



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Madhavi Nimmagadda Baby

**Respondent:** Newday Cards Ltd

**HELD at Leeds in person**

**ON: 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 25<sup>th</sup>, 26<sup>th</sup>, and  
27<sup>th</sup> March 2024**

**BEFORE:** Employment Judge Lancaster

**Members:** J Lee  
M Brewer

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Iris Ferber KC, Counsel

**JUDGMENT** having been sent to the parties on 28 March 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The claims and the issues were clearly identified in the Case Management Order of Employment Judge Davies at the Preliminary Hearing on 9<sup>th</sup> October 2023. The still relevant parts of that Order, which have been constantly referred to throughout this hearing are reproduced as an endnote to this decision<sup>1</sup>. These reasons follow the template of that list of issues, and when principally addressing the findings of fact do not need to elaborate on the underlying legal principles also set out. This is principally a claim of discrimination, and the alleged fundamental breach of contract in the constructive dismissal claim is specifically pleaded as that same discrimination – though the Respondent does not take a “pleading point” that we should exclude evidence of any other potential but non -discriminatory breach. The

crucial question is to address the reason why. Why did the Respondent do what it in fact did? Was that because of the protected characteristic of age or sex or because the Claimant had done a protected act?

### **Age Discrimination**

2. Firstly we will deal with the claim of age discrimination. This relates to the fact that the claimant was not promoted.
3. She joined the respondent Newday in 2017 working in IT and that was, as she accepted in her own documentation, her “core specialism” commensurate with her previous experience. Unfortunately it soon became apparent in her new employment there was very little, if any, opportunity for promotion within the IT department. So the claimant was looking to transfer from IT to “business analysis” particularly because she foresaw that she may be able to gain promotion there. Also it was a potentially where she would attract a higher salary, and it was as she admits a concern that she wanted to be able to get more money.
4. When she first applied for a transfer out of IT into business analysis in July 2017 that application was automatically flagged up for rejection. That was because it was a criteria ordinarily that anyone who had had been in their post for less than 12 months could not apply for a transfer or a promotion. That was not an unvarying rule that could not be relaxed in some instances, but in the claimant’s case she had not been in post for 12 months - she stated as much on her application form - and the electronic application therefore flagged that up as a reason for rejecting her. So that has nothing whatsoever to do with her age. It was simply because she had not been in post for 12 months.
5. She did subsequently, after she had been there for more than 12 months, achieve a sideways transfer - still at her Band D post - into business analysis. At that point she was very open that she wished to be promoted and that was shared with her then manager. We accept the claimant’s evidence that there was some discussion with Ms Shortland about her aspirations and that there would be attempts to seek to progress her promotion and increase her pay. But that was merely an aspirational conversation. It has no contractual effect. Indeed Ms Shortland left her post as the claimant’s manager before the period in spring of 2019 where she had initially hoped, after a year in post or thereabouts, that she would have been able to progress the claimant.
6. In actual fact it is quite clear why the claimant was not progressed in this way. There are two methods of being promoted within the respondent. One is if there is an actual vacancy and a person applies and they are selected. There is also the possibility that where within the role they are performing at a level above their graded band, or if their job has expanded significantly to include more responsibility or a higher level of expertise, they may be upgraded. And essentially that is what the claimant is complaining about. That is that she believed her performance justified being promoted from Band D to Band C. It is clear that she raised this regularly with her various managers after Ms Shortland. They disagreed. They did not believe she was performing at an appropriate level that warranted them applying to have her upgraded.

In relation to the identified issues that are the substance of her complaint.

#### **8.5.1 In July 2017 Mr Grimbley refused her request for promotion;**

7. The reason initially as we say for the rejection of the transfer request to business analysis was because she did not have 12 months in post.

**8.5.2 In January 2018 Mr Grimbley refused her request for promotion;**

8. In January 2018 she was not refused a request for promotion. That was when she made a sideways transfer. When she subsequently applied for promotion or regrading within this new role, as we say it was not granted because she was not deemed suitable.

**8.5.3 After she requested promotion in December 2018/January 2019, Mr Cavill did not promote her or take steps to progress that. (Hope Bodle)**

9. The claimant identifies as a potential comparator Hope Bodell. She is not a material comparator at all. She had been a Band D also in the business analysis department, but she had left some months before the claimant started work there. It is right that at that point she had not been in post for 12 months but she was permitted to apply to move out because clearly this department did not suit her. She applied therefore for an advertised post elsewhere at Band C and was successful. So her circumstances are entirely different to the claimant and it matters not that Ms Bodell may be in a younger age bracket.

**8.5.4 In March 2020 Mr Cavill and Mr Milburn did not promote her or take steps to progress that. (Lucy Thornton) 8.5.5 In March 2021 Mr Cavill did not promote her or take steps to progress that. (Charlotte Bartrick, Ben Rogers, Lorna Crayston, Priya Ramasamy)**

10. Continually thereafter the claimant was not regraded at a higher band. During the pandemic there was a general policy that promotions were put on freeze, but that was not universally applied. There could be exceptions and the claimant identifies a number of such exceptions. But by definition therefore that is the difference between the circumstances of those alleged comparators and the claimant's circumstances. If somebody was exceptionally promoted either because their role had increased or because they applied for a promotion within that period, it was because there were exceptional circumstances related to that area of work or to that person. None of these were within the same business analysis department where the claimant worked.
11. So again the fact that those people who were able to be promoted at that time in other circumstances may have been younger than the claimant is wholly immaterial.
12. The claimant did in around May 2021 at a point where she was clearly looking to move out of business analysis apply for a further promotion outside but that was rejected by the hiring manager on the merits of the application. So again this is not relevant to these claims that there was a failure to promote her because of the difference in age

**8.5.7 In February 2022, when her job title changed to Senior Product Analyst, Mr Rashwan and HR did not change her from band D to band C or increase her pay. (Ancelin Thankamony)**

