Steve Aston.

48. We accept the claimant's evidence that the administrative tasks taken over by Ross Liddell or Barry Nichols-Grey were limited to checking that Steve Aston was inputting his daily tasks into the respondent's CRM system and other administrative tasks like signing off his holidays.

49. The claimant continued to carry out her role of managing the sales team as set out in her job description including, for example, managing the performance of the team. Although Barry Nichols-Grey pulled the information from the system in relation to KPIs, we accept that the claimant carried out her role in relation to sales performance targets as described in the tasks and responsibilities above.

50. This included responsibility for strategy. It may be that the respondent did not think that the claimant was very effective in relation to strategy but it is clear to

us that it formed part of her role and responsibilities and that it was not taken off her in March 2017.

51. Further we accept the claimant's evidence that when Alex Chewins was recruited in about October 2017 as an additional member of the sales team she carried out her role as described in the job description and managed him as part of her team. When asked by the claimant in cross-examination why Ross Liddell had not allocated the territory maps for Alex Chewins, Justin Morris replied 'He is not a sales person, he is operations director… never been a sales manager he's not managed the sales team. He might have coordinated them.'

52. We do not accept Justin Morris' evidence that the claimant's line management responsibilities for the sales team were removed in March 2017. Our finding of fact that, after March 2017, the claimant actively managed the sales team in the full sense set out in her job description, is supported by the understanding of her team and other staff as reported in the grievance investigation set out below.

53. In about late 2017 Barry Nichols-Grey handed in his notice. At some point, probably in early December 2017, a 'reshuffle' took place. The respondent did not put in evidence any minutes of any meetings or documentary evidence about this reshuffle, so it is difficult to make clear findings as to exactly what happened and when. However it is clear from Justin Morris' evidence that Freya Davies became operations director, Ross Liddell moved into a generalist product centred role and Richard Price took on overall responsibility for the sales.

54. Justin Morris' evidence is that Richard Price only took on the elements of the responsibility for sales that had previously been held by Barry Nichols-Grey and/or Ross Liddell. We do not accept that this is accurate for the reasons set out in the following paragraphs. We find that it was intended that Richard Price would take on a much more substantive role in relation to the sales team than either Ross Liddell or Barry Nichols-Grey.

55. Part of the reason for this change were concerns that Justin Morris was beginning to have about the claimant's performance. It is clear from the grievance investigation notes of the interview with Richard Price that Justin Morris had raised these concerns with Richard Price:

> Justin had raised several concerns about Kristina's performance over a period of time and I said I'd be happy to take on sales from a reporting stand point so that we would have greater visibility of what they were doing…

56. We find that Justin Morris had, as a result of the sales figures, concerns both about the effectiveness of the claimant's role – i.e. whether the position of a sales director paid at that level would ever bring in enough extra sales to justify the salary - and about the claimant herself. The former is clear from his written evidence. The concerns about the claimant herself related to her performance and about what the claimant was doing on a day to day basis. As a result, the respondent attempted to refocus the claimant on the larger sales, to push harder in relation to the claimant recording her day to day activities and, in general, to keep a closer eye on what the claimant was doing.

57. Although it is clear that the respondent had these concerns, no concerns about the claimant's performance or the effectiveness of the claimant's role were explicitly raised with the claimant at this stage, nor had they been raised before this point. Further, the claimant was not told or consulted about any of the changes that had taken place in December 2017. She was not told what responsibilities Richard Price was taking on, nor were there any discussions with her as to how it fitted in with her role.

58. In December 2017 it became apparent that changes were being made to the claimant's role of which she had not been made aware. Around 13 December, without the claimant's knowledge, Steve Aston was told by Richard Price to pick up a lead with a company which has 5+ branches ('Ocean'). Ordinarily this would have been handled by the claimant. This has an impact on the claimant's ability to earn commission. She earns a certain percentage of commission on leads that she handles and a much smaller percentage on leads handled by the team. Further the claimant was unaware that Steve Aston had been asked to handle the lead and she only found out when she rang the client and was informed that both her and Steve Aston had called the company on 13 December which, as the claimant put it, 'makes us look stupid'.

59. The claimant raised this with Justin Morris, Barry Nichols-Grey and Ross Liddell in an email dated 13 December. She received a response from Richard Price by email on 14 December which states that he had asked Steve Aston to pick up the lead following a discussion with Justin Morris and the board. There was then an email discussion and a telephone call between the claimant and Richard Price, in which it was agreed that the claimant would continue to pick up 5+ branches, which she communicated to the team. Unknown to the claimant, Justin Morris then told Steve Aston that it was 'fine' for him to handle up to 20 branch leads (see the grievance interview with Steve Aston).

60. The claimant had built up a lot of holiday and so she did not come back from her Christmas holiday until 15 January 2018.

61. At some point in early January 2018 while the claimant was on leave the sales team (Alex Chewins and Steve Aston) were told that the team would no longer be managed by the claimant, but that it would be managed by Richard Price. This is apparent from the interviews with Steve Aston and Joe Diamond as part of the later grievance investigation.

62. During the grievance investigation Laura Liddell interviewed Joe Diamond on 8 March 2018. The following is an extract from that interview (p327):

> LL: Do you know what Kristina's role is?
> JD: Large enterprise customers now.
> LL: You said now, has that not always been the case?
> JD: I think as Sales Director previously she managed the performance of the sales team and stuff like that as well and she was involved with smaller leads.
> LL: Why do you think that has changed?
> JD: Steve told me that Richie was now doing that stuff. Managing performance and working through leads with them.
> LL: When did he tell you that?
> JD: Around Christmas time I think – maybe when we came back after the break.

63. The following is an extract from Laura Liddell's interview with Steve Aston dated 8 March 2018 (p328):

> LL: Have you ever been told that KG is not longer your Line Manager?
> SA: Yes, it was through the grapevine at first. We knew that there had been a meeting that happened a while back, around January time. But then Richie spoke to me and Luke about what was going to happen and that they were going to confirm it with her as well.
> LL: When were you told?
> SA: Before the sales meeting in February
> LL: Did Richie specifically say he was going to be line managing you?
> SA: He said that he would be doing all the KPIs and speaking to us about our leads and generally giving an overview of the team so we could reach our targets. To me that's line managing.
> LL: Did Justin ever say to you that Richie was line managing you and that Kristina's role had changed?
> SA: He was far more stand offish about it. He said she would be mentoring and if we needed anything she was still there. But that Richie was doing all the reporting day to day.

64. Justin Morris was asked about Steve Aston's interview:

> Q: Would you agree that Steve Aston is saying that I was no longer his line manager and that he was told before the sales meeting in February?
> A: yes says always been a bit unusual
> Q: Is Steve right?
> A: yes, happened some time in February.

65. An email from Alex Chewins dated 5 April 2019 (p608) states:

> I reported to Kristina until Xmas 2017.
> Training was conducted by Steve Aston and I Had a weekly call from Kristina. I was told in January post Christmas to report to Rich but not to tell Kristina as they had not sorted out the changes and that W would then report to him.

66. Although we find that the sales team were told after Christmas that they should report to Richard Price rather than to the claimant, the claimant was not told about this change.

67. When the claimant returned to work an annual review meeting took place at Celtic Manor on 24 January 2018 attended by the claimant, Richard Price and Justin Morris. At the meeting the claimant was given a key target of successfully closing 10 Enterprise deals per month. Leads would be allocated to the team based on patch and size of customer measure by number of branches. We do not accept that the claimant was told about the structural changes to the executive team nor that any discussions took place about changes to the claimant's role or about Richard Price taking on responsibility for managing the sales team.

68. Justin Morris initially stated in evidence that the claimant had been told about the structural changes in the meeting. He was referred to the notes of the grievance interview on p337. These show that when he was asked by Laura Liddell if the change in structure and the executive team was explained to the claimant in the meeting, he had replied, 'No it probably wasn't'. He then stated in evidence, 'I thought we made it clear in Celtic Manor but it appears from my statement there that I didn't'.

69. There is an email from Richard Price to the claimant on 25 January 2018, summarizing the discussions in the meeting on 24 January. It makes no reference to any discussion about changes to structure or to the management of the sales team.

70. However it is apparent that Richard Price had taken on responsibility for sales, including to some extent monitoring the claimant's performance. For example, he was present at the meeting on 24 January and raised some issues with the claimant about claiming expenses, which he followed up by email.

71. A sales meeting was scheduled for 7 February 2018. We accept that the claimant normally ran and set the agenda for these meetings. This is supported by Laura Liddell's follow up interview with Steve Aston on 9 March 2018 as part of the grievance investigation. It contains the following exchange:

> LL: Who would normally set the agenda for the sales meeting?
> SA: Kristina.
> …
> LL: And she doesn't do that anymore?
> SA: Well I think in February there was a bit of a clash as we received one from Kristina and then Richie sent another one. We ended up using Richie's. He ran the meeting.
> …
> LL: OK, but prior to Christmas Kristina used to run the meeting.
> SA: I guess yeah.

72. Richard Price emailed the claimant on 3 February as follows:

> Thanks for putting the sales meeting in the diary for next week. I'll send out an agenda. Do you have any thoughts on what should be in the agenda?

73. We do not accept that this is Richard Price offering to do the agenda, as he asserts in the interview with Laura Liddell (p332). We accept the claimant's evidence that she was uncomfortable with this, even though she replied to say 'Ok cool saves me the hassle' and enclosing points for the agenda.

74. The meeting on 7 February 2018 was led by Richard Price. In this meeting he showed an organizational chart which showed the claimant and Steve Aston at the same level and both reporting into Richard Price. Richard Price states that: 'I didn't clarify Kristina's role. I didn't think that it was necessary'.

75. Steve Aston's understanding of the relevance of the organizational chart is set out in his grievance interview:

> LL: Kristina mentioned in my discussion with her that at the sales meeting in February there was a slide shown that detailed her position having been changed and that Richie now line managed you and that she reported to him also. Is that accurate?
> SA: Yes the organisational chart was shown. The one with all the columns.
> LL: How was that received by the room? Was there any uncomfortableness or did Kristina seem embarassed by it?
> SA: No not at all. Like I said, we all knew the meeting had taken place and it seemed like everyone was already aware of it. The overall impression in that meeting was that Richie had taken over managing the team.

76. Following the meeting the claimant checked the position on people HR, and discovered that it showed the same organizational structure as Richard Price had

shown in the meeting i.e. with her on the same level as her team and reporting into Richard Price. It also showed that Richard Price's title had changed from client director to Head of Transformation and Consulting, Sales. The claimant spoke to Alex Chewins and was told that he and Steve Aston had been told in the first week of January that they no longer reported to the claimant and that they should report to Richard Price on all activities.

