



EMPLOYMENT TRIBUNALS

Claimant: Mr A Stone
Respondent: Plantforce Rentals Ltd
Heard at: Exeter Employment Tribunal
On: 2, 3, 4, 5 and 6 February 2026

Before: Employment Judge Volkmer

Representation

Claimant: in person
Respondent: Mr Curtis, Counsel

JUDGMENT having been sent to the parties on 20 February 2026 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided.

REASONS

Background

1. By a Claim Form dated 18 October 2022, the Claimant issued a claim of constructive unfair dismissal.
2. The matter was listed for a two-day final hearing. On the Respondent's application, that listing was postponed and the matter was listed instead for a Case Management Preliminary Hearing (CMPH). It came before Employment Judge Midgley on 20 March 2023. He identified the issues (which were recorded in the Case Summary) and listed a further hearing in order to determine whether all of the issues identified were capable of having been

pursued on the basis of the claim form or whether the Claimant required permission to amend to pursue those complaints.

3. Employment Judge Salter conducted the next Case Management Preliminary Hearing on 5 May 2023. The amendment issue was not contested by the Respondent, the issues were confirmed and case was set down for a five day hearing in late November 2023.
4. The Respondent applied for a stay in the proceedings on the basis that the Claimant had then commenced a personal injury claim. At the hearing which then followed on 1 November, Employment Judge Smail stayed the claim pending the conclusion of the parallel civil claim (Claim No. 070DC359) and the final hearing was postponed.
5. The county court proceedings were resolved at the start of 2025 and the stay was lifted. A further Case Management Preliminary Hearing took place before Employment Judge Dawson on 14 May 2025. At that hearing, fresh directions were issued and a final hearing was re-listed.
6. On 18 August 2025, the Claimant applied to amend his claim by way of some minor amendments to the wording within two of the issues identified in the Case Summary of Employment Judge Midgley at paragraphs 1.1.1.6 and 1.1.1.7. In the absence of any objection from the Respondent, that application was granted on 16 September 2025 by Employment Judge Cadney.
7. A further “catch-up” hearing took place before Employment Judge Livesey on 10 December 2025.

This Hearing

8. I heard oral evidence from the Claimant and, on behalf of the Respondent, Nicki Reed (nee Dyer), James Smith, Joanne Ryan, Steve Lewis, and Darren Blackburn.
9. The parties produced an Agreed Hearing Bundle of 974 paginated pages. Page references referred to as “page X HB” refer to Agreed Hearing Bundle pages. The Claimant also had a separate bundle, referred to as “Claimant’s Bundle” with 176 pages. References to the Claimant’s bundle will say “page X of the Claimant’s Bundle”. There is significant duplication between the bundles. For ease of reference, I will use bundle references in the agreed bundle where there is duplication.
10. At the beginning of the hearing, we discussed two additional documents the Claimant wished to refer to. One was a counter-schedule of loss produced by the Respondent for the purposes of Judicial Mediation. I declined to allow this into the documents as it was covered by without prejudice privilege. The other document was correspondence between the parties, which I allowed to be added as a separate document.
11. The amendments which were permitted by Employment Judge Cadney on 16 September 2025 were, in error, not included in the hearing bundle. It was understood that the List of Issues set out in Employment Judge Midgley’s

orders stood. As such, at the time the Claimant was being cross examined on days one and two, Mr Curtis and I were unaware that the changes had been made. During cross-examination, the Claimant conceded that Mr Smith had called him on 20 July 2020 and that there was discussion of his injury. The current wording of paragraph 1.1.1.7 of the List of Issues was an allegation that Mr Smith had not called him on this date to discuss the injury. The Claimant was asked to withdraw the allegation, based on his concession. He did so. Upon reviewing the Tribunal file before submissions, I became aware of the amendment to the List of Issues. The allegation had been amended to say that Mr Smith had not called the Claimant *until* 20 July 2020. After I explained the likely confusion, Mr Curtis agreed to my suggestion that the allegation should be re-instated, as the Claimant's withdrawal was based on a misunderstanding of the issue as it had been properly put after the amendment made on 16 September 2025.

12. During the cross examination of Mrs Ryan on the second day of the hearing, the Claimant wished to refer to a document at pages 112 to 113 of the Claimant's bundle. There is also a redacted version on pages 109 to 111 of the Claimant's bundle. This is a note of a meeting between Mrs Ryan and the Respondent's lawyers about the Claimant's separate personal injury claim against the Respondent. I raised a concern that this document was legally privileged. The Claimant's position was that this had been sent to his lawyers by the lawyers for Keir Bam, the First Respondent in the same personal injury claim. The Respondent's position was that it had not been so disclosed, privilege had not been waived and the Respondent objected to the Claimant's reliance on this document.

13. The Claimant stated that it had been permitted by EJ Livesey in the Preliminary Hearing on 10 December 2025. I reviewed the note of the hearing, which stated the following:

"42.5 The Claimant alleged that he had been provided with an unredacted version of minutes of a meeting which took place on 30 November 2021 in which representatives from Clyde and Co appeared to have given certain advice [312-4]. He alleged that those minutes had been sent to Kier and then onto his barrister during the personal injury litigation. It appeared to the Judge, therefore, that any privilege that may have attached to them had been waived and lost. Miss Laxton did not suggest that that would not have been the case. She relied upon a redacted version [309-11]. Privilege aside, Miss Laxton did not consider that the contents of the document were relevant. The Claimant did and he was at liberty to include them within his own bundle if he wished".

14. In my view, the matter of privilege had not been determined by EJ Livesey. But rather it was a statement that he considered, based on the Claimant's account that it appeared to have been waived. I considered that this guidance had been given on the basis of the Claimant's account that the unredacted version of the document had been disclosed to the Claimant. In light of the Respondent's objection, I asked the Claimant to provide the email in which the unredacted version of the document had been disclosed. Given that the default position was that the without prejudice rule applied. I wished to see the correspondence the Claimant relied on as a waiver of such privilege, in order to determine the issue. I agreed with the parties that Mrs Ryan would be released from the oath once the Claimant's other questions had been asked on the basis that she

could be recalled if the document was allowed into the evidence. We agreed that we would leave the matter over night and, if necessary, Mrs Ryan could be recalled on the third day of the hearing. Each party was to seek the relevant emails disclosing the disputed meeting minutes.

