



EMPLOYMENT TRIBUNALS

Claimant: Mrs K Hogben

Respondent: National Car Parks Limited

Heard at: Manchester

On: 5 and 6 September,
and in chambers on
3 October 2019

Before: Employment Judge Franey
(Sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Mr I McGlashan, Solicitor

RESERVED JUDGMENT

The complaint of unfair dismissal is not well founded and is dismissed.

REASONS

Introduction

1. By a claim form presented on 11 January 2019 the claimant brought a complaint of “constructive” unfair dismissal arising out of her resignation from her post as Human Resources (“HR”) Manager with effect from 31 August 2018. She provided a narrative of events beginning with the appointment of a new HR Director, Sarah Gibbs, in December 2017. The essence of the claim was that the way Mrs Gibbs treated the claimant resulted in her going off sick at the end of February 2018, and her handling of a meeting on 24 July 2018 about a possible return to work was the final straw which triggered the claimant’s resignation.

2. By its response form of 14 February 2019, the respondent opposed the claim on the basis that there had been reasonable cause for the actions of Mrs Gibbs, who had been brought in as a new HR Director to effect significant change in the HR Department. It was denied that there was any fundamental breach of contract.

Issues

3. At the outset of the hearing I sought to identify with the claimant the matters set out in her claim form which formed part of a breach of trust and confidence. In that discussion she confirmed that she had no complaints about the way her grievance or grievance appeal had been handled, and that the component parts of the repudiatory breach were all matters for which Mrs Gibbs was responsible.

4. I had identified fifteen separate allegations against Mrs Gibbs, and a draft List of Issues was provided to the parties during the course of the first morning whilst I was reading the statement and documents. Both sides confirmed at 2pm that the List of Issues was agreed.

5. The issues for determination were therefore as follows: -

Dismissal

1. Can the claimant establish that the respondent committed a fundamental breach of the implied term as to trust and confidence in that without reasonable or proper cause it conducted itself in a way calculated or likely to destroy or seriously damage trust and confidence through the alleged behaviour of Sarah Gibbs towards her on the following occasions, taken individually or cumulatively?

1.1 In the first HR team meeting on 19 December 2017

1.2 On 20 December 2017 in the office

1.3 On 8 January 2018 in a 121 meeting

1.4 On 15 January 2018 in the London office and the following morning in cancelling a meeting

1.5 On 22 January 2018 before, during and after an HR meeting in London

1.6 On 30 January 2018 at a meeting in Manchester

1.7 On 31 January 2018 in a 121 meeting

1.8 On 31 January 2018 in the office

1.9 On 8 February 2018 in a telephone call

1.10 On 14 February 2018 in a 121 meeting

1.11 On 15 February 2018 in a discussion about the Boyle tribunal

1.12 On 26 February 2018 when the claimant dialled in to an HR meeting

1.13 On 2 March 2018 when sending a letter about a welfare meeting when the claimant had been off sick with work related stress for only 3 days with a fit note for 2 weeks

1.14 When telling the HR team that the claimant had lodged a grievance, and/or

1.15 On 24 July 2018 in a meeting about a return to work?

2. If so, was that breach a reason for the claimant's resignation?

3. If so, had the claimant lost the right to resign by affirming the contract, whether through delay or otherwise?

Fairness

4. If the claimant establishes that her resignation was a constructive dismissal, can the respondent show that the reason or principal reason for the conduct which amounted to a fundamental breach was a reason relating to the claimant's capability?

5. If so, was the dismissal fair or unfair?

Evidence

6. The parties had agreed a bundle of documents running to over 450 pages. Any reference to page numbers in these reasons is a reference to that bundle unless otherwise indicated.

7. I heard from three witnesses, each of whom confirmed the truth of a written witness statement before answering questions. The claimant gave evidence herself, and also called Sharon Eley, who was the predecessor of Sarah Gibbs. The respondent called only Mrs Gibbs to give evidence.

Relevant Legal Principles

8. The unfair dismissal claim was brought under Part X of the Employment Rights Act 1996. An unfair dismissal claim can be pursued only if the employee has been dismissed as defined by Section 95. Section 95(1)(c) provides that an employee is dismissed by his employer if:

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

9. The principles behind such a “constructive dismissal” were set out by the Court of Appeal in **Western Excavating (ECC) Limited v Sharp [1978] IRLR 27**. The statutory language incorporates the law of contract, which means that the employee is entitled to treat himself as constructively dismissed only 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.

10. The term of the contract upon which the claimant relied in this case was the implied term of trust and confidence. In **Malik and Mahmud v Bank of Credit and Commerce International SA [1997] ICR 606** the House of Lords considered the scope of that implied term and the Court approved a formulation which imposed an obligation that the employer shall not:

“...without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.”

11. It is also apparent from the decision of the House of Lords that the test is an objective one in which the subjective perception of the employee can be relevant but is not determinative. Lord Nicholls put the matter this way at page 611A:

“The conduct must, of course, impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. That requires one to look at all the circumstances.”

12. The objective test also means that the intention or motive of the employer is not determinative. An employer with good intentions can still commit a repudiatory breach of contract, although a well-intentioned comment is less likely to breach trust and confidence than one which is deliberately hurtful or insulting.

13. Not every action by an employer which can properly give rise to complaint by an employee amounts to a breach of trust and confidence. The formulation approved in **Malik** recognises that the conduct must be likely to destroy or seriously damage the relationship of confidence and trust. In **Frenkel Topping Limited v King** **UKEAT/0106/15/LA** 21 July 2015 the EAT chaired by Langstaff P put the matter this way (in paragraphs 12-15):

“12. We would emphasise that this is a demanding test. It has been held (see, for instance, the case of **BG plc v O’Brien** [2001] IRLR 496 at paragraph 27) that simply acting in an unreasonable manner is not sufficient. The word qualifying “damage” is “seriously”. This is a word of significant emphasis. The purpose of such a term was identified by Lord Steyn in **Malik v BCCI** [1997] UKHL 23 as being:

“... apt to cover the great diversity of situations in which a balance has to be struck between an employer’s interest in managing his business as he sees fit and the employee’s interest in not being unfairly and improperly exploited.”

13. Those last four words are again strong words. Too often we see in this Tribunal a failure to recognise the stringency of the test. The finding of such a breach is inevitably a finding of a breach which is repudiatory: see the analysis of the Appeal Tribunal, presided over by Cox J in **Morrow v Safeway Stores** [2002] IRLR 9.

14. The test of what is repudiatory in contract has been expressed in different words at different times. They are, however, to the same effect. In **Woods v W M Car Services (Peterborough) Ltd** [1981] IRLR 347 it was “conduct with which an employee could not be expected to put up”. In the more modern formulation, adopted in **Tullett Prebon plc v BGC Brokers LP & Ors** [2011] IRLR 420, is that the employer (in that case, but the same applies to an employee) must demonstrate objectively by its behaviour that it is abandoning and altogether refusing to perform the contract. These again are words which indicate the strength of the term.

15. Despite the stringency of the test, it is nonetheless well accepted that certain behaviours on the part of employers will amount to such a breach. Thus in **Bournemouth University Higher Education Corporation v Buckland** [2010] ICR 908 CA Sedley LJ observed that a failure to pay the agreed amount of wage on time would almost always be a repudiatory breach. So too will a reduction in status without reasonable or proper cause (see **Hilton v Shiner Builders Merchants** [2001] IRLR 727). Similarly the humiliation of an employee by or on behalf of the employer, if that is what

is factually identified, is not only usually but perhaps almost always a repudiatory breach.”

