



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms T Kenyon

**Respondent:** Independent Vetcare Limited

**Heard at:** Bristol (via VHS)

**On:** 8, 9 and 10 August 2022

**Before:** Employment Judge Cuthbert

## Representation

Claimant: M Whittington (claimant's partner)

Respondent: I Ferber (counsel)

**JUDGMENT** having been sent to the parties on 16 August 2022, following oral judgment and reasons on 10 August 2022, and written reasons having been requested by the claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the written reasons set out further below are provided.

The judgment had determined as follows: the claimant's claim for constructive unfair dismissal failed and was dismissed.

# REASONS

## Introduction

1. The claimant brought a claim for constructive unfair dismissal against the respondent following her resignation with effect from 30 September 2021.
2. I heard the case on 8, 9 and 10 August 2022, by way of a remote hearing, which was consented to by the parties. The form of remote hearing was fully remote via VHS. A face-to-face hearing was not held because it was not practicable, no-one requested the same and all issues could be determined in a remote hearing. There were occasional connection issues during the hearing but these were addressed by way of several short adjournments and did not materially affect the proceedings.
3. The claimant was represented by Mr Whittington, her husband and a lay representative; the respondent was represented by Ms Ferber, counsel.
4. At the conclusion of the hearing, I gave an oral judgment dismissing the

claim. The claimant's representative subsequently requested written reasons.

### **Change of name**

5. As a preliminary issue, at the start of the hearing the name of the respondent was changed by consent from IVC Evidensia to the correct name of the claimant's employer at the relevant times, Independent Vetcare Limited.

### **Documents**

6. I was provided with a 347-page agreed bundle of documents and witness statements from the three witnesses identified below. References in square brackets below are to pages in the hearing bundle which was before me.

### **Issues**

7. The claim was for constructive unfair dismissal only.
8. I spent some time at the start of the hearing discussing the issues in the case with the parties and in particular identifying the alleged breaches of contract relied upon by the claimant as set out in her ET1 claim form [8].
9. The issues were identified and agreed as follows:

#### *Constructive Dismissal*

10. Did the Claimant terminate the contract under which she was employed in circumstances in which she was entitled to terminate it without notice by reason of the Respondent's conduct? The burden was on the claimant to establish that she did so.
11. This gave rise to the following sub-issues:

(1) Did the following alleged matters set out in the ET1 give rise to a breach of Claimant's contract, including on a "last straw" basis?

- a) Being shouted at by her then line manager, Anna Wall, in a return-to-work meeting on 13 November 2019.
- b) Not promoting the claimant to Payroll Supervisor in December 2019.
- c) The respondent not resolving complaints by the claimant about her mobile phone signal in 2020, whilst working from home.
- d) Failure by the respondent to deal with a complaint raised by the claimant on 17 June 2021.
- e) The claimant on 23 July 2021 being accused in an email of not attending meetings by her then manager, Suzie Abbott.
- f) An email from Rachael Martins to the claimant of 13 August 2021 which the claimant considered to be focused on her

conduct rather than her complaints.

- (2) If so, was the breach repudiatory in nature?
- (3) If so, did the Claimant affirm the contract and/or waive the breach of contract?
- (4) If not, did the Claimant terminate her employment in response to the breach?

*Reason for Dismissal/Fairness*

12. If the claimant was constructively dismissed, was she dismissed for a potentially fair reason under s.98(2) ERA 1996? The respondent contended that the reason for the dismissal was a substantial reason of a kind to justify the dismissal of an employee holding the position which the claimant held ("some other substantial reason").
13. If that was the reason for dismissal, did the respondent act reasonably in treating this as sufficient reason for acting as it did?

**Findings of fact**

14. I made findings, set out below, on the facts relevant to my decision on the issues above. I have not mentioned matters which I did not consider to be relevant.
15. The respondent owns and operates over 1,000 veterinary practices across the UK. The claimant commenced employment with the respondent on 23 May 2017 as a Payroll Specialist in the Payroll Team, part of the respondent's Support Operations function at its Head Office.

*Witnesses*

16. I heard oral evidence from the claimant on her own behalf and read a four-page witness statement prepared by her.
17. I also heard oral evidence on behalf of the respondent from Alison Challenger, the claimant's line manager until around February 2019 when she was promoted from Head of Payroll to Financial Transactions Controller (maintaining responsibility for the claimant's team), and Rachael Martins, the Respondent's Deputy Finance Director, Alison Challenger's line manager and with overall responsibility for the Payroll Team. Each provided a 10-page witness statement.
18. My findings of fact are as follows on the relevant disputes.

*The meeting on 13 November 2019 between the claimant and Anna Wall*

19. On 13 November 2019 the claimant attended a return-to-work meeting,

after a short absence, with her line manager and the then Head of Payroll (successor to Alison Challenger in the role), Anna Wall. The claimant found this meeting difficult. In her witness statement she said that Anna Wall raised concerns about her, and that Anna Wall became hostile and started to shout when the claimant would not agree with her.

20. Anna Wall did not give evidence - she was no longer employed by the respondent at the time of the hearing. Some detailed notes of the meeting were made by Ms Wall [69 – 74] which recorded concerns raised by her about the claimant, including that the claimant became hostile/defensive when challenged and she noted that the claimant had said she felt ambushed in the meeting. The notes were plainly not made in the meeting as they contain [73] the statement “*I agree I said this as I was about to go to a meeting*”. Anna Wall said in an email sent during a 2021 investigation of a grievance by the claimant [291] that she had jotted down a couple of things in the meeting but made her notes straight after the meeting. The notes were located in mid-2021 after the claimant had raised concerns about the 2019 meeting [199].
21. Alison Challenger explained in her evidence to the Tribunal that she met with the claimant that same afternoon (13 November 2019), the claimant having emailed Alison Challenger (subsequent to the meeting with Anna wall) to withdraw from a promotion application for Payroll Supervisor (see below). The claimant was visibly upset and told Alison Challenger that Anna Wall had shouted at her in the return-to-work meeting earlier that day. Alison Challenger told the claimant she was surprised by this (in view of her own experience of Anna Wall). The claimant then told Alison Challenger that Anna Wall had challenged the claimant on some of the ways she works. Alison Challenger encouraged the claimant to go back into the recruitment process for the Payroll Supervisor role and the claimant did so.
22. Alison Challenger also spoke to Anna Wall about the same meeting, on 13 November 2019, and recalled Anna Wall telling her that it was the claimant who had been confrontational and argumentative in the return to work meeting.
23. Alison Challenger decided not to take the matter any further as she took the view that Anna Wall had taken the opportunity, informally, as the claimant’s line manager, to raise some areas where the claimant could make some improvements; Alison Challenger’s evidence was that she had herself experienced the claimant as defensive if challenged and at times inflexible when she had managed the team in the past (and therefore consistent with the impression of Anna Wall and of the meeting notes).
24. I found on the balance of probabilities that the return-to-work meeting occurred as follows. The meeting was a difficult one for both the claimant and Anna Wall, in that Anna Wall raised issues about the claimant’s performance and how colleagues perceived her as being difficult to work with, which were uncomfortable and not easy to raise. The claimant took against such comments being made; she felt ambushed and taken by surprise. Each party perceived the other as being hostile/argumentative