15. The Respondent sought further documentation from the solicitors who had acted for them in relation to the personal injury claim, Clyde and Co. They were told that the files had been archived and were unable to produce anything over night. The Claimant stated that he had also contacted the lawyers who had acted for him in relation to the personal injury claim but had also been unable to obtain anything over night. The Claimant did not produce anything from his own emails to show that privilege had been waived.
16. On the morning of day three we discussed it again. In the absence of any emails regarding the point for me to consider whether privilege had been waived, I said that I considered the default position to be that it had not been so waived. It is possible that when a document has been electronically redacted, the wording underneath the redaction can be copied and pasted. The formatting of the unredacted document was not the same as the formatting of the redacted document. We discussed waiting longer to see if documents could be obtained, but the Claimant said that he was happy to proceed without questioning Mrs Ryan about the contents of this document. The substance the Claimant wanted to ask about was the same as an email dated 16 September 2020, in which Mrs Ryan suggested a capability dismissal may be appropriate (page 69 Claimant's Bundle).

Issues

17. The issues for the Tribunal to determine, as set out in the case management order of EJ Midgley and amended on 16 September 2025 are as follows.

Constructive Unfair Dismissal

1. *The Claimant claims that the Respondent acted in fundamental breach of contract in respect of the implied term of the contract relating to mutual trust and confidence. The breaches were as follows.*
 - 1.1. *Attempting to conceal and cover up the Claimant's accident at work (which the Claimant argues occurred on 5 March 2020) as follows.*
 - 1.1.1. *On 5 and 6 March 2020 the Claimant's line manager, Nicky Reed, failed to make an accident report in the relevant log.*
 - 1.1.2. *Mrs Reed deliberately failed to discuss the accident with the Claimant between 6 and 17 March 2020 knowing that that time delay would preclude the instigation of a referral to the Health and Safety Executive for an investigation.*
 - 1.1.3. *On 2 October 2020 Mr Smith informed the Claimant that he had not been involved in an accident at work, but the injury was caused a longstanding health condition which was unrelated to work.*
 - 1.1.4. *On or before 7 October 2021 Mrs Reed denied that the Claimant made two telephone calls on 5 and 6 March 2020 in which the Claimant reported the accident to her.*
 - 1.1.5. *Between 5 March and 15 September 2022 an individual employed by the Respondent or acting as an agent for it, altered the vehicle plant*

hire time sheet for the Claimant's vehicle to change the tick in the seatbelt check column to a cross.

- 1.1.6. Between 17 March 2020 and 20 July 2020 Mrs Reed contacted the Claimant on three occasions to make enquiries about his health (in order to reduce the lowest possible level records about the injury and its cause).*
- 1.1.7. James Smith, the Respondent's Health and Safety Manager, did not make contact with the Claimant to discuss his injury until 20 July 2020.*
- 1.1.8. From 5 March 2020 until 26 September 2022 the Respondent failed to make enquiries with the Claimant to identify how the damage to the seatbelt was caused.*
- 1.1.9. On dates between 6 March 2020 and approximately June 2022 Miss Joanne Ryan caused to be deleted documents and emails relating to the accident.*
- 1.2. The Respondent deliberately delayed the progress of its capability process in order to cause the Claimant to resign (so as to avoid the need to record an accident at work as part of the reason for the dismissal) by failing to initiate the capability process between 24 September 2020, following a return-to-work assessment conducted by James Smith, and 30 June 2022 despite Mrs Ryan the medical evidence and OH reports recording that there was no prospect of the claimant being fit to return to work within a reasonable period.*
- 1.3. The Respondent, specifically Joanne Ryan, deliberately delayed the return-to-work process for the Claimant between 2 February 2021 and approximately June 2022 by failing to provide light duties at Hinkley point for the Claimant, but proposed that the Claimant could do light duties on HS2.*
- 1.4. Between 20 July 2020 until 26 September 2022, the Respondent failed to provide the Claimant will a single line manager with responsibility for his return to work but permitted Mrs Reed and Mr Smith and subsequently from 7 July 2020 Mr Smith and Mrs Ryan to manage the Claimant as follows.*
 - 1.4.1. On 20 July 2020, 1 August 2020, and 3 August 2020 the Claimant complained about the fact of the mismanagement but the Respondent took no action.*
 - 1.4.2. On 20 July 2020 Mr Smith gave the Claimant inappropriate advice as to how to deal with Mrs Ryan, which led to an allegation from Mrs Ryan that the Claimant was being uncooperative.*

(The last of those breaches was said to have been the 'last straw' in a series of breaches, as the concept is recognised in law).

- 2. The Tribunal will need to decide:*
 - 2.1. whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and*
 - 2.2. whether it had reasonable and proper cause for doing so.*
- 3. Did the Claimant resign because of the breach? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end.*
- 4. Did the Claimant delay before resigning and affirm the contract?*

5. *In the event that there was a constructive dismissal, was it otherwise fair within the meaning of s. 98 (4) of the Act?*
6. *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? (Polkey)*
7. *If the Claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct? If so, would it be just and equitable to reduce the compensatory award? By what proportion?*

Findings of Fact

18. The Claimant was previously employed by a company called Hawk Plant Limited, with his continuous employment beginning on 26 June 2017. Before the events which are the subject of this claim occurred, the Claimant's employment was transferred to the Respondent pursuant to a transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2016, commonly referred to as TUPE.
19. The Claimant worked at a construction site building a new nuclear power station at Hinkley Point, known as Hinkley Point C (also known as "HPC"). The site was owned by EDF but run by contractors. One was a joint venture, Keir BAM Earthworks Joint Venture, an unincorporated joint venture between Kier Infrastructure and Overseas Limited and BAM Nuttal Limited. The joint venture was known as "Keir Bam". Keir Bam was what was known as the "primary contractor" for HPC. The Respondent contracted with Keir Bam to provide plant and operators. The Claimant was a plant operator for the Respondent, in practice at the relevant he would drive a dumper truck at HPC called a "Hydrema 922", provided by the Respondent to Kier Bam, which was capable of carrying 22 tones of material.
20. I find, based on the evidence of Mrs Reed and Mr Lewis was that Keir Bam was in charge of the site. Plant operators, like the Claimant, were under the effective control of Keir Bam. Keir Bam would give daily briefings in which all personnel were instructed to report any incidents to the "black hat", which referred to the site supervisor who would wear a black safety hat. I find based on the evidence of Mrs Reed and Mr Lewis that the expectation was that any accidents would be reported to the black hat. This is consistent with the evidence of Claimant, who agreed in cross examination that the normal practice was to report accidents to the "black hat", although he later added that it was to report it to the black hat or line manager.
21. The Respondent's timesheets for its plant operators included a tick sheet in relation to the condition of the plant being operated by that individual. There was a tick box section for each day. The Claimant's account, which I accept, is that on 5 March 2020, when he checked his vehicle in the morning, he marked on his time sheet that there was no defect in relation to the seatbelts.
22. On 5 March 2020, it is the Claimant's position that an accident occurred on the HPC site whilst he was driving the Hydrema 922 in which he was injured. He says that as a result of the accident, his seatbelt mechanism exploded. I do not

