



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Kay

Respondent: Jean Ferguson on her own behalf and on behalf of all the other members of the executive committee of the Yorkshire Countrywomen's Association at the relevant time

Heard at: Leeds **on:** 9 to 12 April 2024
16 April 2024 (reserved decision in chambers)

Before: Employment Judge Cox

Representation:

Claimant: In person

Respondent: Miss Marshall, pupil barrister

RESERVED JUDGMENT

1. By consent, the claim for accrued holiday pay due on termination of employment succeeds and the Respondent must pay the Claimant £594.
2. The claims for damages for breach of contract in relation to unpaid expenses and retained personal belongings are dismissed on withdrawal by the Claimant.
3. The claim of unfair constructive dismissal succeeds and the Tribunal awards the Claimant £5,492 in compensation.
4. The claim for damages for breach of contract by failure to give notice of termination succeeds and the Tribunal awards the Claimant damages of £660.

REASONS

1. Mrs Kay made a claim to the Tribunal alleging that her former employer, whom she named as the Yorkshire Countrywomen's Association (the YCA), had unfairly constructively dismissed her, failed to pay her notice pay, breached her contract by not paying her expenses or returning her personal belongings and failed to pay her holiday pay due on termination of her employment. Her claim for holiday pay was resolved during the Hearing and a consent Judgment was made. She withdrew her claims for breach of contract in relation to expenses and personal belongings during the Hearing and these were dismissed.
2. The YCA is an unincorporated association and has no legal personality, meaning it cannot be an employer or be sued in its own name. At a Preliminary Hearing on 2 January 2024 the Tribunal amended the identity of the Respondent to Miss Ferguson, on her own behalf and on behalf of the other members of the Association's executive committee at the relevant time. Miss Ferguson is the Chairperson of the YCA's executive committee, which is called the Central Committee and is referred to in these reasons as "the Committee".
3. Mrs Kay based her claim of unfair dismissal on her case that various members of the Central Committee had acted in a way that breached the implied term of mutual trust and confidence in her contract of employment. At the beginning of the Hearing, she clarified the actions about which she complained and the Tribunal put these in a numbered list for everyone's ease of reference.
4. A term is implied in every contract of employment that an employer will not without reasonable and proper cause act in a way that is calculated or likely to destroy or seriously damage the relationship of trust and confidence between itself and its employee. Whether the employer has breached that term is to be assessed objectively, taking into account all the circumstances of the case. Because this implied term is fundamental to the employment relationship, if the employer fails to respect it, that is viewed as a fundamental breach of the contract and the employee is entitled to respond by resigning without giving any notice. In those circumstances, the employee is viewed as having been dismissed, both for the purposes of their contractual right to notice of termination and for the purposes of a claim of unfair dismissal (Section 95(1)(c) of the Employment Rights Act 1996 – the ERA). This is termed a constructive dismissal.
5. The Respondent confirmed during the course of the Hearing that it no longer maintained that Mrs Kay had affirmed her contract and lost the right to resign by working on after some of the conduct that she said breached the implied term. It also accepted that Mrs Kay had resigned in response to the Committee's conduct and not for any other reason. Further, it accepted that it had no potentially fair reason for its conduct that fell within Section 98(1) ERA. That meant that, if Mrs Kay had been constructively dismissed, her dismissal would be unfair. In

addition, Mrs Kay would be entitled to damages to compensate her for the Committee's failure to give her four weeks' contractual notice of dismissal.

6. The issues for the Tribunal to decide were therefore whether the Committee had acted in the way that Mrs Kay alleged and, if it had, whether that conduct amounted, individually or cumulatively, to a breach of the implied term. The Tribunal bore in mind that the onus was on Mrs Kay to establish that she was dismissed in this way.

The evidence

7. At the Hearing, the Tribunal heard oral evidence from Mrs Kay. She also submitted two written statements, from Mrs Cumberland and Mrs Orange, but these contained little evidence that was directly relevant to the issues the Tribunal had to decide. For the Respondent, the Tribunal heard oral evidence from Mr Robin Rowbotham, who worked alongside Mrs Kay as an office administrator and took over her duties when she left; Miss Jean Ferguson, who has been Chairperson of the Association since May 2022; Mrs Christine Clayton, who is, and was at the relevant time, Treasurer of the Association and a Committee member; and Mrs Anita Taylor, who preceded Miss Ferguson as Chairperson and remains a Committee member. The Tribunal was also referred to various documents in a Hearing file that ran to around 450 pages.
8. On the basis of that evidence, the Tribunal made the following findings on the facts and issues.

The Association

9. According to its constitution, the Association's purpose is to "further the skills, knowledge and social activities of its members and to preserve the heritage of Yorkshire". The activities of the Association comprise mainly of events of various kinds, including craft and baking events, and talks.
10. Membership of the Association is open to any woman living in Yorkshire on payment of the current affiliation fee. Members pay a small annual subscription, currently £15, and belong to a branch in their locality. Each branch has its own officers but there also committees covering the branches in each of the three Ridings of Yorkshire. Four members of the committee in each Riding are elected to serve on the Central Committee, which acts as the executive committee for the Association. All the committees are made up of volunteers and the majority are retired. The Central Committee's members live in a wide range of locations across Yorkshire. It meets monthly but relies on its office administrators to implement the decisions it reaches. The administrators are based in an office in the NFU office building just outside York.

11. The Association's revenue comes from membership fees, events and the sale of a limited number of inexpensive items from its online shop, which include badges and handmade craft and baking-related items. This income is sufficient to cover the Association's operational costs.

Beginning of employment

12. Mrs Kay began working for the Association as an office administrator on 16 July 2019. She was recruited to work 15 hours a week, on Tuesday to Thursday, and to work alongside the other office administrator, Rebecca Hoggarth-Hall. She signed a written contract of employment under which she was entitled to an hourly wage, to be monthly paid by direct debit, sick pay and paid holidays, the dates of which had to be approved by the Committee.

13. Mrs Kay's family run a campsite and farm shop. After her first day at work on 16 July, she emailed Mrs Taylor, who was then the Committee chairperson, to say:

I am currently self-employed for my campsite and farm shop so my accountant suggests that the best way for me to be paid, and the simplest for the YCA is for me to invoice you monthly for my work and the YCA issue me with a cheque. That way you do not have to pay stamp or any other fees as I remain self employed and take care of those items myself annually. It also saves on the payroll paperwork for the YCA.

14. The Committee agreed to this arrangement and so for the first period of the Claimant's employment, up to and including August 2020, she sent the Committee invoices for her pay.

