



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Chapman

Respondent: The Secretary of State for Justice

Heard at: Cardiff **On:** 29, 30, 31 August and 01 September 2023

Before: Employment Judge R Russell

Representation

Claimant: In person

Respondent: Ms J Moore, Counsel

JUDGMENT having been sent to the parties on 4 September 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. By way of a claim form presented on 14 January 2023 the Claimant brings a claim of constructive unfair dismissal. ACAS early conciliation began on 26 November 2022 and ended on 04 January 2023. By way of a response dated 21 March 2023 the Respondent defends the claim.
2. I received witness statements from the Claimant and, for the Claimant, from Steven Allender and Lee Raynor. For the Respondent, I received witness statements from Nicola Floyd, Natalie Bevan, Emma Richards, Kate Fitzgerald, Lynne Williams, and Rebecca Morley. As Steven Allender did not attend the hearing and could not be cross-examined on his evidence, there was little weight that I could attach to his statement.
3. I had a bundle spanning 729 pages. References below to page numbers are to page numbers in the bundle. I have considered those pages to which I was directed by the parties.
4. I received written submissions from Ms Moore, and oral submissions from the Claimant and Ms Moore.
5. Oral judgment was given on the final day of the hearing. Written reasons have been prepared at the request of the Claimant.

Applications

6. At the start of day 1, the Respondent applied to amend its Grounds of Resistance to include the sentence: *Ms Floyd took steps to speak to any members of staff not present during the weekly tasking meeting on 10th August 2021 as she came into contact with them.* The Respondent had previously been given permission to provide an amended ET3 response addressing the complaints that had been clarified following earlier case management.
7. The Claimant objected to the application. She argued that the Respondent had previously asserted that Ms Floyd spoke to the Claimant at a meeting on 10 August 2021. The Claimant said that she was not present at that meeting.
8. I allowed the amendment. Oral reasons were given at the hearing. The Grounds of Resistance sets out the Respondent's case. The issue of when Ms Floyd first spoke with the Claimant was an evidential issue for me to decide.

Issues to be determined

9. The issues for me to decide were agreed between the parties in a document headed Final List of Issues dated 23 May 2023 [p66-69]. These were confirmed with the parties at the outset 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. Unfair Dismissal

1.1 Was the Claimant dismissed?

1.1.1.1 Did the Respondent do the following things:

1.1.1.2 Following becoming the Claimant's line manager in August 2021, Ms Floyd failed to make any contact with the Claimant for three weeks, ignored her emails and laughed at the Claimant when she challenged this stating she had been "caught up with emails".

1.1.1.3 Between March 2022 and July 2022, Ms Floyd would dismiss the Claimant when she knocked on Ms Floyd's door to seek advice on her cases (by saying she was in a meeting or shooing her away) and would pull unpleasant and unfriendly faces at her.

1.1.1.4 Between March and July 2022, Ms Floyd failed to respond to the Claimant's requests for advice on her cases/guidance about what cases she could use as evidence for her PQUIP.

1.1.1.5 Between March 2022 and July 2022, Ms Floyd failed to countersign the Claimant's risk assessments within the appropriate timescales.

1.1.1.6 During a supervision meeting on 16th May 2022, Ms Floyd failed to provide adequate advice to the Claimant in respect of her case [MP case] and simply stated that "neighbour disputes are the worse".

- 1.1.1.7 On 24th June 2022, Nicola Floyd called the Claimant and in a threatening manner said “I need you to confirm you have not resent the email”.
- 1.1.1.8 On 15th July 2022, during a return to work meeting, Nicola Floyd refused to accept that she had been ignoring the Claimant and took exception to the Claimant challenging her about this.
- 1.1.1.9 Nicola Floyd provided inaccurate notes from the meeting on the 15th July 2022 to the Claimant and her union rep and failed to amend them despite the Claimant’s union representative highlighting errors/discrepancies.
- 1.1.1.10 Between March and July 2022, Nicola Floyd failed to support the Claimant through the disciplinary investigation process.
- 1.1.1.11 Around 4th August 2022, Nicola Floyd told Lynne Williams that the Claimant was subject to a disciplinary investigation.
- 1.1.1.12 On 23rd June 2023, Natalie Bevan told the Claimant that her email to a MP was inappropriate and alleged that the Claimant colluded with an offender.
- 1.1.1.13 The Claimant says that due to her personal decision to terminate the employment of Emma Richards’ daughter in her role as a personal assistant to the Claimant’s son, the Respondent:
 - 1.1.1.13.1 Commenced an investigation into her email to a MP on 23rd June 2023.
 - 1.1.1.13.2 Kate Fitzgerald from 14th July 2022 until the Claimant resigned on 25th August 2022 constantly harassed and bullied her by phoning her, video calling her or calling meetings on a daily basis. The Claimant asserts that it was not what Ms Fitzgerald said, it was the daily contact.
 - 1.1.1.13.3 On 2nd August 2022, Kate Fitzgerald smirked at the claimant during a meeting when telling her she removed [sic] from the PQIP.
- 1.1.1.14 Lynne Williams told Lee Raynor (the claimant’s neighbour and person on probation) on 4th August 2022 that the Claimant was under investigation.
- 1.1.1.15 The Claimant’s grievance hearing was not fair due to Kate Fitzgerald being a witness while still dealing with the claimant directly.
- 1.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:
 - 1.1.2.1 Whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and

- 1.1.2.2 Whether it had reasonable and proper cause for doing so.
- 1.1.3 Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.
- 1.1.4 Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.
- 1.2 If the Claimant was dismissed, what was the reason or principal reason for dismissal i.e. what was the reason for the breach of contract?
- 1.3 Was it a potentially fair reason?
- 1.4 Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?

2. Remedy for Unfair Dismissal

- 2.1 Does the Claimant wish to be reinstated to their previous employment?
- 2.2 Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?
- 2.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and if the Claimant caused or contributed to the dismissal, whether it would be just.
- 2.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and if the Claimant caused or contributed to dismissal, whether it would be just.
- 2.5 What should the terms of the re-engagement order be?
- 2.6 If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 2.6.1 What financial losses has the dismissal caused the Claimant?
 - 2.6.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - 2.6.3 If not, for what period of loss should the Claimant be compensated?
 - 2.6.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed or for some other reason?
 - 2.6.5 If so, should the Claimant's compensation be reduced? By how much?
 - 2.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance procedures apply?

- 2.6.7 Did the Respondent or the Claimant unreasonably fail to comply with it?
- 2.6.8 If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?
- 2.6.9 If the Claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?
- 2.6.10 If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?
- 2.6.11 Does the statutory cap of fifty-two weeks' pay apply?
- 2.7 What basic award is payable to the Claimant, if any?
- 2.8 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

Findings of fact

Preliminary observations

10. Before noting my findings and conclusions, I make some preliminary observations on the reliability of the witness evidence. Memories are not infallible. Witnesses in the present case were giving evidence about events that happened over a year ago and, sometimes, two years ago. Where recollections of events varied, I based my factual findings on inferences that could be drawn from the documentary evidence or known (or probable) facts.
11. I generally found the evidence of the Respondent's witnesses to have been delivered openly and straightforwardly. This was particularly the case in respect of Lynne Williams' account of her discussions with Mr Raynor. Insofar as there was contemporaneous written evidence of that discussion with Mr Raynor, her account was corroborated in that contemporaneous written evidence.
12. 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. She felt, and continues to feel sincerely, that she has been badly treated by the Respondent.
13. 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

14. The Claimant was employed by the Respondent from 18 April 2006. At the time of her resignation, she was a Probation Services Officer (PSO). This is a trainee Probation Officer.
15. The Respondent is the Secretary of State for Justice. It operates the probation service. This is part of the criminal justice system, which supervises offenders in the community.

