EMPLOYMENT TRIBUNALS

Claimant: Ms D. Philpott

Respondent: Cawdor Cars (Newcastle Emlyn) (R1)
Mr D. K. L. Davies (R2)
Mr. D. W. Evans (R3)

HELD AT/BY: Wrexham/CVP **on:** 24-28th January, 7th February & 18-19th May 2022

BEFORE: Employment Judge T. Vincent Ryan
Mrs L. Owen
Ms Y. Neves

REPRESENTATION:

Claimant: Ms Philpott represented herself (a litigant in person)
Respondent: Ms. H. Barney, Counsel

JUDGMENT having been sent to the parties on 23rd May 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The parties agreed a List of Issues and the final version, the one addressed by the Tribunal, is set out in the appendix to this judgment. The claimant also referred to a "Scott Schedule" which appears at pages 130 – 159 of the hearing bundle (any reference to it will be to "C's schedule"; unless otherwise stated all page references in general shall be to the hearing bundle).

The Facts

2. The respondents (R1 – R3):

   2.1. R1 describes itself as "a multi-franchise new car retailer operating throughout South and West Wales"; in addition to being a car retailer (trading and referred to in evidence as Cawdor) it operates a property rentals section and

this is where the claimant (C) was employed; this business is known as Datblygau Davies Developments. R1 is owned by the second respondent (R2); he is the controlling mind of R1 and to that extent where the context permits R1 and R2 are one and the same. The third respondent (R3) is employed as R1's Operations Director. At the material time R1 employed approximately 70 people including a professional HR manager; it maintained regular contact with professional legal advisers on matters relating to HR. R1 is a large to medium sized business.

2.2. The Tribunal heard evidence on behalf of the respondents from R2 (known as Kevin Davies), R3, Gwenllian (known as Gwen) Davies (daughter of R2), David Davies (Human Resources manager for R1), and Susan Hughes (Financial Controller of R1). The Tribunal considered that generally speaking the respondents' witnesses came across defensively and as not being wholly straightforward, particularly with some unconvincing denials of events that the Tribunal found have occurred. While being careful not to read too much into witness demeanour, which can be affected by many things such as habits and nervousness, Mr David Davies in particular was observed on a number of occasions by both C and the panel to be making light of the situation and apparently smirking or laughing during his evidence; this was not conducive to credibility bearing in mind the seriousness of the situation and C's obvious distress at what she considered provocative behaviour. Ms Hughes was accepted as a straightforward witness for the most part. On balance however the panel considered that some of the respondents' witnesses' denials were unlikely to be true and that at very least they have downplayed events in some respects. We have not wholly discounted the respondents' witnesses evidence but we were cautious in accepting all of it.

3. The claimant (C):

3.1. C, who is English and resident in Wales, commenced employment in R1's property business on 14 December 2017 and ultimately resigned on 13 June 2020; she says that she resigned in circumstances in which she was entitled to terminate her employment without notice by reason of R1's (R2's) conduct. She was employed as Accounts Assistant/Property Manager, being assistant to Tom Jarvis who was the Senior Group Accountant and with whom she shared an office when he attended at work. C reported to Mr Jarvis and R2; David Davies was responsible for managing her contract and matters relating to wages. C had some dealings about financial arrangements in relation to the two branches of the business with Susan Hughes.

3.2. **Disability and knowledge**: C is a disabled person by reason of psoriatic arthritis. During the Covid pandemic she was vulnerable; she has an auto-immune condition. One of her symptoms was back pain and she required a chair with lumbar support; she requested an improved chair because of her disabling condition and R1 provided it. When R1 introduced an attendance log with a touchpad C explained that fingerprint technology did not always work for her because her hands were often painful and in that condition she could not always effect an adequate touch, especially in the winter. David Davies accepted this explanation and for this reason C was provided with a

pin number to sign in everyday instead of having to use her fingerprint; this was a unique arrangement for her. C discussed her condition with management, staff and colleagues throughout her employment as when it was relevant to the context of any discussion although she played it down as much as she reasonably could. Management and colleagues were aware of her mobility issues caused by a disabling condition throughout employment. On occasions C had to attend hospital or her GP practice for blood tests and permission was granted for her to leave work. At the commencement of the pandemic in February/March 2020 C made a point of requesting and insisting upon social distancing because she was vulnerable and this was known to management and colleagues. There were discussions including in the kitchen with R2 about medication that C required for her condition and she was led to believe that R2 had personal knowledge of some aspects of a similar condition affecting one of his family members. In all the circumstances the Tribunal finds that the respondents knew, or ought reasonably to have known, throughout C's employment that she was a disabled person and certainly by mid-February 2020, and all material times.

3.3. C had a sometimes challenging and combative relationship with R2. R2 did not spend a great deal of time in the property office although he had the use of a desk there; he would visit both sides of the business and various property sites and so was often out of C's office. When he was in the office C found him to be intrusive and considered that he interfered. She did not always appreciate what she considered to be is brusque and demanding style of management but she was not daunted by him and frequently challenged him. She would raise issues of concern to her directly with him, such as her pay and arrangements about pay rises and the payment of expenses.

3.4. The tribunal considered that C was honest in giving her evidence in that she either gave evidence accurately or at very least genuinely believed that what she was saying was true, but we also considered that some of her interpretation of events was subjective and through an emotional lens applying a considerable degree of hindsight justification for her claims. We made these findings both on our consideration of the claimant's oral evidence but also on the transcripts of conversations and text of emails produced to us; C is a robust and fairly resilient character although we accept that overall she became upset at the way relationships within the business were developing, in particular issues arising over the role of Gwen Davies, her own pay and expenses, and finally what reasonably appeared to her to be attempts to remove her from the business.

3.5. R2 saw a future in the business for Gwen Davies, his daughter. He wanted her to have a role in Property Management. She was allocated duties on that side of the business and this appears to have disturbed C's equilibrium and working arrangements with Tom Jarvis. C did not think that Gwen was pulling her weight. C was very critical of Gwen and there appears to be some resentment at the intrusion of, who we referred to as, "the bosses daughter". C felt somewhat threatened by the arrival of Gwen into her department but

she was also put out that Gwen was not, to her mind, bearing a fair share of the work for which she was receiving more than a fair share of credit.

