



EMPLOYMENT TRIBUNALS

Claimant: Mr Gary Mobbs
Respondent: Weetabix Limited
Heard at: Huntingdon Employment Tribunal
On: 26 and 27 September 2022, 6 December 2022
Before: Employment Judge Hutchings (sitting alone)

Representation

Claimant: Mr Mobbs

Respondent: Ms Katie Nowell of counsel

RESERVED JUDGMENT

The claimant's complaint of unfair dismissal is well founded. The claimant was constructively dismissed.

REASONS

Introduction

1. The claimant, Mr Gary Mobbs, was employed by the respondent, Weetabix Limited ('Weetabix'), from 29 September 1993 until he gave notice with immediate effect on 11 June 2020. On 17 July 2012 Mr Mobbs was appointed to the position of UK Health, Safety and Environmental Manager; he remained in this position until his employment ended. By a claim form dated 6 August 2020 Mr Mobbs claims constructive dismissal, asserting he had no choice but to resign because of breaches by Weetabix of the term of trust and confidence which is implied by law into his employment contract (the 'term'). ACAS consultation began on 16 June 2020 and a certificate was issued on 10 July 2020. Mr Mobb's particulars of claim set out several facts to support his assertion that Weetabix breached this term. In summary his reasons are:

- 1.1. The behaviour of Mr John Petre, Mr Mobb's line manager which the claimant alleges was *'inappropriate, bullying and harassing behaviour...specifically in relation to a safety incident in November 2019'*;
- 1.2. Weetabix's handling of a grievance Mr Mobbs raised against Mr Petre, including the appointment of Mr Stuart Benham as Grievance Manager and

handling of it by Ms Laura Morton (*'specifically failing to conduct a prompt, robust grievance investigation, attributing the claimant's illness to other things, and arriving at perverse conclusions'*);

- 1.3. The promotion of Mr Petre to role of director while the grievance investigation was on-going;
 - 1.4. Weetabix's handling of Mr Mobb's appeal against the grievance outcome (specifically *'the appeal manager, Mr Colm O'Dwyer recharacterizing interviews and failing to engage with the appeal questions'*); and
 - 1.5. The handling of an Occupational Health ('OH') referral; Mr Mobbs alleges there were delays in the referral by Mr Stuart Benham. He identified the last straw event as a misrepresentation of reasons for the OH referral.
2. The respondent, Weetabix Limited ('Weetabix') is a food processing company, owned by an American holding company, producing breakfast cereal brands. By a response form (undated but accepted by the Tribunal as in time) Weetabix contests the claim. It does not accept that Mr Petre exhibited unwarranted anger, abusive language or attempted to humiliate Mr Mobbs and colleagues. It asserts that it expected Mr Mobbs, as a senior leader, to be able to robustly engage with the senior leadership team on a range of issues and Mr Petre's *'direct management style'*. Weetabix asserts that the initial grievance and the appeal process were properly addressed and the outcomes in line with Weetabix's policies. Weetabix denies there were delays to the OH referral; it further denies that it mishandled the OH process. Weetabix contends that (acting by its managers) it did not behave in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence it had with Mr Mobbs and, therefore, it did not breach the implied term.

Preliminary matters

3. The hearing was listed for 3 days. Prior to the start of the hearing the Tribunal was unable to accommodate 3 days; mindful that the hearing had previously been relisted at the start of the hearing I informed the parties that day 1 and 2 would take place as scheduled and, if necessary, a third day would be listed at a later date. At the end of the second day Mr Benham and Mr O'Dwyer had not given their evidence; a third day was listed for 6 December 2022.

Procedure, documents, and evidence

4. Mr Mobbs was represented by Mr Mobbs (a family member) and gave sworn evidence.
5. The respondent was represented by Ms Nowell of counsel, who called sworn evidence on behalf of the respondent from:
 - 5.1. Mr John Petre, Quality and Compliance Manager (at the time of Mr Mobbs' resignation), Mr Mobbs' line manager;
 - 5.2. Ms Laura Morton, HR Business Partner (at the time of Mr Mobbs' resignation);
 - 5.3. Mr Stuart Branch, Group People and IT Director
 - 5.4. Mr Colm O'Dwyer, Commercial Director; and
 - 5.5. Mr Stuart Benham, Head of HR.
6. I considered the documents from an agreed 631-page bundles of documents which the parties introduced in evidence. On 6 December I received additional documents disclosed by Weetabix, arising from a line of questioning at the

hearing. Mr Mobbs told me that the claimant had received the documents on 5 December and felt disadvantaged by this late disclosure, telling me neither he nor the claimant had the opportunity to consider them in detail. Miss Nowell apologised for late disclosure, explaining that following points arising in the first 2 days of the hearing the respondent had undertaken an in-depth search for documents, many documents had been identified, some had not due to Weetabix's destruction policy (disclosed as part of this process) and a filter had taken place, resulting in this disclosure. I reviewed these documents, considered them to be relevant to the issues to be determined and insubstantial in number. While it is unfortunate that these documents were not disclosed by a represented party earlier in the proceedings, I am mindful of the on-going duty of disclosure in the Employment Tribunal and of the overriding objective to ensure parties are on an equal footing. Accordingly, as these documents were relevant, I admitted them.

7. At the end of the third day I had heard the evidence from both parties but did not have time to hear closing statements. Therefore, I made an order for written submissions from both parties, which the Tribunal received on 13 December 2022, and I received at a later date.

Findings of fact

8. The relevant facts are as follows. First, the Tribunal makes a general finding on evidence. I found Mr Mobbs, Mr Branch and Ms Morton open and honest witnesses. Both provided direct, factual answers to questions and were transparent in recognising situations where they did not understand the question or could not recall details. I found them keen to assist the Tribunal with their understanding of events. Mr Mobbs was clear and consistent in his evidence and his answers to questions corresponded to the contemporaneous documentary evidence. Mr Petre's evidence lacked detail when recalling some events and was inconsistent in places; on occasion his oral evidence contradicted the evidence in his witness statement, contemporaneous documents, and earlier oral evidence. In making this observation, I have borne in mind the period of time which has passed (around 3 years) since many of the events occurred; some discrepancies may be attributable to this. Mr O'Dwyer was also keen to assist the Tribunal and willing to concede, with reflection, how events may have appeared to Mr Mobbs at the time; he acknowledged some situation could have been approached differently by the respondent. I found Mr Benham's evidence confused and inconsistent. On occasion he did not answer the question put, instead referring to a version of events which did not accord with the contemporaneous documents.
9. I turn now to my findings of fact relevant to the issues in dispute. Mr Mobbs started his employment with Weetabix on 29 September 1993. In July 2012 he was promoted to Health and Safety Manager, the terms of his employment set out in a contract dated 20 July 2012. On 1 March 2017 Weetabix revised Mr Mobbs' job title to UK Health, Safety and Environmental Manager; the terms of his employment remained the same. In evidence Mr Mobbs' accepted that he held a senior position and was responsible for plant safety.
10. By his own admission the first 25 years of Mr Mobbs' employment with Weetabix were happy. From 2018 to his resignation his line manager was Mr Petre. Initially the relationship was positive; for his 2017/2018 performance Mr Petre awarded Mr Mobbs the high grade of 3:3. After about 6 months Mr Mobbs

experienced difficulties in his working relationship with Mr Petre. From the sum of documentary evidence, and by his own admission and the evidence of Mr O'Dwyer and Ms Morton and the evidence gathered in the grievance investigation, Mr Petre has a direct management style which some line reports found challenging. Mr Mobbs describes it as '*uncompromising*' and found it difficult to work with Mr Petre.