15. A significant amount of cash was collected in the office from events revenues. Banking the cash involved a round-trip of over an hour into York city centre. Mrs Kay wanted to save the Association the expense of banking this cash. On 6 November 2019 she sent Mrs Taylor and Mrs Clayton an email as follows:

I was counting up cash to put in the bank and thought it would be easier to use it to pay myself last months wages plus what was overdue from the month before. So I asked Rebecca to double check it and I have taken the cash plus topped up from the Yorkshire Bank online app.

The invoice attached details everything.

Just telling you as it's a significant cash amount.

Attached was an invoice for her November wage and expenses, showing that she had met the invoice total by paying herself £855 in cash and £123.84 via the Yorkshire Bank online app. Mrs Kay continued this practice of using the cash revenue to pay her wages but always recorded the transaction in the office

accounts records. There was an average of £300 in cash kept in a locked drawer in the office but on occasions there could be hundreds of pounds more.

16. From the end of August 2020, Mrs Kay moved onto payment of her wages through the payroll, in order for the Committee to take advantage of Government funding for employees furloughed during the lockdowns resulting from COVID-19. There was no evidence, however, that the nature of Mrs Kay's relationship with the Committee changed at this time or indeed at any other point over the course of her employment.
17. The Tribunal is satisfied that the reality of Mrs Kay's relationship was that she was the Committee's employee from the outset of her employment on 16 July 2019.. She worked under the direction and control of the Committee, had fixed days and hours of work and had to have permission to take holidays. She had the benefit of sick pay and paid holidays, which is normally associated with employee status. The Committee clearly viewed her as entering into an employment relationship because it offered her a contract of employment as the basis of her working relationship at the outset.
18. The Tribunal makes the following findings on Mrs Kay's allegations of conduct that individually or cumulatively breached the implied term of trust and confidence.

Allegation 1: The Respondent required the Claimant to implement unlawful working practices by in November 2020 making Rebecca Hoggarth-Hall redundant when she was not in fact redundant and from October 2022 treating Mr Rowbotham as a self-employed person rather than an employee.

19. Effectively, Mrs Kay said that the Committee required her to be complicit in unlawful practices in the way it treated the other office administrators.
20. During the national lockdown resulting from the COVID pandemic, the Association's activities were greatly reduced. There was very little work for Mrs Kay or the other office administrator, Ms Hoggarth-Hall, to do. Ms Hoggarth-Hall asked to be made redundant and the Committee decided to dismiss her for redundancy in November 2020. At this point, the Committee had a diminished requirement for employees to carry out work of a particular kind, namely the work of office administrator. That fell within the statutory definition of redundancy (Section 139(b)(i) ERA). Mrs Kay disapproved of the decision because she believed Ms Hoggarth-Hall had requested to be made redundant only so that she could claim welfare benefits. Objectively assessed, however, there was nothing about the decision itself or the Committee's expectation that Mrs Kay would prepare the necessary paperwork to implement it, that was likely to breach the relationship of trust and confidence between the Committee and her.

21. In 2022, in acknowledgment of the fact that the office workload had increased since the recovery in the Association's activities after the ending of lockdown, the Committee decided to take on another person to work in the office. This was Mr Rowbotham. The Committee's accountant suggested that Mr Rowbotham could be taken on as a self-employed person. Mr Rowbotham and Mrs Kay used the HMRC website to check whether he would be classified as an employee for tax purposes and emailed the Committee with the results, which were that he would be. In an email to the Committee on 25 January 2023 he explained that it would be better for him to be an employee because he would not need to do his own tax return.
22. After discussing Mr Rowbotham's email, the Committee stuck with its initial decision. It took into account the fact that it would not need to give Mr Rowbotham sick pay or holiday pay if he was not an employee. Mrs Kay was unhappy about this, as she would be working alongside him and considered it unfair that he would not be receiving all the benefits she had as an employee. She exchanged text messages with Mr Rowbotham expressing her concerns but he reassured her that she did not need to worry about him and that he would not agree to anything he was not comfortable with. In the event, he confirmed in his evidence to the Tribunal that, as it has turned out, he is happy to be treated as self-employed because of the level of control and flexibility that it gives him. He can choose the days and hours that he works and does not need permission to go on holiday.
23. The Tribunal accepts that the status of Mr Rowbotham's employment relationship with the Committee was not entirely clear, at least initially. It was not clear, however, that the Committee was acting unlawfully in treating him as a self-employed worker. The Association's accountant had advised that it was permissible to treat him as self-employed. Whilst Mrs Kay did line-manage Mr Rowbotham and paid his invoices, she was not being asked to collude in some sort of patently unlawful arrangement. Objectively assessed, there was nothing about the Committee's decision that was likely to damage the relationship of trust and confidence between itself and Mrs Kay.

Allegation 2: The Respondent gave the Claimant an unreasonable workload, including taking on the work of three sub-committees after they ceased to function and the responsibilities of Rebecca after she left in November 2020

24. When Ms Hoggarth-Hall was made redundant, there was very little work to do in the office. Once the lockdowns were lifted, the Association's activities started to resume and the work in the office also increased. At this point, Mrs Kay was undertaking the work previously done by two people. At some point in the past, the Association had three sub-committees, but the Finance Sub-Committee last

met in April 2016, years before Mrs Kay joined the Association. Ms Hoggarth-Hall had been responsible for servicing the other two sub-committees but those sub-committees also ceased to function post- COVID and their work was taken over by the Central Committee.

25. The work that Mrs Kay did included the following:

- keeping paper records of the membership up-to-date and maintaining a computer database
- managing correspondence to and from the Committee, the membership and third parties, with related photocopying and filing
- ordering office supplies and making savings where possible
- banking cash and cheques
- keeping accounts of income and expenditure, stock taking, liaising with the Association's accountant and presenting and explaining the accounts to the Committee
- dealing with telephone enquiries from members
- maintaining computer systems, including updating programmes and sourcing new components and programmes
- producing a monthly membership newsletter, including design, copy writing, sourcing and chasing up contributions, printing, collating and distribution
- creating and maintaining a new website with additional features
- organising events, including sourcing speakers and venues, costing, programme content and timings, invitations
- administering events, including completing risk assessments, setting up of tables, seating plans, preparing printed material, delivering catering items to the venue and collecting them at the end of the event, liaising with caterers and speakers, dealing with queries from members and Committee members,
- preparing agendas for monthly Central Committee meetings and any ad hoc meetings, ensuring that these were annotated with relevant information and matters held over from previous meetings
- preparing information on finances and membership for each meeting and providing further information as and when appropriate during meetings
- issuing invitations for Central Committee meetings and keeping minutes
- updating social media
- overseeing and running the election process for new officers of the Committee
- sourcing, designing and ordering marketing items such as cups, badges and pens, including updating the Association's branding