consider that it is necessary for me to make a finding as to whether this accident actually occurred.

23. The Claimant did not report the accident to a black hat or a member of Keir Bam staff.
24. On leaving his vehicle on 5 March 2020, the Claimant took a picture of his seatbelt (page 156 HB). He left his timesheet and pen in the vehicle. He left his vehicle and at 9.15 am the Claimant attended Hinkley Health, which was an onsite healthcare provision. He was seen by a nurse there. Her report (page 163 HB) states the following.

"Presenting complaint: Back pain

History of presenting complaint: Lower back pain progressively getting worse. Pt perceives that this is worsening due to the nature of his job. Dump truck driver and has been using the Haul road which seems to be in poor condition – he describes it as when he is using this road it feels like someone is constantly kicking him in the back. He states that he is also getting numbness to the right thigh.

Past medical history/current medication: Previous injury to the lower back. No regular medication taken

...

Clinical examination: Patient is well in self. No abnormalities seen to the back. Limited ROM – Pain is restricting his moments (sic), lateral flexion, forward flexion and extension. No Red flags. Is able to walk but c/o of pain 8/10.

....

25. I find based on the evidence of Mr Smith, a Health and Safety Manager for the Respondent, and the email at page 311 HB, that when workplace accidents were reported to Hinkley Health, they would themselves instigate a process to formally report the accident. It is clear from the discussions in the hearing as well as documents in the bundle (such as the email at page 311 HB) that this would be sent on a system called SELMA. The Hinkley Health report from the Claimant's visit on 5 March 2020, states *"Is Selma required: No"* (page 165 HB).
26. A central dispute is whether the Claimant then reported the accident to Mrs Reed, who was the Claimant's line manager. The Claimant's evidence is that he rang Mrs Reed and explained that he had an accident, telling her that this was connected to a suspension defect and poor haul roads and that the seat belt was damaged. He alleges that he asked Mrs Reed to make an entry in the accident book in relation to this matter. Mrs Reed denies that the Claimant told her about the accident, her account is that he told her that he had a bad back and would be going home.
27. The Claimant and Mrs Reed both gave clear oral evidence regarding their respective accounts. Although Mrs Reed's evidence in relation to the personal injury claim and to this Tribunal differs in relation to her account of whether the Claimant told her he was leaving site (page 913 HB), she was clear in both statements that the Claimant had not told her there had been an accident at work.

28. I take into account when determining this point the notes of the Claimant's visit to an osteopath on the following day, 6 March 2020. A copy of the handwritten notes is at page 971 HB and states the following:

"Meralgia Paraesthetica, right. 2/12 onset.

Numbness over right L2 dermatome.

Power present / equal.

No bowel or bladder complaints or changes. BP 125/80.

No discal signs.

Occupational hypertonicity paraspinal to L2-L4 with subsequent extension/compression through the L2/4.

Responded well to soft tissue and spinal articulation. Advised exercise to reduce lumbar extension, together with rest at appropriate times".

29. In a joint medical expert report produced for the purposes of the personal injury claim, one of the medical experts, Mr John P Hodgkinson, a Consultant Orthopaedic Surgeon, took the view that the reference to *"Meralgia Paraesthetica, right. 2/12 onset"* could be interpreted as stating that the symptoms of meralgia paraesthetica started 2 months prior (page 970 HB). The other medical expert felt that this was speculative. I consider that the meaning attributed by Mr Hodgkinson is the natural reading of the relevant handwritten note. I adopt this interpretation.
30. The Claimant's own GP record refers only to *"low back pain"* and *"seen osteopath ? meralgia paraesthetica"* in a record of a consultation on 6 March 2020, there is no reference to an accident (page 855 HB). It is not until an entry on 31 July 2020 (page 853 HB) in the CP records that there is a reference to any accident. The 31 July 2020 entry refers to an accident at work.
31. Bringing the evidence together, there were three medical professionals with whom the Claimant had consultations on 5 and 6 March 2020: a nurse at Hinkley Health, an osteopath and his GP. None of these medical professionals record the Claimant reporting a workplace accident to them. Whilst the Claimant's evidence is that he also told Hinkley Health that he had had a workplace accident, this is not borne out in the nurse's note.
32. I also take into account the Respondent's later conduct in investigating the alleged accident: the conduct of the Respondent after 20 July 2020 in being very active in its investigation of an alleged accident, does not support an account of an organisation which seeks to conceal accidents.
33. Taking all of the evidence in the round, I find that the Claimant did not report a workplace accident to Mrs Reed on 5 March 2020. The reason for this finding is that Mrs Reed's evidence that he reported having back pain and not having an accident is consistent with the records of what the Claimant reported to the nurse at Hinkley Health, the osteopath and his GP.
34. Mrs Reed did not record the Claimant being involved in an accident on site on 5 March 2020 in the HPC accident book.
35. The parties agree that on 5 or 6 March 2020, the Claimant phoned Adam Childs, a Machine Fitter for the Respondent, and reported a fault with the seatbelt in the Hydrema 922.