11. On 24 September 2018, Mr Mobbs gave his verbal resignation to Mr Petre, as he found Mr Petre's management techniques created a difficult working relationship. Mr Mobbs and Mr Petre met to discuss the reasons Mr Mobbs had offered his resignation, including Mr Petre's management style. Mr Petre agreed to change his behaviour, accepting that he was '*open to operating differently*'. Mr Mobbs; retracted his resignation, remaining at Weetabix under Mr Petre's line management. For the reasons set out below I find he did not operate differently in management of Mr Mobbs after this meeting.

Mr Petre's behaviour

12. Mr Petre acknowledged that he vocalised frustrations and accepted, sometimes, he overstepped the mark in conversations with colleagues. He acknowledged that some events Mr Mobbs referenced in the grievance could have happened. Mr Petre told me that, on occasion, he did use words to humiliate, as part of his management style to get the best out of people. He appreciated that, on occasion, his language was inflammatory and unhelpful, but he used the words '*as an extreme example*' telling the Tribunal that it was '*his responsibility to hold [people] to account and use public forums*' to do so. He told the Tribunal he '*would not shy away from holding them to account*', accepting '*it does not look good*'.
13. I have read the minutes of meetings with Mr Petre during the grievance process; when allegations are put to him, some responses are vague, yet he is lucid in his recollection of other events which present his behaviour positively. At the hearing some of his recollections were also vague and replies dismissive. When challenged about the inconsistency of his recollections, Mr Petre told the Tribunal that sometimes he '*spoke more openly than [he] should have done*', accepting on occasion his comments were inappropriate, repeating he would humiliate to get the best out of colleagues. Mr O'Dwyer told the Tribunal that there had been '*swearing and bad behaviour*' by Mr Petre. For these reasons, I prefer Mr Mobbs' recollection of the following events and find that:
 - 13.1. At the Monthly Technical Leadership Team meeting in April 2019 Mr Petre told Mr Mobbs '*I'm pissed off, when I ask for this completing, I want it completing*', apologising afterwards.
 - 13.2. On 26 April 2019 Mr Petre said about a colleague '*what the fuck is he playing at sending that document out, what an idiot*'.
 - 13.3. On 12 July 2019 he described a colleague as '*useless*' and '*a fucking idiot*'.
 - 13.4. On 25 September 2019 Mr Petre and Mr Mobbs met to catch up prior to Mr Mobbs' holiday to identify a colleague to investigate safety concerns at Weetabix's Corby plant. In discussing a line report of Mr Mobbs, based on my overall observations about Mr Petre's evidence, I find that Mr Petre did say of Mr Orbell '*we had better not give it to him as he may start crying*'.
 - 13.5. On 30 October Mr Mobbs emailed (at 7.14am) Mr Petre asking to bring forward a meeting to resolve the dairy clash, in a subsequent telephone

call Mr Petre told Mr Mobbs ‘...*don’t inconvenience me with your poor organising skills....sort yourself out*’ and refused to accommodate the request.

- 13.6. When discussing an incident which had occurred on 18 October Mr Petre told Mr Mobbs ‘...*your role here is to provide me with the investigation highlights and if there are any failures my job is to publicly humiliate [name removed] and [name removed] in the Monday OLT*’. He told Mr Mobbs he intended to humiliate 2 colleagues and that Mr Petre used humiliation as a means of getting the best out of colleagues.
14. Objectively, the language used by Mr Petre was offensive (swearing) and unprofessional. I find that it was integral to his management style and that he saw this approach as a means of getting the best out of his colleagues and line reports. I note that on some of these occasions Mr Petre apologised. Objectively, I find that the language Mr Petre used is not mitigated or excused by his intention to stretch colleagues, the pressure, or frustrations, he refers to in his own role as a senior manager or subsequent apologies. When put to Mr Petre that apologies can be meaningless, he rejected this, replying that the apologies ‘*were few and far between*’.
15. I find that by this Mr Petre meant he did not have to apologise often as the incidents were infrequent, rather than he only apologised on occasion. The frequency of his use of this the language does not mitigate. At the time he used this language he was aware, from the 2018 conversations, that Mr Mobbs found it difficult. Indeed, he said he would adjust his style mindful of how Mr Mobbs had told him he felt in 2018. He did not. He was also aware from the colour coded system of management style used by Weetabix, which was transparent, that Mr Mobbs’ style was very different to his (each man coded a different colour). The fact Mr Petre did not use this language in every interaction and the fact Mr Mobbs did not challenge the language he heard Mr Petre use before raising a formal grievance does not mitigate Mr Petre’s behaviour.

Plant safety / Provision and Use of Work Equipment Regulations (‘PUWER’, November 2019)

16. On 7 November 2019 Mr Mobbs and Mr Petre spoke about some health and safety matters at Weetabix’s Corby plant where production had been suspended. Mr Mobbs alleges when he updated Mr Petre, he raised his voice and accused Mr Mobbs of jeopardising the commercial interests of business. Mr Petre recalls a ‘*tense, high-stakes*’ conversation was about health and safety matters, and that he was frustrated but was vague in his recollection of the language he used, suggesting he was seeking to clarify the contents of Mr Mobbs’ email about the safety issue email. Based on Mr Mobbs’ recollection of the conversation and my findings that it was commonplace for Mr Petre to use offensive language as part of his management style and my findings of the inconsistencies in Mr Petre’s ability to recall past events, I prefer Mr Mobbs’ recollection that Mr Petre raised his voice to Mr Mobbs’ not allowing him to speak.
17. On several occasions Mr Petre directed unprofessional and abusive language at and in the presence of Mr Mobbs and other colleagues. Mr Petre told the Tribunal he was familiar with Weetabix’s Dignity at Work Policy document (about which I make findings below) and understood the policy that communications can be offensive to a recipient irrespective of intention (section

1 and section 3). On the balance of the evidence before me, I find the language Mr Petre directed at and used in the presence of Mr Mobbs was inappropriate given the policies Weetabix had in place, Mr Petre's seniority and the fact he was aware Mr Mobbs from the 2018 conversation that Mr Mobbs found his behaviour difficult to work with.

Grievance investigation

18. By email dated 18 November 2019 Mr Mobbs raised a formal grievance with Weetabix against Mr Petre. Conduct of the investigation was governed by Weetabix's Grievance Policy. It sets out timelines for the response to complaint and appeal. Section 2 states: *'If your complaint relates to bullying or harassment on the part of a colleague, the matter should be dealt with in line with the Bullying and Harassment Policy'*. This is found in Weetabix's Dignity at Work Policy ('DWP'), referred to by Mr Mobbs in his complaint. Section 1 states as its purpose:

'Weetabix is committed to promoting a working environment that encourages inclusiveness and which is free from discrimination, harassment, bullying and intimidating behaviour'.

