



EMPLOYMENT TRIBUNALS

Claimant: Janet Lewis

Respondent: EE Ltd

Heard at: Bury St Edmunds (via CVP)

On: 9 - 12 May 2023
In Chambers: 15 – 16 May 2023

Before: Employment Judge Graham

Members: Mrs L Gaywood and Mr A Hayes

Representation

Claimant: In person
Respondent: Mr K Webster of counsel

JUDGMENT

The unanimous Judgment of the Tribunal is as follows:

1. The Claimant's claim of whistleblowing detriment is dismissed.
2. The Claimant's claims of constructive unfair dismissal and automatically unfair dismissal are dismissed.
3. The Claimant's claims of unauthorised deductions/breach of contract are dismissed.
4. The Claimant's claim under the Working Time Regulations 1998 is dismissed.

REASONS

Claim

1. By way of an ET1 claim filed on 12 August 2021 the Claimant brings claims for detriment resulting from whistleblowing, constructive unfair dismissal, as well as claims for arrears of pay and holiday pay. Within the narrative at paragraph 8.2 of the ET1 the Claimant indicated that she was complaining of constructive dismissal on the grounds of a last straw. The Claimant also referred to sexual harassment, racism, bullying, isolation, fraud, and illegal hour drops. The terms whistleblowing and protected disclosure are used interchangeably below.
2. On 23 February 2022 the Respondent filed their ET3 Response denying all the claims whilst noting that some of the claims remained unclear. By Order dated 15 April 2022 the Claimant was directed to provide additional information concerning any complaint of harassment, direct and indirect discrimination (on grounds of sex or race), victimisation, and whistleblowing. No information was provided in response.
3. A preliminary hearing for case management took place by telephone on 24 May 2022. This was conducted by Employment Judge Quill. During that hearing the Claimant confirmed that whilst she had ticked the box in her ET1 for race she was not pursuing any claim for race or sex discrimination or harassment.
4. The Claimant said that the correct box for her to have ticked in the ET1 would have been for disability. Employment Judge Quill informed the parties that he was not satisfied that the claim included any allegations that the Claimant had a disability or allegations that there was any form of disability discrimination or harassment. The Claimant was informed that if she wished to include such a claim then she would need to make a formal written application. The Case Management Summary sets out in detail the steps that the Claimant would need to complete in order to do so.
5. A Judgment dismissing the claims of race and sex discrimination upon withdrawal was issued on the same date (24 May 2022) and it recorded that the claim as presented did not contain any allegations of disability discrimination or harassment related to disability.
6. The Claimant has made a number of serious allegations against a number of employees and former employees of the Respondent. None of these individuals were called to give evidence. The Tribunal understands that in the region of five of those individuals are no longer employed by the Respondent. No application for an Order under Rule 50 (privacy and restrictions on disclosure) was made. Nevertheless given that those individuals have not had the opportunity to attend the hearing and to give evidence, where appropriate the Tribunal will abbreviate their names by use of their initials. This will provide for a measure of privacy given that this judgment will appear on the register of tribunal judgments which is publicly available.

List of issues

7. The list of issues recorded by Employment Judge Quill in the Case Management Summary of 24 May 2022 are set out below.

8. Time limits / limitation issues

8.1 *Were all of the claimant's complaints presented within the time limits set out in:*

8.1.1 *section 48 of the Employment Rights Act 1996 ("ERA")?*

8.1.2 *section 111 of the Employment Rights Act 1996 ("ERA")?*

8.2 *Dealing with this issue may involve consideration of subsidiary issues including: when the treatment complained about occurred; whether there was an act or conduct extending over a period, and/or a series of similar acts or failures; whether time should be extended.*

8.3 *Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 27 March 2021 is potentially out of time, so that the tribunal may not have jurisdiction to deal with it, subject to consideration of the matters mentioned in the previous paragraph.*

Constructive unfair dismissal

8.4 *Was the claimant dismissed, i.e.*

8.4.1 *was there a fundamental breach of the contract of employment, and/or did the respondent breach the so-called 'trust and confidence term', i.e. did it, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between it and the claimant?*

8.4.2 *did the claimant affirm the contract of employment before resigning?*

8.4.3 *did the claimant resign in response to the respondent's conduct (to put it another way, was it a reason for the claimant's resignation - it need not be the only reason for the resignation)?*

8.5 *If the claimant was dismissed: what was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA"); and, if so,*

8.5.1 *was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the respondent in all respects act within the so-called band of reasonable responses?*

Public interest disclosure (PID)

8.6 *Did the claimant make one or more protected disclosures (ERA sections 43B and 43C to 43H) as set out below?*

8.7 *The alleged disclosures the claimant relies on are as follows:*

8.7.1 **24 August 2019.** *Email to Regional Support Manager ("PA"). This alleged:*

- 8.7.1.1 *Fraud.*
- 8.7.1.2 *Staff exposing genitals to other staff in back office*
- 8.7.1.3 *Drugs being taken by staff both in and out of work*
- 8.7.1.4 *The Claimant's manager "LS" asking the Claimant to send sexual photos (if she failed to meet targets)*

8.7.2 **29 June 2020.** *A phone call to HR which made the same allegations, plus mentioned that action had not been taken since previous email, plus referred to alleged bad treatment suffered by the Claimant since the previous email.*

8.7.3 **8 February 2021.** *A phone call to HR which made the same allegations but supplied more detail of the fraud and theft.*

8.8 *The claimant relies on the follow subsection(s) of section 43B(1) in relation to this alleged disclosure.*

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

[staff members taking customer SIM cards and using the credit to access PlayStation content from home, taking money from the sale of customer trade in phones and selling to a third party company (CEX in Folkestone) adding friends and family numbers to customer broadband accounts to claim the extra data for family. Accessing customer data with no customer in store to use their pay and go SIM cards for new customer deals to get 20% off. Accessing extra money left by customers for the upfront cost of phones and keeping the money for themselves. Taking customer trade in phones and storing customer data on them.]

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

[the legal obligation for the staff to adhere to policy and procedure; staff breaching their contracts and also the customers data. DPA breach GDPR breach, fraud. customer sensitive data was leaked and breached and given to other customers. Taking by deception]

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

8.9 *If the Claimant was dismissed, was the principal reason for the dismissal that the Claimant had made a protected disclosure?*

8.10 *Did the respondent subject the claimant to any detriments, as set out below?*

(Included within this issue are the questions of what happened as a matter of fact and whether what happened was a detriment to the claimant as a matter of law.)

8.11 *If so, for each detriment, was the Claimant subjected to that detriment on the ground that they had made one or more protected disclosures?*

8.12 *The alleged detriments the claimant still require further clarification and information (see orders below). As itemised in response to 15 April 2022 orders, they are as follows:*

- 8.12.1 *Isolated away from working groups on WhatsApp by being taken off,*
- 8.12.2 *Pulled off courses which were to further her own career*
- 8.12.3 *Told to resign*
- 8.12.4 *Had hours reduced without consent*
- 8.12.5 *Been sacked on the spot (as "joke")*
- 8.12.6 *Treated unfavourably for extra hours, for further career progression, for store transfers*
- 8.12.7 *Treated badly in general working life day to day.*
- 8.12.8 *Been subjected to scrutiny by the line manager and staff members*
- 8.12.9 *Been abused sexually, mentally and emotionally due to the disclosures.*

Remedy for unfair dismissal

8.13 *If the claimant was unfairly dismissed:*

- 8.13.1 *Should reinstatement or re-engagement be ordered*
- 8.13.2 *What adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant might still have been dismissed had a fair and reasonable procedure been followed?*
- 8.13.3 *Would it be just and equitable to reduce the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to ERA section 122(2)? If so to what extent?*
- 8.13.4 *Did the claimant, by blameworthy or culpable actions, cause or contribute to dismissal to any extent? If so, is it just and equitable to reduce the amount of any compensatory award, pursuant to ERA section 123(6)?*

Reduction in Hours in September 2018

8.14 *Did the Claimant have a contractual entitlement to work and be paid for 32 hours per week prior to September 2018?*

8.15 *Did the Respondent (manager "LS") inform the Claimant that her hours were reduced to 18 in or around September 2018?*

8.16 *Did the contract permit the Respondent to unilaterally reduce or set the Claimant's hours?*

8.17 *Did the parties agree to a variation of the Claimant's contract?*

8.18 *If the Respondent unilaterally reduced the Claimant's hours, without (at the time) being permitted to do so by the contract, has the Claimant agreed to the variation by her conduct? Alternatively, has she waived her rights under the contract.*

8.19 The Claimant alleges that both her salary payments and holiday pay should be calculated based on the 32 hour week. Thus:

8.19.1 From September 2018 onwards, did the respondent make unauthorised deductions from the claimant's wages in accordance with ERA section 13 and if so how much was deducted

8.19.2 From September 2018 onwards, did the Respondent fail to pay the appropriate amount for holiday pay (and/or in lieu of unused holiday) in accordance with the Working Time Regulations 1998

8.19.3. Did the Respondent breach the Claimant's contract in relation to pay from September 2018 onwards

8.19.4. Did the Respondent breach the Claimant's contract in relation to holiday pay from September 2018 onwards

Remedy

8.20 If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy and in particular, if the claimant is awarded compensation and/or damages, will decide how much should be awarded.

9. The Case Management Summary recorded that the alleged detriments for whistle-blowing still required clarification from the Claimant and she was directed to provide further information. The additional information from the Claimant was not provided until 24 November 2022, however it was incomplete. On 6 February 2023 the Respondent wrote to the Tribunal to apply for an Order that the Claimant provide the information requested with leave for the Respondent to provide an amended Response.
10. On 22 February 2023 the Respondent confirmed that the Claimant had provided some additional information on 18 February 2023 which helped to clarify some of the detriments relied upon, however it applied for a further preliminary hearing to clarify the remainder of the Claimant's claim.
11. On 28 March 2023 the Tribunal notified the parties that Employment Judge Quill had considered the papers and that the Claimant's letter of 18 February 2023 contained answers to the first seven questions and that a preliminary hearing would decide if the remaining answers were clear enough.
12. The further preliminary hearing for case management by telephone took place on 19 April 2023 before Employment Judge Talbot-Ponsonby. By that time the parties had exchanged witness statements and the Respondent conceded that the Claimant's witness statement provided sufficient detail for it to respond to the claims.
13. The Respondent was directed to provide an Amended Grounds of Resistance addressing that additional information by 26 April 2023 together with any supplemental witness statements dealing with the same information. The Claimant was directed to provide a further witness

statement by 3 May 2023 addressing any additional information in the Respondent's Amended Grounds of Resistance and supplemental witness statements, as well as setting out the "last straw" which triggered her resignation on 13 July 2021.

14. The Respondent submitted an Amended Grounds of Resistance dated 24 April 2023 which conceded that the Claimant had made the following three protected disclosures:
 - 14.1 On 24 August 2019 the Claimant made a protected Disclosure to Regional Support Manager, PA. She alleged indecent exposure and drug use in the workplace and sexual coercion by her line manager.
 - 14.2 On 29 June 2020 she made a second protected disclosure in a telephone call to HR, repeating these allegations and complaining that no action had been taken since her conversation and emails with PA in August 2019.
 - 14.3 On 8 February 2021 she made a third protected disclosure in a telephone call to HR re-stating the same allegations and giving more information as to alleged theft and fraudulent activity taking place in-store.
15. The Claimant provided an additional witness statement dated 2 May 2023 dealing with the "last straw" and the Respondent's Amended Grounds of Resistance.
16. On the first day of the final hearing on 9 May 2023 the Respondent confirmed that it still did not concede that the Claimant had made protected disclosures in respect of fraud or theft.
17. It also appeared to the Tribunal that some of the alleged detriments (paragraphs 8.12.1 to 8.12.9 of the case management summary) still required some clarification despite the attempts between the parties to produce an agreed list. For example, it was noted that some of the alleged whistle-blowing detriments appeared to pre-date the date of the first alleged protected disclosure of 24 August 2019, and that detail was lacking. The parties were advised that it would be difficult for the Tribunal to determine the issues if it did not know what they were.
18. The parties were therefore asked to produce a clearer list of the issues to be decided by reference to the list of alleged detriments at paragraphs 8.12 to 8.12.9 of the Case Management Summary of 24 May 2022. The Claimant was asked to provide the dates of the alleged acts and the name of the alleged perpetrator as this would assist the Tribunal in determining whether the complaints had been brought in time. The Claimant was advised that this was not an opportunity to widen the claim, nor to add additional complaints but rather to help put dates to allegations already raised. The Respondent was asked to review this list and to provide comments for review on the second day of the hearing. This was duly provided and is set out below.