3.6. C was aware from conversations within the office that her predecessor had found R2 difficult and she believes that her predecessor had left because of R2's behaviour. She was ready and able for it, until at least the events of 17th March 2020 (see below).

4. Overview: R2's management style and his interaction with his staff were at times perceived by them to be interfering, demanding, brusque and it often involved crude language, whether used in anger or in jest. C was up to this whilst things were going well for her and was able to fight fire with fire (although we do not suggest that she used crude language either in anger or in jest). She was able to, and did, stand-up to R2. When the property office was affected by the arrival and involvement of Gwen, C reacted badly. She became defensive and felt undermined as well as a sense that there was unfair and unequal treatment where Gwen got away with things, and additional work was created for her. Irritations in relation to R2 became major issues, and particularly with hindsight when C recalled various incidents and comments that had previously not caused her great distress. Matters came to a head on 17 March 2020 in circumstances described below, and that was the low point of the relationship between C and R2, namely R2's unacceptable behaviour to C. C felt unsupported and isolated thereafter, and this led to a sequence of events, issues over pay and expenses, complaints over workload where C felt she was not properly rewarded, where C felt that R2 had reneged on promises made, and the hardening of attitudes ending with the claimant's resignation. C fell out of R1's plans for the future because of her complaints believing that she was no longer a "team player". The tribunal considers that ultimately the claimant resigned over issues of money, events of 17 March 2020, and dissatisfaction with the working situation involving Gwen. This was in the context of R easing her out of employment with a redundancy proposal followed by talk of a re-organisation that she thought was prejudicial, and her concern that R1 was not dealing, and would not deal, with her formal grievance fairly in the circumstances.

5. C's schedule sets out 18 events which were initially thought to constitute individual claims. C explained however that some of the matters such as items numbered 11 and 12 were included in the schedule as background information only and that they did not constitute claims.

6. Allegations of race discrimination – harassment: The tribunal first turned its attention to C's schedule items numbered 1 to 8 and 10. C corrected item number 10 to confirm that she believes this happened in February, and not April, 2020. We deal with item number 9 relating to 17 March 2020 separately below.

6.1. These allegations of harassment related to race and/or sex, as detailed in the schedule, are dated:
   6.1.1. September 2018
   6.1.2. February 2019
   6.1.3. April – May 2019
   6.1.4. June 2019
   6.1.5. September 2019

6.1.6. November 2019
6.1.7. September - November 2019
6.1.8. February (not April as per schedule of claims) 2020
6.1.9. Early March 2020 (not 17.03.20 – dealt with below).

6.2. C ahs made uncorroborated specific allegations with allegedly quoted words used; R2 denies the allegations and the other witnesses do not bear out what C alleges to the extent that she alleges. We find on balance that R2 often used insulting language referring to anyone who irritated him or caused him difficulties, and in particular tenants, as “bitch” and “bastard”. It is more likely than not that he would add the word “English” in connection with some of those derogatory expressions where he thought the object of his ire was English. C said in evidence words to the effect that local people considered by R2 to be “bitches” and “bastards” were referred to as such, in other words people who were Welsh or resident in Wales, but that other people were referred to as “English bitches” or “English bastards”. We find that R2 was differentiating between those two groups. He was expressing his annoyance or intolerance of conduct in each of the examples cited but not a particular anti-English sentiment. When he recounted stories about college life and about a newspaper sponsored competition from the dim and distant past he factually reported the nationality of the person involved and he did so in an insulting fashion; we consider he thought it as part of a humorous re-telling. We find on balance that R2 did not do this with the purpose of upsetting C or with any thought or reference to the fact that she was English as on balance it is more likely than not that this fact was no longer in his mind. He was just re-telling an often told story in a remembered fashion. Similarly with regards to the sex of the subject of the story or tirade in circumstances he found annoying. C was not enamoured of R2’s tone and choice of language but we find also that it did not have the harassing effect claimed by C at the time. We say this in part because C did nothing substantive about it at the time by way of complaint or grievance, whether formal or informal, and neither did she take a stand on the issue. She was well able to, and did, directly challenge R2 on business matters and issues in relation to her pay and expenses; the tribunal has no doubt that if the claimant felt harassed by R2’s language she would have complained vociferously but she did not. She may have asked him to refrain where she had sympathy with an individual tenant, and did so when she thought any criticism was unfair but that was more to do with the fact of unwarranted criticism than pejorative racial or sex-related language. Given R2’s denial, his witnesses lack of corroboration of C’s specific complaints, the passage of time, and lack of other corroborating contemporaneous evidence we cannot find as a fact that each allegedly reported comment was made as claimed. The allegations go back many years. It is likely that R2 swore frequently. C recalls a type of comment, and the Tribunal finds it more likely than not that such type of comments were sometimes made; we cannot now be any more specific.

6.3 C resigned from her employment on 2nd July 2019 after, but not related to, many of these alleged events; she resigned for alternative employment because her request for a pay increase had been rejected by R2, (not because of his boorish language), and she withdrew that resignation because of R2’s offer of an improved remuneration package. R2 told her that she had a “good handle on the work” and words to the effect that he had great trust in her; he wanted her to take on more responsibility with a view to Tom Jarvis retiring. He asked her what it would take for

her to stay in employment with R1 and C asked for £12 per hour plus expenses and a phone allowance; there was some negotiation about the hourly rate, the parties eventually agreeing £11 per hour with some payment of expenses to assist the claimant with travelling, in particular with regard to her son getting to and from school in the working day so that C could work longer. Later when R1 withheld such payment on a regular basis it was because it was known that C's son's school was closed (be it for holidays or due to Covid); C resented this.

6.4 When she retracted her resignation in July 2019 C had drawn a line under any previous issues and accepted improved terms and conditions of employment. The examples of abusive language were specific to unrelated 3rd parties and their respective roles, R2's tirades about tenancy issues, in stories, or in a business and sporting context, rather than being by reference to C, or indeed R2 having any particular thought of C such that they were unrelated and not a series of conduct towards C. C has sought to use them in this litigation and in doing so has painted a poor and unsympathetic picture of R2, but she has not adduced evidence to satisfy the tribunal that there was a course of discriminatory conduct or that it would be just and equitable to extend any time limits. All that said, the Tribunal made the point that abusive language such as that alleged has no proper place in the workplace.