'You have a personal responsibility to behave in a manner that is not offensive to others and to treat colleagues and others with dignity and respect. You should always consider whether your words or conduct could be offensive. Unintentional bullying or harassment is also unacceptable'.

19. The list of examples in the policy is not exhaustive. Section 3.1 of the Policy states:

'Harassment means any unwanted conduct which has the purpose or effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment, or is personal Someone may be harassed regardless of whether the conduct was directed at them'

Harassment may take a wide range of forms and includes any unwelcome physical, verbal and/or non-verbal conduct. It can be a series of incidents or a single incident in some serious cases.'

20. Included in the non-exhaustive list of examples of harassment are:

*'derogatory, degrading or demeaning comments
swearing at or ridiculing an individual or group'*

21. Section 3.3 addresses the complaints process and refers to Weetabix's Grievance Policy as an appropriate route. The Code of Conduct of Post Holdings Inc (Weetabix's parent company) states: *'Success can only be achieved if we treat everyone with respect. Each of us has the right to work in an environment free from harassment.... Managers and Supervisors have a greater responsibility to lead by example by conducting themselves in a manner consistent with our code.'* Mr Petre was aware of the contents of this Code, having completed the training on 10 December 2018.

22. Initially Mr Benham was appointed investigating officer. Mr Mobbs challenged this appointment as lacking independence, saying he had already confided in

Mr Benham informally in November 2019. Weetabix recognised this concern; Mr Benham was replaced by Ms Laura Morton, senior HR Business Partner, as investigating officer on 22 November 2019. She received a copy of Mr Mobbs' grievance document dated 18 November sharing it with Ms Twiselton, the note taker at the grievance investigation meeting.

23. On 25 November 2019 Mr Benham wrote to Mr Mobbs to invite him to a grievance meeting on 27 November 2019, confirming Ms Morton as the investigating officer and informing Mr Mobbs of his right to be accompanied. At the start of the meeting Mr Mobbs provided a second version of the grievance document; Ms Morton accepted version 2 did not remove any of the content of version 1 and that it provided additional context to events which had been stated in version 1. Ms Morton agreed that Mr Mobbs' allegations should be measured against Weetabix's DWP document. The grievance was about Mr Petre's behaviour.
24. Ms Morton meet Mr Petre on 28 November 2019. I have read the minutes of this meeting. Ms Morton raises the offensive language Mr Mobbs alleges Mr Petre used. In each case Mr Petre replies that he does not *'recall saying that'*, commenting that if something he was expecting had not been done, he would be *'frustrated'* and that *'he may have sworn in front of [Mr Mobbs], I can't recall swearing directed at him, or shouting at him'*. Mr Petre accepted on occasions he had behaved inappropriately but that he *'always made good'*. Ms Morton did not discuss the DWP with Mr Petre. On 28 November 2019 Ms Morton met with Mr Rigby.
25. On 29 November 2019 Ms Morton emailed the notes of the 27 November grievance meeting to Mr Mobbs asking to meet him *'on Monday'*, 2 December to discuss her meetings with Mr Petre and Mr Rigby. She confirmed she did not share Mr Mobbs' grievance statement with Mr Rigby or Mr Petre. Ms Morton also refers Mr Mobbs to AXA for support. Her email is supportive.
26. By email on 2 December Mr Mobbs asks to reschedule the meeting to allow him to speak to his doctor first, following up on 4 December with another email saying, *'I will not be well enough to attend a second session relating to the grievance process at present. I will be in touch with an update next week'*. The meeting is rescheduled for 14 January 2021; prior to which Mr Mobbs raises his concern that, *'there appears to be some confusion regarding my grievance....'* I agree. I find, based on the minutes of the meetings, her focus at this time is the intention behind Mr Petre's comments (irrelevant based on the correct application of the DWP) rather than a systematic consideration of Mr Mobbs allegations and arranging meeting with people he identified as witnesses (the next witness meeting did not take place until 14 January 2020).
27. On 14 January 2020 Ms Morton met with Mr Mobbs a second time; the minutes record a discussion of Mr Petre's responses. Ms Morton summarises her meetings with Mr Petre as: she *'put Gary's allegations to him of his intimidating behaviour and inappropriate outbursts and John refuted them each time.'* This is not an accurate reflection of her meetings with Mr Petre and not founded on the evidence before her at that time. Meeting minutes record that Mr Petre acknowledged that he may have used some of the language put to him, being unable to recall other situations, offering explanations for his behaviour or referencing a subsequent apology. Ms Morton says she would not shy away from disciplining a director. I find her statement now is not accurate of the

approach taken at the time; she was not robust in her conversations with Mr Petre.

28. At this meeting on 14 January safety concerns about safety at the Corby plant are raised, which Ms Morton escalates following the meeting, confirming by letter to Mr Mobbs dated 15 January that his concerns had been taken seriously and informing him that a health and safety investigation would take place. Escalating these concerns to Mr Petre created a conflict of interest given he was the subject of the grievance.
29. On 16 January 2020 Ms Morton met a second time with Mr Petre. Other than Mr Petre and Mr Rigby, Ms Morton did not interview the witnesses until 17 January 2020, despite Mobbs identifying them in his grievance document dated 25 November 2019. She met them on the following dates: Mr Chandley, 17 January 2021; Mr Mirkovic, 21 January 2021; Ms Furnival, 27 January 2020; Mr Orbell, 27 January 2020. It took 34 days for her to interview other witnesses identified by Mr Mobbs. She accepted during this time she did not receive any new information
30. When asked to explain this delay, Ms Morton told the Tribunal that she felt she needed to speak to Mr Petre and Mr Rigby first to get a full understanding of the grievance and that she wanted to ensure Mr Mobbs was well enough to meet again and to gain an understanding of who the relevant people to interview were. This explanation is not credible; the 5 employees were named in the document. It does not accord with her comments in the meeting on 25 November 2019 when she tells Mr Mobbs it is her priority to progress the investigation quickly. She did not. There was a period of over a month where little action (meeting Mr Rigby and a second meeting with Mr Petre) was taken. References to Mr Mobbs' companion not being available due to holiday are not credible. While the companion did take annual leave in this period, there was no direct conversation between Mr Mobbs and Ms Morton about this, or any consideration of an alternative companion, an option identified in the Grievance Policy. The Tribunal is unable to determine exactly when Ms Morton scheduled meetings: she could not recall, invitations had been destroyed in line with Weetabix's data retention policies. In the absence of the invitation, and credible explanations for the delays, I find that there was little effort made by Weetabix during the period 27 November 2019 to 17 January 2020 to move the investigation forward
31. On 5 February 2020 Ms Morton wrote to Mr Mobbs setting out the findings of her grievance investigation and making recommendations. She did not uphold any of Mr Mobbs' complaints against Mr Petre. I have considered the conclusions by reference to the evidence to which the letter refers and the contemporaneous records of the meetings with Mr Mobbs, Mr Petre and the other witnesses. In her witness statement Ms Morton says that she, *'I decided there was no evidence [Tribunal emphasis] that John's behaviour was unacceptable or intimidating. I had spoken to many other employees who did not corroborate Gary's version of events that this occurred or was intended.'* The summary lacks accuracy in places and does not take account of the provisions of Weetabix's DWP; the contemporaneous minutes of witness meetings include examples of behaviour which is contrary to the wording of section 3.1 of the DWP; for example: Mr Chandry told her, *'you could say it was humiliating'* about Mr Petre's behaviour; Mr Orbell tells her *'if you want to challenge it will be John's way or the highway'*.