14. In some cases, the breach of trust and confidence may be established by a succession of events culminating in the “last straw” which triggers the resignation. In such cases the decision of the Court of Appeal in **London Borough of Waltham Forest v Omilaju [2005] IRLR 35** demonstrates that the last straw itself need not be a repudiatory breach as long as it adds something to what has gone before, so that when viewed cumulatively a repudiatory breach of contract is established. However, the last straw cannot be an entirely innocuous act or be something which is utterly trivial. The Court of Appeal reaffirmed these principles in **Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978**.

15. If a claimant proves that her resignation was in truth a dismissal, Section 98 deals with the question of fairness.

Relevant Findings of Fact

16. This section of the reasons set out the broad chronology of events necessary to put my decision into context. In it I will identify the fifteen occasions upon which the claimant says that Mrs Gibbs behaved in a way which amounted to or contributed to a fundamental breach of contract as “**allegation 1**” etc. However, for some of those matters there were conflicts of fact as to what happened and I will address those conflicts in the discussion and conclusions section.

Background

17. The respondent is a leading provider of off street parking services which employs approximately 1,500 people and which has a dedicated HR department. The claimant was employed in a variety of roles from May 1990 onwards, starting as Secretary and working her way up to be HR Manager North in 2016, reporting to the then HR Director Sharon Eley.

18. The role profile appeared at pages 43 – 44. The purpose is to provide a high-quality HR administration team and transactional service to the business. Key responsibilities included monitoring and reporting on HR matters, and: -

“**responsibility for drafting, reviewing and maintaining HR service operating processes**”.

19. The payroll department had its own manager who also reported to Ms Eley but the role profile for the claimant’s role contained some references to payroll, primarily ensuring that payroll system data was up to date and accurate.

20. The claimant had a long experience with the respondent in HR, and had achieved the CIPD qualification. She did not have any experience in HR in other businesses.

Process Maps

21. At an HR Team Meeting on 17 November 2016 attended by the claimant and her colleagues there was discussion of the need to create process maps (page 69).

22. This was discussed again at a meeting of HR Managers with Ms Eley in July 2017 when the need to create process maps by mid-September was recorded (page 80). In fact, little progress has been made on this. There were some process maps but they were in a rudimentary pictorial format.

Appointment of Sarah Gibbs December 2017

23. In the Spring of 2017 Ms Eley resigned, but remained in post until her replacement Sarah Gibbs started as HR Director on 4 December 2017. They overlapped by a few days and there were some handover discussions between them. Mrs Gibbs was new to the respondent, but had extensive HR experience in a number of different industries including retail.

24. Mrs Gibbs was appointed with the remit of improving the way the HR operated and adding value to the business. The desire for change was in part driven by the recent acquisition of the respondent by new owners. The Chief Executive Officer (“CEO”), Jo Cooper, told Mrs Gibbs that she wanted someone to professionalise and upskill the HR team and review its activities across the business. Mrs Gibbs was told to “get hold of HR”.

25. Further, during the selection process Mrs Gibbs asked senior directors about their perception on the performance of the HR team and was told that its output was poor and that the team lacked direction. It was clearly going to be necessary for her to make some significant changes once in post.

26. The HR Department was split between the respondent’s Head Office at Saffron Court in London, and the offices in Manchester. Mrs Gibbs divided her team between the two. The claimant was based in Manchester but would travel regularly to London for meetings.

27. The claimant first introduced herself to Mrs Gibbs on 8 December 2017 in Manchester. She formed an unfavourable impression of Mrs Gibbs’s reply to her offer to help her settle in. She thought that Mrs Gibbs responded in a brusque manner. Her interactions over the next ten days or so also reinforced that impression. As far as the claimant was concerned, their working relationship got off to a bad start.

28. On 14 December 2017 Mrs Gibbs emailed the claimant about safety and security matters, and raised a question about the general induction process (pages 182 – 183). The claimant replied explaining that induction was done by the line manager, and that there was a pack available for managers with a new starter. Her email ended by saying that she had booked a meeting room for the following week hoping to get some time to discuss matters with Mrs Gibbs. That meeting did not happen.

HR Team Meeting 19 December 2019

29. This was the first team meeting at which Mrs Gibbs addressed the HR team. Each member of the team, including the claimant, had to prepare a presentation on his or her role. Mrs Gibbs also made a presentation about her first impressions of the department, which were positive and negative, how she proposed to develop the

plan, and provided some personal information. The slides from that presentation appeared at pages 86 – 100.

30. **Allegation 1** concerned the conduct of Mrs Gibbs at this meeting. In her claim form the claimant alleged that during her presentation Mrs Gibbs had a disinterested demeanour with disengaged body language, and that at the end of the presentation she made a comment that “your trackers are shit and a complete waste of time, just pointless”. The claimant alleged that Mrs Gibbs openly chastised her about poor induction for two recent members of staff. She alleged that Mrs Gibbs was critical of the format for the board reports which was in the same format for the past five years or so. I will return to this matter in my conclusions.

In the office on 20 December 2017

31. This exchange between the claimant and Mrs Gibbs formed the basis of **Allegation 2**. The claimant alleged that Mrs Gibbs respondent curtly in a discussion about how they would work together. Her allegation was that Mrs Gibbs asked what the claimant wanted from her, to which the claimant replied “advice, guidance and support”. She alleged that Mrs Gibbs said, “I’m now, how can I do that? I don’t know anything”. I will return to this matter in my conclusions.

32. Prior to Christmas 2017 the claimant was tasked with writing process maps for the department. She was not given any guidance on how Mrs Gibbs wanted them to look. She had provided a copy of one of the existing pictorial process maps but Mrs Gibbs did not regard it as adequate. The claimant was to work on the process maps between Christmas and the New Year, and Mrs Gibbs arranged for two colleagues, Paula Holt and Andrew Moody, to report to her rather than to the claimant to give the claimant time to do that work.

One to One Meeting 8 January 2018

33. The conduct of this meeting by Mrs Gibbs formed the basis of **Allegation 3**. The heart of the claimant’s allegation was that at this meeting Mrs Gibbs was unjustifiably critical of her. She alleged that Mrs Gibbs made comments critical of her capabilities and those of the team without having had enough time to form a proper view, saying for example that contracts had been sent out that were wrong but refusing to specify why that was. The claimant was accusing of having lost personal data, when in fact only a passport photograph had been mislaid, but she was not allowed to explain that. She alleged that Mrs Gibbs said, “I do not feel you have the capability or the want to be here”. There was a discussion about the claimant not being skilled at analysing data and pulling statistics together, but in response the claimant alleged that Mrs Gibbs simply offered her a training course on the use of Microsoft Excel. The claimant felt there was no room for discussion or consultation on the changes which Mrs Gibbs was implementing.

34. The claimant also made an allegation that in this meeting she informed Mrs Gibbs of some personal information concerning the health of her mother, and that in response Mrs Gibbs made a comment which compared her mother to a dog. The claimant found this an astounding response. In the later grievance interview (page 310) Mrs Gibbs accepted that she had made a comment referring to a dog but in a very different context. I will return to this issue in my conclusions.

15 and 16 January 2018 – London Office

35. **Allegation 4** concerned the events of these two days in London during a period when Paula Holt had suffered a bereavement and the claimant was asked by Mrs Gibbs to take over her work.

36. Whilst in London Mrs Gibbs asked her to produce some statistics urgently for a presentation to the new owners. The claimant went to sit on the bank of desks where Mrs Gibbs was sitting, but alleges that she was told to sit on her own away from the HR Team at a “hot desk”. She felt isolated from the HR Team by this. She supplied the information to Mrs Gibbs but received no response.

37. The claimant also alleged that she was asked to come in early the following day for a meeting with Mrs Gibbs to review the board report. The meeting was scheduled for 8 am. The claimant arrived early. She alleges that Mrs Gibbs arrived at 8.30 am, and told the claimant curtly that there was no meeting now as she had to meet the new owners that day.

