EMPLOYMENT TRIBUNALS

Claimant: **Miss A Townend**

Respondent: **Willerby Manor Hotel Limited**

Heard at: **Leeds by CVP**
On: **13-16 July 2021, 1-3 March and (deliberations only) 14 March 2022**

Before: **Employment Judge Maidment**
Members: **Mr C Childs**
Mr G Corbett

Representation
Claimant: **Miss N Twine, Counsel**
Respondent: **Mr M Humphreys, Counsel**

RESERVED JUDGMENT

1. The claimant's complaints of disability discrimination, harassment and victimisation fail and are dismissed.

2. The claimant's complaint of unfair dismissal fails and is dismissed.

3. The claimant's complaint seeking damages for breach of contract fails and is dismissed.

REASONS

Issues

1. The claimant brings a claim of unfair dismissal where the respondent maintains that she was dismissed for a reason relating to conduct arising out of a message she sent to employees on 23 April 2020 said to be undermining of the respondent. The claimant does not accept that this was the genuine reason for her dismissal.

2. She also brings a complaint seeking damages for breach of contract where the respondent maintains that she had no notice entitlement in the circumstances of her gross misconduct.

3. It is accepted that the claimant was at all material times a disabled person by reason of her suffering from cancer and peripheral neuropathy. The respondent also accepts that at all material times it had knowledge of the claimant's status as a disabled person.

4. The claimant maintains that she was unfavourably treated because of something arising from her disability pursuant to Section 15 of the Equality Act 2010 and in particular:

    4.1. Mr Derek Hill suggesting that the claimant reduce her hours to 14 hours per week.

    4.2. Placing time pressures on her to agree to changes in her role and the future of the respondent's hotel

    4.3. Failing to provide responses to the claimant's reasonable requests for information and accusing her of wasting Mr Hill's and others' time on numerous occasions from May 2019 – March 2020

    4.4. Placing pressures on the claimant whilst on holiday to create a data room for possible purchasers of the business despite there being no agreement by the shareholders or directors to sell the hotel

4.5. Appointing additional directors to the board of the respondent when the claimant would not agree with Mr Hill's requests

4.6. Accusing the claimant of misleading the respondent's auditors and the board

4.7. Stating in written correspondence that her "memory may be letting [her] down"

4.8. Sharing the claimant's personal email address with others without her consent

4.9. Failing to deal diligently with the renewal of the respondent's healthcare scheme, thus causing the claimant extreme stress and anxiety due to the ongoing cancer cover provided in the existing policy

4.10. Unfairly criticising her performance to the shareholders

4.11. Ignoring the fact that the claimant's performance had been impacted by her disability

4.12. Accusing the claimant of making disparaging remarks about her brother taking his wife and children on foreign trips when she had never made this comment

4.13. Advising shareholders that she was refusing to provide Mr Hill with information that had already been provided as requested

4.14. Stating to shareholders in writing in October 2019 that she "would have been replaced on performance grounds by 2015 at the latest" if the respondent was a non-family company

4.15. Suggesting to shareholders in writing in October 2019 that she take early retirement on the grounds of ill-health or step aside from her role, and thereafter failing to make her any financial offer

4.16. Sending inaccurate and unfair emails to the shareholders in respect of her health and making untrue allegations in respect of her behaviour in December 2019

4.17. Advising the shareholders that she was no longer ill, which was untrue

4.18. Accusing her of putting words into peoples' mouths in an email of 24 February 2020 and further criticising her performance

4.19. Dismissing her

5. The claimant has provided further particulars which appear at pages 48-53 of the agreed bundle.

6. The something arising from disability is said to have been the claimant's inability to sustain a 70-80 hour week. The respondent accepted in submissions that this was indeed something which arose out of the claimant's disability. It does not accept that it was the reason for any treatment of her by the respondent.

7. The claimant further and in the alternative maintains that the acts set out at paragraphs 4.2-4.18 above amounted to disability-related harassment.

8. The claimant next brings a complaint of victimisation in respect of the detrimental treatment she is said to have suffered as set out in paragraphs 4.2-4.18 above. The protected act relied upon is an email from the claimant to Mr Hill dated 13 May 2019. The respondent does not accept that this amounted to a protected act.

9. Finally, the claimant brings a complaint alleging a failure on the respondent's part to comply with its duty to make reasonable adjustments. This is reliant as a PCP on the respondent's requirement in March 2019 that she work 70-80 hours per week. It is said that the claimant was put at a disadvantage by such requirement as she was unable to sustain those hours due to her disability impairments. As a reasonable adjustment she says that the respondent ought to have recruited a new employee with sales and marketing experience and/or to have ensured that the claimant worked a reasonable amount of full-time hours only.

10. The respondent's position is that a number of the complaints have been submitted to the tribunal outside of the applicable time limit and in circumstances where it would not be just and equitable to extend time.

Evidence

11. The tribunal had before it an agreed bundle of documents which, after the addition (by agreement) of a small number of additional documents during the course of the hearing, numbered some 519 pages.

12. The tribunal took some time to privately read into the respondent's witness statements and relevant documents. The first part of the hearing involved the attendance of the respondent's witnesses and Counsel at the Leeds Tribunal albeit only to access the remote hearing. The tribunal heard, on behalf of the respondent, firstly from Mr Derek Hill, Chairman, followed by Mr John Charles Townend, managing director of the House of Townend, and Mr David Archibald, sales director of the House of Townend. Following a lengthy adjournment, the claimant then gave evidence on her own behalf.

13. Having considered all relevant evidence, the tribunal makes the following findings of fact.

Facts

14. The respondent is one of 2 trading subsidiaries of John Townend and Sons Ltd and is a vehicle for the operation of a hotel known as Willerby Manor. The other trading subsidiary is a wine company known as House of Townend. The hotel was managed by claimant and the wine business by her brother, John Charles Townend. The claimant had taken on management responsibility for the hotel in 1991, in her early 20s. These were long-standing family businesses overseen by the father, John Ernest Townend, as group chairman, until his death in August 2018. A number of family members held shares in the holding company, but the largest block of 27% of the shareholding rested within a family trust. No instructions were given on John Ernest Townend's death as to what should happen to those shares. The trustees were business professionals who had agreed to become trustees some time previously, but who had not been significantly called upon prior to John Ernest Townend's death.

15. Having commissioned an independent consultant's report (the Simpson report), the trustees decided to retain the shareholding and seek the appointment of a new group chairman from outside the family. The family was indeed fractured with the claimant and Mr John Charles Townend having no meaningful relationship and

having spoken only briefly in the context of business affairs for a considerable number of years.

16. Mr Derek Hill was approached by the trustees in or around November 2018 for information regarding the history of the group and Mr John Ernest Townend's likely wishes. Mr Hill is a chartered accountant who had held a number of senior management positions including with listed companies. By this time, he had effectively retired and was in his mid-70s. He had been a director of the House of Townend from 2005 and regularly attended board meetings. He had been asked over 10 years previously to provide consultancy advice regarding the direction of the House of Townend. As such she had worked with John Ernest Townend and John Charles Townend. He had also been used as a facilitator in 2014 of a possible demerger of the wine and hotel businesses. He had, however, been unable to broker an agreement between the claimant and her brother. Mr John Ernest Townend had asked that if anything should happen to him, Mr Hill would agree to help the group and he promised that he would. By the time of John Ernest Townend's death, Mr Hill had, however, not been involved with the business for around 7 or 8 years.

17. Mr Hill produced a report at the end of 2018. In this he described his background with the business saying that he was very much aware of the difficulties which the claimant and her brother had in working together. He said that he had no doubt that it had been John Ernest Townend's intention for the shares within the trust to be split equally between the claimant and her brother.

18. Mr Hill emailed the claimant and her brother on 31 December 2018 saying that John Charles Townend had advised that it would appear that the trustees had decided to keep the shares within the trust and had decided to appoint a non-executive chairman. He recounted that Mr John Charles Townend had asked if he would be interested in putting his own name forward. Mr Hill had prepared a document effectively setting out his credentials for holding that role and some of the issues which he considered needed to be addressed. The claimant was given notice of a board meeting to take place on 12 March by an email of 4 March from Mr Angus Whitehead, group finance director, which was stated to be for the purpose of discussing the Simpson report and for the appointment of Mr Hill as a director - a letter from the trustees approving that appointment was attached. The claimant told the tribunal that she had not seen this.

19. It is fair to say that Mr Hill painted a bleak picture of the hotel business and how it affected the group as a whole at that time. Group borrowings had regularly approached and at times exceeded £2 million against the latest figure for the group's retained profits of £42,000 for the year due to end on 30 April 2018 and

with no expectation of a significant change in the current year. In addition to bank borrowings, there were also family loans in excess of £600,000 which were repayable on demand and were subject to an interest rate of 10%. There were expensive historic arrangements to provide benefits to the widow of Mr John Ernest Townend. The Simpson report had identified a risk if the bank became more assertive in what it expected in terms of performance and repayment. That report referred to problems being magnified by the performance of the hotel "where recent results look challenging". The claimant agreed that the Simpson report confirmed an urgent need to stabilise the group's finances and that the problems were magnified by the performance of the hotel, albeit she thought simply the "recent" performance of the hotel.

20. Mr Hill referred to a valuation report of consultants, Edward Symmonds LLP, in 2010 which identified the wage costs of the hotel as being too high. The claimant considered that this was impacted by increases in the National Minimum Wage, but the report was clearly considering what it would expect in any similar hotel business in the area. Another consultancy valuation report of Lambert Smith Hampton in early 2018 had noted over a period that wage costs were in excess of the industry norm. The report indicated a long-term decline going back to 2010. The claimant, in evidence, recognised only a "stagnation". A further valuation report for the purposes of a bank loan produced in June 2019 by Christie & Co commented on a decrease in turnover and occupancy rates year-on-year giving the opinion that if turnover decreased further, the hotel might no longer be a viable business. That report commented that it might be prudent to explore the possibility of getting planning consent for alternative use of the site.

21. The tribunal accepts Mr Hill's evidence of a decline in the hotel business turnover from 2010 which pre-dated the claimant's cancer diagnosis (in 2017) and which was not explained by a short lived upturn during the Hull City of Culture year in 2017, followed by a decline. When put to the claimant that the hotel's underperformance had been a feature for years, she said that she did "not fully agree" with that. When put that it pre-dated her illness, she replied: "not all of it".

22. It was Mr Hill's opinion that the claimant had continually failed to address major issues and that her management performance was poor. His evidence was that he had never been made aware by her of any analysis of performance or measures to improve performance. He said that under the claimant's sole management control, the group and shareholders had lost over £2 million in the value of their assets referring to the hotel being valued at £4 million in 2010, £2.5 million in 2018 and at £1.93 million in 2019.

23. At a board meeting on 12 March 2019, Mr Hill was appointed to the role of non-executive chairman. The claimant opposed this appointment in circumstances where Mr Hill was not seen by her as independent. The Simpson report was then tabled. The claimant declined to comment on it. Angus Whitehead, agreed with the report's findings. Mr Hill then outlined his own thoughts. He said that the negative cash flow of the hotel had to stop - the claimant would have to work with Mr Whitehead and could be given 2 months to come up with a 12 month plan. He referred to the need for a positive story to tell the bank and that if none was forthcoming an alternative might mean having to sell the hotel or close it and sell the property for its land value. He mentioned conversations in the past with John Ernest Townend and that he had always wanted both the claimant and her brother to be given responsibility for their respective businesses. He stated: "ALT [the claimant] had achieved a good performance at the hotel in the past and could do it again." Mr Hill told the tribunal he was referring to a five year period of involvement he had had in the business from 2005 when the hotel was profitable. When asked at the board meeting, the claimant declined to comment on what Mr Hill had said. He then asked her if she was willing to accept the challenge, to which she responded in the affirmative. The claimant in evidence accepted that Mr Hill had been positive at the board meeting and said that he wanted to lead an improvement in the hotel.

24. Mr Hill spoke to the claimant on 12 March after the board meeting on a one-to-one basis. His evidence was that she was clearly unwell and he was indeed shocked at her state of ill health describing her as visibly distressed and crying. He described her as putting her head in her arms and weeping. He said that the claimant told him that she had no idea or solutions as to how to address the ongoing problems of profitability at the hotel and that she had no energy.

25. The claimant rejects Mr Hill's description of their meeting and the state she was in. Her evidence was that Mr Hill had had no idea as to the extent of her illness, but that at their meeting following the board meeting, she had to be frank about her illness. There was then, she said, a change in Mr Hill's attitude towards her.

26. The claimant emailed Mr Hill on the evening of 12 March saying that any input he could give in terms of the hotel would be appreciated, with her feeling that it was a very lonely fight for survival both professionally and personally. She felt, she said, a real injustice that she was being judged on the last 18 months performance and that she was looking for positive help to turn the tide.

27. Mr Hill emailed the claimant on 13 March. He said that he was taken aback when she explained the problems associated with her health. He said that "to put it mildly you did not look very well especially having not seen you for such a long time. I

had heard an occasional comment about your not being very well, but no way was I aware of how serious the situation had become." He went on that he had agreed to become chairman mainly because of the commitment he had given to her father. He said that it soon became obvious to him that communications had substantially deteriorated since he had last visited the business. He wished to concentrate on the future, however, not the past and said he would use his best endeavours to ensure that everyone was kept in the loop. He said that if she ever believed that she was being ignored or left out to contact him straightaway. He said that he hoped she could reassure her mother that he was not her brother's "glove puppet".

28. Referring to the one-to-one meeting he commented: "it was also very easy to see how you had visibly wilted with the pressures of the day." He recorded that they had agreed to concentrate on improvements in attracting more customers, gross margin and reassessing employment costs. He said that he had then asked what could be done to assist her in work and where she felt that she could best contribute. He went on: "initially you commented that you did not know what to do to restore the situation regarding negative cashflow and the worsening of profitability, but as we explored this in more detail, you felt that you could no longer do everything on your own because of tiredness, and that to bring someone else in to help on the sales and marketing would at least help alleviate some of your suffering." The claimant told the tribunal that she thought that she said that everything was becoming too much and she was too tired. She said to the tribunal that she could not deal with "the further down the line and the future planning … I could just do the day to day." He asked her to forward a job specification previously used to explore the recruitment of a sales and marketing person.

29. Saying that he needed to be ultra-cautious about how he addressed the issue, he stated: "you have been most unfortunate in being struck down with a very serious medical problem at a relatively young age. I implore you to give serious thought of what is best for you. No one and myself in particular would want you to soldier on leading you to have a total relapse or permanent impairment. Please believe me when I say there is life outside of work. Again I must stress that I do not wish to get you out." He said that they could probably fund the recruitment of a good operations director if she was able to manage with a much reduced salary so as to reduce her need to attend the hotel to around 14 hours per week. He said this would enable her still to take the key decisions regarding the hotel and that she could pull down cash from her loan account to maintain her standard of living. Again, he gave an opinion that she must start to think more about herself and her health as soon as they could find someone to help her.

30. Mr Hill told the tribunal that there was no discussion with the claimant about the amount of hours she was actually working and said he had no knowledge that she was working 70 – 80 hours per week as she now claimed. He was adamant that

she had not in fact said that she wanted to reduce her hours to work more normal full-time hours. She had simply expressed a desire to reduce her hours. He could not recollect her saying expressly that her health had impacted negatively on her duties, but accepted from her demeanour that it would have in any event. He agreed that she had asked for assistance with sales and marketing. He said that she said that she hadn't been able to find anyone suitable previously. He wanted to help with that process. The claimant told the tribunal that her hours were determined by the needs of the business. Whilst she did not believe that there was significant staff support available for her, she said that at all times prior and after Mr Hill's involvement, she had absolute authority to make appointments and recruit additional staff. She accepted that she had not referred to working 70-80 hours per week in her witness statement evidence. She said that she felt the hours she had been working had never been under dispute. Her evidence was then that she did not refer to working those hours – she had told Mr Hill instead that she worked "excessive hours". She said that she had not been specific – the number of hours she said was not particularly relevant at this point – but had said she was tired. Again, the hours she worked, she said, were what the business required. The tribunal concludes therefore that the claimant never referred to working 70-80 hours and that Mr Hill had no belief that she worked those hours. The greatest dispute as to the 12 March meeting is as regards the claimant's exact demeanour, albeit more a question of degree. The tribunal, however, concludes that Mr Hill's perceptions of her state of health were entirely genuine.

31. Mr Hill agreed in cross examination that, whilst the claimant had been looking for sales and marketing assistance, he had suggested the engagement of an operations director. He said that he thought he could include the type of help she needed in sales and marketing in a job description when advertising for that role. He was also concerned about the relationship between the claimant and Mr Whitehead such that he felt it might be helpful for there to be someone inbetween them. He agreed that this potential appointment and the claimant reducing her hours down to 14 hours per week had not been discussed at their meeting. Some of what was in the email, he agreed, would have come as a surprise to her. He said he had reflected on what was needed to help her after their meeting. It was put to him that at the board meeting he had believed that the claimant could perform well again, but that, once he knew about her health issues, he was considering reducing her hours or her taking ill-health retirement. He said that was not the case, but that the board meeting had been before the one-to-one and in the one-to-one meeting she had broken down after which he was trying to think of something to help with her health issues. He wanted to help her have time off, but said she would remain as managing director. The claimant told the tribunal that she was not sure how she could have taken all the key decisions, if working only 14 hours per week. She felt that Mr Hill wanted her to consider retiring. His proposals arose out of having seen and listened to the claimant and his consideration that he needed to view her situation sympathetically. He was not thinking of her working 14 hours every week but some weeks she would not need to come in at all and could take

holiday. When pressed, he agreed that he viewed his proposal as appropriate because of how the claimant had presented in terms of her health. He did not accept that he was considering any "perceived consequences" of her health on her work. At their meeting, he repeated, she couldn't offer any suggestions.