13. The final matter which she complains about age discrimination, is that in early 2022 her job title was altered to senior business analyst although it is quite clear in the acceptance letter that the claimant understood that all other terms and conditions remained the same which meant she stayed on a Band D posting. Her complaint is that another employee Ancelin Thankamony was also in that re-deployment exercise categorised now as a senior analyst, but she was on a Band C. But the reason for that was that she had already been on a Band C and that again is the material difference between her circumstances and the claimant's. The claimant was given the title of senior business analyst at Band D and Ancelin Thankamony was given the title of senior business analyst at Band C. The reason why the claimant was not upgraded at that stage was not because she was older than Ancelin Thankamony but because she was not perceived to be working at the same level or at the same experience at Band C.
14. A further difficulty with the whole of the age discrimination complaint is the goal posts move. Initially the claimant said she was discriminated against because she was over 35 and then when she had her 40<sup>th</sup> birthday on 4 June 2018 she says the band for age for purposes of discrimination is that now she was over 40. But the claimant has put forward no evidence whatsoever to suggest that that was in fact the reason: see section 136 (2) Equality Act 2010. There is nothing to suggest that there were any comments about her age, nothing to suggest that the culture of the company favoured younger people. It is simply that retrospectively complaining as she habitually did about the failure to promote her because she deemed herself to be working at a higher level than her managers considered her to be doing, she has claimed that to be age discrimination.
15. So on the merits that claim we find it clearly does not succeed. Also because the last allegation is from February 2022 this claim is significantly out of time, effectively a year before the claim was presented in the Tribunal. And although the claimant complained about the lack of promotion, at no stage prior to issuing the claim did she ever allege that had anything to do with her age. So had it been necessary we certainly would have considered on the merits of this claim and given that length of delay that it would not be just and equitable to allow the claimant to bring a complaint 12 months after the last alleged event.

### **Sex discrimination**

16. We turn now to the complaints of sex discrimination and these essentially concern the fact that the claimant was based on performance management programmes in July of 2021 and again in July 2022, that is at the end of the mid-year review period.
17. Basically her complaint is that within her small department she was placed on performance management and she knew of one other person who was also a woman was placed on performance management, and therefore she seeks to argue that the reason why that happened was because they were women. She alleges that she is competent and able to identify performance deficiencies in her male colleagues all of who were working at the higher Band C level, that she says should have resulted in them also being placed on performance management.
18. It is clear that none of her male colleagues at any of their reviews are said to have had performance issues flagged and yet not been placed on performance management. So that is the clear material difference between them and the

claimant and indeed between them and her colleague who is again female who was also at one stage on performance management.

19. We are satisfied that the claimant's sex had no bearing upon why she was performance managed. It is entirely incidental that it happened to be women where issues are identified.
20. As we have said the claimant was a Band D. She was therefore the lowest graded analyst within this department. When she first transferred across in 2018 she inevitably was having to learn the role so she was assigned lesser tasks, and also she accepts that for a substantial period she was effectively working on "past papers" as you would in preparation for an exam. She was looking at incidents that had been raised and dealt with previously and identifying how she would address those issues and learning from the way they were in fact addressed. So although she had aspirations to be promoted, that would depend upon her proving herself within her new role.

### **8.2.1 In July 2021 Mr Cavill commenced a performance improvement process for the Claimant.**

21. Initially she was on track performing as a Band D but not in reality showing, as she believed, evidence of working at a higher level. At the mid-year review in July 2021 her then manager Mr Carroll did identify performance issues. He did not in fact at that stage commence a performance improvement process, but the result of having identified those issues was that very shortly after and within the second half of that year when her management had in fact transferred to Mr Plexidas there was a manager led performance improvement review over a six week period between October and November.
22. So though it is right to say that Mr Carroll did not himself instigate that review, the analysis of those issues at mid-term did provide the basis for subsequent improvement programme.
23. We observe the performance review carried out by Mr Carroll at that stage was comprehensive. It identified the areas where the claimant was performing satisfactorily but it identified the concerns as well, and that is what led to the overall rating that there were performance issues going forward. The claimant comments that when towards the end of the half year on 29 June she had posted on the documentation that set out her performance objectives for that year, what she had done, and Mr Carroll's comments were either positive in relation to her post or were stating that the matter would be reviewed the second half, there were no identified issues at that point and they only emerged when Mr Carroll set out his overall summary of her performance. We accept that that final summary was a genuine assessment of how the claimant was performing overall. In particular we observe that, within what as we say was a comprehensive review of what the claimant was doing, Mr Carroll expressly recognises that the claimant wished to progress to Band C. So he makes the observation within the report that if she wished to achieve her objective she would have to demonstrate a significant improvement. It would not be enough that she was meeting her objectives at Band D. If she was to be progressed she was at the cusp, at the point where she would have to show improvement, and that is why he identified these concerns.
24. It appears clear from the evidence we have heard that the Respondent did operate a rigorous regime of analysing performance. It is a competitive industry with high

standards and attracts high salaries. The claimant was on a salary of more than £50,000. She was already therefore relatively well paid, and to prove that she would justify a further promotion and pay increase, it was right that she should be rigorously assessed. But within that context it again appears clear to us looking at the documentation in the round that this was intended to be supportive, to help the claimant to show that she was able to move up a step and achieve her aim of promotion to Band C. So that when she was then transferred to the management of Mr Plexidas in particular that was to move her into project management where it was anticipated that she may flourish more successfully. Having taken over in August as her manager, he took time to assess an appropriate improvement plan and put that in place from October.

25. And the Claimant was signed off as having successfully completed that. So that achieved the aim. At the end of year review, which admittedly was not finally published until March of 2022, she was signed off as then meeting expectations. As a consequence she was eligible for the discretionary annual bonus as a percentage of her salary, and she did in March therefore receive a significant figure of over £9,000. As we have said she was already on a relatively high salary and indeed that had been increased in April 2021. Even though the general policy was not to increase salaries during the pandemic, at that point there had been a review and it was assessed that the respondent was not paying the market rate in this area. The claimant was one of those who exceptionally had her salary increased. So she had had an increase to bring her up to the appropriate level in the industry in April 2021. She had been through a successful PIP ( manager led) between October and November. She was therefore on track and therefore again eligible for the annual bonus on top of that not insignificant salary.
26. On the back of that successful completion of PIP, there was a general review in early 2022 to which we have already alluded on the age discrimination complaint, and the claimant's title was amended to senior business analyst. Again her evidence is that she understood that Mr Plexidas as her manager had argued her corner to suggest that she should be included in that job description where there was some concerns from higher up in the company as to whether she in fact merited being included within that banding. But that happened, and as a consequence it meant that Mr Plexidas was able to assign her now as a senior business analyst to take the lead on projects. And in particular from early 2022 he did so on a project known as Aqua Gold, of which there are various elements. So that was the first project where the claimant had been involved for a substantial period, rather than coming into a project part way through,. It was also the first project where she was given overall lead responsibility. So that was an opportunity for her again to prove herself and show that she would warrant a promotion in due course.

