EMPLOYMENT TRIBUNALS

Claimant: **Miss Abimbola Idowu**

Respondent: **West London YMCA**

Heard at: **Bury St Edmunds Employment Tribunal (by CVP)**
On: **22-26 January 2024 and (Tribunal only) on 30 January 2024**

Before: **Employment Judge Findlay and**
Members: **Mr C. Juden and Mr F. Wright**

Representation
Claimant: In person
Respondent: Ms J Linford (Counsel)

RESERVED JUDGMENT

1. The claimant's claim under section 45A(1)(f) of the Employment Rights Act 1996 is not well founded and is dismissed;

2. The claimant's claim of constructive unfair dismissal pursuant to section 95(1)(c) of the Employment Rights Act 1996 is well founded and succeeds.

REASONS

The Issues:

1. The issues are as set out at paragraphs one to six in EJ Warren's order at pages 49 and 50 of the tribunal's bundle and are attached as an appendix to this decision. At the hearing on the 22nd of January 2024, the claimant clarified that the last straw upon which she is relying in respect of her constructive unfair dismissal claim is as set out at paragraph 80 of the attachment to her claim form (p19).She clarified that the comments that she attributes to Ms Ademoye in that paragraph were made at a stage 3 sickness absence hearing which took

place on the 14th of February 2022 and not at the grievance appeal meeting on 24 January 2022. The respondent did not object to that clarification.

2. As will be seen from the list of issues, the claimant has made two claims; one under section 45A of the Employment Rights Act 1996, and the other is a complaint of constructive unfair dismissal under section 95 (1) (c) and part X of that Act.

3. Procedural issues: at the start of the hearing on the 22nd of January 2024, a number of issues were raised about the documents before the tribunal. At around 9:30 that morning, the respondent had sent through a further bundle of documents. We clarified with Miss Linford that the only addition was a judgment from another tribunal case in which the claimant had appeared as a witness in August 2023. The claimant objected to that judgment being included, and it was not obvious to us how it was relevant to the issues before us. It appeared that the respondent may wish to introduce it if the claimant raised certain points. In those circumstances, taking account of the overriding objective and the lateness of the addition, we decided that it would be a matter for the respondent to apply to introduce that document if, in the respondent's view, it should become relevant. We informed the parties of this, but no further application was made in that respect.

4. The claimant had sent an e-mail to the tribunal on the 17th of January 2024, attaching video and audio files. We asked the claimant if she was intending to rely upon those files and she asked if they could be admitted in evidence. At that point, on the morning of 22nd January, Miss Linford had been able to view the video files but had not been able to listen to the audio files. The respondent objected to the video and audio files being admitted in evidence.

5. The claimant explained that the video files showed Mr Sunday Ikie attempting to print in colour on the respondent's printer at the Greenford office (where the claimant had been employed) in about February 2023. In his witness statement, Mr Ikie says that the video films show that he was unable to print in colour (an important matter from the claimant's viewpoint). After we had concluded our reading, on the morning of the second day of the hearing, 23rd of January 2024, we informed the parties that we did not consider that those videos should be admitted. We gave reasons at the time. For example, we did not think that whether or not another employee was able to print in colour more than ten months after the events for which the claimant was disciplined would assist us in determining the issues. We did not consider that it was reasonably necessary for us, taking account of the overriding objective, to admit those videos in all the circumstances.

6. Regarding the audio files which had been sent to the tribunal, the claimant told us that she had sent the audio and video files to the respondent between May and August 2023. The respondent's solicitor had indicated to the claimant that she had some difficulty in accessing the audio files, but otherwise took the matter no further, and neither party had contacted the tribunal to ask for directions about this. The claimant told us that one of the audio files was covertly recorded at a stage two sickness meeting on the 21st of September 2021 after she had begun to mistrust the respondent, because, as she put it, important matters were being omitted from the respondent's minutes of meetings. The claimant was concerned that the minutes of the meeting on 21 September 2021 did not accurately reflect what the HR Business Partner Kehinde Loremikan ("KL") had said; the claimant said that KL had indicated

that she was going to ask the IT department to investigate the claimant's concerns further.

7. We were told by the claimant that the second audio file corroborated her allegations about what was said by Ms Ademoye ("AA" - the manager who heard the grievance appeal) at the stage 3 sickness absence review meeting on 14 February 2022. These allegations are set out in paragraph 80 attached to the claimant's claim form. Again, we responded to those applications, after hearing from the respondent and after completing our reading, on the morning of the 23rd of January. We informed the parties that we had decided not to admit the audio recordings at that point as it was not clear to us that they were relevant or reasonably necessary for us to reach our decisions fairly. We said that we would revisit that decision when we had heard from the relevant witnesses and had a clearer idea of why the claimant said that they were both relevant and reasonably necessary for us to consider.

8. After hearing the evidence from Ms Chisakuta ("PC"), who (together with the respondents HR Business Partner KL) had attended the sickness absence review on the 21st of September 2021 with the claimant, and before we concluded the evidence of Ms Ademoye, we reconsidered the situation regarding the audio tapes. By that stage, it had become apparent that PC did not recall the details of what had been said by KL on the 21st of September 2021, whereas the evidence of the claimant was clear about this. KL did not give evidence, although her name was mentioned on many occasions and she was present at the hearing before us. We noted that the claimant had sent amended minutes of the meeting on the 14th of February 2022 to the respondent and that her version was included in the bundle before us. Her version included what she alleged was recorded on the audio tapes. By this time (26 January 2024) Miss Linford had been able to access the audio tapes and agreed that the claimants amended minutes of the meeting on 14 February 2022 accurately reflected the extract on the recording provided. In those circumstances we did not consider it to be reasonably necessary or in the interests of the overriding objective for either of those audio files to be played to us.
9. On the morning of the 22nd of January also, the claimant complained that she had not received the notes of her grievance appeal hearing on the 24th of January 2022 until shortly before the final hearing before us. Neither the claimant nor the respondent was able to tell us exactly when she had received those notes, but it was clear to us that the claimant did have an opportunity to read them before the hearing, that they were directly relevant and we considered that it was reasonably necessary in the interests of the overriding objective for us to take them into account.
10. The claimant also pointed out that there was an e-mail at page 239 of our bundle which was to the claimant from Mr. John David, who was investigating her grievance. It was dated 19th of November 2021 and asked the claimant for evidence of a comment attributed to the respondent's own IT department. The claimant said that she had answered that e-mail, but that her response had been omitted from the bundle by the respondent's solicitor. During the hearing that morning, 22nd January 2024, Mr. David produced a copy of the claimant's reply, which was then included in our bundle as part of exhibit R1.
11. On the morning of the 23rd of January, the second day of the hearing, Miss Linford told us that the respondent had discovered an e-mail chain between an

HR Business Partner, Efrat Burl (EB), and the respondent's IT department dating from January 2022. She said that it directly related to the issue of whether or not the respondent had adequately investigated the claimant's concerns (issue 1.10). Miss Linford was unable to explain to us initially why these had not been disclosed previously, and the claimant strongly objected to their inclusion. She considered that they would adversely affect her case. The tribunal considered that these emails were directly relevant to the issues before us, and that it was reasonably necessary for us to consider them in the interests of the overriding objective. Those emails, between EB and Christopher Daniel ("CD"), whom we were told was the respondent's Head of IT, form the remainder of exhibit R1. Given the claimant's concerns, we ensured that she was given the opportunity to read and consider how to approach those emails before she asked any questions about them.

12. On the morning of the 22nd of January 2024, in answer to a question from the Judge, the claimant said that she had not understood that she would need to ask questions of the respondent's witnesses. The Judge explained to the claimant that she would need to be prepared to do this and encouraged her to start thinking about the questions that she would ask each witness that were relevant to the issues, and that she should write them down so that she had them available to her when asking questions. The tribunal also explained to the claimant that as she was not legally represented, once she and her witness (Mr Ikie) had given evidence, the tribunal would give her the opportunity to clarify anything she thought was insufficiently clear (re-examination) and that she should keep a note of those answers which she thought required clarification as a result.
13. Mr David's evidence began on Wednesday the 24th of January 2024 in the afternoon. We had been told on 22 January that Mr. David was not able to be present on the 25th of January as he had to attend a funeral. His evidence was therefore completed on the 26th of January. During his evidence on the 24th of January 2024, Mr. David referred to the existence of what he referred to as "a much more detailed investigation report" in respect of the claimant's grievance, which he said he had given to HR in November 2021. We asked Miss Linford to make further investigations about this. After taking instructions, she addressed us on the morning of the 25th of January, saying that the report had not previously been disclosed to respondent's solicitors and that as a result, Miss Linford had needed to wait until her solicitor had read the report and had given her instructions upon it. This meant that the claimant had only been sent a copy of the report earlier that morning. Given the adjustments referred to below and the claimant's state of health, we gave the claimant an opportunity to read the report before making submissions to us. The claimant strongly objected to the report being introduced at that stage, saying that as an unrepresented party experiencing mental health difficulties, she would struggle to digest the report and take it into account in her questioning of the respondent's witnesses, having received it at such a late stage. For reasons we gave at the time, including the very late stage at which the document was disclosed to the claimant, that Mr David had been given the opportunity to provide a witness statement dealing with his investigation, and that he would be able to give further evidence about what he had done to investigate the grievance during questioning by the claimant, we did not consider that it was

reasonably necessary or in the interests of the overriding objective to admit that report into evidence and we declined to do so.

14. On the 4th day of the hearing in the afternoon, the Tribunal informed the parties that as it was likely that the evidence would be concluded the following morning, Friday the 26th of January 2024, the tribunal would expect to hear the parties' closing submissions at that point. It seemed likely that this would leave too little time for the tribunal to reach conclusions and deliver a judgment on that date. The hearing had taken longer than the time estimate, partly because of the numerous applications for inclusion of documentation referred to above, and partly because there had been no indication in the case management hearings that the claimant would require reasonable adjustments as set out below. At this point, Miss Linford indicated that she had hoped to use written submissions. She had not completed them but had available a summary of the relevant law. The Judge suggested that the summary of the law could helpfully be shared with the claimant prior to the start of the proceedings the following morning, but that the claimant would be given time to read them and should ensure that she had a proper rest on the evening of the 25th of January as we had been told that the proceedings were taking a toll on her health (see below).
15. Following conclusion of the evidence, Miss Linford indicated that she would prefer to make oral submissions, although she had by then sent her summary of the law to the claimant. The claimant indicated that she had worked on her own closing submissions and would be able to deliver them orally that day. In accordance with the overriding objective, the tribunal paused at the conclusion of the oral evidence and took a break of 90 minutes, to enable the claimant to eat and to read and absorb the respondent's legal submissions. On return at 2:00pm the tribunal checked with the claimant that she had read the legal submissions and that she was content that both parties would give their oral submissions that afternoon. The claimant indicated that she had been given sufficient time to read and understand the respondent's legal submissions and that she was content to make her submissions. We heard the respondent's oral submissions first. At the claimant's request, there was then a further break for her to gather her thoughts before she made her own closing submissions. The claimant's closing submissions ended shortly before 4pm on the 26th of January 2024, the last day of the hearing, so the tribunal reserved its decision on liability (Judge Warren's directions had limited the scope of the hearing to liability only). The Tribunal was able to meet again on the 30th of January to deliberate.
16. Reasonable adjustments: by the time of her resignation on the 18th of March 2022 the claimant had been absent from work for approximately 9 months. We have seen examples of her fit notes. After the first month or so, her absence was attributed to stress at work, and/or anxiety and depression. On the first morning of the hearing the claimant told us that she was still taking what she referred to as "calmers" as part of her treatment or therapy connected to her mental state. She said that she would need to take this medication hourly but that she may need regular breaks in addition. The Tribunal regarded the claimant as a vulnerable person due to her condition and had regard to the Equal Treatment Bench Book and Presidential Guidance on Vulnerable Persons.
17. The Judge suggested that the claimant should raise her hand when she needed a break. The hearing paused hourly to enable the claimant to take her

medication and as required on request from the claimant. The only occasion when this was not adhered to was on one occasion on the afternoon of Wednesday the 24th of January 2024 when there had been a break for 10 minutes around 3:00pm and a further break for just over 10 minutes from 3.17pm to 3.30pm so that the Tribunal could decide how to proceed, as it was unlikely that Mr David's evidence would conclude that day. As a result, around 4pm the tribunal asked the claimant if she would like a break. She declined but then became emotional around 4.15pm. The Judge directed that everyone would turn off cameras and microphones and would wait until the claimant felt able to proceed and turned her camera back on. The tribunal concluded its evidence at 4:45pm as the claimant was visibly tired. The next day, the claimant did not attend promptly at 10:00am. The tribunal waited until 10:10 before starting to see if she would join before admitting the other attendees. Mr Ikie then informed the tribunal that he had been in contact with the claimant who had found the previous day difficult, and that she would attend as soon as possible. In the event, she was able to join the hearing within the next 10 minutes. The Tribunal agreed that it would ensure that the claimant had her breaks hourly whether or not she said she wished to proceed. That practise was adhered to for the rest of the hearing and, as above, the Tribunal checked that the claimant had sufficient time to read and absorb additional material.

18. Evidence : as well as the agreed bundle and exhibit R1, we had statements from and heard evidence from the claimant, Mr Ikie ("SI") on her behalf, and Prixades Chisakuta ("PC"), John David ("JD"), Paul Sayers Gillan ("PSG") and Ayoku Ademoye ("AA") on behalf of the respondent. All of our findings have been made on the balance of probabilities.

FINDINGS OF FACT

19. The claimant was employed by West London YMCA as a night support manager at the Greenford office from 28th January 2015 until her resignation on 18 March 2022. She notified ACAS on 26 March 2022 and the early conciliation certificate was issued on 6 May 2022. The claim was received by the Tribunal at Watford on 3 June 2022.
20. Prior to the events set out below the claimant had a clean disciplinary record and got on well with PC, who had become the claimant's line manager in October 2020 but with whom she had some previous contact. As a night support manager, the claimant worked alone, working 70 hours every two weeks on 10-hour shifts. The residents of the hostel at Greenford had no access to the office where the claimant worked.
21. On Friday 26th of March 2021, the claimant gave evidence at an Employment Tribunal in support of her colleague Mr Sunday Ikie (SI). Mr Ikie had brought a claim alleging breach by the respondent of the Working Time Regulations 1998 on the basis that he was not able to take uninterrupted rest breaks in accordance with those regulations. The claimant gave evidence that due to the nature of the work she did, it was not possible for her to take uninterrupted breaks, and that she believed that SI would have experienced similar difficulty in taking his rest breaks. The respondent did not dispute that, in so doing, the

claimant had alleged that the respondent had infringed the 1998 Regulations in accordance with section 45A(1)(f).

22. The claimant told us that during the hearing on the 26th of March 2021, she could see that Ms Ademoye ("AA") was an observer at the Employment Tribunal hearing. AA's evidence was at first unclear about this; she told us that she had attended more than one employment tribunal remotely as an observer, but she did ultimately accept that she had attended SI's tribunal hearing. She was not sure whether she had observed the claimant give evidence. The claimant's account was that AA was present when the claimant give evidence; we prefer her account on that matter. The claimant and SI accepted that another colleague, Miriam, had also given evidence in support of his claim. They agreed that the respondent would have had the claimant's witness statement some weeks before the hearing on the 26th of March 2021, but that this had not caused her to be treated adversely before the events referred to in the Issues. SI accepted that as far as he was aware the other colleague who gave evidence in support of his claim, Miriam, had not considered it necessary to raise a grievance about her subsequent treatment by the respondent. The claimant's line manager, PC, was not (at the relevant time) managing SI and was not present at his tribunal hearing. We find that she was not aware of the claimant's role at that hearing until the claimant mentioned it during a sickness absence review in or about July 2021.
23. On the Monday morning after the Tribunal, 29th of March 2021, a housing support officer employed by the respondent at Greenford ("ES") contacted PC to say that the office was "going through a lot of stationery". ES told PC that although she had printed all the checklists required over the weekend before leaving on Friday, all the paper that she had left in the printer on Friday 26th of March 2021 had been used up. She had noted also that someone had been to the loft (where the extra stationery was stored) and had picked up a box of stationery comprising 5 reams of paper. Each ream contains 500 sheets of paper and PC was told that approximately 1.5 reams had been used up. PC somehow contacted Mr Gary Dymock ("GD") in the respondent's IT department and asked him to send her a printing log from the 26th to 29th of March 2021. We say "somehow", because although PC refers to an e-mail in her investigation report, we have not seen it and she was unclear when she gave evidence as to whether this contact was an e-mail or a telephone call, or indeed when it took place.
24. After the claimant's next spell of work, on the 12th of April 2021, PC again received a call from ES at Greenford to say that the paper left in the printer on the previous Friday had been used up, even though she had filled it on the Friday (9th April 2021). It appears from the investigation report on page 90 that PC had not yet received the printing log she said she had requested from IT, nor had she spoken to the claimant about the matter or told her to stop using the printer. The claimant was not working between the 12th and 18th of April 2021 and PC did not contact her about her concerns during that period.
25. There is in fact an e-mail at page 408 in our bundle which suggests that PC received the print log on or about the 19th of April 2021. When asked about the sequence of the events at the hearing before us, PC was vague and said that she could not remember the order in which she had received information about what the claimant had printed or when the claimant's ability to print had been restricted. She first saw the short printing log sent to her by IT, at pages 97-99.

It must have been sent to her sometime in the week between the 12th and 19th of April 2021, because we know that when the claimant returned to work on the 19th of April she was unable to access her e-mail account as PC had requested the IT department to disable it (see PC's investigation report page 91). The print record at pages 97 to 99 of our bundle shows that the claimant printed 505 sheets on the 29th of March 2021 and 254 on the 12th of April 2021, a total of 759 pages. The summary on page 99 indicates that 312 of these were printed in black and white at a total cost of £0.90 and 447 in full colour at a total cost of £120.69. The claimant has been adamant throughout that she did not print in colour and that on 29 March and 12 April 2021 she had only printed past papers from the examination board websites of AQA and EdExcel for her son to use, and that these are black and white. Her son was 16 at the time and was studying for his GCSEs.

26. When asked by the claimant why she had delayed in telling the claimant about her concerns over use of stationery/printing, PC explained that this was because the claimant was then on non-working time for the week after the 12th of April 2021. The parties agreed that the claimant had contacted PC by mobile phone on the 20th of April 2021, to say that she was unable to log in to her e-mail account. We accept that the claimant was at first taken aback by this fact, and that she had checked with a colleague as to whether she was experiencing similar difficulties. Learning that she was not, the claimant then considered why her e-mail account may have been blocked and realised that it may relate to the large quantity of printing she had recently carried out whilst at work.
27. PC was on her way home from work when the claimant telephoned her on 20th of April 2021. She was in a public place so that it was difficult for her to talk to the claimant about the matter. It is unclear whether there were one or two calls between the claimant and PC on that date, but nothing turns on that. At some point during the telephone call or calls, the claimant asked PC if the reason her account was blocked was 'because she had printed a lot of pages". We accept that the claimant did say that she was sorry about this, and that she had made a mistake by doing it. PC did not recollect that the claimant said this, but as she indicated that her recollection of these events was generally vague and referred during her investigation meeting with the claimant to the claimant having acknowledged her mistake, we prefer the evidence of the claimant about this. PC told the claimant that she would give her more details later. The claimant did not attend work on the 20th or the 21st of April 2021. We believe that the date of 21st of June 2021 (on page 92 in the investigation report) is a typographical error as the report is dated 26th May 2021.
28. The claimant next spoke to PC when she was at work on the night of 22nd April 2021 and asked why her e-mail account was still not working. PC explained that she had been trying to establish why the stationery was being used up "too quickly" and who was responsible for that. PC told the claimant that, according to the printing log that she had been sent, the claimant had been printing excessively on the 29th of March and 12th of April 2021. She pointed out that this had an impact on the stationery budget as well as being a misuse of the respondent Charity's resources. PC accepts that the claimant acknowledged that she had made a mistake at this point and said that she usually used her own paper (if printing). The claimant asked what would happen next and PC explained that she would follow the official procedure and would invite the claimant to an informal investigatory meeting to discuss the issue. She said that

an HR business partner would be present. The claimant asked why PC could not simply deal with the matter herself as the claimant's line manager, and simply issue her with a warning if necessary. PC informed the claimant that she needed to follow the organisation's procedures.

29. On the 16th of April 2021, PC had obtained a statement from ES, which is on page 100 of our bundle. ES states in her statement that on Monday the 29th of March 2021 she noticed that a box containing five packs of paper had been taken from the loft and that 2 packs of paper had been used up that morning "before the day had started" as she puts it. She states that on Friday the 9th of April, before "signing off" from work she had loaded the printer tray with paper for AA and PC, as they were in the office printing. She says that she did mention that all the paperwork needed for the weekend and night staff had been printed out. She says that on the 12th of April 2021, after she had received a handover from the claimant, she was about to print when she noticed that all the paper that was placed in the printer on the Friday had been used up. ES asked PC if AA and herself had used up all the paper on Friday. PC said that she and AA had only printed about two sheets each after ES had left.
30. The claimant has pointed out that there is an inconsistency between the investigation report on page 90 where PC says that 1.5 reams of paper had been used up by the 29th of March, and ES's statement on page 100 where she refers to two packs of paper having been used by that date. The log with which PC was provided indicates that the claimant had printed 505 pages on the 29th of March, which would suggest that either approximately 245 or 495 sheets of paper were still unaccounted for, depending on whether ES or PC were correct about the amount of paper which was missing. PC accepts that she did not investigate exactly how many pages were used and what may have happened to any missing pages.
31. On the 23rd of April 2021, the claimant received a formal invitation to a disciplinary investigation meeting to take place via teams at 7:00am on 26th of April 2021. She was told that the meeting would be attended by PC and KL. The invitation letter states that the meeting had been arranged because the respondent was in the process of investigating allegations relating to the claimant's conduct in the workplace in that "**on 29th of March 2021 and 12 April 2021, it is alleged that you were involved in a serious misuse, abuse of office resources belonging to YMCA St Paul's group**".
32. The respondent's computer, e-mail and Internet usage policy begins at page 404 in our bundle. The claimant now accepts that she had received this before the events we are considering. Part of the purpose of the policy was to outline the Association's response to inappropriate use of computers, e-mail and the Internet. This is set out at point 1.4. In the second bullet point on page 405, it is said that employees are expected to use technology provided responsibly and productively, as necessary for their jobs. Internet access and e-mail use is for job related activities; however minimal personal use is acceptable as long as this is kept within reasonable limits. Any private use is expected to be in the employee's own time and must not interfere with job responsibilities. The next bullet point says that printers should only be used for business purposes. In order to limit printer usage, before printing work related documents, employees should consider if they really need a paper version of the document. If the document needs to be printed, employees should print double sided and in black ink. At paragraph 7.2 of the policy, on page 407, it is stated that any

employee who abuses the company provided access to e-mail, the Internet or other electronic communications or networks, including social media, may be denied future access and, if appropriate, be subject to disciplinary action up to and including termination of their contract. We were told that the printing carried out by the claimant was done using a laptop provided by the respondent and the printer at the respondent's Greenford office.