36. If a workplace accident had been reported, whether by the Claimant, Hinkley Health or Mrs Reed, the normal process would have been that the Hydrema 922 dumper truck would have been taken out of service, and there would have been statements taken from those involved. Since no accident had been reported, this process did not take place.
37. On 6 March 2020, the Claimant supplied the Respondent with a fit note referring to back pain (page 168 HB) which signed him off from work until 20 March 2020. He sent Mrs Reed a message referring to meralgia paresthetica and what it meant (page 170 HB).
38. Mrs Reed notified Mrs Ryan, in her capacity as an HR Consultant for the Respondent, that the Claimant was signed off sick. On 11 March 2020 Mrs Ryan informed Mr Smith that the Claimant had been signed off sick with a bad back for two weeks. She confirmed this discussion by email on 12 March 2020 (page 173 HB).
39. On 16 March 2020 Mrs Reed sent a group text asking for personal information, contact details and next of kin details. She sent a reminder to the Claimant personally on 17 March 2020 and asked how he was doing (page 176 HB). He replied providing the requested details and saying he was still sore with pains in his legs and that he was going to the doctor on Friday (page 177 HB).
40. The Claimant continued to submit fit notes which referred to lower back pain (page 839 HB). On 6 May 2020 Mrs Ryan emailed Mr Smith saying she wanted to refer the Claimant to an Occupational Health provider (page 187 HB). At the end of May, Mrs Ryan tried to call the Claimant, but he asked that their communication be in writing (page 189 HB).
41. On 1 June 2020 Mrs Reed texted the Claimant she hoped he was on the mend and asking him to call her (page 191 HB). He responded saying nothing had changed and referring to lower back pain and meralgia paresthetica. He asked her to send any questions by email (page 192 and 193 HB).
42. On 20 July 2020, Mrs Ryan prompted Mr Smith by email regarding an Occupational Health appointment for the Claimant. Mr Smith obtained two dates available in July which could be offered to the Claimant (page 203 HB). He asked for the Claimant's contact details and telephoned the Claimant that day. The Claimant and Mr Smith had a telephone conversation during which the Claimant informed Mr Smith that he had been involved in an accident at work which had caused his injury. This was the first time Mr Smith became aware that it was alleged that there had been an accident at work.
43. During the conversation, Mr Smith and the Claimant discussed a potential return to work. Mr Smith said that the Claimant could refuse tasks that might affect recuperation. The Claimant was concerned that it might be difficult to enforce this on the ground. Mr Smith told the Claimant that he could tell those on site to call him, and he would stand the Claimant's corner. This was a lighthearted conversation, and when the Claimant asked what Mr Smith would do if they argued with him, Mr Smith responded that he would tell them to feck off or bugger off. The Claimant asked if he could tell them the same, and Mr Smith said he could if he wanted to. The Claimant asked if he could tell Mrs

Ryan to feck off or bugger off and Mr Smith said that he could if he wanted to, but he would not advise it. This finding is based on the evidence of Mr Smith, which I found credible.

44. The Claimant's evidence was that Mr Smith made these comments in the context of telling the Claimant not to talk to Mrs Ryan or Mrs Reed again because this was now a Health and Safety matter. I consider that Mr Smith's account of the context is more credible against the overall background. Mr Smith was already aware that the Claimant was refusing to speak to those at the Respondent (page 205 HB), and it is unclear why he would want to encourage the Claimant to refuse to speak to Mrs Ryan or Mrs Reed. On the other hand, a discussion about possibly returning to work is consistent with other conversations Mr Smith had with the Claimant (see paragraphs 5356, 57, 61, 68 below).
45. The Claimant's position is that Mr Smith used the term feck off, Mr Smith says he said bugger off. I do not consider there is a material difference between the terms: the same meaning is conveyed. Whilst Mr Smith had agreed in the Respondent's grievance process that he had used the word "feck", I found his explanation that this was because he felt there was no significant difference credible. The rest of his account in relation to the grievance was consistent with that given to the Tribunal and I do not, therefore, make any inference regarding credibility as a result of the change in Mr Smith's account from using "feck" to using "bugger".
46. In the call between Mr Smith and the Claimant, the Claimant declined an Occupational Health assessment. The Claimant denies this, saying that this has been fabricated by Mr Smith. I prefer Mr Smith's evidence on this because it is consistent with a background where Mr Smith had appointment dates to offer the Claimant and because was also recorded in an email sent by Mr Smith on the same day as the call took place (page 202 HB).
47. Later the same day, on 20 July 2020, Mrs Reed texted the Claimant asking how he was (page 196 HB) he responded saying that there had been some improvement and that he hoped to get back to it soon, as well as referencing his call with Mr Smith.
48. Having just discovered the allegation that there had been an accident, Mr Smith started to make enquiries. He emailed Mrs Reed the same day to ask about whether the Claimant had made any health and safety reports or reported anything related to seat belts. She stated that she was not aware of any such reports (page 209 HB). A similar enquiry was made of Mrs Ryan (page 202 HB) who also did not have any information (page 201 HB).
49. On 22 July 2020 Mr Smith also made enquiries with Keir Bam in relation to the period of February/March 2020. He was told that they had no records of an accident involving the Claimant. Mr Smith was not able to access documents held by Keir Bam in relation to the Claimant's vehicle.
50. In the course of these enquiries, on 27 July 2020 Mrs Reed sent Mr Smith the Claimant's time sheet, and Mr Smith became aware that the seatbelt section on the Claimant's timesheet for 5 March 2020 had been crossed, rather than ticked, indicating a defective seatbelt (page 151 HB). He asked for further

information from Mrs Reed regarding this and whether the defect had been rectified (page 215 HB). Mrs Reed looked into the matter. Mrs Reed informed Mr Smith that she had spoken to Mr Childs who recalled the Claimant asking him to fix the seatbelt on 6 March 2020, which he had done by completely replacing it (page 225 HB).

