



EMPLOYMENT TRIBUNALS

Claimant:
Miss P Mistry

v

Respondent:
Travelodge Hotels Limited

Heard at: Reading

On: 1 and 2 December 2021

Before: Employment Judge Hawksworth (sitting alone)

Appearances

For the Claimant: Ms G Nicholls (counsel)

For the Respondent: Ms R Kight (counsel)

RESERVED JUDGMENT

The judgment of the tribunal is that:

1. The claimant resigned and was not constructively dismissed.
2. As the claimant was not dismissed, the complaint of unfair dismissal fails and is dismissed.

REASONS

Claim and response

1. The claimant was employed by the respondent from 12 February 2007 to 24 December 2019. At the time she left the respondent's employment, the claimant was a supervisor at one of the respondent's hotels.
2. In a claim form presented on 23 April 2020 after a period of Acas early conciliation from 2 to 26 March 2020, the claimant brought a complaint of constructive unfair dismissal. The response was presented on 26 May 2020. The respondent defended the claim.

Hearing and evidence

3. The hearing took place at Reading employment tribunal.
4. There was an agreed bundle which ran to page 309. Some pages had been added later (eg 78A to 78F). There were 361 pages in the electronic

copy. Page numbers in these reasons are references to the hard copy page numbering.

5. At the start of the hearing the respondent made an application to substitute a witness. Danny Hilliam, the respondent's grievance manager, has left the respondent's employment and was no longer available to give evidence. The respondent wanted to rely instead on the evidence of the appeal manager, Martine Elliott. For reasons given at the hearing I allowed this. Ms Elliott adopted the grievance manager's witness statement.
6. I heard evidence from the claimant and Ms Elliott on the first day of the hearing, and from Susan Hughes (the hotel manager and the claimant's line manager) on the second day of the hearing. The parties' representatives made closing submissions.
7. There was insufficient time within the time allocated for me to deliberate and deliver judgment, and so I reserved judgment. I apologise to the parties and their representatives for the delay in the promulgation of this reserved judgment, this reflects the general pressure of work in the employment tribunals at present.

Issues

8. In summary, the issues for me to decide are whether the claimant was constructively dismissed, and if so whether her dismissal was unfair.
9. The parties agreed a list of issues on 25 November 2021. This sets out the acts relied on by the claimant as fundamental breaches of contract. Each of the alleged breaches is included in the conclusions section below. The last act relied on by the claimant is the behaviour of Mrs Hughes on 19 December 2019 (issue 1.9).

Findings of fact

10. I make the following findings of fact about what happened. Where there is a dispute about what happened, I consider the evidence I have heard and the documents I have read, and I decide what I think is most likely to have happened.
11. The claimant joined the respondent on 12 February 2007 as a receptionist. She did well in the role and was frequently asked to step up and provide support or cover for her managers. This included times when she was in charge on site, running the hotel.

The claimant's new role and training

12. On 1 March 2018 the claimant was promoted to supervisor. The supervisor role was a new role which the respondent had just introduced. It was intended as an additional role between staff members and hotel management, to recognise those staff who were willing to step up and take

on extra responsibilities. The job profile for the supervisor role included deputising for the hotel manager, managing performance and developing others (pages 307-308). It also included some of the same duties as the claimant's previous role, as the focus was reception and housekeeping (page 307).

13. The claimant's line manager was Susan Hughes, the hotel manager. She had been the manager of the hotel since 2014. The hotel performed well; it did not have high staff turnover or other performance issues.
14. Mrs Hughes and the claimant had worked together for some years, and they had a friendly relationship. Mrs Hughes worked well with the claimant and was impressed by her. She thought she was well experienced in all aspects of her role. It was Mrs Hughes' decision to promote the claimant to supervisor.
15. As the hotel manager, Mrs Hughes had other management responsibilities. She was not always on or near the hotel reception when she was at work. She often used a meeting room or hotel bedroom to do management/administrative tasks. The respondent's payroll model did not provide for a manager and supervisor to be at work in the hotel at the same time. However, Mrs Hughes built in some cross over shifts where she and the claimant were both in the hotel for part of their shifts so that they could catch up. They also communicated regularly by WhatsApp messages and texts.
16. After her promotion, the claimant had online training and on the job training. The claimant's record of online training showed that in March 2018 she completed training sessions on national living wage, the right to work and pillow talk (pages 203A to 203C). In August 2019 she completed two online courses on training new team members (page 203C). These were courses for supervisors and managers, not for all team members.
17. The claimant was also provided with an induction training plan for the new role, known as a workbook. The workbook set out and explained each element of the role and had spaces for the employee to fill in supporting evidence to show they had practised that element of the role. The workbook had to be signed off by the line manager. It was intended to cover the first four weeks of the new role (page 216). The workbook included a section at the start for the employee to describe the role. The claimant wrote, '*Supporting the manager in delivering the perfect stay. Stepping up when the manager is off to maintain operational standards*' (page 219).
18. The claimant found it difficult to find time at work to fill in the workbook, and it took longer than the intended four weeks to complete. Mrs Hughes reminded the claimant in April and May 2018 and checked that she was understanding everything (pages 178B to 178E). On 29 May 2018 Mrs Hughes told HR in an email that the claimant's training needed to be completed and the workbook signed off (page 78B). Mrs Hughes checked and signed off parts of the workbook in June and July 2018 (for example

pages 217, 219, 221, 224). She flagged the need for the claimant to have more training or more time on some areas (pages 219, 244). In July 2018 Mrs Hughes suggested that the claimant take a couple of hours in a meeting room to work on the book (page 178W). The workbook was recorded as completed in August 2018 (page 250).