32. In questions from the tribunal, he accepted that there was no time limit regarding the period during which the claimant worked on reduced hours. He said this was based on her health problems. He said that he had an idea that it would continue until the hotel was improving. They could then review the position of the hotel and, if the claimant felt she could do more, this could be discussed. He said that he was happy to relook at the situation. He agreed, however, that this is not something which had been explained to the claimant.

33. Mr Hill rejected that he applied any pressure on the claimant to accept his proposals, saying that 8 weeks later they were still talking about it and that he was simply providing a suggestion for her to consider. He also suggested she should speak to her medical consultant to see what he thought. The reference to her drawing money from her loan account, he said, was again only a suggestion.

34. He agreed that this proposal represented a drastic adjustment in her life and income with a significant pro rata reduction from her full-time salary of £144,000.

35. The claimant emailed Mr Hill on 19 March asking for an indication of the timescale that would be allowed to improve the hotel's position. She said that she believed that the hotel would benefit hugely from an experienced marketing person. She said that she needed to give the rest of his email some thought as the decisions were "huge". The claimant told the tribunal that she had been shocked at what it had been suggested she consider. She said she had some holiday around Easter and, away from the pressures of everyday life, would consider her situation carefully. At this point, the Easter period was around 1 month away.

36. Mr Hill replied that day. He set out the words for an advert for the position of operations director which included a key responsibility to generate increased sales and the planning of both normal and digital marketing. Mr Hill accepted that some of the responsibilities listed for the operations director position were ordinarily responsibilities of a managing director. The claimant believed that Mr Hill had come up with an operations director role with marketing only as part of the remit – Mr Hill was trying to sideline her and get someone in to do her job. That was not what she believed had been discussed, she said, when put to her that she did not engage with his suggestion. In cross-examination, Mr Hill said that the claimant had not even prepared a budget for the previous year. When put to him that it would

appear that he was proposing to take away her key functions he said that it was difficult for him to say what she thought and that he later gave her carte blanche as to what she wanted to concentrate on.

37. Attached to the email he provided detailed calculations to illustrate the financial consequences of the claimant accepting his proposal to reduce her hours. These reflected a proposed reduction in salary to £42,500 per annum. He did not provide any timeframe for demonstrating improvements to the trustees and said that this was not an easy question to answer. He suggested visiting the claimant the following week. When put to him that he was ignoring that she had said she needed time to think, he said that this was part of a discussion rather than a deadline for deciding anything. The claimant told the tribunal that she was not seeking a permanent change, but rather some help through her period of illness and to give her some time off.

38. Mr Hill emailed the claimant's mother on 19 March saying that he was concerned about the claimant's health "as the spark that used to be one of her predominant features appears to have been extinguished." Mr Hill agreed that he hoped that her mother would have a conversation with her and that he believed she felt that a reduction in hours would benefit the claimant. Whilst the claimant's mother was a shareholder/director, the claimant was clear that she did not feel it was Mr Hill's place to raise such matters with her mother.

39. Mr Hill emailed the claimant on 27 March before he departed on his own holiday. He described the benefit which he obtained from having frequent holidays, asking her to think about what he had suggested about her putting herself first. He suggested having a word with her consultant and stressed that he was not trying to ease her out, but was genuinely concerned. She would remain managing director and if she felt well enough to do a longer week, then have a 3 week break in the sun, that could also be accommodated. He questioned whether it might help her to talk to her pension adviser.

40. The claimant responded on 28 March. Within this she stated: "you say you are not easing me out but sending me a job advert for my job can only be seen as that!!" She referred to her age and difficulty in drawing a pension as well as to another hotel where the general manager had cancer and had been supported while he took a year off work. She referred to a lack of offer of any help in her case. She agreed she had a lot to think about, but said simply retiring and absolving the company of any responsibility for her was just plainly unfair and that it could not be right that "you get ill then get punished because you were ill." She asked Mr Hill to also reflect on what would be a fair outcome.

41. Mr Hill emailed the claimant further on 4 April. He said that he was sorry to read her email. He said that he could have just put out an advert for a managing director without her knowledge, but that he did not contemplate this as he wanted to work with her. However, he said that leaving things as they were was a total non-starter. He went on that the more he thought about the scenario suggested he believed it to be a win-win situation. He continued: "you win as you stay MD, you protect your legacy, and more importantly you give your health a boost. WMH wins as expenses fall so helping profits and cashflow…" The claimant saw this as giving Mr Hill what he wanted and not giving her the marketing help she needed whilst she recovered her health. She would lose her salary and have her hours cut to 14 hours per week. She felt that Mr Hill was threatening that he could do whatever he wanted at any time.

42. Mr Hill attached to an email of 23 April a further note seeking to address her email of 28 March in some detail reiterating a number of his views, refuting the suggestion that he was seeking to ease her out and revisiting the issue of how she might boost her income. He expressed a view that if an offer for the hotel was made at a certain level then this would be difficult/unwise to resist. He ended that there was much to consider within this note and that he would contact her following her return from holiday. Mr Hill said that he thought it would be helpful for her to have this to consider whilst on her holidays. He recognised that the claimant may have her own proposals. It was put to him that a reference he had made to tax efficiency in terms of inheritance tax was insensitive to someone suffering from cancer to which he replied: "you may judge it as that. I was trying to provide information".

43. The claimant replied on 30 April saying that she was now back from her holiday and in a position to talk to him about the future. She said that she would be available to meet at the hotel on 7 May or 10 May. She said that they would need to discuss what her role would be if her hours were reduced and said she was sceptical about how this would work in practice and the risk of her inevitably being dragged in to help out more. Mr Hill responded on 1 May suggesting that a meeting on the Friday was too late as they needed to get out agenda items for the next board meeting by the Thursday. He said he would arrange to come over to meet on the Tuesday. He asked her to draw up a list of tasks she could and couldn't do. In Mr Hill's mind, he was here giving the claimant carte blanche to decide what she wanted to do. His email suggested she draw up a list of the matters which caused her "stress and depression". It was put to him that the claimant never said that she suffered from depression. Mr Hill responded that in his opinion she was at a low ebb. He was not saying that she was medically depressed. The claimant explained in evidence that a lot of jobs had already been placed under the director designate position which she thought Mr Hill was fixed on. When put to her that Mr Hill's suggestion was for her to tell him what she wanted to do, she answered: " No. Not really" and said that she "just wasn't capable" of responding. In a note sent to her on 1 May, Mr Hill set out as suggestions "for your perusal" marketing ideas to help

the hotel's performance. The claimant told the tribunal that she had asked for marketing support, not Mr Hill's ideas and that this was not something in Mr Hill's skill set.

44. By email of 25 April, Mr Hill had sought clarity from the claimant regarding her initial budgetary projections. This was sent when the claimant was away on holiday. Mr Hill thought that she had sent the budget information before she left. The claimant responded on that day saying that in every one of the last 29 years, with the exception of the previous year when she was unwell, she had provided the company accountant with the starting figures, which he then processed into a working document and sent back for her review. She said this had not happened this year. She expressed alarm that she had been cut out of the process. Not having the opportunity to see the document he was referring to, coupled with the fact that she was on holiday, she was unable to answer the question, she said, at this point in time. Mr Hill responded on 26 April saying not to worry as he was pushing Mr Whitehead to get an initial feel for things. He said it was obvious that the final version could not be agreed with her being on holiday. She had not been cut out of any process "and you really need to stop reacting so negatively to everything", he said. Before the tribunal, Mr Hill said that all the items he raised were minor tweaks. The claimant told the tribunal that receiving 3 emails on her holiday on the matter, when she needed to rest, added to her stress and the pressure she felt under. When asked, what the requests had to do with her disability, the claimant said that they made her health worse.

45. Mr Hill, in his evidence, referred to solicitors acting on behalf of the claimant and her mother requesting that family loans of approximately £500,000 be repaid in full. It was arranged that the group pension scheme would replace these loans but, with the claimant and her mother refusing to agree to this arrangement, the group had to turn to its commercial bankers. It was put to him that interest on the family loans had been cut to 2.75% from October 2018 but that the claimant had just become aware of this in April 2019. Mr Hill was unable to comment. The claimant's position is reflected in an email she sent to Mr Whitehead on 1 May copied to Mr Hill. This said she had not been notified of any interest change.

46. By email of 2 May 2019, the claimant asked Mr Hill for an explanation. She said that she would continue to carry out her duties at the hotel as normal and, whilst she would consider his proposal, she was unwilling to be pressurised just to meet the board meeting timetable. She said that his pushing her was extremely stressful. The claimant's evidence was that at this point, Mr Hill was only interested in her agreeing to be sidelined. She did not accept that Mr Hill was trying to engage with her on the issue of her role. On 3 May, the claimant asked Mr Hill for the job advert he had prepared on 19 March – she had already received this. She told the tribunal that she had, however, lost it.

47. Another issue related to an administration charge applied to the hotel business. The claimant had raised this with Mr Hill when they met on 12 March and he had said he would respond. He emailed her on 6 May saying that the recharge stood at £42,000. His evidence was that this had been introduced by John Ernest Townend as he was concerned to remove any duplication of effort between the hotel and wine business employees. Mr Hill's view was that the hotel business would have been charged a similar sum for the work undertaken by the wine business employees if it had had to look outside the business for such services. Mr Hill considered this to be a small sum. He told the claimant that worrying over the recharge should not be a priority and that she should concentrate on trying to increase turnover in the hotel together with reducing costs.

48. The claimant responded on 6 May saying that this did not answer her query. She said that the charge had been a subject of discord for a number of years. The list of tasks was out of date and no information on time spent on each had been provided. She said that the charge should have been cancelled, but had unilaterally been reinstated after her father's death by Mr John Charles Townend and Mr Whitehead. She accepted that a charge should be made, but it should fairly reflect the work done. She did not believe it was unreasonable to ask for a full breakdown. She said that she was at a loss how this simple request could not be met.

49. Mr Hill responded on 8 May 2019 saying that he was not going to have staff totally wasting their time on filling in timesheets to try to justify to the exact penny how much time they spend on various sections of the business. He considered that the claimant's request was unreasonable. In cross-examination, he said that there were more important matters to concentrate on.

50. Mr Hill emailed the claimant on 13 May seeking, amongst other things, progress on the list of tasks he had previously asked her to identify which she wished to be directly responsible for as opposed to items that adversely "impact upon your stress and depression". He also asked for specific feedback from her consultant as to their advice on whether having more time to relax would assist her health. This communication was, he said, to let the claimant know what he wished to discuss with her when they next met.

51. The claimant responded on 13 May. As regards her health, she commented on her struggling with her energy levels at the present time following cancer treatment and said she had never been diagnosed with depression. She said that she did have high stress levels due to ongoing issues with the business. She said that she was protected by the Equality Act due to her health and said that working less than 80 hours per week would be beneficial for anyone. She reiterated that she would like

to engage a sales and marketing manager, but that Mr Hill then appeared to use this request to seek to substantially reduce her hours and pay which she said she was not prepared to agree to. Her request remained that she wished for additional resource to improve hotel footfall. The claimant agreed in evidence that this was her closing down any discussion of the suggestion that she reduce her hours to 14 per week. When put to her that her suggestion was to recruit a sales and marketing manager, the claimant referred to the possibility of existing group resources working in the wine business. The tribunal cannot accept that this is what the claimant might have been suggesting or would have been satisfied with. When put to her that adding to the hotel's costs at this time was unrealistic, she said that it was not, as a step to help someone who was poorly. She said that she was just asking for help to "get over a bump in the road" and that she was not asking to be retired. She wanted marketing help and to work "normal" hours. Mr Humphrey put to the claimant that her case was that Mr Hill had been treating her badly from March – she agreed again that she believed his attitude had changed after their first meeting on 12 March – and that the claimant's email made no difference to how Mr Hill treated her. The claimant said that she did not understand what point was being made – there was pressure on her which was continuing to build and therefore she felt that she needed to be clear about her health.

52. The claimant and Mr Hill met on 15 May. Mr Hill produced his own aide memoire of their discussions which was not circulated. She disputed a number of points in it. The claimant was recorded as dismissing an HMRC investigation as of only a minor nature. She denied saying that. Mr Hill stood by his note. He recorded that the claimant became quite agitated and said the words: "bring it on". He was adamant that she had used that term. The claimant also challenged that she had raised the issue of Mr John Charles Townend taking his family on overseas trips. Again, Mr Hill said that he had no doubt that she did raise this question. The claimant in cross-examination said that Mr Hill knew who had really said that, referring obliquely to the children of other shareholders being on Facebook. On balance, the note Mr Hill made is more likely to be accurate, certainly of what he understood the claimant to have said. The claimant was recorded as commenting that Mr Whitehead was a "waste of time". Mr Hill said this was an accurate note. He noted that the claimant had commented that a trustee, Mr Stephen Hall, did not like "ladies" being involved. Mr Hill accepted that the claimant had probably referred to "women". The tribunal notes that at one point in her cross-examination, the claimant did use the term "ladies". There was discussion of splitting the group into two separate entities and how this had been attempted in the past. The claimant was recorded as raising a question of the trustees or John Charles Townend buying out the minority interests as an alternative, with Mr Hill commenting that he couldn't see that happening with the current state of the group's finances. When challenged, Mr Hill could not be certain that the claimant had made any reference to the trustees in this context. Mr Hill was adamant that there had been discussion of John Ernest Townend's estate as otherwise, he said, that he would have had no idea of the identity of the solicitor handling the probate. The tribunal notes that Mr

Hill and the claimant discussed the issue of interest on the family loans – he explained why he felt that there was a need to reduce the level of interest.

53. The claimant and Mr Hill attended together with others a group board meeting on 10 June 2019. Discussion took place there regarding using pension fund loans to replace those from family members. Wilkin Chapman, Solicitors were recorded as acting for the claimant and her mother. They also acted for the claimant's sister and brother-in-law. By a solicitors' letter of 23 May 2019 from them, a sale of the hotel and shares was proposed. No response was made to that offer. Mr Hill's position was that nothing could be done until the on demand loans were repaid, which occurred in August. The wine business was also struggling with the implications of Brexit.

54. Mr Hill had lunch in the hotel restaurant with a director from Beals, property developers, on 10 June. Mr Hill said that this was to thank him for information which had been provided to shareholders regarding the possibility of selling the land. There was nothing underhand in this and, if there had been, he would not have invited him to the hotel. Mr Hill accepted that the claimant had expressed concern, coming over to the table to advise them to be careful what they said. She considered that Mr Hill was not being discreet.

55. An issue arose in July 2019 regarded bonuses. The claimant was concerned that employees of the House of Townend were receiving unauthorised bonuses. The claimant raised the issue in an email to Mr Hill of 15 July. He accepted that she had every right to raise the issue, but believed she had misunderstood the situation. He agreed that bonuses would affect the profitability of the group but said that bonuses of £220,000 had not been paid. The amounts were contractual commission payments that House of Townend was obliged to pay to salespeople. Other employees had been paid small non-contractual bonuses he said. Nor was there a custom and practice in terms of bonus arrangements for Mr John Charles Townend and Mr Whitehead. Mr Hill accepted that he hadn't responded to this query of the claimant. The issue was then raised by the claimant at a board meeting on 17 July and Mr Hill explained his aforementioned position. Before the tribunal, the claimant maintained that non-contractual bonuses paid to John Charles Townend and Mr Whitehead were "not legal". When asked how she said that any refusal by Mr Hill to deal with this issue was related to her disability, the claimant said that it was because Mr Hill's behaviour had begun as soon as he knew she was ill and that it was "continual".

56. On 24 July, Mr Hill asked the claimant to create a data room for possible purchasers of the hotel once they had signed a confidentiality agreement. The claimant accepted that she was aware of the potential for a sale albeit only as one

of 5 possible scenarios (as set out in Mr Hill's note of 24 April 2019). Mr Hill suggested that this data room be set up in the boardroom at Melton, away from the hotel and set out what needed to be provided within it in terms of documentation. He chased a response from the claimant on 10 August. The claimant says that she was on holiday at the time. The claimant responded 15 August asking when the decision was taken and by whom. Mr Hill responded on 24 August saying that the original proposal for the sale came from Wilkin Chapman back in May (it was raised by them on behalf of the claimant and others in correspondence of 23 May) as discussed at the June board meeting. The claimant referred to there having been no response from Mr Hill to the proposal in the solicitors' letter. No decision had been taken as the hotel's future, but a data room was described as the normal accepted route of allowing interested parties to view all necessary information. If the shareholders did decide to seek offers for the hotel, there would be a need to market the hotel quickly prior to December. Therefore, it was prudent to prepare the information now, he said. On 28 August, the claimant told Mr Hill that she would begin work once the shareholders had come to an agreement on a sale. By email of 8 September, Mr Hill again chased progress from the claimant saying that most of the information was not difficult to prepare. Mr Hill's evidence was that he never received any information about employees or their contracts. He simply got copies of some gas and electricity contracts. The claimant said that she had provided some information, but that "it didn't need to be now". She characterised the requests as pressure to manoeuvre her out.

57. A board meeting had in fact taken place on 5 September in advance of which the claimant had chased Mr Whitehead for a copy of the accounts. Mr Hill said that he was not aware that they had not been received by her. The claimant refused to sign the audited annual accounts at the board meeting because of the lack of breakdown provided for the administration recharge. Mr Hill's position was that she said that the auditors had told her that the charge was too high which he said was untrue. Such statement of the claimant is reflected in the board minutes and the tribunal considers is likely to be accurate. Certainly, that is what Mr Hill believed the claimant to have said. Mr Hill said that he spoke to Mr Whitehead after the meeting and learned that the auditors had not said that or looked at the recharge. The claimant had been told that she had the right to look at any costs reflected in the accounts.

58. Following the board meeting, Mr Hill emailed the claimant, as already referred to, on 8 September saying that he had contacted Tony Bullock of the auditors who denied that he had ever informed the claimant that the auditors had checked the administration charge and told her that it was too high. It was said therefore that there was no doubt that she had misled the board with her statement. What Mr Bullock agreed was that he had mentioned that the claimant had the right to question any type of charge associated with the hotel business. The tribunal has been directed to an email from Mr Bullock of the auditors to the claimant telling her

that as a director of the respondent she was entitled to ask for a breakdown of any charge made to the company and if this was not provided she was not obliged to accept it. Clearly, Mr Hill viewed the whole issue as a distraction in circumstances where even if the charge had been, for instance, £10,000 too high, it would have made no material difference.

