EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102035/2020

Held in Glasgow on 16, 17, 18 and 19 November 2020

Employment Judge M Kearns (sitting alone)

Ms R Glendenning	**Claimant** **In Person**
Ross & Liddell Limited	**Respondent** **Represented by:** **M I Moretti - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal was to dismiss the claim.

REASONS

1. The claimant, who is 63, was employed by the respondent as its insurance manager from 1 March 2013 until her resignation with notice took effect on 2 January 2020. On 3 April 2020, having complied with the early conciliation requirements, she presented an application to the Employment Tribunal in which she claimed constructive unfair dismissal. The respondent resisted the claim.

Evidence

2. The parties lodged a joint bundle of documents ("J") and referred to them by page number. The claimant gave evidence on her own behalf. The respondent called Mr Alec Cassidy, director; Mr Alan Beaver, office manager; and Mr Andrew Cunningham, its managing director as witnesses. Where possible, I have tried to avoid directly naming in this judgment people referred to in evidence who are not

parties to the action where they have not had the opportunity to answer concerning any matter in which they were involved.

Issues

3. The issues for the Tribunal were:-

(1) Whether the claimant was dismissed;

(2) If so, whether that dismissal was unfair;

(3) If it was unfair what financial award/compensation, if any is due to the claimant?

Findings in Fact

4. The following material facts were admitted or found to be proved:-

5. The respondent is Ross and Liddell Limited, a company providing property management and factoring services to residential and commercial property owners. The service provided by the respondent normally includes arranging insurance and maintenance of the properties they look after.

6. The claimant was employed by the respondent as its insurance manager from 1 March 2013 until 2 January 2020. She did not have a written job description. Her job involved arranging, managing and renewing insurance on the properties managed by the respondent. The claimant was an associate director. She reported to Alec Cassidy, director and latterly part owner of the respondent. The claimant has a wealth of knowledge and experience in the insurance industry. It was Mr Cassidy who had recruited the claimant in 2013. At that point the respondent's insurance function was not working well. The claimant came in and did an excellent job of sorting it out. She conducted a thorough review of the respondent's insurance processes. Following her review, she effected a number of improvements to the insurance system. She checked the title deeds of the properties managed by the respondent and made sure they were all insured in accordance with their requirements and those of the Regulator. She made sure that the building sums insured ("BSIs") were adequately specified and (having discovered that some

properties were not insured at all and that some owners only had a £10,000 BSI for their whole flat) she saw to it that appropriate insurance was in place for each property. She also obtained alternative renewal quotations and negotiated more competitive premia for the property owners. She initiated an insurance newsletter and a system for communicating key information to property owners as required by the new property factors legislation. When she started in 2013, the claimant was the only person in the insurance department. By 2017 she was managing a team of three additional staff members. The claimant's working relationship with Mr Cassidy was very good until the end of 2017/ beginning of 2018.

7. In or about May 2017 the respondent changed loss adjusters and instructed Vericlaim. However, they began to experience a high volume of calls from property owners about the standard of the claims service Vericlaim were providing.

8. The renewal date for the insurance on all properties managed by the respondent was 1 May every year. The respondent's contract with their insurance broker usually lasted three years. The respondent's broker in 2017 was JLT. Their contract with JLT began in 2015 and was due for renewal in May 2018. The claimant was unhappy with the level of service JLT were providing and she told Mr Cassidy they were not performing. In the Autumn of 2017, the claimant persuaded Mr Cassidy that the respondent should carry out a 'silent tender' exercise with a view to appointing a different broker when JLT's contract came to an end the following year. This involved meetings with other potential brokers. JLT found out about the silent tender and were unhappy about it.

9. On 9 November 2017 JLT's CEO, Nigel Todd emailed Mr Cassidy (J38) noting that JLT were trying to find a resolution to claims issues raised with them by the claimant by speaking to Vericlaim at the highest level. Mr Todd pointed out that the respondent had chosen Vericlaim as their loss adjuster directly without JLT's involvement and that JLT and the insurer had then interacted with them. Mr Todd stated: "*However, I believe that we need to have a conversation as we understand that you are considering undertaking a further broker tender as a result of these issues.// To be fair, we were not involved in the appointment and then sacking of* [the respondent's previous loss adjusters] *and the subsequent appointment of*

Vericlaim, but are actively involved in helping to solve the issues and I would like to discuss any proposed broker tender with you." Initially Mr Cassidy rebuffed this approach, but later a meeting was arranged in Glasgow between the respondent and JLT for 28 November 2017.

10. The day before the meeting the claimant had a telephone conversation with a member of JLT's staff regarding a claim/complaint. The claimant needed the complaint resolved that day and she 'wasn't taking no for an answer'. The call was quite heated. Later that day Mr Cassidy received an email (J44) from JLT's CEO, Nigel Todd in the following terms:

"*Alec,*

As you know, we were scheduled to catch up tomorrow to discuss various matters surrounding your insurance programme. I had also previously tried to make contact with you to which you directed my attempts to do so on to your Insurance Department.

Unfortunately, there have been further discussions this afternoon between Rita and [JS] *at JLT regarding a specific claim and an issue with* [the respondent's insurers]*. This conversation did not end well.*

As an organisation we pride ourselves in putting Clients First in everything we do. As part of that, the welfare and wellbeing of our staff is paramount to JLT in ensuring that we are able to maintain this Client First mentality.

I am not prepared to accept the continued approach by Rita to our staff and am therefore providing you with the attached letter giving notice to you of JLT resigning as your broker, effective from today.

Suffice to say, we will not be attending the proposed meeting.

I wish you every success in your new broker arrangements and as per the attached letter will be happy to help, if required in any transition process during the defined termination period.

Kind regards,

Nigel"

11. Mr Cassidy spoke to the claimant about the email. The claimant acknowledged that she had 'messed up' during the call the previous day. She said she had lost her temper and said a few things she should not have said.

12. Mr Cassidy responded to Mr Todd's email on 30 November 2017 (J43). In his reply he stated that he accepted that it had been a mistake to direct Mr Todd to his Insurance Department, one which he would not make again. He requested that JLT reconsider the 30-day notice of termination they had given, saying "*the impact on our co-proprietors* [property owners] *could be very extensive".* He asked that JLT continue to the renewal date the following May. He "*categorically assured*" Mr Todd that he would be the sole point of contact, would personally keep communications to an absolute minimum, and that there would be "*no nonsense*". Mr Todd replied by email later that day (J42). He stated: "*Alec, Thank you for your email and comments contained therein. I can confirm that our intent isn't to leave you in a difficult situation but to draw a line under what has been unacceptable interaction between Rita and our team. Unfortunately, this interaction has also spilled over to insurers and adjusters new and old and has been very difficult to manage. Speaking frankly, feeling that there was not going to be a resolution to this interaction issue dovetailed with the threat of a broker tender pending, we came to the conclusion that this would be a good time to end our relationship…."*

13. The sudden premature notice of termination of their brokerage contract by JLT caused serious difficulties for the respondent. The insurance product the respondent was using for all its property owners was JLT's own product. JLT sell the product on behalf of the insurer, but they have complete autonomy over it. In order to continue using it after JLT's termination of the brokerage contract the respondent would require JLT's authorisation. One possible way of keeping JLT 'onside' suggested by the claimant was for her to resign. Mr Cassidy reported this to the respondent's board of directors who were furious about the sudden termination of JLT's contract and wanted Mr Cassidy to accept the claimant's resignation, but he did not do so. He did try making an offer to Mr Todd that he

would personally be the sole contact for JLT going forward, but the offer was declined.

14. JLT could not be persuaded to rescind their termination, so another solution had to be found. Mr Cassidy wanted to avoid having to notify 30,000 property owners of a mid-term change of insurance, which would have meant reissuing all their insurance certificates. The respondent's preferred broker in the silent tender exercise was Towergate and so a brokerage contract was urgently negotiated and drawn up by the respondent with them. Mr Cassidy also continued to negotiate with Mr Todd in relation to the ongoing use of the JLT product. The solution eventually arrived at was that the respondent's contract with JLT would terminate on expiry of the notice period at the end of December 2017, but JLT would authorise the insurers to work with the respondent's new broker Towergate with the JLT product, rates and wording. Thereafter, for a further 30 days beyond the notice period (i.e. to the end of January 2018) JLT would work with Towergate to answer any questions they may have about the JLT product and the transition only. The claimant was also involved in working to resolve the problems caused by JLT's premature termination and she dealt with a number of emails in early January while she was on annual leave in Lanzarote. Following this incident, the respondent's board instructed Mr Cassidy to take a more active role in running the insurance side of the business going forward and in liaising with the brokers and insurers.

15. Whilst on annual leave, the claimant also dealt with a number of requests from JH, head of the respondent's commercial department for insurance cover for new properties bought at auction by her biggest client. The claimant had helped to convince JH's client to bring the respondent their insurance. However, this required information being collated by the respondent's finance, insurance and commercial departments and there were a number of practical problems. In order to provide insurance cover, the claimant required information about the BSIs for the properties and whether they were wind and water-tight. The client did not have this information because - the properties having been bought at auction - surveys had not been carried out on them and JH asked the claimant to ask the insurers if they could provide the information. The claimant told JH that the insurers were not valuers and that it was for JH herself to obtain and provide the information. She insisted that

JH go back to the client and ask for the information. JH did so, but she felt there was inconsistency in the information the claimant was asking for. The claimant felt that JH was "nippy" with her. From around this time, the relationship between the claimant and JH began to deteriorate. The new business quotation process became a bone of contention between them. There were constant disagreements about what information had to be put on the form. JH would email Mr Cunningham about it and Mr Cunningham would email Mr Cassidy.

