



EMPLOYMENT TRIBUNALS

Claimant: Mrs Syra Bowden
Respondent: The Mare and Foal Sanctuary

Heard at: Exeter (by video)
On: 14 and 15 January 2026
16 January 2026 (panel in chambers)

Before: Employment Judge Le Grys
Mrs M. Metcalf
Ms J. Kaye

Appearances

For the Claimant: Mr A. Pincott, counsel
For the Respondent: Mr H. Dhorajiwala, counsel

RESERVED JUDGMENT

The claim for accrued but unpaid holiday pay is dismissed upon withdrawal.

The claim that the Respondent made an unauthorised deduction from the Claimant's wages is dismissed upon withdrawal.

The unanimous judgment of the Tribunal is that:

1. The Claimant's complaint of constructive unfair dismissal is not well founded and is dismissed.
2. The complaint of wrongful dismissal is not well founded and is dismissed.

REASONS

INTRODUCTION

1. By way of a claim form received on 21 March 2025 the Claimant brought the following complaints:

- 1.1 Constructive unfair dismissal;

- 1.2 Wrongful dismissal (relating to notice);
 - 1.3 Unauthorised deductions from wages;
 - 1.4 Accrued but unpaid holiday pay.
2. The Claimant was employed by the Respondent between 29 December 1997 and 21 November 2024 as Head of Equine Welfare. She asserts that the Respondent fundamentally breached the implied term of mutual trust and confidence by imposing an oppressive and unreasonable Performance Improvement Plan (PIP), requiring her to withdraw an application to become a director of an external organisation, and requiring her to undertake work while signed off sick. She contends that these matters left her with no reasonable alternative but to resign, amounting to constructive dismissal.
 3. The Respondent disputes the claim and asserts that the Claimant's allegations are unfounded. It maintains that the Performance Improvement Plan was a reasonable and supportive measure, agreed by the Claimant, implemented to address documented performance concerns, and accompanied by coaching and regular meetings. The Respondent states that the email sent during the Claimant's sick leave was a generic communication with no expectation of action. It contends that the Claimant resigned without notice while receiving support, and that no conduct occurred which could amount to a repudiatory breach of contract.

PRELIMINARY MATTERS

Withdrawal

4. At the outset of the hearing the Claimant confirmed that she no longer pursued her claims relating to unauthorised deductions from wages and holiday pay. These claims are accordingly dismissed on withdrawal.

Applications

Amendment

5. By the outset of the hearing the parties had not presented an agreed list of issues. On 12 January 2026 the Claimant instead applied to amend her claim, seeking to add six particulars, which we summarise as follows:
 - 5.1 Being bullied by a named individual, SJW.
 - 5.2 Conspiring to place the Claimant on a Performance Improvement Plan without due cause with the intention of terminating her employment and removing her from her home.
 - 5.3 Requiring the Claimant to withdraw an application to become a director of the National Equine Welfare Council (NEWC) without due cause.
 - 5.4 Unfairly pressuring the Claimant during the PIP.
 - 5.5 Disclosing personal information about the Claimant.

- 5.6 Sending the Claimant a work email while she was signed off from work as a result of stress, requiring her to promptly provide information.
6. In oral submissions, Mr Pincott stated that the Claimant no longer pursued point 5, while Mr Dhorajiwala stated that points 3 and 6 did not disclose new matters and therefore did not require an amendment. The Respondent also accepted that point 2 did not in general require an amendment, save that Mr Dhorajiwala argued that the specific reference to an intent to remove the Claimant from her home was a new matter that did require an amendment.
 7. The Tribunal was accordingly required to resolve the application in respect of points 1 and 4, and the disputed part of point 2.
 8. Mr Pincott submitted that the amendments were minor and amounted to providing no more than additional detail about the Claimant's claim; in substance, "filling in the blanks". He argued that they did not change the nature of the claim as the Respondent had understood it, and that the balance of hardship clearly fell in the Claimant's favour, as she would otherwise be unduly hampered in the presentation of her case.
 9. Mr Dhorajiwala strongly objected to the characterisation of the application as minor and submitted that, if it were as minor as suggested, an amendment application would not be required at all. He argued that the Respondent would be significantly prejudiced if the application were admitted, as the Claimant was now making very specific allegations in respect of individuals about which the Respondent had not prepared evidence. He submitted that he would at least need to take further instructions and potentially lead additional evidence if the application were granted, and that the hearing listing itself might be jeopardised given the limited time allotted. He emphasised that the Claimant had been legally represented from the outset and that there was no justification for these matters not having been particularised properly earlier.
 10. Having considered the application, and applying the well-known principles in *Selkent Bus Co Ltd v Moore* [1996] ICR 836 (EAT), the Tribunal refused the application in respect of points 1 and 4, but allowed it in respect of point 2:
 - 10.1 In relation to point 1, the original claim referred to bullying by "employees", plural, and did not specify any individuals. There was accordingly a change in substance from generic and somewhat vague allegations of bullying to specific incidents involving a single individual who no longer worked for the Respondent. Had this been pleaded earlier, it is likely that the Respondent would have prepared its case differently, including the possibility of calling different or additional witnesses. It is not reasonable to assert a wide-ranging allegation and expect the Respondent to work out for itself who and what this was said to involve, and to be in a position to respond fairly when raised at a late stage. The Claimant was represented throughout and there was no apparent justification for this deficiency only being addressed so late, namely only a matter of days before the hearing, at a point when granting the amendment would realistically have necessitated a

postponement to avoid prejudice. The balance of hardship accordingly fell in favour of the Respondent.

10.2 For point 2, we were unpersuaded that this amounted to a change of substance in the Claimant's case, which had always been that the PIP was a tactic to force her out of her role. As her accommodation was tied to that employment, the amendment amounted to little more than additional detail. As the witnesses involved in the decision-making process were present to give evidence, the Respondent could reasonably be expected to respond to this detail by asking a few additional questions in chief if needed. The balance of hardship therefore fell in favour of the Claimant.

10.3 For point 4, the proposed amendment remained vague and unparticularised. Other than a reference to an email sent while the Claimant was on sick leave (already in issue), it was not clear what was now said to amount to unfair pressure. We were not satisfied that the balance of hardship favoured an amendment expanding the claim at short notice into unclear and potentially wide-ranging new areas, which would likely have required fresh evidence and risked jeopardising the existing listing.