38. The claimant sent an email the following day asking how the meeting went (page 260). There was no response.

39. I will return to these matters in my conclusions.

22 January 2018 – HR Meeting London

40. **Allegation 5** concerned the conduct of Mrs Gibbs during this meeting, but also in discussions with the claimant privately before and after it.

41. In relation to the discussion before the meeting, the claimant alleged that Mrs Gibbs began by telling her that she had heard some things which were not good and that she was on the CEO’s “shit list”. Mrs Gibbs told the grievance investigation that she had heard that the claimant had said that if her face did not fit, Mrs Gibbs would have to get her chequebook out. Mrs Gibbs understood this had been said at the Christmas party at Manchester on 20 December 2017. The claimant’s case was that she had never mentioned the chequebook, but she had expressed a concern to a colleague in Manchester that she felt that her face did not fit. The claimant also alleged that Mrs Gibbs accused her of having made a comment about hating being in London. Mrs Gibbs discussed Sharon Eley in a very derogatory manner and warned the claimant about speaking to her outside work.

42. As to the HR team meeting, the claimant alleged that she was undermined when challenged by Mrs Gibbs about why she was attending a Business Impact Analysis Meeting, when she had been told Mrs Gibbs required it. She felt that she was being openly chastised for that and other things in front of others. The claimant alleged that there was a discussion about obstacles which hindered people doing their jobs, and that during that discussion Mrs Gibbs looked directly at her and said, “capability issues with you and your team”. She alleged that Mrs Gibbs was dismissive when the claimant mentioned problems with the Basware system.

43. The claimant also alleged that Mrs Gibbs challenged her on why she was doing some work relating to a health and safety audit.

44. After the meeting the claimant spoke to a colleague and agreed to make payment to a surveyor who was leaving the business in accordance with normal practice, but when she reported that back to Mrs Gibbs a few minutes later she was told just to pay him everything immediately. The claimant felt she had been undermined again.

45. She alleged there was then a further private discussion. She alleged that Mrs Gibbs asked her how she felt and the claimant in return asked Mrs Gibbs if she liked the claimant. She explained she needed a clear steer but felt she was not getting one. She alleged that Mrs Gibbs again made a comment about capability and whether the claimant had the will or even wanted to do the job. She alleged, however, that Mrs Gibbs did not give any examples when asked for them. There was a discussion about an email the claimant had sent about redundancy figures on 10 January 2018 (page 204).

46. Finally, the claimant alleged in this meeting Mrs Gibbs requested that she put her out of office email reply on every time she was away from her desk so Mrs Gibbs would know where she was. The claimant disputed the need for this but was required to do it.

47. I will return to these matters in my conclusions.

48. The actions resulting from the meeting on 22 January were summarised by Mrs Gibbs in an email of 31 January 2018 (pages 216 – 218). It recorded that the claimant was due to complete process maps by 12 February with some support. There was other work allocated to her including a full review of all new starter paperwork. The next meeting would be on 26 February in London.

Business Impact Analysis Meeting 23 January 2018

49. The claimant attended this meeting and was told by her colleague that Sarah Gibbs had told him that the claimant was required to attend. That reinforced her view that Mrs Gibbs was wrong to have challenged her on attending that meeting the previous day.

30 January 2018 HR Admin Team Meeting Manchester

50. This formed the basis of **Allegation 6**. By email of 25 January (page 266) Mrs Gibbs asked the claimant to arrange a meeting for the two of them to sit down with the team “to talk about some of the issues we have been discussing”. She did not ask the claimant to do an agenda for the meeting. The claimant alleged, however, that at the start of the meeting she was asked by Mrs Gibbs why there was no agenda in a way that was implicitly critical of her.

31 January 2018 One to One Meeting

51. The conduct of this one to one meeting by Mrs Gibbs formed **Allegation 7**. The claimant alleged that Mrs Gibbs told her that her team had no respect for her and she was not managing them properly. This appeared to have arisen out of a change in policy about whether items would be sent recorded delivery. The claimant alleged that Mrs Gibbs then raised again whether the claimant had been speaking to

Sharon Eley, but then admitted that the “chequebook” comment had been made by somebody else not the claimant.

52. The claimant alleged that Mrs Gibbs then said that she wanted payroll to report to the claimant and that there was a discussion during which Mrs Gibbs made clear that the claimant would have to spend significantly more time in London. The claimant felt that this was a deliberate move to set her up to fail because Mrs Gibbs was aware of her mother’s health and her childcare responsibilities. She alleged that Mrs Gibbs dismissed the claimant’s point that she was not authorised to sign off payroll under the respondent’s scheme of delegated authority (pages 71 – 79).

31 January 2018 – in Manchester Office

53. **Allegation 8** was that after this discussion in the open office in front of others there was a discussion about gender pay reporting and data protection, during which the claimant told Mrs Gibbs that others had been tasked with doing that work. She alleged that Mrs Gibbs said, “so if I ask them will they know about it?” in a way that implied by her tone of voice that she thought the claimant was lying.

54. I will return to this issue in my conclusions.

8 February 2018 – Telephone call

55. **Allegation 9** was that in telephone call on 8 February 2018 Mrs Gibbs spoke to the claimant in a derogatory manner when the claimant had been trying to contact her by email, responding “I am not on email today, so what do you want?” I will return to this issue in my conclusions.

14 February 2018 – One to One Meeting

56. The conduct of this one to one meeting by Mrs Gibbs formed the basis of **Allegation 10**. It centred on the process maps. The claimant alleged that Mrs Gibbs told her that the process maps were not good enough. They had been available on the shared drive for the HR team for over a week for the team to add feedback, but only one comment had been received. The claimant felt that Mrs Gibbs had not shown her what she wanted the process maps to look like and that it was unfair therefore to criticise her. I will return to this issue in my conclusions.

57. The claimant left that meeting feeling crushed and physically sick. She had not been sleeping or eating properly for some time. Her health was starting to be affected.

15 February 2018 – Boyle Tribunal discussion

58. **Allegation 11** was that on 15 February the claimant was asked why she was not attending an Employment Tribunal hearing. The claimant said that she was on annual leave which had been approved by Mrs Gibbs. Her allegation was that Mrs Gibbs looked at her with disgust and said, “So you’re not going to this one, I take it?” and just looked away. I will return to that matter in my conclusions.

59. The claimant was due to be on annual leave in the week of 19 February.

Emails 15 and 16 February 2018

60. On 15 February 2018 Mrs Gibbs sent an email (page 297) expressing her disappointment that the process maps had not been completed by the original deadline of 12 February, and that the quality and attention to detail was not at the expected level. She wanted a plan from the claimant before she went on holiday as to how and when they would be completed at a level that could be used. Her email said: -

“my offer of support and assistance remains – please let me know what you need from me in order to complete them”.

61. The claimant replied on Friday 16 February explaining how she felt. The email itself did not appear in my bundle but the text was reproduced at pages 297 – 298. She thanked Mrs Gibbs for the offer to work at home whilst her son was ill. In relation to the process maps, the claimant said she was equally as disappointed. Her email said that the deadlines had been unrealistic and that she had had no steer from Mrs Gibbs to get them how she wanted them. Her email said: -

“when I have tried to raise the subject with you for support I have had a number of responses “be creative” “how would I know I’m new”; this I found really hard and feels like I’m being set up to fail”.

62. She explained how she had put the process maps into a different “swim lane” format but this had still not been acceptable.

63. The email went on to say that the claimant felt she got no support, just personal criticism of her and the team and a regular roll of the eyes when she did not give the answer Mrs Gibbs wanted.

