EMPLOYMENT TRIBUNALS

Claimant: Ms A Lawton	**Respondents:**	**1. Dynamic Medical Logistics Ltd** **2. Mr A Edwards**
Heard by CVP	**On:**	**28 February, 1, 2, 3, 4 March 2022**
Before		**Employment Judge Davies** **Mr L Priestley** **Mr R Stead**
Appearances **For the Claimant:** **For the Respondent:**		 **In person** **Mr Z Malik (solicitor)**

RESERVED JUDGMENT

1. The following complaints are dismissed on withdrawal by the Claimant:
   1.1 All complaints relating to the allegation that the Claimant was not offered private health care insurance;
   1.2 The complaints of direct sex discrimination and harassment related to sex in respect of the allegations that the Claimant was told that her role required full-time attendance in the office; and that she was told without justification that she had acted in a way unbecoming of a manager.
   1.3 The complaints of direct sex and disability discrimination, and harassment related to sex, in respect of the allegation that the Claimant was asked if she had bitten off more than she could chew.

2. The Claimant's remaining complaints of direct sex and disability discrimination, and harassment related to sex and disability, and the complaints of being subjected to detriment for making protected disclosures, automatically unfair dismissal, unfavourable treatment because of something arising in consequence of disability, failure to make reasonable adjustments for disability, victimisation and wrongful dismissal are not well-founded and are dismissed.

3. The First Respondent's contract claim is well-founded and succeeds.

4. The Claimant shall pay the First Respondent damages of **£800**.

REASONS

Introduction

1. These were complaints of being subjected to detriment for making protected disclosures, automatically unfair dismissal for making protected disclosures, direct sex and disability discrimination, unfavourable treatment because of something arising in consequence of disability, failure to make reasonable adjustments for disability, victimisation and wrongful dismissal brought by the Claimant, Ms A Lawton, against her former employer, Dynamic Medical Logistics Ltd and its owner and Managing Director, Mr A Edwards. The First Respondent brought an employer's contract claim against the Claimant.

2. The Claimant represented herself. The Respondents were represented by Mr Malik, solicitor. The Tribunal discussed reasonable adjustments with the Claimant at the outset. She did not identify any adjustment she needed. The Tribunal made clear that we would take regular breaks and that the Claimant should ask if she needed a break. She did so. On the morning of the third day of the hearing, the Claimant emailed the Tribunal to say that she did not want to continue with the hearing. She wanted the Tribunal to reach its decision based on the evidence. If that was not possible, she would withdraw her claims. By that stage, the Claimant's own evidence was complete and she had substantially completed her cross-examination of Mr Edwards. The Tribunal decided to proceed. Each of the remaining witnesses was called and the Tribunal formally put the relevant allegations to each witness. The Tribunal reserved its decision.

3. The Tribunal was provided with a file of documents prepared by the Respondents and we admitted a small number of additional documents by agreement during the hearing.

4. The Tribunal heard evidence from the Claimant. For the Respondents, we heard evidence from Mr Edwards, Ms K Wilson (Sales and Marketing Manager), Mr F Scoon (HR Consultant employed by Moorepay), Ms G Smith (HR Consultant employed by Moorepay), Mr A Raza (consultant to the Respondents) and Mr M Cromack (General Manager). The First Respondent accepted that it was liable for the conduct of the HR consultants involved in its internal processes.

Issues

5. By the time of the hearing, the Respondents admitted that the Claimant was disabled at the relevant time because of a back condition and that her son was disabled at the relevant time too. The claims and issues were identified following two preliminary hearings. The issues for the Tribunal to decide were as follows.

Protected disclosures (whistleblowing)

5.1 The protected disclosures the Claimant says she made were:

	Date	Factual allegation
1.	Roughly every week	C told Mr Edwards that he was not allowed to class personal expenses as business expenses in order to reduce his tax bill.
2.	24/2/20	C wrote in her grievance that she was "being told to treat transactions in a way that I am not comfortable with ethically but am in fear of losing my job if I do not comply."
3.	3/3/20	C stated at the grievance meeting that personal expenses had been put through the accounts as business expenses, which she explained amounted to tax fraud.
4.	24/4/20	C emailed Mr Edwards. She set out concerns that personal expenses had been, and were going to be, put through the business accounts, which she explained amounted to tax evasion.

5.2 Did the Claimant make one or more protected disclosures as above? The Tribunal will decide:

5.2.1 What did the Claimant say or write? When? To whom?

5.2.2 Did she disclose information?

5.2.3 Did she believe the disclosure of information was made in the public interest?

5.2.4 Was that belief reasonable?

5.2.5 Did she believe it tended to show that a person had failed, was failing or was likely to fail to comply with a legal obligation?

5.2.6 Was that belief reasonable?

Detriment for making protected disclosures

5.3 Did the Respondents subject the Claimant to the following detriments?

	Date	Factual allegation
1	13/5/20 and 14/5/20	Mr Edwards did not reply to the Claimant's email about an advance.
2	15/5/20	Mr Edwards suspended the Claimant.
3	15/5/20 to 9/6/20	Mr Edwards told the disciplinary investigator and/or Mr Cromack that the Claimant was not entitled to authorise advances for herself and that they did not have a verbal agreement to that effect.

5.4 If so, was it done on the ground that the Claimant made a protected disclosure?

Direct sex and disability discrimination

5.5 Did the Respondents do the things specified below as being direct discrimination? Note, the Claimant withdrew all complaints relating to allegation 1 and certain other complaints during the hearing.

	Date	Factual allegation	Legal complaints
1	September 2018	C was not offered private health care insurance as part of her employment package.	Direct disability discrimination s 15 Harassment
2	January 2019	Mr Edwards said to C, "I think you need to ask yourself if you're right for this position."	Direct disability and sex discrimination s 15 Harassment
3	Early February 2019	Mr Edwards asked C, "Are you sure this job is right for you with being a single mum and your back?"	Direct disability and sex discrimination s 15 Harassment
4	September 2019 – February 2019	Mr Edwards did not offer C study leave for her accountancy exams.	Direct disability and sex discrimination s 15 Harassment
5	Around October 2019	Mr Edwards, without justification, criticised C for three performance issues and handed her a "Letter of Concern."	Direct disability, associative disability discrimination and sex discrimination s 15 Harassment
6	January 2020	Mr Edwards asked C, "Do you think you have bitten off more than you can chew?"	Direct disability and sex discrimination s 15 Harassment
7	Mid-February 2020	Mr Edwards told C that her role required full-time attendance in the office, and that she must increase her attendance at the office.	Direct disability and sex discrimination s 15 Harassment
8	Around 20 February 2020	Mr Edwards told Mr Cromack that he felt that C had acted "unbecoming of a manager", when C had done nothing to warrant such treatment.	Direct disability and sex discrimination s 15 Harassment
9	20 February 2020	Mr Cromack held a meeting with C in which he relayed Mr Edwards's statement made on or around 20 February 2020 (as set out above)	Direct sex discrimination s 15 Harassment
10	March 2020	C was not given a pay rise.	Direct disability discrimination s 15 Harassment

	Date	Factual allegation	Legal complaints
11	20 March 2020	C's grievance was not upheld.	Direct disability and sex discrimination s 15 Harassment
12	13/5/20 and 14/5/20	Mr Edwards did not reply to C's email about an advance.	Direct disability and sex discrimination s 15 Harassment
13	15/5/20	Mr Edwards suspended C.	Direct disability and sex discrimination s 15 Harassment
14	15/5/20 to 9/6/20	Mr Edwards told the disciplinary investigator and/or Mr Cromack that C was not entitled to authorise advances for herself and that they did not have a verbal agreement to that effect.	Direct disability and sex discrimination 15 Harassment
15	9/6/20	C was dismissed.	Direct disability and sex discrimination s 15

5.6 If so, was it less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated. The Claimant says she was treated worse than:

In relation to her direct disability discrimination complaints: Kelly Wilson, Michael Cromack, Peter Stables and a hypothetical comparator.

In relation to her direct sex discrimination complaints: Michael Cromack, Peter Stables and a hypothetical comparator.

5.7 If so, was it because of:

5.7.1 the Claimant's disability (for those things specified as being direct disability discrimination)?

5.7.2 the Claimant's son's disability (for the purposes of allegation 13 only)?

5.7.3 the Claimant's sex (for those things specified as being direct sex discrimination)?

Discrimination arising from disability

5.8 Did the Respondent treat the Claimant unfavourably by doing the things set out in the table above?

5.9 Did the following things arise in consequence of the Claimant's disability:
  5.9.1 The Claimant takes medication which causes tiredness and yawning;
  5.9.2 The Claimant needs to work from home regularly;
  5.9.3 The Claimant needs to limit her time driving;
  5.9.4 The Claimant needs to work flexibly?
5.10 Was the unfavourable treatment because of any of those things?
5.11 Was the treatment a proportionate means of achieving a legitimate aim? The Respondents say their aims were:
  5.11.1 That internal reasonable management instructions are honoured;
  5.11.2 That team morale remains sufficiently high;
  5.11.3 That staff are sufficiently and consistently accountable, contactable and visible;
  5.11.4 That the integrity and oversight of cash advancement processes are not compromised;
  5.11.5 That senior personnel visibly demonstrate professionalism.
5.12 The Tribunal will decide in particular:
  5.12.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;
  5.12.2 could something less discriminatory have been done instead;
  5.12.3 how should the needs of the Claimant and the Respondent be balanced?
5.13 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

Harassment

5.14 Did the Respondents do the things specified in the table above as being harassment?
5.15 If so, was that unwanted conduct?
5.16 Did it relate to disability and/or sex?
5.17 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
5.18 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Reasonable Adjustments

5.19 Did the Respondents know or could they reasonably have been expected to know that the Claimant had the disability? From what date?
5.20 A "PCP" is a provision, criterion or practice. Did the Respondents operate a PCP that employees are required to minimise the amount of time spent working from home?
5.21 Did the PCP put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that:
  5.21.1 The Claimant's disability means that travelling by car into the office is painful. As such, working in the office increases her pain which affects her concentration.

5.21.2 The Claimant's disability means that she experiences significant pain when working in an office chair and walking around the office. Working in the office increases her pain which affects her concentration.

5.22 Did the Respondents know or could they reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?

5.23 What steps could have been taken to avoid the disadvantage? The Claimant suggests that she should have been allowed to work two days a week at home and two days a week in the office. The Claimant states that this arrangement should have been put in place formally and should not have been removed and the threat that it would be removed should not have been made.

5.24 Was it reasonable for the Respondents to have to take that step?

5.25 Did the Respondents fail to take that step?

Victimisation

5.26 The protected acts the Claimant says she did were:

	Date	Factual allegation
1	24/2/20	C submitted her grievance, alleging she was subjected to disability discrimination.
2	3/3/20	C explained at the grievance meeting that she had been subjected to disability discrimination.
3	27/4/20	C appealed the grievance outcome, stating that Mr Edwards had subjected her to disability discrimination.
4	12/5/20	C stated at her grievance appeal hearing that Mr Edwards had discriminated against her because of her disability.

5.27 Did the Claimant do a protected act as set out above?

5.28 Was the Claimant subjected to detriment as follows?

	Date	Factual allegation
1	13/5/20 and 14/5/20	Mr Edwards did not reply to the Claimant's email about an advance.
2	15/5/20	Mr Edwards suspended the Claimant.
3	15/5/20 to 9/6/20	Mr Edwards told the disciplinary investigator and/or Mr Cromack that the Claimant was not entitled to authorise advances for herself and that they did not have a verbal agreement to that effect.
4	9/6/20	C was dismissed.

5.29 If so, was it because she did a protected act?

Time limits

5.30 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? Any acts or omissions before:
- 5.30.1 11 February 2020 (in the case of R1); and
- 5.30.2 21 March 2020 (in the case of R2);

are potentially out of time.

5.31 The Tribunal will decide:
- 5.31.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
- 5.31.2 If not, was there conduct extending over a period?
- 5.31.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
- 5.31.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
  - 5.31.4.1 Why were the complaints not made to the Tribunal in time?
  - 5.31.4.2 In any event, is it just and equitable in all the circumstances to extend time?

Unfair dismissal

5.32 Was the reason or principal reason for dismissal that the Claimant made a protected disclosure? If so, the Claimant will be regarded as unfairly dismissed.

Wrongful dismissal/notice pay

5.33 Was the Claimant guilty of gross misconduct or did she do something so serious that the Respondent was entitled to dismiss her without notice?

First Respondent's contract claim

5.34 Did the Claimant act in breach of contract by retaining company property, namely a laptop?

5.35 If the Claimant did act in breach of contract as alleged, should the Claimant pay the Respondent damages in the sum of £800?