16. On or around 15 January 2018 JH spoke to Mr Cunningham about the communication difficulties she was having with the claimant. She mentioned concerns about the claimant's tone and attitude and said the claimant had been rude and condescending to her and one of her staff. Mr Cunningham asked JH to confirm the problems to him in writing so that he was clear what the issues were when he raised them with Mr Cassidy. He asked JH whether she wanted to raise a formal procedure and she said absolutely not. As requested, JH emailed (J45) Andrew Cunningham, the respondent's acting CEO in the following terms:

"*Hi Andrew*

As discussed this morning, I think it would be beneficial to put in place a procedure for insurances to be followed by ourselves and the Insurance Department.

Rita previously requested a spreadsheet detailing the required information, but the content of this spreadsheet changed recently, and now she is proposing a further change by requesting that a quotation form accompanies the spreadsheet for each instruction.

The current lack of procedure is making it difficult to keep on top of the various insurance transactions for the client. As Rita's requests for information are inconsistent, I am unable to provide all information at one time, which results in various emails or telephone calls about one transaction.

In addition to this, I am having difficulty communicating with Rita. I find her extremely rude and condescending most of the time. Her attitude is terrible, so I often avoid calling her. I thought about sending this email to you on Friday, as she called looking for Lisa, and while she was on the phone I asked her about the level

of cover at [ ]. *We recently identified two errors with this policy, so I wanted to clarify the level of cover with the Insurance Department before responding to the client, but Rita was unwilling to assist and she was extremely rude in telling me this. I just decided not to send it to you on Friday, convincing myself that 'it's just her way', but having thought about it over the weekend, I am not willing to accept her speaking to me like that anymore, as it happens a lot. I expect her to speak to me in a professional manner, but it would appear that she is unwilling to. Therefore, while setting our procedure, I would like to suggest that all communication via myself and Rita is done via email, rather than telephone, to avoid this issue going forward. …. //I am happy to sit down and discuss the potential new procedure with you, once you have had the opportunity to review this."*

17. Mr Cunningham spoke to Mr Cassidy about how to resolve the problem. He asked Mr Cassidy to speak to the claimant and get her opinion on the issue and enlist her help in working together to get a procedure agreed about what information needed to be forwarded to Towergate to place cover. Everyone would then follow that procedure. When the claimant returned to work from her annual leave the following week, Mr Cassidy called her into his office and told her that the respondent had received a complaint from JH that the claimant had been unhelpful and abusive to her and that she kept changing the information required to place cover. The claimant asked what she had changed, but Mr Cassidy was unable to provide examples. The claimant asked Mr Cassidy if she could see a copy of JH's complaint. Mr Cassidy believed at that point that the complaint was verbal. In fact, JH had confirmed her concerns in an email to Mr Cunningham (J45). JH did not want to raise a grievance. She just wanted it sorted out. The claimant offered to provide Mr Cassidy with copies of her files and her email correspondence with JH, but Mr Cassidy did not take up this offer. The claimant asked Mr Cassidy for more information about the complaint. Mr Cassidy said '*look, if you want to find out about that you should possibly raise a grievance.'* Various meetings then took place between the claimant, JH, Mr Cassidy and Mr Cunningham over the next few weeks to try and resolve the issues that had arisen between the claimant and JH about the form and the process for new business insurance quotations and the difficulty presented by properties bought at auction, which might be sold the next day.

18. The main focus of these meetings in January and February 2018 was to put in place an agreed procedure about what information JH would obtain from the clients and pass to the claimant to enable the claimant to arrange insurance cover and to standardise the form. JH was of the view that the claimant kept asking for different information. A revised 'new business quotation form' was drawn up by Mr Cunningham. Mr Cunningham finally got the content of the form agreed and issued it by email on 2 February 2018 (J47) but the claimant then told the commercial department that Towergate required an electronic signature on the form. Mr Cassidy and Mr Cunningham arranged a meeting with Towergate on 16 February 2018. The claimant attended along with two representatives from Towergate. The meeting lasted fifteen minutes. Towergate confirmed they were happy that the revised form covered all the information they required in order to place cover on properties. Mr Cunningham asked Towergate why they required an electronic signature on the form and Towergate said that they did not require this. The claimant did not challenge Towergate's statement about this.

19. Thus, the upshot of the numerous meetings following JH's complaint was that an agreed form was drawn up by Mr Cassidy and Mr Cunningham in conjunction with Towergate to capture the information required for the brokers to place properties on cover, including in circumstances where properties had been bought at auction. While it would normally be the claimant's job to revise and complete forms for the brokers, the directors had become involved on this occasion because of the difficulties that had arisen between the claimant and JH about what information was required. These difficulties were affecting the smooth running of the respondent's operations and needed to be resolved urgently.

20. From around 2016 onwards there were occasional conflicts between the claimant and individuals in other departments and Mr Cassidy had to speak to the claimant a number of times about her behaviour and the way she interacted with people. On one occasion Mr Cunningham witnessed an incident where the claimant had a heated discussion with JH in JH's office in the presence of two other members of staff. During the course of the discussion the claimant said to JH that 'she was not there to do her job for her'. Mr Cunningham said that 'that was enough and that they should not be having heated discussions in front of junior members of staff'.

He told Mr Cassidy about it. Mr Cassidy told the claimant on one occasion that people did not find her approachable and that he had had a number of complaints. He also said that she was "*difficult to work with she as she constantly changed the goal posts*" and that her manner was aggressive. On another occasion, Mr Cassidy said that he could "*see the aggression emanating from her*". After one such meeting Mr Cassidy went to see the claimant in her room later that day and told her that he only had her best interests at heart and that he spoke to her the way he did because he *"knew she could take it"*.

21. On an unspecified date in 2018 the claimant went to tell Mr Cassidy that she felt unwell and had arranged a GP appointment and Mr Cassidy asked her what was wrong with her now.

22. In or about February 2019 a serious dispute arose in relation to an insurance claim by one of the respondent's commercial clients for 'weight of snow damage' to the glazed roof of a shopping arcade managed by the respondent. The dispute was between the loss adjusters and insurers on the one hand and the property owners and respondents on the other. It concerned the cause of the damage. Mr Cunningham was a qualified surveyor. The loss adjusters suggested that the claim was for pre-existing damage. Mr Cunningham was furious at this suggestion and considered that the respondent's integrity was being questioned. He produced evidence to the loss adjusters that refuted the suggestion and made a serious complaint to the insurer about the loss adjuster's handling of the claim. The respondent had never raised a complaint of this severity and nature before and they had worked hard to ensure that only appropriate claims were made. Given the sensitivities surrounding it Mr Cunningham decided the matter required to be dealt with at director level. As the claimant was not a director, she was not invited to attend the meetings. She was, however, asked to obtain updates on occasion. JH was also involved in the claim and she was also not invited to the meetings.

23. Part of the claimant's role involved dealing with the insurance renewals. In previous years, the claimant had obtained the report from the broker and gone through it with Mr Cassidy line by line. They would look together at the reports for each co-proprietor, the broker's remuneration, their work transfer fee, their loss ratio, and

any claims. The claimant would usually go through it herself first before discussing with Mr Cassidy. In or about March 2019 the claimant received the renewal report from Towergate and forwarded it to Mr Cassidy immediately, having had a quick look at it. She did not hear back from him, so she reminded him about it. Mr Cassidy then informed the claimant that he was dealing with it himself and he did not ask her for her comments on it in the usual way.

24. With effect from 2015, the respondent began undertaking BSI valuations where this was required by a property's title deeds. It was impossible to do such a valuation on every property every year, so the claimant drew up a valuation programme. The claimant would then negotiate with the brokers regarding how to handle the valuations. Following the BSI valuations, the claimant would review the rating applied to the old sum insured. She found it was sometimes necessary to adjust premia. In March or April 2019, prior to the insurance renewals for 2019, the claimant received a letter from one of the respondent's property managers in Edinburgh who had been told he could write to property owners with their new BSI valuations and tell them there was no change in their premium. The claimant telephoned Andrew Cunningham, who was, at that time running the Edinburgh office. He told her that he had discussed the matter with Mr Cassidy and they had decided that the BSIs (building sums insured) would be adjusted and they would waive any premium adjustments. The claimant then called Mr Cassidy, who said he had authority to do this. The claimant told Mr Cassidy that the respondent did not have the authority to waive premium adjustments. Mr Cassidy told the claimant to resolve this with the brokers. By this stage some developments had already been told there would be no additional premium. The claimant drafted an email to the brokers in which she explained that some owners had already been advised there would not be an additional premium because Mr Cassidy and Mr Cunningham had not realized they needed to run it past the brokers first. The claimant passed a copy of the email to Mr Cassidy, who expressed annoyance at the content and said it should not be issued. The claimant then removed the reference to the directors having made a mistake and sent the email. She provided a copy to Mr Cassidy, who was still unhappy with it. The claimant said the email had already been sent and asked what was wrong with it. Mr Cassidy said he would discuss it later.

25. Staff appraisals were done occasionally, but not annually by the respondent. Prior to 2019 the last appraisals had been done in 2016. The claimant had carried out the 2016 appraisals for her direct reports, but that was the only occasion when she had been asked to do this. In March 2019 Mr Cassidy discovered that all the other Board members did their staff appraisals directly and did not delegate them to senior managers as he had done with the Insurance Department in 2016. He came in for a bit of criticism from the Board for having delegated this to the claimant in 2016. He therefore decided to undertake the 2019 staff appraisals for the Insurance Department directly himself. He told the claimant that she would not be asked to do the 2019 staff appraisals and that he wanted to do them himself as there were underlying issues he wanted to take up with one member of staff about absence and he had other matters to raise with the other two.