16. The Respondent has a conduct and discipline policy that sets out the professional standards expected of its employees [p578]. Annex A to that policy contains a Professional Standards Statement, which clarifies the standards and conduct expected of all probation staff [p599]. The Annex includes a section dealing with relationships with offenders [p600]. It states that particular care must be exercised by staff in their dealings with offenders. Dealings with offenders and their friends and relations must not be open to abuse, misrepresentation or exploitation by either side [p600]. Staff must not have inappropriate personal or financial relationships with an offender whether or not that particular offender is under their supervision [p600]. Potential conflicts of interest must be brought to the attention of the employee's line manager [p601]. Staff must also not bring the Respondent into disrepute including when off duty for example through use of social media [p601]. The Claimant accepted under cross-examination that these rules applied to her as they would to all staff.

Change of line management and first contact with Nicola Floyd

17. Until her retirement at the end of July 2021, the Claimant had previously been line managed by Tracey Girton. On or around 16 August 2021, Nicola Floyd, a Senior Probation Officer ("SPO"), became the Claimant's line manager in addition to becoming the line manager of around another 12 direct reports.

18. There was some dispute as to when Nicola Floyd and the Claimant were first introduced. Nicola Floyd returned from maternity leave on 09 August 2021. She had previously worked out of a different office. She returned from maternity leave to the Bridgend office where the Claimant worked, essentially to replace Tracey Girton.

19. There are two SPOs in the Bridgend team: Nicola Floyd and Natalie Bevan. They described themselves as co-managers. Probation Officers, trainee probation officers (PSOs), and those undertaking the PQUIP qualification, would be split equally between them for the purposes of formal line management. However, if one SPO was not available, colleagues could speak with the other SPO.

20. The formal allocation of line management responsibilities between Natalie Bevan and Nicola Floyd did not take place until week beginning 16 August 2021. I find that it was not until that week that Nicola Floyd officially became the Claimant's line manager.

21. With regards to when Nicola Floyd first introduced herself to the Claimant, Nicola Floyd had initially thought that she had introduced herself to the Claimant at a team meeting on 10 August 2021. She accepted that this could not have been the case as the Claimant was on annual leave that day. The Claimant was then on annual leave between 23-31 August 2021. There was therefore a week between Nicola Floyd officially becoming the Claimant's line manager and the Claimant going on holiday. Nicola Bevan recalled seeing Nicola Floyd walk around the office and introduce herself to colleagues. While Nicola Floyd may have seen the Claimant briefly during the period between 10 and 23 August 2021 when they were both in the office, I find that it was not until early September 2021 that they had a more formal 1:1 introductory meeting.

22. The Claimant accepted under cross examination that the meeting in early September 2021 between her and Nicola Floyd was an open and welcoming chat. There was no mention at this meeting of the Claimant being disgruntled about the alleged failure by Nicola Floyd to contact her. During the meeting, Nicola Floyd drew the Claimant's attention to an advert for the PQUIP qualification. This is a professional qualification in probation to allow someone to become a Probation Officer. The Claimant had already seen the advert and subsequently applied for a place on the PQUIP course.
23. The Claimant began adoption leave on 08 September 2021. Excluding the Claimant's annual leave in August 2021, there was a period of around three working weeks between Nicola Floyd becoming the Claimant's line manager on or around 16 August 2021 and the Claimant beginning adoption leave.
24. The Claimant sent several emails to Nicola Floyd during this roughly three-week period. The Respondent operates a case management system called Oasys. While the system would flag that work completed by the Claimant would need signing by her line manager, it was the Claimant's practice to send an email to flag that work needed countersigning. She told the Tribunal that she had been 'burnt' before when relying just on the Oasys flags. On 16 August 2021 she sent an email to Nicola Floyd to flag that work was ready to be countersigned [p116]. She sent an email to Nicola Floyd on 18 August 2021 to flag other work that was ready for countersigning [p117]. She emailed Nicola Floyd and Natalie Bevan with a copy of her adoption matching certificate on 19 August 2021 [p121]. In response to an email from Nicola Floyd to the Claimant and other colleagues on 03 September 2021 asking for certain work to be completed if not already done, the Claimant replied to say that she was not aware that a particular task needed to be done [p125-6]. On 03 September 2021 the Claimant emailed Nicola Floyd to query whether a case was being picked up by a colleague [p127].
25. The Claimant did not raise any concerns with Nicola Floyd before she went on adoption leave about what she perceived as a lack of response, or timely response, to emails. She did not complain to Natalie Bevan about the matter. Natalie Bevan said in oral evidence that the Claimant may have mentioned before going on adoption leave that Nicola Floyd had not responded to her emails, but the matter was put no more strongly than that. The Claimant did not complain at the time that she had been laughed at by Nicola Floyd. Nicola Floyd's evidence was that she may well have said something along the lines of having 'been so busy catching up with emails and getting back into work' when she met with the Claimant. I find it likely that Nicola Floyd did make a comment along these lines given that she had only recently returned from maternity leave but that she had not laughed or mocked the Claimant by saying this. Viewed objectively, it is a reasonable comment to have made in the circumstances.

Return from adoption leave and line management support

26. On 25 January 2022 the Claimant emailed Nicola Floyd about her return from adoption leave and mentioned that she had yet to hear if she had a place on the PQUIP course. She mentioned that she had texted Nicola Floyd the other day but had yet to have a response [p129]. Nicola Floyd responded shortly before 8am on 26 January 2022 regarding the Claimant's return. She told her that she hoped she would hear about PQUIP soon [p135].

27. On 23 February 2022 the Claimant emailed Nicola Floyd and Natalie Bevan to inform them that she had a place on the PQUIP course with effect from 07 March 2022 on her return from adoption leave [p146]. On 01 March 2022 Nicola Floyd emailed the Claimant to congratulate her [p157]. She told the Claimant that she would be on annual leave on the Claimant's return but that Natalie Bevan would be around.
28. On the Claimant's return from adoption leave, her new work pattern was 2 PQUIP study days at home and 3 days on her PSO duties. Her PQUIP course was an accelerated 15-month programme where she would undertake modules with the University of Portsmouth while working as a PSO. The 3 days of PSO work were a mixture of home and office-based work. Nicola Floyd worked full-time compressed into 4 days. I find that the combination of flexible working patterns and PQUIP studies meant that the Claimant and Nicola Floyd would not see each other daily.
29. In respect of her PQUIP qualification, the Claimant was allocated a separate PTA tutor.
30. Nicola Floyd returned from holiday on 14 March 2022. Day to day line management of the Claimant resumed from then. On 15 March 2022 the Claimant informed Nicola Floyd and Natalie Bevan that she was having problems trying to access a new work laptop and had not been able to complete a piece of work. Nicola Floyd replied that afternoon to say that Natalie Bevan would see if the work could be 'tasked out', meaning that the work would be given to another colleague to complete [p161].
31. On 31 March 2022 Nicola Floyd attended a meeting with the Claimant and her PTA to set objectives for her PQUIP. She attended a second PQUIP meeting with the Claimant and her PTA on 14 June 2022.
32. After the Claimant began work on her PQUIP, Nicola Floyd circulated relevant training opportunities to colleagues in the team (including the Claimant) who were undertaking PQUIP. On 11 April 2022 Nicola Floyd emailed an opportunity for a prison visit to 3 colleagues including the Claimant [p194]. Later that day the Claimant emailed Nicola Floyd and Natalie Bevan to say that she had met with her PTA who asked if she could be allocated a female case and licence case to work on or, even better, a female licence case. Nicola Floyd replied a few minutes later to say that she would keep an eye out [p196]. The Claimant was subsequently allocated a female licence case on 26 April 2022 [p221]. 09 June 2022 Nicola Floyd circulated a further opportunity to trainee PSOs at Bridgend to observe a pre-release meeting [p303]. Neither the Claimant nor her PTA raised any issues at this time over the cases that the Claimant had been allocated or complained that the Claimant had been given inadequate exposure to relevant cases in respect of PQUIP.
33. Nicola Floyd gave feedback to the Claimant on her cases as her line manager. Over 25 and 26 April 2022 the Claimant completed two reports for cases V and AB. Nicola Floyd provided written feedback on areas to develop and offered to discuss her comments as needed [p216-8]. I find that this feedback was targeted, careful, and explained why changes were needed on the documents to help the Claimant learn as a PSO.