Findings of fact

6. Before turning to the findings of fact, we begin with some observations about the Claimant's credibility. The Tribunal found her evidence unreliable and lacking credibility in many respects. For example:
   - 6.1 On the first day of her evidence the Claimant accepted that she and Mr Edwards agreed at her interview that she would work one day a week from home. She then accepted that Mr Edwards had accommodated her request to work from home even from before her employment started. On the second day, when it was again suggested that the Claimant had agreed with Mr Edwards at her interview that she would work one day a

week from home, she disagreed. She was reminded of her evidence from the previous day. Initially, she said, “That’s how it eventually panned out.” Then she said that she could not actually remember. Then she said that overnight she had noted that her contract said four days per week. It was clear that the agreement *was* made at the interview ut the Claimant changed her evidence because she thought the documents supported her.

6.2 In her witness statement, the Claimant said that her commute to the office was a round trip of over three hours. She was asked about this in cross-examination. She accepted that it was a journey of around 13 to 15 miles. Initially, she suggested that it could take anything from 2 to 3 hours to get home. Eventually, she accepted that this was a “slight exaggeration.” It was clearly a substantial exaggeration. Mr Cromack had done the same journey for seven years. His evidence was that it took 25 to 30 minutes in the morning and had never taken more than an hour to get home.

6.3 In her claim form the Claimant said that she was bullied, harassed and undermined by Mr Edwards from the beginning of her employment. In her witness statement she said that Mr Edwards gained her trust. In her oral evidence she said that there was about a year when they “got on great.” When she was questioning Mr Edwards, he said that he thought she was happy with everything he did. She commented, “I was until 2020.”

6.4 In her claim form the Claimant said that “roughly every week” she raised issues with Mr Edwards about putting personal expenses through the accounts as business expenses. She was asked about this in cross-examination. She started by saying that she did tell Mr Edwards “roughly every week.” She was asked if that was from the start of her employment, and she said it was not in the first six months. She was asked when it started. Then she said it was an “ongoing conversation.” She was asked when it started, and she said that she could not remember.

6.5 In her claim form the Claimant said that she and Mr Edwards agreed verbally in September 2019 that she could approve advances of wages for all employees including herself. In cross-examination she maintained that stance. It was put to her that the verbal agreement was that she could approve advances of wages for other employees once every six months and provided that they could be repaid in two months, but that she still required Mr Edwards’s agreement for an advance of her own wages. She disagreed that she required any such agreement. However, when it came to the Claimant questioning Mr Edwards, she did not put it on the basis that there was a verbal agreement. She said that she “presumed” that if she could approve advances for other employees she could approve them for herself. She did not say that there was a verbal agreement that she could do so. She confirmed when asked by the Tribunal that this was an assumption.

6.6 In her claim form the Claimant said that she stated at the grievance meeting on 3 March 2020 that personal expenses had been put through the accounts as business expenses, and she explained that this amounted to tax fraud. In cross-examination, she confirmed that she had

said this at the grievance hearing. Her attention was drawn to the notes of the meeting taken by her companion, and to the grievance outcome letter, both of which recorded that she had said she did not want to pursue this matter. It was put to her that she did not say that this amounted to tax fraud and she agreed. It was then put to her that her two answers were contradictory. She said that she was aware it was tax fraud, but she was bound by confidentiality in her code of ethics. She was asked again why she had given contradictory evidence. She said that she did not prepare the claim form herself. She was reminded that this was about her oral evidence: she had initially said that she did refer to tax fraud and moments later said that she did not. Finally, she confirmed that the latter was correct.

7. These are just some examples of evidence that was inconsistent, vague and contradictory. The Claimant gave a variety of explanations: she could not remember; she had made a mistake; she was not legally represented. In many respects she could not explain the inconsistencies. The Tribunal also noted the evidence that in February, May and June 2020 the Claimant saw her doctor because her mental health was declining. We understood that she was still experiencing poor mental health by the time of the Tribunal hearing. We understood that this might have affected her perception and her recollection. It does not really matter whether the Claimant was being deliberately dishonest, or simply made a mistake or there was some other reason for her inconsistent evidence. Either way, the Tribunal was not able to rely on the accuracy of the evidence she gave. Where there were documents written at the time, the Tribunal considered them a more reliable source.

8. That brings us to the findings of fact. The First Respondent is a company providing transport of medical products and equipment for the healthcare industry. Its owner and Managing Director is Mr Edwards, the Second Respondent. It has around nine staff and a fleet of around 35 self-employed drivers.

9. The Claimant started working for the First Respondent as Financial Controller in September 2018. Before that, the First Respondent had a sub-contracted book-keeper two mornings per week, Mr Staples. Although the Claimant had identified Mr Staples as a comparator for some of her claims, she did not give any evidence that he was in a comparable position and treated differently in any relevant respect. As the business grew, the Second Respondent identified the need for a Financial Controller to perform a range of functions, be more present in the office and answer the new dedicated accounts phone number. The role was advertised as five days a week working from the office. At her interview, the Claimant said that she had a bad back and wanted to work one day a week from home. That was agreed. She was contracted to work 20 hours per week with one day working from home.

10. By the time of the Tribunal hearing, the Respondents accepted that the Claimant met the definition of disability in the Equality Act, by virtue of her back condition. She had a car accident in 2016 and injured her back. That left her with back and leg pain because the nerve roots in her spine were being

compressed. In December 2017 she had surgery to address that. In January 2018 her surgeon noted that she would reduce her Gabapentin medication and would remain on Naproxen and Zapain (Co-codamol) for at least three months. Unfortunately, she continued to experience pain. When she started work, the Respondents knew that she had a back problem and that was why she wanted to work from home one day a week. At that stage sitting for long periods of time, including driving, caused her significant pain. She was more comfortable sitting on her bed. She took painkillers and they caused tiredness. Pain worsened her ability to concentrate. She needed to work flexibly, in the sense that she might have to change her hours or working arrangements at short notice.

11. At this stage, we note that the Respondents now accept that the Claimant's son had a disability at the relevant time, although they say they did not know that at the time. We do not need to give any more detail about that.

12. In about October 2018, Mr Edwards found the Claimant asleep at her desk one day. She explained that the painkilling medication she was taking caused her to be tired but that she was going to change the medication. Mr Edwards told the Tribunal that after that he was not aware of any issue with Claimant being tired because of medication until much later on (see below). We accepted his evidence. There were a number of occasions during the next year when the Claimant texted or emailed to say that she would be late or working from home. On one occasion in November 2018 she said that she was going to the doctor to get her pain medication sorted and on one occasion in January 2019 she referred to medical appointments. Apart from that, none of the explanations related to the Claimant's disability. On several occasions it was because her son was "sick" or "ill". On two or three occasions it was because she had a bug or wanted some uninterrupted time to get up to date. Once it was because she was waiting for someone to fix her boiler.

13. In January 2019 Mr Edwards had his first one-to-one meeting with the Claimant. She complains that he said to her during the meeting, "I think you need to ask yourself if you're right for this position." Mr Edwards evidence was that he did not use those words or make any similar comment. He did recall a discussion in early 2019 when the Claimant was struggling to meet her commitments. He said that she was struggling to meet the days and timeframes that had been agreed and that he asked her from a caring perspective whether she was sure she could do what had been agreed. The Claimant's first mention of this allegation was in her grievance in February 2020. The Tribunal preferred Mr Edwards's evidence. Mr Edwards told the Tribunal that asking this question had nothing to do with the Claimant's gender or disability. He would have asked the same of anybody who was evidently struggling to meet their recently taken on commitments. The Tribunal accepted his evidence.

14. In her claim form the Claimant then complains that in early February 2019 Mr Edward asked her, "Are you sure this job is right for you with being a single mum and your back?" That was reflected in the clear list of issues set out in Case Management orders made by two Employment Judges. The Claimant was ordered to confirm whether she agreed with the list. She did not identify any inaccuracy in it. During the hearing, she said for the first time that this alleged comment was *not* made in February 2019, it was from the time she

made a banking error (a year later). It was suggested to her that there was only one comment about the job being right for her. It was the same comment that she had referred to in her grievance in February 2020, and she had embellished it by adding the bits about being a single mum and her bad back. She then said that she was not even sure of the exact words, but it was along those lines. That's what made her "so angry." There was no mention of this alleged comment in the grievance. Mr Edwards's evidence was that he did not make such a comment. He had himself been brought up by a single parent and would never make such a comment. The Claimant's evidence about this changed; she was vague about what precisely was said; and there was no mention of this allegation in her grievance, despite the fact she said it made her "so angry." The Tribunal preferred Mr Edwards's evidence in those circumstances. We found that no such comment was made.

15. On Saturday, 18 May 2019 the Claimant emailed Mr Edwards. The subject was "Emergency loan to myself." She said that she did not want to disturb Mr Edwards by calling him. She did not realise her car insurance ran out that day and she had a large deposit to pay. They got paid on Friday. She hoped that Mr Edwards did not mind. Mr Edwards replied to say that he did take exception to this. The business account should not be used by the Claimant as an emergency loan and certainly not without talking to him first and getting explicit consent. He asked the Claimant to make sure that it did not happen again.

16. Another employee regularly asked for advances on their wages. This led to Mr Edwards and the Claimant agreeing a process for wage advances in about July 2019. The agreement was that the Claimant could authorise an advance of wages for other employees once every six months, provided that it could be repaid within two months. The Claimant texted Mr Edwards to ask for an advance on her wages in August 2019. He replied, "Sure, you know the drill, once every six months! Assume you can pay it back in two months also?" The Tribunal had no hesitation in finding that Mr Edwards had not agreed in July 2019 that the Claimant could authorise an advance to herself without his permission. The agreement in July 2019 related to other employees. It remained the case that the Claimant required permission from Mr Edwards. Apart from anything else, if the agreement in July had been that the Claimant no longer required permission, there would have been no reason for her to request it the following month. As noted above, the Claimant's own evidence about this was inconsistent with the way she cross-examined Mr Edwards. Furthermore, Mr Cromack gave very clear evidence of a conversation he had with the Claimant when she suggested he take an advance of wages before he went on holiday. Mr Cromack said that the Claimant told him at that time that she was not allowed to do this herself but could do it for him. That stuck in his mind. The Tribunal found not only that the Claimant still required Mr Edwards's permission for an advance of her own wages, but that she knew she did. That is what she told Mr Cromack, and that is why she requested permission when she wanted an advance. This was, of course, plainly sensible and appropriate: the Claimant had access to the bank account as Financial Controller. It was in her own interest as well as the company's that she could not simply loan herself money without explicit consent.

17. In July 2019 the Claimant was exploring the CIMA Management qualification, which she wanted to do. Mr Edwards agreed to pay for the qualification. He did not need the Claimant to do it and he had not asked her to, but he saw it as an investment in her. The Claimant's evidence to the Tribunal was that the course entailed one day per week attending taught classes and 15 hours per week study. Mr Edwards said in evidence that he agreed to pay for the course but told the Claimant she would have to do it in her own time.

18. The Claimant drew a contrast with the treatment of Mr Cromack. He was doing an HR qualification and he was given time off for study leave. However, Mr Edwards gave evidence, which the Tribunal accepted, that he had asked Mr Cromack to do that qualification. Mr Cromack's role expanded to include HR, so the qualification was required training for his job. Initially, Mr Cromack tried to do the study in his own time, but there came a point when he asked for study leave and it was agreed. Mr Edwards regarded this as different from the Claimant's situation, in which she had chosen to do the CIMA qualification. In any event, Mr Edwards said that if the Claimant had asked for study leave he would probably have agreed to it. There was extensive evidence in the Tribunal file of numerous requests from the Claimant to Mr Edwards – e.g. changes to homeworking days, late starts, early finishes, advances of wages and other matters – all of which Mr Edwards agreed to. When the Claimant explicitly asked for study leave in her grievance (see below) Mr Edwards agreed to it. The Tribunal had no doubt that if the Claimant had asked, she would have been given study leave. She was not offered it at the outset, because the CIMA qualification was not a requirement of her job. The Tribunal had no hesitation in accepting Mr Edwards's evidence that the Claimant's gender and disability had nothing to do with the fact that she was not offered study leave.

19. In July 2019 the Claimant had asked if she could work an extra day per week from home and Mr Edwards agreed. In September 2019, the Claimant's working hours were formalised as Mondays off completely, Tuesday and Wednesday at home and Thursday and Friday in the office. When she started her job, Mr Edwards had told the Claimant that if she needed to work extra hours she could claim overtime. He left her to get on with it. In about October 2019 he realised she had claimed more than £10,000 over time the previous year. He and the Claimant discussed an increase to her contractual hours in those circumstances. They agreed that she would increase her hours to 35 per week with a corresponding £15,000 pay increase.

