



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms C BARKER

v

**CP WOBURN (OPERATING
COMPANY) LIMITED**

Heard at: Watford (by Hybrid CVP)

On: 20, 21 & 22 September 2021
and 23 September in chambers.

Before: Employment Judge Skehan
Mr N Boustred
Mr D Wharton

Appearances

For the Claimant: Mr Swales, lay representative

For the Respondent: Ms Twine, counsel

RESERVED JUDGMENT ON LIABILITY.

1. The claimant's claim for harassment contrary to section 26 of the Equality Act 2010 is not well-founded and is dismissed
2. The claimant's claim for constructive unfair dismissal contrary to the Employment Rights Act 1996 is not well-founded and is dismissed.

REASONS

1. By claim form received at the Employment Tribunal 21 October 2019 the claimant claimed constructive unfair dismissal, harassment on the grounds of disability, wrongful dismissal and age discrimination. The claims of wrongful dismissal and age discrimination had been withdrawn by the claimant prior to the final hearing.
2. At the beginning of the hearing, the tribunal revisited the list of issues agreed at the preliminary hearing on 18 December 2020 and annexed to this judgment with the parties. The importance of the list of issues was stressed by the tribunal and it was agreed that this list was a complete list of the issues to be determined by the tribunal.

The Evidence

3. We heard evidence from the claimant on her own behalf. On behalf of the respondent, we heard evidence from Ms Bradbury, the claimant's line manager and manager of the medical centre, Ms Packer, the respondent's HR manager and Mr Carpenter, Deputy General Manager at the relevant time. All witnesses gave evidence under oath and their witness statements were adopted and accepted as evidence-in-chief. All witnesses were cross-examined. As is not unusual in these cases the parties have referred in evidence to a wider range of issues than we deal with in our findings. Where we fail to deal with any issue raised by a party, or deal with it in the detail in which we heard, it is not an oversight or an omission but reflects the extent to which that point was of assistance. We only set out our principal findings of fact. We make findings on the balance of probability, taking into account all witness evidence and considering its consistency or otherwise considered alongside the contemporaneous documents.
4. The respondent operates the Center Parcs holiday village in Woburn ('the Village'). The claimant commenced employment as a nurse in February 2014 in the respondent's medical centre on the Village. The claimant's employment contract recorded her hours of work as 64 hours over a 4 week period. Under the heading 'hours of work' it is stated, '... The actual hours that you will be required to work each week will be as notified on the departmental roster and these may involve attendance on any day of the week including Saturday and Sunday. You will be required to work on some customary or public holidays and may also be required to work additional hours should business levels dictate'.
5. When the claimant commenced work with the respondent, it is common ground that the medical centre operated on a 'self rota' system. This system operated by nurses on a particular day being provided with a blank rota document showing the days of the month. The nurses present would fill in the days that they wished to work. Generally, nurses worked for full days at a time. This system suited the claimant as it provided her with a lot of flexibility in relation to her work. The system of 'self rotaing' meant that the claimant would not necessarily need to work two days per week, but could create longer periods off in one go. This was of particular advantage to the claimant as throughout her employment with the respondent she also worked as a flight attendant.
6. Ms Bradbury joined the medical Centre in July 2014 and was employed as the Medical Centre Nurse Manager and the claimant's manager. Ms Bradbury was responsible for the rota and identified problems with the system of 'self rotaing'. The main issue identified by Ms Bradbury was that those who filled in the document first, selected the days they wanted, with reducing choice for those who filled in the document at a later stage. The requests to work certain days was higher and conversely it was difficult to fill certain other days such as weekends or bank holidays. There was no incentive for any nurse to pick a

certain day over another, because nurses are paid the same irrespective of what day they worked. The end result was that Ms Bradbury regularly had to work weekends days or employ bank nurses at extra cost to the business. This adversely affected her budget for the centre. For these reasons Ms Bradbury abolished the 'self rotaing' system in August 2014, shortly after commencing her employment. Thereafter, Ms Bradbury completed the rota. Once she had finalised the rota, should any nurse be unhappy with it, they were encouraged to swap with another nurse. Ms Bradbury said that where possible she would seek to accommodate changes. On occasion Ms Bradbury swapped with the claimant herself in order to accommodate the claimant. This is referenced within the WhatsApp messages. The claimant objected to the introduction of a manager set rota and told the tribunal that other medical centres within the Center Parcs group continued to operate on the self rotaing system. Ms Bradbury told the tribunal that the majority of departments within the Village operated on a system whereby the manager determined the rota. Further, the medical centres in other parks have since this time moved to manager set rotas.

7. The rota system caused continuing difficulty and anxiety for the claimant throughout her employment. Ms Bradbury says in her witness statement that, 'there were always slight difficulties around the rota'. The WhatsApp messages exchanged show the claimant seeking to make changes to the rota on occasion and there is a specific what'sapp exchange around May 2017 between the claimant and Ms Bradbury. Where the claimant says, '..... So glad we talked about things today, we feel much better. All we want is to feel less stressed about everything and not feel so anxious about rosters etc.....'
8. The bundle contains an email from the respondent's HR department to the claimant dated 25 August 2017. This email is a response from the respondent in relation to the claimant's request for two weeks off over Christmas 2017. This request was not granted as the respondent considered it unfair on the rest of the team for such a long period of time to be taken over the busy Christmas period. There is also comment on this email states, '*regarding your rota request, I do want to remind you of the agreement we had some time ago where we discussed that the rota will be rolling and will be done fairly for all. I am a little concerned that we are reverting back to where we were. As discussed, [Ms Bradbury] would produce a rota for everyone that is distributed fairly. After which you can liaise with others in the team (contracted staff) to swap shifts. The request system is there so that we can take into account special days the people want, not to accommodate second jobs. With this in mind we are happy to confirm your requests for 24 to 27 November*'. The internal documentation produced during the claimant's grievance shows that the claimant had been requested to work Christmas Day on one occasion and New Year's Day on one occasion over the years complained of.

9. We take this opportunity to comment upon the documentation provided:

- a. The claimant told the tribunal that she first consulted her union in January 2017 and also sought advice in September 2017. The claimant was advised to keep a diary note of matters of concern as they arose. The claimant said that she did keep a diary noting incidents at work following this time. The claimant referred to specific disclosed diary entries supporting her claim. There were occasions where the claimant referred to her diary entries in general terms where no reference could be found to a specific page. The claimant was informed on more than one occasion that where she wished for the tribunal to note a particular diary entry, she must identify the relevant page of the tribunal bundle. The claimant was provided with the opportunity to re-examine her diary entries overnight following the first day of the hearing and during the lunch break of the second day to ensure that all relevant pages were brought to the attention of the tribunal.

- b. We were provided with a large number of WhatsApp messages exchanged between the claimant and Ms Bradbury between March 2017 and November 2018. The messages show both women exchanging what can fairly be described as friendly information and mentioning their families. There are occasions where Ms Bradbury, passes on clothes to the claimant's children and offers to lend a prom dress and a prom car to the claimant's daughter. Ms Bradbury also offers to (and subsequently lent) her car to the claimant, for the claimant's private use. Some of the messages show Ms Bradbury allowing the claimant to alter her working days and on occasions Ms Bradbury has agreed to change her own working pattern to accommodate the claimant's requests for flexibility. Some of the messages show the claimant contacting Ms Bradbury during Ms Bradbury's non working days to ask for her assistance with matters and they show Ms Bradbury's generally accommodating responses. The messages show communication between the women sent late in the evening on personal topics. The tribunal's attention was drawn to one particular message sent by the claimant to Ms Bradbury at 4.39am on 30 August 2018. Ms Bradbury later complains that the message woke her up, and the claimant subsequently explains that she does not sleep well. The claimant revisited this text message during the course of re-examination and told the tribunal that she would not have sent such a message in the middle of the night and the late delivery time of the message was due to a glitch or a 'delayed send or receive' where either the sender or recipient did not have a signal. The claimant's evidence is that these messages should not be taken at face value. She told the tribunal that her messages were sent by her in an attempt to 'keep in' with Ms Bradbury. The offers of apparent assistance made by Ms Bradbury were designed to exert control over the claimant

and make the claimant feel indebted to her. The offer of the prom dress for her daughter was controlling as Ms Bradbury refused to provide the dress until the day before the prom, causing anxiety on the claimant's side. The claimant later said during cross examination that the dress provided by Ms Bradbury was provided two weeks before the prom, but as the claimant was on holiday, it still caused stress. Similarly, the claimant told the tribunal that while she borrowed Ms Bradbury's car, she was asked to return it earlier than expected causing the claimant difficulties.

