



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4101345/2023**

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**Held in Glasgow on 15, 16 and 17 May 2023**

**Employment Judge L Wiseman**

10 **Ms Margaret Broadfoot**

**Claimant  
Represented by:  
Ms M Gribbon -  
Solicitor**

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**SW Global Resourcing Ltd**

**Respondent  
Represented by:  
Mr K Duffy -  
Solicitor**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The tribunal decided to dismiss the claim.

### **REASONS**

- 25 1. The claimant presented a claim to the Employment Tribunal on the 31 January 2023 in which she claimed she had been unfairly constructively dismissed. The claimant considered she had been entitled to resign without notice because of the respondent's conduct in not dealing with her grievance in a proper, fair and timeous manner.
- 30 2. The respondent entered a response in which it denied that it had acted in repudiatory breach of contract. The respondent asserted it had progressed and investigated the grievance and had not acted in a manner calculated or likely to destroy or seriously damage the implied term of mutual trust and confidence.

3. The tribunal heard evidence from the claimant and Mr Alan Beaver, Head of Finance; and from Ms Fiona Baggley, Director and Mr Raymond Johnstone, General Manager who dealt with the grievance.
4. The tribunal was referred to a set of joint productions.
- 5 5. The tribunal, on the basis of the evidence before it, made the following material findings of fact.

### **Findings of fact**

6. The respondent is a frontline services provider of manpower for the rail industry. The respondent employs approximately 120 employees, and approximately 300 workers. Mr George Nixon is the Owner/Director of the company; Ms Fiona Baggley is a Director and Mr Raj Sinha, is the Managing Director.
7. The claimant commenced employment on the 18 August 2003, until her resignation on the 9 October 2022. The claimant was employed as the Payroll Supervisor.
8. The claimant worked 29 hours per week and earned £2208 gross per month, giving a net weekly pay of £328.21.
9. The claimant, up until July 2021, reported to Anne Nichol, Payroll Manager. There was also a Payroll Assistant, Ms Catherine Kelly, in the department.
- 10 10. Ms Nichol, Payroll Manager, retired in July 2021. The Finance Director had previously retired in April 2021. The Managing Director took the opportunity to streamline some roles and decided to delete the Payroll Manager role and to instead hire a Head of Finance to be responsible for finance and payroll.
11. Ms Baggley informed the claimant of this and agreed there would be a period of approximately one month where the claimant would take on some of Ms Nichol's duties until the new Head of Finance arrived. Ms Baggley also informed the claimant that a new member of staff would be recruited to cover finance and payroll, particularly during periods of annual leave and sickness absence.

12. The claimant received a pay rise (page 67) which took her salary to £23,000 per annum. The letter dated 5 July 2021 also confirmed the claimant's application for flexible working to reduce her working week from 5 days to 4 days had been agreed. The reduced working week came into effect on the 1 November 2021 and the claimant's pro rata salary was £19,057.14.
13. Mr Alan Beaver was appointed to the post of Head of Finance in November/December 2021. He was responsible for the line management of the claimant and Ms Kelly.
14. The claimant received a pay rise in May 2022 (page 69) which took her salary to £26,000 (pro rata £20,800).
15. Ms Kelly, Payroll Assistant, decided to seek alternative employment and secured another job at a higher salary (£28,000). Ms Kelly gave notice of termination of employment to the respondent, effective on the 8 July 2022. The loss of staff from the payroll function at this time would have had a serious impact on the department because there was an increased workload due to the respondent winning two new contracts and the TUPE transfer of hundreds of workers meant an increased workload for the payroll department.
16. Ms Baggley obtained authority from Mr Sinha to negotiate with Ms Kelly and ultimately Ms Kelly agreed to stay when her salary was increased to £26,500.
17. Ms Baggley was aware this took Ms Kelly's salary above the claimant's salary and so on the 11 July (page 70) a letter was sent to the claimant to inform her that her salary would increase to £26,500 (£21,956.48 pro rata). Ms Baggley had been unable to obtain Mr Sinha's agreement to increase the claimant's salary by more because the respondent was in a period of change. It was however always the respondent's intention to look at the claimant's salary again towards the end of the year.
18. The claimant was aware of the salary Ms Kelly had been offered because Ms Kelly told her about it. The claimant was not happy that she and Ms Kelly were on the same salary.

19. The claimant sent an email to Ms Baggley on the 25 July 2022 (page 72). The claimant wrote to request a review of her pay increase because she felt she was the employee with most responsibility and did not feel it fair to be paid at the same level as someone with less responsibility. The claimant asserted she was the one who was accountable to management for the output of the team and considered the salary she was paid should demonstrate this fairly.
20. The claimant sent a chaser email to Ms Baggley on the 4 August (page 71). Ms Baggley replied that day (page 71) to say she was sorry the claimant was disappointed. Ms Baggley confirmed she had spoken to Mr Beaver regarding the email and he had confirmed he had spoken to the claimant about the matter. Ms Baggley explained she had returned from holiday on the 25 July to an extremely busy work schedule plus the Managing Director being on holiday. Ms Baggley explained that although she had not responded to the claimant, she had addressed the issues raised by the claimant.
21. Ms Baggley had spoken to Mr Beaver on the 2 August and understood that he had had a conversation with the claimant to advise that the issue of salary increase would be dealt with at the same time/as part of the ABC appraisal which took place in September each year.
22. The claimant, upon receipt of the email from Ms Baggley, spoke to Mr Beaver to voice her displeasure at being on the same salary as Ms Kelly. Mr Beaver explained there was no money at present for a pay rise: the company was dealing with very challenging times with the new contract and TUPE'd staff, and to leave matters until September.
23. The claimant left the meeting with Mr Beaver and reflected on what had been said. She decided she would not leave it until September and decided to raise a grievance. The claimant sent an email to Mr Beaver (page 74) advising she wished to raise a formal grievance and asking how to begin the process. Mr Beaver responded to provide a copy of the grievance procedure.
24. The claimant went on holiday and upon her return she emailed her grievance to Mr Beaver on the 18 August (page 84). Mr Beaver forwarded it to Ms

Shannon O'Hare, HR, the same day (page 155). Mr Beaver, in his email to HR, said "please see below, if we can discuss".

25. Ms O'Hare did not forward the grievance email to Ms Baggley because she was waiting for Mr Beaver to discuss the matter with her. Mr Beaver was on holiday from the 25 August until the 9 September. Mr Beaver, notwithstanding the terms of his email, considered it was for HR to progress the grievance.
26. The claimant emailed Ms Baggley on the 8 September (page 82) to say she was feeling unhappy again with the lack of response to the concerns she had raised and she asked when she would receive a response. The claimant noted she was about to go on annual leave and would not return until the 19 September.
27. Ms Baggley replied to the claimant the following day (page 82) saying it was taking longer than expected because Mr Beaver was on holiday and it would be addressed as quickly as possible on his return to work.
28. Ms Baggley responded in these terms because she had been unaware of the grievance until that time and wanted to speak to Mr Beaver to understand she what had changed from her previous understanding that the matter had been resolved.
29. Ms Baggley decided to appoint an independent manager to deal with the grievance and she advised the claimant of this in an email dated 20 September (page 79). Ms Baggley confirmed she had asked Mr Raymond Johnstone to schedule a meeting with the claimant on Thursday of that week to allow the process to commence.
30. The claimant replied to Ms Baggley by email of the 21 September (page 81) noting she had raised her grievance on the 18 August and had chased this up on the 8 September. The claimant referred to the respondent's Grievance Policy (page 50) and stated she had not been spoken to informally or formally regarding her grievance and she wanted stage 1 of the policy to be carried out before the meeting.