77. The claimant telephoned Justin Morris on 12 February 2018 to discuss her concerns. This was the first occasion on which the claimant was told that the company was being restructured and that Richard Price would be taking on some responsibility for managing the sales team. The conversation contained the following exchange:

> JM .. . what was said is I want you to concentrate on enterprise that's it. That's what I want your, that's where we're going to get the value from you.
>
> KG But I have always done that Justin if you know what I mean while still sort of managing the teams and I just, you know, I just sort of feel like as if
>
> JM I don't want you wasting your time on that. I think they can do their own thing. Steve's been in it for two years you know we are confident that he can deal with it. I think performance wise, yes you know, sales training, encouraging them or teaching them how to do the sales absolutely that is your job, um but the manager making sure they hit their targets and all that sort of stuff that can be you know, administered and pulling them up if they are not making enough phone calls or whatever I think that it going to be an administrative role um yeah.

78. Justin Morris suggested that the claimant and him and Richard Price met to work out 'how we are going to divvy out any of these tasks'.

79. The telephone call was followed up by an email exchange between the claimant and Justin Morris. The claimant raised concerns in an email of 12 February 2018 that she had been recruited as a Sales Director, drawing attention to the parts of her job description that she felt were being taken away. She states that the sales team thought that Richard Price was responsible for them, and that he was the port of call. She states:

> I agree we discuss this and decide where the line is with Richard and me and then inform the sales team so there is clarity across all people involved in sales. I just need to know that there is no fundamental changes to my job and then lets get on with getting those sales in.

80. On 13 February Steve Aston was removed from reporting to the claimant on People HR.

81. The reply from Justin Morris on 14 February 2018 states:

> The level of sales being brought in by the sales team and overall performance of the Sale Team is unsatisfactory – The revenue generated from sales is less than the cost of sales.
>
> - The board has decided that we should take an interim measure to see if we can get the sales team performing at a viable level (aligned with our sales targets)
> - We need to both increase levels of new agent sales and also need a large showcase customer (…) so we've taken the decision to free you up to solely work on large company deals 20+ offices. i.e. We want you to spend your time dealing with existing and new large agency/Enterprise opportunities
> - The board feel that Dezrez will get the most value from closing Enterprise deals and want you to concentrate all your efforts in this area

- Your contract says that: your job description may be amended from time to time as your career develops
- Your title is still Sales Director
- I propose that you, I and Richie have a tele-con tomorrow or Friday to discuss how the split of management duties of Steve and Alex are allocated. EG KPI and activity reporting – RP, Mentoring and advice on closing strategy – KG etc. We can then communicate this with the Sales team.

82. Although the email begins by saying 'Hopefully you will embrace the proposed changes'. It is clear from our findings above that these changes had already been implemented and communicated to the rest of the team.

83. The email is inconsistent with Justin Morris' witness statement in which he asserts that the claimant's management responsibilities were not changed in late 2017 or February 2018, and that Richard Price was simply taking over the administrative tasks that Ross Liddell had carried out since March 2017. In particular the reference to a decision of the board to 'free you up to solely work on large company deals', the reference to the part of the claimant's contract that allows changes to be made 'your job description may be amended from time to time as your career develops' and the reference to meeting to discuss how the 'split of management duties of Steve and Alex are allocated' is inconsistent with Justin Morris' statement at the end of para 85 in his witness statement that '…in my view, things were not materially different in terms of sales team management to how they always had been. It was just that it was Richie, instead of Ross, doing the administrative management.'

84. We find that the email is a more accurate reflection of the position.

85. In relation to the fact that the claimant had been shown as reporting to Richard Price, the email states:

> I had asked Richard to administer all members of the sales team. If this isn't agreeable to you, I will change this so that you report directly to Ross Liddell. Richard will continue to report to the board on overall sales performance.

86. This suggests that, without her knowledge, Richard Price had been asked to manage the claimant, including her performance, along with the rest of her team. Richard Price is the claimant's peer. Previously she had reported to a board member.

87. Although Justin Morris states in his witness statement that it is only in retrospect that he felt that the claimant was 'gearing up towards exiting the business' with her email of 12 February, we note that the email of 14 February 2018 from Justin Morris adopts a much more formal tone than previous emails and we find that he probably had concerns at the time that the claimant was 'gearing up towards exiting the business' as a result of the concerns that the claimant raises in her email of 12 February and, probably, in particular the use of the phrase 'fundamental changes' in that email.

88. On 15 February 2018 at the Finance Team Leader, Scott-Morgan Davies emailed the claimant stating:

> Thank you for all your credit card receipts, just wondering where you're at with your expenses and mileage? We haven't had any expenses since May '16 and we haven't had any mileage since Oct '16.
>
> Is there anything we can do to help you get these submitted?

89. The reference to mileage is a reference to the claimant's personal mileage in her company car that needed to be paid back to the company.

90. The respondent's Travel and Expenses Policy states on p3 (p71 of the bundle) that telephone expenses must be submitted within 14 days of the end of the month.

91. The claimant used the company credit card for most business expenses. It had therefore been agreed between her and Barry Nichols-Grey in about May 2015 that she could submit her other expenses claims, such as telephone expenses, 'as and when'.

92. This agreement is supported by the fact that throughout her period of employment the claimant had not submitted her expenses within 14 days of the end of the month, and no issue had been raised with the claimant about this delay until after the relationship between the claimant and the respondent began to deteriorate.

93. Further Justin Morris stated, in relation to that agreement, that 'I was not aware of that, but that could have been appropriate. We don't rigorously enforce the 4 days rule. It's the spirit of the policy'.

94. Although the respondent relied on a number of chasing emails, most of these were examples of a standard monthly email sent to the entire team, which we do not accept is inconsistent with the claimant having reached a separate agreement. The specific emails sent to the claimant relied on by the respondent do not relate to expenses, they relate to claimant's company credit card which, she accepts, was due in principle at the end of each month, or to mileage claims.

95. The claimant accepted that she may have received some chasing emails towards the end of the financial year. We find that that is not inconsistent with an agreement that there was no specific time limit for submitting expense claims.

96. The first email specifically asking for expenses directed at the claimant individually was the email set out above from Scott Morgan-Davis on 15 February 2018. This is also consistent with an agreement that there was no specific time limit for the claimant to submit her expense claims. The email notes that no expense claims have been submitted since May 2016 and asks if the respondent can do anything to 'help you get these submitted'. If the claimant was expected to submit the claims within 14 days or even within three months, it is unlikely that she would have been encouraged by the Finance Team Leader to submit claims potentially dating back nearly two years, without any reference to the fact that any claims that were submitted out of time would not be paid.

97. On 16 February 2018 the claimant submitted a formal grievance by email to Justin Morris (p279). In it she acknowledges that her contract states that the job

description can be amended from time to time as her career develops, but that her interpretation was that this would be progressive as far as her role and job was concerned and that the company would speak to her before making the changes to ensure her involvement and agreement. She points out that in this case nobody has spoken to her about changes to her role, nobody sought prior agreement and they changes occurred as far back as early January.

98. The claimant forwarded the email to Vicky Richard, who acknowledged the grievance by email dated 21 February 2018 in which she stated:

> Due to the seniority of Justin I am looking for a suitable, impartial alternative to hear the grievance.

99. The claimant replied the same day, asking to be told who Vicky Richards considered to be impartial (as well as potential dates and meeting location) by the end of the week.

100. In response to the encouragement in the email from Scott Morgan-Davies dated 15 February 2018 to submit her expenses claims and mileage, the claimant emailed him on 21 February 2018. She states:

> I have done my mileage so far and just working through expenses now (…) From the analysis I have done the company owes me money marginally as I have a fair few invoices from the landline. I will post receipts to Jo tomorrow so I am guessing you won't be able to process payment anyhow this month..

101. The reply from Scott Morgan-Davies asks the claimant to forward on her mileage. Again, no concerns are raised about the fact that the claimant was intending to submit claims for landline expenses dating back almost two years.

102. On 22 February 2018 the claimant received an invite from Laura Liddell (director of the sister company, Dezrez Legal) to a grievance hearing with her at the company offices in Swansea on 27 February 2018.

103. The claimant responded by email the same day stating, inter alia, that:

- To be honest I don't find Laura impartial being married to a member of the board whose decision it is I have raised a grievance about, however that is your choice.

104. She asks for the meeting not to take place at the company offices in Swansea, giving the following reasons for this: it is a 5-6 hour drive requiring an overnight stay and 2 consecutive work days availability; it would 'set tongues wagging' if she were seen attending a meeting with two people she never normally engages with; and she does not have 2 consecutive work days available in that week so it would have to be delayed. She suggests Birmingham or London as an alternative venue.

105. On 23 February 2018 the claimant was off sick. She told Vicky Richards that it was 'flu or similar' in an email that morning.

106. Vicky Richards replied to the claimant by email dated 13 February. She states:

> Laura is not associated or working with you in any way so is the most impartial person at Director level. Due to the size of the business there are limited options but if you want to make a suggestion I will certainly consider it.

107. There was no further mention of Laura Liddell's impartiality until the grievance meeting itself.

108. In relation to meeting at the Swansea offices, she states 'As you say this will make you feel uncomfortable I will arrange for a meeting room/hotel away from Swansea.' Agreement was eventually reached for the meeting to take place in London as suggested by the claimant although it was rescheduled due to snow for Celtic Manor on 6 March 2018.

109. A number of interviews were carried out by Laura Liddell and the grievance outcome was communicated to the claimant by letter dated 14 March 2018. In essence, it concluded that fundamental changes had not been made to the claimant's role but accepted that there was a need for better communication around how responsibilities were shared between the claimant and Richard Price to provide clarity for them and the team. The grievance recommended (i) that a meeting be held with Justin Morris (and Ross Liddell and Richard Price as necessary) to discuss and agree the exact requirements of the role and (ii) that more regular meetings were held at a senior level.

110. On 14 March 2018 the claimant's company car was collected having reached the end of the lease period. A new car was delivered on the same day. An inspection was carried out that day. The BCA (British Car Auctions) vehicle condition report documents damage 'within standards' or not 'within standards'. For example, damage to a wheel rim which is less than 20% is not included and damage over 20% is included. We find that the damage which is included can be classed as more than reasonable wear and tear. The total cost of repairing damage which is more than reasonable wear and tear is £2,228.35.

111. The report identifies a burn to the carpet. The respondent appears to have made further enquiries with the De-fleet administrator as to the cause of the burn to the carpet in March 2018, and they confirmed that the BCA inspector identified that the burn is likely to be a result of a cigarette burn by email dated 27 March 2018 at p404.

112. The company car policy (p48) provides:

> The Company reserves the right to withdraw the car in cases of abuse, including, but not limited to, inadequate care and maintenance, reckless or irresponsible acts and causing unnecessary damage. The Company also reserves the right to charge you the costs of repair of any such damage caused to the car.
> …
> Smoking is not permitted in any Company vehicle as your Company vehicle … Smoking in smoke free vehicles is a criminal offence and may result in a fixed penalty fine or prosecution and disciplinary action will be taken against any employee found to be smoking in a company vehicle.
> …
> *Accidents and incidents*
> In the event of an accident or incident you are required to inform HQ immediately. You should ensure that you have the relevant insurance details of other drivers and details of any

witnesses. Where it is safe to do so, you should obtain photographs of the scene to assist with a claim.
…
Car maintenance
…
If excessive valeting or repairs are required (i.e. cleaning beyond basic vacuuming) or the value of the car is significantly reduced because of excessive wear and tear (i.e. damage) you may be asked to bear the cost.
…
Servicing and Maintenance
…
All work must be carried out by an approved franchise dealer otherwise problems will arise in connection with repairs carried out under warranty. Please contact HQ to arrange this.