51. On 21 August 2020, Mrs Ryan emailed the Claimant to inform him that his contractual and statutory sick pay would come to an end on 11 and 18 September 2020 respectively. On 7 September 2020 the Claimant informed the Respondent that he would like to return to work on light duties (page 247 HB). His fit note dated 9 September 2020 confirmed that he was fit for light duties (page 839 HB).
52. On 15 September 2020, Sam Stitson called the Claimant (the transcribed covert recording made by the Claimant is at page 263 HB). The Claimant informed Mr Stitson that whilst he was signed off for light duties, he could not wear a seatbelt or stand, that he could not do machine work or manual handling. The Claimant said that his physiotherapist had not given any examples of tasks he could do.
53. On 16 September 2020, Mr Smith rang the Claimant (the transcribed covert recording made by the Claimant is at page 271 HB). The Claimant told Mr Smith he had contacted HSE himself because the Respondent had not reported the alleged accident to them. They discussed a potential return to work. The Claimant told Mr Smith he could not drive. Given that the Claimant could not drive, to get onto the site at HPC we would need to get a bus and then he would need to queue to get on site. This would be difficult for the Claimant because of his difficulties with standing. Mr Smith's view was that the difficulties for the Claimant getting on site as well as site conditions, meant that HPC did not currently seem suitable for the Claimant (page 272 HB). The Claimant agreed with Mr Smith's assessment. Mr Smith asked the Claimant whether he would be willing to work in other locations. The Claimant's response to this was that because his contractual workplace was HPC, if this was to be changed he would need to be paid a redundancy payment. Mr Smith did not comment on this saying it was out of his department (page 273 HB). Following this, Mr Smith completed a return to work assessment which concluded that the Claimant was not fit to undertake light duties at HPC (page 277 HB).
54. On 21 September 2020, the Claimant sent Mr Smith pictures of the defective seatbelt. Mr Smith sent these to the supplier and manufacturer of the Hydrema 922, who responded to Mr Smith that their view was that the seatbelt had been damaged as a result of being sat on and not being worn correctly rather than because of an accident because of the damage appearing to be from downward pressure rather than outward pressure. This was later confirmed by letter (page 345 HB).
55. On 25 September 2020, Mrs Ryan and the Claimant had a call (the transcribed covert recording made by the Claimant is at page 298 HB). In this discussion, the Claimant misrepresented the discussion he had had with Mr Smith on 16 September 2020, saying that Mr Smith had told him that he would not be going back to HPC and that this would be his contract finished (page 299 HB) and that his job at HPC "*no longer exists*" (page 301 HB). He further said that Mr Smith had been the one to say the Claimant needed a new contract (page 300

HB). Mrs Ryan correctly stated that her understanding was that the discussion was just that the Claimant was not fit to return to HPC at that time. The Claimant informed Mrs Ryan that he was now able to stand for 30 minutes. (page 300 HB).

56. On 2 October 2020, Mr Smith phoned the Claimant (the transcribed covert recording made by the Claimant is at page 315 HB). During the call, he made the following comments to the Claimant.

"JS: Ok, so we've had a chat with Hinckley health there is a record and you are attending.... And er, what the record is that you've attended for a non-work related health condition because they haven't reported it through to selma there is no accident record and Kier Bam were not made aware so the data we have is it was a health condition that originated outside of work and was existing.

AS Well no that's not that's not what's in the report.

JS Okay well I don't have that all I've got is a statement from Hinckley Health

AS Ok that's fine.

JS I mean, if you wanna send me the report, it would make things easier cause then I can go look at this to people within Plantforce and then act upon it, but I I can only act on the information I have, and the information I have is you did go there which is you know corroborated but you went there for a health condition that did not occur on site and was an existing condition.... at the moment there's still nothing evidential to support an injury on site, I'm afraid".

There was discussion about the fact that there was no accident record. Mr Smith acknowledged that there had been maintenance of the Hydrema 922 in relation to the suspension. He told the Claimant he had not been able to obtain any relevant paperwork from Keir Bam.

57. In the discussion, Mr Smith asked whether, given HPC was out of the question, the Claimant would be interested in something else if it was available. The Claimant stated that Mrs Ryan had told him that there was not anything because of his contract (pages 321 and 322 HB). In cross examination, the Claimant's position was that there had been unrecorded calls in which Mrs Ryan had said this to him. I take into account the discussion with Mrs Ryan which the Claimant had recorded (in circumstances where she was not aware that she was being recorded). I consider that it is likely she would have taken a similar approach in any unrecorded conversation. I also consider that it is relevant that the Claimant can be seen to have misrepresented to Mrs Ryan things he had discussed with Mr Smith. Taking these matters into account, I find that this was a misrepresentation of what Mrs Ryan had told the Claimant.

58. Following this, the Respondent was asked to communicate with the Claimant through his solicitor and did so.

59. On 13 January 2021 Mrs Ryan held a welfare meeting with the Claimant (the notes of the meeting are at page 347 HB). Mr Blackburn attended as a note taker. The Claimant said that he was now much better. He could walk for around 20 minutes, drive and wear a seatbelt. It was agreed that the Claimant would be referred to Occupational Health.

60. On 2 February 2021 an Occupational Health examination took place via Skype and the report is dated the same day (page 369 HB). The report stated that the

prognosis was good and the condition was resolvable. The report stated that the Claimant was *"fit to return to work on lighter duties such as driving on green routes, where there are lower levels of vibration, and other duties such as vehicle checks and maintenance and work at the lights/barriers."* (page 370 HB). If it was not possible to return on light duties, a review in six weeks was recommended.

61. On 19 February 2021, a virtual meeting took place between the Claimant, Mr Smith, Mrs Ryan and Mr Blackburn attended again as a note taker (page 387 HB). Mrs Ryan tried to discuss the Claimant's view on the types of light duties he could do. She referred to those identified in the Occupational Health report. The Claimant's response was *"I can't do them Joanne...No, you told me I couldn't do them"* (page 390 HB). Mrs Ryan referred back to the Occupational Health report a number of times, but the Claimant kept reverting back to what he alleged Mrs Ryan had told him the previous September. Despite several attempts by Mrs Ryan and Mr Smith to understand the types of duties the Claimant might be able to undertake in a possible return to light duties, the Claimant would not engage with that discussion and would divert the discussion to talking about past events.
62. The Claimant once again asked that communication be done via his solicitor and the Respondent complied.
63. A further Skype based Occupational Health appointment took place on 22 June 2021. The report stated that the Claimant's symptoms remained unchanged over the past four months (page 416 HB). The report stated that he was unlikely to be able to return to his role within six months and recommended a review after six months.
64. On 23 July 2021 a further absence review meeting took place with the Claimant, chaired by Mr Lewis. Reviewing the notes of the meeting it is clear once again that Mr Lewis was trying to explore with the Claimant what kind of light duties the Claimant might be able to undertake, but the Claimant refused to engage with Mr Lewis on this, saying at one point *"Well, I can't do light duties"* (page 427 HB).
65. Mr Lewis and the Claimant met again on 4 October 2021 (page 480 HB). This time Mrs Ryan also attended. The Claimant stated that he was not feeling any better. He said that he could drive cars and vans and walk for around an hour. An occupational health assessment was arranged to follow this, but the Claimant withdrew his consent to the report being shared with the Respondent around 24 November 2021.
66. A further Occupational Health assessment took place on 11 April 2022 (page 572 HB). The report recommended that the Claimant be allocated to desk-based duties and refrain from physical manual handling or driving duties by way of permanent adjustments (page 575 HB).
67. On 28 June 2022, the Claimant raised a formal grievance regarding some of the matters which form the basis of his claim before this Tribunal (page 580 HB).