11. The claim was therefore amended to include points 2, 3 and 6. The application was refused in respect of points 1 and 4, and withdrawn in respect of point 5. The parties were asked to prepare a clean list of issues in line with our decision, which was submitted prior to the Tribunal's deliberations and is reproduced below.

Strike-out

12. The Respondent submitted additional evidence before the hearing commenced on the second day, including a supplementary bundle of 10 pages. Mr Pincott requested time to consider this material, which was granted, and then applied to strike-out the response for non-compliance with Tribunal directions. He argued that the material raised matters which ought to have been disclosed earlier, would require the Claimant and Mr Wylie (who had by then given evidence) to be recalled, and might jeopardise completion of the hearing within the remaining time. He submitted that the fairness of the proceedings was compromised.

13. Mr Dhorajiwala opposed the application. He indicated that he was prepared to respond on the notice given. He expressed surprise at the suggestion that a fair hearing was not possible, and stated that the additional documents had been identified following matters arising in cross-examination, which is an entirely normal feature of litigation. He disputed that the documents raised new or additional complications and said he would have few, if any, additional questions for the witnesses if they were recalled. He argued that strike-out would be disproportionate.

14. Having considered the matter, the Tribunal refused the application for strike-out, which we were satisfied would be a wholly disproportionate response. While we acknowledged that the late service of additional documents was undesirable, this is not unusual in litigation and it could be remedied without compromising trial fairness. It was accordingly reasonable to expect a legally represented Claimant to respond to this modest volume of new material. Furthermore, the impact could be addressed through far less drastic measures than strike-out, consistent with the overriding objective and the Tribunal's case-management powers, such as allowing additional time, recalling witnesses, or (if appropriate) considering costs or other case-management orders. While we were conscious of the difficulty of completing the hearing within the time estimate, we did not consider that this justified so draconian a measure as striking out the entire response. We therefore find that a fair hearing remained achievable by proportionate case-management and declined to exercise our strike-out discretion.

Timetable

15. The hearing timetable was somewhat challenging, with two days provided for the evidence of four witnesses, submissions, and Tribunal deliberation and judgment. Given the time taken to resolve the additional issues arising at the start of day two, those difficulties increased. There was, however, sufficient time to complete the evidence and hear time-limited closing submissions, with the parties also given the option to submit additional written representations if they so wished. The Tribunal then reserved judgment, before meeting in chambers for deliberations on what became day three of the hearing.

16. At the close of day two the Tribunal expressed its gratitude, which we repeat here, to both Mr Pincott and Mr Dhorajiwala for their conduct throughout the hearing. Their cross-examination remained focused and their submissions were concisely made, which greatly assisted the Tribunal in managing the time available.

ISSUES

17. The matters which fall to be determined by the Tribunal are as follows (relating to liability only):

Constructive unfair dismissal

18. Was the Claimant constructively dismissed on 21 November 2024?

18.1 Did the Respondent do the following things:

18.1.1 Iain Wylie (Chief Operating Officer) and David Spilsbury (Acting CEO) placed the Claimant on a Performance Improvement Plan ("PIP") without due cause and with the intention of terminating her employment and removing her from her home, where she had lived for the previous 15 years.

18.1.2 Withdraw its support for the Claimant's application to become a director of the National Equine Welfare Council (NEWC);

18.1.3 David Spilsbury sending the Claimant an email on 28 October 2024, while she was on sick leave, which contained a deadline.

18.2 If so, did that conduct, individually or cumulatively, breach the implied term of mutual trust and confidence? The Tribunal will decide whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the relationship of trust and confidence, and whether the Respondent had reasonable and proper cause to do so.

18.3 If so, was that breach a repudiatory breach?

18.4 Did the Claimant resign in response to the breach? The Claimant resigned without notice on 21 November 2024.

18.5 Did the Claimant affirm the contract before resigning, including through delay?

19. If the Claimant was dismissed, what was the reason or principal reason for the dismissal?

20. Was it a potentially fair reason? (The Respondent has not pleaded that the Claimant was dismissed for any potentially fair reason.)

21. Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant? This will include:

21.1 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

21.2 The equity and the substantial merits of the case.

Wrongful dismissal; notice pay

22. The Claimant's contract gives the Claimant a right to three months' notice pay of three months.

23. The parties agree that if the Claimant was dismissed she is owed three months' notice pay.

FINDINGS OF FACT

Basic factual background and chronology

24. The Respondent is an equine welfare charity founded in 1988 by the Claimant's late mother and registered as a charity in England and Wales. The Claimant was employed by the Respondent from 29 December 1997 until she resigned with immediate effect on 21 November 2024. During the latter part of her employment she held the position of Head of Equine Welfare.
25. In this role the Claimant was responsible for leading the Sanctuary's welfare outreach and advice team, overseeing welfare interventions, and rehoming practices for equines in distress. Her job description records her duties as including setting welfare intervention criteria, managing relationships with external agencies (such as DEFRA and the RSPCA), and ensuring compliance with animal welfare legislation and NEWC standards. She was expected to manage staff within the welfare team, attend weekly veterinary meetings, and maintain oversight of monthly equine reports. The role also involved developing policies and procedures for welfare and rehoming, coordinating responses to welfare cases, and contributing to strategic projects such as updating NEWC standards and hosting rehoming workshops. She was expected to be regarded as the Sanctuary's principal source of non-veterinary equine welfare expertise.
26. Following the departure of the then CEO on 12 March 2024, interim arrangements were made under Acting CEO Mr David Spilsbury, with Mr Iain Wylie (COO) assuming line management responsibility for the Claimant and conducting a review of the welfare function.
27. A formal Performance Improvement Plan for the Claimant was prepared and implemented in June 2024. The Claimant signed to acknowledge and agree the PIP on 13 June 2024. The PIP contemplated a 12-week period with an interim review at six weeks.
28. Shortly before the PIP commenced, Mr Spilsbury gave his approval to an application by the Claimant to become a director of NEWC. Shortly after the application was made he withdrew his support, as a result of which the Claimant was unable to pursue it.
29. In September 2024, the Respondent determined that the PIP would be extended, and this was communicated to the Claimant by letter dated 18 September 2024.
30. The Claimant was signed off sick commencing 13 September 2024, with further fit notes thereafter. During this period, Mrs Irene Breckenridge, as Head of People, maintained periodic contact.
31. On 28 October 2024, an email about 2025 budget timetables was sent by Mr Spilsbury to Heads of Department. The Claimant was included in the circulation.

