



EMPLOYMENT TRIBUNALS

Claimant: Samantha Taylor

Respondent: Frontier Therapeutics Limited

Heard at: Cardiff by video

On: 30 and 31 May 2023

Before: Employment Judge R Russell

Representation

Claimant: In person

Respondent: Ms R Senior, Counsel

RESERVED JUDGMENT

1. The claim of constructive unfair dismissal is not well founded and is dismissed.
2. The claim for unlawful deductions from wages fails and is dismissed.

REASONS

Introduction

1. By way of a claim form presented on 03 August 2022 the Claimant brings a claim of constructive unfair dismissal and unlawful deductions from wages relating to an alleged shortfall in bonus payments made to her. ACAS early conciliation began on 21 June 2022 and ended on 23 June 2022. By way of a response dated 08 November 2022 the Respondent defends the claim.
2. I received witness statements from the Claimant and, for the Claimant, from Bethan Roberts, Pam Jones, and Sally Nesta. For the Respondent, I received witness statements from Gill Davies (Commercial Operations Director) and Matthew (Matt) Bambery (Chief Financial Officer). The Claimant, Gill Davies, and Matt Bambery gave oral evidence. As Bethan Roberts, Pam Jones, and Sally Nesta did not attend the hearing and could not be cross-examined on their evidence there was little weight that I could attach to their statements.

3. I had a bundle spanning 874 pages. References below to page numbers are to page numbers in the bundle. I explained to the parties at the outset of the hearing that I would consider those pages to which I was directed.
4. The Claimant's claim regarding a shortfall in bonus stems from a dispute about which bonus plan governed the payment. The Respondent says her bonus was governed by the terms of the National Sales Manager (NSM) bonus plan. The Claimant says it was governed by the Regional Sales Manager (RSM) bonus plan. The bundle contained a document showing how the Claimant's bonus had been calculated under the NSM plan [p696].
5. At the start of day 1, the Respondent provided the Claimant and Tribunal with a document showing alternative calculations under the RSM plan. This evidence related to the issue of remedy, had been prepared solely for the purposes of the hearing, and was not included in the joint bundle. At the start of day 2, the Claimant provided alternative bonus information in the form of spreadsheets. This evidence also related solely to the issue of remedy. The Respondent objected to the late disclosure. Although the hearing had been listed to determine liability and remedy if necessary, I indicated to the parties at the start of day 2 that it would be unlikely that I could give judgment that day. This was because the Claimant had yet to conclude her evidence and I had yet to hear evidence from the Respondent. A separate remedy hearing would be listed if necessary. The application to include both sets of additional evidence was refused. The evidence related solely to the question of remedy. The evidence would not assist me in determining liability.
6. I received written submissions from Ms Senior and oral submissions from the Claimant and Ms Senior. Judgment was reserved.

Issues to be determined

7. The parties produced an agreed list of issues at the start of the hearing. The issues for me to decide were as follows (the original numbering from the list has been retained for ease of reference):

1) Unlawful Deduction from Wages

- 1.1 Did R make a deduction from C's wages? If so,
 - 1.1.1. Was the deduction required or authorised to be made by virtue of a statutory provision or a relevant provision of C's contract?
 - 1.1.2. Had C previously signified in writing her agreement or consent to the making of the deduction?
 - 1.1.3. Was the purpose of the deduction the reimbursement of the employer in respect of an overpayment of wages?
 - 1.1.4. Was the deduction made by R in pursuance of any arrangements which have been established in accordance with a relevant provision of C's contract to the inclusion of which in the contract the worker has signified his agreement or consent in writing, or otherwise with the prior agreement or consent of the worker signified in writing?

2) Unfair Constructive Dismissal

2.1 Did the Respondent do the following thing or things:

2.1.1 Bulling and controlling behaviour towards the Claimant by Gill Davies;

2.1.2 Not give the Claimant any support or a hand over when she moved to the National Sales Manager position;

2.1.3 Not support the claimant whilst she was off sick with work related stress;

2.1.4 Not investigate the Claimant's grievance thoroughly;

2.1.5 Make an unlawful deduction from C's wages, see issue 1 above.

Claimant to specify what was the most recent act (or omission) on the part of the Respondents which the Claimant says caused, or triggered, her resignation.

2.2 Did the above conduct breach the implied term of trust and confidence? The Tribunal will need to decide:

2.2.1 Whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and

2.2.2 Whether it had reasonable and proper cause for doing so.

2.3 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end.

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

2.5 Did the Claimant waive the breach? Did she affirm the contract?

3) Remedy

3.1 If an unlawful deduction from wages was made, to what remedy is the Claimant entitled?

3.2 If the Claimant was unfairly dismissed, to what remedy is she entitled?

3.3 What is the amount of the basic and compensatory awards?

3.4 Did the Respondent unreasonably fail to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures? If so, should any compensation awarded be increased and by how much (up to a maximum of 25%)?

Claimant to confirm what paragraph/s of the Code is/are relied upon as having been unreasonably breached.

3.5 If the dismissal was procedurally unfair, what is the chance that the Claimant would have been dismissed in any event had a fair procedure been followed? How long would it have taken for a fair procedure to have been followed? Should the Claimant's compensation be reduced accordingly and if so, by how much?

3.6 Has the Claimant committed culpable or blameworthy conduct which caused or contributed to her dismissal? If so, should any compensation be reduced and by how much?

3.7 What period of loss should compensation be awarded for, including, would the Claimant have been dismissed in any event for serious misconduct or reasons other than conduct?

3.8 Has the Claimant unreasonably failed to mitigate her losses?

Findings of fact

8. Applying the balance of probabilities, and to the extent necessary to decide the issues in the case, I make the following findings of fact.

Terms of employment

9. The Claimant began employment with the Respondent on 16 October 2017 as a Territory Manager in the Northern Region. At that time Gill Davies was Head of Sales and Marketing. She and the Claimant had previously worked at the same company. They had not worked together but met at a sales meeting. The Claimant had impressed Gill Davies. She contacted the Claimant to inform her of the Territory Manager vacancy.
10. The Claimant's terms and conditions were contained in a service agreement dated 15 September 2017 signed by the Claimant and Respondent [p55]. The Respondent is a provider of specialist medical devices to healthcare professionals and end users based in South Wales. The Claimant is based in the north west of England.
11. Clause 8 of the service agreement provides that the Claimant will be required to work such hours as may be necessary for the proper performance of her duties [p62]. The Claimant was given a letter of appointment dated 15 September 2017 [p75]. This states that the usual working hours are 40 hours per week. It further provides that it is an 'expectation that this may be exceeded on occasions, particularly when there is a requirement to travel or stay away at exhibitions or meetings' [p75].
12. Clause 5.2 of the service agreement provides that if 'employment shall terminate during the currency of any Financial Year under which a bonus is payable under this clause 5.2, the Board shall pay to the Executive such sum as the Board shall in its sole discretion determine' [p60]. The appointment letter of 15 September 2017 provides that 'there is an opportunity to earn a further annual on target bonus, based on mutually agreed financial growth and objective targets set for the role. The figure and criteria will be confirmed to you by your Manager' [p75].

13. The Claimant was promoted to Regional Partnership Manager with effect from 01 April 2018 [p101]. She was given a letter of appointment dated 12 April 2018, which she signed on 16 July 2018 [p101]. In respect of hours of work, the letter provides that the usual working hours will be 40 per week including rest breaks. These 'should be discussed with your line manager to ensure any break fits with your duties and that expectations are aligned and agreed' [p102]. The letter continues:

"There is an expectation that your working hours may be exceeded on occasions in line with typical business demands of the role e.g. a requirement to travel or stay away on business. This will not typically be paid overtime" [p102].

14. The letter of appointment to the Regional Partnership Manager role provides that the Respondent may 'in its absolute discretion pay you a bonus of such amount, at such intervals and subject to such conditions as the Company may in its absolute discretion determine from time to time' [p102].

15. The Claimant was promoted to Regional Sales Manager – Northern Region (RSM) with effect from 23 April 2020. She then reported to Simon Warden, National Sales Manager. The appointment letter to that role provides that 'this change does not affect any of your standard conditions of employment' [p110].

16. On 30 July 2021 the Claimant was promoted to National Sales Manager (NSM) [p138]. In this role she reported directly to Gill Davies who was by then Director of Sales and who, in turn, reported to the CEO. Simon Warden had by this time moved to the role of UKI Commercial Manager. He also reported to Gill Davies.

17. The Respondent's sales team is divided into two Regions – North and South. Within these, there are separate territories. On her promotion, the Claimant was responsible for managing the team nationally. At this time there were several vacancies in the team. In the email from Gill Davies of 30 July 2021 at 13:20 in which the Claimant's promotion to NSM was announced, she acknowledged that the Claimant had been leading the Northern team for the past 18 months together with covering vacant areas. She informed the email recipients that the Respondent would be recruiting for two Business Development Managers – North and South [p138]. In addition there were two vacancies for Territory Managers in the South [p145].

18. The Claimant was highly regarded by Gill Davies.

Bonus plan

19. The Respondent operates separate bonus plans for Regional Sales Managers (RSM) and National Sales Managers (NSM). The terms of both plans are the same except for the bonus figures. Under the NSM plan, there is the potential to earn a higher bonus.

20. The Claimant signed the RSM FY21 Bonus Plan on 6 May 2020 [p111]. She signed a further copy for FY21 on 23 July 2020 [p115]. The last bonus plan signed by the Claimant was the RSM plan for the FY22 financial year, which she signed on 01 May 2021 [p129]. She was then RSM. She was promoted to

NSM a few months later. She has never signed a copy of the NSM bonus plan.

21. The relevant terms of the FY22 RSM bonus plan include the following: ‘100% of your annual targets and KPI’s will earn £14,000, being the On-Target Bonus (OTB)’. It further states that ‘Bonuses will only start to be paid upon achievement of 90% of that Quarter’s cumulative target’. Bonus payments are stated to be ‘at the discretion of the line manager’ [p129].
22. The RSM plan contains the following clauses in respect of ‘catch up’ payments and overpayments [p130]:

“There will be a catch up (or ‘true-up’) payment at year-end as required to ensure full year performance is appropriately recognised. For example, if after Q1, Q2 and Q3 the performance was 95% of target, but after Q4 the full year performance is on target, then the year-end payment will make good any financial shortfall from Q1-3”.