26. In March or April 2019 Mr Cassidy told the claimant that she was too lenient to one of her direct reports, giving him time off he was not entitled to. The claimant said that every time the member of staff had been off, she had called Mr Cassidy for instructions. She said she had then emailed him to confirm that she had done what he told her to do. She offered to forward to him all the emails she had sent him. He said he did not want her to do this, but that he needed to manage the member of staff's absence and was unable to do so because the absence information had not been entered on the system. He told her not to send him the emails again, but to input the information into the absence recording system. In relation to the immediate issue, he asked her to phone down to him with the dates and times she had sent the emails. The claimant did so. Mr Cassidy did not discuss the matter again with her after that.

27. In April 2019 the claimant attended a meeting with Mr Cunningham. In the course of the meeting Mr Cunningham said that he was "*not clear exactly what tasks the insurance department actually did"*. The context to the comment was that at that time, Mr Cunningham had raised a number of concerns with the claimant on behalf of property managers who said that they were unclear what their specific duties were vis a vis the insurance department. They had told him that there was inconsistency in the information they were being asked by the insurance department to provide and they had asked him to seek clarity from the claimant

about this. The lack of clarity was sometimes the fault of the property managers themselves and not necessarily the fault of the claimant or her department. Mr Cunningham did not make the comment in a context or manner from which it could reasonably be inferred that he was criticising the insurance department or suggesting that they did not do anything.

28. Under the Property Factors (Scotland) Act 2011 factors must give all property owners a written statement of the services they are providing. The respondent meets this obligation by entering a Service Level Agreement ("SLA") with owners. In relation to property owners' liability ("POL") insurance the respondent's SLA (J151) states: "*Where we do not place comprehensive cover on behalf of clients, we arrange POL cover as a mandatory requirement of our management of your property and do so to protect all clients under one policy, in individual buildings or estates, against liability claims."*

29. In April 2019 the respondent was contacted by the management committee of one of their developments who wanted to cancel the insurance arranged through the respondent and go with an alternative broker who had provided a cheaper quote. The alternative quote also allowed the premium to be divided among the owners proportionately rather than equally. The respondent's property manager who looked after the development confirmed to Mr Cunningham that he had checked the deed of conditions and it allowed the owners to arrange their own insurance including POL insurance. Mr Cunningham telephoned the claimant and told her that the development wanted all insurance cover from the respondent removed. He asked her for information so he could draft a letter to the property manager and owners outlining the risks to them. The claimant explained to Mr Cunningham that the respondent's company policy was that mandatory POL cover was the minimum cover required as expressed in the SLA and she could not cancel POL cover. Mr Cunningham's view was that if the title deeds differed from the SLA, then the title deeds took precedence. He told the claimant that Mr Cassidy had made the decision in relation to this development.

30. The claimant telephoned Mr Cassidy and had a heated conversation with him. She said she had concerns about removing property owners liability (POL) insurance

for the development because the respondent's SLA with all clients specifies that POL cover is a mandatory requirement and the claimant had used this fact as a defence against complaints to the First Tier and FSA regulators by clients complaining about being charged for it. She said that she had drafted quite a robust response which was sent to owners who complained about the cover. This response had been tested by the Ombudsman who had upheld the respondent's position. The claimant said to Mr Cassidy that if they made an exception for this client, how would they defend complaints to the regulator in the future. Her robust defence would be gone. She said she would have thought they would be getting rid of the development rather than managing it without POL cover. Mr Cassidy told the claimant that it was consistent with this particular client's title deeds for the respondent not to arrange any insurance including POL cover. The owners were disgruntled and did not want the respondent to arrange cover. He said that if they arranged insurance anyway when the client had expressly said they did not want it, the owners could take them to the First Tier Tribunal and they would not have a leg to stand on. He told the claimant that this was an isolated incident. The claimant was very unhappy about it and said that this was a change in policy and would need to be applied to all developments going forward and she would not be able to argue the SLA defence if anyone challenged them in future. Mr Cassidy insisted that it was a one off and told her that he would '*see it as a dereliction of her duty to the respondent if she did not continue to use the same statements to defend complaints regarding the arrangement of POL despite the fact that POL being in place was no longer a requirement for this development*'. Ultimately, the insurance was cancelled, the claimant put in place contingency insurance to protect the respondent and the claimant and Mr Cassidy agreed to disagree.

31. From around 2018 onwards, the claimant was no longer advised if a property manager had given notice to leave the respondent, which meant that by the time she had been advised of the changes, the insurance department had lost the opportunity to deal with outstanding insurance department issues the person may have had before they left. This came about partly because Mr Cassidy's office moved from next door to the claimant's down to the floor below due to changes in staff accommodation needs. Also, the board of directors had grown, Mr Cassidy

was not always at board meetings and he did not always receive information about property managers starting and leaving.

32. In March or April 2019, the claimant asked Mr Cassidy "*when are we going to discuss apportionment codes*?" and discovered that it had already been done. The apportionment codes were arranged by the finance department and concerned the apportionment of insurance premia among the property owners on developments. Mr Cassidy had met with Tracey Moffat, head of the Finance Department and Mrs Devenny regarding the codes. Deciding on apportionment codes was not a matter within the claimant's remit. It was the finance department, not the insurance department that decided the codes. However, the codes were information the insurance department required.

33. In or around May 2019 Mr Beaver went into the insurance department looking for the claimant shortly before 5pm. The staff said she had gone home. Mr Beaver asked why the claimant had left for the day as he needed information from her for the auditors regarding the insurance year end. The staff said the claimant often went home at 4.45pm and that she worked flexible hours. At a later date, Mr Beaver was asked by the auditors for copies of the contracts of employment of certain employees at random. The claimant's contract was one of those requested (J69). The nearest photocopier to Mr Beaver's office was next to the claimant's desk. Mr Beaver had a look at the claimant's contract while he was photocopying it and he said to her: "*Your contract says 9 to 5"*. Mr Beaver then went back to his office and locked all the contracts he had been copying away. The claimant came into his office and challenged him forcefully about his remark to her about her hours. Mr Beaver showed her the email from the auditors requesting a spot check of certain employee contracts including her own. Mr Beaver told the claimant that he had noticed that her contract stated working hours of 9am to 5pm. He said he had not meant to offend her. The claimant said that she was offended because he had discussed her contract. Mr Beaver said again that he had not meant to offend her. The claimant told Mr Beaver that she often worked long hours and had been told at the start of her employment by Keith Bagnell, a former director that her hours were flexible. Mr Beaver said: "*If a director told you that, that's fine.*" Nothing more was said about the matter.

34. On or about 12 August 2019 Mr Cassidy called the claimant to his office and told her that he had had a very uncomfortable lunch with Towergate, the respondent's brokers. He said he was upset to have been told by them that she was causing issues for their claims team. He told the claimant that the Towergate claims manager ("X") was threatening to leave because he was so stressed. Mr Cassidy said he had been told that the claimant was refusing to meet with him to resolve problems, was contacting the insurer directly without making him aware she had done so, was taking him out of the loop for claims and had issues communicating with him. Mr Cassidy told the claimant that she had one month to resolve the matter and stop X from leaving. The claimant reminded Mr Cassidy that she had had to take action to resolve problems the respondent had had with the Towergate claims service, and that she had kept both Towergate management and the respondent informed about these problems. She said that she had made both Mr Cassidy and the Towergate branch manager DM aware that she was having to go direct to the insurer to resolve claims and renewal issues. Mr Cassidy was adamant that she had to resolve the matter to the satisfaction of Towergate as they did not want to lose their claims manager. The claimant had had a number of problems with X and felt that he did not understand the complexities of the respondent's account despite a number of steps her department had taken to assist him with this. She had therefore 'put him to one side' to deal with the renewal in May 2019. The claimant had spoken to DM (who was X's line manager) about it. She said that the start of a process to help X was already in place because she had arranged a meeting with the insurers for 2pm on 15 August 2019. The claimant had had a conversation with KP at the insurer who was going to be her day-to-day contact for claims. KP had wanted to know what the issues with Towergate were. The claimant had told her that X was not providing updates on claims, so she had arranged for KP to meet with her to go through every claim. KP would then go back to the insurer and send an update on each claim to say what stage it had reached, whether the insurer would pay the claim, and if not, what their defence was. The claimant said she had asked KP to copy X into emails so they would have a starting point. Mr Cassidy insisted that she should communicate with X and with effect from that week the claimant began copying X into emails again.

35. At 16:45 on 13 August 2019 one of the claimant's staff ("G") sent an email (J71) on her instructions to Mr Cassidy. It bore the subject heading: "*deceased owners"* and stated:

"*Hi Alec*

Rita has asked me to send this email as it has become apparent that there has been a few properties where the owner has passed away but the insurance department have not been informed despite another department being aware of the owners passing.

This is not an issue isolated to one department and seems to be a companywide issue some of the examples we have come across show that either PM's, finance or credit control have been aware of the owner's passing but have neglected to inform the insurance dept. The main concern is that if an owner dies, and there is a very high chance that the property is unoccupied which means increased excesses and so on. As the insurance dept have not been informed we have not been given the opportunity to advise executors or the beneficiaries of the estate of the change to cover and offer the optional extension.

If something happened and a claim was not paid out or increased excesses are applied due to the unoccupancy and we have not informed the executors/ beneficiaries of the change to cover levels for unoccupied properties then they can potentially hold R & L liable and come after us. I don't believe that either first tier or FOS would accept departments not communicating with each other as a reasonable defence as to why the information was not issued.