31. The claimant subsequently phoned Ms Baggley to ask that she become involved and “fix it all”. Ms Baggley met with the claimant to explain why she could not become involved and advised the claimant to follow the process she had started. Ms Baggley did not have authority to offer the claimant a pay increase without prior discussion with Mr Sinha.
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32. The claimant, accompanied by Ms Diane Hamilton (a work colleague) attended a grievance meeting with Mr Raymond Johnstone on the 22 September. A brief synopsis of what the claimant conveyed at the meeting was produced at page 88. Mr Johnstone understood the background to what had happened, the fact the claimant was unhappy she had not received a pay increase after Ms Kelly had received one and that the claimant was unhappy at the delay in her grievance being dealt with. Mr Johnstone questioned the claimant about the fact the grievance she had submitted had not contained the word “grievance” and had been entitled “complaint”. Mr Johnstone advised the claimant he intended to meet with a number of people as a result of the issues which had been raised and he confirmed he would meet with the claimant to update her in a week’s time.
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33. The brief synopsis of the meeting was sent to the claimant for approval. The claimant made some changes to the document, which were accepted by Mr Johnstone and incorporated into the note.
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34. Mr Johnstone met with Ms Baggley on the 27 September. This was a meeting which had been arranged in order to catch up with a number of issues, one of which was the claimant’s grievance (page 145).
35. Mr Johnstone and Ms Baggley did not have sufficient time on the 27 September to conclude the issues which Mr Johnstone wished to raise with Ms Baggley regarding the claimant’s grievance and so their meeting was continued until the 29 September. A brief synopsis of the meetings was produced at page 99. Ms Baggley confirmed the background to the situation with Ms Kelly as well as the loss of other staff members at or about that time.
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- 30 Ms Baggley considered the claimant had been surprised and disappointed that the post of Payroll Manager was not filled. Ms Baggley also recalled that

the claimant had raised with her whether she should be approving holidays for Ms Kelly (page 68). Ms Baggley knew the claimant was unhappy with her salary after Ms Kelly's salary had been increased to the same level, but she understood Mr Beaver had spoken to the claimant to agree that salary would be looked at in September at the time of the ABC appraisal.

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36. Mr Johnstone met with Mr Beaver on the 29 September and a brief synopsis of the meeting was produced at page 98. Mr Beaver confirmed he was aware of the circumstances leading to Ms Kelly being offered a pay increase. He confirmed payroll staff were hard to recruit and he confirmed his opinion that payroll staff were likely to be on higher salaries than the respondent currently offered. Mr Beaver was of the opinion that uplifting the claimant's salary by £1000/15000 would be about right.

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37. Mr Johnstone met with the claimant on the 29 September to advise her of the interviews which had taken place and that he had still to speak to Ms O'Hare, HR. Mr Johnstone advised the claimant that he hoped to complete the investigation in about a week and would then need to review all of the evidence. The claimant stated she had waited a long time for this to be resolved. Mr Johnstone confirmed the conclusion was about a week/10 days away.

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38. Mr Johnstone met with Ms O'Hare on the 4 October and a brief synopsis of that meeting was produced at page 103.

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39. The claimant emailed Mr Johnstone on the 5 October (page 105) asking if there was any update on the next meeting because she was hoping it could be resolved that week because it was constantly on her mind.

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40. Mr Johnstone replied to say he had arranged a meeting for the following day. He also advised that he would not have the conclusion available for the meeting, but would be in a position to meet with the claimant early the following week for this.

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41. Mr Johnstone met with the claimant on the 6 October and a note of that meeting was produced at page 109. Mr Johnstone confirmed all meetings

were now complete and he was in a position to review and complete the process. The claimant complained that it was taking longer than she had hoped. Mr Johnstone apologised for this and explained the nature of the case meant a final outcome could be given and there was no scope for interim measures such as were possible in a case of alleged bullying. Mr Johnstone confirmed he was confident the final report would be ready early next week. Mr Johnstone made reference to the claimant having raised a “complaint” and asked if the claimant had read the grievance procedure.

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42. The claimant was upset after this meeting. The claimant left the meeting and sent an email to Mr Johnstone (page 110) attaching her email to Mr Beaver saying she wished to raise a formal grievance.

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43. The claimant met with Mr Beaver after the meeting and told him she could not take any more. The claimant was upset because the process was slow and because of the way in which Mr Johnstone had spoken to her. Mr Beaver agreed the claimant should leave work and go home.

44. The claimant attended her GP the following day (Friday 7 October) and obtained a Fit Note confirming she was not fit for work for a period of 28 days due to stress at work. The claimant did not send this Fit Note to her employer.

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45. The claimant exchanged WhatsApp messages with her colleague Diane Hamilton on the 8 October (page 112) asking to be reminded exactly what Mr Johnstone had said at the meeting on Thursday 6 October.

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46. The claimant sent an email to Mr Beaver on Sunday 9 October at 19.38 attaching her letter of resignation (page 116). The claimant stated that due to the way she had been treated throughout her grievance, as well as prior to raising the grievance, she felt she had been left with no option but to resign with immediate effect. The claimant noted she had complained about being on the same salary as the Payroll Administrator whom she supervised and managed. The claimant had hoped this anomaly would be quickly resolved given her record as a long-standing, committed and loyal employee. The claimant referred to being unhappy with informal discussions to resolve the matter and being left with no choice but to raise a formal grievance. The

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claimant felt her grievance had been ignored and that she did not understand the reasons given for the delay in dealing with it. The claimant also did not accept Mr Johnstone had been independent. The claimant referred to expecting an outcome on the 6 October and the final straw was when Mr Johnstone told her he still did not have an outcome to her grievance. The claimant stated she had lost trust and confidence in the company.

47. Mr Beaver responded to the claimant by email of the 10 October (page 157) to say he was disappointed she was leaving, but he understood her reasons for doing so. Mr Beaver noted that whilst he accepted the resignation, he asked her to come in and see him once everyone had had time to reflect on the situation. The claimant replied to say she was not prepared to come to the office but could meet for a coffee.

48. Mr Beaver did not follow this up because he was aware Ms Baggley was contacting the claimant to try to meeting to resolve matters.

49. Mr Johnstone sent an email to the claimant's personal email address (page 119) confirming a meeting had been arrange for the 13 October. Mr Johnstone confirmed he was aware the claimant had resigned. The claimant replied to confirm she would not be attending any meeting because she was no longer an employee of the company.

50. Ms Baggley texted the claimant on the 18 October, but the number was incorrect. She sent a further text on the 21 October (page 137) asking if the claimant would like to meet for a coffee and a chat. The claimant replied to say "no thanks".

51. Mr Johnstone sent the claimant a copy of his Final Report (page 126). Mr Johnstone considered the main points of the grievance were (i) unfair level of salary; (ii) time taken to process the grievance and (iii) not following the grievance process. Mr Johnstone concluded (i) that there was nothing wrong with the salary of a team member being similar to that of the supervisor and whilst he empathised with the claimant, he did not uphold this aspect of the grievance; (ii) the grievance process could have been dealt with more quickly by around one week, but the overall time taken to deal with it had not been

excessive or unreasonable and (iii) this aspect of the grievance was dismissed.