34. There was a difference in accounts of whether Nicola Floyd would discuss her comments further with the Claimant. The Claimant said that Nicola Floyd would 'shoo' her away from her door, that she would tell the Claimant that she was in a meeting, that her door was closed, and that she would pull faces at the Claimant. The Claimant did not complain at the time about being shooed away by Nicola Floyd. She did not complain that Nicola Floyd pulled unpleasant faces at her. The Claimant did not raise these issues with Natalie Bevan, who worked alongside Nicola Floyd. Natalie Bevan had never witnessed this alleged behaviour. Emma Richards, who line managed Nicola Floyd, had never received any complaints from the Claimant or other colleagues about her line management style. Emma Richards told the Tribunal that Nicola Floyd has an unblemished disciplinary record. Her account of Nicola Floyd's way of working was that she adopts a 'direct, structured, and business-like style of management'. She did not observe Nicola Floyd's door to be closed any more than others. She recalled that Nicola Floyd would have a sign on her door if she was busy. On balance, I find that Nicola Floyd did not shoo the Claimant away from her door or make faces at her. I find that she would tell the Claimant that she was in a meeting if that were the case and that her door would be closed if she needed uninterrupted work time.
35. On 13 May 2022 Nicola Floyd wrote to the Claimant about case AF. She said that this is 'a case that I would like to have regular discussion with you about both in and out of supervision' and explained her reasons for this [p242]. That day the Claimant had also emailed Nicola Floyd about case U. She reminded Nicola Floyd that she had already spoken with her about the case and was not happy about the case being in her name having previously been managed by a colleague [p249]. She raised concerns about this colleague [p248]. Nicola Floyd responded that day to reassure the Claimant and to say that the matter would be discussed fully in supervision. She went on to say that the issue of this colleague's working arrangements and the specific reasons for those had been agreed by senior management and 'those reasons are not, and should not, be shared with anyone the individual does not want them shared with' [p247].
36. On the afternoon of Friday 10 June 2022, the Claimant emailed Nicola Floyd. She forwarded on information, which she had been asked to review in respect of Case T. She gave her opinion to Nicola Floyd on why she did not think that certain factors would be a trigger for reoffending [p304]. On the morning of Monday 13 June 2022 Nicola Floyd thanked the Claimant and provided feedback that 'as long as your attempts and assessment are explicit' this would suffice [p308].
37. In sum, Nicola Floyd regularly provided feedback in writing and through discussions with the Claimant about her cases upon the Claimant's return from adoption leave.
38. The Respondent has a process whereby a SPO must countersign a risk assessment completed by a PSO within 15 days. This is an organisational target. This period includes the time for a PSO to complete the assessment and for a SPO to review. Different accounts of Nicola Floyd's practice in respect of countersigning were provided to the Tribunal. The Claimant alleged that Nicola

Floyd failed to sign risk assessments within the appropriate timescales between March and July 2022. Nicola Floyd denied that this was ever the case.

39. Nicola Floyd accepted that she would typically sign close to the deadline. She manages around 12 other employees, who will also need their work reviewed. She prioritised her work so that reviews would be carried out based on deadlines, with those approaching the 15-day deadline being prioritised. Nicola Floyd also accepted that the Claimant was organised and would typically send work for review early in the 15-day period and would then have to wait for the work to be countersigned. I accept that the Claimant found this practice frustrating. Viewed objectively however, the practice resulted from Nicola Floyd's workload and particularly her method of managing her workload, which she applied to all those under her supervision.
40. Where minor amendments were needed to the assessment and the deadline was imminent, Nicola Floyd would countersign and then ask the Claimant to make any minor amendments. This would only be the case if the amendments were genuinely minor in nature.
41. I find that there was one occasion where a deadline had been missed. This was in March 2022, when the Claimant had experienced problems with her laptop on return from adoption leave. Nicola Floyd recalled that a meeting with a probationer had not been carried out within the relevant period. There were no repercussions for the Claimant.
42. There was some confusion about whether a second deadline had been missed in relation to a second countersigning. This was around 18 May 2022. The Claimant was unable to attend a prison visit due to a family member being in hospital. The visit needed to be rearranged. Insofar as there was any delay, there were no repercussions.

Supervision meetings

43. At the relevant time, the expectation was that formal supervision between a PSO and line manager would be carried out every 4-6 weeks. During the hearing, the Claimant made several references to only having had one formal supervision in 11 months of being line managed by Nicola Floyd. While this is factually accurate, I find this to be a misleading and unfair representation when considered in context.
44. A formal supervision meeting was held between the Claimant and Nicola Floyd on 16 May 2022 at 3.30pm. Having regard to the 4-6 weekly expectation of supervision, this was delayed slightly and fell just outside this timescale. The Claimant had returned from adoption leave on 07 March 2022 and Nicola Floyd had returned from annual leave on 14 March 2022. The delay was not significant. It was also not the case that the Claimant had been without any supervision or feedback on her work until this meeting.
45. After 16 May 2022, the next supervision would likely have been due around mid-late June 2022. It would not have been possible for the Claimant to have had a supervision meeting at this time. She was, by then, on sick leave. On her return, matters were superseded (see below).

46. At the meeting on 16 May 2022, all 13 of the Claimant's cases she was managing were discussed with Nicola Floyd. There are different accounts about what was discussed in relation to Case A, which is referred to in the list of issues as the MP case. Case A was a person on probation due to harassing their neighbour. The Claimant says that she was at a loss as to what to do with this service user. She says that she asked for specific advice from Nicola Floyd who replied to the effect that 'neighbour disputes are the worse' and gave no advice on how to manage the case. The Claimant's view was that the service user was now the victim of harassment by the neighbour.

47. Nicola Floyd's version of events differs. She recalled that the supervision meeting began with a discussion of how the Claimant was managing with work, PQUIP, and childcare. She noted that the Claimant was juggling all these aspects of her life well. Her account is that Case A was discussed together with the Claimant's other cases. No specific advice was sought. She did not say that neighbour disputes are the worse. She recalled that she may have said something along the lines of neighbour disputes being tricky. No advice was sought as to whether it would be appropriate to contact Case A's MP. With respect to Case A, the action that was recorded was that supervision of the service user is to focus on managing the ongoing issue with his neighbour and associated concerns with safeguarding. There is no mention that the service user feels he is the victim of harassment, although the notes of the supervision meeting record that 'neighbours are reporting everything he and his partner is doing' [p259]. The entry in respect of Case A in the supervision notes ends:

"Supervision to focus on managing this ongoing issue and associated concerns with any safeguarding. Trying to get him involved in groups and exploring pro social activities which get him away from the property".