I know Rita has issued companywide communications in the past highlighting the importance of informing the insurance dept when an owner passes away and there are some members of staff that regularly update the insurance department to allow us to contact the relevant people.

To reinforce how important the issue is we feel it may be better coming from Director level that if someone becomes aware of an owner that has passed away and there is buildings insurance in place then the insurance dept should be notified ASAP so the relevant parties can be informed of insurance conditions accordingly.

Let me know what you think.

Many thanks

G"

36. The background to the email was that the claimant and G had been contacted by a property owner to say that the flat above them was unoccupied and had been for a couple of years. G had checked and there had been nothing on the respondent's file to say that the property was empty. This had implications for the insurance cover and the premia had been paid by a building society. The claimant asked G to speak to Mr Cassidy about how to find out who was making the payments. It had turned out that the owner was deceased. Once the building society found out that the insurance cover was restricted (due to lack of occupancy) they had taken out an optional extension. G had then been able to say to the owner in the flat underneath who had contacted him that the owners were aware they needed to inspect the property. The claimant and G were aware of one or two other cases where they had become aware by chance that a property was unoccupied. The claimant instructed G to send Mr Cassidy an email since the departments he managed were the ones that would know. G asked the claimant whether he should put a client reference on the email, but the claimant said no because that would bring it down to an individual in the Glasgow office and this was a general point. They did not want to get the person into trouble. G drafted the email and the claimant approved it before he sent it. Mr Cassidy was not happy about the terms of the email. The respondent looks after 1800 developments and has 32,000 clients Only 20 are marked as executries. Mr Cassidy did not see this as a company-wide problem and believed that the information was, in any event available by searching on the system.

37. On 14 August 2019 Mr Cassidy sent a reply to G (J71), copied to the claimant, in the following terms:

"*G*

I find this email totally unacceptable.

I totally disagree with the comments.

This email for me defines exactly why there is a constant wedge between the insurance department and all other departments.

I will speak to you both independently."

38. The claimant went into work around 8am on 14 August. G looked upset and asked her whether she had seen the reply from Mr Cassidy. As the claimant was reading it she received a call from Mr Cassidy asking her to come down to his office. She initially said she was busy, but she went down once she had read the email. The claimant went into Mr Cassidy's office. Mr Cassidy was seated at his desk. She asked him: "*So, what is it you think is wrong with this email?"* Mr Cassidy said to the claimant: "*I'm appalled".* The claimant went round and stood at the side of the desk. She leant forward onto the desk and said to him "*I'm appalled…."* At this, Mr Cassidy raised his voice and said "*Stand back please. I'm not comfortable with this at all. I want a witness here."* He phoned Mr Beaver and asked him to come down. The claimant walked out of Mr Cassidy's office and back up the stairs, passing Mr Beaver coming down. When she got back upstairs, the meeting had been so short that G said to her "*I thought you'd gone down.?"* She replied: "*I was down and I walked out."* She told G that she would not go back down. Mr Cassidy then phoned the claimant on her landline and asked her to go down to the boardroom. The claimant said she would not do so. Mr Cassidy asked her whether she was refusing. She said: "*No, I'm declining"* and put the phone down. The claimant asked G to cancel the meeting she had arranged with the insurers for 2pm the following day. She then went down to speak to Mrs Devenny, the respondent's managing director.

39. Mrs Devenny asked the claimant would she not speak to Mr Cassidy, but the claimant said she would not because it would just be her being screamed at and she couldn't take it. The claimant left the office, passing Mr Cassidy at the door of Mrs Devenny's room. The next day she went to the doctor and was signed off sick initially for four weeks with work related stress and anxiety. She remained unfit for work. In accordance with their normal policy and because the claimant was signed off with work related stress, the respondent did not contact her other than by writing to her on 3 September (J77) confirming her entitlement to contractual and statutory

sick pay. With effect from 15 August, the claimant did not have access to her work emails.

40. On 26 September 2019 the claimant wrote to Mrs Devenny (J78). In the letter, the claimant said that she had been signed off with work related stress and anxiety and that she believed the cause was the "*bullying behaviour and management style*" of Mr Cassidy. The claimant said in the letter that she hoped that they could resolve the matter amicably, but that it would be difficult for her to return to work for the incumbent management team. She said that this was a great pity because until the first incident with Mr Cassidy she had enjoyed working for the respondent. She stated that Mr Cassidy's bullying had been a personal attack on her integrity, and as such she felt she had no option but to refrain from returning to work until a reasonable solution could be found. She asked Mrs Devenny to treat the matter seriously and to "*look for a reasonable outcome*".

41. Mrs Devenny passed the claimant's letter to Mr Beaver and asked him to arrange a grievance investigation meeting. Mr Beaver wrote to the claimant asking her to attend a meeting with JH, head of the respondent's property department to discuss her complaint. The claimant replied to say that her letter was not a grievance, but a request for assistance to resolve the issues with Mr Cassidy. The claimant asked for details about the format of the proposed meeting and noted that Mr Cassidy had told her that JH had complained about her in the past. She stated in the letter: "*I am reluctant to involve any work colleague to attend with me as I would hope to return to work and do not feel it is appropriate for me to speak freely against a director of the company."* She requested instead to bring a friend.

42. Further letters were exchanged between the claimant and Mr Beaver regarding the arrangements for the grievance meeting. A copy of the respondent's grievance process was enclosed with one of the letters. The grievance meeting was rearranged for 17 October 2019 and the claimant attended on that date. Mr Beaver chaired the meeting. Tracey Moffat attended to take notes (J95). The claimant's husband accompanied her and waited for her in reception. The claimant also took minutes (J98). The meeting lasted 15 minutes.

43. Mr Beaver told the claimant that his task was to investigate the content of her letter to Mrs Devenny confirming that the letter was the first time that the respondent had become aware of her issues relating to Mr Cassidy. The claimant said that to save time she had prepared written notes and that her aim of the meetings was to resolve matters amicably. She asked Mr Beaver what outcome the respondent was looking for and he said that they were looking for the claimant to return to work. The claimant passed Mr Beaver a copy of her 'pre-meeting notes' (J85) advising that they contained details relating to a number of incidents. She told him: "*This is everything I've got to say"*. Mr Beaver looked at the notes and said he would need time to review them in full. He asked the claimant if she would be willing to attend a further meeting to discuss them. Mr Beaver also said that they may require further information from her. The claimant confirmed that she would attend a further meeting and asked that any additional information required should be requested from her in writing. This would allow her to prepare and provide a detailed written response, ensuring that all parties would have this at the next meeting to save time and avoid any misinterpretation. Mr Beaver confirmed that any additional information would be requested from the claimant in writing and asked her again what outcome she was looking for. The claimant confirmed as she had said within her notes and at the beginning of the meeting, she was looking for an amicable solution. Mr Beaver confirmed that he would hope to have a response to the claimant within seven days. He also said he may be in a position to investigate without requiring further information. If that happened, it may not be Mr Beaver holding the next meeting but Mr Cunningham. The notes reiterated the claimant's aim "*to resolve matters amicably*".

44. Mr Beaver obtained a response from Mr Cassidy on the claimant's pre-meeting notes (J88 - 93). In his response Mr Cassidy denied having made some of the specific comments attributed to him by the claimant. He included the following introductory words:

"*In late 2017\ early 2018 RG acted beyond her authority by telephoning, the then broker JLT, and informing them that in the following mornings pre- arranged meeting with myself that they were to be terminated. JLT immediately resigned their position giving one months' notice. This was categorically not going to happen at*

the meeting. RG knew I was intending on extending JLT's appointment. RG verbally offered me her resignation, and asked me to offer that as a carrot to get JLT to reverse their decision. I did no such thing with JLT. JLT did not reverse their decision (see emails to and from [NT], chief executive, JLT).

The consequences for R&L were momentous. I did not feel RG resignation would have made my task any easier, so I did not accept it. I did stress under no circumstances was she ever going to put me or R&L in this critical working situation ever again! RG fully understood. I had to appoint a new Broker within one month with her assistance.

The main insurance policy which was a JLT product, meant we had to liaise with JLT, Zurich and TG (new insurance broker). All final decisions being mine. We were able to avoid having to change the policy mid-term with [insurer], and subsequently avoid contacting every client about this. And thankfully resolving a potentially financial and reputational disaster. It has taken R&L and TG until May 2019 to fully resolve what was the complete rewrite of the JLT policy to a new [insurer] policy, all caused by RG's unauthorised actions.

Making it clear to RG, although verbally, that neither R&L or myself would never be put in the same position again by her wrongful actions. Prior to this, the arrangement was that she was the main point of contact, however, after this event, I advised RG that I would be much more directly involved in all aspects of R&L insurances, in order to ensure the company's best interest were a priority."

45. Having obtained Mr Cassidy's response, Mr Beaver considered that his investigation was complete and he wrote to the claimant on 23 October 2019 (J94) confirming this and letting her know that he had passed his findings to Mr Cunningham for review. Mr Cunningham then wrote to the claimant on 29 October asking to meet with her on 5 November 2019 to obtain further clarification on the details of her grievance. He said he also intended to meet with Mr Cassidy. He told her that she was entitled to be accompanied by a work colleague and that Tracey Moffat would take notes.