32. The Claimant resigned with immediate effect by email on 21 November 2024. The Respondent accepted the resignation by letter dated 22 November 2024.

The imposition of the Performance Improvement Plan

33. The Claimant contends that she was placed on a Performance Improvement Plan as a method of forcing her out of both her job and her home. It was explicitly put to the Respondent's witnesses by Mr Pincott that the PIP process was a "sham". We therefore begin with an exploration of these issues.
34. The Claimant occupied tied service accommodation at the Respondent's Honeysuckle Farm for many years, her occupancy being linked to her employment. Her family's connection to the property was longstanding: she lived there with her late husband, whose ashes are scattered on the estate. The Claimant stated that her occupation of the accommodation was connected to certain out-of-hours duties she performed, and that she paid rent. The Tribunal was not, however, provided with any wider information as to the precise terms of the arrangement, or any evidence to suggest that the Claimant enjoyed security of tenure beyond that ordinarily associated with a service tenancy.
35. In early 2024 there were changes in the Respondent's senior management. Following the then CEO's departure on 12 March 2024, Mr David Spilsbury became Acting CEO and Mr Iain Wylie assumed line management responsibility for the Claimant. Mr Wylie undertook a review of the Respondent's welfare function, which included the department that the Claimant headed. It was against that background that the Claimant's PIP was prepared and implemented in June 2024.
36. In oral evidence, Mr Wylie stated that the decision to place the Claimant on the PIP arose from his assessment of longstanding and systemic performance concerns. He said that his review highlighted significant deficiencies in leadership, communication, and change management within the Claimant's department, including poor team morale, ineffective processes, and a lack of strategic oversight. He characterised the PIP as a proportionate and earnest attempt to address those matters, aimed at improving performance in a business-critical area, and rejected the suggestion that it was devised or triggered for any ulterior purpose. He accepted that the Claimant was highly regarded for her technical knowledge, but maintained that the concerns were managerial and operational, and sufficiently serious to justify formal performance management.
37. Mr Spilsbury's evidence was to similar effect. He explained that, as Acting CEO, he regarded the departmental issues identified in the welfare review as urgent and requiring structured intervention, and that the PIP was the appropriate mechanism to address them.

38. The witnesses were referred to an extract from the Acting Chief Executive's Report to Board, dated 30 April 2024. Those minutes recorded a confidential discussion attended by the charity trustees, Mr Spilsbury, and another individual, namely Ms Nicola Pavey.
39. At that meeting, Mr Spilsbury made the Board aware of the "*current performance issues*" concerning the Claimant and stated that a review conducted by Mr Wylie showed that it was evident she was not managing or leading her team well, and that current processes were not well organised. He also "*highlighted the difficulty in dealing with these performance issues at the same time as reallocating service accommodation as [the Claimant] resided in the farmhouse...*"
40. During the same discussion it was noted that performance issues had been raised previously and that, while the Claimant handled some elements of her role very well, such as her links with external organisations, it was felt that her performance was not at the required level. One attendee stated that they "*didn't think redundancy was appropriate as the role was still required.*"
41. It was suggested that Mr Spilsbury would place the Claimant on a PIP for three months and oversee and regularly review the milestones. It was agreed that conversations about the service accommodation would be deferred until it was known whether the Claimant had passed or failed the PIP. The possibility of garden leave was also discussed, and it was confirmed that all discussions would follow the current legal processes.
42. The minutes record the Board's hope that the Claimant would react well to the PIP and that she would not be spoken to about her accommodation until after those discussions had been initiated. It was also noted that it had been previously agreed that any notice she was given in respect of her accommodation would be for 12 months.
43. Responding to this in oral evidence, Mr Wylie highlighted that he was not present at this meeting but denied that the decision to impose the PIP was in any way an effort to force the Claimant out of her role or accommodation. Mr Spilsbury stated that the discussions about service accommodation were a separate and longer-standing governance issue driven by trustee concerns about consistency and charitable use of property, and that those discussions were deliberately parked so as not to conflate them with the performance process. He expressly denied any link between the PIP and the Claimant's accommodation, stating there was no direct charitable benefit in removing her. On his account, the two matters were kept distinct, and the commencement of the PIP was not motivated by, nor designed to advance, any decision concerning her occupation of the property.
44. We find that there was a lack of clarity in the Respondent's evidence as to who took the decision to impose the PIP. Mr Wylie was adamant that it was his findings that led him to conclude that formal performance management was needed. He presented himself as the operational driver: he identified the problems through the review, recommended a PIP as the appropriate

mechanism, and thereafter managed the process day to day as the Claimant's line manager. He accepted that others were involved, but his account was that the professional judgment that a PIP was needed flowed directly from his review, and that he stood by that judgment. He accepted, however, that the ultimate outcome of the PIP was not his decision.