6.5 The incident of February 2020 (item 10 in the schedule) was an isolated incident as before, when R2 referred disparagingly to a tenant. As before C noted it but we find she was not harassed by it. We find this taking into account C's perception which we have commented upon before, namely that she noted some racially related comments but was not perturbed by them and took no substantive action in respect of them, resigned for other reasons and retracted it for more money such that she accepted such conversations as run of the mill and tolerable.

6.6 In early March 2020 R2 compared the conduct of English football supporters to that of Welsh rugby supporters calling the former "hooligans". He associated C with English support ("your lot") but not with hooliganism. The Tribunal finds that it was not reasonable in all the circumstances, including news reports of football hooliganism, frequently but not exclusively by a minority of English supporters, and the often favourable comparison of the behaviour of rugby supporters, for C to take offense or find that this conversation had a harassing effect. We find this taking into account C's perception which we have commented upon before, namely that she noted some racially related comments but was not perturbed by them and took no substantive action in respect of them, resigned for other reasons previoulsy and retracted it for more money such that she accepted such conversations as run of the mill and tolerable.

6.7 The Tribunal finds that comments such as those cited by C were part and parcel of the daily dialogue in the office when R2 was there. C did not join-in to the same extent nor did she condone bad language, but she was not concerned by it either, save in hindsight. R2 used pejorative language about Welsh and English people. She defended tenants when she thought any criticism was unwarranted but that was over substantive issues of rent or repairs and the like. R2 commented on the colours of clothing worn by English and Welsh staff during the 6 Nations Rugby campaigns (item 2 of the schedule). C's claims display an element of hindsight and of using

material to enhance her claim when that material did not have the harassing effect at the time comments were made.

7. Disability discrimination – discrimination arising: 17th March 2020:

   7.1. By this date sanitisation and social distancing were recommended practices because of the Covid pandemic.

   7.2. C made a point to management and colleagues that because of her disabling condition, and vulnerability, she was insistent on following all due guidance and precautions including social distancing. She repeatedly made the point that she wanted people to maintain a safe distance from her in and around the office.

   7.3. On 17 March 2020 R2, passing C in a corridor, coughed in her direction deliberately and loudly, commenting that she was being ridiculous. He did this because in his mind C was being ridiculous and he did not accept or appreciate a reasonable requirement that social distancing be respected. His purpose was to ridicule and intimidate, and that is the effect that this act and that comment had upon C. This was unfavourable treatment in the circumstances of the pandemic and C's health situation and it resulted from C's vulnerability and request for respect for adherence to social distancing. R2 cannot have been pursuing any legitimate aim by his actions and there was no excuse. The loud coughing was at the very least overheard by members of R1's management team including witnesses to this tribunal who were aware of the incident at the time; some may even have seen R2 doing it and on balance the tribunal considers that it was seen and heard by witnesses. Perhaps with the exception of Gwen Davies, all the respondents' witnesses were aware of the incident at the time either because they directly observed it, heard it, or were immediately told of it.

   7.4. C complained vehemently about these events, including ultimately to the police. This was the low point of her relationship with R2 and their relationship never recovered before C's eventual, second and final, resignation.

   7.5. C complained about this incident in email correspondence at the time with Mr Davies and Ms Hughes and that correspondence sets out in detail both the event and why it caused C so much distress. She complained in terms of her disability, and raised a matter of endangerment to health and safety where she believed she had been put at risk and that senior managers, and R2 in particular, were not taking Covid guidance and restrictions seriously enough, to the risk of staff.

8. On 14th May 2020 (page 215) C sent an email to R2 complaining about the amount of work she was doing from home because she was not being paid as had been agreed. She also asked for an extra payment of £10 towards her electricity bills. Such complaints, especially about remuneration and expenses, developed into a continuing theme until C's resignation. Her issue, which she took up with R3 on 24th May 2020, was that R1 was not paying her money identified for her child's school taxi fares, and expenses such as electricity bills,

and what she considered due recompense for the hours she was putting in. This was a running sore along with the involvement in the property business of Gwen Davies, C's personality clash with her and concerns over whether Ms Davies was pulling her weight (my expression) as mentioned above. C was now maintaining complaints and raising issues over hours of work, pay, payment of expenses, health and safety, her disability and the role and work of Gwen Davies. We find that this led R to take against C; she was no longer seen as a team player but, with apologies for mixing metaphors, she was a thorn in the respondents' collective side.

9. The tribunal is well aware and takes due notice that every business in the country, big or small, was struggling at this time of Covid to come to terms with the effects of the pandemic both on its people and its profits and on how best to manage businesses. The car sales business had been closed for a long time by this stage in the chronology, albeit on a temporary basis, because of restrictions. The property side of the business continued to be busy. The business as a whole was suffering considerable loss of income and trying to come to terms with the requirements and rules in place. Rules concerning furlough pay and what work was allowed, if any, during this time changed repeatedly and, we accept, confusingly for the respondents. R1 made errors in payments; there was an expectation that some in management positions, and also the claimant, would carry out work from home. C was prepared to work under the new regime taking work home and working from home. She expected to be paid extra by R1 and that R2 would honour the agreements they had reached. She expected protection from the guidance given in respect of social distancing, isolating and shielding because of her condition. C was insistent that R2 take some action in respect of Gwen Davies and what C perceived to be her unwillingness or inability to pull her weight.

10. Against this background on 22 May 2020 R3 telephoned C to "give a heads up" that consideration was being given to making some people redundant. He stressed to C that she was not being made redundant at that time, but that she was at risk because of R1's financial difficulties. He said that there was a proposal that the accounts work in the property department would transfer to Jane Haslam. Jane Haslam is English; this is significant because some of the claimant's discrimination claims are that Welsh employees were favoured over her. Jane Haslam worked in the car retail section. R's proposal involved the retention of Ms Haslam and another English employee in the administration of the business, along with four Welsh employees. In response C reiterated her issues over social distancing in the 17th March incident, her issues with Gwen Davies and the pressure of work generally as well as the issue of pressure of work and the payment of remuneration and expenses. Whilst the relationship between C and R2 was not always a good one she was valued by R2 and indeed by all three respondents. The value and quality of her work was appreciated and this is also evident from the fact that R2 allowed her to retract her earlier resignation, did not take the opportunity in the previous July to bring the relationship to an end, and offered her an improved remuneration package. That said, the respondents did not consider that C fitted into the long-term future of the business; this was because of her complaining about money and conditions, working from home

with added pressure of work, and the role of Gwen Davies; it had nothing whatsoever to do with her nationality.