HR Meeting 26 February 2018

64. Mrs Gibbs had delayed the HR meeting to 12 noon so that she and the claimant could meet privately for an hour to discuss issues between them, but that meeting did not happen because the claimant could not travel to London due to her mother being taken into hospital. The claimant had to dial in to the meeting.

65. **Allegation 12** concerned the conduct of Mrs Gibbs at the HR meeting. The allegation was that during the meeting Mrs Gibbs said that the claimant had put everything behind with the process maps by missing the deadline. I will return to that in my conclusions.

Email 26 February 2018

66. After the meeting Mrs Gibbs sent an email to the claimant. The text appeared at pages 299 – 302. Mrs Gibbs expressed her concern that the claimant felt there were problems in the relationship and said she had hoped to discuss that in person in London that morning had the claimant been able to travel there. She appreciated that the claimant had had some challenges with producing the process maps but set out some of the efforts she made to reduce other demands on the claimant. The claimant had not said that the deadline was unrealistic until after it had expired. It was clear to her that the HR function had not had well-documented processes, and

there were other concerns about the quality of output including attention to detail. Her email said that the HR team had a poor reputation in all areas of the business. Mrs Gibbs could not help with mapping the processes because she was new to the business and did not know how they operated. The claimant was in the best position to do that. She felt she had given feedback on the process maps, and summarised some of that in the email. She referred to the minutes from August 2016 and July 2017 where process maps were discussed. It was not a new task.

67. As to the working relationship, Mrs Gibbs said the following: -

“I also want a constructive and positive working relationship with you but I believe that you have struggled with the change that comes with a new line manager since day one. I have been in the business less than three weeks and you were already commenting to other members of the team that you believed your face didn’t fit and I didn’t like you. I have treated you exactly the same way as other members of the team – I am asking the whole team to change how we work so that we improve on our reputation, improve on the quality of our output and ensure that we can support the people agenda across the whole business.

I know that you feel that some of my comments regarding the issues we have discussed have been a personal criticism of you and your team – they are not. I fully appreciate that I have been very candid with my feedback and that some people – yourself included – are uncomfortable with that. However, I don’t believe that we will really challenge the current processes without the full and frank debate we need. This is a real opportunity to deliver an objective review of what we do now and then to build some new ways of working to support the development of the overall function. What it is not is a personal attack on your capability in an open forum”.

68. The email concluded by reiterating that assistance had been offered and asking the claimant to arrange to meet to discuss matters face to face.

69. That discussion did not happen because the claimant went off sick. The claimant saw her GP and was certified unfit for work. A copy of the initial sick note did not appear in the bundle, but a second fit note was issued on 13 March 2018 certifying the claimant unfit for work for four weeks due to stress at work (page 117).

2 March 2018

70. On 2 March 2018 the claimant sent an email setting out a list of things that needed to be completed whilst she was off sick (page 109).

71. Mrs Gibbs wrote to the claimant the same day (page 115). **Allegation 13** was that this letter was sent too swiftly after the claimant had gone off sick. I will return to that issue in my conclusions. In its entirety the letter read as follows: -

“Dear Karen

I am sorry to hear you aren’t feeling very well – if I can do anything to support you in any way please let me know.

So far, I haven’t received a fit note from you, but my understanding from Helen is that you will be away for at least a couple of weeks. I would appreciate it if you could forward it on to me as soon as possible so I can make sure that payroll have the correct information.

In terms of further contact and a potential welfare meeting/call I will be guided by you as to how and when you would like to proceed. I would therefore appreciate it if you could keep me up to date with your situation.

With kind regards”

72. The claimant supplied a further fit note for four weeks on 13 March. The recruitment of an interim manager to perform her role during her absence was authorised by the CEO (pages 121 – 122).

73. On 14 March Mrs Gibbs wrote to the claimant (page 124) informing her of the possibility of recruiting an interim replacement, and saying that a colleague Michelle Carrington would be in touch about managing absence from work.

74. The claimant responded by email of 16 March 2018 at page 125. She made clear that she was off sick because of the way Mrs Gibbs had treated her. She said she felt that Mrs Gibbs had bullied her, harassed her and constantly put her down in front of others, using foul language at meetings and telling her that what she did was “shit” in front of others. Michelle Carrington had witnessed that behaviour and would not be an appropriate person to manage her absence.

Grievance

75. The claimant lodged a grievance by email of 21 March 2018. The grievance document appeared at pages 127 – 141. It was accompanied by copies of emails and other documents. The claimant alleged that she had been bullied and harassed by Sarah Gibbs since December 2017. She provided a summary of events, attributing to Mrs Gibbs a range of comments which she alleged had been made. She provided an account of **allegations 1 – 13** in the grievance. She said that the only reason she was off because of Mrs Gibbs and that she could not continue to work under those circumstances.

76. The grievance was heard by the Managing Director Duncan Bowins. He interviewed the claimant in a grievance meeting on 11 April 2018. The notes appeared at page 144 – 177. The notes recorded the claimant saying that Sharon Eley had not been the easiest person to work for, but she had never been accused of under-performing until Sarah Gibbs arrived. She generally felt that Sarah Gibbs was going to get her out one way or another and blame it on her performance. There ensued a detailed discussion about the points raised in the grievance document itself.

77. The CEO told Mrs Gibbs that a grievance had been lodged against her and that all the HR team would need to be interviewed. Mrs Gibbs told Paula Holt that a grievance had gone in from the claimant and that staff would be interviewed. This formed the basis of **allegation 14** and I will return to it.

78. Mrs Gibbs had not seen the grievance itself but she prepared a submission and response. It consisted of a summary document on 23 April 2018 (pages 283 to 288), accompanied by notes of her various meetings with the claimant between 18 December and 28 February (pages 289 – 303). In that response she pasted the text of some of the email exchanges in February 2018.

79. Mr Bowin interviewed Sarah Gibbs on 24 April. The notes appeared at page 304 – 325. Over the next ten days he interviewed ten other members of staff, including Andrew Moody, Michelle Carrington, Helen Johnson and Paula Holt. The notes of those interviews appeared between pages 326 and 360.

80. The decision to reject the grievance was contained in a letter of 14 May 2018 from Mr Bowins (pages 361 – 366). His letter recorded his conclusion that although it was well known that the claimant believed that her face did not fit and thought Mrs Gibbs did not like her, the vast majority of the evidence showed no indication of concerns about how the claimant had been treated. He acknowledged that Mrs Gibbs had strongly expressed views, but the negative feedback was aimed at historic ways of working rather than at specific individuals. It had been supported by feedback. The letter went on to discuss the process maps issue, the use of swear words, changes to the role, and other matters raised in the grievance.

81. The conclusion was that the grievance was not upheld. Mr Bowins said in his concluding paragraphs: -

“I do appreciate that you and Sarah [Gibbs] have had a difficult relationship from early on, and that Sarah can be strong and assertive in her manner and has standards she expects to be met. She needs to deliver a lot of change and improvement in HR. I don’t think there is an issue with this, but I do understand that some people may find it difficult, as I believe you have. However, I do believe there is no reason why something could not be put in place to enable you to put this behind you and to move forward in a positive way, working together constructively.”

82. He suggested some form of mediation to find a way of working together and asked for the claimant’s views.

Grievance Appeal

83. The claimant lodged an appeal against this decision by email of 18 May 2018 at page 367. She expressed her deep disappointment and asked for copies of the documentation from the investigation. She supplied a further fit note for a further four weeks. She asked for an extension of occupational sick pay, which was granted. However, Mr Bowins refused to release the documentation gathered during the grievance investigation (page 368), although he acknowledged that the claimant could make a Data Protection Act Subject Access Request.

84. The grievance was heard by the CEO on 4 June 2018. The claimant prepared some notes for that hearing at pages 372 – 375, and the notes of the hearing itself appeared at pages 376 – 381.