- creating seasonal items for the Association's use such as Christmas and Easter cards
- instigating and running fundraising campaigns, including sourcing prizes and recording profits and stock levels
- maintaining and reporting stock levels of Association materials
- instigating and running projects with third parties and reporting on the results
- administering the payroll including the issuing of wage slips
- paying other invoices
- maintaining personnel records
- liaising with the office landlords about issues relating to maintenance and access
- recording the movement of Association trophies and silverware
- attending officer days to give updates and answer members' queries

26. The Tribunal accepts that there is a large variation in the scale of these duties, from ones that are of minor significance and involve little work, through to those with major significance involving a substantial amount of work. The Tribunal also accepts, however, that the sum total of these duties represents a greater workload than Mrs Kay could reasonably be expected to manage in a 15-hour week and that she worked a substantial amount of overtime. Some of this was undoubtedly generated by her own enthusiasm and initiative in developing the work of the Association. The Tribunal considers, for example, that the improvements she made to the newsletter, the relaunching of the website, fundraising initiatives, projects working with third parties and the redesign of the Association's branding were matters she took upon herself because she wanted to improve the functioning of the Association, rather than being essential to her work or things that she had been instructed to do by the committee. The Tribunal accepts that Mr Rowbotham, who is now the sole office administrator, is able to complete the job duties within the 15 hours that he works each week. He does not, however, do a significant number of the tasks that Mrs Kay undertook.

27. Mrs Kay was conscientious and committed, was used to hard work and really enjoyed the job. She did not, therefore, make any formal complaint about the volume of her work. Nevertheless, the Tribunal is satisfied that the Committee were aware that Mrs Kay was struggling with her workload. On 12 January 2022, the Committee met in the absence of Mrs Kay to discuss the fact that they felt Mrs Kay had "lost her sparkle". The meeting acknowledged that Mrs Kay had said that the responsibility of being the sole employee worried her. They considered whether they could afford to employ someone on 4 hours a week or whether the Committee members could volunteer to help in the office on a rota basis. They also discussed whether the content of the newsletter could be

reduced now that branches were beginning to meet again post-pandemic. They agreed to have an appraisal meeting with Mrs Kay.

28. When the Committee met again on 9 March 2022 Mrs Taylor reported back on the meeting she had had with Mrs Kay. Mrs Kay had said that although she was happy with her job, as branches were beginning to meet again the workload was increasing. The Committee acknowledged that they needed to be more proactive and agreed to address this at their meeting in May. They also acknowledged that they might need to change the expectation from when the sub-committees were operating that the administrator would implement committee decisions.
29. On 10 August 2022 the Committee met again to discuss office staffing levels. By this time, Miss Ferguson had taken over as Chairperson. Several Committee members reported that they had offered help in the office but Mrs Kay had told them this was not practical. The Tribunal accepts Mrs Kay's evidence that she had refused offers of help from Committee members because she could not predict how much work would come into the office on any given day by way of correspondence or telephone enquiries and the Committee members were not able to help with any of her other work. In effect, she considered that their presence in the office would be a distraction rather than a help.
30. The Committee felt that they could not afford to employ another person to replace Ms Hoggarth-Hall. The Association was now operating at around the same level as before the COVID pandemic. (The membership had grown significantly during the pandemic but had now fallen to around the previous level.) It was acknowledged that the newsletter had been much improved and was very well received but took a lot of effort and perhaps could be issued quarterly rather than monthly with a black and white events sheet produced monthly.
31. On 25 August 2022 some of the Committee members met with Mrs Kay to discuss her concerns about her workload. She felt keenly that she was bearing all the responsibility and the Committee members said that they were themselves concerned that she had no-one to talk things over with. Mrs Kay said that as the work of the sub-committees had been incorporated into the work of the Central Committee, this meant more responsibilities and an increased workload for her. The Committee members raised the possibility of bringing in an "office junior" for four hours a week to help her and it was agreed that she would organise this. That led to the recruitment of Mr Rowbotham to work four hours a week.
32. When Mr Rowbotham began work in November 2022, Mrs Kay was responsible for allocating him tasks and line managing him generally. She reviewed his work and pointed out errors he was making. For the initial period of Mr Rowbotham's

employment at least, it is likely that there was little net benefit to Mrs Kay in terms of her workload. The Tribunal finds, however, that she did not say anything to the Committee after Mr Rowbotham's recruitment about the fact that she was still struggling with her workload. At the Committee meeting on 11 January 2023, she was asked how everything was going in the office since Mr Rowbotham's arrival and she said that he had made a great start and was making work in the office easier. She was thankful for his appointment. On 7 February 2023, the day before Mr Rowbotham was due to have a review of his performance with committee members, Mrs Kay emailed Mrs Clayton to tell her that Mr Rowbotham was making mistakes through not paying attention to detail. She was having to check his work and redo a lot of it. She added that he was very easy to work with. She did not say anything about her workload being excessive. She sent Mrs Clayton a blind copy of an email she had sent to Mr Rowbotham pointing out some errors he had made and explaining what he needed to do to correct them.

33. In all the circumstances and objectively assessed, the Tribunal does not accept that the Committee breached trust and confidence in relation to Mrs Kay's workload. The Committee was responsible for Mrs Kay's work but, given their status as volunteers and the fact that some of them lived a long way away from the office and were unable to drop in to check on her, they were dependent on Mrs Kay alerting them if she felt her workload was excessive. When they noticed that she had "lost her sparkle", they started discussing what could be done to help her. Whilst their eventual solution to employ Mr Rowbotham might not have been adequate to bring Mrs Kay's workload down to a comfortable level, they were reliant on her to bring that to their attention, and she knew that.

34. The Tribunal has no doubt that Mrs Kay is a very capable and self-reliant person. That may be the reason why she was reluctant to state clearly that she was still struggling. Be that as it may, the Committee cannot be said to have acted in breach of trust and confidence by failing to act on a problem it did not know persisted and that Mrs Kay knew she had not raised again.

Allegation 3: At Committee meetings on 11 January and 8 February 2023 Miss Ferguson bullied the Claimant

35. Mrs Kay alleged that Miss Ferguson bullied her. Specifically, she said that at two successive Committee meetings on 11 January and 8 February 2023, when she had refused to undertake tasks Miss Ferguson had asked her to do, Miss Ferguson had ignored her and referred to her as "she" to other Committee members.

