# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Lawrence

**Respondent:** British Gas Services Limited

# FINAL HEARING

**Heard at:** Leicester **On:** 23 to 27 May 2022

**Before:** Employment Judge Camp Members: Mrs K Srivistava<br>Ms K McLeod

**Appearances**
For the claimant: in person, assisted by his wife Mrs C Lawrence
For the respondent: Miss A Smith, counsel

# RESERVED JUDGMENT

The claimant was not constructively dismissed and his entire claim, including all complaints of disability discrimination, fail.

# REASONS

**Introduction & background**

1. The claimant was employed by the respondent from 1 January 1991 until his resignation on 6 December 2019. At the time of his resignation his job title was Technical Engineer. Early conciliation was from 19 December 2019 to 19 January 2020. The claim form was presented on 18 March 2020. In it he claimed constructive unfair dismissal, disability discrimination and notice pay.

2. The claimant's resignation followed a disciplinary and grievance process. Allegations, summarised in paragraph 6 of the respondent's ET3 Grounds of Resistance, had been made. Originally, they were put as allegations of gross misconduct, but prior to the disciplinary hearing they were downgraded to simple misconduct, and dismissal was removed as a potential sanction. Throughout the disciplinary process the claimant had trade union representation, from Mr B Bibb. The disciplinary hearing – labelled a "*disciplinary interview*" in accordance with the respondent's written Disciplinary Procedure – took place on 10 October 2019. The disciplinary hearing / interview was handled by a Mr M Tonks, then a Customer Delivery Manager. The claimant was given a written warning.

3. The claimant appealed and raised a grievance at the same time. The grievance and the appeal were virtually identical. There was a combined grievance and appeal hearing on 28 November 2019. The decision-maker was Mr S Rai, Area Customer Delivery Manager. At the end of the grievance and appeal hearing Mr Rai told the claimant that the appeal had been successful and that the warning would be revoked. Mr Rai and the claimant had a telephone conversation on 5 December 2019. The claimant alleges that during this conversation Mr Rai backtracked on something he had said at the grievance and appeal hearing about the grievance being upheld. The claimant resigned by letter on 6 December 2019, with immediate effect.

**Complaints & issues**

4. This case has a relatively complicated procedural history, which it is unfortunately necessary for us to go into in quite some detail. Various attempts at producing a comprehensive list of issues have been made by Employment Judges and the respondent's representatives, the most successful and helpful being the list produced by respondent's counsel, Miss Smith, during the course of this hearing, to which we refer. We have dealt only with liability issues.

5. In terms of the complaints being made, the starting point has to be what was in the original claim form in March 2020. We note that the claimant was professionally represented, by solicitors instructed through his trade union, from before early conciliation until December 2020. The only events mentioned in the claim form relate to the disciplinary and grievance process and on the face of the claim form that is what the constructive unfair dismissal claim is all about. So far as concerns disability discrimination, no specific events are referred to at all; there is merely a general allegation that the claimant was subjected to less favourable treatment because of his disability, so presumably the claim being made there is one of direct disability discrimination.

6. The first preliminary hearing for case management took place on 22 June 2020. For whatever reason, neither the claimant nor his representatives attended. Amongst other things, the claimant was ordered to provide further and better particulars of his constructive unfair dismissal claim, to confirm that his disability discrimination claim consisted of a complaint of direct discrimination relating to dismissal, and to confirm "*that he does not rely upon any events occurring before 9 September 2019 and that the acts and omissions complained of are fully pleaded in the claim form*". The main significance of 9 September 2019 is that it is, or was thought to be, the critical date for time limits / limitation purposes, in that a claim about something that happened before then would potentially have been brought out of time. Having a particular date specified was also important because there were potentially questions as to whether the claimant was a disabled person because of various conditions, and if so from when, and whether the respondent had knowledge of disability, and, again, if so from when.

7. Further particulars of claim were produced on the claimant's behalf in September 2020. In short, expressly and/or by implication, they confirmed that the only events being relied on in relation to the constructive unfair dismissal complaint were those surrounding the disciplinary and grievance process, starting in October 2019, and that the only disability discrimination complaint was of direct discrimination in relation

to "*the conduct of the employer leading to his dismissal*". No explanation was provided of what that allegedly discriminatory conduct was, but the assumption one would make reading it is that it was the same conduct as was specifically relied on in support of the constructive unfair dismissal complaint.

8. There was a further case management preliminary hearing on 12 May 2021. By this stage, the claimant was a litigant in person. In the written record of that hearing, it is stated that, "*the claimant agreed that the case as currently pleaded does not include any complaints relating to events outside of the disciplinary and grievance process which commenced in September 2019*" and "*the claimant accepted at today's hearing that*" the allegation that his contract of employment was fundamentally breached by a course of conduct starting in 2018 was "*outside the pleaded case*". On 6 May 2021, the claimant had applied to amend his claim. It was impracticable for that application to be dealt with at the hearing 6 days later and the Employment Judge [Judge Rachel Broughton] ordered him to provide further particulars of his proposed amendments, including of those to the constructive unfair dismissal complaint, and for the amendment application to be dealt with at a subsequent hearing. She produced a list of issues, based principally on the claimant's draft amended details of claim. Her list of issues in turn forms the basis of Miss Smith's list of issues.

9. In addition, Employment Judge Broughton noted that the respondent had conceded that the claimant was a disabled person because of depression (from 13 November 2018) and because of back pain (from 17 June 2019). The claimant was also at that time relying on carpal tunnel syndrome as a relevant disability for the purposes of his claim; and the respondent has never conceded that the claimant was disabled under the Equality Act 2010 ("EQA") because of that condition. However, we established during this final hearing that none of the claimant's complaints – whether those that were actually before the Tribunal or those he seemingly was or had been wanting to pursue – had anything to do with carpal tunnel syndrome.

10. The claimant provided further details of his proposed amendments broadly in accordance with Employment Judge Broughton's order on 18 May 2021. The amendments went significantly further even than those put forward on 6 May 2021. The preliminary hearing to deal with the amendment application was on 9 July 2021 and was before Employment Judge P Britton. We decided on day 1 of this final hearing, in a reasoned decision[1], that the only amendment he allowed was an amendment to add a single complaint of disability-related harassment concerning a remark allegedly made by the claimant's line manager, Mr I Wyer, following a request for an extended lunch break to enable the claimant to go home for lunch: "*why do you need to go home for, is it for a blowjob?*"[2] We'll refer to this as the "rude comment".