**8.2.6 In July 2022 Mr Plexidas told her that her performance was of concern and she would be put on a manager-led PIP. (Venkat Chalapareddy, Tony Cavill, Harish Subramanian, Anupam Thapar)**

27. Unfortunately, that did not happen because there were significant issues in relation to the management of that project, and they were flagged up therefore at the further

mid-term review in 2022. Again that is a very comprehensive document that sets out the positives in the claimant's work as well as identifying these issues. But in particular there were two issues that had arisen in respect of the Aqua Gold project where it was considered that ultimately the responsibility lay with the claimant to identify these at an earlier opportunity. They related to the transfer of loyalty points from those customers who were having their cards upgraded but had been on a loyalty point scheme on the old card, and also an issue that when new cards were issued they should have kept the existing PIN number, but in fact customers were required to change that which was not part of the parameters of the upgrade.

28. There were other issues identified from feedback from stakeholders as to whether the claimant was adequately conveying information to them. Again we accept at this point, that the reason why Mr Plexidas raised those concerns was genuinely because he perceived those to be issues of the claimant's performance. As we say she had been offered the opportunity to progress but there had been issues. We accept Mr Carroll's characterisation of the claimant that she became very defensive whenever there was any attempt to constructively criticise her role. That is apparent from how she responded to these performance issues. It has been corroborated by what we have seen from how she justifies herself and claims it is not her fault. She has repeated that at length in the course of her evidence, and indeed in her closing submissions she used the phrase of herself that she went into "defence mode" after final performance review meeting.
29. So although the claimant would seek to say that this was not ultimately her responsibility, so that she should not be criticised, there were performance issues identified. At that stage we accept that when Mr Plexidas spoke to the claimant about these concerns which was on 27 July, the claimant reasonably came away with the understanding that this may be dealt with similarly to the matters in October/November the previous year. Even if Mr Plexidas did not specifically use the phrase that this would again be a "management led PIP" at that lower level, it is quite clear that he was talking in terms of working through this together. The claimant has referred to him using the metaphor, and this seems to be a genuine recollection, that together they would "sail this ship to shore". So again Mr Plexidas was evidently seeking to find a way of working positively to support the claimant in progressing.

**8.2.7 On 19 August 2022 Mr Duddy told the Claimant that he agreed with Mr Plexidas's comments because he had seen the way she worked and talked over the past year. (Venkat Chalapareddy, Peter Plexidas)**

**8.2.8 On 19 August 2022 Mr Duddy told the Claimant to look and apply for different roles in another team. (Venkat Chalapareddy)**

30. But the issue was picked up on the mid-performance review by Mr Plexidas' manager Mr Duddy and it is evident to us that he considered it was a more serious concern. He therefore convened a meeting with the claimant which was on 19 August. It is evident that Mr Duddy's concern was to identify if there were any underlying issues, so he asked questions about the claimant's health, was there anything affecting her performance, and he also raised questions about whether or not she ought to consider moving to another area where she may be better suited and may be able to progress. We do not accept the claimant's own recollection

that she was told to apply for jobs elsewhere or that Mr Duddy inappropriately stated that he had seen the way she worked and talked and agreed with the assessment.

**8.2.9 On 7 September 2022 Mr Plexidas invited the Claimant to a PIP meeting, to take place on 14 September 2022. (Venkat Chalapareddy)**

31. It is quite clear that there was a discussion that led to consideration of how the flagged up mid-term performance issue should properly be addressed. Therefore a decision was then taken that it would be raised not simply at that point in a manager led performance review, but would move to the formal stages of the improvement process. Therefore the claimant was invited on 7 September to a first performance review meeting with Mr Duddy and Mr Plexidas to be held on 14 December. This was a shock to the claimant because as we have said she reasonably had come out of that meeting with Mr Plexidas on 27<sup>th</sup> believing it might be managed more informally. Whether she could sensibly have maintained that belief having met with Mr Duddy on 19 August is less certain. But at that point this was the appropriate step to be taken under the Respondent's policies. Admittedly that policy had changed on 29 July, but it simply made explicit what had been implicit in the previous version, and that is if there were persistent performance issues, that is repeated performance issues flagged up then the formal process may be considered.

**8.2.10 At the meeting on 14 September 2022 Mr Plexidas told the Claimant that she was not fit for the role and that her work had been done by members of FiServ staff or other team members, not the Claimant. (Venkat Chalapareddy, Tony Cavill, Harish Subramanian, Anupam Thapar)**

**8.2.12 On 14 September 2022 Mr Duddy told the Claimant that she might receive a performance warning at the next meeting. (Venkat Chalapareddy, Harish Subramanian, Anupam Thapar)**

**8.2.13 On 14 September 2022 Mr Plexidas blamed the Claimant for delays in the Aqua Gold project and for missing transferring loyalty on 1100 accounts. (James Przystupa)**

32. So the claimant was invited to that meeting and it is right that issues were then put to her. It is clear looking at both the HR note taken by Emilie Lie for the Respondent and also the claimant's own subsequent recollection, contained in an email of 16 September, that the majority of that meeting was in fact taken up with her arguing her case. And indeed we note from internal communications that the Claimant has disclosed with her former colleague a Mr Lazarus at the point she resigned, that she expressly states that she had argued her case. And she did so vigorously. But within that context the Respondent, in the persons of both Mr Plexidas and Mr Duddy still identified that there were issues to be taken forward.



33. But no decision was finally taken as to how that would be managed. A performance objective program had been prepared in advance. That was shared on screen at this virtual meeting, so clearly the claimant would not be able to take in all that detail, but no final decision was taken as to whether those objectives were pursued or how they'd be managed, but at the end of the meeting Mr Duddy, we accept reading from a script provided by HR, indicated the possible options and that included the fact that the claimant might be placed on a formal warning going forwards for any performance management. The next day the claimant resigned, and it is clear both from her resignation letter and also as we say from her immediate private correspondence from Mr Lazarus that the principal reason was that she objected to being placed on performance management. That was the reason why the slides were not then shared with her as it had been said they would be: performance review objectives to be agreed were no longer relevant if the Claimant was no longer to be assessed because she had resigned. The Claimant now accepts that the slides were never in fact requested and "refused", they were just never provided.
34. Throughout that history as we have explained it, we are satisfied that none of these decisions had anything to do with the fact that the claimant was female. They were all to do with the identified issues about her performance, particularly in the context that she was somebody who was at Band D but was seeking actively to demonstrate that she could work at a higher level and the Respondent was concerned to test that. Where there were performance issues identified which suggested that she may not be able to make that step up, they took appropriate measures to identify support and deal with them.
35. That is the overall background of this one year history of performance management. But within the specifically identified issues, as we have said, it is right in July 2021 Mr Carroll did flag up performance issues, and although he did not himself start a performance improvement process at that stage, it laid the groundwork for that taking place in October.