85. The appeal outcome was set out in a letter of 15 June 2018 at pages 386 – 387. Mrs Cooper acknowledged that the claimant had been affected by the working relationship with Sarah Gibbs, but upheld the conclusion reached by Mr Bowins. She said that the perspective of Mrs Gibbs on matters had been preferred because it had been corroborated. Her letter said: -

“I am satisfied that whilst there is a general view that Sarah’s approach is direct and on occasion blunt, that is her style. I appreciate that you felt singled out for harsher treatment by Sarah, but I am satisfied that that is simply because you are the manager of the HR activities that are under scrutiny, where poor feedback has been received from

the business and that it was not personal to you. In fact, when Sarah realised you were struggling with her blunt and direct approach she arranged to spend a whole day with you, so that she could explain what she wanted and to help you. Unfortunately, that did not happen as you have not returned to work since. I do not think anything that you have reported she has said and done was improper”.

86. The letter went on to acknowledge, however, that Mrs Gibbs should not have told Paula Holt that a grievance had been received (**allegation 14**), and it said that Mrs Gibbs had accepted this.

87. Mrs Cooper then turned to the way forward. She said there were no suitable vacancies at the moment but there was a possibility of creating a suitable role.

Return to Work Discussions

88. These discussions were pursued in meetings between the claimant and Jo Cooper on 25 June and 2 July. A role was created for the claimant. She had understood from speaking to Mr Bowins that it was a Business Partner role, representing part of the job the claimant had been doing since she took up her current position in 2016. She had retained some of the business partner aspects of that role as well as becoming an HR Manager.

89. These discussions came to a head at a meeting on 24 July 2018. The alleged conduct of Mrs Gibbs in this meeting formed **allegation 15**. The claimant was given a role profile for a Senior HR Co-Ordinator (pages 394 – 396). Technically the role would report to Sarah Gibbs. The salary for the role was £10,000 less than the claimant’s current salary.

90. The main concern of the claimant with the meeting, however, was her perception of Mrs Gibbs’ attitude towards her return to work. Her allegation was that Mrs Gibbs said words to the effect of: -

“you cannot walk right back in, you have bridges to build and don’t think you will be welcome with open arms”.

91. The claimant took this to be a reference to the fact that she had brought a grievance and that her colleagues would hold this against her.

92. The other comment by Mrs Gibbs on which the claimant relied was that during a discussion about her management style Mrs Gibbs said: -

“I am not changing for anyone.”

93. I will return to these matters in my conclusions.

Emails 26 and 27 July 2018

94. Two days after the meeting the claimant sent an email of 26 July 2018 (page 403 – 405) in which she said that she had felt in a good place to return to work, but after the meeting on 24 July the position had changed. It had borne no resemblance to what she had discussed with Jo Cooper.

95. Her email said: -

“After meeting Sarah, she advised me that I can’t just walk back in as she is restructuring and needs to make announcements before I can return”.

96. She also took issue with the fact that Mrs Gibbs had said that the proposed new post was confidential when she was aware from the response to a Subject Access Request that the restructuring had already been discussed with Michelle Carrington in March 2018. Her email said she was not prepared to take a £10,000 drop in salary and suddenly become a junior member of the team.

97. Jo Cooper responded on 27 July by email at pages 402 – 403. She made clear that a return to the substantive role was always possible. It had been very hard to identify a role in the business suited to the claimant’s skills based in Manchester. If that role was rejected, the claimant could confirm that she would return to her substantive role. She was asked to bring her fit note confirming a return to work on a phased basis to her meeting with Sarah Gibbs on Monday to begin the process of a return to work.

Resignation

98. Instead of attending work on 30 July the claimant resigned. Her brief letter appeared at page 406. She gave one month’s notice. She made arrangements to return her property. Her letter did not give any reasons for her resignation.

Submissions

99. At the conclusion of the evidence each side made an oral submission.

Respondent’s Submission

100. After briefly reviewing the legal framework and emphasising that the burden lay on the claimant to prove that her resignation was really a dismissal, Mr McGlashan emphasised some important background factors. The claimant had long experience of HR but only within the respondent. Her witness statement said that she was obviously nervous and apprehensive about having a new manager. There had been feedback from others about the HR team which was negative. Further, the view of Mrs Gibbs which the claimant held was not shared by her colleagues, according to the grievance interview notes.

101. Mr McGlashan then went through each of the allegations in turn and summarised why the respondent contended there was reasonable and proper cause for the approach taken by Mrs Gibbs. It is not necessary to repeat each item here but I will consider any salient points in the discussion and conclusions section below.

102. Overall, he submitted that the case should be dismissed because there have been no fundamental breach of trust and confidence: the actions of Mrs Gibbs had reasonable and proper cause, and even if they did not, they were not actions which were calculated or likely to destroy or seriously damage trust and confidence when viewed objectively.

Claimant's Submission

103. The claimant began by emphasising that she felt humiliated and targeted in a way which had affected her health and caused her to lose trust and confidence. She had been very concerned at the disclosure to a colleague that she had brought a grievance, but her discussions with Mr Bowins and Mrs Cooper had been positive and she had been hoping to wipe the slate clean. However, those hopes were dashed at the meeting on 24 July when Mrs Gibbs said that nothing had changed and made the comment about the difficulty of returning to work and building bridges. It was clear at that point that there was not going to be any fresh start and that was why she resigned, not any concern over the salary of the proposed new role.

104. The claimant emphasised that her attendance and performance had never previously been questioned. The problems only arose once Mrs Gibbs joined the business.

105. I then asked the claimant about her position on a number of the individual allegations. Again, it is not necessary to record these here and I will address those points as appropriate in the discussion and conclusions section below.

Discussion and Conclusions

106. In considering the case on each side I bore in mind the legal framework summarised above. It was necessary for me to view matters objectively, once the relevant facts had been identified, rather than to consider them solely on the basis of either side's perspective.

107. Further, the hurdle for a claimant who has to show that there has been a breach of trust and confidence is a relatively high one. An employer can behave unreasonably, unfairly or capriciously without there necessarily being any fundamental breach of contract. As explained in the **Frenkel Topping** case, it is a stringent test which exists to prevent an employee being unfairly and improperly exploited. It is possible for employers to behave in ways that can be criticised without that behaviour demonstrating objectively that the employer is abandoning and altogether refusing to perform the contract.

108. Bearing those principles in mind, I considered each of the allegations in turn before considering the cumulative effect. For some of the allegations it was necessary for me to resolve a dispute of fact before applying the law.

Allegation 1

109. This allegation concerned the first meeting at which Mrs Gibbs addressed the HR team. Mrs Gibbs had formed a negative impression of the current performance of that team and was seeking to deliver change. From that perspective it was bound to be an uncomfortable meeting.

110. The essence of the claimant's allegation, however, was that there was negativity directed towards her personally. She alleged that Mrs Gibbs was critical in coarse terms at the end of her presentation about the statistics for the board report pack which was something the claimant had been doing for over a year by then.

The claimant also felt that she was questioned about poor induction for members of staff in a way that suggested she was viewed as responsible.

111. I did not have any witness evidence from any other person present at the meeting. I had the slides for Mrs Gibbs' presentation which showed both positive and negative feedback to the team. Broadly, Mrs Gibbs accepted that she had been critical of a number of aspects of how the team were operating, including areas for which the claimant was responsible. Her note at page 289 recorded the criticism she had about the induction of two members of staff in her own team. Further, Mrs Gibbs accepted in cross examination (about allegation five) that she did occasionally swear in the office.