32. The outcome letter refers to other factors Ms Morton consider may have caused Mr Mobbs stress. It is not for a Tribunal to step into the shoes of the investigation officer and suggest the investigation should have been conducted differently; to do so would be an error of law. The role of the Tribunal is to consider the evidence gathered by the investigating officer and determine whether it aligns with the outcomes made. Weetabix's grievance policy required Ms Morton's to determine the grievance by reference to the DWP. The evidence she gathered and conclusions she reached do not align in the context of sections 1 and 3 of the DWP.

Promotion of Mr John Petre (December 2019)

33. On 6 December 2019 Weetabix issued an announcement of Mr Petre's promotion to Supply Chain and Technical Director, following the departure of the incumbent in November 2019. An unsigned offer letter of the same day records Mr Petre's start date as 9 December 2019. Despite being relevant to an issue to be determined it was not disclosed, by a represented until requested by the Tribunal at the hearing and is not a signed copy. Mr Petre should have received a signed and dated offer letter. No explanation was offered by the respondent as it could not produce a signed letter. This invariably affects the credibility of this document.

34. The CEO, Ms Abbott, and shareholders were responsible for Mr Petre's appointment. Mr Branch was involved in the process, advising Ms Abbot. In his evidence, given before disclosure of the letter and announcement, Mr Branch recalled the announcement as November 2019. I have found Mr Branch to be a credible witness and accept his evidence that when the decision to promote Mr Petre was made by the Ms Abbot, she was aware (from Mr Branch) of the existence, but not the content, of Mr Mobbs' grievance. Mr Branch acknowledged that the announcement of Mr Petre's appointment while the investigation was on-going could be taken by Mr Mobbs as Weetabix favouring Mr Petre in the grievance process. At the time he counselled Ms Abbott against the potential risks of continuing with the appointment.

35. On balance of the evidence before me: that Mr Petre started this role on 9 December, just 2 days after an offer letter which is not signed; that the incumbent director left in November 2019; and widespread knowledge in management, confirmed by Mr Branch, of Mr Petre's career ambitions, I find that at some point in October 2019, and certainly before the grievance, an internal decision had been made that Mr Petre would be appointed and he was aware; it is simply not credible he had 2 days' notice of a change in role. I find Weetabix know of the grievance before Mr Petre's appointment was confirmed and made public.

Appeal

36. By email dated 14 February 2020 Mr Mobbs appealed, acknowledged by Ms Morton on 18 February 2020. Ms Abbot asked Mr O'Dwyer to act as appeal officer. On 26 February 2020 Mr O'Dwyer invited Mr Mobbs to an appeal hearing, which takes place on 9 March 2020. Mr Mobbs was accompanied at this meeting. Prior to this meeting Mr O'Dwyer read the grievance policy and Ms Morton's outcome policy and Mr Mobbs' appeal document, describing it as clear and comprehensive. He did not read the DWP.

37. In evidence Mr O'Dwyer accepted that Mr Mobbs left this meeting with no specifics on what was to be explored. There are no contemporaneous notes of the meeting; Mr O'Dwyer told the Tribunal he did not adopt this approach in the appeal meetings as the *'appeal against a member of executive leadership team which was very seriousfelt taking every note would impede the truth'*. Mr O'Dwyer felt the presence of a note taker from HR would *'make the person more guarded in what they say'*, acknowledging that his own notes were not verbatim but that he felt he *'got thread of what people were saying'*. I find that he followed up on the meetings with emails which sent days and the emails are not accurate summaries. For example, the notes of his meeting with Mr Arnold are sent 11 days after meeting; the email is not a record of meeting but the start of an exchange of emails to clarify the record of the conversation. Mr O'Dwyer acknowledged, with hindsight, that the lack of note taking was not his finest hour.
38. In a document dated 30 March 2021 Mr O'Dwyer recorded his *'initial findings'*, describing it as *'some of the 13 were things C wanted to understand but were not core to the appeal.'* He identifies the 5 colleagues with whom he met and records in summary his conversations. The document does not cover all the issues Mr Mobbs raised on appeal. He discussed the document with Mr Mobbs on 31 March 2020. Mr O'Dwyer told the Tribunal that the purpose of this meeting was to check in with Mr Mobbs to say *'this is what I have heard, do you want me to do anything else'* and give Mr Mobbs the opportunity to ask questions. There are no notes of this meeting. Given my findings about the overall approach Mr O'Dwyer took to the appeal process, I do not accept the respondent's submission that Mr O'Dwyer provided a full explanation at this meeting to the points Mr Mobbs raised. The document refers to meeting with Laura; in oral evidence Mr O'Dwyer said he could not remember taking notes of this meeting. Mr O'Dwyer's rationale for not doing so was that he was *'trying to understand if Laura carried out a good process so did not need to make lots of notes'*. Again, this reflects the informality with which I have found Mr O'Dwyer approached the appeal.
39. On 2 April 2020 Mr Mobbs and Mr O'Dwyer met again. At this meeting Mr Mobbs' read a statement. In evidence Mr O'Dwyer told the Tribunal *'Gary sounded in his statement like he was resigned to the outcome of the process and did not ask me to explore other avenues or interview other people'* Mr O'Dwyer did not undertake any further investigations of the matters raised on appeal after this meeting. He did not interview Mr Petre as part of the appeal process.
40. On 6 April 2021 Mr O'Dwyer sent an appeal outcome letter to Mr Mobbs which attached his initial findings document. He did not uphold the appeal, concluding that Mr Petre's behaviour did not amount to harassment or bullying behaviour, accrediting the behaviour to Mr Petre's management style and a lack of emotional intelligence. In evidence Mr O'Dwyer told the Tribunal that there had been *'swearing and bad behaviour'* by Mr Petre. This is not a finding is not recorded in the outcome letter. There is no evidence Mr O'Dwyer applied the DWP in making his findings or reaching his conclusions.
41. Overall, I find that Mr O'Dwyer's light touch and informal approach to the appeal process did not examine all the points raised Mr Mobbs raised in his appeal document, nor did it reference Weetabix's relevant policy documents.