68. On 30 June 2022 a meeting took place between Mr Smith and the Claimant, with a note taker also in attendance. During this meeting, Mr Smith offered the Claimant an alternative role at HS2, which would require driving in a Hilux or Ranger type vehicle between the various worksites forming part of HS2. The Claimant said that he was interested but that until the grievance had been settled, he could not trust anything Mr Smith said. Mr Smith offered to send it in writing and the Claimant said he would look at it after the grievance had been resolved.
69. The grievance and grievance appeal process are not relevant to the List of Issues, so I do not make detailed findings of fact in relation to them. The grievance outcome was issued on 6 September 2022 (page 707 HB). The grievance appeal outcome was issued on 22 September 2022 (page 725 HB).
70. At the time of the grievance process, Mrs Ryan was no longer employed by the Respondent. The Claimant was told by the Grievance Officer that she had access to Mrs Ryans emails but that there were gaps in the documents.

Constructive Dismissal: The Law

71. Under section 95(1)(c) of ERA 1996, an employee is dismissed if they terminate the contract under which they are employed (with or without notice) in circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct. This is often referred to as a "constructive dismissal".
72. If the Claimant's resignation can be construed to be a dismissal, then the issue of the fairness or otherwise of that dismissal is governed by section 98 (4) of ERA 1996 which provides "*.... the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on 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 – (b) shall be determined in accordance with equity and the substantial merits of the case*".
73. The leading authority in relation to constructive dismissal and the applicable test for a claim of constructive unfair dismissal was provided by Lord Denning MR in Western Excavating (ECC) Limited v Sharp [1978] IRLR 27: "*If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of his employer's conduct. He is constructively dismissed. The employee is entitled in these circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract.*"

74. The Tribunal must therefore establish that there is a relevant contractual term and decide if it has been breached. If there has been a breach of contract, the question is then whether the breach is fundamental, in other words whether it repudiated the whole contract. In Tullett Prebon PLC and Ors v BGC Brokers LP and Ors Maurice Kay LJ endorsed the following legal test at paragraph 20: "... whether, looking at all the circumstances objectively, that is from the perspective of a reasonable person in the position of the innocent party, the contract breaker has clearly shown an intention to abandon and altogether refuse to perform the contract."
75. As set out in in Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) 1997 ICR 606, HL it is an implied term of any contract of employment that the employer "'would not, without reasonable and proper cause, conduct itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between employer and employee". This is known as the implied term of trust and confidence. The test of whether there has been a breach of the implied term of trust and confidence is objective, and any breach of it will amount to a fundamental breach. That is because the essence of the breach of this implied term is that it is calculated or likely to destroy or seriously damage the relationship.
76. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a 'last straw' incident even though that incident by itself does not amount to a breach of contract (Omilaju v Waltham Forest London Borough Council [2004] EWCA Civ 1493), as follows.
- "I see no need to characterise the final straw as 'unreasonable' or 'blameworthy' conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence."*
77. If a fundamental breach of contract has been established, the employee may accept the breach and resign or affirm the contract. If the employee resigns, in order to amount to constructive dismissal, such resignation must be caused by the breach of contract in question.
78. Jones v F Sirl and Son (Furnishers) Ltd 1997 IRLR 493, EAT, in order to decide whether an employee has left in consequence of fundamental breach, the tribunal must look to see whether the employer's repudiatory breach was the effective cause of the resignation. There may have been concurrent causes operating on the mind of an employee whose employer had committed fundamental breaches of contract (including, in this case the offer of an alternative job). Where there was more than one cause operating on the mind of an employee it is the task of the tribunal to determine whether the employer's actions were the effective cause of the resignation.

79. The Court of Appeal in Meikle v Nottinghamshire County Council 2005 ICR 1, CA made clear that the crucial question is whether the repudiatory breach “*played a part in the dismissal*” and was “*an*” effective cause of resignation, rather than being “*the*” effective cause. It need not be the predominant, principal, major or main cause for the resignation.

Constructive Dismissal: Applying the Law to the Facts

80. The test for constructive dismissal is an objective rather than a subjective test. Looking at all the circumstances objectively, from the perspective of a reasonable person in the position of the Claimant. In relation to an alleged breach of the implied term of trust and confidence, I must consider:
- a. was there ‘reasonable and proper cause’ for the conduct; and
 - b. if not, was the conduct ‘calculated or likely to destroy or seriously damage trust and confidence’?

81. First taking each alleged breach of the implied term of trust and confidence individually.

82. The Claimant claims that the Respondent acted in fundamental breach of contract in respect of the implied term of the contract relating to mutual trust and confidence. The breaches were as follows.

On 5 and 6 March 2020 the Claimant’s line manager, Nicky Reed, failed to make an accident report in the relevant log. The Claimant alleges that this was an attempt to conceal and cover up the Claimant’s accident at work.

83. Mrs Reed did not make a report in the accident log. I have made a finding of fact that the Claimant did not report an accident taking place to Mrs Reed. As such, I find that there was reasonable and proper cause for Mrs Reed not to make an accident report. On that basis, this allegation is not upheld as a breach of the implied term of trust and confidence.

Mrs Reed deliberately failed to discuss the accident with the Claimant between 6 and 17 March 2020 knowing that that time delay would preclude the instigation of a referral to the Health and Safety Executive for an investigation. The Claimant alleges that this was an attempt to conceal and cover up the Claimant’s accident at work.

84. It is agreed between the parties that there was no contact between the Claimant and Mrs Reed between 6 and 17 March 2020. I find, based on Mr Smith’s evidence that an 11-day delay would not prevent HSE being contacted. The Claimant did in fact himself contact HSE. Further, the allegation that Mrs Reed was seeking to cover up an accident is not proven. In fact, I have made a finding that Mrs Reed was not aware of the allegation that there was an accident at this time. The main substance of the allegation is therefore not factually upheld.