112. Having heard the evidence I was satisfied that the factual basis for the claimant's allegations was broadly correct in the sense that Mrs Gibbs was critical in forthright terms of areas for which the claimant was responsible. However, I did not consider that this in isolation amounted to a breach of trust and confidence. The claimant's perspective on matters was already affected by what she saw as a bad start to the working relationship. This was a consequence of their first encounter (paragraph 28 above) and the fact that Mrs Gibbs had not been able to find time to sit down with the claimant and discuss matters prior to the team meeting (paragraph 29 above). I concluded that this negative first impression affected the way the claimant viewed this meeting, and that viewed objectively the comments were not directed at her personally in a way that was calculated or likely to destroy or seriously damage trust and confidence. All the HR team were being criticised to some extent in that meeting.

Allegation 2

113. The claimant alleged that on 20 December 2017 Mrs Gibbs responded curtly to a request from the claimant for advice, guidance and support. In cross examination Mrs Gibbs did not dispute that the claimant had asked her for help. She described the claimant as appearing very nervous and unsure of herself. Mrs Gibbs had been told by Jo Cooper that there were members of staff in the HR team who had to be "spoon fed". Mrs Gibbs accepted she said she did not know what advice to give because she was new. However, she disputed saying it in a curt manner.

114. I was satisfied that the claimant perceived this as a curt or unhelpful response, and to some extent it was perhaps robust in tone. However, it did not in isolation amount to a breach of trust and confidence. There was reasonable cause for Mrs Gibbs to expect staff to use their initiative rather than rely on her for detailed guidance.

Allegation 3

115. This allegation concerned the one to one meeting on 8 January 2018. The claimant alleged that Mrs Gibbs was unjustifiably critical of her in this meeting. She was accused of having lost personal data and not given a chance to explain that it was only a passport photo that had been mislaid.

116. In broad terms that account was consistent with Mrs Gibbs' record of that meeting at page 290. Mrs Gibbs was indeed frustrated and disappointed in what

she saw as the claimant's performance. There had been insufficient progress (in her view) on the process maps. Her note recorded that the claimant appeared to lack confidence and experience and was seeking not just direction but instruction from Mrs Gibbs about what exactly to do. She formed the view that there was little self-motivation to develop the role.

117. By this stage Mrs Gibbs had been in post for just over a month, albeit over the holiday period. She had had an opportunity to form some views about the way the team and individual members were operating. There was reasonable cause for her to express views that were negative in some respects. I recognised that the claimant felt that this was an inappropriate way for Mrs Gibbs to proceed. That reflected the difficulties in their working relationship which had already emerged. It also reflected the difficulty of adapting to a new line manager with a different approach, particularly when the claimant had been close to Ms Eley. However, viewed objectively these criticisms of the claimant were not matters which breached trust and confidence.

118. The claimant also perceived that changes were being made without proper consultation, but in my judgment, there was reasonable cause for Mrs Gibbs to proceed in that way given the mandate to effect change which she had been given.

119. The second part of this allegation concerned the comment about a dog. The claimant did not provide any details of this comment in her claim form other than to say that the response from Mrs Gibbs left her astounded. She did, however, provide details in her grievance (page 129) where she explained that she had become emotional and upset when talking about her mother's health, and alleged that Mrs Gibbs said:

"If it was my dog, who is my baby, I would have him put down".

120. In her witness statement the claimant gave a different form of words. She alleged that Mrs Gibbs said: -

"Well if she was a dog, then you'd have her put down".

121. Mrs Gibbs was made aware of this allegation when she became aware of the grievance. Her note of that meeting (page 291) made a reference to the claimant raising personal issues to do with her mother and being clearly upset, but understandably did not mention the comment. However, when interviewed about the grievance (page 310) Mrs Gibbs said that she had compared the situation to putting down a dog, but had been trying to be supportive. She said: -

"I was saying that yes, it is awful to see someone really suffering like that, and that that was often how it was with humans, and I said with animals you can put them down and so there is no suffering and I was being supportive, agreeing it is really hard to see someone and their ongoing suffering, when that's not what they want".

122. I was satisfied that Mrs Gibbs did make a comment about how a dog in the same situation would be put down. I was not in a position to make a firm finding about the exact words used because the claimant's accounts differed. However, I was also satisfied that this was intended by Mrs Gibbs to be a supportive comment, recognising how distressing it was to have a relative suffering from illness when the

option available with a pet was not something that could be considered. It was not in my judgment a comment that was intended to be hurtful or upsetting; just the contrary. I accepted that the claimant took it the wrong way, perhaps understandably given how upset she was, but that again was in part a consequence of the difficulties in the working relationship that had already emerged. Viewed objectively this comment was well intentioned, if with hindsight unfortunate, and could not in isolation amount to a breach of trust and confidence.

Allegation 4

123. The first part of this allegation was that Mrs Gibbs told the claimant to sit at a hot desk away from the HR team when in London on 15 January 2018 in a way that made her feel isolated. Mrs Gibbs did not recall this matter when asked about it. She explained that there were six desks in a pod occupied partly by payroll and partly by Mrs Gibbs and other members of her team, but that HR staff did use the hot desks which were in another pod.

124. Having heard the evidence I was satisfied that the claimant had been directed to sit at a different desk from where she would have preferred, but that was essentially a relatively trivial matter. The claimant reacted badly to it because she was sensitive to the working relationship. Similarly, the fact that Mrs Gibbs did not respond to the information provided was a reflection of how busy Mrs Gibbs was and the claimant was being oversensitive in taking it personally.

125. As for the following day, the claimant was entitled to be annoyed by the short notice cancellation of her meeting with Mrs Gibbs, and by the lack of any response to her email the following day. However, these were again relatively trivial matters which did not in isolation breach trust and confidence.

Allegation 5

126. This allegation was in three parts. The first was about a private discussion between the claimant and Mrs Gibbs before the HR meeting during which Mrs Gibbs told the claimant that the CEO had concerns about what she had heard about the claimant. Mrs Gibbs did not accept that she used the phrase "shit list", although she accepted that she does on occasion swear in the office. It seemed to me likely on the balance of probabilities she did use that phrase. The claimant was clear about it in her grievance and in her witness statement and oral evidence.

127. However, use of that language alone is far from enough to render this a breach of trust and confidence. In broad terms I was satisfied that there was reasonable cause for Mrs Gibbs to speak to the claimant about these matters. She had been directed to do that by the CEO. News had reached the CEO that the claimant had been talking inside and outside the business about how unhappy she was. There was reasonable cause for Mrs Gibbs to make this intervention.

128. There was also a discussion about how the claimant had been negative about working in the London office. Mrs Gibbs was legitimately concerned at that because her vision for the claimant's role would include more dealings with London as she became more involved in payroll. This initial discussion on 22 January 2018 did not amount to a breach of trust and confidence.

129. The second part of this allegation was about the conduct at the HR meeting. I found as a fact that the claimant was asked by Mrs Gibbs why she was attending a particular meeting. However, the perception of the claimant that this amounted to her being openly chastised in front of others reflected her oversensitivity to interactions with Mrs Gibbs as a consequence of their poor working relationship. The reference made by Mrs Gibbs during the meeting to capability issues with the claimant and her team was also something for which there was reasonable cause given the view Mrs Gibbs had formed of the performance of the HR team and the claimant. These comments did not breach trust and confidence.

130. The third part of this allegation related to a discussion after the meeting between the claimant and Mrs Gibbs where a decision made by the claimant was overturned. Mrs Gibbs had authority to overrule the claimant and in doing so did not breach trust and confidence, even though I accepted that the claimant was very concerned at this. Nor did the further private discussion in which Mrs Gibbs again raised concerns about capability and whether the claimant wanted to do the job breach trust and confidence. There was reasonable cause for a line manager to have that discussion with a member of her team seen as underperforming. Finally, the request for the out of office email to be put on every time the claimant was away from her desk was seen by the claimant as micromanagement. To an extent it reflected Mrs Gibbs' concerns about how the claimant was operating. In isolation, however, it was not serious enough to destroy trust and confidence.