19. There were some elements of the supervisor role which the claimant was not required to do because they were covered by the hotel's assistant manager. For example, the claimant completed the workbook for audit finance activities, but Mrs Hughes recorded that she would not be doing cash (page 242). Mrs Hughes recorded that training the claimant on people systems for payroll and cash was not a priority because the hotel had an assistant manager who did this (page 244). The claimant felt that this meant that she was not fully trained or confident in her role. I accept the respondent's evidence that she was fully trained and confident in the areas she was required to do.
20. In February 2019 and April 2019 the claimant attended two training sessions. The sessions were organised by the district manager for all the recently appointed supervisors in the district.

Events in 2018

21. In April 2018 some money went missing from the hotel safe. There was an investigation but it was not possible to identify who had taken it. Mrs Hughes was very upset by this incident, as she had always tried to be friendly with her staff and she felt her trust had been broken by someone. After this she decided she should keep relationships with all her staff on a professional basis. Mrs Hughes' relationship with the claimant changed from a personal friendship to a manager/employee relationship. I find that Mrs Hughes' decision to shift the relationship away from a personal friendship is likely to have been difficult for the claimant.
22. In around May 2018, the claimant found a statement from her personnel file had been left on the photocopier. The statement included her home address. She told Mrs Hughes. Mrs Hughes told the claimant that she was sorry and said, 'That shouldn't have happened'. Mrs Hughes carried out a fact find but could not establish how the statement had been left there. In September 2018 the claimant took the matter up with the respondent's HR department who agreed that the claimant's personnel file could be kept at the respondent's headquarters, not at the hotel (pages 79 and 140).
23. In around November 2018, the claimant reported that a man had come to the hotel reception a few times asking for Mrs Hughes. Shortly after this, Mrs Hughes received an anonymous threatening letter. Mrs Hughes was understandably upset and anxious about the anonymous letter.
24. There was an investigation. The respondent identified who should be spoken to as part of the fact finding process required by the disciplinary policy (page 58). The claimant was asked to attend a fact-finding meeting as part of the investigation because she had seen the man who had asked

for Mrs Hughes and she had collected the post on the day the anonymous letter was delivered.

25. In the meeting with the claimant on 19 December 2018, the investigating manager had a copy of some messages the claimant had sent to the staff whatsapp group about six months earlier. The whatsapp messages were about traffic problems. There were some words in capital letters and some in lower case (page 177). Mrs Hughes thought the capital letters might be spelling out a hidden message saying something like 'Watch out when I find out Sue's out'. She gave a copy of the messages to the investigating manager. At the hearing before me, the claimant accepted that the stress of receiving an anonymous letter might make someone look back at things and try to find explanations.
26. The investigating manager spoke to the claimant about the messages. He asked the claimant what the capital letters meant. The claimant said 'that's how I text'. She said it was ridiculous to suggest the messages had anything to do with the anonymous letter. She said Mrs Hughes was the only manager over her time with the respondent who had supported her (page 85 to 88). The investigating manager did not probe this further, and drew the interview to a close.
27. On or around 20 December 2018 the claimant asked to speak to Mrs Hughes about the interview. It was just before Mrs Hughes was starting a period of leave for Christmas. They went to one of the hotel rooms to talk. There were no notes of the meeting. The claimant explained her concerns to Mrs Hughes about how being asked about the text messages had made her feel anxious and stressed. Mrs Hughes listened to the claimant and then left the room. I accept the claimant's evidence that as she left Mrs Hughes said something like, 'Don't talk to me about stress, I can't talk to you'. I accept that this was a stressful time for both the claimant and Mrs Hughes, and I find that Mrs Hughes left because she was upset that the claimant had not recognised the stress Mrs Hughes herself was under, and thought they should both calm down.
28. No action was taken against the claimant following the fact finding meeting she attended.

Staff issues

29. In around October 2018 the claimant began assisting a housekeeper who was underperforming. The claimant provided her with extra training but the performance problems continued. In January 2019 the claimant told Mrs Hughes about the ongoing issues (page 90). On 16 February 2019 in a text discussion about how to record staff performance issues for another staff member Mrs Hughes told the claimant, '*You are a supervisor, you can speak to cleaning staff*' (page 178O) and on 26 February 2019 Mrs Hughes suggested the claimant should '*Write it down and on Thursday we can have a chat about it. What to do etc*' (page 178P).

30. In November 2018 and January 2019 the claimant raised concerns with Mrs Hughes and the assistant manager about a team member's drinking. Mrs Hughes and the assistant manager both provided coaching and advice to this team member. Mrs Hughes also provided advice to the claimant about how to deal with this team member.
31. In the autumn of 2019 the claimant was providing a member of the night staff with additional one to one training because of underperformance. On 7 November 2019 the claimant told Ms Hughes that the underperformance problems were continuing, and that this was impacting on the claimant as it meant she had extra work to do when she started her shift in the morning. Mrs Hughes told the claimant she should deal with the staff member's underperformance issues.