Alleged detriment, date, and perpetrators	Respondent's comments
<p>8.12.1 Isolated away from working groups on WhatsApp by being taken off, Dates of incidents:- 8th April 2018, 11th April 2018, 24/08/2019, continuous 2 more times through until 2020 when I left the store to go to Ashford.</p> <p>WhatsApp has encrypted the chat from 2018 to 2020 no longer visible to obtain exact dates after previous.</p> <p>People indicated:- LS, BP, PA</p>	<p>This was previously pleaded as the removal from the WhatsApp group on 24.08.19</p> <p>This is coincidentally the date of the First Protected Disclosure</p> <p>It is submitted that it is highly unlikely that the Claimant was removed from this group on exactly the same day, although not impossible – however this will be a finding of fact for the Tribunal to make on the balance of probabilities.</p>
<p>8.12.2. Pulled off courses which were to further her own career</p> <p>Dates of incidents:-autumn 2018, 2020</p> <p>People indicated:-LS, PA, KR, MB</p>	<p>The courses are unparticularised. This was previously pleaded as the Aspire programme.</p> <p>This is the first time individuals other than LS have been alleged to be responsible for the Claimant's removal from courses. The information is unparticularised.</p>
<p>8.12.3. Told to resign</p> <p>Dates of incidents:-13/12/2018, April 2019, June 2019, August 2019, November 2019</p> <p>People indicated:- LS</p> <p>WhatsApp sent to "T" (regional manager) stating LS was forcing my hand at resignation</p>	<p>The information is unparticularised. The Claimant has provided no evidence of the Text message the claimant to have sent to "T" nor the date of the message allegedly sent.</p>
<p>8.12.4. Had hours reduced without consent</p> <p>Dates of incidents:-September 2018 another incident close to 2019 November/ December due to given hours and promise to keep them but took them away and made everyone battle for them all.</p> <p>People indicated:- LS</p>	<p>The information is unparticularised. The Respondent avers that the Claimant's hours were reduced in September 2018.</p> <p>This will be dealt with in cross examination and in the Respondent's evidence. The information is unparticularised.</p> <p>This is a new suggestion of further reductions in hours. Close to 2019</p>

	<i>November and December does not indicate dates of detriments.</i>
<p>8.12.5. <i>Been sacked on the spot (as "joke")</i></p> <p><i>Date of incidents:-timescale is 2017 December the 29th, September 2018, July 2019 December 2019.</i></p> <p><i>People indicated:- LS, AM</i></p>	<i>The information is unparticularised. AM did not have the authority to dismiss the claimant. This is the first suggestion that he purported to do so. The remaining allegations will be dealt with in cross examination.</i>
<p>8.12.6. <i>Treated unfavourably for extra hours, for further career progression, for store transfers</i></p> <p><i>Dates of incidents- 2018, 2019,2020 new store Ashford</i></p> <p><i>People indicated:- PA, KR, LS, PA, SS</i></p>	<i>The information is unparticularised.</i>
<p>8.12.7. <i>Treated badly in general working life day to day.</i></p> <p><i>Dates of incidents:-2018-2020 Folkestone, 2021 sick leave before leaving fully.</i></p> <p><i>People indicated:- AM, LS, BP, SS</i></p>	<i>The information is unparticularised.</i>
<p>8.12.8. <i>Been subjected to scrutiny by the line manager and staff members</i></p> <p><i>Date of incidents:-December 2019, January 2020, 2021, continuous even after leaving. Time scales not precise due to the extensive scrutiny suffered.</i></p> <p><i>People indicated:- LS, AM, BP, CR, MH, RB, SS</i></p>	<i>The information is unparticularised.</i>
<p>8.12.9. <i>Been abused sexually, mentally and emotionally due to the disclosures.</i></p> <p><i>Dates of incidents:- 2019 onward to 2020 when I left 20/05/2021</i></p> <p><i>People indicated:- LS, AM, CR, PA, SS</i></p>	<i>The information is unparticularised.</i>

19. The list of 10 May 2023 helped to clarify some of the dates of some of the allegations, however some detail remained lacking, for example with respect to complaints of (i) being treated badly in general working life day to day; (ii) being subjected to scrutiny by the line manager and staff members; and (iii) being abused sexually, mentally and emotionally due to the disclosures.
20. The Respondent pointed out that the Claimant appeared to be attempting to re-plead her case, that this was the fourth opportunity for the Claimant to specifically identify the particulars of those detriments, and that the paucity of specifically identified detriments suffered at specific times and by whom would have a bearing on the Tribunal's ability to make findings of fact in relation causal links between any specific detriments established by evidence and protected disclosures previously made.
21. The Tribunal therefore proceeded on the basis of the claims and issues as they could be ascertained from the ET1 claim form, the Case Management Summary, the Claimant's further information of 18 February 2023, her two witness statements, and the above table. The Tribunal considered that it was unlikely that further particularisation would provide any greater clarity and that it was in the interests of justice for the hearing to proceed. Moreover, there would be significant unfairness to the Respondent in attempting to have the claims particularised a fifth time part way through a hearing.

Application for CVP hearing

22. The first day of hearing was due to commence at 10am on Tuesday 9 May 2023. The Claimant sent an email to the Tribunal in which she indicated that she would not be in attendance in person that day and requested that the hearing be converted to CVP to take place the following day. The Respondent was in attendance. The Tribunal directed that the Claimant join the hearing via CVP at 10:30am which she was able to do and she raised no issues about doing so.
23. The Tribunal heard the Claimant's application to convert the hearing into a CVP hearing on grounds of her health, specifically the impact on her back of travelling from her home in Kent to the Tribunal venue in Bury St Edmunds, a return journey which would take many hours. The Claimant also made reference to breast feeding her young baby. No independent medical evidence was provided.
24. The Respondent objected to the application on grounds that the hearing had been listed for some time, no medical evidence had been provided, and the Respondent had made arrangements for an in person hearing. The Claimant responded that she had only recently been diagnosed with one of the medical conditions.
25. After considering the respective representations the Tribunal Ordered that the hearing be converted into a hybrid whereby the parties would join via CVP and the panel would attend in person in the tribunal. This was on the

basis that it would be in furtherance of the overriding objective and the interests of justice, as well as for the need for the matter to progress to a timely hearing. The Claimant was able to take part online with no issues with her connection. The Respondent counsel's connection only dropped very briefly for a few moments and the hearing was able to proceed without any interruption.

Witness order

26. The Respondent had previously applied for a witness order with respect to Mr Michael Bousquet to compel his attendance at the hearing. The Tribunal was provided with a witness statement from Inderpreet Cheema dated 4 May 2023 setting out the Respondent's attempts to contact the witness. Mr Bousquet subsequently confirmed that he would be available on 11 May 2023, and as such the application was not pursued and the Order was not made.

Disability discrimination

27. When asked if the Claimant had any preliminary issues to raise she indicated that she felt that the disability discrimination aspect of her claim had dropped out. The Claimant was reminded of the Case Management Summary of Employment Judge Quill dated 24 May 2022 confirming (para 1.3 of Applications) that if she wished to amend the claim to include complaints of disability discrimination then she would need to make an application.

28. The Claimant confirmed that she had not made an application as she did not know how to. It was clear that the Case Management Summary set out in detail the steps that the Claimant would need to follow to do so. Accordingly, the Tribunal advised the parties that as there had been no application there was no disability discrimination complaint for the Tribunal to consider.

Procedure

29. The panel were provided with an agreed bundle of 469 pages (numbered to 427) and considered those documents to which it was referred by the parties. References to page numbers are references to that bundle of documents. A reading list, a chronology and a cast list were provided by the Respondent.

30. In the course of the hearing the Tribunal heard oral evidence from the Claimant. The Claimant represented herself.

31. For the Respondent the Tribunal heard oral evidence from Michael Bousquet, Louise Bishenden and Tahir Malik. The Respondent was represented by Mr Keith Webster of counsel.

32. Breaks were taken after every 50 minutes of witness evidence in order to support the Claimant. The witness evidence was completed shortly after 2pm on the third day and the Tribunal gave the parties until the following day to prepare their closing submissions. Mr Webster, for the Respondent,

gave his oral submissions at 10:30am and helpfully provided his written speaking note to the Claimant and Tribunal.

33. The Claimant was given from 11:30am until 2pm to further work on her closing submissions. At 2pm the Claimant informed the Tribunal that she had prepared most of her submissions however they were incomplete. In order to ensure that the Claimant was able to make her full submissions the Tribunal gave the Claimant an additional hour until 3pm to finalise those submissions which she was able to do. Mr Webster did not object to that additional time when his views were sought. The Claimant delivered her submissions orally and comprehensively, making reference to the evidence and some of the statutory provisions and responding to relevant parts of the Respondent's submissions.
34. The Tribunal retired to make its deliberations shortly after 3.32pm on the fourth day.

Findings of fact

35. From the information and evidence before the Tribunal it made the following findings of fact. We made our findings of fact on the balance of probabilities taking into account all of the evidence, both documentary and oral, which was admitted at the hearing. We do not set out in this judgment all of the evidence which we heard but only our principal findings of fact, those necessary to enable us to reach conclusions on the issues to be decided.
36. Where it was necessary to resolve conflicting factual accounts, we have done so by making a judgment about the credibility or otherwise of the witnesses we have heard based upon their overall consistency and the consistency of accounts given on different occasions when set against any contemporaneous documents. We have not referred to every document we read or was directed or taken to in the findings below, but that does not mean it was not considered.
37. The Claimant commenced employment with the Respondent on 23 October 2017 as a Sales Advisor. The Respondent is a telecommunications business which provides mobile and broadband services to consumers and businesses in the UK. The Respondent is part of the British Telecommunications (BT) Group. Prior to joining the Respondent, the Claimant had worked in this field for a considerable period having worked previously for Vodafone for in the region of nine years and briefly at Carphone Warehouse.
38. The Claimant's employment contract with the Respondent confirmed that she would work an average of 30 hours per seven day week dependent upon shift pattern [**bundle page 67**]. The contract contains the following term:

"Changes to your employment terms

To reflect the changing needs of our business it may be necessary for us to make changes to and/or introduce, new terms and conditions of employment, company policies and procedures, discretionary terms and other benefits that we provide to you, this can include

- *Contractual terms including hours, shift patterns/rotas, location, duties, accountabilities, job title, reporting lines, working hours and arrangements*
- *Reward arrangements including, grade, commission schemes, bonus plans, pensions, car schemes, healthcare and benefits policies and procedures*

We can make changes to your terms and conditions as and when required and by accepting this offer you're agreeing to such changes being made

Any changes we make will either be confirmed in writing or by general communication to everyone affected giving four week's notice, where reasonably possible." [bundle page 82].

39. The Claimant did not sign her contract by hand, nevertheless the Tribunal finds that she accepted the terms and conditions by her conduct in working pursuant to the contract up to the date of her resignation on 13 July 2021. During cross examination the Claimant accepted that the Respondent had the power to vary the contract with the appropriate notice in writing.
40. The contract also refers to the other policies to which the Claimant was subject including the sickness absence policy, the disciplinary policy, as well as the grievance policy. The Respondent also has a whistleblowing policy and also operates a "Speak Up" hotline where staff can inform the business of any concerns or wrongdoing. The Claimant had access to these policies which were available from the Respondent's Human Resources department and they were also available on the Respondent's intranet.
41. The Respondent also operates a development programme called Aspire which staff may apply to join to gain promotion.
42. The Claimant joined the Folkestone store after completing a period of induction in Hatfield and training at a "buddy store" in Maidstone in 2017.
43. In December 2017 LS became the store manager of the Folkestone store.
44. The Claimant accrued significant absence due to sickness and other reasons during her time with the Respondent. The extract provided by the Respondent records five separate instances of sickness absences in the period between the Claimant joining the Respondent in October 2017 and the end of that year. The extract also records twelve separate absences from the beginning of January 2018 to the end of June 2018.
45. The Tribunal was only provided with a selection of copies of return to work interviews and these were from the first half of 2018. The reasons for the Claimant's absence include hospital appointments and sickness, work related stress, anxiety and depression, toothache and dental appointments. Some of the return to work interviews record child care as the reason for the Claimant's absences.
46. On or around 8 September 2018 the Claimant's hours decreased to 18 hours per week. During her employment with the Respondent the number of hours she worked varied. The Respondent's job history records for the

Claimant [**bundle pages 84-85**] show that these hours varied throughout her time with the Respondent, increasing to 40 hours per week in August 2018 before reducing to 18 hours per week in the months leading up to the end of her employment.

47. On 13 April 2019 the Claimant started to raise queries with the Respondent's Human Resources department via telephone about her entitlement to emergency leave. These calls are logged and recorded into a system which ascribes a case number and creation date with details of the call and advice given as well as other details. The Tribunal was referred to several documents which appear to be case notes produced by the system used by Human Resources. The Claimant has not challenged the accuracy of those case notes during this hearing.
48. The case note for the 13 April 2019 call records that the Claimant said "*I am aware of some things that are happening, which are unethical - how do I report this as I have informed my manager a few times now and nothing has happened.*" The Claimant was advised of the Respondent's Speak Up line and was provided with the telephone number.
49. The Claimant says in her witness statement that she attended an interview with British Telecom ("BT") on 20 May 2019 as she wanted to leave the Respondent. The Claimant alleges that the interview went well and that she had the best feedback on the day. The Claimant alleged that her career path may have been blocked because she was not given feedback despite being told that it would be provided and having requested it. The Claimant attributed this to an act on the part of the Respondent. The Claimant said that this has happened twice but she was not sure of the date of the second interview.
50. In cross examination the Respondent asked the Claimant why she believed that the Respondent would "scupper" this interview if they wanted to be rid of her. The Claimant responded that it was because BT had said that they would provide feedback but hadn't done so. It was put to the Claimant by the Respondent that she had no evidence to support the allegation and that this was no more than paranoia and a hunch, to which the Claimant replied that she had no evidence and "*it doesn't stand I guess.*"

First protected disclosure

51. On 24 August 2019 the Claimant telephoned the Respondent's Regional Commercial Manager PA and raised concerns with him. The Claimant alleged:
 - (i) her manager LS had asked a colleague (AM) to show her his genitals,
 - (ii) drugs were being used,
 - (iii) LS had told her that if she did not deliver on her KPIs (key performance indicators) she would have to show him a picture of her breasts.
52. The Claimant alleges that this was a protected disclosure, and the Respondent concedes that it was.

53. PA emailed the Claimant later that day (4:32pm) recording what she had told him and said that these were very concerning allegations which had to be dealt with in a timely manner. The Claimant was asked to provide the dates and times of the incidents so that CCTV and audio could be downloaded. The Claimant was also asked for any text and WhatsApp messages and details of witnesses who would support the allegations.
54. The Claimant's response to PA at 7:30pm that evening contained none of the information that he had requested to advance his investigation, nor did she address any of the specific allegations. The Claimant responded only in very general terms about not wanting anyone to lose their jobs and wanting situations to be pointed out formally to improve communications and professionalism and for people to be treated fairly. The Claimant referred to not wanting to suffer repercussions and she said that she had already been taken off groups and isolated. The Claimant concluded "*I do not wish to make this a formal complaint, but more serve an insight into what is happening for your own knowledge. I believe the repercussions to be worse than the actual incidents now.*"
55. The Tribunal notes that the email from PA to the Claimant recording her allegations did not contain any reference to fraud or theft. The response from the Claimant to PA that evening did not seek to correct him that she had also mentioned fraud or theft in her call to him earlier that day. Accordingly, the Tribunal finds on the balance of probabilities that the Claimant did not mention fraud or theft during the telephone call to PA that day.
56. In her witness statement and in cross examination, the Claimant said that she was forced to retract her statement because LS (store manager of Folkestone) told her that PA had called him and divulged her concerns and that she started to be treated badly as a result by both LS and AM who told her to drop it and that no one would listen to her. In cross examination the Claimant said LS told her the following day that PA had called him. The Tribunal finds that this could not have happened as described. The conversation between the Claimant and PA and their email exchange all occurred on the same day on 24 August 2019 within a matter of a few hours. The Claimant could not therefore have retracted her concerns because of alleged behaviour which had yet to happen.
57. The Claimant alleges in her witness statement (paragraph 32) that she then called the Respondent's Human Resources on 28 August 2019 to raise the concerns over the telephone and to get advice on what to do. The Claimant says that she told Human Resources that LS was encouraging a team member AM to expose his genitals in the back office. The Respondent put it to the Claimant in cross examination that she was reinventing and embellishing evidence to which the Claimant said "*No, I am telling you how it was.*" The Tribunal notes that the Claimant contacted Human Resources on many occasions during her employment and case notes have been produced and included in the hearing bundle which record the contents of those conversations. There is no case note or record for the alleged call on 28 August 2019 and the Claimant did not challenge this during her cross

examination of the Respondent's witnesses. Given the lack of any corroborative evidence the Tribunal cannot find that the Claimant made the telephone call as alleged.

