



# EMPLOYMENT TRIBUNALS

**Claimant** MZ

**Respondent** Google UK Limited

**Heard at:** Exeter (remotely)

**On:** 11 April 2022

**Before:**  
**Employment Judge** Goraj

## Representation

**Claimant:** in person

**The Respondent:** Mr D Craig QC, Counsel

# RESERVED JUDGMENT

## THE JUDGMENT OF THE TRIBUNAL IS THAT -

The claimant's application for interim relief pursuant to sections 103A and 128 (1) of the Employment Rights Act 1996 is dismissed.

## REASONS

### Documentation

1. The Tribunal has been provided with the following documentation by the parties for the purposes of this Preliminary Hearing: -
  - 1.1 **The claimant:** - (1) the claimant's witness statement/ application for interim relief ("the claimant's application") and (2) the claimant's documents bundle ("CDB").
  - 1.2 **The respondent:** - (1) the respondent's documents bundle (RDB) (2) the respondent's pleadings bundle ("RPB") (3) the

respondent's bundle of authorities ("RBA") (4) the respondent's occupational health bundle ("ROH") (5) the respondent's skeleton argument ("RSA") (6) Witness statement of Anna Frazer ( People & Culture Partner) and (7) Witness statement of Tim Lillicrap (Senior Staff Research Scientist).

2. The documents (where relevant) are referred to below accordingly.

## Introduction

3. By a claim form which was presented to the Tribunals on 8 December 2021 (paragraphs 1- 12 of the RPB), the claimant brought claims which included claims for discrimination because of disability, constructive dismissal, whistle blowing and interim relief (paragraph 8 at pages 6- 7 of the RPB). The claimant stated in her claim form that she had been employed by the respondent as a software engineer from 1 June 2020 and that her employment was due to end on 17 December 2021. The claimant's claim form was not accompanied by an ACAS Early Conciliation Certificate ("ACAS Certificate") at that time.
4. The claimant provided further information in support of her claims including various medical reports relating to her mental health. These included a report from a consultant psychiatrist dated 6 December 2021 (pages 29 – 30 of the RPB) in which it stated that, after review that day, it had been agreed that the claimant required urgent inpatient admission together with further assessment therapy.
5. Following subsequent correspondence between the claimant and the Tribunals, the claimant's complaint of unfair dismissal and claim for interim relief were accepted by the Tribunals. The remaining claims were however rejected pending receipt of an ACAS Certificate.
6. On 14 December 2021, the respondent was notified of the claimant's application for interim relief and the parties were given notice that the matter had been listed for an interim relief hearing by video for one day on 7 January 2022 (pages 140 -142 of the RPB bundle).
7. The claimant's remaining claims were subsequently accepted by the Tribunals, on reconsideration, on 23 December 2021 (page 153 of the RPB), following the submission of an ACAS Certificate (page 144 of the RPB).
8. On 5 January 2022 (pages 304 – 305 of the RPB) the Tribunal advised the parties that the purpose of the Interim Hearing was to determine the single issue of whether "the claimant should be temporarily reinstated into her role because it is likely that the tribunal will find that she was unfairly dismissed because she was a whistleblower". The

Tribunal drew the claimant's attention to sections 128 - 131 of the Employment Rights Act 1996 ("the Act") and Rule 95 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 ("the 2013 Regulations") including that it was unlikely that oral evidence would be heard and that the decision on whether to grant interim relief was likely to be based upon documents and submissions.

9. The interim relief hearing on 7 January 2022, together with a subsequent hearing on 2 February 2022, were postponed at the claimant's request on medical grounds in the light of the claimant's mental health conditions and associated hospital admission. The claimant describes herself as having High Functioning Autism together with diagnoses of severe anxiety and depression and PTSD (as referred to at paragraphs 17 – 18 and 24 of the claimant's application). The claimant further states in the application that she was detained under section 2 of the Mental Health Act on 9 December 2021 and remained in hospital until 4 March 2022 at which time she was discharged with ongoing treatment and therapy (paragraph 26 of the claimant's application)
10. The claimant made multiple applications to amend her claim form/ particulars of claim. The latest permitted Grounds of Complaint / Application for Interim Relief ("the Grounds of Complaint") which the respondent calculates is the 9<sup>th</sup> version of the claimant's grounds of complaint is at pages 313 – 346 of the RPB. The claimant is a litigant in person, however it appears that the claimant has had the assistance of Counsel with regard to the preparation of at least one previous version of the grounds of complaint (page 191 of the RPB).
11. The respondent's Response/ accompanying Grounds of Response dated 14 February 2022, in which the allegations are denied, ("the Response") is at pages 350 – 411 of the RPB.

### **The conduct of the Hearing**

12. The Hearing was conducted, with the consent of the parties, by CVP. The Tribunal raised with the claimant at the commencement of the Hearing whether she required any adjustments to the conduct of the hearing by reason of her health. The claimant confirmed however that she did not require any such adjustments.

### **The requirements of section 128 of the Act**

13. It was agreed that: - (1) for present purposes, the effective date of termination of the claimant's employment was 17 December 2021 and (2) the claimant's claim form (which includes claims for unfair dismissal for making protected public interest disclosures pursuant to section

103 A of the Act and interim relief) was presented on 8 December 2021. It was accepted by the respondent that the requirements of section 128 of the Act had been fully complied with by the claimant and that the Tribunal therefore had jurisdiction to determine the claimant's application for interim relief. The claimant had not, initially, obtained an ACAS Certificate. The respondent accepted however, that in the light of the nature of the claims an ACAS Certificate was not required for such purposes.

### **Documents and Associated issues**

14. The parties brought to the Hearing the documentation identified at paragraph 1 above which included voluminous files of documents from both parties ( the CDB - which included pleadings- 807 pages and the RDB – 534 pages together with a RPB of a further 411 pages). The Tribunal reminded the parties of the summary nature of the application and that the matter had (without objections from the parties) been listed for one day. The Tribunal explained that in the circumstances, it could only have regard for the purposes of the Hearing to documents identified by the parties. The parties also submitted the signed witness statements referred to at paragraph 1 above. The Tribunal however reminded the parties that it would be inappropriate, in the light of the provisions of Rule 95 of Schedule 1 of the 2013 Regulations to hear oral evidence. The statements were therefore admitted as written representations only (with no evidence given on oath) and were utilised by the Tribunal to assist its understanding of the case. The Tribunal was unable to access the respondent's documentation (other than the skeleton argument) prior to the Hearing because of password related issues.
15. After clarifying the issues with the parties, the Tribunal rose to undertake further reading prior to the oral submissions of the parties. This Judgment was reserved as there was insufficient time for the Tribunal to consider all relevant documentation or reach/ prepare its decision. The Tribunal sat until 18.10 in order to complete the oral submissions of the parties. The respondent confirmed that in the event that the claimant's claim for interim relief was successful it was not prepared to reinstate the claimant. It was therefore agreed that if the claimant's application for interim relief was successful the Tribunal would make an order for the Continuance of the claimant's contract of employment in accordance with the provisions of section 130 of the Act and that, in such circumstances, the Tribunal would convene a short CVP hearing to allow the parties to make representations regarding the terms of any such order. It was further agreed that the Tribunal would also arrange for the matter to be listed for a further Hearing to deal with the future conduct/ listing of the case.