The Late Record

32. In about January 2019 Mrs Hughes was told by other staff that the claimant was coming in late for work. Mrs Hughes spoke to the claimant and asked her to come in on time. She offered a change of start time but the claimant declined. Mrs Hughes had spoken to another member of staff about lateness and she thought it was important to be consistent. She started keeping an informal record of the claimant's arrival times. The document was headed 'Pitti [sic] Late Record' (page 215A). The first recorded instance of lateness was 14 January 2019. Mrs Hughes recorded 7 instances of the claimant being late, leaving early or working extra time without approval in the period between 14 January 2019 and 11 February 2019.
33. On 12 February 2019 the claimant started work two hours late because of a migraine. Mrs Hughes marked this as a 'part absence' (that is a part day sickness absence) (page 91). Mrs Hughes had not recorded a part-absence for any other member of staff before. The return to work form included a box marked 'total days' not hours; Mrs Hughes completed the form by writing in '2 hours'. Under 'reasons' she wrote, 'Migraine, so started later.' She also recorded that the claimant had five days absence in the previous 52 weeks and she said that the claimant had approached an unacceptable level of absence (page 93).
34. On or around 24 April 2019 an assistant manager left the claimant's Late Record open on a computer which was accessible to all staff. The claimant saw the document and messaged Mrs Hughes asking her to contact her to discuss it. Mrs Hughes was not at work when this message was sent. She replied on 25 April 2019 saying 'Will talk tomorrow' (page 100A).
35. Mrs Hughes and the claimant did not speak on 26 April and the claimant messaged her again saying:

"Due to all your recent mistakes I will need to go through my personal file every single document again. One document was left on the drive that was prepared by you with dates times etc about me which I will need to discuss..."

36. On 27 April 2019 Mrs Hughes apologised to the claimant for the document being left open on a computer which was accessible to staff. She gave coaching advice to the assistant manager who had left the document open.

Staffing issues in November 2019

37. On the weekend of 2/3 November 2019, Mrs Hughes and the assistant hotel manager both took holiday at the same time. They were both away for three days, leaving the claimant in charge of the hotel. Although Mrs Hughes generally tried not to take leave at the same time as the assistant manager, it happened on this occasion because the assistant manager had recently transferred to the hotel, and both had their leave approved before the transfer.
38. It was not the first time the claimant had been in charge of the hotel. However, there were staffing issues that week which made it a particularly busy weekend. The hotel was short-staffed and the housekeeping and reception staff who were working that weekend were inexperienced. In the lead up to the weekend, the claimant contacted other managers to raise her concerns about staffing levels (pages 179 to 191). The district manager took steps to find additional help but with little success (pages 183 and 184). One member of staff started her shift earlier at the claimant's request.
39. On or around 17 November 2019 the claimant spoke to Mrs Hughes and the assistant manager about her concerns about insufficient staffing levels on the weekend of 2/3 November. The claimant said that a crossover shift should have been put in place. Mrs Hughes said that she did not have payroll approval to include a crossover shift in the rota. The claimant disagreed with Mrs Hughes. She said that the payroll model allowed extra staff hours when a manager is off. I find that the claimant is likely to have tried to put her point across forcefully and to have come across as argumentative.
40. After this discussion, when Mrs Hughes was leaving work at the end of her shift, she spoke to the claimant alone. Mrs Hughes said that she was unhappy about the way in which the claimant had spoken to her about the extra hours, which she described as an outburst.
41. On 12 November 2019, Mrs Hughes sent the claimant a text message with a photo of two handover sheets. The text message said 'Pls sign off at end of shift' (page 178X). This was a request by Mrs Hughes to the claimant to ask her to fill in a new handover sheet at the end of each shift. The claimant was not aware that a new handover sheet had been introduced. Mrs Hughes had sent a message to the staff whatsapp group about the new procedure on 21 October 2019, but the claimant had removed herself from the group so she did not see it.

42. Later in the month, the claimant noticed when she arrived at work that sometimes the handover sheet had not been completed by other staff (for example page 195). The claimant was not aware of Mrs Hughes texting those staff with a request to fill in the new handover sheet.

Lighting in reception

43. The claimant raised concerns about the spotlights above the reception computer being too bright in annual Display Screen Equipment (DSE) self-assessment questionnaires completed on 9 May 2017, 30 November 2017 and 2 May 2018 (page 206 to 214). The May 2018 questionnaire noted that a glare-free screen covering had been fitted.
44. In 2019 the Claimant became concerned again about the bright spotlights in the reception office area. The lights caused a glare and the claimant was getting frequent headaches. She tried working with the lights off but this didn't help. She ordered a non-glare keyboard from IT but it didn't arrive. The lights were logged as a maintenance issue on 23 March 2019. The respondent's maintenance team attended but were unable to suggest a solution. They referred the job to a contractor.
45. In May 2019 the claimant completed another DSE questionnaire. In the box 'Remedial action required', Mrs Hughes noted, 'Chase job - lights in reception'. Mrs Hughes emailed the maintenance team to chase this up.
46. In a text on 14 June 2019 the claimant asked Mrs Hughes for a copy of her risk assessment and 'the DSE form' (page 178V). On 21 June 2019 and 23 June 2019 the claimant asked Mrs Hughes about one of the lights and Mrs Hughes responded straight away (pages 178F to 178G). By 22 June 2019 Mrs Hughes had given the claimant a copy of the risk assessment but not the DSE questionnaire. Mrs Hughes asked the claimant which form she meant and then provided the claimant with a copy of her DSE questionnaire after the claimant chased this up on 13 July 2019 (pages 178U to 178V).
47. The claimant spoke to the respondent's HR dept about this in June 2019 and again on 25 October 2019. She told the assistant manager on 23 October 2019 that she was going to log the problem with maintenance again (page 103).
48. In November 2019 different bulbs were fitted. Mrs Hughes spoke to the claimant about the lighting on 13 December 2019 (page 121). The claimant was finding the lighting a little better but she was still getting headaches. She asked whether the respondent could put different spotlights in the ceiling. On the advice of the respondent's HR team, Mrs Hughes suggested that the claimant have an eye test and come back with the results so that they could consider next steps. The claimant had not had an eye test by the time she left her employment with the respondent (page 162).