10. The claimant complains about the implementation of the respondent's 'time owing' system. Staff would incur overtime hours or attend work on days off to attend training meeting and thereafter allowed to take this 'time owing'. The claimant says that initially she was able to accrue time owing in the same way as all other nurses at the time of her choosing subject to quotas been covered and her colleagues were allowed to accrue time owing for periods of up to 6 months accruing 20 to 30 hours, to be taken at the time of their choosing. The claimant did not provide any further information in relation to the application of the time owing system to others. The claimant was required to take time owing at short notice or at the discretion of Ms Bradbury be paid in lieu of time owing. This matter formed part of the claimant's internal appeal that was dealt with by Alex Bluck. It was explained to the claimant during the internal process that time owing could be taken back at the discretion of a manager when at least three nurses have been rostered on a shift and providing the needs of the business are met. All staff were requested to take this time owing at short notice. Ms Bluck reviewed when other nurses had been informed that they need to take time owing and states, 'I am satisfied that there were incidents of several other nurses being requested to take this time back with less than 24 hours notice due to 3 staff members been rostered for the following day'.
11. The claimant complains that she was prevented from attending specialist courses. Ms Bradbury says that there was one situation where there were two available places on an audiology course in May 2015. The claimant was not chosen to attend this course. Ms Bradbury did not attend the course herself. Ms Bradbury said places were limited and during the relevant time the claimant had chosen to do all eight of her four weekly shifts in the first two weeks of the period. The claimant was due to go on holiday during the last two weeks without using her annual leave. The audiology course was when Ms Bradbury knew the claimant would be on holiday.
12. The only other instance referred to by the claimant is the claimant's attendance at the Immediate Life Support training. This is a course that all nurses have to do every year. The claimant was due to complete this course and 21 February 2017. Unfortunately the nurse due to cover the medical centre on that day was off sick. Ms Bradbury says that she examined the training records of all the nurses and as the claimant had done the course

most recently, the claimant's training was postponed. It is common ground that the claimant did undertake the course with another colleague at the Sherwood village approximately two weeks later on 8 March 2017.

13. The claimant says that she was denied the opportunity to carry out special duties. She was appointed to the 'linen' Department, part of the housekeeping department. This was a small specialist area that made her feel marginalised and when she wished to attend meetings, she was questioned as to why she needed to go. Ms Bradbury says that the claimant was the named nurse for 'inventory and linen'. All of the Center Parcs villages had issues in this department with work relating to upper limb disorders. Ms Bradbury wanted the claimant to work alongside the HOD and observe working practices, to see how processes could be potentially improved. This was considered an important project by the respondent and one in which the respondent was investing as the business was trying to improve the area.
14. The claimant says that she was marginalised by Ms Bradbury. The claimant referred to the diary entries of:
 - a. 3 September 2018. This related to an incident where the claimant Ms Bradbury and Ms Stopp were making beds in lodges. The claimant worked alone and the other two nurses worked together. The claimant comments in her diary, 'how do they sleep at night?'
 - b. The claimant also referred to entries within her diary between 10 and 13 September 2018.
15. The claimant's allegation in relation to harassment on the grounds of disability relates to her husband's disability. The claimant told the tribunal that there was a reference within an email to 'husbands complex mental health needs' prior to taking a three-month sabbatical in 2017 and Ms Stopp and Ms Bradbury were fully aware of her husband's disabilities. The claimant did not provide any evidence of directly telling either individual of her husband's mental health conditions but alleged that:
 - a. Ms Bradbury knew of her husband's mental health conditions due to their relationship and general discussions about their families;
 - b. Ms Stopp previously worked in a GP surgery alongside the claimant where the claimant's husband was registered. Ms Stopp was likely to have had and viewed her husband's medical record during appointments that probably happened. In addition, Ms Stopp was likely to be aware of the claimant's husband's serious mental health issues due to her relationship with and knowledge of the claimant at that time.
 - c. The claimant said that she did not refer to her husband's medical issues in writing as she felt to do so would be inappropriate. Her husband's mental health issues were not referred to within the messages with Ms Bradbury.
16. We have no evidence from Ms Stopp. Ms Bradbury said that she knew the claimant's husband had some personal difficulties and the claimant had

alluded to him having mental health problems. She says that she did not know the extent of those problems. She was not under the impression that they were particularly serious and did not know that it was something that affected his life on a day-to-day basis.

17. The claimant's witness statement says that prior to working for the respondent, she worked with Ms Stopp for many years at a GP practice and saw her occasionally on a social basis. Ms Stopp had been considered a close friend for a period of time. There were 'some incidents' with Ms Stopp in 2015 or 2016 that she could not remember and their relationship had broken down. Within the claimant's grievance, there are references to bullying allegations against Ms Stopp. She refers to an incident on 19 February 2018 where Ms Stopp asked the claimant to assist with a guest issue. The claimant answered queries for the guest. Later the claimant says that Ms Stopp started 'raging at her' in front of other people accusing her of taking over. The claimant contacted Ms Bradbury asking her to mediate to resolve matters. Ms Bradbury took no action. The claimant refers to diary entries on 28 February and 4 March 2018. The claimant said that Ms Bradbury's behaviour suggests that 'she concludes condones this behaviour and the offensive and toxic work environment it creates for me'.

18. The claimant said that at a nurses' meeting on 18 January 2017 Ms Stopp provided a document 'the agenda document'. This document was contained in the bundle and consisted of 44 numbered points. Point number 27 said :

Mental health update

Right steps rep joined sisters meeting to discuss his company intervention programme agreed with Marge Mitchell to join in with this scheme when in full available will be shared (buy a bus to dribble on the Windows)

19. The claimant says that this agenda document was distributed to all those present. There are handwritten annotations on the document that the claimant says are her handwritten notes. The words 'right steps' are underlined with 'Google' written beside them. The notes circulated following this meeting were disclosed by the respondent during the hearing. These notes correspond with the 44 points listed within the agenda document. The notes at paragraph 27 state:

Mental health update

Right steps rep joined sisters meeting and explained his company intervention. To join into the scheme when information available and will be shared out.

Ms Bradbury said that she had not seen the agenda document prior to the claimant raising of this issue within the grievance process and that it had not been circulated prior to the meeting on 18 January 2017. Ms Bradbury said that there were eight individuals in attendance including herself and a representative from HR, Kathy Kaesmacher. Ms Bradbury was not in attendance for the entire meeting and had no recollection of seeing or hearing

the comments 'buy a bus to dribble on the Windows' or 'window lickers'. Ms Bradbury told us that it was only when the claimant raised her formal grievance, the offensive comments are brought to her attention. She had a discussion with Ms Stopp and informed her that the comments were offensive and inappropriate.

20. The claimant said that she was shocked that Ms Stopp had written this on the agenda. Ms Stopp read the comment out and everyone laughed. No one challenged Ms Stopp on her views. Ms Stopp also made a comment during this meeting using the expression 'window lickers'. The claimant says that because Ms Stopp felt confident enough to write this comment on the agenda, read it out and make an additional offensive comment she knew that her comments were not only acceptable but condoned by the respondent. The claimant says that Ms Stopp and Ms Bradbury were aware of her husband's severe mental health problems and the claimant felt that they were making fun generally of people with mental health problems but also specifically her husband. The claimant says that she found the words and the response to them to be harassing and demeaning of people with mental health issues, and in particular her husband. She was extremely upset by it.
21. During the course of the hearing, the claimant added that the offensive comment 'window lickers' was used by Ms Stopp on 19 February 2018 and 3 September 2018 that Ms Stopp repeatedly used the expression, repeating it between 10 and 15 occasions, During cross-examination the claimant accepted that:
 - a. she was keeping a diary to record incidents at work but did not make any mention of this remark made by Ms Stopp or any upset caused by it. The claimant said that she considered the comment to be so bad that she did not want to write it down or make reference to it. The claimant said that the comments were made so often that she wasn't surprised by them and that she did not record them but she should have done.
 - b. The claimant was referred to her grievance letter dated 26 November 2018. The claimant's grievance states 'at the team meeting on 18 January 2017 under the agenda heading of mental health, [Ms Stopp] wrote 'buy a bus to dribble on the windows'..... having previously described mental health sufferers as 'window lickers'. The terminology was wholly inappropriate but elicited no comment from Ms Bradbury. She did not challenge it either in the meeting or subsequently. Moreover we felt that this derogatory comment was aimed at me as she and the other nurses are aware that my husband suffers from severe mental health problems.'. The claimant accepted during cross examination that the complaints made within her grievance only related to comments on or around 18 January 2017 with no reference to the wider pattern of behaviour complained of within this litigation. The claimant responded that the comments were regularly repeated as she