48. Nicola Floyd's account of the supervision meeting accords with the notes of the supervision meeting [p253-270], which she maintains were created close to the time of the meeting. They were not sent to the Claimant at the time. Nicola Floyd says that this was an oversight. The Claimant alleges that the notes are not an accurate record of the meeting. A record of the document's properties showed that the supervision notes were created on 16 May 2022 at 17:17. This appeared to be shortly after the conclusion of the meeting, which began at 3.30pm that day. The document's properties show that the document had been 'modified' by the Respondent's solicitor. Nicola Floyd explained in oral evidence that she had saved the document in word format. Someone else had turned the document into pdf format for the purposes of the hearing bundle. I found that this was likely to have been the Respondent's solicitor while preparing for the hearing and this accounted for the record of the document having last been modified by her.

49. In determining which account of the meeting was the most reliable, I preferred the evidence of Nicola Floyd. Her version was consistent with the contemporaneous written evidence, namely the supervision notes created shortly after the conclusion of the meeting. In sum, no specific advice had been sought on Case A. No allegation of harassment by his neighbours against Case A had been raised.

Case A: The MP case

50. On 17 May 2022, the Claimant had a further appointment with Case A. The Claimant recorded her notes of the meeting on the Respondent's Delius record keeping system on 18 May 2022 [p691]. She noted a recent RI (Reportable Incident). The police will notify the probation service of any RIs involving service users on probation. Several RIs had been made about Case A as a result of his neighbour calling the police about him. The Claimant recorded on Delius that 'In my professional opinion I believe that A's neighbour is just wasting police time in the hope that he will get A in further problems with the Criminal Justice System'. The Claimant had not spoken with the neighbour. The neighbour is not a service user. The Claimant did not discuss her view with Nicola Floyd or Natalie Bevan. She told the Tribunal that she had spoken with Nicola Floyd the day before at supervision. A further appointment was made with the service user on 17 June 2022.
51. On 18 May 2022 the Claimant's son broke his hip and she took a period of special leave to deal with this.
52. On 09 June 2022 the Claimant was alerted to another reportable incident re Case A [p322-3]. The Claimant requested further information from the police that morning using the relevant enquiry form [p322]. She cc'd Nicola Floyd into the request to the police. On 17 June 2022 Nicola Floyd asked the Claimant whether there had been an update on the case [p322]. Nicola Floyd had updated the Delius record that night at 22:16 to note follow up enquiries had been made with the police. She recorded that enforcement was not an option at this time due to the person on probation being subject to a community order but 'depending upon update further safeguarding activity may be required and intervention in place to address behaviour/risk' [p672]. On 20 June 2022 the Claimant replied to Nicola Floyd's query about whether there was an update to say 'yes only that the case hasn't been allocated to an officer yet' [p322].
53. On 23 June 2022 the Claimant was alerted to RIs on two of her cases [p331-3]. One was another reportable incident re Case A, namely that he had breached his harassment order. Natalie Bevan was reviewing the RIs that morning as Nicola Floyd was out of the office. In respect of the first of the two cases, the Claimant replied to Natalie Bevan. In that email at 12.30 on 23 June 2022 she wrote 'I have also copied you in on an email re: the other RI for [Case A]' [p335]. At 12.45 Natalie Bevan emailed the Claimant with the following message 'Hi Cara Can you call me please about [Case A]' [p334].
54. The email in which Natalie Bevan was cc'd was sent by the Claimant at 11.50 on 23 June 2022. The intended recipient was the service user's MP. Natalie Bevan and the service user were cc'd. The MP did not receive the email due to a spelling error in his email address meaning that the email was not delivered to him. Natalie Bevan and the service user did receive the email. In summary, the email said that the service user was being harassed/stalked by his neighbour, that the neighbour was reporting the service user for harassment on a weekly basis with no real evidence, that South Wales police had done nothing to prevent the harassment, and questioned the impartiality of a police officer who she said 'was seen laughing and joking with a cup of tea/coffee in his hand' on the neighbour's drive. The Claimant said that the service user was getting to the point of being scared to leave his house, that a written complaint had been made to South Wales police a month ago, and that no acknowledgement of the complaint had been received. The email was sent from the Claimant's

work account in which her email signature gave her job title as 'Trainee Probation Officer' [p336].

55. The neighbour has not been convicted of an offence of harassment. The Claimant had not spoken with the neighbour. The Claimant had been asked by the service user to send the email on his behalf. Under cross examination, the Claimant accepted in part that it was not appropriate for her to call into question the impartiality of the police. She did not accept that it was inappropriate to describe the service user as being harassed and stalked. In her view, she believed that this was what the neighbours were doing.
56. A call with Natalie Bevan took place between 12.45 and 13.01 on 23 June 2022. This is clear from the time range between Natalie Bevan asking the Claimant to call her and a subsequent text from the Claimant to Natalie Bevan at 13.01 [p335A].
57. The recollection of the telephone call varies. It is agreed that Natalie Bevan was concerned by the contents of the email to the MP. The Claimant says that she was accused of colluding with the Claimant. Natalie Bevan says that what she said was that the email could be perceived as collusion. She said that the Claimant was defensive on the call.
58. The Claimant texted Natalie Bevan immediately following the call to say how upset she was at the call and was 'questioning if probation is where I belong' [p335A]. She said that she had not done anything wrong and had only tried to help one of her service users [p335C]. She did not mention that she had sought specific advice on the case or that she felt unsupported in how to deal with the case. She did complain that colleagues were 'taking the absolute mick with their caseloads and hours'. Natalie Bevan tried to call the Claimant back who texted a reply that she was unable to speak due to crying [p335C]. Natalie Bevan texted to say that she was sorry that the call had impacted the Claimant this way and that she had asked Nicola Floyd to give the Claimant a call [p335D].
59. At 13.55 that afternoon the Claimant emailed Nicola Floyd and cc'd Emma Richards, her union representative (Steven Allender), and Natalie Bevan [p337-8]. Emma Richards is the line manager of Natalie Bevan and Nicola Floyd, and head of the unit where the Claimant worked. The Claimant wrote that Natalie Bevan had 'basically told me off'. She maintained that she had done nothing wrong. She said that she was 'really upset' by the conversation she had just had with Natalie Bevan who was 'basically accusing me of colluding with my service user'. She complained about other colleagues getting praise they did not deserve and 'taking the absolute mick with their hours and caseloads'. She said that she thought the time had come for her to look for another role.
60. There is no mention in this email of any advice that had been sought about Case A. There is no complaint about the support she was given with managing the case. She does not complain of a failure by Nicola Floyd to offer her advice on the matter.
61. At 2pm that day, Natalie Bevan forwarded the original email that she was cc'd into to Nicola Floyd and Emma Richards. The cover email says 'Please see the e-mail I was copied into this morning' [p336].