33. The claimant was told that the meeting to be held on 26 April 2021 was an informal fact-finding exercise so that she did not have a right to be accompanied. She was told that if, once the investigation had concluded, the respondent wished to institute formal disciplinary proceedings against her she would be invited to attend a disciplinary meeting at a later date. She was told that the notes from the investigatory meeting may be used if this proceeded. She was asked to bring with her any information that might be of assistance to the investigation and that once it was completed, she would be informed of the outcome. The claimant was given the number of the respondents Employee Assistance Programme ("EAP") should she need to use it. On page 103, we can see that the claimant replied at 23.56 on the 23rd of April saying she was happy to go ahead with the meeting.
34. The minutes of the meeting are at pages 125 to 130 in the Tribunal's bundle. They were sent to PC on the 4th of May 2021 (page 124). It is to be noted that by the 26 April 2021 the claimant had not received a copy of the printing log and was only aware that the blocking of her e-mail account and the subject of the investigation meeting related to excessive printing. At the start of the meeting, the claimant made the point that the invitation letter did not make it clear what the investigation meeting was about, and that she was only aware that it was about printing from her telephone conversation with PC. At the start of the meeting, PC said that the purpose of the meeting was to "establish the allegations against the claimant" She said that this related to the claimant having printed about 500 pages and excessive use of printing. According to the log PC had received from IT, 447 of those were printed in colour. She said that between 7:00 and 8:00 am on the 12th of April the claimant had printed about 254 copies. PC said that they wanted to establish what the claimant was printing and why she had printed so many copies. KL interrupted the claimant's comments about her not being clear about the allegations. She asked the claimant to answer the questions and asked if she worked on the relevant dates, whether she printed a large document in colour and whether or not she used YMCA paper?
35. The claimant responded (on page 126) saying that she did print but she did not print colour documents. She said that she had brought her own printing paper and she that she had already said this to PC. She said she had never done this before. She said that she was printing past question papers for her son because of the pandemic. She said that if not for the pandemic, she would not have been printing at work. She said that the local internet cafes and local library were closed due to the pandemic. She said that she did not do it to save money but because of the pandemic and because she wanted to help her son. She said that she used a lot of her own papers.
36. At this point PC interrupted and said, "Are you sure because you said you were sorry that you had made a mistake". The claimant asked why PC was effectively challenging her answer, and PC referred again to their previous telephone conversation when the claimant had said "I made a mistake I normally use my

paper, but I used YMCA paper". PC said that the claimant was changing her statement. The claimant denied saying that and asked that PC should not put words in her mouth. The claimant asked if she could explain. She said, again, that on the 29th of March 2021 the shops were not open. She said that she had brought in paper and showed it to a colleague. She said if she did anything wrong, she would always "own up". The claimant said she knew she was going to print a lot when she came into work and that there was not much paper in the printer when she got there. She said that she did not do colour printing. The claimant said she was unclear whether she was being accused of using the printer or doing a lot of printing or whether it was about use of paper.

37. On p127, the claimant says that she did not say she used the respondent's paper but goes on to say that there was already some paper in the tray and she added her own box of printer paper. She continues that she could have used some of the YMCA paper but used a lot of her own as well. The claimant said that when she had spoken to PC, she had been told there were about 750 pages. She said that PC had told her how much cost had been incurred and that she was surprised, because a pack of 550 sheets cost only £2.99, and if she had used 750 sheets it couldn't have cost more than £6. She said that if she knew she was going to be in this situation she would have brought her own (printing) ink in to work.
38. In response to a question from KL, the claimant said that she brought her own paper in on the 11th of April also. The claimant stated that when she came into work there was a small quantity of paper in the printer to which she added her own paper and did her printing, but on the 29th when she finished her printing paper she went upstairs to bring down a big box of paper, opened the box and put some in the printer just as she was about to leave, so that there was paper in the printer for the incoming shift. She says that she told ES that there had been no paper.
39. KL asked whether she was suggesting that she did not use any YMCA paper. The claimant responded that she could have used some but had brought her own paper in and used it. KL then asks whether, since the claimant brought in her own paper because she was going to do a large amount of printing, it had occurred to her to have informed her manager or asked her permission to do this? The claimant replied that's why she had said that her failure to mention it to PC was in no way malicious. She asked that her record of honesty be checked and that for example she had asked permission when she needed to take money out of the office "tin".
40. PC commented that she understood that if she had only printed once it may not have crossed the claimant's mind to ask for permission, but that the claimant had done it twice. The claimant replied that it did not occur to her and that she hadn't realised printing or the use of the company printer to print large documents would be such a problem. She said that she knew people had done their assignments and used the printer for this previously. She makes a reference to the fact that her home printer was broken. She repeated that she could not remember printing in colour. At this point, the claimant suggested that she could call her son by video to ask him whether any of the printed documents were in colour or solely in black and white. KL declined this offer and suggested that the claimant checked with her son when she got home because of the time, and then fed back his response to her and PC. The claimant responded that

she would and would copy KL into the e-mail. It is common ground that the claimant did not do this.

41. She was then asked again whether she had used some of the YMCA paper or not. The claimant replied that it was a possibility, and she could have used some of the YMCA paper. KL again asked her whether she was accepting she had used YMCA paper or not. The claimant said she used some YMCA paper and brought some of her own which would have been about 600 sheets. This is on page 128. The claimant asked about whether it was coloured printing or the large amount of printing that was the issue, and repeated that she used some YMCA paper but brought some of her own in as well. PC replied that the coloured printing was more expensive as the claimant was aware and asked the claimant about the claimant's statement that she didn't realise that using YMCA resources to print past question papers for her son would be such a “big deal”. She asked the claimant if she understood where management was “coming from” and that if the claimant was the manager and one of the staff had done such a big printing job, what the claimant would do?
42. The claimant said she did understand where the management was “coming from”, but reminded PC that she and PC had previously been work colleagues at the respondent’s Hanwell office and that PC had given testimonials about the claimant's work. She asked whether PC was suggesting that she could not “vouch” for her. PC denied this, and tried again to clarify with the claimants whether she understood what the concerns were. The claimant said that if PC was talking about the cost she would understand. PC replied that the issue was not cost alone but that the claimant was using YMCA resources for personal use. The claimant pointed out the other people use the computer and printer for personal use and PC asked to what extent they used it. The claimant indicated that she did not know.
43. In her evidence, the claimant eventually accepted that she was not aware of any other staff member at Greenford who had printed such a large number of copies and that she did not have personal knowledge of how many copies other staff members were printing out. She accepted in evidence that having now seen a more detailed log of what was printed over the six months prior to the 19th of April 2021 at Greenford (see page 340 onwards) that her use of the printer on the 29th of March and 12th of April “stood out”.
44. PC persisted in asking the claimant to consider the matter from the other side, referring to breach of policy and misusing company resources for personal use excessively and said it had led to the rise of the stationery budget. The claimant repeated that she didn't understand whether she was being accused of using the printer or using her own paper to print on the company's printer and was asking for evidence that she had used the company paper, having previously accepted that she probably did. The claimant accepted that she hadn't told anyone that she had brought her own paper into work to print on the company’s printer. The claimant said that she didn't think printing would become an issue and that anybody could have come in to take stuff. The claimant said that if paper was going down, that did not mean it was her who had taken it -it could have been anyone. The claimant said that she had brought paper down to replenish the paper in the tray and not for her to use. PC said that she just wanted to know whether the claimant accepted it was a breach of the policy and misuse of the company's resources without permission and that the claimant was just throwing a lot of unrelated information into the conversation.

PC asked for evidence that the claimant brought in her own paper. KL then asked the claimant whether she had evidenced that she had brought her own paper and whether anyone else saw her bring her paper from her bag. The claimant said that she worked alone.

45. The meeting ended with PC saying she would do further investigation and get back to the claimant and that this was not a witch hunt, the stationery budget had increased, and stationery was disappearing, and that the cost of the printing by the claimant was about £110. PC said she would investigate further and get to the claimant with the next steps.
46. So by the end of this meeting, it was clear to the respondent that whilst there were some contradictory statements from the claimant about whether she had used the respondent's paper or had shown her own paper to ES, the claimant accepted that she had done a large amount of printing. It was also clear that she was disputing that she had printed in colour, that she had offered to call her son to get him to confirm this, and that she was also disputing the extent to which she had used YMCA paper. The claimant was saying that she could have used a few sheets but did not accept that she had only used YMCA paper. She had pointed out that there was a discrepancy between what ES said had been used and the amount of printing she had done. She had also indicated that she did not understand exactly what she was being accused of, whether it was the fact that she had used the printer to print such a large quantity of documents, whether it was the use of YMCA paper, whether it was the fact that some of the printing appeared to be in colour or a combination of these.
47. In her investigation report at page 94 PC says that she interviewed the IT service engineer (GD) on the 19th of April and 7th of May 2021, but in her statement at paragraph 9 PC says that she interviewed him on the **12th** of April and the 7th of May 2021 [emphasis added]. In fact, there is no record of any interview with GD, just an e-mail at page 132 of the bundle dated 7th of May 2021. PC indicates that she may have contacted GD by telephone but is unclear about the actual date. In the e-mail on page 132, GD simply says that, as a rule, the respondents printing software, "Papercut" kept a record of all the printing done in the organisation. As of the previous week no one could print to any printer other than through the Papercut print queue. He goes on to say that, however, in addition to "Papercut" each individual printer keeps its own log of every job that it processes, whether copy, print or scan. He says that it does not record the name of the document that was printed, only who printed, when they printed, from which device, the size of the paper and whether colour or black and white. The printer company (IBS) used the information to apply billing charges to the respondent and the printer reports the total pages in colour and black and white. This shows that PC made some attempt to find out whether there could be any inaccuracy in the print log she had received and in particular whether the log identified the type of document that was printed. In fact, we know that by the time of the grievance appeal the respondent had extracted a more extensive printer log which is at pages 341 to 401. This shows the sites from which the claimant printed as well as showing the print activity of the claimant's colleagues over a six-month period prior to the 19th of April 2021. PC did, however, attempt to obtain more information about the type of printing the claimant had done after the meeting on 26 April 2021, but GD did not tell her (and seems not to have realised) that a more detailed report could be obtained.

48. In her evidence, PC accepted that she did not investigate whether there was any missing paper in addition to that which may be attributable to the documents the claimant had printed, and that she did not take any steps to identify exactly how much paper had been used over the two relevant weekends.
49. At this point, it is important to note that in her investigation report at page 91, PC indicates that prior to the 12th of April, she had contacted the respondent's IT department to ask it to put restrictions on the claimants printing, and that on the 12th of April when she spoke to IT they said that somehow the claimant had overridden the restriction they had put on her ability to print. This allegation is important because it was picked up by AA at a later stage. This allegation is not repeated in PC's witness statement, where she suggests that it was on 12 April 2021 that she asked IT to restrict the claimant's ability to print. In her evidence before us, PC accepted that she did not know when she had asked IT to restrict the claimant's ability to print, whether this was before or after the 12th of April 2021, or whether it was a restriction on colour printing or on printing altogether. There is no documentary evidence to corroborate that PC had asked IT to restrict the claimant's ability to print before 12 April 2021 (or that she had the print log at pages 97 -99, which implicated the claimant, before that date) and we do not accept, on the balance of probabilities, that she did. PC did not suggest that she had spoken to the claimant prior to 20 April 2021 to tell her not to print, and in evidence she accepted she had not and said that this was because the claimant was absent immediately after the occasions when she printed. PC also told us that she had in fact printed in colour on the printer at Greenford herself and had concluded that it would be possible for the claimant to print in colour.
50. On the 4th of June 2021, more than 5 weeks after the investigation meeting, KL sent the investigation notes to the claimant. She asked the claimant to read them and, if she was happy with the contents, to sign them and forward a signed copy to KL. This appears at page 144 in the bundle.
51. On the 18th of June 2021, the claimant's GP certified her as unfit for work due to gastroenteritis until the 25th of June. The claimant says that this absence was later attributed by her GP to stress at work.
52. On the same day, 18th of June at 15.34, the claimant wrote KL correcting certain aspects of the minutes of the disciplinary meeting. On page 152 she said that she had not said that she did use the respondent's paper but that she had made it clear that she may have done so, because she had brought in a pack of 500 sheets and a pack that she had partly used. She said it was unclear to her whether she had used YMCA paper or not. She pointed out that she strongly refuted printing in colour and that she had asked to call her son to support this, but this offer was turned down. She said that she had said that the pack of 500 sheets cost £2.99. She said she had asked for an explanation of the £121.59 the printing had allegedly cost but received none. She confirmed that PC had said that she had records of every staff printing for personal use but that the claimant's use of the printer stood out. The claimant said that she had asked for evidence that she printed in colour but was told IT had evidence that 443 pages were in colour. She said that when asked if anyone saw her bring in papers she had first said that she did not think it would be an issue printing at work and then went on to say that on 23rd of April 2021 she had shown ES a pack of papers at handover and had a brief conversation with her

about having to take the paper back home because she could not access the printer. She complained that the respondent had omitted her statement about this. So, the claimant was still disputing printing in colour, was disputing that she had made significant use of the respondent's paper and was asserting that she was unclear about the nature of the disciplinary allegations.

53. On same date, 18th of June at 16.42, KL wrote to the claimant to invite her to a disciplinary hearing on the 22nd of June at 1:00pm. There had been a previous attempt to set a hearing date, however the claimant's representative was not available on the date originally proposed, 15th of June. The claimant was sent the formal invite on pages 155 to 156, which is signed by PSG, who was to hear the disciplinary hearing. PSG was a housing manager at another hostel. The claimant was also sent PC's disciplinary investigation report, the notes of the investigation meeting, what is referred to as GD's statement (but is his e-mail of the 7th of May 2021), ES's statement, the three page IT print out, the e-mail from the claimant to KL dated 18th of June 2021 about the amendments to the investigation notes and the claimant's second e-mail to KL on that date, together with a copy of the disciplinary policy and procedure. The claimant was sent a Microsoft Teams invitation for the disciplinary meeting and so was SI, who was her representative.
54. The invitation letter sets out the allegation that on the 29th of March 2021 on the 12th of April 2021, **it is alleged that you were involved in a serious misuse, abuse of office resources belonging to YMCA Saint Paul's Group**. This is the same wording that the claimant had previously said was unclear. The claimant was told that PSG would be chairing the meeting with KL in attendance as HR representative and note taker. The claimant was told that, depending on the facts established at the hearing, the outcome could be a final written warning but a decision on this would not be made until the claimant had a full opportunity to put forward everything that she wished to raise and the hearing had been concluded. Again, she was given details of the EAP should she wish to access it.
55. The respondent's disciplinary policy and procedure is it pages 157-164. On page 158, the respondent says that it will abide by the principles set out in the following paragraphs. These include the principle that the Association's management and employees would raise and deal with issues promptly and should not unreasonably delay meetings, decisions, or confirmation of those decisions. On page 159, it is said that the respondent will carry out any necessary investigations. At page 165 to 168 we find appendix A and B of the disciplinary procedure, which give examples of standards expected by the respondent. At appendix B on page 167 is a non-exhaustive list of unsatisfactory behaviour, misconduct and negligence which includes misuse, abuse or failure to comply with the YMCA's policies on telephone systems, computer, e-mail intranet or internet usage. On page 168 is in an indication of what will be considered to be gross misconduct and gross negligence - including serious misuse, abuse or failure to comply with the respondent's policies on telephone systems, computer, e-mail, intranet or internet usage. At pages 161 and 162, the sanctions for disciplinary action are set out. First, if a minor offence has been committed a recorded oral warning may be given. The next level of sanction is a first written warning, followed by a final written warning or dismissal. At page 163, employees are told that they may appeal against any disciplinary sanction imposed upon them except for an informal oral warning.

The appeal would be heard by a senior manager who has not been involved in the decision to impose a disciplinary sanction on the employee.

56. On the day before the disciplinary hearing, 21st of June 2021, the claimant had emailed KL and PSG at 11:04am requesting the print log for all West London YMCA project staff members who had worked in the last 12 months, by the end of that day. She said that she was happy for the names of staff to be obscured. The claimant also asked for ES and PC to be available to be questioned at the disciplinary hearing. KL replied at 10:58 am on the 22nd June saying that the request regarding the print log could not be granted. She said that it was not appropriate to draw other staff members into this matter. She said that the request had no relevance to the claimant's case. She informed the claimant that ES had left the respondent and that PC had completed her investigation and provided her report, so that it was now up to the Chair of the disciplinary hearing to decide whether to follow up any issues that may require clarification after the disciplinary hearing and before concluding the case. PC would not, therefore be present for questioning. The claimant raised this matter in the disciplinary hearing, and PSG confirmed that he had discussed the claimant's request with KL and that it had been decided to refuse it. As previously noted, in her evidence before us, the claimant accepted that she had now seen the print log for other staff members at Greenford over the previous six months and that no other staff member printed to the extent that she had, so that her entry indeed "stood out".
57. In the disciplinary hearing, at page 170, the claimant explained why she had wanted PC to be present. She said that she believed that PC's report and ES's statement were contradictory and that she would like to pose questions to which PSG and KL may not be able to respond. At the hearing before us, the claimant made it clear that the contradictory element was about the amount of paper that was alleged to have been used by her. KL responded that if there were any questions that the claimant wished to direct PC, PSG would go away and present the questions to her for clarification as a decision would not be made at the hearing that day.
58. At the disciplinary hearing, SI mentioned that the claimant had asked to KL if she could call her son during the investigatory meeting to ask him to confirm that the printing was only in black and white. He pointed out that KL had said that the claimant could ask her son afterwards and revert to KL or PC. He explained that the claimant did not do so because the investigation was still going on and she didn't know what questions would be asked. He added that the claimant felt that if KL and PC did not believe her at the investigation meeting, why would they believe her if she asked her son after the meeting? He said that the claimant had brought some of the copies that she had printed and could show that they were in black and white. SI went on to say that although he had seen the print log which showed that 447 pages were printed in colour, to his knowledge the printer at Greenford was set to default to black and white and had been for many years, and that this had been done by the previous project manager. He said there was no way that the claimant could have printed in colour. He said that if the setting on the printer had changed, he wanted to know when it was changed and who changed it, and that this should be checked with IT. He said that if a person tried to print in colour from Greenford, the printing came out in black and white.
59. PSG said that it may be necessary to refer that back to IT for further comment.

60. The claimant explained to PSG how she went about printing a document. She said that although she hardly ever printed, when she did, she would select the document [on her computer], select “print” and then select the printer for the project. She said that she was told not to click the one for Greenford, but then she said she would select the icon or option that showed “Greenford report”. She said that sometimes she forgot and when she clicked on Greenford, if it didn't work, she would just click on something until she heard the clicking sound [presumably the sound of the printer starting to work].
61. PSG asked the claimant how she managed to print out a significant volume in colour copies. The claimant said that this was a mystery to her because she did not print colour and, in her words, there was no way GCSE past question papers would come out in colours. She said she was confident that she did not print in colour and that she had previously said this in the investigation meeting.
62. SI asked if the claimant could show the documents on camera now. At page 173, there is a comment attributed to PSG which appears to be the claimant speaking. She points out that earlier in the investigation she had asked to call her son on video to show that she only printed in black and white, but KL had said it was not necessary. The claimant said that she had some copies with her and showed the papers via the camera. It appears that following some interruptions to the disciplinary hearing, PSG said that he acknowledged that the claimant had attempted to show an example of some test papers on camera, but that unfortunately the paper “could have been any paper and printed yesterday at this stage of the hearing”.
63. In the disciplinary meeting, the claimant said that she could not remember seeing the respondent’s IT policy, but by the time of the hearing before us, she accepted that there was such a policy. The claimant said that she did not really know what would amount to fair use of the respondent’s IT equipment.
64. At page 175 in the disciplinary minutes, the claimant again made the point that when she printed on the 29th of March 2021, [internet] cafes and libraries were not open and her printer at home was not working. She said that when she came in on the Monday, there was no paper in the printer and she knew she was going to do a lot of printing, so she brought two boxes from home and put her paper in the printer and printed past question papers. She questioned whether, given what was said about use of the respondent’s paper, someone else had printed or did someone else just take the paper? She said that she told ES in the morning that there was no paper in the tray and she had wanted to do some printing, but that she had brought down some paper to replenish the printer.
65. Further down that page, the claimant said that she had brought in two boxes of paper, that is 1 full box and another half full box [on 29 March 2021]. She repeated that she was not the only person coming into work and that anyone could have taken the paper that seemed to be missing.
66. Neither the claimant nor SI disputed the quantity of printing that had been carried out by the claimant. SI again raised the issue about the apparent difference of at least 500 pages, the claimant having printed no more than 500 sheets on 29 March 2021, whether of her own paper or the respondents, and about ES saying that 2 reams had been used. He pointed out that PC said 1.5 reams were used up. On page 176, towards the bottom, PSG said he would try to clarify the issue about how much paper was used outside of the hearing. He

said that he didn't have an absolute answer, and that the numbers were “a guesstimate”.