The investigation concerning complaints about the claimant in November 2019

49. On around 20 November 2019 the Claimant was asked to attend a fact-finding meeting (page 104 to 114). A member of staff who had resigned and two other colleagues had expressed concerns about the claimant to Mrs Hughes. Mrs Hughes sought advice from the respondent's employee relations team. On their advice, Mrs Hughes asked the staff to put their complaints in writing (pages 115 to 120).
50. The staff members made written complaints. The complaints said that the claimant did not help them and that she was negative, unapproachable, rude and abrupt. The alleged conduct if proven would have been a failure to demonstrate the behaviours expected of colleagues as explained in the disciplinary policy, and would have amounted to misconduct (page 55). The fact-finding meeting was an initial investigatory meeting, not a disciplinary hearing (page 104). It was to enable the respondent to decide whether to take any action about the complaints which had been made. It was in line with the respondent's disciplinary procedure to hold a fact finding meeting in these circumstances (page 58).
51. The claimant was upset by the complaints which had been made, as she felt she was the one person who would step in and help, and she felt she spoke to people politely. She felt she was being targeted. She said her training for the supervisor role had been poor and she didn't really know what the role was. She didn't feel that she had sufficient support from Mrs Hughes.
52. The respondent's employee relations team who were conducting the investigation asked Mrs Hughes to download some CCTV to assist with the investigation. On 19 December 2019 Mrs Hughes was in the office downloading the CCTV. She was short of time to do this because she was soon starting her annual leave for Christmas.
53. While Mrs Hughes was downloading the CCTV, the claimant came into the office. Mrs Hughes found this difficult as she was trying to keep what she was doing confidential. She told the claimant to go straight upstairs and start the housekeeping meeting. The claimant could see that there was something downloading on the CCTV screen and she asked Mrs Hughes if something had happened. Mrs Hughes said she could not say. The claimant made herself a coffee and then went to check the email system. Mrs Hughes said it had already been checked, and again said that the claimant should go upstairs. The claimant said she had made a list of a few things she wanted to discuss with Mrs Hughes. She got out her list and started to ask Mrs Hughes some questions about cleaning staff and training. Mrs Hughes said that she did not have time to speak to the claimant about this. The claimant offered Mrs Hughes a coffee. Mrs Hughes said she did not want one. The claimant left the office. She was upset that Mrs Hughes was trying to get her to leave the office so quickly.
54. The claimant said that during this discussion, Mrs Hughes also said to her 'I know what you are doing', and 'I don't want anything from you ever'. Mrs Hughes denied saying these things. I accept Mrs Hughes' evidence on

these points. In contrast to the rest of the conversation as I have found it to have occurred, these comments do not sound natural or plausible.

55. Mrs Hughes put a 'do not disturb' sign on the office door so that she could finish downloading the CCTV. The claimant came in again later to tell Mrs Hughes that she was going for a break and to ask for her bag. Mrs Hughes snapped at the claimant for ignoring the sign. She passed the claimant her bag.
56. The following day, the claimant spoke to the district manager about the incident.
57. No action was taken against the claimant following the fact-finding meeting.

The claimant's resignation, grievance and appeal

58. On 24 December 2019 the claimant sent a resignation letter by email (page 121A and 121D). She gave a week's notice. Her last working day was 31 December 2019. In the letter (page 121E), the claimant said

"I have enjoyed most of my time with Travelodge but sadly this has changed. I therefore feel I have to leave my role."

59. In her covering email, the claimant said:

"A further letter outlining a formal complaint against Sue Hughes will follow in the next few days. This will outline my concerns and my reasons for wanting to leave my employment with Travelodge, this is due to the way I have been treated over a period of time which has got too much to cope with."

60. The claimant's formal grievance letter was sent on 2 January 2020 (page 122 to 129). The focus of the claimant's grievance was her relationship with Mrs Hughes. The claimant said Mrs Hughes was lacking in ability as a manager and had provided the claimant with inadequate training and support over the last two years. The claimant referred to a number of concerns including the CCTV incident on 19 December 2019, the busy weekend of 2/3 November 2019, the investigation into the anonymous letter in December 2018 and the problem with the lights in reception.
61. Danny Hilliam, one of the respondent's district managers, was appointed as the grievance manager. The grievance meeting took place on 13 February 2020. The outcome letter was sent to the claimant on 28 February 2020 (page 136 to 142). The claimant's grievance was not upheld except that Mr Hilliam recognised that a witness statement with the claimant's address had been left out on a photocopier. He felt that the respondent dealt sufficiently with this incident.
62. The claimant appealed against the grievance outcome in a letter of 5 March 2020 (page 143).

63. The appeal was heard by Martine Elliott, people business partner. The hearing was on 19 March 2020 (page 145 to 159). There was then a delay as the first national lockdown for covid-19 meant that the respondent's hotels were closed and it was more difficult for Ms Elliott to carry out her investigations. The appeal outcome letter was sent to the claimant on 7 May 2020 (age 164 to 172).
64. The appeal outcome was that the appeal was partially upheld, in relation to the lights in reception. Ms Elliott concluded that there was a delay in changing the bulbs, but that interim measures were taken. Other than this point, the original grievance decision was confirmed.