62. At some point in the early to mid-afternoon of 23 June 2022, Emma Richards returned to the office. She had been in Leeds. She had originally intended to return home but had been sufficiently concerned about the contents of the email that she came into the office to meet with Nicola Floyd and Natalie Bevan. When they met, a typo was spotted in the MP's email address and it appeared that the email may not have been received due to this error. Emma Richards asked Nicola Floyd to call the Claimant. This was partly to check on the Claimant's wellbeing and partly to ensure that the Claimant was clear that she should not attempt to re-send the email to the MP.
63. At 15.28 that day Nicola Floyd emailed the Claimant. She said that she was sorry to hear that the Claimant was upset and asked if she could call her [p337]. 10 minutes later the Claimant replied and cc'd Emma Richards. She said 'No I am not in a great way to speak to anyone right now. I won't be in tomorrow and I will be going to get a doctors note from my GP tomorrow for stress in the workplace' [p337].
64. At some point between 15.28 and 16.38 that day, Nicola Floyd called the Claimant. She left her a voicemail message. The Claimant says the message was abrupt. Nicola Floyd says that it was assertive and clear. I find that the voicemail message was likely to have been clear and unequivocal in its message. I have formed that view based on an email sent by Nicola Floyd to the Claimant at 16.38 [p340]. She said that there were two reasons for her call: concern for the Claimant but also serious concerns about the email. She informed the Claimant that there was a typo in the email address of the MP and said that she needed to be very clear in her instruction that you are not to send that email. There could be no doubt regarding the instruction. It was phrased as an instruction and 'my instruction that you are not to send that email' was written in bold. She said that she had left a voicemail to that effect. In the circumstances, even if the voicemail was firm, and I find it was likely to have been, I find that this was so that there could be no room for doubt that the Claimant was not to send the email given how serious the Respondent regarded the matter. Nicola Floyd asked the Claimant to confirm the email had not been resent.
65. The Claimant replied at 16.45 to say that she had received Nicola Floyd's email and voicemail. She did not confirm that she had not resent the message [p339].
66. At 16.47 Nicola Floyd again asked the Claimant to confirm she had not resent the message [p339]. The Claimant did not reply.
67. At 16.13 that day Emma Richards emailed Peter Greenhill, the Head of Operations for Wales, with the email in question asking if they could discuss the matter [p336]. She said that she would also pass on the Claimant's response to Nicola Floyd, which she did at 16.14 [p337]. Peter Greenhill replied at 20.45 to say that he would send her a diary invite to discuss [p343]. They discussed the matter on 25 June 2022. His view was that the matter needed to be investigated formally. During this meeting Emma Richards raised the possibility of a conflict of interest due to the Claimant's involvement with her daughter. He advised the Claimant to seek advice from HR.
68. In between Emma Richards emailing Peter Greenhill and his reply at 20.45, the Claimant had sent a message to Emma Richards' daughter at 17.18. Emma

Richards' daughter had acted as an assistant to, and looked after, the Claimant's son. This was usually on Saturday mornings. The Claimant's son had been using a wheelchair having broken his hip. It was accepted that Emma Richards' daughter had not looked after the Claimant's son for a while. This was for a variety of reasons including pressures of studying and a lack of confidence and training in caring for someone with additional physical and mobility needs.

69. The message from the Claimant at 17.18 said: 'I hate to write this but as you have not looked after [] since May and there was massive gaps in the days that you looked after him prior to that. I am going to have to re-advertise the post...Thank you for the time you spent with him xxx' [p341].
70. Emma Richards' daughter replied. This appears to have been around 17.27. She said 'no worries at all'. She explained that she would not have felt comfortable taking her son out when he was using a wheelchair. She said that she had a present for him. She ended her reply by thanking the Claimant for sharing her beautiful boy with her and asked her to 'send him all my love'. I find the exchange to be a pleasant and professional one [p341].
71. Emma Richards' daughter forwarded the message to her mum around 17.27 that day [p577]. This was after Emma Richards had escalated the issue of the Claimant's email to Peter Greenhill.

Investigation

72. The Claimant was signed off work with stress from 24 June 2022 to 07 July 2022 [p350]. She returned to work on Monday 11 July 2022.
73. On 30 June 2022, following her discussion with Peter Greenhill, Emma Richards emailed the Respondent's HR team seeking a caseworker [p363] to assist. As the head of the Claimant's probation unit, commissioning an investigation would fall within her remit. On 04 July 2022 she chased as no caseworker had been appointed [p362]. On 05 July 2022 an HR caseworker was appointed [p364]. The caseworker asked for some background information about the issue including a copy of any Terms of Reference (TOR) for the investigation. Following discussion with the caseworker, it was agreed that Emma Richards would not be involved in commissioning an investigation due to any potential conflict of interest because of her daughter's previous work for the Claimant's son. On 05 July 2022 Emma Richards made a request by email that an 'external' officer be appointed to commission an investigation [p374].
74. Victoria Harris was ultimately appointed as commissioning manager. On 08 July 2022 Emma Richards emailed a draft TOR to Victoria Harris and explained that it was not complete [p374]. This was for Victoria Harris to do following her review of the matter.
75. Emma Richards asked Kate Fitzgerald, the Senior Operational Support Manager and Emma Richards' deputy, to act as a single point of contact for the Claimant so that the Claimant could be kept updated on the progress of the investigation. Kate Fitzgerald was cc'd into the email on 08 July 2022 and it was noted that she would update the Claimant 'as soon as the TOR is

completed'. Emma Richards concluded the email by stating that she would not be involved further.

76. The Claimant returned to work on 11 July 2022. The TOR had not been finalised at that point. On 13 July 2022 Kate Fitzgerald chased up Victoria Harris [p379]. The TOR were finalised on 14 July 2022. Kate Fitzgerald spoke with the Claimant that day virtually to advise her that an investigation had been commissioned into her email to the MP. The Claimant was upset. She was due to attend a return-to-work meeting with Nicola Floyd the following day. Kate Fitzgerald encouraged her to attend this.
77. On the Claimant's return to work, the exchanges between her and Nicola Floyd were pleasant and professional. On 15 July 2022 for example, Nicola Floyd emailed the Claimant to say that she had asked for work to be 'tasked out' during the Claimant's absence but that there was one piece of work that needed to be completed that day. She asked if the Claimant could do it. She said please. She thanked her at the end of her email. The Claimant responded professionally [p387-388].
78. On 15 July 2022 a return-to-work meeting was held between the Claimant and Nicola Floyd. Steven Allender, the Claimant's union representative, was present. The minutes of the meeting record that the Claimant had taken annual leave on 08 July 2022 and Nicola Floyd had been on annual leave until 13 July 2022 and so this was the earliest that everyone could meet [p426-428]. The Claimant raised at that meeting that she felt unsupported. She accused Nicola Floyd of scowling at her, which Nicola Floyd denied. Nicola Floyd asked the Claimant what needed to be different. The Claimant asked her to be more responsive and to leave a note on her desk if Nicola Floyd came to see her and she was not there. They discussed how the Claimant might protect her PQUIP study time on her study days, and an occupational health appointment that had been made for 02 August 2022.
79. Case A was discussed. The Claimant alleged that she was being investigated due to having received no advice on how to manage this case. Nicola Floyd stated that she could not recall any particular advice being sought on Case A at the supervision meeting on 16 May 2022.
80. Nicola Floyd's recollection of the meeting is that it became difficult towards the end as the Claimant interrupted her and made personal comments about her management style. She said that her view of Nicola Floyd was 'shared by the team and she is the only one who has the guts to say it' [p428]. The Claimant accused Nicola Floyd of being patronising. The Claimant says that Nicola Floyd became defensive at the meeting. Emotions were heightened by the end of the meeting. It was agreed that Nicola Floyd would stop being the Claimant's line manager and an interim manager would be appointed.
81. Nicola Floyd emailed the notes of the return-to-work meeting to the Claimant and her representative on 25 July 2022 [p425]. She asked if they were happy that they reflected the discussion. She wrote 'let me know if there is anything I may have overlooked or that you think is inaccurate'. Steven Allender replied on 02 August 2022 with 5 points he wanted noted [p439]. He asked for these points to be included for the record.

82. It was accepted that Nicola Floyd ceased being the Claimant's line manager with effect from 15 July 2022.

Grievances

83. On 18 July 2022 the Claimant raised a grievance against Nicola Floyd for lack of management support [p412-415].

84. Lee Raynor is the son of the Claimant's next door neighbour. He was released from prison on 10 February 2021. On 09 February 2021 the Claimant asked that details of his case be blocked from the Claimant on the Delius record system [p102]. She explained that he would be living with his dad with whom she is very friendly. Lee Raynor's probation officer is Lynne Williams. She was copied into the request by the Claimant that his records be blocked from her.