46. The claimant responded to Mr Cunningham's letter on 30 November 2019 (J97). She said that she could not manage 5 November, but suggested some other dates. She also asked for details of the additional information Mr Cunningham required to be provided in writing and said she would provide a written response. She stated: "*I struggle to see where R&L are providing any element of support; or indeed show any concerns as to the impact this is having on my overall health and wellbeing…..It is falling to family members only to ensure that all possible steps are being taken to reduce my anxiety levels, this extends to include a family member being in attendance when I am in receipt of written communications from R&L."*

47. Mr Cunningham responded to this letter on 8 November 2019 (J99). He noted in his reply that the claimant had been absent from work nearly three months; had a current medical certificate confirming she was unfit which was due to expire on 20 November; and had said in her letter that the whole situation was having an impact on her health. He said that as a result of this it seemed appropriate to seek guidance from the respondent's occupational health provider, so the respondent could gain a greater understanding of the claimant's health, fitness for work and how they may be able to support a return to work. He also noted the adjustments she had requested to the usual grievance process (requesting that additional information be exchanged in writing) and said he also wanted to seek OH guidance on that. The claimant replied on 11 November 2019 (J100). She asked for clarification on some points and said: "*I do worry that the delays may hinder my return to working duty. Whilst Alan Beaver had advised that R&L wished to see me return to working duties, can I ask whether this is also the wish of yourself and Alec Cassidy?"* Mr Cunningham replied on 14 November (J101). The OH referral (J103) was submitted on 17 November 2019 and Mr Cunningham wrote to the claimant on 18 November (J109) to let her know that an appointment had been arranged for her with OH on 4 December.

48. On 20 November 2019 the claimant wrote Mr Cunningham a letter of resignation (J110). In it she stated that she felt abandoned and that her grievance had not progressed. She said that she was concerned because her final grievance appeal should have been to Irene Devenny, but that Mrs Devenny was retiring during December. She noted that she ought to have been sent a copy of the OH referral

and that this had not happened. She said that she could not manage an OH appointment on 4 December or any other date that week. The claimant gave six weeks' notice of termination. Her end date was 2 January 2020.

49. On 26 November 2019 Mr Cunningham wrote to the claimant (J113) allowing her a period of seven days (until 3 December 2019) to reconsider her resignation. He enclosed a copy of the OH referral and said that he proposed instructing an independent third party to investigate her grievance instead of himself. The claimant read over the OH referral (J103) and noted the questions OH were being asked to answer. These included: "*Likely date of return to work; is the presenting condition work related? Is the employee fit to continue in their current post?*" She was upset that the respondent was asking questions like these of a third party when she had been a member of their staff for seven years. She thought the questions ought to have been directed to her. The claimant responded by letter dated 28 November (J115) saying that she did not wish to rescind her resignation. Her position was as follows: "*having no communication from R&L after nearly 7 weeks of absence, I wrote and asked for assistance in resolving the matter. I agree that Alec and myself are senior members of staff, as such in my innocence I believed that meaningful adult discussions could take place to resolve matters amicably. Instead R&L insisted that the grievance process be followed. I am now being advised that R&L cannot complete the grievance process and need to firstly seek advice from OH and then involve a HR professional. If the issue of pre meeting questions was such an issue and would stall the process, why was this not communicated to me so that a viable solution could be agreed?"*

50. On 29 November 2019 Mr Cunningham wrote to the claimant (J117) to confirm that her resignation was accepted.

Observations on the evidence

51. The factual matrix in this case was somewhat complicated. The claimant made a good job of cross examining the respondent's witnesses and presenting her case. However, there were a couple of occasions where it was clear on reviewing my notes that the claimant was talking about one incident and the witness was answering in relation to another. This happened when she was questioning Mr

Cassidy about the POL insurance matter. Fortunately, when she cross examined Mr Cunningham on the same issue there was more of a meeting of minds.

52. The claimant was a sincere and honest witness and I accepted her evidence as generally reliable. There were occasions where it was clear that although she was giving her honest testimony, she did not have all the facts and this affected her interpretation of the event. Mr Cunningham was an impressive witness who gave his evidence in a measured and careful way. I had no hesitation in accepting his testimony as credible and reliable. The same applied to Mr Beaver. Mr Cassidy's recollection of events in 2017 was a little tentative in places, which is understandable given the lapse of time. There were occasions where it appeared to me that the claimant had recalled one part of a conversation and the respondent's witnesses remembered another. I have done my best in the circumstances with the assistance of the documentary record.

53. One key event about which there was disagreement was the telephone call the claimant had with JS of the respondent's former broker JLT on 28 November 2017. Mr Cassidy's evidence was that the claimant had come to see him after her call with JS and told him she had messed up, lost her temper, said a few things she should not have said and that she told him she had told them they were coming up to the meeting the following day to "get fired". The claimant admitted that the call with JS had been heated and said that she had been "firm". However, she categorically denied having told JLT they were going to be fired. She pointed out that the email that followed the call (J44) made no mention of her having told JLT their contract was being terminated. The claimant's position was that JLT could not service the account and were looking for an excuse to get out of the contract. I concluded that on balance, although the claimant's call with JS appeared to have been seen by JLT as unacceptable and had been given by them as a reason for their termination of the contract, if the claimant had informed them they were about to be fired that would probably have been mentioned in Mr Todd's email. I considered that the claimant was more likely to have remembered the call accurately than Mr Cassidy. She was directly recalling her conversation with JS, whereas Mr Cassidy was trying to recall hearsay about the conversation. Thus, on the point about whether the claimant did tell JS that JLT were about to be fired, I

preferred the claimant's evidence as more consistent with the documentary record and more likely to be reliable.

54. The claimant testified that she had had an excellent working relationship with Mr Cassidy until things began to go sour. She was not entirely clear about when this happened, but the totality of the evidence suggested it was around the end of 2017/beginning of 2018 after the JLT issue. I put her evidence on this to Mr Cassidy. Was there a point at which the relationship changed and if so, what was the cause? He responded that he had had to move his office from next door to the claimant's on the third floor down to the second floor and that from that point they had not been in such regular direct contact. I concluded that while that may have been so, that answer was not the whole truth. In his response to the claimant's pre-meeting notes in October 2019 (J88) Mr Cassidy wrote the passage quoted in paragraph 44 above. It is clear from that passage that he considered the sudden premature termination by JLT of their brokerage contract to have been "*a potentially financial and reputational disaster*" and that he thought it had been caused by the claimant. That was not an unreasonable conclusion based on the evidence before him. In his email of 28 November 2017 (J44) JLT's CEO stated: "*I am not prepared to accept the continued approach by Rita to our staff and am therefore providing you with the attached letter giving notice to you of JLT resigning as your broker, effective from today*." Whether fairly or unfairly, JLT were blaming the claimant for their termination of the contract. Mr Cassidy explained in his response to the claimant's pre-meeting notes that prior to this the claimant had been the respondent's main point of contact for insurance. After it, Mr Cassidy was going to be much more directly involved in all aspects of insurance. I concluded that essentially, the JLT incident caused Mr Cassidy to lose confidence in the claimant's communications with key external contacts.

55. One piece of undisputed evidence was that the claimant and Mr Cassidy considered telling JLT that the claimant would resign as a way of, in the claimant's words "*keeping them onside*". The documentary evidence, particularly the email correspondence between Mr Cassidy and Mr Todd (J38 – 44) supports Mr Cassidy's position that the claimant caused the relationship with JLT to breakdown prematurely, whether or not, as the claimant submits, Mr Cassidy has

misremembered the precise way in which that happened. I accepted that the claimant sincerely believed that JLT were not going to be reappointed and that they used her contact with JS regarding the claims dispute as an excuse to break off the relationship with the respondent prematurely because they could not service the account. However, the preponderance of the evidence supports Mr Cassidy on the matter. It is clear that from the beginning of 2018 onwards Mr Cassidy did abrogate important tasks to himself that would formerly have been done by the claimant.

Discussion and decision

Constructive Unfair Dismissal

56. In a claim for constructive dismissal the onus rests on the claimant to establish that she has been dismissed. Section 95(1)(c) of ERA provides that an employee is dismissed if

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

57. The circumstances in which an employee is entitled to terminate a contract without notice by reason of the employer's conduct are judged according to the common law. The claimant must establish a repudiatory breach of her employment contract by the respondent. In essence, the claimant requires to prove:

(i) that there was a breach of a contractual term by the respondent;

(ii) that the breach was sufficiently serious to justify her resignation;

(iii) that she resigned in response to the breach and not for some other reason; and

(iv) that she did not delay too long in resigning.

58. In these proceedings the claimant's case was that the respondent was in breach of the implied term of mutual trust and confidence. The latter term was described by the House of Lords in Malik v BCCI [1997] IRLR 462 HL as a term that:

"*The employer shall not, without reasonable and proper cause conduct itself in a manner calculated and [or] likely to destroy or seriously damage the relationship of trust and confidence between employer and employee*."

59. In order to establish a breach of the implied term the claimant requires to prove that the respondent was guilty of conduct that was so serious as to go to the root of the trust and confidence between employer and employee and destroy it or be calculated or likely to destroy it. Furthermore, there must be no reasonable and proper cause for the conduct. In the words of Brown Wilkinson J (as he then was) in Woods v WM Car Services (Peterborough) Ltd 1981 ICR 666 EAT:-

"*The tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it*."

60. In this case the claimant resigned by letter dated 20 November 2019 (J110). The onus is on her to establish that she resigned in response to a repudiatory breach of her contract of employment. The claimant's case was set out in her further and better particulars and further explained and developed in her evidence. In short, her case was that the following alleged conduct had occurred and that it amounted cumulatively to a breach of the implied term of trust and confidence. I have summarised each alleged incident complained of by the claimant below along with my conclusion in respect of each and the reasons for reaching that conclusion. (I have set out the allegations made by the claimant in her further and better particulars to the extent that they were supported by her evidence only. Any aspect of the particulars not supported by testimony is omitted below, except where specifically stated.) In each case, the incident alleged by the claimant is shown in bold type:

(i) In or about January 2018 the respondent mishandled a complaint against the claimant by the head of its commercial property department, JH. In particular, it was alleged that during the course of meetings held to discuss the complaint:

(a) Mr Cassidy told the claimant that she could only see the complaint if she raised a grievance.

