Case Number: 1300905/2021

EMPLOYMENT TRIBUNALS

Claimant: **Mrs D Griffiths**

Respondent: **Whitbread Group plc**

Heard at: **Birmingham**

On: **5 & 6 October 2022**

Before: **Employment Judge Flood**

Representation
Claimant: In person
Respondent: Ms Dalziel (Solicitor)

JUDGMENT

The complaint against the respondent for constructive unfair dismissal is not well founded and is dismissed.

CORRECTED REASONS

The Complaints and preliminary matters

1. The claimant brought a complaint of unfair dismissal on 9 March 2021, following early conciliation from 16 to 17 February 2021.

2. Several preliminary issues arose on the first day of the hearing. The issues to be determined by the Tribunal were raised by me first. Following an initial discussion with the parties, in particular on what the claimant alleged to be the acts that amounted to a breach of the implied term of trust and confidence, I prepared a draft list of the issues as I understood them based on the claim form and what the claimant told me. This draft list was given to the parties to review over the reading break. After the break this was discussed, and the claimant indicated that she wished to make an application to amend her claim to add two new allegations of conduct amounting to a breach of trust and confidence. The

first related to an incident in August 2018 when she contended that the respondent failed to provide a safe environment at work by having CCTV cameras that were not operating. The second incident related to an alleged humiliating meeting carried out by Ms Matthews with the claimant in the adjoining restaurant in August 2019. After hearing submissions from the parties my decision was not to grant the claimant's application to amend. The amendments sought were substantial and amounted to "*entirely new factual allegations which change the basis of the existing claim"* as identified in the **Selkent** case below. There was no reference to the factual allegations behind either of the amendments sought in the claim form. Although there was no issue of time limits in terms of jurisdiction to bring the overall complaint, there could be a concern that even if the acts amounted to breaches of contract that the claimant did not resign in response to them and had affirmed any breach, as these matters date back some time. The application was made late, and the respondent would be prejudiced having prepared the claim on one basis and would have to face the claim on another one if the amendment were allowed. The first incident does seem to be indirectly connected to something that forms part of the background factual matrix of the background of the claim (and disclosure has been made around this topic). However, the second matter appears to relate to a new incident not mentioned before. The claimant is self-represented, and I took this into account, but she did have some assistance from Citizen's Advice in preparing her claim form. If these two matters were crucial it is surprising that there were not included. The claim form recounted in good detail other events relied upon and was well put together, so if these were contended to be fundamental breaches of contract, they should also have been included.

3. In considering the balance of prejudice I considered whether, if the amendment were allowed, delay would be caused, and the respondent will be put to increased costs whilst it investigates the new allegations and calls evidence. This will undoubtedly be the case as these matters have not been addressed at all in evidence. It would have caused immense prejudice to the respondent to have to continue with the hearing to address new allegations it has not called evidence on. It is likely that a postponement would have been requested and granted. There is also some suggestion that evidence relevant to the new issues is now not available as employees have left the business. However even if this is not the case, I acknowledged the difficulty of calling evidence on events that are now up to 4 years old.

4. On the contrary, the relative prejudice to the claimant if the application were granted would be relatively small. The first allegation relied upon with reference to the health and safety issue does not appear to me to be one which has reasonable prospects of succeeding in any event. This took place some years ago, a grievance was raised and addressed about the main issues around this i.e., the bullying complaint and no claim was made at the time alleging this CCTV issue or indeed anything about this incident was a fundamental breach of contract. In addition, the second incident, whilst more recent to the events this claim is about is vague in nature as the claimant admits she cannot remember

exactly what was discussed. Therefore, on that basis it would be difficult for the claimant to show that whatever was discussed was something that amounted to a fundamental breach of contract. The claimant already has a number of allegations in play, and these would appear to be more closely related both in time and factual nexus. It would significantly prejudice the claimant and the respondent for the trial to be further delayed whilst these matters are added to and addressed in evidence (it would be at least February 2023 when the trial could be relisted). The claimant had already indicated that she suffers from ill health. I was concerned that the interests of justice would not be served by further delaying matter. For the above reasons, the balance of prejudice and hardship favoured refusing the amendment application.

5. The next matter discussed was documents. The respondent produced an unredacted copy of the document which started at page 157. The claimant was concerned that she had only seen this yesterday. I asked her to consider this over the reading break and to let me know if there were any concerns when we came back. The claimant also raised the issue that she felt she was still awaiting documents from the respondent which she had asked for in a data subject access request (DSAR). Ms Dalziel stated that there had been correspondence on this in the bundle including with the Information Commissioner's Office. She said that the respondent's position was that everything that was possible to send to the claimant had been produced and an explanation had been given for anything it was unable to produce. The claimant said she would consider the issue in the break, and I reminded her that the Tribunal had no jurisdiction to deal with data issues as they related to failures to comply with a DSAR which were for the ICO. The Tribunal's concern with any documents relevant or necessary to the fair disposal of these proceedings. Following the break, no applications were made in relation to documents.

6. The claimant also raised a concern that she may require the attendance of additional witness and mentioned 5 names. I explained the process for making an application for a witness order to the claimant and asked the claimant to think about the matter overnight and informed her that any applications would be considered on the second day of the hearing. The claimant informed me on the second day that she had decided not to make an application for an order requiring witnesses to attend. Due to the number of preliminary issues that arose and had to be dealt with, the evidence did not start until the second day of the hearing.

7. Having concluded oral submissions at 4pm on the second day of the hearing, I adjourned the hearing for a reserved decision to be made. I apologise to the parties for the delay in being able to provide this written decision.

The Issues

8. The issues that the Tribunal had to determine were as follows:

1. **Unfair dismissal**

1.1 Was the claimant dismissed?

1.1.1 Did the respondent do the following things:

1.1.1.1 On Friday 7th February 2020 make an accusation of gross misconduct relating to two incidents:

a) a breach of Health & Safety guidelines by allowing a member of the public (who was also an electrician) to go behind the hotel reception desk to reset a trip switch; and

b) a failure to take reasonable instructions by not insisting that guests must book a table for breakfast.

1.1.1.2 On Saturday 15th February 2020 inviting to a disciplinary meeting on 18th February to discuss the allegations above which the claimant says were manufactured and that the meeting was deliberately held when the respondent knew she would be off work. The claimant says she told her manager L Matthews that she could not attend as she was on holiday and received a letter stating that she had refused to attend the meeting.

1.1.1.3 Failing to fully investigate and not uphold the claimant's grievance raised on 23 February 2020 and subsequent appeal.

1.1.1.4 Failing to set a date for the disciplinary meeting despite the claimant making various requests.

1.1.1.5 Commencing disciplinary action against the claimant in relation to an accusation of discrimination against someone on the basis of their sexual orientation which the claimant believe was manufactured.