11. On 20 May 2020 C spoke to David Davies on the telephone and in the conversation he told her that the respondents wanted her to return the work files that she had at home to the office because the homeworking arrangement was not working out. He also said that they were to discuss the possibility of redundancies. C said that she was shielding but also that she felt isolated, victimised and singled out over the redundancy proposal. She did not want to return to work because she was shielding and she said that she was working on at home because of pressure she felt that was being applied by R2. C perceived that she was working reduced hours but doing additional work under increased pressure and while she was doing her best she was not being paid what she deserved or what had been agreed with R2, specifically with regard to expenses. She felt she had bent over backwards to help R1 and she felt aggrieved at the way she felt she was being treated. C said to Mr Davies that if R2 had been fair and abided by their agreement then she would not have been aggrieved but that he had breached his word. This was a matter personal to C; it was a comment in the context of her working from home whilst on furlough pay; it was not made in the public interest but rather in terms of her not being paid what she considered to be enough for the work that she was doing; it was a pay issue.

12. On 1 June 2020 R2 telephoned the claimant suggesting that there may be a reorganisation and a reduction in hours and duties for C. He said C may remain in employment. C stood up to R2 and argued her point, and we say this not as a criticism but as further evidence that she was not in any way intimidated or cowed by R2. When she had an issue with him or anything he said or did, she raised it in a forthright manner, challenging him as she thought fit and appropriate.

13. On 2 June 2020 C sent an email to Susan Hughes and David Davies entitled “Work Issues” (page 218). In this email she refers to R2’s attitude, to Gwen Davies, to racist comments made about tenants, and the incident of 17th March 2020 and R2’s failure with regard to social distancing which affected her health and safety. She referred to the company handbook. She complained about wages and expenses and working whilst on furlough but the latter was not a disclosure or a complaint but rather again reference to her not being paid as much as she felt she was due. This email is a grievance, and it sets out in quite some detail matters of concern to C at that time.

14. C was instructed not only to return work files but also equipment and then the keys of the office. The Tribunal finds that this was all part of the respondents’ response to C’s complaints, reflecting their current view that she did not have a future in the business and their intent to oust her. This was because of the way she was now viewed as an obstacle, for all the reasons previously stated and it was not in any sense related to her nationality. The Tribunal does not consider that the reference to racial comments in the grievance weighed upon the respondents; the other issues raised did. We say this because the allegations were denied and not taken seriously by them, and because the other issues raised by C clearly did influence the respondents’ attitude to C and their actions. The respondents were exercised about C’s complaints over work-load and pay;

R2 was particularly exercised about C's attitude to Gwen Davies (which was apparently putting her off working in the property side of the business as R2 wanted her to), and the allegations surrounding the incident of 17th March. For those reasons R2 saw no future for her, and not her comments about his use of insulting language which was just seen as part and parcel of working life for R2 and some of his colleagues.

15. R1 instructed an independent grievance officer to investigate; the report was to be sent to R1's solicitors before being seen by C. C took exception to the respondent forwarding her grievance and the report to its solicitor unseen by her. She had no confidence that there would be a fair and proper consideration of the grievance believing instead that she was being ousted from the business. The claimant resigned by email of 13 June 2020 addressed to R3. She gave notice of resignation "due to untenable working environment"; her letter of resignation commences at page 242. It sets out the reasons being the incident of 17 March 2020, being asked to return work to the office despite her shielding, instructing a third party to investigate her grievance which was then to be reported exclusively to R1's solicitor, and the failure to support or protect her health. In the final paragraph C says that these are the main reasons amongst others too many to list. She considered that she had been constructively dismissed.

16. ACAS early conciliation: The claimant entered into early conciliation in respect of the respondents on 11th June 2020 and ECC certificates were issued on 13th July 2020.

17. ET1: C presented her claim form to the Tribunal on 4th August 2020.

18. All claims relating to events predating 11th March 2020 are potentially out of time.

The Law

19. Amendments to claims: The Tribunal has discretion to allow amendments to claims that have been presented, be that by way of re-labelling a presented claim or allowing the later addition of a claim(s). **Cocking v Sandhurst (Stationers) Ltd** [1974] ICR 650I established that the key principle when deciding whether to allow amendments to claim forms, was to have regard to all the circumstances, in particular any injustice or hardship which would result from the amendment or a refusal to amend. That test was restated in the leading authority on how to exercise discretion, set out by the EAT in its decision in **Selkent Bus Co Ltd v Moore** [1996] ICR 836. The key principle is to have regard to all the circumstances and in particular balancing the injustice and hardship of allowing the amendments against the injustice and hardship of refusing it. That guidance has been reiterated more recently in the Presidential Guidance on making amendments.

20. Time Limits: S. 123 EqA provides that proceedings on a complaint of discrimination may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable. For the purposes of this section conduct extending over a period is to be treated as done at the end of the period. The Tribunal has a wide discretion to extend time, but there must be convincing evidence to support a finding that it would be just and equitable to do

so; an extension is considered to be the exception and not a given. In reaching a conclusion on the exercise of this discretion the interests of justice are paramount and a Tribunal should weigh the balance of prejudice between the parties, considering against whom the balance falls, the claimant for not being able to advance a claim or the respondent in having to face an otherwise late claim. **British Coal Corporation** v **Keeble** [1997] IRLR 336, identified that tribunals would be assisted by considering the factors listed in section 33 of the Limitation Act 1980 dealing with the exercise of discretion by civil courts. That again involved having regard all the circumstances of the case but in particular to the length of and reasons for the delay, the extent to which the cogency of the evidence is likely to be affected by the delay, the extent to which the respondent to a claim has cooperated with any requests for information, the promptness within which the claimant acted once they knew of the facts giving rise to the cause of action, and the steps taken by the claimant to obtain appropriate advice once they knew of the possibility of taking action.