## The Law

16. Statutory provisions - the Tribunal has had regard in particular to sections 43 B (1) (a)- (f) 43 C – 43 H and 103A (protected public interest disclosures) section 95 ( circumstances in which an employee is dismissed) and sections 128 – 130 (interim relief provisions) of the Act.
17. The Tribunal has also had regard as appropriate to the legal authorities contained in the RBA together with the further guidance contained in **His Highness Sheikh Khalid Bin Saqr Al Qasimsi v Ms T Robinson UK EAT/ 0283/17**(interim relief application for making protected public interest disclosures). The claimant did not seek to rely on any further legal authorities.
18. The Tribunal has reminded itself in particular of the following: -
  - (1) A Tribunal will not normally hear oral evidence on an interim relief application.
  - (2) The application has to be determined expeditiously and on a summary basis.
  - (3) The Tribunal has to do the best it can with such material as the parties have been able to deploy and to make as good an assessment as it is able to do so.
  - (4) The Tribunal has to be careful to avoid making findings of fact that might tie the hands of the Tribunal which is ultimately charged with the determination of the substantive merits of the case.
  - (5) The Tribunal is required to decide whether it is likely that the claimant will succeed at a full hearing of the unfair dismissal complaint. For these purposes “likely “does not mean “more likely than not” but connotes a significantly higher degree of likelihood. The test to be applied is whether the claimant has a pretty good chance of success at the full hearing.
  - (6) When interim relief is sought in a claim relating to protected public interest disclosures (as in the present case) the claimant must show that it is likely that – (a) the Tribunal will find that he/ she has made protected public interest disclosures for the purposes of section 43B – H of the Act (including that he/ she

has made qualifying disclosures for the purposes of section 43 B of the Act) and also (b) that the making of such protected public interest disclosures was the principal reason for the claimant's dismissal.

**The claimant's pleaded case for the purposes of interim relief**

19. The claimant's current pleaded case of unfair dismissal is set out at paragraph 15 of the Grounds of Complaint (page 333 of the RPB).
20. The claimant's primary pleaded case is that she was unfairly dismissed by the respondent on or about 17 November 2021 with one month's notice (paragraph 15.1). The claimant further alleges that "The real reason" for her dismissal was, "either her disability, and/or in the alternative for a reason arising from her disability (outbursts set out above) and /or because she had made protected disclosures and /or because she was protecting her mental health from danger" (paragraph 15.2)
21. The claimant's alternative position is that in the event that the claimant was found to have resigned on or around 17 November 2021, she was forced to do so by reason of the respondent's breach of the implied term of trust and confidence. The claimant relies for such purposes on the allegations of discrimination/ detriment pleaded in the Grounds of Complaint as the relevant breaches of contract. These are pleaded at paragraph 6 of the Grounds of Complaint (page 341 of the RPB). Two of the four pleaded acts of discrimination / detriment are alleged to have occurred prior to the alleged constructive dismissal on 17 November 2021 and are therefore relevant for the purposes of this application in respect of the constructive dismissal claim namely:-
  - (1) "From the 10<sup>th</sup> November 2021 onwards, Pushed her to participate in disciplinary investigation despite apparent mental health challenges and said would do so even in absence of OH assessment."
  - (2) "Harassment in **IA Onsite meeting on 11 November 2021** where an autistic person was compared to a chimpanzee".
22. The alleged protected public interest disclosures (PIDs) relied upon the claimant are pleaded at paragraph 16 onwards in the Grounds of Complaint (pages 334 – 340 of the RPB). These amount to around 40 alleged PIDs. The claimant (erroneously) contends (at paragraph 17 of the Grounds of Complaint – the application for interim relief) that the respondent does not dispute that the claimant was dismissed by the respondent (expressly or constructively). The claimant further pleads for the purposes of her interim relief claim that the alleged PIDs were

the principal reason for her dismissal (express or constructive) which was accordingly automatically unfair contrary to section 103 A of the Act.

23. In the claimant's application/ her oral submissions the focus of the claimant's contentions regarding the termination of her employment were that :- (a) there was no actual resignation/ that she did not intend to resign (paragraph 15 of the application) and/or (during her oral closing submissions) that her email dated 17 November 2021 was submitted in the heat of the moment at a time when she was mentally unwell and should have been treated as such/ rescinded by the respondent and (b) she was constructively dismissed (documents 120-121 and 205 of the CDB) as she felt that she had no alternative but to resign in the light of the imminent threat to her health and safety as the respondent continued to pursue disciplinary proceedings notwithstanding that it was aware of her mental health condition and the issues had previously been resolved with Mr Komarek.
24. The claimant set out in Section 6 of the application (pages 15 – 27 of the application) the PIDs upon which she sought to rely for the purposes of the interim relief application which amount to around 60 alleged PIDs identified under 15 headings. The claimant sought to justify the increase on the basis that any additional documents identified in Section 6 of the application were all connected/ related to those PIDs already identified in the Grounds of Complaint and requested the Tribunal to consider all of the PIDs for the purposes of the interim relief application. The respondent contended that this constituted a significant increase/ extension in the PIDs previously relied upon by the claimant in the Grounds of Complaint (to which the respondent had endeavoured to respond in its response).
25. The claimant was permitted, strictly for the purposes of this application, to address the Tribunal on the alleged PIDs identified in the application and the respondent was given an opportunity to respond accordingly. Going forward, it may however be necessary (if the claimant continues to propose to rely on the additional alleged PIDs and the respondent objects) formally to apply to the Tribunal for leave to amend her claim form further.

#### **The respondent's position for the purposes of the interim relief application**

26. The respondent denies the claimant's claims including that the claimant was dismissed (whether expressly or constructively) for making protected public interest disclosures /that she has a pretty good chance of success in respect of such claims such as to entitle her to interim relief. The respondent's primary contention is that the claimant

terminated her employment with the respondent by way of a valid unambiguous resignation on 17 November 2021 which took effect on notice on 17 December 2021. The respondent's response (which includes its reply to such matters) is at pages 397 – 411 of the RPB) .

27. The Tribunal accordingly identified at the commencement of the Hearing that there are the following principal areas of dispute between the parties for the purposes of the interim relief hearing namely:-

- (1) Whether the claimant resigned or was dismissed (expressly or constructively).
- (2) If the claimant was dismissed (expressly or constructively), whether the principal reason for any such dismissal was because she had made protected disclosures. The claimant says the protected disclosures which she made during October/ November 2021 were the principal reason for her "dismissal". The respondent says any protected public interest disclosures were not the reason for any such dismissal (which was because the respondent reasonably believed that the claimant had resigned) and, in any event, that any action which was taken against the claimant was because of the manner in which she raised any concerns (and not the making thereof).
- (3) There is a further dispute between the parties as to whether the claimant, in any event, made any disclosures/ qualifying disclosures for the purposes of sections 43 A/ B of the Act. The respondent says that the claimant did not make any disclosures/ qualifying disclosures for such purposes.

## Relevant information

28. Strictly for the purposes of determining this application for interim relief, the Tribunal has taken into account the information set out below which has primarily been taken from the documents which have been provided by the parties for the purposes of this Hearing. The Tribunal has not heard any evidence on oath in this case and the information below is therefore not intended, and should not be regarded, as findings of fact. Further, the information is not, in anyway, binding on the Tribunal that subsequently determines the substantive merits of the case.

29. The Tribunal has concentrated for purposes of the interim relief application on the period between 1 October 2021 and 17 November 2021 as this is the period during which the claimant contends that she



made the majority of her alleged protected disclosures, and the alleged “resignation/dismissal” took place.

### **The claimant’s return to work in September 2021**

30. Following a period of sickness absence and the receipt of OH and associated medical advice, the claimant returned to remote working on a phased return in early September 2021. The claimant continued to be based in India with her family. Following the claimant’s return to work there were discussions between the parties concerning the work project to which the claimant should be assigned.

### **Early October 2021**

31. On 1 October 2021, the claimant raised concerns in a message exchange with her manager, Mr Stanforth, regarding her proposed assignment to the Cognition project. Mr Stanforth stated in response that the respondent believed that the project offered the claimant the best opportunities and support to grow, and that the decision would not be reviewed for 4 to 6 weeks. The claimant continued to raise concerns about her assignment to the project. The claimant concluded the exchange of messages by stating that she did not agree with the assignment and that: -

“ I am happy to quit the job as I have not been in good health or happy since I joined. I cannot continue like this. I can’t waste more time. And my health” (pages 241 – 242 of the RDB).