85. Lee Raynor's dad has a garage at the side of his property. He works on the Claimant's car. Her husband pays him for doing so. On a couple of occasions the Claimant has tried to give Lee Raynor money to pass on to his dad. He has asked the Claimant to give the money directly to his dad. Lee Raynor began working in the garage on his release from prison. He has helped the Claimant's family on a few occasions. On one occasion he helped the Claimant's husband move a dining table in the downstairs of their home. He has taken scrap metal from the Claimant's garden to sell for money that he kept. He has jet washed the Claimant's front of property when he has been jet washing other properties in the street.

86. On 27 July 2022 Lynne Williams carried out a home visit with Lee Raynor. She was not instructed to carry out a home visit. Home visits would ordinarily be carried out sooner following a probationer's release from prison. Lynne Williams explained that there was a delay in conducting the home visit due to her workload. Home visits allow a probation officer to verify where a service user lives and gain a better understanding of their circumstances such as family dynamics. She would typically meet with service users weekly following their release, then every two weeks until 6 months post-release. After 6 months, meetings would be monthly. During the 18 months when she had worked with Lee Raynor, she was not aware of any risk-related issues. She did not know that the Claimant was on annual leave when she arranged the home visit. Subjectively, the Claimant may have felt suspicious about the timing of the visit. However, viewed objectively the timing of the visit after investigatory proceedings were commenced was coincidental.

87. The recollection of what happened during that home visit varies. Lynne Williams says that Lee Raynor raised an issue with having rats on his property and the conversation turned to the 'probation lady' next door. This was in response to a discussion about how Lee Raynor was getting on with his neighbours generally. During the conversation about rats, Lynne Williams recalled him saying that he believed the rats came from rubbish next door. He said that he had helped clear some stuff from next door's garden. He also mentioned jet washing next door when he was doing his property, moving a table in the downstairs of the house next door, and working on the Claimant's car. Lynne Williams asked Lee Raynor whether he felt obliged to do these tasks. He was clear that he felt under no obligation to do so. Lynne Williams

says that she had never before discussed the Claimant during her supervisions with Lee Raynor.

88. Lee Raynor's account differs both from that of Lynne Williams, and between his statement and oral evidence. In his witness statement he said that he had never referred to the Claimant as the probation lady. He said that Lynne Williams would 'steer the conversation' to the Claimant during their supervisions. He said that he had moved a table in the Claimant's house and moved scrap metal from their garden as 'I knew I could earn a few pound from doing this by selling the scrap'. He said that on the day of the home visit, he discussed the problem of rats coming to the property but said that they were from the church yard. He accepted under cross examination that Lynne Williams had asked whether he felt obliged to carry out tasks for the Claimant and he had said that he did not have to do them if he did not want to.
89. Under cross examination, he admitted that Lynne Williams had not previously brought the Claimant up in their supervision sessions.
90. I find Lynne Williams' account of the home visit on 27 July 2022 to be the more reliable of the two. I have formed that view based on the contemporaneous written evidence. On 28 July 2022 Lynne Williams sent an email to Natalie Bevan. On her return to the office following the home visit, Lynne Williams had mentioned to a colleague what she had been told. She asked the colleague's advice on whether she should flag with her line manager what Lee Raynor had told her. She was concerned about whether any policies may have been breached. Her colleague advised that it would be sensible to mention it. Lynne Williams briefly discussed the matter with her line manager, Natalie Bevan, then followed it up with an email note [p431]. In this email, she said that Lee Raynor had 'made reference to the "Probation lady" that lives next door'. She recounted how he thought rats may be coming from next door and the work that he had done. She explained that he did not feel obliged to do these jobs and that 'Cara had always paid him for any work he carried out on her vehicle'.
91. Lynne Williams' version of events is consistent with the email she sent to Natalie Bevan the day following the visit. It was also consistent with the oral evidence she gave to the Tribunal. Lee Raynor's account in his witness statement differed from that he gave in oral evidence, particularly about whether Lynne Williams had brought up the Claimant in previous supervision meetings. Moreover, Lynne Williams had been clear in her email to Natalie Bevan that the Claimant had been referred to as the probation lady. This is evident from her use of the phrase "Probation lady" in quotes in that email. On balance, I found the evidence of Lynne Williams to be the more reliable and preferred this account of the meeting.
92. Natalie Bevan spoke with Kate Fitzgerald about what she had been told by Lynne Williams. The Respondent has strict rules about relationships between probation officers and service users. Kate Fitzgerald considered it inappropriate to raise the issue with Emma Richards, who had recused herself from any investigations involving the Claimant. Instead, Kate Fitzgerald raised the issue with Victoria Harris who was the commissioning manager for the investigation into the issue involving the email to the MP. On 29 July 2022 the TOR for the investigation were expanded due these further allegations [p432-3].

93. Kate Fitzgerald instructed Natalie Bevan to ask Lynne Williams to call Lee Raynor. She was to tell him that the information he had disclosed had been reported to a manager and that the Claimant would be spoken to about it. Kate Fitzgerald's view was that Lee Raynor may have felt vulnerable in his position, hence why he had raised the issues with Lynne Williams in the first place. She did not want this supervisory relationship to be undermined. She wanted Lynne Williams to have a conversation with Lee Raynor so that he would know that his concerns had been conveyed and that the matter was dealt with as far as he was concerned. Natalie Bevan told Lynne Williams that she needed to speak with Lee Raynor. She should let him know that she had relayed what he had told her to her line manager and that they would speak with the Claimant.
94. Lynne Williams was clear on the message she was given from Natalie Bevan. It was that she was to tell Lee Raynor that the information he had provided had been passed on and the Claimant would be spoken to. Lynne Williams was worried that Lee Raynor had thought he might have done something wrong.
95. There is a difference in accounts of what Lynne Williams told Lee Raynor when she spoke with him on 04 August 2022. Lynne Williams' account is that she was clear on the instructions of Kate Fitzgerald that came via Natalie Bevan. She told Lee Raynor that she had passed on the information he had told her and that the Claimant would be spoken to. She said that he had not done anything wrong and that she wanted to let him know in case the Claimant spoke to him about it. As far as Lynne Williams was concerned, that was the end of the matter.
96. Lee Raynor said in his witness statement that Lynne Williams called him on 04 August 2022. She said that he was no longer to take money from the Claimant for fixing her car as this was not allowed. He said that Lynne Williams told him: 'Cara was under investigation in work for another matter and this would need to be reported to her Manager'. Later, on 04 August 2022, he spoke to the Claimant and told her that he had been informed that she was under investigation at work.
97. At 17.16 on 04 August 2022 the Claimant wrote to Kate Fitzgerald attaching a grievance against Lynne Williams for breach of confidentiality [p445] due to informing Lee Raynor that she was under investigation [p446-8].
98. The account given by Lee Raynor in his witness statement of the call on 04 August 2022 was different to that he gave in oral evidence in a number of respects. Under cross examination, he was asked whether Lynne Williams had called him to say that he was not in trouble. He agreed. He then said: 'she said she had passed it on to her manager and that was it.' This was consistent with Lynne Williams' account. In his statement, however he was clear that Lynne Williams had said that the Claimant was already under investigation 'for another matter'. Lynne Williams was adamant that she had not said this. She was clear that she did not know at this time that the Claimant was under investigation for another matter.
99. Lee Raynor told the Tribunal that he was worried in case he had done something wrong and would be recalled to prison. This was consistent with how Lynne Williams had perceived the situation. It was put to him that what might have been said was that 'Cara will be spoken to' and not that Cara was 'under

investigation'. He accepted that 'spoken to' was, in fact, what had been said. That the Claimant would be spoken to was also consistent with Lynne Williams' account.