1.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

1.1.2.1 whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

1.1.2.2 whether it had reasonable and proper cause for doing so.

1.1.3 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the

claimant was entitled to treat the contract as being at an end.

1.1.4 Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

1.1.5 Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

1.2 If the claimant was dismissed, what was the reason or principal reason for dismissal - i.e., what was the reason for the breach of contract?

1.3 Was it a potentially fair reason?

1.4 Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

Findings of Fact

9. The claimant attended to give evidence and Mr D Ashcroft, Hotel Manager for the Merseyside region ("DA""); Ms Kerry-Anne Bennet. Multi-Site Hotel Manager ("KAB") and Ms A Stevens, Hotel Manager ("AS") gave evidence on behalf of the respondent. The managers who were involved in the incidents involving the claimant, C Braddick ("CB") and L Matthews ("LM") did not attend to give evidence and Ms Dalziel said that a view had been taken by the respondent that they would not be called and instead the contemporaneous advice from the various meetings would be relied upon. It became apparent that LM no longer worked at the respondent. I considered the evidence given in written statements and oral evidence given in cross examination, re-examination and in answer to questions from the Tribunal. I considered the ET1 and the ET3 together with relevant numbered documents referred to below that were pointed out to me in the Bundle of Documents. Where there were disputes of fact, I determined these on the balance of probabilities.

10. I made the following findings of fact:

10.1. The claimant started work with the respondent hotel chain on **6 May 2011**. She was employed as Hotel Receptionist at its Premier Inn in Shrewsbury working a shift from 3pm to 11pm, 5 days a week. The claimant was regarded as a good performer and received excellent feedback for her customer service, having received internal company awards during her employment.

Contract and relevant policies

10.2. The claimant's statement of terms and conditions of employment was at page 131, and she signed receipt of the staff handbook at pages 132. A further statement of terms and conditions signed by the claimant was at page 151. I was referred to the following policies and procedures which applied to the claimant's employment which were contained in the handbook:

10.3. The disciplinary policy was at pages 81-86, identified at page 84-85 examples of gross misconduct, which included (amongst other matters):

"Rude or abusive behaviour, harassment, bullying ore discrimination or any nature, against your colleagues, guests or suppliers…

Failure or refusal to carry out legitimate, reasonable instructions…

"Failure to following procedures for securing the business including guest areas, private accommodation, Company money, keys or swipe cards"

It also included the following provisions around investigations (page 82):

"You won't usually be given any notice of an investigation, and during an investigation, you do not have the right to have someone with you, although requests will be considered. The person conducting any investigation meetings may have a note taker with them. Recordings are not permitted.

Once the investigation is complete, the investigating manager will make a decision, based on the evidence they have gained, as to whether your behaviour or performance warrants disciplinary action or not. Often, when weighing up the evidence, a decision will be made by weighing up conflicting evidence and making a decision as to what story is the most credible/plausible – this is called the 'balance of probability'."

Allegations of bullying in 2016 and 2017

10.4. In 2016 the claimant was investigated for what she viewed as an 'unjustified allegation' of bullying brought by her then colleague (who subsequently became her manager), CB. She stated that these were investigated by P Curtis Regional Manager and O Gibbs Hotel Manager, but no further action was taken at this time.

10.5. The claimant also gave evidence about an incident that took place in 2017 where she alleges she was subjected to bulling and harassment from another receptionist, S Reeves ("SR"). The claimant was left a 'ransom letter' in a bucket she kept in reception containing toy ducks which she would leave in guests' rooms to entertain children. The claimant said she reported this incident to her manager and had a meeting about this with S Crowther, a manager at the time. The claimant said she was initially discouraged from raising a grievance but did then raise a grievance to the respondent's regional area manager, L Hinson and the matter was investigated by another

hotel manager. The claimant said that no further action was taken. I saw a copy of the investigation report into this incident at pages 157-177 (an unredacted version of which was supplied at the start of the hearing). This confirmed that the outcome of the investigation was that SR would be issued with a first and final written warning for her behaviour towards the claimant. SR was invited to a disciplinary meeting but was ultimately not issued with a disciplinary sanction with the disciplinary meeting outcome notes recording a "*breakdown in communication amongst the team*" with a need for a "*mediation session*". It is not clear whether such a session ever took place. This was an unfortunate incident which appears to have created a difficult working atmosphere in the hotel which did not appear to have been resolved by the time the incidents leading to this claim took place.

10.6. The claimant was given a letter of concern on 9 May 2019 relating to failure to clock in on time (page 187). This was described in the letter as not being a formal warning and not part of the respondent's disciplinary procedure. The claimant challenged this letter of concern and wrote back to the respondent on 12 May 2019 stating that the issue with clocking in related to a mechanical error with the clocking in machine (page 188). The claimant asked for a further letter to be sent to her confirming that she was not at fault, but no further correspondence was received.

10.7. The claimant also stated that that she was not given an end of year appraisal in 2019 and was left out of the process although all her colleagues had theirs. This matter does not appear to have been pursued at the time. The claimant complained about this as part of her grievance appeal meeting held with KAB on 17 July 2020 and this element of her grievance appeal was upheld by KAB which was communicated to the claimant on 7 August 2020 (page 250).

<u>Power cut incident November/December 2019</u>

10.8. The claimant was subsequently investigated about the way she handled an incident which took place at the hotel at some point towards the end of 2019. The claimant was on duty in the early evening when there was a power cut. The claimant attended the restaurant adjoining the hotel to seek assistance and the duty manager there pointed out that a computer engineer was a customer in the bar that evening and may be able to help. The claimant then permitted the customer to enter the rear of the reception area of the hotel and he resolved the issue by checking electrical trip switches. The claimant said she had panicked at the time as she was checking guests in, and a queue had started to build up. There appears to be little in dispute about the events of that evening itself with the claimant agreeing that she permitted someone who was not an employee (or an authorised contractor) to enter the secure reception area

10.9. This matter appears to have been raised with the claimant for the first time on 1 February 2020. At page 189-90, I was shown copies of the shift notes written on the hotel's online system. This allowed employees on reception to make notes of things that had taken place during their shifts (and to leave messages) which would be visible to the next person on shift. These messages were visible to any employee logging on to the reception system. At 07:23 on 1 February 2020 there was an entry added by CB as follows:

"Hi Denise, please do not let anybody behind reception to go near fuse box, this is against company policy and H&S, we will get in serious trouble if they are not from our company, Thanks Cath."