45. Mr Spilsbury, by contrast, emphasised his role as Acting CEO and final decision-maker. His evidence was that the decision to place the Claimant on a PIP was taken at a senior level as a response to what he described as business-critical issues. While he accepted that Mr Wylie conducted the review and was closely involved in the process, Mr Spilsbury portrayed himself as the person who authorised the PIP and retained responsibility for deciding how to proceed at key points, including whether the Claimant had passed it and whether it should be extended.
46. Mrs Breckenridge's evidence added a further layer. She said that she drafted the PIP document itself, explaining that she did so in her HR capacity on the basis of the issues identified in the welfare review and discussions with Mr Wylie and Mr Spilsbury. She maintained, however, that this was no more than a draft prepared to support the process, and that her position was advisory rather than that of a decision-maker. She accepted that the organisation had limited experience of running PIPs and that she was more closely involved in shaping the paperwork than might ordinarily be expected. She recognised that record-keeping had not always been perfect, and stated that she had been unable to find many of the notes she had made relating to this.
47. We are accordingly satisfied that there was a blurring of the lines within the Respondent's approach, with the result that matters which ought to have been entirely separate considerations, such as performance and accommodation, ended up being discussed together. There was also an apparently collective approach to the Claimant's circumstances, with her performance issues being discussed at various levels up to and including the trustees, rather than being addressed by her line manager alone. The decision to adopt a PIP accordingly appears to have been a "group" one, rather than something Mr Wylie independently identified, as he initially sought to suggest. The result was that various levels within the hierarchy seemingly considered themselves responsible for the performance management, while also maintaining that someone else was taking the lead.
48. While this was poor practice, however, we do not find that it was the product of a deliberate effort to manufacture a reason for dismissal. The fundamental difficulty for the Claimant's case in this respect is that she frankly accepted in her own oral evidence that there were genuine underlying issues within her department which needed to be addressed. She also accepted that aspects of the welfare review identified matters of concern within her area of responsibility. She further agreed that some form of intervention could properly have taken place and repeatedly said that parts of the work she carried out during the PIP were valuable, necessary and, in hindsight, beneficial to the department. She stated her belief that, at the outset of the

process, the PIP appeared to be a genuine attempt to improve matters and not a strategy designed to remove her.

49. The Claimant's main objection was accordingly not that performance management was required at all, but rather that it took the form of a PIP. She said that she had never been the subject of informal performance management and that alternative, less onerous means of addressing the issues were not explored. She also said that, notwithstanding her status as a senior manager, she had never seen a PIP before, and suggested that the Respondent had not used such plans in the past. Her central complaint was accordingly the structure and method of performance management, rather than that it was taking place at all.
50. We acknowledge that a different manager or management team might have decided to approach the situation more informally. We do not find, however, that the availability of alternative options made it unreasonable for the Respondent to choose the one it did. In short, there is nothing inherently sinister in choosing a path that records matters formally and sets clear targets, particularly in respect of important issues concerning the management of functions going to the core of the charity's objectives. While it might not have been the Claimant's preference or the approach she would have taken, we do not find that there was anything inherently unfair in taking a formal approach, or that the decision to do so demonstrates that the Respondent had ulterior motives.
51. It therefore cannot fairly be said of the Respondent that the decision to embark upon performance management was contrived; we accept instead Mr Spilsbury's evidence that the organisation was obliged, as part of its duty to ensure adherence to its charity objectives, to address the issues it had identified. Given that the welfare review had shown that the key "bottleneck" was in the Claimant's department, coupled with the Claimant's own admission that this was a valid concern, we accept that performance management was considered a necessary step.
52. In these circumstances, the Respondent's genuine concerns as to how to address a serious performance issue with a business-critical team leader are what led to the matter being discussed more widely within the senior management team, rather than amounting to evidence of conspiracy.
53. Furthermore, we do not find that the references to service accommodation demonstrate an ulterior motive. Again, the Claimant herself accepted that her accommodation had always been regularly reviewed, generally annually. There was accordingly nothing unusual about such matters being considered. Mr Spilsbury highlighted the obligations on the trustees to ensure that resources were being used appropriately. He explained that the concerns were that on-site accommodation might be better used, whether as office space or for other staff who had a more pressing need to be on site.
54. While we therefore accept that there were concerns among senior leadership that the Claimant might not be able to continue to reside in her property in the

longer term, we find that these had not reached any further than preliminary discussions about matters the trustees were obliged to keep under review. We do not find that a decision had been reached to remove the Claimant, and indeed are satisfied that the Board's decision to defer such issues until after any performance management strongly suggests that this was not considered to be a priority.

55. The reference to 12 months' notice does, in our view, reinforce rather than undermine this conclusion, as it demonstrates that the trustees had already decided that, if notice were ever given, it would be for a relatively substantive period. There was, therefore, no apparent urgency in respect of this issue. In this context, the Claimant's suggestion that dismissal was chosen as a "simpler" way of ousting her makes little sense. There was no evidence to show that, had the Respondent wished the property to be vacated, it could not simply have required this. The Claimant's case accordingly requires the Respondent to have chosen a convoluted and potentially risky method of achieving her removal over more straightforward options in circumstances where no decision had been made and there was no apparent rush to do so. We reject that this was its true motivation.
56. We accept that the references to difficulties regarding the Claimant's accommodation, as well as the references to redundancy and garden leave, suggest that the Respondent was not optimistic as to how the Claimant would respond to the PIP, and that it was considering the potential consequences if she did not. We do not find, however, that a lack of confidence as to a positive outcome demonstrates that the outcome was pre-determined.
57. While the Claimant asserts that she was the only person placed on a PIP, any decision in respect of performance management will be unique to the individual concerned. We are accordingly not satisfied that the circumstances have been shown to be so similar as to make this a fair comparison, and we accept the Respondent's evidence that comparable concerns did not arise in respect of other managers.
58. Finally, we note the somewhat unusual history and background of the Claimant's employment. This was not a straightforward contractual arrangement between employer and employee, but one where the Claimant's mother had founded the charity and the Claimant had worked for it for many years. It was agreed that she was well regarded within the equine community, and indeed seen as an expert in many respects. It was also not disputed that there were elements of her job which she did extremely well. In respect of the property, she had resided there for over 15 years, and her late husband's ashes were scattered on the estate. There were, therefore, deep connections between the Claimant, the charity, and the wider community, and obvious potential both for causing upset and for reputational damage if matters relating to her were poorly handled. Against that backdrop, the tendency of the Respondent to over-analyse and over-discuss the Claimant's situation does not require a finding of conspiracy. The more straightforward explanation is that it reflected caution in circumstances the Respondent recognised as unique and sensitive.

59. Taking the evidence as a whole, we find that the Respondent faced genuine, pre-existing concerns about leadership, communication, change management, and team processes within the Claimant's department, which were identified by Mr Wylie's review and discussed at senior level. The Respondent chose to address those concerns by instituting a formal PIP with defined objectives and timelines; the Claimant agreed to that plan, received support by way of regular meetings and coaching, and completed substantial work against the objectives. References to accommodation, redundancy and garden leave were considered contingently and did not move beyond exploratory discussion; accommodation issues were deferred pending the outcome of performance management.
60. Overall, therefore, in light of the Claimant's concessions that performance issues existed and that aspects of the PIP were necessary and beneficial, we find that the Respondent's use of a PIP was a genuine managerial response to operational concerns rather than a contrived effort to force the Claimant from her role or home.