“In the rare circumstance you might have been overpaid a bonus (e.g. Q1-3 performances are on target but a Q4 slump in sales gives a low total annual performance) the Board of Directors will consider whether to seek to reclaim this overpayment on a case by case basis e.g. through netting off against the future year’s bonus”.

23. Simon Warden signed the FY22 NSM bonus plan on 29 April 2021 [p511]. The terms of the NSM plan signed by Simon Warden and the RSM plan signed by the Claimant (when both were NSM and RSM respectively) are the same in all material respects apart from the bonus figures. The key difference is that 100% achievement of annual targets and KPIs would earn an On-Target Bonus of £14,000 under the RSM plan and £18,000 under the NSM plan. This is broken down further into different sales targets for different products. The provisions regarding catch-up payments and overpayments are the same in both plans as is the fact that bonus payments are ‘at the discretion of the line manager’.
24. On 30 July 2021 there was a friendly iMessage exchange between the Claimant and Gill Davies [p672]. The Claimant had asked to chat ‘about reporting lines and package. Nothing bad at all, just double checking some bits etc xx’. She said that she had ‘just arrived at friends’. This message appeared to have been sent at 19:16.
25. Gill Davies replied with the following message at 22:57 on 30 July 2021 [p672]:

“Of course. 65k basic. Same bonus as it’s 6 months in. Go live 1st October for the salary. (As these things normally do). You report to me. Car allowance will increase when you get a new car. All BDMs and [sic] TMs report to you. You will find that the TMs will speak to the bdms a lot which should reduce the need for you to be so hands on. Your role will be a lot coaching though. Simon will support with the commercial pricing and any big stuff that I can’t get involved in or I’m happy for him to be involved in. Hope this helps but let’s talk Monday. I plan to spend a lot of time giving you direct coaching. That’s not a negative but I know/think you will want that. Enjoy your night. X”.

26. The confirmation from Gill Davies was sent some hours after the Claimant's promotion had been announced. The promotion had therefore been agreed at the time of the announcement but precise terms needed to be finalised.
27. The Respondent sent the Claimant a letter on 11 August 2021 confirming her promotion to National Sales Manager, that her salary would be increased to £65,000 from 01 October 2021, and 'all other terms and conditions remain the same' [p140]. This reflects the substance of the message sent by Gill Davies to the Claimant on 30 July 2021.
28. On 17 October 2021 Gill Davies sent the following WhatsApp message to the Claimant [p661]:

"I'm going to try and increase your normal bonus to £18k [followed by a thumbs up emoji]. Can't promise but will try. X"

The Claimant replied that day to thank her [p661].

29. In the Claimant's witness statement, she understood that 'Gill...was trying to get my normal bonus put up from £14k to £18k' [paragraph 68].
30. The parties disagree over whether the Claimant was moved to the NSM plan. In oral evidence Gill Davies said that, at the time of the October 2021 WhatsApp message, she was in discussions with the then CEO, Simon Jackson, about moving the Claimant to the NSM plan. The reference to £18,000 is, she says, reference to the On-Target bonus figure contained in the NSM bonus plan for the 2022 financial year. Moving the Claimant to the NSM plan would give her higher earning potential. The RSM plan bonus was limited to £14,000. She says that the CEO approved the Claimant being moved to the NSM plan. She informed the Claimant of this. The change to the NSM plan was never documented due to pressures of work. She says that she had a strong relationship with the Claimant, who trusted her to negotiate with the CEO on her behalf. In sum, Gill Davies said she gained the CEO's approval to move the Claimant to the NSM plan for the remaining two quarters of the 2022 financial year. This gave the Claimant the potential to earn a higher bonus. She communicated this to the Claimant and it was agreed that the Claimant would move to the NSM plan.
31. The Claimant denies that she was moved to the NSM plan. She thought that the October 2021 WhatsApp message related to a new incentive scheme. Gill Davies' evidence was that the incentive scheme in question only applied to Territory Managers.
32. Following her promotion to NSM, the Claimant's targets were national sales targets [paragraph 55 of her statement].
33. The Claimant was paid under the RSM plan for Q1 and Q2. She was paid under the NSM plan for Q3 and Q4 [p696]. The Claimant did not complain about the Q3 payment. She says that she did not receive a breakdown of how the January 2022 quarterly bonus had been calculated. She had no reason to query the amount and did not do so. She did not, under cross-examination, dispute how the bonus figures had been calculated in respect of the sums arrived at. Her dispute related solely to the fact that she averred that she

remained on the RSM plan and that the targets and achievements against targets should be calculated under that plan.

34. The Respondent refutes the Claimant's claim that she would not have understood how her quarterly bonus was calculated. She was not reliant on receiving quarterly bonus statements. She would receive monthly dashboards as NSM to track how sales were progressing relative to targets. She participated in, and steered, sales meetings on a regular basis.

Bullying and controlling behaviour by Gill Davies

Working from home

35. The Claimant states that during the Covid lockdown, she and sales team colleagues were made to feel as though they could not be trusted when working from home. On 06 January 2021 she emailed Simon Warden about the lunch break to which her team were entitled [p118-119]. She was, at this time, RSM North. Simon Warden was NSM and reported to Gill Davies. The email followed a telephone call she had with him about managing working at home particularly when colleagues were home-schooling children due to the closure of schools. She explained in her email that she had told her team that she needed complete transparency from them. She made the following proposal [p118]:

“My initial thoughts...were to advise the team that they take their allocated lunch breaks and use this for exercise/fresh air with children or home schooling and if any other time is required maybe 30 mins morning or 30 mins afternoon they work from 8am to cover this and until 5.30pm, whichever way suits there [sic] homelife but time to be taken to fit around work”.

36. Simon Warden responded later that day to thank the Claimant [p117-118]. He thought her points were reasonable. He wanted to hold a conference call with the team as he thought that each member would require different support depending on their individual circumstances. The Claimant replied within a couple of minutes of this email to thank him [p117]. She said that it would be helpful to have some guidance on the amount of lunch break colleagues should take as some team members were taking an hour, others half an hour, and others working on.
37. The Claimant did not raise any concerns about being denied a lunch break or about not being trusted. I do not find that the Claimant was not trusted to manage her time at home or that Simon Warden, whether on his own initiative or on instructions from Gill Davies, was behaving in a controlling way. It was the Claimant who had suggested to Simon Warden how she might ensure accountability within her team and it was she who asked for guidance about the lunch breaks that could be taken.
38. The issue of lunch breaks and accountability when working from home was raised by the Claimant during her appraisal over a year later on 11 February 2022. The Claimant made a covert recording of the appraisal without informing Gill Davies. A transcript of the recording was included in the bundle [p715].

39. The transcript records the Claimant saying that she had spoken with Simon Warden about lunch breaks. She would not always find time for lunch [p721]. The transcript notes the following exchange [p721-722]:

Claimant: "So, you know, it's just, but it's just me, nobody else is stopping me from doing it, this is just me, and I need to think, I just maybe need to make a bit of time for myself, even if it's just five minutes downstairs while I have that cup of tea, and then come back up, or that sandwich, rather than doing it here".

Gill Davies: "Yeah, I mean, I know, on occasions you've told me that you're just nipping out to get something, or you're just getting lunch or what have you, and I'm like, why are you telling me that? You could have been on a phone call for half an hour and I wouldn't of known about it. But, yeah, if you're working from home and I can't get you for three hours, then I'm gonna be like, what's the matter. But, you don't need to be telling me that you're taking a lunch break".

Claimant: "Yeah, Yeah I know".

Gill Davies: "So, that is about self managing, this point here is about your self management. Yeah".

Claimant: "Yeah, yeah and I think it's just because the job is very busy..."

40. I find that in the context of lockdown where the sales team were working from home, the Respondent adopted a flexible approach to the issue of lunch breaks. The Claimant was not prevented from taking lunch breaks, as she acknowledged herself in the appraisal conversation with Gill Davies. The Claimant invited the Tribunal to find that Gill Davies had acted in a passive aggressive manner during the appraisal. I do not find this to be the case. Gill Davies was not aware that she was being recorded. An objective reading of the above exchange shows that Gill Davies told the Claimant that she need not call her to say that she was taking a lunch break. She told the Claimant that she could 'self manage'.

41. The Claimant avers that a further example of controlling behaviour occurred on 06 July 2021 when Simon Warden asked her to put details of customer calls she was making into the Respondent's CRM record management system [p133 and 135]. The Claimant asked if she could discuss the requests with him. She did not complain. She provided details of the volume of emails and calls she had received and made that day [p131]. Simon Warden replied shortly afterwards to say 'Yes of course Sam. Speak soon. Cheers' [p131]. The Claimant was promoted to NSM shortly afterwards and no longer reported to Simon Warden. I do not find that this was controlling behaviour on the part of Simon Warden or on instruction from Gill Davies. He had made a request of the Claimant, she asked to discuss it further, and he responded in a friendly manner.

Promotion and management of Owen Davies

42. At the time the Claimant became NSM, Owen Davies was a Territory Manager in the southern region. He is the son of Gill Davies. On 18 August 2021 the Claimant and Simon Warden interviewed him for the role of

Business Development Manager – South (BDM). He was successful at interview. The Claimant avers that she was unable to participate fully in the interview process due to attending remotely and was not included in discussions about his appointment. She did not raise concerns about the interview process or the appointment of Owen Davies at the time. The Claimant wrote to Gill Davies on 19 August 2021 recommending him for the role [p143]. Around that time she had an iMessage exchange with Gill Davies. Gill Davies had informed the Claimant that she had approval to offer the role to Owen. She asked the Claimant whether it was ok for her to do so. The Claimant replied that she would ‘love to offer him it.’ She told Gill Davies that it was ‘fantastic news’ and ended her message ‘xx’ [p677]. She confirmed the start date, salary, and bonus with Gill Davies and said that she would call him the following morning to offer him the role. I find that she was involved in the recruitment of Owen Davies and she offered the role to him.