Tyres and Exhausts
Quotes should be obtained before tyres, batteries and exhausts are replaced and approval of HQ is required before work is carried out.

113. The claimant appealed the grievance outcome by email on 16 March 2018.

114. At some point in March 2018, in response to the email from Scott Morgan-Davies asking her to submit her expenses, the claimant submitted a claim for landline telephone expenses dating back to 2015. The bills were addressed to the claimant's partner, Richard Barron. The account name was 'dalesvalleyview', which as well as being the claimant's current address, the respondent knew had at some stage been a holiday home which had been rented out as a business by the claimant's husband.

115. The claimant had had the landline put in as a result of a request from Justin Morris in 2015, because she had had no broadband and had been unable to take part in Skype calls. There was no conversation about who would pay the bills for the landline but the claimant assumed that the respondent would pay the bill, including personal calls because that was the arrangement in relation to her mobile phone.

116. Justin Morris stated that the landline was meant to be a business line for her broadband and 'obviously we would reimburse her for that'. He stated that no agreement had been reached about personal calls, but that if it had been discussed 'we would have taken a view on it and seen the level. I think we might have agreed to pay for an acceptable level of personal calls'.

117. The expenses policy states that:

> Expenses incurred by you in the proper performance of your duties will be reimbursed by the Employer. The principle of reimbursement is that claims can only be made for expenditure that is wholly and necessarily and exclusively incurred for business purposes. You must provide evidence of any expenditure by producing appropriate receipts

118. In response to receiving the claimant's bill for telephone expenses dating back to 2015, Scott Morgan-Davies emailed the claimant on 16 March 2018. He asks her to forward on the full itemised bills. He states 'We need the detail so we can distinguish what are business calls and repay the correct amounts incurred for the business. Can you please highlight the business calls?' No issue is raised

about the delay in submitting the expenses at this point. The claimant replies that this was a business line specifically put in for the respondent.

119. Scott Morgan-Davies' reply on 20 March 2016 raises three concerns. Firstly that the claim has been submitted for a three year period when the expenses policy states that it should be submitted within 14 days; secondly that the information does not show how the calls were 'wholly necessarily and exclusively' incurred for business purposes and thirdly:

> The invoice is payable by someone other than you and is under a business name. This would suggest that the same land line is simultaneously being used by another business entity and the call log is likely to include calls for that business in addition to any made by you on behalf of Dezrez. In addition it is likely that the whole of that bill would already have been wholly claimed as an expense of that business. If so it is not clear to me why the entire invoice is being submitted for payment by Derez?

120. This request is followed by a series of emails in which the claimant provides an explanation for why the bill is in her partner's name and has the address Dales Valley View on it. She also states that she is shocked and upset by the accusations. In Scott Morgan-Davies' reply on 21 March 2018 he states:

> … I am sorry if I upset you but you will understand why I cannot simply process a claim for expenses dating back over three years with almost no information to support the claim being made. I am not aware that you have been allowed to "hold back" but the claim is for quite a large sum of money and I still have to verity that it relates exclusively to business expenditure…I hope you understand why I can't be expected to just take your word for it. Everyone else who submits an expenses claim provides me with the evidence to support the claim because that is what the policy requires.

121. There follows a series of emails between Scott Morgan-Davies and the claimant where they dispute the agreement with Barry Nichols-Grey about the time limit for submitting expenses. Scott Morgan-Davies states that he will pay the expenses for the last quarter if itemised bills are submitted. The claimant did not submit itemised bills, nor have they been produced for the tribunal.

122. On 19 March 2018 the claimant emailed Joanna Curds, the finance administrator, to notify her that there was some pot hole damage to her company car that had occurred 'just over a week ago or so' which 'we will need to put through insurance, could you send me relevant forms and I will fill out for you.' There was no reply by Joanna Curds.

123. The claimant had also notified Joanna Curds of damage to the same car on 25 May 2017 when another car drove into her causing damage. She asked 'can we report this to insurance and see if they can do anything about it?'. Joanna Curds reported it to the insurance executive who said that they could claim it on their own fleet policy subject to a £250 excess or ask the claims team to try to claim it from the other driver. The same day Joanna Curds asked the claimant to fill in an incident form and get an estimate for a repair. She chased the claimant on 1 June and 4 July 2017. There was no reply from the claimant and it was not followed up any further by either Joanna Curds or the claimant.

124. On 21 March 2018 the claimant was invited to attend a grievance appeal hearing on 29 March at 11am at the respondent's headquarters in Swansea. The letter states that Vicky Richard has taken account of the claimant's prior objection to

holding a meeting at headquarters, but that she did not consider it necessary to hold the meeting elsewhere. She gives her reasons as follows:

a. As Sales Director it is expected that from time to time she will attend meetings at head office;
b. The purpose of the claimant's attendance will be not be communicated to wider staff and those involved in the process have kept it strictly confidential;
c. They are keen to minimise additional expenditure.

125. The claimant objected to the location of the hearing by email dated 23 March in which she stated that she saw it as bullying and intimidation.

126. By email dated 26 March 2018 Vicky Richards asked the claimant to bring her laptop, Mac and iPad with her when she was onsite on Thursday. The reason given was 'As part of GDPR we need to update security settings on company devices.'

127. There are a number of factors which make the tribunal doubt Vicky Richard's explanation that the IT department had recently identified that the claimant's macbook was the only device that needed to be updated.

(I) There is no contemporaneous documentation from IT, e.g. an email to Vicky Richards asking her to ask the claimant about this, or any internal communication about updating devices for GDPR purposes.
(II) The claimant had had the macbook for 6 or 7 months and she had never been asked to have it updated before. GDPR had been on the horizon for longer than that and had not suddenly become more urgent.
(III) The evidence of the respondent is that it could be done remotely, so there was no reason to bring the macbook with her to the meeting
(IV) The evidence of the respondent is that it was only the macbook that needed the security settings updated: this is inconsistent with the email which refers to 'company devices' as opposed to only one particular device. It also requests the claimant's laptop and ipad too. Vicky Richards had no explanation as to why she had asked her to bring all of them.
(V) Justin Morris' explanation given in evidence for the request being made was that they had started to 'watch Kristina a little bit more' (see below)

128. When Justin Morris was asked if the fact that it suddenly became urgent was anything to do with the grievance he replied:

> Not specifically. But her behaviour… lack of sales… to be honest it was all…we had started to watch Kristina a little bit more.

129. In response to a follow up question on whether the request on 26 March was part of that, he stated:

> We were just more aware because of her behaviour beginning to be more unacceptable, just keeping an eye to make sure that we were certainly protected.

130. The claimant went on sick leave on Tuesday 27 March 2018. She emailed the respondent giving the reason as follows:

> I am unfortunately off sick due to multiple stress related symptoms and in addition as a direct consequence to this my pain has shot through the roof….[my doctor] has advised me to not work until we get on top of this problem. I will update you next Tuesday again.

131. As a result the claimant's grievance appeal, scheduled for 29 March had to be re-arranged.

132. Vicky Richards's response on 27 March asks the claimant to confirm that she had made appropriate plans for appointments that week to be picked up by others and includes the following:

> As far as pay is concerned, you need be aware that you have exhausted your entitlement to contractual sick pay as your Bradford factor score is at 108 as of today.
> …
> Finally, I understand that the company car you returned recently was damaged to I will need to write to you separately about that.

133. The claimant's reply of the same date states:

> …
> I am though ill enough to not need any further stress by being emailed in respect to any other matter as you are adding to my stress and illness. The company is aware I had a serious operation last year and on some very strong medications due to this disability and although told by my consultant to take 8 weeks off I put Dezrez first to support them in the Countryside deal and other matters.
>
> My doctor who I am seeing this afternoon is looking to resume this medication today and potentially provide me with others so it is a very serious matter, a stress related escalation of my pain relating to the disability, therefore I would appreciate Dezrez gives me no further stress.

134. In Vicky Richards' email of 28 March she states that she does not have any information about the reasons for the current absence, and asks the claimant for an update following her doctor's appointment.

135. The claimant's reply included the following:

> As you are aware I had an operation last November, 2 in fact as I had emergency surgery also for internal bleeding. I was advised to take 8-12 weeks off work…I am currently on morphine patches, Oxynorm (liquid morphine), amitriptyline, gabapentin…I have always had full pay relating to this disability. I also know that generally most employees have received full pay irrespective of Bradford score…As I said I would be grateful if Dezrez allows me the time to recover and does not add further to my stress…

136. The claimant emailed Justin Morris on 28 March 2018 (p411) asking for him to consider paying full pay because the absence is as a result of a disability. She says:

> …As you know I have a chronic pain & disability, last year I had an operation relating to this pain… My current illness is an escalation of this chronic disability due to stress…I understand that sickness pay is discretionary but considering its pain relating to my existing disability and its escalated as a direct result of whats happening at work, I would ask you to be considerate and treat me in the same way as last year and pay me my full salary…

137. In an email dated 28 March 2018 (p411) from Justin Morris to the claimant he states:

> I am not doubting that you are unwell and I do want you to get better but there is no right to contractual sick pay when you are off sick regardless of whether that absence is disability related as you suggest yours may be. As your contract states, it a discretionary. I believe I have been very fair in terms of pay that you have received for sickness absence to date and you were paid in full for the duration of your absence in November… Other staff are not routinely paid in full when they are off sick as you suggest either and with current budgetary constraints at the moment I have to try and be fair to everyone.

138. Vicky Richards replied to the claimant's email of 28 March on 29 March stating:

> I know you had some surgery in November which I thought you said was to sort out an issue with your lower back and I am sorry if you stress is now causing you pain…I don't think you ever told me you that you had been signed off for 8-12 weeks. As far as pay is concerned the Bradford factor is a guide that we use for sickness absence and although you have been paid full pay for sickness absences last year, the company is not paying contractual sick pay to anyone at the moment even where the Bradford scoring is lower than yours.
> …
> As mentioned in my other email I do have correspondence for you relating to the car that you returned but I will send that to you next week when hopefully you are feeling better.
> …

139. Paragraphs 13.3 and 13.4 of the claimant's contract of employment (p34) provide that any payment for sickness absence other than statutory sick pay is 'made entirely at the discretion of the Employer'.