The contents of the PIP

61. The Respondent argued that how the PIP was subsequently progressed was not relevant, as the claim was pleaded on the basis of the initial decision to impose it. We do not accept, however, that this renders the contents of the PIP entirely irrelevant, as they may inform the question of the Respondent's motivations at the point that it was imposed. We therefore consider the contents and the impact, if any, that this has on our conclusions above.
62. In her evidence, the Claimant did not contend that the objectives of the PIP were irrelevant or illegitimate in themselves. She accepted that the department required streamlining, that policies and processes needed updating, and that clearer frameworks for team working were desirable. She said that she regarded much of the work as necessary, worthwhile and within her professional competence, and that she applied herself fully to delivering it. Her principal challenge was to the validity of the objectives when coupled with the imposed timescales and the formal PIP framework.
63. The terms of the PIP were agreed in advance by the Claimant. We acknowledge the more limited scope for an employee to disagree with a PIP, but the fact remains that there is no evidence that she challenged the realism of the objectives at the time. She also accepted that some of the more demanding aspects of the plan involved re-drafting and re-organising work she had already done, rather than starting from scratch. There was no contemporaneous complaint or grievance raised during the PIP in relation to the nature or scale of the objectives.
64. It was put to the Respondent's witnesses that the terms of the PIP were outside the scope of the Claimant's role, on the basis that they related to change management. We do not accept that submission. Change is an ordinary part of working life, and the ability to lead a team through change is a

basic and ordinary aspect of any management role. We therefore do not find it unreasonable for the Respondent to have expected the Claimant to perform to the required standard in respect of such issues.

65. We also do not accept the suggestion that the Claimant was given insufficient time to meet the PIP timescales, for example because she was criticised for not submitting written documents for a meeting which took place before six weeks had passed. The Claimant's evidence was not that she failed to submit the documents because she lacked sufficient time, but rather because she had not appreciated that this was required. Furthermore, and in any event, the relevant meeting took place close in time to the six-week point. It is not reasonably arguable that an attendee would think that documents specifically required for a meeting were not due simply because, counting forward from the date the PIP was signed, the six-week mark did not fall until shortly afterwards. Indeed, there was no evidence that the Claimant believed she had longer; she accepted that she had misunderstood what was expected.
66. We accept the evidence of Mr Wylie and Mrs Breckenridge that the Claimant was offered support during the process. This was supported by the documentary evidence and acknowledged by the Claimant, who accepted that support included weekly meetings and coaching sessions. She also accepted that in some respects she found the process useful, for example describing some of the work she completed as rewarding. She further asserted, as evidence that the process was a sham, that she in fact met all of her targets. There was accordingly a tension in her case, in that she asserted both that the PIP imposed unreasonable expectations and that those expectations proved to be within her capability, albeit through considerable effort.
67. Taken together, we do not accept that the contents of the PIP demonstrate that it was designed for the Claimant to fail. It instead set challenging but realistically achievable targets, within her competencies and role.

The decision that she had not passed the PIP

68. The Claimant gave evidence, which was not specifically challenged by the Respondent's witnesses nor contradicted by any documentary material, that she had "passed" the PIP in the sense that each of the objectives imposed had been recorded as met. Notwithstanding this, the Respondent determined, in a letter from Mr Spilsbury dated 18 September 2024, that whilst the PIP had not been failed, they were not yet able to conclude that its objectives had been fully met. It accordingly proposed a six-week extension.
69. We found much of the Respondent's evidence relating to the decision to extend to be unsatisfactory. There was an absence of records or notes of meetings or discussions, and Mrs Breckenridge in particular stated that she had been unable to locate such material. There were clear inaccuracies: it was initially asserted, for example, that of the three team surveys planned as part of the PIP, only two were undertaken. That position changed overnight during the hearing when Mr Wylie and Mrs Breckenridge accepted that a third survey had in fact been carried out. Indeed, this was one of the additional

documents that led to the Claimant's strike-out application. As to who decided that the PIP should be extended, Mr Wylie insisted that the decision was his, describing it repeatedly as his independent or professional judgement, based on what he considered to be unresolved issues in the Claimant's work, but under cross-examination he accepted that he had, in fact, recommended termination rather than extension. His position then shifted to one of having made recommendations only.

70. Mrs Breckenridge also accepted that, on 4 September 2024, she emailed confirming that the Claimant had met the "basic" requirements of the PIP, yet nevertheless advised that the Claimant had "*reached the limits of her effectiveness in this role*". She said she could not recall how she reached that conclusion, having effectively acknowledged that the Claimant had achieved the goals that had been set.
71. In this respect there was a repetition of what we found at the outset of the PIP: multiple people were involved and lines of responsibility were unclear. Mr Spilsbury subsequently confirmed in his own evidence that it was he who decided to extend the PIP.
72. In that context we accept the Claimant's clear evidence that the PIP was passed in the sense that each of the objectives had been ticked off. We also accept her evidence that she had been reassured during the process that she was making progress. We did not hear any consistent or coherent evidence to the contrary. Instead, the Respondent's witnesses offered equivocal answers to the effect that she had "passed but not passed", with a noticeable reluctance simply to say whether the Claimant had achieved the goals set, and a tendency to steer answers back to what they saw as wider problems.
73. We also acknowledge the belated evidence provided by the Respondent of the third survey. That lends some support to the Claimant's evidence that there had been improvements within the team. While we accept the evidence of Mr Wylie and Mrs Breckenridge that they nevertheless retained concerns based on separate one-to-one discussions with team members, the survey results support a finding that the Claimant genuinely believed that there had been positive improvements over the course of the PIP.
74. We find that the Claimant was therefore extremely upset and disappointed when told that the PIP would be extended. She had achieved the goals set, at considerable effort, and expected that to be the end of the matter. That expectation was not unreasonable: one of the main advantages of a formal, written PIP over informal advice is that clear goals are set which can then be worked towards. If those goals are achieved, it is reasonable to expect that to be the end of the matter or, if additional issues have been identified during the process, that this should be clearly explained. Instead, the Claimant unexpectedly received an unclear finding that she had "neither passed nor failed" and was told that the process would continue. There was no contemporaneous written explanation provided to the Claimant identifying any additional objectives or clarifying what further outcomes were required during the proposed extension.