OH referral

42. On 13 November 2019 Mr Benham considered referring Mr Mobbs for an OH consultation through AXA, support Mr Mobbs accepted.
43. On 8 December 2019 Mr Mobbs asked Mr Benham to send him the final set of questions to be used in the OH consultation. Mr Benham replied he would do so *'maybe today / early part of next week'*. He accepts he did not do so for a month, initially saying the delay was due to the Christmas break, later suggesting it was due to the availability Mr Mobb's companion and AXA. Evidence to support this explanation was not disclosed until requested by the Tribunal. His explanations are implausible. I find they are not considerations he raised, or indeed had, at that time. Mr Archer's holiday dates do not cover the full period of the delay. Any restrictions on AXA's availability, not evidenced, are not an obstacle to submission of the form, as by Mr Benham's own admission this was an online process. There was no communication with Mr Mobbs between 8 and 18 December, after which there were some brief exchanges of text in general terms as check in. On 14 January 2020 Mr Benham emails the consent form to Mr Mobbs, acknowledging that he forgot to ask Mr Mobbs to approve the process.
44. On 28 January 2020 AXA confirmed to Mr Benham that it had received from Weetabix an OH referral submission for Mr Mobbs. AXA booked a telephone assessment with Mr Mobbs on 7 February 2020. On 18 February 2020 AXA send Mr Benham a copy of Mr Mobbs' report dated 7 February 2020.
45. Mr Mobbs raises the delay to the OH referral in his meeting with Mr O'Dwyer on 9 March 2020. Mr O'Dwyer records, *'my initial reaction was the ill health timeline and how long it had taken'*. In oral evidence he told the Tribunal the timeline was *'very slack'*. I agree. While there are some exchanges of text during December, Mr Benham does not action the OH referral until mid-January. I find the delay was due to errors and delays by Mr Benham.
46. On 14 May 2020 Mr Benham acknowledges that there was an issue with the consent form for the second referral as he *'did not appreciate that AXA would not rely on the previous consent form'*. I find this delayed the second referral by about 3 weeks. Mr Mobbs signed the referral form on 16 May. At a meeting on 27 May Mr Mobbs and Mr Benham discuss the form, which is then finalised and shared with Mr Mobbs by AXA on 2 June 2020.
47. Based on my findings about Mr Benham's recollections and the credibility of his evidence, I prefer Mr Mobbs' recollection of this meeting, that Mr Benham told him the referral process would mirror the January referral. Mr Mobbs would see the questions raised by Mr Benham in advance and the reference made to *"challenging questions" in our meeting on the 27 May 2020 absolutely not in the context that "Weetabix have some concerns that are yet to be explored"*. Mr Benham could not recall if he explained the AXA process (as he described it at the hearing) to Mr Mobbs at the 27 May meeting or at all. I find that he did not.
48. On the form he submitted online Mr Benham ticked the reference to conduct in the reasons for referral; he told the Tribunal this was ticked in reference to the grievance process, qualifying by raising specific questions. Based on my

findings as to how Mr Benham handled the referral, not understanding the process and making mistakes, failing to progress without adequate explanation for the delays, his confused oral evidence in which he changed his explanations, I find that this was not the motivation for ticking this box. Had it been so at that time, he would have explained the line of thought, as he did at the first referral when questions were identified, at the meeting on 27 May.

49. On 6 June 2020 Mr Mobbs had a telephone appointment with an AXA nurse. The nurse referred to '*challenging questions*', asking Mr Mobbs whether he would be able to engage in challenging conversations on his return. As a result, Mr Mobbs ended the appointment. On 8 June Mr Benham shared the full referral form with Mr Mobbs.
50. Overall, I find that the delays to the OH referral process were due to Mr Benham not understanding the process and not actioning the referral for a number of weeks due to his own maladministration. Mr Benham was not as transparent with Mr Mobbs at the time about the contents of the form as he is now claiming to be. The evidence given by Mr Benham at the hearing for delays and the explanation for the questions raised does not accord with the evidence of events, said and done, at the time. Mr Benham's evidence was inconsistent and confused, raising explanations at the hearing not raised beforehand. The explanation provided by Mr Benham for ticking the conduct box, that the reference were challenging conversations taking place as part of the grievance process, is not credible. By the time this form was submitted, by Mr Benham's own admission, the grievance process was concluded. I find that the box was ticked in reference to future conversations the respondent had in mind. The transparent process presented by Mr Benham at the hearing does not reflect the reality of the conversation on 27 May. The explanations for the delay were afterthoughts; the delay to the OH process sat wholly with Mr Benham.

Resignation

51. On 11 June 2020 Mr Mobbs sent a letter of resignation to Weetabix. He states bullying and harassment by Mr Petre as the reasons for his resignation and his view that Weetabix had not conducted a fair investigation. Mr Mobbs states his intention to bring an action for constructive dismissal. In oral evidence Mr Mobbs confirmed this as the reason for his resignation, telling the Tribunal that his anxiety was at a height such that he had no choice but to give up a high paid job.
52. Mr Mobbs spoke with Mr Branch by telephone on 16 June 2020 in which Mr Branch asked him whether he was sure he wanted to resign. The conversation explores Mr Mobbs' concerns that Weetabix are providing a safe workplace for him. The conversation concludes with Mr Branch asking Mr Mobbs to reconsider, telling him he has until Friday to do so, when he will be processed as a leaver. Mr Mobbs restates his decision to resign and the reasons for doing so.
53. Mr Mobbs was signed off work by his GP for the period 11 November 2019 to 11 June 2020.

Issues for the Tribunal to decide - constructive dismissal

54. To determine whether Mr Mobbs was unfairly dismissed first I must consider whether Weetabix breached the implied term of trust and confidence? The burden of proof is with Mr Mobbs to prove that, on the balance of probabilities, Weetabix did breach this term. I must decide whether:

54.1. Weetabix (acting by its managers) behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence with Mr Mobbs; and (if I find that it did)

54.2. It had reasonable and proper cause for doing so.

55. I have considered the particulars of claim. The events Mr Mobbs claims breached the implied term of trust and confidence can be summarised as follows:

55.1. Mr Petre's behaviour in line managing Mr Mobbs from 2017 to his resignation, in particular in April 2019, October 2019 and November 2019.

55.2. Mr Petre's conduct towards Mr Mobbs regarding an issue surround the re-opening of Weetabix's Corby Plant and a safety incident in November 2019.

55.3. The manner in which Weetabix handled the grievance Mr Mobbs made against Mr Petre, specifically.

55.3.1. The appointment of Mr Benham as investigating officer;

55.3.2. The handling of the investigation by Ms Morton including:

55.3.2.1. Unreasonable delays;

55.3.2.2. The robustness of the investigation and its outcome; and

55.3.2.3. Attributing Mr Mobbs' anxiety / illness to other things;

55.3.3. The decision to promote Mr Petre to director while the grievance investigation was on-going.

55.4. The manner in which Weetabix handled Mr Mobbs' grievance appeal, specifically:

55.4.1. By adopting an informal approach, and not taking notes of the meetings which took place during the appeal investigation; and

55.4.2. The appeal manager, Mr Colm O'Dwyer, recharacterizing interviews and failing to address the issues raised by Mr Mobbs in his appeal document dated 4 March 2020; and

55.4.3. Not providing an explanation as to why Mr Petre's admitted behaviour did not breach the Dignity at Work Policy.

55.5. The delays with and conduct of the OH referral. The claimant identified the last straw event as a misrepresentation of reasons for the OH referral, referring to a meeting with an AXA OH nurse on 5 June 2020 when 'challenging conversations' on return were referenced.