The law

65. The definition of dismissal in section 95 of the Employment Rights Act includes constructive dismissal. Section 95(1)(c) provides that an employee is dismissed where:

“the employee terminates the contract under which [she] is employed (with or without notice) in circumstances in which [she] is entitled to terminate it without notice by reason of the employer’s conduct.”

66. *Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27* set out the elements which must be established by the employee in constructive dismissal cases. The employee must show:

- 66.1. that there was a fundamental breach of contract on the part of the employer;
- 66.2. that the employer's breach caused the employee to resign; and
- 66.3. that the employee did not affirm the contract, for example by delaying too long before resigning.

67. The claimant in this case relies on breaches of the implied term of trust and confidence. The implied term was explained by the House of Lords in *Malik v Bank of Credit and Commerce International SA 1997 ICR 606, HL* as a term to the effect that neither party will, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. Contrary to what was suggested in paragraph 3 of the list of issues, any breach of the implied term of trust and confidence is a fundamental breach of contract, entitling the employee to treat the contract as being at an end.

68. Whether there has been a breach of the implied term is a highly context-specific question, and is to be considered objectively, from the perspective of a reasonable person in the claimant's position (*Tullett Prebon plc v BGC Brokers LP 2011 IRLR 420*).

69. In *Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978* Underhill LJ set out guidance on the questions to be considered where an employee claims to have been constructively dismissed and where there are said to be a number of breaches of the implied term. Those questions are:
- 69.1. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, the resignation?
 - 69.2. Has the employee affirmed the contract since that act?
 - 69.3. If not, was that act (or omission) by itself a repudiatory breach of contract?
 - 69.4. If not, was it nevertheless a part of a course of conduct comprising several acts and/or omissions which, viewed cumulatively, amounted to a breach of the implied term of trust and confidence?
 - 69.5. If so, did the employee resign in response (or partly in response) to that breach?
70. If a constructive dismissal is established, the tribunal must also consider whether the reason for the dismissal is a potentially fair reason, and whether the dismissal is fair in all the circumstances, pursuant to section 98(4) of the Employment Rights Act 1996.

Conclusions

71. I have applied these legal principles to the facts as I have found them, using the approach set out in *Kaur v Leeds Teaching Hospitals NHS Trust*, to reach the following conclusions.

What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, the resignation?

72. The claimant says that issue 1.9 in the list of issues was the final straw which caused her to resign on 24 December 2019. This was described in the list of issues as: *“On around 19 December 2019 the claimant was banished from the office and Mrs Hughes rudely shouted at the claimant when the claimant tried to ask Mrs Hughes some questions”*.

73. I have not found that the claimant was ‘banished’ from the office. I have found that Mrs Hughes twice asked the claimant to start a housekeeping meeting so that she could continue downloading the CCTV in private, because it concerned an investigation into the claimant. I have also found that the claimant did not follow Mrs Hughes’ instructions, and instead made a coffee, went to check emails, offered Mrs Hughes a coffee and tried to go through a list of questions with her. I have not found that Mrs Hughes rudely shouted at the claimant. I have found that she snapped at the claimant when the claimant went back to the office while there was a do not disturb sign on the door.

Has the employee affirmed the contract since that act?

74. The claimant did not affirm the contract between 19 December 2019 and her resignation on 24 December 2019. She took a few days to consider her position. She did not say anything to the respondent during this time which could have amounted to affirmation of the contract of employment.

If not, was that act (or omission) by itself a repudiatory breach of contract?

75. I need to consider whether, when Mrs Hughes spoke to the claimant on 19 December 2019 in the office, the respondent conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties and whether that conduct was without reasonable or proper cause. This is an objective test.
76. Looked at objectively, there was nothing in Mrs Hughes' interactions with the claimant on 19 December 2019 which was calculated or likely to destroy the trust and confidence between them. It was an awkward situation. Mrs Hughes was trying not to let the claimant know what she was doing. Mrs Hughes did not (as the claimant's representative suggested) deliberately create this difficult situation, by downloading the images when she knew the claimant was around, in order to annoy the claimant or trip her up somehow. Rather, the awkward situation was created by circumstances: Mrs Hughes had been asked to obtain the CCTV, and she only had a limited amount of time to do so before her annual leave. This meant that she had to download the images when the claimant was at work.
77. Mrs Hughes' actions when the claimant came in were, viewed objectively, not calculated or likely to destroy trust and confidence. Mrs Hughes asked the claimant to go upstairs and start a meeting. This was a reasonable management request and it was soon apparent to the claimant that Mrs Hughes wanted her to leave the office. However, instead of doing that, the claimant made herself a coffee, went to check emails, started speaking to Mrs Hughes about a list of questions, offered Mrs Hughes a coffee, and later came back to the door when there was a do not disturb sign on it.
78. Mrs Hughes had reasonable and proper cause for asking the claimant to leave the office; she was carrying out a confidential task relating to an investigation into the claimant's conduct. She also had reasonable and proper cause for asking the claimant to leave the office because she was the claimant's line manager and she was instructing the claimant to start a housekeeping meeting. When the claimant came back to the door a little later, Mrs Hughes snapped at the claimant. Viewed objectively in light of the circumstances surrounding this, it was not conduct which was calculated or likely to destroy trust and confidence.
79. Mrs Hughes' conduct on 19 December was not by itself conduct which was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties, and Mrs Hughes had reasonable and proper cause for her actions. It was not a breach of the implied term of trust and confidence.

