RM

EMPLOYMENT TRIBUNALS

Claimant:	**Ms Andrea Walters**
Respondent:	**Crisis UK**
Heard at:	**East London Hearing Centre (by CVP)**
On:	**22 – 24 November 2022 and (in chambers) 10 January 2023**
Before:	**Employment Judge S Knight**
Members:	**Ms Gillian McLaughlin** **Ms Patricia Alford**

Representation

Claimant:	Mr Tomasz Gracka (consultant)
Respondent:	Mr Sam Way (Devereux Chambers)

JUDGMENT

1. The Respondent victimised the Claimant.

2. The Claimant's claim of unfair dismissal by way of constructive dismissal is well-founded.

3. The Respondent breached the Claimant's contract of employment and wrongfully dismissed the Claimant.

REASONS

Introduction

The parties

1. The Claimant was employed by the Respondent between 14 March 2015 and 5

January 2021, when she resigned without notice. She was employed in a number of roles including as a Weekend Service Manager (from 28 February 2020 to 15 November 2020) and as an Operations Manager (Structured Coaching) from 16 November 2020 until her resignation.

2. The Respondent is a registered charity which provides services to homeless people.

The claims

3. The Claimant claims for the following:

   (1) Victimisation (following the making of a claim of race and sex discrimination to the Employment Tribunal).

   (2) Unfair dismissal by way of constructive unfair dismissal.

   (3) Wrongful dismissal / breach of contract.

4. On 30 November 2020 ACAS was notified under the early conciliation procedure. On 30 December 2020 ACAS issued the early conciliation certificate. On 24 February 2021 the ET1 Claim Form was presented. On 26 March 2021 the ET3 Response Form was accepted by the Tribunal.

The issues

5. In a Preliminary Hearing on 24 August 2021 Employment Judge Speker discussed the case with the parties and prepared a list of issues. That list of issues is contained in Case Management Orders made on 24 August 2021 and sent to the parties on 26 August 2021. It also appears at Annex A to this judgment.

Procedure, documents, and evidence heard

Procedure

6. This has been a remote hearing conducted using the Cloud Video Platform. A remote hearing was agreed to by the parties because of the Claimant's health issues.

7. At the start of the hearing we checked whether any reasonable adjustments were required. No reasonable adjustments were requested beyond regular breaks to accommodate the witnesses.

8. The Tribunal met in private on 10 January 2023 for deliberations.

Documents

9. We were provided with an agreed 412-page Hearing Bundle. A further set of emails was provided to us on the first day of the hearing.

10. Witness statements were provided separately from the following witnesses:

(1) Andrea Walters, the Claimant;

(2) Atara Fridler, Director of Crisis Skylight Brent (who conducted the disciplinary investigation);

(3) Janice Gunn, Director of Operations for Crisis London, South and Christmas (who heard Employee A's grievance appeal);

(4) Tania Marsh, Director of Crisis Skylight Croydon (who conducted the Claimant's disciplinary hearing and gave the first written warning);

(5) Richard Lee, Director of Fundraising (who heard the Claimant's appeal against the first written warning).

Evidence

11. We heard evidence under affirmation from each of the witnesses. The witnesses adopted their witness statements and answered questions.

Closing submissions

12. The parties made oral closing submissions. Mr Way on behalf of the Respondent also provided written closing submissions.

Findings of fact

The Respondent's activities and its policies

13. The Respondent operates a national charity providing campaigning and support services for homeless people.

14. The Respondent has policies covering all areas of its work. These include a Code of Conduct and a Disciplinary Policy.

15. The Code of Conduct requires that staff must "Treat all those they come into contact with through their work in a professional manner and with appropriate courtesy, ensuring that their behaviour does not constitute harassment or bullying or that it could be interpreted as such".

16. The Disciplinary Policy states that it "should be read in conjunction with the Crisis Code of Conduct and applies to all employees of Crisis other than new members of staff who are still in their probationary period."

17. The lowest stage of the Disciplinary Policy is "Stage One". This provides that "If conduct does not meet acceptable standards the member of staff will be required to attend a formal disciplinary hearing" and that "If the case is upheld, the employee may be issued with a first written warning".

18. Breaches of the Code of Conduct, including bullying, amount to breaches of the Disciplinary Policy and can lead to the imposition of a first written warning.

The Claimant's employment by the Respondent

19. On 14 March 2015 the Claimant began her employment with the Respondent. Most of her work was conducted at the weekends, when the Respondent ran training sessions for service users at some of its offices.

20. The Claimant moved through a series of roles with the Respondent, taking on a managerial role. In particular, she gained line management responsibility over an employee of the Respondent who did not give evidence at the Tribunal and who we will refer to as Employee A.

21. At the Respondent's weekend service the Claimant had worked with Employee A before she gained line management responsibility for him. As such, she was in a position to have direct knowledge of the times that he did not attend work. Before Employee A was line managed by the Claimant, he had been line managed by his partner.

22. In April 2019 the Claimant raised with the Respondent's HR staff that Employee A had been absent from work in the period before she took over his line management, but that this had not been recorded in Employee A's HR records.

23. On 21 February 2020 at 10:46 Janice Gunn sent an email to the Claimant instructing her to cancel some classes that the Claimant was responsible for. At 13:01 Ms Gunn sent a further email to the Claimant acknowledging that the Claimant was in meetings but asking for the Claimant to confirm that she had cancelled the classes. At 13:30 the Claimant replied that she was not in the position to do what Ms Gunn asked of her because it was another team's job. At 13:44 Ms Gunn emailed the Claimant and several of the Claimant's colleagues criticising the Claimant for having not responded earlier, despite the fact that she knew that the Claimant was in meetings.

24. On 17 July 2020 Ms Gunn emailed the Claimant. Ms Gunn had become the Claimant's temporary line manager. However, in the email of 17 July 2020 Ms Gunn was not clear in stating this to the Claimant. Ms Gunn presented the Claimant with a series of questions about the Claimant's working practices which she had discussed in advance with Karen Wan from the Respondent's HR department. On 24 July 2020 Ms Gunn for the first time by email told the Claimant that she was the Claimant's line manager. There was no good reason for her not to have told the Claimant before then that she was the Claimant's line manager. The Claimant was unsettled by this development, and by the series of unexpected and unexplained questions from Ms Gunn. The Claimant made clear her surprise, and her desire to be properly prepared for any discussion that the two of them would need to have.