75. We do not find, however, that these findings show that the process was a sham from the start. They again demonstrate that the process was not well managed, but poor management does not, of itself, imply conspiracy. Indeed, we are satisfied that the evidence points away from that conclusion.
76. First, there is nothing inherently implausible in the suggestion that the Claimant's managers were not satisfied that the PIP had fully addressed the underlying performance concerns, even though the Claimant had achieved the specific goals she had been set. Mrs Breckenridge, for example, explained that she felt the changes were essentially superficial; not in the sense that the Claimant was paying lip service to the PIP or was not genuinely motivated to change, but rather that earlier problems appeared to be re-surfacing rather than clearly resolved. This could have been better communicated as the reason for the extension, but we do not accept that it was a deliberate attempt to shift the goalposts. It suggests no more than that the Respondent realised that the original objectives had not fully addressed what it was trying to resolve, and decided that it therefore needed to look again at how those were framed.
77. Second, the clear recommendation of Mr Wylie and Mrs Breckenridge by September 2024, following the initial PIP, was that the Claimant should be dismissed. The Respondent was accordingly presented with a clear opportunity to terminate the Claimant's employment, had that been the desired outcome. Instead, the Claimant was to be given a further opportunity to improve. This undermines the suggestion that dismissal was inevitable or that the situation was being manipulated to achieve that result.
78. Third, as a result of the Claimant's holiday, sick leave and subsequent resignation, the new PIP was never agreed. While there was an initial draft, therefore, it cannot fairly be said that the Respondent put in place new objectives that were unrealistic or unattainable. It is instead reasonable to anticipate that there would have followed a similar process to the initial PIP, with the Claimant's involvement and the drafting of agreed goals.
79. We therefore accept Mr Spilsbury's evidence that he did not agree that dismissal was warranted at that stage, and that it remained his hope that the Claimant would come up to the necessary standard. He gave that evidence in a straightforward and credible manner, and appeared genuine in his view that the situation might resolve more positively. This conclusion is also consistent with his explanation for sending the email of 28 October 2024 (considered below), namely that he expected the Claimant to return and would want to be involved in a significant piece of work involving her team. The fact that his view of the future included the Claimant undermines the suggestion that he was working towards her exit. Even at this late stage, she remained a key player in the organisation in his mind.
80. Where the Claimant sees conspiracy, therefore, we find that the decision to extend the PIP was a well-intentioned but poorly managed response to genuine, ongoing concerns about her performance. We reject the suggestion

that the Respondent was caught by surprise by the Claimant reaching the required standard and was forced to set harder goals as a result, which is not consistent with our earlier findings that the original PIP goals were reasonable and achievable.

81. Finally, we note at this stage that the views expressed by Mr Wylie and Mrs Breckenridge as to termination were internal to the Respondent and there is no suggestion that they were communicated to the Claimant before these proceedings. We accordingly do not find that those views operated on the Claimant's mind at the time of resignation: she did not know what had been said privately.

Withdrawal of NEWC application

82. We found the Claimant's case in respect of this aspect of her claim to be somewhat confused. It was presented on the basis that the breach lay in requiring her to withdraw her application. In evidence, however, she conceded that there were grounds to ask her to do so. Indeed, she accepted that this was probably necessary. She instead suggested that the problem was that she was allowed to put the application forward in the first place.
83. We recognise that allowing the Claimant to make an application and then requiring her to withdraw it caused genuine embarrassment. The proposition that the Respondent breached the term of trust and confidence by not being even more restrictive with her than it was is, however, difficult to sustain.
84. Further, and in any event, we accept Mr Spilsbury's evidence that the position resulted from timing rather than malice. He explained that consent to the application had to be given at short notice and fell before the decision was taken to impose a PIP. As he did not wish to pre-judge that outcome, he gave his consent. When it subsequently became clear that continued support was not compatible with the demands of the PIP, that was promptly communicated and the Claimant was asked to withdraw.
85. We accordingly do not find that the Respondent's approach to the NEWC application was unreasonable, or that it was designed to embarrass the Claimant.

Email during sick leave

86. There was no dispute that Mr Spilsbury emailed the Claimant on 28 October 2024, while she was on sick leave. This email was sent directly to the Claimant, began "Hi Syra", and set a tight deadline for the return of a substantial project by 12 November 2024. There was no acknowledgement within the body of the email to suggest that this was for information purposes only, or that Mr Wylie was expected to complete this work on the Claimant's behalf.
87. We note, however, that Mr Spilsbury had also sent another email to all managers, including the Claimant, on the same date explaining what this

related to and what was required. We accordingly do not accept that the Claimant saw only a single email directly addressed to her and had no other means of contextualising it.

88. We accept that the Claimant was checking her work emails during this period of sick leave, and that the Respondent was aware of this: it was the address Mrs Breckenridge was using to stay in touch with her. She was not directly told prior to Mr Spilsbury's email that there was no expectation on her to respond to work emails during her absence. The Respondent ought, therefore, to have realised that the Claimant might see this email before she returned to work.
89. We do not find, however, that the Claimant genuinely believed on receiving this email that there was any expectation that she would complete this work before her return. Such a finding is not plausible in the context of an experienced manager, who would know that no such expectation would fall on an employee absent for health reasons. In support of this conclusion we note that there is no evidence that she replied asking for clarification or to protest, and it is not suggested that she made any effort to complete the work in line with the email.
90. We additionally note that, while her resignation email of 21 November 2024 refers to the email tipping her over the edge, the clear implication from her wording is that this was a complaint about the fact that the email was sent to her, rather than that she believed she was actually expected to complete the task.
91. The Claimant does not mention the email at all in her witness statement, which undermines the suggestion that she considered it to be a significant event.
92. We therefore accept Mr Spilsbury's evidence that he sent the email to ensure that the Claimant was aware of the project on her return, and that he never had any expectation that she would complete it. He acknowledged that in hindsight it might have been better to make clear that it was for information only, but we accept that this was a minor and unintentional oversight on his part. We do not find that the Claimant believed, because he had not done so, that she was being told to work while she was sick.
93. Within this context, and noting the absence of any reference to the email in the Claimant's witness statement, we do not accept that receipt of the email caused the Claimant any significant or enduring concern at the time. We find that it did not operate as a substantive source of pressure, or as an event that materially influenced her decision to resign.