The claimant replied at 15:54 that day as follows:

"This guy is a qualified electrician and a regular in the Bridgewater arms at the time he was a godsend as I did not know what to do. It was approved by the restaurant manager at the time that he was allowed to help me, He sorted the problem out free of charge for the premier inn so therefore it was a win win for us all"

And further

"I am not in the habit of letting people behind reception and this was an emergency which you were aware off at the time, so do not know why you have left me the above message"

Booking breakfast table issues

10.10. Around the same time, in early February 2020, an issue arose around the booking of breakfast tables by the claimant. The claimant describes a conversation she had with CB on reception after she had just checked in a guest and stated that CB stated that the claimant "*did not make the guest book a breakfast table*" to which the claimant said that she could not force the guest to do so. The claimant said that during this conversation she "*felt that she was forcing me to make guests book breakfast tables*". The claimant then went on to state that she raised an issue about CB having previously discouraged her from exceeding expectations when CB was a receptionist before becoming a manager. The claimant then also said she raised issues around holidays and challenged why managers were allowed holidays at Christmas when staff were not and said that CB became "*exasperated*" with her. The Tribunal had no evidence from CB about this conversation but have accepted the evidence of the claimant that it took place broadly as alleged. I was not satisfied however that the claimant was challenged for not "*making*" a guest book a breakfast table. This may well have been how it was perceived to the claimant but given later discussions and correspondence (see paras 10.11 and 10.13 below) it is not plausible that the claimant was told by a manager to **make** a guest book breakfast,

rather that she was requested to ask (and perhaps even encourage) a guest to book breakfast at the time of check in.

10.11. On 2 February 2020, CB left a message on the respondent's shift notes system at 09.10 as follows:

"*Dave Burke (manager) has repeated again about Breakfast times not being booked in. I want to at least 50% now being booked and we can then increase that. Burke has offered to come sit to show us how if needs be."*

Later that day the claimant left a series of messages on the shift notes relating to this firstly noting about rooms that did not want to book breakfast. At 18:17 the claimant left the following message:

"If the above message is intended for me I find it very offensive to say the least, we CANNOT force our guests to do things against there will"

10.12. The claimant was informed by CB on 5 February 2020 that she was going to be asked to attend a meeting with CB and LM but was not told what it was about. I find that the claimant must have been informed that the meeting was to discuss at least the issue with the power cut, because she subsequently wrote to LM to explain this incident to her. The claimant sent a letter to LM that same day on 5 February 2020 describing the power cut incident (page 194), in which she notes:

"*I was so grateful for his help and I know in insight I should off called an engineer which could of taken a few hrs and I really needed it to be asap because of the great inconvenience it would have been for our guests staying with us that evening.*

I am not 100% sure if I mentioned it to Cathy but I thought I did however I did hand it over to the next shift and I do not know why it has become a big problem now, as I am not in the habit of letting just anyone around the reception area."

10.13. On 7 February 2020 on her arrival at work the claimant was asked to attend a meeting held in one of the hotel's rooms with LM. LM took notes of that meeting which were shown at pages 195-197 and 200-201. The meeting started with the claimant stating that she felt bullied and harassed. There was then a discussion about the question of breakfast bookings which referenced a conversation between the claimant CB and LM and the messages left by the claimant on 2 February 2020 (as referred to above). The claimant stated that she had worked at the respondent for 8 years and had never been left messages like that and stated, "*I know how to do my job, I find it very offensive*". The claimant was then informed that asking guests to book breakfast was a reasonable management instruction and, in the guest's, best interests and the claimant said she disagreed that it was

always in the guest's interests as they wanted breakfast when they wanted it, not when the hotel wanted them to have it. It was then noted that LM said:

"*fully appreciate you will not be able to capture all guests booking time but the questions needs to be asked and the guests need to be advised of possible busy periods*"

10.14. The claimant went on to state she had never been asked to do this in the week (only on weekends) and went on to ask why this was only being requested now when there were new managers in place. LM informed the claimant that this was on the instruction of the restaurant manager to improve the quality of service in the restaurant. The claimant again noted at the conclusion of this discussion that she felt the discussion was "*bullying and harassment*" as it had been sprung on her. In cross examination, the claimant agreed that being instructed to ask guests if they would like to book breakfast was a reasonable management instruction. She went on to state that she felt this was a breach of contract because it was only since LM and CB had been managers that this policy had been put in place, she had never had to do it before, and she felt that she was being singled out by being asked to do this and that her managers were picking on her.

10.15. There was then a separate discussion and note taken by LM around the issue of the power cut and what the claimant did at the time. The claimant was asked whether she had been told about the procedure when there was a power cut and she replied she had not. The claimant was then referred to the security manual pages 19 and 21 (which was contained at pages 183-4), and this was shown to her, and the claimant said she had not seen this before. The claimant was asked about letting a customer in behind reception and was asked:

"*Do you understand that letting a non-approved Whitbread contractor is a dangerous risk to yourself and him?"*

The claimant responded that she thought he would help, and she was in a panic. She was asked whether she understood that if anything had happened, the respondent would not be insured, and she said that this did not "*cross her mind*" at the time and that she was just trying to get things sorted out. She said she did not know why this issue had just come up now and that it would not happen again. The claimant was asked in cross examination whether she accepted that letting a non-employee (or approved contractor) into the secure area behind the hotel reception was something she should not have done and she said whether people should be let behind reception would depend on the reason for it. She contended that she (and other receptionists) regularly had to let non-employees behind reception and mentioned specifically a sponsored cycle race that the hotel hosted and allowing guests to bring their bikes behind reception. She also mentioned allowing guests to bring heavy cases through themselves and allowing

access for contractors who needed to carry out works. When the claimant put to the respondent's witnesses that it was usual for receptionists to allow members of the public behind reception for various reasons, they all denied that this was the case. DA stated that the policy was very clear that this should not take place. I preferred the evidence of the other respondent witnesses on this matter and do not accept that there was a general practice of allowing non-employees or authorised contractors behind reception. The respondent had a clear policy (at pages 184-5) which amongst other matters contained the following provisions:

"All visitors/contractors must be asked to provide identification on arrival before they are taken to restricted areas. All contractors appointed by the Company will either have ID for their employees or they will be issued with a cover letter from your Operations or Premises team advising of what they have been sent to do within your premises. If in doubt, telephone for confirmation"

And

"*Only Managers or authorised Team Members should have access to the reception. The reception is whether the biggest security risk lies due to the quantities of cash held in the safe"*

The claimant accepted that there were risks with allowing nonemployees to enter the secure area behind reception but that this was a regular occurrence, and she should not have been subject to disciplinary investigation for it.