**8.2.2 In August 2021, Mr Duddy did not investigate her grievance or come back to her with an update about it.**

36. The claimant was unhappy with that mid-term review so she initiated a meeting with Mr Duddy on 3 August. At that meeting she particularly took exception to the suggestion in the mid-term review that she had only worked on smaller cases. So following that meeting she provided Mr Duddy with an email table setting out the work she had actually done. She was also obviously particularly concerned about the suggestion that her feedback to stakeholders was not sufficiently clear so she elicited what are said to be 360 review assessments from her peers that she believed indicated that she was effectively communicating, and again she sent that information to Mr Duddy.
37. Mr Duddy did not reply to those emails. He says that is an oversight. We consider it to be simply rude and unprofessional behaviour by a manager. He should have replied. However not doing so is not an act of sex discrimination and nor is it a fundamental breach of the claimant's contract. And of course what did happen is that the management transferred to Mr Plexidas, the claimant began to assume more work on projects rather than her interventions and dealing with incidents, and there was then a successfully completed performance review.

**8.2.3 In February 2022 Mr Plexidas said in a snappy way, “There are other members of the team working for less money than you get.” (Venkat Chalapareddy, Tony Cavill, Harish Subramanian, Anupam Thapar)**

38. The next complaint is that in February 2022, so this is after the claimant’s job description was changed to senior analyst and she therefore made representations that her pay should simply be increased, Mr Plexidas is alleged to have said in a snappy way that other members of the team working for less money than you get.
39. On the face of it that would be an incorrect statement. We accept on the Respondent’s evidence that the claimant at Band D was not earning more than any of the Band C members actually within her team. But equally it is highly likely that something was said along the lines the claimant was relatively well paid and it may be that as a Band D with this department she was on a higher level than others in different areas of the business. We have commented that she had exceptionally been given a market forces increase less than a year before which had not been afforded to others.
40. We pause to observe that it has been characteristic of this case that the Respondent’s witness statements have been somewhat sloppily prepared with a lack of attention to detail. Also we are not impressed by the general approach of the Respondent’s witnesses that they either say they do not recollect incidents or they simply flatly deny that things happened. As we say it is almost certain that when this issue of pay in February was raised, there was some discussion and it would have been much more helpful if there had been some attempt to reconstruct the context to help us with what actually happened. We accept there was some discussion about pay, though not in the terms described by the Claimant. Again although the Claimant has given very detailed evidence on many points, in this and in other areas unfortunately we do not consider that she is necessarily a reliable narrator either.
41. So something was certainly said about money and what the claimant earned. We cannot work out precisely what it was, but we are satisfied that it had nothing whatsoever to do with the fact that she was a woman. There is no contemporaneous documentation to assist us in the face of inconclusive oral recollections, and nothing plausibly to suggest that anything of this nature would in fact have been said.

**8.2.4 In March 2022 when the Claimant was trying to get approval for a trip to India, Mr Plexidas said, “We have tight project deadlines and it’s difficult to get such approvals. You worry about yourself and your daughter and not your mother. It would be better if you bring your mother here to the UK rather than you flying to India.” (Venkat Chalapareddy, Tony Cavill, Harish Subramanian, Anupam Thapar)**

42. The next alleged issue is the claimant sought to visit her mother in India and she alleges that when she first applied to Mr Plexidas for leave, it was said “we have tight project deadlines, it is difficult to get such approvals. You worry about yourself

and your daughter and not your mother. It would be better if you bring your mother to the UK rather than flying to India.”

43. Again we are satisfied there must have been some conversation about the logistics and that is clear from the fact that the Respondent did accommodate the Claimant's leave by somewhat complicated process of giving her holiday and allowing her to work from India in combination. They also allowed that at a crucial point in the development of the Aqua Gold project to which she had been assigned as lead analyst which was due to go live in the middle of that period. We are quite satisfied there must therefore have been some conversation about how that would be managed, whether the claimant needed to travel, what alternatives might be made. It would have been much more helpful, as we say, if we had been given some indication by the Respondent of what that conversation actually was.
44. But again whatever was said we do not accept that this recollection of the Claimant is necessarily correct. And in any event there is no indication whatsoever that that was said because of her sex.

**8.2.5 In June 2022 Mr Plexidas belittled the Claimant in front of colleagues, implying she worked on small and simple projects that were repetitive in nature. (Venkat Chalapareddy, Tony Cavill, Harish Subramanian, Anupam Thapar)**

45. The next allegation is that Mr Plexidas belittled the claimant in front of colleagues implying she worked on small projects.
46. Again this is an area where we are satisfied that something was said. The claimant recalls dealing with a new stakeholder, and it does appear to us that a clumsy comment was made by Mr Plexidas about allocating his best resource and at the same time seeking to identify the fact that the Claimant, although by that stage of course categorised as senior analyst, was still the more junior member of the team. We think that something clumsy was said about the precise nature and extent of the claimant's role and expertise, but again not because she was a woman but because it was a poorly worded attempt to reflect what she was actually doing within that project.
47. The next allegation is the matter we have already dealt with in the general summary about the mid-term assessment where Mr Plexidas did identify performance concerns and the fact that his conversation indicated to the claimant that that may be similarly dealt with to the incidents in October/November as informal manager led PIP even if that was not expressly stated.
48. We have also already dealt with Mr Duddy's intervention on 19 August where it is clear that he was expressing his concerns having seen the mid-term review. As we say he identified issues about the possible looking at other roles.
49. Again we have already identified that Mr Plexidas did invite the claimant to a formal review on 7 September.