52. Mr Johnstone went on, in the Final Report, to note some wider issues which he considered were worthy of consideration: for example, salary for payroll staff; the claimant's rating of "exceeding" in the ABC appraisal and staff discussing salaries.

53. The respondent's Grievance Procedure was produced at page 50. The procedure noted that if the employee could not settle their grievance informally, then it should be raised formally. The timescales referred to in the procedure were "*five working days*" but it was stated that "*if it is not possible to respond within this time period, you will be given an explanation for the delay and be told when a response can be expected*". Mr Johnstone complied with this procedure.

54. The claimant, after leaving the employment of the respondent, was in receipt of Jobseekers Allowance from the 10 October to the 27 November 2022. The claimant attended an interview for a payroll assistant on the 22 November and was successful in obtaining this employment which she started on the 28 November 2022. The job involved working the same hours as she had previously worked with the respondent, and the salary was £26,500.

#### 20 **Credibility and notes on the evidence**

55. The tribunal considered the claimant to be, on the whole, a credible witness who gave her evidence in a straightforward manner based on her recollection of events. The tribunal did prefer the evidence of the respondent's witnesses on several points as set out below. The tribunal also accepted the respondent's submission that the letter of resignation (which was drafted with the benefit of legal advice) described the final straw as being "*when Raymond told me on Thursday that he still did not have an outcome to my grievance*". However, by the time of the submission of the claim form, the final straw was described as the much wider issue of "*Mr Johnstone's improper handling of the 6<sup>th</sup> October grievance meeting*". The tribunal noted there had been no

reference in the letter of resignation to the conduct of Mr Johnstone which was subsequently alleged.

56. The tribunal formed the impression from the evidence that the claimant considered the issue of her pay could (and should) have been simply and quickly resolved by Ms Baggley giving her a pay rise: this is what the claimant wanted and expected. The claimant was annoyed and frustrated when this did not happen and felt she had been “made to” progress a formal grievance. The claimant did not appear to acknowledge or accept the reasons provided by Ms Baggley for being unable to simply give the claimant a pay increase on demand. The claimant remained annoyed and frustrated at Ms Baggley not simply giving her a pay rise and resented having to go through the grievance procedure to address what she considered was a straightforward matter. The tribunal’s impression was that the claimant remained aggrieved for these reasons and that these factors influenced the attitude of the claimant to subsequent events.

57. The tribunal noted in this case that there was no dispute regarding the fact the claimant was a loyal and valued employee. There were no issues with the claimant’s work and her appraisals supported this. Mr Beaver had given the claimant a rating of “exceeding” in the 2022 appraisal.

58. The tribunal did not accept the claimant’s evidence that the email from Ms Baggley dated 4 August had been “*brusque and unhelpful*”. The claimant had said, in her email, that she was disappointed not to have received a response to her earlier email. Ms Baggley started her email saying “*I am sorry you are disappointed*”. Ms Baggley then went on to explain what she had done in terms of meeting with Mr Beaver. The tribunal acknowledged the claimant may not have liked the response, but could not accept it was either brusque or unhelpful in circumstances where Ms Baggley confirmed to the claimant the action she had taken following receipt of the earlier email.

59. The claimant endeavoured to cast doubt on the credibility and character of Ms Baggley and Mr Johnstone by referring to the employment of Ms Baggley’s son. The tribunal did not, for the reasons set out below, accept the claimant’s

evidence cast doubt on the credibility and character of Ms Baggley or Mr Johnstone, and in fact the tribunal questioned why time was spent raising this issue in the circumstances of the case.

- 5 60. There were no issues of credibility or reliability regarding Mr Beaver's evidence.
- 10 61. The tribunal found Ms Baggley to be a credible and reliable witness. Ms Baggley was challenged by the claimant regarding the delay in responding to the claimant's emails. The tribunal accepted the respondent's evidence that that particular time was an incredibly busy time for the respondent because it had won two contracts and approximately 300 workers were transferring to them. The respondent's witnesses spoke of being in and out of constant meetings and Ms Baggley referred to having to send emails in advance of meetings, so there was a checklist of items she would not forget. Ms Baggley did not offer this as an excuse for the delay in dealing with the claimant's grievance, but it did explain, in part, why things had not been progressed as quickly as usual. The tribunal noted that Ms Baggley accepted there had been some delay in dealing with the claimant's grievance and Mr Johnstone concluded, as part of the grievance, that there had been delay overall of approximately one week.
- 15 20 62. Ms Baggley rejected the claimant's suggestion that she could have resolved matters quickly by meeting with the claimant and offering a pay increase. Ms Baggley's explanation, which the tribunal accepted, was that offering a pay increase was not within her gift. She had spoken to Mr Sinha regarding increasing the claimant's salary but he had not been prepared at that time to increase it by any more than £500 (to £26,500). This was because the company was in a period of streamlining posts and activities. The intention was, and always had been, to look at the claimant's salary again at the end of the year and the claimant was told this on several occasions.
- 25 30 63. The claimant gave evidence regarding the employment of Ms Baggley's son in the company and suggested he had been "brought in" in preference to other employees. Ms Baggley very strongly rejected that suggestion. The tribunal

accepted her evidence that she not been in favour of the employment of her son; she had not proposed it and had not been involved in the interview and selection process.

- 5 64. The tribunal also preferred the evidence of Ms Baggley to that of the claimant and accepted Ms Baggley had not been “annoyed” at the 21 September meeting: she had been trying to explain to the claimant (who was emotional) why she could not become involved and to advise the claimant that she should proceed with the grievance process she had started.
- 10 65. The tribunal found Mr Johnstone to be a credible and reliable witness who gave his evidence in a straightforward manner. He had been asked by Ms Baggley to deal with the claimant’s grievance and he did so in the way in which he considered appropriate (by this the tribunal means he identified those he needed to speak to and reached his conclusion). The claimant challenged that Mr Johnstone was not “independent” because he was junior to Ms Baggley. The tribunal did not consider there was any merit in this argument in circumstances where there was no suggestion that Ms Baggley influenced the outcome of the grievance. Mr Johnstone was not “independent” in the sense that he was external to the company; however, he was “independent” insofar as he had not been involved in the matter prior to the grievance. Further, the tribunal accepted the evidence of Ms Baggley and Mr Johnstone that he was his own man and would make the decision he considered was appropriate.
- 15 20 25 30 66. The claimant challenged the way Mr Johnstone had dealt with things and the way in which he had spoken to her (this is dealt with below). The claimant supported what she had said by referring to a colleague who had voiced an opinion that Mr Johnstone was “not a nice person to deal with” and that she had chosen to resign. The claimant understood from her colleague that Ms Baggley’s son had been brought in by Mr Johnstone to be the new Manager. Mr Johnstone rejected these suggestions and confirmed that rather than apply for a job in the new structure, the claimant’s colleague had resigned. Mr Johnstone also rejected the suggestion that Ms Baggley’s son had been “brought in”. Mr Johnstone confirmed the post had been advertised and

interviews conducted. The tribunal preferred the direct evidence of Mr Johnstone regarding these matters.