67. In this meeting, at page 176, the claimant said that she felt that she was being targeted. Up to that point, she had not explained why she felt targeted. On the second last entry for SI on that page, he explained that the claimant felt that she was being targeted because she was a witness at an Employment Tribunal against YMCA. PSG replied: “I fully understand what you have said”. SI also made the point (last entry on page 176) that the investigation report stated that the claimant had overridden a restriction on the printer. He said this was a mystery to the claimant, and they would like to know how that could happen. He suggested that for this to be the case, the claimant must have very good IT skills. He pointed out that in PC’s report, she said that she asked IT to disable the claimants account on the 12th of April. He said that the claimant had not been able to print at work [on 19 April 2021], for example she was unable to complete a sick note because she had been restricted and “treated like a criminal”.
68. PSG asked the claimant as to whether the school would help her son by printing past question papers. The claimant said she was not sure, and that she had asked her son to ask in school, but he came back saying that schools would only allow a certain number of copies to be printed. SI said that asking the school would not have been ideal given the large quantity of printing. He said that the claimant's son would have had to sit down with a teacher to go through the papers in order to print.
69. At the foot of page 177, KL asked the claimant again whether it had occurred to her to mention to or seek permission of her manager before printing such a high volume of work. She said that it was a lot of printing even if the claimant brought her own paper, and that there is no way the printer would be able to differentiate between the respondent's paper and paper the claimant had brought in. The claimant replied that as she had said during the investigation meeting, it didn't occur to her at the time, and she didn't see it as a big deal because she had brought her own paper. She said she did apologise at the time as she didn't have malicious intent. She again said that she thought it was common for people to use YMCA resources. She said if she had known, however, that she would be “sitting here” because of the printing, then she would maybe have mentioned it to PC.
70. PSG concluded by thanking the claimant and SI for a smooth hearing and said that he had noted a couple of questions which had been put forward which he needed to clarify with one or two people. Based on the clarification on the unanswered questions, a decision would be made, and the outcome of the hearing would be sent within five working days. He said that if there was going to be a delay the claimant would be notified. SI thanked PSG for conducting the hearing in a professional manner and said that it was the first time he had attended a well facilitated meeting in YMCA. The claimant was reminded about the availability of the EAP for support.
71. So after the disciplinary meeting, PSG and KL knew that the claimant was disputing that she had printed in colour, was saying that she had mainly used her own paper, was questioning where some of the stationery had disappeared to and had said that she felt she was being “targeted” by having formal disciplinary allegations made against her because she had given evidence at the Employment Tribunal.

72. On the 29th of June 2021, KL wrote to the claimant to say that some other information was being awaited in relation to the hearing, and as a result there was a delay in sending the outcome to her. She said that the outcome letter would be sent by the end of the week. On 30th of June 2021, the claimant received a further fit note from her GP, saying that she was unfit until the 1st of August 2021 because of stress at work, anxiety and depression.
73. During the claimant's questioning of PSG, she asked him about page 172, where PSG said it may be necessary to go back to IT to find out whether or not the printer at Greenford could print in colour. PSG replied to say that he did not recall saying he would check this. He said that he did mention that maybe that was what needed to be done but that he did not assure the claimant that he would go back to IT. The claimant asked him whether he did not think that the allegations needed to be investigated? PSG replied that he did not think that was necessary, he was hearing a disciplinary and was not going back to investigate what had already been investigated. We observe that this seems to be at odds with the respondent's disciplinary policy at page 159.
74. The claimant then asked PSG about page 181, the e-mail of the 29th of June 2021 from KL. She suggested to PSG that the outcome was delayed so that he could ask IT whether the printer was set up to print in black and white. She asked him whether more information had become available about that. PSG replied that he didn't share any further information but that he was given an answer from GD which helped him to reach his conclusions. He said this information from GD was not in the bundle and had been provided in a telephone call. The claimant asked whether PSG received or requested any extra information beyond what she had been given. PSG said that he did not receive or request further information. PSG said that he was not sure what the e-mail at p181 referred to, but he had received information in a telephone conversation. He said that he had only seen the three-page printing log produced by GD.
75. PSG said that his understanding of the allegation of serious abuse or misuse of resources referred to excessive printing in number, the fact that the printing was both in black and white and colour and an allegation about the potential use of company stationery (that is, paper) and of overriding an IT command to print in black and white. The claimant asked him which of these allegations he thoroughly investigated. PSG replied that he investigated them all, but not completely, and pointed out that the claimant had agreed that she did print an excessive number of copies. He said that he had asked GD whether is possible that colour printing could be included by mistake, and that GD's response had been that the log was determined by the printer and that it could differentiate between black and white and colour printing. PSG asked GD if there was a way of manipulating the permissions to print in black and white or colour and received the answer from GD that "he did not really know".
76. Regarding paper usage, PSG told the claimant in evidence that he could not conclude whether she did or did not use company paper. He said that he had asked GD whether it was possible to print in colour on the printer and was told it was, because the log said so. This conversation is referred to at paragraph 33 of PSG's witness statement. This simply refers to GD confirming that the printer software, Papercut, keeps a detailed log of each individual's actions whilst they are logged into a particular printer. It keeps a record of how many

print jobs have been executed, how many pages were printed each time and whether they were in colour or black and white.

77. The claimant asked PSG to identify the reference to his discussions with GD in the outcome letter. PSG replied that it was not there and that he had been struggling to reach an outcome. He had discussed appropriate sanctions with KL, ranging from a formal conversation about the concern to, at the other extreme, dismissal and that he had concluded that a first written warning was appropriate.
78. He agreed that he not spelled out his reasons in the outcome letter, which was sent on the 2nd of July 2021 and is on pages 184 and 185. The letter confirmed that the claimant was being given a first written warning effective from the 2nd of July 2021. The letter states that having taken the claimant's explanations into account, the key issues were found to be the excessive amount of personal printing on YMCA printers over the two days specified in the allegation. The claimant's mitigation, to the effect that her own printer was not working, the local cafes were not open due to the pandemic and that the school was unable to assist, was set out. The conclusion was that the claimant's conduct justified a first written warning which would remain on her personnel file for a period of 12 months from the date of the letter and would thereafter be disregarded for disciplinary purposes. The claimant was advised that there is that if there was any recurrence of the issue or any other misconduct within 12 months, she would be invited to a further disciplinary hearing, and she may be issued with a final written warning or notice of dismissal. The claimant was told that there would be a recommendation to her line manager to continue to monitor her conduct around the use of company resources over the next 12 months. She was told that if she needed to do personal printing whilst at work, prior permission from her line manager would need to be sought. The claimant was told that she had a right of appeal against the decision and if she chose to appeal this must be put in writing with within five working days of receipt of the letter to Tom Cole, the Head of HR, with reasons.
79. The sanction was at a relatively low level, as we have seen from the disciplinary policy and procedure referred to above. The claimant chose not to appeal because she accepted that she had printed a large quantity of documents without her manager's permission, although she still disputed printing in colour and was adamant that she had not overridden any restrictions or used a significant amount of the respondent's paper.
80. It is clear from PSG's witness statement, for example at paragraph 28, that he considered that the claimant had printed both in colour and black and white and thought that the claimant could not remember if she used her own paper, the respondent's paper or a combination of both. PSG was concerned that the claimant had not shown any remorse, although the investigatory meeting notes suggest (p126/7) that she had accepted her mistake when discussing the issue with PC. PSG told us that he found it difficult to decide whether the claimant had used her own paper or not, or whether she had printed in colour or not, but was guided by what he was told by GD.
81. The outcome letter from the disciplinary procedure is lacking in detail and the claimant would not be able to tell, from reading it, whether PSG considered that she had printed in colour as well as black and white or whether or not she had used her own paper, whether he thought that she had somehow overridden commands on the printer to print in colour or whether or not, as she and SI had

suggested, he thought she was being targeted because she had given evidence against the respondent.

82. In paragraph 38 of his witness statement, PSG confirms that he did not know the claimant or SI before the disciplinary meeting and that he did not know that the claimant had given evidence against the respondent until the claimant and SI pointed that out during the disciplinary hearing. In response to a question from the tribunal, PSG confirmed that he had not asked anyone else if they had knowledge of SI's tribunal or whether it had influenced them. He said it did not occur to him that it was for him to ask, and he thought it was irrelevant to his task. We accepted this evidence. PSG said that he had never read the ACAS guidance on disciplinary matters and that he did not regularly carry out disciplinary investigations.
83. On the 23rd of July 2021, the claimant received an e-mail from the respondent stating that her absence had triggered a stage 1 sickness absence monitoring meeting. She was invited for a review meeting on the 29th of July 2021. We accept that the claimant was pleased that this was taking place, as she saw it as an opportunity to express her concerns about not being able to return to work and the negative impact of what she refers to as "the false allegations" upon her health – those allegations being that she had printed in colour, that she had overridden a printer setting in order to do so, and that she had used the respondent's paper to print. At the meeting on the 29th of July, the claimant was asked if she would consent to an occupational health referral, and she gave oral consent to do so. We accept that KL neglected to attach the consent form for the occupational health referral when she wrote to the claimant's personal email address on the 29th of July 2021, and again on the 3rd and 13th of August 2021.
84. PC wrote to the claimant again on the 13th of August 2021 informing her that she was being given a stage 1 absence warning and saying that she still had not received the signed consent form. On page 194, the letter records that the claimant attributed her recent long-term absence to feeling targeted at work because she had supported a colleague at the Employment Tribunal against the respondent. The claimant had said that she did not feel comfortable coming to work, that she would be "looking over her shoulder", and that she was feeling unsupported by her manager. She said that it had been "quite stressful" and that she was having heart palpitations. The claimant said that the minutes of the disciplinary meeting (taken by KL) did not record that the claimant was emotional and tearful during that meeting. The claimant said that she felt that her statements were being misrepresented, that "everyone was manipulating the system" and that she did not feel she could work in an environment where she did not feel safe and treated fairly. KL attempted to reassure the claimant that no one was targeting her but referred to the issue of the 750 pages of paper the claimant had printed and that the disciplinary was brought about by "high level use of paper." This would indicate to the claimant that the respondent believed that she had substantially used its paper to print rather than her own, a matter which she denied.
85. The letter dated 13th of August 2021 is slightly out of order in our bundle and it includes page 196. On that page, in relation to the possibility that the claimant had overridden the default setting of the printer to print in colour, it was explained to the claimant that the information that she had done so "was provided by IT". PC then said that she had included the claimants mitigating

circumstances in her investigation report and that she had no intention of targeting or discriminating against the claimant. It was stated that the number of short-term absences as well as a long - term absence by the claimant was unacceptably high. A review meeting was set for the 28th of January 2022 at 4:00 PM.

86. On the 9th of August 2021, the claimant received another fit note lasting until the 31st of August 2021, citing stress at work as the reason for the absence. On the 19th of August 2021 the claimant wrote back to KL and PC to tell them that she has still not received the OH consent form. This was acknowledged by KL on the same day; KL explained that she had sent the consent form to the claimant's work e-mail, although she was aware that the claimant was still absent due to ill health. The claimant returned the signed consent form the same day. On the 24th of August, the claimant was given an occupational health appointment with Medigold, the respondent's OH providers, on the 3rd of September 2021. This took place by telephone.
87. The claimant told the occupational health adviser that her work-related stress appeared to start between March and May 2021. The adviser records that the claimant appeared to have had well developed coping strategies prior to these events, but now believes that she is unable to perform her role at this time. The OH advisor states on page 201 that, once the factors affecting the claimant had been identified and discussed, then a management strategy may be devised to deal with those factors. (emphasis added). The advisor said that she understood that the claimant really enjoyed her role and was usually able to meet its demands. She said that the claimant had told her that she worked well with colleagues and clients. The advisor recorded that the claimant had said that she did not do anything wrong maliciously and did not intend to cause any issues and now felt very stressed about the situation, which had really upset her. The claimant was said not to be feeling any better than when she first went off sick. She said that the claimant had been tearful throughout the consultation. The claimant had said that she wanted to be able to trust people at work again, and that her ability to do so had declined over the past few months. The advisor recommended that the claimant's managers carried out "an individual stress risk assessment as a first course of action to ascertain what the perceived issues are and whether any control measures can be implemented" (emphasis added). The advisor said that the claimant currently remained unfit for work. The advisor considered that, after the claimant's next medical appointment, her symptoms could be expected to improve significantly over the next four to six weeks. It was not felt that any adjustments were required to the claimant's role itself. Once the claimant was fit, the adviser thought that a phased return would be beneficial. No further review had been organised at that point.
88. The claimant visited her GP on the 8th of September and was again given a fit note for the period of 6 September 2021 until the 11th of October 2021 saying that she was unfit for work due to stress at work, depression and anxiety. The OH report was sent to KL on the 6th of September 2021.
89. On the 16th of September 2021, the claimant was sent an invitation to a meeting on the 21st of September 2021 to review the OH report and carry out a stress risk assessment -see page 417. The stress risk assessment appears at page 205.
90. At page 26, in the stress risk assessment, the claimant said that she did not feel supported by her manager, PC, and that she did not feel she could rely

upon her manager. She said that she felt that PC had withheld some information during the disciplinary process which could have clarified certain issues. The claimant said that she did not feel like she could speak to the manager if something was upsetting her. On page 208 the claimant said that she did not feel harassed, but she felt "targeted". She said that she felt that the whole disciplinary process was targeted at her because she supported SI when he took the respondent to the employment tribunal. She said that she felt "set up" and believed the evidence provided was fabricated by the IT department, and that she was still demanding answers. The assessment records that the claimant was assured that she was not targeted but procedures had to be followed. The claimant said that she has not received a response to some questions she raised during the disciplinary process, especially from the IT department. It is recorded that KL explained to the claimant that the case had been concluded through a formal process. She said that the claimant had the opportunity to appeal but chose not to. The claimant said that she felt as if relationships were strained at work and that PC only wanted to work with certain people. PC had responded that she needed to ensure that shifts were covered by experienced people during staff absences and annual leave. The claimant said that she had no stress from home and that the source of her stress was from work.

91. The risk assessment was followed immediately by a review meeting of which the minutes are at pages 211 -213. The notes record that the claimant was concerned that IT had said that she had overridden the IT command to print in colour. She said that she had requested for that to be investigated but had not received any explanation from anyone and that she "needed closure". The claimant was also represented by SI at this meeting and he said that the claimant felt that PC should have communicated clearly about the reason for deactivating her account. KL replie that "what happened has happened" and that the claimant had not appealed. KL then said that it was important to find out how the claimant could be supported when she is fit to return to work which was the main purpose of the meeting. SI repeated that the claimant had not received a response to her request to investigate whether she printed in colour and said that she required an apology from the respondent. KL stated the formal [disciplinary] process had been completed and that in the light of this no further investigation could be carried out.
92. The meeting concluded with discussion of an agreed phased return to work schedule. This was to commence on Monday the 18th of October 2021. There was a discussion about a light in the reception of the respondent's Greenford office. The claimant said it caused her to have headaches and that a "dimmer" switch was required. PC reported that the matter had been reported to maintenance. On page 213, the claimant returned to the issue of colour printing and said that she needed to know what happened because she did not print in colour. KL then states "as I have explained, IT has confirmed that the printer in Greenford is set up as black and white which is what is in the report. We have gone through a formal process, and you did not appeal against the decision. So far as the process is concerned, that is completed". The claimant said she would like IT to send the report (regarding the printers being set to black and white) in writing to her personal e-mail address. KL responded that she could not guarantee that as the process has been completed. However, she said she

would “escalate it to her manager and feedback to [the claimant] but this may take a long time”.

93. So, as recommended by the respondent's occupational health advisor, the meeting on the 21st of September was set up to identify the concerns which were stopping the claimant from returning to work, and for the respondent to attempt to create a strategy to address her concerns if this was possible. The claimant identified that her key concerns were that she was being targeted and that it was being said that she had printed in colour when she knew that she had not, and when she did not think this was possible. KL referred to a report from IT which confirmed that the printer was set to black and white, on the claimant requested to see that, as this appeared to support her viewpoint.
94. The claimant was not sent the notes of the stage 1 meeting immediately, but on the 27th of October 2021 she wrote back to KL and PC saying that the KL's account of what happened on the 21st of September was inaccurate. The claimant said that she had clearly stated that the issues affecting her mental health were firstly that the YMCA claimed that she printed in colour when the system was set at her default of black and white, secondly that they were suggesting that she overrode this setting on the system which had been set by IT, and which she said she did not have the technical ability to do. Thirdly she requested that the light switch in the reception area be resolved. She said that the meeting had concluded that all these points would be resolved before she returned to work, as these were the issues affecting her mental health. She said that KL and PC agreed that they would investigate the issues raised and get back to her before she returned to work. The claimant said that if there was any report from IT confirming that the printer is set to default to print in black and white, she would like to see it and she would like an explanation of how she could be accused of printing in colour. This became a repeated refrain in later meetings between the claimant and respondent.
95. On the balance of probabilities, we accept that KL, at the meeting on the 21st of September 2021, told the claimant that she would attempt to find out whether the claimant’s concerns could be looked at in more detail before the claimant returned to work.
96. By 14th of October 2021, the claimant had not heard from KL on this subject and was due to return on 18th October. She therefore emailed KL (page 218) to say that following the meeting on the 21st of September, agreed actions were to be put in place or feedback obtained before the claimant returned to work. At this point, the claimant had not received the minutes of the meeting. The claimant said that she would not wish to return to work if the necessary adjustments had not been made and if the queries she raised had yet to be resolved, and she requested an extension of her absence until these matters were investigated. The claimant said that the matters identified in the September meeting were still the triggers for her anxiety and stress. She said she would like to be referred back to OH and did not want to return to work if her queries had not been looked into or resolved. On the 15th of October, KL replied saying that she hoped that the claimant was keeping well and that her health was improving. KL noted that the claimant had requested a further investigation by IT into the issue of whether she had printed in colour. KL reiterated that the case had gone through a formal process which had completed a few months previously. She reiterates that the claimant was issued with a sanction and had the opportunity to appeal. She says that, as a result,

she had stated that the case would not be reopened but acknowledges that she had agreed to escalate the matter to her manager and relay the result to the claimant. She records that she has discussed the matter with her manager, Tom Cole, the Head of Human Resources. She said that she had been advised that the case had already been taken through a completed formal process and that the respondent would not re-investigate a completed case. KL said that there was no basis for a further referral to OH. She asserted that the respondent had acted on the recommendations as practically as possible and reserved the right to decide on what was not reasonable. She said it was not reasonable to refer the claimant back to HR and she would not do so. She said that the agreed actions were to complete the risk assessment and that a phased return to work schedule had been agreed at the meeting on the 21st of September. The problem with the reception light had been reported to the maintenance department. KL said that the issue of the light switch was not a reason for the claimant not to return to work on the 18th of October and that the claimant was expected to return unless she was unfit to work. She reminded the claimant of the Employee Assistance Programme.

97. So as of the 15th of October 2021, the respondent had received an Occupational Health report which recommended that the claimant's concerns be identified and a management strategy be developed, if possible, to resolve them and help her to return to work. The respondent's response, as related by KL in her e-mail or 15th of October, was simply that although the claimant's concerns about the basis of the disciplinary action against her had been identified, there was no action that the respondent was prepared to take, as a formal disciplinary process had been completed. But the disciplinary outcome had not dealt with the claimant's specific concerns, which were that she had been wrongly accused of printing in colour, had overridden printer settings to do so, Had been "targeted" and had used a significant amount of the respondent's stationery to print.

98. In her first e-mail to KL of the 15th of October 2021, sent at 13.32, the claimant said that she had identified the issues which were causing her work-related stress, depression and anxiety at the stage 1 review (page 216 to 217). The claimant explained that she had not appealed against the first written warning because it did not confirm that she had printed in colour or suggest that she had lied about printing in black and white. She observes that if those allegations had been substantiated, it was likely to have been classed as gross misconduct and she thought she would have been dismissed as a result. She also states that the first written warning did not confirm that she had overridden an IT instruction to prevent her from printing and that the first written warning only confirmed that she had carried out an excessive amount of personal printing, which she did not dispute and therefore she did not appeal. The claimant goes on to say that KL had agreed that she would get back in touch with her as she had not received any answers about those issues, which she describes as "false claims". She said that the respondent had failed to confirm if the allegations were founded or not and if not founded and she asks for an apology if the allegations were the result of an error on the respondent's part. She also says that PC had agreed to get in touch with her about the office light but had not. The claimant said that, as she had not received a positive response from KL prior to returning to work on the 18th of October 2021, she had decided to

raise the above matters as a formal grievance and would be contacting her GP as the respondent had refused to refer her back to occupational health.

99. Later that afternoon, at 17.44 on the 15th of October, KL acknowledged the claimant's e-mail as a grievance. She said she would contact the claimant by the 22nd of October to let her know who would be investigating the concerns the claimant had raised. The claimant was told that she was expected to return to work on Monday the 18th of October (the 15th of October being a Friday). The claimant was told that should she be unable to attend work for any reason she was to follow the absence reporting procedure by contacting PC. The claimant was given a copy of the Managing Absence at Work and Grievance policies.

100. The claimant replied at 9:24am on 18 October to KL, copying in PC. She reminded KL of the recommendations by the OH advisor. The claimant reiterates that she had been told that the matters that were concerning her could be looked into, and that she would receive “feedback” before she resumed work. She said that she thought she should receive the minutes of the meeting within a period of five days, but that she had not received the minutes nor any feedback on how the issues were to be dealt with until she wrote on the 14th of October. She said that she had thought that the factors identified as causing her stress could be easily resolved by the respondent, but that KL's response had heightened her concern, and this was prolonging her mental suffering. She said as the issues were yet to be resolved and she was continuing to suffer from stress anxiety and depression as a result of work-related issues she would continue to stay off work and would speak to her GP. She said that the refusal to refer her back to OH was unreasonable.