Allegation 6

131. The essence of this allegation was that Mrs Gibbs asked the claimant to arrange an informal meeting, then at the start of the meeting asked the claimant why no agenda had been done, in a way that was embarrassing.

132. The email from Mrs Gibbs of 25 January 2018 at page 266 did suggest it was an informal meeting and made no mention of an agenda. However, Mrs Gibbs explained in cross examination that she had assumed that the claimant would want to do an agenda and was frustrated she had not done that. She thought the claimant had not prepared the team for this discussion and said that "they sat staring at me" at the start of the meeting. She felt there was no structure to it.

133. This allegation was in some ways representative of the working relationship. Mrs Gibbs had an expectation that someone at the claimant's level would not need to be told exactly what to do, but would appreciate that the meeting would run more smoothly if the team were prepared and there was an agenda of items to be discussed. On the other hand, the claimant did not think it was her job to do that because that had not been the expectation when she was managed by Ms Eley, and Mrs Gibbs had not said exactly that this was what was required.

134. Ultimately this represented poor communication. Viewed objectively it was not serious enough to destroy trust and confidence.

Allegation 7

135. This allegation concerned the conduct of a one to one meeting on 31 January 2018. The focus of the claimant's allegation was that Mrs Gibbs was critical of the

claimant and told her that her team had no respect for her and she was not managing them properly.

136. Mrs Gibbs' note of the meeting appeared at pages 294 – 295. It was not expressly critical of the claimant but it recorded that there was a need for the claimant to start having one to one meetings with her own team and to ensure there were objectives for them on the system. I concluded that Mrs Gibbs was surprised that this was not already being done. I was also satisfied that Mrs Gibbs did tell the claimant her team had no respect for her, bearing in mind that two members of the team had approached her on 30 January and told her that they would rather not go to the claimant for HR advice as they did not trust it (page 294). I was satisfied that there was reasonable cause for Mrs Gibbs to take this approach given what she had been told. There was no breach of trust and confidence in this.

137. The other strand to this allegation was that Mrs Gibbs told the claimant she should have payroll report to her as part of a deliberate move to set her up to fail, knowing that more time in London was difficult for the claimant because of her family responsibilities. She suggested that Mrs Gibbs was wrong to dismiss the claimant's objection that she was not authorised to sign off payroll under the scheme of delegation. I rejected this contention by the claimant. Mrs Gibbs saw increased responsibility for payroll as part of the claimant's role in her plan for the HR department moving forward. This was not a cynical attempt to make matters more difficult for the claimant, and the fact that the claimant saw it in that way showed how jaundiced her own perception of the working relationship had become. Further, I was satisfied that the objection to signing off payroll was based on a miscommunication. Mrs Gibbs was not expecting the claimant to formally sign off payroll, but to verify that the figures were correct before it was signed off by Mrs Gibbs. This was a further instance of poor communication which reflected the deteriorating working relationship but which fell short of amounting to a breach of trust and confidence.

Allegation 8

138. Once again, I accepted the factual basis for the claimant's allegation, but I concluded that she was being oversensitive in forming the view that Mrs Gibbs was trying to suggest that the claimant was lying. The fact that the claimant latched on to this comment and attributed that malicious intent to it reflected the difficulties in the working relationship. There was no breach of trust and confidence.

Allegation 9

139. This allegation concerned a brusque response by Mrs Gibbs to a telephone call from the claimant, who had been trying to get a response by email. I accepted the claimant's evidence that Mrs Gibbs responded in that manner. Mrs Gibbs did not recall it.

140. However, it is not unusual for a busy manager to respond somewhat abruptly to a query of this kind and it fell short in isolation of amounting to a breach of trust and confidence.

Allegation 10

141. This allegation concerned the one to one discussion on 14 February 2018 which centred on the question of process maps. The claimant alleged that it began with Mrs Gibbs saying that the process maps were not good enough, but that Mrs Gibbs refused to send her one in the correct format so that she would know exactly what to do. She said that the meeting left her feeling crushed and physically sick.

142. It was clear from the evidence I heard that Mrs Gibbs did not think the process maps were being handled well by the claimant. She wanted process maps which showed how the HR team would deal with any particular issue. The existing process maps were for managers to show how to deal with things before HR became involved. It was understandable that the claimant felt she had not had enough guidance as to how they should be prepared. There were reasonable grounds for that view on the part of the claimant.

143. Equally, however, there were reasonable grounds for Mrs Gibbs to conclude that the claimant ought to have been able to produce what she had in mind without being provided with a template. Ultimately, this was a situation where there had been poor communication, a matter for which Mrs Gibbs bore some responsibility, but not something which could properly be characterised as a breach of trust and confidence. The process maps exercise had been under way since December, the claimant had been allocated time to concentrate on it, and Mrs Gibbs was genuinely and understandably frustrated by the lack of progress. She expressed that disappointment in her email of 15 February 2018 at page 297. There was reasonable cause for her to take this approach.

Allegation 11

144. This allegation concerned the fact that the claimant was on annual leave rather than attending an Employment Tribunal hearing. Although the claimant was offended when Mrs Gibbs expressed her surprise that the claimant would not be going, viewed objectively there was no breach of trust and confidence. The matter had not been properly handled upon the departure of Sharon Eley. I accepted Mrs Gibbs' evidence that the case had not been handed over to her, and she thought that the claimant had been dealing with it. In fact, that was a misunderstanding on her part, but a reasonable one. That explained her surprise when she learned the claimant was not attending the hearing. She was entitled to express that surprise. The claimant overreacted to this because of the poor working relationship between them.

Allegation 12

145. The core of this allegation was that during the HR meeting on 26 February 2018 (with the claimant dialling in by telephone) Mrs Gibbs said that the claimant had put everything behind with the process maps by missing a deadline. I was satisfied this was the thrust of Mrs Gibbs' view. She had already made that plain in her email of 15 February at page 297. She expressed her disappointment that the deadline of 12 February had not been met with the process maps, and said in relation to the next meeting on 26 February that she was concerned that they would be unable to meet the planned deadlines.

146. However, as explained above, I was satisfied that Mrs Gibbs had reasonable cause for the view that the claimant had not progressed the process maps as well as she had expected, and as HR Director she was entitled to raise that in a team meeting. The reasonable cause for that view was set out by Mrs Gibbs in her email of 26 February (pages 299 – 300) when she explained that the deadline of 12 February had been agreed and the claimant had not indicated that it was unrealistic until her email of 16 February 2018.

147. Further, it seemed to me that the email of 26 February 2018 from Mrs Gibbs was an important email which was a contemporaneous record of the approach Mrs Gibbs was taking to the difficulties in the working relationship. The claimant urged me to conclude that the email was sent in bad faith and was an attempt by Mrs Gibbs to “cover her tracks”. I rejected that. I was satisfied that it was a genuine attempt to record and address the problems that had arisen between them. The fact that the claimant viewed it suspiciously showed just how far their working relationship had deteriorated. The claimant genuinely felt that way about it but hers was not an objective assessment.

Allegation 13

148. The same was true, I concluded, of the letter of 2 March 2018, sent three days after the claimant went off sick on 27 February. The allegation in the claim form was that it was written to put pressure on her about a welfare meeting. Objectively that perception was unwarranted. The letter was couched in sympathetic and supportive terms. It did not ask for a welfare meeting. It said that in relation to further contact and a potential welfare meeting Mrs Gibbs would be guided by the claimant as to how she would like to proceed. It only asked the claimant to keep her up to date.