### **Claimant's submissions**

67. Ms Gribben produced an outline written submission which she spoke to during  
5 submissions. Ms Gribben set out the findings in fact she invited the tribunal to  
make which included the following alleged breaches of the implied term of  
trust and confidence and/or the duty to take a grievance seriously. The  
breaches were:
- 10 • Ms Baggley failed to respond to the claimant's email of the 25th July  
2022;
  - On 4 August, Ms Baggley emailed the claimant stating that Mr Beaver  
had already spoken to her about the pay complaint;
  - Mr Beaver had not discussed the claimant's wage complaint with her  
prior to the 4th August;
  - 15 • On 8 September the claimant emailed Ms Baggley (copied to Mr  
Beaver) complaining about the lack of response to her grievance;
  - Ms Baggley emailed the claimant to advise that the delay was due to  
Mr Beaver being on annual leave;
  - 20 • On 20 September Ms Baggley emailed the claimant advising that Mr  
Johnstone "independent Business Head" had been appointed to hear  
her grievance;
  - On 21 September the claimant met with Ms Baggley who was initially  
annoyed and abrupt with the claimant;
  - 25 • The claimant attended the first grievance meeting with Mr Johnstone  
during which he questioned whether she had competently raised a  
grievance;
  - On 26 September Ms Baggley invited Mr Johnstone to catch up on  
things, including the claimant's grievance;

- On 27 September Ms Baggley and Mr Johnstone meet to discuss items including the claimant's grievance. No note was taken of this meeting and it was not part of the formal grievance process;
  - 5 • On 6 October the claimant attended a grievance progress meeting with Mr Johnstone accompanied by Ms Hamilton. Mr Johnstone behaved in a condescending and belittling manner towards the claimant, trivialised her grievance; told her she was not in danger, made analogies with bullying grievance and did not take the claimant's grievance seriously. Mr Johnstone again suggested the claimant had not raised a  
10 competent grievance and sarcastically asked her if she had read the grievance procedure. The claimant became upset and broke down in tears during the meeting;
  - On 6 October, following the grievance meeting, the claimant forwarded to Mr Johnstone her original email to Mr Beaver on 4 August;
  - 15 • Mr Johnstone did not deal with the claimant's grievance in accordance with the timescales envisaged by the respondent's grievance procedure or in accordance with the ACAS code.
68. Ms Gribben submitted the respondent's handling of the grievance had been a calamity and the claimant's efforts to deal with it informally had been  
20 rebuffed. The differential in pay between the claimant and Ms Kelly was justified because they did not perform the same role.
69. Mr Johnstone was not independent: he reported to the Directors. Ms Gribben suggested Mr George Nixon could have heard the grievance. Mr Johnstone had not taken the matter seriously and had not treated the claimant with  
25 dignity. He had questioned the competence of the grievance and this had been nothing more than a show of power and unhelpful. Mr Johnstone was wholly lacking in objectivity and his final report read like the claimant had been on a disciplinary charge.
70. Mr Johnstone did not look at the job descriptions or the claimant's duties and  
30 responsibilities. The whole issue was about a comparison of the roles. Ms

Gribben submitted Mr Johnstone was never going to approach matters impartially: the fact he thought the claimant should not have been discussing salaries tainted his view.

5 71. The respondent had put forward many reasons for the delay in dealing with matters. Ms Baggley in her evidence accepted timescales had not been followed. Ms Baggley's evidence that she had not known of the grievance until September was not credible.

10 72. The last straw was Mr Johnstone's conduct at the meeting on the 6th October. Ms Gribben acknowledged there had been no mention of this in the letter of resignation but submitted the claimant had told Mr Beaver this. In any event if the last straw was not a repudiatory breach then it contributed to the earlier fundamental breaches (the above bullet points) and the claimant was entitled to resign as a consequence of the cumulative conduct.

15 73. Ms Gribben referred to the following authorities: ***Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27; Malik v BCCI [1997] IRLR 462; Garner v Grange Furnishing Ltd [1977] IRLR 206.; London Borough Council of Waltham Forest v Omilaju [2005] IRLR 35; Kaur v Leeds Teaching Hospitals NHS Trust [2018] IRLR 833; Williams v Alderman Davies Church in Wales Primary School [2020] IRLR. 589; W A Goold (Pearmak) Ltd v McConnell [1995] IRLR 516; Blackburn v Aldi Stores Ltd [2013] IRLR 846; ACAS Code of Practice on disciplinary & grievance procedures; Arthur Guinness Son & Co (GB) Ltd v Green (1989) IRLR 288, EAT and S H Muffett Ltd v Head (1986) IRLR 488, EAT.***

20 74. Ms Gribben invited the tribunal to uphold the claim and to make an award of compensation as set out in the schedule of loss (page 139).

### Respondent's submissions

25 75. Mr Duffy also provided a written submission which he spoke to at the hearing. Mr Duffy referred to the statutory provisions and the relevant case law (***Western Excavating Ltd v Sharp; Malik v Bank of Credit; London Borough of Waltham Forest v Omilaju; Nottingham County Council v***



***Meikle 2004 IRLR 703; Kaur v Leeds Teaching Hospitals NHS Trust and W A Goold (Pearmark) Ltd v McConnell).***

76. Mr Duffy set out a chronology of events and in particular invited the tribunal to note that the claimant, in her letter of resignation on the 9 October, referred to the final straw as being “when Raymond told me on Thursday that he still did not have an outcome to my grievance.” There was no mention of pay differentials. Further, it was submitted that nothing after this date could have informed the claimant’s decision to resign.
77. The respondent’s position was that there was no express or implied contractual term, nor statutory provision, that compelled an employer to pay supervisors more than team members. Therefore, it was not a breach of contract for such employees to be paid the same salary. There was, equally, no obligation to have pay transparency. The respondent had hoped that employees would show discretion and keep their own pay rates confidential.
78. The claimant’s unhappiness with her salary, as expressed in her email of the 25 July, was dealt with informally and appropriately by the respondent when Mr Beaver spoke with the claimant some time between 11 and 25 July. There was then a formal discussion between Mr Beaver and the claimant on 4 August. The claimant decided, after this, to pursue a formal grievance once she returned from holiday. Mr Duffy submitted that the clock started to tick on a potential repudiatory breach of contract on the 18 August with the submission of the grievance. Ms Baggley did not see this grievance until the 9th September. Ms Baggley saw that Ms O’Hare had not dealt with the grievance appropriately and, having thought that Mr Beaver had agreed with the claimant that the issue would be held over until the appraisal in September, she needed to speak with him to find out what had happened. This was the reason Ms Baggley emailed the claimant to say she would address it upon the return of Mr Beaver from holiday.
79. The respondent submitted Ms Baggley had reasonable and proper cause to make this decision, in terms of ***Malik***. Ms Baggley was justified in not intervening when she did not have all of the background information. It was

submitted that any potential repudiatory breach of contract ceased at this time.

- 5 80. Mr Duffy noted the claimant argued Ms Baggley, as a Director, had the authority to intervene over the head of a more junior manager and acknowledged that whilst that theoretically may be the case, it was reasonable in the circumstances for Ms Baggley not to have done so.
- 10 81. The period from the 18 August until the 9 September is three weeks and one day. It was submitted that this period of time could not objectively be deemed a repudiatory breach of contract that sets off a course of conduct relied upon by the claimant. Mr Duffy acknowledged it was inefficient and spoke of poor judgment and noted Mr Beaver being on annual leave had had an impact on the situation; however it did not show the respondent had acted in repudiatory breach of contract.
- 15 82. The respondent accepted that failure to reasonably and promptly afford a reasonable opportunity to redress grievances may breach the employment contract, but submitted the **Gold** case was not activated. The claimant was afforded access to a grievance procedure that, after an admitted initial period of delay, was progressed with all reasonable alacrity.
- 20 83. Ms Baggley accepted she could have put the wheels in motion upon the return of Mr Beaver from annual leave on the 12 September, rather than waiting until the return of the claimant from annual leave on the 19 September. However, even if this had been done, it would have speeded up the process only marginally. The claimant returned from annual leave on 19 September and attended a first grievance meeting on 22 September.
- 25 84. Mr Johnstone interviewed Mr Beaver on the 29 September; Ms Baggley on the 27 and 29 September and Ms O'Hare on the 4 October. Mr Duffy submitted these actions were not consistent with an employer who no longer intends to be bound by one or more of the essential terms of the contract. Further, the practical realities of the situation in which the respondent found  
30 itself have to be borne in mind: the company was going through an exceptionally busy period due to the TUPE transfer of some 300 staff. It was

submitted the claimant's grievance simply could not be progressed as quickly as the claimant wanted it to be.