140. The respondent's absence management policy provides (p6 and p8):

> Please note that Company Sick pay is not a contractual right and is at the discretion of management. Full pay will not be paid if absence is deemed to be unacceptable and in excess of the trigger points shown later in this policy. … Full Pay may also be extended in exceptional circumstances. Such decisions would be at the discretion of Senior Management.
>
> …
>
> <u>Bradford Factor Scores</u>
>
> The Company utilises the Bradford Factor. Employees' individual Bradford Factor scores are shown on the PeopleHR system. The Bradford Factor is an absence management tool which highlights frequent short term absence as these are deemed more disruptive to the business.
> …
> The Company has set the following trigger points on Bradford Factors:
> - 0-74 – no action
> - 75-199 – Stage One Absence Meeting
> - 200-399 – Stage Two Absence Meeting
> - 400-799 – Stage Three Absence Meeting
> - 800+ - Final Stage 4 Absence Meeting
>
> …
>
> … disability related sickness will not be not be considered within the above levels in line with the Equality Act 2010.

141. The policy sets the purpose and outcomes of the different stage meetings. The first point at which the withdrawal of company sick pay is mentioned is in the list of the potential purposes of a Stage Two meeting:

> …to agree way forward, including what action will be taken, and a time-scale/period for review and monitoring and/or further meeting(s). This may, depending on the steps the Company has already taken, include issuing a formal warning to the employee and withdrawal of Company Sick Pay.

142. There is no mention of the withdrawal of Company Sick Pay in the potential action to be taken at a Stage One meeting.

143. The claimant submitted a statement of fitness for work dated 27 March 2018 which states that she was unfit for work from 27 March 2018 to 9 April 2018 because of 'Stress related problem' and 'Chronic pain from leg injury.

144. In evidence Vicky Richards referred to a draft letter she had located recently in which the claimant was to be informed of the start of redundancy consultation.

145. The draft letter, dated 5 April 2018, was clearly relevant to the issues but had only been disclosed during the reconvened hearing. We accept the respondent's explanation for the late disclosure as follows. Vicky Richards had been unable to locate the letter except in an attachment to advice from a solicitor, and they had been advised that it was therefore legally privileged. Vicky Richards had subsequently found an email to Justin Morris dated 29 March 2018 with the draft letter attached. The letter was therefore considered not to be legally privileged and was disclosed.

146. The claimant objected to the inclusion of the letter at such a late stage, however we decided that it should be admitted for the following reasons. Firstly, the letter was relevant to the issues in the case. Secondly the claimant asserted that the letter had been fabricated, but she did not identify any prejudice that she would suffer, such as being unable to deal with the letter in cross-examination because it had been disclosed so late.

147. Although not raised by the claimant, we did take into account the fact that the late disclosure prevented the claimant or the tribunal from asking Justin Morris questions about its content. Thirdly we find that any prejudice to the claimant is limited because the letter reflects the evidence given by Vicky Richards and Justin Morris in their witness statements, i.e. that even if the disciplinary process had not arisen, the claimant's employment would have been terminated on grounds of redundancy because we were struggling to justify her salary against what she brought in and that Vicky Richards 'believed that a redundancy situation was imminently on the cards' and had been discussed with her by Justin Morris. Finally, the letter could be seen to support the claimant's underling assertion that the respondent had an 'exit strategy' and was therefore not unambigiously supportive of the respondent's rather than the claimant's case.

148. The draft letter is dated 5 April 2018. It states that the respondent is of the view that the business can no longer financially justify the retention of a dedicated sales director post and that her role is at risk of redundancy. It states that this is a provisional decision and that a consultation meeting has been arranged. The date for the meeting is left to be completed.

149. We do not accept that the letter was fabricated. We accept Vicky Richards explanation of the points put to her by the claimant, which was straightforward and convincing.

150. On 10 April the claimant contacted Vicky Richards by email to say that she was still off sick and suggesting that they provisionally book the grievance hearing for

the next week. She stated that due to her medication and pain she could not travel for more than 3 hours via car or train. Having had no response she sent a further email on 12 April suggesting Birmingham as a venue. The respondent agreed and it was booked for Thursday 19 April. Vicky Richards said that she would confirm times but that she was 'looking for the afternoon' to enable the claimant to travel up.

151. In an email of 16 April the claimant indicated that she was going to return to work on Wednesday 18 April, as the doctor had suggested a short week to see how she coped. The claimant said that she was still in pain and on medication so she might need to take more breaks.

152. The claimant was sent an email from Vicky Richards on 17 April at 16.50pm. It attached the invite to the grievance appeal hearing to take place in at the Comfort Inn in Birmingham at 1pm on 19 April to be chaired by Freya Davies. The email also attached another letter, as the cover email explained:

> The other [letter] is a disciplinary invite letter relating to damage to your company car. You will recall that I had referred to this issue in my earlier emails to you but as you were unwell you requested that correspondence about this wasn't sent to you at the time. As you are now going to be attending the appeal hearing on Thursday, I have asked Freya to deal with this matter simultaneously. Obviously if you need any breaks during either meeting then just let me know and that can be accommodated.

153. We accept that in arranging the disciplinary hearing on the same day as the grievance appeal Vicky Richard's intention was to make it easier for the claimant because of the travel involved.

154. The disciplinary invite letter states that it concerns damage to the company car vehicle recently returned by the claimant. It states that the vehicle was inspected by the lease company and the report indicates some damage going beyond what would ordinarily be expected as usual wear and tear. It continues:

> Of particular concern is evidence of cigarette burn damage to the carpet of the vehicle. As you know, smoking in company vehicles is strictly prohibited and is a disciplinary offence under the terms of the car policy.
>
> As far as I am aware you have at no point notified anyone in the company that damage has been sustained to your company vehicle as you are required to do under the terms of the company car policy. You did however, contact Jo Curds, the finance administrator, to arrange for the repair costs to be covered by Dezrez without any discussion or authorization from anyone in senior management.

155. The letter stated that it attached the inspection report, the company car policy, the disciplinary policy and an email from the fleet department date 27 March stating that the burn was likely to be a cigarette burn. In fact these were omitted from the email version and emailed the next day at 11 am after the claimant chased them up.

156. The letter states that the following disciplinary allegations will be considered at 14.30 on 19 April at the Comfort Inn:

> 1. that you have acted in breach of the company car policy in that you have:

a. damaged the vehicle beyond reasonable wear and tear then failed to notify anyone in the company of such damage or the circumstances in which it was sustained prior to it being returned to the lease company; and
b. caused, whether directly or indirectly, damage to the carpet of the vehicle through smoking.

2. that by seeking to have the full cost of the damages paid by the company without appropriate authorisation, you have damaged the trust and confidence placed in you.

157. The letter states that if the allegations are upheld they may result in a formal sanction which could include the removal of the new company lease vehicle.

158. Vicky Richards was asked in evidence whether she had carried out any investigation before putting these disciplinary charges or whether she had simply relied on the BCA report and she replied:

> that was it, the report was black and white, with a disciplinary issue if there is an allegation disputed there would be an investigating officer but it was from a third party and it was black and white so those were the facts that presented

159. No enquiries were made of Joanna Curds as to whether any previous damage had been reported by the claimant. If they had then the fact that the claimant had reported damage in 2017 would have come to light. The reason that Vicky Richards and Freya Davies gave for failing to investigate the matter with Joanna Curds was that damage had to be reported to a senior manager, not to the finance department. This appears to be the justification behind allegation 2 also.

160. Both witnesses said that they thought the requirement to report to a senior manager was in the company car policy. The requirement in the policy is to report any incident to 'headquarters'. The normal understanding of 'headquarters' is the main offices of a company. This would include the finance department. In relation to authorization of repairs this is also to be obtained from headquarters. There is nothing in the policy which requires reports to be made to, or approval to be obtained from, for example, the board or a senior manager.

161. Further, when the claimant reported the incident to Joanna Curds there was no suggestion that she should have reported to someone else – in fact given the subsequent emails where Joanna Curds liaised with the insurance company about the claim suggest that she was exactly the right person to report it to, because it was her role to deal with the issue.

162. Despite the fact that the requirement to report to a senior manager does not seem to have been communicated to employees, or to Joanna Curds, the claimant faced disciplinary action for damaging trust and confidence by 'seeking to have the full cost of the damages paid by the company without appropriate authorisation'.

163. The matter was not raised informally with the claimant before proceedings to disciplinary charges. She was not asked how any of the damage had been caused, including for example, the burn. She was not given the opportunity to inform the respondent that she had reported the damage, both in 2017 and after returning the car. She was not given any opportunity to explain why she had reported the matter to Joanna Curds rather than to a senior manager. If the

respondent had concluded, after an informal chat with the claimant, that the damage was more than reasonable wear and tear, and that they could not or it was not appropriate to claim it on their insurance they could have asked her to pay for the damage.

164. When Vicky Richards was asked why she had not checked with Joanna Curds if any previous damage had been notified, her explanation was that it should have been notified to a senior manager, not the finance administrator. Even if it is right that Vicky Richards thought that the notification of any damage should have been made to a senior manager, it is still likely that a record would have been kept of this in the finance department and so it is surprising that this was not investigated. Further there was no suggestion that Vicky Richards checked with senior managers if any damage had been notified.

165. Vicky Richards did not give any satisfactory explanation as to why the respondent escalated the matter to notice of a disciplinary hearing without first going through any of these informal or investigatory stages. Her explanation that the matter was 'black and white' and simply based on the report is not convincing. The allegations are not simply based on the fact that the car is damaged. They include an allegation of a failure to notify and rely on an assumption that the damage has been caused through some fault of the claimant and an assumption that the company car policy requires damage to be reported to and authorised by senior management.

166. We accept the claimant's evidence that any issues were normally raised and resolved formally. Justin Morris would normally just telephone her. The change had occurred after the claimant had submitted her grievance. In the absence of any other convincing explanation we infer that the reason the respondent jumped straight to serious disciplinary charges before informally or formally investigating the matter was because the relationship of trust with the claimant had already started to breakdown and we infer that this was as a result of the ongoing grievance process.

167. The claimant replied on 18 April at 14.34. She stated in the covering email that she did not think that there had been any consideration for the fact that she was still enduring stress related pain and that she did ask the respondent to accommodate her return to work as per her doctor's advice. The attached letter stated that the invite letter was sent while the claimant was still on sick leave and had specifically requested not to be contacted by the company due to stress and anxiety.

168. The letter states that the claimant is out at meetings on 18 April and has been given insufficient notice to prepare for the hearing given the failure to attach the documents. She asked for the meeting to be re-arranged to allow her time to prepare and to ask possible work colleagues to attend with her. She denied the allegations and asked if the respondent had carried out an investigation into the matter. She confirmed in a separate letter that she was happy to attend the grievance appeal meeting.

169. By letter dated 18 April 2018 (p435) the respondent notified the claimant that additional allegations would be considered at the disciplinary hearing the next day. The letter set out the background as follows:

> …you took delivery of a brand-new Mercedez Benz on 14 March 2018. Your recent Company credit card transactions contain a charge incurred on 21 March 2018 for a new tyre. Given the unusual nature of the charge, only a week after taking delivery of a brand-new vehicle, appropriate enquiries were made by our Finance department.
>
> From those enquiries, it has emerged that your Company car had a puncture, which you arranged to have repaired and/or replaced without deference to the Company. Further, that your partner paid for the tyre to be repaired and/or replaced using your Company credit card, on a chip and pin device.