10.16. Following the meeting LM completed two investigation reports into each matter. The first about the issue of breakfast bookings was at page 198-9. This report concluded that the claimant was refusing to ask guests to book breakfast tables and that she concluded that there was sufficient evidence that the claimant was failing or refusing to carry out legitimate reasonable instructions and so was potential gross misconduct. The second issue about the power cut was dealt with at the report at pages 202-3. This concluded that LM believed that there had been a breach of health and safety and security policies and that this was potentially a gross misconduct issue. It recommended that the claimant be put through the disciplinary procedures. A letter was subsequently prepared by LM dated 12 February 2020 (page 204) inviting the claimant to a disciplinary hearing to be chaired by another manager, N Burrows to take place on 18 February 2020. This letter appears to have been sent to the claimant by registered post on 14 February 2020 (page 205) although this document also suggests that this letter was not received by the claimant and was still awaiting collection at the post office on 2 March 2020.

10.17. The claimant alleged that LM had deliberately arranged this meeting knowing that the claimant would be off work (she was not due to be in work

on Tuesday 18 February as it was her regular day off and she was then on annual leave on 19 & 20 February 2020). I can find no evidence to suggest that this was the case and it would appear to be a puzzling decision to arrange a disciplinary meeting on a date when a manager knew that an individual would not attend (and which would probably necessitate a meeting be rearranged which indeed was the case). The claimant was informed by telephone by LM on Saturday 15 February 2020 that she was being invited to a disciplinary meeting. However, there is clearly a dispute about what was said during this conversation and whether the claimant was informed of the date of the meeting. The claimant said that she told LM during this conversation that she would not be able to attend as she was on holiday. However, I am not satisfied that the claimant did inform LM of this or indeed that she was told during that conversation when the hearing was taking place. If the claimant had done so, it is likely that some steps would have been taken to rearrange the meeting (as other managers had already been organised to attend) or at least some acknowledgment made that the claimant was not intending to attend the meeting. In addition, in the claimant's subsequent grievance letter (see below) the claimant makes no mention of a disciplinary hearing having been arranged for a particular date but simply states that she had been informed by LM on 15 February 2020 that LM "*would be taking disciplinary action against me*". The claimant did not attend the meeting on 18 February 2020, and I find this was because she was unaware that it was taking place at all on this date (having not received the letter and having not been told of the date by LM over the phone). There was a clear miscommunication between the respondent and the claimant about this meeting, but I do not find there was any deliberate arranging of a meeting on a date when the respondent's managers knew she could not attend.

10.18. On 23 February 2020, the claimant raised a grievance which is shown at pages 207-8. In this letter she complained about the meetings held by CB and LM surrounding the allegations of failing to book breakfast and dealing with the power cut. She alleged that she was being singled out by her managers because of a "*personality clash*" between CB and the claimant. She said that she could not concentrate on her job and felt badly treated, let down and bullied. This letter makes no mention of an actual hearing having been arranged of that a letter had been sent to the claimant inviting her to a disciplinary meeting.

10.19. The claimant was subsequently sent a letter on 2 March 2020 (posted on that same date) rearranging the missed disciplinary meeting from the disciplinary officer which was shown at page 209. This letter stated as follows:

"*I write further to the disciplinary hearing schedule for Tuesday 18th February 2020 in relation to allegations of gross misconduct which you failed to attend,*

or contact to advise the disciplining officer that you would be unable to attend."

10.20. The letter set a new date for the disciplinary meeting on 5 March 2020 and informed the claimant that the meeting would be chaired by another respondent manager, S Harris.

Complaint about incident on 12 February 2020

10.21. During the evening of 12 February 2020, there was an interaction between the claimant and a member of the respondent's restaurant staff in the evening. The claimant said that during that evening she had several complaints from business guests who were upset with the service received from the adjoining restaurant staff. The claimant said she documented this as a complaint. She then said that at 11pm, a team leader from the restaurant came through to reception and complained about some guests being difficult and that she wanted to finalise their bill. The claimant said that this was all that was said at this time.

10.22. The respondent contends that it received a written complaint about this incident from a team leader at the adjoining restaurant, E Redman ("ER"). Whilst the Tribunal did not have any direct evidence from the respondent about how this complaint was received (and ER had since left the respondent's employment), this did form part of the investigations carried out by AS. AS interviewed CB, the restaurant manager, D Burke ("DB") and another manager E Lord ("EL") about how the complaint came to light. DB told AS that he became aware of a comment having been made to ER and had asked her whether she wanted to take any further action and had initially said she did not want to. He said he had subsequently discovered that ER had put in a complaint directly to CB (see notes of investigatory interview on pages 257-8). EL told AS that she did not remember anything happening on the 12 February itself but recalls ER telling her the next day that something that had happened with a member of staff from the respondent and that the staff member had been talking about guests implying that they were lesbians. EL said that ER told her she was still upset the next day and that EL would be making a complaint to CB as the manager at the respondent (see notes of investigatory interview on page 265-267). CB told AS that she had found out about the comment from another employee a couple of days after it had taken place and was informed that ER would be coming to see her. She said that ER then came to see her and made a complaint that the claimant had made a homophobic comment and then asked for CB's e mail address to put this in writing. CB said that when she received the complaint in writing, she sent it to LM. The claimant alleged that this was not a genuine complaint and had been fabricated by CB together with ER (and ER's mother) who also worked at the restaurant. I could not accept this contention as there was no evidence to support it other than the claimant's assertions.

10.23. The written complaint itself was shown at page 214 of the Bundle. In the letter, ER stated that she had to deal with some customers during the evening who had not paid their bill and had complained and had become rude. The letter stated that ER had gone to the hotel reception area and had asked the claimant to remind the guests to pay their bill. The letter then stated:

"I then explained about the guests behaviour and at this point [claimant] felt it was necessary to inform me that the guest was homosexual and that this was why he was being rude and behaving inappropriately.

I explained to [claimant] that I myself was married to a woman and didn't appreciate the comments and I found them offensive, I also explained that regardless of sexual orientation it had absolutely nothing to do with behaviour and it was not her place to tell me the guests sexuality"

The letter went on to describe the claimant pulling "*disgusted faces*" and stating that she felt it was "*dirty*". The letter concluded with ER stating that she was "*very upset and deeply offended by her comments. I do not expect to have to tolerate this in the work place*". The letter stated that it was an official complaint, and that ER would like it to be dealt with appropriately. The claimant admitted in cross examination that the letter contained allegations of the utmost seriousness and that an employer would be under a duty to investigate such allegations. She maintained that ER had made up this allegation because there had been a complaint made about poor service in the restaurant that evening.

10.24. On the claimant's arrival to work on 2 March 2020 she was asked to attend a meeting with LM in a hotel room. The notes of that meeting were at pages 212-213. The claimant was asked about what happened on 12 February 2020 but refused to participate in the meeting without the attendance of a witness, so it ended shortly after. LM prepared an investigation report after that meeting (page 215-216) which concluded that disciplinary proceedings should be commenced in relation to that allegation. AS was then asked to conduct a formal investigation into the complaint made against the claimant.