85. Mr Johnstone kept the claimant up to date with the progress of his investigation and made her aware that a conclusion would not be ready in time for the meeting on the 6 October. He advised the claimant, at that meeting, when the conclusion would be available.
86. The claimant had the benefit of legal advice when drafting her letter of resignation. The final straw relied upon in the letter of resignation was "*when Raymond told me on Thursday that he still did not have an outcome to my grievance*". By the time of the ET1 claim form in January 2023, the final straw relied on had evolved to "*..a course of conduct ... which culminated in Mr Johnstone's improper handling of the 6<sup>th</sup> October grievance meeting (the final straw).*" The claimant described Mr Johnstone using terms like "condescending", "cavalier" and "caustic".
87. The respondent submitted it had not engaged in a course of conduct that could objectively be deemed a breach of contract. However, should the tribunal find that it did, it was submitted Mr Johnstone's conduct at the 6 October meeting, could not objectively be deemed a final straw. Mr Duffy acknowledged the bar for finding a last straw was low (in terms of ***Omilaju*** and ***Meikle***) but submitted that even this low bar had not been met. The respondent denied Mr Johnstone had acted in the way alleged. Mr Duffy invited the tribunal to note that the Whatsapp message from Ms Hamilton to the claimant made no mention of terms like condescending, cavalier or caustic or even words like horrible or unpleasant. Further, no mention was made of this in the claimant's letter of resignation: in fact, no mention was made of Mr Johnstone's conduct in the letter of resignation. The final straw referred to in the letter of resignation was the absence of an outcome on the 6 October.
88. Mr Duffy acknowledged Mr Beaver's evidence regarding the claimant being in tears on the 6 October, however he also stated that he had not been present at the meeting and made reference to what people can perceive as their reality.

89. The respondent's position was that Mr Johnstone behaved reasonably and professionally in that meeting and that it objectively contributed nothing to any alleged repudiatory breach of contract. That the claimant subjectively did not like what she heard does not meet the objective tests.
- 5 90. The claimant suggested the grievance could have been easily dealt with and that such a laborious process was unnecessary. The respondent disagreed because, even if apparently quite straightforward, actioning pay increases required liaison with different senior people, not least the Managing Director Mr Sinha.
- 10 91. Mr Duffy submitted the respondent correctly followed its grievance procedure albeit after an initial delay of approximately three weeks. The five working days period for a response referred to in the grievance procedure was not absolute because there was recognition that if it was not possible to respond within this time period, the person would be given an explanation for the delay and told when a response could be expected. Such explanations were given to the claimant.
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92. Mr Duffy invited the tribunal to prefer the evidence of the respondent's witnesses in any dispute and to dismiss the claim. If the tribunal did not dismiss the claimant, Mr Duffy made further submissions regarding alleged loss of long notice period and uplift for failure to unreasonably follow the ACAS code.
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### **Discussion and Decision**

93. The tribunal referred firstly to the statutory provisions in section 95(1) Employment Rights Act which provide 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 for the employer's conduct."
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94. An employee, in a constructive dismissal case, must demonstrate:
- that there has been a fundamental breach of contract on the part of the employer;
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- the breach must be sufficiently serious to justify the employee resigning or else it must be the last in a series of instances which justify him leaving;
- the employer's breach caused the employee to resign and
- 5       • the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

95. The tribunal noted the respondent took no issue with delay/affirmation in this case: accordingly the issue for the tribunal to determine was whether there was a fundamental breach of contract entitling the claimant to resign.

10 96. The claimant's position was that she resigned following a "last straw". She relied upon a series of acts by the respondent which individually and taken together amounted to a fundamental breach of contract. The claimant relied on the implied term of mutual trust and confidence which is found in every contract of employment and on the duty of an employer to treat a grievance seriously.

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97. The tribunal next referred to the case of ***Western Excavating (ECC) Ltd v Sharp 1978 IRLR 27*** where it was said that "*An employee is entitled to treat himself as constructively dismissed 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. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him to leave at once. Moreover the employee must make up his mind soon after the conduct of which he complains. If he continues for any length of time without leaving, he will be regarded as having elected to affirm the contract and will lose his right to treat himself as discharged.*"

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98. The claimant argued there had been a fundamental breach of contract in circumstances where the implied term of trust and confidence had been breached. The implied term of trust and confidence was formulated by the

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EAT in ***Courtaulds Northern Textiles Ltd v Andrew 1979 IRLR 84*** and approved by the EAT in ***Woods v WM Car Services (Peterborough) Ltd 1981 ICR 666***. It was held in the earlier case that it was a fundamental breach of contract for the employer, without reasonable and proper cause, to conduct  
5 itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties. The implied term was given the approval of the House of Lords in the case of ***Malik v BCCI SA 1997 IRLR 462***.

99. The particular incident which causes an employee to leave (the last straw)  
10 may in itself be insufficient to justify a resignation but may cumulatively amount to a breach of the implied term of trust and confidence. In the case of ***Lewis v Motorworld Garages Ltd 1986 ICR 157*** it was held that 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  
15 incident even though that incident by itself does not amount to a breach of contract. This was developed in ***London Borough Council of Waltham v Omilaju 2005 IRLR 35*** where the EAT held that in order to result in a breach of trust and confidence, a last straw, which is not itself a breach of contract, must be an act in a series of earlier acts which cumulatively amount to a  
20 breach of the implied term. It was said that “the act does not have to be of the same character as the earlier act. It is essential that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively  
25 insignificant.”

100. The tribunal also had regard to the fact a failure to deal properly with a grievance may constitute a contractual repudiation based on a specific implied term to take such grievances seriously (***W A Goold (Pearmark) Ltd v McConnell 1995 IRLR 516***) or a breach of the grievance procedure may  
30 amount to a breach of the implied term of trust and confidence (***Blackburn v Aldi Stores Ltd 2013 IRLR 846***). Further, an employer’s failure to treat a long-serving employee with dignity and consideration may amount to a

fundamental breach of the implied term of trust and confidence (***Garner v Grange Furnishing Ltd 1977 IRLR 206***).