59. Mr Hill emailed the claimant on 9 September reiterating that the claimant had misled the board. He said that the board of the holding company therefore had to take action to ensure the approval of the accounts which needed to be signed by a director of the respondent. He said that consequently she would be receiving notice that a board meeting would be convened to approve the appointment of Susie Townend, the wife of John Charles Townend and Mr Hill himself to the board of the respondent. A board meeting of the respondent would then be called to consider the proposed audited accounts and to appoint a director to sign these off. He regretted that such action was necessary.

60. The claimant emailed him on 9 September saying that she had not said that the auditors advised her not to sign the accounts. She said that they had given her the opinion that the admin charge was perhaps on the high side and she was entitled to ask for a breakdown in the absence of which she was not obliged to accept the accounts. She referred to steps she had taken, without success, to obtain such breakdown.

61. Mr Hill responded on 11 September 2019 saying: “I’m afraid that your memory may be letting you down a little. Your response may cover what you may have wished to say, but this is certainly not what you actually stated.” By this, the tribunal concludes that Mr Hill was saying that he did not believe the claimant. He was not suggesting that the claimant’s memory had been affected by her health/disability. When put to Mr Hill that this was quite bullying in its tone, he said that it was “realistic”. They had a business to run and she was frustrating the business of the group. It had nothing to do with her health.

62. There was a subsequent telephone discussion between the claimant and Mr Hill on 12 September when she said that she would sign the accounts as long as Mr Hill and not Mrs Townend was appointed to the board. Mr Hill notified the relevant directors of the cancellation of the board meeting as the claimant was now willing to sign the accounts saying that she had also agreed to him joining the board. On the understanding that this would occur, he was therefore withdrawing the request of the holding company board that Mrs Townend joined the board of the respondent. The claimant accepted in evidence that the threat of appointing new directors was because she had refused to sign the accounts. She described Mr Hill’s actions as blackmail. The claimant maintains that whilst she had been given

information about administration charges, this was "stale" and had been made up to send to her. Some of the work was now done wholly at the hotel.

63. The claimant at times used her personal email account to correspond with Mr Hill. She said that sometimes this was when she was on holiday or otherwise when she did not want correspondence to be on the work computer. On 12 September Mr Hill had emailed Mr John Charles Townend saying that a notice had not reached the claimant because an email address he had used was no longer active. He asked him to use the claimant's iCloud email address to avoid any confusion in the future. The claimant emailed Mr Hill on 12 September saying that work issues needed to be sent to her hotel account and asked that he ensured that others used her work email address for correspondence. She said that she appreciated that there was no malice intended. Having received no response from Mr Hill she emailed him again on 18 September referring to her as having made a reasonable request and saying that he had shared her personal data without her consent and, despite her request to respect her privacy, Mr John Charles Townend was using her personal email address for work. She said she could only assume that Mr Hill had ignored her request.

64. A separate issue arose regarding healthcare insurance cover. The claimant emailed Mr Hill on 1 October believing that the continuance of the cover was at risk. She obviously benefited personally from this. The respondent business held a separate policy from the House of Townend and as a result of staff leaving, the claimant was the only person left within it. The group pension adviser had picked this up and had said that they couldn't put in place a policy with only one potential beneficiary. Mr Hill recognised that they needed to keep healthcare cover in place for the claimant. This issue came out of the blue and he was looking at the possibility of moving the claimant into the House of Townend scheme. In the end they came up with a policy which would cover the claimant and provide continuity of cover. The matter was resolved he said within 6 or 7 working days. He said that the claimant had raised the matter on 29 September and it was resolved by 7 October when the claimant was told by Kim Walker that Aviva had confirmed that she was on continuity of cover. The claimant maintains that the issue regarding her healthcare had been ongoing for a time prior to 1 October and she felt that Mr Hill had not been forthcoming then with concrete solutions. The tribunal has been referred to no evidence of this.

65. The claimant has complained about Mr Hill's communications about her to shareholders. Mr Hill sent his statement to shareholders on 29 September in advance of the AGM. He said that he had not discussed this with the claimant or indeed Mr John Charles Townend in advance. Mr Hill denied that he had altered financial information regarding the hotel to show her in a bad light. His position was that he had sought to show both the House of Townend and the respondent company in a true light. He explained that Mr John Ernest Townend had wanted

to show the hotel business in a good light to attain a four-star rating. Before he had died, however, he had asked for the accounts to reflect that they were separate businesses. Mr John Ernest Townend and his widow's salary/benefits had been charged to the House of Townend. Mr Hill now attributed them equally across the two businesses. That represented an additional £30,000 charge in the respondent's accounts he said. The only other difference was that the claimant's loan interest was now charged to the respondent. This produced a swing of around £70,000. It was not Mr Hill's idea, but something agreed previously with John Ernest Townend. The tribunal accepts that the apportionment of costs to the respective trading companies gave a truer picture of performance and was information relevant to the shareholders. The claimant does not agree with the exacts amounts attributed to the hotel and complains of a lack of consultation with her. If the figures put the hotel in a worse light, that was a consequence of Mr Hill wishing to put it in a true light, as he saw it. His adjustments also affected negatively the wine business' figures.

66. He referred in the report to trying to get the claimant to accept that it would be in her best interests to reduce her workload and proposing she reduced her weekly workload to 14 hours and highlight the areas she would wish to concentrate on and those which were causing too much stress. He said that he had suggested a new appointment to look after the other areas, but that the claimant had ignored the proposal, wanted to keep running the hotel and was not prepared to accept any lower pay/hours and simply proposed increasing staff costs by around £50,000 so as to recruit additional resource. He said that the claimant had decided not to prepare a budget in 2019 and had produced a budget for 2020 which showed only a small trading profit.

67. He referred to the administration recharge, saying that he was prepared to reduce it by a percentage as a gesture of goodwill but asked that this be the end of all comments relating to it and for there to be a concentration on reversing the hotel's trend of falling sales and high staff costs. He referred to the claimant raising House of Townend bonuses as a misunderstanding on her part. He referred to the claimant and her mother making disparaging remarks about Mr John Charles Townend taking his wife and children on foreign trips at group expense. He said that there was a lack of recognition on their part of the nature of corporate entertainment in the wine business. In a similar fashion he said that in the hotel trade most managing directors will benefit from free food and other services. He said that if the claimant and her mother had any concrete evidence of possible problems in the past, they now needed to produce documentary evidence to support their claims or withdraw them. He continued: "in essence to use a well-known phrase they need to either "put up or shut up" so that no further management time is wasted on distracting events." Mr Hill accepted in cross-examination that he could have been less abrasive in his comment that there needed to be a concentration on the big issues affecting the businesses.

68. Mr Hill reiterated his surprise at the claimant's state of health at the one-to-one meeting on 12 March and explained his thinking regarding the claimant reducing her workload. He described the claimant as visibly wilting and almost collapsing at their one-to-one meeting. Mr Hill reiterated that she had had her head in her hands and cried. He also referred to her stress and depression. He said that she had said that she suffered from stress and that in his opinion there was some depression. He told the tribunal that he was describing what he felt. When suggested to him that he was suggesting to shareholders that the claimant was incapable because of her disability he said that the fact was that she had serious health issues and he suggested working 14 hours to help with her health but with her continuing as managing director.

69. Mr Hill prepared a linked document for shareholders concerning the future of the hotel. When put to Mr Hill that he was suggesting the claimant was incapable of performing, he said that it was up to the shareholders to decide what to do. He said that he was setting out the choices of maintaining the status quo, engaging a management company or selling as a going concern. In terms of continuing with current arrangements, he raised the "other imponderable" of the unfortunate state of the claimant's health. He said that shareholders will need to form their own opinion including as to whether the claimant would be able to undertake the turnaround exercise required to bring the current performance to a more sustainable level. He said that the claimant had admitted that at times she struggled to manage with the tiredness resulting from her serious health conditions. He referred to the claimant wishing to continue but to recruit additional resource and for the need for the shareholders to decide whether this was in the best interests of the group. The claimant told the tribunal that Mr Hill had not asked her about her health and should have done so before he raised it as an issue with shareholders. She had never suggested that her health might go into a steep decline. She objected to references to depression when she had told Mr Hill months previously that she had no such diagnosis. She did not want her health discussed with the trustees – it was not appropriate. She described Mr Hill as having: "No idea and no care." She said that she had received his report only after some of the other shareholders.

70. As regards the option of appointing a management company to run the hotel, he referred to the obvious charge they would levy for their services and that the appointment of such a company would mean that the claimant would have to agree to either fully step down from her role or perhaps take early retirement on ill-health grounds so as to allow the management company to introduce their own general manager. He said that otherwise the management company would have to agree to keep the claimant in place at her current cost which would make this option prohibitively expensive.

71. As regards selling the hotel as a going concern, he said that the claimant would have to agree to resign because it was extremely unlikely that any acquirer would agree to continue to meet the cost of her continued employment. A final option was to realise the value of the land for housing development.

72. He said that had this been a normal non-family company, then the claimant would have been replaced on performance grounds by 2015 at the latest. The claimant told the tribunal that a similar point could have been made in respect of John Charles Townend. However, as a family company, a number of non-commercial decisions had been taken in the past. On the one hand, the claimant would have few alternative employment opportunities and had given 29 years of service to the hotel, carrying on despite the decline in her health. Conversely, it could be argued that over the past decade the hotel had not performed. If the claimant agreed to step aside, the shareholders would need to compensate her with some type of package.

73. The shareholder AGM took place on 7 October 2019. The claimant was not in attendance, but Kim Walker (her brother-in-law) was present as her proxy. The minutes were only circulated by Mr Whitehead on 26 February 2020. He said there had been some differences of opinion as to what content should be included. He said that one shareholder had wished to add into the minutes things which were not actually said in the meeting. The second issue was that some quite strong wording relating to individuals had been used and Mr Hill had deemed it appropriate to "sanitise" these so as not to cause any further family friction. He said if anyone wished to know the exact phrasing used, he had maintained a true record of what had been said. Fiona Walker, the claimant's sister, responded to Mr Whitehead, expressing concern at the delay in producing the minutes and their content. She referred to an omission where, whilst she confirmed that the claimant no longer had the cancer, the minutes failed to mention that she had said that the claimant was struggling with the after-effects of the chemotherapy with terrible pain in her legs making mobility a problem. The tribunal accepts that it is more likely than not that Mrs Walker did not simply state that the claimant was "not ill", which is the bare statement included in the minutes.

74. The minutes did record that Kim Walker had read out a note from the claimant expressing outrage at the contents of Mr Hill's paper, not least in terms of reference to her management of the hotel and her health. It was recorded in the minutes that there was support from the claimant and her mother for the management company option with a view to a future sale as a going concern and the potential to buy out the minority shareholders. It was said that all the options would depend on reaching an agreement with the claimant. Mr Hill was recorded as stating that the

claimant would be entitled to reasonable notice. The claimant's case before the tribunal was that by this point, as everyone was now aware, she was "ready to go".

75. Having been provided with a copy of the interim group results for the 6 months to the end of October 2019, the claimant emailed Mr Hill on 3 December saying that she was extremely upset and stressed about the untruths he had stated as fact. Mr Hill had commented that there had been a refusal by the claimant to provide information about wedding and corporate event bookings. The statement was not inaccurate, albeit the claimant told the tribunal that she could not allow the diary to be taken off site in case it was needed and she had offered that someone could come in on an evening to copy the information. The claimant did not address this in her reply. The claimant told the tribunal that wages information had been provided to Mr Whitehead and the tribunal has seen email correspondence to that effect. She said that she had accepted that a management company could be the best solution for everyone, but that it was wrong for him to now say that this had been her preference as the basis for his decision. She said that he was well aware that her health was compromised and that she was doing her best in very difficult circumstances having worked over 60 hours in the last week. She said that she had spent time showing management companies around, only to be accused in communications to shareholders of refusing to provide information. She asked for an acknowledgement to all those who had been emailed with the interim report that he had made a mistake or that Mr Whitehead had withheld the information.

76. Mr Hill responded 12 December, in a chain of communication which now involved all shareholders, rejecting the claimant's comments and referring to her having a remarkable insight as to what had happened in a meeting which she had refused to attend. He said that he was sure that all shareholders present would form their own opinion as to whether her claims were true or fair.

77. The claimant responded on 14 December to say that she had not refused to attend the meeting, but had exercised her right to appoint a proxy because he had chosen without her permission to discuss her health in an open forum.

78. The claimant's case was that Mr Hill had not responded to requests for information.

79. On 29 January Mr Hill emailed the claimant about the auditor's charges. The claimant responded asking about the discussions which had taken place with the auditors. Mr Hill accepted that it was a reasonable request, but that the claimant was confused. He thought that the claimant was trying to score points by saying that Mr Whitehead had been discussing the sale of the hotel with developers. The issue related to something well in the past involving Mr John Ernest Townend. He

said that Mr Whitehead had contacted the auditors at his request and could confirm that at the time he knew nothing regarding a subsequent possible offer from the house developers. He said that he chose not to advise Mr Whitehead of her allegation so as not to inflame the situation any further. He also referred to the claimant having chosen not to attend the shareholder forum, that it had not been agreed that a management company would definitely take over and that the claimant's remuneration package effectively made the use of any management company unviable. Mr Hill rejected the suggestion that this response was confrontational and unnecessary.

80. The claimant responded on 20 February saying that she was now even more confused about the auditor's bill as it referred to discussions with Mr Whitehead regarding a sale. Mr Hill responded on 24 February saying: "you really do need to cease trying to put words in people's mouth… I am not prepared to waste any more time on non-items from the past that have been fully resolved. I would have hoped that you recognise that you can assist your fellow shareholders far more by concentrating your attention on reducing the losses at the hotel as opposed to trying to score points against Angus." In cross examination, Mr Hill said that the amount involved in the auditor's invoice was the sum of £1157. The tribunal considers that Mr Hill believed the claimant to be misrepresenting the situation. The claimant's position was that he was refusing to answer her query.

81. Mr Hill emailed the claimant again on 9 March on a number of matters. He reiterated, as regards the auditor's invoice that he was not prepared to waste time on non-important items from the past. He did not accept that he had been aggressive and confrontational with the claimant. He also rejected that his view of the claimant was coloured by the fact that he wanted her to leave. He said that he had said that she could stay on as managing director. His reaction was nothing he said to do with her ill-health. He agreed that he had shown some exasperation, he said, because the claimant was talking about such a minor amount.

82. It was suggested that following the October shareholders meeting there had been exit discussions about the claimant. Nothing was put to her at the following meeting. Mr Hill said that it was the claimant's wish to have a management company come in and he had organised for such companies to visit the hotel and meet the claimant. He had then been approached by the claimant through her solicitors to say that she would stand down in return for a payment of £331,000, which he said killed off any chance of the use of the management company.

83. The claimant's solicitors corresponded with the respondent's solicitors on 27 November 2019. The respondent's solicitors acknowledged receipt on 5

December. Mr Hill believed that the cost of the proposal came to the aforementioned amount.

84. There was subsequently a meeting at the respondent's solicitors around 21 January 2020. An offer was made to the claimant on 9 March of 3 months payment in lieu of notice and her statutory redundancy entitlement. For the claimant, that did not represent the "fair offer of settlement" she had understood, from the shareholders meeting, would be made. The claimant came back with a further proposal on 12 March and gave an indication that, if there was no resolution within 6 weeks, ACAS early conciliation would be commenced. It was put to Mr Hill that by now he viewed the claimant as a particular difficulty and was exasperated. He said that, on certain issues, he indeed was as there were a lot of minor items being raised when he just wanted to take the company forward.

85. Mr Hill emailed John Charles Townend and Mr Whitehead on 11 April 2020. As regards the management charge, he said that he had mentioned last month that he had agreed a figure "to shut Alex up over her continual carping". Mr Hill accepted this was a negative reaction towards the claimant. He also referred to not understanding why the claimant was keeping the hotel swimming pool running. He didn't accept this reference was inappropriate as by this stage the hotel was in total lockdown.

86. Indeed, the hotel was closed from 23 March 2020 due to the coronavirus pandemic. In March conversations took place regarding redundancies. Mr Hill said that the claimant had approached Gosschalks Solicitors (who acted for the respondent) about what should be done. The claimant emailed Mr Hill on 21 March saying that she would try to access the government furlough scheme. He replied that day saying that the claimant should never leave the staff with false hopes. There was no chance he said of the hotel reopening. Staff needed to know that now. The support measures available he said were short-term. By all means the claimant could explore the government scheme, but he did not think it applied where staff had to be made redundant and again it would not be reasonable to mislead the long serving staff. She emailed Gosschalks on 23 March saying that she had told the board and shareholders in October that mainly for health reason she did not see herself in the hotel for much longer. As a result, she said the decision had been taken to bring a management company in while options were explored for selling the hotel as a going concern or as development land. She envisaged therefore a possible future redundancy process. She said, however, that they were nowhere near that stage and if a buyer was found for the hotel as a going concern then the employees would transfer over pursuant to TUPE. She said that coronavirus was the reason for laying off hotel staff at this time and that no redundancy situation existed or would have existed but for the pandemic. Until the government furlough scheme was announced she had thought that all of the staff would have to be made

redundant, but thankfully that was not the case. On 25 March the claimant emailed Gosschalks confirming that it was her belief that the situation was best dealt with by one person and that as Mr Hill was talking redundancies, which would include herself, it was appropriate for her to step back from the situation. She, however, asked to be kept in the loop in order that she could do the right thing in her communications with employees. The claimant said that the context of that communication was purely relating to a small number of redundancies and furlough due to the pandemic. When put to her that she accepted that she would not be the right person to lead any redundancy consultation, she said that she did not accept that proposition.