10.25. The claimant was then off work on sick leave from 5 March 2020. The claimant did not attend the disciplinary meeting that had been scheduled to take place on 5 March 2020 and at page 216 there was a note of a meeting made by the manager that was due to chair that disciplinary hearing, S Harris. SH noted that the claimant had not attended and had phoned in sick and went on to state that the claimant would be given a final opportunity to attend a disciplinary hearing. The grievance that had been submitted by her on 23 February 2020 was passed to another of the respondent's manager, DA to deal with. DA wrote to the claimant on 15 March 2020 introducing himself and inviting her to a grievance meeting (page 218). This letter

referred to an outstanding disciplinary hearing and stated that this would be dealt with after the outcome of the claimant's grievance.

Claimant's grievance

10.26. The grievance meeting was held on 22 March 2020 by telephone and was chaired by DA. The handwritten notes of the meeting were at pages 219-224. When asked what she wanted to get out of the grievance process, the claimant stated that she wanted to be left alone by CB and LM to get on with her job. She went on to state that a couple of years ago that CB had started to make false allegations against her. The written notes of the meeting then finished, and it is not clear whether any other matters were raised.

10.27. Following the meeting, DA started to investigate the claimant's grievance. He interviewed LM on 20 April 2020 (notes at page 222-4) and asked about the discussions around breakfast bookings and how this had been raised with the claimant. He went on to discuss how the issue around the power cut had come to light and finally how the final allegation relating to comments said to have been made by the claimant arose. DA spoke to CB on 21 April 2020 (notes at page 225-6). CB was asked about her relationship with the claimant and CB said it had:

"*become strained, she's told me she can't work with me, but I'm her line manager, doesn't take instructions very well, maybe because I was once a receptionist myself*"

CB was asked whether she felt that there was a personality clash but said she did not think so from her side but that the claimant had trouble accepting that she was now a manager. CB went on to give her account of the conversation she had with the claimant about booking tables which was broadly consistent with the claimant's (see paragraph 10.10 above). CB said that the claimant had told her that she would not been booking tables for breakfast. CB said that having raised this issue with her human resources, she had been asked to investigate the claimant not following management requests and that LM had then carried out that investigation.

10.28. Following these investigation conversations into the claimant's grievance, DA completed a grievance investigation report which was shown at pages 227-8. He concluded that the allegation of the claimant that she had been victimised, harassed, and treated unfairly by CB and LM would not be upheld. He concluded that the investigations into all three incidents had been correctly carried out by CB and LM. He decided that the disciplinary process could now be scheduled in relation to the first two allegations. He recommended that the investigatory interview into the third allegation of alleged homophobic comments would be held again with a different manager to allow the claimant the opportunity to provide her side of the story in an investigatory interview. DA also recommended that there should be a mediation between the claimant, CB, and LM to try and repair the

relationship and that the claimant should also be offered a transfer. The outcome was communicated to the claimant on 29 April 2020 (page 228). It advised her of the outcome and attached meeting notes and the investigation report and informed the claimant she had the right to appeal.

10.29. The claimant appealed against this decision by a letter dated 10 May 2020 (page 230). She stated that she did not feel that DA had recorded the true conversation and had not addressed all the issues that had built up between the claimant and CB over the last 3 years and over the last 12 months with LM.

10.30. During cross examination the claimant was asked about what she felt that DA could have done differently to investigate her complaints. The claimant said that DA should have understood that she could not make guests book tables for breakfast and that he must have known that at times receptionists had to let non-employees behind reception. She suggested that DA could have looked at the bigger picture to find out what was really going on and that the managers were deliberately harassing her. She acknowledged that her grievance letter does not deal with more general allegations of bullying and harassment but felt that DA should have investigated her view that the managers were deliberately trying to remove her from her position.

Grievance appeal

10.31. The claimant's grievance appeal was passed to KAB to deal with who wrote to the claimant to introduce herself by a letter dated 17 July 2020 (page 231). The grievance appeal hearing was held on 23 July 2020 and the notes of that hearing were at pages 232-245. Much of the hearing was spent with the claimant discussing with KAB what she felt had led to the current issues with her managers with her raising events from the last 3 years. She raised the matter of being informed by a previous manager that if she wanted to be promoted, she would need to move site, but that CB had been promoted without having to move. She raised the matter of the bullying allegations described at para 10.5 above describing this as harassment but acknowledged she did not raise a grievance at the time as she felt her manager was dealing with it. She stated that she felt that her managers were spying on her to try and get rid of her and complained about CCTV being turned off. The claimant also complained about receiving the letter of concern for not clocking in (see para 10.6 above) and not receiving an end of year appraisal. The claimant explained that she would like all the disciplinary sanctions she had received to be taken away as an outcome of her grievance appeal. KAB explained that no sanctions had been issued against the claimant at this time. KAB also raised the possibility of a transfer of site with the claimant and she said she would think about it and that she was "seriously thinking about leaving".

10.32. KAB met with LM on 27 July 2020 to discuss the claimant's grievance (notes of meeting at pages 240-245). LM explained that she was not working at the hotel when the incident described at 10.5 took place. LM was asked about the claimant's letter of concern for not clocking in and she explained that the claimant was not clocking in correctly when she started her shift at 3pm and said that other team members did not receive letters because they were completing manual timesheets and following procedure. She was asked about end of year performance reviews and why the claimant had not had one. She was also asked about viewing CCTV and said that she had done this on the one occasion when the complaint about the use of a homophobic comment had been made to check that it was correct that ER had come into reception. She explained that the claimant's end of year bonus had been put on hold pending the outcome of the disciplinary sanction.

10.33. KAB completed her investigation report (page 246-249) setting out her findings on the various matters in the grievance appeal specifically dealing with the complaints about being informed she should move site to apply for a promotion, the allegations regarding the ducks, the letter of concern, the performance appraisal and her managers watching her on CCTV. She went through the various allegations the claimant was making and none of the allegations were upheld except for the complaint about a lack of end of year performance review which was partially upheld. KAB recommended that due to the length of time that had now passed since the original allegations had been made (relating to the breakfast tables booking issue and the power cut incident) that these should now be dropped and improvements in these matters be addressed informally with refresher training being offered. As to the third allegation of alleged homophobic comments, she recommended that the investigation into this matter be concluded with the claimant being invited to a fresh investigation with a new manager. She also concluded that a full return to work interview be conducted with the claimant and noted that the claimant:

"now must accept that the leadership team of the site are able to challenge and investigate behaviour which they deem to be unacceptable or to have fallen below the required standards. This should be done in line with our internal policies which they have been in the instances outlined above and that this is not bullying but is the role of sites leadership team. The sites leadership team must also work to address these in formal 1-2-1 on a regular basis which as outlined above has been lacking."