**8.2.10 At the meeting on 14 September 2022 Mr Plexidas told the Claimant that she was not fit for the role and that her work had been done by members of FiServ staff or other team members, not the Claimant. (Venkat Chalapareddy, Tony Cavill, Harish Subramanian, Anupam Thapar)**

**8.2.12 On 14 September 2022 Mr Duddy told the Claimant that she might receive a performance warning at the next meeting. (Venkat Chalapareddy, Harish Subramanian, Anupam Thapar)**

**8.2.13 On 14 September 2022 Mr Plexidas blamed the Claimant for delays in the Aqua Gold project and for missing transferring loyalty on 1100 accounts. (James Przystupa)**

**8.2.16 In September/October 2022 Ms Parish or HR did not properly investigate the Claimant's complaint, made in an email of 7 September 2022.**

50. Following the meeting with Mr Duddy on 19 August the Claimant had prepared a detailed report to the mid-term assessment by Mr Plexidas and she emailed that to Mr Plexidas. However that was late on the Friday before he went on annual leave and he did not ever reply to it. It was copied to Mr Duddy and he did not reply. Again that is, we consider, rudeness on his part, but not of itself a breach of contract. The Claimant, also we accept, on 24 August following the meeting with Mr Duddy prepared effectively a grievance complaint again seeking to challenge the performance issues identified at the mid-term review. And also following that meeting with Mr Duddy, as we have said it flagged up then whether there were any health concerns and the claimant did send to Mr Duddy by email a summary of the issues she had had earlier in the year particularly after a bout of covid. Again Mr Duddy did not acknowledge or respond to that and that is unjustifiable rudeness on his part yet again, but not so as to constitute in the circumstances a fundamental breach of contract.
51. So nothing happened during the period of Mr Plexidas' leave. He returned on 5 September and then on the 7<sup>th</sup> he invited the claimant to the formal review and following receipt of that invitation the claimant then sent through the documents she had drafted on 24 August framed as a grievance and that too was on the evening of 7 September. We will come to the way that was dealt with by Ms Parrish from HR in due course.
52. As we have emphasised in the course of this hearing, we are not here to make decisions about the actual sequence of events or whether the claimant should properly be criticised for what she did on the Aqua Gold project. And in fact it has been impossible for us to identify a clear timeline as to what happened. That is partly because of the way the Respondent's evidence has been given, but it is also partly the result of the way the Claimant's evidence has been given. There is great attention to detail on her part but it is very hard to follow the actual narrative thrust of what happened. But we are not concerned with that. We are concerned in the terms of this complaint with what the Respondent did, and that is particularly at the meeting on 14 September. We have two versions of that, one the note prepared by the HR attendee and also the claimant's own notes. But as we have said, from both of those it is apparent that the bulk of that meeting was in fact affording the claimant the opportunity to put her case, and it is not possible to identify anything that is properly objectionable on the part of the Respondent.
53. The Claimant says that Mr Plexidas told us she was unfit for her role. We are satisfied that was not said. In her own note at that meeting the claimant does not

make that allegation. It is certainly not in the Respondent's note. It is a general allegation in the grievance of 7 September which as we say was drafted on the 24<sup>th</sup> August. That is the claimant's interpretation of the fact that performance issues were identified. She believed that that meant she was being told she was unfit for her role rather than taking a more balanced view and looking at the whole picture as to how issues were identified comprehensively with weaknesses and successes together.

54. So that phrase was not used. Nor was the claimant, as she subsequently alleged, told that she was not doing any work and it was all being done by other members of staff. When we look at the Respondent's note we can see the general concerns that the claimant was overly reliant upon other people, lacking confidence and not taking ownership of the issues. And in that context it is commented that she was looking for support from other agencies. It is not that she was not doing any work or that other people were doing it for her but identifying a weakness in the way she approached her tasks.
55. We have already dealt with what Mr Duddy said at the end of the meeting about the fact that she might receive a performance warning. We do not know whether that would have happened because it was pre-empted by the claimant resigning. Nor was the claimant blamed for the defects of the Aqua Gold project. As we say she set out her case. It was identified, we think rightly, by Mr Plexidas as her indulging in a blame game between herself and her stakeholders. But all that was identified was the fact that the Claimant as lead analyst was responsible overall for that project, that there had been deficiencies and that was what was sought to be addressed and to identify whether that gave right to performance issues and how that could be rectified. Though as we say the claimant unfortunately does become over defensive when faced with any attempt to analyse or constructively criticise her performance and therefore she categorises this as being solely blamed for an issue.
56. Following that meeting before any final decision was taken as to the next stage the claimant resigned.
57. Following her 7<sup>th</sup> September grievance Ms Parrish had dealt with that promptly on 8 September and she had identified within that grievance two areas of concern to the Claimant. One related to performance and Ms Parrish said that those issues would be addressed at the meeting on the 14<sup>th</sup> of which the Claimant had already been notified. That is perfectly appropriate. But also within the course of that email the Claimant had identified the concern to which we have already alluded that she believed only women were being singled out for performance management and therefore they felt undervalued within the team, probably because they were women. That was identified as potential discrimination and she said that she had evidence of areas where she claimed that male members of the team had not been treated similarly for performance issues that she believed they should have been.
58. So in her response Ms Parrish asked for further information. That is providing the evidence which the claimant had already herself said that she possessed and Ms Parrish did use the phrase that therefore "if necessary" those further matters would be addressed not in the performance review that was scheduled for 14 September but separately under the grievance policy. It is right that she did not provide a copy of the policy to the claimant at that stage though we believe it would have been accessible to her, but that was all contingent upon identifying what those concerns were and how they should properly be addressed.

59. The claimant did not ever provide that evidence and therefore after her resignation Ms Parrish wrote again on 16 September and invited the claimant to indicate if anything else was needed from her. The claimant did not respond to that. She says that the Respondent should have then convened a meeting even without her further documented evidence and they failed to do so. Shortly before the end of her employment on 12 October she wrote again to Ms Parrish and complained about the use of the phrase “if necessary” saying that she thereby assumed that the matter had been closed by the Respondent and she was unhappy that she had not been called to a meeting.
60. The reasons why Ms Parrish dealt with the grievance in this way are self-evident. She correctly identified the areas of concern. She correctly identified the performance issues should be addressed in that review meeting. She properly asked for more information before they sought to progress the alleged discrimination complaints, and after the claimant had resigned, of course it would have been unclear whether there was any purpose to be served by pursuing a grievance when she going to leave employment in any event. She asked for further clarification but was not forthcoming until the very end of the employment period. It had nothing to do with the fact that the claimant was a woman.
61. All these events after the resignation letter on 15 September of course cannot by definition be relied upon as contributing to any fundamental breach of contract that would entitle the claimant to resign. Those can only relate to matters before she submitted her resignation.

**8.2.15 No exit interview was conducted. This was a decision by HR on instructions from Mr Rashwan or Mr Duddy. (Rowen Lazarus)**

62. Further matters concern the end of employment. Having submitted her resignation to Mr Plexidas we note that there then appears to be further email correspondence where Mr Plexidas expresses his upset that it had come to this. He invited the claimant to talk to him if she felt able or wished to do so. And although the Claimant said she would be prepare to do this it does not appear that that ever happened. The matter was then progressed with Mr Plexidas submitting the leaver request to HR. They dealt with the formal acknowledgement and details of pay that would be due. That was sent on 20 September. But also there was an automated response inviting the claimant to an exit interview. But that never in fact happened, and when the Claimant raised this issue it was dealt with by HR and there is no reason to suspect that the reason why it did not happen is anything other than expressed at that point. And that is that this was an error. It was no longer the policy to offer exit interviews except to those who work in the contact centres and that the only automated email indicating this would happen was in error. And that we accept is why there was no exit interview, not because the Claimant was a woman.