21. Burden of proof:

    21.1. The burden of proof provisions of the Equality Act 2010 are set out in s.136. If there are facts from which the Tribunal could decide, in the absence of any other explanation, that A contravened the provision concerned, the tribunal must hold that the contravention occurred, save where A shows that A did not contravene the provision. This is referred to as a two stage test, facts being established at the first stage showing a potential for discrimination and then at the second stage a respondent (A) showing, proving facts, to establish an innocent explanation for acts, omissions or words (or otherwise, such as where A establishes in fact that the alleged acts etc did not occur) and therefore that there was no contravention as alleged.

    21.2. At the so-called first stage the tribunal must find sufficient facts, which may be proved by either the claimant or the respondent, to pass any burden of showing there was no contravention of the provision to A, although any mere explanation from the respondent (A) is to be ignored at that first stage. One would expect the claimant to advance evidence to prove facts beyond merely making assertions of discrimination.

    21.3. In discrimination cases there is often the obvious difficulty of positively proving that discrimination took place from available oral and documentary evidence. A tribunal may, but is not obliged to, draw adverse inferences from established facts, and by that route find that there was contravention of a relevant provision. In this judgment if adverse inferences have been drawn from established facts this will be made clear; if it is not clear that adverse inferences have been drawn then, on consideration and for good reason, it was not deemed necessary to draw any.

22. Disability s.6 EqA: Disability: s 6 Equality Act 2010 (EqA) defines disability as a physical or mental impairment having a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities. The Secretary of State has issued guidance on matters to be taken into account in determining questions relating to the definition of this disability. A respondent's knowledge of disability is essential to most claims made, even if there is no technical or medical

appreciation of the details of a claimant's condition. Knowledge, where required may be actual or constructive, in that a Tribunal may find an employer ought reasonably have known of the disability, and to determine that question all relevant circumstances must be considered.

23. Harassment s.26 EqA: Harassment s.26 Equality Act 2010 (EqA): a person harasses another if they engage in unwanted conduct related to a relevant protected characteristic that has the purpose or effect of violating the other's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them (the harassing effect). In deciding whether the conduct has the harassing effect the tribunal must take into account the perception of the employee alleging they were harassed, the other circumstances of the case, and whether it is reasonable for the conduct to have the harassing effect.

24. Discrimination arising from disability s.15 EqA:

    24.1. A person discriminates against another if they treat that other unfavourably because of something arising in consequence of that person's disability, where the alleged discriminator cannot show that the treatment was a proportionate means of achieving a legitimate aim.

    24.2. Guidance on how to approach a discrimination arising claim was given in Pnaiser v NHS England [2016] IRLR 170: (a) the tribunal must identify if there was unfavourable treatment, and by whom; (b) the tribunal must identify what caused the impugned treatment, or what was the reason for it (the 'something arising' need not be the sole reason, but must have at least a significant, or more than trivial, influence on the unfavourable treatment); (c) motives are irrelevant; (d) the tribunal must determine whether the reason (or a reason) is 'something arising in consequence of C's disability; (e) the more links there are in the chain between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact; (f) this stage of the causation test requires an objective question and does not depend on the thought processes of the alleged discriminator; (g) it is not necessary for there to be a discriminatory motive, or for the alleged discriminator to know that the 'something' that causes the treatment arises in consequence of disability; (h) the knowledge required is of disability only; (i) it does not matter precisely in which order these questions are addressed.

    24.3. A respondent to such a claim may not know that the "something" arose out of disability (City of York Council v Grosset [2018] EWCA Civ 1105. What matters is whether the unfavourable treatment was because of that "something", which arose out of disability.

    24.4. In deciding whether the treatment complained of was a proportionate means of achieving a legitimate aim(s), the tribunal should consider whether it was reasonably necessary and appropriate to achieve the aim (Homer v Chief Constable of West Yorkshire Police [2012] UKSC 15).

25. Direct Race Discrimination s.13 EqA :

    25.1. A person discriminates against another if because of a protected characteristic, such as disability, they treat that other less favourably than a comparator (whether a named comparator or a hypothetical comparator but in either case the person whose material circumstances are the same save in respect of disability).

    25.2. Unlawful discrimination cannot be inferred from unreasonableness alone (Bahl v The Law Society & others [2004] EWCA Civ 1070) nor can it be established by showing merely a difference in status and a difference in treatment of the two (Madarassy v Nomura International Plc [2007] ICR 867).

    25.3. The protected characteristic does not have to be the only or main cause of the treatment as long as it had "a significant influence" (Nagarajan v London Regional Transport [2000] 1AC 501).To make a valid comparison there must be no material difference between the circumstances of each case (s.23 EqA).

26. Victimisation s.27 EqA : a person victimises another if they subject them to a detriment because of a protected act or belief in a protected act, where a protected act includes making an allegation of contravention of the Equality Act 2010. In both discrimination and whistleblowing cases treatment will amount to detriment if a reasonable worker would, or might, take the view that the treatment accorded to them had in all the circumstances been to their detriment (Jesudason v Alder Hay Children's NHS Foundation Trust [2020] EWCA Civ 73).

27. Public Interest Disclosure :

    27.1. S.43A Employment Rights Act 1996 (ERA) defines protected disclosures, in the context of public interest disclosures generally referred to as "whistle blowing". S. 43B ERA lists the types of disclosures that qualify for protection at 43B (1) (a) – (f) ERA including disclosures that a person failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, and that the health and safety of any individual has been, is being or is likely to be endangered. Any such disclosure must be made appropriately as required by sections 43C – s. 43H ERA.

    27.2. A worker has the right not to be subjected to any detriment by the employer done on the ground that the worker has made a protected disclosure (S. 47B ERA). S.103A provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason, (or if more than one, the principal reason), for the dismissal is that the employee made a protected disclosure, an automatically unfair dismissal (s. 1O3A).

    27.3. There is a five stage test to determine if there has been a protected disclosure

        27.3.1. there must be a disclosure of information;

27.3.2. the worker must believe the disclosure is made in the public interest;

27.3.3. that belief must be reasonably held;

27.3.4. the worker must believe that the disclosure tends to show one of the matters in s.43B(1) (a) – (f) ERA, for example breach of legal obligation et cetera ;

27.3.5. that belief must be reasonably held.