100. On balance, I find that what Lynne Williams said when she spoke with Lee Raynor on 04 August 2022 was that the issues he had raised with her about doing work for the Claimant had been passed on to her manager and the Claimant would be spoken to. Lynne Williams did not say that the Claimant was under investigation for this or any other matter. What Lynne Williams told Lee Raynor is consistent with what Kate Fitzgerald instructed Natalie Bevan to tell Lynne Williams. It is consistent with what Natalie Bevan, in turn, says she told Lynne Williams and what Lynne Williams understood the instruction to be. It is also consistent with what Lee Raynor initially said under cross examination, namely that what he had relayed to Lynne Williams had been passed to her manager and 'that was it'.
101. Lynne Williams, who I found to be a straightforward and reliable witness, did not know that the Claimant was already under investigation in relation to another matter. After the Claimant had raised a grievance against Lynne Williams on 04 August 2022, Kate Fitzgerald had, by 08 August 2022, spoken with members of the management team who were aware of the Claimant's investigation. She had been assured that the information had not been shared with colleagues [p477-481]. The Claimant alleges that Nicola Floyd told Lynne Williams of the investigation. Both Nicola Floyd and Lynne Williams denied that this was the case.
102. Kate Fitzgerald met with the Claimant and her union representative on 15 August 2022. She sent an email to them that day summarising the discussions at the meeting. Her email noted that 'Cara has agreed for me to share with Lynne Williams that she is subject to a conduct and discipline investigation should I feel this is appropriate'. It was not until after seeking the Claimant's permission on 15 August 2022 that Lynne Williams was informed that the Claimant was under investigation. She could not therefore have told Lee Raynor that the Claimant was under investigation as she did not know this at the time.
103. I have also considered what might reasonably be inferred by Lynne Williams' comments to Lee Raynor on 04 August 2022. This is heavily dependent on the context. The relevant context is that a service user, worried about recall on licence, raised with Lynne Williams that he had done some jobs for the Claimant's household knowing that the Claimant worked for the probation service. He was worried that he had done something wrong. Lynne Williams was calling in the context of offering reassurance that the matter had been passed on. The relevant manager would speak to the Claimant and that, as far as Lee Raynor and Lynne Williams were concerned, was the end of the matter.
104. I find that a conversation did take place between the Claimant and Lee Raynor on 04 August 2022 when Lee Raynor told her about the call from Lynne Williams. It is clear from the grievance that the Claimant raised against Lynne Williams later that day that she had understood that Lynne Williams had been informed that she was under investigation and had informed Lee Raynor of this. I find that the most likely explanation of events was that the Claimant, knowing

that she was under investigation, jumped to conclusions. When viewed objectively and when Lynne Williams' words are seen in context, it cannot reasonably be said that she had said anything to Lee Raynor to make him believe that the Claimant was under investigation for another matter (as he alleged in his witness statement) or that she was under investigation more generally.

105. Rebecca Morley, Head of Stakeholder Engagement, was appointed as the grievance manager to hear the Claimant's two grievances around 15 August 2022. She spoke with Kate Fitzgerald during the grievance process in September 2022. Kate Fitzgerald explained the chronology of events from 28 July 2022 when Lynne Williams first spoke with Natalie Bevan about Lee Raynor. She told Rebecca Morley about the instruction she had given to Natalie Bevan to relay to Lynne Williams. Kate Fitzgerald continued to liaise with the Claimant about progress on the investigation and grievances. She was also involved in discussions about where the Claimant would work on her office days and in her application to have her period of absence for stress exempted from her sick leave record. Neither the Claimant nor her representative asked that Kate Fitzgerald contact her less frequently.

PQUIP and resignation

106. On 02 August 2022 the Claimant attended a remote meeting with Kate Fitzgerald and Sharon Walters. Sharon Walters had been appointed as the Claimant's interim line manager [p435]. Kate Fitzgerald told the Claimant that her PQUIP qualification would be temporarily paused pending the outcome of the disciplinary investigation process. Kate Fitzgerald's recollection to the Tribunal was that this was an upsetting meeting. The Claimant was clearly upset by the news. I also find that Kate Fitzgerald found this a difficult meeting as she was aware that the news would be upsetting.
107. The Claimant's recollection is that Kate Fitzgerald smirked at this meeting. Kate Fitzgerald says that she did not. On balance, I prefer the account of Kate Fitzgerald. She did not find the meeting funny. Her clear and straightforward evidence to the Tribunal was that she found it a difficult meeting. She had no reason to find the situation amusing. She suggested to the Claimant that while PQUIP was paused, she could continue to shadow Probation Officers to maintain her learning. The Claimant emailed her PTA tutor on 02 August 2022 after the meeting with Kate Fitzgerald to say that she was 'absolutely fuming' that she had been suspended off PQUIP [p450]. She did not complain that Kate Fitzgerald had smirked. Her PTA tutor informed her the following day that it is normal procedure to be referred to a progression board where there is a disciplinary investigation [p450].
108. On 12 August 2022 the Claimant completed a 'Progression Board Learner Statement'. She said that she wanted to continue with her studies and that she is committed to the course [p487]. The Claimant said under cross examination that she wanted to continue with her job had the PQUIP process not been paused. The progression board met on 24 August 2022 [p449]. The decision to pause PQUIP was confirmed.
109. On 25 August 2022 the Claimant wrote a letter of resignation in which she gave one month's notice [p491-2]. She said that she came to this decision

after months of bullying. She said that the matter has come to a head with a probation officer breaching her confidentiality. I find that this was a reference to the conversation between Lynne Williams and Lee Raynor on 04 August 2022.

110. That same day she posted a message on Facebook [p493-4]. She accused a colleague of spreading malicious allegations throughout her village, that she has been bullied, and stated that she 'will never work for a company again that will dictate what I say, think, and do!!!' The Claimant was suspended on full pay for the remainder of her notice period following this post on social media [p502-3].
111. The Claimant resigned the day following the meeting of the PQUIP board at which the decision to pause her PQUIP was confirmed. I find that it was this that triggered her resignation. Up to and including her completion of the learner statement on 12 August 2022, she was committed to her role and her studies.

Law

112. 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 her 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".
113. 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).

Conclusions

114. 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 and have followed the order set out in the agreed list of issues.

115. There was no deliberate failure on the part of Nicola Floyd to make contact with the Claimant in August 2021 upon becoming her line manager. The Claimant and Nicola Floyd had limited time together due to a combination of working patterns, Nicola Floyd getting back up to speed following her return from maternity leave, and the Claimant's annual leave. When they did meet together in early September 2021, the meeting was a pleasant one. Nicola Floyd did not ignore the Claimant's emails during this period. While she did not respond to every email with an acknowledgement, not all emails required a response.