87. A board meeting of the respondent took place on 22 April. There was a proposal to make all employees redundant subject to the outcome of a consultation period with the consultation period to commence as soon as reasonably practicable. That was set out as an agenda item in the notice of the meeting sent out on 14 April. It was recorded in the minutes of the meeting that the claimant thought that this was the only option, the claimant's mother agreed, but wanted to wait until the government furlough period was over as did the claimant. Mr Hill prepared a report to shareholders. He said that the hotel could not be allowed to reopen and all the staff needed to be made redundant. He referred to it never being an easy decision to take to inform staff, who may have been with the respondent for a long time, that there was no future at the respondent, but the financial information indicated that there was no option. His personal recommendation was that the hotel should not be reopened and that all staff should be made redundant by the end of May.

88. When put to Mr Hill that, whilst there was a discussion regarding a consultation process, this would only have been a formality because the decision to close had been made, he said that that was not true and that they couldn't decide to close without consultation. Employees might have come up with ideas. Indeed, he said he ultimately spoke to 75 of the 81 employees and brought back around 40 items for discussion to the board. He was advising as indicated in his report that consultation should commence as soon as reasonably practicable. Mr John Charles Townend's evidence was that the directors had all agreed to close the hotel - it was their opinion that it should close - subject to consultation with the staff, which was a process they had to follow. It therefore couldn't be something finally decided upon at that point. The board minutes reflected the approval by the board of the resolution set out in similar terms to the agenda item. Before the tribunal, the claimant said that all that had been voted on was the closure of the hotel. In the face of the agenda and board minutes, her evidence cannot be accepted above that of Mr Hill and Mr John Charles Townend.

89. Mr Hill agreed that there had been no discussion as to who would lead the consultation and no timescale agreed upon. Mr John Charles Townend concurred.

The claimant told the tribunal that she assumed that the reference to consultation was to the statutory requirement of which she was aware. The claimant said that she understood that there would be a requirement to consult with employees in this case. She said that she understood the process and what might happen if it was not followed. She also however referred to Mr Hill's email of 21 March advising telling staff they were redundant as soon as possible. When put to her that the intention was that the consultation would be genuine, the claimant said that it would take place, but jobs would be lost at the end.

90. On the evening of that meeting, the claimant sent a message to an employee WhatsApp group. This stated as follows: "Good evening everyone we had a board meeting this morning in which it was decided that the hotel will not reopen at the end of the pandemic I have called as many of you as I can to let you know as with disgraceful haste house of townend are sending out notices to everyone in the post some I am sure will arrive in the morning it is not possible for me to contact all 80 people and whilst this is a horrible way to communicate I didn't want you to open the letter with no warning I am sorry that it has come to this and if anyone has any questions I will do my best to answer them and if I can't I will go away and find the answer please direct all queries to me Sharon can't answer them and it would be unfair to put her under additional pressure everyone of us are in the same situation and I will give all my effort into trying to get a fair deal for everyone I am really sorry to have to give you this news."

91. The claimant was suspended from work the following day by a letter hand-delivered to her. Mr Hill said that he hadn't taken any advice himself on the matter and that it had been handled by either John Charles Townend and/or Mr Whitehead. Mr Townend said he did not know if he had any involvement in it. Mr Hill said that it was felt this was a serious matter and the claimant should be suspended pending investigation. He agreed that the letter suspending her had been prepared on his behalf and sent after advice.

92. Indeed, the letter went out signed by Mr Hill. It said that the claimant must not communicate with any employees unless authorised by Mr Hill. The reason for the suspension was not set out at this stage. There was however reference to an investigation into an allegation of gross misconduct. The claimant responded by email of 27 April asking to know the reason for her suspension. Mr Hill responded 30 April referring to the reference to the allegation of gross misconduct. He agreed that this statement didn't give her full details. Mr Townend said that Mr Hill had not involved him with this issue. He said however that information was coming to him through the House of Townend's HR department, which was passed on to Mr Hill. A lot of it was hearsay. On their enquiry, the claimant's solicitors were told on 6 May that that the claimant's suspension related to the message she had sent to staff.

93. Mr Hill said that he had had to step away from the process because the claimant had made allegations against him. He said that he initially took on the role of investigating the matter as chairman but had to withdraw around 12 May. He had thought he was in a position to be independent enough to investigate. The claimant had indeed now made allegations of discrimination against him. Mr Hill accepted that through her solicitor such suggestions had already been made before 23 April, but he said that they had not been raised officially.

94. In an email to Mr Hill from the claimant of 13 April she had described his behaviour over the last 12 months as at best bullying and at worst discrimination. He still thought that it had been appropriate for him to commence the investigation. He was the best person to look into the matter and it was concentrated on the message she had sent.

95. However, the investigation was then handed over to John Charles Townend from 12 May. It was explored with Mr Hill what investigation had been done. He said he looked at the WhatsApp message and comments that had come into Mr John Charles Townend. Nothing else had been said specifically to him. When put to him that he did nothing, he said that he couldn't recollect. He was leaving it in the hands of contacts at a local level. He said he did not ask anyone what information they had. When put to him that he was waiting on Mr John Charles Townend to provide information on the investigation he (Mr Townend) was carrying out, he said that he thought that would be correct. He agreed that he had not told the claimant that he was no longer involved in any investigation.

96. He put the delay between the suspension and disciplinary hearing down to the pandemic. In particular the wine business had collapsed.

97. When put to him that the claimant's dismissal was pre-determined he said that was not true and no decision was able to be taken until they got evidence. When put to him that the reason for dismissal was ill-health he said that it couldn't be discriminatory for the claimant to decide to send the message.

98. Mr John Charles Townend subsequently wrote to the claimant on 22 May inviting her to attend a disciplinary hearing on 28 May by videoconferencing. He rejected the suggestion that the outcome was pre-determined and that the claimant's message to staff had been seized upon as an opportunity to get rid of her. He said that the ultimate dismissal decision had nothing to do with the claimant's disability or that she couldn't work long hours.

99. He told the tribunal that since he took over the investigation he had been talking to people, but information came in anonymously. He said that he had tried to get hard evidence of what had happened, but couldn't. He had been told that the claimant had said she would do all that she could to stop the hotel closing, but no one was prepared to give him any evidence of that, such that he had to disregard it. The claimant had rejected a suggestion that she had met with staff the following day and he had no evidence to support that allegation. The main evidence was therefore the message from the claimant itself.

100. When put to Mr Townend that he was the wrong person to hear the disciplinary allegation because of his poor relationship with the claimant, he said that he didn't want to do it but that once Mr Hill had to stand back, he was the next senior person. He said that he hadn't considered the possibility of using an external consultant. He rejected the proposition that he had a financial interest saying that the risk the respondent faced from the actuality of a failure to consult with employees dwarfed that. When put that Mr Hill had spoken negatively of the claimant including in writing to him, he said that that was the way Mr Hill was. He said that he was very blunt to everyone. He rejected the suggestion that he had any instruction from Mr Hill to dismiss the claimant. There is no evidence that he had.

101. He agreed that the invitation to the disciplinary hearing was the first time the allegations had been set out. The letter referred to an allegation of gross misconduct. There was, under a section dealing with the background, a summary of the claimant's duties as managing director of the respondent including to exercise reasonable care and skill, not to act in conflict with the company and to maintain the confidentiality of board meetings. Reference was made to the financial difficulties facing the hotel. It was said that the claimant had sought legal advice about how to make redundancies due to the coronavirus lockdown. This advice set out in terms the obligation to consult with a reference to a severe penalty if there was a failure. The message sent to staff following the 22 April board meeting was then set out.

102. It was then alleged that this message constituted gross misconduct for 4 reasons. Firstly, the claimant took it upon herself to inform employees about the situation despite having already accepted that she was not the appropriate person to undertake any consultation process. In informing employees of the potential redundancy situation in this way, it was alleged, she had brought the company into serious disrepute, was seriously negligent and had acted in serious breach of confidence. Secondly, she misrepresented to employees that the decision had already been taken not to reopen the hotel. This was untrue as the claimant was aware it was a proposal pending consultation. Thirdly, the claimant stated to employees that she would put all her effort into trying to get a fair deal for everyone

thereby implying that the company would fail to treat employees fairly. Fourthly, stating that the company was acting in disgraceful haste was a further misrepresentation given that the company intended a fair and lengthy consultation process.

103. The claimant was provided with a copy of the WhatsApp message. The claimant supplied on 1 June an email said to be a statement made by Sharon Crawford, whose responsibilities included wages administration for the respondent. This was the claimant's note of a discussion she said she had with Ms Crawford. Ms Crawford was recorded as saying that, on 22 April, Mr Whitehead telephoned to say that there had been a board meeting and that they needed to write to all staff, therefore asking if she would be able to provide him with names and addresses and could he send someone round to collect some headed notepaper. She said that she would do this, however the paper was in the conference room and she didn't have a key, so that she would wait until the claimant arrived and would let him know as soon as she had some. She said that the claimant arrived and she explained to the claimant that Mr Whitehead had called and what he had said. A further email from Ms Crawford to Mr Whitehead attached the personnel details and said that she would let him know when the claimant was there and she could get some letterhead. There was no reference here to Ms Crawford having been told of forthcoming redundancies by Mr Whitehead as the claimant now asserts. If the claimant had been told this by Ms Crawford, she would have included this in her email. Similarly, the tribunal concludes that Mr Whitehead did not say to Ms Crawford that there had been a board meeting and that the claimant wouldn't mind him telling her about it.

104. Minutes were taken of the disciplinary meeting (conducted by Zoom) by Hannah Christmas, HR manager. The claimant attended accompanied by Mr Richard Corbett. Mr Townend accepted that this was not a verbatim record. He could not, however, comment on the claimant's queries regarding the minutes which she raised at the subsequent appeal. He said that it was very difficult to get anything agreed with the claimant. He said that he was surprised if she had read out a mitigation statement as if she had done it would not have been omitted from the minutes. He could not recall one.

105. The claimant's position was that the legal advice she took was in respect redundancies before lockdown due to the business dropping through the floor. The claimant said that the WhatsApp message wasn't an indication of her taking part in any consultation process (her having previously accepted that she was not the appropriate person). Nevertheless, she thought she would be involved in any consultation. As managing director, she thought that it was her responsibility. The claimant said that she had called fewer than 8 employees and she believed that the WhatsApp group to which the message had been sent had around 27/28

members. She said that she had no other contact with employees to whom the message was sent. When asked if she accepted that this was a bad way to inform employees of the situation, she agreed that it was and even pointed out that she said in her message that it was a horrible way to communicate. As regards the board meeting, she accepted that they had discussed that the hotel would not reopen and the consultation process wasn't discussed. She accepted consultation was necessary regardless. When her brother said that no decision had been made, she said that the decision had been made and consultation should be more honest instead of giving employees false hope. She confirmed that she was aware of the legal implications of a failure to follow the consultation procedures. She said that she had no reason to believe that a consultation process wouldn't have been carried out. She accepted that she had told employees that the hotel would not reopen but never said that there would be no consultation. Mr Corbett suggested the claimant had misworded her message and if she had referred to a "proposal" to close the hotel then that would have made all the difference.

106. As regards the emails between Mr Whitehead and Ms Crawford, she said that she didn't think the WhatsApp message was a breach as Mr Whitehead had already told Ms Crawford. She said that her motivation was to do the right thing by the employees as they didn't know who Derek Hill was. She said that Ms Crawford had confirmed to her that she knew redundancy letters were going out that night.

107. The claimant said that she tried to reassure employees that they would be treated fairly. She said a redundancy letter was not nice to receive.

108. As regards the reference to acting in disgraceful haste, she said that "disgrace" was the wrong word to use she should have used another word. She should not have referred to the haste being "unnecessary".

109. Mr John Charles Townend wrote to the claimant on 8 June 2020 informing her of the termination of her employment on the grounds of gross misconduct. He referred to her acceptance that she had sent the message and to the number of people contacted. He said that she had last sought advice on redundancies a month previously and had stepped back and left it for Mr Hill to deal with. He said that she knew as an employee she would have a conflict of interest undertaking the consultation herself. When questioned as to what this conflict of interest might be and the lack of reference to it in the solicitors' advice, Mr Townend said that she had accepted that she would not be involved and had told the solicitors on 25 March that she would step back.

110. He said that the claimant had said she had sent the message because after the board meeting she had seen Ms Crawford to be upset and had discovered that redundancy letters would be going out. He referred to the statement the claimant had made about her conversation with Ms Crawford. He said that she was aware that he had asked Ms Crawford to attend the disciplinary hearing at the claimant's request which Ms Crawford had refused. He said that he had contacted her following the disciplinary hearing to see whether she agreed with the statement which the claimant read out and she had confirmed that she did not. The account as set out in the above-mentioned email was then set out. He said that he had asked Mr Whitehead for his position and Mr Whitehead said that he had not mentioned anything to do with possible redundancies or the potential closure of the hotel. Mr Townend did not accept that Mr Whitehead had told Ms Crawford about the redundancy proposal or that the claimant reasonably believed that he had.

111. Given the content of the message, he did not believe that the claimant would have thought that the board or the respondent's solicitors would have approved the method or content of the communication. He did not accept that she viewed that she was acting in a way that she thought was permissible or because she reasonably believed the information about redundancies had already been discussed. Whilst he accepted that, as managing director, the claimant wanted to let employees know directly and that in some ways mitigated the decision to send a message, the way in which she did it was a serious breach. He did not accept that Mr Whitehead had committed a similar breach or that she reasonably believed that he had done so.

112. She had told employees that the decision to close was already taken, essentially telling them that they had lost their jobs and that there had been no consultation. He did not understand her suggestion that her message did not give that impression.

113. The suggestion in her message was also that the respondent would not treat employees fairly or give them a fair deal without her involvement. He believed that is how the message would have been interpreted. The reference to "disgraceful haste" misrepresented the position and she had accepted that the word "disgraceful" should not have been used. She had stated at the hearing that she was referring to House of Townend, but that was not accepted by Mr John Charles Townend.

114. He said that he had taken into account the claimant's length of service and the fact that she was acting out of a desire to help the employees. For that reason, he had disregarded the third allegation regarding the reference to obtaining a fair deal. He had also take into account that she was understandably upset about the

proposal which may have clouded her judgement. He accepted and appreciated her apologies and regret over certain things that were said. Nevertheless, the communication was completely inappropriate as he believed the claimant knew. As well as damaging the respondent's reputation, it had the potential to cause it great loss if employees sought to rely on the message as proof of a failure to consult in any future proceedings. Had he just been dealing with the sending of the message, he would have been inclined to opt for a lower sanction, but looking at the overall content, including telling employees the decision had already been taken and the reference to "disgraceful haste", it was misleading, seriously negligent and a serious breach of confidence amounting overall to an act of gross misconduct. He therefore decided to terminate the claimant's employment without notice.

115. The claimant was given the right to appeal in writing to Mr David Archibald, Sales Director in the House of Townend, by 16 June.

116. Mr Hill said he took no involvement in the appeal process. There is no evidence of his involvement at either the disciplinary or appeal stages.

117. The claimant emailed Mr Townend on 10 June confirming her wish to appeal, but saying that it was inappropriate to appeal to Mr Archibald, who was his subordinate. She requested the appointment of an independent external chair. He responded that day saying that he viewed Mr Archibald as sufficiently independent, experienced and removed from the process to date to be able to deal with her appeal independently and without any obligation to reach a particular conclusion. She replied on 11 June disputing this. Mr Townend responded that he was no longer involved in the process. The claimant also contacted Mr Hill in this regard who responded in similar terms.

118. Mr Archibald wrote to the claimant scheduling an appeal hearing for 1 July via Zoom. He emailed her on 15 June saying that there was no legal requirement for an employer to engage an external consultant, but that particularly a small employer must do everything it can to ensure a fair appeal, always bearing in mind what is realistically possible. He said that he sat on the board of the House of Townend and took his duties as director seriously. He said that he was independent and would make his own decision.

119. The claimant then provided her grounds of appeal to him by email of 16 June. These reiterated that he was not an appropriate person to hear the appeal. She said that she had not accepted there was a conflict of interest in her undertaking the consultation process herself. She said that she did not present any statement

of Sharon Crawford but rather gave her recollection of her conversation with Ms Crawford. Her mitigation submission was not referred to at the hearing. She questioned the fairness of the process and said that the outcome was harsh, particularly when other directors had been deemed to be negligent without any disciplinary action taken against them. She then made a number of comments on the disciplinary hearing minutes.

120. The claimant attended the hearing accompanied again by Mr Corbett. Ms Christmas was in attendance again to take a note. The claimant was given an opportunity to explain her grounds of appeal. Mr Archibald asked some questions for clarification, but largely adopted a position of listening to the claimant's arguments rather than engaging in them.

121. Having considered his decision, Mr Archibald wrote to the claimant by letter of 9 July 2020 (sent by email) rejecting her appeal. He said that he considered himself to be the most appropriate person in the group to deal with the appeal. He said that he now had the mitigation statement and had taken that into account. He accepted that, as regards Sharon Crawford, there were two separate 'statements'. One was the claimant's recollection of the discussion she had with Sharon and one was Sharon's statement on her discussions after the board meeting. He accepted that and had taken everything into account. He said that there had been no requirement to have an earlier investigation meeting with the claimant. All relevant correspondence had been disclosed to her. All of the directors at the 22 April board meeting passed the proposal to start a redundancy consultation. He saw no issue with the process starting as soon as possible after that. He did not accept that she thought she was doing the consultation herself. If she had been unsure, she could have asked. Regardless of what she thought, however, it did not mean that it was right or justified to send the message she did. He did not agree that the matters of conduct of other directors raised were comparable incidents. Nor were they entirely accurate. He appreciated that she had said in her mitigation document that the message was an error of judgement. However, the content was so serious and with potentially serious ramifications that dismissal was justified. He did not feel there was any difference whether the message had been sent to all staff or the number to whom it was sent. He did not accept that the claimant's dismissal was in order to avoid redundancy and notice pay costs. If she had not sent the message that she had, then she would have been dismissed on the grounds of redundancy along with the other employees and received her entitlements. The reason she was dismissed was clearly because of the seriousness of the message and for no other reason.