The previous Employment Tribunal claim

25. Prior to this case, on 8 June 2019 the Claimant filed with the Employment Tribunal a sex discrimination claim against the Respondent ("**the Previous Claim**") under claim number 3201508/2019 (which has sometimes been incorrectly recorded as 3201308/2019). The Previous Claim was settled between the parties. As a result, the Claimant withdrew the Previous Claim and on 22 November 2019 it was

dismissed on withdrawal.

26. Janice Gunn accepts that, as a member of the Respondent's senior leadership team, she was aware of the Previous Claim. Given his senior role on the Respondent's senior management team, it is equally obvious that Richard Lee was also aware of the Previous Claim. It is inconceivable that by virtue of their positions (which would necessarily involve dealing with issues related to Tribunal claims) the workers in the Respondent's HR department (including Karen Wan) and Rebecca Pritchard (Director of Services) were not aware of the Previous Claim. They were aware of the Previous Claim.

27. Neither Atara Fridler nor Tania Marsh were aware of the Previous Claim until the Claimant brought the present claim.

The collective grievance

28. In 2018 the Respondent began a restructuring project called Project Vista. Project Vista involved a complete restructuring of the Respondent's services within which the Claimant worked. In particular, the Respondent decided that the weekend service on which the Claimant worked would be closed. Janice Gunn, Tania Marsh, Rebecca Pritchard, and the Respondent's HR team took leading roles within Project Vista.

29. As a result of Project Vista the Claimant was transferred to working in a management role during the week. Her working hours were also changed from part-time to full-time.

30. In response to Project Vista a collective grievance was raised by 20 employees and 2 former employees of the Respondent. The Claimant was one of those employees. The collective grievance led to an independent investigation. On 16 February 2021 the report of the independent investigation ("**the Independent Investigation Report**") was published. The Independent Investigation Report resulted from a detailed and fair investigation. Its conclusions were balanced and accurate. The Independent Investigation Report was critical of elements of the Respondent and its management processes. Specific criticisms included the following:

    (1) There had been poor communication with staff about parts of Project Vista.

    (2) Weekday staff and weekend staff had been treated differently.

    (3) Staff felt pressured during the redundancy process which was part of Project Vista, and the actions of the Respondent were "somewhat disingenuous".

    (4) "[T]here appears to be no organisational culture of document management – almost without exception the documents with which I have been presented do not stand alone and lack information as regards their target audience, as well as the respective date and the document author."

The grievance by Employee A

31. After the Claimant took over the management of Employee A she directly line

managed him and was responsible for his appraisals.

32. In the early hours of 14 December 2019 Employee A sent to Jaana Watt and James Hickman an email containing a grievance in relation to the Claimant. Employee A alleged that the Claimant had engaged in behaviours that would be construed as bullying. The grievance appeared to describe a complete breakdown in the relationship between the Claimant and Employee A. In particular, Employee A alleged that on 7 December 2019 in a supervision meeting the Claimant had acted in a belittling way.

33. The allegations made by Employee A were serious. The Respondent was required by its own policies to investigate them.

34. In due course the Respondent upheld Employee A's grievance insofar as it related to the Claimant making inappropriate comments about the work of some of her colleagues. However, the Respondent did not uphold the grievance insofar as it related to the Claimant bullying Employee A.

35. On 10 March 2020 Employee A appealed against the grievance outcome. The grievance appeal was heard by Janice Gunn.

36. In the context of Employee A's appeal against the grievance outcome, on 23 June 2020 Janice Gunn and Jaana Watt met. Jaana Watt told Janice Gunn that Employee A had come to her 3 or 4 times to express his dissatisfaction with the Claimant's management of him.

37. On 26 June 2020 Ms Gunn wrote to Employee A upholding his grievance appeal in respect of being bullied by the Claimant. The basis for doing so was (1) that the original grievance outcome which dismissed this complaint did not consider the evidence of the Claimant's criticism of other staff, and (2) that Employee A had raised with Jaana Watt issues about the Claimant before he raised his original grievance. The outcome of Janice Gunn's decision on the grievance appeal was that Employee A would continue working under a different line manager and that he would continue to work collaboratively with the Claimant and other peers.

38. Following her decision on the grievance appeal, Ms Gunn directed that disciplinary action against the Claimant was needed in respect of the complaint of bullying that she had upheld.

The line management changes that took place as a result of the grievance

39. As a result of the grievance against the Claimant, the Respondent removed Employee A from the Claimant's line management, and transferred his line management to Jaana Watt.

40. Despite the transfer of Employee A's line management away from the Claimant, the Claimant continued to be given individual line management responsibilities for Employee A. On 22 June 2020 the Claimant complained by email to Jaana Watt about still being given such responsibilities, as she could not make informed decisions in relation to what she was asked to do in respect of Employee A. Ms

Watt did not respond to this complaint.

41. On 3 October 2020 Ms Watt emailed to the Claimant further line management tasks in respect of Employee A for the Claimant to complete. On 25 October 2020 the Claimant reiterated to Ms Watt her request not to be given responsibilities for Employee A given that she did not manage him.

42. At no stage did the Respondent take practical steps such as mediation to repair the working relationship between the Claimant and Employee A. Nonetheless, the Respondent continued to expect them to work collaboratively together outside of the direct line management reporting structure.

The grievance by the Claimant

43. On 17 January 2020 the Claimant submitted a grievance to the Respondent. The issues the Claimant complained about in her grievance related to matters between July 2015 and December 2019. They included the following:

    (1) Health and safety failures in relation to weekend working at the Respondent's premises. In particular, the Claimant complained about there being insufficient security for staff members. The Respondent's staff had to deal with individuals who could be high risk because of mental health issues and alcohol consumption. The Respondent's services prohibited consumption of intoxicants, and this could cause conflict with service users. Further, there were issues relating to training for fire procedures.

    (2) She had been promised training including management training, managing conflict training, de-escalation training, and ILM training, and this either was not provided or had been provided years later than it was requested (and in some cases promised) by the Respondent.

    (3) In November 2018 a member of staff was recruited into her team who she would line manage, without her being involved in the recruitment process, and she had raised issues regarding this for more than a year.

    (4) In October 2019 Jaana Watt had told her she had no time to rewrite the Claimant's job description and the Claimant should do it herself.