10.34. The claimant was notified of the outcome by a letter dated 7 August 2020 (page 250). During cross examination the claimant acknowledged that KAB was thorough and allowed the claimant to set out widely what her concerns were and was being reasonable in her approach, in particular in her approach towards dropping the first two disciplinary allegations. The claimant stated that she felt that because KAB allowed the third allegation to

go forward to investigation, she was failing to see the bigger picture that her managers were bullying and harassing her. The claimant remained off sick and at page 254 saw evidence of a referral for counselling due to ongoing anxiety issues in September 2020.

10.35. As a result of the completion of the grievance process, the respondent determined that as recommended in KAB's outcome it would now restart the investigation into the allegation of homophobic comments being made. AS was the manager tasked with conducting that investigation. AS interviewed the restaurant manager on duty at the time of alleged incident on 13 October 2020 (notes at page 257-8) and interviewed CB on the same date (notes at page 323-5). Both gave their accounts of how they had come to be aware of the alleged incident which is set out at para 10.22 above. AS then interviewed the claimant on 21 October 2020 (notes at page 259-264). The claimant denied making a homophobic comment and stated that it was ER who had made a comment that the issue in the restaurant was a case of "gays versus gays in a rage". The claimant was asked why she thought that ER would have made an allegation against the claimant and the claimant said she thought it was a witch hunt and that ER was trying to get her out acting with CB to do this. The claimant was asked whether she pulled a face as this had been alleged and the claimant stated she did not know if she did but if she had done it would have been in response to comments made by ER. AS also interviewed another colleague on duty on that evening in the restaurant (see page 265-7) but was unable to interview ER as she no longer worked there. AS said, she reached the conclusion after her investigation that "on the balance of probabilities [the claimant] had indeed made the alleged remarks regarding sexual orientation and had pulled a face as alleged". She set out her reasoning in an investigation outcome report dated 21 October 2020 (page 268-70). She concluded that CB had not encouraged ER to make a false complaint and recommended that formal action be taken.

10.36. The claimant was informed by a letter dated 23 October 2020 that she was being invited to attend a disciplinary meeting (page 271) to take place on 2 November 2020. On 1 November 2020, the claimant submitted her resignation by e mail (page 273-4). This stated:

"You should be aware that I am resigning in response to a fundamental breach of contract by my employer and therefore, consider myself constructively dismissed.

As you have not upheld my Grievances, I now consider that my position at Premier inn is untenable and my working conditions intolerable, leaving me no option but to resign in response to the trust and confidence broken without good reason."

The claimant explained to the Tribunal that she reached her decision to resign was related to the whole process from the start of the investigation through the grievance and when she got the letter from AS she felt that the decision would be prejudged and unfair from beginning to end. She said that the allegation related to comments being made about sexual orientation were the last straw as she that that simply did not happen. She denied the suggestion put to her in cross examination that she resigned because she thought she would be dismissed.

10.37. This was acknowledged by J Williams HR business partner on 4 November 2020 (page 272-3), and this referred to a conversation where the claimant had tried to raise another grievance in relation to further complaints and attempts made to discuss this with the claimant by a different manager which were unsuccessful. She was asked to reconsider her resignation and given until 6 November 2020 to retract her resignation. The claimant did not do so, and her employment terminated on 1 November 2020.

The Law

11. Section 94 of the Employment Rights Act 1996 ("ERA") sets out the right not to be unfairly dismissed.

12. Section 95 (1) (c) ERA says that an employee is taken to have been dismissed by his employer if the employee terminates his contract of employment (with or without notice) in the circumstances in which he is entitled to terminate if not notice by reason of the employer's conduct i.e., constructive dismissal.

13. If dismissal is established, then the Tribunal must also consider the fairness of the dismissal under Section 98 ERA. This requires the employer to show the reason for the dismissal (i.e.: the reason why the employer breached the contract of employment) and that it is a potentially fair reason under sections 98 (1) and (2) and where the employer has established a potentially fair reason then the Tribunal will consider the fairness of the dismissal under section 98 (4), that is:

13.1. did the employer act reasonably or unreasonably in treating it as a sufficient reason for dismissal; and

13.2. was it fair bearing in mind equity and the merits of the case.

14. Roberts v West Coast Trains Ltd [2004] IRLR 788, [2005] ICR 254, the Court of Appeal confirmed that there is no 'dismissal' for the purposes of the legislation if there is a successful appeal. This has the effect of negating the original decision to dismiss.

15. It was established in the case of Western Excavating (ECC) Limited v Sharp [1978] IRLR 27 that the employer's conduct which can give rise to a constructive dismissal must involve a "*significant breach of contract going to the root of the contract of employment*", sometimes referred to as a repudiatory breach. Therefore, to claim constructive dismissal, the employee must show: -

15.1. that there was a fundamental breach by the employer;

15.2. that the employer's breach caused the employee to resign;

15.3. that the employee did not delay too long before resigning, thus affirming the contract of employment.

16. Malik v Bank of Credit and Commerce International SA [1997] IRLR 462, [1997] ICR 606. The implied term of trust and confidence was summarised as follows:

"The employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."

17. If the act of the employer that caused resignation was not by itself a fundamental breach of contract, the employee may on a course of conduct considered as a whole in establishing constructive dismissal. The 'last straw' must contribute, however slightly, to the breach of trust and confidence (Omilaju v Waltham Forest London Borough Council [2004] EWCA Civ 1493, [2005] IRLR 35, [2005] 1 All ER 75).

18. It was confirmed by the Court of Appeal in the case of Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978, [2018] IRLR 833 in an ordinary case of constructive dismissal tribunals should ask themselves:

18.1. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

18.2. Has he or she affirmed the contract since that act?

18.3. If not, was that act (or omission) by itself a repudiatory breach of contract?

18.4. If not, was it nevertheless a part…of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term?

18.5. Did the employee resign in response (or partly in response) to that breach?

19. The general case management power in rule 29 of First Schedule to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (amended and reissued on 22 January 2018) ("the ET Rules") together with due consideration of the overriding objective in rule 2 to deal with the case fairly and justly, gives the Tribunal power to amend claims and also to refuse such amendments.

20. In the case of Selkent Bus Co Limited v Moore [1996] ICR 836, the Employment Appeal Tribunal gave useful guidance, namely:

"(4) Whenever a discretion to grant an amendment is invoked the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.

(5) What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant:
(a) The Nature of the Amendment
Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the additions of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The Tribunal will have to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action.
(b)The Applicability of Time Limits
If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the Tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions, e.g., in the case of unfair dismissal section 67 of the Employment Protection (Consolidation) Act 1978.
(c) The Timing and The Manner of the Application
An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the Regulations of 1993 for the making of amendments. The amendments may be made at any time – before, at, even after the hearing of the case. Delay making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the discovery of new facts or new information appearing from documents disclosed on discovery. Whenever taking factors into account the Parliament considerations are relative injustice and hardship involved in refusing or granting an amendment. The question of delay, as a result of adjournment, and additional costs, particularly if they are unlikely to be recovered by the successful party are relevant in reaching a decision."