170. It is unclear why these enquiries or investigations did not involve the claimant at all. The allegations to be added to the disciplinary hearing the next day were set out as follows:

> 1. That you acted in breach of the Company Car Policy, in that you have failed to obtain a quote and/or failed to seek approval from HQ before arranging to replace your tyre;
> 2. That you have either knowingly permitted or recklessly enabled, your partner Richard to have access to your Company credit card and PIN in order to fraudulently use your Company credit card to pay for expenses; and
> 3. That, in relation to the second allegation above, you have either knowingly permitted or recklessly enabled, your partner Richard to have access to your Company credit card to pay for expenses on multiple occasions.
>
> …
>
> You should be aware that the second and third allegations set out above are considered to amount to serious acts of gross misconduct. Accordingly, if either of these allegations are upheld, the Company may decide to terminated your employment without notice.

171. The respondent states that these disciplinary allegations arose because they were surprised to receive an invoice for new tyres so soon after a new company car had been delivered. We accept that it would have been appropriate to raise the issue informally with the claimant, and we find that that would have been the usual approach of the respondent.

172. Instead of contacting the claimant, Scott Morgan-Davies telephoned Harrison's tyres on the morning of the 18 April 2018. We do not have a transcript of this call so it is unclear exactly what enquiries were made. However 'Dave' at Harrisons told Scott Morgan Davies that the claimant's partner had brought the car in for the replacement tyre and the claimant had paid for the tyre over the telephone. It is unclear why this raised concerns with the respondent , but Scott Morgan-Davies instructed Lynne Brangwynne to telephone NatWest Commercial card division to see how the transaction was paid for. She was told that it was paid for using chip and pin (therefore not over the phone).

173. Scott Morgan-Davies telephoned the garage again to clarify how the tyre had been paid for. There is a transcript of this call, of which the relevant parts are agreed. The garage were not told that it was an investigation relating to disciplinary action, nor that the Respondent was investigating a serious allegation which could potentially lead to dismissal. Scott Morgan-Davies does

say that 'this is erm really quite important to us' and 'it's because it's a company card see so we need to be absolutely clear on…' He does not state what they need to be absolutely clear on.

174. It is clear from the transcript that Dave is not at all sure how the tyre was paid for. After he is told by Scott Morgan-Davies that the bank said the card was used chip and pin he states:

> Scott: Alright I'm just guessing there I were guessing this morning I presumed that they paid over...let me just..
> …
> Scott: did he come in did Richard come in and pay?
> Dave: I think I think Richard's paid with it he's…
> Scott: Rich…
>
> Dave: He's I don't think she's ever brought the car in…
>
> Scott: Ah right OK perfect.
>
> Dave: Err I've seen Richard a few times I mean he's a bit rough and ready is Richard he's a farmer and he comes in and he's paid on a card
>
> Scott: He's paid on a card
>
> Dave: Err (*clicking noise*) let me just

175. He does become slightly clearer later in the call, remembering that it was a 'newish Merc' and when asked 'and he come in and paid by card' he replies 'yes'. However when Scott attempts to clarify it again, his answer is less clear again:

> Scott: … just one that it can be clear when the puncture was err
>
> Dave: yeah
>
> Scott: when he brought the car in and he paid chip and pin.
>
> Dave: I mean I mean to me it was just like a cash customer and he pays over you know he pays straight away you know what I mean..
>
> Scott: yes
>
> Dave: Err he doesn't have an account us or anything like that
>
> …
>
> Dave: So but I do you're lucky I know him (*laughter*)…
>
> Scott: Yea Yea no worries that's perfect Dave thanks a lot
>
> Dave: So I wouldn't you know alright..
>
> Scott: Cheers thanks for that goodbye.

176. No informal or formal investigation was carried out internally or with the claimant.

177. If this had taken place, it would have been clear to the respondent that the claimant had never obtained quotes or sought prior approval before replacing a

tyre. The respondent had simply processed the receipts as normal. The clamant would also have told them that when she first had a tyre to replace in her company car, Barry Nichols-Grey had told her just to choose a local garage.

178. In relation to the second and third allegations The claimant has since contacted the garage and there is a letter in the bundle at p 683 which states that if he had known it was for use in a disciplinary meeting. 'I would of done some investigation before agreeing to anything or probably not got involved at all'. On undertaking some investigation the letter confirms that a colleague dealt with the car, and that the claimant had come into the office and paid.

179. When asked about proceeding straight to formal allegations in relation to the tyre, Vicky Richards gave evidence that these allegations were 'bolted on' to the original allegations and that 'at this point things were progressing at an alarming rate and this is the rationale for going straight to disciplinary' and that otherwise she would have 'pulled back'.

180. She also stated that 'In retrospect I wish I had done further investigations. At the time I felt it was sufficient to go straight to a hearing. If I had my time again would have been far more significant investigations'.

181. We accept Vicky Richards' evidence that she had been intending to discuss with the claimant what support she might need on her return to work when she saw her on 19 April 2018. This was then overtaken by the following events.

182. By letter dated 18 April 2018 the respondent agreed to postpone the disciplinary hearing so that the claimant had more time to find a companion, but that they would also move the grievance appeal to the same date to minimise disruption for everyone involved. The letter gave notice that the disciplinary hearing would take place on 25 April 2018 in Birmingham at 13.00 and the grievance appeal would take place straight afterwards at 14.30.

183. In an email dated 18 April 2018 at 18.01 (p441) to the claimant from Justin Morris he wrote:

> …Vicky asked you to bring your laptop/Mac/iPad with you when you were due to travel to Swansea to enable us to ensure all the relevant protective software was installed. It is essential that we gain access to your Mac (as this is not currently registered on our network) so that appropriate protective software can be installed. At the moment if it were lost or stolen that could seriously damage the business. Please speak to Matt Davies first thing tomorrow as he will be able to remotely install the software required. Please ensure that you do not remove your Mac from your home until the appropriate software has been installed.

184. Justin Morris emailed the claimant again on 19 April at 09.37 stating that Matt was awaiting her call, and that she should send him a skype message and he would call her straight back to install the software. He stated 'As explained yesterday this is very important and needs to be done now.'

185. The reply by the claimant on 19 April at 10.43 (p 443) stated that she was currently dealing with the serious allegations that had been made against her, that she would ring Matt Davies once she had concluded on that, but that she doubted it would be today. The claimant noted that the Mac was not leaving the house so there was no urgency.

186. Justin Morris replied by email at 13.32 as follows:

> This is my fourth (sic) email requesting that you contact Matt now. This is non-negotiable and as confirmed yesterday should have been done first thing this morning. … Please contact Matt **now** and let me know when this has been done.

187. The claimant submitted her resignation (with notice) by email on 19 April at 13:34. She was required to give three months' notice under her contract.

B During the notice period

188. Justin Morris asked the claimant again to contact Matt Davies as a matter of urgency by email on 19 April at 14:40. He stated:

> This needs to be done immediately. This is not an unreasonable request and I am concerned that you seem so unwilling to comply. You have until 5.00pm today to comply with this request.

189. The claimant replied by email at 14:50:

> As I explained earlier due to the serious nature of the accusations Dezrez has made against me I have to be out today so nowhere near the Mac. Originally you stated it was because of GDPR and then it was because of security which confuses me somewhat, also not withstanding that I have had it over 6 months and it was never concern so clearly not urgent unlike my predicament.
>
> Please don't state that I am unwilling to comply when there is very valid reasons why I can't.

190. In response Vicky Richards sent the following email at 17:22 on 19 April (p449):

> I have left you a voicemail confirming that the extra time scheduled to allow you to prepare for the discipline hearing did not mean that you were able to use company time for the next 5 working days to prepare. I understand that Justin has been repeatedly requesting that you contact Matt Davies today and this hasn't happened. We have therefore taken the decision to suspend you access to Dezrez systems until this matter is resolved.

191. A letter to the claimant from Vicky Richards dated 20 April 2018 states she is writing to confirm that the claimant is suspended from work until further notice pending conclusion of the disciplinary charges. The letter also sets out the following additional allegations to be considered at the disciplinary hearing:

> 1. That you have repeatedly and wilfully refused to obey a reasonable management instruction to allow IT access to your Mac laptop so that it can be appropriately protected in line with the company's requirements;
> 2. That your email responses to the Managing Director relating to allegation 1 amount to serious insubordination
> 3. The above allegations have undermined trust and confidence in your as a senior employee.

192. The letter sets out that those allegations, if well founded, constitute serious misconduct and a possible sanction may be termination of employment.

193. The letter further states that:

> Pending conclusion of the disciplinary process we have, as a precautionary measure to safeguard both you and the company, disabled your access to email and the company networks.

194. The claimant was also instructed to return the mac to HQ by courier so that the software can be installed and the letter states that failure to do so by 23 April will be treated as a disciplinary offence.

195. By email dated 24 April 2018 sent at 11.55 the claimant resigned with immediate effect stating that since she lodged her grievance there has been an erosion of the implied term of mutual trust and confidence in her employment with Dezrez. She states that this has been 'finalised' by the letter of 20 April 2018. She asks if the respondent is willing to meet to deal with the outstanding disciplinary issues. She states that she has been very ill again as a result of the email, including vomiting and increased pain. On the matter of the mac, she states that her intention was to courier this to the respondent, but her health has prevented her from doing so.

C After termination without notice

196. Vicky Richards responds by email dated 24 April. She asks the claimant to notify her by 4pm if she still wishes to attend the disciplinary hearing and grievance appeal on the 25 April. She states that it will go ahead in the claimant's absence if she does not attend.

197. The claimant replies at 16.29 stating that she wants to obtain legal advice before attending any meeting to discuss the disciplinary and grievance issues. She suggests, especially because she is sick, that the meeting is postponed to another date after she has been able to seek advice. She says that she has not had time to gather all the evidence because she has been sick, but that she does have a statement from Harrison's tyres confirming she was present and dealt with the car payment. She says 'I cannot drive tomorrow or get a train as I am vomiting and in too much pain'.

198. Vicky Richards replied on 25 April stating that she was not prepared to postpone the meeting.

199. Freya Davies's conducted the disciplinary hearing and the respondent relies on her findings to support an argument that if the claimant had not resigned would have been fairly dismissed for gross misconduct in any event. The following findings of fact are relevant to that issue.

200. The letter setting out her conclusions is dated 17 May 2018.

Allegation 1a and 1b

201. Freya Davies upholds allegation 1a, finding that the claimant damaged the vehicle beyond reasonable wear and tear and did not at any point report to anyone the fact that such damage had been sustained.

202. Freya Davies states in her notes at p 497 that 'there is no evidence to suggest that at any point that KG notified anyone in the company that damage had been

sustained to her company vehicle as is required under the terms of the company car policy'. If the respondent had investigated this allegation they would have discovered that this is not accurate.