101. KL responded on the 21st of October 2021 at 8:11am copying in PC. She said that the claimant had requested that IT look into the report that she had overridden the default command on the printer at Greenford. She reiterated that it was not appropriate for her to provide any further comments on the matter which was best left to be addressed in the claimant’s grievance. The claimant was reminded to follow the absence reporting procedure, as KL had been told that the claimant had failed to contact PC since Monday 18th of October.

102. On the 21st of October 2021, the claimant obtained another fit note for the period of the 18th of October to the 14th of November 2021. The reason given was stress at work and panic attacks (page 220).

103. KL did not revert to the claimant by the 22nd of October to state who would be dealing with her grievance. Instead, on the 27th of October 2021 at 10:51am the claimant wrote to KL copying PC and stating that she had sent her fit note to PC. In this e-mail, referred to above, the claimant identified what she believed to be inaccuracies in the respondent’s minutes. As PC told us that she could not really remember the details of that meeting and as we did not hear from KL, we accept that the claimant’s version as set out at page 221 to 222 is accurate.

104. The claimant pointed out that no one had yet got back to her about her grievance and that the respondent was not following its own grievance procedure. She asked that this be remedied as it was not helping her mental health due to continued delay. We can see that on the 28th of October 2021, the claimant forwarded her e-mail to Tom Cole (“TC”) because KL was on annual leave. She asked that Mr Cole respond to her e-mail.

105. No one had responded substantively to the claimant by the 4th of November at 9:30am when she next wrote to KL, PC and TC. She wrote to request an update

on her e-mail of the 27th of October 2021. She said that TC had responded that her concerns would be looked into on KL's return to work. KL had been due to return on 1 November (see page 224). The claimant said that the respondent's failure to address her ongoing concerns has continued to affect her health, and she asked for a response that week. The following day at 17.02, KL responded thanking the claimant for her e-mail and saying that she hoped her health was improving. She asked the claimant to accept her apologies for the late response as she was on annual leave. She said that a grievance was still being "looked into" and that she would feedback to the claimant by the end of the following week to provide her with an update.

106. The next contact between the claimant and the respondent about her grievance was on the 10th of November 2021 when she received a letter signed by Mr. John David, (JD) a housing manager, dated the 10th of November 2021. The letter sets out the substance of the claimants grievance in three points: firstly YMCA claiming that she had printed in colour when the system was set at a default of black and white; secondly that the claimant had overridden a command on the system which had been set by IT in order to do so (which the claimant said she had no ability to do) and thirdly that the light switch issue should be resolved. JD asked the claimant to attend an investigation meeting on Friday 12th November at 1:30pm via Microsoft Teams. He said that he would chair the meeting. The meeting was to be an informal fact-finding exercise and the claimant did not have a right to be accompanied. The claimant was told that the notes from the investigatory meeting would be used if it proceeded to a formal hearing.

107. The respondent's Grievance procedure and policy is on pages 85-88 of the tribunal bundle. It provides that, where concerns are raised formally, the matter should be raised in writing with the person's immediate line manager, who would meet with her **within five working days** to discuss the matter. It states that he or she will confirm the decision in writing normally **within 10 working days**. It is stated that if it is not possible to respond within the specified time **you will be given an explanation and told when a response can be expected** [all emphases added].The employee is told that if they feel it is inappropriate to raise the grievance with their line manager, they should raise the matter with the next manager in the chain of command, giving reasons for doing so. If this was still felt to be inappropriate concerns should be raised with the person at the next level of authority. We note that although the claimant copied PC, her line manager, into her grievance, she raised it with KL. Having said that, the respondent has taken no point about this, and the respondent clearly accepted the claimant's grievance when it was lodged on the 15th of October 2021.

108. On page 86, it is recorded that in some matters it may be felt appropriate to use mediation to try and resolve the issue and this may be arranged and undertaken by an independent staff member. The respondent states that they may seek assistance externally as an alternative. The policy and procedure states that, at any interview concerning a grievance the employee may be accompanied by a work colleague or a trade union official but not a legal representative. There is no distinction drawn in the policy and procedure between formal and informal meetings in this respect so it is not clear why JD's letter suggested that the claimant could not be represented on 12 November. At page 86, it is also stated that it is important that grievances are dealt with speedily. It is stated that a consultation with a staff member normally takes place within **two working days** to arrange a hearing date. A formal meeting should be held to consider the complaint, at which

the staff member may be accompanied, and the grievance would be investigated fully. A written decision must be provided, normally, **within 10 working days** of the hearing. The staff member should be **advised if it is not possible to respond within the specified time, giving them an explanation and telling them when a response can be expected** [emphases added].

109. The policy and procedure states that managers need to maintain an open approach to a grievance and should not adopt a defensive attitude. They should seek to find out how the person raising a grievance would like the matter to be addressed and resolved. They should not be afraid to confront and deal with the issues that a grievance may raise. At page 87, it is stated that the person hearing the grievance should take as much time as necessary and ask as many questions as are relevant to ensure that the complaint is understood fully. The purpose of the hearing is said to be to hear the complaint, not defend the organisation. Managers are expected to give proper consideration to the issues raised. They should consider adjourning the hearing if further information or advice needs to be sought. On page 88 it is stated that, after the meeting, the relevant manager should then take the opportunity to investigate the grievance and obtain other views when necessary. Any decision should be based only on the facts collated. It may be necessary to meet with the person who submitted the grievance to clarify any further information received during an investigation. The policy and procedure concludes by stating that should the staff member not be satisfied with the initial decision, they should send a written appeal statement setting out the problem to the “Director of People” who will arrange for the grievance to be further considered. The decision made at the second stage would be final and will be confirmed in writing normally within 10 working days. If it is not possible to respond within the specified time the staff member would be given an explanation and told when a response could be expected.

110. We remind ourselves that the claimant raised her grievance formally on the 15th of October 2021. No effort was made to agree a date for the grievance to be heard within the 2 working days indicated, nor at all until the 10th of November 2021 - 26 days later. The claimant was not given an explanation for this delay beyond receiving an automated reply from KL on the 27th of October 2021, which said that she was on leave until the 1st of November, and then an apology from KL on the 5th of November saying that she had been on annual leave. There was no explanation as to why another HR worker could not have dealt with matters or why there was a further delay from 1 – 10 November. Altogether it took around 20 working days before the grievance meeting took place, rather than the 5 regarded as the norm.

111. The minutes of the meeting on the 12th of November, including amendments from the claimant in different coloured ink, appear on pages 227-231 of our bundle. The claimant commenced by saying she had been disciplined for something that she didn't do, which had affected her mental health. The claimant said that she had been accused of printing large amounts of documents in colour and overriding an IT command. She also mentioned that she had been upset by her manager asking IT to block her account at the start of investigation without notifying her. The claimant said that she had not been notified of the reason for quite a while. The claimant said that she had not printed in colour but in black and white and she had told PC that printing in colour was not possible. The claimant has corrected the minutes to say that she has never disputed printing a large amount. The claimant mentioned the mitigating factors relating to the lockdown

and the fact that she had volunteered to contact her son during the investigatory meeting but been refused permission to do so. The claimant again highlighted that there had been contradictions in the statements of PC and ES about the amount of paper used She said she had been disciplined because of incorrect statements and she felt targeted for supporting SI previously in a tribunal. She asked if IT would investigate the websites she had used to show that she could not print in colour as the past papers were in black and white. The claimant said that she knew that the respondent had been able to investigate the websites visited by former colleagues so that the respondent had capacity to do that. The claimant made the point that the issue of colour printing and overriding the IT command were not covered in the disciplinary outcome letter so she could not contest them. She said again that she needed closure and needed to feel safe in the workplace. She pointed out that OH had recommended a risk assessment to establish the issues affecting her health with a view to resolving them. The claimant has cut and pasted part of the OH report into the minutes.

112. The claimant said that she did not know that the default setting in Greenford was black and white until SI said it in the disciplinary meeting. It is noted on page 229 that the claimant had said that KL had emailed had to say the case had been finalised and that IT had confirmed that the printing had been in black and white, but that the claimant had not received written confirmation from IT. The claimant (in her amendment) suggests that the notes inaccurately recorded that **she** said the IT had agreed that the printing had been in black and white. The Claimant referred to **KL's statement** during the OH review on the 21st of September 2021 that IT had confirmed that the **default setting** of the printer at Greenford was black and white [emphasis added]. She said she had asked KL to produce the report from IT and give it to her in writing. We observe that the confusion seems to have arisen over what KL said in the meeting on the 21st of September 2021, which is recorded in the respondent's note of the meeting at page 213 of our bundle. In the second entry for her initials on that page, KL says that as she had explained, IT had confirmed that the printer in Greenford is set up as black and white "which is what is in the report." This comment is what had caused the claimant to repeatedly request sight of that "report". We understood from the claimant that she believed that report with corroborate her account that she only printed in black and white on the 29th of March and 12th of April 2021 and that, if there was a report to that effect, the respondent should provide it with an explanation of why it thought she had printed in colour.

113. The three points of the claimant's grievance are clearly set out on page 216, as previously noted. They related to the claimant's concern that she was disciplined for printing and colour when she said she had printed in black and white. She believed that the respondent's IT department could verify the sites that she printed from, which she said did not require colour printing and she asserted that the printer at Greenford defaulted to black and white. She was aggrieved that the respondent had, in her view, made-up false allegations about her printing in colour. Secondly, she was concerned that the IT department was alleging that she had overwritten a command which stopped her from printing at all and that this was again a false allegation. Thirdly she raised a concern that although the statements of PC and ES were inconsistent about the amount of paper that was used, this allegation was pursued against her nevertheless. We consider that it should have been abundantly clear to JD that the claimant was particularly exercised about the allegations that she had printed in colour, had somehow overridden commands on

the printer in order to do so and that she had used large quantities of the respondent's paper.

114. JD told the claimant that it may take him some time to investigate, and that he would need to speak to IT and the claimant's manager, PC. He asked the claimant to e-mail him any other information that she thought he might need to see. On page 231 we see that JD concluded by assuring the claimant and SI that he would look into the matter and try to resolve the issues although this may take some time. He said he would go back to IT, and KL and PC.

115. In his witness statement at paragraph ten, Mr. David says that he spoke to an IT representative, an HR representative (KL), PC and the claimant's colleagues. He considered the three-page printing log, the letter of warning issued to the claimant and evidence about the claimant's sickness and the risk assessment for stress. He also visited the Greenford office to check on the light switch, but when he was there did not look at the printer or check whether he could print in colour. He said he did not do so as he was aware that some members of staff could print and colour, especially if they were managers and needed to print out posters. He clarified in evidence that he was relying on his own experience in his own hostel and did not check the situation at Greenford.

116. On the 3rd of December 2021, three weeks after the investigation meeting, JD sent his decision on the grievance to the claimant. He did not uphold any of her complaints. The outcome letter is on pages 247-249. Although he did not uphold the investigation, he said that his investigation revealed a strained relationship between the claimant and her manager. He said that because there had been an occupational health referral, and a review of the recommendations on the 21st of September at which a stress risk assessment was completed and a phased return to work was agreed, he believed that the charity had done everything possible to enable and support the claimant to return to work on the 18th of October 2021. He recommended that, in the interests of a peaceful working environment, the claimant and her manager should commit to mediation process to resolve any further issues. He indicated that the claimant had a right to appeal and how to do so.

117. In his evidence before us, JD accepted that he was not familiar with the ACAS Code of Practice on Grievances but said he was familiar with the respondent's Grievance policy and procedure. The claimant asked JD about paragraph 17 in his witness statement, where he says that the claimant's assertion that the printer in the Greenford office could not print in colour was not taken into consideration during the grievance hearing because the basis of the warning issued to the claimant was not for printing in black and white or colour but for serious misuse/abuse of office resources belonging to the respondent. The claimant asked JD whether that admission meant that he did not address her grievance that she was falsely accused of printing in colour. JD responded but he had addressed it, but this was the basis upon which "he gave the claimant a right of appeal" as it was "a grey area". He said that he had asked IT if the claimant had overridden a setting or command to print in colour, but that element "could not be conclusively resolved" so, he repeated, he gave the claimant a right of appeal. We note that the claimant was in fact entitled to appeal under the respondent's own policy and procedure. JD said that he looked at the matter holistically.

118. JD said that there was no evidence to corroborate that the IT department had stated that only black and white printing was possible or that the IT department had confirmed that the default setting of the printer at Greenford was black and white. He then said that he had spoken to GD, who said that if a person had IT

knowledge, they could override a default setting. He repeated that this was a "grey area" for him. He said that, however, he had looked at other aspects of the grievance thoroughly and carefully. He accepted that he did not tell the claimant about his discussion with GD. He said that he was not 100% happy with GD's response as GD was not sure how the claimant printed in colour, but he said that a person could if they had the right IT knowledge. He repeated that this was why he gave the claimant the right of appeal. JD did not say whether he had asked specifically whether the claimant's ability to print had been restricted in any way by 12 April 2021, and we find that he did not do so.

119. JD said that he was anxious about the time frame for concluding the grievance and he wanted to "wrap it up" given the claimant's concern about having the matter dealt with. As a result, he had sent the claimant the e-mail which was referred to on the second day of the hearing - on the 19th of November 2021, JD had written to the claimant asking that she sent him evidence that IT had confirmed that she had printed in black and white (p239). We have noted that this reveals a misunderstanding of what the claimant had said – she had been referring to **KL's comments** on 21 September 2021 and had not suggested that IT had told her this. The claimant replied to JD on the 22nd of November 2021 – this was the e-mail which had not been included in the bundle until the second day of the hearing, when JD produced it. The claimant had, on 22 November 2021, sent to JD an extract from the minutes of the OH meeting on the 21st of September 2021 where KL had used the words that "IT confirmed that the printer at Greenford was set up at black and white which is what is in the report" (see R1). The claimant commented that KL had failed to provide her with the "IT report" referred to, despite the claimant's requests. She said that "this simple request" could help her mental health and how she felt about coming back to work. So, the claimant had attempted to clarify the issue that she was concerned about. During his evidence, the claimant asked JD if he had asked KL about her statement that she had been told by IT that the printer at Greenford defaulted black and white. Although he was asked twice, JD did not directly respond and only stated that he asked KL (over the 'phone) if she had any additional evidence about whether the claimant printed in black and white or colour and said that what he had looked at the three page print out (p97-99). Given the confusion in the minutes of the grievance meeting about what the claimant was saying about the printer defaulting to black and white, we consider that although the claimant had drawn JD's attention to the minutes of the 21st of September 2021 meeting and KL's comments about what she had been told by IT, he did not specifically ask KL about this. He had mistakenly understood that the claimant was saying that IT had told her that the default position was black and white, despite the contents of the claimant's e-mail on the 22nd of November 2021.

120. JD told us that he had looked at the claimant's grievance, as he put it, holistically, and that he had measured it against PSG's sanction of a first written warning. During his evidence, JD told us that he had prepared a more comprehensive report on the claimant's grievance which had been provided to HR. He said that he had spoken to the claimant's other colleagues at Greenford as well as visiting Greenford to look at the light and that he had spoken to PC and KL. This is a reference to the report which we refuse to admit because, amongst other things, of the point in the proceedings at which the respondent wished to introduce it - start of the fourth day of evidence – and the claimant's ability to respond to that). It was first mentioned in evidence at the end of the third day. JD accepted that the claimant's grievance was not about her manager but said that PC's name had

come up during his discussions with the claimant, who had been very emotional. He thought that he should take the opportunity to promote a good working relationship with the manager but said he did not lose sight of what the grievance was about. We did not accept that he retained his focus on what the grievance was about.

121. JD said that he did not consider the colour printing or black and white printing was the reason for the sanction, but that excessive printing from the respondent's system was. He said he considered that to be a serious misuse of the respondent's property. JD's evidence was that he was concerned about the amount of YMCA time that the claimant had taken to print so many sheets of paper and he had considered there was excessive use of the respondent's paper. He accepted that he did not investigate the discrepancy between the amount of paper that ES had said had been used, that PC said had been used and the number of pages attributed to the claimant by the printer log, which was explicitly referred to in the grievance.

122. We concluded on the evidence that we heard that JD did not thoroughly or adequately investigate the claimant's grievance but rather that he focussed on whether the disciplinary sanction of a first written warning was appropriate. He appeared to be reviewing the disciplinary sanction rather than addressing the claimant's specific grievances. Instead, after concluding that the first written warning was appropriate given that the claimant accepted that she had printed over 700 pages, although she disputed using the respondent's paper or printing in colour, he went on to investigate something which was not raised in the grievance, that is the claimant's (and her colleagues') working relationship with their line manager.

123. On 1st December 2021, at page 244, KL had written to the claimant to tell her that the investigation had been completed and that JD would be writing to her to provide her with an outcome as soon as possible. There was no explanation as to why the respondent's time scales for dealing with grievances had been exceeded.

124. JD's findings are on page 248, in his letter of the 3rd of December 2021. It records that the disciplinary process was based on serious misuse, abuse of office resources belonging to the respondent and not on colour printing only. He refers at point (c) to the fact that the printing log contains both black and white and colour printing. He states at (d) that there is no evidence to corroborate that IT stated that the claimant only printed in black and white – although the claimant had already addressed that confusion in her email of 22 November - but goes on to see say at point (e) that IT confirmed that the Greenford printer is set at a default black and white. We find these conclusions did not address the claimant's concern and were inherently contradictory.

125. Although JD attributes some of the delay in returning his outcome to his attempts at contacting ES, it is unclear from the evidence before us what he asked ES, and what if any conclusions he reached. It seems to us that the only pertinent issue about which he could ask ES was about the amount of paper which had been used, and about which he appeared to reach no conclusion. In his evidence he said that he did not ask any of the claimant's colleagues whether they could print in colour as he did not consider that to be relevant as he was aware that some of his own staff members could.

126. On the 3rd of December 2021, the claimant wrote to the respondent saying that her doctor had decided to discontinue the anti-depressants initially prescribed

to her because he considered that if the matters at work were resolved, the claimant's health would significantly improve.

127. The claimant appealed against the grievance outcome on the 8th of December 2021 and the grounds of her appeal are at pages 250 to 253. Not all the points raised by the claimant are relevant to the issues, but the first three points that she makes are significant. Firstly she identifies that her grievance was seeking to address the “false allegation” that she printed in colour when she had been told that the printer is set at a default of black and white and as a result she would be unable to print in colour; secondly the “false allegation” that she overrode IT commands which restricted her ability to print and, thirdly, she refers to the inconsistencies in the witness statements from ES and PC. This seems to be a reference to the amount of paper that was being used and whether the claimant used a substantial amount of the respondent’s paper. The claimant goes on to say that she had made it clear that all the above issues were affecting her mental health. She points out that she was assured that the issues would be resolved before she returned to work - this seems to be a reference to the stage 1 sickness meeting on the 21st of September 2021.

128. The claimant continues, on page 250, that the appeal outcome missed the above points and was seeking to address the claimant’s concerns as if she was appealing the decision about the first written warning. She said that she made it clear she was not appealing against that, but that she did accept that she printed excessively with her own paper and did not ask for permission. She says again that PSG had not addressed the issue of the level of seriousness of the abuse of the resources, which she had interpreted to be an allegation that she printed in colour and had overridden the IT command. She said that PSG's decision not to address those points had left her with the issues she was experiencing with her mental health.

129. She included a table identifying her response to the specific points made by JD. She makes it clear against point (d) that she had never said that IT stated that she only printed in black and white. In fact this was the point she wanted IT to confirm as indicated in her email of 21 November 2021. She then repeats that there may have been a “set up” to get her dismissed for supporting her colleague at the ET. Again, at point (e) she confirms that the first time she heard that the Greenford printer was set to default to black and white was from KL in the review meeting on the 21st of September 2021 (although we note that SI had mentioned this in the hearing before PSG. She said that she needed closure as the above matters were continuing to affect her health and points out that her grievance did not suggest that she had a problem working with her manager.

130. On the 13th of December 2021, the claimant wrote to Samantha Cain (SC – the HR Business Partner supporting JD) at page 260 saying that she had still not received the minutes of the grievance hearing on the 12th of November 2021. SC had written to the claimant on the 10th asking her to agree the minutes. The claimant said that she believed that SC had sent the minutes to her work e-mail although she was not at work, and that this was deliberate. The relevant e-mail, showing that the minutes were indeed initially sent to the claimant's work e-mail address, are at the foot of page 260. By that stage the claimant seems to have received the minutes and sent back her amended version.

131. By the 31st of December 2021 the claimant had not heard anything further about her grievance appeal and she wrote to SC, copying JD, PC KL and TC, to

say that she suspected that the respondent was continuing to escalate its sickness absence procedures against her in a bid to have her dismissed. She referred to delaying tactics, said that detriment was being caused to her mental and emotional health and pointed out that she first raised her grievance on the 15th of October 2021. That was now “almost three months ago” yet the grievance was far from being resolved. This is on page 259. In response, SC replied the same day saying that she could not comment on the absence management process, which was entirely separate from the grievance procedure. She suggested that the claimant contact her line manager to update PC on her health and to forward any medical certificates to her at the earliest opportunity. The claimants e-mail had in fact been copied to PC, her line manager. SC then explained that the claimant's appeal had been handed over to TC as Head of HR and that the respondent would be in contact with her in due course, following the bank holiday, regarding her appeal. She wished the claimant a Happy New Year.

132. On the 7th of January, KL wrote to the claimant to remind her that her current fit note expired on the 9th of January 2022. She said that the claimant had now triggered stage 3 of the sickness absence procedure. She would be writing to the claimant to invite her to a stage 3 sickness absence review meeting. She referred the claimant again to the EAP. On the 7th of January also, SC wrote to the claimant to confirm that an appeal hearing would be chaired by AA, Regional Housing and Support Manager, who would be supported by Efrat Burl (“EB”), an HR Business Partner. The claimant was informed that the hearing would take place on the 13th of January at 11:00am. The e-mail indicated that the grievance appeal would look at the outcome of JD's investigation into the specific issues in the original grievance, namely (firstly) that the claimant printed in colour when the system was set at a default of black and white; secondly that the claimant overrode the command on the system set by IT which, the claimant alleged, she had no technical ability to do. The third point related to the issue of the light switch at Greenford, which JD had said was resolved.