Was it part of a course of conduct comprising several acts and/or omissions which, viewed cumulatively, amounted to a breach of the implied term of trust and confidence?

80. I have therefore gone on to consider whether Mrs Hughes' conduct on 19 November 2019 was part of a course of conduct which amounted to a breach of the implied term of trust and confidence.
81. I have considered my findings of fact in relation to each of the alleged acts or omissions which the claimant relies on as amounting to a breach of contract (as set out in the list of issues). I have considered the acts in reverse date order, not in the order they were set out in the list of issues. I have then considered whether the acts as I have found them to have happened amounted to a breach of the implied term, first individually and then cumulatively.

Issue 1.10: On around 20 November 2019 the Claimant had to attend a fact-finding meeting at which she was told of criticisms of her from other team members, which seemed to the Claimant as though management were trying to find something against her.

82. This was not a breach of the implied term of trust and confidence. The respondent had reasonable and proper cause for this action. It was carrying out an initial investigation into complaints which suggested that the claimant may have been in breach of the disciplinary policy. The respondent's fact finding process was in line with its own procedure. The fact-finding meeting was not disciplinary action. Mrs Hughes' request to the staff members who complained to put their complaints in writing was made at the suggestion of the respondent's employee relations team. There was no evidence that the claimant's managers were trying to find something against her.

Issue 1.8 Ms Hughes' failure to manage the hotel properly had negative effects on the Claimant; for example, on or around 17 November 2019 Ms Hughes failed to respond to the Claimant's concerns about staffing levels and described the Claimant as having an 'outburst'.

83. I have not found that Mrs Hughes failed to manage the hotel properly. I have found that the hotel performed well. Staffing issues and a clash of booked leave made the weekend of 2/3 November 2019 very busy, I return to this below.
84. Mrs Hughes' discussions with the claimant on 17 November 2019 were not a breach of the implied term of trust and confidence. There was a difference of views between Mrs Hughes and the claimant about how the rota for the busy weekend at the start of November could have been done. Mrs Hughes had reasonable and proper cause for speaking to the claimant after the first discussion. It was a reasonable step for her as the claimant's manager to take, because she was unhappy about the way the claimant had spoken to her. Mrs Hughes acted reasonably in waiting until later to raise this with the claimant, this meant that they could speak about it in

private rather than in front of the assistant manager. It also meant that Mrs Hughes was able to raise her concerns when temperatures had cooled a bit. Again, this was a reasonable approach for Mrs Hughes to take as the claimant's manager.

Issue 1.11 In or around November 2019, Ms Hughes expected the Claimant to complete a new handover sheet but she did not expect other staff to do so.

85. I have found that this refers to a text sent by Mrs Hughes on 12 November 2019. The text was a reasonable management instruction, not a breach of contract. It was a new procedure. Mrs Hughes brought it to the attention of staff via the Whatsapp Group. She expected all staff to complete it. She followed up with the claimant when the claimant did not complete the handover sheet. She did so in a brief but polite text message, which was a method of communication the claimant and Mrs Hughes used regularly. Mrs Hughes expected the claimant as a supervisor to lead by example. Even if other staff were not picked up when they failed to complete it, it was reasonable to remind the claimant as a supervisor of the need to complete the handover sheet.

Issue 1.7 In or around early November 2019, Ms Hughes and the Assistant Hotel Manager both took holiday over the same weekend, leaving the Claimant in charge of the hotel, without providing her with adequate resources or support.

86. This was not a breach of the implied term of trust and confidence. The manager and assistant manager were both away at the same time because the assistant manager transferred to the hotel after booking her holiday for the same weekend as Mrs Hughes' booked leave. There was reasonable and proper cause for the respondent permitting this on this occasion. There was reasonable and proper cause for leaving the claimant in charge of the hotel; she was experienced and had done this before. There were staffing issues which made it a particularly busy weekend, but the respondent did try to find extra help. The fact that it was unable to do so did not mean that its conduct over this weekend was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties. It was part and parcel of running a busy hotel that there would be particularly busy times.

Issue 1.4.1 On around 7 November 2019 Ms Hughes did not support the Claimant in dealing with [a member of night staff].

87. Mrs Hughes had reasonable and proper cause to ask the claimant to deal with this staff issue. It was part of the claimant's role as a supervisor to manage performance and develop others, as explained in the job profile and workbook. This was an underperformance issue and it was reasonable to ask the claimant to deal with it. Mrs Hughes had made it clear to the claimant on other occasions that they could chat about how to deal with staff management issues (eg page 178P). This was not a breach of the implied term of trust and confidence.

Issue 1.13 From early 2019 onwards the claimant raised issues about the bright lights above the computer which caused the claimant frequent headaches, but nothing was done until November 2019 and even then the problem was not resolved. Mrs Hughes failed to support the claimant over this issue.

88. The claimant formally logged the issue for maintenance in March 2019 and there was a lengthy delay in dealing with it until November 2019 when different bulbs were fitted. However, the respondent did make an earlier attempt to resolve this when a maintenance team was sent. Mrs Hughes chased the issue up for the claimant in May 2019 and spoke to HR about it when the replacement bulbs fitted in November 2019 did not solve the problem. Overall, the respondent was very slow in addressing this for the claimant, but it did take some steps and Mrs Hughes did not fail to support the claimant on this issue. The delay in dealing with the issue after it was logged for maintenance was not in itself conduct which was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties.