27.4. It is good practice to decide why an employer acted as it did before becoming involved in lengthy esoteric debate about whether there has been a protected disclosure, so as to ensure the relevance of any such finding; if the tribunal were to find that the employer's actions were not influenced by any potential disclosure but have a clear and obvious innocent explanation for action or inaction then there is no need to over-deliberate to establish whether in fact the comment or observation made by the employee amounted to a qualifying or protected disclosure. The tribunal should establish the employer's motivation and rationale for action or deliberate inaction.

27.5. An "allegation" and "information" are not mutually exclusive; to qualify for protection a disclosure must have sufficient factual content and specificity such as is capable of tending to show one of the matters listed in section 43B (1) ERA; if there is sufficient factual content and specificity, and the worker subjectively believes that the information tends to show one of those listed matters, then it is likely that the belief would be a reasonable belief, assessed in the light of the particular context in which it is made (Kilraine v Wandsworth LBC [2018] ICR 1850).

27.6. The tribunal ought to investigate the claimant's state of mind at the time of the disclosure to consider the reasonableness of the claimant's belief and whether this subjective belief was objectively reasonable.

27.7. What matters them is whether protected disclosure materially influenced (more than trivially) the employer's treatment of the person who made the disclosure (Fecitt & others v NHS Manchester [2012] ICR 372).

27.8. As stated above, in both discrimination and whistleblowing cases treatment will amount to detriment if a reasonable worker would, or might, take the view that the treatment accorded to them had in all the circumstances been to their detriment (Jesudason v Alder Hay Children's NHS Foundation Trust [2020] EWCA Civ 73).

27.9. It is irrelevant that the respondent to a claim involving detriment would have or may have acted in the same way for any other number of reasons if the reason for action in the particular case is because of the protected action. If the treatment was because of a protected action it is no defence to say that the same treatment could have followed other circumstances too (Balfour Kilpatrick Ltd v Mr S. Acheson & Others EAT/1412/01/TC).

27.10. The protection given to an employee carrying out health and safety activities (and by analogy, or who makes a protected disclosure) is broad. It would protect an employee (or worker, as appropriate), who caused "upset and friction" by the way in which they went about the said activity (or making a protected disclosure); an example of this would be where the person involved was perceived as being overzealous even to the point of allegedly demoralising colleagues. The protection seeks to guard against resistance or any manifestation of their conduct being unwelcome. It would undermine the statutory protection if an employer could rely upon the upset caused by legitimate health and safety activity, the manner in which such activities are undertaken, as a reason to dismiss. The manner in which such activities are undertaken will not easily justify removal of protection unless they are, for example, wholly unreasonable, malicious or irrelevant to the task in hand. [Sinclair v Trackwork Ltd UKEAT/0129/20/OO (V)]

28. Causing or inducing Discrimination and knowingly aiding discrimination s.111 & 112 EqA: a person must not instruct another to contravene the above provisions of EqA in relation to a third person, or cause them to do so. An inducement may be direct or indirect. Furthermore a person must not knowingly help another to do anything which contravenes these provisions, although, if it is reasonable to do so, one may rely on a statement that there has been no such contravention.

29. Constructive Unfair Dismissal s95 & 98 Employment Rights Act 1996:

29.1. S.94 Employment Rights Act 1996 (ERA) establishes an employee's right not to be unfairly dismissed. S.95 ERA sets out the circumstances in which an employee is dismissed which includes where an employee terminates the contract of employment (with or without notice) in circumstances in which he or she is entitled to terminate it without notice by reason of the employer's conduct (a constructive dismissal).

29.2. It is well established that for there to be a constructive dismissal the employer must breach the contract in a fundamental particular, the employee must resign because of that breach (or where that breach is influential in effecting the resignation), and the employee must not delay too long after the breach, where "too long" is not just a matter of strict chronology but where the circumstances of the delay are such that the employee can be said to have waived any right to rely on the respondent's behaviour as the basis of their resignation and a claimed dismissal.

29.3. The breach relied upon by an employee may be of a fundamental express term or the implied term of trust and confidence and any such breach must be repudiatory; a breach of the implied term will be repudiatory, meaning that the behaviour complained of seriously damaged or destroyed the essential relationship of trust and confidence. Objective consideration of the employer's intention in behaving as it did cannot be avoided but motive is not the determinative consideration. Whether there has been a repudiatory breach of contract by the employer is a question of fact for the tribunal. The test is contractual and not one importing principles of reasonableness; a breach cannot be cured and it is a matter for the employee whether to accept

the breach as one leading to termination of the contract or to waive it and to work on freely (that is not under genuine protest or in a position that merely and genuinely reserves the employee's position pro temps).

29.4. As to whether a claimant has resigned as a result of a breach of contract, where there is more than one reason why an employee leaves a job the correct approach is to examine whether any of them is a response to the breach, rather than attempting to determine which one of the potential reasons is the effective cause of the resignation.

29.5. Even if an employee establishes that there has been a dismissal the fairness or otherwise of that dismissal still falls to be determined, subject to the principles of s.98 ERA. That said it will only be in exceptional circumstances that a constructive dismissal based on a repudiatory breach of the implied term will ever be considered fair.

29.6. "In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions" **Kaur v Leeds Teaching Hosp [2018] EWCA Civ 978** (Per LJ Underhill):

(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
(2) Has he or she affirmed the contract since that act?
(3) If not, was that act (or omission) by itself a repudiatory breach of contract?
(4) If not, was it nevertheless a part (applying the approach explained in *Omilaju* [that "the function of the Employment Tribunal when faced with a series of actions by the employer is to look at *all* the matters and assess whether cumulatively there has been a fundamental breach of contract by the employer"]) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the *Malik* [trust and confidence] term? If it was, there is no need for any separate consideration of a possible previous affirmation, [because: "If the tribunal considers the employer's conduct as a whole to have been repudiatory and the final act to have been part of that conduct (applying the *Omilaju* test), it should not normally matter whether it had crossed the *Malik* threshold at some earlier stage: even if it had, and the employee affirmed the contract by not resigning at that point, the effect of the final act is to revive his or her right to do so").
(5) Did the employee resign in response (or partly in response) to that breach?

Application of the law to the facts

30. Issue 1 - Application to amend:

30.1. C sought to amend her claim to include A claim in relation to alleged non-payment of expenses. The claimant had made reference to not having been paid expenses in her earlier documentation however she did not pursue

the matter as a discrete claim and indeed referred to it in a paragraph which she described as being background information.