56. If I find trust and confidence has been breached, I must decide whether the Mr Mobbs' resignation on 11 June 2020 was in response to that breach.

57. If so, I must determine whether the resignation took place within a reasonable period of time or did Mr Mobbs affirm the contract before resigning? This means I will need to decide whether Mr Mobbs' words or actions showed that he chose to keep the contract alive even after any breach.

Law – constructive dismissal

58. Section 95(1)(c) of the Employment Rights Act 1996 (the 'Act') provides that an employee is dismissed by their employer if:

'the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct'.

59. In order to establish constructive dismissal, an employee must show that the employer has committed a breach of contract (express or implied) which causes an employee to resign (Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27) and that the breach is sufficiently serious to justify the employee resigning or is the last in the series of incidents which justify their leaving. In this case the claimant relies on an alleged breach of the implied term of trust and confidence as the employer's conduct.
60. A breach of this term occurs where an employer conducts itself without reasonable and proper cause in a manner calculated, or likely to destroy or seriously damage, the relationship of confidence and trust between employer and employee (Courtaulds Northern Textiles Ltd v Andrew [1979] IRLR 84, Mahmud v BCCI [1997] IRLR 462, Yapp v Foreign and Commonwealth Office [2015] IRLR 112). A Tribunal must consider:
- 60.1. Was the conduct likely to destroy or seriously damage the relationship of confidence and trust between employer and employee?
- 60.2. If so, was there reasonable and proper cause for the conduct?
61. A breach of this implied term is likely to be repudiatory. The Court of Appeal considered the characteristics of a repudiatory breach of contract in the case of Tullett Prebon plc & ors v BGC Brokers LP & ors [2011] IRLR 420. Maurice Kay LJ, who delivered the leading judgment, held as follows at paragraphs 19 and 20:
- "The question whether or not there has been a repudiatory breach of the duty of trust and confidence is "a question of fact for the tribunal": Woods v WM Car Services (Peterborough) Limited, [1982] ICR 693, at page 698F, per Lord Denning MR, who added:*
- 'The circumstances ... are so infinitely various that there can be, and is, no rule of law saying what circumstances justify and what do not' (ibid).*
62. The question whether a repudiatory breach of contract has occurred must be judged objectively (Buckland v Bournemouth University Higher Education Corporation [2010] ICR 908); this requires the Tribunal to assess whether a breach of contract has occurred on the evidence before it. Neither the fact that an employee reasonably believes there to have been a breach nor that the employer believes it acted reasonably in the circumstances is determinative of this: the test is not one of 'reasonableness' but simply of whether a breach has occurred. When considering the question of constructive dismissal, the focus is on the employers conduct and not the employee's reaction to it.
63. Furthermore, a claimant must show that they resigned in response to this breach and not for some other reason (although the breach need only be a reason and not the reason for the resignation) Kaur v Leeds Teaching Hospitals NHS Trust [2019] ICR 1; however, the breach must be a substantial part of the reasons for the dismissal United First Partners v Carreras [2018] EWCA Civ 323.

64. It is open to an employer to prove that the employee affirmed the contract despite the breach, perhaps by delay or taking some other step to confirm the contract Cockram v Air Products plc [2014] ICR 1065, EAT
65. A claim for in breach of the implied term of trust and confidence may be based on the *'last straw doctrine'* (the name of which is derived from the old saying *"the last straw that broke the camel's back"*). This doctrine provides that a series of acts by the employer can amount cumulatively to a breach of the implied term of trust and confidence even though each act when looked at individually might not have been serious enough to constitute a repudiatory breach of contract. Inherent in the concept of a last straw is that there was one final act which led to the dismissal (*'the last straw'*) and the nature of this was considered in London Borough of Waltham Forest v Omilaju [2005] IRLR 35 where the Court of Appeal held that the last straw need not be unreasonable or blameworthy conduct, all it must do is contribute, however slightly, to the breach of the implied term of trust and confidence. If the act relied on as the final straw is entirely innocuous however then it is insufficient to activate earlier acts which may have been, or may have contributed, to a repudiatory breach.
66. The breach of contract does not need to be the sole reason for the resignation. It is sufficient for the employee to prove, on the balance of probability, that they resigned in response, at least in part, to a fundamental breach of contract by the employer (Nottinghamshire County Council v Meikle [2004] EWCA Civ 859).
67. Of course, where parties are acting reasonably it is less likely that there will have been a breach of contract when judged objectively but this is not necessarily so. If, on an objective approach, there has been no breach by the employer, the employee's claim will fail.
68. This claim identified a grievance procedure as part of the claim for breach of the implied term of trust and confidence. In Abbey National Plc v Fairbrother [2007] UKEAT/0084/0. the EAT held that when considering a grievance procedure in the context of constructive dismissal, the standard against which it should be judged was *'the band of reasonable responses'*.

Conclusions – constructive dismissal

69. Mr Mobbs' claim turns on the questions I set out in the list of issues. First, when judged objectively, on the balance of probability, and on the basis that Mr Mobbs resigned on 11 June 2020, I must decide whether Weetabix (by its managers / employees) behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between Mr Mobbs and Weetabix and (if I find that it did) whether it had reasonable and proper cause for doing so. The events Mr Mobbs claims breached the implied term of trust and confidence are summarised in the list of issues. I address each in turn.

Mr Petre's behaviour

70. I have considered Mr Petre's behaviour as Mr Mobbs' line manager from 2017 to his resignation, in particular the events in April 2019, October 2019 and November 2019 about which Mr Mobbs complained. I have found that Mr Petre

used unprofessional and abusive language on the occasions Mr Mobbs identified, shouting at him and swearing about a colleague in front of Mr Mobbs. I have found that other staff told Ms Morton that Mr Petre's behaviour could be humiliating. Based on these findings about his behaviour and my findings about Mr Petre's seniority, the provisions of the DWP, that intent, management style and apology do not mitigate nor, in my judgment, does the number of incidents given the language used, I conclude that Mr Petre's behaviour to Mr Mobbs was sufficiently serious that it was likely to breach the term of trust and confidence.