58. Throughout her employment the Claimant raised issues with Human Resources about her pay. The Claimant first contacted Human Resources about her pay on 25 September 2019 where she said that she had only been paid £90 and she said that her absences had not been recorded properly.

59. On 18 December 2019 the Claimant sent a message to PA as LS was due to leave the Respondent. The Claimant offered to forgo £3,000 of her salary for LS to retain him and she asked to be made senior advisor and transferred to the Ashford store. The text of the Claimant's message is as follows:

"Heyyy,

Food for thought.

I'm so confident we can turn this store around with "LS" that I'll be willing to sacrifice what you need to pay him out of my own wages to keep him.

He wants 33 give him £3k off Mine a year.. give me senior and we will turn this place around.

I have the experience of a manager, a regional engagement manager and also many legal and business perspectives that are viable options to progress further for the store.

Let me know what ya think but I know from working in franchise it's not going to be the fluff and love he expects.

Also please let me go turn ashford around [two smiling emojis] at some point. I'm ambitious and rare to make stuff happen."

60. The Tribunal finds this to have been an unusual offer for the Claimant to have made given the serious allegations that she had already made about LS, as well as the allegations she would later make in her grievance about his conduct prior to her message to PA. The Claimant had already alleged that LS demanded naked photographs from her if she failed to meet her KPIs, and that he had asked AM (assistant store manager) to show his genitals in the back office. The Claimant would later allege that LS had unilaterally reduced her hours from 32 to 18 per week in September 2018, that he made offensive comments about her and her children and had made further inappropriate comments about sacking her, trying to force her to resign, and making light of domestic abuse she said that she had suffered.

61. In cross examination it was put to the Claimant that at that time her salary was in the region of £12,000 therefore her offer would have represented a quarter of her annual salary at a time when she now says she was desperately short of money. In response the Claimant suggested that she was a people pleaser, that the offer had been made to LS due to her empathy as they had both suffered from domestic abuse and that she had felt sorry for him and that she also wanted to turn the store around. Later

in her evidence the Claimant suggested that the offer was made based on the salary she would have received as senior advisor which was higher.

62. The Claimant was also cross examined by the Respondent as to her relationship with LS. The Claimant was asked when her relationship with LS began, to which she denied that there had been a relationship with LS. The Claimant said there had never been a relationship with LS. The Respondent put it to the Claimant that by the time LS left the Respondent she was in some sort of relationship with him. The Claimant denied that she was, she said that it was an empathetic situation and not a close relationship.
63. The Respondent also referred to the witness statement of Michael Bousquet (store manager of Ashford) where he said that the Claimant admitted to him that she had been in a relationship with LS, as well as the notes of grievance interviews with colleagues who had also said that they were in a relationship and had been seen together. In one interview LS admitted that he had been in a relationship with the Claimant and had moved in with her briefly but had returned to his partner. The Claimant denied that there had been a relationship, but said that he had been to her house once when he had been kicked out from home where he had been sleeping on the floor, but there was nothing in it as her brother had been there at the time.
64. As regards the offer to forgo her salary for LS, the Claimant said that she hoped that it would change him and make him more professional. The Claimant also referred to suffering from ADHD and being unable to regulate her emotions. The Tribunal found the explanation to be implausible and the Claimant's answers to contain inconsistencies. The Tribunal further notes that no medical evidence was provided from the Claimant as regards the alleged medical condition. The Tribunal finds the offer to forgo £3,000 to have been at odds with the allegations that the Claimant makes about LS.
65. The Respondent put it to the Claimant that she made the offer to LS as she wanted to keep him in the relationship but when she couldn't keep him she then decided to "dob him in." The Claimant said this was definitely not the case, it was a last ditch attempt by her to maintain the store and to turn things around, that LS did not want to leave and it was only money preventing him from staying. The Claimant said that the relationship had been platonic, and she denied that she wanted to be with him then "grassed him up."
66. In any event PA (Regional Commercial Manager) did not act upon the Claimant's offer. LS left the Respondent in December 2019 or early January 2020 although he returned to work for the Respondent at some later date.
67. During cross examination it was put to the Claimant that she must have been happy with her employer on 18 December 2019 given her offer, and that she continued to have trust and confidence in the Respondent. The Claimant replied that she had been unhappy and that there was no trust and confidence due to the fraud and that she had seen a lot happening.

68. The Respondent put to the Claimant that what she was saying was that trust and confidence had gone by this time. The Claimant said that it was partially gone but the full trust and confidence had not gone. The Claimant was specifically asked whether the trust and confidence had been destroyed, to which she replied partially and not fully.

Misconduct hearing

69. On 8 February 2020 the Claimant was issued with a Record of Conversation (“ROC”) following a misconduct hearing where she was found to have accessed her own account on Respondent’s IT system Excalibur. The Respondent’s witnesses gave evidence that an ROC is not a disciplinary sanction in itself but it may lead to disciplinary proceedings for repeated conduct.

70. The Claimant had previously signed a Declaration on 8 February 2019 confirming that she understood the Respondent’s policies with respect to accessing the Respondent’s systems, and that under no circumstances are retail staff permitted to access their own accounts or those belonging to their colleagues, friends, or family members. The Claimant could have been issued with a more severe sanction for gross misconduct however the Claimant said that she had suffered a bereavement at the time of signing the Excalibur declaration, so she was not focussed on her job.

71. It was put to the Claimant in cross examination that if the Respondent had wanted her out at that point, they could have removed her for this incident as it amounted to gross misconduct however she had been given an ROC instead. The Claimant admitted that it could have been a gross misconduct and she did not dispute that the Respondent had acted with clemency on that occasion.

72. The Claimant contacted Human Resources on 20 February 2020 to state “*I am concerned about another colleague that used to work at my store who may potentially have stolen devices before he left and has accessed customers data – I don’t want to email RM as they wont [sic] him back in the store shall I email Ian.*” The advice from Human Resources was that they would not normally advise emailing the Head of Stores but the Claimant should but as this was very serious the Claimant should email everything she knows so that he could make an informed choice. There is no evidence that the Claimant ever did so.

73. It was put to the Claimant in cross examination that by this time she had still not provided information about the alleged fraud and thefts. The Claimant said that she had spoken to Human Resources and Occupational Health. The Respondent put to the Claimant that she still had not provided the specific information to the Respondent but was rather still looking who to go to with the information. The Claimant said that she had later told Mr Bousquet.

Move to Ashford Store

74. The Claimant transferred to the Ashford Store in February 2020 after she had directly approached the store manager Michael Bousquet who attended these proceedings as a witness. Mr Bousquet's evidence was that it was unusual for staff from other stores to approach a store manager in this way to discuss a transfer. Mr Bousquet confirmed in his evidence that prior to the Claimant's transfer he had been informed that she could be difficult to manage mainly due to her attendance. This information came from the then Folkestone store manager who replaced LS, PA (Regional Commercial Manager), and also SS a senior sales adviser who also wished to transfer from the Folkestone to the Ashford store at that time.
75. Mr Bousquet said that he was also informed by the acting manager of the Gravesend store that the Claimant had been in a relationship with her former store manager LS. Mr Bousquet said that he discussed some of these issues with the Claimant and she confirmed to him that she had been in a relationship with LS. Mr Bousquet says that he treated this as no more than hearsay. None of the information supplied to Mr Bousquet appears to have negatively influenced him against the Claimant as she transferred to his store later that month.
76. Mr Bousquet was clear in his evidence that the Claimant said that she had been working 18 hours at the Folkestone store which he had agreed to honour and that she did not request an increase. Mr Bousquet said that the Claimant informed him that she was expecting a large pay-out of £100,000 from Vodafone and as such her hours did not appear to concern her. It was Mr Bousquet's evidence that the Claimant never requested to increase her hours but had asked to work three shifts per week instead of four which led to her losing one hour's pay per week as she would save money from not travelling to work on a fourth day. This evidence was not challenged by the Claimant in cross examination, and we accept Mr Bousquet's evidence in this regard.
77. The Claimant joined the Ashford store on 28 February 2020 however she soon started to have frequent periods of sickness absence. The Claimant was off work for most of March 2020 due to experiencing COVID symptoms or having been advised to self-isolate. Mr Bousquet said that the Claimant only worked in the region of six weeks in the Ashford store for that year.
78. In his witness statement and in his oral evidence to the Tribunal, Mr Bousquet said that he got on well with the Claimant whilst she was at work. Mr Bousquet said that he found the Claimant to be a good sales person who got on well with her colleagues, however some of those colleagues would become frustrated at covering her work during her absences as well as meeting store targets. The Claimant cross examined Mr Bousquet and asked whether he had ever found her to have acted inappropriately and did he ever find her communication threatening? Mr Bousquet responded that he had not done so.
79. Mr Bousquet in his witness statement (paragraph 61) said that he recalled that the Claimant had informally told him that she thought that there may have been fraudulent activities in other stores however she provided no proof or detail and did not raise this formally. Mr Bousquet's evidence in

cross examination was consistent with this, he recalled the Claimant mentioning that someone had taken a phone and brought it back and that the Claimant may have mentioned Folkestone and Dover stores and possibly Bluewater but he could not be 100%. The Claimant did not press him any further on this point in cross examination.

80. The Claimant continued to raise queries with Human Resources about her pay. On 30 March 2020 the Claimant contacted Human Resources to say that her wages were short as her store manager had recorded her as AWOL even though she said that he knew the reason for her absence and he was now demanding a sick note.
81. The Claimant again contacted Human Resources on 24 April and 27 April 2020 about her pay and said that she had wrongly been recorded as having two weeks unpaid leave.

Second protected disclosure

82. The Claimant alleges that on 29 June 2020 she made a telephone call to Human Resources which repeated the allegations she had previously made to PA on 24 August 2019. The Tribunal was not provided with any record of this telephone call but the Respondent has conceded that it was a further protected disclosure, save that it did not contain any allegations of fraud or theft.
83. The Claimant commenced a fresh period of sickness absence from 30 June 2020. On 6 August 2020 Mr Bousquet telephoned the Claimant to discuss her sickness absence. The Claimant complained that she had not been paid for a week at the end of June and that she was *“having the piss taken out of her”* and that historically *“I don’t take time off.”* The Claimant complained that LS had previously reduced her hours from 32 to 18 and that her application to join the Aspire development course had been declined. The Claimant said that she had raised this with the regional manager however it had not been satisfactorily addressed. The Claimant said that she had been referred to Occupational Health a year earlier but had heard nothing from it. Mr Bousquet agreed to refer her again. The Tribunal notes that no referral was made for the Claimant.
84. On 11 August 2020 Mr Bousquet made a further telephone call to the Claimant to discuss her absence and he notified her that she would be invited to a Stage 1 Sickness Absence Meeting to take place on 21 August 2020. By this time the Claimant already exceeded the triggers for this meeting. Mr Bousquet’s evidence is that during the call the Claimant did not contend she was treated worse due to having made any protected disclosures.
85. The Stage 1 Sickness Absence Meeting took place on 1 September 2020 after having been rescheduled three times at the Claimant’s request as she had been feeling unwell. The meeting was chaired by DG the manager of the Bluewater store. The notes of the meeting record a comprehensive discussion with the Claimant about her situation. The main concerns raised by the Claimant concerned her feelings of not being supported, difficulties

with childcare, and being overlooked for progression and not having the opportunities to develop. The notes do not record the Claimant as saying that she was being denied career progression due to having made disclosures, rather she appeared to attribute it to issues with her childcare. The Claimant also made reference to undertaking a degree in business and law at that time.

86. When specifically asked if she would like to return to the Ashford store and would she like more than 18 hours, the Claimant responded that she was happy with the store but there was no room to grow. The Claimant did not respond to the question about increasing her hours. Alternative stores were suggested to the Claimant however she rejected these due to childcare.
87. DG made a number of recommendations to the Claimant about steps she could take to progress with the Respondent. The outcome letter was sent to the Claimant 17 September 2020 and she was not issued with any sanction. The Claimant was reminded of the availability of the Respondent's Employee Assistance Programme (EAP) and Rehab Works Counselling. The Tribunal finds the contents of the notes of the meeting, together with the outcome letter to have been a positive attempt by the Respondent to provide support to the Claimant however the Tribunal also notes that a referral to Occupational Health was still not made after this meeting.
88. On 15 October 2020 the Claimant contacted Human Resources to report that someone would be returning to the store where she worked whom she had made a complaint about regarding theft as they had taken phones from the store and sold them. The Claimant said she had raised this before but had received no response. The Claimant was advised to raise this with Speak Up and also BT Security and she was provided with the telephone numbers.
89. The Claimant went on sick leave again on 2 December 2020 and she contacted Human Resources to say that she had a fit note for a one month and that she felt that there was insufficient support within the business. The Claimant said that she was meant to be referred to Occupational Health but had heard nothing and that she had reported fraud but there had been no consequences on the individuals.
90. The notes of the call to Human Resources record that the Claimant specifically stated that she had been turned down for the Aspire course due to her health and that her hours were reduced without her consent. The Claimant was advised to speak to EAP and that Speak Up had already been informed about previous concerns. The Claimant was advised to speak to her regional manager to raise concerns.
91. On 8 December 2020 the Claimant attended a meeting with Mr Bousquet and they agreed a return to work date for later that week on a phased return. Mr Bousquet informed that the Claimant that once she returned should her performance be good then she could still pursue a more senior role through the Aspire course in the future.