during what was a heated discussion on each side. I do not find that Anna Wall shouted at the claimant. I also find that Anna Wall made her notes relatively contemporaneously afterwards, given the level of detail and that the content ties in broadly with what the claimant herself says was discussed and I accepted them as an accurate summary of the meeting.

25. The claimant raised no further concerns about the meeting in November 2019 with Anna Wall until June 2021, 19 months later. She gave her reasons as being that she feared for her job if she did and she wished to remain in it.

*The claimant's application for Payroll Supervisor – late 2019*

26. Meanwhile the respondent had decided to recruit for two new roles in the Payroll Team, of which the claimant was part. The team covered both the finance side of payroll and general payroll queries. The respondent was regularly acquiring new veterinary practices at this time and, as it was continuously expanding, so too was the work volume in the team. The respondent considered that the structure did not allow for much career progression and Anna Wall was under pressure with the number of direct reports and the amount of work in the team. The respondent decided to introduce a new Payroll Supervisor role on the finance side and a new Payroll Supervisor role on the general payroll side.
27. The claimant was sent a Payroll Supervisor job description on 21 October 2019 [64]. The original job specification was generic including elements of both roles and the intention had been to split the roles out into two separate job descriptions at some point in the future as Anna Wall's cover email to the claimant pointed out [64].
28. Anna Wall and Chris Gibbons, UK Takings Manager, held interviews for the two roles in the new structure, interviewing Natalie Flagg and Lee Bennett, two of the claimant's colleagues, on 14 November 2019 and then the claimant on 21 November 2019.
29. It was suggested, on behalf of the claimant, to Alison Challenger during her evidence that Anna Wall should have been removed from the panel as a result of the meeting on 13 November. Alison Challenger explained that she had decided to take no further action on that issue and as Anna Wall was the Head of Payroll, it was vital that she was on the panel for the roles which would report to her. I also noted that the claimant did not suggest at the time that Anna Wall should not be on the panel.
30. Chris Gibbons was asked to be on the panel as he was not in the Payroll Team and was so seen as impartial. He wrote up the interview notes and gave feedback at the end. His order of preference for the 2 new roles was Natalie Flagg; Lee Bennett; then the Claimant [92]. He stated:

*Natalie:*

*Natalie was nervous and wasn't as chatty but her responses were more to the point, based on this she clearly knows what she is talking about. That being said it was based around the finance side*

*of the department and not so much the payroll, however I believe given the opportunity would pick this up quite quickly and would learn from others. I feel that she would be decisive when needed and in my opinion already the go to person in the team.*

*Toni:*

*I feel that Toni has potential but she isn't ready for the role yet. I feel that she would do a lot to accommodate but I think the role at the moment is too big and it would be unfair to put her in certain situations, especially when decisions have to be made. I do believe that in time with the correct training or planning we could train or encourage further education in management to develop her for the future, a smaller step up like a senior or TL would be better giving her smaller exposure as opposed to a whole department.*

*If both roles were filled Internally then I do believe that both Nat and Lee would work well together and would cover all areas of the department. They could learn from each other and they would support each other as well.*

31. After the interviews, Alison Challenger met with Anna Wall and went through the notes and considered the recommendations of Chris Gibbons. Given their experience of the candidates and based on performance at interview they took the decision to give Natalie Flagg the finance-focused role and Lee Bennett the general payroll one. Alison Challenger also observed in evidence before the Tribunal that Natalie Flagg was already working on the finance side in payroll whilst the claimant was on the general side at the time of the interviews and Natalie Flagg had a degree, a Chartered Institute of Payroll Professionals qualification and an accounting qualification (CIMA) [296]. The claimant had none of these [305].
32. During the Tribunal hearing, the claimant suggested during her own evidence that Chris Gibbons' emails and comments in the bundle (above) had been fabricated by the respondent for the purposes of defending her Tribunal complaint. I found that the documents were genuine – there was no evidence whatsoever of fabrication, beyond mere assertion by the claimant; on the other hand, there was a contemporaneous email chain from November 2019 between those involved in the process which specifically referred to attachments documenting feedback on the candidates [87].
33. The recruitment decision was subsequently communicated to the team in December 2019 and the new appointees commenced their roles in January 2020. Lee Bennett became the claimant's supervisor following her appointment as supervisor on the general side in which the claimant worked. The claimant did not report to Natalie Flagg and I saw no evidence of the claimant having any material dealings with Natalie Flagg following her appointment as supervisor on the finance side.
34. The claimant raised no concerns with the respondent about the November

2019 recruitment decision to appoint Nathalie Flagg until June 2021, again citing the reason for this, during the Tribunal proceedings, that she had feared for her job if she did so and she wished to remain in it.

35. Meanwhile she continued working in the same team in the same physical office, under the supervision/line management of Lee Bennett. The claimant did not work from home (prior to the COVID pandemic).
36. Aside from the above, little of note in terms of the claimant's employment occurred until March 2020, by way of relevance to the issues in these proceedings, as set out above and the particular events relied upon by the claimant in terms of her decision to resign.
37. I noted some emails referred to in evidence which indicated that the respondent wanted the claimant to use dual IT screens for her role, as her colleagues did, but the claimant was unwilling to do so, citing her sinuses as the reason. The respondent also wished to change the claimant's hours from 8am – 4pm to 9am – 5pm but the claimant was unwilling to change. The respondent also changed the claimant's job title and that of her colleagues in the same role to "Payroll Support Technician" (from Payroll Specialist), a change to which the claimant objected. However, these matters were not relied upon by the claimant in the ET1 as being a factor in her resignation so I did not consider them in any detail.