133. On the 11th of January 2022, however, the claimant was issued with an Isolation Notice in respect of coronavirus; she was asked to isolate until the 21st of January. On the 12th of January, EB wrote to the claimant saying that the grievance appeal hearing would now take place on the 24th of January 2022 and would be conducted by AA. EB would attend as HR representative and note taker. The claimant was told that she was entitled to be accompanied. The claimant was asked to provide any documentation to which she wished to refer by 48 hours in advance. The claimant was given a further Isolation notice from the 22nd of January to the 1st of February 2022, but the appeal hearing went ahead on the 24th of January.

134. AA described this as a difficult meeting which left her shaking. She said that it was difficult because SI and the claimant kept interrupting and would not allow her to say what she wanted.

135. The claimant made it clear at the start of the meeting that she was not feeling well and that her son was seriously unwell. EB offered an adjournment, but the claimant said that she wanted to continue, and that SI could help her. AA pointed out that SI should not answer questions on the claimant's behalf. Having been asked what outcome she wanted, the claimant said that she wanted closure. She said that she wanted proof of the [basis of the] allegations against her, because the allegations made were “very strong”. She said that from the beginning she had been asking for proof and had only received an answer of “IT said”. This is on page

269. The claimant repeated that IT department had the capacity to look at the websites she had visited, and this would show that she did not print in colour, only in black and white. She said that she had already told the respondent the names of the websites she had visited. She said that she did not know how to override the “black and white” default setting. She repeated that the allegations were “a plot” because she supported a colleague in the employment tribunal and that she questioned why she had not been dismissed if she had done what they said. She again said that she wanted to return to work feeling safe and secure and not looking over her shoulder. She repeated that she had brought her own paper in and had shown them to ES. She said that the investigation had been flawed.

136. AA replied that she was not going to hear the grievance all over again. She said she was looking at the three points mentioned in the letter. She said that the claimant had printed a large amount of printing whether it was black and white or in colour. She said she was not looking at the whole case. She wanted to resolve the matter and support the claimant’s return to work. She asked if there was anything new that the claimant wanted to add. The claimant repeated that she did not use the respondent’s paper, and AA asked her whether she brought the ink. The claimant said that she understood [the point] and that she took responsibility for that, and that she didn't have permission.

137. The claimant became upset and there was a break so that she could gather herself. AA reminded the claimant if she needed time to think or another break she should let her know. The claimant said that having seen PSG's outcome she couldn't contest that, and took responsibility for what she had done, but that other issues which had been raised were not addressed. She said that she had hoped that JD would take the information she gave him and consider it, but it didn't appear that was the case. She said his response felt like it had been copied and pasted. Her grievance had not been addressed.

138. She referred to the fact that she was no longer on full pay as her contractual sick pay had run out. There was then a discussion about how far SI was able to support the claimant. She then asked if she could “unpick” two items, firstly that the claimant had said this was “like a vendetta” from the respondent because she had supported SI in tribunal. She said that if the printing had not happened, they would not be here. She pointed to the fact that the claimant had not been sacked and that the policy and procedure had been applied to give the necessary sanction. She said that she had been hoping that they would be able to come to a reasonable agreement that day as how to best to support the claimant back to work. She explained that the pay had been reduced because the claimant was on sick leave and that in order to be fully paid, she needed to go back to work. She said she was hoping to move forward. She gave the claimant an opportunity to consult with SI off camera. The claimant said that she wanted to continue and that she was asking for proof of the allegations about printing and colour.

139. AA then said that she would let SI speak for the claimant as the claimant was in a difficult position. SI referred to the occupational health review meeting on 21 September 2021 when claimant said she did not think that the respondent was providing a safe environment. He pointed out that there was another point about the overriding of the IT commands on the system as opposed to the issue about black and white or colour. He said that PC had apparently contacted IT and asked that the claimant be prevented from printing. According to PC’s report, IT had said this was done but the claimant was then able to print. This is where the allegation about the claimant overriding the command had come from. SI became rather

incoherent and was saying that the issue had nothing to do with colour printing, although this was the opposite of what the claimant was saying. He pointed out that the claimant was looking for proof because the issues she was concerned about had not been addressed and that this had prevented the claimant's return on the 18th of October.

140. AA tried to steer the parties back onto the topic of the meeting and reminded everyone that this was the appeal against JD's outcome. She said she could not address sickness and SSP at that meeting. Earlier, however, AA had said that she did want to address the claimant's absence and get her back to work. The claimant then asked once more that IT check the websites that she had printed from. She said that she was confident that she did not print in colour. She mentions again that she had not been allowed to call her son during the initial investigation to give evidence about the exam papers being printed in black and white. She said she wanted a written report from IT, not via a third party and that she needed them to address the allegation that she had somehow overridden system settings. EB said that AA would reflect on the discussion and investigate the points that the claimant wished to have clarity about. It was said that she would write back with the outcome within 5 working days.

141. In her witness statement at paragraph 8, AA says that she understood that she had to take a fresh look at the claimant's appeal, impartially and with an open mind, carefully considering all evidence and statements as well as expecting new evidence from the claimant. AA refers to the claimant's allegation of "victimisation" because she had supported SI as an additional ground of grievance, although it had been raised in the previous meeting with JD. Likewise, she suggested that the request for evidence from IT to show how the claimant was able to print on 12 April 2021 when she was allegedly "blocked" was an additional matter, although it is something which had been raised before by the claimant, and we have found above that on the evidence before us the claimant's printing was not restricted until 12 April 2021, after she had printed that day. AA also said that the breakdown of trust between the claimant and her manager due to the claimant's perception of being "set up" was an issue for the grievance appeal though the claimant had never raised this in her grievance.

142. AA provided the outcome of the appeal to the claimant on 4th of February 2022, at pages 280 to 285. In her statement at paragraph 14, she says that the claimant's appeal was not upheld simply to confirm the outcome of the grievance investigation by JD. She said that the reason for the decision was that the original reason why the claimant was sanctioned "was for serious misuse and abuse of office resources". The grievance was not upheld due to the claimant's inability to present evidence to support her claim of printing only in black and white. AA says that the appeal was equally unsuccessful due to lack of evidence to support the claimant's claims of victimisation or that a false statement had been made in relation to the issues around printing in colour. AA had referred to the IT print log, which she says evidenced the claimant printing in colour- this is a reference to pages 97 to 99. AA took the view that the claimant did not show any remorse throughout the process, although we have noted evidence to the contrary at various points above. Although it is correct that the grievance outcome was provided within 10 working days, we note that the appeal took almost two months from the date of the appeal to be concluded.

143. AA confirms in her witness statement that her decision not to uphold the appeal was not affected by the fact that the claimant had given evidence in SI's

tribunal case. We accepted her evidence on this, for reasons set out below in our conclusions.

144. In her evidence, AA told us that she had spoken to JD about what he had done and said he had looked at everything at length, but he could not conclude whether the claimant had printed in colour or black and white. AA accepted that she had obtained the more extensive log of printing, which starts at page 340 in our bundle, via HR. We were taken to that log at an earlier stage, and it is apparent that, contrary to what others of the respondent's witnesses have said, it was possible for the respondent to identify the sites which had been visited by individual employees. Looking at the entries for the 29th March 2021, the log shows that the claimant had printed question papers from various examination paper sites, as she had previously suggested.

145. It became apparent during the claimant's questioning of AA that, sometime around the hearing of the grievance appeal, AA's father had, sadly, died. As mentioned before, on the second day of the tribunal hearing the respondent had produced a chain of emails, exhibit R1, which included emails between EB and CD. We were told that CD was the respondent's Head of IT. The claimant asked AA about these emails, which cover the period 26th to the 27th of January 2022. AA said that she was being supported by EB, and because she did not see any documentation from IT apart from the short print log at 97-99, she instructed EB to go beyond GD and to ask CD about the matters raised. She said she could not do it herself as she was dealing with grief. The claimant asked whether JD had told AA that he had been told by IT that the claimant had overridden the system to print in colour but that they did not know how. AA replied that there was no evidence to corroborate the claimant's assertion that it was only possible to print in black and white. The claimant reiterated that she had told JD that KL had confirmed that the printer at Greenford was set to black and white. AA said she did not know this at the time of the appeal hearing. The claimant referred AA to the record of the stage 1 sickness absence meeting where KL had made that comment, and to the finding in JD's outcome letter. AA said that she had spoken to both KL and JD and to CD as well, as she had followed up EB's e-mail chain with a telephone call to him. She accepted that no IT report showing that the printer was set to black and white had been produced to her.

146. The claimant asked AA about the e-mail chain between EB and CD from January 2022 ("R1"). EB had begun by asking if it was possible to get a report of the websites the claimant had visited when she was printing. She also asked if CD was aware that someone from IT liaised with PC to block the claimants printing. She asked if this was something that could be done and whether the service desk would have a log of this. EB said that the timeline was tight as they needed to write back to the claimant. CD responded by asking if there was a ticket associated with the request and that it was possible to provide logs if more details were given. EB responded that she did not think there was a ticket. She said that there was one e-mail from GD but it didn't give a full picture. KL had said that she thought PC called GD direct.

147. EB said that they were trying to check the surfing history and printing log for the claimant as she said she had never received any proof and claims that false allegations had been raised. EB summarised that this was mainly because [at some point] the claimant was told that she had been blocked from printing (or printing in colour) and it was alleged that she had somehow managed to override the IT settings. EB comments that she couldn't see how this was possible "without

an admin login", and that the claimant "definitely didn't have the technical skills to figure something like that out".

148. EB said that she would like to share some information with the claimant as they wanted to bring her grievance against the respondent to a close. EB told CD that the claimant was claiming that websites she used on those two occasions did not allow colour printing, so she wanted to check that for herself. CD's reply is short and to the point, saying that IT would not wholly restrict any user from printing, but would (if requested) restrict colour printing. He said that surfing history was not retained, but if the user said the website restricted printing in any form, he suggested getting this confirmed directly from the website's hosts. He said that printing logs are provided from the printer itself, that these logs are unalterable and written at the time of printing. They indicate that the claimant had been the user and that the computer from which she printed was a Greenford workstation.

149. We were told that EB had left the respondent organisation soon after the grievance appeal hearing, and we did not hear from her. The claimant asked AA about what SI said about the previous manager, DM, restricting colour printing at Greenford. AA responded that DM "had left years ago" and that the printing system had changed several times. She pointed out that the organisation had merged in 2019 and that they had changed printer providers at various points. She said that DM had left in about 2015 or 2016. The claimant put to AA that CD had suggested that EB contact the hosts of the websites the claimant had printed from direct. AA said that this was one of the reasons she had called CD as he said that the respondent generally did not retain surfing history. She had asked him if he could "go into" the website and he said that he could not, and that she should ask the claimant to do so. She said that she was told that "the print log did not lie". We note that AA did not in fact inform the claimant about her conversation with CD or suggest that the claimant contact the website's hosts. AA accepted that the claimant had told her that she had only printed from a QA and Edexcel examination board websites. When asked why she did not check the websites herself, AA repeated that she was dealing with the death of her father and that she had given EB instructions to contact CD as a result. She did confirm that CD had said that it might be an idea to go on to the website to check. AA accepted that she did not ask JD or anyone else whether they had checked the websites previously.

150. The claimant asked AA where she had got the idea that PC had restricted her from printing but that she had disobeyed this by printing again on the 12th of April 2021. AA asked to be referred to PC's investigation reports at page 90 and said she had got the idea from there. In fact, the entry at the foot of page 90 says that PC asked IT to disable the claimants account on the 12th of April 2021 after she had been told that paper had been used up again at Greenford over the weekend, that is, after the claimant printed for the second time, not before. This appears again at page 91 and is referred to in our findings above. On the evidence we heard, we do not accept that AA asked CD, when she spoke to him, whether the claimant's ability to print had actually been restricted in any way before 12 April 2021.

151. In the grievance outcome letter at page 301, AA does not refer to the additional print outs of printer usage that she had obtained via HR (p340 onwards). She simply says that a report extracted from the system confirmed that a substantial amount of the printing the claimant did was in colour. She found at page 301 that whether the printing was in colour or black and white had minimal relevance to the overall issue of printing 759 pages. We observe that this ignores

the fact that the substance of the claimant's grievance was that she was accused of printing in colour when she was not. She says on page 302 that IT had provided further explanation as to how the claimant **could have** printed in colour [emphasis added]. This statement presupposes that the claimant's ability to do so was restricted by 12 April when she printed for the second time, but AA had not checked this. She said that according to the head of IT, the printer is connected directly to the computer and overrides the request of the system to log in, to print. AA has provided no documentation to support this account and it is not referred to in her witness statement. In all the circumstances we find that IT provided her some explanation as to how the claimant could have printed in colour if the printer was set to default to black and white but that she has not accurately recorded it. The explanation given in the letter is difficult to follow.

152. At page 302, AA describes the claimant's claim that the respondent was victimising her due to her support of SI as "groundless". She went on to say that the claimant had shown "a lack of respect" to her manager "who had been working to support you and making reasonable adjustments". She says, "it is disappointing also that even though your manager had raised the matter with you in your previous shift, on the very next shift you printed again". We note that there is no evidence before us to support the allegation that PC had told the claimant about her concerns over use of the printer before the 12th of April 2021 when the claimant next printed. As noted above, AA could only point to the investigation report which suggests that PC had asked it to restrict the claimant's account on the 12th of April after the second episode of printing. We do not accept that PC had informed the claimant about her concerns over printing before the 12th of April. This would be contrary to the evidence of both the claimant and PC, which we accept, that on the 22nd of April the claimant called PC because she did not know why her account had been disabled and she could not log on.

153. In her outcome letter, AA noted that the respondent had consulted with the claimant about relocating to another work location but that the claimant had turned this down. Although the meeting on the 24th of January 2022 was said not to be about the claimant sickness absence, the grievance appeal letter refers to the claimant mentioning her sickness record and indicated that AA did not consider that the respondent's actions were affecting the claimant's mental health. She simply says that the claimant was supposed to return to work on the 18th of October 2021. She said that there is a plan for a phased return based on recommendations from OH. She goes on to say that the claimant's continued absence from work is having an impact on the service delivery, was a strain on the team and morale and was having an impact on vulnerable residents. She said that it would be necessary to consider the claimants continued employment if she continuously refrained from coming to work and said that all the claimants' issues had been addressed. She said that the claimant was expected back at work on the 6th of February 2022.

154. On the evidence before us, AA never checked with anyone as to whether the printer at Greenford actually had a "default setting of black and white". She told us that she was aware that different staff had different "permissions" so far as printing was concerned, but she did not check whether the claimant's printing "permissions" extended to printing in colour. We find that she relied upon her own experience of having printed in colour, but did not actually check whether the claimant could do so.

155. On the 9th of February, the claimant wrote to KL and AA about the appeal outcome letter. She noted that AA had finally confirmed that the only information available from IT were the printing logs (the 3 page log she had seen) and a statement from IT. She noted that the Head of IT's response was not definite or certain as to whether she printed in colour or not yet the allegation against her was a certain one that she did print in colour, because the log said so. She asked for an explanation as to what the Head of IT had told AA about printing [i.e. how she could print in colour if the default was black and white] as she could not understand it. This is on page 307. AA's response (dated 21st of February 2022 at 17.02) is brief, apologises for the late reply and says that the Head of IT confirmed that the printing logs that were provided are from the printer itself and that the logs are unalterable and in written at the time of printing. The logs also indicated that the claimant sent the jobs from the computer at Greenford. This does not answer the claimant's question about the comments in the grievance appeal outcome letter as to how she may have printed in colour if the setting defaulted to black and white. The claimant did not receive the minutes of this grievance appeal hearing until after she resigned. The claimant understood that this was because EB had left before the claimant resigned, without finalising the minutes or sending them to the claimant.

156. On the 14th of February 2022, the claimant attended a sickness absence review meeting with AA. SI attended, as did KL. The claimant relies upon comments made by AA at this meeting as "the last straw" which caused her to resign. The meeting commenced with AA stating that the purpose of the meeting was to review the claimant's absence under stage 3 of the Managing Absence at Work Policy and Procedure. AA identified that there were various options ranging from the issue of a warning to an offer to make adjustments, redeployment with the employee's agreement or a decision to dismiss the employee with notice. It was noted that the claimant had been absent for a total of 121 days on 7 occasions and that the claimant had been continuously absent from work since June 2021. The claimant said that her continuous absence since June 2021 was because measures had not been put in place in respect of "the false allegations" after the OH review. She clarified on page 293 that it was the "false accusations" of the claimant having overridden the computer system and of printing in colour that were supposed to be addressed. The claimant said that because she had had been ill with coronavirus, the GP's fit notes had stopped. SI made it clear that the claimant was happy to continue with her original role when she was fit to return to work but that the issues affecting her health had not been addressed. The claimant clarified that she would send in a sick note later, on page 294.

157. KL pointed out to the claimant that she still had an obligation to be in contact with her line manager, PC, as to when she intended to return to work or produce further fit notes. The claimant responded that she had not been too well recently. SI pointed out that the claimant had sent an e-mail to AA which had not yet been addressed [this referred to the claimant's email of 9 February 2022, which AA did not reply to until 21 February 2022, see above]. He said that the issues that were keeping her away from work had still not been addressed. On page 295 the claimant says that people were not listening to her and that she knew that she had printed but she did not do it maliciously. She repeated that as the respondent knew the days on which she had printed, they could go online and check the websites. She said that she was quite disappointed that JD did not address anything that she stated in her grievance.

158. At the foot of page 296, the claimant said that she had asked AA about the statement from IT about overriding the printer and said she didn't understand what they meant – this referred to her email of 9 February 2022. AA responded that she had liaised with CD, and that's what he said to her. She said she would look at the e-mail again and would respond to it. She goes on to say “I didn't ask questions to check the websites”. She says that CD reassured her that the printing log that was given to the claimant at the beginning of the investigation was extracted directly from the printer.

159. The claimant was not satisfied with the minutes of the meeting of the stage 3 absence review which were finally sent to her on the 8th of March 2022. She sent the respondent her amended version, which we were told was taken from the illicit recording. Ultimately, the respondent accepted that the version on page 323, produced by the claimant, is accurate. On page 323, it is recorded that the claimant said that she had made it clear that the respondent had in the past told an employee of the website they visited and blocked their activities. She said that the YMCA could in her case do the same to prove that she only visited and printed past examination papers from Edexcel and AQA websites on the two occasions. She said that the respondent or its IT department only needed to confirm the websites, which would easily show that all the allegations were false. The issues affecting her health would be significantly improved as they would see that, in addition to the printers being set at a default of black and white it is not possible to print in colour from these websites.

160. The claimant asked AA if she had asked IT about the above, and AA responded “Yes, the Head of IT told me that it is possible and we can also ask the “host”, they can give us the name of the website you printed from”. We observe that this is in keeping with the exhibit R1 and what was said by CD there. SI then asked AA if she would be getting information from the host as suggested, to help the claimant and the respondent put an end to these issues affecting the claimant’s health. AA said “No, I will not be contacting the host”. SI then asked AA whether IT came back to her about how the claimant could have overridden the printer system as alleged, firstly to allow her to print (if IT had allegedly prevented her from printing) and secondly to override the alleged default setting of black and white, as alleged by the respondent. Again, AA said that she did not check with the Head of IT about the claimant overriding the IT systems. SI responds that “this is exactly what the claimant is saying about two issues not being addressed”. We observe that in the outcome of the grievance appeal, as recorded above, AA had stated that the head of IT had explained how the claimant could have overridden the settings on the printer, but that AA had not checked what the settings actually were, or whether, in any case, by 12 April the claimant herself was restricted from printing in colour. Following the stage 3 meeting, KL wrote to the claimant on the 21st of February 2022 at 16.59 saying that due to unforeseen circumstances there was a delay in getting the outcome letter of the stage 3 sickness absence meeting to her, and that they would try to get the outcome letter to the claimant by the end of the week. AA stated in evidence that the unforeseen circumstances were not the death of her father, which had nothing to do with the stage 3 process but could not explain what KL had been referring to.

161. In late February 2022, the claimant started asking KL for a copy of her contract of employment – page 308. On the 2nd of March 2022, KL said that she was currently unable to access the HR drive but was hoping to send it to the claimant by the end of the day, and she apologised for the delay. On the 2nd of

March, the claimant asked KL for the minutes of the meeting on the 14th of February 2022. On the 4th of March KL said they would be sent as soon as possible together with an outcome letter. On the 4th of March also, KL wrote to the claimant again saying that no outcome had been reached and that to further support and enable her to return to work, they would like to refer the claimant to Occupational Health again and were asking for her consent.

162. Again, on the 4th of March 2022, the claimant received a letter from the respondent saying that she had been absent from 2nd of February 2022 without medical certificates and that her absence was being treated as unauthorised. It was stated that the claimant had been reminded on the 14th of February of the need to provide a fit note. This was signed by KL. On the 8th of March, page 317, the claimant received a formal notification of the outcome of a sickness absence review. This is on page 317 to 318. The claimant was reminded to return the consent form regarding the occupational health referral and that following receipt of the OH report she would be invited to a reconvened stage 3 sickness absence meeting.

163. The claimant told us that she did in fact have a fit note supporting her absence during this period, but that after the meeting on the 14th of February she felt that her trust in the respondent had been damaged and that she was afraid that by sending in another fit note she would affirm her contract of employment. She wished to have the minutes of the stage 3 sickness absence review before deciding whether to resign. These were sent to her on the 8th of March. The claimant reviewed the notes and sent her amendments on 18 March 2022 at 11.05, attaching her version of what had been said by AA at 322-323, and which are now accepted to be accurate. Also on the 18th of March, the claimant sent her letter of resignation, which appears on page 325. She said that she was resigning due to fundamental breach of contract and that this was a breach of trust and confidence resulting in the employment relationship irrevocably breaking down due to victimisation, failure to pay her for the period of her absence, several false allegations with one of them being a false accusation that the claimant had breached the trust and confidence of the respondent. She continues: “to make matters worse, [AA] admitted she had not investigated the allegations of me overriding the IT systems, also admitted that IT can verify the website I printed from and IT have told her how to establish this but AA’s blatant refusal to go through the process whilst claiming that West London YMCA have done everything to support me, even though the exercise could help repair the already broken relationship and significantly improve my health, was difficult for me to take.” She therefore tendered her resignation with immediate effect. Also on 18th March, page 326, the claimant wrote to EB asking for the minutes of the 24th of January 2021 meeting.