92. The Claimant remained off sick and met with Occupational Health on 2 February 2021. The subsequent report indicates that the Claimant was absent due to a mental health condition and that she had a history of a condition affecting her heart. The Claimant reported symptoms of low mood, disturbed sleep, feeling anxious and worried. The report recorded that the Claimant remained unfit for work in any capacity and should be reviewed in 6-8 weeks' time after she had commenced counselling which was awaited. No reasonable adjustments were recommended.
93. In his witness statement Mr Bousquet said that he recalled a conversation with the Claimant in early 2021 where she said that she wished to reapply for the Aspire course and that he was keen to support her. Mr Bousquet says that the Claimant sought to go straight to assistant manager from sales advisor rather than becoming a senior advisor first. Mr Bousquet says that he told the Claimant that she would need to speak to the acting regional manager about the application as she wished to skip a stage, however he later heard from KM (Canterbury store manager and Regional People Lead) that the Claimant had been unsuccessful in her application.
94. The Claimant cross examined Mr Bousquet on the issue of his career progress and put to him that he had not progressed quickly because he had previously made disclosures. In response Mr Bousquet confirmed that he had made a disclosure involving PA and they had not spoken for a number of years, however he denied that his career progress with the Respondent was held back because of that. Rather Mr Bousquet said he had been a manager before he joined the Respondent at a lower grade and he felt that he was held back because he had been a manager outside the Respondent, rather than because he had made a disclosure.
95. In cross examination the Claimant asked Mr Bousquet whether he felt that he had been under scrutiny whilst at the Ashford store. Mr Bousquet replied "probably." In re-examination Mr Bousquet clarified that the scrutiny related to the pressure in sales and meeting targets rather than being linked to having made any disclosures.

Third protected disclosure

96. The Claimant alleges that on 8 February 2021 she made a telephone call to Human Resources which repeated the allegations she had previously made to PA on 24 August 2019 and to Human Resources on 29 June 2020. The Tribunal was not provided with any record of this telephone call but the Respondent has conceded that it was a further protected disclosure and that it supplied more detail of the fraud and theft. In cross examination the Claimant was asked what details of theft and fraud she had provided to Human Resources in her call. The Claimant responded that she said that within the Folkestone store customer phones that had been traded in had been stolen, sim cards had been stolen, and the proceeds had been used to obtain points and vouchers. The Respondent pointed out to the Claimant that she only made this call three months after LS had left the Respondent.
97. The Claimant attended a meeting with SM (Store Manager from Eastbourne, and Acting Regional People Lead) on 13 February 2021 to

discuss her continuing absence. This was because Mr Bousquet was still feeling unwell on his return to work after suffering from COVID.

98. The notes of the meeting record that the Claimant indicated that she would be off work for a further four weeks and that she may need to sit down at work due to a heart condition. The Claimant told SM that she had been suffering from work related stress and anxiety and that she agreed to email SM details of what had happened when she felt able. The Claimant said that she had experienced childcare issues due to lockdown which she felt had not been addressed and this had caused her stress when trying to work and deal with childcare. The Claimant said that she had asked to work 9 - 3 but had been put on different shifts. The Tribunal was not provided with any documents showing that the Claimant subsequently emailed SM.

Claimant's grievance

99. On 4 March 2021 the Claimant submitted a formal grievance. This was a highly narrative ten-page document consisting of allegations going back to the first few days when the Claimant joined the Respondent in 2017 up to the present time. The grievance contained many serious allegations against several of the Respondent's staff. In summary the grievance alleged:

- 99.1 During training in Hatfield a colleague had followed her, pushed her into a hotel room and tried to initiate sex.
- 99.2 During the induction training in the Maidstone store a member of staff had openly discussed sexual behaviours and that she had been humiliated in front of customers by other staff.
- 99.3 JK sent the Claimant a SnapChat image of his genitals.
- 99.4 JK sent a colleague home early, pushed a tote box in front of the back office door and suggested that he and the Claimant "do sexual things together."
- 99.5 During a Christmas party one evening JK told the Claimant that he would go to her hotel room and show her a good time causing the Claimant to change her hotel booking and then sleep in her car.
- 99.6 On the same evening another male colleague RB kissed the Claimant and said that he would "*push me down the alley and fuck me if no one else was there.*"
- 99.7 The Claimant's line manager LS had called Human Resources and tried to have the Claimant's offer of employment withdrawn before she started work due to gossip he had heard about her.
- 99.8 Insufficient support provided to her by LS after she had come to work suffering from injuries from domestic abuse from her partner.
- 99.9 LS had told the Claimant to sign her resignation, had said "*shall I beat you up as it is the only way you will listen*" and "*no other manager will take you as your name is mud in this region.*"
- 99.10 LS reduced the Claimant from 32 to 18 hours per week.
- 99.11 LS forced the Respondent to remove the Claimant from the Aspire development course due to her depression.
- 99.12 Various allegations of fraud and theft against numerous named members of staff regarding pay and go SIM cards, stealing phones that customers had traded in, and obtaining data boosts.

- 99.13 LS made AM expose his genitals in the back office.
- 99.14 AM and a colleague from the Dover store were buying and selling drugs to smoke on breaks at work and before work.
- 99.15 LS and BP had taken the Claimant off work groups and regional groups.
- 99.16 LS told the Claimant to leave the business and told her that she was sacked.
- 99.17 CR and M bullied the Claimant on work groups for sharing her ideas whilst off sick.
- 99.18 LS failed to refer the Claimant to Occupational Health and forced her to sign return to work meeting minutes under duress.
- 99.19 LS told the Claimant that if she missed her targets she would have to send him naked photos or show him her breasts.
- 99.20 The Claimant had raised earlier concerns about behaviours however these had been passed to LS and she had been forced to retract them.
- 99.21 The new manager of the Folkestone store cleaned a toilet with his shirt and t-shirt off.
- 99.22 The decision to reject the Claimant's further application to join the Aspire course.
- 99.23 The failure to take action in response to her reports to Speak Up.
- 99.24 Issues over incorrect pay and wrongly recorded absences.
- 99.25 Failure to refer the Claimant to Occupational Health following sickness meetings.
- 99.26 AM, BP and LS making inappropriate comments about race and disability.
- 99.27 AM showing beheading videos.
- 99.28 AM and LS talking dirty about women and how many people they had slept with.
- 99.29 LS made inappropriate comments about the Claimant's disabled child and refused the Claimant time off for medical appointments.
100. As regards the Claimant's proposed resolution the Claimant said that she wanted the matters to be investigated and appropriate action to be taken, and financial compensation for what she had lost due to her hours being dropped.
101. The Claimant said *"I would like either a settlement to leave the business too or a plan to work through to find an alternative solution to this situation that suits everyone. I have been victimised for my mental health over and over again and this is just not acceptable in any form at all. I believe that I have been discriminated massively on the grounds of my protected characteristics and this for me is paving the way for constructive dismissal if I do not feel happy with this outcome as a last straw doctrine."*
102. The Tribunal finds that the grievance document is the first time that the Claimant set out the details of the allegations of fraud and theft.
103. In cross examination the Claimant was asked when she first became aware of the concept of constructive dismissal. The Claimant replied that it was from her time at Vodafone, that she had wanted a fresh start with the Respondent and that she was aware of her rights.

104. The Claimant's grievance was acknowledged by Louise Bishenden (Retail Regional Manager) and the Claimant was invited to a grievance investigation meeting to be held on 15 March 2021. In her email Ms Bishenden provided the Claimant with the Respondent's Domestic Abuse policy containing details various support providers given that the Claimant had indicated that she had previously suffered from domestic abuse.
105. The investigation meeting took place on 15 March 2021 and lasted for in the region of two hours and 50 minutes. The meeting took place online and was recorded with the Claimant's consent. Ms Bishenden advised the Claimant that she would focus upon the "people elements" of the grievance and specifically some of the unprofessional behaviour. The Claimant was advised that the allegations regarding unethical sales and potential fraudulent behaviour would be picked up by the Respondent's compliance manager.
106. The notes of the meeting demonstrate a comprehensive discussion with the Claimant about events going back over many years. Some of the alleged incidents were from years before, including some from October 2017 which was three and a half years before the investigation meeting.
107. There were numerous instances where the Claimant was unable to provide Ms Bishenden with dates or details of incidents given the passage of time, and she agreed to provide additional information including copies of messages she said that she had received. Some of this information was provided by way of screenshots of messages, however the Tribunal notes that some of them were incomplete and contained only extracts of longer conversations where the context may be quite different. There was very little documentary evidence to support the Claimant's allegations as many of them were about things that she said had been said to her.
108. One particular photograph appears to be a screenshot of the Claimant taken from CCTV with a red ring around her and the words "*known trouble maker lol*" pasted. It is understood that this was posted on a work WhatsApp group by LS. Another series of photographs appear to be of a naked man with his genitals covered by emojis. The Tribunal understands that the Claimant applied the emojis after she says she received them. The images do not show who sent the image, when or who is in them. Under cross examination the Claimant said that these were sent to her direct on SnapChat and she took a photograph of them using another mobile telephone.
109. The Claimant had agreed to provide Ms Bishenden with a timeline of the alleged incidents. On 25 March 2021 the Claimant emailed Ms Bishenden to say that she was still working on it. By the end of April 2021 the Claimant had still not sent it and Ms Bishenden messaged the Claimant to advise that the interviews were nearly concluded and she again requested the timeline from the Claimant. In her reply the Claimant queried the relevance of the timeline and said that as Ms Bishenden had the grievance and had held a grievance meeting so she was curious as to the need for a timeline. The Claimant was advised that it was needed to clarify the dates of events because these had been vague when they had spoken

in the grievance interview. The timeline was provided by the Claimant on 8 May 2021.

110. On 20 May 2021 the Claimant messaged Ms Bishenden to say that a colleague from the Folkestone store had approached her and was upset as two of the people who were part of the grievance had taken her to one side and made up things about what had occurred at the Christmas party in 2018. The Claimant said that it was unkind and untrue and that she was being slandered and that she was receiving a backlash for speaking out. The Claimant said that it was unprofessional and she was even more determined to remain off sick as it was putting more pressure on her.
111. Eleven witnesses were interviewed as part of Ms Bishenden's investigation into the Claimant's grievance. It is the view of the Tribunal that the notes of the interviews demonstrate a comprehensive investigation into the subject matter of the Claimant's grievance.
112. Some of those interviewed provided screenshots of messages and images that had been circulated on the work WhatsApp groups. Some of these were more complete versions of those that the Claimant had provided.
113. Ms Bishenden sent the Claimant the notes of her interview with her on 13 May 2021 however the Claimant responded the same day to say that they were less explanatory and "*most of the information was incorrect with names mixed up or just not as elaborate as it was supposed to be.*" The Claimant was notified that the minutes had been checked via the transcript of the video of the meeting and she was asked to highlight any mistakes and to return these to Ms Bishenden.
114. The Claimant was asked to confirm that the areas of complaint identified by Ms Bishenden were correct. The Claimant responded to confirm that she would do so. On 17 May 2021 the Claimant provided Ms Bishenden with the points she wanted to be addressed in the grievance. The Claimant said that she wished the matters to be addressed as follows:
- 114.1 Isolation and segregation
 - 114.2 Sexual harassment and unprofessional conduct
 - 114.3 Disability discrimination around being a working parent with the illegal drop in hours thus leaving me financially unable to stay in my home as well as manage my mental health
 - 114.4 Race discrimination within a professional working environment
 - 114.5 Discrimination of my protected characteristics
 - 114.6 Bullying and harassment
 - 114.7 Improper use of power over development abilities
 - 114.8 Fraudulent activity in the workplace
 - 114.9 Lack of support around mental health/wellbeing and improper proceedings for reporting domestic violence
 - 114.10 Lack of support when documenting under duress on multiple occasions and forms

115. The Claimant said that she would send the amended meeting minutes to Ms Bishenden the following Monday. These were not received by the Respondent. On 2 June 2021 Ms Bishenden wrote to the Claimant to advise that she apologised for the length of time the investigation had taken however she needed to conduct a thorough investigation with a large number of interviews during some periods of annual leave. The Claimant was told by Ms Bishenden that she was in a position to deliver the outcome to her imminently and she said *“I am conscious that you wanted to amend some of the points in order for me to correctly review and respond to your points, can you have any amendments through to me by Monday 7th June at the latest please.”*
116. During the Tribunal hearing the Claimant asserted that she had provided the amended meeting interview notes to Ms Bishenden but she could not access them as she was locked out of her EE account. Ms Bishenden denied that she had received them. The Respondent put to the Claimant that she was not positive that she had sent the notes to which the Claimant said *“I don’t really remember the last two years very much, two years is quite a long time.”* As there was no evidence that they had been sent the Tribunal finds that they were not provided by the Claimant to the Respondent.
117. During cross examination of Ms Bishenden the Claimant did not challenge her on the accuracy of the meeting notes she had prepared from the recording of the interview. The Claimant did not identify any area where they were said to be inaccurate. Accordingly, the Tribunal also finds that they were an accurate record of that meeting.
118. The grievance outcome letter was sent to the Claimant on 25 June 2021. The findings were set out using the structure that the Claimant had requested in her email of 17 May 2021. This was a detailed grievance response comprising 13 pages of findings.
119. With respect to the allegations of isolation and segregation, the Tribunal understands that this relates to the removal of the Claimant from two work WhatsApp groups comprising of a regional group and a local group for the Folkestone store referred to as *“Team Twatenham”*. In her grievance interview the Claimant said that the group was *“loads of crap really, was supposed to be to discuss everything that was happening in the store.”*
120. In her evidence to the Tribunal the Claimant said that the *“Team Twatenham”* did not relate to work much and was a rubbish and mockery. When asked by the Tribunal during the second day of her evidence the Claimant said that only 30-40% of it was work related. The dates of the removals were alleged to be 8 April 2018, 11 April 2018, 24 August 2019 and two further occasions until 2020 when the Claimant left the Folkestone store to go to Ashford. The Claimant alleged that LS, BP (Assistant Store Manager / Retail Business Consultant) and PA were responsible for this treatment.
121. During the grievance investigation BP was asked if he had ever removed a team member from a team WhatsApp group and why. BP

responded that it happened all the time, and that there had been an occasion where the store manager was on annual leave and an advisor had been off work for some period of time and he thought that it was right to remove her from the regional group so that she was not bombarded with work messages whilst off sick. BP said that the individual was not happy with the decision and felt that he or the Respondent were using the sickness of the child as a reason to treat her differently.