11. The wording of Employment Judge Britton's order in relation to the amendment application is important: no amendments were permitted other than "*a claim for harassment … relating to the alleged remarks of* [Mr Wyer] *… in so far as they relate*

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[1] Written reasons will not be provided unless asked for by a written request presented by any party within 14 days of this written record of the decision being sent to them.

[2] This wording is from the amendment application of 18 May 2021. The wording in the claimant's witness statement is slightly, but not materially, different.

*to the events in the immediate run up to the inception of the disciplinary proceeding circa 5 September 2019 i.e. August 2019.*" In other words:

11.1 other than in one respect, the claimant was left with his 'pleaded case', as recorded by Employment Judge Broughton, which was limited to "*the disciplinary and grievance process which commenced in September 2019*";

11.2 the claimant was permitted to bring a disability-related harassment complaint about the rude comment[3], but only in so far as it dated from August 2019 onwards and related "*to the events in the immediate run up to the inception of the disciplinary proceeding*".

12. As discussed at length during this hearing, Employment Judge Britton was evidently under the impression that the claimant was alleging the rude comment was made in or around August 2019 and was in some way loosely connected with the disciplinary process. It is reasonably clear from the Judge's reasons that the existence of that connection was a decisive factor in the amendment being permitted. In fact, the claimant is alleging the rude comment was made in or around October 2018; and on any reasonable view it had nothing to do with the disciplinary process that took place around a year later.

13. In those circumstances, Employment Judge Britton did not give the claimant permission to amend to bring the complaint about the rude comment the claimant wants to pursue. That complaint is therefore not before the Tribunal and we dismiss it on that basis. We shall nevertheless consider the claimant's allegations and complaint about the rude comment, in case we are wrong in our interpretation of Employment Judge Britton's decision.

14. In addition, at the end of his decision, Employment Judge Britton recommended to the claimant making an application to amend to turn his direct disability discrimination complaints into 'discrimination arising' complaints under EQA section 15 ("section 15"). Employment Judge Britton stated in relation to these potential section 15 complaints, "*if another engineer who was not disabled had got some sort of dispensation in terms of extended lunch break but had gone off without reporting he couldn't do a 3rd job … would that employee have been treated any differently? … // If there would have been no difference in treatment, then is this not pursuant to s15 a case of unfavourable treatment …? … The unfavourable treatment would be because of the ignoring of the need to make reasonable adjustment with the knock on effect on the Claimant's utilisation of time ie extended lunch breaks and requiring longer time to complete a particular job? If he isn't getting this support from Mr* [Wyer] *through the material period, then prima facie he is being treated unfavourably because of something arising in consideration* [sic] *of this disability.*" The Judge suggested that if an application to amend were made on this basis it would be a "*relabelling*" type of amendment.

15. Whatever Employment Judge Britton was told at the preliminary hearing on 9 July 2021 and whatever he understood the position to be, the claimant is not – at least

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[3] The order permitting the amendment referred to "*remarks*" [plural], but there is no claim about any particular remarks Mr Wyer is alleged to have made other than the rude comment.

not now[4] – making any claim along the lines of that envisaged by Employment Judge Britton. Amongst other things, there again seems to have been some confusion about the dates. The rude comment was allegedly made in response to a request by the claimant to have a longer lunchbreak. However, as already mentioned, the relevant conversation took place in or around October 2018, not just before the disciplinary process. It is agreed between the claimant and respondent that there was a conversation between them in late 2018 the outcome of which was an agreement that the claimant could take a longer lunchbreak. In addition, there was never any suggestion of the respondent backtracking from that agreement, or of the claimant being subjected to the disciplinary process in 2019 for taking the longer lunchbreak that had been agreed in 2018.[5] Moreover, if the claimant had sought to amend to put forward a section 15 claim based on suggestions like that, we do not agree that it would simply be a relabelling of the claim made in the claim form.

16. Most importantly, the claimant has never put forward on paper a coherent section 15 claim of any kind, let alone applied for and obtained permission to amend so that he could pursue it. The claimant was in terms, by Employment Judge Britton, refused permission to amend to bring any claim of any kind in addition to his direct discrimination and unfair dismissal claims other than the single complaint of disability related harassment already referred to. What that means is that the only discrimination claim that is properly before us is one of direct disability discrimination, as set out in the list of issues produced by Employment Judge Broughton and substantially reproduced in Miss Smith's list of issues.

17. We should add that during the course of this hearing the claimant seemed – sometimes; not with any consistency – to be wanting to make a claim along these lines: that the disciplinary case against him was manufactured by Mr Wyer because Mr Wyer wanted to 'get rid' of him[6], that the reason Mr Wyer wanted to do this was because the claimant had taken sick leave and Mr Wyer [supposedly] feared the claimant's disabilities would lead to him needing further sick leave and, generally, would create future problems for Mr Wyer. That is a claim that could be made as one under section 15. However, as just mentioned, it is not a claim that is before the Tribunal, nor is it the claim that Employment Judge Britton seems to have envisaged the claimant making; the claimant has never asked for permission to amend to bring such a claim and has certainly never been granted permission to do so. Nevertheless, we shall consider these allegations about Mr Wyer as part of our decision.

18. In his witness statement and during this hearing, the claimant has made a number of other allegations of fact that might be relevant to his constructive unfair dismissal claim that concern things other than the disciplinary and grievance process. They are yet again allegations not made in the claim form and in relation to which the claimant

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[4] There is a suggestion of such a claim in his application to amend of 18 May 2021.

[5] The claimant seemingly came to believe that he was, but he is quite wrong about that. He appears to us simply to have misunderstood.

[6] This part of it was consistently put forward by the claimant at this hearing as part of his allegation that he was constructively dismissed, albeit it was not an allegation in the list of issues. It is the disability discrimination part of the allegation that was not put forward consistently.

does not have permission to amend, but which we shall, even so, examine to at least some extent later in these Reasons.

## Relevant law

19. The relevant law is reflected in Miss Smith's list of issues and set out in her skeleton argument dated 25 May 2022.

20. We provided the parties with copies of the Employment Judge's 'self-direction' in relation to constructive dismissal part-way through the hearing. It is annexed to this decision. Neither side suggested that self-direction was wrong or incomplete in any important way.