20. The Claimant's CIMA course started in late September 2019. At around this time colleagues were raising concerns with Mr Edwards about struggling to contact the Claimant by telephone on the dedicated accounts extension. Mr Edwards gave evidence that there had been growing concerns about the Claimant's performance. He had not tackled them, but at around this time he realised he needed to. He took advice from Moorepay, and began to document issues, concerns and discussions. The Tribunal accepted that evidence. We saw the log that Mr Edwards kept. It indicated that on Thursday, 3 October 2019 the Claimant emailed Mr Edwards to say that her son was sick so she wanted to stay home and keep an eye on him. She needed to work from home as she had lots to do and could do a longer day at home. The next day, Friday,

4 October 2019, she called in to say she had been up most of the night with her son and was going to work from home.

21. Mr Edwards spoke to the Claimant on 10 October 2019 about being more visible in the office. He told her that he wanted her to be more visible than her predecessor and at the moment he did not feel that she was. He felt that there were double standards if she got to pick and choose days to work from home when nobody else could do so. He also told her that she must consult him before deciding herself that she would work from home. He recorded this conversation in a file note. The Claimant was the only person who was permitted to work from home at all. The Tribunal accepted Ms Wilson's evidence that she never worked from home prior to the pandemic and Mr Cromack's evidence that he only worked from home when he was later given study leave.

22. The Claimant's job description required her to produce management accounts within 5 days of the month end. Mr Edwards said that she did not meet this deadline, and the accounts were getting later. He set a deadline of 23 October 2019 for the September accounts. The Claimant produced them on 29 October 2019. The Claimant was absent on Thursday 24 October 2019 due to unspecified illness. The Claimant was due to produce a new account procedure by 5 November 2019. She requested an extension to 8 November 2019.

23. On Thursday 7 November 2019 the Claimant left work at 2pm because she had forgotten about a dentist appointment. She missed a 2020 budget meeting, which obviously as Financial Controller she was expected to be at.

24. The Claimant also had to produce Objectives and Key Results (OKRs) quarterly. The Claimant's evidence was that these were voluntary. She explained that they were not relevant or worthwhile in her case. The evidence of Mr Edwards and her colleagues was that they were not voluntary, they were required, and were part of performance monitoring. The Claimant may not have thought they were important, but it was for her line manager and Managing Director, Mr Edwards, to decide whether they were required or not. The Tribunal accepted that the Claimant was required to do them. She was late producing her OKRs in October 2019. The Tribunal noted that at her grievance meeting (see below) the Claimant actually complained that Mr Edwards was asking her to prioritise her OKRs over her CIMA work, which was not part of her employment.

25. In November 2019 the First Respondent was changing its factoring company. This was another significant matter in which the Claimant needed to be centrally involved as the Financial Controller. On 7 November 2019 a representative of the new company emailed the Claimant and Mr Edwards to confirm that he would visit the First Respondent's premises at 9.30am on Tuesday 12 November 2019 to carry out an in-depth survey. He asked for a range of financial information to be available. On Tuesday morning Mr Edwards texted the Claimant to remind her about the meeting. She replied to say that she thought it had been Monday and that she had missed it. She said that her toilet was broken so "it wouldn't be great." They were sending an emergency repair out. She added that they needed to give 30 days' notice to the old factoring

company in any event. Mr Edwards replied to say that he did not want to delay the meeting. He had rearranged it for midday and asked the Claimant to come in for then. She replied to say that she could do next Monday. Mr Edwards said that he wanted it to happen today. The Claimant had had five days' notice and he had delayed the meeting to help. She replied to say that he had put it in for yesterday. Then she sent a further message to correct herself. She sent a number of messages, saying that the repair man was coming that afternoon and asking to do the meeting remotely or arrange it in Mr Edwards's absence. In fact, the Claimant had immediately on receipt of Mr Edwards's first message emailed the company to ask to reschedule the meeting or do it remotely. She did not copy in Mr Edwards. Mr Edwards found out.

26. Mr Edwards held a meeting with the Claimant to discuss these issues. He took advice from Moorepay, and they suggested holding a meeting and then sending a letter of concern to record the discussion. This was the lowest level of intervention, and avoided taking a more formal approach using the company's disciplinary policy. The meeting took place on 20 November 2019. The letter was sent on 27 November 2019. The matters of concern were identified as: text messaging to take sick leave; text messaging to amend office/work from home schedule; several missed performance objectives including OKRs and management account delivery; and several missed meetings. The letter said that it was not a formal warning or part of the disciplinary process. It simply identified the need for improvements. The Claimant was to stop sending text messages and to report sickness absence and request working from home by telephoning Mr Edwards and she was to meet her deadlines and attend and prepare for meetings as agreed.

27. The Claimant said that this Letter of Concern was unjustified. The Tribunal disagreed. The Claimant suggested that she was being criticised for sending too many text messages or for taking time off to care for her son. She clearly was not. Mr Edwards's concern was that she was reporting these things by text, not that they were happening. That was a justified concern. Indeed, the company handbook made clear that reporting sickness absence by text or email was not acceptable. In cross-examination, the Claimant accepted that the concerns about texting to report sickness absence or a change of working from home days were justified. The Tribunal also considered that the other criticisms were justified. Taking the meeting with the factoring company as an example, the Claimant knew when the meeting was and she simply failed to turn up. In cross-examination she suggested that it was Mr Edwards's responsibility to send her a meeting invitation, but she was a direct recipient of the email confirming the meeting time and date. She did not accept that it was reasonable for Mr Edwards to insist on the meeting going ahead that day. She said that the meeting did not need to take place that day. She thought Mr Edwards was being unreasonable because she had a broken toilet. The Tribunal disagreed. Mr Edwards was the managing director and this important meeting had been arranged for some time. He and the factoring company were expecting it to take place. That was reason enough for it to go ahead. The Claimant was the Financial Controller and needed to be there. It was reasonable for Mr Edwards to expect her work commitments to take priority over this domestic issue. The Tribunal had no hesitation in accepting Mr Edwards's evidence that he would

have raised these concerns with any employee. It had nothing to do with the Claimant's gender, or her disability or that of her son.

28. It is clear that the Claimant was upset after the meeting. Mr Cromack calmed her down. They were good friends in and out of work. Mr Cromack referred her to "Able Futures", part of Access to Work. We noted that she emailed them the following day. She told them that she was "a single mother juggling too much" and that her manager had raised concerns with her about being distracted and he "had a point." At the time, the Claimant seemed to acknowledge that she had too much on and that Mr Edwards's concerns were justified.

29. The Claimant continued to make changes to her working arrangements after that. She did so by email. Mr Edwards agreed to all her requests. She asked to bring her son to work on one occasion and Mr Edwards suggested he could watch Netflix in the meeting room. She asked to change her working from home days and Mr Edwards agreed each time. She took a day's emergency leave to look after her son and there was no issue. She was paid in full for that day. She did not attend the following day either. She said she thought she had asked for the day off. Mr Edwards told her she had not and that she needed to book the leave on the portal. She did so.

30. In December 2019 the First Respondent's main client emailed Mr Cromack with a complaint about duplication of files in control pay for the second month in a row. He asked Mr Cromack to work with the Claimant to see how it was happening. This led to a meeting with the client, attended by Mr Cromack, Ms Wilson and the Claimant. Ms Wilson's evidence was that the Claimant was "quite challenging" towards the client and lacked professionalism. She was not happy and spoke to Mr Edwards about it because she did not want it to happen again.

31. In early January 2020 the Claimant emailed Mr Edwards to say that she had booked two half days' holiday on Thursday and Friday, but was hoping to work the other half day at home on both days. She had her CIMA exam on 13 January 2020. Mr Edwards agreed, but said that he wanted to discuss the Claimant's working routine when they next met as he wanted her in the office more. The Claimant replied to say that she had a fit note recommending limited duties. She had told the doctor Mr Edwards was "quite flexible with me working from home." She could supply the fit note if Mr Edwards wished. She said that she wanted to be in the office more, but her disability restricted that. The more travelling and walking round she did, the more fatigue she had. She did not need to take as much medication if she worked from home and was more productive. She had been for a second opinion that day and had been referred for another MRI. She said that she had been out of the office a lot lately because she had booked holidays to study for her exam. She said that at a bare minimum she would usually be in on a Thursday and Friday. She said that once her exam was done, she could aim for Wednesday to Friday weeks and assess fatigue and wellness levels if that was agreeable with Mr Edwards.

32. The Claimant disclosed a fit note dated 14 January 2020 in these proceedings. It recommended she needed shorter days in the office and to do the rest of her hours from home. Mr Edwards's evidence was that he had not seen it before

these proceedings. The Tribunal accepted that evidence. No earlier fit note was provided to the Tribunal. The Tribunal noted that the Claimant was still experiencing significant nerve pain at this time. Sometimes she would have what she described as "electric shock nerve pain", which caused her to cry out in shock and pain. Mr Edwards agreed that he had seen that happen on occasion.

33. The Claimant and Mr Edwards did meet when she was next in the office. Mr Edwards accepted that he asked the Claimant if she thought she had, "bitten off more than you can chew?" He said that she was very stressed. He agreed that she was asking to move her OKR deadline again because of her exam. He accepted that he may have asked her whether she could move her exam. He said that the comment was made in a caring way; he was asking the Claimant whether she had taken on too much with the CIMA course. The Claimant's evidence to the Tribunal was that at this time she was working 70 hours per week taking into account her study as well. She failed her exam. As noted above, she had told Able Futures that she was "juggling too much." Mr Cromack remembered the occasion when Mr Edwards made this comment. He gave evidence that the Claimant came out of Mr Edwards's office and said, "oh the cheeky bugger he said I have bitten off more than I can chew." He said that the Claimant was laughing and said, "I cannot believe he said that." Mr Cromack told her that if the comment had upset her she should tell Mr Edwards. She said that it had not upset her. She seemed very "jovial." The Tribunal accepted Mr Cromack's clear evidence. As already noted, he and the Claimant were friends. The Tribunal accepted Mr Edwards's evidence that he asked the comment in a caring way, and that he did so because he was concerned that the Claimant had taken on too much with the CIMA course. It had nothing to do with her gender or disability.

34. On 5 February 2020 it came to light that the Claimant was chasing a payment of over £100k that had been paid in November 2019 and that she had borrowed against that sum from the factoring company. Mr Edwards investigated and found that the Claimant had received an email from the client in November 2019 and had acknowledged receipt of the payment. However, she had not allocated it to the invoices. He spoke to the Claimant about it and gave her a copy of the email. The Claimant said in her witness statement that this was an "oversight". She said that it had been overlooked by the banking institutions and that she had told Mr Edwards about it. She said that Mr Edwards made out he was going to fire her over it and she was very emotional because she was angry. This was clearly a very serious matter for the Respondents and the Tribunal found that it was entirely appropriate for Mr Edwards to raise it with the Claimant. It was surprising that her reaction was anger, rather than accepting some responsibility for her part in the situation.

35. The Claimant and Mr Edwards had a further discussion about her working hours. They agreed on 6 February 2020 that she would have Mondays off; Tuesdays, Wednesdays and Thursdays she would be in the office; and Fridays she would work from home. The agreement was that on Tuesdays, Wednesdays and Thursdays the Claimant would only need to work 10am to 3pm in the office. Her remaining 20 hours could be worked flexibly, including Friday being a work from home day in its entirety.

36. Mr Edwards gave evidence that he did not tell the Claimant her role required full-time attendance in the office. He did tell her that he wanted her in the office more, to meet the original remit of her role. That was reflected in his email on 5 January 2020. They had a consultative conversation in which he expressed a desire for them both to work towards that goal. He said that the Claimant agreed she too wanted to work towards that goal. When questioning Mr Edwards, the Claimant confirmed that she had indeed agreed she wanted to work towards that goal, after her surgery. She agreed the increase to 3 days in the office, as set out above. We noted that the Claimant had not seen the spinal consultant to discuss further surgery at that stage. The appointment was on 2 March 2020.

37. It seemed to the Tribunal that there was little dispute between the Claimant and Mr Edwards. It was clear that this was a consultation. The Claimant was not objecting. She had explained the constraints resulting from her disability in her email in January, but she had volunteered at that stage to try and increase her days in the office to 3 after her exam. That was then agreed on 6 February 2020, but on the basis she only needed to be in the office for the five core hours in the middle of the day on each of the three office days. The Tribunal accepted Mr Edwards's evidence that he would have asked any employee who was not meeting the original remit of the role to work towards increasing their presence in the office.