71. Relevant to my conclusion is Weetabix's Dignity at Work Policy and Code of Conduct. They stand as the respondent's internal guidance. Weetabix acknowledged, and I have found, that the DWP guides the behaviour between colleagues in its workplace; as such I must consider Mr Petre's behaviour to Mr Mobbs in this context.
72. Section 1 places personal responsibility on employees *'to behave in a manner that is not offensive to others and to treat colleagues and others with dignity and respect. You should always consider whether your words or conduct could be offensive.....'* The DWP guides that swearing can amount to unwanted conduct by reference to the impact on someone, rather than intention; language does not need to be directed at an individual and it can be a series of incidents or a one-off occurrence.
73. Weetabix circulated policies to ensure that all employees' dignity was safeguarded in the workplace. A senior manager, as Mr Petre was (he, Mr Branch and Mr O'Dwyer spoke of his seniority and of his ambition to progress) must be mindful of such policies in all his conduct in the workplace. Indeed, Mr Petre told the Tribunal he was familiar with Weetabix's DWP document and understood from the policy that communications can be offensive to a recipient irrespective of intention. I have accepted Mr Mobbs' evidence of the impact that Mr Petre's language had on him.
74. The respondent submits that the frequency of incidents is relevant. The DWP states a single incident may suffice, taking account of impact on the complainant. I have accepted Mr Mobbs' evidence of the impact that Mr Petre's language had on him. I am mindful that Mr Petre was aware of the impact as Mr Mobbs' had raised his concerns directly with Mr Petre in 2018, Mr Petre acknowledging it upset Mr Mobbs and agreeing to adjust his behaviour which I have found he did not.
75. To explain the language he used, addressed directly to Mr Mobbs or about colleagues, away as not being serious enough as they were isolated incidents or resulting from a direct and challenging management style or not intending to offend or that any offense was negated by an apology but then for another incident to occur is to disregard the guidance in Weetabix's own policies (the DWP and Code of Conduct). In my judgment neither Mr Petre's direct management style nor ambition to get the best of colleagues by humiliating them are not reasonable or proper causes for the language he used.
76. In my judgment, viewed objectively, the use of unprofessional and offensive language by Mr Petre on more than one occasion was likely to destroy Mr Mobbs' trust and confidence with his employer; therefore, Mr Petre's behaviour breaches the term.

77. Mr Petre's conduct towards Mr Mobbs surrounding the re-opening of Weetabix's Corby Plant and a safety incident in November 2019 is identified as a separate issue. I have found that Mr Petre raised his voice to Mr Mobbs' not allowing him to speak. As a separate incident it does not breach the term of trust and confidence as it is not behaviour at a level, objectively, to do so. However, I do not consider this behaviour can be considered standalone as it links to my finding that there was a pattern of behaviour in Mr Petre's management style, and that pattern of behaviour to or in the presence of Mr Mobbs does breach the term of trust and confidence. Mr Petre was aware that Mr Mobbs had a different style to him (something transparent due to Weetabix's sharing individual's working styles through a colour coding system); therefore, it was reasonable for him to have adjusted his own style. He did not.

Grievance process

78. I have considered the way Weetabix handled the grievance Mr Mobbs made against Mr Petre about which Mr Mobbs raised several concerns. There is no issue with the appointment of Mr Benham as investigating officer; he was replaced with Ms Morton in response to Mr Mobbs' concerns. His appointment did not breach the term of trust and confidence.

79. The role of the Tribunal is to consider the length of the process, the evidence gathered by the investigating officer and determine whether it aligns with the outcomes made. It is not within the jurisdiction of this Tribunal to reconsider the decision reached; to do so would be an error of law. I must determine whether Ms Morton's investigation was within the band of reasonable responses, mindful of Weetabix's size and resources.

80. Mr Mobbs alleges there was unreasonable delay in conduct of the grievance investigation. The investigation started with a meeting on 25 November 2019 and was concluded with the outcome letter of 5 February 2020. While Ms Morton interviewed Mr Mobbs, Mr Petre and another colleague in late November she did not interview other employees named in Mr Mobbs' grievance document until between 17 and 25 January 2020. Ms Morton explained this lapse of time as needing to gain an understanding of who the relevant people to interview were. Even accounting for Mr Mobbs' request in December to reschedule a meeting I have found that her explanation does not accord with her comments in the meeting on 25 November 2019 when she tells Mr Mobbs it was her priority to progress the investigation quickly. I have found that it took 34 days for her to interview other witnesses identified by Mr Mobbs in his grievance document and at his meeting with her on 25 November and her explanation for this taking 34 days not credible. In submissions the respondent suggests that Ms Morton's approach was to consider their interviews as a whole. This was not what Ms Morton told the tribunal in evidence; she said she wanted to focus on Mr Petre's explanation before speaking with the other witnesses.

81. I conclude that the approach taken by Weetabix (Ms Morton) with the interviews is not within the band of reasonable responses of an employer with the size and resources of Weetabix. In my judgment a reasonable employer having told an employee at an investigation meeting it intended to advance the investigation quickly would have done so, interviewing colleagues named in the grievance document in a timely manner; 34 days is not timely. A reasonable

employer would have been mindful that memory fades with time and in a grievance investigation and would have arranged timely interviews with the other witnesses.

82. Mr Mobbs' claims the grievance investigation lacked robustness; he takes issue with the investigation and outcome. In my judgment, viewing the evidence from the investigation objectively, the investigation lacked balance and the outcome letter did not align to the evidence she gathered.
83. Ms Morton's conclusions are flawed by reference to the evidence from her own investigation. She records that there is no evidence that Mr Petre's behaviour was intimidating; Mr Mobbs had told Mr Morton that he found the language (which Mr Petre admitted using) intimidating; another employee had told her it could be humiliating. She *'decided there was no evidence [Tribunal emphasis] that John's behaviour was unacceptable or intimidating. I had spoken to many other employees who did not corroborate Gary's version of events that this occurred or was intended.'* Her summary is simplistic. Contemporaneous minutes of meetings with other witnesses give some examples of behaviour which, objectively, is unacceptable and contrary to the wording of section 3.1 of the DWP; for example: Mr Chandry told her that *'you could say it [Mr Petre's behaviour] was humiliating'*; Mr Orbell tells her *'if you want to challenge it it will be John's way or the highway'*. Ms Morton concluded there was no evidence of unacceptable behaviour, intimidation, verbal abuse, degradation, humiliation or bullying. This is an overstatement not borne out in Mr Petre's own evidence or that of other witnesses.
84. Weetabix's grievance policy required Ms Morton to determine the grievance by reference to the DWP. Ms Morton's interpretation of the DWP is flawed: the wording of the policy is objective; Mr Petre's intentions are not relevant to its application. Ms Morton focused on the impact of the language on Mr Mobbs, rather than the behaviour itself. A reasonable employer would have applied its own policy correctly, disregarding intent and focusing on the behaviour alleged and its impact. In failing to properly apply the DWP correctly, Ms Morton's investigation was outside the band of reasonable responses. I conclude this flawed approach was likely to seriously damage the trust and confidence between Weetabix and Mr Mobbs and as the term was breached
85. Overall, in my judgment the delay to interviewing witnesses, without credible reason, conclusions in the outcome letter which do not reflect the evidence gathered and which are based on misapplication of the DWP take the investigation outside the band of reasonable responses. Weetabix's conduct of the investigation process was likely to destroy its trust and confidence with Mr Mobbs. I conclude the investigation process breached the term.
86. Mr Mobbs alleges that Ms Morton attributed his anxiety / illness to things other than the interactions with Mr Petre. In the outcome letter Ms Morton concludes that several factors may have caused Mr Mobbs stress, including the issues surrounding the Corby plant. It is within the band of reasonable responses for an employer to consider wider factors as part of the investigation. The comment is attributable to discourse between employer and employee when an employee is unable to attend work and as such, I conclude that the comment does not breach the term of trust and confidence; in any. Event Ms Morton had reasonable and proper cause for considering wider causes of stress as Mr Mobbs was engaging with the OH referral.