Issue 1.12 On or around 24 April 2019 a chart recording the claimant's lateness and attendance was left on the computer which all staff could access.

89. This was not a breach of the implied term of trust and confidence. Mrs Hughes had reasonable and proper cause for keeping the record, because the claimant's lateness had been drawn to her attention by other staff, and she had spoken to another member of staff about lateness and wanted to be consistent. It was reasonable management action to keep a record of the claimant's lateness as a first step, to enable Mrs Hughes to decide whether she needed to take any further action. The document was left open on a computer by mistake by an assistant manager. Mrs Hughes dealt with the mistake appropriately by apologising to the claimant about it and giving advice to the assistant manager. This was not conduct which was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties.

Issue 1.4.3 On 12 February 2019 Mrs Hughes marked the claimant down as having a 'part absence' when she started late by two hours. Ms Hughes did not treat other staff in this way.

90. Mrs Hughes had not recorded a part absence before for the claimant or for any other member of staff. However, she did so in circumstances where concerns about the claimant's attendance had been raised by other staff, and where she was recording the claimant's attendance. She had recorded a number of absence issues in the weeks before 12 February 2019. Although the claimant did not have a full day's sick leave, it was not unreasonable for Mrs Hughes to record that, because of sickness, the claimant had been unable to work her full hours that day. The absence records makes it clear that this was not a full day's absence, and gives the

reason for it. It was not a breach of trust and confidence for Mrs Hughes to record this.

Issue 1.4.2 In late 2018-early 2019 Mrs Hughes failed to support the claimant regarding a team member's drinking.

91. I have not found that Mrs Hughes failed to support the claimant in relation to this team member. I have found that Mrs Hughes and the assistant manager both dealt with this team member and that Mrs Hughes gave advice to the claimant about it. It was entirely appropriate for Mrs Hughes and the assistant manager to deal with this, given the serious nature of the issue. Mrs Hughes' actions did not amount to a breach of trust and confidence.

Issue 1.3 On or around 20 December 2018 the claimant asked to speak to Ms Hughes about the [anonymous letter fact finding meeting] but Ms Hughes refused to engage with her or offer her support.

92. I have not found that Mrs Hughes refused to engage with the claimant about this. Mrs Hughes went with the claimant to one of the hotel rooms and listened to what the claimant said about how being asked about the text messages had made her feel anxious and stressed. It was understandable in the circumstances, which were very stressful for Mrs Hughes as well as for the claimant, that Mrs Hughes found it difficult to discuss how stressed the claimant was. It was reasonable for her to have ended the discussion rather than allowing it to escalate. It was a difficult situation, but Mrs Hughes' behaviour in ending the meeting and the way she did so was not calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

Issue 1.2 In around the end of 2018 the claimant was questioned about an anonymous letter that had been sent to Susan Hughes but other team members were not so questioned. Further, Ms Hughes tried to suggest that unrelated text messages sent by the claimant, concerning traffic issues, were somehow related to the anonymous letter, in an attempt to blame the claimant.

93. I have found that the claimant was questioned as part of the investigation because she had seen the man at reception and she had collected the post on the day the letter was received. There was reasonable and proper cause to interview the claimant as part of the fact finding process regarding this incident. The claimant had important information that the investigating manager wanted to talk to her about. In relation to the text messages, the claimant accepted that the stress of receiving an anonymous letter might make someone look back and try to find explanations. In the circumstances, Mrs Hughes giving the text messages to the investigating manager was not a breach of the implied term. The investigating manager dealt with this very briefly. When the claimant had given her explanation, the interviewing manager moved on and closed the meeting shortly afterwards. No action was taken against the claimant. This conduct by the respondent did not amount to a breach of the implied term.

Issue 1.4.4 [In October 2018] Mrs Hughes failed to support the claimant in dealing with an under-performing housekeeper.

94. I have found that Mrs Hughes told the claimant that as a supervisor she was responsible for managing and developing the housekeeping team. These were elements of the claimant's role as recorded in the job profile and the workbook. It was reasonable to expect her to deal with underperformance by housekeeping staff. In February 2019, Mrs Hughes told the claimant they could chat about how to deal with managing underperforming staff. It was clear that she was willing to support the claimant if needed. Asking the claimant to deal with underperformance as part of her role was not conduct which was calculated or likely to damage trust and confidence.

Issue 1.1 In around May 2018, the claimant found a statement containing her home address had been left on the photocopier, in breach of the claimant's right to keep her personal data confidential. The respondent did not provide an apology or explanation.

95. I have found that Mrs Hughes apologised to the claimant for the statement being left on the photocopier. She conducted an investigation, but was unable to find out how the mistake had happened, and so she was unable to provide the claimant with any explanation. The claimant's personal information should not have been left on the photocopier but when it was discovered, Mrs Hughes took appropriate action. When the claimant raised this again later with the respondent's HR department, they agreed to her request for her file to be kept elsewhere. The respondent's conduct in respect of the statement did not amount to conduct which was calculated or likely to damage trust and confidence.

Issue 1.5 The claimant was not provided with adequate training.