85. I have found that the Claimant did not report an accident to Mrs Reed, and he provided a fit note signing him off work until 20 March 2020. In those circumstances, viewed objectively from the perspective of a reasonable person in the position of the Claimant, an 11-day gap between contact being made

cannot be said to be conduct calculated or likely to destroy or seriously damage trust and confidence between employer and employee.

86. This allegation is not upheld as a breach of the implied term of trust and confidence.

On 2 October 2020 Mr Smith informed the Claimant that he had not been involved in an accident at work, but the injury was caused a longstanding health condition which was unrelated to work. The Claimant alleges that this was an attempt to conceal and cover up the Claimant's accident at work.

87. I have found that Mr Smith informed the Claimant on this date that the evidence he had before him from Hinkley Health was that they had not been told there was an accident, but that he had been treated for a longstanding health condition. He went on to say that there was no evidence to support an allegation that there had been an accident on site. Mr Smith told the Claimant he was willing to consider documents from the Claimant which showed otherwise.

88. There is no evidence before me which would support a finding that Mr Smith was deliberately attempting to conceal or cover up an accident.

89. The information relayed by Mr Smith to the Claimant was an accurate reflection of the record of the consultation between the Claimant and Hinkley Health and his investigations which had revealed that there was no accident report or other documentation indicating an accident had taken place. I therefore consider he had reasonable and proper cause for this conduct.

90. This allegation is not upheld as a breach of the implied term of trust and confidence.

On or before 7 October 2021 Mrs Reed denied that the Claimant made two telephone calls on 5 and 6 March 2020 in which the Claimant reported the accident to her. The Claimant alleges that this was an attempt to conceal and cover up the Claimant's accident at work.

91. The Claimant was not able to refer in cross examination or submissions to a date or example of Mrs Reed denying that the Claimant had called her. I note that the grievance outcome of 6 September 2022 states that "*Having spoken to Nicki she still states that she does not remember you contacting her other than by text.*" (page 707 HB). Mrs Reed gave evidence to this Tribunal that the Claimant did call her.

92. I have made a factual finding that the Claimant did not report the alleged accident to Mrs Reed.

93. As such, there is reasonable and proper cause for Mrs Reed to deny a call in which the accident was reported to her. This is because it had not been reported to her.

94. This allegation is not upheld as a breach of the implied term of trust and confidence.

Between 5 March 2020 and 15 September 2022 an individual employed by the Respondent or acting as an agent for it, altered the vehicle plant hire time sheet for the Claimant's vehicle to change the tick in the seatbelt check column to a cross. The Claimant alleges that this was an attempt to conceal and cover up the Claimant's accident at work.

95. The evidence before me is that there was a cross in the seatbelt check column of the time sheet relating to 5 March 2020 (page 151 HB). Mr Smith noted that the cross was present on 27 July 2020.

96. The Claimant's evidence was that he had put a tick in the column, not a cross. There is no evidence before me as to how or who might have changed this. The sheet was left in the Claimant's cab. He reported the seatbelt fault to Mr Childs on 5 or 6 March 2020. The sheet also passed through Keir Bam employees who signed it off. Neither party made a positive case as to who changed the timesheet.

97. I find that it has not been proven that the timesheet was changed by an individual employed by or acting as an agent for the Respondent. It is mere speculation without evidential basis.

98. This allegation is not factually upheld.

Between 17 March 2020 and 20 July 2020 Mrs Reed contacted the Claimant on three occasions to make enquiries about his health (in order to reduce the lowest possible level records about the injury and its cause). The Claimant alleges that this was an attempt to conceal and cover up the Claimant's accident at work.

99. Mrs Reed did make contact on these dates. However, there is no evidential basis for concluding that she had the motive alleged by the Claimant. Mrs Reed gave compelling evidence that her enquiries were made out of genuine concern for the Claimant which I prefer.

100. In circumstances where the motive is benign, this conduct cannot objectively be viewed by an employee in the Claimant's position to be conduct which is calculated or likely to destroy or seriously damage trust and confidence.

101. This is not upheld as a breach of the implied term of trust and confidence.

James Smith, the Respondent's Health and Safety Manager, did not make contact with the Claimant to discuss his injury until 20 July 2020. The Claimant alleges that this was an attempt to conceal and cover up the Claimant's accident at work.

102. It is correct to say that there was a delay between the Claimant going off sick and Mr Smith contacting him to discuss this.

103. There is no evidence before me which would support a finding that Mr Smith was attempting to conceal or cover up an accident. My finding of fact is that Mr Smith and the Respondent were not aware of an alleged accident until the call on 20 July 2020.

104. I consider that in circumstances where I have found that the Claimant had not reported an accident, and his line manager Mrs Reed and Mrs Ryan had been in contact with him, this cannot objectively, by an employee in the Claimant's position, be said to be conduct which is calculated or likely to destroy or seriously damage trust and confidence.

From 5 March 2020 until 26 September 2022 the Respondent failed to make enquiries with the Claimant to identify how the damage to the seatbelt was caused. The Claimant alleges that this was an attempt to conceal and cover up the Claimant's accident at work.

105. There is no evidence before me which would support a finding that Mr Smith was attempting to conceal or cover up an accident.

106. The Claimant reported a defective seatbelt to Mr Childs but did not say that there had been an accident in connection with this. Mr Childs therefore simply replaced the seatbelt.

107. The Respondent did not become aware that the Claimant was alleging that there had been an accident until he disclosed this to Mr Smith on 20 July 2020. On 20 July 2020 Mr Smith became aware of the Claimant's account that the seatbelt broke because of the alleged accident. Following this, Mr Smith did investigate the allegation within the Respondent and with Keir Bam, specifically asking for information about the seatbelt. When the Claimant sent Mr Smith the pictures of the defective seatbelt, Mr Smith made enquiries without delay with the manufacturer about potential causes.

108. In the circumstances, Mr Smith's conduct in relation to investigating this matter, which I consider he did in a timely fashion after receiving the information and picture respectively cannot objectively be said to be conduct which is calculated or likely to destroy or seriously damage trust and confidence when viewed objectively from the position of an employee in the Claimant's position.