**8.2.14 On 11 October 2022 Mr Cavill told the Claimant to be careful what she said in exit interview or it may hamper her career.**

**8.2.15 No exit interview was conducted. This was a decision by HR on instructions from Mr Rashwan or Mr Duddy. (Rowen Lazarus)**

**8.2.17 On 13 October 2022 Mr Cavill went through the Claimant’s laptop and looked into her personal folder when she handed it over. (Michael Hutchinson, Amar Rashid)**

63. When the Claimant went in at the end of employment to speak to Mr Carroll on 11 October there was some conversation about whether she had had an exit interview. We believe and accept the Claimant's account for the most part: Mr Carroll told her to be mindful of what she said in that exit interview. But if she was warned to be careful and only give factual account that is not because she was a woman. It may have been misplaced advice and the Claimant may have interpreted to suggest that she do not speak her mind about why she was leaving but it was nothing to do with her sex. And in any event shortly after that conversation took place the claimant received the confirmation from HR that the invitation to the exit interview was in error so she knew by that point that there was not going to be an interview. So whatever Mr Carroll may have advised her to say or not to say was no longer material.
64. The final allegation which is said to be sex discrimination is on 13 October when the claimant went in to work, and this was to mark the end of her employment. She says that Mr Carroll went through her laptop. The Respondent deals with this allegation by saying that the actual laptop was handed in on her leaving to security and not to Mr Carroll, but it is clear the Claimant's complaint is that before that she met with Mr Carroll and there was some discussion, and we accept there will have been, as to whether she had successfully completed all necessary handovers and transferred information. The claimant says that Mr Carroll was then looking through to see what was on her laptop including access to personal files, though there is nothing on the claimant's evidence to suggest there was anything inappropriate. All she has identified in the course of evidence was there may have been photographs of her passport information, but no doubt that was information that was lodged with HR in any event as employee details. So she was unhappy with that process, but again, even if it was inappropriate it was nothing to do with the fact that she was a woman.
65. In conclusion there have been no facts put before the Tribunal from which we could conclude that, notwithstanding the fact that two women were placed on performance management issues in this relevant period, that was because they were female. In the case of the claimant we are satisfied that there were good reasons for identifying the performance issues. There were certain inappropriate failures to acknowledge her correspondence, particularly on the part of Mr Duddy but not because of her sex.

### **Victimisation**

66. The claimant also alleges victimisation repeating a large number of the factual allegations of discrimination. There are four alleged protected disclosures.
67. There were private employee engagement meetings called Pulse which the claimant was invited both in April 2021 and again in April 2022. She says that on both of those occasions she identified concerns about the treatment of women and the lack of promotion opportunities. And the Respondent is not in a position to dispute that. But what the Respondent does say, which we accept, is that that information was confidential within the Pulse engagement process and was not communicated to any manager and therefore could not have had any bearing upon any subsequent decisions.

68. Following the April 2021 meeting however, it is correct that the director who was present passed on to Mr Carroll his concerns that the claimant had expressed a negative attitude in the course of that meeting and Mr Carroll did pass that information on to the claimant. But what is significant is that even on the claimant's own evidence she does not say that there was anything in that conversation to indicate that Mr Carroll had in fact been informed of the substance of anything she had said. It was a general concern that she was perceived to be negative, not that she was perceived as being negative because she had said something in particular.
69. We are satisfied that Mr Carroll did not in fact know the terms of anything the Claimant may have said, and even if it did amount to the doing of a protected act for the purposes of victimisation it had no bearing upon his subsequent decision to place the claimant on performance management in mid-term 2021. That was because of his concerns and because he was conscious of the fact the claimant was looking to progress and move to Band C and would not be able to do so unless she addressed these matters. Similarly there is no indication that from the April 2022 meeting the Claimant's comments if they did amount to the doing of a protected act were passed on to anyone who had a bearing on any decision.
70. The final allegations are for the 27 July meeting with Mr Plexidas when he reported his mid-term concerns. Although in his original statement Mr Plexidas denied any such relevant conversation, he now accepts that the Claimant did refer to her general concerns that the use of performance management within the company was causing stress and anxiety to both men and women. She says she cited an example known to her of somebody who had been affected by this who was a man and had sought to bring in the union. Mr Plexidas now accepts that there was a conversation to that effect. What he disputes is that the claimant also made the allegation at that stage that it was only women who had been put on performance concerns. And on balance we prefer Mr Plexidas' evidence on this. That is because the first time that the Claimant alludes to this alleged discriminatory treatment is in her communication drafted on 24 August. On 19 August when she puts in her substantive report to the mid-term review she does not mention that matter.
71. It appears to us that this concern was only articulated after the meeting with Mr Duddy on 19 August. But in that context we are therefore prepared to accept the Claimant's account that by the time she met with Mr Duddy she did set out her complaint that performance management had been targeted at women, and again that would be consistent with the fact that on 24 August she expressly stated that in the document that subsequently formed her grievance of 7 September. If she was formulating those concerns at those times it is unlikely that she would not have voiced it to Mr Duddy at least.
72. We are therefore particularly concerned with whether or not the decision to move to a more formal PIP was materially influenced by the fact that that protected act had been done. There is a chronological connection. The matter was raised with Mr Duddy, we find on balance, on 19 August. On 7 September despite the intimations given by Mr Plexidas that it might possibly be dealt with less formally the decision was taken to move forward. So there is a possible inference that that was a material factor.
73. However we are satisfied that Mr Duddy's initial intervention as at the 19<sup>th</sup> because he considered the matter to be potentially serious, meant that the process was



already on track from that point before the claimant brought this potential concern to his attention. He had identified he considered this issue was serious, he had called the claimant into a meeting to explore if there were any underlying issues and it was already progressing therefore to a more formal procedure as was then provided for under the policy that had recently come into effect explicitly. So we are satisfied that that was not materially influenced by anything that was said whilst that process was already in train.

**8.11.2 Changing the concerns in the PIP invitation letter sent to the Claimant and dated 7 September 2022 from those identified by Mr Plexidas on 29 July 2022?**

74. It is an alleged act of victimisation that the terms of reference for that formal meeting were changed from the mid-term assessment. That relates to the use by Mr Plexidas in the letter of 7 September of an alleged failure of the Claimant to show initiative. Mr Plexidas has dealt with that conclusively in our view. In his evidence he identified issues in the mid-term review of the Claimant not taking ownership of projects and his use of the words “failure to show initiative” was simply a summary of what he had already identified. We accept that.