Mr Petre's promotion

87. I must consider whether the decision to promote Mr Petre to director while the grievance investigation was on-going was a breach of trust and confidence in that the promotion was calculated, or likely to destroy or seriously damage, the relationship of confidence and trust between Weetabix and Mr Mobbs.
88. This is finely balanced. On the one hand a business must continue in the normal course; on the other hand, which was recognised by Mr O'Dwyer in oral evidence, appointing Mr Petre to a senior position before the end of the investigation may be interpreted, as the Mr Mobbs did, as Weetabix preferring Mr Petre, leading him to consider that the appointment influenced the grievance investigation. Mr Mobbs also raised concerns that for a business to find against Mr Petre after his recent promotion would result in '*reputational damage, and professional embarrassment*' for Weetabix, another reason Mr Mobbs submits the appointment.
89. I have found that Mr Petre had made know his ambitions to senior leadership. The timing is unfortunate. A cautious employer may have waited until the outcome, given appointment was around 7 December and the outcome 5 February, to ensure there was no doubt. I have found the decision to appoint Mr Petre was made by Ms Abbott in November 2019 and at the time she was aware that Mr Petre was subject to a grievance investigation. Viewed objectively, in my judgment the appointment of Mr Petre before the grievance investigation had concluded was likely to seriously damage the relationship of trust and confidence between Mr Mobbs and Weetabix. I agree Weetabix placed itself in the difficult position of potentially facing an adverse outcome against a new director. It was reasonable for Mr Mobbs to distrust the outcome in this context.
90. However, I consider that Weetabix had reasonable and proper cause for this decision. The incumbent director was leaving, and Weetabix needed someone in this role, considered Mr Petre a suitable appointment based on his ambition, expertise, and performance delivery.

Appeal process

91. I turn now to the grievance appeal process, which Mr Mobbs alleges was informal, citing the lack of note taking in meetings which took place during the appeal investigation. Mr Mobbs also suggests that Mr O'Dwyer, recharacterized these interviews.
92. By his own admission, Mr O'Dwyer did not take notes in the meetings. I have found that in some cases he followed up with a summary email, and a dialogue followed so the record was accurate. There is no evidence of a deliberate attempt to recharacterize an interview. I have found Mr O'Dwyer adopted an informal approach to the appeal process. As a result, the outcome letter did not address all the issues raised by Mr Mobbs in his appeal document dated 4 March 2020.
93. The appeal forms part of the grievance process and as such I must consider the handling of the appeal by reference to the band of reasonable responses test. The question is whether the approach taken by Mr O'Dwyer to the appeal

process was within the band of reasonable responses of an employer with the resources of Weetabix. In my judgment, the approach taken at the appeal stage was outside this band. Viewed objectively, given the seriousness of the allegations Mr Mobbs raised (which Mr O'Dwyer acknowledged in his evidence), where a senior employee was subject to allegations of bullying and use of unprofessional language directed at and about colleagues, an employer with Weetabix's resources would have engaged with an appeal process where notes were taken of appeal meetings and would have provided an outcome letter which considered all concerns Mr Mobbs raised on appeal.

94. In reaching this conclusion I am mindful that Mr Mobbs admitted that his experience of Mr O'Dwyer as the Appeal officer was a positive one. The test is not subjective; it is objectively the approach taken by Mr O'Dwyer within a band of reasonable responses of an employer of the size and resources of Weetabix. I conclude it was not and as such the approach taken by Mr O'Dwyer was likely to seriously damage the trust and confidence between Weetabix and Mr Mobbs. Mr O'Dwyer's explanations as to why he adopted this approach do not, in my judgment, provide a reasonable and proper cause for the informal approach taken.

OH referral

95. Finally, I must consider the conduct of the OH referral. I have found that the delays from December to January with the first referral were due to errors and delays by Mr Benham. Mistakes happen; however, as an HR expert, in dealing with a referral for an employee who had been signed off work by a GP, it was Mr Benham's role to understand the OH referral process, or if he had any doubts, check the process. I have found his explanations for the delay confused, inconsistent and afterthoughts; they are either not borne out in fact or simply not credible.

96. Mr Mobbs has identified the last straw event as a misrepresentation of reasons for the OH referral, referring to a meeting with an AXA OH nurse on 5 June 2020 when 'challenging conversations' on return were referenced. Mr Mobbs did not see the full OH referral form until after he had resigned. Therefore, sight of the questions themselves cannot as a matter of chronology constitute the last straw event. I have found that Mr Benham was not transparent in the approach he took with this OH referral. He had assured Mr Mobbs the same approach would be taken as the earlier OH referral, in that Mr Mobbs would know the questions in advance. Mr Benham did not adopt this approach. His explanation that he ticked the box about difficult conversations in reference to questions that were being asked as part of the grievance process is simply not credible. By the time he completed this form the grievance process had concluded. While Mr Mobbs had not had sight of the questions in the form, the AXA meeting on 5 June referred to the questions, which were not as Mr Benham had presented in the meeting.

97. Even allowing for the mistake, the delay falls below the standard of a reasonable employer. In my judgment, Mr Benham's conduct of the OH referral was likely to seriously damage the relationship of trust and confidence between Weetabix and Mr Mobbs.

98. On the evidence before me, viewing my findings of fact objectively, I conclude that Weetabix has breached the term of trust and confidence implied into the

employment contract with Mr Gary Mobbs. As I have concluded Weetabix breached the term, I must determine whether the resignation took place within a reasonable period of time or did Mr Mobbs affirm the contract before resigning.

99. Mr Mobbs was signed off work from November 2019 until his resignation because of the impact on him of the behaviour that was subject to the grievance investigation. He received the appeal decision letter on 6 April 2022. Conversations about the OH referral, which had been instigated due to Mr Mobbs' raising a grievance and being signed off work, were ongoing after the appeal letter. Indeed, it was due to Mr Benham not appreciating he required Mr Mobbs' consent that Mr Mobbs did not sign the form until 16 May and that he did not meet with Mr Benham to discuss the form until 27 May. Mr Mobbs met with AXA on 6 June. All these events underpin the reason Mr Mobbs resigned. Mr Mobbs' resignation letter is dated 10 June 2022, 5 days after the OH meeting. He still had not returned to work. In my judgment Mr Mobbs resigned within a reasonable period of time during which there was no conversation between Mr Mobbs and his employer that amounts to affirmation of his contract of employment.
100. As I have found the resignation took place within a reasonable time, I must decide whether Mr Mobbs' resignation on 11 June 2020 was in response to the breaches of trust and confidence.
101. Mr Mobbs' resignation letter states his reasons for resignation; this accord with the breached I have identified. While the specific wording of the OH referral could not have resulted in Mr Mobb's resignation; Mr Petre's behaviour, the handling of the grievance investigation and the handling of the OH process did. On the balance of probability, I conclude Mr Mobbs resigned in response to the breaches of the term of trust and confidence in the behaviour of Mr Petre, the handling by Weetabix of the grievance process and the handling of the OH referrals and not for some other reason. Therefore, I conclude that Mr Mobbs was constructively dismissed.
102. A remedy hearing will be listed, with an order for disclosure of evidence and listing the issues the Tribunal will determine.

Employment Judge Hutchings

9 January 2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

2/2/2023

NG

FOR EMPLOYMENT TRIBUNALS