    (5) 2 applicants for a job had been disqualified from the application process without proper grounds. The effect of the disqualification was that the 2 remaining applicants obtained jobs without competition. This included the appointment of Employee A, to whom the Claimant objected. After Employee A's appointment the Claimant raised that his absences had not been properly recorded in the Respondent's HR system. At the time of the absences Employee A's partner was his line manager. When Employee A had been absent the Respondent had paid locum staff to cover for him. The Respondent's management had been made aware of the issue but had disregarded it. In particular the Claimant had made Jaana Watt aware of this. Jaana Watt had nonetheless extended Employee A's contract. This involved bypassing the Claimant. Jaana Watt and James Hickman also allowed for an exception from the leave policy for Employee A to allow him

to take 4 weeks' annual leave, against the Claimant's objections.

(6) Jaana Watt requested to meet the Claimant on 18 October 2019 and the meeting reviewed the Claimant's work in an accusatory tone and was an ambush, which resulted in the Claimant feeling bullied. The Claimant had complained about this contemporaneously by email but received no apology, with Jaana Watt instead making further accusations against the Claimant.

(7) James Hickman had failed to deal with complaints the Claimant had made about Jaana Watt bullying her.

44. On 31 January 2020 Rebecca Pritchard met with the Claimant regarding her grievance.

45. On 10 February 2020 Rebecca Pritchard wrote to the Claimant with the findings she made in relation to the grievance. Some of the complaints within the grievance were upheld, and some were dismissed. Ms Pritchard made the following findings in particular:

(1) Adjustments would be made to resourcing on the weekend.

(2) Weekend staff would receive further training.

(3) In relation to Employee A, he had raised a grievance against the Claimant so the Claimant's concerns about the recruitment process for him would not be considered by Ms Pritchard.

(4) An updated job description would be agreed, once it had been drafted by the Claimant.

(5) The relationships between the Claimant and Jaana Watts, James Hickman, and another manager were under some strain. The Claimant should reflect on what she contributed to that situation. The Claimant did not produce constructive solutions to problems.

(6) The Claimant was encouraged to contact the Respondent's Employee Assistance Programme regarding her claims of bullying and harassment, but that Jaana Watt had not bullied or harassed her.

(7) Mediation would be arranged with those she had complained about.

46. On 12 February 2020 the Claimant wrote to Ms Pritchard commenting on some of the findings that Ms Pritchard had made. She requested an extension of the 5-day time limit for appealing against the grievance outcome, until the outcome of her job description review.

47. Also on 12 February 2020 Ms Pritchard wrote to the Claimant. She dismissed the issues that the Claimant raised in her letter of the same date. However, she stated that the appeal deadline would be 5 days from 12 February 2020.

48. On 19 February 2020 the Claimant wrote to Frances Stainer in the Respondent's

HR department to appeal against the grievance outcome.

49. Sarah Farquhar, Director of Organisational Development, dealt with the appeal against the grievance outcome. On 10 June 2020 Ms Farquhar met with the Claimant over Zoom. Also in attendance were the Claimant's trade union representative (Steve Lee) and Frances Stainer.

50. Subsequently Ms Farquhar wrote to the Claimant upholding part of the grievance appeal. In particular, Ms Farquhar made the following conclusions:

    (1) The criticism of the Claimant not producing solutions should be stricken from the grievance outcome.

    (2) The Claimant had repeatedly raised concerns with different levels of the management chain.

    (3) The treatment of the Claimant by colleagues (who were not listed specifically) "did not meet the standards of management and support required by Crisis and a change of approach was required".

    (4) Compliance with policy and procedure on recruitment could not be evidenced so that part of the Claimant's grievance relating to recruitment was upheld.

    (5) Health and safety concerns must be given immediate attention.

    (6) Throughout the grievance appeal decision letter, Ms Farquhar held that there were deficiencies in the way the grievance had been dealt with by Ms Pritchard.

The disciplinary process against the Claimant

51. Following the allegation by Employee A, James Hickman authorised an investigation into the Claimant. On 17 January 2020 Karen Wan, the Respondent's HR Advisor, wrote to the Claimant. She informed the Claimant that the Claimant was under investigation for (1) bullying behaviour towards Employee A (who at that stage was not named); and (2) making inappropriate comments about colleagues' workstyles and professionalism. Ms Wan informed the Claimant that Atara Fridler would lead the investigation.

52. It is pure coincidence that the Claimant's grievance was submitted on the same date that she was sent the notice of disciplinary investigation. The preparations for the grievance and the preparations for the disciplinary investigation started before 17 January 2020. The Respondent's staff did not know that the Claimant was about to file a grievance, and the Claimant did not know that the Respondent was about to start disciplinary proceedings against her.

53. On 17 February 2020 Ms Fridler held an investigation meeting with the Claimant. Before this date the Claimant had had no dealings with Ms Fridler. Also in attendance at the investigation meeting were the Claimant's trade union representative (Steve Lee) and a notetaker from the Respondent's HR department. In the investigation meeting Ms Fridler questioned the Claimant

about the sort of relationship that the Claimant had with her subordinates. Ms Fridler did not give the Claimant further details of the allegation against her. The allegations against the Claimant were vague and anonymous. Ms Fridler asked the Claimant where the Claimant thought the allegation of bullying came from and what she thought about it. The Claimant was unable to provide an answer without being told specifics. The Claimant asked what time period the allegation related to. Ms Fridler said, "Let's say can you think of any incident in the past year." The allegations in fact went back beyond a year. This comment by Ms Fridler materially misled the Claimant about the scope of the allegations against her and the investigation into her. It deprived the Claimant of the ability at the investigation stage to answer the allegations against her.

54. Ms Fridler produced an investigation report. Her approach in the production of the investigation report was not to establish specific dates, or to investigate anyone or anything other than the Claimant and the allegations against her. She did not bring a critical approach to any of the evidence placed before her, in particular the evidence of Employee A, and did not consider whether Employee A may have a reason not to tell the truth or to exaggerate or misrepresent his evidence. In producing her investigation report she also did not take investigatory steps that the Claimant had requested. She did not look into the impact of Employee A's partner having been his former manager.

55. On 5 March 2020 James Hickman wrote to the Claimant. He invited her to a disciplinary hearing to consider 2 allegations: (1) making inappropriate comments about colleagues' workstyles and professionalism; and (2) that the Claimant did not uphold Crisis' values, in particular "dignity".