75. So there is therefore no evidence that the claimant was subjected to unfavourable treatment because she had done any protected act, either in raising matters at the Pulse meetings in April 2021 or April 2022, nor in what we find that she did indeed say to Mr Duddy on 19 August.

**Unfair dismissal**

76. Having made those findings it necessarily follows that in no regard that we have already addressed is there any fundamental breach of contract that would entitle the claimant to have resigned. She resigned, we find, because she was dissatisfied with being placed on performance management but that is not a breach of contract, neither express nor a breach of the implied term as to trust and confidence.

77. The Respondent was entitled properly to explore issues and performance and they did so in an appropriate manner.

**8.14.1.2 Ms Shortland saying in May 2018 that she would try to increase the Claimant’s pay in March 2019 and/or that she would promote her if she met her objectives at that time and then failing to do so;**

**8.14.1.3 The manner in which the Respondent dealt with the Claimant’s sickness and the aftermath of COVID**

78. The other matters pleaded as being relied upon as contributing to that breach of contract are returning to the issues of what Miss Shortland in May 2018 about seeking to promote the Claimant or increase her pay, but as we have commented that was aspirational and did not have any contractual effect, and in any event was many years before.

79. The Claimant also complained about the manner in which she was dealt in the aftermath of covid.

80. The Claimant to her credit had very little time off even if she was ill. The last period of sickness recorded is in fact from 2021 and only for one day. So although she

suffered from the aftermath of covid in 2022 she did not take sickness leave. As we have said this came to light when Mr Duddy sought to explore whether there were any underlying health issues and the Claimant then provided him with a summary of what had happened in April of 2022, which as we say was rudely not even acknowledged or responded to.

81. But the Claimant does not allege that there were still any continuing health concerns at the point she submitted that information at the end of August. She still by then had not taken any time off. What she did do was identify that she had two further hospital appointments which were taken at the end of August and she subsequently provided an update to Mr Plexidas and copied him in to her earlier communications with Mr Duddy, both about the effects of her illness in April and also about the need to attend appointments. But she was stating then that she was not required to take further time off sick and in fact her conditions had been appropriately medically managed.
82. There are, it has transpired, two parts of this complaint. One is that at the meeting on 14 September, because there was a potential improvement plan in place and under the policy that would ordinarily be over a six week period, the Claimant although she never specifically addressed this issue, believes that the Respondent should have unilaterally considered whether to extend that six week period because of any health issues. But as we said at that stage the claimant's conditions were being appropriately managed by her doctors. She was not required to take time off sick and she was not alleging that any health issues actually affected her performance.
83. The other matter is much more general. It is that the claimant believes that there was a lack of empathy for any medical issues that she had suffered, and although there was a rude failure to respond on the part of Mr Duddy, that is not sufficient to say that that is fundamental breach of contract in the circumstances where, as we have commented, the Claimant did not require time off. So there is no fundamental breach of contract that would have entitled the claimant to resign as of 15 September.
84. It is very unfortunate that the Claimant's aspirations to progress in the company have not been met as she would have wished. She was clearly unhappy from an earlier stage at the fact that she had not been promoted. She was looking to move out of this department and applied for a post - that application being rejected by another hiring manager - in May of 2021 before any issues as to performance arose. It is also from her private communications apparent that she was considering possibly moving out of the Respondent company, and ultimately she was dissatisfied by the fact that she had been placed on performance management review. Again. That is notwithstanding that that had been a supportive measure in October/November which she successfully completed and which then led to her getting an on track assessment at the end of the year and therefore being eligible for a substantial bonus.
85. But this general dissatisfaction with the way she progressed in the company is not a result of any conduct on the part of her employer that amounted to a breach of any contractual term that would have entitled her to resign when she did and claim constructive dismissal.
86. So for those expressed reasons all the claims are dismissed.

87. We do not address the time issues on the sex discrimination complaints. It is entirely artificial when we dismiss the claim on its merits.

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Employment Judge Lancaster

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Date 7<sup>th</sup> May 2024

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#### <sup>i</sup> Claims

8. The issues the Tribunal will determine at the next hearing are:

Time limits: discrimination and victimisation

8.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

8.1.1 For anything that happened on or before 30 September 2022, was it part of a course of discriminatory conduct extending over a period that ended on or after 1 October 2022?

8.1.2 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

8.1.2.1 Why were the complaints not made to the Tribunal in time?

8.1.2.2 In any event, is it just and equitable in all the circumstances to extend time?

Direct sex discrimination

8.2 Did the Respondent do the following things?

8.2.1 In July 2021 Mr Cavill commenced a performance improvement process for the Claimant.

8.2.2 In August 2021, Mr Duddy did not investigate her grievance or come back to her with an update about it.

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8.2.3 In February 2022 Mr Plexidas said in a snappy way, "There are other members of the team working for less money than you get." (Venkat Chalapareddy, Tony Cavill, Harish Subramanian, Anupam Thapar)

8.2.4 In March 2022 when the Claimant was trying to get approval for a trip to India, Mr Plexidas said, "We have tight project deadlines and it's difficult to get such approvals. You worry about yourself and your daughter and not your mother. It would be better if you bring your mother here to the UK rather than you flying to India." (Venkat Chalapareddy, Tony Cavill, Harish Subramanian, Anupam Thapar)

8.2.5 In June 2022 Mr Plexidas belittled the Claimant in front of colleagues, implying she worked on small and simple projects that were repetitive in nature. (Venkat Chalapareddy, Tony Cavill, Harish Subramanian, Anupam Thapar)

8.2.6 In July 2022 Mr Plexidas told her that her performance was of concern and she would be put on a manager-led PIP. (Venkat Chalapareddy, Tony Cavill, Harish Subramanian, Anupam Thapar)

8.2.7 On 19 August 2022 Mr Duddy told the Claimant that he agreed with Mr Plexidas's comments because he had seen the way she worked and talked over the past year. (Venkat Chalapareddy, Peter Plexidas)

8.2.8 On 19 August 2022 Mr Duddy told the Claimant to look and apply for different roles in another team. (Venkat Chalapareddy)

8.2.9 On 7 September 2022 Mr Plexidas invited the Claimant to a PIP meeting, to take place on 14 September 2022. (Venkat Chalapareddy)

8.2.10 At the meeting on 14 September 2022 Mr Plexidas told the Claimant that she was not fit for the role and that her work had been done by members of FiServ staff or other team members, not the Claimant. (Venkat Chalapareddy, Tony Cavill, Harish Subramanian, Anupam Thapar)

~~8.2.11 On 14 September 2022 Mr Plexidas refused to send the Claimant the Powerpoint and objectives from the PIP meeting on the same day.~~

8.2.12 On 14 September 2022 Mr Duddy told the Claimant that she might receive a performance warning at the next meeting. (Venkat Chalapareddy, Harish Subramanian, Anupam Thapar)

8.2.13 On 14 September 2022 Mr Plexidas blamed the Claimant for delays in the Aqua Gold project and for missing transferring loyalty on 1100 accounts. (James Przystupa)

8.2.14 On 11 October 2022 Mr Cavill told the Claimant to be careful what she said in exit interview or it may hamper her career.