149. Viewed objectively this letter was perfectly appropriate. There was no breach of trust and confidence.

Allegation 14

150. The allegation that Mrs Gibbs had told members of the team about the claimant's grievance was considered by Jo Cooper at the appeal stage. Her outcome letter recorded that Mrs Gibbs had indeed told Paula Holt that a grievance had been received from the claimant. Mrs Gibbs had been told of this but had not seen a copy. I was satisfied that Mrs Gibbs told Paula Holt that a grievance had been received in order to give the team a “heads up” that they might need to participate in the investigation.

151. This was a mistake by Mrs Gibbs. She should have let matters take their course given the importance of confidentiality attaching to a grievance.

152. However, I was also satisfied that this was not a matter serious enough to destroy trust and confidence. The nature of the allegations made by the claimant in her grievance was such that the team were bound to become aware of it when they were interviewed about it. That did indeed happen in the series of interviews carried out in late April and early May. This did not amount to a serious matter capable of breaching trust and confidence in isolation.

Allegation 15

153. This allegation concerned the return to work meeting on 24 July 2018. The importance of this matter to the claimant's case was reflected not simply in the fact that it was the last matter which triggered her resignation, but also in the emphasis she placed upon it in her oral submission after the evidence concluded. The claimant made clear her position that she was prepared to put the concerns about earlier treatment behind her and return to work with a clean slate, following positive discussions with Mr Bowins and Mrs Cooper, but that those hopes were dashed by the way Mrs Gibbs behaved at this meeting. The focus was on the comments she alleged Mrs Gibbs had made about how the claimant could not walk back in, had bridges to build and would not be welcomed with open arms, and also that Mrs Gibbs herself was not going to change for anyone.

154. No note was kept of this meeting. I had no evidence to go on other than the evidence from the claimant and Mrs Gibbs.

155. However, the claimant sent an email two days later to Mrs Cooper (pages 403 – 405) in which she gave an account of the meeting. She referred to a concern about the role profile and the salary, but she relayed that Mrs Gibbs had told her that she could not just walk back in as she was restructuring and needed to make announcements before the claimant could return. At the end of the email (page 405) the claimant recorded that Mrs Gibbs had made a comment at the meeting that she would not be welcomed back with open arms within the team, and this made her anxious.

156. In her claim form the claimant explained that following this comment Mr Bowins intervened and raised the question of style of communication. The claimant was to try and look at things in a positive manner and Mrs Gibbs was to think about her style and audience. She alleged at this point Mrs Gibbs said, "I am not changing for anyone".

157. In cross examination Mrs Gibbs denied having used the words attributed to her by the claimant, but said there was a broader conversation which reflected her concern about the duty of care owed to the claimant upon her return to work. There had been no occupational health guidance as the claimant had not wanted that, and someone appointed on an interim basis had been sitting at the claimant's desk. There were some practical steps that would need to be taken before the claimant could return successfully. Mrs Gibbs also explained that she felt that the claimant had damaged her relationships with some people (including Paula Holt) and views were different now from when she had gone off sick. She said that she raised these issues out of a real concern that the claimant might be made ill again. Further, she was explaining that nothing had changed in the sense that she would still be leading the team, not saying that she wouldn't change but recognising that she had not had a "personality transplant".

158. Putting these matters together I was satisfied that the account given by the claimant in her email was factually accurate. I found as a fact that Mrs Gibbs did say that the claimant could not just walk back in, but (as the claimant's email recorded) that related to the need to sort out the restructuring before the role could be created for her to return.

159. I also found as a fact that Mrs Gibbs said that the claimant would not be welcomed back with open arms within the team. This reflected her concern about the fact that there was some negative feeling as a consequence of the claimant's grievance. It was understandable that the claimant was made more anxious by this, and it should have been expressed in a more sympathetic way.

160. However, neither of these comments in themselves breached trust and confidence. Mrs Gibbs had reasonable cause for recognising the practical difficulties in reintegrating the claimant to the team following her wide-ranging grievance. Although they could have been expressed more sympathetically, these comments were not raised out of ill intent or deliberately to increase pressure on the claimant and make her more anxious.

161. I also found as a fact that Mrs Gibbs did say something about how she had not changed. Again, that was in my judgment a blunt reflection of the reality. There had been significant difficulties in the working relationship to which the personalities of both the claimant and Mrs Gibbs had contributed. There was reasonable cause for Mrs Gibbs to say that the underlying personalities would not change. However, the fact that the claimant took this as an aggressive comment, suggesting perhaps that the problems had been the claimant's fault, reflected her perception of matters rather than the objective reality. In isolation, therefore, this comment too, if robustly expressed, did not breach trust and confidence.

Cumulative effect

162. For the reasons set out above I concluded that none of these individual allegations in isolation breached trust and confidence. However, the claimant also put her case on the basis of a cumulative effective. It was necessary for me to consider the overall course that matters took and look at the whole picture.

163. At this stage it was important to bear in mind the case law about a "final straw". It is possible for a series of actions by an employer to amount to a breach of trust and confidence, crystallised by the last event, even if none of the matters individually are serious enough to breach trust and confidence. A final straw can have that effect if it adds something to what has gone before, as long as it is more than something which is innocuous and trivial.

164. This was a working relationship which got off to a bad start. I concluded that this was due to a combination of the personalities involved. As Mr McGlashan pointed out in his submissions, having worked closely with Ms Eley for some time the claimant was nervous and apprehensive about having a new manager. She was also someone whose HR experience had been gained entirely within the respondent. Mrs Gibbs, in contrast, was appointed with a mandate to effect significant change within the HR team, and had a personal manner which could at times come across as brusque, robust or even dismissive.

165. That was an unfortunate combination, and it meant that the working relationship got off to a bad start and never recovered. Mrs Gibbs expected the claimant to be performing at a level which had not previously been required of the claimant; the claimant expected Mrs Gibbs to provide the comforting support and direction which she had enjoyed from Ms Eley. Both were to be disappointed.

166. Viewed objectively, however, Mrs Gibbs had reasonable cause for her actions in seeking to get the claimant to operate in a different manner, and the fact the claimant took this so badly was a reflection of her subjective perception and the difficulties in the working relationship. There are often difficulties where established employees are expected to operate in a different manner by a new line manager, and in this case those difficulties were significantly exacerbated by the personality issues and poor communication.

167. Once the claimant had gone off sick, however, the actions of Mrs Gibbs in my judgment were entirely appropriate and proper. The email she sent on 26 February 2018 was supportive and reasonable, and the letter of 2 March 2018 was equally a letter which an employee ought to have welcomed. However, matters had gone too far for the claimant by then and she viewed with suspicion anything which Mrs Gibbs did. That perception coloured the remainder of their interactions, including the exchanges at the meeting on 24 July 2018.

168. Accordingly, I concluded that even on a cumulative basis the claimant had failed to establish that there was a breach of trust and confidence. The claimant was an honest and truthful witness and I had no doubt that her subjective trust and confidence in the respondent was destroyed by her interactions with Mrs Gibbs. However, the Tribunal has to apply an objective test, and even though Mrs Gibbs can be criticised for the manner of her communications in some respect, fundamentally her approach to effecting change in this department and in the way the claimant operated was an approach for which there was reasonable cause and therefore not one which amounted to a fundamental breach of contract.

Outcome

169. It followed that the resignation of the claimant was not a dismissal under Section 95(1)(c), and therefore her complaint of unfair dismissal failed and was dismissed. Of the issues set out in paragraph 5 above, issue 1 went against the claimant and issues 2-5 did not arise.

Employment Judge Franey

22 October 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON
24 October 2019

FOR THE TRIBUNAL OFFICE

[JE]