- claims. The claimant explained that her grievance was not against Ms Stopp but was directed towards Ms Bradbury.
- c. The claimant did not make any comment or written note relating to the offensive comment on the agenda. She did not highlight the offensive comment in any way on the document.
 - d. The claimant did not complain to Ms Bradbury or mention the comment in any way. The claimant says this was because she didn't feel confident or supported.
22. The claimant describes an incident that happened on 19 February 2018 where Ms Stopp was 'raging at her' for little more than providing information to a guest and that the claimant was criticised in a public and humiliating way. The matter was not properly dealt with by Ms Bradbury. This incident is recorded within the claimant's diary. There is no reference to any inappropriate or offensive comment within the diary entry for that day.
23. The claimant made various applications for parental leave during her employment. Some had been granted others had not. The claimant also made an application for and was granted a three-month sabbatical in 2017.
24. The claimant made various complaints in relation to a lack of flexibility. She says that Ms Bradbury made it very difficult for the claimant to support her husband by accompanying him on medical appointments which fell on working days by being very inflexible about roster changes in the claimant's case but not in the case of other nurses. The Claimant told the tribunal that this was a regular occurrence however she was unable to identify an occasion whereby she was unable to attend a medical appointment with her husband due to inflexibility on the respondent's part. The tribunal was not referred to any diary entry in support of such an allegation. No information was available to the tribunal in relation to the practices of other nurses in similar circumstances.
25. The claimant complains that the respondent was similarly inflexible in relation to the claimants wish to attend medical appointments with her 'elderly mother and other family members'. The claimant told the tribunal that this occurred on 5 April 2018 and related to the claimant's mother. The claimant says in her witness statement that 'I was told that no one would swap and that I would have to reschedule the appointment I had to cancel my mum's appointment as short notice which caused her a lot of distress...'. The background to this matter as set out within the respondent's detailed response to the claimant's grievance sent by Alex Bluck dated 21 January 2019. This outlines delay on the part of the claimant. The medical appointment was cancelled at short notice as the claimant did not take action in good time.
26. The claimant complains about being excluded from social events and refers to her internal grievance complaining about exclusion from:
- a. Bingo night on 11 April 2018. The response to the grievance says that the bingo event was advertised in the weekly team brief on 23

March 2018. The invite was extended to all Center Parcs employees and it was open for the claimant to attend had she wished to do so. It was noted that the claimant had sent text messages to Ms Bradbury on 11 and 12 April enquiring if colleagues were going/had gone. The grievance outcome informed the claimant that attendance was a last-minute outing which was decided on the day by some colleagues and there was no record of those who attended.

- b. a spa evening for a colleague's birthday. The grievance outcome says that this was not a medical Centre event but a private event organised by a member of staff as a birthday surprise.
- c. and a Christmas party from which the claimant was excluded. The grievance outcome says that the event complained of was on 14 December 2017 when the claimant was on annual leave. This was a last-minute suggestion by the deputy HR manager as Ms Bradbury was staying in a lodge and an impromptu get-together was organised. This was not a team or Center Parcs event.

27. We note the witness statement of evidence produced by the claimant from Jane Gilbert in support of her grievance dealt with below. While this witness statement had limited value to the grievance process as the individual did not work in the medical centre during the relevant time, it does reflect what the witness was told by the claimant in relation to her requirement for flexibility and ties this requirement entirely to the claimant's second job as a flight attendant.

28. The claimant complains that Ms Bradbury allowed personal friendships with Ms Stopp and nurse Inman to get in the way of her professional judgement. She showed favouritism in the way she managed rosters and time owing in the way responsibilities were delegated and how courses were allocated. The claimant complains that she had been 'chosen for exclusion and isolation'. The claimant refers to an occasion when the claimant claims Ms Bradbury told her off in front of Helen Chambers which made the claimant feel both humiliated and uncomfortable. The claimant complains that Ms Bradbury rebuffed her friendly conversation enquiring about Ms Bradbury's mother yet welcomed such enquiries from other nurses. Ms Bradbury denies these allegations.

29. The respondent allows guests to visit the Village and bring their dogs on the condition that they reside within designated lodges, referred to internally as 'dog lodges'. Guests staying on the park may also purchase day passes for family and friends during their stay. People attending on guest day passes are not permitted to bring dogs into the village. Mr Carpenter and Ms Packer say that similar rules to those for a guest day passes applied to staff day passes. No member of staff would be permitted to do something on a day pass that a guest pass prohibited. We were referred to the respondent requirements to keep details of dogs in the Village. The claimant disputes this

and refers to an absence of written policy referring expressly to 'staff' day passes.

30. On 11 September 2018 the claimant brought her dog to the village. During the subsequent investigation carried out, the claimant confirmed that she had brought her dog onto the village and into the medical centre. The claimant says that she didn't know that she could not bring a dog to the village until 11 September 2018, when she was told by Ms Bradbury. The claimant was also told by Ms Bradbury that another nurse had been told she could not bring a dog onto the park and a housekeeper had been 'disciplined'. Ms Packer told the tribunal that on 11 September 2018 she was aware that the claimant had brought her dog into the Village and had asked Ms Bradbury to speak to the claimant and remind her that dogs were not allowed on the Village. Mr Carpenter told us that he considered it common knowledge that dogs were not to be brought to the village by those utilising day passes. There was no distinction between guest day passes and staff day passes in respect of the prohibition on bringing dogs to the Village.
31. On 11 October 2018 the claimant visited the village and brought her dog. The claimant says that her dog was kept in the car. Security allowed the claimant to proceed. The claimant said she did not intend to contravene the rules.
32. During the claimant's employment the respondent operated a system of day passes, allowing staff and their guests access to the Village as visitors. This was a perk of being an employee. Mr Carpenter told the tribunal that provision of the day passes had minimal cost to the business and employees were provided with a generous allocation of day passes. The claimant was provided with a sheet of yellow card with numbered lines. To use a day pass, the employee should have filled in the date and name of the person proposing to use the pass and thereafter get a head of department to sign that particular line on the cardboard sheet. Up to 8 day passes could be used at a time. It was common practice for Ms Bradbury to sign 8 numbered lines on one occasion and for the claimant to fill in the required dates and names on the lines as she used the passes. Sometimes if noticed, security would fill in the date on which passes were used. The claimant told the tribunal that Ms Bradbury signed the day pass at lines 51-53, on 6 August 2018..
33. Ms Bradbury said that she had worked with the claimant on 22 September 2018. They discussed the 'Joshua fight' they planned to watch that evening. Ms Bradbury was not asked to sign a day pass for the claimant and had not signed such a pass for some time. The claimant did not say that she planned to watch the fight in the village. Later that evening Ms Bradbury heard that the claimant was in the Village sports Cafe with her family watching the fight. Ms Bradbury contacted village security and asked if the day pass had been signed by another head of Department. Ms Bradbury was told that the pass looked as if it was signed in her name.