Allegations of bullying

94. We did not allow the Claimant's amendment to plead bullying by a specific individual, and this aspect of the claim did not subsequently appear in the list of issues agreed by the parties. As the Claimant nevertheless raised a more

generic allegation of bullying in her original claim, and our decision was to refuse an amendment to identify a specific individual rather than to strike-out that original allegation entirely, we consider the issue briefly.

95. We found the Claimant's case in this respect to be vague. Even taken at its highest, it was not clear that the matters relied upon amounted to bullying as opposed to a disagreement with management decisions or a clash of personalities. Where a single incident of hostile behaviour is described in her witness statement, it is not clear that this was bullying rather than as an inappropriate but isolated response.
96. Furthermore, even taking the Claimant's case at its highest, she did not suggest that she took any action at the time to seek to address this, for example by raising a grievance or discussing the matter informally with more senior colleagues. While the Tribunal recognises that individuals may not always feel comfortable in doing so, there remains a lack of contemporaneous evidence to suggest that this was considered to be an issue at the time.
97. There was then no suggestion that any bullying continued after March 2024, many months before the Claimant's resignation.
98. We therefore do not find that the Claimant has proved allegations of bullying, or that any such matters remained an operative factor in her mind at the time she decided to resign.

RELEVANT LAW

99. In *Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221 (CA) the common law concept of repudiatory breach was imported into what is now s.95(1)(c) ERA 1996. If the employer commits a significant breach going to the root of the contract (or demonstrates an intention no longer to be bound by an essential term), the employee is entitled to treat the contract as at an end and may resign; if they resign in response to that breach, they are constructively dismissed.
100. The implied term of mutual trust and confidence requires that the employer shall not, without reasonable and proper cause, conduct itself in a manner likely to destroy or seriously damage the relationship of trust and confidence: *Malik v BCCI* [1997] ICR 606 (HL). The enquiry is objective and takes account of all the circumstances.
101. Whether the conduct amounts to a repudiatory breach is a question of contract, not a test of management reasonableness. The "range of reasonable responses" standard does not apply to the breach question: *Buckland v Bournemouth University* [2010] EWCA Civ 121. Good intentions will not save conduct that objectively crosses the Malik threshold; equally, procedural imperfections or managerial misjudgements will not suffice if, viewed objectively and in context, the trust and confidence term has not been destroyed or seriously damaged.

102. Not every unreasonable act amounts to a breach. The *Malik* formulation requires conduct likely to destroy or seriously damage the relationship. Acting unreasonably is insufficient; there must be objective abandonment or refusal to perform the contract. Illustrations sometimes given include unjustified failure to pay wages on time, substantial and unjustified demotion, unilateral fundamental change to contractual duties, or unwarranted humiliation. Whether any example attains the threshold is fact-sensitive.
103. A breach may arise from a series of acts taken cumulatively. An employee may rely on a “last straw” which need not itself be independently repudiatory provided it is not innocuous or trivial and is capable of contributing to the overall picture: *Omilaju v Waltham Forest* [2005] EWCA Civ 1493.
104. The employee must resign in response to the breach and without affirming the contract. Affirmation may occur through delay or by conduct indicating an intention to continue, but this is fact-sensitive; time taken to seek advice or whilst off sick will not necessarily amount to affirmation: *Western Excavating; Kaur v Leeds Teaching Hospitals* [2018] EWCA Civ 978. As Kaur explains, a structured approach is often helpful: (i) identify the alleged breach(es); (ii) consider affirmation; (iii) if relevant, consider whether there was a last straw; and (iv) decide whether the employee resigned in response.
105. Where the employer is exercising ordinary managerial functions (for example, setting performance objectives, monitoring progress, or reorganising work), the question is whether the manner and effect of that conduct, assessed objectively and in context, crossed the *Malik* threshold. The mere fact that the employer chose a formal process (such as a PIP) rather than a less formal alternative does not, without more, amount to a breach; what matters is whether the conduct, without reasonable and proper cause, was likely to destroy or seriously damage trust and confidence.

APPLICATION OF THE LAW TO THE FACTS

106. We are satisfied that the Respondent had genuine concerns about the Claimant’s performance and was making a genuine attempt to resolve this. While there may have been a concern that the outcome was unlikely to be positive, and concerns as to the consequences of such an outcome and how that should be handled, we have not found that the process was intended to bring about a situation in which the Claimant was forced to leave. Any conclusion to the contrary is inconsistent with the proposed extension to the PIP and the clear attempt to give the Claimant as much of a chance as possible to improve. If the Claimant’s accommodation were the true goal, then the PIP would have been an implausibly convoluted means of achieving this in circumstances where the Claimant had no real security of tenure.
107. It therefore follows that the pleaded allegation of a deliberate, removal-driven sham is not made out on the facts. On the objective test,

such conduct as we have found does not, and could not, amount to conduct without reasonable and proper cause that was likely to destroy or seriously damage the relationship of trust and confidence. The “conspiracy” strand accordingly does not establish any breach of the implied term.