36. At its meeting on 11 January 2023, the Committee discussed a letter that it had received from Mrs Cumberland, a Committee member. Mrs Cumberland had

been unable to attend some Committee meetings and had resigned from the Committee. A member of the Association, Mrs Orange, had previously emailed Miss Ferguson to say that she felt that Mrs Cumberland had been bullied into resigning. Miss Ferguson asked Mrs Kay to write to Mrs Cumberland on the Committee's behalf to thank her for all her hard work as a Committee member. After the meeting, Mrs Kay told Miss Ferguson that she would not feel comfortable writing such an important letter, which should come from the committee and using its own words. Miss Ferguson was annoyed that Mrs Kay would not write the letter. Mrs Clayton later told Mrs Kay that Miss Ferguson had returned to the Committee members and said something along the lines of: "she won't do it, what are we going to do now?"

37. On 8 February 2023, Miss Ferguson asked Mrs Kay to organise a lunch for the Committee members. Mrs Kay was aware that this would take a lot of work, finding a suitable venue and fixing a date. She therefore refused, saying that she had too much work to do already. Miss Ferguson was again annoyed that Mrs Kay had refused to do something she had been asked to do. She folded her arms, turned away from Mrs Kay and asked the Committee members something along the lines of: "She won't do it, what are we going to do now?"

38. The Tribunal accepts that on both these occasions Miss Ferguson expressed her frustration that Mrs Kay had refused to undertake tasks that she had been asked to do. The Tribunal also accepts that Miss Ferguson was somewhat petulant in the way she did so. It does not, however, consider that that amounted to bullying. Mrs Kay was well able to stand up for herself and she was aware that the other Committee members liked and had confidence in her. It may have been uncomfortable for her to be on the receiving end of Miss Ferguson's behaviour, which was less than professional, but, objectively assessed, that was not enough to amount to conduct that was calculated or likely to destroy or seriously damage the relationship of trust and confidence between herself and the Committee.

Allegation 4: At a Committee meeting on 8 February 2023 Miss Ferguson changed the nature of the Claimant's role by asking her to sign an agreement that she would keep the content of committee meetings confidential, when it was her responsibility to keep the membership informed of committee decisions.

39. At the meeting on 8 February 2023, Miss Ferguson asked everyone present, including Mrs Kay, to sign a statement: "All present at this meeting accept that everything discussed is confidential and should not pass beyond this room." Mrs Jones, the Vice-Chairperson, passed around a notebook with the statement for all to sign. Mrs Kay refused to sign because she saw it as a central part of her role to keep the membership informed about the decisions made by the Committee.

40. The Tribunal does not accept that asking Mrs Kay to sign this statement was, objectively assessed, a breach of trust and confidence. Many committees operate on the basis that their discussions must remain confidential, to ensure that committee members are able to speak freely. Others operate on the basis that all contributions must be recorded and attributed to the speaker, in the interests of transparency. But even those who operate in that way are likely to consider it necessary to keep discussions on certain agenda items confidential because they involve sensitive personal information or sensitive financial matters.
41. At this time, Miss Ferguson wanted the Committee's discussions to remain confidential and all at the meeting on 8 February were asked to sign to confirm that they understood that. The minutes of the Committee meetings held the previous year, in May, June and July 2022, also record that Miss Ferguson reminded those in attendance that discussions in the Committee's meetings were confidential.
42. The statement Mrs Kay was being asked to sign did not prevent her communicating the Committee's decisions to the membership once they had been finalised. It did not, therefore, contrary to her contention, involve a fundamental change to the nature of her role. She could continue to be a bridge between the Committee and the membership by providing information about the Committee's decisions. The Tribunal does not accept that asking her to observe confidentiality of the Committee's discussions amounted to a breach of trust and confidence.

Allegations relating to the period of Mrs Kay's sick leave

43. The next specific allegations that Mrs Kay made relate to the Committee's conduct during the period from the beginning of her sick leave in February 2023 until her resignation in May 2023 and are inter-related. The Tribunal therefore sets out its findings of fact relevant to all the allegations before setting out its findings on each of them.
44. On 9 February 2023, the day after the Central Committee meeting at which she had had her disagreement with Miss Ferguson, Mrs Kay informed the Committee that she was taking seven days off work due to work-related stress. She had replies from various Committee members saying they were sorry to hear she was poorly and telling her to take care of herself. Miss Ferguson asked her to ring if she felt she would like a chat. Mrs Kay returned to work on 15 February but then went home again. She emailed the Committee to say that she found "the stress

of this workload and situation” were making her feel ill and she would be seeking an appointment with her GP. She sent in a fit note confirming that she was unfit for work until 6 March due to work-related stress.

45. On 23 February Mrs Kay wrote a two-page letter to the committee because she thought “it might be an idea to communicate some of the issues I have which are causing the work related stress”. She said that she had noticed many changes within the Association at central level. These changes had led to her feeling very undervalued, in some cases not well treated at all and very stressed, mentally and physically. In summary, she said that she had been doing the role previously done by two people single-handedly but Miss Ferguson had not even implemented the Committee’s decision to give her a Christmas present, leaving her feeling overlooked and undervalued. There were in fact reasons why this decision had not been implemented that were entirely unrelated to Mrs Kay but Mrs Kay was not aware of that. In her letter, Mrs Kay went on to mention Miss Ferguson’s dismissive attitude towards her when she refused to undertake tasks that were not part of her role and that added to her already excessive workload. She expressed her concerns about the decision to take Mr Rowbotham on as a self-employed person only, which she considered “underhand and greedy”. She felt stressed by people constantly telling her things and then asking her not to repeat them. She mentioned the “secrecy agreement” she had been asked to sign at the 8 February meeting and said she would not promote secrecy between the Committee and the membership. She ended by saying that she loved the Association, she had worked her socks off in the job and enjoyed it, but she was being made to feel very stressed by the changes.
46. The Tribunal finds that at the point when Mrs Kay began her sick leave, the Committee had not committed any conduct that, objectively assessed, breached the relationship of trust and confidence between itself and Mrs Kay. Mrs Kay was nevertheless clearly feeling upset about Miss Ferguson’s behaviour towards her, and in particular being asked to do tasks she had no time to do or she felt were not appropriate for her to do, and the Committee’s decision about Mr Rowbotham. The “changes at central level” about which she was raising concerns appear largely to have been those arising from Miss Ferguson taking over as Chairperson.
47. On 27 February Mrs Jones wrote to Mrs Kay asking her to just clarify the details about online banking and asking whether anyone else could access the account since Mrs Kay was not well. She was aware that Mrs Kay’s payday was the end of the month. She asked whether Mrs Kay would mind having a cheque if they could not access the bank account online.