38. On 19 February 2020 Mr Edwards held what he referred to as "town hall" meetings with all staff, including senior management, to update them on a variety of matters. There were two meetings covering the same material. Ms Wilson, one of the senior managers, attended both. Her evidence was that this meant she spent more time in the second meeting observing people's reactions and (see below) the Claimant's behaviour. The Claimant, another of the senior managers, attended the second meeting. Mr Edwards showed a slide captioned, "Honest. We own our mistakes." It showed a surfer falling off a wave. The Claimant questioned the image. Her evidence was that she said that she had a question: she did not see how a surfer coming off the board was making a mistake because it was inevitable it would happen. It was just a comment and she did not mean to offend Mr Edwards. Ms Wilson's evidence was that the Claimant was "combative" and "challenging." She kept pushing it and people in the room were feeling awkward. The Claimant accepted that during the meeting she could "barely keep her eyes open or stop yawning." She told the Tribunal that this was because of the light and heat and her medication. Shortly afterwards she walked out of the meeting. The Claimant's evidence in her witness statement was that she made her excuses and left as she felt that she might just pass out at any moment, but when she spoke to Mr Cromack the next day (see below), she told him that she left the meeting because her phone buzzed on her watch about an appointment she had forgotten. Ms Wilson gave evidence that the Claimant simply got up and left: she did not say why or ask to excuse herself. The Claimant's evidence about this was inconsistent. The Tribunal preferred the accounts given by Mr Edwards and Ms Wilson: the Claimant had not simply made a light-hearted remark but had been challenging and combative; she yawned through the meeting and then walked out without explanation.

39. Mr Edwards spoke to Moorepay for advice and asked Mr Cromack to meet the Claimant and ask for her version of events. Mr Cromack did so the next day. He asked Ms Wilson to make notes. Mr Edwards asked the Claimant to speak to Mr Cromack by sticking a Post-it note on her desk that said "Go see Michael urgently after call" while she was on the phone. She did so. Mr Cromack told the Claimant that Mr Edwards had alleged that she had acted in an unprofessional manner at the meeting the previous day, talking over him and saying inappropriate things, yawning and leaving before the end. The Claimant said that she did not think she did anything wrong. She did not understand the surfer reference and just made a flippant comment in that regard. She felt very sleepy because of her medication and she left the meeting because her phone buzzed about an appointment she had forgotten. She said that she was tired because she had done more than her hours. Mr Cromack reported back to Moorepay. No further action was taken. When she came out of the meeting, the Claimant spoke to ACAS. She wrote "bully" on the Post-it note and stuck it back on Mr Edwards's screen. Mr Cromack removed it and told her to go home and sleep on it and speak to him the next day.

40. The Claimant complains that Mr Edwards was discriminating against her when he told Mr Cromack that she had acted in a way that was "unbecoming of a manager" (or words to that effect) on 19 February 2020 and that Mr Cromack was discriminating against her when he relayed that to her on 20 February 2020. The Tribunal had no hesitation in accepting Mr Edwards's evidence that he would have treated any employee who behaved in that way during the meeting in the same way and in accepting Mr Cromack's evidence that he was simply investigating as requested and the Claimant's gender and disability had nothing to do with it. Fundamentally, the Claimant had done something to warrant the treatment. She had behaved in a challenging and combative way in front of all the staff at what was meant to be a positive meeting, and she had walked out of the meeting without explanation.

41. One of the matters announced at the meeting after the Claimant left was that Ms Wilson had been promoted to Sales and Marketing Manager. Her salary was increased as a result. The Claimant complains that she did not get a pay rise at this time. Mr Edwards's evidence was that she did not get a pay rise because her job did not change whereas Ms Wilson got a pay rise because she was promoted. The Tribunal accepted that evidence about the obvious explanation for the difference in treatment. As noted above, the Claimant's pay was increased when her hours were.

42. The Claimant raised a grievance. She sent it to Mr Cromack by email on 24 February 2020 and he forwarded it to Moorepay the next morning. He did not read the attachment because he did not know if he should.

43. In her grievance the Claimant complained of failure to make reasonable adjustments for her disability. She said that she had been flexible to suit the needs of the business, but now she was being expected to go above and beyond. She said that she had been penalised for taking time off to care for her dependent in a letter of concern. She complained about a male manager receiving study leave and about being asked, "do you think you've bitten off

more than you can chew?" She complained about being given "non-essential deadlines such as OKRs." She complained about not being given her own office space and of having her own "time in motion information" used against her. She complained that she was being "micromanaged." She said that the company was not following its own disciplinary and grievance procedures. She said that she had been given unofficial flexible working, which had been taken away and used as a bargaining chip. She said that she had been, "told to treat transactions in a way that I am not comfortable with ethically, but am in fear of losing my job if I do not comply." Finally, she said that she worked on average 40 hours per week was only paid 35, which she said was because she had the flexibility of working from home. She provided supporting documents including a detailed background information document.

44. The Tribunal noted that some of the complaints plainly misrepresented the situation. For example, the Claimant clearly had not been penalised for taking time off to care for her dependent in the letter of concern. The issue raised was that she was texting about taking the time off, rather than following the correct process and calling Mr Edwards. Likewise, in the background document she said that she was given the letter of concern because she "texted too much." Again, clearly, the concern was not about the volume of texts she sent, it was about the inappropriateness of informing her manager about time off by text. Other elements of the grievance were, on the face of it, surprising, in the light of the evidence set out above: for example, the suggestion that she was being micromanaged in circumstances where she had claimed over £10,000 overtime in 12 months without that being noticed.

45. The reference to being told to treat transactions in a way she was not comfortable with ethically relates to protected disclosures the Claimant says she made. It concerned the suggestion that personal expenses of Mr Edwards should be put through the business accounts. As already noted above, the Claimant said in her claim form that she told Mr Edwards roughly every week that he was not allowed to class personal expenses as business expenses, but in her evidence to the Tribunal she backtracked from that. By the end of her evidence, it was very unclear when she said she had raised these concerns with Mr Edwards and on how many occasions. Mr Edwards accepted that there was a legitimate concern in relation to processing some personal expenses through the business account and that the Claimant was right to advise him in that regard. He said that the Claimant had raised this issue with him at most 3 times in 18 months. Once was about an iPad and once about a training event. There might have been one other occasion. He agreed with her. He recalled that the Claimant had told him that she would not put the expenses through and said that he had said, "okay fine." That was consistent with what the Claimant wrote in an email on 24 April 2020 (see below). In view of the inconsistencies in the Claimant's evidence about this, and generally, the Tribunal preferred the evidence of Mr Edwards. We found that on two or three occasions in 18 months the Claimant questioned advice Mr Edwards's accountant was giving about putting personal expenses through the business account. When she did so, Mr Edwards accepted the advice. There was no threat to her job. She did not put the expenses through. The Tribunal found that when the Claimant raised concerns with Mr Edwards on two or three occasions in the preceding 18 months, she genuinely believed that a legal obligation might be breached and

that she was raising this in the public interest. It related to the proper payment of tax.

46. We note at this stage that Mr Cromack told the Tribunal that he was completely unaware of this issue. It had never been raised with him. Although there was the oblique reference to it in the grievance, he had not read that but had simply forwarded it to Moorepay. Mr Cromack's evidence to the Tribunal was consistent and heartfelt. He plainly had fond regard for the Claimant. The Tribunal had no hesitation in accepting his evidence that he was unaware of any issue about personal expenses nor of the Claimant raising any concern about this.

47. After she submitted her grievance, the Claimant seldom, if ever, attended the office. The Claimant saw the spinal consultant on 2 March 2020. They agreed that she would have fusion surgery to address her ongoing pain.

48. Given that much of the Claimant's grievance was about Mr Edwards, Mr Scoon of Moorepay was instructed to investigate it. He met the Claimant on 3 March 2020. A separate note taker was present, and the Claimant's colleague also took notes on her behalf. Mr Scoon went through each of the Claimant's points with her. The Claimant repeated her assertion that she had been subject to disability discrimination. Her colleague noted that when she was asked about the ethical issue, the Claimant said that she had advised the accountant but was not pursuing this in the grievance meeting. Mr Scoon recalled in evidence that he had picked up that this was about an iPad or a tablet purchased through the business account. The Claimant was clear that she did not want to pursue it in the grievance and said she would raise it with the accountant. Mr Scoon encouraged her to pursue it but she declined. Mr Scoon said that the Claimant had not referred to this as "tax fraud" nor was that recorded in the meeting notes. Given the Claimant's inconsistent evidence about this, the Tribunal found that it was not said. The Claimant therefore said very little to elaborate on this part of the grievance and expressly told Mr Scoon that she did not want to pursue the matter. In those circumstances, the Tribunal found that she did not believe she was disclosing information in the public interest either in the grievance itself or in the grievance meeting. She had included this reference for her own purposes.

49. Mr Scoon subsequently met Mr Edwards to investigate the grievance with him. He did mention the expenses issue but did not interrogate Mr Edwards because the Claimant did not want to pursue it.

50. Mr Scoon wrote to the Claimant on 20 March 2020 with an outcome to her grievance. He summarised their discussion and then went through each of her numbered points in turn. Mr Scoon concluded that the Claimant had only recently raised issues about disability and that the true extent of her back condition and its impact was not clear to her employer. Notwithstanding that, they had taken her at face value and allowed her to work from home. That went a long way to fulfilling their obligation to make reasonable adjustments. The complaint of discrimination was not accepted. Mr Scoon rejected the remainder of the Claimant's complaints too.

51. Mr Scoon gave evidence that the Claimant's gender and disability had nothing to do with the outcome of her grievance. He based his findings on the evidence. The Tribunal accepted his evidence. There was nothing to suggest that he would have treated a man or a non-disabled person any differently. Mr Scoon was also asked whether Mr Edwards tried to influence the grievance outcome. He said that this absolutely had not happened. He was an experienced HR professional and had reached a decision based on the evidence. The Tribunal accepted this.

52. It was at this time that the country entered the first national lockdown. The Respondent saw a 90% drop in turnover and most staff were furloughed. The Claimant, as Financial Controller, was not furloughed but she worked exclusively from home. Two other members of staff also carried on working.

53. On 16 April 2020 the First Respondent's main client emailed the Claimant and Mr Edwards again raising queries about duplication of files in control pay. The Claimant replied saying that she was suffering with nervous exhaustion due to work issues. She was taking advice from her doctor and dealing with urgent things at the moment. This was copied to Mr Edwards. He regarded it as highly unprofessional. In her evidence to the Tribunal, the Claimant accepted that it was. As a result of the email, Mr Edwards contacted his accountants to ask if they could lend him somebody part-time to relieve the pressure on the Claimant and they said that they could. He called the Claimant and offered to arrange such cover. She emailed him on 24 April 2020 after that conversation. She thanked him for the offer but said that the accountants were not the right fit. She questioned the accountant's motives in agreeing to it and suggested the accountant had been "acting shifty." She said that she had done an "amazing job" and that if Mr Edwards wanted a cheaper option for her role he should not "insult" her by trying to blame her performance. She continued "if you don't want me there, for a decent settlement I would go and appreciate the respect." At the end of her email the Claimant wrote:

> Also, when he's telling you to put things through the business, I don't not do it to not comply, I've been through several VAT inspections, I know what they look for, and one of those is that benefit in kind/personal expenses don't go through the business. I'm looking out for you so there is no chance of tax evasion, because that's what it is and it's serious, purposely evading tax could land you in prison, and definitely not worth the risk. When you make a decision that crosses a line please bear that in mind, it's in my code of ethics to make you aware, so if [the accountant] is advising you to do it, it's not him taking the risk."

54. As noted above, the Claimant's email indicated that she did *not* put personal expenses through the business accounts.