56. Along with the letter of 5 March 2020 Mr Hickman sent to the Claimant the investigation report written by Ms Fridler ("**the Investigation Report**"), along with the supporting evidence. The Investigation Report summarised the allegations, the investigation, the evidence, and the conclusions that Ms Fridler had reached. From this point on Employee A was no longer anonymous. The Investigation Report held that the allegations of bullying against the Claimant could not be established. The majority of the Claimant's colleagues and subordinates who were interviewed as part of Ms Fridler's investigation and whose statements appeared as annexes to the Investigation Report provided evidence to the effect that the Claimant was a good and supportive manager. However, Employee A had made the bullying allegation against the Claimant, and another member of staff had witnessed Employee A coming out of a meeting with the Claimant being very distressed. Some interviewed members of staff also gave evidence that the Claimant had acted in an inappropriate manner in being open in her criticisms of the working practices of some of her colleagues, and sharing confidential information about colleagues.

57. On 25 March 2020 the Claimant's trade union representative Steve Lee emailed James Hickman to complain about the disciplinary process. He noted that the Claimant had an unresolved individual grievance against Mr Hickman and Ms Watts. Steve Lee raised the issue with natural justice that this created, noting that there was an appearance of bias, and that another person should hear the disciplinary hearing.

58. On 26 March 2020 Mr Hickman informed Steve Lee that he would explore with HR whether someone else could chair the disciplinary hearing and that HR would be in touch when a new chair had been agreed.

59. On 14 April 2020 Karen Wan informed Mr Lee that Tania Marsh would take over the chairing of the disciplinary hearing.

60. On 10 July 2020 the Claimant was invited to the disciplinary hearing. Karen Wan was to act as HR support. The allegations to be heard at the meeting were (1) bullying a direct report (Employee A); (2) saying inappropriate things about work colleagues; and (3) not upholding Crisis' value of "dignity". The first of these was acknowledged by the Respondent to be an allegation which was not contained in the letter of 5 March 2020 at which the Claimant was originally invited to a disciplinary hearing.

61. On 14 July 2020 Steve Lee wrote to Tania Marsh and Karen Wan to (1) complain that the new charge had been added; (2) ask for the rationale for it being added; (3) request any additional evidence upon which the decision to add the new charge was based; and (4) request that the disciplinary hearing take place on 27 July 2020.

62. On 16 July 2020 by email Tania Marsh confirmed that the disciplinary hearing would take place on 27 July 2020. She also noted that the allegation of bullying Employee A followed a re-review of the investigation report in light of a witness corroborating Employee A's account. Ms Marsh said that a witness corroborated Employee A's account of bullying prior to a supervision meeting on 7 December 2019. This corroboration related to the meeting between Janice Gunn and Jaana Watts on 23 June 2020 which related to Employee A's former complaints against the Claimant.

63. The disciplinary hearing was subsequently adjourned. The disciplinary hearing was rescheduled for Monday 28 September 2020 at 10:00.

64. On Friday 25 September 2020 at 09:57 the Claimant emailed Ms Marsh and Ms Wan to inform them that Steve Lee had an emergency the day before, and she needed to check whether he could proceed on the following Monday. At 10:25 Ms Marsh responded that if Steve Lee could not attend on the Monday then "it's the Unions responsibility to make sure that you are represented at the meeting on Monday". In fact, Ms Marsh knew that it was unreasonable to expect the Claimant to produce another trade union representative in such a timescale, especially one who was knowledgeable about the case and who would be competent to represent her. At 16:36 the Claimant confirmed that Steve Lee was unable to attend the hearing on 28 September 2020. She noted that she could not get new representation in time and requested an adjournment as she could not go ahead with the hearing unrepresented. In response, at 17:27 on 25 September 2020 Ms Marsh said that the Claimant's position was "completely understandable" and that a new date would be sent out.

65. On 28 September 2020 Ms Marsh sent the Claimant an email attaching a letter inviting her to a rescheduled disciplinary hearing on 9 October 2020.

66. On 9 October 2020 the disciplinary hearing took place. At the disciplinary hearing the Claimant and Steve Lee challenged the validity of the evidence in respect of the added-on bullying charge, due to it being hearsay, anonymous, and uncorroborated, and the way the evidence was obtained through a direct approach from Employee A. The Claimant was given no opportunity to comment on the new evidence, challenge its insertion as evidence, or speak to the maker of the statement prior to or at the disciplinary meeting.

67. The "new evidence" was the meeting of 23 June 2020 between Janice Gunn and Jaana Watt. That evidence had led on 26 June 2020 to the change of outcome of Employee A's grievance. The names of Janice Gunn and Jaana Watt had been redacted in the notes of the meeting of 23 June 2020 provided to the Claimant.

68. During the disciplinary hearing the Claimant put forward a comprehensive case in her defence. In particular, she set out issues that she had had with Employee A, and noted that he had been previously inadequately managed by his former line manager who was also his partner. The Claimant was not given the opportunity of questioning Employee A.

69. As she noted in her evidence to the Tribunal, when Ms Marsh chairs a disciplinary hearing she assumes that people are telling the truth. She brought this approach to the consideration of the Claimant's case.

70. A colleague of Employee A had given evidence to Ms Fridler that Employee A was not doing good work but Ms Marsh gave that no weight because the colleague was not Employee A's manager.

71. On 14 October 2020 Ms Marsh emailed the Claimant asking further questions of the Claimant and requiring responses by 17 October 2020.

72. On 16 October 2020 the Claimant responded to Ms Marsh's questions by email.

73. On 23 October 2020 Ms Marsh sent the Claimant the outcome of the disciplinary hearing. All three allegations against the Claimant were upheld and reasons provided. The Claimant was issued with a first written warning. Ms Marsh also recommended that the Claimant participate in a leadership and development programme. The Claimant was informed of her right of appeal.

The Claimant's appeal against the disciplinary outcome

74. On 29 October 2020 the Claimant submitted a letter of appeal against the disciplinary hearing.

75. On 2 November 2020 Rebecca Pritchard wrote to the Claimant inviting her to an appeal hearing and informing her of her right to representation, and that if the representative was unavailable, she may suggest an alternative time within five days of the original date. An appeal hearing was scheduled for 12 November 2020 at 11:30.