(b) Mr Cassidy told the claimant that she was "*disliked by all within the company*"; that she was "*difficult to work with she as she constantly changed the goal posts*" and that her manner was aggressive.

(c) Mr Cassidy said that he could "*see the aggression emanating from her*"; and that he '*only had her best interests at heart*' and spoke to her the way he did because he *"knew she could take it"*.

(ii) In January 2018 Mr Cassidy undermined the claimant by changing the new business quotation process: (a) by intervening to take over a task the claimant would normally have undertaken directly and (b) by the manner in which he handled it. The claimant's case was that the effect of this was to undermine her advice and integrity and imply that she was difficult.

Discussion and Decision

61. It was clear from the evidence I accepted from the claimant, Mr Cunningham and Mr Cassidy and from JH's email (J45) that there were communication difficulties between the claimant and JH about the information required for new business insurance quotations for a particular client with a high volume of business. JH felt the claimant kept changing the information required and had been rude and condescending. The claimant felt that JH was "nippy" with her. JH was primarily asking for a procedure to be agreed going forward. She was not seeking to raise a formal complaint and she only put the matter in writing because Mr Cunningham asked her to. Mr Cunningham was clear that he was not trying to decide who was right and who was wrong. Instead, he was trying to reach a solution that would work for both the claimant and JH going forward. I did not conclude that the respondent's handling of this matter was conduct calculated or likely to destroy the relationship of trust and confidence. I concluded in any event that the respondent had

reasonable and proper cause for their actions. When an employer receives a request from an employee for assistance in resolving a difficulty with a colleague the employer has to try and assist. Mr Cunningham handled the matter in a reasonable way, and ultimately a solution was found that enabled matters to move forward.

62. Mr Cassidy discussed with the claimant JH's concerns about the claimant's conduct towards her. The claimant testified that Mr Cassidy had also discussed with her complaints he had received from other staff about her behaviour. This was not in dispute. I considered that Mr Cassidy had reasonable and proper cause for bringing up these issues with the claimant. An employer sometimes does need to have difficult conversations with an employee. None more so than where complaints or concerns are received from colleagues. With regard to allegation (i)(b) above, I did not conclude that Mr Cassidy had told the claimant at this or any other stage that she was "*disliked by all within the company*". I inferred that the claimant may have interpreted the raising of complaints with her as having that implication. Mr Cassidy accepted that he had referred to the claimant 'changing the goal posts' and that this related to an issue with her attitude that had been going on for some time. I accepted that he had told the claimant that she was "*difficult to work with she as she constantly changed the goal posts*" and that her manner was aggressive. He had reasonable and proper cause for raising those matters with her and giving her an opportunity to comment on them because they were concerns that had been raised with him by other employees and he needed to give the claimant an opportunity to comment and reflect on her communication with colleagues and make any changes required.

63. With regard to (i)(a) Mr Cassidy accepted that the claimant had asked him about the complaint and that he had said '*look, if you want to find out about that you should possibly raise a grievance.'* That did not appear to me to be conduct calculated or likely to undermine trust and confidence. JH had not raised a formal complaint and the claimant was not being subjected to any disciplinary process. Mr Cassidy was making the claimant aware of something that had been said about her communication style. The correspondence between JH and Mr Cunningham could be regarded as confidential.

64. Turning to (i)(c), I accepted that Mr Cassidy did say to the claimant that he could "*see the aggression emanating from her*". It was clear that the claimant and Mr Cassidy had great respect for one another. My impression of the claimant's communication style is that it is quite direct and no-nonsense and she is inclined to speak her mind. There is nothing wrong with that. However, frankness begets frankness. In circumstances where she and Mr Cassidy had had a close working relationship over a number of years, I inferred that they communicated in a frank and direct way. That is what I took from the statements that he '*only had her best interests at heart*' and spoke to her the way he did because he *"knew she could take it"*. If Mr Cassidy thought the claimant was speaking with aggression he was entitled to say so. With regard to (i) above, I did not find that the facts as found constituted or contributed to a breach of the implied term. Those comments that might otherwise have done so were made with reasonable and proper cause in the circumstances.

65. With regard to (ii), the claimant's case was that management intervened unnecessarily in a review of process that was her responsibility and in doing so undermined her. It was not in dispute that the preparation of new business quotation forms and any review of the attendant process was a task normally within the responsibility of the claimant. It was also agreed that the particular requirements of an important commercial property department client had necessitated a review of the process. I concluded that the directors had become involved on this occasion because of the difficulties that had arisen between the claimant and JH about what information was required. These difficulties were affecting the smooth running of the respondent's operations and needed to be resolved urgently. The intervention of the directors on this occasion was with reasonable and proper cause and it did not constitute or contribute to a breach of the implied term.

(iii) On an unspecified date in 2018 the claimant went to tell Mr Cassidy that she felt unwell and had arranged a GP appointment and Mr Cassidy responded: "*What is wrong with you now?*"

Discussion and Decision

66. Mr Cassidy did not recall saying this to the claimant. On balance, I accepted her evidence that he had done so. However, the claimant's complaint about this in evidence was that: "*It was as if I was constantly taking time off the way he looked at me"*. It was not put to Mr Cassidy that he had looked at the claimant in a particular way so as to convey that sentiment. Clearly, the remark would not, without more amount to a breach of the implied term. I have taken it into account below in considering whether there was a cumulative breach.

(iv) In or about February 2019 the claimant was excluded from meetings she should have attended with the respondent's brokers about an insurance claim relating to a shopping arcade. She was told by Mr Cassidy that she should not arrange any meetings about the claim unless he was in attendance. He later told that her he would handle the matter directly.

Discussion and Decision

67. In or about February 2019 a serious dispute arose in relation to an insurance claim by one of the respondent's commercial clients for 'weight of snow damage' to the glazed roof of a shopping arcade managed by the respondent. The respondent had never raised a complaint of this severity and nature before and given the sensitivities surrounding it the respondent decided the matter required to be dealt with at director level. I concluded that the claimant had not been excluded from meetings that she would normally have expected to attend in relation to this matter. On the basis of the facts found this was not conduct by the respondent capable of constituting or contributing to a breach of the implied term.

(v) In early 2019 the claimant was told not to provide any renewal instructions to the respondent's brokers for the 2019 renewal as this would be done by Mr Cassidy directly.

Discussion and Decision

68. It was part of the claimant's role to be involved in the insurance renewals. The claimant's evidence which I accepted was that in previous years, she had obtained

the report from the broker and gone through it with Mr Cassidy line by line. They would look together at the reports for each co-proprietor, the broker's remuneration, their work transfer fee, their loss ratio, and any claims. The claimant would usually go through it herself first before discussing with Mr Cassidy. In or about March 2019 the claimant received the renewal report from Towergate and forwarded it to Mr Cassidy. He then dealt with it directly himself and did not ask her for her comments on it in the usual way. Mr Cassidy's evidence in chief (which I also accepted) was that the board had required him to take a more active and frontline role in insurance following the termination of the JLT brokerage contract in November 2017 and the fallout from that. I accepted that that was the case. However, I concluded that the claimant might reasonably have expected to be involved in the 2019 renewals to some extent and if that was not to be then it was incumbent on Mr Cassidy to have explained this to her and the reasons for it instead of just leaving her out of the process. I have taken this into account below in considering whether, together with any other conduct, it was capable of contributing to a breach of the implied term.

(vi) In March or April 2019, prior to insurance renewals for 2019, Mr Cassidy and Mr Cunningham agreed that the BSIs (building sums insured) would be adjusted without the need for any premium adjustments. The claimant told Mr Cassidy that the respondent did not have the authority to waive premium adjustments. Mr Cassidy told the claimant to resolve this with the brokers. The claimant emailed the brokers and passed a copy of the email to Mr Cassidy, who expressed annoyance at the content of her email and said it should not be issued. The claimant said the email had already been sent and asked what was wrong with it. Mr Cassidy said he would discuss it later.

Discussion and Decision

69. The background to this was that the claimant had received a letter from one of the respondent's property managers in Edinburgh who had been told he could write to property owners with their new BSI valuations and tell them there was no change in their premiums. The claimant telephoned Andrew Cunningham, who was, at that time running the Edinburgh office. He told her that he had discussed the matter with

Mr Cassidy and they had decided that the BSIs would be adjusted and they would waive any premium adjustments. The claimant then called Mr Cassidy, who said he had authority to do this. The claimant told Mr Cassidy that the respondent did not have the authority to waive premium adjustments. Mr Cassidy told the claimant to resolve this with the brokers. By this stage some developments had already been told there would be no additional premium. The claimant drafted an email to the brokers in which she explained that some owners had already been advised there would not be an additional premium because Mr Cassidy and Mr Cunningham had not realised they needed to run it past the brokers first. The claimant passed a copy of the email to Mr Cassidy, who expressed annoyance at the content and said it should not be issued. The claimant then removed the reference to the directors having made a mistake and she sent the email. She provided a copy to Mr Cassidy, who was still unhappy with it. However, the claimant said the email had already been sent and asked what was wrong with it. Mr Cassidy said he would discuss it later. Mr Cassidy's evidence, which I accepted along with the claimant's was that he did not see any point in discussing the matter further once the email had been sent and that there was no particular issue with it.

70. The way the matter was described by the claimant in her evidence I could not see any particular issue with it. Mr Cassidy had expressed annoyance at the terms of a draft email. The claimant had amended and sent it. In the absence of anything further, it seemed to me to be business as usual and I did not conclude it was a matter capable of constituting or contributing to a breach of the implied term of trust and confidence.