Applicable law

122. In a claim of unfair dismissal, it is for the employer to show the reason for dismissal and that it was a potentially fair reason. One such potentially fair reason

for dismissal is a reason related to conduct under Section 98(2)(b) of the Employment Rights Act 1996. This is the reason relied upon by the respondent.

123. If the respondent shows a potentially fair reason for dismissal, the tribunal shall determine whether dismissal was fair or unfair in accordance with Section 98(4) of the ERA, which provides:-

> *" [Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*
> *depends upon whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
> *shall be determined in accordance with equity and the substantial merits of the case".*

124. Classically in cases of misconduct, a tribunal will determine whether the employer genuinely believed in the employee's guilt of misconduct and whether it had reasonable grounds after reasonable investigation for such belief. The burden of proof is neutral in this regard.

125. The tribunal must not substitute its own view as to what sanction it would have imposed in particular circumstances. The tribunal has to determine whether the employer's decision to dismiss the employee fell within a band of reasonable responses that a reasonable employer in these circumstances might have adopted. It is recognised that this test applies both to the decision to dismiss and to the procedure by which that decision is reached.

126. A dismissal, however, may be unfair if there has been a breach of procedure which the tribunal considers as sufficient to render the decision to dismiss unreasonable. The tribunal must have regard to the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015. The Code provides that, where practicable, different people should carry out the investigation and disciplinary hearing. A decision to dismiss should then only be taken by a manager who has the authority to do so. Employees should be provided with an opportunity to appeal and any appeal should be dealt with impartially and, wherever possible, by a manager who has not previously been involved in the case.

127. ACAS have issued Guidance which compliments the Code. It provides that wherever possible there should be provision for the appeal to be heard by someone senior in authority to the person who took the decision to dismiss and, if possible, someone who was not involved in the original meeting or decision. In smaller

organisations, even if there is no more senior manager available, another manager should, if possible, hear the appeal. If this is not possible consideration should be given to whether, for example, the business owner or, if relevant, any board of trustees should hear the appeal. Whoever hears the appeal should consider it impartially. In some instances, employers may wish to bring in external consultants to carry out an investigation.

128. Section 98(4) recognises also that allowances must be made for the size and administrative resources of the employer. Natural justice requires that the person conducting the proceedings should not have a direct interest in the outcome of the proceedings and should not give any appearance of bias. To that end, again, the processes of investigation, decision-making and appeal ought to be separated wherever possible. Nevertheless, it is recognised that the requirement that there should be no possibility of bias cannot be applied in absolute terms in the employment context and it may be unreasonable, particularly in smaller organisations, to expect different stages of investigation and decision-making to be conducted by different individuals or to expect those individuals to be unaffected by daily contact with each other. In the case of **Haddow and ors v Inner London Education Authority 1979 ICR 202 EAT** it was said that: “In the end the only thing that matters is whether the disciplinary tribunal acted fairly and justly”.

129. If there is such procedural defect sufficient to render dismissal unfair, the tribunal must then, pursuant to the case of **Polkey v A E Dayton Services Ltd [1998] ICR 142**, determine whether and, if so, to want degree of likelihood the employee would still have been fairly dismissed in any event had a proper procedure been followed. If there was a 100% chance that the employee would have been dismissed fairly in any event had a fair procedure been followed, then such reduction may be made to any compensatory award. The principle established in the case of **Polkey** applies widely and indeed beyond purely procedural defects.

130. In addition, the tribunal shall reduce any compensation to the extent it is just and equitable to do so with reference to any blameworthy conduct of the claimant and its contribution to her dismissal – ERA Section 123(6).

131. Under Section 122(2) of the ERA any basic award may also be reduced when it is just and equitable to do so on the ground of any kind conduct on the employee’s part that occurred prior to the dismissal.

132. The assessment of conduct is, on these questions of compensation, one for the tribunal rather than one based upon any reasonable belief of the employer.

133. Similarly, in the claimant's complaint seeking damages for breach of contract, the tribunal must determine whether the claimant was guilty of an act of gross misconduct.

134. In the Equality Act 2010 discrimination arising from disability is defined in Section 15 which provides:-

> *"(1) A person (A) discriminates against a disabled person (B) if –*
> *A treats B unfavourably because of something arising in consequence of B's disability, and*
> *A cannot show that treatment is a proportionate means of achieving a legitimate aim.*
>
> *(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability"*

As with all the claims of discrimination, the tribunal bears in mind the burden of proof provisions at Section 136(2) as follows:-

> *"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravenes the provision concerned, the court must hold that the contravention occurred.*
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision".*

In **Igen v Wong [2005] ICR 935** guidance was given on the operation of the burden of proof provisions and the first stage of showing facts from which an inference of discrimination could reasonably be made. The Supreme Court in **Hewage v Grampian Health Board [2012] UKSC 37** made clear, however, that 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. However, they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence as to the employer's reason (otherwise the second stage, where the burden has shifted to the employer) one way or the other.

135. The tribunal must determine whether the reason for any unfavourable treatment was something arising in consequence of the claimant's disability – this involves an objective question in respect of whether "the something" arises from

the disability which is not dependent on the thought processes of the alleged discriminator. Lack of knowledge that a known disability caused the "something" in response to which the employer subjected the employee to unfavourable treatment provides the employer with no defence – see **City of York Council v Grosset 2018 ICR 1492 CA**.

136. Any unfavourable treatment must be shown by the claimant to be as a result of something arising in consequence of the claimant's disability, not the claimant's disability itself. The EHRC Code at paragraph 5.9 states that the consequences of a disability "include anything which is the result, effect or outcome of a disabled person's disability". It has been held that tribunals might enquire as to causation as a two-stage process, albeit in either order. The first is that the disability had the consequence of "something". The second is that the claimant was treated unfavourably because of that "something". In **Pnaiser v NHS England 2016 IRLR 170 EAT** it was said that the tribunal should focus on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious thought process of that person, but keep in mind that the actual motive in acting as the discriminator did is irrelevant.

137. Disability needs only be an effective cause of unfavourable treatment - see **Hall v Chief Constable of West Yorkshire Police 2015 IRLR 893**. The claimant need only establish some kind of connection between his or her disability and the unfavourable treatment. In that case sickness absence was as a result of stress and a heart condition. A tribunal had held that the cause of the unfavourable treatment was the police force's genuine but erroneous belief that the claimant was falsely claiming to be sick. The EAT considered nevertheless that disability had a significant influence on or was an effective cause of the unfavourable treatment. On the other hand, any connection that is not an operative causal influence on the mind of the discriminator will not be sufficient to satisfy the test of causation. If an employee's disability-related absence, for instance, merely provided the circumstances in which the employer identified a genuine non-discriminatory reason for dismissal, then the requisite causative link between the unfavourable treatment and the disability would be lacking. The authorities are clear that a claimant can succeed even where there is more than one reason for the unfavourable treatment. As per Simler J in the Pnaiser case: "The "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason or cause for it". Further, there may be more than one link in a chain of consequences.

138. The complaint of harassment is brought pursuant to Section 26 of the Equality Act 2010 which states:

"(1) A person (A) harasses another (B) if -

A engages in unwanted conduct related to a relevant protected characteristic, and

the conduct has the purpose or effect of—

violating B's dignity, or

creating an intimidating, hostile, degrading, humiliating or offensive environment for B….

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

the perception of B;

the other circumstances of the case;

whether it is reasonable for the conduct to have that effect."

139. Harassment will be unlawful if the conduct had either the purpose or the effect of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. A claim based on "purpose" requires an analysis of the alleged harasser's motive or intention. This may, in turn, require the tribunal to draw inferences as to what the true motive or intent actually was. The person against whom the accusation is made is unlikely to simply admit to an unlawful purpose. In such cases, the burden of proof may shift from accuser to accused.

140. Where the claimant simply relies on the "effect" of the conduct in question, the perpetrator's motive or intention – which could be entirely innocent – is irrelevant. The test in this regard has, however, both subjective and objective elements to it. The assessment requires the tribunal to consider the effect of the conduct from the complainant's point of view. It must also ask, however, whether it was reasonable of the complainant to consider that conduct had that requisite effect. The fact that the claimant is peculiarly sensitive to the treatment accorded her does not necessarily mean that harassment will be shown to exist.

141. The duty to make reasonable adjustments arises under Section 20 of the 2010 Act which provides as follows (with a "relevant matter" including a disabled person's employment and A being the party subject to the duty):-

> *"(3) The first requirement is a requirement where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*

142. The Tribunal must identify the provision, criterion or practice applied, the non-disabled comparators and the nature and extent of the substantial disadvantage suffered by the Claimant. 'Substantial' in this context means more than minor or trivial.

143. The case of **Wilcox –v- Birmingham Cab Services Ltd EAT/0293/10/DM** clarifies that for an employer to be under a duty to make reasonable adjustments he must know (actually or constructively) both firstly that the employee is disabled and secondly that he or she is disadvantaged by the disability in the way anticipated by the statutory provisions.

144. Otherwise in terms of reasonable adjustments there are a significant number of factors to which regard must be had which, as well as the employer's size and resources, will include the extent to which taking the step would prevent the effect in relation to which the duty is imposed. It is unlikely to be reasonable for an employer to have to make an adjustment involving little benefit to a disabled person.

145. In the case of **The Royal Bank of Scotland –v- Ashton UKEAT/0542/09** Langstaff J made it clear that the predecessor disability legislation when it deals with reasonable adjustments is concerned with outcomes not with assessing whether those outcomes have been reached by a particular process, or whether that process is reasonable or unreasonable. The focus is to be upon the practical result of the measures which can be taken. Reference was made to Elias J in the case of **Spence –v- Intype Libra Ltd UKEAT/0617/06** where he said: *"The duty is not an end in itself but is intended to shield the employee from the substantial disadvantage that would otherwise arise. The carrying out of an assessment or the obtaining of a medical report does not of itself mitigate, prevent or shield the employee from anything. It will make the employer better informed as to what steps, if any, will have that effect, but of itself it achieves nothing."* Pursuant, however, to **Leeds Teaching Hospital NHS Trust v Foster UKEAT/0552/10**, there only needs to be a prospect that the adjustment would alleviate the substantial disadvantage, not a 'good' or 'real' prospect.

146. If the duty arises it is to take such steps as is reasonable in all the circumstances of the case for the respondent to have to take in order to prevent the PCP/physical feature/lack of auxiliary aid creating the substantial disadvantage for the claimant. This is an objective test where the tribunal can indeed substitute its own view of reasonableness for that of the employer. It is also possible for an employer to fulfil its duty without even realising that it is subject to it or that the steps it is taking are the application of a reasonable adjustment at all.

147. Pursuant to section 27 of the Equality Act 2010:

> *"(1) A person (A) victimises another person (B) if A subjects B to a detriment because –*
>
> *(a) B does a protected act; ….*

Sub-paragraph (2) of this section provides:

> *(2) Each of the following is a protected act –*
>
> *…. (d) making an allegation (whether or not express) that A or another person has contravened this Act*

148. To succeed in a complaint of victimisation, the detriment must be "because" of the protected act.

149. In the case of **Chief Constable of West Yorkshire Police –v- Khan [2001] 1 WLR** Lord Nicholls put forward that the "by reason that" element *"does not raise a question of causation as that expression is usually understood. Causation is a slippery word, but normally it is used to describe a legal exercise. From the many events leading up to the crucial happening, the court selects one or more of them which the law regards as causative of the happening. Sometimes the court may look for the "operative" cause, or the "effective" cause. Sometimes it may apply a "but for" approach. For the reasons I sought to explain in* ***Nagarajan –v- London Regional Transport****, a causation exercise of this type is not required either by section 1(1)(a) or section 2. The phrases "on racial grounds" and "by reason that" denote a different exercise: Why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact."*

150. It is clear from the authorities that a person claiming victimisation need not show that the detrimental treatment was meted out solely by reason of the protected act. If protected acts have a "significant influence" on the employer's decision making,

discrimination would be made out. It is further clear from authorities, including that of **Igen Limited –v- Wong [2005] ICR 931**, that for an influence to be "significant" it does not have to be of great importance. A significant influence is rather *"an influence which is more than trivial. We find it hard to believe that the principle of equal treatment would be breached by the merely trivial."*

151. The time limit in complaints of discrimination is provided for at section 123 of the Equality Act 2010. It is a period of three months starting with the date of the act complained of, but also "such other period as the employment tribunal thinks just and equitable". Conduct extending over a period is to be treated as done at the end of the period. A failure to comply with a duty to make reasonable adjustments is an omission rather than an act. A failure to do something is to be treated as occurring when the person in question decided on it. This may be when he does an act inconsistent with doing it. Alternatively, if there is no inconsistent act, time runs from the expiry of the period in which the person might reasonably have been expected to implement the adjustment.

152. The tribunal reminds itself that in the case of **Robertson v Bexley Community Centre [2003] IRLR 434** it was stated there was no presumption that a tribunal should exercise its discretion to extend time and in fact the exercise of the discretion would be the exception rather than the rule.

153. The factors to be taken into account when deciding whether to exercise the discretion to extend time in discrimination claims include those which are set out in the Limitation Act 1980, section 33(3). Such an approach was endorsed by the Employment Appeal Tribunal in the case of **British Coal Corporation v Keeble and Others [1997] IRLR 336**. The ultimate consideration is the balance of prejudice, but other relevant matters include the length of the delay and the reasons for it; whether the delay is likely to affect the cogency of the evidence and the extent to which the other party has co-operated with any requests for information. The claimant maintains that there were continuing acts of discrimination culminating in her dismissal and that therefore all of her discrimination complaints were brought in time.

154. Applying the legal principles to the facts as found, the tribunal reaches the conclusions set out below.

Conclusions

155. Save where noted to the contrary, the discrimination complaints are brought, in the alternative, as ones of unfavourable treatment arising from disability, disability related harassment and victimisation. There is then a freestanding reasonable adjustments complaint to consider. The tribunal has ensured that it has considered the further particulars of the complaints provided by the claimant. The claims were largely discernible without the additional narrative, but there was within them a

clearer identification, in particular, of the alleged examples of Mr Hill placing time pressures on the claimant and failing to provide responses to requests for information.

156. The claims in this case have been exhaustively pleaded – a not uncommon approach, but one which necessitates the tribunal standing back and viewing the overall picture in case its view is obscured by an analysis of a multitude of detailed individual complaints. Whilst it deals with each complaint individually – as it must – the tribunal has ensured that it has revisited its conclusions by taking a broader view of the allegations in case that is more illuminative of a pattern of behaviour. On the other hand, the claimant has been legally advised throughout and has chosen to plead her case in a particular way. It is for the tribunal to determine that pleaded case and not to consider the allegations on any alternative basis different from the case the respondent has come able and prepared to answer. The conclusions reached as to liability are then subject to any issues as to time limits, which can only be determined after considering all of the discrimination complaints.

157. The complaints of victimisation are dependent upon the claimant's email of 13 May 2019 amounting to a protected act which at subsection 27(1)(d) of the Equality Act covers allegations of contravention of that Act whether or not expressly made. Within the email the claimant asserts that she is protected by the Equality Act due to her health condition. She then refers to her wishing to engage a sales and marketing manager, this request being met by Mr Hill seeking to substantially reduce her hours and pay, but that it continues to be her wish for an additional resource. The tribunal considers that within this the claimant, albeit not expressly, is raising what she considered to be a request for a reasonable adjustment and that thus far Mr Hill had not reacted in a way which would alleviate the disadvantage caused by her health condition. On balance, there is within it an allegation of a contravention of the Act. There is no suggestion of bad faith on the claimant's part. The email constitutes a protected act.

158. The email covers other issues, including requests by Mr Hill for information. There is no evidence that Mr Hill particularly changed his approach to the claimant and her issues or even indeed picked up on, at the time, that the claimant was making an allegation of unlawful discrimination. The claimant's case is indeed that Mr Hill's attitude towards her changed as from their individual meeting on 12 March 2019 (after the board meeting earlier that day) when the claimant's health was discussed and Mr Hill drew conclusions from his perceptions of the claimant's health and the limitations on her. She thereafter saw the adverse treatment of her as a continuation. The protected act, on her own case, did not constitute a sea change in his attitude, nor was that particularly pursued with him in cross examination. When considering the individual allegations of victimisation, the tribunal has regard to those factors.

Mr Derek Hill suggesting that the claimant reduce her hours to 14 hours per week (s.15 only)

159. The claimant has a fundamental difficulty in this and all of the pleaded complaints of discrimination arising from disability in that the something arising out of disability which is said to be the reason for the alleged unfavourable treatment is the claimant's inability to work 70 – 80 hours per week. The tribunal has to conclude that was not in Mr Hill's mind at all. The claimant never referred on 12 March 2019 to those being her habitual hours of work or that she needed to work those hours to fulfil her responsibilities and for the hotel to operate effectively. The tribunal can accept that the claimant from time to time did work such hours, particularly given the 24/7 nature of the hotel business, particularly one which made money from its restaurant and events as well as room occupancy. She did not tell Mr Hill, however, that she worked those hours. She was seeking a reduction in hours from what she indicated were in her view excessive hours, but without any indication as to what those hours might be. It did not occur to Mr Hill that those were the sort of hours the claimant was working and he certainly did not have in his mind that there would be a consequence for the business if they were not worked. The claimant said, in her email of 13 May 2019 to Mr Hill, that working less than 80 hours a week would be beneficial for anyone, let alone someone with her health issues. There is no evidence that, at that later stage even, Mr Hill picked up on this reference or thought for a moment that those were the hours which the claimant was working or that any managing director would need to work to properly serve the hotel.