76. On the same date the Claimant emailed Ms Pritchard to request a new date for the appeal hearing, in the week of 16 November 2020, as neither she nor Steven Lee were available on 12 November 2020. She also asked for the appeal to be

heard by someone not from the Client Services Department.

77. Subsequently, the appeal hearing was rescheduled by consent to 20 November 2020.

78. Email correspondence between Steve Lee and Karen Wan then took place, about whether Ms Pritchard was an appropriate manager to conduct the appeal hearing. Ms Wan originally asserted that there was no difficulty with Ms Pritchard conducting the appeal hearing. The Claimant refused to attend the appeal hearing on 20 November 2020 because of Ms Pritchard's apparent conflict of interest.

79. Eventually, on 23 November 2020 after significant debate and representations from Steve Lee, the Respondent agreed that Ms Pritchard would not conduct the appeal hearing.

80. An appeal hearing was then set down for 11 December 2020, to be conducted by Richard Lee.

81. On 10 December 2020 at 14:36 Steve Lee emailed Richard Lee to inform him that his wife had COVID-19, that he had symptoms of COVID-19, and he would be taking a test, but that he was not well enough to attend the appeal hearing the next day.

82. On the same day at 14:44 by email to Richard Lee and Karen Wan the Claimant requested a postponement of the appeal hearing.

83. Further at 16:48 on 10 December 2020 Richard Lee stated that he had consulted with HR and that the appeal hearing would go ahead, and the Claimant should seek alternative trade union support.

84. Also on 10 December 2020 the Claimant's lawyers emailed the Respondent stating that the Claimant had been victimised and that it was unreasonable not to postpone the appeal hearing because ACAS early conciliation was by that stage taking place, and also the Claimant's trade union representative Steve Lee was unable to attend.

85. Richard Lee was always aware that the Claimant had no ability to obtain fresh trade union representation by the time of the appeal hearing, with less than 24-hours' notice. He took no steps to assist the Claimant to find new trade union representation. Nor did anyone else from the Respondent. It took Richard Lee a considerable period of time, in one go, to read into the case. He knew that a new representative could not have been up-to-speed on the case by the time of the appeal hearing even if one was instructed. It was "completely understandable" that a postponement of a hearing would be required in such circumstances, as Richard Lee was well aware. He decided to continue with the appeal process knowing this.

86. The disciplinary process and appeal process were confidential. Employee A would not have known about them. As such, there was no benefit to Employee A in having a resolution of the appeal process. Indeed, Employee A had already

been moved from being managed by the Claimant. In his words, Richard Lee was concerned himself, and on behalf of the Respondent, "to bring the matter to a conclusion" and to "move this forward". This is despite the fact that, unless and until the appeal was successful, the sanction against the Claimant would remain in place. Other than finality, there was no benefit to the Respondent that would arise from continuing with the appeal hearing.

87. On 11 December 2020 the appeal hearing went ahead via Zoom. The Claimant attended the appeal hearing and requested a postponement, which was refused. She then left the Zoom call. The hearing proceeded in her absence.

88. On 17 December 2020 Richard Lee wrote to the Claimant refusing her appeal.

The Claimant's resignation

89. Christmas is the busiest time of year for the Respondent's services.

90. On 5 January 2021 the Claimant emailed her letter of resignation to Frances Stainer. In the letter of resignation she noted that she was resigning in response to the Respondent's repudiatory breach of contract and that she considered herself constructively dismissed. She also stated that she was victimised by a sham disciplinary process and an unjustified written warning, in response to her bringing the Previous Claim.

91. The resignation was in fact in response to the purported breach of contract, in particular the implied term of trust and confidence. There was no significant delay in the time that she took to resign.

Relevant law

Victimisation (Equality Act 2010 section 27)

Protected acts and the right not to be subject to victimisation

92. An employee who performs certain protected acts in relation to the Equality Act 2010 has a right not to be victimised because of such a protected act. In this regard, section 27 Equality Act 2010 provides as follows:

"(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act[…]

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act; […]"

93. Further, section 39 Equality Act 2010 provides as follows:

"(4) An employer (A) must not victimise an employee of A's (B)—

[…]

(d) by subjecting B to any other detriment."

The nature of a detriment

94. Whether the Claimant has suffered a detriment is determined by asking, "Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to [their] detriment?" (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11; [2003] ICR 337 (27 February 2003) at ¶ 35). This is an objective test.

The detriment must be "because" the Claimant did the protected act

95. For a detriment to amount to victimisation the employer must subject the employee to the detriment because of the employee having committed a protected act. "Because of" in this context does not mean that a "but for" test applies. Rather, in the words of Lord Scott in *Chief Constable of the West Yorkshire Police v Khan* [2001] UKHL 48; [2001] 1 W.L.R. 1947 (11 October 2001) the Tribunal has to look for the "real reason, the core reason, the *causa causans*, the motive, for the treatment complained of".

96. *Khan* was decided under the Race Relations Act 1976 which contained a test of "by reason that" rather than "because". However, Lord Justice Underhill in *Amnesty International v Ahmed* [2009] ICR 1450 (13 August 2009) made clear that "because of" and "by reason that" had the same meaning.

The requirement for knowledge of the protected act

97. In the cases of *Scott v London Borough of Hillingdon* [2001] EWCA Civ 2005 (18 December 2001) at ¶¶ 24-26 and *Essex County Council v Jarrett* EAT 0045/15 (4 November 2015) at ¶ 43 it was held that in order to prove an allegation of victimisation, there must be evidence that the person who allegedly inflicted the detriment knew about the protected act. (In *Jarrett* at ¶ 43 the EAT also referred to the possibility of the person who allegedly inflicted the detriment being "in a position where he should have known" about the protected act, but on our findings this is not relevant to the present case.)

98. In *Royal Mail Ltd v Jhuti* [2019] UKSC 55; [2020] I.C.R. 731 (27 November 2019) in a claim for unfair dismissal the Supreme Court held that "If a person in the hierarchy of responsibility above the employee […] determines that, for reason A[…], the employee should be dismissed but that reason A should be hidden behind an invented reason B which the decision-maker adopts[…], it is the court's duty to penetrate through the invention rather than to allow it also to infect its own determination. If limited to a person placed by the employer in the hierarchy of responsibility above the employee, there is no conceptual difficulty about attributing to the employer that person's state of mind rather than that of the deceived decision-maker."