(vii) In March/April 2019 Mr Cassidy told the claimant that the insurance department had messed up the survey administration for renewal 2019 and as such, would not be involved in this task moving forward. He refused to provide any information on how or why the task had failed.

Discussion and Decision

71. The claimant's evidence on this was that in 2016/7 she had produced the valuations by getting the necessary information about the properties from the property managers and passing it to a surveyor, who then changed the valuations. She

testified that she had then followed the same process for the 2019 valuations and that in March or April 2019 Mr Cassidy had called her into his office and said: "*by the way, the Insurance Department have messed up all the valuations."* The claimant said she had asked "*How?"* and that Mr Cassidy had said that he had no time to explain, but that the claimant would not be doing them again and he would discuss with her what had gone wrong. Mr Cassidy was asked about this in examination in chief. He strongly denied that he had made this comment. His evidence was that the valuations were a major problem for everyone and that this was still the case in 2019. Mr Cassidy's evidence was not challenged on this point and I therefore felt unable to make a finding on it.

(viii) In March 2019 Mr Cassidy told the claimant that she would not be asked to complete the insurance department staff appraisals and that she would not be capable as she was too close to the staff and could not be trusted to provide an accurate appraisal. Mr Cassidy decided to undertake the appraisals directly himself.

Discussion and Decision

72. Staff appraisals were done occasionally, but not annually by the respondent. Prior to 2019 the last appraisals had been done in 2016. Although the claimant had carried out the 2016 appraisals for her direct reports, it was not in dispute that that was the only occasion when she had done them. The claimant did not have a job description and I did not conclude from the evidence that carrying out the appraisals for her direct reports was necessarily one of the claimant's duties. Thus, I did not conclude that Mr Cassidy carrying out this task was itself a breach of the implied term.

73. I accepted Mr Cassidy's evidence that in March 2019 he had discovered that all the other board members did their staff appraisals directly and did not delegate them to senior managers as he had done with the Insurance Department in 2016. He said that he had come in for criticism from the board for not having carried out the 2016 appraisals himself. I accepted that he had told the claimant that he wanted to do them himself as there were underlying issues he wanted to take up with the staff.

74. Mr Cassidy denied that he had said that the claimant would not be capable of carrying out the appraisals as she was too close to the staff and could not be trusted to provide an accurate appraisal. His response was: "*that's not the comment I made*". Unfortunately, he did not say what comment he had made and the claimant did not challenge him in cross examination in relation to his denial. I did not, in these circumstances feel able to make a finding that Mr Cassidy had made the disputed comment.

(ix) In March/April 2019 Mr Cassidy told the claimant that she was too lenient to one of her direct reports, giving him time off he was not entitled to. Given that she had sought Mr Cassidy's approval prior to agreeing any absences with the member of staff in question, the claimant was at a loss as to why she was too lenient.

Discussion and Decision

75. The background to this was that in March or April 2019 Mr Cassidy had told the claimant that she was too lenient to one of her direct reports, giving him time off he was not entitled to. The claimant said that every time the member of staff had been off she had called Mr Cassidy for instructions. She said she had then emailed him to confirm that she had done what he told her to do. She offered to forward to him all the emails she had sent him. He said he did not want her to do this, but that he needed to manage the member of staff's absence and was unable to do so because the absence information had not been entered on the system. He told her not to send him the emails again, but to phone down to him with the dates and times she had sent them. The claimant did so. Mr Cassidy did not discuss the matter again with her after that.

76. As I understood it, the claimant's case was that Mr Cassidy was criticising her for managing the absence of one of her direct reports too leniently in circumstances where the decisions had, in fact been taken by him. The claimant had clearly challenged him on this and reminded him that he had made the decisions himself. She had then notified him of the dates when she had emailed him confirmation in relation to the management of each absence. Thereafter, nothing more was said about the matter. Once again, this seemed to me to be business as usual. It must

have been annoying for the claimant that Mr Cassidy made this mistake. However, she soon put him straight and it seems that her position was accepted. I did not think this was capable of constituting or contributing to a breach of the implied term.

77. The parties were slightly talking past each other on this point. In his evidence in chief, Mr Cassidy's beef, was that the claimant had not initially used the online system for recording the absences, which meant, on his case, that he had not been able to manage the employee's absence as early as he had wanted to. However, he testified that the matter had not been a source of any conflict with the claimant so far as he was aware.

(x) In April 2019 Mr Cunningham told the claimant that he was "*not clear exactly what tasks the insurance department actually did"*.

Discussion and Decision

78. I accepted the claimant's evidence that Mr Cunningham had said something like this to her in the course of a meeting. I also accepted Mr Cunningham's evidence that he had not made the comment in a context or manner from which it could reasonably be inferred that he was criticising the insurance department or suggesting that they did not do anything. Mr Cunningham had no recollection of making that specific comment. However, he testified that there would have been a context if he had done so. He stated that at that time, he had raised a number of concerns with the claimant on behalf of property managers who said that they were unclear what their specific duties were vis a vis the insurance department. They had said to him that there was inconsistency in the information they were being asked by the insurance department to provide and they had asked him to seek clarity about this. Mr Cunningham was measured and reasonable in giving his evidence. He was at pains to stress that the lack of clarity was sometimes the fault of the property managers themselves and not necessarily the fault of the claimant or her department. He said that it was sometimes difficult to get teams to work smoothly together.

79. I concluded that whilst Mr Cunningham had said something like this to the claimant, he had not done so in a context or manner that would constitute or in any way contribute to a breach of the implied term.

(xi) In April 2019 Mr Cunningham instructed the claimant to cancel all elements of insurance for a specific development. The claimant told Mr Cassidy she had concerns about removing property owners liability (POL) insurance for the development because the respondent's service level agreement (SLA) with all clients specifies that POL cover is a mandatory requirement of the respondent's management of client property and the claimant had used this fact as a defence against complaints to the regulators by clients complaining about being charged for it. Mr Cassidy told the claimant that he would '*see it as a dereliction of her duty to the respondent if she did not continue to use the same statements to defend complaints regarding the arrangement of POL despite the fact that POL being in place was no longer a requirement for some developments*'.

Discussion and Decision

80. I accepted the evidence of the claimant, Mr Cunningham and Mr Cassidy regarding this point. There was no real dispute about what happened. The claimant telephoned Mr Cassidy and had a heated conversation with him about removing property owners' liability (POL) insurance for a development. There was disagreement about whether it was a 'one of' (or possibly 'two of') situation. The claimant tried and failed to persuade Mr Cassidy that if they made an exception for this client, they would struggle to defend complaints to the regulator in the future. Mr Cassidy told the claimant that it was consistent with this particular client's title deeds for the respondent not to arrange any insurance including POL cover. The owners were disgruntled and did not want the respondent to arrange cover, and if they arranged cover when the client had expressly said they did not want it, the owners could take them to the First Tier Tribunal and they would not have a leg to stand on.

81. The claimant was very unhappy about it, Mr Cassidy insisted and they agreed to disagree. The claimant said that this was a change in policy that would need to be applied to all developments going forward and she would not be able to argue the SLA defence if anyone challenged them in future. Mr Cassidy insisted that it was a one off and told her that he would '*see it as a dereliction of her duty to the respondent if she did not continue to use the same statements to defend complaints regarding the arrangement of POL despite the fact that POL being in place was no longer a requirement for this development*'. It seemed to me that this boiled down to a difference of professional opinion and that in the end the director pulled rank as he was entitled to do. With regard to Mr Cassidy's remarks quoted by the claimant in italics above, it seemed to me that they simply had different interpretations of the effect of making an exception in this case. The claimant was taking an absolute/ no exceptions view of the statement in the SLA. Mr Cassidy was saying that the position in the title deeds took precedence over the SLA. It seemed to me to amount to a fairly robust disagreement about a matter of professional practice between two senior members of staff. I did not conclude that it was capable of contributing to a breach of the implied term. It was not obvious to me that Mr Cassidy's interpretation of the position was unstatable. In any event, no test of the situation ever arose. There was no evidence that the claimant ever had to use the defence with the Ombudsman in the remaining months of her employment.

(xii) The claimant was no longer being provided with information about property managers starting and leaving the respondent, which meant that by the time she had been advised of the changes, the insurance department had lost the opportunity to deal with outstanding issues.

Discussion and Decision

82. From around 2018 onwards, the claimant was no longer advised if a property manager had given notice to leave the respondent, which meant that by the time she had been advised of the changes, the insurance department had lost the opportunity to deal with outstanding insurance department issues the person may have had before they left. This came about partly because Mr Cassidy's office

moved from next door to the claimant's down to the floor below due to staff changes and accommodation needs. Also, the board of directors had grown and Mr Cassidy was not always at board meetings and did not always receive information about property managers starting and leaving. This issue was really about communication. I concluded that this was the sort of 'soft information' that the claimant would absorb from close daily contact with a director, but it was not information she was entitled to be provided with, not least because it may have had data protection implications. Once Mr Cassidy moved downstairs this sort of incidental communication would be less frequent. I also inferred from his evidence that Mr Cassidy was less inclined to rely on the claimant in the wake of the termination by J of their brokerage contract. It was not, in any event, a matter capable of amounting or contributing to a breach of the implied term.

(xiii) The claimant was excluded from meetings relating to apportionment codes for new developments despite the fact that the insurance department would be the first department requiring such codes.