32. Later that afternoon the claimant emailed Mr Stanforth Ms Frazer, People & Culture Partner and other managers (page 260 of the RDB) in which she stated as follows:-

“Hi – I have decided to call it quits for now. I had been going through lot of mental stress and deterioration in health and facing lot of stereotype at work in my conversations with colleague to an extent I no longer feel comfortable to communicate.

I want to prioritize being happy and learning than being made to feel I am not competent.

It was a good opportunity to see a new type of firm and people:)”

Thanks

[name deleted]”

33. Mr Stanforth replied to the email (also at page 260 of RDB) as follows:-

“Dear [ name deleted]

I am sorry that you are feeling this way. Let’s discuss this on Monday and work out the best way to proceed

Robert”.

34. There was a further exchange of emails between the claimant and Ms Fraser on 1 October 2021 (page 259 of the RDB). The claimant stated in her email that her research had indicated that performance went down as a result of unhealthy stress levels and that a lesson to be learnt from this was that when a colleague started to get low and depressed, and productivity got low they should be asked to stop and disconnect completely which had not happened in her case in the period from January to April. Ms Frazer responded by expressing her concern for the way in which the claimant was feeling. Ms Frazer further stated that the team had taken every effort to support the claimant including working with OH to support her to return to work and to succeed in her role at the respondent and invited the claimant to identify the nature of any further support required at that time.

#### **4 October 2021 and subsequently**

35. The claimant sent a detailed email to Ms Frazer (which she copied to Mr Stanforth and other managers) on 4 October 2021 entitled “ Raise notice to resign from the job” which is at page 258 of the RDB. In brief summary, the claimant stated that whilst she acknowledged that the management had made efforts during the previous 2-3 months to support her this was not the case in January to May 2021 and raised concerns regarding the treatment and lack of support which she stated that she had experienced including that the management had failed to take proper care of her wellbeing and that support was not given until she had reached extremely high levels of stress and anxiety including multiple anxiety attacks. The claimant summarised at the conclusion of her email 5 areas of stated management failings including bad and stereotypical work culture and lack of experienced structures around employees’ wellbeing together with unempathetic colleagues and team mates.

36. The claimant had a meeting with Mr Stanforth on 4 October 2021. Mr Stanforth’s notes of the meeting are at pages 115 – 116 of the RDB. In brief summary, the notes state that Mr Stanforth described to the claimant other options which were open to the claimant as an

alternative to resignation including time off and reduced hours and that the respondent wished to ensure that the claimant had considered all other options before committing to such a route. Mr Stanforth's notes also state that there was a discussion regarding the claimant's concerns regarding the project assignment and that Mr Stanforth acknowledged that the work place concerns which she had raised were serious and would be investigated.

37. The documents indicate that over the following days the claimant continued to raise concerns regarding her assignment to the Cognition project and also raised concerns via the respondent's Slack group messaging system regarding the way in which she believed that she had been managed. The documents also indicate that the claimant was requested during this period to refrain from raising such matters via the group messaging system and to raise any concerns via the respondent's formal grievance procedures (page 269 of the RDB).

#### **6 October 2021 and subsequently**

38. On 6 October 2021 the claimant messaged her line manager Mr Stanforth stating that she felt that she had been manipulated regarding the project assignment (pages 244/ 245 of the RDB). The claimant also stated that she did not believe that she had received proper support from management or P&C as she had not received regular checks to see how she was doing, was being forced to move projects despite raising concerns and that she was not sure whether she was suffering from racism. The claimant further stated that she would quit if she was forced to work on the Cognition project, that she felt that she had been exploited since she joined and that she was going to raise a grievance of racial bias as she stated that she suspected that it had interfered with her well – being and career. In the reply, Mr Stanforth encouraged the claimant to discuss her concerns with Ms Fraser.
39. The documents indicate that the respondent continued to have meetings/ discussions/ exchange emails with the claimant over the following days. The claimant stated in her email to Ms Fraser on 12 October 2021 that she was still considering keeping the notice of resignation (page 290 of the RDB). The claimant also stated in her email to Mr Stanforth on 12 October 2021 that she remained concerned about the low level of work on the criterion project and that she had expressed in her discussions regarding the role that if she did not find the level of work to be right for her, she was happy to quit the job and find a better/ right opportunity for her (page 247 of the RDB).

#### **15 October 2021 and subsequent days**

40. On 15 October 2021, Ms Frazer emailed the claimant setting out her understanding of the meetings which she had had with the claimant on

5 and 6 October 2021 which she stated had been for the purpose of sharing the claimant's workplace concerns and the reasons behind the claimant's email of resignation dated 1 October 2021. This document is at pages 295 – 297 of the RDB.

41. In brief summary, the email states that :- (a) that there was a discussion regarding the claimant's assignment to the Cognition project and associated proposed further discussions (b) it was Ms Frazer's understanding that project 1A ( the claimant's previous project assignment) would not be a suitable option to support the claimant's career growth at that time because the claimant had previously expressed dissatisfaction regarding the project and expressed concerns about the colleagues with whom she had worked on the project (c) a summary of what Ms Frazer understood to be the claimant's workplace concerns (d) that the claimant had indicated, after having considering the respondent's grievance procedure which Ms Frazer had sent to her, that she did not wish to raise a formal grievance and ( e) that, in the light of the serious nature of some of the concerns which the claimant had raised, that the respondent may nevertheless still need to look into them. The claimant was asked to confirm whether there was anything that Ms Fazer had omitted to include. The claimant was further advised that Ms Frazer had set time aside on 19 October 2021 to discuss the next steps with the claimant. The email further stated that the claimant had declined the meeting and informed Ms Frazer that she did not wish to proceed with the grievance process/ did not consider that it would be beneficial.

42. In subsequent dealings/ exchanges of messages with Ms Frazer and Mr Stanforth on 15 October 2021 and during the following few days, the claimant continued to express her unhappiness at the respondent including that she did not think that the job was right for her and that she wanted to quit the job/ was happy to leave (pages 247, 251 and 253 of the RDB). The claimant also stated in a message on 17 October 2021 that the only way that she could stay was if she was allowed to return to the IA project for a whole year with no conversations about change (page 252 of the RDB).

### **19 October 2021**

43. In a message to Ms Frazer dated 19 October 2021 (RDB page 301), the claimant questioned whether the job was right for her or whether she was not well and overreacting to things. The claimant expressed her continuing unhappiness at the respondent including that she did not feel safe or happy, that she was unable to move on from earlier clashes with colleagues and that she had not previously experienced anxiety attacks.

44. Around this time former colleagues of the claimant on the IA team raised concerns with the respondent about the messages which they stated the claimant was sending/ deleting on the respondent's Slack messaging system (pages 302 and 311/ 312 of the RDB).

#### **Meeting on 21 October 2021**

45. Ms Fraser and Mr Stanforth had further discussions with the claimant on 21 October 2021. The notes of the meeting indicate that the respondent discussed the claimant's concerns regarding the proposed project and stated why they did not consider it would be appropriate for her to return to IA (pages 318- 320 of the RDB). Ms Fraser also emailed the claimant on 21 October 2021 (page 313 of the RDB) concerning their discussions on 19 October 2021. The letter states that they had discussed the claimant's recent resignation and that the claimant had shared with Ms Frazer that the claimant was unsure what to do about her resignation - whether she wished to continue to work with the respondent and if so in what role. The letter also states that Ms Frazer asked the claimant for a decision by 25 October 2021. The letter further states that they discussed the other workplace concerns which the claimant had raised, that the claimant did not wish to raise them as a grievance as she believed that it would have a negative impact on her wellbeing and that the respondent indicated that it nevertheless had a duty to follow up on such concerns as she had raised concerns about feeling unsafe.