*March 2020 – COVID lockdown and subsequent mobile phone issues*

38. With the onset of the COVID pandemic and the subsequent lockdown, the claimant and her colleagues were required to work from home at short notice, from 23 March 2020. The claimant accepted in evidence that this created challenges for the respondent, both in terms of the sudden onset of the situation and the uncertainty about how long it would last.
39. The claimant was provided by the respondent with a mobile phone, intended to allow her to receive work-related calls at home, which would divert payroll queries to her and her colleagues. The claimant readily accepted in oral evidence that her work during lockdown was not dependent on using a phone and she was in any event very busy dealing with emailed payroll queries from the respondent's many employees.
40. The claimant sent her line manager (Lee Bennett) an email on 29 June 2020 [118] attaching a screenshot of her phone showing a poor 4G signal [126]. Lee Bennett had queried with IT why the claimant was receiving so few calls to her mobile.
41. The suggestion was made to switch the provider from O2 to EE and arrangements were put in place for that [119-125]. A new SIM was sent but the claimant informed the respondent that she did not receive this. When a second SIM arrived on 16 September 2020 the Claimant then informed the respondent's IT team that she had nothing small enough to open her phone and insert the new Sim [162-164]. The respondent's IT team then sent a SIM tool to assist, which it appeared again did not arrive [155 – 162].

42. On 10 February 2021, the IT team wrote to the claimant by email, suggesting she speak to her manager about options as the only two methods of getting the SIM tool to the claimant were via post or collection from the respondent's office and neither were apparently viable in view of events to date [156]. In an earlier email the claimant had said she would not be coming into the office as she was in a "High Risk Category" [156].
43. On receipt of the email of 10 February 2021, the claimant wrote to Lee Bennett the same day, complaining that the IT team were "*harassing*" her, that the email had "*completely stressed [her] out*" and asking him to tell the IT team to stop contacting her about the issue [155]. That was the last communication about the issue of the mobile phone signal.
44. Nothing else of relevance to these proceedings occurred during the lockdown period, prior to June 2021, save that I noted in the claimant's witness statement that she referred to various appraisals with the respondent. Three of these took place during 2020 and in May 2021 and copies were referenced in the Tribunal bundle. Neither the claimant nor the respondent expressed any concerns of note about the other during the appraisals, according to the notes (save for a reference by the claimant in 2021 to a need for more resources to assist her with her workload). On the face of those documents, the employment relationship between the claimant and the respondent appeared to be a positive one (pages [109], [148], [179]).

*Return to office announced and the claimant's request to work "100% from home" – June 2021*

45. As the COVID situation eased, in around June 2021 the respondent announced that its staff would need to return to working in the office on a hybrid basis, in the claimant's case I understand with effect from September 2021. The claimant's evidence was that she felt so stressed and betrayed by the promotion decision in 2019 that she could not now face returning to the office.
46. On 14 June 2021 a newly appointed Payroll Mgr Suzie Abbott (successor to Anna Wall) requested a meeting with the claimant (who was part of her team). The claimant replied with a "*tentative*" (rather than accepting the meeting) and said that she was unwilling to attend the meeting without her supervisor Lee Bennett in attendance, despite assurances from Lee Bennett that Susie Abbott just wished to say "*hello*" [184].
47. The claimant subsequently did attend a meeting with Suzie Abbott, accompanied by Lee Bennett. The claimant stated briefly in her witness statement that she was accused by Susie Abbott of "*breaking the law*" during the meeting but no further details about the meeting were provided during the evidence by either party. The claimant made no complaint about such an accusation by Susie Abbott at the time, or any other complaint about the meeting. This was despite raising a number of other issues in various emails to the respondent and having a subsequent meeting to discuss various concerns on 4 August 2021. The 14 June



meeting/alleged accusation was not relied upon by the claimant as a basis for her resignation or otherwise mentioned in her ET1. Given all of the above, I made no finding about what occurred during it.

48. On 16 June 2021, Susie Abbott asked the claimant by email to sign new hybrid working contract for her future return to office. The respondent's employees were to be on a rolling schedule of working three days a week in the office, which would repeat after eight weeks. Office days could be from 8am - 4pm and working from home days from 9am - 5pm to ensure all calls were answered and the department covered appropriately [239].
49. The claimant told Suzie Abbott, in response, that she would not sign this document and said she would instead be submitting a request to work from home to Lee Bennett [185, 188].
50. At 1315 on 17 June 2021 [190], the claimant sent an email to Lee Bennett to ask to work from home 100% of the time for "*health reasons*", citing variously risks of:

- (1) COVID/asthma
- (2) strobe lighting exacerbating sinusitis
- (3) air-conditioning causing her joint pain
- (4) "*mental health*" (fewer distractions and less stress working from home)

and, finally stating:

- (5) that events in November 2019 had made it "*impossible*" for her to return to the office as it would affect her mental health "*immensely*".

51. On being asked by Lee Bennett to elaborate on the final issue, at 1344 [189] on the same day, the claimant explained her position that she felt she had been:

- (1) "*defamed*" and upset in the RTW meeting in November 2019 with Anna Wall;
- (2) passed over for promotion in terms of the decision to promote Natalie Flagg; and
- (3) she said she was upset about pressure to have a second screen and about the change to her job title (events which also occurred in late 2019 and early 2020)

52. The claimant received an email on 22 June 2021 [196] from Suzie Abbott indicating that Lee Bennett had forwarded the 100% working from home request on to her. Suzie Abbott had reviewed the email and details within and was seeking support from HR and Alison Challenger on ways to proceed.