164. The respondent has argued that the real reason the claimant resigned was that she could effectively “see the writing on the wall” i.e. that she was likely to be dismissed under stage 3 of the respondent’s sickness absence procedure so decided to leave before that happened. We do not accept that this is the case. We accept the claimant’s evidence that she had initially been pleased that AA was dealing with her grievance appeal but that she was disillusioned by what she perceived as AA and the respondent’s breach of her trust and confidence by failing to investigate her grievance adequately and, in particular, by AA saying she had investigated how the claimant could have overridden the printer settings in the appeal outcome letter then saying in the stage 3 absence meeting that she had not done so.

RELEVANT LAW

165. The claimant's first claim is under **section 45A of the Employment Rights Act 1996**. This provides, under subsection 1, that a worker has the right not to be subjected to any detriment by any act or any deliberate failure to act, by his employer, done on the ground that the worker (sub-paragraph (f)) alleged that the employer had infringed a right conferred by the Working Time Regulations 1998. Section 48 of the Act provides for complaints of breach of section 45A to be made to Employment Tribunals. Under subsection (1ZA), a worker may present a complaint to an employment tribunal that they have been subjected to a detriment in contravention of section 45A.

166. Under subsection 2 of section 48, it is for the employer to show the ground upon which any act, or deliberate failure to act, was done. According to **Ibekwe v Sussex Partnership** EAT 0072/2014, however, following **Kuzel v Roche,** the rejection of the respondent's evidence about the reason for the treatment does not mean that the claimant necessarily succeeds. The tribunal must decide the reason for the treatment based on all the evidence before us. According to **London Borough of Harrow v Knight**, if the respondent does not provide evidence, the tribunal may draw an inference about the reason for the treatment, but the inference must be justified by the facts found.

167. The phrase "done on the ground that" has been subject to judicial consideration and the test is whether the claimant's conduct (here, alleging that the employer had infringed a right under the Working Time Regulations 1998) had a more than trivial influence on the conduct of the employer about which the employee complains.

168. Section 48(3) of the 1996 Act provides that an Employment Tribunal shall not consider a complaint under this section unless it is presented (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure to act is part of a series of similar acts or failures, the last of them, or (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months. Subsection 4 gives further details of the rules where an act extends over a period, when (a)the date of the act means the last day of that period, and (b)that a deliberate failure to act should be treated as done when it was decided upon. Subsection (b) provides that in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act, or if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the act if it was to be done.

169. In this context, **detriment** simply means that a reasonable worker would think they were being placed at a disadvantage in the circumstances in which they had to work - **MOD v Jeremiah** 1980 ICR 13 CA. The case of **Jesudason v Alder Hey Children's NHS Foundation Trust**, 2020 ICR 1226 CA provides that the tribunal has to decide whether there has been a detriment as a matter of fact, and that causation of the detriment is a separate matter.

170. **Section 94** of the 1996 Act provides that an employee has the right not to be unfairly dismissed by his employer. Under **section 95**, an employee is treated as being dismissed by their employer if, under paragraph (1) (c), the

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

171. **Dismissal**: The claimant relies upon the respondent's breach of the implied term of trust and confidence as justifying her resignation in this case. The effect of the implied term is that the employer will not, without reasonable and proper cause, conduct their business in a manner likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. We remind ourselves that this is a contractual test, in which the range of reasonable responses test has no place **- Bournemouth University v Buckland** 2010 ICR CA at p908.

172. The well-known case of **Western Excavating (ECC) v Sharp** 1978 ICR 221 CA provides that the employer's conduct must involve a repudiatory breach of contract, that is a significant breach going to the root of the contract, in other words one which shows that the employer no longer intends to be bound by the contract. The breach must have caused the claimant to resign, and the claimant must not have affirmed the contract by their conduct. Depending on the circumstances, significant delay may (but will not necessarily) result in affirmation being implied.

173. We remind ourselves of the case of **Woods v WM Car Services Peterborough** 1981 ICR 66 which provides that we must ask ourselves whether the respondent's conduct overall is such that the effect is that the employee cannot be expected to put up with it. In the case of **WA Goold (Pearmak) v McConnell** 1995 IRLR 576 it was held that it is implicit in the implied term of trust and confidence that the employer will reasonably and promptly afford a reasonable opportunity to an employee to obtain redress for any grievance they may have. Failure to engage with the employee's grievance in a full and fair manner may lead to a breach of the implied term of trust and confidence. It is for the tribunal to decide whether what occurred was sufficiently serious as to amount to a breach of the implied term.

174. The tribunal must consider whether, if the conduct looked at overall was such as to destroy or seriously damage trust and confidence between employer and employee, the employer had reasonable and proper cause for its conduct. The burden is on the employee to show that there was no reasonable or proper cause for the conduct.

175. We reminded ourselves of the cases of **Lewis v Motorworld Garages Ltd** 1986 ICR p157 CA and **Omilaju v Waltham Forest London Borough Council** 2005 ICR 481 CA which provide that the last straw must contribute something to the breach of the implied term and must not be wholly innocuous. We must decide whether the so called "last straw" was by itself a repudiatory breach of contract. If it was not, we should go on to consider whether it was nevertheless part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence. The question of whether the implied term has been breached is an objective test and we do not need to make any findings about the employer's intention.

176. If it is established that the employer has repudiated the contract of employment by its conduct, we must ask ourselves whether the employee has accepted the repudiation by treating the contract as at an end – the employer's repudiatory conduct need not be the only reason for the employee's resignation, but it must be "a" reason for the resignation –it must be an effective cause.

177. If there has been a repudiatory breach we must also consider whether the claimant has affirmed the contract, as mentioned above. **:** We reminded ourselves of the principles set out in **Kaur v Leeds Teaching Hospitals NHS Trust** 2019 ICR 1 CA: what was the most recent act or omission which the employee says caused or triggered her resignation? Has she affirmed the contract since that act? If not, was that act or omission by itself a repudiatory breach of contract? If not, was it nevertheless part of a course of conduct comprising several acts or omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term? If so, did the employee resign in response (or partly in response) to that breach?
178. If we find that there has been a dismissal, the dismissal is **not necessarily unfair** and we must go on to consider the provisions in section 98 of the 1996 Act, that is under section 98 subsections (1) and (2) whether the employer has shown that the reason for the dismissal was a potentially fair reason and, if so, we must go on to decide whether the dismissal was fair or unfair under subsection (4), having regard to the reason shown by the employer and considering whether in the circumstances, including the size and administrative resources of the employer's undertaking, the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and this shall be determined in accordance with equity and the substantial merits of the case.
179. In this case, the respondent did not suggest that the claim for unfair dismissal was out of time, and we find that, the claimant having resigned with effect from the 18th of March 2022, the unfair dismissal claim was made in time on 3 June 2022.

APPLICATION OF LAW TO FACTS

180. Detriment under section 45A (1)(f) of the Employment Rights Act 1996: we firstly considered whether the claimant had established that she had been subjected to detriment within the meaning of the Act by the matters alleged in the list of issues.
181. In answer to a question from the tribunal, the claimant said that she considered that she had been subjected to detriment by PC, KL, JD, AA, PSG- although at first the claimant was unsure about PSG and said she did not know – and she was unsure as to whether GD or EB had subjected her to detriment.
182. **Issue 1.1**: investigating the claimant's use of a printer on 26 March 2021 and in the days immediately thereafter. We have interpreted this to cover the investigation carried out by PC and KL in respect of the claimant's use of the printer on the 29th of March and 12th of April 2021. It was agreed that the investigation did not commence until, at the earliest the morning of the 29th of March 2021.
183. As we have set out in our findings of fact, PC's investigation of the claimant's use of the printer at the Greenford office was prompted by a report from ES on 29 March 2021 that the office was going through a lot of stationery and that all the paper she had left in the printer on the previous Friday had been used up, and that in addition approximately 1.5 reams of paper had been used. There is no evidence that PC was given the claimant's name at this stage. We find that PC initially commenced a general investigation into who had been using the printer between Friday the 26th and Monday the 29th of March 2021. As

appears from our findings of fact, it seems that PC became aware at some point between the 29th March and 19th of April 2021 that it was the claimant who had carried out a significant amount of printing on the 29th of March and the 12th of April 2021. In our view, as the respondent's Computer, email and Internet usage policy makes it clear that employees should not print for personal use it was entirely reasonable of PC to investigate who was responsible for the apparent increase in the use of stationery. Upon learning that the claimant had printed out substantial quantities of material on both the 29th of March and the 12th of April 2021, we again think it was entirely reasonable of PC to investigate that further. The Internet usage policy is quite clear that any personal use must be minimal, that any private use is expected to be in the employee's own time, and the printers should only be used for business purposes.

184. The claimant has always accepted that she did use the respondent's printer to print out past examination papers so that her son could study for his GCSE's, and she has never disputed the number of pages that were printed but says that she had not printed in colour and that she substantially used her own paper. In those circumstances and considering that PC and KL had evidence by the 19th of April 2021 at the latest that the claimant had printed a significant number of pages on the respondent's computer, we do not consider that a reasonable employee in the claimant's situation would have considered themselves placed at a disadvantage simply by the fact that PC and KL had commenced a disciplinary investigation into the matter.The claimant was unable to demonstrate that any of her colleagues had printed for personal use to a similar extent but had not been subjected to a disciplinary investigation – and she accepted in evidence that, having seen the fuller printout from page 341 in the bundle, her printer usage "stood out".

185. Considering **issue 1.2, however**, whether the fact that the claimant was subjected to disciplinary action in relation to her use of the printer amounted to a detriment, we have interpreted this to refer to the decision by PC to commence disciplinary action following the investigation meeting on the 26th of April 2021. At that meeting, the claimant had made it clear that she disputed printing in colour. She also disputed using the respondent's paper to a substantial extent, saying that she had brought more than 500 sheets of her own paper in. The claimant also made it clear that she did not know exactly what she was accused of, whether it related to an allegation that she had used the respondent's paper to a substantial degree or whether it was that she had printed in colour. At the end of the investigation meeting, PC made it clear that she would do some further investigation.

186. The respondent's disciplinary procedure states that the respondent will carry out any necessary investigations to establish the facts of the case – page 159. It also states that the respondent will inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.

187. We have found that PC did try to find out from GD (in the respondent's IT department) whether the claimant had printed in colour and whether it was possible to find out which websites she had visited to check this. GD's response was cursory, simply relying on the print log, and he apparently told PC that he could not check which websites the claimant had visited, although this was later shown to be incorrect.

188. The claimant was also prevented from calling her 16-year-old son at the disciplinary investigation meeting, so that she could ask him if the printed sheets were in black and white and so that PC and KL could evaluate his evidence. We agree with the claimant that asking her to feedback to KL and PC what he had said later was an inadequate substitute as they would not be able to see and hear him, and the spontaneity of the claimant's suggestion would be lost.
189. PC did not make any investigation into exactly how much paper had been used, or whether ES or anyone else had been aware of the claimant bringing in her own paper. As PC said that it was the cost of the stationery that which had initially troubled her sufficiently to start a disciplinary investigation, and it was clear that the claimant was disputing how much had been used, we find this surprising.
190. In addition, at the disciplinary investigation, the claimant had made it clear that she did not understand what she was being accused of, whether it was due to printing and colour or whether it was use of the respondent's paper, or a combination of these matters and the fact of printing to this extent. When the invitation to the disciplinary meeting was sent to the claimant on the 18th of June 2021, it used the same wording as had been used in the invitation to the investigation meeting, referring to "serious misuse, abuse of office resources". It was not clear what the office resources were being referred to, whether it was the using the printer for personal use, colour printing or using the respondent's paper, or a combination of these, and what rendered the allegation "serious".
191. Looking at the matter objectively, we consider that a reasonable employee in the claimant's situation would have felt themselves placed at a disadvantage by disciplinary proceedings being started at that point, 18 June 2021, and in those circumstances, when important issues (whether she had brought in a substantial quantity of her own paper, how much of the respondent's own paper had actually been used, and whether that exceeded the amount, if any, used in printing by the claimant, whether it was in colour) had not been adequately investigated and when the nature of the allegations against her had not been made clear, and that the claimant was therefore subjected to a detriment by being subjected to disciplinary action at that time and in those particular circumstances.
192. **Issue 1.3**, the issuing of a first written warning regarding the claimant's use of the printer. The claimant has never disputed that a first written warning was an appropriate sanction for the actions she admitted - that is, that on the 29th of March and the 12th of April 2021, whilst at work, she used the respondent's computer and printer to print off over 750 pages containing past examination papers. She accepts that, in retrospect, she should have asked the respondent's permission to do so and has acknowledged that she did receive prior notice of the respondent's policy and procedure on Computer and Internet use prior to those dates. As we have seen, these prohibit personal use of the printers, and that personal use of the internet should be minimal, in the employee's own time. The claimant accepted that she had gone on to examination board websites for personal purposes and had printed excessively from them whilst at work. She did not appeal against the disciplinary sanction imposed by PSG, the first written warning, because she accepted that it was a reasonable sanction given her admitted actions. The basis of her grievance

was, rather, that allegations had been made against her which were not dealt with by PSG in his disciplinary outcome letter, rather than the sanction applied.

193. It follows that we do not consider that a reasonable employee in the claimant's position would have considered herself to be placed at a disadvantage simply by the issuing of the first written warning, and we find that this did not amount to a detriment.

194. **Issue 1.4**, falsely accusing the claimant in respect of her use of the printer, of not using her own paper, of printing in colour and of overriding the respondents printer IT systems/settings : at the hearing, the Judge asked the claimant if by "falsely accused" she meant that the respondent had deliberately falsely alleged that she had done these things, knowing that she had not, and she agreed that this was what she intended.

195. The key issues are whether, at any, stage the respondent then knowingly and deliberately made a false accusation that the claimant had printed in colour, and had overridden the settings on the respondent's computer and printer system and used the respondent's paper to do so. We do not accept that PC had "falsely accused" the claimant in that sense. PC had evidence before her that a substantial quantity of printer paper belonging to the respondent had been used on the dates in question and had the printer log between pages 97 to 99 which said that the claimant had printed in colour. At the stage that PC was involved, there was no disciplinary allegation that the claimant had overridden the printer system. The claimant was clear in her evidence that no-one had said that the printers at the Greenford Office were set to print at black and white until SI said this at the disciplinary hearing in June 2021. PC's investigation report indicates that contacted IT to restrict the claimant's ability to print on the 12th of April 2021, that is after the last occasion on which the claimant printed. PC's evidence was unclear when she gained knowledge of what the claimant had printed, and thus when she asked for her ability to print to be restricted. What we do know is that the claimant's account had been disabled by 19 April 2021.

196. We have referred in our findings of fact to PSG's outcome letter, confirming that the claimant was to be given a first written warning. In this letter, there is no allegation that the claimant printed in colour, or used the respondent's paper, or overrode the respondent's printing system. The first written warning was given because of an "excessive amount of personal printing on the respondent's printers over the two days specified in the allegation" – p184. We accept that the disciplinary allegation was vague, but as a result cannot conclude that it contained "false" (in the sense agreed by the claimant) allegations of colour printing and use of the respondent's paper.

197. As noted above, the claimant's concern that she was being accused of overriding the settings on the printer originated from SI stating, in the disciplinary meeting with PSG on the 22nd of June 2021, that the printers at Greenford office had been set to default to black and white printing some years previously, so that it would not have been possible for the claimant print in colour. Then, later, on the 21st of September 2021, KL had commented that the respondents IT department had confirmed that the printer in Greenford was set up as black and white "which is what is in the report." It was never made clear to which report KL was referring, but the claimant inferred from this statement that there was a report from IT which had confirmed that the printer at Greenford was set to print black and white, which implied that the claimant must have

overridden the printer settings if, as the respondent's log said, she had printed in colour. So, it was never an express allegation within the disciplinary proceedings that the claimant had overridden settings on the printer at Greenford, and we do not find that KL's ambiguous comment on 21 September 2021 was an allegation that the claimant had overridden the printer commands. There is certainly no evidence that KL knew that the claimant had printed in black and white but was falsely suggesting that she printed in colour nevertheless or knew that the claimant had brought in her own paper but was falsely asserting that she had not.

198. We have seen from the minutes of the grievance investigation meeting on the 12th of November 2021 that the claimant alleged at that meeting that she had been accused of overriding an IT command. This can only be a reference to what was said by KL at the stage 1 absence review meeting on the 21st of September 2021, and at page 247 JD has recorded it as an allegation that the IT department alleged that the claimant overrode a printer command to print in colour (emphasis added). We have made our findings about that comment above. JD's outcome letter at page 248 and 249 states that " IT confirmed that the Greenford printer is set at a default to black and white". It is not clear where he obtained this information from, and it may even have come from the claimants reply to him on the 22nd of November 2021. He did not suggest that he had obtained this information from GD or had seen any "report". We were not satisfied on the balance of probabilities that JD had asked KL whether she had been told that the Greenford printer was set at a default to print at black and white or whether there was a written report from IT to that effect. He was asked twice about this by the claimant and his response was vague and unclear. He replied that he had asked KL if she had any additional evidence that the claimant had printed in colour and had been referred back to the initial 3 page print log provided to PC. We concluded that he did not ask KL about the comments attributed to her on 21 September 2021 and did not ask her if she had seen a report from IT which confirmed the Greenford printer had a default setting of black and white, so that if the claimant had printed in colour, she must have overridden it.

199. We find that his failure to clarify this detail was because JD was not focussed (as he should have been) on the issues raised in the claimant's grievance, but rather whether the disciplinary sanction was appropriate in all the circumstances. He was also, as he told us, keen to "wrap up" the grievance as quickly as he could because he knew the claimant was asking for a prompt resolution, and therefore we find that he did not give the details of the claimant's grievance as much attention as he should have. We will return to those matters below.

200. We are satisfied that, however, JD genuinely formed a belief that the printer at Greenford was set to print at black and white. He simply records this in his report as a matter of fact and does not, in terms, accuse the claimant of overriding the settings. On the balance of probabilities, we accepted his evidence that he had not been able to conclude whether the claimant had printed in colour or not. In the circumstances, we do not consider that he falsely (in the sense of knowing that this was wrong) accused the claimant of printing in colour, or of overriding the respondent's printing systems to do so. We have found that JD never investigated how much of the respondent's paper had been used on the 29th of March or the 12th of April 2021 and specifically that he did

not investigate thoroughly whether the claimant had used the respondent's paper or her own. He did not accuse the claimant using the respondent's paper in his grievance outcome letter – pages 247 -249.

201. In respect of the grievance appeal hearing, the minutes of the grievance appeal hearing which took place on the 24th of January 2022 before AA suggest that it was SI who first referred to overriding IT commands, and that he rather confused the situation by suggesting that PC's investigation report said that the claimants ability to print had been restricted before the 12th of April and that the claimant had somehow overridden this. This is not in fact what PC's report said- she said that after the claimant had printed on 12 April, she ensured that her ability to print was restricted – page 91. SI's comments clearly confused AA; it is clear from her witness statement that she thought that the claimant had printed on 12th of April 2021 even though her ability to do so had already been blocked. She told us that this was her interpretation of PC's investigation report, but in our view that report cannot reasonably bear such an interpretation. PC's evidence was that the claimant's ability to print was not restricted until after the 12th of April 2021.

202. In the grievance appeal outcome letter, AA accuses the claimant of continuing to print on the 12th of April after PC had told her not to – page 282. We find that this was a misunderstanding by AA of the situation, and that she had misread the investigation reports, and may have been confused by SI's comments. In the grievance appeal outcome letter, however, she did suggest that the claimant may have overridden the printer settings to print in colour, but she did so because of a conversation she had with the Head of IT - p282. Her explanation of that is difficult to understand and that is why the claimant later raised a question about what it meant – page 299. AA's eventual response was unclear and did not address the claimant's concerns. She had not actually checked for herself whether there were any restrictions on the claimant's ability to print in colour at the relevant time. She states, at the foot of page 281, "I find that the type of printing (colour or black and white) has minimal relevance to the overall issue of printing 759 pages. This is a serious misuse and abuse of resources belonging to the respondent. In addition to this it is misuse of the Charity's time when you are paid to do your job". We find that, on the evidence we heard from AA, she was more concerned about the fact that the claimant had spent time whilst at work using the respondent's printer to print a large number of pages from the Internet rather than specifically whether it was in black and white or in colour. Like JD she was more concerned about whether the disciplinary sanction which had been applied was appropriate than the details of the claimant's grievance.

203. She did not investigate whether the claimant had used her own paper or the respondent's paper. In the grievance appeal outcome, she did not accuse the claimant of using the respondent's paper.

204. For these reasons, we do not consider that AA falsely (In the sense of knowing that this was wrong or untrue and making the accusation nonetheless) accused the claimant of printing in colour, overriding the respondent's printer systems or using the respondent's paper.

205. In any case, on the evidence we heard, none of the respondent's witnesses were able to establish whether the documents printed by the claimant were actually in black and white or colour, whether the claimant's printing had been restricted in any way before 19 April 2021 and whether it would have been

possible for the claimant to print in colour from that computer and printer given any settings in place at the time. They did not adequately investigate how much paper had been used or gone missing, despite the claimant pointing out discrepancies as to how much paper was missing and that on any view this seemed to be more than the amount of printing carried out by the claimant (500 pages printed on 29 March but at least 750 sheets of paper said to be missing on that date). They cannot be said, therefore, to have knowingly and/or deliberately wrongly accused the claimant in respect of those matters, but their investigation of the issues raised by the claimant was manifestly inadequate.

206. For the avoidance of any doubt, there would be an initial evidential burden on the claimant to establish that she was subjected to detriment in this way, but there is simply insufficient evidence before us to establish that the claimant did only print in black and white and substantially used her own paper to do so and the allegation that she was subjected to detriment by being falsely accused in this way must fail. It is not for the Tribunal to make its own enquiries, for example by visiting websites; we must make our decisions based on the evidence before us.