#### **25 October 2021**

46. Ms Frazer had a meeting with the claimant on 25 October 2021 (page 325 of the RDB). The notes of this meeting state that they discussed the claimant's health. They also state that they discussed the claimant's request to return to the IA project and why the respondent did not consider it to be an option including as the respondent had previously taken the claimant off the project at the claimant's request. Ms Frazer subsequently wrote to the claimant regarding the rescheduling of her Occupational health follow up.
47. On 25 October 2021 a member of the IA team raised further concerns with the respondent about messages which he stated the claimant was sharing on the Slack message system (page 311 of the RDB).

#### **26 October 2021**

48. On 26 October 2021 Mr Stanforth emailed the claimant. Mr Stanforth stated that he had been informed that the claimant's project assignment was still an issue and he gave instructions for the work which the claimant was required to undertake whilst he was on leave pending resolution of the issue. Mr Stanforth also stated that he

understood that the claimant had been messaging a member of the IA Team and reminded the claimant of his previous instructions regarding such contacts and that she should restrict direct messaging to what was relevant to her currently assigned work (page 327 of the RDB).

49. Ms Frazer continued to be in contact with the claimant during this period including with regard to a follow up appointment with occupational health and the claimant's assessment for autism. On the afternoon of 26 October 2021, the claimant messaged Ms Frazer stating that she had been texting two of her former colleagues on the IA team quite extensively over the previous couple of weeks and asking Ms Frazer to let them know that she was sorry and was trying to fight the negativity (page 330 of the RDB). Ms Fraser replied that she believed that the team would know from the claimant's messages that the claimant had apologised. The claimant informed Ms Frazer that she was taking a day's leave and Ms Frazer encouraged the claimant to disconnect and rest in the light of her anxiety.

#### **28 October 2021**

50. On 28 October 2021 the claimant messaged Ms Frazer stating that "I want to quit the job. It's not been a good experience." Ms Frazer replied offering to set up time to speak to the claimant (page 333 of the RDB).

#### **29 October 2021**

51. On 29 October 2021 a research scientist at the respondent emailed Mr Komarek, a senior manager, to express concerns about the contents of the slack messages which he stated that the claimant had shared on the respondent's random slack message channel (which he stated could be accessed by nearly 900 people) and contained remarks which he considered to be "racially disparaging, generalizing and offensive" (page 372 of the RDB). The research scientist asked that someone should sit down with the claimant informally to let her know that some of the messages crossed the line. The associated messages, which express views of a racial nature, are at page 373 of the RDB. The research scientist sent a further message to Mr Komarek and also to other senior managers in the respondent later that day advising them that the claimant was continuing to send what he considered to be "hostile and inappropriate messages on Slack". The associated messages are at page 371 of RDB.
52. Ms Frazer messaged the claimant later that day (page 364 of the RDB) stating that she had seen complaints from staff about messages that the claimant had sent on the random and general slack channels. Ms Frazer further stated that the claimant had been warned by her and Mr Stanforth about sending inappropriate messages on Slack because

of the impact on others. Ms Frazer informed the claimant that they would discuss the messages on Monday and asked the claimant to refrain from sending any more messages on Slack over the weekend.

53. In the claimant's subsequent response, she stated that she had realised that some of the comments might not be appropriate and had therefore deleted them and said sorry. The claimant also stated that she was struggling because of the state of health. Ms Frazer encouraged the claimant to disconnect from work and seek support from mental health professionals (page 365 of the RDB).

54. A further employee notified Ms Frazer on 29 October 2021 of his concerns regarding the claimant's messaging on the Slack channel (pages 367 – 370 of the RDB).

### **31 October 2021**

55. On 31 October 2021 the claimant emailed Ms Frazer requesting a medical note for a two month "reset". In her response on 1 November 2021, Ms Frazer asked the claimant to clarify what she meant and advised her that any medical note would have to be obtained from a medical professional. Ms Frazer also stated in the email that she had arranged an occupational health appointment for the claimant to speak to a doctor that morning to understand how the respondent could continue to support her but had been advised that the claimant had failed to attend (page 374 of the RDB.)

### **1 November 2021**

56. On 1 November 2021 the claimant requested a copy of the medical note which had recommended her removal from the IA team.

57. On 1 November 2021 Ms Frazer received from a member of the IA team, copies of the claimant's further messages on Slack. The messages related to alleged (unspecified) unfairness/ favouritism relating to opportunities to undertake presentations in the IA team (pages 309/310 of RDB).

58. Ms Frazer subsequently received a copy of further messages which the claimant had sent that day to members of the IA team which contain unparticularised comments relating to :- (a) her experiences at the respondent (page 309 of the RDB), (b) allegations of enslavement and exploitation (page 392 of the bundle) and (c) a subsequent exchange of messages between the claimant and a member of the AI team in which he advised the claimant of what he considered to be the disconcerting nature of her messages and negative impact on the team together with the claimant's responses. The claimant asserted in such responses her right to express her views

regarding unspecified inequalities and injustices and the adverse effect which the job was having on her life, how much it had brought her down as a person and how selfish, biased and unkind people were in the respondent (pages 307 – 308 of the RDB).

59. Ms Frazer messaged the claimant again on 1 November 2021 (page 394 of the RDB) in which she stated that she had been made aware that the claimant was continuing to post on Slack channels when she had been asked not to do so including by way of clear feedback from Mr Stanforth. Ms Frazer instructed the claimant to stop messaging the IA team and to disconnect from work if she was unwell. The claimant responded that she was not a slave, that if something was wrong she had a right to raise it as long as it did not wrong someone else and what they had done to her and was doing to others was wrong and that she was not scared to “flag” it. Ms Frazer replied that she had made it clear that they took her concerns very seriously and that the respondent had constructive and appropriate ways to raise concerns. Ms Frazer further stated that the claimant had cancelled a 1 to 1 with her that day which could have been used to address the claimant’s concerns.
60. The claimant continued to exchange messages with Ms Frazer on 1 November 2021 (page 396/399 of the RDB) in which she stated that she found the team / respondent exploiting/ cruel and fundamentally flawed. Ms Frazer encouraged the claimant to take time to rest. Ms Frazer advised the claimant that if she no longer wished to work at the respondent, they could talk about it once the claimant was back at work and in the meantime that it was best for the claimant to disconnect from Slack. Ms Frazer informed the claimant that she would allocate some time for them to talk with Mr Stanforth and asked the claimant to let her know if there was anything else she could do to support her. Ms Frazer further advised the claimant to refrain from sending any further potentially distressing messages which would be contrary to the organisational values of the respondent/was not helpful to the claimant and which, if they continued, could potentially be a conduct issue. Ms Frazer further stated that she had previously advised the claimant how to raise concerns.
61. The claimant replied that she had concerns relating to selection biases, however she did not want to say on what grounds, that she was scared and wanted to raise them for the benefit of others in the future. The claimant did not explain the nature of her concerns. Ms Frazer informed the claimant that if she had concerns it was important that she shared them so that they could be investigated.



62. The claimant concluded the exchange by stating that some people had been treated more favourably than others and that she wanted to leave the job which was a negative environment and had brought her down a lot (page 399 of the RDB).

### **2 November 2021**

63. It was agreed on 2 November 2021 that the claimant would take a day's sick leave as she had indicated that she was in very low mood and that the respondent would meet with her on 3 November 2021 to discuss the next steps. Ms Frazer requested the claimant to refrain from sending unwarranted slack messages to other colleagues which she stated had been causing a lot of distress (page 401 of the RDB).

### **3 November 2021**

64. The respondent exchanged further messages / correspondence/ had further discussions with the claimant on 3 November 2021. As part of the exchange Ms Fraser stated in an email responding to the claimant's previous enquiries, that the decision to end her assignment to the IA team in June had been taken by management in the light of the claimant's request and what was considered to be best for the claimant's growth and productivity (page 410 of RDB).