53. Subsequent to her resignation (and so these details were self-evidently not in the claimant's mind at the time she decided to resign) the claimant obtained some emails from the respondent via a subject access request, including emails at [197 – 200], "*Subject: Employee Case*", which appear

to have been prompted by the claimant's request to work from home. It is apparent that the respondent's management were unhappy with the claimant being unwilling to attend the office and seeking to work entirely from home. Various performance concerns were also mentioned by Alison Challenger, Lee Bennett and Anna Wall in these emails. The possibility of capability proceedings relating to the claimant was also mentioned. Alison Challenger on 22 June 2021 requested that Anna Wall and Lee Bennett provide a "list of all issues encountered with TK" including [198]:

*Not agreeing to attend meetings with Suz and Rhys (unless with you Lee)*  
*Working sat on sofa*  
*Partner in background during calls*  
*The headphone issue*  
*The mobile phone issue*  
*The job title change*  
*The additional screens*  
*Working hours*  
*Inflexibility*  
*Absolutely anything you can think of...*

54. In response, Anna Wall and Lee Bennett supplied details and information about the claimant to Alison Challenger and Suzie Abbott on 24 June 2021 and this was in turn passed on to the respondent's HR team. As I have indicated, the claimant was unaware of these details at the time when she resigned.

*Suzie Abbott's email of 23 July 2021 concerning the claimant attending meetings*

55. Several weeks later, on or around 19 July 2021, Suzie Abbott requested a meeting with the claimant to discuss her flexible working request to work 100% from home. the claimant declined to attend unless the meeting was recorded [205 – 206].
56. The claimant then received two emails from Suzie Abbott on 23 July, each timed at 1232.
57. The first [208], relied upon by the claimant in these proceedings as one of the reasons for her resignation, was headed "Private and Confidential: Informal Meeting" and Suzie Abbott stated:

*Further to your email on 20th July 2021, I wish to understand the basis of your refusal or reluctance to attend departmental or manager meetings, which recently has consisted of the following incidents:*

- *One to one meetings with new team members for training or support*
- *One to one meeting with new line manager to discuss your role*
- *Mandatory GDPR breach meeting*

58. I was taken in evidence to four instances of the claimant being asked to attend meetings and her responses:

- (1) [138-139] - a request for the claimant and colleagues to attend a Teams “meet and greet” meeting with a new third-party supplier. The claimant said she was concerned about being asked to provide personal information, essentially “ice-breakers” (favourite pet, what she liked about her job, a fact about herself) and so had not accepted the meeting (but she did ultimately attend).
- (2) [168 – 170] - an email chain between the claimant and Lee Bennett about meeting a new team member, Rhys, via Teams. The claimant accepted the meeting request but then expressed reservations to Lee Bennett when Lee Bennett was not going to be present, including about the claimant being asked “awkward questions” in the meeting. The claimant said she was feeling “quite stressed about it all”. Lee Bennett agreed to attend to introduce the claimant to Rhys and the meeting did then take place without issue.
- (3) [184] - the meeting above requested by Suzie Abbott herself with the claimant on 14 June 2021 which the claimant declined to attend without Lee Bennett also being present.
- (4) [201 – 203] - a request on 29 June 2021 from Suzie Abbott to the claimant and her team to attend an urgent and mandatory meeting, first thing the following morning, about a GDPR breach. The claimant replied that she could attend but it may be that not as many people would be paid that day (it was an “Advance Payments day”).

59. The claimant was asked during cross-examination in respect of each of these emails if she accepted that she had been “reluctant” to attend the various meetings in view of her emails at the time. She repeatedly denied that she had been reluctant, and attempted to draw a distinction between a reluctance to attend a meeting, and expressing concerns about a meeting.

60. Suzie Abbott then explained to the claimant in the same email of 23 July (in respect of the meeting attendance issue):

*This clearly cannot continue, in the interest of a healthy, mutual relationship which I consider to consist of trust and confidence between employee and employer. You have referred to your treatment from your previous line manager which you have stated as defaming your character which has led to your distrust in the business and line management along with IVC HR. I need to understand further details with regards to this to enable me to support you and rectify the situation. Whilst I will communicate with you via email for the immediate future, clearly this cannot be sustained for a longer period.*

*Please ensure that you send over the background separately to the Flexible Working Request email. I am keen that communication via this method is clear and not confused.*

*I would like to work with you to understand your challenges and will work to resolve this matter.*

61. The second email from Suzie Abbott on 23 July 2021 to the claimant [211] was headed "*Private and Confidential: Ways of Working*". In that email Suzie Abbott expressed some concerns about the claimant working from home, not having a suitable working area or wearing headphones, and not responding to working calls. The email asked the claimant to complete a DSE assessment and mentioned the possibility of the respondent providing additional equipment and Occupational Health support, if needed by the claimant.
62. The claimant replied swiftly the same afternoon to both emails, copying in Alison Challenger, Lee Bennett and the respondent's HR dept in each case.
63. In her reply to the first email on the meetings issue (timed 1350) [207] the claimant said she had raised concerns previously (17 June) and those had been ignored; she wanted answers as to why her character had been "*defamed*" and she had been passed over for promotion; she concluded that if the respondent continued to "*harass and bully*" her, she would "*need to look for a new job and may need time off for stress and seek legal compensation*".
64. At 1408 the claimant replied to the second email [210] stating that her character was "*being attacked again*". She replied to some points about her home working arrangements and concluded (sic):

*Due to IVC trying to Defame my Character yet again, I Formally Request that I do not attend any more Weekly Meetings.*

*Alison, I would also like to Formally Request that I answer to Lee and not to Suzie going forward as there obviously appears to be a Conflict of interest.*

*Rachael Martins appointed to address the claimant's concerns – late July 2021*

65. Following the emails above, Natasha Laver, HR Manager, asked Rachael Martins, Deputy Finance Director and Alison Challenger's line manager, to assist in investigating the claimant's concerns, which it was apparent were now being treated as complaints by the respondent.
66. Rachael Martins wrote to the claimant on 27 July 2021 to explain that she was planning to invite the claimant to a meeting to discuss her complaints, her flexible working request [215] and also her request to change managers. Rachael Martins pointed out that HR would be in attendance for both parties. The claimant responded querying the attendance of HR and informing Rachael Martins that the claimant would need to record all meetings [214]. Rachael Martins replied later that day to point out that HR was neutral and could support both sides [213]. Rachael Martins's view, as she explained in her evidence to the Tribunal, was that the claimant had not raised a formal grievance but had raised complaints about historic events as a partial explanation for requesting to work from home 100% of the time. Rachael Martins agreed for the meeting to be recorded via

Teams (the claimant in addition made her own recording on her mobile phone, unknown at the time to the respondent but which came to light during the Tribunal proceedings).