203. Further Freya Davies relies in her notes at p 497 on the fact that the claimant did not inform the Board of any damage prior to returning the vehicle. This is not required by the respondent's policy.

204. Freya Davies upholds allegation 1b finding that the claimant caused, directly or indirectly, damage to the carpet of the vehicle through smoking.

205. At the tribunal the claimant put forward an alternative potential explanation, namely that the burn could have been caused by chemicals on her farm.

Allegation 2 – by seeking to have the full cost of the damages paid by the Company without appropriate authorisation, you have damaged the trust and confidence place in you

206. Freya Davies upholds allegation 2 on the basis that by notifying the respondent about pothole damage after the return of the vehicle she was seeking to claim under the company's insurance for damage not attributable to pot hole damage.

207. It is unclear how Freya Davies reached the conclusion that by emailing Joanna Curds about pot hole damage the claimant was attempting to claim for any damage other than that attributable to pot hole damage. There is nothing to support this finding in the claimant's email to Joanna Curds, which simply suggests that a claim is made in relation to pot hole damage. Further there is nothing to suggest that the claimant was attempting to do this 'without appropriate authorisation'.

Allegation 3 – failed to obtain a quote and/or failed to seek approval from HQ before arranging to replace your tyre

208. This allegation is upheld.

Allegation 4 and 5 – knowingly permitted or recklessly enabled her partner to have access to her company credit card and pin in order to fraudulently use it to pay for expenses on this occasion (4) and multiple other occasions (5)

209. Allegation 4 was upheld, allegation 5 was not.

210. It is not clear if Freya Davies listened to or had the transcript of the telephone call before her. Vicky Richards gave evidence that she did not, and this seems to be supported by the notes at p 499. In the light of the contemporaneous notes we find that Freya Davies' evidence that she had listened to the tapes is probably a not an accurate recollection. She did not have the claimant's evidence before her, nor the letter from the garage.

Allegations 6, 7 and 8 – repeated and wilful refusal to obey a reasonable management instruction to allow IT access to her laptop (6), that the email

responses to Justin Morris amounted to serious insubordination (7) and that this has undermined trust in confidence in her as a senior employee (8).

211. These allegations were upheld. This incident took place right in the thick of the claimant's resignation. It is intimately connected with the breakdown of the relationship. We find, as a fact, that this incident would not have occurred if the relationship of mutual trust and confidence had not already been seriously damaged. It was not consistent with the claimant's and Justin Morris' normal relationship and conduct before the events leading up to and including the repudiatory breach occurred.

D *Additional findings relevant to knowledge of disability*

212. The respondent conceded by letter dated 10 September 2018 that the claimant was a disabled person at the material time. The claimant's disability is set out in the case management order of 30 July 2018. It states:

> Miss Grimes alleges that she is a disabled person as a result of a physical impairment, namely tissue, muscle and nerve damage and scarring caused by an accident in 2013. She takes a number of drugs for pain relief and to enable her to sleep. If she did not take those drugs, she "would not be able to function": her impairment would have a substantial effect on her mobility and her ability to sleep.

213. The physical impairment arose initially out of a horse riding accident in 2014.

214. Knowledge of disability is disputed. In addition to the relevant facts set out above, the tribunal makes the following findings in relation to knowledge of disability.

215. The respondent knew about the accident in 2014. A series of emails int the bundle show that the claimant told Marnie Clarke at Dezrez around the time of her recruitment in June 2014 that she had been injured as a result of an incident with a horse and that it has 'proved to be a slow recovery but on the right track at least!'

216. The respondent was aware of the regular medical appointments that the claimant attended. The documents in the bundle show that these took place on the following dates. The reason in brackets is as recorded on the respondent's system: 18 November 2014 (hospital appointment), 23 December 2014 (MRA scan), 6 February 2015 (consultant appointment at hospital), 27 March 2015 (Hospital appt – apologies for so many but the aftermath of the horse kick) 14 May 2015 (doctors appt), 9 October 2015 (Hospital appointment), 21 December 2015 (Hospital appointment) 29 February 2016 (Hospital appointment), 29 March 2016 (Hospital appointment), 8 September 2016 (MRI scan), 25 October 2016 (Hospital appointment), 22 November 2016 (Hospital appointment), 20 January 2017 (Sorry another one. am sick of them), 16 March 2017 (Doctors appt – pain from car accident), 17 July 2017 (LGI Hosp appointment), 4 September 2017 (Hospital appointment),13 October 2017 (Hospital appointment LGI), 20 October 2017, (Hospital appointment LGI), 29 January 2018 (Hospital appointment), 5 February 2018 ((Hospital appointment LGI last one was cancelled albeit only informed when I arrived).

217. The claimant informed the respondent in an email dated 25 Oct 2016 to Barry Nichols-Grey and Justin Morris (p91) that

> I have had to have another MRI as my injury getting progressively worse pain wise, they have also arranged an urgent appointment with pain management tomorrow in the interim to try and get morphine levels right and other medication etc so going to be off next couple of days as a guess'

218. It is clear from the reference to 'my injury' that they were already aware of the injury at that point.

219. In an email dated 23 October 2017 (p190) to Vicky Richards, Justin Morris and Ross Liddell the claimant stated:

> I have to go into hospital for an operation on the 2 November, I have been advised I will be in hospital for a few days and then will require 2 weeks off. I doubt I will be off for the full 2 weeks but I do know I will not be able to drive for that period (op involves opening me from hip to knee)

220. By email dated 6 November 2017 to Justin Morris, Vicky Richards, Barry Nichols-Grey and Ross Liddell (p195) the claimant stated:

> Just to keep you informed that surgery didn't go to plan ended up needing further emergency surgery on Friday. On the road to recovery now but still in hospital so won't be back to work for a bit

221. By Email dated 16 November to Justin Morris (p202) the claimant stated:

> I am ok thanks, out of hospital, saw consultant yesterday again who thinks another few weeks of not driving, riding horses etc (doing my head in !!). I in end had about 8 hours in total in theatre so still a lot of pain and on heavy painkillers…

222. The respondent's absence management policy and procedure provides that a return to work interview will take place after every absence with the line manager using a prescribed Return to Work form. The purposes of the interview include:

- establish the reason for absence and the employee's fitness to return to work
- enquire if there is a need for any particular assistance or support to return to work
- assess if there is a need for further medical review
  …
- confirm the accuracy of the sickness record and indicate if a formal sickness absence meeting will follow

223. The return to work form includes the following questions:

> What was the cause of the absence/main symptoms?
> Are you taking any medication which may affect your performance at work?

224. Vicky Richards accepted that no return to work interview had been carried out with the claimant after her return from the 10 days absence from 2 November 2017 to 15 November 2017 related to her back operation.

225. If a return to work interview had been carried out on her return we find that the respondent would have been informed of the history of the injury up to the operation. It is likely that this would have included details of the medication that

the claimant was taking (set out in full at pages 819-828) including for example the very strong painkillers that the claimant was and had been taking.

E *Additional findings relevant to the counter-claim*

226. The respondent has provided the tribunal with a list of company equipment and gave evidence that it was damaged or not returned by the claimant.

227. Paragraph 34.1 of the contract provides:

> You will be provided with a Company Car, laptop, mobile phone, fuel and hotel cards and any other equipment felt necessary to carry out your role. You are responsible for the safe keeping of these items and they should be returned if your employment ends. Use of this equipment is subject to separate policies which will be supplied to you at induction.

228. Although we find that the claimant posted the macbook and cable to the respondent, when they opened the package the box was empty. We find on the balance of probabilities that it was stolen during transit.

229. The claimant was cross-examined in relation to the apple keyboards, the iphone cover and the synology cloud server. On the basis of the evidence we find that she did not keep those items safe or return those items in breach of contract.

230. In relation to the equipment that was returned damaged, we find that the claimant did not keep those items safe.

231. In relation to the damage to the company car, we accept that the report records damage that is beyond reasonable wear and tear. Although the claimant reported some of the damage to the respondent as accidental damage, she did not fill in the insurance form as requested, nor did she arrange for repairs to be carried out. She did not report the rest of the damage until after the car had been returned, at which point repairs could not be carried out. We have not heard evidence from the claimant as to how any other specific items of damage were caused.

Relevant Law

Constructive dismissal

232. Section 91(5)(c) of the **Employment Rights Act 1996** provides that an employee is dismissed if the employee terminates the contract with or without notice in circumstances in which she is entitled to terminate it without notice by reason of the employer's conduct. Such conduct must amount to a repudiatory breach going to the root of the contract of employment.

233. The claimant relies on the implied term that an employer should not, without reasonable and proper cause, conduct itself in a way that is calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence that exists between an employee and her employer. The employer does not need to intend to damage the relationship. The question is whether the effect of the employer's conduct, judged objectively, is such that the employee cannot be expected to put up with it. A breach of this term is always repudiatory.

234. A dismissal under Section 95(1)(c) can be fair or unfair under Section 98 of the Employment Rights Act 1996. It is for the employer to show the reason for the dismissal and that it was a potentially fair reason within Section 98(1) or (2). In the case of constructive dismissal the reason for the dismissal is the reason for the breach of contract that caused the employee to resign (*Berriman v Delabole Slate Ltd* 1985 ICR 546). If there is a potentially fair reason for dismissal the question is whether in the circumstances the employer acted reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the employee.

235. The Claimant must show that she resigned in response to the breach.

236. The breach of the implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so.

237. An employee has a reasonable period of time to decide whether or not to accept a breach without being taken to have waived the breach or affirmed the contract.

Reasonable adjustments

238. Section 20 of the Equality Act 2010 sets out the meaning of the concept of "reasonable adjustments" and sets out the three requirements which a person (referred to as A) must comply with when the duty to make reasonable adjustments is imposed by the Act. Subsection (3) relates to the first of those three requirements and provides that:

    "The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage".

239. The Equality Act 2010 Statutory Code of Practice issued by the Equality and Human Rights Commission (which must be taken into account by courts or tribunals in any case in which it appears to the court or tribunal to be relevant: see s.15(4)(b) Equality Act 2006) provides as follows:

> 6.10 The phrase [PCP] is not defined by the Act but should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, or qualifications including one-off decisions and actions .."

240. The word "substantial" means "more than minor or trivial". See section 212(1) of the Act. A failure to comply with a duty to make reasonable adjustments constitutes discrimination against a disabled person (see section 21(1) and (2) of the Act).

241. A one-off act or decision will not necessarily qualify as a PCP, although it might, for example, if it is a decision that would have been applied in future to other employees. . These particular words (provision, criterion or practice) were chosen by Parliament rather than the word 'act' or 'decision'. The words carry

the connotation of a state of affairs indicating how similar cases are generally treated or how a similar case would be treated. (**Ishola v Transport for London** [2020] EWCA Civ 112).