48. On 28 February, Mrs Kay wrote to Mrs Jones and said that her GP had said she needed a complete break from work “and that includes being able to know with certainty that work will not contact me about work”. She told Mrs Jones that Mrs Clayton could log on to the online banking app and arrange payments and she had already emailed Mrs Clayton and Mrs Taylor with passwords and login details. Mrs Kay had sent them both an email on 12 May 2021 attaching a list of the usernames and passwords for use on various YCA accounts, including its online banking details.
49. Although she was the Treasurer of the Association, Mrs Clayton was not familiar with the office accounts, the operation of the Association’s online banking or the operation of the payroll. Her role was an “honorary” one only and appears to have been very limited, involving providing the Committee with the current bank balances at its monthly meetings, based on information given to her by Mrs Kay. Although she had the Association’s online banking app on her ‘phone, she did not know how to use it. On 3 March 2023 the Committee sent Mrs Kay a cheque for £463.05, being wages for three working days and three weeks’ sick pay “as advised by the accountants”. The sick pay was Statutory Sick Pay (SSP) only.
50. On 7 March Mrs Kay wrote to thank the Committee for the cheque but explained that she had worked four and a half, not three, days in February. She asked for the balance of what was owed, her wage slip and confirmation that HMRC had received her salary details for February. She submitted a fit note confirming that she was unfit for work until 2 April due to work-related stress.
51. On Friday 31 March at 4.19 Mrs Kay emailed the Committee: “In anticipation of a return to work I would be grateful if you could update me on what has happened in relation to the grievances I shared with you.” Miss Ferguson replied: “Thank you for your message, can you please reply back and provide details of your grievances, so that we can help and discuss”. Mrs Kay emailed back: “Please consider all the items in my previous emails to you all since my absence from work as grievances.”
52. In her evidence at the Hearing, Mrs Kay accepted that it was only at this point that the Committee was aware that she wanted her email of 23 February to be viewed as a formal grievance. On its face, the email reads as an explanation of why Mrs Kay was suffering from work-related stress. An employer with personnel management experience might infer from the contents of the email that it needed to take action to address the concerns it raised, but the email itself did not say that Mrs Kay wanted the Committee to do so. As Mrs Kay was aware, the Committee were all volunteers with no background in personnel management and they could not reasonably be expected to view the email as a grievance unless she said that it was.

53. At 5.47 on Saturday 1 April, having spoken to the other Committee members, Miss Ferguson emailed Mrs Kay to suggest that they all meet in the office to discuss some of the issues Mrs Kay had raised. She added: "(As the late Queen said 'some of our recollections may vary')." Whilst acknowledging that it was short notice, she suggested a meeting on Monday between 10am and 2pm at a time convenient to Mrs Kay. She added: "Whilst you have been away we have had a bit closer involvement in the running of the office and we would need your input in clarifying one or two issues that have come to light."
54. Mrs Kay replied on 3 April saying that she considered Miss Ferguson's email to display a lack of respect for her. She said that it was very troubling that the Committee had not addressed her "concerns/grievances" after many weeks. She said that she was still waiting for her March wages slip and wages, which should have been sent to her on 30 March. She also said that she was "sickened that you shared details of my grievance with Robin" by sending it to the central office email. This was a reference to the fact that Miss Ferguson had copied her email of 1 April to Mrs Kay to the office email address, where it would be viewed by Mr Rowbotham. She had sent it from her personal email address but had copied it to the office email because she wanted there to be a record of it on the office system.
55. On 5 April Miss Ferguson emailed Mrs Kay to say that they were in the process of preparing her payslip but needed her National Insurance number and tax code. Mrs Kay replied with her National Insurance number and said her tax code could be found in her personnel file in the office, on her previous wage slips or on the HMRC PAYE software on the office computer. Miss Ferguson told her that they had looked for her personnel file but could not find it and asked her where it might be.
56. On 5 April Mrs Kay submitted a further fit note saying she would be unfit for work until 13 May, again due to "work related stress".
57. On 8 April Mrs Jones sent Mrs Kay a cheque for £82.50 for the extra 1.5 days' pay due for February. She confirmed that the other items mentioned in Mrs Kay's email would be dealt with and added that if there was anything anyone on the Committee could do to help she should not hesitate to call. It is not clear which email Mrs Jones was referring to here.
58. On 16 April, Miss Ferguson wrote to Mrs Kay and said that the Committee intended and wanted to pay her everything to which she was entitled but had been unable to access the HMRC online portal to process payment. They had not been able to find her previous wage slips. She asked Mrs Kay to send the online portal details including the password so that they could ensure that her

SSP was processed without further delay. She also asked for the login and password information for the Association's bank account. Miss Ferguson had been trying her best to access the HMRC portal and Mrs Clayton, Mrs Jones and at least three other Committee members had been trying to help her do so, but without success. The Association's accountant had not been able to assist either. Eventually the Committee asked another accountant for help and he requested a new password but it did not arrive. They requested it again but still were unable to access the portal because what Miss Ferguson referred to as a second password was needed.

59. Mrs Kay replied on 18 April saying that this illustrated what she had been telling the Committee all along, that the office should not have just Mrs Kay in charge, for everyone's sake. She went on to say that the passwords and logins were in the black "office bible", as she had shown Mr Rowbotham and other Committee members. This "office bible" was a book kept in the office containing contact details and other information relevant to the administration of the Association's affairs. Whilst the log in details for the bank account were with other passwords on the final pages of the book, some necessary information to access the HMRC portal was on another page that Mrs Kay did not identify. Mrs Kay acknowledged in her email that she had delayed replying because she should not have been contacted about work matters, she was angry that her email had been shared (a reference to Miss Ferguson's email of 1 April) and that her personnel file had been lost.
60. On 26 April Mrs Kay wrote to the Committee to tell them that her application for a re-mortgage had failed because she had not been able to provide her last three months' pay slips. As a result the rate of interest on her mortgage would be 2% higher than it would have been.
61. During Mrs Kay's absence, the Committee had discovered the large amount of cash that was being kept in the drawer in the office. They were also concerned that Mrs Kay's personnel file had gone missing. They organised the changing of the locks on the office door as a security measure. On 27 April an individual who worked for the NFU telephoned Mrs Kay to tell her that the locks to the Association's office had been changed and that someone on the Committee had been enquiring about security and whether Mrs Kay could get access to the building. Another individual from the NFU later told Mrs Kay that the person making the enquiries had been Miss Ferguson. The Tribunal accepts Miss Ferguson's evidence that it was in fact another Committee member, Ms Los, who had gone into the NFU office. Miss Ferguson did not know what Ms Loss had said to the NFU staff or whether she had asked specifically about Mrs Kay's access. Ms Los did not give evidence at the Tribunal Hearing.