67. The claimant responded to Rachael Martins to say she had no choice but to complain now, because the stress of going back into the office knowing that someone "*less qualified*" than she was had been promoted in 2019 instead of her had "*really affected [her] health badly*" [212-213]. The claimant also confirmed her attendance at the proposed meeting on the understanding it was "*a fact-finding meeting*" and "*no accusations would be made*".
68. The claimant met with Rachael Martins and Natasha Lever on 4 August 2021, for just over one hour. A full transcript of the recording was at pages [220 - 233].
69. The meeting, in summary, went through various points raised by the claimant in her recent emails and the claimant was given time to make and explain her points. Rachael Martins's evidence (supported by the notes) was that the claimant did not appear upset or uncomfortable with the meeting and the claimant answered questions put to her. The claimant also appeared to accept Rachael Martins's explanations as to why the claimant needed to attend team meetings [222] and why she needed to continue to report to Suzie Abbott [232-233].
70. In terms of why the claimant did not wish to return to the office, whilst she had initially given a number of medical reasons in part as to why she did not wish to return to the office in her email of 17 June, it was made repeatedly clear by her in the meeting (and confirmed in her evidence before the Tribunal) that the main reason she did not now wish to return to work in the office was the respondent's decision to promote Natalie Flagg to Payroll Supervisor rather than her in November 2019 [229 - 232] - "*that's the ultimate problem*" was how she put it at one point in the meeting.

*Rachael Martins's email to the claimant of 13 August 2021*

71. Following the meeting on 4 August, Rachael Martins had promised the claimant an update before her annual leave but emailed her slightly later, on 13 August 2021, Rachael Martins's second day off. The email was at pages [248-250],
72. In that email, Rachael Martins firstly explained that she was still in the process of looking into the claimant's complaints against Anna Wall and about the recruitment process in 2019.
73. Rachael Martins then explained in the email that she was reporting back on the claimant's further complaint regarding her relationship with her new line manager Suzie Abbott. Rachael Martins had by now spoken to the claimant and to Suzie Abbott and reviewed the correspondence between them. Rachael Martins's evidence before the Tribunal was that it was clear to her that the claimant perceived herself as having been subject to

inappropriate behaviour by Suzie Abbott but Rachael Martins did not consider this to be the case and did not find any evidence to support the claimant's position. She felt that the claimant was preoccupied with attaching blame and that the claimant would not acknowledge that there might be areas in her own working practices and communications that could be done differently or better. She observed that the claimant resented interference in her day to day tasks and instead wanted to be left alone to deal with emails.

74. In her email to the claimant, Rachael Martins explained her conclusions about Suzie Abbott/the line management issue as follows [249]:

*From reviewing the emails and discussing the meetings with Suzie, I cannot find any reason to believe that there has been any unfair treatment from Suzie towards you, the emails that I have seen represent, in my view, a normal exchange and contain normal expectations between an employee and line manager. I am unsure of what further notice Suzie could have provided for these to not be received unexpectedly. Suzie is a new manager to the team, and I would expect there to be meetings and discussions around aligning all members of the team to their roles and responsibilities. From further checks, I can see no evidence of you being treated differently to other members of the team in this aspect.*

...

*The meeting that Suzie requested you attend near payroll deadline was due to an emergency from a serious data breach and was only brief in terms of time required. Again, a reasonable request and mandated by our GDPR responsibilities, yet I do accept you didn't refuse, though you gave your line manager an ultimatum that if you attended, other work may not be completed. This wasn't a response that other team members had shared.*

*We also discussed your thoughts that Suzie didn't listen to you and you had voiced various concerns with work related situations and in your view, you had been correct, I have reflected on this area and I do expect our managers to collaborate where possible with team members though I do expect that ultimately the manager may make a decision without collaboration. Again, an expected representation of a working relationship and I don't find anything to be unreasonable.*

*With all of the above, I cannot see any formal processes or detriment to yourself. Therefore, you should continue to report to Suzie and there is no further action required.*

75. Rachael Martins also set out some concerns which the respondent had about the claimant and about her work set up at home and referred to matters which the claimant herself had raised about her own workload. She explained as follows in the email to the claimant her proposed way forwards [249]:

*Following on from this, I recommend that Suzie should work through a HSE Work Stress risk assessment, a wellness plan and I will also review your job role and output whilst comparing to other members of the team. When I return from annual leave I will ask Suzie to put these into action.*

*We will also progress the Occupational Health referral so you should have some contact on that shortly.*

76. The email concluded:

*I also just want to be clear that we are currently working on this in an informal manner as previously stated, you requested that our meeting on 4th August was a fact finding meeting, this was how we approached it. You have not currently requested this be treated as a formal grievance, if you would like it to be, the formal grievance policy and process is available on the intranet.*

77. The claimant replied a short time after Rachael Martins's email requesting the grievance procedure [251]. Mandy Stevens, Head of HR Operations, replied to the claimant forwarding on procedure [253].

#### *The claimant's Resignation*

78. On 20 August 2021, the claimant emailed a letter of resignation to Ms Abbott. She stated, briefly:

*I, Toni Kenyon, hereby resign my position as Payroll Specialist at IVC Evidensia effective from the date of this letter.*

*I am giving 6 weeks notice as per my contract so my last Official day will be 30th September 2021.*

*I am disappointed that IVC Senior Management have given me no choice but to tender my resignation at this time.*

79. No further details were provided by the claimant in that letter.

#### *Events subsequent to the claimant's resignation*

80. The claimant submitted her claim to Acas on 20 August 2021 and an Early Conciliation certificate was issued on 25 August 2021.
81. She lodged her ET1 on 25 August 2021, five days after her resignation, in which she set out the six specific reasons for her resignation as identified in the list of issues earlier in this decision.
82. The respondent placed the claimant on garden leave for the remainder of her employment, which terminated on 30 September 2021.
83. The claimant's complaints about the 2019 meeting with Ms Wall, the

recruitment decision, and a complaint of bullying and harassment by Ms Martins and Natasha Laver, HR, were subsequently investigated as a grievance by David Elms, Service Transformation Lead. He was external to the Payroll Team and reported to the Head of IT Service, Implementations and Training. These matters were not touched on in any detail during oral evidence.