55. Mr Edwards did make the Claimant a settlement offer, in response to her email, but she declined it. The Tribunal noted that in her grievance appeal meeting (see below) she described her reference to a settlement offer as a "trick question." She relies on what she said in this email about personal and business expenses as a protected disclosure. As part of that, the Tribunal has to make a finding about whether the Claimant genuinely believed that in this email she was disclosing information to Mr Edwards in the public interest. In that context, the notes of her discussions with Access to Work are relevant. The

Tribunal noted that on 14 April 2020 she told Access to Work that she did not get on with her boss, felt he was targeting and bullying her, and felt discriminated against due to her disability. She said that she had responded to a letter of concern by raising a grievance and felt better because she had "stood up to" her boss. She told Access to Work that her boss had "refused all her requests – working from home (due to her disability)." That was plainly incorrect. She also told Access to Work that she was the only employee not on furlough. That was also incorrect. She kept joking about "strangling her boss", which she made clear was just her "ranting about her frustration." She also said that she was "considering telling her boss that she knows enough to get him and the company into serious trouble as she knows the whole financial side of the business." That was said just a few days before her email to Mr Edwards. She was asked about it in cross-examination. It was put to her that she had "sinister" intentions. She disagreed. She said that her intentions were honest, but that she was bound by obligations of confidentiality. The Tribunal found that evidence unconvincing. She seemed to lack understanding about what her obligations of confidentiality were, and it appeared to the Tribunal that she was using this as an excuse for not reporting matters. The Tribunal also noted that although she had raised this in her grievance, the Claimant told Mr Scoon that she did not want to pursue it. The Tribunal found that the Claimant did not genuinely believe that she was disclosing information in the 24 April 2020 email in the public interest. She was using it as a threat for her own purposes.

56. The Claimant sent a lengthy undated appeal against the grievance outcome. She repeated her assertion that she had been subjected to disability discrimination. Mrs Smith of Moorepay was asked to deal with the grievance appeal. She met the Claimant by Teams on 12 May 2020. The Tribunal saw a transcript of the recording. Mrs Smith went through all the Claimant's concerns with her. Mrs Smith then investigated with Mr Edwards and also Mr Scoon. The Tribunal saw a written note of Mr Edwards's answers to Mrs Smith's questions. Mr Edwards also provided Mrs Smith with his timeline of interactions with the Claimant, to which we have referred above.

57. Before Mrs Smith reached a conclusion on the grievance appeal, other events intervened. In the week beginning 4 May 2020, the Claimant was late in processing sub-contractor payments and had to do them manually. She paid several sub-contractors duplicate payments to incorrect bank accounts and contacted the bank to try and retrieve the payments. On 13 May 2020 another member of staff, Ms Maxted, told Mr Edwards that she was trying to resolve an error with driver pay and that the Claimant had asked her not to tell Mr Edwards of the mistake.

58. The same day, Wednesday 13 May 2020, at 7:44am the Claimant emailed Mr Edwards about an advance on her wages. She said that she "really didn't want to ask" but that the same had happened this year as last with her car insurance. She said that she would usually go ahead for anyone else but wanted to double check with Mr Edwards that she was okay to have an advance. As we have already explained, the Tribunal had no doubt that the Claimant knew she still required permission from Mr Edwards for an advance on her wages. No doubt that is why she was seeking it. The Tribunal also noted that a few days later the Claimant told Access to Work that the money was for "her CPD." This seemed

to the Tribunal to exemplify the Claimant's willingness to present a false account of events to paint herself in a better light.

59. Mr Edwards did not reply to the email that day. The Claimant said that this was discrimination or was because she had raised concerns about his personal expenses or complained of discrimination. Mr Edwards said that it was a national lockdown. He was at home and not working that much. He did not see the email at that time. The Tribunal accepted his evidence. Although the Claimant suggested at one stage that he had replied to other emails she sent that day, the evidence in the Tribunal file indicated the opposite.

60. By Thursday, 14 May 2020 Mr Edwards had seen the email. He did not reply to it. Instead, he telephoned the Claimant twice around midday. She did not answer, although it was a work day. He left a voicemail message. The Claimant did not call back.

61. At 1:15pm the Claimant emailed Ms Maxted about one of the issues with a driver's pay. She said that it was her birthday so she had only just woken up. She referred to being stressed and in need of a friend. She said that she was not at her best and apologised.

62. At 3:30pm the Claimant transferred £500 from the First Respondent's bank account to her own account.

63. At around 4pm the Claimant spoke to Mr Raza, the First Respondent's external Mergers and Acquisitions adviser. She had texted him at 12:49pm asking if he had suggested replacing her to Mr Edwards. After an exchange of messages, they spoke at around 4pm. Mr Raza said that it was a strange call. The Claimant's speech was "quite slurred" and she mentioned that she had had a party and had had a drink or two. She made criticisms of Mr Edwards. Mr Raza called Mr Edwards and told him about the messages and phone call. He told Mr Edwards that the Claimant had said that she could "do the job drunk."

64. At 4.54pm the Claimant emailed Mr Edwards. She said, "I am going to give myself an advance as I am an employee like everyone else. I've earned lots more already this month, so technically you owe me, no offence!" This was obviously misleading: the Claimant had already transferred the money to herself. Mr Edwards emailed the Claimant just after 5pm. He said that he had tried to contact her by phone and left a voicemail to call him back. He would call her at 11:30 the next morning and asked her to ensure she was available.

65. The Claimant replied asking what the meeting was about so that she could prepare for it. She added that she was going to book a half day that day as she had celebrated her birthday last night. This was a statement (after the event), not a request for authorisation.

66. The next day, Ms Maxted telephoned Mr Edwards to tell him that drivers were calling to say that their payments were wrong. Mr Edwards checked the bank account and discovered that of 19 sub-contractors to be paid, the Claimant had made incorrect payments to 16.

67. At 11:30am on 15 May 2020, Mr Edwards suspended the Claimant. This was confirmed in writing. The letter said that the suspension was to allow an investigation into allegations of misappropriating company funds.

68. The Claimant says that Mr Edwards did not reply to her emails about an advance of wages and suspended her either because he was discriminating against her, or because she was raising concerns about expenses or complaining of discrimination. Mr Edwards said that these matters had no bearing on his actions. He did not reply to the first email requesting an advance immediately because he did not see it. When he did see it, he acknowledged that he did not immediately agree to the advance as he had done on previous occasions. He explained that by this stage he was worried about the Claimant and her position in the company. She was making a number of mistakes and he had received emails in which she was making disparaging remarks about him, including to external clients. An advance seemed inappropriate in the circumstances. That is why he wanted to talk to her. The Tribunal accepted that evidence, which was consistent with the evidence from the time referred to above. Likewise, the Tribunal accepted Mr Edwards's evidence that the only reason for suspending the Claimant was concern that she had helped herself to money from the First Respondent's bank account without permission. He explained that he took advice from Moorepay. Suspension was consistent with the company handbook, and he had done similar things before. Mr Edwards was asked by the Tribunal about the fact that the Claimant had not concealed what she was doing. He said that he had explicitly told her that she must never give herself an advance without permission again and he was not pleased about it. It was another example of not doing what he wanted her to and showed complete disrespect for him as a manager. The Tribunal was quite satisfied that this was the reason Mr Edwards suspended the Claimant and that it had nothing to do with whistleblowing, victimisation, disability or gender.

69. Ms Simpson of Moorepay was appointed to conduct a disciplinary investigation. The Claimant was invited to a disciplinary hearing to be held by Teams on 19 May 2020. She was provided with a report by Mr Edwards setting out a chronology of correspondence relating to historic advances and the events of 13 and 14 May 2020. In the event, the hearing was delayed to 1 June 2020.

70. In the meantime, Mrs Smith wrote to the Claimant on 27 May 2020 with the detailed outcome to her grievance appeal. Mrs Smith concluded in particular:

    71.1 The Claimant was not discriminated against by being asked to an informal meeting to discuss the 19 February 2020 meeting. Her yawning was only one of the elements of her behaviour that was questioned. Her explanation was accepted and no further action was taken. It was reasonable for employer to question her about it. Mrs Smith recommended that the Claimant inform her employer if she suffered side-effects from medication or other health problems so that they could offer her support.

    71.2 From her discussions with Mr Edwards, Mrs Smith could see that it was not the concept of working from home that caused him concern it was the Claimant's inconsistent working pattern and last-minute changes. This had led to meetings being missed. The Claimant was also sometimes difficult to contact when working from home. This was what

had led Mr Edwards to express a desire for the Claimant to return to work in the office on a more regular basis if her disability allowed. The Claimant had agreed in the appeal hearing that this was something she would be willing to do if medically fit.

71.3 Mrs Smith rejected the suggestion that the Claimant was being treated less favourably than Ms Wilson or Mr Cromer, either in respect of pay or by being managed more closely.

71.4 Mrs Smith found that it was appropriate that Mr Edwards discussed the bank error with the Claimant.

71.5 Mrs Smith's view was that the Respondents had agreed to every request the Claimant had made for time off, and adjustments to her working hours or place of work to assist with her domestic circumstances. Each occasion had been accepted without question and the company had enhanced its legal and contractual obligations by paying the Claimant in full each time.

71.6 Mrs Smith concluded that there were no episodes between October 2018 and February 2020 of sleepiness or yawning and that it was reasonable for the Claimant to be questioned about yawning in the town hall meeting in February 2020. Further no action was taken.

71.7 Mrs Smith explained that each of the outcomes the Claimant had requested, including an increase of her working hours to 37.5 per week, a commensurate salary increase, and study leave, had been agreed to.

71. As noted, the disciplinary hearing took place on 1 June 2020. The Claimant told Ms Simpson that she had emailed Mr Edwards the day before she transferred the money informing him that she needed an advance. She said that she sent him approximately six emails and he replied to them all except the one about the advance. She said that she was not asking for an advance but informing Mr Edwards because she felt she was authorised to do that. She thought that Mr Edwards was trying to get rid of her because she had raised a grievance, and that is why she sent the email. She told Ms Simpson that Mr Edwards had told her verbally after May 2019 that she could authorise an advance for herself. The Claimant went on to discuss her disability and the impact of recent events on her.

72. Ms Simpson investigated. She looked at the original emails and text messages. She checked the Claimant's sent emails and found that she had sent only two emails to Mr Edwards on 13 May 2020. She checked Mr Edwards's emails and found that he had not replied to any email from the Claimant on 13 May 2020. She checked Mr Edwards's mobile phone and confirmed that he had made two calls to the Claimant around midday on 14 May 2020. She checked the company's bank account which confirmed that the Claimant had transferred money to herself at 3:30pm. Ms Simpson wrote a report. She concluded that the Claimant did not have permission to give herself an advance without authorisation. Ms Simpson did not believe that the Claimant intended to steal money, but she did believe the Claimant had paid herself an advance without prior consent from her Managing Director and that such consent was both explicitly required and proper practice. She did not find that the Claimant misappropriated funds, but she did believe that the Claimant had committed a serious breach of financial procedures. Her view was that financial probity was of the utmost importance given the Claimant's position and that in making an

unauthorised payment to herself, the Claimant had committed gross misconduct.

73. The matter was to be referred to Mr Cromack for a decision. Ms Simpson noted that the ultimate penalty for gross misconduct was summary dismissal but that it was for Mr Cromack to decide whether this or a lesser penalty was appropriate. Ms Simpson drew attention to the need to consider any mitigation and identified possible lesser penalties.

74. Mr Cromack reviewed Ms Simpson's report and all the accompanying evidence. Mr Cromack concluded that the Claimant should be dismissed. He said that this was nothing to do with any concerns the Claimant was raising about expenses or complaints of discrimination, and had nothing to do with her gender or disability. Simply, he did not think the company could trust the Claimant. As set out above, the Tribunal accepted Mr Cromack's evidence that he did not know the Claimant had raised concerns about personal expenses being put through the business accounts. Further, he did not know until these proceedings that she was complaining of discrimination. He was shocked when he found out. Her gender and disability had nothing to do with his decision. Mr Cromack was asked by the Tribunal whether he had spoken to Mr Edwards about the disciplinary issue. His evidence that he "absolutely" had not was compelling. He was at home during lockdown and made the decision solely on the evidence before him. Mr Cromack explained that he had to make a non-emotional decision. He felt that the Claimant had breached a huge barrier of trust. He acknowledged that the Claimant had not concealed what she did, but it came down to one thing: she was not authorised to take it. Emailing Mr Edwards was irrelevant. Mr Cromack regarded this as theft. It was a serious breach of trust. The Claimant was the Financial Controller, in charge of all the money. She could not be free to take money without authorisation. It was a hard decision because he liked the Claimant, but he considered it was a serious breach of trust that they would never get over. The Claimant was categorically not allowed to do it and she did it anyway. It was irrelevant that she would pay it back.

75. The Tribunal accepted that this is why Mr Cromack decided to dismiss the Claimant. Mr Cromack wrote to the Claimant on 9 June 2020 to tell her that she was being summarily dismissed. The Claimant did not appeal against her dismissal.

76. The Claimant had a work laptop at home. It was not the one she was originally given. When another member of staff had left, she had swapped with his laptop because it had a number keypad. Mr Cromack volunteered in evidence that he knew about this because the Claimant had asked him if she could swap the laptop and he did so. He said that the laptop was newer than the Claimant's original laptop and had been recently purchased.