Discussion and conclusions

Unfair dismissal

Changes to the claimant's role

242. We find that the claimant's role as she performed it and as described in her job description was changed in December 2017, as set out in our findings of fact. We find that the effect of the changes was to remove the majority of the claimant's management responsibilities and give them to Richard Price. This was not limited to administrative aspects of the role, and amounted in effect to taking the claimant's responsibility for the sales team, in the ways set out in her job description away from her. We find that these changes were fundamental. They amounted to a decrease in status for the claimant's role, both in the claimant's view but also in the view of a reasonable observer.

243. We find that this took place because of the respondent's concerns about the viability of the claimant's role and because of concerns they had about the claimant's performance and the work she was carrying out on a day to day basis.

244. Although the respondent is entitled under the contract to make changes to the claimant's job description, no discussion or consultation took place with the claimant before the changes were implemented. The claimant was not informed of the changes before they were implemented. She was not even told of the changes for a period after they had been implemented, so her team had been told to report to someone else and had been doing so before she had any idea that changes were in motion. The way the claimant found out about the changes was likely to, and did, undermine and embarrass her. We have been given no rational explanation as to why these changes were made in this manner.

245. The way in which these changes were made was likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. We find that the respondent had no reasonable and proper cause for the way in which they made the changes. We find that the claimant was entitled to raise a grievance to try and resolve the issue. The grievance outcome was dated 14 March 2018. The claimant submitted an appeal but resigned on 19 April 2018 before it was heard. We find that the claimant was entitled to attempt to wait for that period of time while the grievance process took place, and that this is not an affirmation of her contract. There is no conduct by the claimant during this period which we find could amount to a waiver of the breach.

246. The way in which fundamental changes were made to the claimant's role was a substantial part of the reasons for her decision to resign on the 9 April 2018. It is the first issue set out in her resignation letter: 'you fundamentally changed my job description without prior consultation and therefore are in breach of contract'.

247. We do not find that giving the minimum notice that was required under the contract amounted to affirmation of the contract.

248. We therefore find that the claimant was constructively dismissed.

249. We find that the employer had no potentially fair reason for the way in which it made the fundamental changes to the claimant's role and, in any event, whatever the reason we would have found that the employer did not act reasonably in treating it as sufficient reason for acting in that way. The dismissal is therefore unfair.

Alternative findings

250. It is not therefore necessary for us to consider the other matters that the claimant relied on as breaches of the term of mutual trust and confidence, but in case we are wrong on our conclusions above we find that the some of the other conduct of the respondent, taken together, would amount to a fundamental breach whether taken together with the changes to the claimant's role or not. This conduct also formed a substantial part of the claimant's decision to resign. In contrast, some of the other conduct, does not, we find contribute to a fundamental breach. We have therefore set out our findings on all the conduct relied upon by the claimant below.

Appointment of Laura Liddell

251. The respondent is a company with a relatively small pool of senior employees that was dealing with a grievance involving the board. In those circumstances we think it was reasonable for the respondent to give the claimant an opportunity to put forward an alternative name. In the absence of any suggestion we find that the respondent had reasonable and proper cause for making Laura Liddell the chair of the grievance hearing. We do not find that this conduct formed part of any fundamental breach.

Required to attend disciplinary and grievance meetings on the on same day

252. We accept that Vicky Richards was genuinely attempting to make things easier for the claimant and that this was a reasonable and proper cause for arranging the meetings to take place on the same day.

In April 2018 Vicky Richards refused the claimant's request for the grievance appeal to be held at R's headquarters

253. The claimant did not make any such request, therefore the alleged conduct did not take place.

Singled out to have security software installed/ classed as gross insubordination/Persisted in demand for return of laptop when knew away from office preparing for disciplinary hearing

254. Although we accept that the claimant was 'singled out' to have security software installed because it was not related to GDPR, but arose out of the

respondent's concerns that the claimant might resign, we accept that it was reasonable for the respondent to attempt to protect itself. We find that the respondent had reasonable and proper cause for asking the claimant to have security software installed on the mac.

255. Although the claimant provided a partial explanation for her movements in the emails, we accept that it was open to an employer to conclude that the claimant could have complied and that she was being grossly insubordinate. Although we accept that this would not have been the respondent's approach had the relationship not broken down to the extent that it had, in the circumstances we find that there was reasonable and proper cause for classifying the claimant's behaviour in that way.

256. Even in the light of explanation provided by the claimant about why she was unable to comply we do not think it was unreasonable for the respondent to assume that she would have the opportunity at some stage in the day to comply and therefore it was not unreasonable for the respondent to persist in its demands.

The respondent did not discuss with C what support she might need on her return from sick leave

257. We have found that Vicky Richards intended to do so when she saw her at the hearings. This was overtaken by events, but we find that the failure to discuss this with the claimant was not without reasonable and proper cause.

Allegation of fraud by Scott Morgan-Davies

258. We accept that claiming as expenses a bill which has already been wholly claimed as an expense of another business would amount to fraud. In the email of 20 March 2018 Scott Morgan-Davies states that it is 'likely' that this was what had happened. We can understand therefore how the claimant might see this as an allegation of fraud.

259. However the submission of a three year claim for telephone expenses, whatever the claimant's agreement with Barry Nichols-Grey, is bound to have been somewhat surprising. Further Scott Morgan-Davies was entitled to assume that the claimant could only claim for business expenses, because that is what the policy says. Finally, the bill was in the claimant's partners name and did have 'Dales Valley View' on it, which Scott Morgan Davies knew was the name of a holiday home which had been operated as a business at some stage.

260. It may therefore have been a leap too far to say that it was 'likely' that the entire bill had been claimed for another company, but this was in the context of 'concerns' about the bill being raised in support of a request for itemization through which the matter could have easily been resolved. Further, as soon as the claimant raised the fact that she was upset, Scott Morgan-Davies apologised for upsetting her and explained why he could not simply accept the claim (see our findings of fact for details). Taken together with this email of the 22 March 2018 we do not think the Scott Morgan-Davies conduct was unreasonable.

Failure to pay contractual sick pay

261. The claimant's case is that she should have been paid contractual sick pay because disability related absences should have been disregarded under the claimant's policy.

262. We find below that the respondent had the required knowledge of the claimant's disability at the relevant time. The claimant's absence in November 2017 was related to her disability, so was her absence in March 2018. Further, the claimant explicitly stated that she was asking the respondent to consider exercising the discretion in her favour because the absence was related to her disability.

263. The respondent's reason for not exercising its discretion to pay contractual sick pay was that her absence had exceeded the triggers set out in the policy.

264. The policy states that disability related absences do not count for the purposes of the 'triggers' set out in the policy, and therefore the absences in November and March should not have counted.

265. If the respondent's economic circumstances meant that they had to change their policy in relation to discounting disability related absences, this change should have been communicated to employees. It was not.

266. In the absence of any communicated change to the written policy, we find that it was perverse for the respondent to exercise their discretion to count disability related absences, when it was explicitly set out in their policy that those absences would not count.

267. The fact that another employee who might have had a disability was also not being paid contractual sick pay makes no difference to this conclusion.

268. We find that the respondent had no reasonable and proper cause for refusing to pay, and that this formed part of the conduct which, taken together, was likely to destroy or seriously damage the relationship of mutual trust and confidence.

Disciplinary charges relating to damage to the car: corresponding about the car while on sick leave/ sending the email about disciplinary allegations on 17 April/treating the claimant differently post-grievance

269. This forms part of the claimant's allegation that she was treated differently post grievance.

270. If reporting a claim to the finance department rather than a senior manager is going to lead to disciplinary action for damaging trust and confidence by 'seeking to have the full cost of the damages paid by the company without appropriate authorisation' then we would have expected that requirement to report to a senior manager to be set out in the policy or to have been communicated clearly to employees.

271. It is surprising that the respondent proceeded immediately to formal disciplinary charges without any internal investigation as to whether any damage to this car

had been reported, or without any informal approach to the claimant or any formal investigation with the claimant. We have set out our detailed findings on this above. In the absence of any satisfactory explanation as to why this approach was adopted our inference is set out in our findings above, i.e. it was because the relationship of trust with the claimant had already started to breakdown and we infer that this was as a result of the ongoing grievance process.

272. We find that this formed part of a course of conduct which amounted to a breach of mutual trust and confidence.

273. Part of the conduct complained about by the claimant is that the company corresponded with her about the company car while she was on sick leave and emailed her about the allegations on 17 April. The claimant had informed the respondent that on 27 March 2018 that it being emailed in respect to the company car was adding to her stress and illness. The claimant was due back at work on 18 April, and she was sent the disciplinary invite letter by email at 16.50 17 April, on her last day of sick leave. We do not think that this is so unreasonable as to amount to conduct which could form part of any fundamental breach.

Conduct relating to the replacement tyre:

i. *Enquired of tyre company if had sold a tyre to C without reasonable grounds for doing so*
ii. *Described C's use of company credit card to pay for car tyre as fraudulent without reasonable grounds for doing so*
iii. *Put a disciplinary charge to C of failing to obtain a quote for a new tyre and obtain approval for the expenditure without reasonable grounds and when it had never asked for this before*
iv. *The claimant was treated differently after her grievance*

274. We accept that it was open to the respondent to call the garage about the tyres because they were obtained so soon after the new car was delivered. We do not think that this amounts to conduct which could form part of any repudiatory breach.

275. It is surprising that the respondent chose to put a formal disciplinary charge of failing to obtain authorisation or quotes for a spare tyre, without raising the matter informally with the claimant or carrying out any formal investigatory meeting with her. This is a fairly minor breach of the company car policy and conduct which been accepted by the respondent a number of times without complaint.

276. In the light of the telephone transcript of the call with Dave from Harrisons it is surprising that the respondent escalated the matters relating to use of the company card immediately to disciplinary allegations to be heard at a hearing the next day without any further investigation. It is surprising that the matter was not raised informally or investigated formally with the claimant. Given that the statements in the telephone call by the garage were fairly equivocal, we think it is surprising that the respondent put formal allegations to the claimant without getting a written statement from the garage and in the absence. Looking at the information before the respondent we do not think that the respondent had

reasonable grounds for putting formal allegations of fraudulent conduct at that stage.

277. Further it is surprising that the respondent put the third formal disciplinary allegation that this 'fraudulent conduct' had happened on a number of occasions based purely on the following ambiguous comment by the garage:

> 'Err I've seen Richard a few times I mean he's a bit rough and ready is Richard he's a farmer and he comes in and he's paid on a card'.

278. It is surprising that the claimant was going to be expected to be able to deal with these allegations the next day, without being provided with a transcript of the telephone call showing the evidence from the garage or any details of the content of the evidence from the garage.

279. The respondent has not provided a convincing explanation or a reasonable and proper cause for this conduct. We infer that it was because the relationship of trust with the claimant had already started to breakdown and we infer that this was as a result of the ongoing grievance process. We find that this falls within the conduct described in the list of issues as treating the claimant differently after submitting her grievance.