84. The grievance was not upheld and the outcome letter is at [276-278].
85. The claimant appealed the grievance outcome by email dated 22 September 2021 [279] but later requested that Mandy Stevens who had been appointed to hear the appeal, stop contacting her as the matter would be formally dealt with “*through the Court*” [288]. The grievance appeal outcome was sent to the claimant on 10 November [293-294]. The appeal was unsuccessful.
86. The claimant commenced new employment with a different employer on a fixed term contract, working fully from home, from 22 November 2021 until 23 April 2022. The contract was then renewed with effect from 1 March 2022 until 31 August 2022.

#### Relevant Law

87. I considered the following relevant law, which I summarised during the oral reasons.
88. The statutory basis for constructive dismissal is section 95(1)(c) of the Employment Rights Act 1996:

**95     *Circumstances in which an employee is dismissed.***

*(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) only if) —*

*(a) ...*

*(b) ...*

*(c) the employee terminates 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.*

96. The burden of proving dismissal where this is disputed, including in cases of constructive dismissal, rests with the employee.
97. The leading case relating to constructive dismissal is *Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221, in which it was held that to claim constructive dismissal, an employee must establish that there was a fundamental breach of contract on the part of the employer or a course of conduct on the employer's part that cumulatively amounted to a fundamental breach entitling the employee to resign, whether or not one of the events in the course of conduct was serious enough in itself to amount to a repudiatory breach. The final act must add something to the breach



even if relatively insignificant. If the employee does so, and terminates the contract by reason of the employer's conduct, the employee is constructively dismissed.

- 98 In a complaint of constructive unfair dismissal, Langstaff P (as he then was) in *Wright v North Ayrshire Council* [2014] ICR 77 at paragraph 2 said “that involves a tribunal looking to see whether the principles in *Western Excavating (ECC) v Sharp* [1978] IRLR 27 can be applied” and set out four issues to be determined:
- a. that there has been a breach of contract by the employer;
  - b. that the breach is fundamental or is, as it has been put more recently, a breach which indicates that **the employer altogether abandons and refuses to perform its side of the contract**;
  - c. that the employee has resigned in response to the breach, and that
  - d. before doing so the employee has not acted so as to affirm the contract notwithstanding the breach.
- 99 As subsequently described in *Malik v BCCI SA (in Liq.)* [1997] ICR, employment contracts contain an implied term of mutual trust and confidence, that the parties will not **without reasonable and proper cause**, conduct themselves in **a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust**, which should exist between employer and employee. The test for determining whether the employer has acted in breach of that mutual term is a severe one. The conduct must be, such as, to destroy or seriously damage the relationship, and there must have been no reasonable and proper cause for the conduct. While it is unnecessary to make a factual finding as to the respondent's actual (subjective) intention about the contract, a finding should be made as to whether objectively the conduct complained of, was likely to seriously damage the relationship of trust and confidence.

#### *The “last straw” doctrine*

- 100 The “last straw” doctrine was dealt with by the Court of Appeal in its decision in *Omilaju v Waltham Forest London Borough Council* [2005] ICR 481. The judgment of Dyson LJ at paragraphs 14 to 16 contained the following statement of the law:

*14. The following basic propositions of law can be derived from the authorities:*

*1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment ...*

*2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example, Malik v Bank of Credit and Commerce International*

SA [1998] AC 20 ...

3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract ... The very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship.

4. The test of whether there has been a breach of the implied term of trust and confidence is **objective**. As Lord Nicholls said in *Mahmud* at page 610H, the conduct relied on as constituting the breach must 'impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer' (emphasis added).

5. A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put at para [480] in *Harvey on Industrial Relations and Employment Law*: 'Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the "last straw" which causes the employee to terminate a deteriorating relationship.'

15. The last straw principle has been explained in a number of cases, perhaps most clearly in *Lewis v Motorworld Garages Ltd* [1986] ICR 157. Neill LJ said (p 167C) that the repudiatory conduct may consist of a series of acts or incidents, some of them perhaps quite trivial, which cumulatively amount to a repudiatory breach of the implied term of trust and confidence. Glidewell LJ said at p 169F:

(3) The breach of this implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In particular in such a case the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term? ... This is the "last straw" situation.

16. Although the final straw may be relatively insignificant, it must

*not be utterly trivial: the principle that the law is not concerned with very small things (more elegantly expressed in the maxim "de minimis non curat lex") is of general application.*

*Affirmation or waiver*

- 101 Lord Denning said in *Western Excavating v Sharp* (referring to an employee who had been the subject of a repudiatory breach):

*...the employee must make up his mind soon after the conduct of which he complains. If he continues for any length of time without leaving, he will be regarded as having elected to affirm the contract and will lose his right to treat himself as discharged.*

- 102 In *W E Cox Toner (International) Ltd v Crook* [1981] IRLR 443, the EAT set out the principles that apply to affirmation in the employment context. It recognised that there is an important difference between employment contracts and most other contracts. It pointed out that if an employee faced with a repudiation by their employer goes to work the next day, they will, on the face of it, be doing an act which is only consistent with the continued existence of the contract, and therefore affirming the contract. Moreover, when they accept their next pay packet (which is further performance of the contract by their employer), the risk of being held to affirm the contract becomes even greater. If the ordinary principles of contract law were to apply strictly to a contract of employment, delay would invariably be very serious, not in its own right but because any delay normally involves further performance of the contract by both parties.
- 103 The EAT also recognised that the courts have been prepared to adopt a more flexible approach in employment cases. It referred to the Court of Appeal's decision in *Marriott v Oxford Co-operative Society* [1970] 1 QB 186 as authority for the proposition that, provided the employee makes clear their objection to what is being done, they are not to be taken to have affirmed the contract by continuing to work and draw pay for a limited period of time after the breach, even if their purpose is to enable them to find alternative work.
- 104 There is no fixed time within which the employee must act upon the breach and so a delay per se will not amount to affirmation in law, albeit it will often be an important factor: *Chindove v William Morrison Supermarkets Ltd* UKEAT/0201/13 (26 June 2014, unreported). A reasonable period is allowed.