On dates between 6 March 2020 and approximately June 2022 Mrs Joanne Ryan caused to be deleted documents and emails relating to the accident. The Claimant alleges that this was an attempt to conceal and cover up the Claimant's accident at work.

109. The Claimant was not able to say in evidence which documents or emails it was alleged Mrs Ryan had deleted. The Claimant cannot give evidence to support this allegation he has no personal knowledge of Mrs Ryan deleting any documents or emails. He simply makes an allegation based on something said to him during the grievance process. Mrs Ryan strongly denied deleting any documentation.

110. I note that Claire Trott, the Grievance Appeal Officer informed the Claimant in a meeting on 13 October 2022 that *"when we were saying about the emails not being there, the[n] they're not. It's not just your case, by the way. It's the whole HR system altogether. There's lots of missing stuff on the HR email file. It's not just, not just your case. So it's not just, you know, it's randomly. It's just you. It's not. It's across the board, so I just wanted to make that point."* (page 742 HB). This does not support the Claimant's allegation that Mrs Ryan had herself deleted documents but indicates that there was a system issue.

111. I find that Mrs Ryan did not delete any documents or emails. This allegation is not factually upheld.

The Respondent deliberately delayed the progress of its capability process in order to cause the Claimant to resign (so as to avoid the need to record an accident at work as part of the reason for the dismissal) by failing to initiate the capability process between 24 September 2020, following a return-to-work assessment conducted by James Smith, and 30 June 2022 despite Mrs Ryan the medical evidence and OH reports recording that there was no prospect of the claimant being fit to return to work within a reasonable period.

112. Whilst it is clear that the Respondent did not initiate a capability dismissal process, there is no evidence before me from which I could conclude that this was done deliberately or to cause the Claimant to resign. There is no evidence before me which would support a finding that the reason for this was to avoid the need to record an accident at work. This allegation is not factually upheld as put by the Claimant.

113. Without the alleged malign intent, it is very difficult to see how the failure to dismiss a sick employee could ever be objectively seen as calculated or likely to destroy or seriously damage trust and confidence. Normally it would be beneficial to an employee for an employer not to rush into a capability dismissal, but to keep exploring options to retain the relevant employee.

114. This allegation is not upheld as a breach of trust and confidence.

The Respondent, specifically Joanne Ryan, deliberately delayed the return-to-work process for the Claimant between 2 February 2021 and approximately June 2022 by failing to provide light duties at Hinkley point for the Claimant, but proposed that the Claimant could do light duties on HS2

115. The Respondent made numerous attempts through different individuals at various meetings to have constructive discussions about the Claimant potentially returning to work. These discussions occurred throughout the Claimant's absence. On a fair reading of all of the transcriptions of meetings with the Claimant, I consider that the Claimant was actively obstructive to these discussions on every occasion an attempt was made by the Respondent. I find that the Claimant's position throughout was that he could not return on light duties. There can therefore be no delay attributed to the Respondent in relation to the return to work process. This allegation is not factually upheld and is dismissed.

Between 20 July 2020 until 26 September 2022, the Respondent failed to provide the Claimant with a single line manager with responsibility for his return to work but permitted Mrs Reed and Mr Smith and subsequently from 7 July 2020 Mr Smith and Mrs Ryan to manage the Claimant as follows. On 20 July 2020, 1 August 2020, and 3 August 2020 the Claimant complained about the fact of the mismanagement but the Respondent took no action.

116. The Claimant did not give written evidence about the alleged complaints made. In cross examination Mr Curtis suggested that these complaints were contained in the documents at pages 208, 228, and 230 HB. The Claimant's

response is that these were not the complaints referred to. He could not assist the Tribunal in evidence as to where they could be found or what they referred to.

117. In submissions, the Claimant sought to rescind the answers given in cross examination and rely on the suggestions made by the Respondent.

118. The Respondent's submission in response was that cross examination on this topic had been taken no further because of the Claimant's negative response.

119. I must hold the Claimant to the evidence he gave under oath: he cannot give evidence in submissions. I made this clear in my introductory explanations on the first day of the hearing.

120. As such, this complaint has not been evidentially made out and must be dismissed.

On 20 July 2020 Mr Smith gave the Claimant inappropriate advice as to how to deal with Mrs Ryan, which led to an allegation from Mrs Ryan that the Claimant was being uncooperative.

121. Mr Smith admits to having a conversation with the Claimant in which he said that the Claimant could tell Mrs Ryan to feck off/bugger off. The Claimant did not go on to tell Mrs Ryan to feck off/bugger off. The Claimant had been declining to engage with Mrs Ryan prior to this discussion. There is no causal link between Mr Smith's comment and any suggestion that the Claimant was uncooperative.

122. I consider that it is clear that there is no reasonable or proper cause for Mr Smith's conduct.

123. I must consider whether this conduct goes to the heart of the employment relationship. Can it objectively, from the perspective of an employee in the Claimant's position, be seen as calculated or likely to destroy or seriously damage trust and confidence.

124. This is a single instance of an inappropriate comment being made in what is intended to be a jovial manner. The comment is not directed towards the Claimant. The Claimant clearly did not take the advice seriously in that he knew it was inappropriate to repeat the relevant comment to Mrs Ryan, and he did not do so. This comment made by Mr Smith does not meet the hurdle required for a breach of trust and confidence – it does not go to the heart of the employment relationship. I consider that objectively an employee in the Claimant's position would not consider it to be conduct calculated or likely to destroy or seriously damage trust and confidence.

125. This allegation is not upheld as a breach of the implied term of trust and confidence.

Cumulative Breach

126. Now I must decide whether the alleged breaches can be considered to cumulatively to be a breach of the implied duty of trust and confidence.

127. Even taken all together, these acts together do not accumulate into a fundamental breach of contract. Whilst it is not a pre-requisite for last-straw cases that the employer's acts should be unreasonable, it is material here that the Respondent has had reasonable and proper cause for the majority of acts, and the act of telling the Claimant to tell Mrs Ryan to feck off/bugger off was, objectively, simply not serious enough to go to the heart of the relationship.

128. As such, in my finding, there has been no fundamental breach of contract and therefore, no constructive dismissal.

129. I dismiss the claim.

Approved by
Employment Judge Volkmer
Date: 9 March 2026

JUDGMENT SENT TO THE PARTIES ON
20 March 2026

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