43. As NSM, the Claimant began line managing Owen Davies with effect from his appointment to the BDM role on 01 September 2021.
44. On 22 November 2021 the Claimant emailed Owen Davies with the subject matter ‘Sugar CRM Forward planning’ [p224]. Her email was professional and supportive. She was chasing for him to complete the records management system. She asked whether she could take anything off his plate and acknowledged that he was ‘juggling many hats at the moment’. She told him that updating his CRM and forward planning information was a ‘mandatory KPI and one that I have to monitor as part of my KPI’s’. He apologised a few minutes later and promised to complete the work [p223]. The Claimant replied with a further supportive email to ask him to let her know if he felt that things were getting on top of him [p223].
45. The Claimant stated that she believed Owen Davies had complained to Gill Davies about being asked to complete the CRM. She said that Gill Davies retaliated by asking her to complete her CRM. The request from Gill Davies to the Claimant was sent via email on 29 October 2021 [p169]. This was over three weeks before the Claimant had asked Owen Davies to complete his work. As a matter of fact, there was no retaliation.

Lack of support/handover as NSM

46. The Claimant told the Tribunal that her complaint relating to lack of support was specifically regarding the southern region. This included a lack of support in managing Owen Davies.
47. When the Claimant had been promoted to NSM, Gill Davies had sent the Claimant a message on 30 July 2021 in which she said ‘I plan to spend a lot of time giving you direct coaching. That’s not a negative but I know/think you will want that’ [p672].
48. The Claimant sent an iMessage to Gill Davies on 10 September. I find that it was likely sent in September 2021 (although the date is unclear) as it states how much happier the Claimant is in her new role and ‘feel I am learning so much every day from you’ [p674]. She thanked Gill Davies for her support and said ‘I know I still have loads to learn but am really enjoying it, even though some of the aspects of the job are draining and nerve wracking [emoji] at times. Have a lovely weekend! Xx” [p674]. Gill Davies responded by telling

the Claimant that she had every confidence in her, that she regarded her as her apprentice, and said 'Let's look forward and together we will make a massive difference and I'm sure be very successful'. The message ended 'Xx' [p674].

49. Gill Davies and the Claimant would typically have daily calls. Gill Davies told the Tribunal that discussions included how the Claimant might handle sensitive staffing issues within her team. The Claimant did not raise any objections with Gill Davies about what she regarded as her coaching of the Claimant.
50. On 02 November 2021 the Claimant asked Gill Davies if she could get back in time to attend her son's parents evening. Gill Davies suggested she leave at lunch time. In the event the Claimant did not need to leave early.
51. On another occasion (the date was unclear), there was a sales team residential event. The Claimant sent a message to Gill Davies to say that she would not be out with the team every night as she would be 'catching up in the evening and chilling'. Gill Davies replied that they could take turns to be with the team. The Claimant agreed that this 'sounds like a plan' [p675].
52. As BDM for the South, the Claimant relied on Owen Davies to help provide her with information about that region. She had chased him for information in November 2021. She was frustrated at what she thought was a lack of timely reporting from him. On 08 December 2021 the Claimant had sent a personal message to Caitlin Kane, one of the Territory Managers in her wider sales team, where she recounted a discussion with Gill Davies [p682]. The Claimant said she had told Gill Davies about Owen who had 'given him a bollocking this morning' as Gill Davies had checked his CRM and found that it was blank. I find that between the emails to Owen in November 2021 and this exchange with Caitlin Kane on 08 December 2021, the Claimant had raised her concerns about Owen Davies with Gill Davies notwithstanding any awkwardness she may have felt given their mother-son relationship. Around this time, to help the Claimant and in response to discussions with the Claimant, Gill Davies moved line management responsibilities for the BDMs from the Claimant to Simon Warden. The Claimant told Caitlin Kane that she was 'relieved I wasn't managing him [Owen Davies] now' [p682].
53. The message to Caitlin Kane on 08 December 2021 followed a lengthy call between the Claimant and Gill Davies. The Claimant described to Caitlin Kane letting 'it all out' and being on the call for over an hour [p682]. Caitlin Kane had been due to attend a trade fair in Glasgow the following week. She told the Claimant on 07 December 2021 that she was unable to attend [p680]. The Claimant was asked to go to the trade fair, which would involve her being away from home. She was upset at this as can be seen in the messages she exchanged with Caitlin Kane on 08 December 2021 where she complained that she had been away from home 2 or 3 nights in the last 10 out of 12 weeks. She said that she was away for 4 nights in one week [p683]. It appears to have been the request that she go to Glasgow that led to the lengthy call with Gill Davies. It would have meant that the Claimant would miss her son's Christmas event at school. She told Caitlin Kane that following the call with Gill Davies 'I'm not away next week now [followed by emoji]' [p683]. Gill Davies had arranged for other colleagues to attend so that the Claimant did not have to go.

54. Although the tone of the messages between the Claimant and Caitlin Kane suggests that the Claimant felt aggrieved, the two messages between the Claimant and Gill Davies following the call suggest that the Claimant was grateful to Gill Davies for her support [p751]. She thanked Gill Davies for being able to speak with her openly and honestly. She explained that things had built up. She mentioned her husband being stressed at work and not having had a proper break due to Covid. She ended her first message by saying 'It'll be fine and I am thankful I have a boss I can moan to just sorry it came when it did xxxx'. She sent a second message in which she said her husband 'shouted at me for even saying anything and I've shouted at him for making me feel like I needed to. Men! [followed by an emoji] x'.
55. Gill Davies replied. She reassured the Claimant that 'We all have these moments and it's important to.' She considered the Claimant to be 'a strong woman'. She wrote:

"Speak to me though. I know I claim to be a white witch. Which I think I am most of the time but I don't always get it right. Hence being inclusive with you and Simon. We are a great team and I think we are the strongest and most robust team in the business. We are just too stretched. We need to be balanced and the board get that. Just don't over think things and if you find yourself doing so. Tell me. You will get nothing but honesty from me as you know and I like to be fair. On that note. I've had a chat with Owen. I've made myself very clear and Simon will speak to him on Friday. It will be sorted. Thank you for speaking to me. Give you [sic] hubby a hug. X"

56. On 15 December 2021 the Claimant sent a WhatsApp message to Gill Davies with a photograph of her son dressed as Father Christmas for his Christmas show. Gill Davies replied 'Awww. Brilliant. Have fun. X.' The Claimant sent a further message to Gill Davies to say 'He's chuffed I'm here. Thank you x' [p666].
57. In mid-January 2022 the Claimant had to complete sales reports for Gill Davies. She was relying on Owen Davies to provide some information. On 14 January 2022 he sent a message to the Claimant at 17:16 to say that he was halfway through completing his report and would send it to her by tomorrow morning. He apologised [p679]. The Claimant replied to say that it was not a problem. She ended her message by saying 'Have a great weekend! X'. There followed a friendly exchange where Owen Davies told the Claimant that it had been a long week and to enjoy her evening 'with a nice wine' and the Claimant replied to say that she was doing her husband's accounts and would be 'pouring one soon though [followed by a wine glass emoji] x' [p679].
58. The following day, a Saturday, the Claimant emailed Owen Davies at 10:56. She cc'd Gill Davies. She asked him to complete the data and send it to her and Gill Davies [p279]. Gill Davies asked the Claimant what had been agreed with Owen Davies [p273]. The Claimant said she had been told by Owen that he would send the information on the Saturday morning but she had not received it. She said she had arranged a catchup with Simon Warden for Monday 17 January 2022. He was now managing Owen Davies. She felt that she did not know what was going on in the south and wanted to be kept in the loop [p272]. Owen Davies sent an email to the Claimant on Monday 17

January 2022 attaching the completed document and confirming that he had sent it to Gill on the previous Saturday [p276].

59. On the evening of Saturday 15 January 2022 Gill Davies sent an email to the Claimant and Simon Warden [p275]. She apologised for emailing them on a Saturday. She acknowledged that the reports had been sent to her on a Saturday, which she regarded as 'really going the extra, extra mile and on top of a very busy and tiring week it really is much appreciated and this really is beyond the call of duty'. She recognised that it had been a 'tough January' due to workloads. She explained that she had highlighted to the board how hard both Simon Warden and the Claimant worked. She acknowledged that 'in the next few weeks and even until the end of the financial year that we three are still going to have to juggle a lot' and reassured them on recruiting more team members. She acknowledged the challenge of turning reports around quickly and that 'I really need to find a way that we can change this...its really too much'. She explained that she would seek further support on how to reduce the time taken to complete business reports and made clear that 'you have my commitment on this'. Her email ended with thanking them for their 'hard work, dedication and support'.
60. On 21 January 2022 Gill Davies sent an email to the Claimant, Simon Warden and two others to ask them to start planning their CRM reporting for February [p277]. I find that this was in response to the issues of report completion that had occurred the previous weekend.
61. On 09 February 2022 the Claimant emailed Simon Warden and cc'd Gill Davies to ask for weekly calls with the BDMs so that she could be kept updated about account activity [p314]. There followed an email discussion about who should participate on the calls [p315-318]. The exchange was professional. The Claimant and Simon Warden had different suggestions as to how to approach the issue. Gill Davies responded on 11 February 2022. She said that she could see both points of view and gave her own opinion. She ended her email with 'Thoughts?'
62. The issue of weekly calls with BDMs was discussed in the Claimant's appraisal that day. The appraisal began with Gill Davies asking for a 'temperature check' on how the Claimant was [p715]. The Claimant told her she was still enjoying her role but feeling exhausted at times [p715]. The Claimant spoke about not wanting to spend too much time away from home [p716]. Gill Davies suggested how the Claimant might cut down on the emails she received. She mooted the possibility of the Claimant not being cc'd into all emails from her team and said that was something for the Claimant to decide on herself. She acknowledged that the Claimant had been asking about attending a leadership course since being promoted to Regional Manager previously but there had been no opportunities to do it during lockdown. The Claimant appeared to agree with Gill Davies' view that there was little point in participating in leadership training remotely [p.724]. The appraisal transcript suggested a positive and supportive relationship. Gill Davies suggested ways in which the Claimant's wellbeing could be supported [p724-725]. She supported the Claimant in dealing with a colleague who was not always participating in weekly calls and told the Claimant that, as NSM, she should be clear with the team member about expectations [p728]. I found this to be an encouraging exchange where Gill Davies was backing the Claimant up in respect of her management of a sensitive line management issue.