### **3 November 2021**

65. Mr Stanforth messaged the claimant stating that he understood that the claimant had been messaging a member of the A1 team and reminded her that they had instructed her not to message research leads directly except in relation to currently assigned work. The claimant replied that everyone was free to speak and questioned whether it was a law to which Mr Stanforth replied that it was an instruction. The claimant asked why the respondent wished to keep her in a box, questioned how the respondent could ask her not to speak and stated that she was not a slave and that they could not deny her opportunities (page 404 of the RDB).

66. The respondent's note of the meeting with the claimant later on 3 November 2021 (page 407 of RDB) record that the claimant stated that her employment with the respondent had been a bad experience which had had a big effect on her health. The notes also state that Ms Frazer mentioned that the claimant was wanting to quit to which the claimant is recorded as responding yes as there were a lot of things which were wrong and she did not want to give more of her time and professional career. The notes further record that the claimant stated that she wanted to be placed in a team at the correct level and did not wish to return to the A1 team.

67. Ms Fraser wrote to the claimant following the meeting. This email dated 3 November 2021 is at page 413 of RDB. In summary, the letter stated that Ms Fraser and Mr Stanforth had explained that they felt that they had explored all available options including regarding alternative work and had done all that they could to support the claimant / her emotional wellbeing and that if the situation continued without the claimant engaging in the available options it would be detrimental to the claimant's mental health. Ms Fraser further stated that if the claimant wished to resign from her role the next step would be for the claimant to finalise it in writing and that if the claimant decided to resign, they would want to ensure that her notice period was as comfortable as possible. Ms Fraser concluded her letter by reminding the claimant that she should take time to finalise her decision as it was a big decision for the claimant to make and that the respondent strongly believed that it was not in the claimant's best interests to engage in communications on Slack during such period.
68. Later that day, the claimant messaged Ms Fraser enquiring about arrangements for returning office equipment to the London office. The claimant further stated that she agreed with Ms Fraser that she should give herself space and not engage in Slack (page 420 of the RDB). The respondent subsequently provided the claimant with copies of OH reports requested by the claimant that day (page 419 of RDB) and gave reasons for the respondent's decisions in relation to the claimant's fitness for work/ not to continue her assignment to the IA team after June.
69. During the course of 3 November 2021, the respondent received copies of further messages which the claimant had sent to a former colleague on the IA team ( page 305-306 of RDB) which included a question about the allocation of work within the IA team and a message stating that she should be blocking the job out of her life given how much it had brought her down as a person and how selfish, biased, short sighted and unkind people were at the respondent , that the job "makes me sick" , they should not try to scare her and "I have had enough".
70. The claimant sent a message to Mr Komarek on the evening of 3 November 2021 setting out her requirements for a project assignment in order to remain with the respondent (page 423 of RDB).

## **5 November 2021**

71. On 5 November 2021, the claimant contacted Mr A Fidjeland, Senior Director of Engineering. The claimant's messages to Mr Fidjeland, in

which she requested new management and team, are at pages 434 of the RDB.

#### **6 November 2021**

72. On 6 November 2021 Ms Frazer received copies of further Slack messages which the claimant had sent to a member of the IA team together with an email from his manager Mr Botvinick (pages 435 – 437 of the RDB) expressing concern about the welfare of the team member and questioning why the respondent had not been able to protect him from harassment. Many of the messages were timed after 9pm at night. The claimant questioned in the messages whether the IA team had asked management to remove her from the project in June 2021/ suggested that her removal had come from the team and made disparaging remarks about the character of the team. The messages also included unparticularised allegations of favouritism and bias and of a toxic environment which the claimant stated had caused her anxiety attacks and low confidence.

#### **7 November 2021**

73. Ms Frazer responded to the emails on 7 November 2021 advising that the matter would be addressed the following day (page 435 of the RDB).

#### **8 November 2021**

74. In an exchange of messages on 8 November 2021 the claimant informed Ms Frazer that she wished to raise a grievance against a member of the IA team. The claimant also asked whether the IA team had requested her removal from the team to which Ms Frazer replied that it was a medical decision that the claimant was not fit for work at the end of June 2021 and a management decision that it was better for the claimant's wellbeing and productivity to have a fresh start on a new project when she returned from sick leave (page 439 of the RDB).

#### **9 November 2021**

75. On 9 November 2021, Ms Frazer sent the email to the claimant at page 442 of the RDB. In brief summary, Ms Frazer asked the claimant if she had reached a decision regarding her resignation or whether she needed any additional support to make the decision. Ms Frazer further advised the claimant that she was working on the basis that the claimant planned to remain with the respondent, that she wished to ensure that the claimant had ongoing support and asked the claimant to confirm when she would be available to meet with OH. Ms Frazer also acknowledged that the claimant had raised concerns regarding a former colleague in IA including that she might wish to raise a

grievance and in stated that she was enclosing a copy of the relevant policy and offered to discuss the process with the claimant.

#### **10 and 11 November 2021**

76. Ms Frazer and Mr Stanforth held a meeting with the claimant on 10 November 2021 to discuss the claimant's use of the Slack messaging system. Ms Frazer subsequently wrote to the claimant on 11 November 2021- this email is at page 448 of the bundle. In summary, Ms Frazer stated that although the claimant's wellbeing was her priority it could not come at the expense of others and that the respondent had a duty of care to ensure that all employees behaved in a respectful manner. Ms Frazer stated that she and Mr Stanforth had, on more than one occasion, requested the claimant not to message her colleagues in IA or to participate in the IA Channels as she was no longer working on the project, they believed that it wasn't helping the claimant's welfare and, because her colleagues were finding it distressing. The claimant had however repeatedly chosen to ignore such instructions. Ms Frazer further stated that given the extent of the messaging and the ignoring of the respondent's requests an investigation into potential breaches of the respondent's code of conduct, which could lead to disciplinary action as previously warned, was warranted. Ms Fraser stated that she would arrange a follow up meeting with occupational health to make sure that the claimant was adequately supported during the process. Miss Fraser acknowledged that the claimant had indicated that she wished to raise grievances in respect of her time at IA and stated that she would arrange for someone to support her through such processes.

#### **12 November 2021**

77. On 12 November 2021 (page 425 of RDB) the claimant sent a lengthy message to Mr Komarek regarding the investigation into her messages. The email included a request that the matter was not formally investigated as the claimant stated that it would not have a positive impact on her confidence and happiness at work and would help to burn bridges. The claimant offered to apologise to the team members concerned whom she stated she was sure would understand. The claimant acknowledged that she had been warned but stated that she had not stopped because it was not in her control as work was making her sick as she had repeatedly shared. The claimant gave a further detailed explanation of her situation and why she believed that it would not be appropriate to take action against her. Mr Komarek acknowledged the claimant's message and encouraged the claimant, who was off sick that day, to fully disconnect and rest over the weekend. At the end of the email Mr Komarek listed the contact details of potential internal and external sources of support.

**15 November 2021**

78. Mr Komarek had a discussion with the claimant on 15 November 2021.

Mr Komarek's notes of the meeting are incorporated into an email to Ms Frazer of the same date which is at pages 458 – 459 of the RDB. In summary, the notes state the following: - that the claimant had stated that she wasn't causing anything but was responding to others, that she felt that IA was a toxic work environment and that she could not go through the investigation process which she believed that the respondent was trying to inflict on her and that everything was a consequence of her time at IA. The claimant stated that going forward, she wished to work with people who had stable scope and planning with a stable project period of around a year. The claimant stated that she had informed Mr Komarek that she would not continue working at the respondent if there was an investigation into her conduct. Mr Komarek advised the claimant that he was 99% sure that the investigation would continue however the claimant should confirm the position with Ms Frazer of P& C to be 100 per cent sure. The claimant reiterated that she would not participate in an investigation or remain working somewhere that felt that an investigation was appropriate given the mental challenges which she was facing. Mr Komarek concluded the discussion by stating that he would share the claimant's need for clarity about whether the investigation would proceed and acknowledged that the claimant sounded very distressed. Mr Komarek stated that he hoped that the claimant would reach out to the counselling and mental health resources which he had previously shared with her.