21. We add the following about the law relating to the discrimination claims:

    21.1 it is contained in sections 13, 23 and 136 of the EQA;

    21.2 direct discrimination involves 'less favourable' treatment and not merely bad treatment. We are looking at whether the claimant was treated worse than others without his disabilities, in materially the same circumstances, were or would have been treated;

    21.3 in terms of case law, our starting point is paragraph 17, part of the speech of Lord Nicholls, of the House of Lords's decision in Nagarajan v London Regional Transport [1999] ICR 877. We also note the contents of paragraphs 9, 10 and 25 of the judgment of Sedley LJ in Anya v University of Oxford [2007] ICR 1451;

    21.4 in relation to the burden of proof, we have applied the law as set out in paragraphs 36 to 54 of the decision of the Court of Appeal in Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913.

22. It seems to us that the allegations the claimant is making are not allegations of direct disability discrimination at all. He is not in reality alleging that he was less favourably treated because of depression and/or his back injury. If he is making any claim at all that is to do with his disabilities, he is either: as already explained, making ill-defined allegations of some other kind of disability discrimination – and no other kind of disability discrimination claim is before the Tribunal; or alleging that the respondent failed to take reasonable care for his physical and/or mental health, an allegation that might form the basis of a County Court personal injury claim rather than an Employment Tribunal claim.

## The facts

23. There were six witnesses. We had statements from all of them. On the claimant's side there was the claimant himself, his wife Mrs C Lawrence, and Mr Bibb. By the end of the case we had very grave concerns about the claimant's credibility, for reasons we shall explain in a moment. The parts of Mrs Lawrence's evidence that were relevant to the issues we decided consisted of her telling us what she had been told by the claimant; she had no direct personal knowledge of any of the relevant events. She was not cross-examined to any extent. For the respondent, we heard from Mr Wyer, Mr Tonks, and Mr Rai.

24. There was a hearing file or 'bundle' of 500[7] pages or so. Most of the pages in the bundle were not referred to by either side. The claimant emailed to the Tribunal and respondent late in the evening of Sunday, 22 May 2022 – the day before the hearing started – a 32 page "extra bundle" of documents. Other than questioning the relevance of those documents, the respondent did not object. We were referred to only 2 or 3 pages from the extra bundle and they did not help us with our decision-making.

25. As to the claimant's credibility as a witness, in closing submissions, Miss Smith for the respondent put forward a large number of reasons in support of a submission that the claimant was not credible; indeed that he was wilfully lying in some of his evidence. Those reasons included:

    25.1 the evidence showed that the claimant had not told the truth in connection with the company he worked for after his resignation – see below;

    25.2 what the claimant told us had happened, where it was in dispute, was mostly contradicted by contemporaneous documents and when challenged about this in cross-examination, the claimant alleged, without evidence, that they had been fabricated;

    25.3 the claimant made other allegations of fraud and dishonesty without evidence and, when pressed about the lack of evidence, doubled-down on those allegations and refused to entertain explanations for what had occurred that did not involve accusing the respondent's employees, Mr Wyer in particular, of serious impropriety;

    25.4 significant parts of the claimant's evidence were inconsistent, internally and with what the claimant had previously written and what had been written on his behalf;

    25.5 at the final hearing, the claimant made a number of allegations in his oral evidence that he had never previously made and he was unable adequately to explain why they had not previously been made.

26. There was little in that part of Miss Smith's submissions with which we disagree. Making all allowances for the fact that people can be untruthful in parts of their evidence but truthful in others: we do not accept any of the claimant's evidence on contentious issues where it is not supported by other substantial evidence; where there is a conflict between what the claimant told us and what the respondent's witnesses said, we prefer their evidence. To explain why we take this view, we don't think it is necessary here to go into the detail around anything in addition to the evidence concerning the claimant's new business.

27. On 13 May 2019, the claimant and a colleague or former colleague had a company called Pro-Tect Heating & Plumbing Ltd incorporated. We'll refer to it as the "claimant's company" or "his company".

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[7] The highest page number was 445, but there were several additional pages slotted in as [page number] A, [page number] B and so on.

28. The claimant has been working for and through his company since his resignation, although there is a dispute as to when he started to work for it. He says he didn't start until after he resigned, and that it did not start trading until December 2019. In addition, in his Updated Schedule of Loss, he stated that he found his "*own employment by way of becoming self employed*" after he "*was dismissed*". It was also his case, on paper at least, that he didn't make the final decision to leave the respondent until just before he resigned; and it is necessarily, as a matter of law, part of his case that the thing he relies on as the last straw – the contents of a conversation with Mr Rai on 5 December 2019 – was at least part of the cause of his resignation.

29. It is clear that by around May 2019, the claimant was making plans to leave the respondent's employment and run his own business. The fact that that was what he was actively planning to do is supported not only by the fact that he set up his company that month but also by what his GP records show he told his GP on 17 June 2019: "*planning on job change and setting up own business later this year*". In his GP records for 26 September 2019, it was recorded that he was "*planning on leaving his job*", and in the records for 24 October 2019 that he was "*stopping job in 2 weeks and will work for self in similar field*".

30. Several times during the hearing we were taken to a document headed "*Attendance Improvement Plan / Action Log*". We'll refer to it as the "Action Log". It was produced by Mr Wyer. It was effectively his personal notes of his ongoing contact (or attempts at contact) and discussions with the claimant concerning the claimant's health and attendance at work, in the context of the targets for attendance that had been set for the claimant. It has columns for, amongst other things, the dates of Mr Wyer's discussions with the claimant and for what happened. Some challenge has been made to the accuracy of parts of it, and to Mr Wyer's evidence that he always filled it in on or very close to the dates recorded in it. There is one entry, for 14 August 2019, which clearly, as explained later in these Reasons, has the wrong date in it. However, that it was a document prepared by Mr Wyer for the purpose he said he prepared it for, that it was regularly updated, and that he wrote it at or around the time of the conversations and events it describes was not challenged in cross-examination and we accept those facts, there being no good reason in the evidence for us to do otherwise. We reject as fanciful any suggestion that this 19 page document, recording, sometimes with small details, events from 8 November 2018 to 6 December 2019, including events not substantially disputed by the claimant and events that have no bearing on the claim before this Tribunal, and which contains typographical errors of the kind you would expect to see in an authentic version of a document like this, is a fabrication put together by Mr Wyer after the event to undermine the claimant or his claim.