160. Mr Hill's suggestion, that the claimant reduced her hours to 14 hours per week did amount to an act of unfavourable treatment. This was even in circumstances where it was couched in language which suggested that this was a "possibility" and he was talking about a reduction to "around" those hours. His suggestion was in the context of the claimant seeking a reduction in hours and him suggesting a very significantly reduced number of hours with a pro rata salary reduction without engaging with the claimant in a discussion as to exactly what she could and couldn't do in terms of her duties and a working hours commitment.

161. The suggestion arose out of the view he took as to her likely fitness to work, albeit also arising out of his genuine view that urgent action was needed to improve the respondent's financial performance. He believed that the respondent's wage costs were higher than expected levels in the market for such a hotel in the respondent's location and that, if an additional resource was required to help turn the hotel around, as indeed was the claimant's own position, this had to be funded. He considered the most obvious cost saving would be in the claimant reducing her commitment and as a consequence her remuneration. However, it did not arise out of any inability to work 70 – 80 hours per week. This is the basis upon which the claimant's section 15 complaint is pleaded. It is not permissible for the tribunal to seek to determine the complaint on an alternative basis. The complaint must therefore fail.

Placing time pressures on her to agree to changes in her role and the future of the respondent's hotel

Mr Hill's email of 13 March 2019 in response to the claimant's request for more normal working hours.

162. The allegation is focused on Mr Hill placing time pressures on the claimant. This communication recounted Mr Hill's visit the previous day and his observations. It contained within it a tone of urgency in terms of turning around the respondent's performance. One suggestion was the bringing in of a new operations director which could be achieved if the claimant was able to manage on a much reduced salary. The message ended with the reference to Mr Hill's need to "generate action to tackle the current problems." Certainly, the tribunal can conclude that pressure was being placed upon the claimant with regard to a restructuring at the hotel. This was also certainly unwanted. She might have asked for assistance and additional resources, but not for the appointment of a new operations director and not for a reduction in hours/salary of the level Mr Hill was suggesting.

163. Was then his conduct related to the claimant's disability? The tribunal concludes that it was. The communication makes number of references to Mr Hill's surprise at the claimant's poor state of health, to her having "visibly wilted with the pressures of the day", to encouragement that the claimant gave serious thought to what was best for her with reference to a desire that she did not soldier on, leading to her having a total relapse or permanent impairment. There was certainly a suggestion that retirement be considered, albeit with Mr Hill seeking to stress that he did not wish to "get you out". The suggestion of reduced hours was related to Mr Hill's belief that the claimant was struggling and would benefit from working less, with the benefit for the respondent being a reduction in salary which would fund a new operations director.

164. The tribunal does not conclude that Mr Hill's purpose was to create the necessary offensive environment. His purpose was to improve the performance of the hotel in circumstances where the claimant had said that she did not know how to achieve this. That was his overriding intention with a lesser regard for how this might affect the claimant on a personal level, albeit out of a lack of thought and a direct but at times clumsy and colourful communication style. He did not seek to cause the claimant distress. He genuinely hoped that this proposal would be seen positively by her and provide a solution for the respondent and the claimant individually at the same time. However, this communication certainly had the proscribed effect and amounts to an act of disability-related harassment. The claimant was genuinely upset and offended by it and such reaction was not objectively unreasonable. For the reasons already explained (arising out of how the complaint is pleaded) this does not amount separately an act of unfavourable treatment arising from disability. It also predates any protected act in the context of the potential victimisation complaint.

19 March 2019, only 6 days later Mr Hill sent a proposal by email to the claimant to advertise for a director designate, which contained large parts of the claimant's role, which was contrary to the request for sales and marketing assistance by the claimant.

165. Again, the tribunal can only view this communication as a form of further pressure. He suggested visiting the claimant the following week. Mr Hill was clearly seeking to firm up on his own proposal of appointing an operations director designate, seeking to put some meat onto such role including proposing a salary it would attract with the anticipation that the candidate would be appointed to the board within 9 months. For the reasons just explained, such communication again has to be seen as unwanted. The claimant was not seeking the appointment of a director designate and her own proposal focussing on bringing in sales and marketing expertise was being ignored. It related to her disability in that it was part of the solution, as Mr Hill saw it, to benefit the claimant in terms of her health (and also the hotel). Again, Mr Hill's purpose was not to cause distress/offence but that was its effect and the communication constitutes a further aspect of unlawful harassment, but not, for the same reasons recounted, discrimination arising from disability or victimisation.

27 March email from Mr Hill to the claimant.

166. Such communication constituted further pressure with Mr Hill expressing his concern (arising out of his perception of her health), trying to reassure the claimant, but then seeking to encourage the claimant to confide in others outside of the "family/work situation". The claimant was informed of the date of the next board meeting on 9 May. Again, for the reasons set out in respect of the earlier correspondence, this amounted to unwanted conduct related to disability with the proscribed effect. The communication amounts to a further act of harassment, but again not to discrimination arising from disability or victimisation.

4 April 2019 email Mr Hill was pushing the claimant to agree a salary and hours reduction describing it as a "win win".

167. This message amounts to a continuation of pressure in a similar manner as the preceding communications. Leaving things as they are is said to be a non-starter. As with the other communications, the constituent elements of unlawful harassment are present (Mr Hill refers to giving the claimant's health a boost) including the proscribed effect on the claimant. No finding of discrimination arising from disability or victimisation, however, can be made.

23/24 April 2019 email and document from Mr Hill to the claimant, including a comment "if an outside party came along with an offer any sane person would conclude it was the correct course of action".

168. The nature of this communication, not least the quote specifically relied upon, is quite different to the preceding emails. Mr Hill's focus is on the options for the respondent going forward against a background of declining profitability. One of those options involved the sale of the hotel. Mr Hill continued that, if an outside party came along with an offer of say £2.8 or £3 million, then such offer could not sensibly be refused. This comment related to Mr Hill's view as to the value of the hotel and the difficulties likely to be faced in turning around its performance. It was not at all related to the claimant's disability. No finding of discrimination arising from disability or victimisation, however, can be made for reasons already referred to.

25 April 2019 email applying pressure to the claimant regarding budgetary changes even though Mr Hill is aware the claimant is on holiday.

169. The claimant was sent, whilst on holiday, this communication raising questions regarding the respondent's budget. The tribunal would note that just because the email was sent, did not mean that an immediate reply was required. Fundamentally, Mr Hill was working on the budget with Mr Whitehead and raised a number of questions for the claimant to answer as they arose. The claimant may reasonably have perceived this as pressuring, but it was not in any sense whatsoever related to her disability, but rather Mr Hill wishing to have the budgetary information. It does not therefore constitute harassment or indeed, again, for reasons already referred to, discrimination arising from disability or victimisation.

1 May 2019 email from Mr Hill referring to areas causing the claimant stress and depression and that she could no longer carry out.

170. This further message does constitute an act of harassment applying the content of the message to the statutory test. It is noted that Mr Hill does not say that the claimant is suffering from depression, but asks her to list any particular responsibilities that caused stress and depression. Nevertheless, this was part of a continuation of his effort to get the claimant to agree to a reduced role and, with Mr Hill indicating that areas of work might be causing the claimant depression, the message amounts to further unwanted conduct. It again relates to the claimant's disability as with the earlier messages and with the additional expressed belief of Mr Hill, without any evidence and presumably on the basis of an assumption regarding how the claimant's disability might have affected her, that there would be tasks which might cause her to feel depressed. Again, the tribunal does not consider Mr Hill's purpose to be to cause the claimant upset. The message is a further example of Mr Hill's general lack of sensitivity and appreciation in correspondence. It did, however, have the proscribed effect to amount to a further act of harassment, albeit again not discrimination arising from disability or an act of victimisation.

2 May 2019 email the claimant requested Mr Hill to stop pressurising her to make decisions regarding her future and the hotel's to meet his timetable.

171. This was the claimant's email stating an unwillingness to be pressured – not a communication from Mr Hill. No complaint can succeed based on it.

13 May 2019 email from Mr Hill to the claimant.

172. This was a further chasing email from Mr Hill, where he was stating that he would wish to discuss her progress in a number of outstanding matters at a forthcoming visit. He referred again to the claimant identifying tasks she wished to be responsible for rather than those "that adversely impact upon your stress and depression." Here Mr Hill was making an express statement that the claimant suffered from depression in an email which was reasonably viewed as further pressure to respond. It was unwanted conduct which again related to the claimant's disability – Mr Hill's belief that the claimant was depressed by reason of her physical impairment. In common with the other allegations, the tribunal cannot conclude that it was his purpose to cause upset, but that was its effect. The claimant's complaint of harassment in respect of this communication succeeds. It predated, however, by some hours the protected act relied upon in the victimisation complaint and, for the reasons already referred to, did not constitute unfavourable treatment arising from disability - the comment was not made by him arising out of an inability to work 70 – 80 hours per week.

Meeting with Beals land director at the hotel on 10 June

173. Mr Hill met with a director of the property developers, Beals, for lunch at the hotel. The claimant's concern was that this was indiscreet and might promote rumours that Mr Hill was talking to them because of a prospective sale. The tribunal has no basis whatsoever for concluding that Mr Hill arranged the lunch and acted in this manner in any sense related to the claimant's disability. He regarded this as a routine business lunch and had no ulterior motive the tribunal has been able to discern. It cannot be seen as an act of harassment or discrimination arising from disability. The tribunal has no basis from which it could reasonably conclude that the lunch was arranged as a reaction to the claimant's earlier protected act, neither specifically nor with reference to the general considerations set out above in respect of Mr Hill's lack of recognition of the communication as an accusation of discrimination and there being no evidence of a change in his behaviour towards the claimant as a result of it.

Email of 24 July from Mr Hill to the claimant and Mr Whitehead regarding the creation of a data room. Chased up by Mr Hill on 10 August 2019 when the claimant was on holiday.

174. The communication stresses the need to make progress in the creation of a data room for possible purchasers to view. It might, therefore, be regarded as the exertion of further pressure on the claimant to provide information, albeit with the closing line that Mr Whitehead would be able to assist. There are no facts from which however the tribunal could conclude that this communication was related to

the claimant's disability. The tribunal finds that it was made by Mr Hill because he genuinely wished to progress the matter. It certainly did not arise out of the claimant's inability to work 70 – 80 hours per week and there is no basis upon which the tribunal could conclude, as with the previous allegation, that the claimant's protected act had any influence whatsoever on Mr Hill sending this message.

Email of 8 September 2019 Mr Hill applied pressure on the claimant in relation to the production of information for a data room.

175. The tribunal views Mr Hill's communication of 8 September 2019 in a similar manner. Mr Hill was frustrated, referring to having already requested information twice and to the delay he perceived the claimant was responsible for. The claimant herself recognised that there was information outstanding, but felt that it could wait. He wished now to elevate this to an official request as chairman of the holding company. This was out of a desire to make progress with the data room. There is no basis whatsoever from which the tribunal could conclude it to be related to the claimant's disability, arising from disability or a reaction to the claimant's protected act.

176. Taking stock, the tribunal has found, subject to issues relating to applicable time limits, that the claimant suffered from disability-related harassment on a number of distinct occasions from 12 March to 13 May 2019 arising out of the conduct of Mr Hill towards her.

Failing to provide responses to the claimant's reasonable requests for information and accusing her of wasting Mr Hill's and others' time on numerous occasions from May 2019 – March 2020.

2 May the claimant asked Mr Hill to investigate why her loan interest has been cut without any consultation or agreement.

177. The claimant raised the issue and it was discussed just under 2 weeks later at a meeting she had with Mr Hill on 15 May. In common with a number of the allegations in this section, the claimant might not have thought that she was receiving a full or fully accurate answer and it may certainly not have been one which she liked. However, the allegation is framed as a failure to respond and, whilst there was a slight delay in getting back to the claimant, there was a relatively timely response. There is no evidence from which the tribunal could conclude that this was disability related, something arising from disability, nor a response or delayed response influenced by her protected act.

6 May request by the claimant for admin charge information that had been requested initially on 13 March by email.

178. There was a response to the claimant's request for information of the administration recharge by Mr Hill on 6 May. He referred to an understanding that Mr Whitehead had sent the claimant details as to what was included. Insofar as there was any delay in response it is clear to the tribunal that Mr Hill genuinely regarded this as being an example of the claimant becoming fixated with amounts which were not material in an accounting sense and which certainly did not address materially a turnaround in performance of the hotel, which is what he was seeking. There are no facts whatsoever certainly from which the tribunal could conclude that any lack of response was related to disability, arose from disability or was influenced by the protected act.

8 May email from Mr Hill to the claimant stating "not going to have staff wasting their time" he would ask the company's accountant the following week. Mr Hill failed to update the claimant following this meeting.

179. This allegation is a continuance of the previous one. Mr Hill said that he was not going to have staff totally wasting their time on filling in timesheets to try to justify to the exact penny how much time they spend on various sections of the business as he genuinely thought this was a waste of time, an unreasonable request and that everyone, including he and the claimant, had more pressing things to concentrate on. In saying so, quite directly, he recognised nevertheless that it was not unreasonable to raise the question of the amount with the auditors. He was going to speak to them to understand their comments, but clearly wanted to move on. The sentiments he expressed were entirely genuine and further indicative of his frustration with the claimant, but, not on any evidential basis the tribunal can discern, related to her disability, arising from her disability or in any sense whatsoever influenced by her protected act. He believed she was wasting people's time. In context, Mr Hill's opinion was not without some basis.

15 July email request by the claimant regarding payment of unauthorised bonuses. The claimant had to ask numerous times in the meeting itself for the information from Mr Hill before it was disclosed.

180. The issue of bonuses was responded to. Again the claimant might have thought it took too long or that response was unsatisfactory, but she has shown no facts from which the tribunal could reasonably conclude that any response or delay in response was related to her disability, was because of something arising from disability or was influenced by her protected act. This is a further example where Mr Hill genuinely thought that the claimant was being mischievous in raising complaints which were not material to the more pressing issue of the hotel's performance. The claimant's issue was in relation to the payment of non-contractual bonuses which the tribunal considers were indeed not of an amount which ought reasonably to have been considered material to the performance of the wine business and group.

Email chain of 10, 15, 20, 22 and 24 August Mr Hill states he is looking for offers for the hotel and the claimant requested information as to when this decision had been made and by whom.

181. The claimant knew that the sale of the hotel was an option Mr Hill considered ought to be explored. It might not, at this point in time, have been her preferred option, but she was aware that Mr Hill wanted to explore it and, given it would have needed her own involvement, that no sale had been agreed. Mr Hill was genuinely seeking a solution to preserve shareholder interests. He and the claimant were not on the same page. However, there are no facts from which the tribunal could conclude that his behaviour in this regard was related to the claimant's disability, because of something arising from disability or in any sense whatsoever influenced by the protected act.

9 September email requesting again a breakdown of the admin charge that had not been provided

182. The issue of the admin charge has already been referred to and the claimant remained unsatisfied with the explanation she had received. She had not received a full breakdown where she agreed with the attribution of costs. Mr Hill's response was to recognise her right to question any charge. The evidence is, however, that he did enquire and the charge was at an acceptable level. He was not ignoring the claimant, but again was deeply frustrated that this matter was being continually raised. His frustration and any lack of response the tribunal concludes was because of his consideration that this was an irrelevant distraction. There are no facts from which the tribunal could conclude certainly that it related to the claimant disability, was because of something arising from her disability or was at all influenced by her having done a protected act.

1 October email – in relation to the healthcare scheme the claimant requested information into who had signed off the health scheme paperwork and how the tax for James Townend and his family had been dealt with. Also, the claimant requested confirmation that all non-employed people had been removed from the healthcare schemes and requested a schedule of who remained in each scheme.

183. Whilst there had been earlier reference to concerns about the healthcare scheme, the only material concern was when it appeared that the claimant might no longer be able to participate within it as the sole employee and in circumstances where it was of obvious concern to her that she maintain continuity of cover with a pre-existing health condition. When it did arise as a significant issue of concern, the evidence is of a solution being quickly found and communicated to the claimant. The claimant has adduced no evidence from which the tribunal could reasonably conclude that any failure to deal with the issue was related to disability, because of something arising from the claimant's disability or at all influenced by her protected act.

2 October email – Mr Hill by email stated he was not spending time checking the last 25 years archives. The claimant requested the information for the last 3 years.

184. This allegation is related to the previous one in respect of the healthcare scheme. Mr Hill was interested in finding a solution moving forward, not in a sterile investigation as to how the scheme had operated in the past and how a situation may have developed where the claimant had been momentarily at risk of not being on cover. The tribunal similarly can see no basis for a claim of discrimination and is clear as to the genuine motivation of Mr Hill to resolve the matter and move on to matters which were material to the hotel's performance. The claimant has adduced no evidence from which the tribunal could reasonably conclude that any failure to deal with the issue was related to disability, because of something arising from the claimant's disability or at all influenced by her protected act.

4 October email – Mr Hill states he will ask Ivan Logan who signed off the scheme in the last 3 years – this information was never received. Mr Hill refused to answer the tax query and threatens the claimant with a breach of data protection and alluded to the claimant receiving benefits in kind for 29 years which is untrue.

185. The claimant wished to continue to debate the issue of the healthcare scheme. Mr Hill communicated on 4 October that he believed that the claimant would remain under cover in the Aviva scheme. He tried to explain what had gone wrong in terms of the claimant having been at risk of not being on cover. Otherwise, spending time on the issues the claimant raised would clearly involve some time and significant patience. Mr Hill is not a particularly patient man, and certainly was not at this point in time, when again he believed that the claimant would not focus on what he considered mattered in terms of the hotel's future and instead continually raised "non-points". The claimant does not appreciate the tone and content of his response, but that is the reason for it. In any event, there are no facts from which the tribunal could reasonably conclude that it was related to her disability, because of something arising from disability or influenced in any sense whatsoever by her protected act.

24 February 2020 Mr Hill states he was not prepared to waste any more time on non-items in the past in reference to the accountants' invoice.