**Closing submissions**

- 105 I heard oral closing submissions from Ms Ferber on behalf of the respondent, in which she set out the respondent's position, in summary, that the claimant had not proved matters capable of amounting to a breach of contract and that many of the earlier matters were in any event waived even if amounting to a breach. Mr Whittington made a brief closing submission on behalf of the claimant to the effect that she had been treated unfairly and had resigned in response to her treatment. I do not

repeat either submission in more detail but I had regard to each in making my decision.

## Conclusions

- 106 I carefully considered the various alleged breaches of contract which the claimant identified in her ET1, submitted just a few days after her resignation, as forming the basis of her decision to resign. These were incorporated into the List of Issues and set out above.
- 107 The key questions were whether, individually or cumulatively, the claimant has demonstrated (the burden of proof resting upon her) that the respondent's actions were **without reasonable and proper cause**, and that the respondent in so acting conducted itself in **a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust**. I reminded myself that the test as to whether the necessary threshold had been established by the claimant was a "severe" one, as identified in *Malik*. The issue of waiver was also especially relevant in the case of the more historical allegations.
- 108 I considered each of the alleged six breaches in turn and then looked at them cumulatively.

### *Alleged breach 1: conduct of the return-to-work meeting with Anna Wall in November 2019*

- 109 My findings of fact about the meeting, are set out above. The meeting was one in which some performance concerns were raised and the claimant found the meeting difficult. Anna Wall, the claimant's line manager at the time, did have some performance/capability concerns about the claimant, which were discussed in the meeting. There was nothing inherently unusual in that. I recognised that the claimant found these concerns hard to hear; her evidence was that she would have preferred to have been forewarned and seemingly also for these concerns to have instead been raised more formally in a capability process (which I inferred from some of the questions raised on her behalf in cross examination of the respondent's witnesses on her behalf about that meeting). I did not find that Anna Wall shouted at the claimant in that meeting.
- 110 There was no identifiable breach of any express term of the claimant's contract of employment in respect of the conduct that meeting as I found it to have occurred. In terms of the implied mutual duty of trust and confidence, the claimant failed to establish that the actions of Anna Wall in that meeting were without reasonable and proper cause and were calculated or likely to seriously damage the relationship of trust and confidence or in other words the claimant failed to show that they amounted to a fundamental breach of the duty of trust and confidence.
- 111 Furthermore, given the passage of time between this issue arising and the claimant's resignation and the claimant's desire to remain in work rather than to complain, it was plain that the claimant would have waived any breach of contract even if one arose.

112 This allegation by the claimant therefore failed.

*Alleged breach 2: the respondent's promotion decision in November 2019*

113 My findings of fact about the respondent's decision to promote Natalie Flagg and not the claimant are set out above. It was a business decision and the reasons given for it by the respondent were cogent, sensible and credible.

114 There was no identifiable breach of any express term of the claimant's contract of employment in respect of the decision to promote Natalie Flagg over the claimant. In terms of the implied mutual duty of trust and confidence, the claimant failed to establish that the decision to promote Natalie Flagg was one taken without reasonable and proper cause and was calculated or likely to seriously damage the relationship of trust and confidence or in other words the claimant failed to show that it amounted to a fundamental breach of the duty of trust and confidence.

115 Furthermore, given the passage of time between this issue arising and the claimant's resignation and the claimant's desire to remain in work rather than to complain, it was plain that the claimant would have waived any breach of contract even if one arose.

116 This allegation by the claimant therefore also failed.

*Alleged breach 3: the issue of the claimant's mobile phone signal during 2020 and 2021*

117 My findings of fact on this issue are set out above. It is evident that there were some issues around the claimant's mobile phone signal but these were ancillary to her core role, which was email-based and which she was able to continue in notwithstanding the signal issues.

118 The respondent did make attempts to resolve the issue, against the backdrop of uncertainty around the COVID pandemic, which ultimately concluded with the claimant complaining that she considered that further contact from IT, in February 2021, seeking to resolve the issue amounted to harassment and that unsurprisingly was the end of that.

119 There was no identifiable breach of any express term of the claimant's contract of employment in respect of the mobile phone signal issues. In terms of the implied mutual duty of trust and confidence, the claimant failed to establish that the actions of the respondent in respect of her mobile phone signal were without reasonable and proper cause and were calculated or likely to seriously damage the relationship of trust and confidence or in other words the claimant failed to show that they amounted to a fundamental breach of the duty of trust and confidence.

120 Furthermore, given the passage of time between this issue arising and the claimant's resignation, the claimant would have waived any breach of contract even if one arose from this issue.

121 This allegation by the claimant therefore also failed.

*Alleged breach 4: the response of the respondent to the claimant's emails of 17 June 2021*

122 I then considered the events from June 2021 onwards leading to the claimant's resignation.

123 It was apparent that both the claimant and the respondent harboured some underlying concerns about the other during the period from 2020 to June 2021, in summary a lack of trust on the part of the claimant (which came across, for example, in her responses to meeting requests) and concerns on the part of the respondent about the claimant being inflexible, defensive and at times difficult. I noted that it was unfortunate that neither party took steps to progress or even voice their respective concerns to any meaningful extent over that period.

124 On the contrary, there were several appraisal processes which on their face suggested things were well in the employment relationship, given what each side contributed to those processes. Thus, the concerns on each side instead simmered away beneath the surface until June 2021 when the claimant was asked to agree to return to the office by her new manager and declined to do so.

125 The catalyst for these issues coming to light was the claimant's subsequent request to work "100%" from home and the reasons given by her for that request, in essence around a lack of trust in the respondent on her part. It was very clear, after the COVID lockdown, that the claimant felt very strongly, in her own mind, that she could not return to the office. The claimant had not, however, worked from home before the COVID lockdown. The nature and scope of the claimant's request was to work 100% from home when the respondent was reasonably seeking the return of its staff to the office (for just three days a week, rather than full-time) as COVID eased. The justification given for the request by the claimant predominantly related to a promotion decision some 20 months earlier. On balance, it was **not** a reasonable in the circumstances for the claimant to request to work 100% from home.