31. For reasons we shall come on to, our firm view is that, contrary to the claimant's allegations, Mr Wyer had nothing at all against him and did not want to 'do him down'.

32. In those circumstances, we accept the Action Log as being, in general, both contemporaneous and accurate. It includes the following entries:

> *12/11/19 … Jason* [the claimant] *has been away in Mexico for 2 weeks.*
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> *13/11/19 … Jason* [is] *not sure if he is ready to come back and not sure what to do.*

> *14/11/19 … Jason advised he has decided not to return to work and he is giving his notice of resignation with immediate effect.* [He] *advised he had made his mind up while on holiday.*
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> *15/11/19 … asked Jason if he is sure he had made the right decision. Jason confirmed that he had made the right decision and feels a weight has been lifted.*
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> *20/11/19. Called Jason as I have not received a doctor's note or a resignation letter. Jason advised he doesn't want to resign until his appeal and grievance has been heard, due to wanting to take his case down the constructive dismissal route.* [I] *advise that's not a problem but a doctor's* [note] *does need to be supplied as at the minute he is AWOL. Jason asked did he have to turn up for his appeal or can the union just represent him* [as] *he was busy doing work.* [I] *advised Jason he still works for British Gas and he shouldn't be working. Jason then advised he didn't expect paying since he verbally resigned on the 14/11/19, again* [I] *advised Jason he had not formally advised he was leaving the business so remains fully employed by British Gas.*

33. In the bundle there is a print-out of pages from the "*TrustATrader*" website relating to the claimant's company. These include customer reviews. The two earliest customer reviews were posted before the claimant resigned, on 18 November and 4 December 2019. The review dated 18 November 2019 suggested that the work reviewed was done by two people. The claimant confirmed during cross-examination that the two people referred to had to be himself and his business partner.

34. In light of all that evidence, we have reluctantly come to the view that the claimant has lied to the Tribunal both about when he firmly decided he was going to leave the respondent's employment and about when he started work for his company. Both of these things are important parts of his case. Indeed, if the thing relied on as the last straw was not a cause of his resignation – as we have just, in effect, decided that it was not – then, in the absence of an alternative, suitable last straw, the constructive unfair dismissal complaint inevitably fails.

35. The impression we have of the claimant is that he has a genuine, if unjustified (on the evidence available to us), sense of grievance against the respondent and that this has affected his evidence. He came to believe that the respondent had done wrong to him and caused him to become unwell with depression, and that he deserved to be compensated for it; he thought he ought to get a pay-out and he didn't want to leave without one, something we find he said to his line manager Mr Wyer near the end of his employment.

36. As to the respondent's witnesses, suffice it to say that we have no similar concerns about them. Parts of Mr Wyer's evidence were incorrect, but that is readily explained by the tricks that memory plays on us all, something that cannot be said about many of the factual inaccuracies in the claimant's evidence.

37. The basic facts have already been set out, in the *Introduction & Background* section, above. We shall now go through things in more detail.

38. By mid 2018, the claimant had become dissatisfied with his job. He was unhappy about: having partly to be a salesman as well as an engineer; what he saw as the respondent's constant monitoring of himself; his whereabouts being tracked; and being 'managed on paper', as he thought of it, by Mr Wyers, who, in contrast to the claimant's previous line manager, did lots of paperwork, including reports.

39. There is, however, no evidence that pressures on the claimant – to the extent pressures existed – were any different to those on everyone else doing his job. The claimant was a member of the GMB trade union and this was a heavily unionised workforce. If there was a significant problem with whatever computer systems and with the processes and procedures that were used, or with anything else that affected lots of people in the claimant's position, it would almost certainly have been raised by the GMB.

40. During the summer of 2018, the claimant was taken to task by Mr Wyer for his time-keeping. Engineers had to be on route to their first job at their start time and the claimant was sometimes late starting. In addition, lunchbreaks were half and hour, with time running from the moment they left their pre-lunchbreak job to when they were on route to their post-lunchbreak job. The claimant was in the habit of driving from his pre-lunchbreak job to somewhere – often home – for lunch and then taking half an hour for lunch before setting off for his next job. As we would expect, the respondent was able to monitor the whereabouts of engineers by tracking their vans, and the tracking technology could also tell whether the van was moving or was stationary.

41. The claimant suggested in his evidence that there was a "grey area" in connection with the rules around the duration of lunchbreaks, but there wasn't. If he genuinely thought there was, this was a result of him not understanding the rules rather than of the rules being unclear or ambiguous.

42. It is common ground that on or around 3 October 2018, the claimant and Mr Wyer had the conversation referred to above in which it was agreed that the claimant would have an hour's lunchbreak instead of half an hour, and would make up the time by working an extra half hour in the evenings. It is during this conversation that the claimant alleges Mr Wyer made the rude comment.

43. We are not satisfied that the rude comment was made. The claimant is the only person who is saying from his own knowledge that it was. Mr Wyer is clear that it wasn't. It was not mentioned by the claimant in his resignation letter and the first time it was mentioned in the course of these Tribunal proceedings was in May 2021.

44. In early November 2018, the claimant was assessed by occupational health. He was having problems with anxiety and depression. The occupational health evidence, which comes from documents produced by the occupational health provider the respondent used called MyHealth, shows that there was still perceived to be a problem with time keeping: he was "*Not starting on time and going home every day.*"

45. The gist of the claimant's case is that he was not significantly criticised for his timekeeping, in terms of start and finish times and length of lunch breaks, until the allegation that led to the disciplinary process arose. However, he says in terms in his

witness statement that the agreement for an extended lunchbreak happened because, "*Ian* [Mr Myer] *had an issue with the length of my dinner breaks*". This part of his case is further undermined by the occupational health evidence just mentioned and by his own comment during the disciplinary interview on 10 October 2019 that Mr Myer had raised an issue with his start and finish times previously.

46. It is in this context that we consider a document we were referred to called a "coaching log". It purports to record Mr Wyer's main conduct- and performance-related dealings with the claimant. The claimant alleges that it has been manipulated in some way. What he seems to be alleging is not that everything in it is made up, but that it records more discussions about his timekeeping than actually occurred. We will deal separately with the allegation of manipulation of that document. It is enough for now to say that given Mr Wyer clearly had concerns, and given it is common ground that those concerns were raised with the claimant in October 2018 at least, we accept that it accurately records Mr Wyer having told the claimant a number of times during 2018 that he had to improve his time-keeping. We think the reality was that although the claimant had been taken to task about this, it never sunk in because he thought it shouldn't matter.