77. The Claimant's contract of employment incorporated the staff handbook. The staff handbook said that she must return any property issued to her before she left, including IT equipment. It said that if she failed to return it, she was liable for the "cost of making good our reasonable losses."

78. The Claimant was asked to return the laptop but she never did so. In her evidence to the Tribunal she said that she did not know where it was. Mr Edwards gave evidence that the First Respondent bought similar or equivalent laptops as a matter of course so that they were interchangeable and keyboards, mice etc could be swapped around. The Respondents provided evidence of the purchase of a Dell laptop in September 2018. The invoice is for two laptops and two keyboards and mice. The cost of one laptop was £864. The Tribunal accepted that the cost of replacing the Claimant's missing laptop would be around this figure.

Legal principles

Protected disclosures and detriment

79. Protected disclosures are dealt with in s 43A to 43L of the Employment Rights Act 1996. By virtue of s 43B of those provisions, a qualifying disclosure means a disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more prescribed matters. Those include that a person has failed, is failing or is likely to fail to comply with a legal obligation to which he is subject. A qualifying disclosure made to a worker's employer is, by virtue of s 43C and 43A, a protected disclosure. In these provisions, a reasonable belief means (1) that the worker must subjectively hold that belief as a matter of fact; and (2) that it must be, in the Tribunal's view, objectively reasonable for her to do so.

80. Under s 47B Employment Rights Act 1996 a worker has the right not to be subjected to a detriment by any act or deliberate failure to act done by her employer on the ground that she has made a protected disclosure. Something is done "on the ground" that the worker made a protected disclosure if it is a "material factor" in the decision to do the act. That requires an analysis of the mental processes (conscious or subconscious) of the decision maker. The decision must be in no sense whatsoever because of the protected disclosure: see e.g. *Fecitt and others v NHS Manchester* [2012] IRLR 64 CA.

81. Under s 48(2) Employment Rights Act 1996, once the worker has shown that there was a protected disclosure, it is for the employer to show the ground on which any act or failure to act was done.

Unfair dismissal

82. So far as unfair dismissal is concerned, the right not to be unfairly dismissed is set out in s 94 of the Employment Rights Act 1996. By virtue of s 103A Employment Rights Act 1996, an employee who is dismissed is automatically to be regarded as unfairly dismissed if the reason or principal reason for the dismissal is that the employee made a protected disclosure. That is a different and higher threshold from the one that applies in a claim of being subjected to a detriment for making a protected disclosure, as the Court of Appeal in *Fecitt* confirmed.

83. The reason or principal reason for dismissal is a question of fact to be determined by a Tribunal as a matter of direct evidence or by inference from primary facts established by evidence. The reason for dismissal consists of a

set of facts which operated on the mind of the employer when dismissing the employee. They are within the employer's knowledge. The proper approach is set out in the case of *Kuzel v Roche Products Ltd* [2008] ICR 799 CA.

Disability discrimination and victimisation

84. Claims of disability discrimination and victimisation are governed by the Equality Act 2010. The Equality and Human Rights Commission's Code of Practice on Employment is relevant to discrimination claims and the Tribunal considered its provisions.

85. The time limits for bringing claims of discrimination are governed by s 123 Equality Act 2010. Under s 123(3)(a), conduct extending over a period is treated as being done at the end of the period. The Tribunal has a wide discretion to extend time under s 123(1)(b) to do what it thinks is just and equitable in the circumstances, but bearing in mind that time limits are exercised strictly in employment cases, and that there is no presumption that a tribunal should exercise its discretion to extend time. The Claimant must persuade the Tribunal that it is just and equitable to extend time: see *Robertson v Bexley Community Centre* [2003] IRLR 434, CA.

86. The burden of proof is dealt with by s 136 Equality Act 2010. The Tribunal had regard to the authoritative guidance about the burden of proof in *Igen Ltd v Wong* [2005] ICR 931. However, as the Supreme Court made clear in *Hewage v Grampian Health Board* [2012] ICR 1054, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other: *Hewage* at para 32.

87. Direct discrimination is dealt with by s 13 Equality Act 2010. Under s 13, direct discrimination arises where (1) an employer treats a person less favourably than it treats or would treat others and (2) the difference in treatment is because of a protected characteristic. That includes somebody else's protected characteristic. In answering the first question the Tribunal must consider whether the employee was treated less favourably than an actual or hypothetical comparator whose circumstances were not materially different. The second question entails asking why the employee received less favourable treatment. Was it because of a protected characteristic or was it for some other reason? It is necessary to explore the mental processes of the employer, to discover what facts operated on his or her mind: see *R (E) v Governing Body of the Jewish Free School* [2010] IRLR 136, SC ("*JFS*"). The protected characteristic need not be the only or even the main cause of the less favourable treatment; it must be an effective cause: see e.g. *London Borough of Islington v Ladele* [2009] IRLR 154, EAT. It is not always necessary to answer the first and second questions in that order. In many cases it is preferable to answer the "reason why" question, first.

88. Discrimination arising from disability and failure to make reasonable adjustments for disability are governed by s 15, and s 20-21 and schedules 1 and 8 respectively. Under s 15, unfavourable treatment does not require a comparator. It is to be measured against an objective sense of that which is

adverse compared with that which is beneficial: see e.g. *Trustees of Swansea University Pension and Assurance Scheme v Williams* [2015] IRLR 885. The EHRC Employment Code advises that this means that the disabled person "must have been put at a disadvantage". If there is unfavourable treatment, it must be done because of something arising in consequence of the person's disability. There are two elements. First, there must be something arising in consequence of the disability; secondly, the unfavourable treatment must be because of that something. The unfavourable treatment will be "because of" the something, if the something is a significant influence on the unfavourable treatment; a cause which is not the main or sole cause but is nonetheless an effective cause of the unfavourable treatment: *Charlesworth v Dransfields Engineering Services Ltd* [2017] UKEAT 0197_16_1201. It is a defence for the employer to show that the treatment is a proportionate means of achieving a legitimate aim. The employer must show that it has a legitimate aim, and that the means of achieving it are both appropriate and reasonably necessary. Consideration should be given to whether there is non-discriminatory alternative. A balance must be struck between the discriminatory effect and the need for the treatment. The EHRC Code advises that a legitimate aim is one that is legal, not itself discriminatory, and one that represents a real, objective consideration.

89. In a complaint of failure to make reasonable adjustments, the Tribunal should identify the PCP, and the nature and extent of the substantial disadvantage. It must identify with precision the step the employer is said to have failed to take: see *Environment Agency v Rowan* [2008] ICR 218 EAT; *HM Prison Service v Johnson* [2007] IRLR 951 EAT.

90. As regards the employer's knowledge, the Tribunal should consider first, whether the employer knew that the employee was disabled and if not, secondly, whether it ought to have known: see *Secretary of State for Work and Pensions v Alam* [2010] ICR 665 EAT. Employers must do all they can reasonably be expected to do to find out whether an employee has a disability. That includes making reasonable enquiries based on the information given to them: see e.g. *Alam* and the EHRC Code.

91. Harassment is governed by s 26 Equality Act 2010. There are three elements to the definition of harassment: (1) unwanted conduct; (2) that the conduct is related to a relevant protected characteristic; and (3) the purpose or effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. As to (1), the conduct must be "unwanted", which means "unwelcome" or "uninvited". As to (2), the question whether conduct is related to a protected characteristic is not a question of "causation". Rather, it requires a connection or association with the protected characteristic. As to (3), the conduct must have the purpose or effect of violating the person's dignity or creating the proscribed environment. The word "violating" is a strong word (as are the other elements of the definition) and connotes more than offending or causing hurt. It looks for effects that are serious and marked. A one-off act can violate dignity, if it is of sufficient seriousness: see *Betsi Cadwaladr University Health Board v Hughes* [2014] UKEAT 0179_13_2802. Looking at the other limb of the definition, the word "environment" must not be overlooked. The conduct must create the specified environment, which means a

state of affairs. A one-off act may do that, but only if it has effects of longer duration: see *Weeks v Newham College of Further Education* [2012] UKEAT 0630_11_0405. If the conduct has the relevant purpose, that is the end of the matter. However, for it to have the relevant effect, the Tribunal must consider both, subjectively, whether the individual perceived it as having that effect and, objectively, whether that was reasonable: see *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336.

92. Victimisation is governed by s 27 Equality Act 2010, which says that A victimises B, if A subjects B to detriment because B does a protected act, or A believes B has done or may do a protected act. A protected act is defined in s 27(2). It includes making an allegation that someone has contravened the Equality Act.

Breach of contract: notice pay and employer's contract claim

93. As regards a claim for notice pay (wrongful dismissal), if an employer acts in breach of contract in dismissing an employee summarily, that is a wrongful dismissal and the employee will be able to recover damages in respect of the failure to give notice. However, a summary dismissal is not a wrongful dismissal where the employer can show that summary dismissal was justified because of the employee's breach of contract. Misconduct by an employee may amount to such a breach. This is so where the misconduct of the employee so undermines the trust and confidence inherent in the particular contract of employment that the employer should no longer be required to retain the employee: see e.g. *Briscoe v Lubrizol Ltd* [2002] IRLR 607 CA.

94. Finally, employers' contract claims are governed by the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. An employer can bring a breach of contract claim against an employee if it arises or is outstanding on termination of the employee's employment and if the employee has brought a breach of contract claim against the employer.

Application of the law to the facts

95. The Tribunal's detailed findings of fact are set out above. We can deal with the issues more briefly, because many of them turn on the findings of fact.

Protected disclosures (whistleblowing)

96. As explained in the findings of fact, the Tribunal found that:
    96.1 On two or three occasions the Claimant told Mr Edwards that he was not allowed to class personal expenses as business expenses in order to reduce his tax bill. The Tribunal found that the Claimant was disclosing information that she genuinely believed tended to show that Mr Edwards was likely to breach a legal obligation. That belief was reasonable. Mr Edwards accepted that there was a legitimate concern. The Tribunal also found that the Claimant genuinely believed that the disclosure was in the public interest. That belief was reasonable: this was about ensuring that tax was properly declared. The Claimant therefore made protected disclosures on these occasions.

96.2 The Claimant did write in her grievance that she was being told to treat transactions in a way that she was not comfortable with ethically but was in fear of losing her job if she did not comply. The Tribunal found that this was a disclosure of information and, as above, the Tribunal accepted that the Claimant genuinely and reasonably believed that it tended to show the likely breach of a legal obligation. However, as explained in the findings of fact, the Tribunal found that the Claimant did not genuinely believe that the disclosure was in the public interest. She made it for her own personal purposes.

96.3 The Claimant did say at the grievance meeting that personal expenses had been put through the accounts as business expenses (or that there had been discussions about doing so) but she did not say that this was tax fraud. She said that she did not want to pursue this. As explained in the findings of fact, the Tribunal again found that the Claimant did not in fact believe that this was a disclosure of information in the public interest.

96.4 The Claimant did set out concerns in her email of 24 April 2020 relating to treating personal expenses as business expenses. The thrust was that Mr Edwards's accountant was misadvising him and that the Claimant had been protecting Mr Edwards by telling him so and refusing to process the payments. As explained in the findings of fact, the Tribunal found that the Claimant did not in fact believe that this was a disclosure of information in the public interest. She was making a threat for her own purposes.

97. That means the Claimant did make protected disclosures when she initially raised concerns with Mr Edwards on two or three occasions, but not in her grievance, grievance meeting or email of 24 April 2020.

Detriment for making protected disclosures

98. As explained in the findings of fact:

98.1 Mr Edwards did not reply to the Claimant's email about an advance on 13 May 2020. He responded the following day by calling her, but she did not answer. He responded to her email on 14 May 2020 saying that she was going to give herself an advance by asking to meet her the following day. However, the reason he did not reply on 13 May 2020 and did not agree to the advance but asked for a meeting was absolutely nothing to do with any concerns the Claimant had raised about personal expenses (whether or not those amounted to protected disclosures). The reason was, first, that he did not see the email straight away. When he did see it, he did not think it appropriate to authorise an advance without speaking to the Claimant because of the growing concerns about her performance at the time.

98.2 Mr Edwards did suspend the Claimant on 15 May 2020 but the reason was again nothing to do with any concerns she had raised about personal expenses (whether or not those amounted to protected disclosures). It was because she was Financial Controller and had advanced herself money contrary to his explicit instruction that she must not do so.

98.3 Mr Edwards did indicate during the disciplinary process that the Claimant was not entitled to authorise advances for herself and that they did not have a verbal agreement to that effect. He did so because there was no such agreement. This had nothing to do with any concerns she had raised about personal expenses (whether or not those amounted to protected disclosures).