96. I have found that the claimant was provided with online training for her new supervisor role. She also had a workbook which the claimant filled in and Mrs Hughes reviewed. This was more than a tick box exercise: Mrs Hughes highlighted areas where the claimant needed more training or more time to complete the training. The claimant was also provided with two training sessions in early 2019.
97. I have found that there were some elements of the role where training was not a priority because the claimant was not required to do those elements of the role. The respondent had reasonable and proper cause for taking this approach, namely to ensure that the claimant's training focused on the areas of work she would be required to do in her role, which was most efficient. I have also found that the completion of the workbook took longer than the anticipated four weeks. However, bearing in mind that the supervisor role was one which the business had only just introduced, and that the hotel management were dealing at this time with the theft investigation, any delays in the claimant's training were objectively

understandable and were not calculated or likely to damage trust and confidence.

Issue 1.6 Ms Hughes did not train or support staff sufficiently and would lock herself away in a room to work in isolation, causing disruption to the team.

98. I have considered the claimant's specific criticisms about training and support above. In relation to Mrs Hughes working in a hotel room rather than in the office, I have found that this was in order to do management/administrative tasks which were part of Mrs Hughes' role as hotel manager. There would have been parts of Mrs Hughes' role that only she could carry out and which would have required some concentration. Mrs Hughes deciding to work in a separate room is not conduct which was calculated or likely to destroy the relationship of trust and confidence with the claimant.
99. As I have found them to have occurred, none of the individual matters relied on by the claimant were, viewed objectively, calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties, or they were acts for which the respondent had reasonable and proper cause.
100. Having considered the various individual allegations in detail, I have stepped back and considered my findings about all of the acts which the claimant complains about, to consider whether cumulatively all or some of them amounted to a breach. This is not straightforward as there are 16 alleged breaches which span a period of around 22 months, from March 2018, when the claimant complains about lack of training on promotion, to the meeting on 19 December 2019. I have kept in mind that I need to decide whether the last act relied on by the claimant was part of a course of conduct comprising several acts and/or omissions which, viewed cumulatively, amounted to a breach of the implied term of trust and confidence. I also consider whether any earlier acts were part of a course of conduct amounting cumulatively to a breach of the implied term.
101. There was a change in the relationship between the claimant and Mrs Hughes shortly after the claimant's promotion to supervisor. This was because of Mrs Hughes' decision that she would have to keep her relationships with her staff on a professional basis after the theft of money from the safe. The change was not personal to the claimant and was not such that it amounted to a breach of the implied term. The working relationship remained professional. However, Mrs Hughes' decision is likely to have been difficult for the claimant, as it represented a change from their previously more friendly relationship. The claimant became more critical of Mrs Hughes, and less accepting of the sort of issues and errors that can arise from time to time in daily working life. The claimant began to see some quite uncontroversial management activities by Mrs Hughes, such as working in a different room, recording the claimant's sickness absence or asking her to complete a new handover sheet, as problematic or as targeting her in some way. I have not found that they were.

102. I have also not found that there was a failure by the respondent in general or Mrs Hughes in particular to provide the claimant with appropriate training or support. There is clear contemporaneous documentary evidence that specific online and on the job training was provided, and that this was more than a tick box exercise. It was a busy hotel, and as a supervisor the claimant was reasonably expected to be able to cover for her manager, and to deal with some matters on her own. She was clearly aware of this as she explained this in a written description of her role in her workbook. There was a tension sometimes apparent in the claimant's complaints that on the one hand she was not trained up in all the responsibilities of the role and she should have been required to do more (for example cash functions), while on the other she had to do some aspects of the role without support, and should not have been required to do so much (for example management of underperforming employees, and managing the hotel over a busy weekend). Overall, I have concluded that Mrs Hughes dealt appropriately with the claimant's training by focusing on those areas which were needed, and with the claimant's requests for support, by asking the claimant to deal on occasions where this fell within the claimant's role and capabilities, and by dealing herself where required, for example with the staff drinking issue. Mrs Hughes told the claimant that they could talk things through if the claimant wanted.
103. The respondent had reasonable and proper cause for the investigation meetings the claimant was required to attend in December 2018 and November 2019. Both of these meetings were part of the fact finding process and no disciplinary action was taken against the claimant after either meeting. The meetings were in accordance with the respondent's disciplinary procedure and there was no evidence that either of these interviews were part of a management campaign to find something against the claimant.
104. The claimant and Mrs Hughes did have some irritable exchanges, for example after the anonymous letter fact-finding interview and after the busy weekend in November 2018, as well as during discussions on 19 December 2019. I have concluded that the claimant's determination to get her point across, even in situations where it is clear that it may not be the right moment, may come across as argumentative, and is likely to have been the cause of this.
105. The respondent made some mistakes, for example in relation to the claimant's personal data on two occasions, and in relation to delays in responding to the claimant's concerns about the reception lights. However, Mrs Hughes apologised promptly and dealt appropriately with the data incidents, and the respondent did take some steps to address the claimant's concerns about the lights, albeit not as quickly as it could have done.
106. I have concluded that there was not a cumulative breach of the implied term which ended with the last act (or any of the earlier acts). Looked at in the round, and viewed objectively, the respondent's conduct was not

conduct which was calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

107. In the light of my conclusion that there was no breach of the implied term, the claimant's complaint of constructive dismissal fails; her employment terminated by resignation. As she resigned and was not dismissed, the claimant's complaint of unfair dismissal cannot succeed and is dismissed.

Employment Judge Hawksworth

Date: 18 February 2022

Sent to the parties on: 24/2/2022

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For the Tribunals Office

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