186. Mr Hill's reaction to the concern about the accountants' invoice was similar to his reaction in respect of a number of other issues the claimant raised, which he considered were instances of her being an effective nuisance and querying matters which were of little or no materiality. That was a genuine belief which is easily accepted by the tribunal in respect of this allegation given that the invoice under discussion was only a little over £1000. In any event, there are no facts from which the tribunal could reasonably conclude that his reaction was related to the claimant's disability, because of something arising from disability or in any sense whatsoever influenced by her protected act.

9 March 2020 email of Mr Hill to the claimant stating he was not prepared to waste any more time on non-important items. Mr Hill alleges he met with the claimant at the hotel to discuss the matter of James's healthcare. When asked when this took place Mr Hill did not respond.

187. Mr Hill genuinely thought he was being asked to waste time on non-important matters. He was not someone who was shy at expressing such view and did not hold back in this correspondence. There was a disagreement as to whether or not there had been discussion about James' healthcare, but the tribunal cannot come to any conclusion as to what this was all about and again, as with many of the other allegations in this category, the claimant has been unable to show facts from which the tribunal could conclude that Mr Hill's response or failure to respond was related to the claimant's disability, because of something arising from disability or influenced by her protected act.

Placing pressures on the claimant whilst on holiday to create a data room for possible purchasers of the business despite there being no agreement by the shareholders or directors to sell the hotel

188. Whilst the respondent had not come to the point where it had resolved to sell the hotel, that was an option clearly on the table and indeed an increasingly likely option. The claimant complains about the tone of communications, but the context is of the claimant not simply providing information upon request, but of querying who had made the decision to market the hotel, in reality asserting that such a decision had not been made. Mr Hill responded that there had been no decision, but it would be on the agenda at the AGM and having a data room in place would enable the hotel to be marketed quickly prior to the winter period, if there was a decision to sell. The tone of correspondence on 8 September was in the context that there was information outstanding from the respondent which Mr Hill did not believe was difficult to obtain. He referred to the original request to sell coming from solicitors acting on behalf of "certain specified shareholders" – a reference to the claimant's 'side' of the family. Mr Hill did recognise that some of the information had been provided. Whilst some communication straddle periods where the claimant was on holiday, the tribunal considers that Mr Hill was making genuine requests at the time they came into his mind. He was not making requests knowing that the claimant would be unable to comply with any deadline set. He was not requiring her to interrupt her holiday.

189. Other than the assertion that the requests were part of a continuing ill treatment of her, the claimant has not pointed to any facts from which the tribunal could reasonably conclude that Mr Hill's request was because of something arising from her disability, related to her disability or in any sense whatsoever by reason of her having done a protected act.

Appointing additional directors to the board of the respondent when the claimant would not agree with Mr Hill's requests

190. The proposal to appoint additional directors to the board was so that the respondent's accounts would be signed off in circumstances where the claimant was unwilling to do so as a director of the respondent. The claimant ultimately changed her position and the proposal to appoint Susie Townend to the board was withdrawn by Mr Hill. The claimant's objection arose out of her not being satisfied with the amount of the administrative charge levied on the respondent. Whilst it was not unreasonable for the claimant to ensure that she understood how the charge was arrived at, Mr Hill considered that she had been provided with sufficient information and that she was being deliberately difficult in circumstances where any difference in the accounts was not going to be material. That is the genuine belief he held and there is no suggestion that there was not an imperative for the respondent's accounts to be signed off. Again, the claimant has shown no facts which the tribunal could conclude that Mr Hill's actions were because of something arising from the claimant's disability, related to her disability or in any sense whatsoever influenced by her protected act.

Accusing the claimant of misleading the respondent's auditors and the board.

191. Mr Hill accused the claimant of misleading the board and of misrepresenting what she had been told by the auditors. He did so because that is what he believed she had done. He has explained to the tribunal's satisfaction the basis for his belief and the claimant's account of conversations was not supported by that of the auditors. The respondent has shown a non-discriminatory reason for its treatment of the claimant, but, in any event, there are no facts from which the tribunal could reasonably conclude Mr Hill's accusation to be because of something arising from the claimant's disability, related to her disability or in any sense whatsoever because of her having done a protected act.

Stating in written correspondence that her "memory may be letting [her] down"

192. This was a not so subtle suggestion by Mr Hill to the claimant that she was not telling the truth. It is a standard turn of phrase and one which the tribunal is satisfied Mr Hill used without any conscious or unconscious consideration that the claimant's mental capacities were somehow impaired by her disability. Whilst clearly Mr Hill is capable of jumping to assumptions regarding the effects of the claimant's disability, for instance, his reference to her suffering from depression, in context there are no facts from which the tribunal could reasonably conclude that the comment was made because of something arising from the claimant's

disability, related to her disability or in any sense whatsoever because of her having done a protected act.

Sharing the claimant's personal email address with others without her consent

193. Mr Hill shared the claimant's personal email address with her brother in circumstances where he thought that John Charles Townend needed to communicate with the claimant and had been using an email address for the claimant which was no longer active. The claimant had used her personal email address when communicating with Mr Hill on work-related matters and the tribunal considers that he did not give a second thought to this being an appropriate email address for others to use for the same purpose. On discovering that the email address had been shared, the claimant asked Mr Hill to ensure that it was not used. Her complaint is then in reality, in the way it has been put, that he failed to respond. However, it was not an email which on its face sought or required any response, but rather some action. It is said that the tone of the claimant's email was of a request for reassurance, but it is not difficult to conclude that Mr Hill would not have picked up on such nuance. Mr Hill's response, after the claimant had chased him, is said to be terse, him saying that he was not the claimant's secretary, but he was prepared to use the claimant's preferred option. He noted that he always clicked 'reply' so that any response would be sent to the email address the claimant had used in her original message. There are no facts from which the tribunal could conclude that Mr Hill's actions in this regard were because of something arising from the claimant's disability, related to disability or in any sense whatsoever because of her having done a protected act.

Failing to deal diligently with the renewal of the respondent's healthcare scheme, thus causing the claimant extreme stress and anxiety due to the ongoing cancer cover provided in the existing policy

194. This issue is also discussed above. In submissions, Ms Twine refers to the healthcare issue being raised on 29 September and the claimant not being informed that the issue had been resolved until 11 October 2019. The dates are not suggestive of a failure to deal diligently or of an unconscionable delay. The evidence is indeed of Mr Hill recognising the importance to the claimant of being on cover and the difficulty she might have in sourcing new cover given her pre-existing condition. The evidence is that he was seeking to ensure that she was at no stage not covered by healthcare insurance. Mr Hill emailed the claimant on 11 October to say that the insurance broker had confirmed to him that the issue had been resolved. He referred also to Kim Walker, the claimant's proxy, having advised at the shareholders meeting on 7 October that the claimant had received confirmation of cover. Whilst the claimant's disability was of material significance in her wish to continue to be provided with health insurance cover, there are no

facts from which the tribunal could conclude that any time taken to resolve the matter was because of something arising from the claimant's disability, related to her disability or in any sense whatsoever because of her having done a protected act.

Unfairly criticising her performance to the shareholders [2019 AGM]

195. A number of aspects of the statement to shareholders for the 2019 AGM are raised in this connection. Mr Hill did make adjustments to attribute costs in the group company accounts to those of the trading subsidiaries. It did have the result of showing a poor performance of both the hotel and the wine business. Mr Hill's view was that it put the performance of the business in a more accurate light and that his purpose was to ensure that the shareholders had a more accurate picture. The tribunal accepts that this is why he made the changes.

196. The purpose for him setting out discussions regarding the director designate role was to give the shareholders a complete picture of those discussions. Mr Hill is not a man to stick to the more prosaic facts, but prefers to paint a picture. He did so because he felt that provided the necessary full picture to shareholders. Mr Hill expressed the view that the claimant was unrealistic by suggesting the recruitment of an additional marketing person. Ms Twine submits that the cost of that person had not been discussed. It was, however, a proposal which would involve an additional cost to the business in circumstances where the claimant was not proposing a reduction in her own salary. Mr Hill genuinely saw that as unrealistic and information of which the shareholders ought to be fully appraised.

197. He referred to the claimant not having prepared a budget for 2019. It is submitted that the claimant was having cancer treatment at the time this would ordinarily have been prepared. There is no evidence that Mr Hill was aware or took time to consider that. Again, he felt the shareholders ought to have been aware that there had been a lack of budget preparation. It is then raised that he was implying that the claimant raised issues which were non-items and that she was being unreasonable, hoping that an end be put to this behaviour and saying that the claimant had to "put up or shut up". Mr Hill's genuine belief was that the claimant was raising issues which were not material to the performance of the business and that she was unreasonable in refusing to be satisfied with explanations and not moving on. Again, he genuinely believed that to be an accurate characterisation of the claimant's behaviour and not, it has to be said, without some basis.

198. His inferring that the claimant was taking benefits from the hotel was in the context of his reference to the claimant making allegedly disparaging remarks

about John Charles Townend benefiting from forms of corporate hospitality in the wine business. He was recognising that almost every managing director in a hotel would in his opinion benefit from a free supply of food and ancillary services. The reasons for the comments are as stated and untainted by discrimination.

199. It is raised that Mr Hill had said that had this not been a family business, the claimant would have been dismissed by 2015. That was his genuine opinion i.e. that a business run on a purely commercial basis would not have continued with the claimant certainly at her level of remuneration and with a declining performance of the hotel. Again, Mr Hill's belief in that decline was genuine.

200. Mr Hill held strong opinions which had become more entrenched by what he genuinely considered to be the claimant's unwillingness to accept responsibility and the seriousness of the situation. He did not see a statement to shareholders as having to be even handed or couched in diplomatic terms. He considered it necessary for them to be given a full 'warts and all' picture. In any event, the claimant has failed to show facts from which the tribunal could reasonably conclude that the comments were made because of something arising from her disability, relating to her disability or in any sense whatsoever because of her having done a protected act.

Ignoring the fact that the claimant's performance had been impacted by her disability

201. Mr Hill did not ignore the fact that the claimant's performance must have been impacted upon by her disability. Clearly, when they met on 12 March he was concerned as to how the claimant could fulfil her responsibilities. The tribunal has no difficulty in concluding that the claimant's ability to work would be impacted upon by her disability and the further symptoms of her treatment for it. How Mr Hill dealt with that perhaps sounds most clearly in the separate complaint of a failure to make reasonable adjustments. The tribunal otherwise remains unclear as to how this allegation sounds as a complaint of disability discrimination. Mr Hill certainly saw the performance of the hotel as one of decline over a period of time and a time which preceded the claimant's cancer diagnosis. The majority of Mr Hill's issues after his meeting with the claimant were relating, not to the hotel's and her historic performance, but how she might engage with a process of improvement or alternative solutions if the hotel was to be a viable business. Complaints about statements made to shareholders about the claimant's health, without him speaking to her in advance, are dealt with separately below.

Accusing the claimant of making disparaging remarks about her brother taking his wife and children on foreign trips when she had never made this comment

202. Mr Hill believed that the claimant had made this comment. He recorded in his aide memoire of 15 May 2019 that the claimant said that the money used by John Charles Townend to take his family on foreign trips should be checked out. That was his recollection of what she had said – he refused to withdraw the comment at the shareholders meeting on 7 October because he said that this is what the claimant had said to him. He was not seeking to misrepresent the situation. Reference to this might not ordinarily be expected to be included in a shareholders report, albeit the context is obviously of family shareholders or shares held in trust on behalf of family members. In any event, the claimant has shown no facts from which the tribunal could conclude that the statement was made by Mr Hill because of something arising from her disability, related to her disability or because of her having done a protected act.

Advising shareholders that she was refusing to provide Mr Hill with information that had already been provided as requested

203. It was Mr Hill's genuine belief that the claimant was not providing him with all the information he was seeking and that information which was provided was with some reluctance and at times only after him having to repeat his requests. Whilst wages information may well have been provided to Mr Whitehead, the tribunal is clear that Mr Hill did not think it had been. The claimant position regarding access to the diary of booked events is viewed objectively as not as helpful as it might have been. As is clear from other allegations raised, Mr Hill believed that the claimant was obstructive towards him and there are no facts from which the tribunal could reasonably conclude that this was because of something arising from her disability, related to her disability or in any sense whatsoever influenced by her having done a protected act.

Stating to shareholders in writing in October 2019 that she "would have been replaced on performance grounds by 2015 at the latest" if the respondent was a non-family company

204. This allegation has already been dealt with, as described above.

Suggesting to shareholders in writing in October 2019 that she take early retirement on the grounds of ill-health or step aside from her role, and thereafter failing to make her any financial offer

205. In the context of appointing a management company to operate the hotel, it was said that the claimant would either have to step down or perhaps take early retirement on ill-health grounds to allow such company to introduce their own general manager. Such comment was certainly unwanted. The claimant was not of the view that she was not capable from continuing in employment because of her health. The comment was dearly also related to her disability. Mr Hill had thought for some time that it might be to the claimant's benefit to remove herself from the burden of her role which he considered would impact on her health arising from her cancer and its treatment. Mr Hill genuinely thought such expressions showed his sympathy towards the claimant. The effect, however, was of the claimant having been upset by such comment particularly in the context of a general communication to shareholders. It was not unreasonable for her to feel that way, It constitutes an act of disability-related harassment. Given the something that is pleaded as arising from disability, it does not however sound as a complaint pursuant to Section 15 of the Equality Act. Nor are there any facts which the tribunal could conclude that the comment was made because of the claimant having done a protected act. Clearly, Mr Hill held such opinions prior to the protected act. From October it was anticipated by both sides that there would be some form of negotiation leading to an exit package for the claimant. There was an expectation the respondent would put together a fair settlement proposal. Clearly, however, each side would have a different view as to what would amount to a fair package. The claimant through her solicitors made proposals and there was a delay in the respondent reverting with an offer at a significantly reduced level. The tribunal has not, however, been pointed to any facts from which it could conclude that the respondent's treatment of the claimant in the making of such offer was in any sense whatsoever because of something arising from her disability, relating to her disability or because of her having done a protected act.

Sending inaccurate and unfair emails to the shareholders in respect of her health and making untrue allegations in respect of her behaviour in December 2019

206. The tribunal has already referred in its factual findings to Mr Hill, in his statement to shareholders, as describing the claimant as "wilting", "collapsing", being "visibly distressed" and crying in his first meeting. He expressed an opinion that she was stressed and depressed without any suggestion from the claimant that she was - despite her having told him on 13 May 2019 that she had never been depressed. He described her as previously seeming quite depressed and as obviously being at a low ebb. Mr Hill told the shareholders that there was a risk of the claimant's health going into a steep decline at any time.

207. The tribunal accepts that the comments were insensitive, inflammatory and not appropriate to be made in this type of communication. They were not based on any informed understanding of the claimant's condition or its prognosis. Mr Hill had not discussed with the claimant how she was feeling. Insofar as it might have been

legitimate to provide the shareholders with some information regarding the claimant's health, this could and ought reasonably to have been done in a more opaque, sensitive and confidential manner. The comments amount to unwanted conduct and are obviously related to the claimant's disability. Despite the way in which he expressed himself, Mr Hill, given how he habitually expressed himself, was again simply seeking to paint a full and detailed picture so that the shareholders fully understood the situation as he saw it. He did not seek by his comments to cause upset or offence. The comments, however, certainly had that effect and reasonably so. They amount to further acts of disability-related harassment. There is, however, no basis upon which the tribunal could conclude that the comments were because of the pleaded something arising from disability or because of the claimant doing a protected act.

Advising the shareholders that she was no longer ill, which was untrue

208. A minute of the shareholders meeting on 7 October 2019 records Mr Whitehead raising the claimant's state of health and an attribution to Fiona Walker of the comment that the claimant was not ill. The tribunal has concluded that this was not a full recording of what was likely to have been said. In an email to the claimant of 12 December, Mr Hill noted, consistent with the minute, that Ms Fiona Townend had been able to advise at the shareholders meeting that the claimant was no longer ill. He The minute in the shareholders meeting was a genuine attempt nevertheless to set out what it had been thought had been said about the claimant. This was then repeated to the claimant in the aforementioned email. It was said because that is what Mr Hill considered had been the substance of the report at the shareholders meeting. Whilst it has as its background the claimant's disabling illness, it was not unwanted conduct related to her disability. Nor does a complaint of discrimination arising from disability, given not least the nature of the pleaded complaint, succeed. There are no facts which the tribunal could conclude that the comment was made because of the claimant having done a protected act.

Accusing her of putting words into peoples' mouths in an email of 24 February 2020 and further criticising her performance

209. The comment was made. There are no facts from which the tribunal could reasonably conclude that it was made because of something arising from disability, relating to the claimant's disability or because of her having done a protected act. In fact, the comment has nothing whatsoever to do with the claimant's disability but was made arising out of a disagreement as to what had been discussed with the auditors and the legitimacy of their invoice.

Dismissing her (s.15 only)

210. There are no facts from which the tribunal could reasonably conclude that the claimant was dismissed because of her inability to work 70 – 80 hours per week – the pleaded "something" arising from the claimant's disability. The decision to terminate the claimant's employment was made by John Charles Townend. The claimant certainly had not told him about this being her normal weekly hours and her having a need to reduce her hours below that level. He had no idea about her working arrangements at the hotel. On the tribunal's findings, she had not told Mr Hill of that either. It is said that Mr Hill must have been involved in the decision to terminate the claimant's employment. It is difficult to imagine that he would have been unaware of that being the likely outcome of the disciplinary process at some stage prior to the decision to dismiss being communicated to the claimant. However, there is no evidence of his involvement at a particular stage or to any particular extent. The tribunal cannot make a factual finding that he was a decision-maker in her dismissal. In any event, again, there is no basis for concluding that the pleaded something arising from disability was the reason for any view he took of the claimant's actions. The tribunal deals further with the reason for dismissal in the context of the claim of unfair dismissal below.

211. The tribunal next considers the claimant's freestanding complaint alleging a failure on the respondent's part to comply with its duty to make reasonable adjustments. This is based on a PCP of the respondent having a requirement, as at March 2019, that its managing director work 70-80 hours a week.