47. The claimant was off sick with what appears to have been quite severe depression between November 2018 and February 2019. When he returned to work, there was a phased return to work plan, which MyHealth confirmed was acceptable. He has alleged that this phased return to work was not properly implemented, but there is no evidence to support that beyond the claimant's suggestion, made for the first time in his resignation letter, that that was so. In any event, we don't think that has any relevance to his claims, which relate to the disciplinary proceedings against him from September 2019 onwards. We again note that this is a heavily unionised workforce. The claimant was well aware of his ability to raise things through the union if he was dissatisfied, as he did when he was being disciplined.

48. In or around late June 2019, the claimant was off work for 5 days because of a problem with his back. At this final hearing, he seemed to be making an allegation about that, and in particular about there not being a proper phased return to work. However, the claimant confirmed to us that the allegation connected with a failure fully to implement a phased return to work that was part of the constructive unfair dismissal claim related to the February 2019 return to work rather than the June 2019 one. In addition, like the complaint relating to the February 2019 return to work, it is unsupported by anything other than the claimant's say-so and is therefore unproven.

49. The claimant is also alleging that he was closely monitored during the period covered, or that should have been covered, by a phased return to work period in June / July 2019. The claimant connects that alleged close monitoring with the allegations that led to him being disciplined. We shall return to this in a moment.

50. The events that ultimately led to the claimant's resignation began on Friday, 9 August 2019, when a concern was raised about the claimant potentially finishing early that day. The concern was mentioned in emails from Mr Wyer to the claimant of 14 August 2019, in one of which Mr Wyer states he had tried and failed to speak to the claimant on the 9th. It is probable that the claimant and Mr Wyer did not make contact on the

9th because the claimant was ignoring calls and messages from Mr Wyer when he was not working.

51. What had happened on 9 August 2019 was that Mr Wyer was telephoned by those responsible for work allocation and was told that before the end of the claimant's shift he had declined a job, signed off the respondent's computer system, and then gone incommunicado. There is an email to Mr Wyer from a GMB representative confirming this. Unsurprisingly, Mr Wyer then looked into what had happened on the day. He discovered that on the face of the respondent's records the claimant had finished for the day 1½ or so hours early. Mr Wyer then checked the records for the rest of that week, and saw similar discrepancies. He then checked back over a longer period and identified further discrepancies. It is therefore not true that the claimant was being especially monitored from early July 2019. It is also not true that everything was instigated unilaterally by Mr Wyer. In fact, Mr Wyer had received a complaint to the effect that one of the engineers he line-managed – the claimant – had not been working the hours for which he was paid and, understandably and reasonably, acted upon it.

52. The main evidence to support the disciplinary allegations made against the claimant was not anything Mr Wyer made up or could have made up but was the indisputable records known as "302 reports" and vehicle tracker information. The former recorded how the claimant himself had accounted for his time. The latter showed where his van was and at what speed it was travelling at 7 minute intervals. On the face of those records, from early July to early August 2019 the claimant was repeatedly late starting and early finishing work and taking overlong lunch hours. He most certainly had a disciplinary case to answer. And he would have had a disciplinary case to answer even if he had never been warned about his time-keeping before.

53. On 14 August 2019, Mr Wyer sent the claimant an email enclosing data relating to the previous working week which showed the claimant not working his contracted hours. Later that day, Mr Wyer called the claimant and left him a WhatsApp message. In the early evening he emailed again asking the claimant to call him ASAP. The claimant did not do so. He was not working that day. After Friday 16 August 2019, Mr Wyer went on holiday. He recorded in the Action Log for 14 August 2019 a conversation about the claimant's health, and in his witness statement he suggests he did have a conversation with the claimant that day. Contemporaneous HR records, however, show that on 16 August 2019, there was a conversation between Mr Wyer and a Ms Warrender of HR which confirms that Mr Wyer had not been able to speak to the claimant that week, and that Mr Wyer would be on leave until 29 August 2019. We think the most likely explanation for the entry in the Action Log is that the date given is a mistake or that the entry was made before 14 August 2019 because Mr Wyer was intending to have a conversation with the claimant about his health on that day; and the most likely explanation for the incorrect evidence in the witness statement is simply that Mr Wyer honestly misremembered what had occurred.

54. On 4 September 2019, the claimant went on sickness absence. The problem, initially at least, was his back. He did no further work for the respondent.

55. On 5 September 2019, the claimant was invited to what was described as a "*Disciplinary Investigation Interview*" on 27 September 2019 to consider "*an*

*allegation or allegations of gross misconduct*", namely "*During WC 08/07/2019 to the 09/08/2019 you have not worked your contractual hours and followed rules around start, finish and break times, you have also failed to follow the Ring Control process and record lost time on your weekly time sheet.*" The letter came from Mr Tonks, who stated that he had, "*been appointed Investigating Officer responsible for carrying out a formal Disciplinary Investigation*".

56. What happened from then onwards is entirely documented and is largely not in dispute. The disciplinary process up to the disciplinary interview is detailed in Mr Tonks's statement in paragraphs 26 to 31.

57. Of particular note is the fact that the charges against the claimant were downgraded from gross misconduct to misconduct prior to the disciplinary hearing taking place. In any organisation of the size and complexity of the respondent, disciplinary proceedings are almost always carried out in conjunction with HR. It was an area manager who, with HR, gave the go-ahead for disciplinary proceedings and if HR and the area manager had taken the view that the allegations were not potentially gross misconduct they would not have been graded as such. The original letter stating they potentially constituted gross misconduct came from Mr Tonks.

58. The reason we mention all this is that the individual who was responsible for the charges being downgraded to misconduct was Mr Wyer. He did this after having spoken to the claimant and after having realised the effect of the disciplinary process on the claimant's mental health. He was under no compulsion to downgrade them. Mr Wyer would not have had the authority either to decide that the original charge should be gross misconduct or to decide that it should be downgraded without HR agreement. The suggestion made by the claimant that the reason Mr Wyer brought about the downgrading of the charges was that although he wanted to oust the claimant, he realised he could not get away with accusing him of gross misconduct is implausible, to say the least.