30.2. C sought to apply a label to matters mentioned in her schedule. We considered all relevant circumstances including, the interests of justice, where the balance of prejudice would lie as well as the timing and manner of the application itself.

30.3. The formal application was made on 23 January 2022 at 23:30; in other words effectively just before the start of the listed hearing. It was not only very late in the day but also ostensibly out of time where the limitation period in respect of that claim probably expired on 13 September 2020 taking into account the early conciliation extension of time. By the time of the application clearly the matter had been listed for a considerable period, there had been multiple preliminary hearings to clarify C's claims and she had submitted three versions of "Scott" schedules as well as agreeing a list of issues for the final hearing.

30.4. The claimant had received employment law advice including on the procedure, her claims, and schedules.

30.5. The tribunal considered that both it and the parties are entitled to, and indeed require, certainty; it was reasonable for R and the tribunal to consider that certainty have been achieved by way of the final schedule and the apparently agreed list of issues which excluded the sought after amendment.

30.6. C had indicated that the claim in respect of expenses had been one of victimisation but she then described the information relating to expenses as background only, confirming it did not amount to any claim.

30.7. C has had every opportunity to present a claim in respect of non-payment of expenses; she had prepared for this case has had R and it would be unfair at this late stage to permit a further variation to the schedule of claims and the list of issues. The balance of prejudice would weigh heavily against R in these circumstances.

30.8. For these reasons the Tribunal refused C's application.

31. Issue 2 & 3 - Racial Harassment & Sex Harassment:

31.1. The tribunal finds that the claims that predate of 11 March 2020 are out of time. The claimant refers to specific comments and causes of irritation to her particularly in the manner and conversation of R2. We find that comments of that type (we cannot find facts save to say R2 would refer on occasions to "bitch" and "bastard" and sometimes with "English" as a descriptor), were not aimed at her or made in relation to her as alleged. In any event it was open to C to present specific claims to the tribunal at the relevant time, contemporaneously, rather than storing up matters which have fuelled her case at a later stage. In all the circumstances we do not consider that it would be just and equitable to extend time to allow the claimant to include these matters in the current claim. She had ample opportunity to present claims in

good time and chose not to do so. Having resigned for alternative employment, for reasons related to remuneration; she then decided to return to the employment of R1 working closely with R2 and R3. C was prepared to put up with working conditions for additional money. It has been difficult throughout this hearing for parties to exactly recall words used in conversations going back over several years where there is no contemporaneous record of many of the conversations in question and some of the remarks made will have been throwaway comments without any great forethought. The delay therefore prejudices the respondent. Whilst we have made a finding that R2 used offensive and inappropriate language in some circumstances it is impossible to make positive findings that on specific dates that the exact terms alleged by C were used in the absence of direct corroborative witness evidence, documentary evidence and in the light of R2's denials. The respondents' witnesses in general denied allegations of abusive language by R2 but those denials were not wholly convincing; that said the Tribunal was not able to find that in each and every instance relied upon by C the alleged words had been used. Extending time is not a given but an exception, and in the circumstances we do not think it would be appropriate. C did not resign because of the alleged harassment but she realised that these examples would portray R2 in a bad light and amounted almost to the "mudslinging" of which Counsel accused C. The claims of sex harassment and race harassment pre-March 2020 are out of time.

31.2. The allegations of April and June 2020 were found not to have been related to C's nationality and did not have the harassing effect nor could they reasonably have done so even taking into account C's perception.

31.3. In the light of the above the claims of harassment in relation to the protected characteristics of race and of sex fail and dismissed.

32. Issue 4 - Disability Discrimination s6 EqA: the claimant is a disabled person and the tribunal has found that the respondents knew or at least ought reasonably to have known of her disability at all material times. We believe in fact that they were fully aware because of explanations and comments that she had made, because of the provision of a chair specifically to assist her because of back pain, knowledge of her going for regular blood tests to the hospital or GP, provision of a PIN as opposed to use of the touchpad for signing in to work, and her comments about social distancing in February and March 2020.

33. Issue 5 - Discrimination Arising from Disability – s.15 EqA: Coughing in anybody's face is unfavourable treatment and can never be favourable. Doing that because of a pandemic is gross behaviour and doing it to somebody who is vulnerable because of a medical condition and who has asked for respectful social distancing is appalling. That must be unfavourable treatment. The claimant had asked for the maintenance of social distancing because of her immunity deficiency and for which she was on medication. The claimant's situation as so described arose from her disability and she had been very clear about this, explaining it to R2. R2's conduct on 17 March 2020 is inexcusable and cannot be discounted as a joke or something light-hearted; he has attempted to deny that it happened. There is sufficient evidence that something untoward occurred for us to conclude from even the respondents' witnesses that C's version is correct. We

do not have to draw inferences; we make a direct finding of fact that C has told the truth in her description of the events of 17th March 2020. This discrimination arising from her disability was an extremely significant, material, influence in her decision to resign. She had other reasons of equal influence. The claimant's claim of discrimination arising from disability in respect of the events of 17 March 2020 succeeds.

34. Issue 6 Direct Race Discrimination – 1st June 2020 – s.13 EqA With regard to the claimant's direct race discrimination dated 1 June 2020, the Tribunal finds that the claimant was not treated less favourably than Welsh employees as alleged because of her nationality, English. We note that there were two remaining English employees, including Jane Haslam and four Welsh employees which is not surprising because of the respondents' home base. The fact is that the rationale for the respondents' actions was not one of nationality but because C had raised numerous issues of complaint and grievance and was considered, in our expression, to be a thorn in their side. There was no unlawful discrimination in relation to the protected characteristic of race forming the basis of the claimant's resignation.

35. Issue 7 - on 17 March 2020 the claimant wrote to R1's management and there are further emails 18 March 2020 where she further complained about R2's behaviour, coughing at her, in terms of her disability. She disclosed that R2, and by extension R1, was not following guidance in place in view of the Covid pandemic and that she was being laughed at by R2 for trying to ensure respect for social distancing in accordance with the guidelines. She disclosed breaches of guidelines and the law with regard to social distancing and the disability discrimination found above. Her emails amount to a protected act raised in good faith by C because she wanted something done about the situation because it was an appalling act. The claimant's continued complaints about failures with regard to social distancing and specifically on 17 March 2020 played a substantially significant part of the respondent's rationale for acting as it did towards her and ousted her from her employment. C was victimised by the respondents. She was victimised on the 1st and 2nd June 2020 when she was told to return work files, equipment and then keys. We find on balance that R2 probably did not see C's written grievance before his telephone call to her but he already knew the substance of her many complaints. He knew the substance of them and the plan had already started to take effect to oust C by the time she resigned. She resigned at least in part because she was victimised; this was a major and significant factor in her decision. She felt that she was being eased out partly because of her complaints. She was correct.