62. Mrs Kay treated the information she had been given by the NFU staff as accurate and as evidence that the Committee was insinuating to third parties that she had been acting dishonestly. On 27 April, she wrote to the Committee to say that the NFU had told her that “you seem to have accused me of theft from the office” and “you have changed the locks and enquired about CCTV and entry codes and if people can access the building on a weekend”. She went on: “**This is toxic behaviour**. If you believe there has been any kind of theft then report it to the police immediately,. Do not soil MY reputation with such ungrateful and disgusting insinuations.”
63. Mrs Kay had now been off work on sick leave for approaching three months. On 27 April Mrs Kay received a letter from the Committee asking for her consent to contact her GP for a report on her fitness for work. In reply she wrote an email setting out her concerns that the Committee was continuing to “withhold” her pay and failing to address its “gross GDPR failure” or her grievances, had changed the office locks without telling her, and implied to other office workers that she had acted unlawfully. She said she was appalled at the Committee’s treatment of her.
64. On 2 May Miss Ferguson replied on behalf of the Committee to give its initial response. This letter was drafted on the Committee’s behalf by its legal advisors. She explained why the locks on the office had been changed, confirmed that no allegation of theft was being made against anyone and if anyone from the NFU had told Mrs Kay otherwise that was false and misleading information. In relation to pay, she confirmed that the Committee was struggling to access the relevant payroll and HMRC information but it had now engaged a new accountant to help with that process. The Committee was keen to ensure that her outstanding SSP and wage slips for February, March and April were forwarded to her as soon as possible. The new accountant had said that they would be able to access the HMRC Gateway the following week.
65. Miss Ferguson added that the Committee had asked the accountant to look into the fact that Mrs Kay had been paid by a mixture of cash and cheques. She went on: “whilst no impropriety is alleged against you, the committee would be keen to understand why not all of the monies received by YCA were banked (which would have provided an audit trail) and also why you chose to process your own pay in this rather unorthodox way?”
66. Miss Ferguson concluded by saying that, now that the Committee understood she wanted the issues and concerns she raised to be dealt with as formal grievances, it would be appointing one or more members of the committee to deal with them. She asked Mrs Kay to confirm “which of the issues previously raised by you should be treated as formal grievances”. Once she had received

that, she would write again with arrangements for a meeting with Mrs Kay to discuss her grievances.

67. On 3 May, Mrs Kay replied, saying that Mrs Clayton and Mrs Taylor were both aware that Mrs Kay used cash to pay her wages. This was to save the Association money by not having to pay her to travel to the bank to deposit the cash. The payments of cash to Mrs Kay were clearly logged and not hidden. She confirmed that all the issues raised by her in her correspondence since 9 February 2023 should be dealt with as formal grievances, as she had made very clear more than once. She asked why the Committee kept delaying in addressing them. She said she found the tone of Miss Ferguson's letter "abominable" and that Miss Ferguson appeared to be trying very hard to find ways to discredit her. The fact that Mrs Kay considered Miss Ferguson to be acting vindictively is confirmed in an email to Mrs Cumberland on 12 May, in which Mrs Kay said that Miss Ferguson was on a witch hunt against her.
68. On 11 May, Mrs Kay sent in a fit note stating she was unfit for work until 9 June.
69. Mrs Kay had submitted a form to the HMRC payment dispute team about the failure to pay her SSP. On 12 May Miss Ferguson rang HMRC to confirm that the Association was not refusing or unable to pay Mrs Kay, it was having difficulty accessing the system.
70. On 15 May Mrs Kay wrote to the Committee to say she was resigning from her job with immediate effect "in order to preserve my mental and physical wellbeing and to try and replace the income you are withholding from me unlawfully." Her email ran to 3.5 pages and set out the reasons for her resignation, which largely reflect the allegations that she says amount to a breach of trust and confidence.
71. Eventually, with the assistance of a past Secretary of the Association who had accountancy experience, the Committee identified the second HMRC password in the office bible and managed to access the HMRC portal. On 19 May 2023 the Committee sent Mrs Kay her wage slips for February to May 2023 and she was paid her outstanding SSP.
72. Against the background of those facts, the Tribunal makes the following findings in relation to the specific allegations relating to the Committee's conduct while Mrs Kay was on sick leave.

Allegations 5: From the end of January 2023 the Respondent failed to provide the Claimant with wage slips

Allegation 6: from the end of February 2023 the Respondent failed to pay the Claimant Statutory Sick Pay

73. The Tribunal accepts that the Committee was struggling to deal with the administration of Mrs Kay's wages and pay slips because of its difficulty in accessing the HMRC portal. The fact that one piece of information they needed was not in an obvious place in the "office bible" added to the challenge. Mrs Kay had sent two Committee members an email nearly two years previously with the relevant details but it is unsurprising that they did not remember that email or its attachment. Mrs Clayton was still an officer of the Committee, as Treasurer, but she finds information technology challenging and Mrs Kay would have known that. She knew that all the Committee members were volunteers and some lived a long way away from the office. She also knew that they were struggling to administer the Association's financial affairs in her absence. She could have done more to help the Committee access the HMRC portal. The fact that she did not was partly due to her anger and frustration that she was effectively being asked to continue to perform her administrative role whilst on sick leave because of stress, stress that was in part due to the fact that she had sole responsibility for dealing with payroll matters. She felt ill-equipped to deal with financial matters herself, having been given no training, and that added to her resentment because she was being asked to assist with a task she had had to master on her own and without support.
74. It remains the fact, however, that the Committee were trying to access the HMRC portal and had told Mrs Kay that. Objectively assessed, there was nothing to indicate to Mrs Kay that the Committee was withholding her wage slips deliberately. In the light of all the surrounding circumstances, the Tribunal does not consider that the Committee's failure to issue Mrs Kay with wage slips for February, March and April before she resigned did not in itself amount to a breach of trust and confidence.
75. The failure to pay Mrs Kay any further sums in relation to her SSP after the payments for February is a different matter. Even taking into account that the Committee were volunteers who lived a distance from the office and found the use of computerised systems challenging, if they had viewed the payment of Mrs Kay as the urgent matter it was, they would have found a solution to accessing the HMRC portal before she resigned. Even if the Committee could not access the HMRC portal to confirm the exact sums it should be paying Mrs Kay, it could have paid her something on account of its liability by a further cheque. The obligation to pay SSP to an employee, like the obligation to pay wages, is

fundamental to the employment contract: the employee's income is at stake. The Committee appears to have accepted its accountant's advice that Mrs Kay was entitled to sick pay. The Tribunal accepts that it was a breach of trust and confidence for it to fail to pay Mrs Kay anything for her period of entitlement from the beginning of March.