59. The fact that Mr Wyer intervened in this way to help the claimant is one of the main reasons why we have rejected the claimant's allegation that Mr Wyer manufactured evidence in order to bolster the disciplinary case against the claimant. Another is: why would Mr Wyer do this; what was his motive? Other than wild speculation, the claimant has been unable to answer that question. The claimant's case makes no sense in this respect. It is also unsupported by anything other than his apparent conviction that it is what occurred.

60. As to the disciplinary hearing or "disciplinary interview" itself, which in the end took place on 10 October 2019, there are minutes which haven't been challenged by the claimant or by Mr Bibb. There was a very unfortunate 2 hour adjournment in the middle of it. Repeatedly during the course of the hearing, the claimant has suggested that there was something untoward about that. This is, though, something else that seems to us to exist only in the claimant's own mind. Mr Wyer and Mr Tonks met on the day during the adjournment. The claimant seemed to be on the cusp of accusing them of having conspired together, or of accusing Mr Wyer of having 'got at' Mr Tonks in some way. Ultimately, though, after considerable discussions during which the Tribunal reminded the claimant of the need to put all serious allegations he was making about Mr Wyer and Mr Tonks to them, the claimant chose not to put to either

of them that their meeting during the adjournment was to do with anything other than what they told us it was about: the IT problems Mr Tonks was having which were the main reason the adjournment was so lengthy.

61. At or before the disciplinary interview, Mr Wyer and Mr Bibb were provided with all of the documents on which Mr Tonks based his decision. Some of those documents were not provided until the hearing itself, but the claimant and Mr Bibb did not ask for extra time to consider them and they asked for Mr Tonks to give his decision there and then. In particular, they did not ask for any opportunity to make further submissions in light of the documents they had only received on the day before Mr Tonks made his decision. Mr Tonks's decision was to impose a 12 month written warning.

62. There is a minor dispute about whether during the course of the hearing Mr Tonks said, "*you just wanted to go home early and had no intention of doing any more work*". Mr Tonks denies saying that and Mr Bibb has not alleged that that remark was made. Nothing like it is shown in the minutes, nor is there any suggestion in the minutes of the kind of heated discussion we would expect a remark of that kind to produce. We are not satisfied that such a remark was made.

63. The claimant appealed and raised a grievance about Mr Tonks's decision in virtually identical emails on 25 October 2019, to which we refer. The appeal and grievance were dealt with together at a hearing chaired by Mr Rai on 28 November 2019. As with the disciplinary process and disciplinary interview, there is almost no factual dispute in relation to the appeal. The detail, virtually unchallenged in cross-examination, is set out in Mr Rai's witness statement. There is no dispute that at the hearing he said something to the effect that he was allowing the appeal and that the warning would be removed. The only important factual dispute is around whether he also said that he was upholding the grievance.

64. By the end of cross-examination, not even the claimant was sure that Mr Rai had said this. Mr Bibb certainly wasn't. Both he and the claimant conceded that it might not have been said but that it might simply have been they were given the impression that the grievance had been upheld. Mr Rai was sure that he hadn't said this. The minutes of the grievance and appeal meeting don't show him saying this. The closest they come to doing so is that they end with the decidedly ambiguous statement that Mr Rai was to speak to HR "*and see about getting the grievance and sanction removed and dismissed*". During the telephone conversation on 5 December 2019 relied on as the last straw (see below), when the claimant suggested to Mr Rai that by saying he was not upholding the grievance he was changing his decision, Mr Rai immediately replied, "No, no, no, no!"

65. There is, in short, no substantial evidence that Mr Rai said he was upholding the claimant's grievance, whereas there is evidence suggesting he did not say this. We find that he did not say it, and that the claimant and Mr Bibb made an assumption that he was upholding the grievance because he was allowing the appeal.

66. Events following the appeal and grievance hearing are again entirely documented and indisputable. On Monday, 2 December 2019, the claimant chased Mr Rai for paperwork and Mr Rai replied less than 15 minutes later, explaining that his mother

had been taken ill and that he was "*just dipping in and out of work as I care for me mum*". The claimant chased by email again, seemingly ignoring what Mr Rai had said about his mother, early on 5 December 2019, a Thursday. Mr Rai immediately replied, promising to "*put it together tonight and get to you before weekend by email and posted*". The claimant was, then, told on 5 December 2019 that he would get what he wanted, including the letter confirming the outcome of the disciplinary and grievance hearing, the following day.

67. The allegedly crucial telephone conversation between the claimant and Mr Rai took place that evening. It – or most of it at least – was secretly recorded by the claimant and the relevant bits of the recording have been transcribed. The important parts of the conversation are: Mr Rai telling the claimant in no uncertain terms that there had been no change of mind; Mr Rai promising that there would be a conversation between himself, the claimant and Mr Bibb on 6 December 2019 to clarify matters; almost the last thing Mr Bibb said to the claimant being, "*We'll get it sorted one way or another*".

68. Following the telephone conversation, there was a further exchange of emails, in which the claimant asked for, and was sent, the notes / minutes of the appeal and grievance hearing.

69. The next and last relevant thing that happened was that the claimant resigned by a letter emailed to Mr Rai and Mr Wyer at 10.11 am on 6 December 2019, which speaks for itself.

**Decision on the issues – disability discrimination & harassment**

70. We have already found that there is no claim about the rude comment before the Tribunal and that, in any event, it was not said. Even if such a claim was before the Tribunal and we had found it was said, the complaint would fail:

    70.1 because of time limits;

    70.2 because, on the basis of the claimant's own evidence, it did not relate to disability and did not have the requisite "*purpose or effect*" in accordance with EQA section 26.

71. The only disability discrimination complaints that are before the Tribunal are complaints of direct discrimination. They are misconceived and fail. It is not in fact any part of the claimant's case as put forward at this final hearing that he was mistreated because of his disabilities, or because of the protected characteristic of disability in any other sense. It was not put to Mr Tonks or to Mr Rai that they did what they did because of disability. There is no evidence that anyone at the respondent did what they did because of disability.

72. There was no less favourable treatment, in accordance with sections 13 and 23, either, on the basis of our findings, above and below, relating to the constructive unfair dismissal claim. The claimant himself, when directly asked during cross-examination whether he thought he had been treated worse than the way in which someone in the same situation as him but who was not disabled would have been treated, said he didn't know.

73. The reality is that the claimant's allegations about disability consist of: possible allegations relating to phased returns to work, which are not before the Tribunal and which would anyway fail on the facts; the potential complaint under EQA section 15 detailed in paragraph 17 above, which is also not before the Tribunal and which would also fail on the facts; an allegation that the respondent caused or exacerbated the claimant's mental ill-health by breaching its duty of care towards him, which seems largely to be based on factual allegations we have rejected and which would anyway be a claim the Tribunal had no power to deal with.