79. On 15 November 2021, Mr Stanforth messaged the claimant to ascertain how she was and in response to which the claimant informed him that she was not feeling well. The claimant advised Mr Stanforth that she needed to "take a couple of meetings" to be able to understand her engagement at the respondent and he advised her that she could take such time (page 451 of the RDB).

80. On 15 November 2021, Mr Fidjeland emailed the claimant in response to her previous requests. This email is at pages 460 – 461 of the RDB. In summary, Mr Fidjeland stated that his understanding was that the claimant had been offered two different projects which should be viewed as good opportunities in terms of growth and development. Mr Fidjeland also stated that he did not see any merit in approving a change in line management at that time as he was satisfied that Mr Stanforth had been providing her with as much support as possible and that a change in line management would not change the issues which she had raised. Mr Fidjeland further advised the claimant that the appropriate way to address those issues was by following the respondent's normal processes which he understood the claimant had

initiated and in respect of which the respondent's P& C team would be able to support her.

### Events of 17 November 2021

81. Ms Frazer contacted the claimant (at 10am) on 17 November 2021 to ascertain how she was and to advise the claimant of the potential next steps including, as Ms Fraser stated that the claimant had indicated the previous week that she did not wish to engage with Ms Frazer at that time, the name of an alternative point of contact. This email is at pages 475- 476 of the RDB. Ms Frazer also stated that in the light of the references during the previous week to the claimant being unwell, she was recommending to OH that they schedule a follow up appointment for the claimant. Ms Frazer further stated that she wanted to ensure that the claimant was fully supported and to obtain advice regarding the claimant 's fitness work / any required adjustments and fitness to participate in an investigation. Ms Frazer advised the claimant that if the claimant decided not to arrange/ attend the OH appointment it was likely that the respondent would progress the investigation without further OH advice and that it was therefore important that the claimant attended such an appointment so that she had the benefit of the third party advice and support for such purposes.
82. The claimant messaged Mr Komarek on the morning of 15 November 2021 (11.45 am) indicating that an informal resolution of the matter should have occurred (page 246 of the RDB).
83. The claimant replied to Ms Frazer by email on 17 November 2021 (12.05pm) (pages 474 – 475 of the RDB) stating that she had read the respondent's policy which stated that an informal resolution with a manager was the first step before an investigation was started. The claimant further stated that she appreciated that an instruction was given to her but that did not resolve the fundamental reason of why she had been acting in a certain way. The claimant concluded her email by saying that she could not proceed with or agree to such an investigation given her mental health deterioration over the past 1.5 years and the future and present impact of such an investigation on her.
84. The claimant emailed Ms Frazer again by email on 17 November 2021 (12.36pm) (page 474 of the RDB) in which she stated as follows: -
- “ I would like to resign my post given the toxic work environment and its impact on my mental well-being. I cannot engage into a process that is neither right course of action nor a healthy thing for me. I have shared as much information and inputs as I could in writing and in person and more recently with Paul. I want to quit from this job and stand 100%

clear that I would not participate in any investigation – [ name deleted]”.

85. The claimant also sent an email to a respondent global distribution list (which was also received by Ms Frazer as part of that list) on 17 November 2021 (12.50pm) (page 472 of the RDB) which stated as follows:-

“ Say Bye

Hi all,

After a very difficult 1.5 years at the firm and experiencing an immense amount of deterioration in my mental and physical health as a result of bad management decisions I have decided to take a step back.

I wanted to reach out to people I talked to and connected with and apologize for not being able to meet in person for this.

I tried my best but I cannot bear the strain of work stress and need to protect myself as an individual.

Wishing everyone the very best and lots of sunshine.

Thanks,

[ name deleted]”.

86. Ms Frazer replied by email on 17 November 2021 (1.10PM) as follows:

-

“Hi [ name deleted], thanks for your email. I’m just on a call, but I assure you that I’ll come back to you asap this afternoon.

Many thanks

Anna”

87. The claimant emailed Ms Frazer on 17 November 2021 (at 1.46pm) as follows: - “hi I am 000 after 2PM. I hope not to receive any emails then”.

88. Ms Frazer emailed the claimant on 17 November 2021 (1.59PM) (page 473 of the RDB) as follows:-

“Hi [ name deleted],

I'm sorry to hear this, but I understand your decision and I confirm that we accept your resignation. I would like to chat to you about next steps and make sure you are supported – would you feel comfortable having a quick chat with me tomorrow so that I can talk you through that and any questions you might have?

If you are not comfortable speaking to me about this, then we will proceed to confirm your decision to resign by letter, outlining next steps and what ongoing support is available to you should you feel you require it.

Many thanks,  
Anna”

89. The claimant emailed Ms Frazer on 17 November 2021 at 8.03pm as follows: “ok we can talk in the morning” and again (at 20.05) “ I would like to talk on gvc once tomorrow before proceeding”.
90. The claimant emailed Ms Frazer on 17 November 2021 (at 8.07pm) as follows:- “I did not say I accept my resignation. I said that I want to appeal against the decision to start the investigation against me. Also my slack is not working without confirming with me about these things when I am 00o” (page 473 of the bundle).
91. The claimant emailed Ms Frazer again at 8.17 pm (page 478 of RDB) as follows - “I did not officially give my resignation. My email is not working. I am not well. I need to talk over GVC”.
92. Ms Frazer emailed the claimant at 8.35 pm (page 478 of the RDB) in which she stated that they could talk about the matter the following day as she was logging off. Ms Frazer advised the claimant to disconnect and look after herself and gave her a contact number at EAP if she needed any wellbeing support.
93. The claimant responded at 8.41 pm stating as follows : “ I don't feel like talking to anyone that's why I was being on 000. And being at work made me sick” (page 478 of the RDB).
94. The respondent disconnected the claimant's access to the respondent's systems on 17 November 2021.

### **Subsequent events**

95. There were subsequent exchanges of correspondence/ telephone discussions between the parties regarding the termination of the claimant's employment including:- (a) the claimant's email to Ms Frazer on 19 November 2021 (page 481 of the RDB) in which the claimant



stated that “ I want my status of resignation to be withdrawn or on hold”, (b) a meeting on 29 November 2021 in respect of which it is recorded that the claimant stated that she did not agree with the respondent’s decision not to accept her retraction (page 486 of RDB) and (c) the claimant’s email dated 30 November 2021 (page 492 of the RDB) in which she stated that she did not wish to proceed with her resignation and disagreed with the respondent’s decision not to reinstate her role including as she never officially confirmed her resignation and as the respondent had placed pressure on the claimant for a formal investigation against her for misconduct for conduct for being mentally unwell.

96. Ms Frazer emailed the claimant on 1 December 2021 (page 495 of the RDB) in which she stated:-

“As explained on Monday, your resignation has been accepted and we will not be accepting your request to rescind it. Your grievance will be investigated (.....) but this does not change our position on your resignation. You will remain on garden leave up until 17 December 2021, when your employment with DeepMind will end”.

97. The claimant subsequently emailed Ms Fraser and other managers on 3 December 2021 in which she referred to the law on heat of the moment resignations. The claimant also asserted that although she had never directly resigned the respondent continued to term it as a resignation and denied her a retraction which not only constituted unfair dismissal but also, having regard to the events of 14 November 2021 constituted constructive dismissal (page 497 of the RDB).

### **The IA Onsite Talk**

98. The respondent conducted an IA onsite training talk on 11 and 12 November 2021. The list of attendees is recorded at page 453 of the bundle. The list does not include the claimant. The respondent accepts, for the purposes of this hearing, that:- (a) as part of the programme there was Survey talk which covered the origins of human child development in relation to primates (b) the slideshow which accompanied the talk included the slide at page 454 of the RDB entitled “ What makes humans different ?” (c) during the talk the respondent played to the attendees a third party video about the works of Michael Tomasello (whom the respondent says is a developmental and comparative psychologist ) in which it was suggested that young children with autism found it difficult to learn certain behaviours which was a trait shared by chimpanzees.