101. The tribunal also referred to the case of ***Kaur v Leeds Teaching Hospitals NHS Trust 2018 IRLR 833*** where the case of ***Omilaju*** (above) was referred to and the judgment of Dyson LJ where he summarised the general law of constructive dismissal.
102. The tribunal, having had regard to the above authorities, reminded itself that the two questions to be asked when determining whether the implied term of trust and confidence had been breached are:
- 10 (i) was there reasonable and proper cause for the respondent's conduct and
  - (ii) if not, was the conduct calculated or likely to destroy or seriously damage trust and confidence.
103. The tribunal also noted the decision whether there has been a breach of contract sufficient to constitute the claimant's dismissal is one of mixed fact and law. The legal test to be applied entails looking at the circumstances objectively, that is, from the perspective of a reasonable person in the claimant's position, although the subjective perception of the claimant can be relevant but is not determinative.
104. The test is demanding. Simply acting in an unreasonable manner is not sufficient: the conduct must be calculated or likely to destroy or seriously damage trust and confidence. A balance must be struck between an employer's interests in managing his business as he sees fit and the employee's interests in not being unfairly or improperly exploited. The test is stringent. The conduct must be such that an employee cannot be expected to put up with it.
105. Ms Gribben, in her submission, set out the alleged fundamental breaches of the implied term of trust and confidence and/or the duty to take a grievance seriously, and it is helpful to set these out:

- (i) Ms Baggley failed to respond to the claimant's email dated 25 July;
- (ii) On 4 August Ms Baggley emailed the claimant stating that Mr Beaver had confirmed that he had already spoken to the claimant about her pay complaint, but Mr Beaver had not discussed it with the claimant;
- 5 (iii) On 8 September the claimant emailed Ms Baggley (copied to Mr Beaver) to complain about the lack of a response to her grievance;
- (iv) Ms Baggley responded to advise the delay was due to Mr Beaver being on annual leave;
- (v) On the 20 September Ms Baggley advised the claimant that Mr  
10 Johnstone "Independent Business Head" had been appointed to hear her grievance;
- (vi) On the 21 September the claimant met Ms Baggley who was initially annoyed and abrupt with the claimant;
- (vii) At the first grievance meeting with Mr Johnstone, he questioned  
15 whether the claimant had competently raised a grievance;
- (viii) On the 26 September Ms Baggley invited Mr Johnstone to a meeting to catch up on things, including the claimant's grievance;
- (ix) On the 27 September Ms Baggley and Mr Johnstone meet to discuss items including the claimant's grievance. No note was taken of this  
20 meeting which was not part of the formal grievance process;
- (x) On the 6 October the claimant attended a grievance meeting with Mr Johnstone during which he behaved in a condescending and belittling manner towards her, trivialised her grievance; told her she was not in danger; made analogies with bullying grievances and did not take the  
25 claimant's grievance seriously. Mr Johnstone again suggested the claimant had not raised a competent grievance and sarcastically asked if she had read the grievance procedure. The claimant became upset and broke down in tears during this meeting;



(xi) The claimant sent Mr Johnstone a copy of the original email to Mr Beaver regarding raising a formal grievance;

(xii) Mr Johnstone did not deal with the claimant's grievance in accordance with the timescales set out in the respondent's Grievance Procedure or in accordance with the ACAS Code.

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106. The tribunal next turned to consider the alleged breaches of the implied term of trust and confidence and/or the duty to take a grievance seriously relied upon by the claimant.

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107. The tribunal noted there was no dispute between the parties regarding the circumstances which led to the claimant raising a grievance. The claimant, Payroll Supervisor, earned more than Ms Kelly, Payroll Assistant. The respondent, in order to prevent Ms Kelly leaving their employment, offered her a salary of £26,500. This was £500 more than the claimant earned, and so the respondent raised the claimant's salary to £26,500. This meant the claimant and Ms Kelly were on the same salary. The claimant was not happy with this because she considered she should be paid more because she had greater responsibility in her role than Ms Kelly had in her role.

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108. The tribunal noted there was no suggestion of an express or implied contractual term entitling the Supervisor to be paid more than the Assistant. This claim, and the claimant's grievance, was about fairness.

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109. Point (i) above. The claimant complained that Ms Baggley failed to respond to her email of the 25 July. There was no dispute regarding the fact Ms Baggley did not reply to the claimant until the 4<sup>th</sup> August, when the claimant sent a chaser email. There was not a "failure" to respond, but, more correctly, a delay in responding. The tribunal had regard to the evidence of Ms Baggley, which it accepted, when she explained that upon receipt of the claimant's email she spoke to Mr Beaver. The conversation with Mr Beaver could not happen before the 2 August. The tribunal considered Ms Baggley had reasonable and proper cause to speak to Mr Beaver because he was the claimant's line manager. Ms Baggley understood from Mr Beaver that he had

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spoken with the claimant to advise the issue of salary would be reviewed as part of the ABC appraisal in September.

110. Point (ii) above. The tribunal did not accept the claimant's position that Mr Beaver had not spoken to her about the pay issue until she approached him on the 4 August with Ms Baggley's response. The tribunal did not accept the claimant's position because the claimant was less than certain about this when giving her evidence, and the tribunal preferred the evidence of Ms Baggley and Mr Beaver. The claimant, when asked in cross examination, if she had spoken to Mr Beaver prior to the 25<sup>th</sup> July regarding her unhappiness with the pay situation, replied "*maybe – probably*". The tribunal (above) accepted the evidence of Ms Baggley that she spoke to Mr Beaver on the 2 August and understood from him that he had spoken to the claimant about the pay situation. Mr Beaver was also not certain in his evidence but confirmed that between the 25 July and the 4 August he would have spoken to the claimant about the matter, but the key date when there was a lengthy meeting with the claimant was the 4 August after Ms Baggley had responded to the claimant.

111. The tribunal acknowledged that whilst there may not have been a formal or lengthy meeting between Mr Beaver and the claimant prior to the 4 August, we accepted that he had spoken to the claimant about the matter. The tribunal considered there was support for that conclusion because he was the claimant's line manager and the first port of call for any issues to be raised. Further, Mr Beaver was aware of the salary situation, saw the claimant regularly and would have known she was unhappy with the situation. These factors tended to support Mr Beaver's position that he had spoken to the claimant at some point between the 25 July and 4 August, albeit the meeting on the 4 August was the key meeting.

112. There was no dispute regarding the fact the meeting between the claimant and Mr Beaver on the 4 August was a lengthy meeting. Mr Beaver told the claimant that there was no money at present for pay increases because the company was facing a very challenging time having taken on new contracts

and workers, and to leave it until September when it would be reviewed at the time of the appraisal.

113. The claimant submitted that her informal efforts to resolve matters had been “rebuffed”. The tribunal could not accept that submission. The claimant discussed the issue with Mr Beaver and she spoke to Ms Baggley. The tribunal accepted neither offered the claimant what she wanted (that is, a pay increase) but this does not amount to being rebuffed. The respondent’s consistent position was that the issue of the claimant’s pay would be reviewed in September at the time of the appraisals. The reason for this was because the work activity in the department had increased and Ms Baggley confirmed “we wanted to look at this” (that is, pay). This was not a situation where the claimant’s request was simply refused without explanation or reason.

114. Point (iii) above. The tribunal accepted there was a delay of approximately 4 weeks in the respondent dealing with the claimant’s grievance. There was no dispute regarding the fact the claimant submitted her grievance to Mr Beaver on the 18 August, and Mr Beaver forwarded it to HR. There was some confusion about what happened with the grievance thereafter. Ms Baggley’s position was that she was not informed a grievance had been submitted and the first time she learned of it was on the 8 September when the claimant emailed her to complain about a lack of response. The claimant challenged the credibility of this position in circumstances where Ms O’Hare reported to Ms Baggley. The tribunal, in considering this challenge, had regard to the following factors: (a) the tribunal found Ms Baggley to be a credible witness and there was no reason to suggest why Ms Baggley would have been untruthful about this matter; (b) there was also no reason why Ms Baggley, if she knew of the grievance, simply did nothing with it; (c) Ms Baggley had not forgotten about the claimant’s position. This was evidenced by the fact Ms Baggley emailed Ms O’Hare on the 4 September (page 76) saying “Salaries I need to look at .... Margaret Broadfoot ...”. The tribunal considered it made no sense whatsoever for Ms Baggley on the one hand to email Ms O’Hare regarding salaries she needed to look at, but on the other hand have knowledge of the grievance and ignore it. The tribunal concluded, for these

reasons, that Ms Baggley did not know of the claimant's formal grievance until the 8/9 September.