34. Following this time Ms Bradbury carried out an audit of day passes and requested that all nurses produce the cardboard day pass sheets. The claimant produced the document later referred to as appendix 7 of the investigation. Mr Bradbury says that the signature on the pass used by the claimant on 22 September 2018 (lines 51-53) was not hers. Ms Bradbury's statement says that 'I can see other signatures purportedly of mine which are definitely not'. From documentation contained within the bundle, the tribunal notes that Ms Bradbury's signature varies considerably. From the day pass in the bundle and produced in original form during the hearing by the claimant, the tribunal notes:
- a. There appears to be a similar signature on lines 43 to 50 (8 lines). These lines are signed with a short signature. There is a bracket drawn along the signatures with Ms Bradbury's name legible that appears to group these 8 lines together. Ms Bradbury accepts that this is her signature.
 - b. Line 51, said by the claimant to be Ms Bradbury's has, on the face of the document, both identifiable differences from and similarities to the previous signatures agreed to be that of Ms Bradbury.
 - c. Similarly lines 52 to 61 have, on the face of the document, both identifiable differences from and similarities to the previous signatures.
 - d. Lines 54-61 are dated 13 October 2018. By reference to the copy of the day pass obtained during the audit carried out by Ms Bradbury in September 2018, we can see that lines 54 and 55 were already signed at the time of the audit and therefore not signed on 13 October 2021. The claimant says that lines 56-61 were signed by Ms Bradbury on 11 October 2018 'in front of a witness'. Ms Bradbury says that she did not sign these lines. These day passes were not used by the claimant.
35. On 12 October 2018 the claimant was called to an investigatory meeting carried out by Helen Chambers. The documentation generated by the investigation as contained within the bundle. The conclusion of the investigation was that there was a disciplinary case to answer. Three matters were raised with the claimant that can be summarised as:
- a. bringing a dog onto the village on 11 September 2018.
 - b. bringing a dog onto the village on 11 October 2018, after being informed staff may not bring dogs onto the village on 11 September 2018
 - c. the signature on a day pass does not resemble that of the head of Department of the medical Centre [Ms Bradbury].
36. The claimant raised a five page grievance directed at Ms Bradbury on 26 November 2018 spanning the majority of her time employed by the respondent.
37. The disciplinary process was dealt with by Mr Brad Purnell. The claimant was accompanied by her RCN union representative. The disciplinary meeting was

held on Thursday, 6 December 2018. The notes of the meeting are within the bundle. This meeting was adjourned to 21 January 2019 to allow Mr Purnell the opportunity to investigate some point raised by the claimant. At the conclusion of the meeting the claimant was given the outcome of the disciplinary process. This was confirmed in writing by letter dated 23 January 2019. The respondent was issued with a verbal warning. Mr Purnell stated that 'I found that 11 October 2018, after being informed on the 11 September 2018 that staff may not bring dogs onto the village, you brought a dog onto the village'. In relation to the other two allegations:

- a. Mr Purnell gives the claimant the benefit of the doubt and concludes that the claimant was unaware of the policy and was first told on 11 September 2018 that she was not allowed to bring a dog onto the village.
- b. The claimant says that the disputed signatures were signed by Ms Bradbury and denied falsifying them. The signature on the day pass does not resemble that of Ms Bradbury. Mr Purnell finds that there is inconclusive evidence to prove that the claimant personally has fraudulently signed the day pass and therefore the allegation was not upheld.

38. The claimant attended a grievance meeting on Tuesday 11 December 2018. The grievance process was dealt with by Ms Alex Bluck, the Village financial controller. The claimant received a very detailed 16 page outcome of grievance by letter dated 21 January 2019.

39. The claimant appealed the outcome of both the disciplinary and grievance decision. Both appeals were dealt with by Mr Lee Carpenter, deputy general manager. The grievance appeal and the disciplinary appeal meetings were held on Wednesday, 3 April 2019. The outcome of both appeals was communicated to the claimant by letter dated 15 April 2019. We heard evidence from Mr Carpenter explained to the tribunal that he had no way of determining on an absolute basis who wrote the signature at line 51 of the claimant day pass. Both Ms Bradbury and the claimant were equally adamant that they did not make this signature. However, the claimant's allegation in relation to this signature was one part of a large number of allegations made against Ms Bradbury extending over years. All of the other matters raised by the claimant were found to have no reasonable basis. Despite the large number of complaints, the respondent found no other behaviour on the part of Ms Bradbury that would align with a vexatious motive for bringing disciplinary allegations. Looking at the entirety of the grievance raised by the claimant, the respondent concluded that the claimant's allegations of vexatious conduct on the part of Ms Bradbury could not be upheld.

40. The respondent's process provides for a second and final appeal. The claimant appealed the grievance outcome and the disciplinary outcome again. The claimant notes within her complaint that Lee Carpenter has fundamentally ignored the main premise of her appeal which asserts that she was subject to a campaign of bullying and harassment culminating in the vexatious and

malicious set of disciplinary allegations raised against her by her manager Diane Bradbury. The second appeal was dealt with by Mr Paul Stewart, being the deputy general manager of the respondents Elveden Forest Park village. The claimant attended a meeting with Mr Stewart on 10 June 2019 and the outcome was provided in writing by letter dated 17 June 2019. The claimant's appeals were unsuccessful

41. The claimant was referred to each stage of the disciplinary and grievance process during the course of the hearing. The claimant complains that the meetings should have been carried out offsite. The respondent says that their village is a large 400 acre site and it is their normal practice and reasonable to conduct internal disciplinary and grievance meeting on site. The claimant raises no other complaints of procedural unfairness. The claimant accepts that the respondent carried out a detailed investigation into the matters complained of and appointed appropriate impartial individuals to carry out the internal process. The claimant accepted that Ms Chambers in investigating the complaints reasonably concluded that the signature for the day pass on 22 September may not be that of Ms Bradbury's. The claimant said that her primary concern was that Ms Bradbury had sought to raise malicious complaints against her.

42. The claimant has placed considerable reliance upon the report of Anthony Stockton, a handwriting expert, in relation to the disputed signatures. The claimant has repeatedly stated that this report proves that she did not forge Ms Bradbury's signature on the day pass as alleged by Ms Bradbury. Mr Stockton concludes that there is strong evidence to show that the five questioned signatures on the day pass are genuine written signatures by Ms Bradbury. There are some issues in relation to this report:
 - a. a copy of the instruction to the expert is not included within the bundle.
 - b. Mr Stockton has considered the signatures in question to be those at lines 51 to 55 of the day pass. Mr Stockton has been provided with 'reference signatures' by the claimant to make his comparison including those at lines 56 to 61 of the day pass said by the claimant to be that of Ms Bradbury, signed by her 'in front of a witness' on 11 October 2019. The claimant did not seek to agree these reference signatures with the respondent prior to obtaining the expert report. Ms Bradbury told us during the course of giving evidence that, not only did she have no recollection of signing lines 51 to 55, that give rise to the disciplinary allegation, she did not believe that the signatures contained at lines 56 to 61 were hers either. Mr Stockton makes particular reference to the comparison with the signature contained at line 56 of the day pass. Ms Bradbury told the tribunal that the signature at line 56 is not her signature.
 - c. Mr Stockton concludes that there is no evidence that the question signatures are simulations of Ms Bradbury's written by another

person but does not take into account the evidence provided by Ms Bradbury herself that she did not write the signatures.

43. The tribunal notes from the various documentation contained within the tribunal bundle that Ms Bradbury uses a range of signatures.
44. The claimant says in her witness statement that she considered the outcome of the appeal process to be woefully inadequate. The respondent had failed to engage with the key points. The claimant alleged that the respondent did this because to engage with a point would have serious ramifications for Ms Bradbury and the respondent itself. The claimant considered that her report from Mr Stockton was strong evidence that Ms Bradbury had signed the day passes and that this was 'buried' by the respondent.
45. The claimant says that following the final outcome she could see that there was only one option. She felt she had to submit her resignation which she did on 30 June 2019. The claimant's overriding reason for resigning was the respondent's double standards in respect of the evidence produced during the internal processes coupled with its wholesale failure to meet its duty of care towards the claimant. The claimant felt that she could not return to an environment where her line manager had made a false accusation against her with the aim of having the claimant dismissed. The claimant said that she could not continue to be managed by Ms Bradbury. The claimant says that she could not return to the workplace where her colleagues had doubts about honesty and integrity. The claimant also says that the second reason for her resignation was that the respondent was complicit in the discrimination that the claimant had experienced and failing to do anything at all to address issues once they have been formally brought to the respondent's attention via the grievance process.
46. The claimant says that she resigned without giving any thought to a contractual notice period. The respondent acknowledged the claimant's resignation and told the claimant that her employment would end on 5 August 2019. The claimant was on sick leave at this point and knew she would not be returning to the respondent.
47. The claimant's resignation letter of 30 June 2019 was contained within the bundle and it is noted:
 - a. the claimant says that she is reluctantly resigning from her position and considers this to be constructive dismissal. She says, 'please accept this as my formal letter of resignation and a termination of our contract. Please note that I am currently on certified sick leave'. The letter is silent in respect of notice.
 - b. the claimant says that she has been left with no choice but to resign as the respondent has failed to protect her from false and vexatious allegations made by Ms Bradbury. Most important of those being the accusation of fraud has been factually disproved beyond all doubt by a forensic report. The respondent has failed to respond to

the original malicious claim to evidence against it in any way. The claimant says that the claim and the respondents in action have been manifestly unreasonable.