**The submissions of the parties**

99. The Tribunal has had regard to the written and oral submissions of the parties as referred to above and summarised further below.

**The conclusions of the Tribunal**

100. The Tribunal has considered the claimant's application for interim relief as follows :- (a) the manner of the termination of the claimant's employment namely, is it likely that the claimant will establish at the full hearing that she was dismissed (expressly or constructively) by the respondent and (b) if so, the reason for any such dismissal namely is it likely that the making of protected public interest disclosures was the principal reason for any such dismissal (including whether the claimant made any such disclosures).

**The termination of the claimant's employment**

101. It is common ground that the claimant's employment came to an end on 17 December 2021 however, the manner of the termination is in dispute. The claimant says that she was expressly or, alternatively, constructively dismissed by the respondent. The respondent says that the claimant's employment came to an end by resignation.

102. The claimant's primary case, as set out at paragraph 15 of the Grounds of Complaint (page 333 of the RPB), is that she was unfairly dismissed by the respondent on or about 17 November 2021 with one month's notice (paragraph 15.1) including as any "resignation" was not an actual resignation / that it was, in any event, made in the heat of the moment as a result of the claimant's mental health conditions.

103. The respondent's primary case is that the claimant terminated her employment with the respondent by way of a valid resignation on 17 November 2021 which took effect on 17 December 2021. The respondent relies in particular on the contents of the claimant's email to the respondent dated 17 November 2021 (paragraph 84 above and page 474 of the RDB).

104. The claimant does not rely on any specific written notification/ words of dismissal by the respondent. The claimant's primary case for express dismissal appears to be that she was dismissed as there was no actual resignation on 17 November 2021 as she was only considering resigning. The claimant states at paragraph 15 of the application in support of such contention that:- " What I actually said/ wrote was something like ' if the management will keep pushing me for

a disciplinary investigation, I want to quit this job given its negative impact on my mental health.”

105. The claimant’s further/ alternative case, which was raised by her in oral closing submissions (albeit that it was previously referred to in the claimant’s email to the respondent on 3 December 2021 – paragraph 97 above) was that it was not, in any event, a valid resignation as any resignation was made in the heat of the moment in the context of the claimant’s serious mental health conditions and the respondent’s continued pursuit of a disciplinary investigation notwithstanding such conditions.

106. The respondent’s position is in summary, that :- (a) the claimant’s description of what she wrote to the respondent on 17 November 2021, as contended for in the Grounds of Complaint and/or at paragraph 15 of the application, is a misrepresentation of what the claimant actually stated in her email dated 17 November 2021 and (b) the claimant’s email on 17 November 2021 (page 474 of the bundle and paragraph 84 above) was a clear and unequivocal resignation (which once submitted could not be withdrawn without the consent of the respondent) and (c) this was not a heat of the moment resignation as it was a clear and unequivocal resignation which was submitted after the claimant had been threatening to resign over a period of weeks, had been given time to reflect on her position and had been told that she should confirm any resignation formally by email. The respondent relied in particular on the authorities of **Riordan v War Office [1959] 1 WLR 1049**, **Harris & Russell Limited v Slingsby [1973] ICR 454**, **NIRC, Sovereign House Security Services Limited v Savage [1989] IRLR 115 CA** and **Wallace v Ladbroke’s Betting and Gaming Limited (UKEAT/0168/15)** in support of its case.

#### **The conclusion of the Tribunal on the issue of express dismissal / resignation**

107. Having given the matter careful consideration, the Tribunal is not satisfied, on the basis of the available information that the claimant has a pretty good chance that the Tribunal will decide at the full hearing that the claimant was expressly dismissed by the respondent for the purposes of section 95 (1) (a) of the Act and/or that there was no resignation and /or that any resignation was, in any event, submitted in the heat of the moment which the claimant should have been permitted to have withdrawn.

108. When reaching such conclusions, the Tribunal has taken into account in particular, that not only has the claimant failed to identify any “words” of actual dismissal but also that the contents of the

claimant's email to the respondent on 17 November 2021 (timed at 12.36pm) (paragraph 84 above and page 474 of the RDB) states (twice) that she wants to resign/ quit her job for the stated reasons. Further, that email does not state, as contended for by the claimant at paragraph 15 of the application, that she would resign if the respondent "will keep pushing me for a disciplinary investigation".

109. The Tribunal has further taken into account that 4 minutes later, the claimant sent an email to a respondent global distribution list (which was also received by Ms Frazer to whom the earlier email had been addressed) in which she announced her decision and said "Bye" to her colleagues (paragraph 85 above and page 472 of the RDB). Moreover, Ms Frazer, emailed the claimant in response to her email (paragraph 88 and page 473 of the RDB) stating that the respondent understood the claimant's decision and confirming the acceptance of her resignation.

110. Further the Tribunal is not satisfied, on the available information and having had regard to the authorities referred to at paragraph 106 above, that the claimant has a pretty good chance of establishing at the full hearing that any resignation on her part was "a heat of the moment" resignation which the claimant should have been permitted to have withdrawn.

111. When reaching such conclusion the Tribunal has taken into account from the available information, the claimant's stated mental health condition at the time of events in question and also that the claimant sought (from 20.05pm ) on the evening of 17 November 2021 to refute that she had resigned/ contended that she was unwell and needed to talk about the matter ( paragraphs 89 to 93 above).

112. The Tribunal has however balanced against this that the claimant had been threatening to resign her employment with the respondent from 1 October 2021 (paragraphs 31 and 32 above onwards) at which time the claimant stated that she had not been in good health or happy since she had joined the respondent and that such comments were ongoing during the subsequent period. The Tribunal has further taken into account from the available information that in the following weeks the respondent encouraged/arranged for the claimant to obtain support from OH, encouraged the claimant to take time to reflect on any decision to resign and told her that if she wanted to resign, she should do it formally by email (in particular paragraphs 46, 49, 55, 66 and 67 above). Moreover, on 15 November 2021 the claimant was permitted to take time to consider her position with the respondent (paragraph 79 above).

113. In all the circumstances, the Tribunal is not satisfied that the claimant has a pretty good chance of establishing at the full hearing that the claimant was dismissed by the respondent for the purposes of section 95 (1) (a) of the Act.

**The conclusion of the Tribunal on the issue of constructive unfair dismissal**

114. The claimant's alternative case is that she was constructively dismissed for the purposes of section 95 (1) (c) of the Act. The relevant issues for the purposes of this interim relief hearing, including the alleged relevant repudiatory breaches occurring prior to any enforced resignation on 17 November 2021, are identified at paragraph 21 above.
115. The claimant's primary case on constructive dismissal appears to be that if she did resign she was forced to do so because of the requirement to participate in a disciplinary investigation notwithstanding that :- (a) any such matters had arisen because of her mental health condition and (b) that she was not fit to participate in any disciplinary investigation because of her mental health condition which would "even" proceed in the absence of an OH assessment. The claimant further appears to contend that the reason why the respondent required her to participate in a disciplinary investigation was that she had made (multiple) protected public interest disclosures. The claimant has not advanced for the purposes of this interim relief application any positive case in respect of the harassment element of the alleged repudiatory breaches of contract.
116. The respondent denies any repudiatory conduct on its part including in respect of the alleged breaches in respect of - (1) the initiation of the disciplinary investigation and /or (2) the alleged harassment on 11 November 2021. The respondent further denies that either of the alleged matters, in any event, occurred because the claimant had made any protected public interest disclosures for the purposes of section 103 A of the Act.
117. The respondent relies in particular in respect of this element of the claim on the authorities of **Bank of Credit and Commerce International S.A v Ali (No 2) [2000] ICR 1354 Ch, Morrow v Safeway Stores [2000] IRLR 9, EAT Salisbury NHS Trust v Wyeth (UKEAT/0016/15) and Abernethy v Mott Hay and Anderson [1974] ICR 323, CA.**
118. In this case the claimant relies on the respondent's alleged breaches of the implied term of trust and confidence in respect of the matters identified above. When considering this aspect of the claim, the

Tribunal has had regard in particular to the review of the legal authorities relating to the implied term of trust and confidence contained in the Judgment of **Morrow v Safeway Stores** referred to above.