Allegation 7: The Respondent failed to address the Claimant's grievances of 23 February and 2 March 2023, despite her reminders and requests, and gave no indication it wanted to resolve the reason for her absence from work through work-related stress.

76. The Tribunal does not accept that the Committee gave no indication that it wanted to resolve the reason for Mrs Kay's absence from work. It was heavily reliant on Mrs Kay, as her absence had illustrated, and it was engaging with Mrs Kay's correspondence about the issues that concerned her. The Tribunal also accepts that it was not clear to the Committee until Mrs Kay's email of 2 March that she wanted her email of 23 February to be treated as a formal grievance.

77. Miss Ferguson's letter of 2 May, which indicated that she needed to re-state the subject of her grievance before it would be investigated, was drafted on legal advice but Mrs Kay did not know that. The Tribunal accepts that it would have been helpful for Mrs Kay to list each of her issues, adding her concern about data protection breaches in relation to the sharing of the email and the loss of her personnel file. The Committee were volunteers and were very unlikely to have had any training in handling grievances. They needed all the help they could get in focusing on the matters they had to investigate.

78. Nevertheless, objectively assessed, the Tribunal considers that Miss Ferguson's letter, by asking Mrs Kay to restate her grievance two months after she had confirmed what issues she wanted addressed, was likely to seriously damage the relationship of trust and confidence between the Committee and Mrs Kay. The letter indicated that the Committee was not treating Mrs Kay's concerns with the urgency that they merited.

Allegation 8: In or around April 2023 Miss Ferguson had the office locks changed without informing the Claimant.

79. The Tribunal does not accept that it was a breach of trust and confidence for the Committee to arrange for the office locks to be changed. It had discovered in Mrs Kay's absence that cash was being kept in an office drawer and it could also not find Mrs Kay's personnel file. Changing the locks was a prudent security measure. Mrs Kay was on sick leave and had instructed the Committee not to contact her about work matters. There was no need for her to be informed at this

time about the change of locks. A key for her use when she returned to work had been left in her drawer.

Allegation 9: In or around April 2023 Miss Ferguson cast aspersions about the Claimant's character by questioning other occupants of the building in relation to security processes and how and when the Claimant might be able to enter the building.

80. As recorded above, Miss Ferguson did not make any enquiries of NFU staff about the office's security in the Claimant's absence. The Tribunal has had no reliable evidence upon which to base a finding that even Ms Los, the Committee member who in fact spoke to the NFU staff, asked any specific questions about Mrs Kay. The only evidence about this has been from Mrs Kay, who was only repeating what she remembered of what was said to her by an NFU employee.

Allegation 10: On 1 April 2023, while the Claimant was on sick leave, Miss Ferguson sent her an email asking the Claimant about "issues that have come to light".

81. Mrs Kay alleged that Miss Ferguson's reference to "issues that have come to light" in her email of 1 April 2023 was intended to imply that Mrs Kay had been guilty of some wrongdoing. The Tribunal does not accept that, objectively assessed, these words do so. There is nothing else in the email to support that inference and the Tribunal accepts Miss Ferguson's evidence that that was not what she intended. It was a statement that the Committee needed Mrs Kay to assist with information about something to do with the running of the office. The fact that Mrs Kay interpreted it in the way she did was because of the poor relationship she had with Miss Ferguson arising from their history, not the content of the email itself.

Allegation 11: Miss Ferguson sent an email containing personal information about the Claimant to the office inbox, in breach of data protection principles

82. When Miss Ferguson sent Mrs Kay her email of 1 April 2023 she copied it to the central email address. As it contained confidential information about ongoing correspondence between Mrs Kay and the Committee about Mrs Kay's employment, it should not have been sent to that email address, because Mr Rowbotham would see it. Miss Ferguson confirmed that she keeps personnel-related correspondence in a confidential paper file that she holds personally. If, as she said, Miss Ferguson wanted her email to be stored somewhere on an office system, that file is where the email should have been stored.

83. There was no evidence that Miss Ferguson copied the email to the central office account with the intention that Mr Rowbotham should read it. Nevertheless, at a meeting on 8 February 2023 to discuss staffing matters, the Committee was told that Mrs Kay and Mr Rowbotham had been advised to contact Miss Ferguson and Mrs Jones on their personal email addresses rather than the central office email account if they wanted to discuss HR issues, “in the interest of personal confidentiality and GDPR”. Miss Ferguson was clearly, therefore, aware of the risks of using the office email address and had not followed her own advice not to use it.

84. Having said that, whilst some of the information in the email was personal, it was not of such a sensitive nature that allowing Mr Rowbotham to see it would, in isolation, be significant enough to amount to a breach of the relationship of trust and confidence. However, when taken together with the other matters identified in these Reasons as having affected the relationship, the Tribunal accepts that it did contribute towards a breach of the implied term.

Allegation 12: From the beginning of the Claimant’s sickness absence in February 2023, the Respondent failed to keep the Claimant’s office personnel file secure, in breach of data protection principles.

85. The Tribunal accepts Miss Ferguson’s evidence that the Committee conducted a thorough search of the office and could not locate the Claimant’s file. The Tribunal has had no evidence to indicate whose fault it was that the file could not be found. There are a number of potential explanations, including the possibility that the office has not been kept secure. Whatever the level of security maintained by Mrs Kay when she was at work, the Tribunal heard no evidence to indicate that it changed when Mrs Kay was not in the office. There was insufficient evidence before the Tribunal to establish that it was the Committee’s conduct that had led to the file going missing. The Tribunal does not accept that the Committee had breached the relationship of trust and confidence in some way simply because Mrs Kay’s file could not be found.

Allegation 13: The Respondent failed to address how the Respondent should rectify these data protection breaches.

86. The Tribunal accepts the Committee’s evidence that the Committee intended to address Mrs Kay’s concerns about Miss Ferguson’s email of 1 April and the missing personnel file when it dealt with Mrs Kay’s grievances. The Tribunal does not accept that the Committee acted in breach of trust and confidence by not addressing Mrs Kay’s data protection concerns before she resigned.