Direct sex and disability discrimination

99. The Tribunal found that one of the matters the Claimant complained of did not happen. For the remaining matters, it was possible to make a clear finding on the evidence in each case as to the reasons for the treatment about which the Claimant complained. In each case the Tribunal found on the evidence that there was a non-discriminatory reason for the treatment and that it was in no sense whatsoever because of gender or disability. Further, in no case did the Claimant prove facts from which the Tribunal could have inferred discrimination in any event. As explained in the findings of fact:

99.1 Mr Edwards did not say to the Claimant in January 2019 that she needed to ask herself if she was right for the position. He asked her whether she was sure she could do what had been agreed and he did so in a caring way so as to support her. Her gender and disability had nothing to do with it. He would have asked the question of any employee in the same circumstances.

99.2 Mr Edwards did not ask the Claimant in February 2019 (or at all) whether she was sure the job was right for her with being a single mum and her back.

99.3 Mr Edwards did not offer the Claimant study leave for her CIMA exams. Mr Cromack was not in a comparable position because he had been asked to do his HR qualification, whereas the Claimant had not. Further, Mr Cromack had asked for study leave and the Claimant had not. If she had asked, she would have been given it. The Claimant's gender and disability had nothing to do with the fact that she was not offered study leave.

99.4 Mr Edwards did criticise the Claimant's performance and give her a Letter of Concern, but it was not unjustified. He did so because the matters raised were legitimate concerns. He would have done the same with any employee. The Claimant's gender and disability and her son's disability had nothing to do with it.

99.5 Mr Edwards did not tell the Claimant that her role required full-time attendance in the office. He told her that he wanted her in the office more, to meet the original remit of the role, and he had a discussion with her in which he expressed a wish for them both to work towards that goal. The Claimant agreed that she wanted to work towards it too. Mr Edwards would have asked the same of any employee who was not meeting the original remit of the role. It was not because of her disability.

99.6 Mr Edwards did tell Mr Cromack that the Claimant had behaved in a way that was unbecoming of a manager, or words to that effect, on 19 or 20 February 2020. He did so because the Claimant had been combative and challenging in the meeting, had yawned through it and

had walked out without apology or explanation. He would have treated a non-disabled employee who behaved in that way the same.

99.7 Mr Cromack held a meeting with the Claimant in which he relayed Mr Edwards's concerns. He did so because he had been asked to ascertain the Claimant's version of events. This has nothing to do with her gender or disability.

99.8 The Claimant was not given a pay rise in March 2020. This had nothing to do with her gender or disability. Ms Wilson was given a pay rise because she was promoted.

99.9 Mr Scoon did not uphold the Claimant's grievance. That was because of the conclusions he reached based on his investigations and the evidence he obtained. He would have reached the same conclusion regardless of the Claimant's gender or disability. The same was true of Mrs Smith.

99.10 Mr Edwards did not reply immediately to the Claimant's email on 13 May 2020 about an advance. He responded on 14 May 2020 by telephoning her and, later, by emailing her to ask for a meeting. He did so because initially he did not see the email. When he did see it, he did not think it appropriate to authorise an advance without speaking to the Claimant because of the growing concerns about her performance at the time. Her gender and disability had nothing to do with it.

99.11 Mr Edwards did suspend the Claimant on 15 May 2020. He did so because as Financial Controller she had advanced herself £500 from the company bank account without his permission, contrary to his explicit instruction. Her gender and disability had nothing to do with it.

99.12 Mr Edwards did indicate during the disciplinary process that the Claimant was not entitled to authorise advances for herself and that they did not have a verbal agreement to that effect. He did so because there was no such agreement. Her gender and disability had nothing to do with it.

99.13 Mr Cromack did dismiss the Claimant on 9 June 2020. He did so because he believed she had committed gross misconduct by taking money from the company bank account without express permission. Her gender and disability had nothing to do with it.

Discrimination arising from disability

100. As set out above, the Tribunal accepted that the following things arose in consequence of the Claimant's disability:

100.1 She takes medication which causes tiredness and yawning;

100.2 She needs to work from home regularly;

100.3 She needs to limit her time driving;

100.4 She needs to work flexibly, in that she may need to change her plans at short notice.

101. The Tribunal also proceeded on the basis that the Respondents knew or could reasonably have been expected to know at all relevant times about the Claimant's disability. She told them at the outset that she had a back problem from a previous accident. It was agreed that she could work from home one day per week as a result. That should have alerted them to the fact that this was an

impairment with ongoing impact. It was evident in the workplace during the coming months that the Claimant still experienced pain. While the Respondents might not explicitly have known that she met the definition of disability in the Equality Act, those facts were enough to mean that they could reasonably have been expected to know, if they had made reasonable enquiries based on the information given to them.

102. We therefore considered each of the allegations that the Respondents treated the Claimant unfavourably because of one or more of those things, and that this was not a proportionate means of achieving a legitimate aim. Our conclusions were as follows:

102.1 Mr Edwards asked the Claimant in January 2019 whether she was sure she could do what had been agreed and he did so in a caring way. Measured against an objective sense of that which is adverse compared with that which is beneficial, that was not unfavourable treatment, it was supportive. The Claimant was not put at a disadvantage. As was clear from Mr Edwards's willingness to accommodate all of the Claimant's requests during her employment, the Tribunal had no doubt that the point of the question was to take any required steps to assist the Claimant. In any event, Mr Edwards did not ask the question because of the Claimant's tiredness, yawning, need to work from home regularly, limit her time driving or work flexibly. He did it because it appeared she was struggling to meet her commitments.

102.2 Mr Edwards did not ask the Claimant in February 2019 (or at all) whether she was sure the job was right for her with being a single mum and her back.

102.3 Mr Edwards did not offer the Claimant study leave for her CIMA exams. The Tribunal had doubts about whether that was unfavourable treatment, given that it was the Claimant who wanted to do the exams, for her personal development, and indeed Mr Edwards agreed to pay for it nonetheless. He was supporting her with her endeavours out of the workplace and was under no obligation to go further. In any event, it was not because of the Claimant's tiredness, yawning, need to work from home regularly, or need to limit her time driving or work flexibly. It was because the Claimant had chosen to do the course, and because she did not ask for study leave.

102.4 Mr Edwards did criticise the Claimant's performance and give her a Letter of Concern in November 2019. That was unfavourable treatment. But it was not because of the Claimant's tiredness, yawning, need to work from home regularly, or need to limit her time driving or work flexibly. It is important to read the Letter of Concern accurately. It was not the taking of sick leave or the changing of working from home arrangements that was the problem, it was the fact that the Claimant was communicating about that by text. Likewise, while the other concerns were about missing meetings and deadlines, it was clear that the incidents addressed had nothing to do with the Claimant's disability-related tiredness, yawning, need to work from home regularly, limit her time driving or work flexibly. The two specific meetings were missed because of (1) a forgotten dentist appointment and (2) a mistake about the meeting date coupled with a broken toilet respectively. There was

no evidence that the missed deadlines were caused by any of the disability-related issues. Indeed, the evidence was that the Claimant did work from home more than usual during the period, including two occasions when her son was ill. That was nothing to do with her disability. Further, she evidently missed her OKR deadlines because she regarded her personal CIMA work as a higher priority. Even if the unfavourable treatment had been because of something arising in consequence of the Claimant's disability, the Tribunal would have found that it was a proportionate means of achieving legitimate aims that reasonable internal management instructions are honoured and that staff are sufficiently and consistently accountable, contactable and visible. Those aims are legal, objective and not themselves discriminatory. It was appropriate and reasonably necessary to raise concerns about how the Claimant communicated her absences and changes to working patterns and about missing meetings and deadlines with her. She was the Financial Controller. It was reasonable to require her to communicate in accordance with the staff handbook and the Managing Director's instructions and it was reasonable to expect her to meet deadlines and attend scheduled meetings in general. Having a discussion and recording the outcome in a Letter of Concern was a low level of intervention. Mr Edwards deliberately avoided using the formal disciplinary process. The discussion provided an opportunity for the Claimant to tell Mr Edwards if the problems were linked to her disability. That struck an appropriate balance between the Claimant's needs and the Respondents'.

102.5 The Tribunal did not consider that Mr Edwards asking the Claimant in a caring way in January 2020 whether she thought she had bitten off more than she could chew was unfavourable treatment. Even if it was, it was not because of anything arising in consequence of her disability. It was because she was struggling with her CIMA exam and other commitments.

102.6 The Tribunal did not think that Mr Edwards telling the Claimant that he wanted her in the office more, to meet the original remit of the role, and having a discussion with her in which he expressed a wish for them both to work towards that goal, was unfavourable treatment. We noted that this was the Claimant's wish too. It was not an instruction, it was a conversation about how to achieve a mutually desired goal. Measured against an objective sense of that which is adverse compared with that which is beneficial, that was not unfavourable treatment. If it had been unfavourable treatment, the Tribunal would have found that it was because of something arising in consequence of the Claimant's disability, namely her need to work from home regularly. However, the Tribunal would have found that it was a proportionate means of achieving the legitimate aim of ensuring that staff are sufficiently and consistently accountable, contactable and visible. The Tribunal considered that that aim was legal, objective and not itself discriminatory. Expressing a wish for the Financial Controller to be more consistently in the office and to work towards that goal was appropriate and reasonably necessary. The Claimant was not instructed to attend the office full-time, or even to increase her attendance in the office. Mr

Edwards opened up a discussion about it. The Claimant had the chance to, and did, explain the impact of her disability. That was reflected in the agreed changes to her working pattern. There was nothing less discriminatory that could have been done. Having a discussion was the lowest level of intervention. It struck an appropriate balance between the needs of the Claimant and the needs of the Respondents.

102.7 The Tribunal found that it was unfavourable for Mr Edwards to tell Mr Cromack that the Claimant had behaved in a way that was unbecoming of a manager, or words to that effect, on 19 or 20 February 2020. Further, part of the reason he did so was that the Claimant had yawned through the meeting. This was an effective cause of the unfavourable treatment and the Tribunal accepted that the Claimant's yawning was something arising in consequence of her disability. However, again the Tribunal found that telling Mr Cromack that the Claimant had behaved in a way that was unbecoming of a manager or words to that effect was a proportionate means of achieving the legitimate aim of ensuring that senior personnel visibly demonstrate professionalism. That aim was legal, objective and not discriminatory. Mr Edwards spoke to Mr Cromack about this so that Mr Cromack could find out the Claimant's version of events. The yawning was only part of the Claimant's conduct. Behaving in a challenging and combative way and walking out of the meeting without explanation were not something arising in consequence of her disability. Mr Cromack found out the Claimant's version of events and no further action was taken. Given the totality of the Claimant's conduct, it was appropriate and reasonably necessary for Mr Edwards to ask Mr Cromack to speak to her about it, and in doing so, to identify the conduct that concerned him and express the view that it was not becoming of a manager. There was nothing less discriminatory that could have been done and an appropriate balance was struck between the Respondents' needs and the Claimant's.

102.8 The same applies to the next complaint, about Mr Cromack holding a meeting with the Claimant and relaying Mr Edwards's concerns to her.

102.9 The Tribunal did not consider that the Respondents treated the Claimant unfavourably by not giving her a pay rise in March 2020. There was no "treatment" of the Claimant, unfavourable or otherwise. All that happened was that Ms Wilson was promoted and given a pay rise. Even if there had been unfavourable treatment of the Claimant, it was not caused by anything arising in consequence of her disability. She did not get a pay rise because she was not promoted.

102.10 The Tribunal found that Mr Scoon treated the Claimant unfavourably by not upholding her grievance, but this was not caused by anything arising in consequence of her disability. The grievance was not upheld because based on the evidence Mr Scoon found that the concerns were unfounded. The fact that the grievance related to some extent to the Claimant's disability and the way that had been handled did not mean that when it was rejected that was because of something arising in consequence of the Claimant's disability.

102.11 The Tribunal had doubts about whether the fact that Mr Edwards did not respond to the Claimant's email about an advance on the same day, and then telephoned her about it, during working hours, the next

morning was unfavourable treatment. That seemed to the Tribunal to be an appropriate response, particularly during the lockdown. In any event, Mr Edwards's approach was not caused by anything arising in consequence of the Claimant's disability.

102.12 Suspending the Claimant on 15 May 2020 was unfavourable treatment but it was not caused by anything arising in consequence of her disability.

102.13 Indicating that the Claimant was not entitled to authorise advances for herself and that she and Mr Edwards did not have a verbal agreement to that effect was not unfavourable treatment. It was a relevant, factual statement. In any event it was not caused by anything arising in consequence of the Claimant's disability.