119. The Tribunal has reminded itself for such purposes, that the there is an implied term in a contract of employment that an employer will not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between an employer and employee. The Tribunal has further reminded itself that an established breach of the implied term of trust and confidence constitutes a fundamental or repudiatory breach going to the root of the contract which entitles an employee to resign and claim constructive dismissal for the purposes of section 95 (1) (c) of the Act.
120. The Tribunal has considered first the claimant's allegations relating to the pursuit of the disciplinary investigations. The claimant has established on the available information that the respondent had notified/ confirmed that it was proceeding with a disciplinary investigation into the claimant's messaging (paragraphs 78 and 81 above).
121. The claimant has not however established on the available information that the respondent informed the claimant that it would do so "even in the absence of OH assessment". The Tribunal is satisfied from the available evidence, that the claimant was encouraged throughout the relevant period to engage with OH. Further in her email to the claimant dated 17 November 2021 (paragraph 81 above) Ms Frazer stated that she was recommending to OH that they arrange an appointment for the claimant and that she wanted to ensure that the claimant was fully supported and to obtain advice regarding any required adjustments and the claimant's fitness to participate in any investigation. Ms Frazer however warned the claimant that if the claimant decided not to arrange/ attend an appointment with OH it was likely that the respondent would, in such circumstances, progress the investigation without further OH advice and that it was therefore important for the claimant to engage with such process.
122. Further, having given the matter careful consideration, the Tribunal is not satisfied that the claimant has a pretty good chance of establishing at the full hearing that the respondent acted in breach of the implied term of trust and confidence in respect of the pursuit of/ requirement that the claimant be subject to a disciplinary investigation.

123. When reaching this conclusion, the Tribunal has taken into account in particular, that it appears from the available information that from the middle of October 2021 onwards, the respondent was receiving notification of an increasing volume of concerns from former colleagues on the IA team and, subsequently associated managers, regarding the nature and manner of the claimant's messaging on the slack messaging system (paragraphs 44, 47, 51, 54, 57, 58, 69 and 72). Further by 6 November 2021 (paragraph 72) a manager was raising concerns regarding the effect of such messages on the welfare of recipients.
124. The Tribunal has also taken into account what appears from the available information to be the increasingly inappropriate nature of the messages and the consequential concern caused to the recipients. These include the messages referred to at paragraphs 51, 58, 69 and 72 above. Further, the claimant herself acknowledged the inappropriate nature/ manner of some of the messages / expressed a wish to apologise (paragraphs 49, 53 and 77).
125. The Tribunal has further taken into account that it appears from the available information that the respondent made multiple informal attempts to :- (a) explain to the claimant the inappropriate nature of her conduct and the importance of refraining from any further messaging which was not accepted/ acted upon accordingly by the claimant ( paragraphs 48, 52, 59, 65 and 78 ) and to encourage / support the claimant to raise any concerns via the respondent's grievance procedure ( paragraphs 41,45, 59 and 75 )
126. Further, in the light of the above findings, The Tribunal has gone onto consider whether, even if, the claimant had a pretty good chance of establishing at the full hearing that she made any protected interest disclosures during the alleged relevant period of October – November 2021 (paragraph 13 of the application) in respect of any of the matters referred to above she, in any event, also has a pretty good chance of establishing that they were the reason/ principal reason for the respondent's pursuit of the disciplinary investigation.
127. The Tribunal has had regard for such purposes to the authorities of **Bolton School v Evans [2006] IRLR 500 EAT & 2007 ICR 641, CA Panayiotou v Chief Constable of Hampshire Police [ 2004] IRLR 500, EAT, and Riley v Belmont Green Finance Ltd t/a Vida Homeloans UKEAT/0133/19**. The Tribunal has therefore reminded itself that there is a clear distinction to be drawn between the dismissal for the making of protected public interest disclosures and dismissal for the manner in which they are made, which is clearly of relevance in this case.

128. Having given the matter careful consideration the Tribunal is not satisfied that the claimant has, in any event, a pretty good chance of establishing at the full hearing that the reason/ principal reason for the respondent's pursuit of the disciplinary investigation was that the claimant made any protected public interest disclosures.
129. When reaching this conclusion, the Tribunal has taken into account the matters previously identified above (including the distinction to be drawn between the making of and the manner of making any protected public interest disclosures). The Tribunal is satisfied on the available information that :- (a) the claimant was encouraged to raise any concerns via the respondent's grievance procedure and (b) that the reason why the respondent initiated and pursued a disciplinary investigation against the claimant was because of her continued messaging on the slack messaging system of inappropriate comments regarding her former colleagues on the IA team (which caused them concern and some of which she herself acknowledged were inappropriate and sought to apologise for). Further, the claimant did so notwithstanding the repeated instructions from the respondent to refrain from such messages and to raise any concerns via the respondent's grievance procedure.
130. In all the circumstances the Tribunal is not satisfied that the claimant has a pretty good chance of establishing at the full hearing that she was constructively dismissed namely, that the respondent committed any breach of the implied term of trust and confidence in respect of the pursuit of the disciplinary investigation / that any such pursuit was, in any event, because the claimant made protected public interest disclosures.
131. The Tribunal has therefore gone to consider the second of the alleged detriments for the purposes of the claimant's constructive dismissal claim namely, the alleged harassment in relation to the onsite meeting on 11 November 2021. The claimant has not pursued any positive case in respect of this allegation in her application. The respondent denies any repudiatory breach / that it was, in any event, in anyway related to the making of any alleged protected public interest disclosures.
132. Having given the matter careful consideration, the Tribunal is not satisfied that the claimant has a pretty good chance of establishing at the full hearing that the respondent committed a breach of the implied term of trust and confidence in respect of such matter and/or that that the claimant has, in any event, a pretty good chance of establishing at the full hearing that any such conduct was perpetrated because the claimant had made protected public interest disclosures.



133. When reaching such a conclusion the Tribunal has taken into account the respondent's acceptance of the matters referred to at paragraph 98 above. On the basis of the available evidence it appears however that :- (a) the discussions referred to at paragraph 98 above were made in the context of an onsite presentation to the IA team concerning scientific research relating to human development (b) the claimant, who had not been a member of the IA team since June 2021, did not attend and had no involvement in the on site talk (c) the claimant has not adduced any prima evidence in her application in support of this allegation/ to show that any such discussions were related to any protected public interest disclosures.

**Did the claimant make protected public interest disclosures?**

134. In the light of the above findings, it is not necessary for the Tribunal to determine this issue for the purposes of the interim relief application.

**Outcome**

135. The claimant's application for interim relief pursuant to 103 A and 128 (1) of the Act is therefore dismissed.

Employment Judge Goraj  
Date: 4 May 2022

JUDGMENT SENT TO THE PARTIES ON

29<sup>th</sup> July 2022

FOR THE OFFICE OF THE TRIBUNALS

**Online publication of judgments and reasons**

The Employment Tribunal (ET) is required to maintain a register of judgments and written reasons. The register must be accessible to the public. It has recently been moved online. Judgments and reasons since February 2017 are now available at: <https://www.gov.uk/employment-tribunal-decisions>

The ET has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should

be anonymised in anyway prior to publication, you will need to apply to the ET for an order to that effect under Rule 50 of the ET's Rules of Procedure. Such an application would need to be copied to all other parties for comment and it would be carefully scrutinised by a judge (where appropriate, with panel members) before deciding whether (and to what extent) anonymity should be granted to a party or a witness