63. In respect of the BDM calls issue, this appeared to be resolved to the Claimant's satisfaction [p745]. Gill Davies explained that her concern about having weekly calls was the time that it would take up for both the BDMs and the Claimant. She suggested perhaps having fortnightly meetings. The discussion in respect of this issue concluded:

Claimant: "Or even just a phone call if they're travelling back from somewhere and something's happened an oh, I'll let Sam know this, because obviously I'll not remember everything but"

Gill Davies: "Yeah, Touch base with them on that and see what works..."

Claimant "No that's fine"

Gill Davies: "Okay, so good stuff, thank you very much"

Claimant: "Thank you Gill"

64. Gill Davies told the Claimant that she thought she was doing a 'really good job' and spoke about the Claimant being able to 'really get your feet under the table' in the coming financial year [p743].

65. Gill Davies told the Tribunal she typed notes of the appraisal during the appraisal meeting. Towards the end of the appraisal, Gill Davies is recorded as saying that she would 'get this typed up, you might not get it today, but you will get it at some point next week' [p745]. Gill Davies said she was typing throughout. The appraisal was sent to the Claimant by Matt Bambery on 18 May 2022 when the Claimant was on sick leave. Gill Davies acknowledged that it was somewhat late in writing. The concluding comments were complimentary [p405]:

"Your knowledge of what was your original territory at CP and FMG is excellent and when coaching new TM's, this knowledge is evident and you will get up [sic] them up to speed very quickly. With ongoing support from me and what ever way that works for you (daily calls quick catch up calls and weekly or fortnightly 1:1's), I am here to support your development. Protect admin time to thoroughly check reports before sending to me and push back on your team if you receive poor quality. Your development journey and great attitude will ensure that achieve success. Good luck for FY23".

Support when off sick

66. On 22 February 2022 the Claimant emailed Cath Griffin, the then HR manager, and another colleague (Kirsty Smith), to advise them that she would not be working that day as she had tested positive for Covid. Around this time the Claimant sent a WhatsApp message to Gill Davies to say she was still testing positive and would be off sick the following day [p461].

67. Cath Griffin left the Respondent on 25 February 2022. Before she left, she emailed the Claimant to say that Caitlin Kane would be leaving the business and terms were being negotiated [p336].

68. On 28 February 2022 Gill Davies messaged the Claimant. She told her that she was sorry to hear she was poorly. She asked whether she had been in touch with the GP to check that all is okay [p461].

69. On 01 March 2022 the Claimant sent an email to Gill Davies attaching a fit note dated 01 March 2022. The Claimant had been signed off for 'stress at work' for 12 weeks from 28 February 2022 [p338]. Gill Davies replied to the Claimant on 02 March 2022 with the following:

"I am so sorry to hear that you are unwell and that you will be taking a period of absence. I hope you start to feel better soon and that this period of rest aides your recovery. We hope to appoint a new HR Manager in the coming days, and I will speak to Matt to ensure that their first priority is to reach out to you so that next steps are understood and mutually agreed. At the appropriate time we will also want to understand the factors that may have led to your stress so that we can try to help resolve/address any underlying issues".

The email concludes by asking the Claimant the best way of making contact with her over the next few weeks. It also suggests a form of words to share with the Claimant's team about her absence and asks whether the proposed message would be 'ok with you'.

70. On 04 March 2022 Gill Davies sent a WhatsApp message to the Claimant [p461]. In it she wrote:

"I was really sorry to hear that you are unwell and I hope you feel better soon. I have responded to you [sic] email but not sure if you have seen my reply. Please do if you can as we hope to put you in touch with a new HR Manager very soon. I need to communicate a message to the team and I've made a suggestion in the email."

Gill Davies then set out the proposed form of words and asked if the suggested message was ok with the Claimant.

71. The Claimant replied to Gill Davies that day [p462]. She said that her doctor had advised her to avoid emails for now. She wrote that when she turned on her laptop, there were over 600 emails. She commented, 'Yes I'm fine with that', which appeared to be in relation to Gill Davies' suggested message to the team, and provided her personal email address for HR to contact her 'so I don't miss anything'. Gill Davies told the Claimant that she would ensure that the Respondent contacted her on her personal email [p462]. She sent a second message to ask whether the Claimant wanted the team to cc her into emails so that 'you can have visibility on things when you get back' [p462]. The Claimant agreed.

72. Gill Davies sent a further message to the Claimant on 12 March 2022 to see how she was [p462]. She told her that the Respondent hoped to have a new HR manager in place soon. She said she would like to send a few messages to the Claimant to keep in touch with her and asked if this would be ok. The Claimant replied 'Hi Gill, thanks for your message. Of course, no problem at all. x' [p462].

73. On 14 March 2022 Gill Davies sent an email to colleagues and cc'd the Claimant to inform them that Caitlin Kane had left the business on 11 March 2022 by mutual agreement. She asked that queries regarding her territories be directed to various colleagues until the Claimant returns to work [p339].

74. Gill Davies sent the following WhatsApp message to the Claimant on 01 April 2022 [p462]:

"Hi Sam. Just checking in with you. I hope you are starting to feel better. Matt will be in touch early next week to discuss a [sic] occupational health assessment and I've shared with him that the GP advised that you not to open your emails because of the volume of them so I just wanted to let you know that we will be given access to them so that they are cleared. Be assured that I won't delete anything though. It will be one less thing for you to do. Anyway, take care of yourself. Weather is lovely albeit cold. Hopefully you've managed to get to your caravan. As always, if there is anything I can do, please let me know. Gill"

75. The Claimant replied that day to thank Gill Davies and said that she would catch up with Matt Bambery the following week. Matt Bambery is the Respondent's CFO. He is responsible for Finance, IT, Purchasing, Manufacturing and HR. He is not an HR manager.

76. The Claimant explained in oral evidence that her complaint about the lack of support during sick leave was not about the nature of the messages from Gill Davies. Her complaint was that all contact with Gill Davies had stopped with effect from 01 April 2022. I find that this was the last date on which Gill Davies contacted the Claimant during her sickness absence. Gill Davies stated that she wanted to give the Claimant some breathing space.

77. The Claimant also complained that she was not told about Caitlin Kane's departure during her sick leave. I find that this is not the case. She was informed on 25 February 2022 that Caitlin would be leaving and that terms were being negotiated. She was cc'd into an email on 14 March 2022 confirming that Caitlin Kane had left. She had expressly told Gill Davies on 04 March 2022 that she had been advised to avoid work email. I find that she was not sent an individual email advising her of Caitlin's departure because she had been clear that she was to avoid work email. She was cc'd into emails as this is what she requested so that she could have 'visibility' on her return.

78. On 05 April 2022 Matt Bambery emailed the Claimant. He told her that the Respondent would like to refer her to OH. He considered that this would 'hopefully provide you and the Company an agreed way forward in terms of your integration back into work at the end of your absence' [p343].

79. On 06 April 2022 Matt Bambery sent the Claimant a draft OH referral form and cc'd Gill Davies. He asked the Claimant to let him know if she wanted to add or edit anything [p342].

80. The Claimant emailed Matt Bambery on 12 April 2022 [p341]. She said that she would be unable to sign the referral form as drafted 'because there have been assumptions made, in to why my doctor has signed me off with stress at

work and these assumptions are incorrect. I will consent when this detail is correct and accurate’.

81. Matt Bambery sent a further email to the Claimant on 20 April 2022 to ask whether she was able to provide the added detail and said that he would be happy to discuss the situation with her [p340]. She replied on 21 April 2022 to say that ‘It will be with you tomorrow, I am still putting it together’ [p340].

82. On 22 April 2022 the Claimant sent a lengthy email to Matt Bambery [p380]. She asked that the wording ‘full management support’ be removed from the referral form and raised several issues, which she described as being:

“...an overview of some of the actions, emails, messages that have impacted on my Health and wellbeing and stress at work and lead to me being away from work. I have compiled a comprehensive list which can be discussed at the Occupation Health assessment”.

83. The issues raised included having no autonomy to run her own diary, being expected to spend lengthy amounts of time away from home, and only being copied into the odd email while off on sick leave [p380-381].

84. Matt Bambery replied to the Claimant on 25 April 2022. He was unsure how to distil what she had written into the referral form. He suggested that he remove what he had written and the Claimant write it instead [p379]. The Claimant agreed. She also asked for a copy of her appraisal document from 11 February 2022 as she had yet to receive this from Gill Davies [p379]. Matt Bambery emailed the appraisal to her on 18 May 2022 [p378]. The Claimant provided her comments on it on 19 May 2022 [p378].

85. The Claimant contends that her return to work was not handled appropriately. She had, by this point, raised a grievance against Gill Davies on 29 April 2022 [p344-347]. She emailed Matt Bambery on 23 May 2022 to say that she was due back to work the next day and asked what she should do [p423]. He replied that afternoon [p424]. He said that he was really glad she was coming back tomorrow. He told her that he had spoken with Gill Davies who thought it would be a good idea for the Claimant to spend the day catching up on emails and then for her to visit the office in south Wales the day after. The Claimant responded to say she was looking forward to returning to work. She mentioned that Croner had suggested mediation. She suggested working from home while the grievance report was being concluded. Matt Bambery said that he would take advice. He agreed that mediation should not move forward until the grievance had been concluded. He was unsure whether the Claimant should work from home.

86. The Claimant returned to work on 24 May 2022. She worked from home. The OH referral was agreed and sent to the OH provider that day [p435]. Later that day, Mark Phillips (the new CEO) emailed the Claimant [p624]. He welcomed her back. They had not met before. He told her he looked forward to doing so and suggested that the Claimant should report directly to him given the Claimant’s ongoing grievance process. This would mean that she would not need to regularly interact with those mentioned in her grievance. He had sought advice from Matt Bambery on managing the Claimant’s return to work. He acknowledged that the Claimant was catching up on emails that day. He told her that he thought it would be a ‘good start back’ for her to come

to the head office for the next two days so that he could meet with her and she could meet a number of new recruits to the sales team as the NSM.