126 That request by the claimant and probably also the tone of some of her correspondence – for example referring in her 17 June 2021 emails to being "*harshly defamed*" by the respondent, to the respondent having run a "*highly unfair*" recruitment process, to her lacking trust in the respondent and to having to "*constantly fight management*" - also brought to light the various concerns which the respondent held about the claimant. Those concerns arose in the first place behind the scenes in discussions between the claimant's managers in late June 2021 (although as indicated above those discussions were **not** known to the claimant when she decided to resign and so cannot have formed part of her rationale for so doing).

127 The issues raised by the claimant about events in 2019, in her initial emails of 17 June 2021, were plainly raised in the context of her request to

work 100% from home and they appeared to be raised as part of the explanation by her for that request. It was not made clear by the claimant that she was raising any free-standing complaint about them. Given the historical nature of the main issues raised (dating back to late 2019) and the lack of any prior concerns being raised by the claimant, nor could the respondent reasonably be expected to have interpreted them as free-standing complaints requiring an investigation independent of considering the claimant's flexible working request.

- 128 Once it became apparent, in view of the claimant's responses to the later emails of 23 July 2021, that she **was** expecting these matters to be looked into, the respondent duly and reasonably appointed Rachael Martins to do so. Rachael Martins met promptly with the claimant on 4 August 2021 and committed to providing a substantive response to the claimant's concerns by 4 September 2021. In the event, that substantive response became unnecessary when the claimant resigned in the meantime, and so was not provided by Rachael Martins.
- 129 The progress of the investigation of the claimant's concerns by the respondent disclosed no breach of any express term of the claimant's contract of employment. The claimant also failed to establish, in terms of the duty of trust and confidence, that the response by the respondent to the issues which she raised, initially on 17 June, was without reasonable and proper cause and was calculated or likely to seriously damage the relationship of trust and confidence or in other words the claimant failed to show that it amounted to a fundamental breach of the duty of trust and confidence.
- 130 This allegation by the claimant therefore also failed.

*Alleged breach 5: the email from Suzie Abbott raising concerns about meetings – 23 July 2021*

- 131 The context of this email is set out in my findings of fact above. There was a clear pattern of the claimant being asked to attend meetings and demonstrating in each example a clear reluctance to do so – she demonstrated that reluctance by expressing reservations and concerns rather than accepting the request to attend. I do not accept the distinction which the claimant sought to make here. It was reasonable for Suzie Abbott, as the claimant's new line manager, to seek to better understand the claimant's position and to make clear to the claimant that she was expected to attend meetings as part of her job. The terms in which she did so in her email of 23 July were reasonably expressed.
- 132 The email from Suzie Abbott disclosed no breach of any express term of the claimant's contract of employment. The claimant also failed to establish, in terms of the duty of trust and confidence, that email of 23 July was without reasonable and proper cause and was calculated or likely to seriously damage the relationship of trust and confidence or in other words the claimant failed to show that it amounted to a fundamental breach of the duty of trust and confidence.

133 This allegation by the claimant therefore also failed.

*Alleged breach 6: the email from Rachael Martins of 13 August 2021*

134 Finally, I turn to the email from Rachael Ms Martins. I readily accepted that the claimant found this email upsetting, because she did not wish to remain under Suzie Abbott's management and she perceived the email as being critical of her in some respects.

135 Viewed objectively, however, which is the relevant test, the email is courteous and considered. I have referred in my findings of fact above to the content of the email in more detail.

136 In the first place, the email indicated very clearly that the claimant's complaints about the issues dating back to 2019 were still under investigation and the outcome of those complaints was likely to be available on 4 September 2021.

137 The email set out the initial decisions of Rachael Martins on behalf of the respondent, as to how she intended to progress the situation in respect of the claimant's line management going forwards and the claimant's recent complaints about Ms Abbott. Ms Martins had met with the claimant and with Suzie Abbott and reviewed relevant material before reaching her view on these matters, and the position set out in that email, and the manner in which the email was expressed, was reasonable.

138 To the extent that the email touched on issues around the claimant's role, duties and performance and how these were to be considered between the parties going forwards, the tone and content was again reasonable and I found nothing unusual or untoward in it, in the context of an employer line managing an employee and setting out its reasonable expectations of that employee.

139 The email disclosed no breach of any express term of the claimant's contract of employment. The claimant also failed to establish, in terms of the duty of trust and confidence, that the email was sent without reasonable and proper cause and was calculated or likely to seriously damage the relationship of trust and confidence or in other words the claimant failed to show that it amounted to a fundamental breach of the duty of trust and confidence.

140 This allegation by the claimant therefore also failed.

*Was there a cumulative breach and a "last straw"?*

141 Finally, I also considered, with the guidance in *Omilaju* in mind, whether the claimant established a course of conduct which cumulatively demonstrated, based upon the email of 13 August as the possible "*last straw*", a fundamental breach of the duty of trust and confidence. I concluded that she failed to establish any course of conduct by the respondent (whether by act or omission) which showed that the respondent cumulatively committed a repudiatory breach of the mutual



duty of trust and confidence when the individual allegations of breach addressed separately above (and all of which failed individually) were looked at, objectively, together.

- 142 In particular, when looking at the question of a course of conduct, I found that the respondent had reasonable and proper cause for the steps it took in progressing the claimant's concerns at the times that it did, including for the email sent to the claimant about meetings on 23 July 2021 by Suzie Abbott and for the email sent by Rachael Martins on 13 August 2021 following up on the meeting of 4 August 2021. That finding was fatal to any "*last straw*" argument.
- 143 I accepted that the claimant found her position at work subjectively very upsetting in a number of respects and that she felt that she had lost trust in the respondent, but that was due to her own perception of and response to those events. Those same events, viewed objectively which is the relevant standard, did not give rise to the breaches of the claimant's contract of employment by the respondent which were alleged by the claimant.
- 144 Given my conclusions above, I found that the claimant's claim failed and was dismissed.

Employment Judge Cuthbert

Date: 22 August 2022

WRITTEN REASONS SENT TO THE  
PARTIES ON 06 September 2022  
By Mr J McCormick

FOR THE TRIBUNAL OFFICE