280. Further, for the above reasons we find both that the claimant did not have reasonable and proper cause for describing the claimant's conduct as fraudulent and that it did not have reasonable and proper cause for putting a disciplinary charge to the claimant of failing to obtain approval for the expenditure.

281. This forms part of the conduct, which, taken together, amounts to the respondent acting without reasonable cause in a manner that was calculated or likely to destroy or seriously damage the relationship of trust and confidence.

Polkey deduction - redundancy

282. We accept that respondent's argument that the claimant would have been dismissed, at some stage, for redundancy in any event. It is clear that the respondent had concerns about the financial viability of the claimant's role from, at the latest, later 2017. This was part of the reason for the changes that they implemented to the claimant's role.

283. In effect, the respondent's restructure in late 2017 and early 2018 had moved the claimant's leadership responsibilities to Richard Price. This included the strategic aspects as well as the managerial aspects of leading the sales team. Although we have found that the way in which this was implemented amounted to a fundamental breach, it is a legitimate business decision which the respondent was entitled to implement if it had carried it out fairly.

284. Once these responsibilities belonging to the sales director role had been reallocated we find that it was only a matter of time before the respondent reached the conclusion that they could reallocate the claimant's remaining duties and that the company did not require a separate sales director post. We find that the evidence suggests that this conclusion was reached in about March 2018.

We would have reached this conclusion even without the draft letter inviting the claimant to a redundancy consultation meeting.

285. We find that the respondent was likely to have begun the consultation process in early April 2019 and that this process would have taken about a month. At the end of this process, we find that the respondent would have concluded that the requirements of the business for employees to carry out work of a particular kind had diminished, because they could manage without a sales director. We therefore find that they would have dismissed the claimant with three months' notice in early May 2020. We find that the claimant's contract would have terminated by reason of redundancy by the end of the first week of August 2018 i.e. by 3 August 2018.

Polkey deduction – conduct

286. In relation to the respondent's argument that the claimant would have been dismissed for misconduct in any event, we do not accept that there should be any deduction to reflect the chance of dismissal for misconduct for the following reasons. When considering the chance of the claimant being dismissed we have considered whether this would have happened outside of the context of the breakdown of the relationship between the claimant and the respondent, i.e. disregarding the effect of the grievance on the respondent's approach to the claimant which forms part of the fundamental breach.

287. We deal first with the allegations dealt with by Freya Davies.

288. We find that there is no chance that this respondent, if it had investigated the matter properly, could have concluded that the claimant had failed to notify the respondent of all the damage prior to the return of the car. The claimant accepts that she notified the respondent of some of the damage after the car was returned. If the respondent had taken the full background into account, we find that they would not have commenced formal disciplinary action. The claimant might have been asked to pay for the damage, but we cannot accept that there is any chance that this respondent would have dismissed the claimant for this breach, given her clean disciplinary record.

289. We accept that the respondent could have concluded that the damage to the carpet was a cigarette burn, even though the claimant has a potential alternative explanation for the burn. Again we do not accept that there is any chance that this respondent would have dismissed the claimant in normal circumstances for this breach given her clean disciplinary record.

290. We find that the respondent could not reasonably have concluded on the evidence that the claimant was attempting to claim for anything other than the damage caused by the pot hole incident.

291. The claimant did fail to obtain a quote and approval for the spare tyre, but we find that in the circumstances set out in our findings of fact this would never have reached the disciplinary stage if the respondent had known about the full circumstances and had approached the matter as it would in normal

circumstances. We conclude therefore that there is no chance that she would have been dismissed for this allegation.

292. In relation to the allegations about misuse of the credit card, we find that if the respondent had listened to the tapes and read the transcripts, investigated how other tyres in the past had been paid for, taken proper account of the letter from the garage and heard the claimant's explanation, it would have found that there were no reasonable grounds for concluding that the claimant's partner had used the claimant's credit card. It would either have decided not to commence disciplinary allegations, or found them not proven. We conclude that there is no chance that she would have been dismissed by this respondent for this allegation.

293. We turn to allegations 6, 7 and 8, all related to the claimant's refusal to obey a reasonable instruction to allow IT access to her laptop. We find that this is intimately tied up with the claimant's resignation. It occurs over a period just before and just after she submitted her notice of resignation. Given the claimant's former good working relationship with Justin Morris, we find that the refusal would not have happened if the relationship of mutual trust and confidence had not been destroyed or seriously damaged. Further, we find that any such refusal would ordinarily have been dealt with by this respondent informally. In the unlikely event that the matter had escalated to disciplinary action, we find that there is no chance that this respondent would have decided to dismiss the claimant for this refusal.

294. In relation to the allegations where we have found that there is no chance that this respondent would have dismissed the claimant, we make the same finding even if those allegations are taken together. They are not sufficiently serious, even taken together, that we can accept that there is a chance that this respondent would have taken the decision to dismiss the claimant in normal circumstances.

295. In relation to damage/failure to return company property, although we have concluded that the respondent is entitled to succeed on the counter-claim in relation to those properties we do not accept that the claimant would have commenced disciplinary proceedings in relation to these issues and therefore we conclude that there is no chance that the claimant would have been dismissed as a result.

Wrongful dismissal

296. Although the claimant initially terminated her contract with notice, she was entitled to terminate it without notice and did so on 24 April. At that point the changes to her role remained a substantial reason for her resignation without notice. In those circumstances the claim for wrongful dismissal succeeds in relation to the remainder of the three month notice period.

Failure to make reasonable adjustments

Knowledge

297. When looking at what the respondent ought to have known, we take account of the fact that they should have carried out a return to work interview after all the claimant's previous absences and therefore have constructive knowledge in relation to the answers to the questions set out in the return to work form that the claimant would have provided if she had been asked.

298. In the light of the information which was or ought to have been available to the respondent when the claimant returned to work in November 2017 set out in our findings of fact we find that the respondent had constructive knowledge of the claimant's disability at that point. We reach that conclusion taking into account the information provided by the claimant in emails, her medical appointments and the reasons given, and the information which the respondent would have had if they had undertaken a return to work meeting and asked the appropriate questions. We find that in the light of all that information they ought to have reached the conclusion that the claimant had an impairment which had a substantial and long term effect on her ability to carry out day to day activities, given that they had to disregard the effect of the painkillers which the claimant was taking.

299. In the light of this, when Vicky Richards received the email dated 27 March 2019 at 09.40 stating that the claimant was off sick 'due to multiple stress related symptoms and in addition as a direct consequence of this my pain has shot through the roof', the respondent ought to have realised that this was a disability related sickness absence.

The claims for failure to make reasonable adjustments

300. Did the respondent apply the following PCPs (provision criteria or practice)?

    1. Sending the claimant an email about the disciplinary allegations against her on 17 April 2018.

    2. On 18 April 2018, requiring the claimant to attend a disciplinary hearing and grievance appeal meeting on the same day.

    3. Corresponding with the claimant about her company car while she was on sick leave in March/April 2018

301. The tribunal finds that 2 and 3 are not PCPs. They were individual decisions applied to the claimant and nobody else. There is no evidence on which we could base a finding that a hypothetical comparator would, in future, be treated in the same way. There is no evidence that this is something that the respondent does under any policy, nor that it is something that it generally does. These claims must therefore fail.

302. In relation to (1), the respondent accepted that this could amount to a PCP if it is put as a practice of putting disciplinary allegations in writing. We are not sure that this is the way the claimant intends to put the claim. In essence, we think that the claimant's objection is to the communication of disciplinary allegations while the claimant was off sick rather than to the method of communication. However we

find that 'the communication of disciplinary allegations while the claimant was off sick' does not amount to a PCP.

303. If the claim is put on the basis that there was a practice of putting disciplinary allegations in writing, the respondent accepts that it had that practice. We do not accept that there is sufficient evidence before us to enable us to conclude that this puts the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. The claimant stated in evidence that it caused her stress, increasing her pain. It is not clear to us why this flows from the fact that disciplinary allegations were put in writing: there was no evidence that the claimant's stress would have been reduced if the disciplinary allegations had not been communicated in writing, for example in a telephone call. Further we accept that once the decision had been taken to formally put disciplinary allegations to the claimant, it would not have been reasonable to put those to the claimant in a telephone call. For those reasons this claim must fail.

Breach of contract/unlawful deduction claim for telephone expenses

304. We accept that the claimant agreed with Barry Nichols-Grey that expenses would be submitted 'as and when'. There is no express agreement by the respondent to pay for personal calls, and whilst we accept that it is likely that Justin Morris would have agreed to pay a 'reasonable amount' of personal calls if it had been discussed, we do not think that this meets the test for implying a contractual term to that effect. In the absence of any express agreement to the contrary we find that the respondent is liable only for any charges which are wholly and exclusively incurred for business purposes.

305. This claim was listed for the determination of liability and remedy. The bundle did not contain any documents showing the itemisation of the bills and we have not been given an explanation of the different headings on the bill. Without this it is impossible for us to make a finding on the balance of probabilities that the claimant has shown that any of the charges were incurred wholly and exclusively for business purposes and this claim is therefore dismissed.

Counter-claim by the respondent

306. We find that the respondent is entitled to the cost of any items which the claimant did not keep safe or return in breach of her contract.

307. On the basis of our finding that the macbook was stolen in transit the respondent is not entitled to recover the cost of the macbook and cable from the claimant.

308. In relation to the apple keyboards, the iphone cover and the synology cloud server we found that she did not keep those items safe or return those items in breach of contract. The respondent is entitled to compensation for those breaches.

309. In relation to the other items on the list of non-returned items we do not accept that the respondent has proved on the balance of probabilities that the claimant was in breach of contract in failing to keep them safe or failing to return them.

The claimant was not cross-examined in relation to those specific items and we have no evidence of what happened to them. It may be that they reached the end of their natural life through normal use and a failure to return those items would not, we find, be in breach of contract.

310. In relation to the equipment that was returned damaged, we accept that the claimant was in breach of contract by failing to keep those items safe and that the respondent is entitled to compensation for those breaches.

311. In relation to the damage to the company car, in the circumstances set out in our findings of fact, we accept that the claimant was in breach of contract by not keeping the car safe and that the respondent is entitled to recover the cost of repairs from the claimant.

312. The claimant accepts that £1,816.10 is due for personal mileage.

Observations about remedy

313. Although we are only at this stage reaching a decision on liability, it might assist the parties if we indicated our provisional view that the claimant would be entitled to the following compensation, on the basis of the findings above:

a. A basic award.
b. A compensatory award limited to the period from 24 April 2018 to 3 August 2018.
c. No additional damages for wrongful dismissal because they overlap with the compensatory award and she is not entitled to double recovery.

314. Provisionally the respondent is entitled to the following compensation for the counter claim:
d. Items not returned: £500
e. Damaged company equipment: £558
f. Damage to the car: £2,674.02
g. Mileage expenses: £1816.10

Next steps

315. The matter will be listed for a remedy hearing for one day by CVP. A separate notice of hearing will be sent out.

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Employment Judge Buckley

Date 15 October 2020

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