87. Mark Phillips attached to his email a draft return to work schedule. He told the Claimant that they could discuss and amend it when they met. He said that he had drawn up the return to work schedule 'such that we can professionally support your activities as National Sales Manager' [p624]. The return to work schedule had, in fact, been prepared by Gill Davies. It was a draft. It was to be discussed with the Claimant when she met the CEO.
88. The Claimant objected to Gill Davies drafting the return to work schedule. In preparation for the hearing, the Claimant had emailed a former colleague, Pam Jones, about how the schedule was prepared. Pam Jones said that it was completed by Gill Davies. She had been asked by Gill Davies to advise her on the sales team's visits and whereabouts [p622]. Gill Davies explained that she had to get a list of field visits from Pam Jones. This was so that Gill Davies could plan the schedule including visits to customers in a way that would avoid unnecessary travel for the Claimant. There was some dispute about how many nights the Claimant would be away from home under this schedule. In any event, I find that it was a draft for discussion and agreement with the Claimant.
89. Pam Jones provided a witness statement to the Tribunal. She did not attend and was not cross examined on her evidence. In her statement, she said that Gill Davies told her that the Claimant may not be returning to work. Gill Davies denied saying this. She told Pam Jones that the Claimant was due back at work hence why she needed information about the field visits the team were making. I preferred the evidence of Gill Davies on this. I could attach little weight to the evidence of Pam Jones as she did not attend the hearing to be cross-examined on her evidence. Moreover, Gill Davies was clearly preparing for the Claimant's return. This was the point of the return to work schedule.
90. Mark Phillips concluded his email by saying that he very much looked forward to meeting the Claimant 'and having you back up and running as soon as possible' [p625].
91. The Claimant had returned to work for a few hours on 24 May 2022. She then began another period of sick leave. She was due to attend an OH assessment on 07 June 2022 [p520]. She cancelled the appointment on 06 June 2022 [p519]. She did not return to work.

Failure to investigate grievance properly

92. On 29 April 2022 the Claimant sent an email to Matt Bambery and the new CEO, Mark Phillips, raising a grievance against Gill Davies [p344-347]. The allegations are lengthy. I do not repeat them here. They relate primarily to the lack of support she felt she had received since being NSM. She did not mention any issue with her bonus.
93. The Claimant told the Tribunal that the grievance was triggered in part by her hearing from her colleague Sally Nesta on 22 April 2022 that Gill Davies and Matt Bambery had discussed her exit from the business. Sally Nesta had heard this from Bethan Roberts, who was an executive assistant to senior employees of the Respondent. Sally Nesta and Bethan Roberts had provided

witness statements to the Tribunal but did not attend the hearing. Bethan Roberts had said that at some point in April 2022 she had overheard Gill Davies and Matt Bambery discussing the possible 'exit' of the Claimant. Sally Nesta said that Bethan Roberts told her this and she shared the information with the Claimant. The Claimant has never spoken with Bethan Roberts. She was relying on information she heard second-hand via Sally Nesta. In evidence, the Claimant gave examples of incidents from some time ago where she claimed to have overheard Gill Davies speaking unprofessionally about aspects of colleagues' personal lives. On one occasion the Claimant could not be sure who was being discussed. The Claimant was not seeking to rely on these incidents as part of her claim other than as background information to advance her assertion that Gill Davies was likely to have made personal comments about her.

94. Gill Davies and Matt Bambery denied discussing the Claimant exiting from the business. Both wanted the Claimant to return to work. Gill Davies was also insistent that she had never discussed colleagues' private lives as alleged by the Claimant. Bethan Roberts had left the Respondent in circumstances which may have affected her objectivity as a witness.
95. In respect of the allegation that the Claimant's exit was discussed, I find, on balance, that this did not happen. The allegation was made by someone that the Claimant has not spoken to and who, on the evidence of Matt Bambery, may not be objective. Those who made the allegations were not present at the hearing. Their evidence could not be cross-examined. The Claimant was asking me to draw inferences based on comments Gill Davies had allegedly made some time ago, which she strongly denied making and, on one occasion, the Claimant accepted she could not be sure what she heard. I found that Matt Bambery and Gill Davies were open and straightforward when giving evidence. Their version of events was often supported by contemporaneous written evidence. There was no cause for me to doubt the reliability of their evidence. I therefore preferred their account and found that there was no discussion of the Claimant exiting from the business.
96. The Respondent appointed Croner to investigate the Claimant's grievance [p455]. The grounds of grievance are summarised in pages 3 and 4 of the grievance report. There are 22 separate grounds of grievance [p457-458]. There is no complaint about bonus. The grievance centred around lack of support since being signed off work, workload issues, colleagues not completing work to deadlines, and a lack of autonomy.
97. On 05 May 2022 Matt Bambery invited the Claimant to attend a grievance meeting on 09 May 2022 [p348]. He told her that Croner had been appointed as an impartial consultant to hear the grievance. He summarised the 22 grounds of grievance and told her that it is important that she informs Croner of any additional points she wishes to raise. She was advised of her right to be accompanied. The Claimant requested a postponement. This was agreed. The grievance hearing was held on 16 May 2022 [p351]. Gill Davies was spoken to as part of the grievance process. The grievance report dated 26 May 2022 runs to 44 pages. Minutes of the hearing are appended. Five of the allegations were found to be unsubstantiated. Sixteen of the allegations were not upheld. One grievance was partially upheld [p456]. This was:

“You state that since you signed off work due to stress and anxiety caused through work and the lack of support received in your role you have not received any HR support or communication from the business to understand what has impacted on your stress levels or to see what we can do to get you to return to work as soon as possible”.

98. The grievance hearer’s conclusion in respect of this was [p456]:

“KT finds that the lack of in house HR support due to recruitment issues, has impacted the employers ability to deal effectively with ST’s absence. As ST was signed off with ‘work related stress’, had an earlier conversation or Welfare meeting been held with ST to discuss her concerns and the reasons for her absence, some of the issues may well have been addressed and potentially resolved without the need for a more formal process to ensue”.

99. Matt Bambery sent a copy of the report to the Claimant on 31 May 2022 [p518]. Having reviewed the report, he proposed workplace mediation between the Claimant and Gill Davies ‘to work towards building a healthy working relationship’. He told the Claimant that a new HR manager would begin on 06 June 2022. He informed the Claimant of her right to appeal the grievance outcome.

100. The Claimant appealed on 08 June 2022 [p523]. She stated that not all aspect of the grievance had been investigated, not all individuals had been interviewed and the evidence she had provided to substantiate her claims had not been considered. She did not mention her bonus.

101. She resigned on 13 June 2022 [p525]. Matt Bambery acknowledged this on 14 June 2022 [p524]. She told the Tribunal that she had considered resigning before her promotion to NSM. She decided to stay but began looking for work again in October 2021. She told the Tribunal that this was because of the environment in which she had to work, which she described as toxic.

102. On 23 June 2022 the Respondent’s new HR manager, Aedine White, wrote to the Claimant to advise her that the Respondent had asked an independent consultant from Croner to hear her appeal. An appeal hearing was arranged for 29 June 2022. She was advised of her right to be accompanied [528]. The appeal hearing report, including minutes of the appeal meeting, runs to 34 pages. It appears from the transcript of the appeal hearing that the Claimant was actively considering Tribunal proceedings at this point. She mentioned the names of those she would like spoken to as part of the appeal and how they would ‘when it gets to the tribunal...be supporting me on that’ [p592].

103. The Claimant submitted her claim on 03 August 2022 [p2].

104. The appeal hearing report is dated 23 August 2022. Matt Bambery told the Tribunal that the Respondent did not receive it until 30 September 2022 due to the appeal hearer being incapacitated. Matt Bambery sent the report to the Claimant on 01 October 2022 [p617]. The Respondent accepted the appeal outcome. It found that the grievance had been properly investigated but that there were four areas that had not been commented on. These were

considered by the appeal hearer. Of these, two of the four points were not upheld and one was not substantiated. The appeal hearer upheld one point. This was in relation to the timeliness of the Respondent's response to a request made by the Claimant on 27 May 2022 for a copy of her bonus statement [p573].

Bonus statement and payment

105. The Claimant's claim for unlawful deductions from wages relates to two bonus payments she contends she is due. In her resignation email to Matt Bambery on 13 June 2022 she wrote:

"As you are aware I have submitted my grievance against my line manager Gill Davies and a subsequent appeal. The situation has led to me considering my future within Frontier Medical Group and I have decided to provide you with my resignation as I feel my role is no longer tenable at Frontier Medical Group."

106. At the end that email she asked that all outstanding monies owed are paid 'including the outstanding bonus payments which have still not been received to date of £4640.63' [p525]. This sum related to 'North Sales ToTo target achieved FY22 £3,750' and 'Dermis Plus payments deducted for QTR 2 and QTR 3 £890.63'. ToTo and Dermis Plus are two of the Respondent's products. This is the amount claimed in her claim form [p9].

107. In the Further and Better Particulars of Claim, she clarified that her complaint related to deductions that were made to her payments for Quarter 4, which were paid in April 2022 [p769].

108. On 11 May 2022 the Claimant emailed Matt Bambery to ask for a copy of her FY22 bonus statement [p354]. He replied on 18 May 2022 with the quarterly figures. In respect of Q3 and Q4 these were £1,757.74 and £2,933.49 respectively [p353]. The Claimant replied that day: 'sorry I probably didn't word the request right'. She explained that she knew what she had received in each quarter but 'it is the actual bonus statement which breaks down what I have been paid for that I would like sent across'. She attached a copy of the previous financial year's statement as an example of the information she was seeking [p353].

109. Matt Bambery emailed the Claimant on 27 May 2022 with the requested information [p499].

110. The annual bonus statement is broken down into quarters [p696]. For Q1 and Q2 it says 'Bonus calculation (Regional Sales Manager: North). For Q3 and Q4 it says 'National Sales Manager'. The Claimant's bonus was calculated under the RSM plan for the first two quarters. It was calculated under the NSM for Q3 (paid in January 2022) and Q4 (paid in April 2022).