122. The Tribunal understands that this individual was the Claimant as the hearing bundle contains an extract from a WhatsApp conversation between the Claimant and BP where the Claimant queried why she had been removed from the groups. After it was explained to the Claimant that she had been removed from the regional group as there was no need for her to be in it and she had let the team down on numerous occasions, the Claimant interpreted this as an attack on her childcare difficulties. In a separate exchange the Claimant queried why she had been removed from a group and she was told that there had been a clear out of people who were not keeping up with engagement.
123. During the grievance interview with PA he confirmed that he recalled removing the Claimant from the regional group as he had been asked to do so by her acting store manager as the group was for senior advisers or influential members of the team so not everyone was on the group. PA said the Claimant's role did not include that anymore, so he did not think anything of it. In her witness statement Ms Bishenden records that changes to the regional group were a common occurrence but the Claimant still remained part of another regional wide daily sales group and therefore the Claimant was far from excluded. The Claimant did not challenge this in cross examination and therefore the Tribunal finds that the Claimant was not totally excluded from the WhatsApp groups and further that the membership changed frequently in any event.
124. The Claimant was provided with this reasoning in the grievance outcome which also recorded that Ms Bishenden found that there had been a miscommunication and she made a recommendation that going forward all store based workplace groups should include all team members and where a team member is absent for an extended period then it would be their responsibility to either turn off notifications or to remove themselves from the group.
125. The Claimant has specifically alleged that she was removed from one or both of the WhatsApp groups on 24 August 2019 which was also the date of the first protected disclosure. In her witness statement Ms Bishenden said that the date of the removal was unclear but she understood that the Claimant had complained that this had happened in 2018 and thus before 24 August 2019.
126. Whereas the Respondent has admitted that the Claimant was removed from these groups the Tribunal is unable to find that the Claimant was removed on any of the specific dates alleged due to the lack of any corroborating evidence. The Claimant says that this also occurred twice

during 2020 however she has not provided the specific dates and again the Tribunal is unable to make any findings in this regard.

127. With respect to the allegations of sexual harassment and unprofessional conduct, these went back to the period of the Claimant's induction in late 2017, her time spent at the Folkestone store, and a Christmas night out with colleagues in 2018. This included the earlier allegation that the Claimant's line manager LS told her that she should have to show him photos of her breasts if she failed to meet her KPIs. In cross examination the Claimant confirmed that she had not failed to meet her KPIs in any event.
128. The grievance interviews with the eleven members of staff did not support the Claimant's version of events. In most respects the allegations were a case of one word against another with the allegations flatly denied, however several of the interviewees suggested that there had been a culture of banter or sexual banter which the Claimant had been an active part of.
129. Many of the interviewees gave a consistent message that the Claimant had taken part in many incidents of inappropriate behaviour, either at work or at work related social events and on a train journey home after one such event. Allegations ranged from the Claimant being flirtatious, to having shown colleagues her tattoos in inappropriate places on her body, at both work and at a work event. One interviewee said that they had been left feeling awkward and uncomfortable after the Claimant had shown him her tattoo whilst on the shop floor.
130. Some of the interviewees said that the Claimant had removed her bra on a train journey after a work event and had offered to perform oral sex on a colleague on that same occasion. Ms Bishenden was sent a video of the alleged incident on the train by one of the interviewees who had been present. The Claimant alleges that there were two versions of the video in circulation, a longer clip and a shorter version which had been cut down or edited to portray her negatively. Neither clip was presented to the Tribunal by either party therefore we make no findings about the video.
131. Whereas Ms Bishenden found no evidence which confirmed or denied that the Claimant had experienced unwanted sexual advances, she recorded that she had multiple witness statements that confirmed that the Claimant had been in a relationship with her former store manager (LS) for a brief period and that he moved into her home and they came into the store as a couple. The Tribunal notes that the relationship was admitted by LS in his interview, and this was supported by Michael Bousquet who said that the Claimant had told him that she had been in a relationship with LS. Other interviews also suggested that they either knew that the Claimant had been in a relationship with LS or had seen them together.
132. Ms Bishenden found no evidence to support the Claimant's version of events with the exception of the store manager who had removed his shirt whilst in the bathroom as he was using chemicals to clean the toilet. Ms Bishenden also found no evidence that the photo of a naked man sent

to the Claimant in December 2017 was a previous colleague. The interview notes show that Ms Bishenden put the allegation to the individual concerned however he denied it and denied even having SnapChat. There was no face and nothing to corroborate that it was the individual concerned. Ms Bishenden also recorded that the Claimant had not been able to provide her with evidence of the hotel booking or the cancellation receipt for the additional hotel she had booked when she alleged she had to change hotels and sleep in her car due to sexual advances from colleagues.

133. Ms Bishenden partially upheld the Claimant's grievance on the basis that some of the banter had been inappropriate however she found that the Claimant had been an active participant in the banter and complicit in some of the policy failures.
134. Ms Bishenden considered the complaint about the Claimant's hours being reduced from 32 to 18 hours. Whereas the Respondent had the contractual power to vary the Claimant's hours on notice, Ms Bishenden found that the Claimant had instead agreed to this change.
135. Ms Bishenden in her witness statement makes reference to the high level of the Claimant's sickness absence and that she had met the trigger within the sickness policy by September 2018, of more than 3 occasions of absence in 6 months, or 10 occasions in 12 months and that this indicated that this set out a useful context for the discussions around hours. The Tribunal has been referred to the grievance interview notes from LS and BP which state that the Claimant had accrued considerable sickness absence and that she had planned to resign in September 2018, however a reduction in hours had been agreed instead and this allowed the Claimant flexibility, reduced her targets, and increased the chance of earning commission. Both LS and BP had said in the grievance interviews that the Claimant had wanted to be at home more.
136. During cross examination the Claimant said that she had not agreed to the change, there had been a conversation about her ill health and that she was struggling with childcare, and that she lost her house as a result of the change. The Claimant said that LS told her that he was over his "FTE" which the Tribunal understood to refer to the store's hours budget. The Claimant was asked in cross examination why she had not asked for more hours from Ms Bousquet whilst in the Ashford store. The Claimant responded that she had wanted a higher position, and that she had been told that there were no more hours in store. The Claimant said that she had been given some overtime in November 2019, however the Tribunal notes that this was before her move to the Ashford store.
137. The Tribunal notes that the Claimant did not formally complain about this at the time in September 2018 nor did she do so until March 2021. The Respondent put to the Claimant in cross examination that she worked for three years without formally raising the issue. The Claimant said that LS had been full of false promises about giving more hours to people. The Claimant did not respond to DG when he asked her if she wished to increase her hours above 18 per week. The Tribunal also notes the evidence of Mr Bousquet that the Claimant had asked to reduce to three shifts per week

rather than four which meant that she would lose one hour per week but would save on travel expenses.

138. Numerous grievance interviewees made reference to the Claimant saying that she was expecting a large settlement from Vodafone and that money did not appear to be a concern at the time. The Tribunal also notes the email from the Claimant offering to forgo £3,000 of her salary for LS. Accordingly the Tribunal finds that after taking all of these matters into account, including the failure to challenge this formally for a number of years, the Claimant did agree to vary her hours in September 2018.
139. The Claimant's allegations of race discrimination was partially upheld by Ms Bishenden. This was on the basis that whilst some comments on the WhatsApp group were not intended to be racist they were inappropriate in the workplace. These comments included the use of the term "nigeritus" by one member of staff (AM) and "niggeritis" by another (BP) after the latter had posted a photograph of plates of food. During his grievance interview AM denied that this was racist and told Ms Bishenden that the term meant feeling sleepy or tired after eating a big meal. AM showed Ms Bishenden the meaning by using Google. One of the replies from BP said "*Teach all those white folk what it means*" followed by a smiling emoji.
140. Another message featured a photograph of a black male believed to be a customer with the words "*Lloyd loves a Guinness*" followed by two smiling emojis. This was also posted by BP.
141. Ms Bishenden said that feedback would be provided including refreshing all stores within her region as to how banter could be perceived and what is appropriate within a working environment. When asked by the Tribunal whether any disciplinary action was taken in respect of the messages, Ms Bishenden confirmed that two members of staff had been issued with an ROC. One of those involved received two ROCs as he had been involved in both messages. The Tribunal finds that the Claimant's complaint was taken seriously, and action taken as a result by the Respondent. The dates of the incidents were not confirmed however the Tribunal finds that they must have occurred before February 2020 as they related to discussions on the Folkestone store group chat.
142. The allegations concerning comments by LS about the Claimant's son's disability also do not form a direct part of the subject matter of this claim. Nevertheless the Tribunal notes that the complaint was not upheld by Ms Bishenden after LS denied making them, and further that this incident appeared to stem from a discussion about reducing the Claimant's hours in September 2018 following her periods of sickness absence.
143. As regards the Claimant's complaints about discrimination and inappropriate behaviour, this arose from an alleged incident during the Claimant's induction in 2017 where she said that a colleague had attempted to initiate sex with her. By the time the Claimant raised this matter formally in her grievance almost three and a half years had elapsed.

144. The Tribunal notes that Ms Bishenden attempted to investigate the matter notwithstanding the passage of time however there were no other witnesses. In the grievance interview the Claimant said that she had reported this to a colleague NP at the time. Ms Bishenden said that she had spoken to NP who confirmed that the Claimant had mentioned to him that someone had been flirty with her after a few drinks and that he (NP) had offered to take the matter further but the Claimant had declined to do so as she felt that she could handle it herself. This complaint was not upheld by Ms Bishenden.
145. With respect to the allegations of bullying and harassment, this appears to relate to WhatsApp messages between the Claimant and her colleagues in the Folkestone store. In cross examination the Claimant indicated that this occurred in or around April 2018. One exchange appeared to be an argument between the Claimant and a small number of staff after she had posted a message about improving store performance. The Tribunal understands that the Claimant had sent the message upon her return from sickness absence.
146. One of the Claimant's colleagues CR was a senior sales advisor and therefore a grade above the Claimant. CR had responded to the Claimant's message about improving performance and asked the Claimant "*Are you serious?*" to which the Claimant replied that she was and that "*It's a compulsory part of your job description to assess your customer needs, if this is not being done then we are missing opportunities.....*" CR responded "*Janet seriously you can't even turn up for you [sic] own shifts and you have the cheek to send this? Who do you think are? We try our best in store each and every time....*"
147. An argument then ensued via WhatsApp messages. In one message the Claimant stated "*You are the senior member who should be implemting [sic] this and if you cannot step up then maybe you should step down!*" When some of the colleagues remonstrated the Claimant described one colleague as "*pathetic*" and made other comments that one of them did not have authority over her and that another should "*pipe down.*"
148. In her grievance the Claimant had said that her store manager failed to intervene and that this exchange had impacted her mental health and that she had gone off sick again as a result. The Claimant alleged that in follow up conversations with her store manager she had requested to move stores and that he had told her that "*no one will take you, no one wants you after hearing about you*" or words to that effect.
149. In their grievance interviews those members of staff involved who were still in post acknowledged that the messages had been inappropriate and that they arose out of frustration of having to pick up additional work due to the Claimant's sickness absence which then came to a head on that day. Ms Bishenden found that all those involved were all heated and brought up personal situations unnecessarily but had the store manager communicated that the Claimant had ideas to share then this would have mitigated the situation.

150. The Tribunal notes that Ms Bishenden did not find that this fell within the definition of bullying within the Respondent's Bullying and Harassment policy as it was an isolated incident with no evidence of persistent negative and malicious attacks on the Claimant. Nevertheless, Ms Bishenden did find that the store manager ought to have stepped in to take the conflict offline and that he ought to have also arranged mediation. Whilst this part of the grievance was not upheld there was evidence that Ms Bishenden took the issue seriously as she recommended that every store manager revisited the policy and receives refresher training on handling conflict.
151. The Claimant's complaint about improper use of power over development opportunities related to her applications to join the internal Aspire programme. The Tribunal understands from the Claimant's additional information that the dates of the alleged acts are autumn 2018 and also 2020.
152. Ms Bishenden said that she examined this allegation by speaking to the learning partner managers who oversaw the programme as well as Mr Bousquet who managed her at the Ashford store and PA who had been the regional commercial manager.
153. Ms Bishenden says that the learning partner managers told her that the Claimant was withdrawn from Aspire the first time and declined for her second application due to her sickness absence. Ms Bishenden gave evidence that there needed to be a level of commitment to attend the various workshops however the Claimant's sickness absence for 2018 and 2019 was 134 days sickness days and also 6 days unpaid leave. Ms Bishenden said that this was the reason for the Claimant's removal.
154. The Claimant did not challenge Ms Bishenden about her levels of sickness absence during cross examination nor did she challenge her for the reasons for her removal, except to say that she had kept up to date on the course. The Tribunal asked Ms Bishenden if other members of staff had been removed from Aspire, to which Ms Bishenden responded that staff are often removed as there is a monthly review undertaken of the course. The Tribunal accepts Ms Bishenden's evidence in this regard given the level of the Claimant's sickness absence and because it was not challenged by the Claimant.
155. As regards the Claimant's third attempt to join Aspire, the evidence of Ms Bishenden was that this would have required the authority of the then regional manager, OH, as the Claimant had applied to fast track to assistant store manager, therefore "skipping" one level. OH was no longer in the business by the time of the grievance investigation therefore Ms Bishenden was unable to confirm whether he provided the authorisation.
156. The Tribunal notes that Mr Bousquet was interviewed by Ms Bishenden on this specific issue however his response does not appear to have been included in her grievance outcome letter. The notes of Mr Bousquet's interview confirms that he says he had supported the Claimant with her application and that he told her that she would need to directly

contact the acting regional manager which she did not do and that this was the feedback she had been given at the time.

157. Mr Bousquet was asked in the grievance interview if this was the normal process to contact the regional manager to which he replied that it was because the Claimant wished to skip a level and go straight to assistant manager instead of senior advisor. When asked by Ms Bishenden why he thought the Claimant had not approached the regional manager, Mr Bousquet replied that he did not know but that he was happy for her to apply and to get on the programme as he thought that it would make her more stable at work, which would benefit him.