102.14 Dismissing the Claimant was unfavourable treatment but it was not caused by anything arising in consequence of her disability.

Harassment

103. The Tribunal next considered whether any of the matters about which the Claimant complained amounted to harassment related to sex or disability. In assessing whether the Claimant's dignity was violated or whether conduct created an intimidating, hostile, degrading, humiliating or offensive environment, the Tribunal took into account the Claimant's oral evidence (inconsistent with her claim form and witness statement) that for about a year she and Mr Edwards "got on great" and that she was happy with everything he did "until 2020."

104. Our conclusions were as follows:

104.1 The Tribunal accepted that Mr Edwards asking the Claimant in January 2019 whether she was sure she could do what had been agreed was conduct that was unwanted by her. However, it did not relate to sex or disability. It related to the Claimant's apparent difficulty in meeting her commitments. Even if it had been related to sex or disability, it did not have the purpose of violating the Claimant's dignity or creating the proscribed environment. Mr Edward's purpose was to support the Claimant. His question did not have the effect of violating her dignity or creating the proscribed environment. This one-off question did not meet the necessary threshold. It did not do more than cause offence or hurt and it did not create any state of affairs or environment.

104.2 Mr Edwards did not ask the Claimant in February 2019 (or at all) whether she was sure the job was right for her with being a single mum and her back.

104.3 The Tribunal accepted that Mr Edwards not offering the Claimant study leave for her CIMA exams was unwanted conduct by her, but it did not relate in any way to sex or disability. Nor did the conduct have the purpose or effect of violating the Claimant's dignity or creating the proscribed environment. She chose to take the CIMA exam, Mr Edwards agreed to pay for it even though he did not need her to do it.

104.4 The Tribunal accepted that Mr Edwards criticising the Claimant's performance and giving her a Letter of Concern in November 2019 was unwanted conduct by her. But it did not relate in any way to sex or

disability. It related to the Claimant's conduct. Even if it had related to sex or disability, it did not have the purpose or effect of violating the Claimant's dignity or creating the proscribed environment. The purpose was to address legitimate performance concerns in a low key way. As to the effect, holding the discussion and following it up with the Letter of Concern did not meet the threshold of violating the Claimant's dignity or creating the proscribed environment.

104.5 The Tribunal accepted that Mr Edwards asking the Claimant in January 2020 whether she thought she had bitten off more than she could chew was unwanted conduct by her. She indicated that in her conversation with Mr Cromack straight afterwards. However, it did not relate to disability. It related to the fact that the Claimant was struggling with her CIMA exam and other commitments and was, on her own account, working 70 hours per week. Even if it had been unwanted conduct related to disability, its purpose was not to violate the Claimant's dignity or create the proscribed environment. Mr Edwards's purpose was to support the Claimant. The conduct did not have that effect either. The Tribunal accepted Mr Cromack's evidence that the Claimant was jovial and told him she was not upset. She did not in fact feel that her dignity was violated or that the necessary environment had been created. Nor would it have been reasonable for her to do so in the circumstances.

104.6 The Tribunal found that Mr Edwards telling the Claimant that he wanted her in the office more, to meet the original remit of the role, and having a discussion with her in which he expressed a wish for them both to work towards that goal, was not unwanted conduct by her. She agreed that she wanted to work towards that goal too, and she volunteered to increase her days. If it had been unwanted conduct, it is arguable that it related to disability, given that the Claimant's home-working was linked to her disability. However, its purpose was not to violate the Claimant's dignity or create the proscribed environment. Mr Edwards's purpose was to work towards an increase of the Claimant's presence in the office. The conduct did not have the proscribed effect either. It was not conduct of a serious and marked kind so as to violate dignity. It was the start of a discussion between Managing Director and Financial Controller, in which the latter's circumstances were taken into account. Nor was it conduct that created an ongoing state of affairs or environment. It simply started a discussion that led to a mutual agreement.

104.7 The Tribunal accepted that Mr Edwards telling Mr Cromack that the Claimant had behaved in a way that was unbecoming of a manager, or words to that effect, was unwanted conduct by her. To the extent that it related to the Claimant's yawning in the meeting, the comment related to disability. However, the purpose of the comment was not to violate the Claimant's dignity or create the proscribed environment. The purpose was to tell Mr Cromack what had happened and ask him to ascertain the Claimant's version of events. The effect of the conduct was not to violate the Claimant's dignity or create the proscribed environment either. The Claimant's yawning was one part only of the conduct that was being considered and there were legitimate concerns that the other aspects were unprofessional for a senior manager. There

had been no concern about yawning and no indication about medication causing the Claimant sleepiness since October 2018, when she told Mr Edwards that she was going to change her medication. In that context, it was not reasonable for the conduct to have the effect of violating the Claimant's dignity or creating the proscribed environment. To the extent that the description of her conduct related to her yawning, it may have caused hurt or offence, but it was not reasonable for it to have a more serious or marked effect. The Claimant was asked for her account. She explained that the yawning was linked to her disability. No further action was taken. It was not reasonable for the conduct to create any ongoing environment or state of affairs.

104.8 The same applies to the next complaint, about Mr Cromack holding a meeting with the Claimant and relaying Mr Edwards's concerns to her.

104.9 The Tribunal did not consider that the Respondents subjected the Claimant to unwanted conduct by not giving her a pay rise in March 2020. There was no conduct in respect of the Claimant. All that happened was that Ms Wilson was promoted and given a pay rise. Even if there had been unwanted conduct, it did not relate to sex or disability.

104.10 The Tribunal accepted that Mr Scoon and Mrs Smith not upholding the Claimant's grievance was unwanted conduct by her, but it did not relate to sex or disability. The fact that the grievance may have included complaints about how the Claimant's disability was handled did not mean that rejecting the grievance related to disability. In any event, the conduct did not have the necessary purpose or effect to amount to harassment. Mr Scoon's and Mrs Smith's purpose was simply to determine the grievance on the evidence before them. Even if the Claimant did feel that her dignity was violated or the proscribed environment was created by the rejection of her grievance, that was not reasonable. Nothing in the evidence before the Tribunal suggested that there was anything inappropriate in the outcome of the grievance and grievance appeal.

104.11 The Tribunal accepted that the fact that Mr Edwards did not respond to the Claimant's email about an advance on the same day, and then telephoned her about it, during working hours, the next morning was unwanted conduct by her, but it clearly was not related to sex or disability.

104.12 The Tribunal accepted that Mr Edwards suspending the Claimant on 15 May 2020 was unwanted conduct by her, but it clearly did not relate to sex or disability.

104.13 The Tribunal accepted that Mr Edwards indicating that the Claimant was not entitled to authorise advances for herself and that there was no verbal agreement to that effect was unwanted conduct by her, but it clearly did not relate to sex or disability.

104.14 The Tribunal accepted that the Claimant's dismissal was unwanted conduct by her, but it clearly did not relate to sex or disability.

Reasonable Adjustments

105. As already indicated, the Tribunal found that the Respondents did know or could reasonably have been expected to know at all relevant times that the Claimant had the disability.

106. We concluded that the Respondents did not have a PCP of requiring employees to minimise the amount of time spent working from home. The only employee permitted to work at home prior to the pandemic was the Claimant, and in her case she was not *required* to minimise the amount of time spent working from home. At all stages prior to January 2020 the Respondents were entirely accommodating of her requirements in respect of working from home. That did not change in practice in January 2020. No requirement was imposed on her. Mr Edwards told her that he wanted her in the office more and opened up a discussion about working towards that goal. The Claimant shared the goal. She volunteered that she would trial three days in the office after her exam. As a result of their ensuing discussion, a mutual agreement about the Claimant's working days was reached.

107. Even if there had been a PCP, the Tribunal noted that prior to February 2020 the agreement with the Claimant was that she would work two days a week at home and two days per week in the office, which is the adjustment she says should have been made. After that date, she was to attend the office on three days, but was only required to be there between 10am and 3pm, and that was agreed with her. Indeed, it was she who volunteered in January 2020 to trial an increase in her working days, in response to Mr Edwards's email. It would not have been a reasonable step for the Respondents to have to take to reduce her days in the office to two in those circumstances, when the Claimant was not asking for that or saying that it was necessary. After she submitted her grievance, the Claimant seldom, if ever, attended the office, let alone three days per week. She did not attend the office at all after the first lockdown started in March 2020. All the Claimant's working patterns were agreed formally with her. No "threat" was made that any of them would be removed. The Respondents did not fail to take any reasonable step.

Victimisation

108. As explained in the findings of fact, the Claimant made complaints of disability discrimination on each of the four occasions she alleges: in the grievance on 24 February 2020; at the grievance hearing on 3 March 2020; in the grievance appeal in April 2020; and at the grievance appeal hearing on 12 May 2020. Each of those was a protected act.

109. However, for the same reasons as given in respect of the equivalent complaints of direct discrimination, the Tribunal found that none of the detrimental treatment that the Claimant alleged was victimisation was done because she did a protected act. The Tribunal made findings of fact on the evidence about why each thing was done. The fact that the Claimant had done protected acts (complained of disability discrimination) was no part whatsoever of the reason.

Time limits

110. A number of the Claimant's complaints were about things that happened more than three months (plus early conciliation extension) before the claim was presented. On the Tribunal's findings, there was not conduct over a period that ended less than three months (plus early conciliation extension) before the claim was presented, so those complaints were not brought within the Tribunal time limit. However, the Tribunal considered that it was just and equitable to extend time for bringing all the complaints. The Respondents were able to call evidence addressing all the complaints, so the prejudice to the Respondents was limited in that respect. In circumstances where the Respondents have been able to call evidence about all of the complaints, and have incurred the time and expense of attending the hearing in any event, to an extent it is in their interests for the complaints to be determined on their merits, rather than rejected as being out of time. The Claimant would be significantly prejudiced by having her out of time claims dismissed. She evidently had poor mental health from February 2020 onwards, which provides some explanation for the delay in bringing those claims. Fundamentally, the Tribunal must weigh the prejudice to both sides, and assess the interests of justice. Weighing all the considerations, the Tribunal decided that it was just and equitable in the circumstances to extend time for bringing all the complaints.

Unfair dismissal

111. The reason for dismissal is a question of fact. As explained in the findings of fact, the Tribunal found that Mr Cromack's reason for dismissing the Claimant was his belief that she had committed gross misconduct by giving herself an advance of wages without authorisation. He was not aware that she had made a protected disclosure or raised concerns about the treatment of personal expenses and this formed no part of the reason for dismissing the Claimant.

Wrongful dismissal/notice pay

112. The Tribunal found that the Claimant was guilty of gross misconduct such that the First Respondent was entitled to dismiss her without notice. The non-exhaustive list of examples of gross misconduct in the company handbook included theft of money or property; action intended to defraud or deceive; and serious insubordination.

113. As explained above, the Tribunal found that the Claimant knew that she required explicit permission to give herself an advance of wages. She was the Financial Controller, and in the trusted position of having access to the bank account. She asked for permission to give herself an advance on 13 May 2020 but did not receive permission. She did not answer the Managing Director's calls to discuss it during core working hours on 14 May 2020 because she was asleep in bed. It was a working day and she had not booked holiday. She transferred the money to herself at 3:30pm knowing that she did not have permission to do so. She sent an email more than an hour later disingenuously

suggesting that she was going to give herself an advance, when she had already done so.

114. The Tribunal found that this conduct, even if not actually theft, was of a level of seriousness equivalent to the examples of gross misconduct set out above. It was a serious breach of trust by the Financial Controller, not only taking the money without permission in the first place, but also sending the second, disingenuous email, after she had already transferred the money. In her senior role as Financial Controller, the Claimant had unrestricted access to the bank accounts. It was of fundamental importance that she could be trusted. Her conduct broke that trust irretrievably and was so serious that it amounted to gross misconduct. Therefore, the First Respondent did not act in breach of contract by dismissing her without notice.

First Respondent's contract claim

115. The Claimant did breach her contract by failing to return her company laptop. The handbook was incorporated into her contract of employment, and it contained an obligation on her to return company property when her employment ended. She failed to return the laptop after her dismissal.

116. The contractual position is that the employee is made liable for "the cost of making good" the First Respondent's losses. The cost of making good the loss of the laptop is the cost of replacing it and the Tribunal considered that this should be assessed as the cost of buying a new laptop. The only evidence before the Tribunal was that the company's laptops cost about £874 when new. The First Respondent seeks the slightly lower sum of £800 in damages. The Tribunal therefore determined that this was the appropriate sum.

Employment Judge Davies

9 March 2022