111. The statement shows the annual OTB (on target bonuses) that can be achieved for each product. For Toto the annual OTB (excluding elements payable only at year-end) was £3,000 under the RSM plan for Q1 and Q2. It was £2,000 for the Dermis products (£1,000 for each product – DPP and DPC) under the RSM plan. These figures in the annual statement reflect the

statement in the RSM plan signed by the Claimant on 01 May 2021 as to what can be achieved [p129].

112. The figures are adjusted in the annual statement for Q3 and Q4 to reflect the figures taken from the NSM plan. The revised OTB in Q3 was £3,750 for Toto and £3,750 for DPP. These figures in the annual statement reflect the statement in the NSM plan signed by Simon Warden on 29 April 2021 as to what can be achieved [p511].
113. In Q4 a further adjustment was made to the OTB. The accompanying notes on the statement state the adjustment was blended between 6 months at RSM and 6 months at NSM rates. The revised OTB for Q4 was £3,375 for Toto and £2,875 for DPP.
114. The annual statement shows actual sales performance against targets. In Q1, sales of Toto had achieved 100.8% of target meaning that the Claimant was entitled to a bonus of £562.50. For DPP, sales were 67.8% of target and so no bonus was payable. For Q2, DPP sales were 267% of target resulting in a bonus of £187.50. Sales of Toto were 69.7% of target so no bonus was payable.
115. For Q3 Toto performance was 92.8% and the Claimant qualified for a bonus of £196.86. DPP performance was 163.4% resulting in a bonus of £703.13.
116. The annual statement shows a final 'true-up' calculation for FY22. This showed the difference in sums between what the Claimant was owed at the year end and what she had already been paid.
117. The Claimant did not dispute the calculations. What she disputed was the fact that the calculations for Q3 and Q4 (including the end of year true-up) had been arrived at by using the NSM plan target figures. In her view, she would have earned more under the RSM plan.
118. On 27 May 2022 the Claimant emailed Matt Bambery to thank him for the information he had sent. She asked why she had been paid under the NSM plan when the agreement was for the Claimant to be paid on North region sales. She asked about the rationale of the ToTo bonus. She said that the North region was £180k above target. She queried why the Dermis bonus paid throughout the year was deducted from her Q4 bonus. She said that this was the first time that deduction from the Q4 bonus had happened to anyone. Matt Bambery said that he would look into her queries [p586]. He emailed Gill Davies that day with a copy of the Claimant's queries and asked her to 'please take a look' [p510].
119. On 31 May 2022 Gill Davies replied to Matt Bambery [p509]. She said that after the Claimant was promoted to NSM, they had agreed that she would move to the NSM bonus plan. She acknowledged that she could not find anything to confirm this in writing but said that they had discussed it. She told him that the Claimant had received the NSM bonus for Q3 and did not question it. She provided the following explanation of the figures:

“Sam has been paid in line with the NSM plan for Q3 and Q4 and the amounts that she is quoting is for north only. The adjustment for DPP

was made as we didn't hit target for the full year and anyone who was paid bonus payments in Q1, 2 and 3 were adjusted in Q4.

If Sam remained on the RSM bonus for the north she would have earned a total of £8125.98. £4125.98 for Repose, £3000k for Toto, the same adjustment for DPP and her KPI would have been £1000. So £500 for Q1 and Q2. We actually paid her the full NSM KPI bonus of £3000 when in fact she should have only had £1500 for Q3 and Q4 so a total of £2000, so we overpaid her £1000. Sorry as I didn't check this. The difference between her NSM bonus and her RSM bonus is £808.75, but we have overpaid her KPI bonus."

120. The Claimant did not dispute the Q3 payment she received in January 2022 under the NSM plan. She told the Tribunal that she had no reason to dispute this. She said that she had received the text from Gill Davies in October 2021 that her bonus would increase. I find that she was referring to the message of 17 October 2021 in which Gill Davies said she would try to increase her normal bonus to £18,000 [p661]. She said that the northern sales had excelled. She stated that she did not know how the calculations had been arrived at as she had not received a breakdown of the figures until 27 May 2022.
121. The Claimant did not dispute the Q4 payment in April 2022. She told the Tribunal that there were several reasons for this. She was busy sorting out her grievance. This did not include any concerns about bonus payments. She said that she did not have access to her online bank account or work laptop to check what she had been paid. She spotted that she had been paid less than she thought she was due but said that until she received a breakdown of how her bonus had been calculated, she was unable to dispute the figures.
122. The Claimant considered that what the Respondent asserted to be a 'true up' exercise was a punishment. Matt Bambery told the Tribunal that several employees had 'true ups' applied in respect of the DPP product. He denied that the Respondent had any reason to punish the Claimant.

Relevant law

Constructive unfair dismissal

123. The unfair dismissal claim was brought under Part X of the Employment Rights Act 1996 (ERA). An unfair dismissal claim can be pursued only if the employee has been dismissed. The circumstances in which an employee is dismissed are defined by Section 95 ERA. The relevant part of Section 95 is Section 95(1)(c) which provides that an employee is dismissed by his employer if: "the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct." It is usually known as a "constructive dismissal".
124. Case law has established the following principles:

- a. The employer must have committed a repudiatory breach of contract. A repudiatory breach is a significant breach going to the root of the contract. This is set out in *Western Excavating v Sharp* [1978] ICR 221.
- b. A repudiatory breach can be a breach of the implied term of mutual trust and confidence that is within every contract of employment. This is that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee (per Lord Steyn in *Malik -v- BCCI SA* (in compulsory liquidation) [1997] ICR 606).
- c. Whether an employer has committed a breach of that implied term must be judged objectively. It is not enough to show merely that an employer has behaved unreasonably. A repudiatory breach does not occur simply because an employee feels they have been unreasonably treated nor does it occur when an employee believes it has.
- d. The employee must leave because of the breach.
- e. The employee must not waive the breach or affirm the contract by delaying resignation too long.
- f. There can be a breach of the implied term of trust and confidence where the components relied upon are not individually repudiatory but which cumulatively consist of a breach of that implied term.
- g. In appropriate cases, a “last straw” doctrine can apply. If the employer's act which was the proximate cause of an employee's resignation was not by itself a fundamental breach of contract, the employee can rely upon the employer's course of conduct considered as a whole in establishing that he or she was constructively dismissed. In *London Borough of Waltham Forest v Omilaju* [2005] IRLR 35 it was confirmed that the “last straw” must contribute, however slightly, to the breach of trust and confidence. The last straw cannot be an entirely innocuous act or be something which is utterly trivial.
- h. In *Kaur v Leeds Teaching Hospitals NHS Trust* [2018] EWCA Civ 978 the Court of Appeal set out the questions that the tribunal must ask itself in a “last straw” case. These are: (a) What was the most recent act (or omission) on the part of the employer which the employee says caused or triggered her resignation? (b) Has she affirmed the contract since that act? (c) If not, was that act (or omission) by itself a repudiatory breach of contract? (d) If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which viewed cumulatively amounted to a (repudiatory) breach. (e) Did the employee resign in response (or partly in response) to that breach?
- i. If it is established that the resignation meets the definition of a dismissal under section 95(1)(c), the employer has the burden of showing a potentially fair reason for dismissal before the general question of fairness arises under section 98(4).

Unauthorised Deductions from Wages

125. A worker has the right under section 13(1) of the Employment Rights Act 1996 not to have an unauthorised deduction from wages. Where a claim is made in respect of a series of deductions, section 23(3) Employment Rights Act 1996 provides that time runs from the date of the last deduction in the series. When considering whether there has been a series of deductions, this is a question of fact. The Tribunal will consider whether there is a sufficient factual and temporal link between any underpayments. Gaps of more than three months will break the series (*Bear Scotland Limited v Fulton and another* [2015] ICR 221).
126. Section 27(1) ERA defines 'wages' as 'any sums payable to the worker in connection with his employment'. This includes 'any...bonus...referable to the employment'. Non-contractual discretionary bonus payments could fall within the definition of 'wages' if there was a reasonable expectation that they would be paid (*Kent Management Services Limited v Butterfield* 1992 ICR 272, EAT) but there must be a legal (even if not necessarily contractual) right to payment (*New Century Cleaning Co Ltd v Church* 2000 IRLR 27, CA). By virtue of section 27(3) ERA if a non-contractual bonus is made to a worker, it will be treated as wages for the purposes of section 27.
127. A deduction is defined in section 13(3) ERA as 'where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions)'. The amount of any shortfall in wages is treated as the deduction.
128. Whether an employee has an enforceable right to a bonus depends, in the main, on the legal status of the disputed bonus. Bonus payments that are expressed to be discretionary may, on closer analysis, turn out to be contractual. Where the bonus is genuinely discretionary, that discretion must not be exercised in a manner calculated to destroy or seriously damage the employment relationship. It must not be exercised in a way which is irrational or perverse (*Keen v Commerzbank AG* 2007 ICR 623, CA).

Reliance on oral agreements

129. Where oral agreements contradict written terms, a tribunal will generally be reluctant to uphold the oral agreement in the absence of corroborating evidence of those oral terms and evidence that those words were intended to be legally binding by both parties. Regard must be had to the context in which the oral agreement was made. A promise to bring an employee's salary into line with a colleague's 'in due course' was, in the absence of other corroborating evidence, held to be too vague to form a binding contract (*Judge v Crown Leisure Limited* 2005 IRLR 823, CA). Parties' intentions to accept a variation in contract may be evidenced by their behaviour but this is not always conclusive of the matter (*Solectron Scotland Limited v Roper and others* 2004 IRLR 4, EAT)

Conclusions

130. Before noting my conclusions, I make some preliminary observations on the reliability of the witness evidence. Bethan Roberts, Pam Jones, and

Sally Nesta did not attend the hearing. They could not be cross-examined. I could attach little weight to their evidence.