21. This position is also summarised in the Presidential Guidance issued under the provisions of Rule 7 of the ET Rules which I have also considered.

22. In the case of Remploy Ltd v Abbott and others UKEAT/0405/14, the EAT allowed an appeal against a tribunal's decision to permit amendment to claims which had been professionally drafted by experienced solicitors and counsel, confirming that, in deciding whether or not to allow an amendment to a claim, employment judges must consider issues such as the reason for delay, and the impact that the amendment is likely to have on case management and preparation for hearings, in light of the prejudice to the parties.

23. Ladbrokes Racing Ltd v Traynor EATS0067/06 when considering the timing and manner of the application in the balancing exercise. It will need to consider:

    - why the application is made at the stage at which it is made and not earlier
    - whether, if the amendment is allowed, delay will ensue and whether there are likely to be additional costs because of the delay or because of the extent to which the hearing will be lengthened if the new issue is allowed to be raised, particularly if these are unlikely to be recovered by the party that incurs them; and

- whether delay may have put the other party in a position where evidence relevant to the new issue is no longer available or is rendered of lesser quality than it would have been earlier.

24. Where relevant I have also considered the ACAS Code of Practice on disciplinary and grievance procedures ("the ACAS Code"), link here:

    https://www.acas.org.uk/acas-code-of-practice-for-disciplinary-and-grievance-procedures/html

Conclusion

25. As there was no express dismissal in this claim, I must consider whether the claimant has established that she was dismissed by virtue of section 95 (1) (c) ERA in that she resigned in circumstances in which she was entitled to treat himself as dismissed.

26. I have considered each of the matters relied upon as being a fundamental breach of contract (issues 1.1.1.1 to 1.1.1.5 above), looking at whether such events happened as alleged (issue 1.1.1 above) and then considering whether they amounted to a breach of the implied term of trust and confidence (issue 1.1.2). I will consider the question of whether there was a breach of the implied term of trust and confidence on each allegation individually and also on all cumulatively (issue 1.1.2 and 1.1.3). If breach is established, I must go on consider whether the claimant affirmed or waived any such breaches (issue 1.1.5) and whether the claimant resigned in response to any breach that is found (issue 1.1.4).

27. The first matter relied upon by the claimant as a breach of contract is that on Friday 7th February 2020 the respondent made an accusation of gross misconduct relating to two incidents: a) a breach of Health & Safety guidelines by allowing a member of the public (who was also an electrician) to go behind the hotel reception desk to reset a trip switch; and b) a failure to take reasonable instructions by not insisting that guests must book a table for breakfast. The respondent acknowledged that it did put forward disciplinary allegations against the claimant related to these two incidents and my findings of fact on these matters are set out at paras 10.8 to 10.16 above. The claimant was informed during investigatory meetings held by LM on 7 February 2020 that the company was investigating allegations about a failure to follow reasonable instructions to ask customers to book a breakfast table (not to insist or make guests book tables – see para 10.10 above) and failing to follow security procedures by allowing an unauthorised person behind reception in breach of security procedures.

28. However, I accept the respondent's contention that simply informing an employee that there were disciplinary allegations against him or her and taking steps to investigate those allegations is not a breach of contact. These allegations related to matters that could legitimately and reasonably be considered matters of concern to an employer and if proven could amount to gross misconduct under the provisions of the respondent's disciplinary procedure (see para 10.3). The claimant clearly disagreed with the way her managers were approaching the issue of asking hotel guests to book breakfasts and objected to the apparent change in practice around this (see para 10.14). Nonetheless asking an

employee to ask or encourage hotels guests to book breakfast tables was clearly a reasonable management instruction and a suggestion that the claimant had refused to follow it is a matter of concern. Similarly, however genuine the claimant's intentions were in letting a non-authorised person go behind reception to resolve the power cut issue, this was a potential breach of process and a security risk (see para 10.15), and the respondent was entitled to investigate it. The claimant acknowledged herself that there were risks to doing this.

29. There is nothing about the way the meetings were held with the claimant on 7 December 2020 that could be regarded as conduct amounting to a breach of contract. There is no requirement for advance notice of an investigation meeting in the respondent's disciplinary policy (para 10.3) nor in the ACAS Code. Overall, I conclude that the manner in which the investigation was carried out was thorough, reasonable, appropriate and did not amount to a breach of the implied term of trust and confidence. This was just the first stage of the disciplinary process being the initial investigation meeting. The claimant would have had the opportunity to refute and challenge all allegations during the remainder of the disciplinary process had it subsequently gone ahead. The claimant has not been able to show that either the nature of these allegations or the way they were put to her on 7 February 2020 amounted to conduct which was calculated or likely to destroy or seriously damage trust and confidence.

30. The claimant next points to being informed on 15 February 2020 that she was being invited to a disciplinary meeting on 18 February to discuss the allegations above which the claimant says were manufactured and that the meeting was deliberately held when the respondent knew she would be off work. The claimant says she told her manager LM that she could not attend as she was on holiday and received a letter stating that she had refused to attend the meeting. There are several aspects to this matter.

31. Firstly, the claimant alleges that the allegations being put to her were manufactured. I do not accept that this was the case. The facts behind incident relating to the power cut and allowing a non-employee behind reception is fundamentally not in dispute (see para 10.8). The claimant strongly disagrees that this was a problem and contends that this was a just regular occurrence for hotel receptions which should not have led to disciplinary investigation. Whilst I did not accept that this was the case (see para 10.15), even if the claimant were correct, the incident itself was something that the respondent was entitled to investigate. If the claimant had been correct that this was a regular occurrence, this may have mitigated the effect of what she did and led to a reduced or no sanction but of itself there is nothing incorrect about the respondent wanting to investigate what took place. On a similar vein, whilst the claimant may have understood that she was being required to make the guests book breakfasts, this is not actually what was being instructed (see para 10.10). A manager being concerned about the claimant refusing to carry out instructions reasonably given was something the respondent as an employer is entitled to take issue with and investigate. Again, questions as to whether the policy was correct or not were not directly relevant to whether the belief that the claimant had not been following

a reasonable instruction should be investigated

32. Secondly, I did not find that the meeting was deliberately arranged by LM for a date when she knew the claimant would be off work (see 10.17). In addition, the claimant did not receive a letter stating that she had 'refused' to attend the disciplinary meeting. The letter sent to the claimant stated that she "failed to attend" and had not notified her non-attendance (see para 10.19). The claimant's suggestion that this is the same as it saying she refused to attend is not credible. These elements of the allegation are not made out on the facts.