- c. the claimant refers to her claims for bullying and harassment, the claimant refers to disability discrimination and that the respondents have knowingly condoned the discriminatory actions of Ms Stopp.

48. The claimants staff appraisals known as 'contribution reviews' were included within the bundle. We note:

- a. within the contribution review preparation for dated 8 April 2018 the claimant records that she is 'very settled and positive' within her job and notes no issues.

The Law

49. Section 26 of the Equality Act 2010 sets out the definition of harassment as conduct related to the protected characteristic which has the purpose or effect of violating the claimant's dignity or creating an intimidating hostile degrading humiliating or offensive environment for the claimant. In deciding whether the conduct has this effect, the tribunal will take into account the perception of the claimant the other circumstances of the case and whether it is reasonable for the conduct to have had that effect.

50. Where disability is admitted, the question of whether an employer could reasonably be expected to know of a person's disability is a question of fact for the tribunal: Jennings v Barts & The London NHS Trust UKEAT/0056/12. Disability is defined within s 6 of the Equality Act. In these circumstances we are referring to a mental impairment, that has a substantial and long-term adverse effect on the claimant's husband to carry out his normal day-to-day activities.

51. Relevant factors to considering 'offensive environment' were addressed in Weeks v Newham College of Further Education [2012] 5WLUK 195.

52. The relevant provisions relating to limitation are found within Section 123(1) Equality Act 2020:

'(1)....proceedings on a complaint within section 120 may not be brought after the end of—

a. the period of 3 months starting with the date of the act to which the complaint relates, or

b. such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

a. conduct extending over a period is to be treated as done at the end of the period;

b. failure to do something is to be treated as occurring when the person in question decided on it.

53. The tribunal's discretion to extend time on a just and equitable basis is wide. In Adedeji v University Hospitals Birmingham NHS FT [2021] EWCA Civ 23, Underhill LJ addressed the approach to be considered by tribunals on exercising discretion:

"The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) "the length of, and the reasons for, the delay". If it checks those factors against the list in Keeble, [referring to s.33 considerations] well and good; but I would not recommend taking it as the framework for its thinking'.

54. 'Constructive dismissal' is set out in Section 95 of the Employment Rights Act 1996. Sub-section 1(c) is the statutory version of a principle originally from common law. The burden is on the employee to prove constructive dismissal. In order to establish that she has been constructively dismissed, the employee must show:

- a. there was a fundamental breach of contract on the part of the employer that repudiated the contract of employment. In this case the claimant relies only upon a breach of the implied term of trust and confidence. This term provides that employers (and employees) will not, 'without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties' Any breach of the implied term of trust and confidence would be considered a repudiatory breach;
- b. the employer's breach caused the employee to resign, and
- c. the employee did not delay too long before resigning, thereby affirming the contract and losing the right to claim constructive dismissal.

55. In cases where a breach of the implied term is alleged, 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. The tribunal has to decide whether the conduct in question in a particular case amounts to a breach of the term, by considering:

- a. Whether there was a 'reasonable and proper cause' for the conduct; and
- b. If not, whether the conduct was 'calculated or likely to destroy or seriously damage trust and confidence'.

56. An example given by the EAT to illustrate the 'reasonable and proper cause' element of the test is that any employer who proposes to discipline an employee for misconduct is doing an act which is capable of seriously damaging or destroying the relationship of trust and confidence between employer and employee, whatever the result of the disciplinary process, but if the employer had reasonable and proper cause for taking the disciplinary action, they could not be said to be in breach of the term of trust and

confidence. Hilton v Shiner Ltd Builders Merchants 2001 IRLR 727, EAT. As a number of breaches of contract are relied on by the claimant, we also refer to the step by step approach set out in Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978.

57. We acknowledge the detailed and helpful written submissions on the applicable law made by Ms Twine and we do not reproduce it herein.

Findings, Deliberations and Decision

58. We acknowledge the oral submissions made by Mr Swales on behalf of the claimant and these have been carefully considered.

59. We have carefully considered the large number of WhatsApp messages exchanged between the claimant and Ms Bradbury between March 2017 and November 2018. The claimant's evidence was that a fractured, negative or dysfunctional relationship existed between the claimant and Ms Bradbury behind the veneer of friendly WhatsApp chat. The claimant cites borrowing both a car and dress from Ms Bradbury in circumstances where Ms Bradbury is said to be either controlling or seeking to exert some untoward influence over the claimant. The tribunal found this to be unconvincing. The WhatsApp messages show both women, over a long period of time, chatting in a friendly manner outside of working hours. We consider it unlikely that either individual would or could maintain such a facade built mainly within their own time. The claimant detracted from her credibility in seeking to revisit the text message sent by the claimant at 4.39 am as referred to above as it was obviously by reference to the following messages sent at 4.39am. This Tribunal, on the balance of probability, considers that the WhatsApp messages between the claimant and Ms Bradbury reflect the reality of the relatively open and friendly relationship between the individuals at that time.

60. The claimant had been keeping a diary for the purpose of recording incidents at work. The claimant started to keep this diary on the advice of her union after the 'agenda incident' in January 2017. The diary spans between February 2017 and September 2018. While the entries in the diary are evidence of events that happened on particular days. The lack of reference within the diary to events said to have happened during that time detract from the weight of evidence supporting the claimant's claims. The tribunal finds it unlikely that the claimant would refrain from recording any incident on the basis that it was too serious, too commonplace and/or too upsetting to record in these circumstances.

61. The tribunal found that the claimant was vague in evidence and her answers during the course of cross-examination, with a tendency to exaggerate. We refer to the claimant's evidence relating to the 'prom dress' and our findings in relation to allegation A below. A combination of our findings in relation to the claimant's oral evidence during the course of the hearing and the documentary evidence referred to above has damaged the claimant's credibility. By contrast the respondent's witnesses appeared straightforward in their

evidence to the employment tribunal, with evidence that was broadly consistent with the available contemporaneous documentation.

62. The respondent concedes that the claimant's husband is a disabled person however they say that they had no knowledge of his disability. We did not hear from Ms Stopp and she was not called to give evidence by either party. She no longer works for the respondent and we draw no adverse inference from her failure to appear for the respondent. The claimant does not say within her evidence that she expressly informed Ms Stopp of her husband's mental health issues on any particular occasion. The claimant surmises, but provides no evidence, that Ms Stopp would have seen the claimant's husband in a professional capacity within his GP practice and/or gained this information through her friendship with the claimant. We find it more likely than not that Ms Stopp was aware that the claimant's husband suffered historically from some form of mental health issues through her previous friendship with the claimant. We do not find that Ms Stopp had any knowledge of the claimant's husband's mental health issues by reference to her previous employment at the GP's practice. Ms Bradbury said she was aware that the claimant's husband had mental health issues but denies that she was aware of the extent of the claimant husband's impairment or its affected his life on a day-to-day basis. We note some references between the claimant and Ms Bradbury referencing the claimant's husband's mental health. However these references are brief and do not allude to specific issues or difficulties in undertaking day-to-day activities. There is nothing within the substantive volume of WhatsApp messages between the claimant and Ms Bradbury to suggest that Ms Bradbury had knowledge of the claimant's husband's disability. The claimant does not detail any particular occasion when she informed Ms Bradbury of her husband's disability but refers to her relationship with Ms Bradbury and says Ms Bradbury was fully aware of her husband's mental health issues. We do not consider that knowledge of mental health issues or previous mental health issues to be equivalent to knowledge of disability. The range of mental health issues is wide and varied. It is possible to have severe mental health episodes that do not amount to a disability as the episode may be linked to a one off event and last for less than 12 months. It is possible to have ongoing mental health issues that do not have a substantial adverse effect on ability to carry out day-to-day activities. The claimant has not provided any evidence to allow us to find knowledge of disability on the part of either Ms Stopp or Ms Bradbury. We find on the balance of probability that neither Ms Bradbury nor Ms Stopp knew that the claimant's husband suffered from a disability as defined within S6 of the Equality Act 2010.