115. The tribunal accepted that Ms O'Hare did not process the grievance because Mr Beaver had stated in his email that he would speak to her about it, and Ms O'Hare was waiting for this to happen. This was then delayed by holidays.
116. Point (iv) above. Ms Baggley, once she became aware of the grievance, emailed the claimant on the 9 September (page 82) to say the delay was due to Mr Beaver being on holiday. Ms Baggley acknowledged, in her evidence to the tribunal, that this was a fudge because Ms O'Hare had not dealt with it appropriately and Ms Baggley needed time to speak to Mr Beaver to understand what had changed from the matter "being parked" until September to now being a formal grievance.
117. Point (v) above. Ms Baggley decided to appoint Mr Johnstone to deal with the grievance. Ms Baggley described him as "independent". The claimant challenged that Mr Johnstone was not independent because he held a position below Director level. The tribunal accepted that Mr Johnstone was not independent in terms of him being someone external to the organisation, however Mr Johnstone was independent insofar as he had not had any involvement in the matter prior to being appointed to hear the grievance.
118. The claimant challenged that Mr Johnstone would not have been in a position to reach a decision contrary to the views of Ms Baggley. The tribunal preferred the evidence of both Ms Baggley and Mr Johnstone on this point and accepted Mr Johnstone was in a position where he could reach whatever decision he considered appropriate. Ms Gribben, in her submissions, suggested Mr George Nixon, Chair of the Group, could have heard the grievance. The tribunal noted Ms Baggley was not asked about this and there was no evidence regarding the involvement of Mr Nixon in the company. The tribunal concluded there was reasonable and proper cause to appoint a senior manager who had not previously had any dealings with the matter, to hear the grievance.

119. Point (vi) above. The claimant met with Ms Baggley on the 21 September. The claimant described Ms Baggley as being initially annoyed and abrupt with her. Ms Baggley denied this and described the claimant as being “quite emotional”. The claimant wanted Ms Baggley “just to fix it all” (that is, she wanted Ms Baggley to give her a pay rise). The claimant offered no explanation for forming the view Ms Baggley had been annoyed and abrupt. The tribunal however formed the impression that the claimant reached that view because she was angry and frustrated Ms Baggley would not do as she asked and she had been “made” to go through the grievance procedure. The tribunal preferred Ms Baggley’s evidence regarding this meeting and accepted Ms Baggley had not been annoyed or abrupt with the claimant.
120. Point (vii) above. There was no dispute regarding the fact that at the first grievance meeting Mr Johnstone did ask the claimant why she had not put the word “grievance” in her email of the 18 August, and had instead used the word “complaint”. The tribunal noted this appeared to be the extent of the conversation regarding this matter. The claimant had an opportunity to amend the notes of the meeting and did not seek to add anything to what is stated above. Mr Johnstone, when asked about this in cross examination, explained that the issue was not about competence but he had been trying to establish when the claimant thought the grievance had been raised because he would need to consider timescales. The tribunal accepted this explanation because there was no issue regarding the competency of the grievance and no issue but that Mr Johnstone proceeded to investigate and deal with it as a grievance.
121. Points (viii) and (ix) above. The tribunal accepted Ms Baggley’s evidence that she and Mr Johnstone had a catch-up arranged for the 27 September. Ms Baggley was very busy at that time and so she sent an email (page 145) listing the points they needed to discuss. One of the points was an update regarding the claimant’s grievance. The claimant’s representative sought to make much of this meeting in terms of its appropriateness, it not being minuted and it not being part of the grievance process. The tribunal did not accept these points. The meeting was a catch-up between two senior managers and there was no

suggestion Ms Baggley was meeting with Mr Johnstone to tell him what to do regarding the grievance or influence him. The meeting as a whole was not minuted, but Mr Johnstone did take the opportunity to discuss with Ms Baggley the points he wished to raise with her regarding the claimant's grievance, and a note was produced reflecting what she had said in both the meetings of the 27 and 29 September.

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122. Point (x) above. The tribunal had regard to the note of the meeting prepared by Mr Johnstone (page 109) and to the Whatsapp message written by Ms Hamilton, who had accompanied the claimant to the meeting, and noted there was little difference between the two. The note at page 109 confirmed Mr Johnstone told the claimant he had concluded the investigation but had to take time to consider the matter and write it up. He noted the claimant stated it was taking much longer than she had hoped. Mr Johnstone apologised for this and whilst he understood her frustrations he commented the case was not causing her immediate harm in the way a bullying case would. Mr Johnstone confirmed he was confident he would have the report ready for early next week and he spoke with the claimant about whether she would prefer a face-to-face meeting or a meeting via Teams.

123. The message from Ms Hamilton confirmed Mr Johnstone said he had spoken to everyone and now had to put down his findings. He spoke to the claimant about a face-to-face meeting or a meeting on Teams. Mr Johnstone had made reference to doing hundreds of grievances and that he needed time to do it right. He said – not to trivialise the claimant's grievance – that he had dealt with some really horrible bullies. Mr Johnstone had also made reference again to the claimant not using the word "grievance" in her original email and he asked whether she had read the grievance policy.

124. The tribunal considered it of note that Ms Hamilton did not make any reference to Mr Johnstone behaving in a condescending and belittling manner or trivialising the grievance. In fact Ms Hamilton's recollection was that Mr Johnstone specifically said he did not want to trivialise the claimant's grievance. The tribunal also took into account the fact that the claimant, in her letter of grievance written only 3 days after the meeting on the 6 October,

made no reference to or suggestion of Mr Johnstone's conduct being condescending, belittling or sarcastic. The tribunal considered this undermined the claimant's evidence regarding Mr Johnstone's conduct. The tribunal, for these reasons, did not wholly accept the claimant's description of Mr Johnstone's conduct at that meeting.

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125. The tribunal did question why Mr Johnstone made reference to the number of grievances he had done and draw an analogy with grievances about bullying. Mr Johnstone, in his evidence, explained that it was an attempt to explain to the claimant that in her case there could be no interim measures: he had concluded the investigation and would give a conclusion, whereas sometimes in a case involving bullying, an interim measure such as moving a person could be done before the final conclusion. The tribunal, whilst accepting Mr Johnstone's explanation, considered that raising the matter had not been helpful.

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126. The tribunal also considered it unhelpful for Mr Johnstone to raise again the matter of the grievance/complaint issue. We accepted Mr Johnstone's evidence that he had not been sarcastic, but clearly the continued reference to this matter upset the claimant.

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127. Point (xi) above. There was no dispute regarding the fact the claimant did send Mr Johnstone a copy of the original grievance.