116. I found that the Claimant was not someone who would feel inhibited about raising a complaint if she felt that a colleague or manager's behaviour had been inappropriate. On 15 July 2022 she mentioned at a meeting with Nicola Floyd how she was the only person in the team who had the 'guts' to say how she felt. She did not complain in 2021 that Nicola Floyd had laughed at her because, as I found, she did not laugh at her.
117. On the Claimant's return from adoption leave, she was supported by Nicola Floyd who would give considered feedback by email on her cases, looked out for cases that could be used in evidence for PQUIP, and flagged relevant opportunities with her. My findings of fact do not support the assertion that she would be shooed away by Nicola Floyd or that she would have faces pulled at her. I accept that Nicola Floyd managed her time carefully and that, at times, her door would be closed if she was in a meeting.
118. With regards to the allegation that Nicola Floyd failed to countersign the Claimant's risk assessments within appropriate timescales, I accept that the Claimant was frustrated by Nicola Floyd's practice of reviewing her work close to the deadlines. Nicola Floyd worked to deadlines and prioritised her work and that of reviewing the work for her other direct reports in strict time order. I accept that the Claimant, who it is accepted was organised and would complete work well in advance of deadlines, found this frustrating. Viewed objectively, it cannot be said that this was a failure on the part of Nicola Floyd to countersign the Claimant's work within the appropriate timescales. On two occasions, the deadlines may have been missed (due to the Claimant having no IT access and a second occasion where there was some confusion over a prison visit). Both occasions were explained by Nicola Floyd. There were no repercussions for the Claimant. In the alternative, even if Nicola Floyd had on these two occasions missed a deadline, it cannot reasonably be said that this would amount to a repudiatory breach of contract. Any failure of Nicola Floyd in that regard was not so serious that it was conduct likely to seriously damage or destroy the duty of mutual trust and confidence.
119. Nicola Floyd's advice and support of the Claimant was appropriate. This included advice on Case A given at the supervision meeting on 16 May 2022. I conclude that Nicola Floyd's account of the meeting on 16 May 2022 is the more reliable version of events. It is supported by the notes of the supervision, which were created shortly after the meeting (albeit not sent to the Claimant until some time later). Moreover, the Claimant made no allegation of a failure to provide inadequate advice when she was first notified of concerns on 23 June 2022 about her handling of the case and particularly about the email she sent to the service user's MP. The Claimant did however, on that day, complain about other colleagues. I concluded that, had the Claimant been inadequately supported, she would have felt confident to raise this at that time. She did not. On balance, adequate advice was given to the Claimant during the 16 May 2022 supervision meeting.
120. The Claimant was not subsequently threatened by Nicola Floyd on 23 or 24 June 2022. Nicola Floyd left a voicemail for her on 23 June 2022. It was assertive in tone and made clear that the email to the MP should not be resent. A contemporaneous email supports Nicola Floyd's account. While I accept that the Claimant considered that she was acting in the best interests of her service user in sending the email to his MP, it was clear at the time that she did not

appreciate the seriousness of what she had done. She also ignored the request of her line manager to confirm that she not resent the email. I am satisfied that Nicola Floyd's message was appropriately assertive and unequivocal but not threatening.

121. It is clear from the minutes of the return-to-work meeting on 15 July 2022 that it was a difficult meeting. The difference in working styles between the Claimant and Nicola Floyd had become apparent by this time. Nicola Floyd did not accept the Claimant's characterisation of her as ignoring the Claimant and was upset by this suggestion and later comments about her management style. Viewed objectively, it cannot be said that Nicola Floyd taking exception to an accusation that she had been ignoring the Claimant, when she felt that this was an unfair portrayal, was conduct that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent. Nicola Floyd stepped down from line managing the Claimant that day. The Claimant was then provided with an interim manager. This was conduct on the part of the Respondent to maintain trust and confidence, not destroy or damage it.
122. The notes provided by Nicola Floyd of the 15 July 2022 meeting were in draft form. She made clear that the Claimant and her trade union representative could correct any inaccuracies. Steven Allender responded with corrections. The original notes and the corrections were retained as a record of the respective accounts of the meeting. Even if the original draft of the minutes did not reflect the Claimant's recollection, it is clear from Nicola Floyd's invitation to provide comments that there was no deliberate intention to mislead.
123. Nicola Floyd was no longer the Claimant's line manager with effect from 15 July 2022. The Claimant was informed that a disciplinary investigation would commence on 14 July 2022 after the terms of reference were agreed. There was one day between the start of the disciplinary process and Nicola Floyd stepping down as the Claimant's line manager. The claim that Nicola Floyd failed to support the Claimant between March and July 2022 through the disciplinary process must therefore fail. In any event, following the Claimant's return from sick leave in July 2022, the contemporaneous emails between the Claimant and Nicola Floyd demonstrate a professional working relationship. Moreover, at the return-to-work meeting on 15 July 2022 Nicola Floyd asked what she could do differently and agreed to the Claimant's suggestions of leaving notes on her desk. To the extent that Nicola Floyd could support the Claimant in the day following the investigation beginning, she did so.
124. Nicola Floyd did not tell Lynne Williams that the Claimant was subject to a disciplinary investigation. The evidence of Nicola Floyd, Lynne Williams, Natalie Bevan, and Kate Fitzgerald (who consulted the managers who knew of the investigation after the grievance was made against Lynne Williams) was consistent. Lynne Williams had not been told of the disciplinary investigation by Nicola Floyd. Lynne Williams did not know about the investigation until some point in mid-August 2022 when Kate Fitzgerald obtained the Claimant's permission to share this with the Claimant.
125. In considering the reliability of Nicola Floyd's account on this matter, I concluded that her evidence had generally been delivered in an open and straightforward manner. I also considered an earlier incident from May 2022

when the Claimant had raised concerns with Nicola Floyd about a colleague's working pattern. Nicola Floyd's response was unequivocal that a colleague's working arrangements and the specific reasons for those should not be shared. This response suggested that Nicola Floyd would behave with discretion in respect of sensitive employment matters. In sum, the weight of evidence supported Nicola Floyd's account that she had not told Lynne Williams that the Claimant was subject to a disciplinary investigation.

126. On 23 June 2022 (not 2023 as in the agreed list of issues) Natalie Bevan did tell the Claimant that her email to a service user's MP was inappropriate because that was her view but she did not allege that the Claimant had colluded with an offender. She said that her actions may be construed as collusion. This is clear from the Claimant's own account of the call on 23 June 2022 when she said that she had 'basically' been accused of collusion, not that she had been accused of collusion. It was not unreasonable for a Senior Probation Officer in the Claimant's team, who had been cc'd into the relevant email by the Claimant, to inform her that her actions were inappropriate given the concerns about the content of the email. It cannot reasonably be said that such a comment could amount to a breach of the implied term of trust and confidence.
127. The Respondent did not take action against the Claimant due to her decision to terminate the employment of Emma Richards' daughter as personal assistant for her son. Emma Richards had contacted Peter Greenhill before she knew of the decision to terminate her daughter's employment. The exchange between the Claimant and Emma Richards' daughter was warm. There were no hard feelings.
128. Kate Fitzgerald's contact with the Claimant was only related to the termination of Emma Richards' daughter's employment insofar as Emma Richards took advice from HR and concluded that it would be prudent to recuse herself from the investigation to avoid any suggestion of a conflict of interest. The level of contact between the Claimant and Kate Fitzgerald was appropriate to the matters that were being pursued. No complaints about the level of contact were made at the time. My findings of fact do not support the assertion that Kate Fitzgerald smirked at the Claimant on 02 August 2022.
129. My findings of fact also do not support the assertion that Lynne Williams told Lee Raynor on 04 August 2022 or at any other time that the Claimant was under investigation. She did not. Moreover, her words in the context in which they were said could not reasonably and objectively be interpreted as meaning that the Claimant was under investigation.
130. It was entirely appropriate for Rebecca Morley to speak with Kate Fitzgerald as a witness during the grievance investigations despite Kate Fitzgerald dealing with the Claimant as a go-between. Kate Fitzgerald gave the original instruction to Natalie Bevan that Lynne Williams should contact Lee Raynor and advise him that what he had told her had been passed on. Kate Fitzgerald had also spoken with the relevant managers to establish whether information about the Claimant's investigation had been shared with anyone. Her evidence was relevant and important to the grievance investigation.
131. 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.

132. 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.

133. I have borne in mind the “last straw doctrine” however whether one views any last straw as the alleged disclosure by Lynne Williams to Lee Raynor, or the suspension of PQUIP after the board meeting on 24 August 2022, 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.

134. The Claimant resigned and was not dismissed. Her constructive unfair dismissal claim does not succeed. The Claimant’s claim is dismissed.

Employment Judge R Russell

Date 04 October 2023

REASONS SENT TO THE PARTIES ON 5 October 2023

FOR THE TRIBUNAL OFFICE Mr N Roche