99. However, the principle in *Jhuti* was expressly distinguished by the Employment Appeal Tribunal in *Malik v Cencos Securities plc* UKEAT/0100/17/RN (17 January 2018). At ¶ 93 Mr Justice Choudhury noted that different principles would apply to cases of dismissal and cases of detriments. In *Malik* the EAT expressly

considered the judgment of *Jhuti* in the Court of Appeal, because the case had not by that stage reached the Supreme Court. Nonetheless, we are currently bound by *Malik* which distinguishes the principle in *Jhuti*. The principle that can be derived from *Malik* is that in a victimisation case it is not open to the Tribunal to attribute the motivation of a more senior manager to another manager who in fact subjects the claimant to a detriment.

The burden of proof in victimisation claims

100. The burden of proof in a claim of victimisation is set out in section 136 of the Equality Act 2010. This states as follows in particular:

> "(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision."

101. Section 136 requires the Tribunal to consider two stages to the burden of proof: Stage 1 (primary facts) and Stage 2 (employer's explanation). These are analytical stages rather than stages of the hearing (see *Royal Mail Group Ltd v Efobi* [2021] UKSC 33; [2021] 1 W.L.R. 3863 (23 July 2021)). Unless the circumstances are truly exceptional, the tribunal should hear all the evidence and submissions from both parties before finding the facts.

102. At Stage 1, all that is needed are facts from which an inference of victimisation is possible. The burden of proof is on the claimant (see *Ayodele v Citylink Ltd & Anor* [2017] EWCA Civ 1913; [2018] I.C.R. 748 (24 November 2017) and *Royal Mail Group Ltd v Efobi*). As it was put in *Madarassy v Nomura International Plc* [2007] EWCA Civ 33; [2007] I.C.R. 867 (26 January 2007), primary facts are sufficient to shift the burden if "a reasonable tribunal could properly conclude" on the balance of probabilities that there was victimisation.

103. The Court of Appeal in *Igen Ltd v Wong* [2005] EWCA Civ 142; [2005] I.C.R. 931 (18 February 2005) gave guidance on two points in particular about Stage 2. Firstly, the employer must prove that the victimisation was "in no sense whatsoever" because of the protected characteristic. Secondly, because the evidence in support of the explanation will usually be in the possession of the employer, tribunals should expect "cogent evidence" for the employer's burden to be discharged.

Unfair dismissal

104. Section 94 of the Employment Rights Act 1996 ("**ERA 1996**") provides that an employee with sufficient qualifying service has the right not to be unfairly dismissed by their employer.

105. Section 98 of the ERA 1996 sets out potentially fair reasons for dismissal:

> "(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.[…]"

Constructive dismissal

106. In the contract of employment there is an implied term of trust and confidence, which was defined in *Malik v Bank of Credit and Commerce International SA* [1998] A.C. 20 (12 June 1997) 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."

107. In *Kaur v Leeds Teaching Hospitals NHS Trust* [2018] EWCA Civ 978; [2019] ICR 1 (1 May 2018) Underhill LJ set out the following guidance in relation to "last straws", at ¶ 53:

"In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:

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

(2) Has he or she affirmed the contract since that act?

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

(4) If not, was it nevertheless a part (applying the approach explained in Omilaju [2005] ICR 481) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term?...

(5) Did the employee resign in response (or partly in response) to that breach?"

108. However, as Lord Justice Singh held in *Burn v Alder Hey Children's NHS Foundation Trust* [2021] EWCA Civ 1791; [2022] ICR 492 (30 November 2021) at ¶ 46, "the law does not imply a general obligation to act fairly into a contract of employment." As such, it is important not to elevate the standards of substantive and procedural fairness that would apply to an ordinary unfair dismissal claim into necessary requirements to comply with the implied term of trust and confidence.

Conclusions on Victimisation

Did the Claimant carry out a protected act?

109. The Respondent accepts that the Previous Claim constitutes a protected act.

Was the Claimant subjected to detriments?

110. It is for the Claimant to prove that the acts alleged are detriments. The Claimant relies on (1) having been accused on 17 January 2020 of bullying; (2) being subjected to an improper disciplinary procedure; (3) receiving an unjustified warning; (4) and refusing to postpone the appeal hearing against the imposition of the warning.

First potential detriment: being accused of bullying

111. The Respondent accepts that having been accused of bullying is a detriment.

Second potential detriment: disciplinary procedure

112. The Respondent denies that the manner in which the disciplinary procedure in this case was carried out, as distinguished from the very fact that it was instituted, amounted to a detriment. However, the Respondent does not specifically challenge whether being subject to an improper disciplinary procedure would amount to a detriment.

113. The disciplinary procedure was carried out improperly to the following extent.

(1) Ms Fridler did not explain what the investigation was about, and materially misled the Claimant about the nature of the allegation against her. This deprived the Claimant of the ability to answer the allegations against her at the investigation stage.

(2) The investigation report did not consider whether Employee A may have a reason not to tell the truth or to exaggerate or misrepresent his evidence.

(3) Ms Fridler did not take the investigatory steps that the Claimant asked for.

(4) Mr Hickman was allocated to deal with the disciplinary hearing at the outset despite the fact the Claimant's grievance was in part against him. Mr Hickman conducting the disciplinary hearing would create an appearance of bias.

(5) The inclusion by Janice Gunn of the bullying charge part-way through the disciplinary process, after it had been dismissed by Ms Fridler, without new independent evidence coming to light, and without any adequate reasoning being provided to the Claimant.

(6) Ms Marsh bringing a closed mind to the case, involving her assuming that people are telling the truth.

(7) Ms Marsh giving no weight to the exculpatory evidence provided by a colleague of Employee A.

114. Each of these matters individually and collectively are failures in the disciplinary procedure. To a greater or lesser extent they were harmful to the Claimant. They were treatment of such a kind that a reasonable worker might take the view that they were to her detriment.

Third potential detriment: receiving the written warning

115. The Respondent accepts that receiving a written warning was a detriment.

Fourth potential detriment: refusal to postpone the appeal hearing

116. The Respondent denies that refusing to postpone the appeal hearing was a detriment. The Respondent argues this because, in summary (1) the disciplinary hearing and appeal hearing had repeatedly been postponed already; (2) the request to postpone the appeal hearing was made late; and (3) a reasonable person would have wished the appeal hearing to go ahead. We disagree with the Respondent's position for the following reasons.