8.2.15 No exit interview was conducted. This was a decision by HR on instructions from Mr Rashwan or Mr Duddy. (Rowen Lazarus)

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8.2.16 In September/October 2022 Ms Parish or HR did not properly investigate the Claimant's complaint, made in an email of 7 September 2022.

8.2.17 On 13 October 2022 Mr Cavill went through the Claimant's laptop and looked into her personal folder when she handed it over. (Michael Hutchinson, Amar Rashid)

8.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated. The Claimant relies on a hypothetical comparator in each case. Where she also relies on named comparators, they are identified in brackets above.

8.4 If so, was it because of sex?

Direct age discrimination

8.5 Did the Respondent do the following things:

8.5.1 In July 2017 Mr Grimbley refused her request for promotion;

8.5.2 In January 2018 Mr Grimbley refused her request for promotion;

8.5.3 After she requested promotion in December 2018/January 2019, Mr Cavill did not promote her or take steps to progress that. (Hope Bodle)

8.5.4 In March 2020 Mr Cavill and Mr Milburn did not promote her or take steps to progress that. (Lucy Thornton) 8.5.5 In March 2021 Mr Cavill did not promote her or take steps to progress that. (Charlotte Bartrick, Ben Rogers, Lorna Crayston, Priya Ramasamy)

~~8.5.6 In May 2021 Mr Cavill told her that the feedback about her from Pulse engagement meetings was that she was negative.~~

8.5.7 In February 2022, when her job title changed to Senior Product Analyst, Mr Rashwan and HR did not change her from band D to band C or increase her pay. (Ancelin Thankamony)

8.6 Was that less favourable treatment? The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated. The Claimant relies on a hypothetical comparator in each case. Where she also relies on named comparators, they are identified in brackets above.

8.7 If so, was it because of age?

For the first two complaints, the Claimant says that she was in the age bracket "over 35" and she compares her treatment with those "under 35".

For the remaining complaints she says that she was in the age bracket “over 40” and she compares her treatment with those “under 40”.

8.8 The Respondent does not say that if there was age discrimination it was a proportionate means of achieving a legitimate aim.

#### Victimisation

8.9 Did the Claimant do the following:

8.9.1 In April 2021 she said in Pulse Engagement meetings that she had been waiting a long time for a promotion, was not being appreciated for her work and felt that she was being side-lined and discriminated against, whereas some employees were being favourably treated.

8.9.2 In April 2022 she said at Pulse Engagement meetings that she was not being appreciated for her work and was being side-lined and not promoted.

8.9.3 On 27 July 2022, she said to Mr Plexidas that only women in her team were being put on performance concerns, and highlighted that many men and women were resigning or becoming sick because of mistreatment in the name of performance concerns.

8.9.4 On 19 August 2022 she said to Mr Duddy that only women in her team were being put on performance concerns, and that errors by male members of staff were being overlooked whereas minor errors by female employees were highlighted as major issues.

8.10 If so, was each a protected act? Did the Claimant expressly or impliedly allege that the Respondent had breached the Equality Act?

8.11 Did the Respondent do the following things:

8.11.1 Allegations (1), (2), (6) to (13) and (15) to (17) in the list of sex discrimination complaints above; and 8.11.2 Changing the concerns in the PIP invitation letter sent to the Claimant and dated 7 September 2022 from those identified by Mr Plexidas on 29 July 2022?

8.12 If so, were these things detrimental treatment?

8.13 Were they done because the Claimant did a protected act?

#### Constructive unfair and discriminatory dismissal

##### Constructive dismissal

8.14 Was the Claimant dismissed?

8.14.1 Did the respondent do the following things:

8.14.1.1 The matters relied on as complaints of discrimination and victimisation above;

8.14.1.2 Ms Shortland saying in May 2018 that she would try to increase the Claimant's pay in March 2019 and/or that she would promote her if she met her objectives at that time and then failing to do so;

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8.14.1.3 The manner in which the Respondent dealt with the Claimant's sickness and the aftermath of COVID.

8.14.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

8.14.2.1 whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

8.14.2.2 whether it had reasonable and proper cause for doing so.

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

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

8.14.5 Did the claimant affirm the contract before resigning? The Tribunal will decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

#### Unfair dismissal

8.15 If the claimant was dismissed, what was the reason or principal reason for dismissal i.e. what was the reason for the breach of contract?

8.16 Was it a potentially fair reason?

8.17 Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

#### Discriminatory dismissal

8.18 If the Claimant was constructively dismissed in part because of discrimination that formed part of a fundamental breach of contract, it would follow that her dismissal was also discriminatory. That is a further complaint of direct discrimination.

#### Remedy

8.19 What compensation should be awarded for discrimination, victimisation or unfair dismissal?

The Tribunal will decide:

8.19.1 What financial losses has the discrimination, victimisation or unfair dismissal caused the Claimant?

8.19.2 Has the Claimant taken reasonable steps to replace her lost earnings, for example by looking for another job?

8.19.3 If not, for what period of loss should the Claimant be compensated?

8.19.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

8.19.5 If so, should the Claimant's compensation be reduced? By how much?

8.19.6 Did the Claimant cause or contribute to her dismissal by culpable and blameworthy conduct?

8.19.7 If so, should her compensation be reduced? By how much?

8.19.8 Unfair dismissal only: does the statutory cap of 54 weeks' pay apply?

8.20 What basic award for unfair dismissal should be awarded?

8.21 What injury to feelings has the discrimination or victimisation caused the Claimant and how much compensation should be awarded for that?

8.22 Has the discrimination or victimisation caused the claimant personal injury and how much compensation should be awarded for that?

8.23 Should interest be awarded on discrimination or victimisation compensation? How much?