158. In his witness statement Mr Bousquet said that the Claimant would need to have contacted PA as the acting regional manager but she had failed to do so. In the notes of the grievance interviews Ms Bishenden had asked PA if he knew why the Claimant had been rejected for Aspire to which he responded that he did not as it was dealt with by OH.

159. In her witness statement Ms Bishenden states that the Claimant did not state that the refusal was due to her disclosures but she instead focussed on her sickness absence. The view of Ms Bishenden was that if the Claimant could not work her substantive role regularly then she would unlikely be able to complete Aspire on top. The Claimant did not challenge this in cross examination.

160. Irrespective of whether the Claimant should have contacted either PA or OH the Tribunal finds that there is no evidence that she did so. The decision to reject the Claimant's third application was communicated to the Claimant by KM (Canterbury Store Manager and Regional People Lead). The Tribunal notes that the Claimant did not challenge the Respondent's witnesses under cross examination in respect of the third Aspire application. The Claimant does not deal with the third application for Aspire anywhere within her additional information dated 18 February 2023. There is only scant reference to the Aspire programme generally within the Claimant's first witness statement of 6 April 2023 and no reference to it at all in her second witness statement of 2 May 2023. The Tribunal therefore finds on the balance of probabilities that the reason for rejecting the Claimant's third application was due to her failure to contact either OH or PA.

161. The Claimant was notified by Ms Bishenden that the relevant parts of the Claimant's grievance relating to fraud would be referred to the correct investigative team however the Claimant was informed that she would not hear about the results of the investigation.

162. The allegations that the Claimant was told to resign or had been verbally sacked were considered under the heading proposed by the Claimant of "*Lack of support around mental health/wellbeing and improper proceedings for reporting domestic violence.*" The management of the Claimant's sickness absence was also considered under this heading.

163. The Claimant had alleged that LS had told her that she was sacked around the time she told him that she suffered from anxiety and depression

and that he had told her to clear out her locker. The alleged dates are 29 December 2017, September 2018, July 2019 and December 2019. The Claimant also alleges that LS and tried to force her to resign and the alleged dates are 13 December 2018, April 2019, June 2019, August 2019, November 2019.

164. Whereas Ms Bishenden recorded that this was one of the allegations she did not make a specific finding in this regard in her outcome letter. In her witness statement Ms Bishenden states that she found the allegation to be unsubstantiated.
165. The Tribunal has reviewed the interview notes with LS. Ms Bishenden specifically asked LS whether he had asked for the Claimant's resignation after she had disclosed her health. The response from LS was *"No. There was one time when she spoke about quitting, we discussed reducing her hours so she was at home more with the kids to allow more flexibility."*
166. Ms Bishenden also asked LS if he had ever verbally sacked the Claimant to which he replied *"No never."* Earlier in his interview LS was asked if he had tried to stop the employment of the Claimant in October 2017. LS responded that yes he had as *"I heard from other business of behaviour issues and a previous case at Vodafone she may not be right for our business. I sought advice from HR as the offer had gone out it won't be retracted."*
167. In cross examination the Respondent referred the Claimant to the way in which the sacking complaint had been described at an earlier preliminary hearing. The issue at 8.12.5 of the case management summary recorded that the Claimant complained that she had been sacked as a joke. It was put to the Claimant by the Respondent that even by her own description it was no more than a joke and there had been no genuine attempt to sack her. The Claimant said that LS had used the phrase *"either she's gone or I'm gone"* on the shop floor. The Respondent put to the Claimant that this was not a genuine attempt to sack her, to which the Claimant replied that it did not feel funny at the time and that LS had previously tried to block her appointment in 2017 by contacting Human Resources.
168. The Tribunal notes that the bare denial of the allegations from LS and the lack of other witnesses would have made it difficult to determine the two allegations. In her findings Ms Bishenden reviewed the Claimant's absence history together with the response from the Respondent. Whereas Ms Bishenden did not make any findings about the alleged attempts to force the Claimant to resign or the alleged verbal sacking, she made criticisms of the way in which the Claimant's sickness absence had been handled by her managers. Specifically Ms Bishenden found that there ought to have been earlier intervention in managing the Claimant's sickness absence which could have supported her but there had been a lack of knowledge of the support available including how to make an Occupational Health referral, as well as an absence of regular and consistent absence review meetings.

169. The recommendations from Ms Bishenden demonstrate that she wished to address the Claimant's sickness absence and to find ways to provide her with support which had been lacking up to that point. A number of recommendations were made to provide future support for the Claimant, including a more in-depth Occupational Health referral *"to ensure that no avenue of support is missed"* [bundle page 373].
170. The Claimant's complaints about having to sign return to work forms under duress were considered but rejected as Miss Bishenden as she did not find any return to work form marked as being signed "under duress" by the Claimant. Nevertheless Ms Bishenden did find some ROCs and a record of complaint which the Claimant had marked as signed "under duress" or it had been recorded that the Claimant had refused to sign them.
171. Whereas the allegations about signing forms under duress does not form part of the subject matter of this Tribunal claim, the Tribunal notes the finding of Ms Bishenden that *"There needs to be some ownership and accountability when feedback is given and I believe the relationship between Janet and her management team had broken down to such a point that it was impossible to work in harmony together."*
172. As regards the future Ms Bishenden recorded that the Claimant had felt that she could not return to the Respondent, however Ms Bishenden said that she felt that the relationship between the two could be rebuilt and that there was no reason why the Claimant should not be able to work in the region in future. The Claimant was offered the opportunity to discuss returning to either the Ashford store or the Canterbury store where a new external manager was due to join.
173. The Tribunal finds that the grievance investigation was conducted fully and fairly and in compliance with the ACAS Code. A considerable number of witnesses were interviewed and the Claimant's allegations were put to them. The time taken to resolve the grievance (from 4 March 2021 to 25 June 2021) was not unreasonable in the circumstances given the size and complexity of the complaints, the age of many of the incidents, and the delays on the part of the Claimant to provide the information requested of her. The Claimant provided the timeline very late and only when repeatedly asked for it, and the Claimant's amendments to the notes of the interview were never produced. The conclusions reached by Ms Bishenden were consistent with the evidence before her.
174. The Claimant was unhappy with the outcome as she wrote to Ms Bishenden just over three hours later and said:

"Louise.

Is this a joke?

I absolutely feel like you are taking the royal.

Wow.

How can you actively dismiss my claims when you have NO EVIDENCE for a majority of these CLAIMS by people who were always going to collectively join forces against me.

I am shocked, honestly shocked at your outcome and I 100% will be appealing this. All this time, lots of incorrect information backwards and forwards for this.

I strictly did not have a relationship with [REDACTED] and I will be taking this further.

What a shame.

Janet”

175. In cross examination the Claimant confirmed that she had been angry at the grievance outcome. On 26 June 2021 the Claimant sent her notice of appeal to the Respondent. In her appeal the Claimant complained that the investigation had been handled unfairly, that there had been nothing but mistakes all the way through, and she complained of unreasonable delay and of bias. The Claimant said she had documents to explain situations, however *“this may as well have been a colouring book with clowns in because it seems like that’s what my evidence was, a joke.”*

176. The Claimant also commenced ACAS early conciliation on 26 June 2021.

177. On 7 July 2021 Ms Bishenden wrote to the Claimant to discuss her continued sickness absence and her return to work. The Claimant responded nine minutes later to say that given the reasons for her absence and the ongoing grievance appeal, she considered that the meeting was *“out of jurisdiction”* and invalid and not something that Ms Bishenden needed to proceed with at the current time.

Resignation

178. The Claimant sent her resignation letter on 13 July 2021 indicating that she was resigning under a last straw doctrine with immediate effect. The Claimant included a list of reasons for her resignation which included bullying and harassment, reduction in pay/hours, unfounded allegations of misconduct, failure to make reasonable adjustments, unfair and unreasonable treatment including sexual harassment, being forced to work in breach of health and safety laws, discrimination, isolation and segregation, blocking a path to promotions, and unacceptable racial situations.

179. The Claimant said that she had no other alternative but to resign as the Respondent had made it very difficult for her continue her current duty in the business. The Claimant said that due to the Respondent’s behaviours she believed that the relationship had irretrievably broken down and that she had to resign as a result of the fundamental breach of the employment contract, in particular the duty of mutual trust and confidence.

180. Ms Bishenden responded to the Claimant the following day to ask the Claimant to reconsider her decision. The email from Ms Bishenden states that she wanted to reassure the Claimant that the Respondent took her concerns seriously and that it was committed to investigating and

concluding her appeal. The Claimant was asked to take further time to consider this.

181. On 23 July 2021 the Claimant responded and advised that her resignation *“was in line the current and total beach of my contract.”* The Claimant alleged that the internal process had been a witch hunt and that she could not return. The Claimant made a number of allegations about the grievance outcome ranging from contradictory findings, dismissal of her complaints with evidence yet accepting evidence from others without evidence, a lack of evidence and wildly incorrect accusations. The Claimant said that if Ms Bishenden had any concerns, then she should have arranged a further meeting with her first for clarification. The Claimant also mentioned that she was £4,000 in debt and had a loss of earnings due to an illegal hour drop without consent or communication.
182. On 28 July 2021 Ms Bishenden again emailed the Claimant and asked her to reconsider her decision and to remind her that the grievance appeal was still open and not yet concluded.
183. The Claimant attended a grievance appeal meeting with Tahir Malik (Regional Manager) on 3 August 2021. The notes of the appeal hearing show that the Claimant was given the opportunity to explain why she disagreed with the grievance outcome, and she did so by addressing each finding in turn. Much of the Claimant’s argument was that findings had been made without evidence and that she should not have to prove that certain things had been said in conversations, for example comments about her son’s disability. The Claimant also argued that her allegations had been turned on her. The Tribunal notes whilst the Claimant challenged Ms Bishenden’s finding that she had been in a relationship with LS, she admitted that she could see where it was coming from as people had seen them go out for lunch and *“I get why people may say that.”*
184. No new evidence was introduced in the appeal however the Claimant again agreed to provide Mr Malik with further evidence that she had at home, including that she had to book another hotel in 2018 following the alleged incidents at the staff Christmas party. The Claimant agreed to provide her further evidence by 6 August 2021.
185. The Claimant did not send Mr Malik her additional evidence therefore on 10 August 2021 Mr Malik wrote to the Claimant to ask for it and he attached a copy of the notes of the meeting.
186. On 12 August 2021 the Claimant filed her ET1 claim form.
187. The Claimant replied to Mr Malik on 13 August to advise that she had lost her phone and that the evidence the Respondent had was sufficient. The Claimant then challenged the accuracy of Mr Malik’s notes by stating that he had not even said some of the things in the notes and that she wasn’t sure if he had been at a meeting with her or someone else and that the meeting should have been recorded as it was misworded. The Claimant stated, *“This is appalling, totally appalling, two meetings with very different minutes to the actual meeting, a grievance investigation a sham, an appeal*

meeting just the same.” The Claimant said that the evidence the Respondent already had was sufficient to show everything that she had complained about, and she asked Mr Malik to look again at what she had already sent whilst she waited for a replacement device, and added *“but given the whole investigation I have little faith left in any of you.”*

188. On 17 August 2021 Mr Malik responded to the Claimant and offered to hold the meeting again to go over her appeal and to record it if she wished. Mr Malik noted the Claimant felt that he had sufficient evidence which he said he was happy to accept if there was no further evidence that she had to support her complaints.

189. The Claimant responded the same day to decline a further meeting. The Claimant made numerous criticisms of the process and said that it had been a waste of time. The Claimant said that she was not interested in it anymore and that is why she had approached the courts. The Claimant said that *“The evidence you require is locked in iCloud and until I have my new phone I won’t be able to send it immediately, however I hold no faith any more. You can also access my HR files to collate some information.”*

190. On 21 August 2021 the Claimant wrote to Ms Bishenden and Mr Malik to complain that the alleged video of the train incident of Christmas 2018 had been leaked to her ex-partner, that the grievance had been compromised and that she no longer wanted the investigation to go ahead.

191. On 23 August the Claimant sent Ms Bishenden a further email with the alleged video clip of the train incident and conversation with her ex-partner. The Claimant said that the video clip had been edited to incriminate her.

192. The Claimant had been given permission by the Tribunal to produce a witness statement which clarified what was the last straw act by the Respondent which prompted her resignation. In her additional witness statement of 2 May 2023 the Claimant says she relies upon a cumulation of issues including the handling of her grievance. The Claimant also said that the video of the train incident from Christmas 2018 had been shared with her former partner. The Tribunal notes that the Claimant had not been made aware of this until August 2021 which was after she had already resigned on 13 July 2021. This is confirmed in the Claimant’s second witness statement of 2 May 2021 together with the contemporaneous emails in the hearing bundle referred to above.

193. The Claimant was cross examined on her decision to resign and gave evidence that she did not resign in response to any particular act which occurred at or around that time, but rather she resigned because of a cumulation since 2017 up to 13 July 2021 and not a single act.

194. During cross examination the Respondent put to the Claimant that she had been accumulating evidence in order to bring a claim. The Claimant denied this however she then said that that she knew that she would need two or three years’ service in order to go to a tribunal. At the conclusion of her evidence the Claimant was asked why she had not gone

to a tribunal at the material times and she responded that she thought that she would need longer service.

Submissions

195. The following is only a summary of the submissions made by the parties.

196. Mr Webster for the Respondent delivered oral submissions from a speaking note he shared with the Claimant and the Tribunal. Whilst accepting that the Claimant made three protected disclosures on 24 August 2019, 29 June 2020, and 8 February 2021 (under s. 43B(1)(a) Employment Rights Act 1996, namely that a criminal offence was being committed), he argued that the Claimant did not do so with respect to thefts or frauds because whilst concerns and allegations were raised, facts were never disclosed. The Tribunal were referred to *Cavendish Munro Professional Risks Management Ltd v Geduld* UKEAT/0195/09, where the Employment Appeal Tribunal held that to be protected a disclosure must involve giving information, and not simply voicing a concern or raising an allegation.