108. While we have not found a sham process designed to remove the Claimant, we have identified shortcomings in the Respondent’s processes and approach to her performance management. These included deficiencies in record-keeping and a lack of clear lines of responsibility in respect of key decisions. We have accepted that the Claimant met the objectives initially set, yet was nevertheless told that she had not “passed” the PIP.
109. We remind ourselves, however, that this is not a case of dismissal in which the Tribunal is assessing the reasonableness of the procedure. These failings are relevant only to the extent that, viewed objectively and in context, they might have destroyed or seriously damaged the relationship of trust and confidence.
110. The Claimant was not, moreover, aware of what occurred “behind the scenes”, for example the Board’s discussions about accommodation or Mr Wylie’s internal recommendation that she be dismissed. We therefore do not find that such matters operated on her mind when she decided to resign.
111. We accept that the lack of clarity over decision-making, and over whether the Claimant had “passed” the PIP, led to mixed messages about her performance. That understandably undermined her confidence in the process and her trust in the Respondent. We note, however, that she was never told, either directly or by clear implication, that she was incapable of meeting the required standard or that dismissal was inevitable. At the point she went off sick, the position was that the Respondent retained concerns but would offer a further opportunity to address them.
112. We therefore conclude that the handling of the PIP would have justified a request for clarification or even a complaint. We do not find, however, that the shortcomings were such as to entitle the Claimant to treat the contract as having fundamentally broken down. It is not uncommon in employment relationships for mistakes to occur in the handling of performance matters, yet still be capable of resolution. Given that, at this stage, the Claimant’s knowledge was principally that she had not been signed off from further performance management, we do not accept that such disappointment objectively justified resignation.
113. We therefore find that, although imperfectly executed, the Respondent’s process amounted to a genuine attempt to improve performance and to avoid the need for dismissal. The fact that the Claimant had completed the specific tasks identified at the outset of the PIP did not exhaust the Respondent’s legitimate concerns about leadership, communication, and embedded change within the department, nor did it remove its reasonable and proper cause for continuing performance management. It did not

amount to conduct, without reasonable and proper cause, that was likely to destroy or seriously damage the relationship of trust and confidence.

114. For completeness, in respect of the management of the PIP, we have considered the totality of the Claimant's evidence for the reasons already given. However, as the claim was advanced on the footing that the *initial decision* to impose the PIP constituted the breach, it is arguable that the claim, taken at its highest, falls even further short than we have identified if the scope of the pleaded case is strictly applied.
115. In respect of the NEWC application, we accept that this was a matter of unfortunate timing that caused the Claimant embarrassment. We do not accept, however, that such embarrassment was a sufficiently significant factor to amount to a fundamental breach of contract. Again, it may have justified complaint or clarification, but it did not objectively justify resignation.
116. Likewise, the email may have given legitimate cause to complain, but it did not justify resignation. It was a matter that could have been resolved within the contractual relationship and was, at its highest, a minor mistake by the Respondent which cannot objectively be said to destroy or seriously damage trust and confidence.
117. We therefore do not find that any of the three specific incidents relied upon by the Claimant, taken individually, amounted to a breach of the implied term of trust and confidence such that she was entitled to resign and have that resignation treated as a dismissal.
118. We therefore consider the cumulative impact of everything relied upon by the Claimant.
119. We are satisfied that the Claimant was embarrassed and at times confused by the Respondent's approach to her, including its decision to subject her to a formal performance procedure in circumstances where she considered her long service and contribution to the charity merited a different approach. We are also satisfied that she had, by the time of her resignation, subjectively reached the point where she no longer felt that she had a future with the Respondent. That belief was shaped by her perception that the goalposts in respect of her performance were being moved, by the extension of the PIP notwithstanding the completion of its objectives, and by what she saw as the wider direction in which the charity was now heading.
120. We take full account of the Claimant's deep personal connection to both the charity and her home. She had worked for the Respondent for many years, her family history was closely entwined with the organisation, and her accommodation was bound up with both her employment and significant personal loss. We are entirely satisfied that her decision to resign was not lightly taken and that it entailed a substantial personal and professional sacrifice. In circumstances where the Respondent was maintaining that termination was not inevitable, the Claimant plainly had much to lose.

121. These matters weigh in the Claimant's favour when considering whether trust and confidence had, from her perspective, broken down. We do not doubt that she genuinely believed that the employment relationship had reached an end and that she could not envisage a future with the Respondent.
122. The question for the Tribunal, however, is whether that belief was objectively sustainable when the Respondent's conduct is assessed as a whole and in context. We are not satisfied that it was. The Respondent had legitimate and longstanding concerns about performance within a business-critical part of the charity's operations, and it was entitled, if not obliged by its charitable objectives and governance responsibilities, to seek to address those concerns through formal performance management. The adoption of a PIP, even if poorly managed in some respects, did not of itself amount to conduct without reasonable and proper cause.
123. While the Claimant was entitled to feel disappointed, embarrassed, and at times frustrated by the Respondent's decisions, including the handling of the NEWC application and the sending of the email from Mr Spilsbury during her period of sickness absence, these matters were not, either individually or cumulatively, of a nature that rendered the continuation of the contractual relationship objectively untenable. They were matters capable of explanation, clarification, and resolution within the framework of an ongoing employment relationship.
124. The Respondent's handling of matters was imperfect and arguably poorly executed. However, mistakes in management, even when taken together, do not necessarily amount to conduct calculated or likely to destroy or seriously damage the relationship of trust and confidence. In this case, the cumulative picture falls short of the threshold required to establish a repudiatory breach of contract.
125. For completeness, we address the Claimant's reliance on the email sent by Mr Spilsbury on 28 October 2024 as a "last straw". We do not accept that this email was a significant factor in the Claimant's decision to resign, nor that it was capable of tipping the balance in circumstances where the employment relationship had otherwise not been objectively destroyed. As we have found, the email was sent in the context of routine budget planning, did not require the Claimant to undertake work while off sick, and was capable of straightforward explanation. The Claimant did not respond to the email, nor did her resignation follow for a number of weeks, during which no further incident occurred. She does not refer to it in her witness statement.
126. We therefore do not find that the email operated as a significant factor in the Claimant's decision to resign, nor that it represented an escalation in the Respondent's conduct. Even when viewed cumulatively with the other matters relied upon, it was not conduct of a kind that could materially contribute to a repudiatory breach of contract.

127. It follows that the Claimant was not constructively dismissed. Her claim for unfair dismissal must therefore fail. In light of our finding that no repudiatory breach occurred, questions of affirmation do not arise. Given that it was accepted by the parties that the claim for wrongful dismissal stood or fell with the unfair dismissal claim, that claim must also be dismissed.

Employment Judge Le Grys

Date: 21 January 2026

Judgment & reasons sent to the parties:
18 February 2026

Jade Lobb
For the Tribunal Office