Discussion and Decision

83. The apportionment codes were arranged by the respondent's finance department and concerned the apportionment of insurance premia among the property owners on developments. Mr Cassidy had met with Tracey Moffat, head of the Finance Department and Mrs Devenny to agree the codes. This was not a task within the claimant's remit. On the evidence I accepted, my understanding was that it was the finance department, not the insurance department that decided the codes. However, it was information the insurance department required and the claimant had been involved in the meetings in past years and would normally expect to be included. I concluded on balance that the claimant might reasonably have expected to attend the apportionment code meeting and that it would have been better if Mr Cassidy had either invited her or communicated to her the reason why she was not required instead of just leaving her out without explanation. This was not a matter capable of amounting to a breach of the implied term by itself. I have taken it into account below in considering whether, together with any other conduct, it was capable of contributing to a breach of the implied term.

(xiv) In July 2019 insurance department staff were questioned by Alan Beaver in the claimant's absence as to why she was leaving the office at times at 4.45pm. The department advised Mr Beaver that the claimant had flexible hours. Mr Beaver told them that this was not correct. At a later date, in front of the insurance team, Mr Beaver provided the claimant with a copy of her contract advising that the respondent's accountants had requested a spot check of certain employee contracts. Mr Beaver told the claimant that he had noticed that her contract stated working hours of 9am to 5pm. The claimant told Mr Beaver that she often worked long hours and had been told at the start of her employment by a former director that her hours were flexible.

Discussion and Decision

84. This matter was set out as above in the claimant's further and better particulars. However, the claimant did not give evidence to support the first three sentences of (xiv) above and I was not able to make findings on them. Both Mr Beaver and the claimant stated in evidence that whilst photocopying her contract for the auditors, Mr Beaver had remarked upon her hours. Mr Beaver said he had noted that they were 9am to 5pm. The claimant said in cross examination that he had spoken about her contract and said she did not have flexi-time. She said she had asked him for a copy of the contract 5 minutes later and Mr Beaver had said he did not want to offend her. She had told him she was offended because he had made the remark in front of "the boys". I did not conclude there was anything in this that would amount or contribute to a breach of the implied term. It seemed to me to be an innocuous encounter.

(xv) In July/August 2019 the claimant was called to a meeting with Mr Cassidy who told her that he had attended a lunch meeting with Towergate, the respondent's brokers and had been disappointed to be told by them that she was causing issues to their claim team, such as: refusing to have meetings with them to resolve problems, contacting the insurer directly without making them aware she had done so, and refusing to communicate with the Towergate claims manager. Mr

Cassidy told the claimant that she had one month to resolve the matter as her actions were causing their claims manager stress and Towergate were concerned he was going to leave. The claimant reminded Mr Cassidy that she had had to take action to resolve problems the respondent had had with the Towergate claims service, and that she had kept both Towergate management and the respondent informed about these problems. Mr Cassidy was adamant that she had to resolve the matter to the satisfaction of Towergate as they did not want to lose their claims manager.

Discussion and Decision

85. The claimant's case was as set out in bold above. It was put to her in cross examination that if a manager receives a complaint about a member of staff from a third party it is reasonable to discuss it with the member of staff. The claimant said there would need to be some evidence. Ms Moretti took her to the emails from DM and SB at Towergate (J73 – 4). The claimant's reply was that that was not evidence but someone's perception. Mr Cassidy's position in evidence was that the claimant had told him that there were performance issues with Towergate. However, he had then met with them and they had advised him that their employee (X) had experienced some serious communication issues with the claimant and was so stressed that he was threatening to leave. Mr Cassidy said in evidence that by this point, the claimant had something of a history of falling out with people and that he had insisted that she resolve her issues with Towergate's employee to their satisfaction within a month. The situation here (as was apparent from the emails at J73 and 74) was that the claimant had experienced some frustrations in dealing with X, but that in the wake of this the relationship between the claimant and X had deteriorated. The claimant was instructed by Mr Cassidy to sort the relationship out. It appeared to me that this was an entirely reasonable instruction that arose as a result of a concern raised by the respondent's brokers which Mr Cassidy had no choice but to respond to. Nothing in this episode would, in my view amount or contribute to a breach of the implied term.

(xvi) On 14 August 2019 the claimant received an email from Mr Cassidy (J71) telling her that the content of an email issued by a member of her team on her instruction was "*totally unacceptable*". The email also stated: "*This email for me defines exactly why there is a constant wedge between the insurance department and all other departments."* The claimant's team member was copied in and the email said that Mr Cassidy would speak to them both independently. The claimant was called down to Mr Cassidy's office. In her further and better particulars, the claimant stated that she felt the manner of Mr Cassidy's opening words to her were aggressive, and from past experience she thought she was going to get a dressing down without the chance to respond.

Discussion and Decision

86. The terms of the email to G from Mr Cassidy are set out at paragraph 37 above. The claimant testified that on 14 August 2019, Mr Cassidy had asked her to come down to his office. She said that as she had walked into his office Mr Cassidy had said: "*I'm appalled".* The claimant accepted that she leant forward onto the side of Mr Cassidy's desk. She said that she got as far as saying to him that she was appalled, when Mr Cassidy had yelled "*get out of my office*" and had then phoned Mr Beaver and asked him to come down. She said she had passed Mr Beaver on the stairs. The claimant said that when she got back upstairs, G had said to her "*I thought you'd gone down.."* and that she had replied: "*I was down and I walked out."* She said she had told G that she would not go back down.

87. Mr Cassidy's evidence was that the claimant had burst into his office, put her hands on his desk and asked him: "*So, what is it you think is wrong with this email?"* and that he had said to her: "*Stand back please, I'm not comfortable with this at all and I want a witness here".* He said that the claimant had then replied that she also wanted a witness, so he had telephoned Mr Beaver and asked him to come down. Both parties agreed that Mr Cassidy had phoned the claimant on her landline when she got back upstairs and had asked her to go down to the boardroom and that the claimant had said she would not do so; that Mr Cassidy had asked her whether she was refusing and that she had said: "*No, I'm declining"* and put the phone down.

88. It was quite difficult to reconcile these two accounts of the brief meeting on 14 August 2019. However, it was clearly a somewhat charged encounter and it is possible that each party remembered a different part of the conversation. The conversation was clearly over very quickly. I accepted Mr Cassidy's evidence that the claimant had asked him what was wrong with the email. The claimant is quite a direct person and on balance it was plausible that she was cross about the email and would have come straight to the point. I also accepted the claimant's evidence that Mr Cassidy had said he was appalled and that she had leaned on his desk and said she was appalled. As to how the encounter had ended, the claimant's evidence that Mr Cassidy had yelled at her "really quite loud" to get out of his office did not sit well with her evidence that when she got back upstairs she told G that she had walked out.

89. In her submissions on the evidence the claimant said that it was her conviction that she was forced to resign from her position for three main reasons:

- Her remit and authority were diminished to the point where she could not effectively perform her role;
- She was treated in a way that eroded her confidence and self-esteem, causing her stress, which had an adverse effect on her health; and
- She was accused of poor performance with no examples being provided.

90. The claimant also stated that despite knowing that she had been signed off sick with work-related stress, the respondent made no attempt to contact her to resolve the issue, and that in fact they had not contacted her from the day she went off sick on 15 August until she contacted them on 26 September 2019. An employer is in a difficult position when an employee is absent with work related stress. Employers frequently do not contact employees who are signed off by their GPs with work-related stress in case the contact from them exacerbates the employee's condition.

91. In order to establish a breach of the implied term the claimant requires to prove that the respondent was guilty of conduct that was so serious as to go to the root of the trust and confidence between employer and employee and destroy it or be calculated or likely to destroy it. Furthermore, there must be no reasonable and

proper cause for the conduct. Drawing together the facts found above in relation to each alleged act of the respondent said to amount to a breach of the implied term, I concluded that the respondent's conduct might be open to criticism to the following extent:

- On an unspecified date in 2018 the claimant went to tell Mr Cassidy that she felt unwell and had arranged a GP appointment and Mr Cassidy responded: "*What is wrong with you now?*";
- The claimant might reasonably have expected to be involved in the 2019 insurance renewals to some extent. If Mr Cassidy had decided that that was not happening, then it was incumbent on him to explain this to her and the reasons for it instead of just leaving her out of the process; and
- The claimant might reasonably have expected to attend the apportionment code meeting. If Mr Cassidy had decided that this was unnecessary, he ought to have communicated to her the reason why she was not required instead of just leaving her out without explanation.

92. The points above were, however set against the context of a number of communication concerns that had arisen in relation to the claimant's work and the premature termination of the JLT brokerage contract which had led to Mr Cassidy being required by the respondent's board to have a more direct role in the insurance side of the business and to delegate less to the claimant. That was a business decision the respondent was entitled to take and for which - to the extent that it impacted adversely on the claimant - they had reasonable and proper cause. All told, I did not conclude on the facts of this case that the claimant had established a breach of the implied term of trust and confidence. Even had she done so, she did not resign until 20 November 2019 and the findings in fact in relation to her correspondence after going off sick strongly suggest that she affirmed the contract. She repeatedly stated in correspondence that her aim was to "resolve matters amicably" and return to work. Nothing about the respondent's management of the claimant's grievance or sickness absence could amount or contribute to a breach of the implied term. She had made a very serious complaint of bullying against Mr Cassidy and the respondent had no choice but to process it formally, carefully and

as impartially as possibly. The respondent was entitled to manage the claimant's sickness absence. The referral to Occupational Health was innocuous and not capable of being a 'last straw' incident.

93. In short, I have concluded on the facts of this case that the claimant has not established that the respondent committed a repudiatory breach of contract. Her claim for constructive unfair dismissal accordingly fails at the first hurdle.

Employment Judge: M Kearns
Date of Judgment: 23 December 2020
Entered in register: 25 January 2021
And copied to parties