33. The claimant next relies on the respondent failing to fully investigate and not uphold her grievance raised on 23 February 2020 and subsequent appeal. My findings of fact on the grievance and appeal process were set out at paragraphs 10.25 to 10.34. The claimant was given ample opportunity to make all the complaints she wanted to during the grievance and grievance appeal meetings held with her. DA and KAB both then investigated the matters raised thoroughly by interviewing other relevant witnesses before completing a detailed investigation report. The complaints made by the claimant about DA not fully considering the background to the current matters was then fully considered and investigated during the grievance appeal, so any defect was corrected at the appeal stage. The grievance and grievance appeal process were conducted in a broadly fair and reasonable manner. The claimant was unhappy with the outcome as it did not go in her favour. However, two of the three matters the claimant had been investigated about where subsequently dropped and one aspect was of her grievance was upheld, I do not consider that any of the matters raised amounted to conduct designed or likely to destroy the relationship of trust and confidence.

34. The claimant next complains about the respondent failing to set a date for the disciplinary meeting despite the claimant making various requests. There was no specific evidence of requests being made by the claimant and requests being refused by the respondent. I have though considered the issue of whether there were any unreasonable delays in the investigation and disciplinary process. There was a delay between the initial incident of concern relating to the power cut (which took place in late 2019) and the investigation into this but this matter appears to have only come to light in February 2020 (see para 10.9). The investigation into alleged failure to follow a management instruction appears to have started very shortly after the issue arose on 2 February 2020 with the shift notes messages being left on that date (see para 10.10-10.11). The allegation in relation to alleged homophobic comments appears to have been picked up promptly, with the incident happening on 12 February 2020 (see para 10.21) and a written complaint being made soon after (see para 10.22). This was first raised with the claimant on 2 March 2020 (see para 10.24). There was then a long gap of over 6 months between the initial investigatory meetings and the decision to restart the disciplinary investigation regarding the third allegation which took place on 23 October 2020. The claimant was absent from work throughout this period due to sickness. In addition, the claimant had raised a grievance which was investigated, and an outcome given and a subsequent appeal. Once the grievance appeal outcome was communicated on 7 August 2020, there was a

further delay of just over two months before the disciplinary process restarted. The delay is unfortunate, and no doubt was a worrying time for the claimant. It would have been helpful if the process could have been concluded sooner.

35. However, acknowledging that this could have been done better and without delay, is not the same as the conduct being a fundamental and repudiatory breach of contract. On balance I conclude that the delay, although unfortunate, was not unreasonable in the above context. I also conclude that it did not amount to a breach of the implied term of trust and confidence. Delay was not a deliberate or calculated act or likely to damage the relationship of trust and confidence given the surrounding circumstances.

36. Finally, the claimant contends that commencing disciplinary action against her in relation to an accusation of discrimination against someone on the basis of their sexual orientation (which the claimant believe was manufactured) was a fundamental breach of contract. My findings of fact on this incident and how the respondent addressed it are at paras 10.21, 10.22, 10.23, 10.24, 10.35 and 10.36. The respondent received a complaint in writing from one of its employees that the claimant had made a comment about a guest's sexuality that the employee found offensive. Once this had been received, the respondent was duty bound to investigate it. The claimant acknowledges that the complaint contained a serious allegation that needed to be investigated. The claimant of course denies that she made such comments contending that the entire incident was concocted by ER and her manager CB to engineer her dismissal from the respondent. The claimant vehemently believes this to be so as sees this incident as the latest in a series of incidents and bullying and harassment against her. However, on this matter, other than the claimant's assertions that this was the case, there is no substantive evidence to support her position. This matter was investigated as part of the claimant's grievance appeal. The incident itself was investigated by AS who was an independent manager with no involvement or knowledge of anyone involved. There is no evidence of any bias in her investigation. Her investigation was reasonable and thorough (see 10.35), and she concluded that commencing disciplinary action was appropriate. The disciplinary hearing itself was the opportunity for the claimant to advance any evidence to support her allegation that the complaint was fabricated. However, the claimant chose not to participate further and decided to resign. There is nothing in the way that the respondent acted in deciding to pursue this matter as a disciplinary allegation against the claimant that amounts to conduct calculated or likely to destroy or seriously damage the relationship of trust and confidence

37. Although, as I have determined that there was no repudiatory breach of contract in each of the individual acts alleged, I have considered whether there was a course of conduct that, viewed cumulatively amounted to a repudiatory breach of the implied term of trust and confidence. The claimant's central allegation being that her managers, CB and LM carried out a campaign of bullying and harassment designed to remove her from employment. Looking at my conclusions set out above, I have also concluded that the acts relied upon, even viewed as a course of conduct, would not cumulatively amount to conduct

calculated and likely to destroy or seriously damage the relationship of trust and confidence. The claimant strongly believes that her managers were 'out to get her' and viewed all interactions she had with her managers through this prism. The relationship at work had not been good for some time (see para 10.5). Following the incident with the ransom note in 2017 it might have been helpful if some form of mediation could have taken place to try and resolve differences in the workplace. Resentment would also appear to have built up when CB (who was previously a receptionist like the claimant) became an assistant manager and started to give the claimant instructions (see para 10.10). The claimant herself refers to a personality clash between her and CB (see para 10.18). The claimant was clearly a very capable and efficient receptionist and had her way of managing things and perhaps when changes were introduced which she did not agree with, it was difficult to accept this instruction. The claimant stated that she simply wanted to be left alone to do her job (see para 10.26). CB appears to have believed that the claimant struggle to take instructions from her since her promotion to management (see para 10.27). My conclusion is that the claimant was unhappy at work and felt that her managers were targeting her, but I can find no evidence that this was the case. The respondent investigated this central allegation as part of the grievance and reached this conclusion (see paras 10.28 and 10.33). KAB's comments in the claimant's grievance appeal outcome letter were insightful as she counsels the claimant to accept that the leadership team are entitled to challenge and investigate behaviour that they believe is unacceptable and below standard. She also perhaps notes that the management could do better in picking up issues as part of a 1-2-1 process which did not necessarily take place. It is highly unfortunate that matters escalated to the point that the respondent has lost the services of a well-regarded employee, but I cannot conclude that it did anything which was calculated or likely to destroy or damage trust and confidence such that the claimant was entitled to resign and treat herself as dismissed.

38. The claimant therefore did not resign, in response to a repudiatory breach of contract. No issue of affirmation needs to be considered as there was no breach. The claimant was not constructively dismissed by the respondent, it cannot be an unfair dismissal and the is claim dismissed.

Employment Judge Flood
Date: 21 December 2022