207. We find that the respondent did, objectively, place the claimant as a disadvantage and therefore did subject her to detriment by unreasonably delaying the implementation of the grievance process **(Issue 1.5)**. The claimant's grievance was acknowledged by KL on the 15th of October 2021, but she did not receive an invitation to meet JD until the 10th of November 2021, and after meeting him on 12 November 2021 did not receive the outcome of the grievance until the 3rd of December 2021. As we have seen, the respondent's grievance policy states that normally a date for a grievance meeting will be set within two working days of the grievance being lodged, will take place within five working days and that the decision will be confirmed within 10 working days. Whilst it is clear that JD did need to carry out some further investigation after meeting with the claimant, there was no attempt to agree a date for the grievance hearing until the 10th of November, nearly four weeks after the claimant had lodged her grievance. No proper explanation has been given for this. KL was absent from the 21st of October to the 1st of November, but there has been no explanation as to why another HR business partner could not have assisted with the claimant's grievance, or why there was a further delay of 10 days after KL returned from leave before the claimant was given a hearing date.

208. There was then a further delay of 3 weeks before the claimant received the grievance outcome. We accept that JD had some further investigation to do, and that there was some delay in him contacting ES, but he was entirely unclear as to what relevant information he had received from ES in his evidence, although he described her input as "crucial". For example, he was unable to tell us how much of the respondent's paper was used on 29 March and 12 April 2021, and did not suggest he obtained this information from ES. He refers to p100 in his witness statement, but that is ES's statement of 16 April 2021. We do not think that the action he took justified the substantial delay. Overall, it took almost seven weeks for the claimant's grievance to be dealt with and we find that this was an unreasonable delay by the respondent and that a reasonable employee in the claimant's situation would have regarded this as a detriment.

209. Logically, the next issue to be considered is whether the respondent subjected the claimant to detriment by not upholding her grievance (**Issue 1.7)**.

As we have seen, the claimant's grievance is set out in her e-mail pages 216 and 217 and was sent on the 15th of October 2021. The e-mail sets out clearly the claimant's concerns which had resulted, she said, in her work-related stress, depression and anxiety. These were that she was disciplined at work for printing in colour when she had printed in black and white; secondly that the respondent's IT department had claimed that when PC asked them to stop the claimant from printing, she had overridden the command and had printed again; in addition she was concerned that she had disputed the amount of the respondent's paper that was used but the allegation was persisted with. She was clear that she was not complaining about being awarded a first written warning, because as she says the first written warning did not confirm that she had printed in colour and lied about that and did not confirm that she had overridden IT instructions. She also raised an issue about the light switch at Greenford.

210. The problem with this allegation is that it, in order for us to find that the claimant was subjected to detriment, it requires us to find that the claimant's grievance should have been upheld, but we simply have not been provided with sufficient evidence to do so. This is, as we set out below, partly because the respondent failed adequately to investigate the claimant's grievance at either the grievance or grievance appeal stage. There is no evidence from the respondent's IT department to the effect that there was a setting, whether on the printer at Greenford or on the claimant's access to it, which prevented her from printing in colour. The respondent never checked whether it was possible to print in colour from the websites which the claimant had visited on the relevant dates. The respondent through PSG was dismissive when the claimant asked to present the pages which she had printed, which she says were in black and white, and those were not produced to us either. No-one looked at the past examination papers on the AQA and EdExcel websites to check whether they were in colour or black and white. The respondent did not adequately investigate how much of its paper had been used and whether or not that substantially exceeded the number of pages printed by the claimant. As the claimant says there is a discrepancy as to how much paper was used. There is no evidence before us that anyone asked ES if the claimant had shown her paper that she had brought in to print from.

211. So far as the light switch is concerned, we accept JD's evidence that when he visited the Greenford office in October 2021, it was by then possible to adjust the light in the Greenford office to "dim" it, and therefore the matter the claimant complained about had been rectified. She had not, in any case, been at work and therefore had not suffered any detriment during the period when the light switch could not be dimmed.

212. In those circumstances, it is not possible for us to find positively that the claimant's grievance should have been upheld, and therefore we find that she was not subjected to detriment by it being dismissed, but we return to the respondents failure to carry out sufficient investigation below.

213. The next issue logically is **issue 1.6**, unreasonably delaying the process involved in considering the claimant's grievance appeal outcome. The claimant appealed against the grievance outcome on the 8th of December 2021, giving grounds of appeal. By the 31st of December she still had not heard anything further about the appeal. It was not until the 7th of January 2022 the SC wrote to the claimant giving her details of the appeal hearing, which was initially

scheduled to take place on the 13th of January, but which had to be delayed on the until the 24th of January because the claimant had coronavirus. The claimants received the outcome of the appeal on the 4th of February 2022.

214. The respondent's grievance procedure specifies, at page 86, that it is important that grievances are dealt with speedily. At each stage (emphasis added) it is recommended that the line manager should acknowledge the grievance immediately and that a consultation with a staff member should take place within two working days to arrange a hearing date. A written decision on appeal should be provided within 10 working days (page 88).

215. It took more than four weeks for the respondent to contact the claimant to set a hearing date. Although the hearing was then further delayed because of the claimant's illness, and AA did then reply to the claimant after 10 working days, we do consider that the delay in dealing with the grievance appeal overall was unreasonable. In a procedure which sets an expectation that a hearing date will be set within two working days, a delay of over 4 weeks before the hearing is set is in our view unreasonable. We consider that a reasonable employee in the claimants situation would have felt themselves to have been placed at disadvantage by such a delay, and therefore she was subjected to detriment by it. This is particularly so given the claimant's state of health, which was well known to the respondent by the time that she lodged her grievance and grievance appeal.

216. Issue 1.8: the respondent failing to uphold the claimants appeal against the grievance outcome. As we have indicated above, the way in which this allegation is formulated presupposes that the claimant's grievance and appeal was justified. As we have explained, the evidence before us did not go so far asked to enable us to find that the substance of the claimant's grievance was correct or justified. In her evidence to us, for example, AA confirmed that at the time of the appeal hearing, she was not aware that IT had confirmed to KL that the printers at Greenford were set to default to black and white (which is how the claimant had understood KL's statement from the OH review on the 21st of September 2021). AA accepted that she had never seen any reports which said that the printer at Greenford was set to black and white. She said instead that she was aware of being able to print in colour on that printer, and that printing "permissions" given to different employees varied. She did not, however, check with anyone what the claimant's permissions were at the relevant time or whether there was any other setting on the printer (or in respect of the claimant's permissions) which would have prevented the claimant from printing in colour. Despite the exchange of emails between EB and CD, AA did not check whether it was possible to print in colour or only in black and white from the websites that the claimant had visited. She did not check with anyone exactly how much paper had been used, and as we have set out above, we considered that was because she was mainly concerned about the amount of printing that the claimant had done during working hours and for personal purposes, when the respondents policy was clear that the printers should only be used for business purposes and that personal internet usage should be kept to a minimum.

217. In the context of her claim under section 45A of the 1996 act, the burden is on the claimant to prove that she was subjected to detriment. Section 48(2) only applies once the claimant has established that certain acts or failures to act occurred. We find that the claimant has failed to prove on the balance of

probabilities that her grievances should have been upheld and therefore that her grievance appeal should have succeeded and so we find that the claimant was not subjected to detriment by having her grievance appeal refused.

218. **Issue 1.9**: this relates to the stage 3 sickness absence meeting which took place on the 14th of February 2022, and to the amendments to the minutes produced by the claimant from the illicit recording that she had carried out. As we have noted, despite the way in which the recording was obtained, the respondent now accepts that the claimant's version is accurate, insofar as it relates to the passages on page 323. As we have seen, AA made it clear that the head of IT -CD- had said that it was possible for the respondent to check the websites that the claimant had visited and that the respondent could ask the website host if it was possible to print in colour from the site (or could ask the claimant to do so). This was the first time that the claimant was told this, and she did not actually see the emails from CD (exhibit "R1") until the start of the hearing before us. In the meeting on 14 February 2022, SI asked if AA would be contacting the host for this information and she said that she would not. He then asked whether IT had "come back to her" about the claimant overriding the IT system to allow her to print when IT had prevented her from doing so, or to override the setting (which, he said was set at a default of black and white) in order to print in colour. AA replied that she did not check with the head of IT about the claimant overriding the IT systems. As we have seen, the issue of whether she printed in colour and whether she had overridden the respondent's systems to do so were central to the claimant's grievances.

219. The respondent's grievance policy is very clear that any person hearing the grievance should take as much time as necessary and ask as many questions as are relevant to ensure that the complaint is understood fully. They should avoid taking a defensive attitude and understand that the purpose of the hearing is to hear the complaint, not to defend the organisation. They should give proper consideration to the issues raised. They should ensure that the hearing does not turn into any kind of disciplinary procedure.

220. It was clear to us that AA, like JD, instead of investigating the claimant's grievance, had focused upon whether the disciplinary sanction awarded by PSG had been fair and justified. The claimant had made it very clear that she was not complaining about being given a first written warning for what she admitted doing, but that she was aggrieved by the fact that allegations had been made that she had printed in colour and used the respondent's paper in order to do so without those matters having been properly investigated, and that she denied them. We therefore find that AA, like JD, did not give proper consideration to the issues raised by the claimant. The claimant had a right to expect that reasonable steps would be taken to consider her grievances, and we consider that an objective person in the claimant's situation would have felt placed at a disadvantage by AA's comments at the stage 3 sickness absence meeting, which showed her failure adequately to address the basis of the claimant's grievance appeal.

221. Issue **1.10**: as is apparent from our findings of fact and our comments above, we accept on the balance of probabilities that the respondent failed adequately to investigate the claimant's assertions that she could not have overridden the respondent's printer systems and had only printed in black and white. PC did not suggest that the claimant had overridden any settings on the printer. In her report she states that the claimant's ability to print was only

restricted after the 12th of April 2021. She does not deal at all with whether the printer was set to black and white and in her evidence to us did not suggest that she had checked whether the claimant's permissions extended to printing in colour.

222. PSG's evidence was that he thought that the claimant had printed in colour, but he did not include that in his findings and, although SI had told him that the printer settings at Greenford were set to black and white, he did not investigate this. Nor did he try to check which websites the claimant has visited and whether it was possible to print in colour from those.

223. The claimant had requested further investigation into the issue of whether she had printed in colour and whether the printers defaulted to black and white at the stage 2 sickness absence meeting on 21 September 2021. In her eventual reply on 15 October 2021, page 217/8, KL repeated that she had said that as the matter had been subject to a disciplinary hearing and had not been appealed, the respondent regarded it as closed, but that she had discussed the matter with her manager TC to see if anything further could be done. She says on page 218 that she had been advised that "as the case had been taken through a completed formal process and that we will not re-investigate an already completed case." We have no reason to doubt that this is what she was advised by TC. There has been no suggestion by the claimant that TC subjected her to detriment because she had given evidence alleging that the respondent had breached the WTR.

224. Although JD visited the Greenford office in order to check the light switch, he did not investigate whether it was possible to print in colour from the printer, and instead relied only upon the initial printer log, and what he was told by GD. GD was not sure as to how the claimant could have overridden any printer settings. JD did not check whether the printer at Greenford was in fact set to black and white as a default, nor whether there was any restriction at the relevant time on the claimant's ability to print in colour. So, he did not check whether the claimant would need to override any settings to print in colour. Instead, he relied only upon his own experience of a different office where he and some (but not all) of his colleagues were able to print in colour.

225. AA attempted initially to carry out some investigation as to whether the claimant could print in colour but did not share this with the claimant. The attempts by EB on her behalf to obtain more clarity failed, as CD did not (or was unable to) answer her questions about whether or not the claimant's ability to print had been restricted, he simply says that IT would not wholly restrict any user from printing but would if requested restrict colour printing. He does not say whether the claimant's ability to print in colour was actually restricted. He said that surfing history was not retained, but we have seen that the respondent was able to obtain details of the websites the claimant visited on the 29th of March 2021.

226. CD's suggestion that the respondent visit the websites in question or ask the website host to check whether colour printing was possible were not pursued by AA or EB. We accept that AA did speak to CD on the telephone, but again she did not specifically ask whether the claimant's permission to print in colour had actually been restricted or whether the default setting for the printer at Greenford was black and white, because she knew that she (AA) could print in colour. That does not answer the question of whether at the relevant times the claimant's ability to do so was restricted in any way. We find

that this was a very simple step that the respondent could have taken at any stage, that is to ask IT whether the claimant's ability to print in colour had been restricted at the relevant time or not. Likewise, when AA received the printout showing the websites from which the claimant had printed on the 29th of March 2021 (which appeared to corroborate what the claimant had said all along - that these were examination board websites), it would not have been difficult at all for AA to check the website or contact the website host, or ask someone else employed by the respondent to do so, as CD had suggested.

227. Although it is not part of the allegation 1.10, the claimants grievance had also challenged whether or not she had used a substantial quantity of the respondent's paper in order to print, and none of those involved investigated this issue or the discrepancy between what PC and ES had said, or the fact that on any view the amount of paper they referred to exceeded that which the claimant would have needed in order to print. We find that this was another indication that the focus of JD and AA was not on the substance of the claimant's grievance, but on whether the sanction with which she had been given was justified by what she admitted. A reasonable employee in the claimant's situation would have felt that they were placed at a disadvantage by the respondent's failure to investigate these matters.

228. So we have accepted that issues 1.2 1.5, 1.6, 1.9 and 1.10 amounted to detriments.

229. We have gone on to consider whether, on the evidence before us, the respondent has demonstrated that those matters were **not done on the ground** that the claimant had alleged that the respondent had infringed a right under the Working Time Regulations 1998 ("WTR"), in the sense that its treatment of the claimant in those ways was not materially (that is, more than trivially) influenced by that conduct.

230. **Issue 1.2**: The decision to subject the claimant to disciplinary action on the 18th of June 2021 was taken by PC (see paragraph 15 of her witness statement, which we accept). PC was not, at that point, aware that the claimant had given evidence in support of SI at an employment tribunal, and therefore her decision that the disciplinary allegations should proceed was not done on the ground that the claimant had alleged that the respondent had infringed rights under the WTR – her decision could not have been influenced by that factor because she was not aware of it. We appreciate that KL supported PC in that decision, but on the evidence before us, we have no reason to conclude that KL was the person who made the decision or that she influenced the decision, and it was not suggested to PC that she did. We dismiss that allegation.

231. Likewise, we have found that there were unreasonable delays in implementing the grievance and grievance appeal processes (**Issues 1.5 and 1.6**). Different HR Business Partners were involved in the grievance and in the grievance appeal respectively.

232. KL was involved in the claimant's grievance at the outset, acknowledging it on 15 October 2021. By 10 November 2021, however, she had passed responsibility for assisting with the grievance to SC, although KL continued to be involved with the sickness absence procedure and both JD and AA asked her questions during their involvement with the grievance and grievance appeal. The claimant told us that KL was aware of her support for SI in the Employment Tribunal and had observed at least part of it. We have observed

that there was an unreasonable delay between receipt of the claimant's grievance and the setting up of the grievance hearing on 10 November 2021. It has not been fully explained, although in his evidence JD said that there was some delay in finding a panel to deal with the grievance. This evidence was unchallenged and we accept that this was a contributory factor. We note, however, that the delay between receipt of the claimant's grievance appeal (8 December 2021) and the setting of a date for the appeal hearing (7 January 2022) was even longer. At that point, the response to the appeal was being coordinated by SC, and there was no evidence from which we could conclude that she was materially influenced by the claimant having given evidence that the respondent had infringed WTR rights 9 months earlier, nor did the claimant even suggest that. Indeed, on the evidence before us, we are not satisfied that JD and SC even knew what the substance of SI's Tribunal case was, or that the claimant had alleged that the respondent had infringed rights under the WTR – in the grievance notes and in her appeal letter she just refers to supporting her colleague at an employment tribunal.

233. JD was not aware that the claimant had given evidence in support of SI until the grievance hearing on 12 November 2021. Although we have found that he contributed to the unreasonable delay in producing the grievance outcome, we accept that this was because he wanted to speak to ES, who had left the organisation, and that it was difficult for them to find a mutually convenient time to speak. We did not consider that it was reasonable for JD to delay the outcome for that reason, but that was because, on the evidence before us, he did not address pertinent enquiries to ES and did not even produce a statement or details of what he asked her, relying on the original statement from April 2021. He told us that he could not ask the claimant's colleagues about the details of the claimant's case because they were "confidential". We find that the reason he did not ask ES relevant questions was because he had focussed on the fairness of the disciplinary sanction rather than the substance of the claimant's grievance (paragraph 12 of his witness statement) and was more interested in the working relationship between the claimant and PC. The delay on his part was not, we conclude, influenced by the fact that the claimant had alleged that the respondent infringed the WTR. He was not in any line management relationship to the claimant and although, as we find, he was confused about his role and the respondent's grievance procedure (he seemed to think he could "give" the claimant a right of appeal) we do not consider that his actions or inactions were influenced at all by the fact that the claimant had alleged that the respondent had infringed the WTR at a previous Tribunal hearing or that he even realised that this was what she meant by "supporting a colleague at an employment tribunal". We accept his evidence at paragraph 16 of his statement that he was not aware of the details of SI's claim. He did not consider those details to be relevant to the task before him.

234. We did not hear from KL, but on the evidence before us we cannot conclude that the delay in organising a grievance hearing or allocating a manager to hear it was due to action or inaction by her on the ground that the claimant had made allegations about infringement by the respondent of the WTR. It was established in evidence that the respondent would have known that the claimant was due to give evidence at the point of exchange of witness statements, some weeks prior to 29 March, but the claimant accepted that she was not subjected to any detrimental treatment prior to that date, and we have

found above that there was good reason for PC to investigate the claimant's use of the printer on the 29th of March and the 12th of April 2021.As we have found, there was another colleague who gave evidence to similar effect to the claimant at SI's Tribunal hearing and there is no evidence before us that she was disciplined or subjected to any specific detriment as a result. We know that KL was away during part of the period between 15 October and 10 November, and that she had initially told the claimant that she would hear about a date by 22 October, that is, within 5 working days. This does not suggest that her conduct in this respect was influenced by the claimant having alleged that the respondent had breached the WTR, and we have accepted JD's evidence that there was some difficulty in finding a panel to hear the grievance. So, although there was an unreasonable delay in dealing with the grievance, in all the circumstances we are unable to draw a conclusion, on the facts found, that the delay was due to actions or deliberate failures to act on KL or JD's part which were influenced in any way by the claimant having given evidence to the effect that the respondent had infringed the WTR.

235. In relation to the delay regarding the grievance appeal outcome (**1.6)** there was no evidence from which we could conclude that either EB or SC acted or failed to act on the ground the claimant had supported SI in his Employment Tribunal by alleging that the respondent was in breach of the WTR. So far as EB is concerned, consideration of exhibit R1 leads us to the conclusion that in fact, she was trying to assist with the investigation into the claimant's grievances and was picking up relevant points that might assist the claimant. There is no evidence that SC was aware of the claimant having given evidence in support of SI until the grievance hearing on 12 November 2021 and the claimant did not suggest that she (SC) had subjected the claimant to detriment for that reason. We have noted above that the evidence does not go far as to suggest that the claimant expressly told JD and SC what SI's case was about or that she had alleged that the respondent infringed the WTR. There is no evidence from which we could conclude that SC was influenced by that at all, or that she delayed either the grievance outcome, which was produced by JD, or delayed the implementation of the grievance appeal. Her email to the claimant on 31 December 2022 suggests that TC was dealing with the grievance appeal at that stage; the claimant has not alleged that he subjected her to detriment.

236. The claimant was unclear when asked as to whether EB had subjected her to detriment on the ground that she had alleged that the respondent breached the WTR, but there is simply no evidence from which we could conclude that she was influenced by this at all. From what we have seen of exhibit R1, EB was trying to clarify pertinent points and to obtain some helpful information to feedback to the claimant. The fact that her endeavours were unsuccessful is not sufficient for us to infer that she somehow delayed the grievance appeal process and was influenced in doing so by the fact that the claimant had alleged that the respondent had breached the WTR.

237. Although there was unreasonable delay in setting up the grievance appeal hearing, AA did produce the outcome letter within 10 working days as expected (and used the intervening time to investigate some aspects of the situation) and so did not, herself, subject the claimant to detriment by her actions or inactions in this respect.

238. In all the circumstances, we conclude that although the claimant was subjected to detriment by the respondent in respect of unreasonable delays to her grievance and grievance appeal, this was not done on the ground that she had alleged that the respondent had infringed the WTR, and this complaint is dismissed.

239. Regarding **Issue 1.9**, although AA accepted on reflection that she had attended SI's employment tribunal and was aware of what he alleged, we accepted that she could not actually remember having seen the claimant giving evidence at that hearing. On the evidence we have heard, AA was not then involved in the disciplinary or grievance process until January 2022, more than 9 months later, when she was eventually appointed to hear the grievance appeal. She would have been, broadly, aware of the claimant's sickness absence and of the disciplinary outcome as she was by then PC's line manager, but she did not attend any of the sickness absence reviews until the stage 3 meeting on 14 February 2022. Having heard AA's evidence, we concluded that the reasons for her actions or inactions were not that the claimant alleged that the respondent had infringed the WTR when she gave evidence at SI's Employment Tribunal hearing, but rather that she had misconstrued the nature of the claimant's grievance and had focussed instead on whether the disciplinary outcome was justified. We know from AA's statement and her evidence that she, like JD, focussed on the appropriateness of the disciplinary outcome – see paragraph 14 of her statement for example – although the claimant had made it abundantly clear that she was not challenging this through her grievance, but rather wanted the respondent to look into the allegations which the disciplinary outcome did not address.