Allegation A:

63. *A discriminatory state of affairs of the claimant's place of work whereby people with mental health disabilities were the subject of inappropriate jokes/comments made by Ms Stopp aimed at the claimant as it was well known that her husband had serious mental health issues.*

64. This allegation (a) was described by Mr Swales as a 'general patter' by Ms Stopp. While we have found that inappropriate jokes/comments were made by Ms Stopp to the extent set out below, we find that these were limited to those found below. We make this finding taking into account the claimant's evidence and also:

- a. The claimant's diary, kept for the purpose of recording incidents at work, do not support these wider allegations. The claimant's evidence that the reason she did not record any incidents relating to the harassment claims was because they were too serious, commonplace and too upsetting to record is improbable.
- b. the claimant's inability to provide evidence as to when or in what circumstances other inappropriate or offensive jokes or comments were made.
- c. the absence of any direct or indirect reference to such inappropriate or offensive comment by Ms Stopp within the large volume of WhatsApp exchanges between the claimant and Ms Bradbury.
- d. The claimant's failure to raise any issue in relation to these wider allegations of inappropriate or offensive comments within the internal grievance.

Allegation B

65. *Ms Stopp, on an occasion when she was writing an agenda and for a staff meeting, referred to the services available for staff with mental health issues and adding 'buy a bus to dribble on the Windows'.*

Due to the format of the document and the similarity of the documents to the final notes, we find it likely that the 'agenda document' was created by Ms Stopp and distributed to at least some of the attendees at the meeting of 18 January 2017, including the claimant.

Allegation C

66. *Ms Stopp referring to people with mental health conditions as window lickers.*

The claimant alleges in her witness statement that this comment was made during the same meeting of 18 January 2017. The claimant told the tribunal during the hearing that this comment was also made on 19 February 2018 and 3 February 2018 and was made on approximately 10 to 15 other occasions. The tribunal finds on the balance of probability that, as the written offensive comment was included within the agenda, the offensive remark along similar lines was likely to have been made during that meeting of 18 January 2017, or around that time. The tribunal finds on the balance of probability that this comment was not repeated as alleged. In reaching this conclusion the tribunal has taken into account the claimant's evidence and:

- a. there is no mention of a repeat of such offensive remarks within the claimant's diary, and we refer to our comments above.
- b. In relation to the specific dates, the claimant told the tribunal that an offensive comment was repeated by Ms Stopp on:
 - i) 19 February 2018. The incident said to have occurred on this day is dealt with at paragraph 26 of her witness statement. The claimant complains of Ms Stopp 'raging

at her in front of other people '. The claimant makes no reference to an offensive comment. The incident is also referred to in the claimant's diary and again no reference is made to an offensive comment.

- ii) 3 September 2018. The claimant records in her diary that on this date she was required when working in a group of three changing bedlinen within the respondent's lodges. Her complaint is that she worked alone while her to colleagues worked together. There is no reference to or inference of any inappropriate or offensive comments made on that day by Ms Stopp.
- c. There is no mention of or indirect reference to such a comment or repeated comment within the WhatsApp messages exchanged between the claimant and Ms Bradbury
- d. When the claimant does bring this matter to the attention of the respondent internally, she complains about the incident in January 2017, but does not make the wider allegations that were subsequently brought within this litigation.

Allegation D

67. *The respondent is taking no action to deal with these actions, leading staff to conclude that they were both condoned and acceptable.*

Ms Bradbury told us that it was only when the claimant raised her formal grievance, the offensive comments are brought to her attention. She had an informal discussion with Ms Stopp and informed her that the comments were offensive and inappropriate. We accept on the balance of probability that this discussion took place.

68. Ms Bradbury says that she was not present for the entire meeting of 18 January 2017 and denies knowledge of the comments, prior to the internal grievance process. We note that this is a very old allegation. The claimant did not make any complaint or comment relating to it to Ms Bradbury, the respondent's HR department or any senior individual within the respondent prior to her grievance. The tribunal considers the large volume of friendly WhatsApp messages between Ms Bradbury and the claimant following this incident, without any reference to this conduct to be inconsistent with a scenario whereby the offensive expressions complained of were '*condoned and acceptable*'. Taking the entirety of the evidence into account we conclude that the respondent was not aware of the offensive expressions complained of prior to the claimants internal grievance process. This allegation is not made out.

Allegation E

69. *Issues relating to complaints relating to the rota and inflexibility generally.*

We take opportunity to comment generally in relation to the claimant's complaints of inflexibility. Ms Bradbury provided clear and concise reasons as to why the 'self rotating' system was abandoned. There are clear, reasonable and understandable business reasons why the change in rota organisation was introduced. We find that this change, applied to all was not made with

any particular reference to the claimant. The claimant was unhappy with the change to the rota system. It did not suit her. It caused her continuous tension during her employment with the respondent. The predominant reason for this tension was the fact that the claimant had a second job as a flight attendant as set out within the witness statement of Jane Gilbert. The claimant's evidence was that the other nurses within the medical centre would WhatsApp Ms Bradbury on a private non transparent basis to try and secure changes that they wanted but this was not available to the claimant. It was pointed out to the claimant during cross-examination that her private WhatsApp communication with Ms Bradbury was also seeking to secure changes to the rota. There is no difference in treatment. There is considerable evidence within the WhatsApp messages between the claimant and Ms Bradbury showing a willingness on Ms Bradbury's part to accommodate the changes requested by the claimant. In viewing the evidence as a whole we are unable to identify any reasonable criticism of Ms Bradbury in relation to the changes to or implementation of the rota system.

Ms Bradbury making it very difficult for the claimant to support her husband by accompanying him to medical appointments which fell on working days by being very inflexible above roster changes in the claimant's case but not in the case of other nurses

70. The claimant was unable to give details of any occasion where the respondent had been 'very inflexible' or inflexible above roster changes reason connected to her husband's medical appointments. There is no email or other correspondence from the claimant to Ms Bradbury or the respondent requesting changes to the rota to support her husband. There is no note in the claimant's diary of such an event nor is there any reference to accompanying her husband to medical appointments within the WhatsApp conversations. On the balance of probability we conclude that there were no occasions when Mr Bradbury made it difficult for the claimant to accompany her husband to medical appointments.

Allegation F

71. *Ms Bradbury being similarly inflexible with rostering when the claimant occasionally asked for flexibility so that she could attend medical appointments with her elderly mother and other family members (expressing the view how much flexibility do you want when you only work two days week?).*

We were referred to an incident that occurred on 5 April 2018. This allegation formed part of the claimant's grievance and we have the benefit of the respondent's detailed response to it. On a general basis the tribunal considers that most employers operate on the basis that medical appointments should where possible be organised outside of working time. In relation to 5 April 2018, we consider that there was an onus on the claimant once she realised that she may need to attend a medical appointment during working time to seek to act without delay to seek to address the issue potentially by changing the medical appointment to a nonworking day. It can be seen from the grievance outcome that the claimant delayed in taking any steps in avoiding

such a diary clash. In circumstances where a rota has been set in advance and an employee has failed to take reasonable steps to address any diary clash, it is reasonable to expect the individual to attend work as planned.

72. The allegation refers to appointments in the plural and also references 'other family members'. The claimant was unable to point to any other instances. We repeat our findings made above. We find that other than the instance on 5 April 2018, there were no occasions where the claimant was unable to attend medical appointments with her mother or other family members.

Allegation G

73. *Ms Bradbury being difficult and uncooperative regarding leave for the claimant over the Christmas holiday period. The claimant confirmed that she considered this allegation to apply to the years 2015, 2016 2017 and 2018.*

This allegation was raised by the claimant within her grievance and answered in detail within the internal process. The respondent notes that the Christmas period is a popular period for holiday requests. Within these years the claimant had been requested to work Christmas Day on one occasion and New Year's Day on one occasion. We also refer to the email of 25 August 2017 from Ms Kaesmacher referenced above reminding the claimant as to how the rota worked. The claimant's allegations of uncooperative behaviour on the part of Ms Bradbury spanning four years conflict with the evidence contained within the WhatsApp messages and we refer to our general comments in relation to the allegations of inflexibility. We find on the balance of probabilities that Ms Bradbury was neither difficult nor uncooperative regarding the claimant's leave over any Christmas period during the claimant's employment.