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128. Point (xii) above. Mr Johnstone did not deal with the grievance in accordance with the timescales set out in the respondent's procedure. However, the grievance procedure is written in terms that the manager "will endeavour" to respond as soon as possible and in any case within five working days of the grievance meeting. The procedure goes on to say that if this is not possible, the employee would be given an explanation for the delay and told when a response could be expected. Mr Johnstone did keep the claimant updated regarding the steps he was taking to speak to those he had identified as relevant, when he had arranged to speak to them and when he expected to have an outcome for the claimant. The claimant knew, prior to the meeting on

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the 6 October, that Mr Johnstone did not have the outcome ready for that meeting.

129. The tribunal, having addressed each of the alleged breaches relied upon by the claimant, concluded the course of conduct being complained of involved delay between the claimant sending her grievance on the 18 August, and the respondent (Ms Baggley) dealing with it on the 9 September; Mr Johnstone questioning if a grievance had been competently raised and the way in which Mr Johnstone had spoken to the claimant on the 6 October.
130. The tribunal next asked whether there was reasonable and proper cause for the conduct. The tribunal noted (above) that there had clearly been some confusion regarding progressing the grievance: Ms Baggley was not aware of it; Mr Beaver thought HR would progress it; HR thought Mr Beaver was going to speak them about it and annual leave meant people were not at work for periods of time. The tribunal concluded that viewed objectively this confusion did not amount to reasonable and proper cause for the delay. The respondent had a grievance procedure and it should have been clear to HR/Ms O'Hare how to process the grievance. This could not have been the first grievance to have been received by HR.
131. The tribunal next asked whether the conduct was calculated or likely to destroy or seriously damage trust and confidence. The tribunal noted on the one hand the claimant described that her grievance had been "ignored" and arguably there was some merit in that position in circumstances where the claimant heard nothing from the respondent for 3 weeks. However, on the other hand, the claimant knew very well that it was an incredibly busy time for the company and she also knew that the respondent intended to review her salary in September when the appraisals were carried out. Ms Baggley's email to HR saying the claimant's salary was one to be reviewed, not only supported the respondent's intention to review the claimant's salary but supported the good faith of the company.
132. This was not a situation where, viewed objectively, the claimant's grievance had been ignored. The fact the claimant had been told her salary would be



reviewed in September when appraisals were carried out was a fundamental consideration. The tribunal did not consider that, looked at objectively, it could be said that the delay in dealing with the grievance was calculated or likely to destroy or seriously damage trust and confidence in circumstances where (a) the delay was of 3 weeks and (b) the claimant had been told – and had no reason not to believe – that the issue of her pay would be addressed when appraisals were done. It could not be said, in those circumstances, that the respondent no longer intended to be bound by one or more of the essential terms of the contract. In fact the claimant knew the respondent wanted to retain its Payroll staff. The tribunal concluded, for these reasons, that the delay was not calculated or likely to destroy or seriously damage trust and confidence.

133. The tribunal next asked whether there was reasonable and proper cause for Mr Johnstone to raise the issue of grievance/complaint. The tribunal, having accepted Mr Johnstone's explanation, concluded there was reasonable and proper cause for Mr Johnstone to ask this question at the first grievance meeting. The tribunal considered there was reasonable and proper cause to establish when the grievance was raised if delay was going to be a complaint to be investigated.

134. The tribunal next asked whether there was reasonable and proper cause for the way in which Mr Johnstone spoke to the claimant on the 6 October. The tribunal found (above) that the claimant's description of Mr Johnstone's conduct at that meeting was undermined by the fact she made no reference to any such conduct in the letter of resignation and neither did Ms Hamilton in her message. The tribunal accordingly concluded that the conduct at the meeting was limited to Mr Johnstone referring to the number of bullying cases he had dealt with and saying the claimant was not in any danger and again saying the claimant had not used the word grievance and asking if she had read the grievance procedure. The tribunal further concluded there was no reasonable and proper cause for that conduct: the fact Mr Johnstone had previously dealt with bullying cases and the claimant was not in danger was

irrelevant and unhelpful and there was no apparent reason for the issue of the grievance/complaint being raised again.

135. The tribunal next asked whether Mr Johnstone's conduct, viewed objectively, was calculated or likely to destroy or seriously damage trust and confidence. The claimant argued that her grievance had not been taken seriously and she had not been treated with dignity. The claimant did not explain or expand on these points. The tribunal considered that the steps taken by the respondent indicated they had taken the matter seriously: a senior manager had been appointed to deal with the grievance and he had investigated the matter with Mr Beaver, Ms Baggley and Ms O'Hare prior to reaching his conclusion. There was no suggestion, for example, that Mr Johnstone should have spoken to others.
136. The tribunal did not consider that the comments made by Mr Johnstone regarding bullying grievances and the grievance/complaint issue supported the claimant's position that the grievance had not been taken seriously or that she had not been treated with dignity. The tribunal accepted the comments were not helpful but that falls far short of not taking the grievance seriously or not treating the claimant with dignity.
137. The claimant was critical of Mr Johnstone because he had not looked at job descriptions or responsibilities. This criticism was not well made because it did not reflect the reason why the salaries were the same. At no time was there any suggestion that the claimant and Ms Kelly's salaries were the same because the claimant's responsibilities had reduced or were the same as Ms Kelly's.
138. The tribunal concluded that Mr Johnstone's conduct was not calculated or likely to destroy or seriously damage trust and confidence. Mr Johnstone took the grievance seriously and investigated it; he met with the claimant regularly; kept her updated on his progress and informed her if timescales were not going to be met, and when she could expect the outcome. The tribunal acknowledged the (above) comments made by Mr Johnstone were unhelpful

but Mr Johnstone was not condescending, belittling or sarcastic to the claimant.

139. The tribunal next looked at the respondent's conduct as a whole in order to determine whether it was such that its effects, judged reasonably and sensibly, were such that the claimant could not be expected to put up with it. The tribunal acknowledged the claimant, as Payroll Supervisor, had always earned more than Ms Kelly, Payroll Assistant. This changed when the respondent offered Ms Kelly an increase in order to retain her as an employee of the company. This was not a reflection of/on the claimant, but a reflection of the reality that the company could not afford to lose a member of the payroll staff.

140. The tribunal considered that the respondent's position that the claimant's pay would be reviewed in September when the ABC appraisals were carried out, was reasonable given the upheaval in the company. The tribunal noted there was no suggestion that this would not be done or that this had just been said to kick the matter into the long grass. The tribunal acknowledged the respondent did not initially deal with the grievance well in terms of the delay, but the delay and the conduct of Mr Johnstone on the 6 October fell far short of a fundamental breach of contract. These matters were understandably frustrating for the claimant but any breach was not so serious that the claimant was entitled to treat the contract as being at an end. This was particularly so given the fact the claimant knew the respondent would review her salary in September, and she had no reason to think this would not happen, or to think her salary would not be increased in circumstances where she had scored very highly in her appraisal.

141. There was no evidence to suggest the respondent wanted the claimant to leave. On the contrary, the claimant knew the respondent wanted to retain its Payroll staff and the contact made with the claimant by Mr Beaver and Ms Baggley after her resignation, suggested they wished to discuss a way for the claimant to return to work if she had been willing to do so.

142. The tribunal was satisfied the respondent's conduct as a whole was not a breach of the implied term of trust and confidence or a breach of the duty to take a grievance seriously. The tribunal, being satisfied there was no fundamental breach of contract, decided the claimant was not entitled to resign and claim constructive dismissal and in those circumstances the tribunal dismissed the claim.

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**Employment Judge: L Wiseman**  
**Date of Judgment: 10 July 2023**  
**Entered in register: 12 July 2023**  
**and copied to parties**

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