197. With respect to the detriments complaints Mr Webster said that the Claimant's oral evidence was unreliable due to inconsistency, lack of corroborative material, contradiction by other witnesses gathered by the grievance investigation and is undermined by her willingness to lie on oath to this Tribunal. He argued that the dates of detriments pleaded should be considered out of time and hence beyond the jurisdiction of this tribunal. Specifically Mr Webster asserted that any alleged detriments occurring before 27 March 2021 could not be considered by the Tribunal. Moreover Mr Webster argued that the Claimant's pleadings are unparticularised, despite several attempts, as to what detriments were suffered, precisely when, and at the hand of whom, and that she has failed to prove by evidence causal connections between the detriments pleaded and the Public Interest Disclosures.

198. As regards the claim for constructive dismissal, Mr Webster again argued that the Claimant's oral evidence was unreliable due to inconsistency, lack of corroborative material, contradiction by other witnesses gathered by the grievance investigation and is undermined by her willingness to lie on oath to this tribunal. Mr Webster argued that the Claimant has not established by evidence – to the grievance investigation or to the Tribunal - that either by a course of conduct or by a single act the Respondent committed a repudiatory breach of contract which would entitle her to resign and treat her contract of employment as discharged. Mr Webster further argued that the Claimant has not established that she resigned in response to a repudiatory breach of contract, and that even if the Tribunal were to infer that she did resign in response to a repudiatory breach her resignation would be so delayed as to constitute an affirmative delay.

199. The Tribunal was referred to the decisions in *Malik v Bank of Credit; Mahmud v Bank of Credit* [1997] UKHL 23 which held that the breach occurs when the prescribed conduct takes place and that the employee may take the conduct as a repudiatory breach, entitling him to leave without notice but if the employee stays, the extent to which staying would be a waiver of the breach depends on the circumstances.
200. The Tribunal was also referred to the test laid down in *Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221 and specifically four questions which should be considered. Firstly was there a fundamental breach on the part of the employer? Mr Webster said that there was not.
201. Secondly did the Claimant terminate the contract by resigning? Mr Webster said that the Claimant did resign but not after the incidents in 2017, 2018 and 2019 and by 18 December 2019 she admitted in cross examination that “*By then trust and confidence between me and my employer was destroyed*” yet she did not resign. When the Claimant did resign it was between the grievance outcome and the grievance appeal but by her own clear admission not in response to either.
202. Thirdly did the Claimant prove that the effective cause of her resignation was the Respondent’s fundamental breach of contract? Mr Webster said that the Claimant told the Tribunal that she resigned not because of any particular event but rather because of the whole situation. Mr Webster says this precludes the operation of the “last straw” doctrine and that the Claimant did not prove by her evidence that the effective cause of her resignation was a fundamental breach of contract by her employer.
203. Fourthly, did the Claimant delay and therefore act in such a way that is inconsistent with an intention to treat the contract as an end? Mr Webster says that the answer to this question is yes and that if the Claimant ever believed that mutual trust and confidence had broken down, it was a long time ago, and she had affirmed the contract over and over again by remaining in post.
204. As regards the claim for unlawful deductions from wages, Mr Webster said the Respondent relied upon the clause in the Claimant’s contract allowing the Respondent to vary her hours. The fact that the Claimant chose not to sign the contract is superseded by her conduct in choosing to work for the Respondent on the terms contained in it and hence accepting the offer of employment on the terms offered. The Respondent was therefore entitled to vary the Claimant’s hours as it did with or without the consent of the Claimant. The contract provides for a period of notice in the event of the respondent exercising its right to vary.
205. Mr Webster referred to the Deduction from Wages (Limitation) Regulations 2014 (SI 2014/3322) which introduced s. 23(4A) and (4B) of the Employment Rights Act 1996 and which provide that for unlawful

deductions claims brought on or after 1 July 2015 an Employment Tribunal cannot go back more than two years before the date of the claim.

206. The Claimant then provided her oral submissions. The Claimant said that it had not been reasonably practicable for her to bring her claims in time due to the nature of the sickness she was experiencing impacting her capability and capacity at that time. The Claimant said that this was evidenced by her sick notes which recorded her as suffering with anxiety and stress. The Claimant also referred to her communications with the Respondent's Occupational Health, the notes of her meeting with SM on 13 February 2021 to discuss her well-being which record her as suffering from anxiety and stress, her contact with Human Resources which recorded her as suffering from work related stress. The Claimant also relied upon the Occupational Health report of 2 February 2021 which recorded her as suffering from low mood, and that she was anxious and worried and the reference to her being unfit for work due to the severity of her symptoms. The Claimant said that that it would have been disadvantageous for her to have brought her claims then without a further decline. The Claimant also refers to her comments to Mr Malik in the grievance appeal that *"And then just the overall emotional side of things. This all built up and had a toll on me."*

207. The Claimant then moved on to the substance of her claim, and repeated the list of matters she had complained about in her claim and said that there had been an accumulation of these matters. As regards the reduction in her hours the Claimant referred to her contact with Human Resources on 16 December 2020 where she asked if they had any request for the reduction **[bundle page 200]**. The Claimant said she agreed that a contract could be varied but only where the deductions were in line with the contract but there was no evidence of any communication with her about the loss of hours.

208. The Claimant referred to her claim for constructive dismissal based on the last straw doctrine. The Claimant said that her identity had been leaked to those she had complained about even though the Respondent's grievance policy ("Resolving Disputes") says that it will be handled confidentially **[bundle page 108]**. The Claimant also referred to her first protected disclosure of 24 August 2019 where she alleged that PA had released the information in public straight after she had told him.

209. The Claimant said that Ms Bishenden had suggested that she had committed misconduct and she drew a parallel with those who had been given ROCs for sending inappropriate messages about race.

210. The Claimant also said that Ms Bishenden had breached her confidentiality by divulging her name causing her to suffer a further detriment and that this was an agreeable reason for her reliance upon the last straw doctrine after all the bullying and harassment and a lengthy and

long campaign. The Claimant said that her resignation was collective and the final straw was the grievance and appeal.

211. The Claimant said that had she been in a relationship with LS, which she denied, it would still not provide any clarity as to why she had been raising allegations for the previous three years.
212. The Claimant alleged that Mr Bousquet had lied under oath and that she remembered a conversation with him where she told him that people had been stealing phones and trading them. The Claimant said that she had been attempting to relay information to the Respondent's hierarchy and pursued a case to Human Resources and made use of the Speak Up process to say what was happening at the Folkestone store. The Claimant said that she had given information through many channels within the Respondent and BT but she had not been listened to.
213. The Claimant also alleged that Ms Bishenden had lied under oath and that her evidence could not be relied upon. The Claimant said whilst Ms Bishenden found in the grievance outcome that she had been in a relationship with LS there was no evidence for this, it had been platonic, and that Ms Bishenden had relied upon hearsay.
214. The Claimant reiterated some of the detriments she alleged she suffered in particular the attempts to sabotage her working relationship and to stop her progression. The Claimant said that her intention was for the Respondent to put right their wrongs and she challenged the Respondent's suggestion that she had always planned to bring tribunal proceedings against it.
215. The Claimant denied that she had brought tribunal proceedings against Vodafone but rather she had entered into a settlement via ACAS. The Respondent interjected and said that this was categorically not true and Mr Webster referred the Tribunal to details of a claim between the Claimant and Vodafone which appeared on the register of tribunal judgments. The Tribunal asked the Claimant if she had issued a claim to which she said that she hadn't and then clarified that she meant that she had not been as far as a hearing before but that it had settled via a COT3 agreement. The Respondent said that there was no misunderstanding, that the Claimant had been asked a clear question by the Tribunal and there was evidence from a judgment on preliminary hearing that she had brought a claim against Vodafone but it had been rejected as there was no jurisdiction to consider it.
216. The Respondent was given the opportunity to briefly respond to the Claimant's submissions and Mr Webster said that it would have been impossible for Ms Bishenden to have properly investigated certain acts without making it clear what was alleged, and that it would be impossible to have confidentiality.

217. The Respondent has repeatedly argued in cross examination and in closing submissions that the Claimant had lied under oath, specifically with reference to her relationship with LS and whether she had brought previous tribunal proceedings. The Tribunal also notes that the Claimant was unable to provide specific dates for many of the acts she complains of and in cross examination stated that she had difficulty remembering some things.
218. The Tribunal does not make a finding that the Claimant has lied under oath in these proceedings, however the Tribunal has noted the inconsistencies identified above in this judgment with regards to the Claimant's relationship with LS, and whether she had brought previous tribunal proceedings. The Tribunal has also made a finding that the Claimant's explanation for offering to forgo part of her salary for LS was implausible given the accusations she has made about his behaviour allegedly occurring before she made that offer in December 2019. Accordingly, the Tribunal has treated the Claimant's evidence with a degree of caution, but it does not find that she has lied under oath.
219. The Claimant has also argued that both Ms Bishenden and Mr Bousquet have lied under oath, however the Tribunal finds there are no grounds whatsoever to support such allegations.

Law

Protected disclosure detriment (“whistleblowing”)

220. The Employment Rights Act 1996 contains the following provisions:

43B Disclosures qualifying for protection.

(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

...

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

43C Disclosure to employer or other responsible person.

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure —

(a) to his employer, ...

47B Protected disclosures.

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or

(b) by an agent of W's employer with the employer's authority,
on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

48 Complaints to employment tribunals.

(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.

(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them,
or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

103A Protected disclosure.

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

Constructive unfair dismissal – sections 95 and 98 Employment Rights Act 1996

221. The applicable law is found in section 95(1)(c) of the Employment Rights Act 1996 which provides that *“for the purpose of this Part an employee is dismissed by his employer ifthe 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”*.

222. The leading case on constructive dismissal is *Western Excavating (ECC) Ltd v Sharp 1978* ICR 221, CA. The employer’s conduct must give rise to a repudiatory breach of contract. In that case Lord Denning said *“If the employer is guilty of conduct which is a significant breach going to the root of the contract, then the employee is entitled to treat himself as discharged from further performance. If he does so, then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed.”*

223. In *Malik v Bank of Credit and Commerce International SA 1997* IRLR 462 the House of Lords affirmed the implied term of trust and confidence 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”*.

224. In *Baldwin v Brighton and Hove City Council 2007* IRLR 232 the EAT had to consider whether for there to be a breach, the actions of the employer had to be calculated and likely to destroy the relationship of confidence and trust, or whether only one or other of these requirements needed to be satisfied. The view of the EAT was that the use of the word *“and”* by Lord Steyn in the passage quoted above, was an error of transcription and that the relevant test is satisfied if either of the requirements is met, so that it should be *“calculated or likely”*.

225. If there was a dismissal, the Tribunal must then consider whether the dismissal was for one of the potentially fair reasons set out in sections 98(1)(b) or 98(2) of the Employment Rights Act and whether the dismissal was fair or unfair under section 98(4).

226. Section 98(4) states that "*The determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)- depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case*".

227. In *Kaur v Leeds Teaching Hospitals NHS Trust 2018* IRLR 833 the Court of Appeal listed five questions that should be sufficient for the Tribunal to ask itself to determine whether an employee was constructively dismissed:

1. What was the most recent act (or omission) on the part of the employer the employee says caused, or triggered, their resignation?
2. Has the employee 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 *Waltham Forest v Omilaju [2004]* EWCA Civ 1493) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence? (If it was, there is no need for any separate consideration of a possible previous affirmation, because the effect of the final act is to revive the right to resign).
5. Did the employee resign in response (or partly in response) to that breach?

228. The Employment Rights Act 1996 contains the following provision as regards the time limit for bringing a claim for unfair dismissal:

111 Complaints to employment tribunal.

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

Unauthorised deductions from wages

229. The Employment Rights Act 1996 contains the following provisions:

13 Right not to suffer unauthorised deductions.

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

23 Complaints to employment tribunals.

(1) A worker may present a complaint to an employment tribunal

(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),

...

(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

...

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments, or

(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates, the references in

subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

(4A) An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.

Conclusions and analysis

Protected disclosures / whistleblowing

230. In the Amended Grounds of Resistance of 26 April 2023, the Respondent concedes that the Claimant made protected disclosures on 24 August 2019, 29 June 2020, and 8 February 2021 within the meaning of s. 43B(1)(a) Employment Rights Act 1996, namely that a criminal offence was being committed. These related to the allegations of indecent exposure in the workplace, drug taking and sexual coercion. As the Respondent has conceded these disclosures were made the Tribunal no longer needs to determine those specific disclosures.

231. However, the Respondent denies that the Claimant made protected disclosures on those dates with respect to allegations of fraud and theft. The Claimant alleges that she relayed this information to PA (Regional Commercial Manager) in her telephone call on 24 August 2019. There is no mention of this in the email from PA to the Claimant on the same date where he listed what she had told him. When the Claimant replied to PA she did not seek to correct him. PA was not called to give evidence.

232. The Claimant alleges that she repeated information she had given to PA in a call to Human Resources on 29 June 2020. The Respondent denies this with respect to allegations of theft and fraud. The Claimant alleged that she again telephoned Human Resources on 8 February 2021 where she again relayed this information. The Respondent denies this but concedes that she gave more information as to the alleged theft and fraud. The

Tribunal has not been provided with any evidence to corroborate what the Claimant alleges. No case notes of the calls with Human Resources on these two dates were provided despite the bundle containing other case notes from other calls.

233. The Tribunal has therefore gone on to consider whether there is any other evidence of a disclosure of alleged fraud and theft issues in the hearing bundle.

234. The case note for the telephone call of 15 May 2019 [**bundle page 162**] only records the Claimant as having said that she is aware of things happening which are unethical and asking how he can report it. Similarly the case note for the telephone call of 24 February 2020 [**bundle page 167**] again only contains limited information that the Claimant was concerned that a colleague *“may potentially have stolen devices before he left and accessed customers data.”* The case note for the call to Human Resources on 4 December 2020 records the Claimant as saying *“I have reported fraud but this has had no consequences on the individuals involved”* [**bundle page 197**]. None of these case notes contain anything other than very general allegations.

235. The Claimant has alleged that she told Mr Bousquet when he was manager of the Ashford store. During his evidence Mr Bousquet was cross examined by the Claimant and he did not recall the Claimant giving him anything other than a general allegation that there may have been fraud at two or three named stores. The Claimant did not challenge Mr Bousquet on this point and the Tribunal has no reason to doubt his evidence.

236. The Tribunal finds that up until the date of the Claimant’s grievance on 4 March 2021 she had only voiced concerns or raised general allegations with respect to theft and fraud. The Claimant’s grievance of 4 March 2021 goes far wider than raising concerns and allegations and contains information about alleged illegal contract signing, how staff fraud the system to get around failed credit checks, and stealing items of stock, however the Tribunal finds that it is the first occasion that she provided this level of detail.