131. I generally found the evidence of the Respondent's witnesses to have been delivered openly and straightforwardly. Much of it was corroborated in the contemporaneous written evidence. I therefore largely preferred the evidence of those witnesses.

132. This does not mean that I considered that the Claimant was untruthful. I find that the Claimant genuinely believed that matters had developed in the way she advanced them to the Tribunal and that she felt, and continues to feel, that she has been badly treated by the Respondent. However, I found no basis for that belief. I found that the Claimant was someone who was unwilling to accept that matters were not how she perceived them to be even when it would have been apparent to a neutral observer that that was the case. The Claimant tended to view matters from a perspective of unfairness. The reality was that there was nothing to suggest that she had been treated unfairly.

Unlawful deductions

133. Did the Respondent make an unlawful deduction from the Claimant's wages? The Claimant's case is that she remained on the RSM plan. On that plan, she says that she would have earned the full Toto bonus of £3,750 because the northern region exceeded its target for this product. By moving her to the NSM plan, the overall performance against target was 91% and a true-up reduction was made. The potential to earn £3,750 for Toto is a provision of the NSM plan. The corresponding provision in the RSM is only a potential to earn £3,000.

134. The Claimant also disputes the true-up deduction for the DPP product. She is of the view that this was an attempt by the Respondent to punish her. Under cross examination, she did not dispute the way in which the figures were reached in the annual bonus statement. Her argument is that for Q3 and Q4 she remained on the RSM plan and her bonus should be calculated accordingly.

135. The Respondent says that the Claimant moved to the NSM plan for Q3 and Q4. It disputes the Claimant's calculation. It says that she was actually paid more than the sums she was due.

136. The terms of the RSM and NSM bonus plans are the same in all material respects. The difference is the NSM plan offers higher earning potential. Performance under the NSM plan is measured against national targets.

137. The question for me was which plan was the Claimant under at the relevant time. The contemporaneous written evidence showed that the last bonus plan to be signed by the Claimant was the RSM plan. Her appointment letter to the role of NSM stated an increase to her salary but that all other terms and conditions would remain the same. The Claimant's promotion had been announced to colleagues by an email dated 30 July 2021 at 13:20 [p138]. The Claimant messaged Gill Davies that evening to ask about the package. This message mentioned having arrived at friends and appeared to

have been sent at 19:16 [p672]. Gill Davies responded that evening to say, in respect of the bonus, 'same bonus as it's 6 months in'. She ended her message 'Enjoy your night. X' [p672]. I concluded that the timings were relevant. The Claimant had accepted the role and it had been announced before terms were agreed. It was clear that, at the time of her promotion, the parties' intention was that she would remain on the RSM plan.

138. On 17 October 2021 Gill Davies messaged the Claimant to say that she would try to increase her normal bonus to £18,000 and the Claimant thanked her [p661]. The Respondent says that this referred to moving the Claimant to the NSM plan. The Claimant says it related to another incentive plan. I was not shown details of this other incentive plan. The figure of £18,000 is the annual on-target bonus in the FY22 NSM plan for 100% achievement of annual targets and KPIs [p511]. The Claimant, in her witness statement, said that she understood the message from Gill Davies was about increasing her 'normal bonus from £14k to £18k'. The figure of £14,000 is the annual on-target bonus in the FY22 RSM plan for 100% achievement of annual targets and KPIs [p129]. The discussion was not about another incentive plan. The intention behind the message from Gill Davies was to move the Claimant to the NSM plan. This was understood by the Claimant as is clear from her own evidence.

139. The parties' recollection of whether the Claimant was subsequently moved to the NSM plan differs. Gill Davies insisted that she received approval from the then CEO to move the Claimant to the NSM plan. This was not documented. The Claimant was not given the NSM plan to sign. The closest contemporaneous written evidence that assisted me was an email from Gill Davies to Matt Bambery on 31 May 2022 in which she described discussing the move with the Claimant. The Claimant's bonus payments for Q3 and Q4 were calculated against national targets under the NSM plan.

140. I have considered the context in which discussions of the move to the NSM plan took place and any wider corroborating evidence. There was evidence of some informality in respect of negotiating the Claimant's terms and conditions. Her package was discussed with Gill Davies after the announcement of her promotion had been made. This is not a conclusive factor but demonstrates a wider context of terms being discussed in a relatively fluid or informal manner, which I found to be as a consequence of the positive relationship between the Claimant and Gill Davies at the time. The Claimant acknowledged that, as NSM, her targets were now national ones. The Claimant was paid her Q3 bonus under the terms of the NSM plan. She did not dispute this. The Claimant told the Tribunal that she was not aware of how her bonus had been arrived at. She simply accepted that she was paid a bonus in Q3 and did not query it. I did not find this explanation plausible. The Claimant managed sales nationally. She participated in regular meetings where sales performance against targets would be discussed. It is likely that she would have had intimate knowledge of how product sales were performing against target, which would allow her to understand how the bonus sums had been reached. The more straightforward, and likely, explanation was that the Claimant did not dispute the Q3 payment as she had agreed with Gill Davies to move to the NSM plan and be remunerated accordingly. Her behaviour showed her agreement to move to the NSM plan.

141. She was paid a Q4 payment under the NSM plan. She did not dispute this at the time of payment. She submitted a lengthy grievance on 29 April 2022. She did not mention a deduction from her bonus in her grievance. I accept that there was a delay between the Claimant requesting a breakdown of the bonus calculation on 11 May 2022 and it being sent to her on 27 May 2022. It was not until 27 May 2022 that she informed the Respondent that she regarded her bonus as still being governed by the terms of the RSM plan. I did not accept that the Claimant was not in a position to query her bonus before then. She told the Tribunal that she was unable to access her bank but she had obviously seen the payment as she considered it to be lower than expected. Moreover, for the reasons I have set out above, I do not think it plausible that the Claimant would not have understood how the business had performed against targets and how her bonus had been calculated.
142. In addition to finding that the Claimant's behaviour showed an acceptance of a move to the NSM plan, I have also considered which version of events – the Claimant's or that of Gill Davies - was the more reliable. I preferred the evidence of Gill Davies. Her account fitted with what happened in that the Claimant was moved to the NSM plan from Q3 and Q4. Her account also fitted with the Claimant's behaviour in that no query was raised about the Q3 payment and a query was only raised about the Q4 payment when it appeared lower than expected. The Claimant accepted that, from the time of her promotion to NSM, she now had national targets. It is national targets, not regional targets, that form the basis of the NSM plan.
143. In the alternative I have considered the Claimant's argument that the deductions of £759.36 and £890.63 off her Q4 bonus payment (in respect of Toto and DPP respectively) were unlawful deductions from wages because any overpayments should have been taken from the next year's bonus and/or the Respondent exercised its discretion capriciously. The annual bonus payment breakdown shows that these are the figures arrived at following a true-up exercise. They are listed in a table called 'FY22 True-up' [p696]. In the case of one product, Repose, the true-up calculation resulted in more money being due to the Claimant. For Toto and DPP the final figures showed that she had been paid too much as the relevant targets had not been met.
144. The terms of the RSM and NSM plans are identical in respect of true-up payments and overpayments. The provisions are clear: 'there will be a catch up (or 'true-up') payment at year-end'. True-ups work to ensure that better or worse performance in Q4 than in the previous quarters of the financial year is recognised. A sum is then calculated to reconcile the entire year's figures. Where Q4 performance boosts the overall performance, an additional payment will be due. Where it is worse, an appropriate deduction will be made to the final year-end bonus sums. The Claimant does not dispute the operation of a true-up to provide an additional payment. She says that a true-up which results in a sum being deducted constitutes an overpayment. In respect of overpayments, the RSM and NSM plans provide that the Board of Directors will consider whether to reclaim the overpayment on a case-by-case basis. An example is given of netting off against the next year's bonus. Overpayments are discussed separately.
145. The Respondent is entitled, by virtue of both the RSM and NSM plans, to conduct a true-up exercise. It is clear from the annual bonus payment that this is what has happened. Insofar as the Claimant sought to argue that

deducting sums from that year's figures was an irrational exercise of discretion on the part of the Respondent, I found that not to be the case. The exercise that was conducted was a true-up exercise. The example given in the plans is one where the true-up results in a higher end-of-year bonus. While an example is not given of the alternative, it is clear from the wording of the plan that the purpose of the true-up payment is to ensure full year performance is appropriately recognised.

146. The Claimant was not punished by the operation of the true-up exercise as she alleged. On 31 May 2022 Gill Davies told Matt Bambery that all those affected by the DPP performance had their targets adjusted. Matt Bambery stated that true-ups were applied to colleagues across the Respondent. I have no cause to disbelieve this.

147. The Claimant's unlawful deductions from wages claim does not succeed.

Constructive unfair dismissal

148. I do not consider that any of the acts relied upon by the Claimant constitute individually a repudiatory breach of contract or more specifically a breach of the implied term of trust and confidence. Nor do I consider that cumulatively those acts form a course of conduct comprising several acts and/or omissions which viewed cumulatively amount to a repudiatory breach/a breach of the implied term of trust and confidence. I set out below why I have reached that conclusion.

Bullying and controlling behaviour

149. The Claimant was a highly valued employee. I have found as a matter of fact that the relationship between the Claimant and Gill Davies was a warm one. The contemporaneous written evidence did not suggest any breakdown in the relationship. I also find that, as matter of fact, the Claimant had a relatively rapid rise through the ranks of the Respondent's organisation to the role of NSM. In this context Gill Davies typically spoke daily with the Claimant and offered her support with sensitive staffing issues and more general coaching. She had described the Claimant as her apprentice. She told the Claimant on her promotion to NSM that she would spend a lot of time coaching her. The written messages sent from the Claimant at the time show that she valued this support. She thanked Gill Davies and told her how much she was learning from her.

150. The Claimant gave particular examples of how she felt controlled including feeling like she was not trusted to work from home around the issue of lunch breaks, not being involved to the extent she would have liked with the appointment of Owen Davies as BDM, and being asked to complete her CRM as punishment for asking Owen Davies to complete his.