117. Firstly, it is of limited relevance that the disciplinary hearing and appeal hearing had repeatedly been postponed: they had been postponed for good reasons. Those reasons included illness, the COVID-19 pandemic, and the fact that the Respondent appointed a disciplinary officer and an appeal officer in respect of whom there was an appearance of bias because of the grievances involving the Claimant. The Respondent has always known that it only has itself to blame for the delay that arose from the appointment of inappropriate disciplinary and appeal officers.

118. Secondly, the request for the postponement of the hearing would necessarily be made late, because the issue which caused the adjournment arose late. Steve Lee informed the Respondent when it was clear that he would not be able to attend because of having the symptoms of a serious respiratory infection.

119. Thirdly, a reasonable person who was in the Claimant's position would not want a hearing to go ahead where she was unrepresented, having been represented throughout her case up until the date of the appeal hearing. She would want to have support from an appropriately qualified representative who had fully read into her case.

120. Having rejected the Respondent's contentions, we have concluded that the refusal to postpone the appeal hearing was a detriment. It is such that a reasonable worker would take the view that it was to their detriment. In this regard

we specifically note that any worker would find the refusal to accommodate a request to adjourn the hearing to be a detriment. This is particularly so when in identical circumstances Tania Marsh had previously described as reasonable the Claimant's position that a disciplinary hearing should not go ahead.

121. Further, the way in which Richard Lee communicated to the Claimant that she would have to find another representative was disingenuous. He knew that she could not get another representative in time. Informing her that she had to do so was little more than an ill-advised attempt to cover the Respondent's back for a decision that was not defensible. Indeed, the way that Richard Lee and the Respondent's HR department conducted themselves in their communications with the Claimant rubbed salt in the wound of their refusal to postpone the hearing.

122. For all of these reasons we conclude that the refusal to postpone the appeal hearing was a detriment.

Was the Claimant subjected to the proven detriments because she did the protected act?

First proven detriment: being accused of bullying

123. There is no evidence on which we are able to conclude that the fact of being accused of bullying itself was because of the protected act. In particular, it is no part of the Claimant's case that Employee A was motivated by the protected act to make a claim of bullying against the Claimant.

124. Further, an allegation of bullying had been made against the Claimant by Employee A. Without more, that allegation could have been credible. It was incumbent on the Respondent to make the Claimant aware of the allegation. This is what occurred on 17 January 2020. Ms Wan conveyed the information to the Claimant. She was aware of the Previous Claim. However, the mere fact of her awareness of the Previous Claim, combined with her informing the Claimant of the allegation, is not enough to allow us to conclude that a reasonable tribunal could conclude there was victimisation.

125. Even if we had been able to conclude this, the whole of the evidence points to the accusation of 17 January 2020 not having been because of the Claimant bringing the Previous Claim.

126. For the reasons we have given, the making of an allegation of bullying was not an act of victimisation.

Second proven detriment: disciplinary procedure

127. The first three of the identified issues with the disciplinary procedure, which relate to Ms Fridler's investigation, arose because of the actions of Ms Fridler, who was not aware of the Previous Claim.

128. Therefore, following the principle set down in *Malik*, they cannot amount to detriments because the Claimant did the protected act. However, the deficiencies in Ms Fridler's approach were known about by those members of the

Respondent's management who continued with the disciplinary process. As such, the later issues cannot simply be seen in isolation from the earlier issues.

129. The last two of these issues, which relate to Ms Marsh's consideration of the evidence, were because of the actions of Ms Marsh, who was not aware of the Previous Claim. As such, again following the principle set down in *Malik*, they cannot amount to detriments because the Claimant did the protected act. Further, Ms Marsh's acceptance and adoption of the deficiency of Ms Fridler's approach cannot amount to detriments because of the protected act.

130. If we had not followed the principle set down in *Malik* and had instead followed the principle set down in *Jhuti* we may have reached different conclusions on this issue. However, having followed *Malik*, we have not given this issue further consideration.

131. Having discounted those issues which arose entirely independently of people who had knowledge of the protected act, what we are left with is a disciplinary process which was nonetheless, in some respects, conducted improperly.

132. The question that then arises is why it was conducted improperly: has the Claimant proven primary facts from which a reasonable tribunal could properly conclude on the balance of probabilities that the detriment was done because of the protected act?

133. Taking a holistic view of the disciplinary process, and focussing in particular on the role of Ms Gunn, who did have knowledge of the protected act, we conclude that a reasonable tribunal could properly conclude that the detriment was done because of the protected act. We reach this conclusion in particular because the disciplinary process which the Claimant had an opportunity to feed into had concluded that the bullying allegation should not proceed to a disciplinary hearing, whereas the grievance appeal process which the Claimant had no opportunity to feed into had reached the opposite conclusion, and Ms Gunn, who controlled the grievance appeal process, specifically directed that the disciplinary process consider the bullying allegation. This was the point at which the approach to the case changed. Ms Gunn's intervention in the disciplinary process, which appears to be outside the scope of the Respondent's disciplinary policy, in turn falls to be considered against the background of Ms Gunn undermining the Claimant in an email to the Claimant's colleagues on 21 February 2020, and her subsequent actions when she became the Claimant's line manager without informing the Claimant that she had become the Claimant's line manager.

134. The Claimant having proven primary facts, has the Respondent then discharged the burden of showing that the detriment was in no way because of the protected act? We conclude that the Respondent has not discharged that burden. This is because, once the interactions that Ms Gunn had with the Claimant and her case are looked at holistically, Ms Gunn's attitude towards the Claimant remains unexplained. In her evidence Ms Gunn was unable to account for her actions towards the Claimant that are recorded in multiple emails. The approach she took to the Claimant was strange. It is all too easy for a manager to let a protected act colour their attitude towards a subordinate, even when they do not think of themselves as carrying out an act of victimisation. In that light, and in the absence

of an explanation of Ms Gunn's general attitude towards the Claimant, we conclude that the Respondent has not shown that the acts which constituted a detriment were not done at least in part because of the protected act.

Third proven detriment: receiving the written warning

135. The written warning was imposed by Tania Marsh. Tania Marsh did not have knowledge of the Previous Claim. Therefore, following the principle set down in *Malik*, she cannot have subjected the Claimant to a detriment because the Claimant did a protected act.