Allegation H

74. *Ms Bradbury requiring the claimant to take her 'time owing' quickly and at short notice whereas other nurses were able to accrue this over long periods and take it at a time of their own choosing.*

The claimant did not name the 'other nurses' referred to nor did she produce any evidence relating to their accruing of or use of time owing. We conclude on the balance of probability that the respondent dealt with time owing as set out within the internal grievance outcome by Ms Bluck and noted above. We find that the respondent demonstrated consistency when dealing with 'time owing' of the nurses within the medical centre.

Allegation I

75. *Excluding the claimant from access to specialist training and specialist duties, both of which were offered to her colleagues which hampered her professional development and career progression.*

The claimant's friendly WhatsApp messages with Ms Bradbury are inconsistent with the claimant's allegations that she was denied access to specialist training and specialist duties. The claimant was allocated specialist duties relating to the housekeeping department and there is no evidence to indicate any barrier to access to such duties. We refer to the evidence in

relation to the audiology course is set out above. The claimant was not unreasonably excluded from this course. The claimant was on scheduled holiday when the course was due to take place and not all nurses within the medical centre attended. The claimant was not unreasonably prevented from attending Immediate Life Support training. The claimant's training was delayed by two weeks due to operational issues. The claimant was not excluded from training nor is there any evidence that her professional development or career progression was hampered in any way.

Allegation J

76. *Ms Bradbury marginalising the claimant and belittling her in front of others and creating a culture whereby there was a clique against her. This included excluding the claimant from social and other events, including team building events.*

The claimant was vague in relation to this wide-ranging allegation. Ms Bradbury was not cross-examined upon it. This allegation conflicts with the relationship shown between the claimant and Ms Bradbury within the WhatsApp messages. The claimant included an allegation that she was excluded from social events within her grievance. We note the responses given within the grievance process as set out above. These appear to the tribunal to be reasonable responses indicating that the claimant has not been excluded by Ms Bradbury for the respondent as she has perceived. We find on the balance of probability that the claimant has not been marginalised, belittled or excluded as alleged.

Allegation K

77. *Ms Bradbury failing to provide any management or other support to the claimant.*

This allegation was vague and unparticularised. There is evidence in the bundle of management on the part of Ms Bradbury including performance reviews, dealing with rota issues and staffing requirements of the medical centre. There is evidence within the WhatsApp messages of Ms Bradbury providing support to the claimant by responding to her messages and providing support by agreeing to alter her working days on occasion to assist the claimant. The claimant has not shown on the balance of probability that Ms Bradbury has failed to provide any management or other support to her.

Allegation L

78. *Ms Bradbury seeking to engineer the dismissal of the claimant by raising spurious and false allegations.*

In relation to the dog-related disciplinary allegation: Ms Packer told us that she requested Ms Bradbury to inform the claimant that dogs were not allowed on the Village on 11 September 2019. The claimant admits that she had brought her dog into the Village on 11 September 2019. The claimant also admits that she had subsequently brought her dog into the Village on 11 October 2019. The claimant cites mitigating circumstances in that she left her dog in her car. Ms Bradbury was not in charge of the investigation or the decision to raise disciplinary allegations. Ms Bradbury had no decision-making

role within the investigation, the disciplinary, the grievance or any appeal. Her only role was in the raising of the allegation. We conclude that these allegations arise from the claimant's conduct in bringing a dog onto the Village in circumstances where Ms Bradbury, Ms Parker and Mr Carpenter considered it to contravene the respondent's rules. We find that the allegations cannot be described as either spurious or false.

79. The third allegation made by Ms Bradbury was that the signature on the guest pass used by the claimant on 22 September 2018 was not hers. The claimant told us that the signature was Ms Bradbury's. In assessing this part of allegation we have taken into account:

- a. The claimant has presented this allegation as part of a campaign on Ms Bradbury's part against her. We repeat our findings in respect of the allegations considered above and the relationship between the claimant and Ms Bradbury prior to these allegations as evidenced within the WhatsApp communication. The claimant has not established any background information that would support a finding of Ms Bradbury raising spurious and false allegations against her.
- b. There are identifiable differences between the signature at line 50 and the signature at line 51. There are also similarities
- c. The expert report of Mr Stockton was considered by the respondent in its finding that there was inconclusive evidence in relation to this third disciplinary allegation. The inadequacies of this report are set out above and we place little weight upon it. We do not consider anything within the report to support a finding that the allegation made by Ms Bradbury was spurious and false.
- d. While Ms Bradbury raised the initial concerns, these were thereafter independently investigated as rightly provided for within the respondent's procedures. The claimant conceded that a full and thorough investigation was carried out by the respondent. Disciplinary allegations were only raised following this investigation. Ms Bradbury had no part in the decision as to whether or not to raise these three complaints as the formal disciplinary matter.

80. Taking the entirety of the above into account we conclude that Ms Bradbury had proper and reasonable grounds to raise the three complaints. Ms Bradbury did not seek to engineer the dismissal of the claimant by raising spurious and false allegations. For the avoidance of doubt we reiterate that this finding relates only to whether the raising of the concern was 'spurious and false'. There is no finding made either by the respondent or this tribunal that the signature upon the pass used by the claimant on 22 September was not that of Ms Bradbury. We make no finding of dishonesty on the part of either Ms Bradbury or the claimant.

Allegation M

81. *By the respondent failing to conduct a fair, impartial and reasonable disciplinary investigation, hearing or appeal process in relation to the claimant*

(including pursuing allegations that were based on spurious grounds and based on false evidence).

We refer to the evidence provided above and conclude that a fair, impartial and reasonable disciplinary investigation, hearing and appeal process was followed by the claimant. This process was carried out in accordance with the respondent's policies. The claimant was unable to identify any procedural flaw within the process. The claimant's complaints appear to be entirely related to her unhappiness with the outcome of the processes. We conclude that the respondent conducted a fair, impartial and reasonable disciplinary investigation, hearing and appeal process.

Allegation N

82. Issuing the claimant with a disciplinary warning and upholding this on appeal.

The outcome of the disciplinary hearing was that the claimant was issued with a verbal warning for bringing a dog onto the village on 11 October 2018, after being informed staff may not bring dogs onto the village on 11 September 2018. This disciplinary allegation was raised after a reasonable and thorough investigation. The claimant concedes that she was told on 11 September 2018 that she should not bring dogs onto the Village yet the claimant chose to bring her dog onto the Village on 11 October 2018. While the claimant raised mitigating circumstances, the sanction of a verbal warning falls clearly within the range of reasonable sanctions. The respondent operated an independent and fair double appeal process. This Tribunal is unable to identify any flaw within the respondent's issuing of the disciplinary warning or dealing with the claimant's appeal on the disciplinary matter.

Allegation O

83. Failing to investigate the claimant's contention that allegations against her had been deliberately fabricated (in an attempt to engineer her dismissal) even after she produced an expert report from a handwriting expert to support her contention.

We refer to our findings above and conclude that the claimant had proper and reasonable grounds to raise the allegation with the claimant. The respondent took the claimant's expert report into account when considering the disciplinary allegations. The respondent did not make any adverse finding against the claimant in relation to the allegation that she had fabricated the signature used on her day pass on 22 September 2018. We were not provided with any credible evidence that such abandoned disciplinary concerns could or did affect the claimant's reputation or tarnish her career. We repeat to our findings above and conclude that following a lengthy process the respondent came to a reasonable conclusion that there were insufficient grounds to investigate the claimant's contention that the allegations made by Ms Bradbury had been deliberately fabricated.

Allegation P

84. *Failing to deal fairly or reasonably with the claimant's grievances, including failing to investigate whether any of the allegations against the claimant had been fabricated and involved evidence presented in bad faith.*

The claimant lodged a lengthy grievance with the respondent. The respondent addressed that grievance in considerable detail. The grievance was considered independently and the claimant availed of the respondent's double appeal process. The claimant was unable to identify any specific flaw within the process other than the outcome decision. We repeat our findings made above in relation to the claimant's allegations that the allegations had been fabricated or involved evidence that had been presented in bad faith. We conclude that the respondent dealt fairly and reasonably with the claimant's grievances including its dealing with the respondent's allegation the allegations against her had been fabricated and involved evidence presented in bad faith.