212. The claimant's fundamental difficulty is again that there was no such requirement. It is not the claimant's evidence that Mr Hill, Mr John Charles Townend or the board of the respondent or its holding company knew, let alone required, that the claimant work such hours. The claimant was the chief executive officer of the respondent and set her own hours. She told the tribunal that she had at all times, including after Mr Hill's appointment, authority to engage additional staff or to require existing staff to undertake particular responsibilities. The case comes down to it being her belief that it was a requirement of the business that she work these hours - in essence, that if she didn't put such hours in, then the business would suffer. That is not, however, a relevant PCP in the context of a reasonable adjustments complaint. No one was requiring the claimant to work those hours. The reasonable adjustments complaint must fail.

213. Ms Twine recognised in submissions that all of the allegations of disability discrimination were against Mr Hill and for all and any of the complaints to be in time there had to be a finding of conduct extending over a period of time up to and including the claimant's dismissal. On the tribunal's findings, however, the claimant did not suffer any form of disability discrimination in her dismissal. Nor had she done so, was there any basis for concluding that Mr Hill was a relevant decision-maker in her dismissal. If a duty to make reasonable adjustments had arisen then the adjustment ought reasonably to have been made in March/April 2019 and the claimant's case is that it was clear to her that it would not do so by that time. The

claimant is left on the tribunal's findings with findings of disability related harassment covering firstly the period from 12 March to 15 May 2019 and then on 7 October 2019 within the report to shareholders. The claimant's tribunal complaint was submitted on 26 June 2020. A period of ACAS early conciliation commenced on 18 June and concluded on 22 June 2020. Therefore, only complaints about acts on or after 19 March 2020 were brought within time. The tribunal accepts that the claimant's complaints ending on 15 May 2019 can be said to the part of conduct extending over a period up to the further acts of harassment on 7 October 2019. However, this still puts the complaints around 5 months and one week out of time.

214. The claimant has in evidence provided an explanation for her delay. She hoped that the treatment of her would get better. She made a choice not to bring proceedings at an earlier stage. She could have brought the tribunal complaint at the time she raised her complaints about Mr Hill's behaviour of her internally, including through her solicitors. She was at all material times instructing solicitors and had access to employment law advice if she wished to take it. The delay in bringing proceedings is of some length given that the earliest complaint originates from March 2019. The tribunal appreciates the breadth of its discretion to extend time and the importance of reviewing all relevant factors and then considering the balance of prejudice. The claimant is obviously prejudiced if discrimination complaints cannot be pursued and the respondent's obvious prejudice, as with any employer in having to defend claims, does not add anything material to the tribunal's considerations. The exercise the tribunal's discretion can feel artificial when it has made primary findings that there have been acts of discrimination. Nevertheless, those acts have been found to be such in circumstances where the respondent has, on balance, suffered prejudice in terms of the cogency of evidence and recollection of events. That is to some extent ameliorated by the acts of discrimination being evidenced in contemporaneous correspondence between the parties. Nevertheless, context was relevant in assessing all of the allegations and Mr Hill was clearly disadvantaged in giving evidence by the passage of time. Again, this is in circumstances where the claims could have been brought much sooner and where an intelligent and sophisticated business owner with access to legal advice made a decision not to pursue the claims. Claims were only pursued following the claimant's dismissal where disciplinary charges arose out of undisputed actions of the claimant which she has not sought to attribute to her disability. Against this background the tribunal concludes that it would not be just and equitable to extend time in respect of these complaints of harassment which must therefore fail and be dismissed in circumstances where the tribunal has no jurisdiction to determine them.

215. The tribunal now turns to the claimant's complaint of unfair dismissal. The tribunal has found that the respondent did not dismiss the claimant for a reason related to disability, whether the pleaded inability to work 70 – 80 hours per week or otherwise. Ms Twine submits that an employer acting opportunistically in

dismissing, does not preclude the potentially fair reason from being the true reason for the dismissal. However, just because there is misconduct which could justify dismissal, does not mean that the tribunal is bound to find that this indeed was the operative reason. The tribunal accepts what she says.

216. In this case, the respondent did genuinely believe that the claimant in sending the WhatsApp message to a large number of staff was guilty of misconduct. It might have viewed this as an opportunity and have been far from disappointed that, in its eyes, the claimant had committed a repudiatory breach of contract. It would be wrong however to conclude the respondent acted opportunistically. It genuinely believed that the claimant had acted in a way which undermined its intentions to commence a process of collective consultation on proposed redundancies on the closure of the hotel. It genuinely considered that the claimant's actions might result in employment tribunal complaints from the affected staff which could result in a significant financial liability for the respondent. It considered that the claimant's actions in effectively telling staff that they would be made redundant and criticising the respondent's treatment of them was in breach of her duties as a director and incompatible with the trust and confidence it needed to have in a person holding the position of managing director.

217. It is said on behalf of the claimant that the respondent's position was undermined by a background of proposals and encouragement of the claimant to consider ill-health retirement or drastically reduce her hours allied with a degree of pressure on her to accept Mr Hill's suggestions. There is no doubt that Mr Hill regarded the claimant as obstructive and the group of companies was significantly dysfunctional with both the claimant and her brother employed within it.

218. However, by the time of the claimant's dismissal, matters had moved on. The claimant on her own evidence had indicated from October that she wanted out of the business.

219. The tribunal accepts then that this was not ever going to be straightforward to achieve. From what the tribunal has seen discussions regarding an exit package were not progressing and the respondent viewed the claimant's demands as excessive, perhaps to the point where a negotiated solution did not appear likely at this time. The claimant was a significant expense and paid at a rate which reflected who she was, rather than ordinary commercial considerations. On the other hand, the claimant's employment status was going to be resolved. The claimant was in agreement with a decision to close the hotel and appreciated that this would involve her own redundancy dismissal. Clearly, there was an issue as to notice entitlement, but the evidence does not support the respondent acting by reason of an imperative to save on those termination costs. Of course, regardless of the employment situation, the claimant was a director of the respondent and the group and, perhaps of most significance, a major shareholder. The termination of the claimant's employment has not been suggested as a means which would resolve potential disputes as to the realisation by her of a value for her shareholding

or her continued involvement in the group as such a stakeholder. Ms Twine suggests a lack of engagement on the part of Mr Archibald with the claimant's contention that the real reason for dismissal was to save money. The tribunal is clear that Mr Archibald was focusing on what he considered to be, as did Mr John Charles Townend, a destructive act on the part of the claimant in sending the WhatsApp message.

220. The question for the tribunal at this stage is not whether it concludes that the claimant was guilty of gross misconduct. The tribunal will return to this issue, but the significance of the claimant's actions is supportive of them being the genuine reason for the respondent deciding that she ought to be dismissed.

221. The respondent carried out a reasonable investigation in all of the circumstances. Mr Humphrey's contention that there was in this case really very little to investigate, given the existence of the WhatsApp message and the claimant's admission that she had sent it, is accepted. The content of that message formed the basis of the disciplinary case pursued against the claimant. The respondent's witnesses' evidence was confused when they were questioned about the investigation. Mr Hill took charge of the disciplinary case following the claimant's suspension, but clearly on his evidence did no investigation of his own beyond looking at the WhatsApp message. He seemed to think that Mr John Charles Townend was collating information although he was unable to say what that might be beyond potentially receiving information from employees of the hotel. Mr John Charles Townend told the tribunal that he was not conducting an investigation at this time beyond receiving some unspecified feedback as to the effect of the WhatsApp message. However, again the tribunal has not been told what reasonable further steps ought to have been taken by way of investigation. After the disciplinary hearing conducted by Mr John Charles Townend, he did take steps to get further information from Ms Crawford and Mr Whitehead in response to the claimant's account presented of her conversation with Ms Crawford. He addressed those in his decision. The respondent did not act unreasonably in not seeking to ask the recipients of the message whether they might be considering bringing tribunal complaints regarding a lack of consultation. It was not unreasonable not to have held an investigation meeting with the claimant prior to the disciplinary hearing. Again, there is no dispute as to what the claimant had said. That, and the claimant's reasons for her actions, were fully explored during the disciplinary hearing.

222. The respondent's key conclusion was that the claimant had made a unilateral decision to communicate the respondent's proposal to close the hotel in a manner which undermined the need and its intention to conduct a process of consultation. Her actions and the manner of the communication, it was considered, opened up the respondent to the risk of significant financial liability if claims were brought and indeed increased the likelihood of such claims, not least in circumstances where the claimant was significantly critical of the respondent's approach and behaviour.

223. The respondent had determined that the hotel ought to be closed but that any notification of redundancies would be subject to the respondent having consulted with employees, clearly a reference to its need to consult collectively in the case of a significant redundancy exercise. Whilst clearly in everyone's minds it was unlikely that such consultation would have provided information or ideas which would cause the respondent's board to change its mind or find a solution which did not involve a closure, the board, including the claimant, clearly understood, that there was a need to go through a process. They all knew that it was important that the respondent was able to maintain that it had conducted meaningful consultation in accordance with the legislation otherwise the respondent might face a significant financial liability. The claimant's WhatsApp message on its face presented staff with a fait accompli in which the House of Townend was acting with disgraceful haste. The claimant reasonably was not thought here to be being simply critical of the wine business or holding company. The respondent did not (reasonably) consider that recipients of the message would make such distinction and, in any event, they were being told that notices would be sent out to everyone. The clear implication was that these would be notices of dismissal from the respondent. The claimant's reference to her seeking a fair deal implied that such effort would be required otherwise staff were not going to be treated fairly. The respondent reasonably concluded that the claimant's message was undermining of the respondent and in breach of the duties she owed to it as its managing director.

224. The allegations formulated by the respondent, broken down into specific individual charges against her, referred to her having accepted that she was not an appropriate person to undertake a consultation process. It is true that at the board meeting there had been no discussion as to who would be leading the consultation or its timing. However, no one including the claimant expected that it would be her. In previous discussion she had referred to her stepping back from a redundancy process, seemingly at least in part in recognition that she was not the appropriate person, not least because she was one of the individuals who would be made redundant. Mr John Charles Townend reasonably concluded that the claimant, if she had felt that Mr Whitehead had breached confidentiality, ought to have raised that with the board rather than to have effectively felt justified in sending the staff message. Indeed, he had a reasonable basis for concluding that there had been no such breach by Mr Whitehead. The claimant's own account of what she was told by Ms Crawford did not include Ms Crawford having been told that staff were about to be informed of their redundancy. Mr Archibald concluded that the claimant could not have thought that she was conducting a consultation process, but even if she had, a message worded as the WhatsApp message had been, ought not to have been sent. Such conclusion was entirely reasonable. Mr Hill had previously advised the claimant on 21 March in the context of the pandemic not to leave employees with false hope and that there was no chance of the hotel reopening. It was clearly understood, however, at that stage that there were matters still to explore and discuss, not least the scope of the Coronavirus Job Retention Scheme. It was not unreasonable for the respondent to consider that against this background and given subsequent developments, not least the board

meeting at which it was determined to close the hotel, that the claimant did not think she would be communicating with staff or that the board thought that she would be.

225. The second charge involved the misrepresentation to employees that the decision had already been taken not to reopen the hotel. The decision had indeed been taken not to reopen, but subject to consultation. The respondent had determined that it would not confirm redundancies until that consultation process had been concluded. The respondent had come to a firm view as to closure and it may have been unlikely that anything else might have occurred to alter that view, but the respondent knew that it had to be open to that possibility not least to avoid potential liability in claims for protective awards. The claimant, in her message, went further in giving a strong indication that employees were about to receive notices of redundancy. That seemed to ignore the possibility of alternatives emerging which might have preserved employment, particularly in circumstances of the respondent being part of a group of companies. Certainly, the respondent wanted to be in a position to say that it was engaging in meaningful consultation so as to be able to defend any complaints regarding a lack of consultation. The respondent considered that its ability to do so had been significantly undermined by the claimant's actions and reasonably so.

226. The third charge was not upheld by John Charles Townend.

227. The final allegation upheld against the claimant was somewhat overlapping of the others. The respondent's conclusions as to the inappropriateness of the language used, including the comment regarding "disgraceful haste", as already referred to, were reasonable. The claimant herself expressed an element of regret for how she had expressed herself. Ms Twine submits that the respondent had not intended a fair or lengthy consultation process, but without any basis. The evidence is that the respondent intended to conduct a process which would satisfy the legal requirements or at the very least enable it to argue that that was the case.

228. The claimant's dismissal is then said to be procedurally unfair. The tribunal does not consider that any delay in providing details of the allegations to the claimant and in the conducting of the disciplinary hearing is sufficient to render dismissal unfair. The claimant was suspended on 23 April 2020, the day after the sending of the WhatsApp message. The tribunal has accepted that the claimant's solicitor was notified that the suspension related to the WhatsApp message on 7 May 2020. She was invited to the disciplinary hearing on 28 May by letter of 22 May. The respondent's approach cannot be characterised as one of unreasonably delaying matters. The claimant reasonably ought to have been given more details of the charges against her at an earlier stage, but the failure to do so cannot certainly in its own render dismissal unfair. It certainly did not materially prejudice the claimant in answering the allegations which she ultimately faced.

229. More significantly, the claimant has pointed to a failure to appoint impartial decision makers during the disciplinary process. Initially, the matter was to be determined by Mr Hill. Ultimately, it was determined by Mr John Charles Townend. Mr Hill in fact may well have been a more appropriate decision-maker than Mr John Charles Townend, although that is debatable given the accusations against him and his feelings towards her. Whilst his relationship with the claimant was, to put it mildly, a difficult one he might still as a non-family member with no shareholding have been more obviously able to act as an honest broker against a background of a significant dispute between family members in a dysfunctional family business. The view was however taken, not unreasonably, that when allegations of discrimination were levelled at him, it was not appropriate that he act as decision-maker. Certainly, if he had undertaken that role, it is clear that he would have been regarded by the claimant as an inappropriate person to do so.

230. In these circumstances, the respondent's options were limited. Mr John Charles Townend was not a person who could satisfy the principles of natural justice in terms of the avoidance of an appearance of bias. In a sense, there could not be a worse person. There was no love lost between brother and sister and they had competing financial interests. The claimant no longer having an executive role within the group would hardly be unwelcome to Mr Townend. What ought the respondent then to have reasonably done? It is submitted that a consultant could have been identified to hear the disciplinary case and indeed also the appeal. The respondent could indeed have taken such a step. The tribunal has to say, however, that on the basis of all the evidence it has heard, it would not have been straightforward to identify a decision-maker acceptable to both the respondent and claimant. The tribunal on balance cannot conclude it to be outside a band of reasonable responses for the respondent not to have outsourced its decision making in this case. Turning to the appeal stage, again it was not outwith a band of reasonable responses for the matter to be determined internally. There was no one more senior than Mr John Charles Townend who could have reasonably undertaken an appeal. Mr Archibald was an individual who had not had any role in the events of the preceding 15 months and who had no vested interest in the result given that his duties involved the separate wine business only and not the hotel. Clearly, there must be a doubt as to how able he might have felt himself able to overturn the decision of his own boss, but there is no evidence that he was instructed to come to the decision he did.

231. The tribunal is not so naïve as to not appreciate that this case has had lawyers all over it on both sides. Nevertheless, the evidence is of the respondent giving very careful and detailed consideration to the claimant's actions, what they amounted to and her reasons behind them. Dismissal was not a knee-jerk response and the claimant certainly had a full opportunity to state her case. On balance, in what is admittedly an unusual case, dismissal was not rendered unfair by an absence of natural justice in those making the decisions regarding the claimant's future employment.

232. Was then dismissal within a band of reasonable responses. The claimant was in a most senior position and one where the utmost faith had to be placed in her to act in the respondent's interests. Her seniority and length of service were reasonably not regarded as mitigating factors. The claimant might have had an intention to look after the respondent's staff, but the message she delivered was not one of comfort and reassurance. The claimant had, it was reasonably concluded, fundamentally undermined the respondent's position and put it at financial risk. It matters not that the respondent cannot point to actual repercussions in terms of claims. The respondent did not and could not have known whether there would be at the time, but was not unreasonable in concluding that there was a significant risk arising out of the claimant's actions. The respondent was in a position still to commence consultation and to issue the form of letter it had always intended to do so, in compliance with the legislation, but whatever steps it took it knew that those would be viewed against the content of the claimant's pre-emptory WhatsApp message. Dismissal was, in the circumstances, within the band of reasonable responses. The claimant was fairly dismissed.

233. Had any procedural defect been sufficient to render dismissal unfair, it would have made no difference to the outcome. The claimant would still have been fairly dismissed.

234. The claimant brings a separate complaint seeking damages for breach of contract. It is therefore for the tribunal to determine whether or not the claimant in the sending of the WhatsApp message was guilty of gross misconduct. The tribunal concludes that the claimant's sending of the WhatsApp message is properly categorised as an act of gross misconduct. The claimant was in the most senior position within the respondent. She knew that the board had determined that the respondent would close, but only after a process of consultation. She was aware that this was a legal requirement and that a failure to properly consult could result in significant financial liability. The claimant knew that there was no expectation that she would be communicating with employees. She knew that any communication had to be done with care given the legal requirements in a collective redundancy situation. She took no such care. Perhaps as an angry reaction to a belief that Mr Whitehead had disclosed the respondent's intentions, perhaps believing that the message which would be sent to the staff by the respondent would not be appropriate and perhaps with a motivation of wishing to help the staff, she sent what was nevertheless an undermining and intemperate message to a group of (but not all) employees. She did so in a manner which was disparaging effectively of the respondent and which put it at significant risk of claims. Such action was fundamentally contrary to the trust and confidence the respondent needed to have in its managing director. It was an act of gross misconduct and the respondent was entitled to dismiss the claimant without notice. Her complaint of breach of contract is dismissed. The tribunal would note that on the basis of such finding, had the claimant's complaint of unfair dismissal succeeded, it would have reduced any compensatory and basic award by a factor

of 100% to reflect the claimant's blameworthy conduct prior to her dismissal and contributing to it.

Employment Judge Maidment

Date 6 April 2022