237. Accordingly in the absence of anything beyond making general allegations, the Tribunal concludes that the Claimant did not disclose information with respect to fraud and theft on either 24 August 2019, 29 June 2020, or 8 February 2021.

Time limit for whistleblowing detriment

238. The Tribunal must now consider whether the complaints of alleged detriments at paragraphs 8.12.1 to 8.12.9 have been brought within the time.

239. The Claimant filed her ET1 on 12 August 2021. The ACAS Early Conciliation process was commenced on 26 June 2021 and the Early

Conciliation Certificate was issued on 12 July 2021. The Respondent argues that on the assumption that the limitation date expired during the Early Conciliation process and an automatic one month extension to the limitation period was granted, the earliest date which an act, omission or the last in a series of acts can be in time to be considered by this tribunal is 27 March 2021. The Tribunal agrees with that submission.

240. On the basis of the above all of the Claimant's complaints of detriment would be *prima facie* out of time save for allegations 8.12.7 – 8.12.9 which the Claimant says occurred up to 2021. The dates of those acts are not specified, nor are they particularised in any way.

241. The Tribunal has gone on to consider whether there is a series of similar acts and having heard all of the evidence it has considered whether there is some relevant connection between the acts complained of. The Tribunal's focus is on the acts which the Claimant has specifically complained about.

242. The majority of those acts allegedly occurred before the Claimant moved to the Ashford store on 28 February 2020, approximately eighteen months before she lodged her ET1 on 12 August 2021. The alleged detriments occurring after the move to the transfer to the Ashford store in February 2020 appear to relate to being rejected in her third application for Aspire and being treated unfavourably for extra hours. The Tribunal heard evidence that the Claimant had not pursued the proper channels for her Aspire application and she had not requested to work additional hours in the Ashford store. The Tribunal notes that she was asked by DG if she wanted more hours, but she did not respond. The final three alleged detriments were not particularised so it has not been possible to determine any connection with those. The Claimant has not demonstrated any evidence of any connection between the acts complained of. Accordingly, the Tribunal finds that there has not been a series of similar acts with some relevant connection between them.

243. The Tribunal has then gone on to consider whether it was reasonably practicable for the Claimant to have presented her claim in time, and if not, whether it had been presented within such period as the Tribunal considers reasonable.

244. The Tribunal has noted the Claimant's first submission on time during cross examination that she thought that she would need qualifying service of two or three years to bring a claim. Ignorance of time limits is not in itself a sufficient reason for granting an extension of time of many years. In any event the Tribunal is not satisfied that the Claimant was unaware of the time limit for bringing claims. The Claimant has previously brought at least one set of tribunal proceedings against a former employer, the Claimant has made references to the concept of constructive dismissal and the last straw doctrine before her resignation, and the Tribunal notes that the Claimant

had told the Respondent that she was studying a BA Hons in business and law. The Tribunal therefore considers that the Claimant would have been aware of the need to bring her claims in time.

245. In her closing submissions the Claimant referred to her health as being a reason for not having brought her claims earlier, and she relied upon the Occupational Health report of 2 February 2021 which recorded her as suffering from low mood, and that she was anxious and worried and that she was unfit for work due to the severity of her symptoms. The Claimant also referred to her conversations with the Respondent about her sickness, including those with SM on 13 February 2021 and Mr Malik at the grievance appeal stage.

246. No medical evidence was provided by the Claimant which would have supported her arguments. The Claimant was able to attend work on occasion up to her transfer to the Ashford store in February 2020. The fact that the Claimant was recorded by Occupational Health unfit for work in February 2021 does not mean that the Claimant was unable to have brought her claims at that time nor within the proceeding two to three years for those allegations going back that far.

247. Accordingly, the complaints of detriments for whistleblowing have been brought out of time for the purposes of s. 48 Employment Rights Act 1996 and the Tribunal has no jurisdiction to consider them. Even if the Tribunal is wrong on that, it notes that many of the alleged detriments are said to have occurred **before** the Claimant's first protected disclosure on 24 August 2019 and accordingly these would likely have been dismissed in any event as they could not have been caused by disclosures which had yet to occur. These matters have nevertheless been considered with respect to the Claimant's constructive dismissal claim below.

Unauthorised deductions from wages / breach of contract

248. The Claimant argues that she had a contractual entitlement to 32 hours per week and that these were unlawfully reduced by the Respondent to 18 hours per week in September 2018. The Claimant concedes that the Respondent had the contractual power to make changes to her hours if confirmed in writing and with the requisite notice under the contract.

249. The Respondent argues that the Claimant's hours were changed with her consent in September 2018 and that it in any event had the power to make changes to her contract. Neither LS (Folkestone store manager) nor PB (Assistant Store Manager / Retail Business Consultant) were called to give evidence, however both had taken part in the grievance interviews with Ms Bishenden and the notes of which record that the change was agreed with the Claimant following her repeated sickness absence and her comments that she was struggling with childcare.

250. The Tribunal notes that the Claimant's contract provides that she would work on average 30 hours per week and it contains the power of the Respondent to unilaterally make changes to hours and that these will be confirmed in writing and four weeks' notice will be provided. The Tribunal was not referred to any document which the Respondent says it sent to the Claimant notifying her of this change. However the Tribunal notes that the term regarding written notice only applied to changes imposed by the employer, it did not refer to variations agreed between the parties.

251. The Tribunal notes the Claimant's level of sickness absence at the time of the change which was high, as well as the contents of the return to work interviews which also record childcare as a reason for some of the Claimant's absence. The Tribunal also notes that the Claimant did not seek to formally challenge this change in hours until her grievance of 4 March 2021, some two and a half years later. The Tribunal also notes that it was not referred to any document by the Claimant where she asked for those hours to be reinstated, and that she did not seek to revert to 30 hours when she joined the Ashford store in February 2020. The Claimant also did not respond to DG during her sickness absence meeting when he asked her if she would like more hours. Finally the Respondent also notes that the Claimant offered to forgo £3,000 of her salary in December 2019, some fifteen months after the Claimant alleges that he unlawfully reduced her hours. The Tribunal finds this to have been an unusual offer for an employee to have made and it appears to be odds with someone who genuinely believed that their hours had been unlawfully reduced.

252. The Tribunal therefore finds on the balance of probabilities that it is more likely that the Claimant agreed to the variation of the contract with the Respondent in September 2018 and accordingly her claims for unauthorised deductions from wages and breach of contract must fail together with the associated claim for holiday pay under the Working Time Regulations which was based upon the Claimant working 32 hours per week. In any event the holiday pay claim was not pursued by the Claimant during the hearing and the Tribunal heard no evidence about it.

253. Even if the Tribunal is wrong on the variation of contract, there are strong grounds to find that the Claimant impliedly agreed to the change by the Respondent as the reduction in hours would have had an immediate practical impact upon her, yet the Claimant did not resign nor did she bring a grievance for a further two and half years.

Constructive unfair dismissal

254. In her resignation letter and in her pleadings and witness statements the Claimant says that she resigned on both a cumulative course of conduct and a last straw. During cross examination the Claimant conceded that she did not resign in response to any particular act which occurred at or around

the time of her resignation. The Claimant relied upon the implied duty of mutual trust and confidence which she said had been breached.

255. Whereas the Claimant has relied upon a cumulative course of events and appears to have abandoned her reliance upon a last straw, the Tribunal will still need to consider all those matters to which the Claimant has relied upon in her resignation letter and witness statement on the last straw.

256. Whilst the Respondent denies constructive dismissal it also argues that acts or omissions before 27 March 2021 cannot be considered by the Tribunal on the basis that they are out of time. The Respondent relies upon *Malik* to the effect that the breach occurs when the prescribed conduct takes place and it relies upon s. 111 Employment Rights Act 1996.

257. The Tribunal does not agree that those matters allegedly occurring before 27 March 2021 cannot be considered by the Tribunal. The judgment in *Malik* does not operate as a strict time bar in the way in which the Respondent describes, moreover s. 111 ERA 1996 does not preclude consideration of a series of alleged breaches older than three months. The effect of *Malik* is that once a breach by the employer has taken place the employee may resign without notice but if that the employee stays then the circumstances will need to be considered before it can be said that the employee has waived the breach. The issue is rather one of affirmation rather than of strict time limits.

258. The Tribunal will therefore need to consider the wider picture which will include all of the matters relied upon in order to determine whether there was a fundamental breach on the part of the employer which would have entitled the Claimant to resign without notice. Only when the Tribunal has the answer to that question can it then go on to answer the questions in *Kaur*.

Was there a fundamental breach on the part of the employer?

259. The Respondent conceded that if any of the detriments allegedly occurring in 2017 and 2018 had taken place then these could be taken individually as repudiatory breaches by the employer. These allegations include telling an employee that she would need to show photographs of her breasts if she missed her KPIs, telling a colleague to expose their genitals, working in an environment where drug taking was rife and unilaterally reducing an employee's hours in breach of contract. All of these allegations could amount to repudiatory breaches however the Claimant did not resign at the time nor did she bring a formal grievance until many years later.

260. The Claimant has not proven to the satisfaction of the Tribunal that the first three of these four events occurred. There is simply no evidence to support the allegations which the Claimant makes, save for the reduction in

her hours which the Tribunal has already made a finding that these were varied by agreement with the Claimant. All of these complaints were historic and whilst the Claimant made a protected disclosure on 24 August 2019, she quickly retracted her concerns the same evening and did not raise a grievance for a further one and a half years by which time the store manager concerned had left the Respondent.

261. The Tribunal has considered the allegations about isolating the Claimant by removing her from WhatsApp groups in 2018, 2019 and 2020. These allegations were thoroughly investigated by the Respondent and the Tribunal accepts the reasons the Respondent has given for the Claimant's removal in 2018 and 2019 which relate to not wishing to disturb her on her sickness absence (for the store group), and the Claimant not having senior responsibilities (for the regional group). The Tribunal did not find that the Claimant was removed from any WhatsApp groups in 2020. The Tribunal does not therefore find that the Respondent breached the Claimant's contract in this respect.

262. As regards the allegations about not granting the Claimant more hours, the Claimant has not demonstrated that she ever requested more hours which were refused. Rather the Tribunal finds when the Claimant was asked if she wanted more hours she did not reply. Similarly, the Claimant has also not demonstrated that she was treated unfavourably with regards to store transfers. The Claimant was permitted to transfer to Ashford at her request in 2020 and in 2021 she was asked if she wished to transfer to other stores but she declined to do so and wished to remain where she was. The Claimant was offered a fresh start at the Canterbury store with a new store manager, however she did not accept that offer either. The Tribunal does not find that the Respondent breached the Claimant's contract in this regard either.

263. The Claimant has also not demonstrated that the Respondent breached her contract with respect to progression, specifically her applications for the Aspire course in 2018 and 2020. These allegations were also investigated by the Respondent and the Tribunal finds that the Claimant's removal from the first course was due to her sickness absence which was unacceptable, and that this applied to other colleagues and not just the Claimant. As regards the Claimant's second application the Tribunal again finds that this was also rejected due to the Claimant's sickness absence. The Tribunal finds that the Claimant's third application was unsuccessful as she failed to follow the process as she wished to skip a step but had failed to speak to the appropriate manager. The Tribunal therefore does not find that the Respondent breached the Claimant's contract with any of the three Aspire applications.

264. As regards being made to work in breach of health and safety laws, the Claimant did not pursue this allegation during the Tribunal proceedings and it is therefore unproven.

265. The Claimant also alleged that there had been a failure to make reasonable adjustments for her. Whereas the Claimant did not amend her Tribunal claim to pursue such an allegation it has nevertheless been considered as part of the constructive dismissal complaint. The Tribunal notes that the Occupational Health report of 2 February 2021 did not suggest that the Claimant was disabled nor did it make any recommendations of reasonable adjustments for the Claimant. The Claimant has also not identified any adjustments she says ought to have been made. Accordingly the Tribunal does not find that this amounted to a breach of contract.

266. The Claimant's allegations of bullying concern the WhatsApp exchange with members of the Folkestone store following her return to work from sickness absence where she made suggestions about improving store sales. The Tribunal notes that the staff concerned were voicing their frustration at the Claimant's message after covering for the Claimant's repeated sickness absence whilst having to meet their own targets. The extract of the WhatsApp messages presented to the Tribunal appear to be more of an argument rather than bullying as the Claimant was an active participant in the brief dialogue. The Tribunal does not find that the Respondent breached her contract in this regard either.

267. The Tribunal has already found that the grievance process was conducted fairly and the outcome findings were supported by a thorough investigation of all of the evidence before the grievance investigator. The Tribunal does not find that the grievance process or the outcome have breached the Claimant's employment contract.

268. The Tribunal does not need to consider matters allegedly occurring after her resignation on 13 July 2021.

269. Therefore, to summarise and answer the five questions in *Kaur*:

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

The Claimant says that there was a cumulative series of events, the last of which prior to her resignation was the conduct of the grievance process with the outcome issued on 25 June 2021.

2. Has the employee affirmed the contract since that act?

No, the Claimant resigned on 13 July 2021.

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

The Tribunal has found that it was not.

4. **If not, was it nevertheless a part (applying the approach explained in *Waltham Forest v Omilaju* [2004] EWCA Civ 1493) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence?**

The Tribunal has not found that there was such a course of conduct.

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

The Tribunal has already found that there was not a breach or a cumulative course of conduct. Even if the Tribunal is wrong on that, it is clear that the Claimant repeatedly affirmed her contract in the period since October 2017 and throughout 2018 and 2019 which are the dates where the majority of the allegations are said to have taken place. The Claimant said that trust and confidence was gone or partially gone by December 2019, yet she still did not resign for almost nineteen months. The Tribunal has not identified any breaches occurring after December 2019.

270. Given these findings the Tribunal concluded that the Claimant was not constructively dismissed by the Respondent. In the absence of a dismissal the Tribunal cannot find that the Claimant was dismissed for having made a protected disclosure either.

Summary

271. It is the unanimous decision of the Tribunal that all of the Claimant's complaints are dismissed.

Employment Judge **Graham**

Dated: 1 June 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

11 June 2023

GDJ
FOR THE TRIBUNAL OFFICE