136. For the reasons we have given, the receipt of the written warning was not an act of victimisation.

137. If we had not followed the principle set down in *Malik* and had instead followed the principle set down in *Jhuti* we may have reached a different conclusion on this issue. However, having followed *Malik*, we have not given this issue further consideration.

Fourth proven detriment: refusal to postpone appeal hearing

138. Richard Lee had direct knowledge of the Previous Claim.

139. The question that then arises is why the appeal hearing was not postponed: has the Claimant proven primary facts from which a reasonable tribunal could properly conclude on the balance of probabilities that the detriment was done because of the protected act? We conclude that she has because there is no good reason why Richard Lee did not postpone the appeal hearing. In his evidence he was unconvincing and defensive. Postponing the appeal hearing would have been an easy thing to do, with no material downside for anyone. Seeking finality did not justify creating an unfair process in which the Claimant was denied the opportunity to be represented in an appeal hearing which clearly had significant meaning to her, and would to any reasonable employee. It is entirely possible that the Claimant having done the protected act influenced the decision taken by Richard Lee, upon the advice of the HR department.

140. The Claimant having proven primary facts, has the Respondent then discharged the burden of showing that the detriment was in no way because of the protected act? We conclude that the Respondent has not discharged that burden. This is because there is simply no credible explanation put forward by the Respondent for the refusal by Richard Lee and the HR department to oppose a postponement of the appeal hearing. The Respondent has failed to show that the detriment was in no sense whatsoever because of the protected act.

Summary of conclusions on victimisation

141. The Respondent victimised the Claimant by subjecting her to an improper disciplinary procedure and by refusing to postpone the appeal hearing.

Conclusions on unfair dismissal

142. The Claimant say that the Respondent breached the implied term of trust and

confidence because of its actions towards her in relation to (1) the detriments; and (2) Project Vista. In contrast, the Respondent says that its disciplinary process was scrupulously fair, and that the effect of Project Vista does not support the Claimant's case.

143. In relation to the proven detriments, we have considered their impact *as detriments*, rather than as *acts of victimisation*. As such, we have considered all of the proven detriments on which the Claimant relies.

144. As set out in the Independent Investigation Report, there were a series of failings on the part of the Respondent in how it dealt with the Claimant's team. In particular, there had been poor communication with staff, weekday staff and weekend staff had been treated differently (to the detriment of weekend staff), and weekend staff felt pressured during the redundancy process which involved the Respondent acting disingenuously. That provided the background against which the detriments were occurring. The Respondent's actions in relation to Project Vista had already so severely damaged the employment relationship that the trust and confidence between the Respondent and the Claimant was hanging on by a thread.

145. The detriments sawed away further at that thread. The whole series of detriments, one after another, in the context of Project Vista, had the effect of undermining the term of trust and confidence. The final straw was the unfair way in which the appeal hearing was approached. The effect of the disciplinary process had undermined the Claimant as a manager. It had given her a legitimate sense of grievance. The way in which the Respondent disingenuously refused to adjourn the appeal hearing caused the irretrievable breakdown of the relationship of trust and confidence between the parties.

146. The Claimant took an entirely reasonable period of time over the Christmas holiday to consider her position and draft her resignation letter. She resigned promptly and without delay in direct response to the last straw.

147. The Claimant did not affirm the contract or delay in resigning.

148. The Respondent had breached a fundamental term of the Claimant's contract of employment. That entitled her to resign and to be treated as dismissed. No potentially fair reason for dismissal was advanced by the Respondent. Indeed, there was no potentially fair reason for dismissal.

149. As such, the Claimant was unfairly dismissed.

Conclusions on breach of contract

150. We have concluded that there was a repudiatory breach of contract by the Respondent which entitled the Claimant to resign and to be treated as dismissed. She did then resign.

151. Therefore, the Claimant is entitled to notice pay.

Conclusions on jurisdiction

152. Each of the claims in this case arose out of actions occurring on 11 December 2020, or courses of conduct which culminated on 11 December 2020. The claims were all brought within 3 months of 11 December 2020. The claims are in time and the Tribunal has jurisdiction to consider the claims.

Employment Judge Knight

23 January 2023

ANNEX 1: LIST OF ISSUES

Victimisation:

1. Did the Claimant make a protected act, or did the Respondent believe that the Claimant made a protected act?
   The Claimant relies upon the following:
   – Making a claim to the employment tribunal on 08/06/2019, number 3201308/2019 (race and sex discrimination)

2. Did the Respondent subject the Claimant to a detriment?
   The Claimant relies upon the following incidents:
   – The Claimant was accused of bullying (17/01/2020) and was subjected to an improper disciplinary procedure (beginning of March 2020) which resulted in her receiving an unjustified warning on 23/10/2020 (paragraphs 19 and 20 of PoC)
   – The Respondent unreasonably refusing to postpone the Claimant's appeal hearing against imposition of the said warning, even though her TU representative was unable to attend on the date of the appeal hearing on 11/12/2020.

Constructive Unfair Dismissal

3. Did the Respondent breach the fundamental term of the Claimant's contract of

employment, namely the implied term of mutual trust and confidence?

The Claimant relies on a chain of events, namely the above victimisation and treatment of Claimant and her team during the period of September and October 2020 that resulted in a complete closure of the Weekend Service (paragraph 24). The Claimant was amongst staff who were harassed and pressurised into accepting redundancies without the Respondent showing any business related reason for it or following a consultation process. (The grievance started on 24/12/2020 and the Claimant had a leading role, as a manager of this department in the collective grievance process)

4. Did the Claimant resign in response to that breach?

   (1) The Claimant resigned on 06/01/2021. The final straw was the unreasonable refusal to postpone the appeal hearing on 11/12/2020 and the treatment of Claimant and her team during this period

   (2) Did the Claimant affirm the contract?

5. Did the Claimant delay in resigning?

Breach of Contract

6. Is the claimant entitled to notice payment?

Jurisdiction

7. Was the unfair dismissal presented within the time limit in Section 111 Employment Rights Act 1996 and if not was it reasonably practicable for the claim to have been made to the Tribunal within the time limit and if not was it made within a reasonable period?

8. Was the claim of victimisation presented to the Tribunal within the statutory time limit and if not is it just and equitable for the Tribunal to extend the time?

9. Was the claim of wrongful dismissal presented within the statutory time limit?