151. It cannot reasonably be said that any of these incidents whether on their own or cumulatively show bullying or controlling behaviour. It was the Claimant who raised the subject of lunch breaks with Simon Warden when she was RSM and she suggested how they might be managed. I paid particular attention to the transcript of the appraisal meeting on 11 February 2022 when the issue was raised again. Gill Davies was clear that the

Claimant was responsible for managing her own time and queried why the Claimant was telling her that she was taking a lunch break. The Claimant invited the Tribunal to find that the appraisal was conducted in a passive aggressive manner. Viewed objectively, I do not find this to be the case. I regarded Gill Davies as a straightforward witness. The appraisal was conducted in a supportive manner. Gill Davies was not aware that she was being covertly recorded. She told the Claimant she was doing a good job. It could not reasonably be said that these were the comments of someone acting in a passive aggressive manner.

152. With regards the appointment and management of Owen Davies, the contemporaneous written evidence does not support the Claimant's version of events. The Claimant participated in the interview process. She was the one who offered him the role. The suggestion that the Claimant was asked in October 2021 to complete the CRM records management system as punishment for her asking Owen Davies to complete his in November 2021 is without foundation.

Lack of support on promotion to NSM

153. I find that there were a few vacancies in the sales team including a vacancy for BDM North and vacancies for territory managers particularly in the south. I accept that the Claimant was working hard and that her wider sales team was not at full complement. I also find that the Respondent was attempting to address this. At the time of her promotion to NSM, it was actively recruiting for two BDMs (Owen Davies was appointed to one role) and two territory managers. The Claimant's particular concern about lack of support related to understanding the southern region. She had previously been RSM for the northern region. It is understandable that the Claimant may have felt less knowledgeable about the southern region. To be clear, this is not a finding that the Claimant was not supported in getting up to speed.

154. The Claimant's concerns about lack of support with the southern region often focus on Owen Davies. She felt that he would either not complete the work she had asked him to do or would complete it late. The Claimant had no issues with raising her concerns with Gill Davies, his mother. Gill Davies acted on these concerns. In early December 2021 she told the Claimant that she would sort it out. Ultimately, she removed line management responsibility for the BDMs from the Claimant and gave this to Simon Warden. The Claimant was relieved by this. When Owen Davies was late in providing a report in mid-January 2022, the contemporaneous exchanges between him and the Claimant are friendly. She explicitly told him that it was not a problem for him to provide the information the following day. In any event, Gill Davies addressed the issue again. The email from Gill Davies on Saturday 15 January 2022 to the Claimant and Simon Warden was supportive, grateful, and fully acknowledged how stretched the team was.

155. The issue of the BDM weekly calls and who could participate cannot, when viewed objectively, be interpreted as anything other than a professional discussion between senior managers about how best to share knowledge and information in the context of a busy sales environment.

156. I find as a matter of fact that the Claimant's role as NSM involved regular travel and staying away from home. This expectation was reflected in

her terms and conditions of employment. However, I do not accept that the Claimant was not supported by Gill Davies with regards her work-life balance and time spent away from home. I do not consider it unreasonable for the Respondent to ask the Claimant to attend a trade fair in Glasgow in her role as NSM. It also cannot be said that the Respondent's handling of the matter when the Claimant did not want to go due to her son's Christmas event was anything other than reasonable. Gill Davies arranged for other colleagues to go. The contemporaneous written evidence shows that there were no hard feelings about the issue. The Claimant wrote to Gill Davies to say how grateful she was that she could speak openly. Gill Davies responded with a warm and supportive message. The following week, when the trade fair was being held, the Claimant sent Gill Davies pictures of her son with a thank you message.

157. Viewed objectively, the extensive contemporaneous written evidence to which I was directed showed Gill Davies to be a supportive and encouraging line manager. I am satisfied that she acted appropriately in supporting the Claimant on and following her promotion to NSM both generally and with regards to the southern region.

Support when off sick

158. The Claimant was signed off sick with stress at work on 28 February 2022. A couple of days previously, the Respondent's HR manager had left the business. The Respondent was without specialist HR support until a new HR manager joined on 06 June 2022. This meant that there was no HR manager for the duration of the Claimant's sick leave.

159. Between the Claimant being signed off sick and 01 April 2022, Gill Davies maintained regular contact with her. I found the messages to be supportive and appropriate. In her last message to the Claimant, Gill Davies had left it to the Claimant to contact her if there was anything she could do. While it may have been a good idea for the Respondent to offer the Claimant an opportunity to meet and discuss the background to her sick leave, I do not find it unreasonable for Gill Davies to give the Claimant some time to recover. I do not find that there was a conscious or deliberate decision to cease contact with the Claimant. It was not designed to cause the Claimant harm or disadvantage. I find it was simply an oversight, borne as a result of good intentions, to give the Claimant some space away from work. I do not find that any failure of Gill Davies in that regard was so serious that it was conduct likely to seriously damage or destroy the duty of mutual trust and confidence.

160. It is also not the case that the Claimant was without contact from the Respondent after 01 April 2022. A few days later Matt Bambery began liaising with the Claimant. There was lengthy correspondence in which the parties attempted to agree an OH referral. Four weeks after the last contact from Gill Davies, the Claimant raised a grievance against her. It was not unreasonable for contact with Gill Davies to cease at this point given the nature of the allegations against her.

161. The issue I have to determine relates to support while off sick and not the subsequent return to work. However, the Claimant averred that the drafting of the return to work schedule could be viewed as another attempt by

Gill Davies to control or bully her and so I set out my conclusions in respect of the return to work.

162. I accept that it was unfortunate that it was the Claimant who had to contact the Respondent, and not the other way round, the day before she returned. I do not find that this was a conscious or deliberate omission. At most, it may be described as human error or oversight due to the Respondent operating without dedicated HR support. What is clear is that the Respondent was keen to welcome the Claimant back to work. It had arranged for the Claimant to report to the new CEO. It had drafted a return to work schedule. The CEO made clear to the Claimant that it was a draft and could be discussed. I accept that the Claimant felt that it was too much to be asked to visit the Respondent's office in south Wales from her home in the north west of England when she had only just returned from sick leave. However, she did not give the Respondent an opportunity to amend the draft return to work schedule or to speak with her to discuss a suitable rehabilitation programme. After only a few hours back at work, she went on sick leave again. She cancelled the occupational health appointment that the Respondent had arranged.

163. Subjectively, the Claimant may have felt suspicious about what was happening. However, viewed objectively there was no campaign or plan in place by Gill Davies or the Respondent to harm or disadvantage or to seek to oust the Claimant. I attached little weight to witness evidence (provided via witness statements only) in which the Claimant had apparently been informed that her 'exit' was being discussed. I preferred the Respondent's evidence that there were no such discussions. Their evidence was supported by the contemporaneous written evidence. This included references in the (very positive) appraisal sent to the Claimant in May 2022 about plans for the next financial year, an offer of workplace mediation, and supportive messages about her return to work.

Grievance

164. The Claimant raised a grievance on 29 April 2022. She made 22 allegations. The Respondent acted swiftly and appropriately. It appointed Croner as an independent consultant to hear the grievance. The Claimant's grievance meeting was held on 16 May 2022. The Claimant and Gill Davies were interviewed as part of the grievance investigation. Contemporaneous written evidence was considered. The final report is extensive. The investigator gave reasons to support her findings. Only one of the allegations was upheld and only upheld in part. This was in relation to support for the Claimant during her sickness absence. The grievance hearer acknowledged the difficulties that the Respondent had without dedicated HR support but found that an earlier conversation or welfare meeting with the Claimant could potentially have addressed and resolved some of the issues raised in the grievance. While the Claimant may not have liked the outcome of the grievance, it could not reasonably be said that the Respondent did not investigate the Claimant's grievance thoroughly.

165. The Claimant appealed the outcome of the grievance on 08 June 2022. She resigned on 13 June 2022 before her points of appeal could be considered by the Respondent. Despite the fact of the Claimant's resignation, the Respondent behaved reasonably and swiftly. It asked another

independent consultant from Croner to hear the Claimant's appeal. An appeal hearing was held on 29 June 2022. The report is extensive. The grievance hearer considered not only the original 22 complaints but further allegations including the time taken for Matt Bambery to provide the Claimant with her annual bonus payment breakdown. One point was upheld and this was in respect of the timeliness of Matt Bambery's response to the request for a breakdown. It was clear from comments made by the Claimant to the grievance appeal hearer that she had already decided to pursue tribunal proceedings. She submitted her claim before the outcome of the appeal.

166. My factual findings do not support the suggestion by the Claimant that her grievance was not thoroughly investigated. Viewed objectively, the appointment of an independent consultant to hear both the grievance and appeal, the willingness of the Respondent to accept the outcome of the grievance hearing, and the suggestion by the Respondent that the parties engage in workplace mediation was conduct which was calculated to maintain trust and confidence, not to destroy or damage it.

Unauthorised deductions from wages

167. The Respondent did not make an unlawful deduction of wages. My conclusions on this point are set out above.

Conclusion on constructive dismissal

168. It is my finding that the criticisms the Claimant makes of the Respondent which she says related to her decision to resign do not, once objectively analysed, on any individual basis demonstrate that the Respondent without reasonable and proper cause conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee or otherwise amounted to a repudiatory breach of the contract of employment.

169. Furthermore, when assessed cumulatively, on an objective analysis, there was no course of conduct by the Respondent where the Respondent without reasonable and proper cause conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee or otherwise amounted to a repudiatory breach of the contract of employment.

170. I have borne in mind the "last straw doctrine" however whether one views any last straw as the alleged conduct regarding the Claimant's return to work, or receiving her annual bonus statement (which the Claimant stated was one of many last straws), or only upholding part of her grievance, or the extent of contact while on sick leave or any other criticism the Claimant makes proximate to the time of her resignation, they do not meet the threshold for being a "final straw". In any event, any such component or components is not part of a course of conduct which, when viewed cumulatively amounts to a breach of the implied duty of trust and confidence.

171. The Claimant resigned and was not dismissed. Her constructive unfair dismissal claim does not succeed.

172. The Claimant's claim is dismissed.

Employment Judge R Russell

Date 27 July 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON 28 July 2023

FOR THE TRIBUNAL OFFICE Mr N Roche