36. Issue 8: The Matters the claimant raised about being required to work whilst in receipt of furlough pay were not raised in the public interest. We accept the submissions made by Counsel for the respondents on this point where she explained the law fully and why whatever was said about furlough does not amount to a public interest disclosure.

37. Issue 9: the tribunal has found that there was no race or sex discrimination and therefore there was none relevant to the events of 22nd of May and 2nd June. These claims therefore fail and are dismissed. Disability was not a relevant factor

in the conversations and therefore any claim in relation to that also fails and is dismissed.

38. Issue 10: the Tribunal finds that the respondent did commit a breach of the implied term of trust and confidence. It was easing the claimant out, and singling her out, because she did not fit any longer in their long-term future plans; this was because she complained in the way that she did and set out in her grievance. She could have no confidence that R1 would have dealt fairly with the redundancy procedure or would deal fairly with her grievance. She could have no grounds to think that she would receive fair treatment and her suspicions were reasonable. R1 acted in a way that was likely to destroy or seriously damage the relationship of trust and confidence. The last straw was that C had to return everything belonging to R1. This was part of the plan that was gaining momentum towards C being shown the door. C did not delay too long before resigning such that she can be said to have affirmed her contract. She was constructively unfairly dismissed.

39. I commented in the oral judgement that it may assist C if she were to re-read the respondent's Counsel's written submissions to better understand why some of the claims have been dismissed. I said that because they have in large part been dismissed for the reasons contended for by the respondent.

Employment Judge T. V. Ryan

02.08.22

REASONS SENT TO THE PARTIES ON 18 August 2022

FOR THE TRIBUNAL OFFICE Mr N Roche

APPENDIX

List of Issues

1. **Application to amend**
   a) What is the nature of the application to amend?
   b) Is the application to amend in time?
   c) Why did the Claimant make the application out of time?
   d) Does the application seek to add a new claim?
   e) Having carried out a balancing act is there a prejudice to the Respondents in permitting the application to amend?
   f) Having carried out a balancing act is there a prejudice to the Claimant as a litigant in person in not allowing the amendment to the claim?

2. **Racial Harassment (s26) – Incidents of Sept 2018, Feb 2019, April – May 2019, June 2019, Sept 2019, Nov 2019, Sept – Nov 2019, March 2020, April 2020, 1 June 2020**
   a) Are the claims in time?
   b) Was the Claimant subjected to unwanted treatment?
   c) Was the unwanted treatment related to her race that had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?
   d) Was it reasonable for that conduct to have had that effect on the Claimant?
   e) Did the Claimant resign because of harassment on the grounds of race?

3. **Sex Harassment (s26) – Incidents of April – May 2019, Sept 2019, Nov 2019, Sept – Nov 2019**
   a) Are the claims in time?
   b) Was the Claimant subjected to unwanted treatment?
   c) Was the unwanted treatment related to her gender that had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?
   d) Was it reasonable for that conduct to have had that effect on the Claimant?
   e) Did the Claimant resign because of harassment on the grounds of gender?

4. **Disability discrimination (s6)**
   a) Is the Claimant disabled for the purposes of the Equality Act 2010?
   b) Did the respondent have knowledge of the claimant's disability at the relevant time?

5. **Discrimination Arising from Disability (s15) – Incident of 17 March 2020**
   a) Was the alleged coughing in the Claimant's face an act of unfavourable treatment?
   b) Was the 'something arising' the claimant's request to maintain social distancing because of prescribed medication she took to control her disability which meant she was vulnerable to infection?
   c) Was the unfavourable treatment because of any of b)?
   d) Was the unfavourable treatment a proportionate means of achieving a legitimate end?
   e) Did the Claimant resign because of discrimination arising from disability?

6. **Direct Race Discrimination (s13) – Incident of 1 June 2020**

a) Was the Claimant treated less favorably than Welsh employees by being given menial tasks?
b) Did the Claimant resign because of direct race discrimination?

7. <u>Victimization (s27) – Incident of 1 and 2 June 2020</u>
a) Was the claimant subjected to a detriment for having done a protected act?
b) Was the protected act done in good faith?
c) Did the Claimant resign because she was victimized?

8. <u>Whistleblowing – 28 May 2020</u>
a) Did the Claimant make a qualifying disclosure in the public interest under section 43(B)(1)(a)(b) and (c) ERA 1996 on 28 May 2020?
b) If so, what words were used, to who and when?
c) What is the criminal offence that has been committed, was being committed or was likely to be committed by the Respondent?
d) What is the legal obligation that the Respondent has failed, was failing or was likely to fail to comply with?
e) What was the miscarriage of justice that had occurred was occurring or was likely to occur?
f) Was the qualifying disclosure made in the reasonable belief of the Claimant?
g) Has the Claimant suffered a detriment on 1 June and 2 June 2020 for making a qualified disclosure?
h) Was the disclosure made in good faith?
i) Was the qualifying disclosure made in the public interest?
j) Subject to the Claimant's application to amend being granted, was the protected disclosure the reason or principal reason for the Claimant's resignation?

9. <u>Causing or Inducing Discrimination and Knowingly Aiding Discrimination (s111 & s112) – Incident of 22 May 2020 and 2 June 2020</u>
a) Have any of the Respondents caused or induced discrimination and/or knowingly aided discrimination?
b) Who was the principal?
c) Who was the agent?
d) What was the detriment suffered?

10. <u>Constructive dismissal (s98) – All incidents referred to above</u>
a) Did the Respondent commit a repudiatory breach of contract?
b) What is the contractual term relied upon?
c) Did the Claimant resign as a response to that breach?
d) Did the Claimant resign in response to cumulative breaches that breached the implied term of trust and confidence?
e) What was the last straw?
f) Did the claimant wait too long before resigning?