**Decision on the issues – constructive dismissal**

74. As explained above, the claimant's case as it was consistently put forward until May 2021 was that he was constructively dismissed solely because of things that happened in connection with the disciplinary and grievance process from September 2019 and he was refused permission to amend to add to that case, except in relation to the rude comment. We shall therefore focus on the specific allegations the claimant was making in connection with that process, as set out in the list of issues. However, we shall quickly go through the claimant's other allegations too, to the extent they have not already been covered.

*The respondent: caused the claimant to lose all trust and confidence by informing the claimant that his grievance had been upheld and then informing him that it had been 'thrown out'; did not act consistently by changing the outcome*

75. This allegation – the crux of the claimant's case – fails on the facts. Our finding, above, is that Mr Rai did not inform the claimant that his grievance had been upheld. There was no change of outcome.

76. In addition, also as mentioned above, we are not satisfied that this conversation was a cause of the claimant's resignation. The claimant was planning on resigning and had already started his new job, working for his company. This misunderstanding about the grievance – which was a genuine misunderstanding – was just the excuse the claimant was looking for to (from his point of view) justify a constructive dismissal allegation. If it affected anything of relevance, it was the timing of his resignation.

*The respondent communicated the outcome of the grievance in a telephone conversation and not in accordance with its grievance policy*

77. All that happened was that during the telephone conversation between the claimant and Mr Rai on 5 December 2019, which was essentially a courtesy conversation prior to Mr Rai providing the written outcome of the disciplinary and grievance process, Mr Rai corrected the claimant's false assumption that because the appeal was successful and because the written warning was being removed, that meant that the claimant's grievance was being upheld. The conversation was not contrary to the respondent's grievance policy. We have no idea of the basis upon which this is said to be a breach of trust and confidence or part of one. The claimant has not explained why it might be. Our view is that picking up the phone before sending an outcome letter, rather than simply sending an outcome letter, does no damage whatsoever to the relationship of trust and confidence between employer and employee.

*The respondent failed to carry out necessary investigations*

78. The claimant has not said what investigations should have been undertaken that were not undertaken. What this seems to boil down to is an allegation that Mr Wyer should have spoken to the claimant before referring it as a potential disciplinary matter to HR. On the facts, Mr Wyer wanted and tried to do this. The claimant did not take Mr Wyer's call (possibly calls) or respond to his messages. He and Mr Wyer then went off on leave. Contrary to how the claimant has sought to portray things during this hearing, these were not just pedantic or petty allegations or a misunderstanding that could be cleared up by a quick conversation between the claimant and Mr Wyer. On the face of the documentation, they were serious and substantial allegations of the claimant repeatedly not working his contracted hours. There was reasonable and proper cause for the claimant to be referred for a potential disciplinary and what then happened was that the allegations were reasonably investigated at every stage. For example, during the disciplinary interview, just before the long break, Mr Bibb had suggested that particular discrepancies on a given day were not a trend and that it was an isolated incident. The long break was partly caused by Mr Tonks going away to investigate whether or not Mr Bibb was right. The respondent did not fail to undertake necessary investigations; there was no conduct damaging trust and confidence in this respect.

*The respondent: delayed confirming the outcome in writing; failed to state what action it intended to take to resolve the grievance*

79. The claimant was told the outcome of the process and what action the respondent intended to take at the hearing on 28 November 2019: the final written warning was being removed. The respondent did not 'delay' confirming the outcome in writing: Mr Rai simply did not produce a written outcome letter as quickly as he would normally have done because of the situation with his mother. He did, though, keep the claimant informed and had told the claimant on 5 December 2019 that the following day the claimant would get the outcome letter and that there would be a telephone conversation between Mr Rai, the claimant and Mr Bibb which, it was hoped, would "*get it sorted*". The claimant resigned before the outcome letter or the conversation was due. In any event, the time frame for giving grievance outcomes in the respondent's grievance guidelines is "*normally within 7 days of the date of the grievance hearing*" and when the claimant resigned the respondent had not exceeded that. Once again, nothing the respondent did was without reasonable and proper cause or, assessed objectively, damaged trust and confidence.

80. Moving on to other points put forward by the claimant and on his behalf during this final hearing:

    80.1 *There was a 2 hour break during the disciplinary interview and the claimant was presented with important paperwork on the day and not beforehand*

    The 2 hour break was unfortunate, but we have rejected the claimant's allegation that there was anything sinister about it.

    The claimant had trade union representation at the disciplinary interview and neither he nor Mr Bibb asked for an adjournment or for more time.

80.2 *The claimant was excluded from a team go-karting event which was to reward the team for achievements for which the claimant was partly responsible.*[8]

We have not gone into this in our findings of fact, above, because it seems to us that it was of no relevance at all to the claimant's decision to resign. The claimant was in fact invited to this event and chose not to attend. If the claimant thought he had not been invited, it was almost certainly because he was not checking his emails while he was off sick. During cross-examination, his evidence was not that this did not occur but that he could not remember. He would not have wanted to go go-karting anyway, because of his back.

80.3 *The respondent obtained and used the claimant's personal ID and passwords*[9]

Again, we haven't gone into this so far because of its seeming irrelevance to the claimant's decision to resign. Suffice it to say that the claimant was openly asked for, and provided without protest or apparent reluctance, some of his log-on information when he was off sick in September 2019 so as to facilitate others carrying out work in his absence. Nothing untoward occurred.

80.4 *Emails the claimant had saved which contained evidence the claimant could have used to challenge the disciplinary allegations against him were deleted from his work laptop in early September 2019*

There is a form of this allegation in paragraph 19 of the claimant's witness statement. The statement was, to our knowledge, the very first time any allegation along these lines was put forward by the claimant or on his behalf. The version of the allegation made in the statement is simply that "*lots of my saved emails and other items were missing or deleted*". During the hearing, it developed and appeared at one stage to become, or to be about to become, an allegation that Mr Wyer or someone acting on his behalf had deliberately deleted emails containing crucial exculpatory evidence to sabotage the claimant's defence to the disciplinary charges against him. However, the claimant, reminded a number of times of the need to put his case to the respondent's witnesses, did not make this allegation against Mr Wyer when cross-examining him. Further, we are not satisfied that when the claimant resigned he had any such allegation in mind. If he had, he would surely have mentioned it: during the disciplinary interview; as part of his appeal; in his resignation letter. Moreover, we have already rejected any suggestion that Mr Wyer 'had it in' for the claimant.