240. AA was irritated by the fact that the claimant had apparently failed to recognise that she had breached the respondent's policies in a significant manner by using its printers to print material for her son's use, by doing so to an excessive extent, 759 pages over 2 days, and that she had done so during her working hours. By the time of the grievance appeal, the claimant had become fixated on the fact that it had been alleged that she had printed in colour, when she believed she had not (and could not have done, due to what SI told her about the settings on the printer, and KL's ambiguous comment about that on 21 September 2021). She was also upset by the initial allegation that she had used the respondent's paper to excess, which she denied. Although she had initially apologised to PC, she now felt wronged by the additional allegations, which had not been expressly addressed by PSG. We find that it was AA's failure to grasp what the claimant's grievance was about, considering that the matter had been appropriately dealt with by the disciplinary action– see, again, paragraph 14 of AA's statement - coupled with her frustration that the claimant did not seem to be accepting responsibility for what she had done, that caused her to make the comments she did. She was also influenced by the fact that she, herself could print in colour on that printer and so did not see the need to investigate what the claimant's permissions were at the time.

241. We conclude that, taking all of the evidence into account, in saying what she did on 14 February 2022 AA was not materially influenced by the fact that the claimant had made allegations that the respondent had infringed the WTR at SI's Tribunal - this appears to have made very little impression on her, to

the extent that she was unable clearly to recall having seen the claimant give evidence when asked.

242. Likewise**, Issue 1.10**, although we have accepted that the respondent failed to investigate the claimants assertions that she could not have overridden its printer and IT systems and had only printed in black and white, and that this amounted to a detriment, we do not consider that the respondent's employees failed to do so on the ground that the claimant had alleged that the respondent was in breach of the WTR.

243. As we have indicated above, we accept that PC was unaware that the claimant had given evidence in support of SI at the point when she was investigating the allegations against the claimant. Her treatment of the claimant could not, therefore, have been influenced by the fact that the claimant did so (or the content of her evidence).

244. PSG was made aware by SI of that matter at the disciplinary hearing and an allegation was made that this was the reason for the disciplinary proceedings. PSG was dismissive of this; we find that this was because the claimant accepted that she had printed to excess in the respondent's time, whether or not this was in colour and whether or not she used its paper, so that he considered disciplinary action to be justified. We find that, because he was unsure of whether the claimant had or had not used her own papers and the extent to which she had printed in colour, his findings were deliberately vague, and he gave a sanction which was at the lower end of the scale. We find that he avoided making express findings because he considered that, based on what the claimant had admitted, a first written warning was appropriate in any case, and the claimant has accepted this. We consider that he avoided investigating further because he thought that by not specifically addressing the allegations about colour printing and use of paper, and applying a relatively low-level sanction, this would put an end to the matter. He was wrong, but we do not consider that there is any evidence from which we could conclude that he was influenced in his treatment of the claimant by the fact that the claimant had alleged that the respondent had breached the WTR in acting as he did.

245. KL did not investigate further after the stage 2 sickness absence meeting on 21 September 2021 because TC advised her that the matter had already been dealt with formally and should not be re-opened, which was KL's view also – p217. As set out above, it was not suggested by the claimant that TC subjected her to detriment because she had alleged that the respondent infringed the WTR. There is no reason for us to doubt the explanation in KL's letter and we find that neither she nor TC were influenced by the claimant having made the allegations she did at SI's Tribunal hearing.

246. JD was not aware that the claimant had given evidence in support of SI at an Employment Tribunal until the grievance meeting on 12 November 2021. As set out above, we consider that the reason that he failed to adequately investigate the claimant's grievance was that he misdirected himself about the nature of the grievance - he considered whether the disciplinary sanction of a first written warning was appropriate or not, rather than properly investigating the matters raised by the claimant, which she said had not been covered by the disciplinary outcome and to which she wanted answers. We found that JD was confused as to his role, and he admitted that he had never read the ACAS Code of Practice on Disciplinary and Grievance Procedures. He said that he was familiar with the respondent's grievance process, but repeatedly said that he

"had given the claimant a right of appeal" because he was unable to reach conclusions about whether she had printed in colour or not. He was apparently unaware that an appeal was not in his gift but something that the claimant was entitled to under the respondent's grievance procedure.

247. Paragraph 17 of his witness statement, which we accept, illustrates the depth of his misunderstanding about his task in hearing the claimant's grievance – he states that "**the point raised by the claimant that the printer in the office cannot print in colour was not taken to consideration [sic] because the bases of the warning issued to the claimant was not for printing in black and white or colour but for serious misuse and abuse of office resources**" belonging to the respondent [emphasis added]. So his failure to investigate the issues of whether the claimant printed in black and white or colour, and whether she had/could have overridden any printer settings was not materially influenced by the fact that the claimant had supported SI in the Tribunal about breach of the WTR – he was unaware of the details of the "support" she had given - but by his erroneous belief that he was investigating whether the disciplinary sanction awarded by PSG was justified by what the claimant admitted. He was also influenced by the fact that there had already been a significant delay in dealing with the grievance and told us that he wanted to get a response to the claimant quickly. In our view, this also contributed to his failure to pay due attention to the nature of the claimant's grievances and to investigate them adequately. This had nothing to do with the fact that the claimant had given evidence in support of SI several months earlier.

248. Again, in respect of AA we have made findings above re Issue 1.9. Like JD, she focused on whether the sanction awarded to the claimant was appropriate, rather than investigating the matters raised by the claimant. She misunderstood her role and expected the claimant to provide proof that she had printed in black and white, because she assumed that the disciplinary outcome was based on the claimant printing in colour and could see that there was some evidence to that effect from the original log. Because she thought it was up to the claimant to disprove what had been said in the original disciplinary investigation report, rather than for her to investigate it further, she did not look at the websites that the claimant had printed from or even enquire whether the claimant's printing permissions on the respondent's IT systems allowed her to print in colour at the relevant time.

249. As we have said, AA was concerned that by that stage the claimant was not showing remorse and did not appear to appreciate the seriousness of what she had done. In fact, the claimant had accepted responsibility and had apologised to PC for her actions. AA did not appear to appreciate that the claimant was not disputing the disciplinary sanction but was aggrieved that specific allegation had been made about colour printing and use of paper which she disputed, and which had not been expressly dealt with in the disciplinary.

250. AA found the appeal hearing involving the claimant and SI to be very challenging, as she told us. For the same reasons we set out above regarding her comments on 14 February 2022, we considered that her failure to adequately investigate the claimant's grievance appeal was not influenced by the fact that the claimant had alleged that the respondent had breached the WTR in her evidence ten months previously. AA considered that the disciplinary sanction awarded had been appropriate and that the matter was over and done with. In those circumstances, we concluded that she did not consider that it was

her role to make more than cursory enquiries about whether the claimant could or could not have printed in colour. AA's actions were also influenced by her assumption that the claimant could print in colour because she could. Although this does not excuse her failure to investigate further, having heard all the evidence we have concluded that AA was not influenced in her dealing with the grievance appeal by the fact that the claimant had alleged that the respondent was in breach of the WTR ten months previously, in fact we concluded that this factor was not in her mind at all in January and February 2022, when she was dealing with her father's death and was focussing on whether the disciplinary sanction seemed appropriate or not.

251. For the avoidance of any doubt, we did not hear from GD and there was no evidence that he was even aware of SI's Employment Tribunal case. The claimant was unclear as to whether she thought he had subjected her to detriment on the ground that she had alleged that the respondent had infringed the WTR. There is no evidence that he did; we have no evidence that he was responsible for any investigation, disciplinary or grievance hearing or delays or that he subjected the claimant to any of the detriments that we have found, so we reject any such allegation.

252. For all of the above reasons, we dismiss the claimant's claims under section 45A of the Employment Rights Act 1996.

253. **Constructive Unfair dismissal:** In paragraph 80 of her attachment to her claim form, (page 19) as reflected in the list of issues, the claimant was clear that it was the comments made by AA (which are referred to at page 323 in our bundle) which amounted to the final tipping point or last straw which caused her to resign.

254. In the end, the respondent did not dispute that AA had made the comments on page 323 - to the effect that she was not going to look at the Edexcel and AQA websites or contact the host of the websites to find out whether it was possible for the claimant to print in colour from them, and that she did not check with the head of IT about the claimant allegedly overriding the IT settings or systems.

255. The respondent argued that the claimant had affirmed the contract after that meeting because she did not resign until 18 March 2022, having heard AA's comments on 14 February. We accept the claimant's evidence that she needed to consider the matter seriously and that she wanted to see her contract and the minutes of the 14 February 2022 meeting before deciding what to do – paragraph 159 – 162 of the claimant's witness statement. We accept that she did not send in her GP's latest "fit note" in the interim as she was afraid this would amount to affirmation. The claimant received the notes of the 14 February meeting on 8 March 2022 – see page 321 and checked them against the recording she had taken. She also wanted to discuss them with Mr Ikie before finally taking the serious step of resigning. She sent in her amendments to the minutes on the day she resigned – p322- 323.

256. In the circumstances, where the claimant had been absent for a lengthy period due to stress, anxiety and depression, we do not consider that the claimant affirmed her contract by her conduct between 14 February and 18 March 2022.The evidence, including her request for a copy of her contract, suggests that she was considering her position carefully and we do not consider that she delayed so long that her conduct in so doing, or anything else that she did or did not do in that period, amounted to affirmation. Indeed, she was being

careful to avoid affirming the contract by, for example, sending in her latest fit note whilst she considered her position.

257. We next considered whether AA's comments, made on 14 February 2022, amounted to a fundamental breach of the implied term of trust and confidence. We reminded ourselves of the terms of the claimant's grievance appeal. The claimant had made it clear in her grievance appeal that her grievance concerned the accusation that she had printed in colour when she had not and that a factor which was affecting her mental health was that she did not understand how anyone could accuse her of printing in colour when, as she had been told by SI and KL, the printers at Greenford were set to black and white.

258. At the grievance appeal hearing on the 24th of January, the claimant again repeated that she wanted closure, and that she did not print in colour, that the respondent could check the websites that she had been on and that as she had been told the printer was set up to print only in black and white (see for example KL's comments on 21 September 2021 and JD's grievance outcome) she would not know how to override this command. In the grievance appeal outcome letter, at page 281 and 282, having said that she thought that the type of printing, whether colour or black and white, had minimal relevance to the overall issue of printing 759 pages, AA went on to say that IT had provided the respondent with further explanation as to how the claimant could have printed in colour. She said that according to the head of IT, "the printer is connected directly to the computer and overrides the request of [the respondent's] system to log in in order to print". Not surprisingly, because it is not a clear explanation, the claimant had not understood this and had asked for further clarification on 9 February 2022. Then on 14 February 2022, at the stage 3 sickness absence meeting, AA said that she had not checked with the Head of IT about the claimant allegedly overriding the IT systems. So, whilst the grievance appeal outcome implies that AA had checked whether the claimant could override any settings which prevented the claimant from printing in colour, 10 days later AA told the claimant that she had not checked whether the claimant had done so.

259. In our view, looked at objectively, AA's comments on 14 February 2022 did amount to conduct likely to destroy or seriously damage the relationship of trust and confidence between the respondent and the claimant. The grievance appeal outcome letter, at the end of a lengthy grievance process, had suggested that the respondent had properly investigated a matter raised by the claimant in her grievance, albeit that the explanation was unclear, but AA was now telling the claimant she had not done so. We consider that AA had no reasonable and proper cause for, on the one hand, saying in the outcome letter that she had asked the Head of IT for an explanation as to how the claimant could have printed in colour and had received one, indicating that she believed that the claimant had overridden the systems, then telling the claimant in the sickness absence review 10 days later that she had not checked with the Head of IT about the claimant allegedly overriding the IT systems. AA could not explain to us why she had made that comment in the grievance appeal outcome letter but had not checked whether the claimant's ability to print in colour was actually in any way restricted on the relevant dates, as she confirmed to the claimant on 14 February 2022. We concluded that in the context of the claimant's grievance and what had been said in the grievance outcome letter, AA's comments on 14 February 2022 were likely to destroy or seriously damage

the relationship of trust and confidence between the claimant and respondent, for which there was no reasonable or proper cause, and did entitle the claimant to resign without notice as a result.

260. Even if we are wrong about that, we find that AA's comments on the 14th of February 2022 were part of a course of conduct by the respondent which, looked at cumulatively, amounted to conduct likely to destroy or seriously damage the relationship of trust between it and the claimant without reasonable or proper cause.

261. The respondent had advice from its OH adviser that it should seek to identify the nature of the claimant's concerns that were preventing her from returning to work and, if possible, should develop a strategy to deal with those concerns. Instead, having identified the claimant's concern that she had been wrongly accused of printing in colour, had overridden the settings on the printer or elsewhere on the system to do so and had used over 750 sheets of the respondent's paper, matters which seriously aggravated the disciplinary allegation, KL on TC's advice decided to take no action to address the claimant's concerns because the disciplinary process was at an end. This ignored the claimant's concern that PSG's decision about the disciplinary allegations did not deal with these matters.

262. Then, having allowed the claimant to pursue her grievance about the matters not expressly dealt with at the disciplinary hearing –including whether the claimant had printed in colour and, if so, whether and how the claimant had overridden settings on the computer/printing system at Greenford in order to do – the respondent unreasonably delayed both the grievance hearing and outcome and the grievance appeal, as we have found. The grievance procedure is clear that grievances should be dealt with speedily at every stage, and the claimant was entitled to expect that. She had made it clear to the respondent that these matters were affecting her mental health and ability to return to work.

263. In those circumstances, any reasonable employee in the claimant's situation would expect that the respondent would afford her a reasonable opportunity to obtain redress for her grievances (see **WA Goold(Pearmak) v McConnell**). The respondent's grievance procedure and policy at page 87 makes it clear that the manager undertaking the hearing should take as much time as necessary and ask as many questions as are relevant to ensure that the complaint is understood fully. Managers should "give proper consideration to the issues raised". The respondent did not do so; neither JD nor AA asked IT whether the claimant was able to print in colour from her computer at Greenford on the printer located there or whether there were any restrictions on the printer setting or on her permissions to do so. They both simply assumed that because they, as more senior managers, could print in colour, the claimant could as well. AA did not follow up on EB's attempts to clarify this (see R1) – she admitted that she had not asked the questions about restrictions on the claimant's ability to print.

264. The claimant had specifically raised in her grievance and appeal that she had been told that there were settings on the printer at Greenford which meant that she could not print in colour. She sent JD a copy of the extract from her stage 2 sickness absence review on 21 September 2021 from which she had understood that KL had accepted this and had indicated she had seen a report to this effect. But JD did not follow this up, either by asking KL about what she

had said or specifically to see the "report", or by checking with anyone else. AA had some general discussion with CD, the Head of IT, but admitted in evidence that she had not asked specifically what the claimant's printing permissions were at the time, that is whether she was able to print in colour without overriding any restrictions. She did not check whether there was some restriction on printing in black and white at Greenford, as JD had suggested in his outcome, which would have meant that if the claimant had printed in colour, she would have needed to override this.

265. The claimant had repeatedly mentioned, in the grievance and grievance appeal hearings, that the documents she printed, being past examination papers, were black and white documents so that they could not have been printed in colour. JD had been told by GD that the websites could not be traced, but AA knew that they could be as she had received the longer printing log which begins at page 340. She could have looked at the websites as the claimant had asked, could have contacted the website's hosts, or asked the claimant to do so but chose not to.

266. We have found that the reason that both JD and AA failed to investigate the claimant's grievances adequately was because they were focussing on the disciplinary outcome, which they considered to be appropriate regardless of whether the claimant had printed in colour (and, indeed, regardless of whether she had used her own paper). This meant that they simply did not adequately address the elements of the claimant's grievance which related to whether or not she printed in colour and whether she had overridden computer/printer system settings in order to do so. Both JD and AA refer to the original printing log at pages 97-99, but by the time the claimant lodged her grievance she was raising a new point – that she had been told that the printers were set to print in black and white and so she could not have printed in colour, as she did not know how to override this. We observe that in the emails at R1, EB appeared to accept this. Neither JD nor AA took adequate steps to look into this matter, although AA suggested she had in the grievance appeal outcome.

267. In this context, AA's comments on 14 February 2022 were not "innocuous"; she had suggested in her outcome letter that she had checked if the claimant had the ability to override the printer settings but was now saying she had not looked into this.

268. Taking the comments on 14 February 2022 as part of the course of conduct referred to above, we consider that there was no reasonable and proper cause for the respondent to fail to investigate the claimant's assertions that she could not have overridden the respondent's printer/IT systems and had only printed in black and white, for their failure to develop a strategy to deal with the claimant's concerns as advised by the OH adviser ,for their unreasonable delay in dealing with the claimant's grievance and grievance appeal or for AA suggesting in the grievance appeal outcome that she had looked into the claimant's grievance, and in particular what she said about not being able to override printer settings to print in colour, and then saying on 14 February 2022 that she had not done so. We consider that these matters, taken together, amount to conduct likely to destroy or seriously damage the relationship of trust and confidence between employer and employee so that there was a repudiatory breach of the implied term of trust and confidence. The claimant was entitled to expect that the respondent would attempt to abide by its OH adviser's advice, that it would follow its own disciplinary and grievance

procedures by investigating thoroughly and timeously and that if it said it had investigated thoroughly, it had done so. When the respondent did not act in this way, it is easy to see why the claimant lost trust in it.

269. The claimant's resignation letter gives a number of reasons for her resignation, including "several false allegations" [relating to the issue of colour printing and use of the respondent's paper] and AA's comments on 14 February about not investigating whether the claimant had overridden IT systems (in order to print in colour) and refusal to check the websites from which she printed to see if they were in colour or black and white. We accept that these were genuinely why the claimant resigned.

270. The respondent alleged that the claimant resigned because she knew or believed that she would be dismissed under stage 3 of the respondent's absence management procedure. We reject this argument; the claimant was informed on 4 March 2022 that the respondent proposed to refer her to Occupational Health for a further assessment. On the previous occasion, OH had recommended that the respondent should listen to the claimant's concerns and try to resolve them. Although PC and KL had identified the claimant's concerns, they had not taken action to resolve them, leading to the claimant's grievance and a request from her to be referred to OH again. So, by 18 March when she resigned, she knew that the respondent proposed to refer her to OH before deciding on what to do next – dismissal was not a foregone conclusion. The claimant told us that she would have welcomed another referral to OH at an earlier stage (and had asked for that) but after 14 February 2022 she felt that matters had gone too far. We agree that by this stage, the respondent's treatment of her was such that she was entitled to resign.

271. We remind ourselves that a fundamental breach of contract need not be the only cause of a claimant's resignation provided that it is an effective cause of it. We conclude that both AA's comments on 14 February 2022 and the preceding course of conduct to which we have referred above were effective causes of the claimant's decision to resign and therefore that she did terminate her contract of employment in circumstances in which she was entitled to terminate it without notice by reason of the employer's conduct within section 94(1)(c).

272. The respondent denied that the claimant had been dismissed and has not advanced a potentially fair reason for her dismissal under section 98(1) or (2) of the 1996 Act. We find that there was no potentially fair reason for her dismissal.

273. The claimant's claim of unfair dismissal therefore succeeds and is well founded.

274. There will be a preliminary hearing on 26 March 2024 to give directions for a remedy hearing to take place.

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Employment Judge **Findlay**

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Date: 16 February 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 19 February 2024

FOR EMPLOYMENT TRIBUNALS

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

Appendix: List of Issues

Detriment for alleging infringement of Working Time Regulations 1998

1. Did the Respondent subject Miss Idowu to detriment as follows:

1.1 Investigating Miss Idowu's use of a printer on 26 March 2021 and in the days immediately thereafter;

1.2 Subjecting Miss Idowu to disciplinary action in relation to her use of a printer;

1.3 Issuing Miss Idowu with a First Written Warning in respect of her use of a printer;

1.4 Falsely accusing Miss Idowu in respect of her use of a printer, of not using her own paper, of printing in colour and of overriding the Respondent's printer IT systems;

1.5 Unreasonably delaying implementation of the Grievance process;

1.6 Unreasonably delaying the process involved in considering her Grievance Outcome Appeal;

1.7 Not upholding her Grievance;

1.8 Not upholding her Appeal against the Grievance Outcome;

1.9 Miss Ademoye confirming to Miss Idowu in a Grievance Appeal meeting that she had not investigated allegations that Miss Idowu had overridden the Respondent's printer IT systems, Miss Idowu's assertion that she had printed in black and white only; and

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1.10 In fact, failing to investigate Miss Idowu's assertions that she could not have overridden the Respondent's printer IT system and had only printed in black and white.

2. Insofar as any of these allegations are upheld, do they amount to a detriment?

3. If so, did the Respondents subject Miss Idowu to such detriment because by assisting her colleague in his complaint to an Employment Tribunal about the Respondent's alleged breach of the Working Time Regulations, Miss Idowu had alleged that the Respondent had infringed his rights under the Working Time Regulations.

Constructive Unfair Dismissal

4. Was Miss Idowu dismissed? In other words:

4.1 Did the Respondent breach the so called “trust and confidence term”, i.e. did it, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between it and Miss Idowu?

4.2 If so, did Miss Idowu affirm the contract of employment before resigning, in particular by the delay between the Appeal Investigation Meeting with Miss Ademoye (relied upon as the last straw) [note: this was clarified on 22.01.22 to refer to the comments at the meeting on 14.2.22 and the respondent did not object to this]
and her resignation on 18 March 2022?

4.3 If not, did Miss Idowu resign in response to the Respondent’s conduct? Was it a reason for her resignation, (it need not be ‘the’ reason for the resignation)? If Miss Idowu was dismissed, she will necessarily have been wrongfully dismissed because she resigned without notice.

5. The conduct Miss Idowu relies upon as breaching the trust and confidence term is that outlined above as amounting to detriments in respect of the claim pursuant to s.45A of the Employment Rights Act 1996 (“ERA”).

6. If Miss Idowu was dismissed, what was the principal reason for dismissal and was it a potentially fair one in accordance of s.91(1) and (2) ERA 1996 [sic – refers to s98(1) and (2)]? If so, was the dismissal fair or unfair in accordance with s.98(4)
ERA 1996 and in particular did the Respondent in all respects act within the so called “band of reasonable responses”?