Allegation Q

85. *Failing, at the end of the disciplinary and grievance appeal process to take any steps to ensure the claimant could have confidence in her line manager and feel safe and supported in the workplace in circumstances where her treatment had significantly impacted on her own mental health. This amounts to the final straw which caused the claimant to finally submit a resignation, having exhausted all internal processes, the claimant felt she now had no other option.*

There was some discussion during the course of the hearing as to what the claimant meant by the above paragraph as it was unclear to the tribunal. The claimant requested and the tribunal confirmed that it would read allegation Q as the 'last straw' being the final outcome and conclusion of all internal processes. We repeat our findings above and conclude that the respondent has dealt with the disciplinary and grievance process in a reasonable and appropriate manner.

Harassment

86. The claimant's harassment claim relates to allegations A to E above. We have found that the respondent did not engage in the conduct set out within allegations A D and E as set out above. We have found that Ms Stopp did provide the 'agenda document' containing the expression '*buy a bus to dribble on the Windows*' at a staff meeting on 18 January 2017 [allegation B]. We have also found that Ms Stopp used the expression 'window lickers' on one occasion on or around 18 January 2017. This is the 'conduct' that we consider below when looking at allegations of harassment contrary to section 26 of the equality act 2010.

87. This conduct occurred on or around 18 January 2017. This was not conduct extending over a period. The allegation was brought to the attention of the employment tribunal on 21 October 2019, over two years and eight months later. This allegation is substantially outside the primary limitation period as set out within Section 123(1) Equality Act 2020. We must consider whether it is just and equitable to extend time in the circumstances. The claimant had

access to legal advice through her union at the time of the conduct. We conclude that the claimant was aware of entitlement to bring a complaint to the tribunal but chose not to do so. Further, the claimant chose not only not to bring a complaint to the attention of her employer either informally by mention to Ms Bradbury or formally to the grievance procedure, but the claimant made no mention at the time to any individual that she found the conduct offensive. The claimant told the tribunal that she took no action as she did not feel supported within the workplace. We repeat our findings made above and conclude, mainly from the WhatsApp messages that the claimant did have support from Ms Bradbury following the conduct. The claimant's delay has had a serious detrimental effect on the cogency of the evidence available to the tribunal. Ms Bradbury has no recollection of the conduct. While the conduct consists of obviously offensive language, we have no context for it. The tribunal's discretion to extend time on a just and equitable basis is wide. In this particular case, we do not consider it just and equitable to extend the primary limitation period. The claimant's claim for harassment is therefore out of time and the tribunal does not have jurisdiction to hear it.

88. If we are wrong and for the sake of completeness we also conclude:

- a. from the claimant's evidence and the general offensive nature of the expressions used, that the conduct was unwanted.
- b. We find that both of the expressions used within the conduct are intended to refer to those with serious mental health issues, to the extent that they would have a limited long-term ability to carry out the activities. On this basis, conduct relates to the protected characteristic of disability.
- c. While the claimant has argued that these comments relate specifically to her husband's disability, we repeat our findings above in relation to an absence of knowledge of the claimant's husband's disability on the part of Ms Stopp. We find that these comments were not related to the claimant's husband.
- d. When considering the purpose of the conduct we note:
 - i) the lack of knowledge of the claimant's husband's disability found above;
 - ii) the absence of any disability on the claimant's part;
 - iii) this conduct was restricted to a short period of time in or around January 2017.

We conclude that there is no evidence from which we can draw any inference that the conduct had the purpose of violating the claimant's dignity or creating an intimidating, hostile degrading, humiliating or offensive environment for the claimant.

89. In considering whether the conduct had the 'effect' set out by the statutory wording we note:

- a. The claimant has told us that the conduct 'left her shocked and made her feel that not only did they make fun of generally of people with mental health problems but also specifically her husband. The claimant says she found the words to be harassing and utterly

demeaning of people with mental health illnesses and in particular her husband. The claimant was extremely upset by it. The claimant found the conduct extremely offensive and wholly unacceptable.

- b. The conduct, on the face of it, is an inappropriate, derogatory and offensive written and oral comment. However, it is also conduct that, depending on context, could be used without thought to its offensive nature.
- c. There is no evidence that would lead this tribunal to drawing any link between the conduct and the claimant's husband's disability. The claimant does not allege that the conduct was expressly directed at her and there is no evidence to support the claimant's assumption, and we do not find, that the comments were directed at her.
- d. The claimant made other notes on the 'agenda document', yet she did not highlight the offensive comment in any way, leaving open the possibility that the written note was skipped over during the meeting.
- e. The claimant made no comment or complaint during the meeting of 18 January 2017 or at any time for a year and a half after. We have accepted on the balance of probability that Ms Bradbury was unaware of the conduct at the time. We are provided with no context for the conduct, that may have been recorded had there been an internal investigation, to assess the claimant's environment at the time.
- f. The claimant kept a diary at work from early 2017 and we were not referred to at any entry that would support the existence of an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

90. We note that the statute refers to "environment". An environment is a state of affairs. While we consider that one off or contained comments are capable of constituting harassment, particularly where the effects of that single incident are of longer duration. However in these circumstances we have identified no further evidence that would support the claimant's claim that the conduct created an intimidating hostile degrading humiliating or offensive environment for her within the medical centre. Taking the entirety of the evidence into account, we conclude that the conduct, although the conduct was offensive and inappropriate in itself, it did not in these particular circumstances, have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. For these reasons, the claimant's claim for unlawful harassment fails and is dismissed.

Constructive dismissal

91. The claimant has set out 17 separate allegations that both individually and cumulatively amounted to a breach of the term of trust and confidence. The tribunal has to decide whether each of those allegations whether individually or cumulatively amounts to a breach of the term, by considering:

- a. Whether there was a 'reasonable and proper cause' for the conduct; and
- b. If not, whether the conduct was 'calculated or likely to destroy or seriously damage trust and confidence'.

92. Mr Swales says that this cast a stain on the claimant's reputation as the disciplinary allegations may affect her future career. The claimant did not provide any evidence to indicate that the disciplinary allegations had any detrimental effect either on her alternative employment or her ability to find a new job. Any allegation touching on dishonesty can seriously damage the trust and confidence. However, the question is whether the allegation is raised by an employer with reasonable and proper cause. In the circumstances, we repeat our findings made above note that the allegation was raised by the respondent following an independent investigation by an independent appropriate individual and with reasonable and proper cause. The respondent's internal disciplinary procedure resulted with no sanction imposed due to a reasonable finding of insufficient evidence supporting the allegation. We do not consider that this can be considered breach of the implied term of trust and confidence. There is no positive obligation on the respondent to take any further action. In this case, the claimant says the original allegation made by Ms Bradbury was in bad faith. We repeat the entirety of our findings above. It is not possible from the evidence available to the tribunal to identify who signed the claimant's day pass used on 22 September 2018. The claimant's allegations of bad faith relating to the forgery matter formed part of a wide-ranging allegation of bad treatment on the part of Ms Bradbury. The respondent reasonably concluded after reasonable investigation that the claimant's wider allegation was without foundation. In the absence of any reasonable grounds to suspect bad faith on the part of Ms Bradbury, the respondent acted with reasonable and proper cause in not taking any further step following the exhaustion of its double appeal process.

93. We repeat our findings in relation to each individual allegation above. We do not consider that any of the above allegations either individually or cumulatively amount to action on the part of the respondent that, without reasonable and proper cause, is calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

94. We note in particular 'the conduct' that formed the basis of the harassment allegation. We repeat our findings in relation to the conduct. We do not consider that the conduct constitutes a breach of the implied term of trust and confidence. If we are wrong, we note that the claimant continued to work for the respondent for over a year following this conduct without complaint. In the circumstances we conclude that the claimant had affirmed the contract in any event.

95. There has been no breach of the term of trust and confidence. The claimant did not resign in response to a breach of the implied term of trust and confidence. In the circumstances the claimant's claim for constructive unfair dismissal fails and is dismissed.

Employment Judge Skehan

Date: 19 October 2021

Sent to the parties on:

21 October 2021

For the Tribunal Office