On the evidence, it appears to us that emails the claimant had saved may have been deleted. We don't know who did it, how, or why. There is no proper basis for us to find that it was done maliciously. And we are satisfied that it was not

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[8] An allegation made in paragraph 19 of the claimant's witness statement.

[9] Ditto.

done by Mr Wyer or on his behalf, or done in an attempt to handicap the claimant's disciplinary defence.

80.5 *Sales were put through in the claimant's name when he was off sick*

This is yet another allegation from paragraph 19 of the claimant's witness statement that the claimant does not seem to have made at the time and that relates to something the claimant does not seem to have been concerned about at the time. What in fact happened was that Mr Wyre would occasionally make sales, but he had no mechanism to record them. He would therefore 'give' them to members of his team, to help them meet their targets. On this occasion, in or around September 2019, the claimant was off sick and was understood by Mr Wyre to feel that he was letting the team down by his absence. Mr Wyre therefore gave these sales to the claimant. This was done openly, with the claimant's knowledge. The claimant suggested this was fraud of some kind, a completely baseless allegation. Even by the end of this final hearing, we could not understand why the claimant had any problem with what had occurred – if and to the extent the claimant genuinely did have a problem with that.

80.6 *Mr Wyer copied the claimant into 'incentive' emails in September 2019 when he was off sick*

The claimant did not complain about this at the time. He was being copied into emails he would normally expect to be copied into. All of the recipients of the emails knew he was off sick. He was not expected to respond to the emails. The emails contained no explicit or implicit criticism of him. And had he been removed from the email distribution list, Mr Wyer might well have been accused of excluding and isolating him.

81. Finally, we turn to an allegation not made during the hearing in terms, but which was a major part of the claimant's grievance and appeal and also featured in his resignation letter: that there were no grounds even to start the disciplinary process, let alone to impose the written warning on him. We have already partly dealt with this, in paragraph 78 above, when considering the allegation that necessary investigations were not carried out. In short, on the basis of the documentary and other evidence we have seen and heard:

81.1 there was ample cause for initiating a disciplinary process;

81.2 there was ample cause for imposing the warning;

81.3 it was no part of Mr Rai's decision that there was no basis for taking disciplinary action or for the warning, merely that on the evidence he (Mr Rai) had, which was not the same as the evidence Mr Tonks had, he reached a different conclusion from Mr Tonks;

81.4 the only aspect of the process that puzzles us and where we think there is an absence of evidence to justify the decisions that were taken is that we do not fully understand why Mr Rai decided that the claimant was innocent and that no disciplinary sanction at all should be imposed. If, then, the respondent did

something wrong during the disciplinary, appeal and grievance process, it was a mistake by Mr Rai in the claimant's favour.

**Constructive dismissal – summary & conclusion**

82. The constructive unfair dismissal complaint fails because:

82.1 most of the factual allegations on which it is based are inaccurate;

82.2 in every relevant respect, there was reasonable and proper cause for what the respondent did and did not do;

82.3 on an objective assessment, nothing the respondent did or did not do damaged the relationship of trust and confidence to any significant extent, even at the time, let alone by the time the claimant resigned;

82.4 the claimant did not resign because of the thing he relies on as the last straw;

82.5 the claimant resigned because of long-standing dissatisfaction with his work and with the respondent that had led to him setting up a business with a colleague and so that he could go and work permanently for that business. If there was a last straw – something that made him finally decide to go through with his plans – it was when he was, justifiably, given a written warning for not working his contracted hours, on 10 October 2019;

82.6 if imposing the warning was a breach of trust and confidence – and it wasn't – the constructive unfair dismissal claim would still have failed because:

82.6.1 the claimant affirmed the contract of employment by not resigning for nearly two months, by continuing to draw pay, by appealing and by bringing a grievance;

82.6.2 after the warning was imposed, nothing happened that could be a last straw as a matter of law and that could 'revive' the affirmed breach in accordance with Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978.

Employment Judge Camp

08 August 2022

SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

## ANNEX

## EMPLOYMENT JUDGE CAMP'S SELF-DIRECTION ON CONSTRUCTIVE DISMISSAL

1. Dismissal includes an employee terminating, "*the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct*": section 95(1)(c) of the Employment Rights Act 1996. What this means was definitively decided by the Court of Appeal in Western Excavations v Sharp [1977] EWCA Civ 165, in the well-known passage beginning , "*If the employer is guilty of conduct which is a significant breach…*" and ending, "*He will be regarded as having elected to affirm the contract.*"

2. The claimant relies, as the "*significant* [a.k.a. fundamental or repudiatory] *breach*", on a breach of the 'trust and confidence term'; that is to say, the claimant alleges that the respondent, without reasonable and proper cause, conducted itself in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between employer and employee. Any breach of that term is repudiatory. This serves to highlight that it is a high-threshold test: "*destroy or seriously damage*" is the wording used. It is not enough, for example, that – without more – the employer acted unreasonably or unfairly.

3. As was explained by Lord Steyn in Malik & Mahmud v BCCI [1997] ICR 606 at 624, although it is possible for the trust and confidence term to be breached by conduct the employee is unaware of, such conduct cannot be the basis of a constructive dismissal claim. This is because the employee must resign in response to the breach in order to have been constructively dismissed.

4. An essential ingredient of the final act or last straw in a constructive dismissal claim of this kind is that it is an act in a series the cumulative effect of which is to amount to the breach of the trust and confidence term. The final act need not necessarily be blameworthy or unreasonable, but it has to contribute something to the breach, even if relatively insignificant. See Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493 and Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978 at paragraphs 39 to 46.

5. In Wright v North Ayrshire Council UKEATS/0017/13, the EAT emphasised that in a constructive dismissal case, the repudiatory breach of contract in question need not be the only or even the main reason for the employee's resignation. It is sufficient that it "*played a part in the dismissal*"; that the resignation was, at least in part, "*in response to the repudiation*"; that "*the repudiatory breach is one of the factors relied upon*" by the employee in resigning. This is the one and only part of the test for whether someone is constructively dismissed in relation to which it is appropriate to look at matters subjectively, from the employee's point of view.