Allegation 14: On 16 April 2023 Miss Ferguson sent the Claimant an email asking her for accounting details.

87. Mrs Kay had made clear in her email of 28 February 2023 that the Committee should not contact her about work matters whilst she was on sick leave. Even taking that into account, the Tribunal does not accept that Miss Ferguson's email asking Mrs Kay for accounting details amounted to conduct that breached the implied term of trust and confidence. As Mrs Kay was aware, Miss Ferguson was asking for the details in part because the Committee was trying to access the HMRC portal to pay the Claimant's SSP and issue her with wage slips. Whilst Mrs Kay might have considered that the Committee should have been able to manage to do this several weeks earlier and with the information it already had, the fact was that the easiest way for the Committee to access the relevant information was to ask Mrs Kay. The Tribunal does not accept that Miss Ferguson's email amounted to conduct that was likely to destroy the relationship of trust and confidence between the Committee and Mrs Kay.

Allegation 15: On 2 May 2023 Miss Ferguson sent the Claimant an email referring to the Claimant's use of case to pay her wages as "unorthodox"

88. The Tribunal accepts that the passage in Miss Ferguson's letter to Mrs Kay that deals with Mrs Kay paying herself in cash does carry an implication that it was at the least improper for Mrs Kay to be doing this. Although the email says that no impropriety is being alleged, it notes that the use of cash in this way meant there was no audit trail, it refers to wanting to understand why Mrs Kay chose to pay herself in this way and uses the word "unorthodox", which is an implied criticism.

89. Although the Claimant had sent Mrs Clayton and Mrs Taylor an email in November 2019 stating that she had paid her wages in cash in part, that was over three years before Mrs Kay went on sick leave and before Miss Ferguson took over as Chairperson. The Tribunal does not accept that the fact that Mrs Clayton and Mrs Taylor did not object to what she did on that occasion amounts to evidence that they authorised her on behalf of the Committee routinely to pay herself in cash or even that they were aware she was routinely doing so.

90. Nevertheless, given that the Committee had no reason to doubt Mrs Kay's honesty and integrity, Miss Ferguson should have taken more care in the wording of her letter, even though it was drafted with legal advice. The Tribunal accepts that this letter contributed towards conduct that was likely to seriously damage Mrs Kay's relationship of trust and confidence with the Committee.

General allegations

91. As well as the specific allegations detailed above, Mrs Kay made two more general allegations of conduct that she said breached trust and confidence.

Throughout the Claimant's employment, Miss Ferguson, Mrs Clayton and Miss Harrison failed to inform themselves about the running of the office, resulting in the Claimant being unsupported in her work.

92. The Tribunal accepts that the Committee did not provide Mrs Kay with any practical support in her work, by way of training or advice. In particular, it gave her no assistance with how she should deal with accounting matters, even though she had explained at her interview that she had no experience of the administration of accounts or payroll. Nor did the Committee members familiarise themselves with any of the details of how the office was run. Mrs Kay was left largely to her own devices.

93. Mrs Kay knew, however, when she took on the job that the Association was run by volunteers many of whom lived some distance from the office. The Committee members did not have the experience or knowledge to help with any of Mrs Kay's tasks. In these circumstances, and objectively assessed, the Committee's failure to provide Mrs Kay with more support than it did with her work did not amount to conduct that was likely to destroy or damage the relationship of trust and confidence between her and the Committee. It is nevertheless understandable that over time and with the increase in her workload after Ms Hoggarth-Hall left, Mrs Kay felt more and more upset about the lack of input from the Committee.

The Respondent failed to take reasonable steps to ensure the Claimant's health and safety whilst the Claimant was working on her own in the office from November 2020 until October 2022 and from November 2022 on Mr Rowbotham's days off.

94. The Tribunal accepts that the fact that an employee works on their own poses potential health and safety concerns and that Mrs Kay was working on her own in the office for much of the time from November 2020 onwards. She did not, however, raise any concerns about her health and safety being at risk with the Committee. She was working in an office environment, which poses far fewer risks than an environment where machinery is being operated or toxic substances are in use. She had the use of a telephone in case of emergency. It was not practicable for the Committee members to monitor Mrs Kay's wellbeing throughout her working day. The Tribunal can think of no other reasonable steps that the Committee could have taken to safeguard her safety. The Tribunal does

not accept that the Committee acted in breach of trust and confidence in relation to Mrs Kay working on her own.

Summary and conclusion on constructive dismissal

95. It was apparent from the oral and written evidence before the Tribunal that Mrs Kay and Miss Ferguson did not get on. There was also, however, evidence that Mrs Kay liked and got on well with the other members of the Committee. Indeed, it clearly upset her to be making allegations that necessarily involved their responsibility for certain acts or omissions. Everyone on the Committee was aware how hard Mrs Kay had worked in her job and how dependent the Association was on her. Looking at the evidence in the round, there was nothing to indicate that anyone, even Miss Ferguson, was acting with the purpose of destroying the relationship of trust and confidence between the Committee and Mrs Kay.
96. On the other hand, objectively assessed and for the reasons explained above, the following conduct of the Committee did, individually or cumulatively, have the effect of seriously damaging the relationship of trust and confidence between Mrs Kay and the Committee:
- 96.1 Failing to make any payment of SSP to Mrs Kay for the period of entitlement from the beginning of March 2023.
- 96.2 Sending a copy of Miss Ferguson's email of 1 April 2023 to an email account where it could be read by Mr Rowbotham.
- 96.3 In Miss Ferguson's letter of 2 May, asking Mrs Kay to repeat the issues she wanted the Committee to address when she had already set them out in writing and confirmed two months earlier that she wanted them to be treated as a grievance.
- 96.4 In that same letter, implying that Mrs Kay had acted improperly by paying herself in cash
97. There was no reasonable and proper cause for any of these acts and omissions and they were all significant parts of the reason why Mrs Kay resigned from her job. The Tribunal therefore concludes that the Committee constructively dismissed Mrs Kay.

Remedy: notice pay

98. The parties agreed that, if Mrs Kay had been constructively dismissed, she was entitled to £660 in damages for failure to give her notice of termination. The Tribunal therefore awards her that sum.

Remedy for unfair dismissal: the issues

99. Mrs Kay confirmed that if her unfair dismissal claim succeeded she wanted to be awarded compensation, not to be re-employed. An award of compensation for unfair dismissal is comprised of a basic award and a compensatory award.

100. The basic award is calculated by reference to the Claimant's age, length of service and gross week's pay.

101. The compensatory award is "such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer (Section 123(1) ERA).

102. By the time of the Hearing, Mrs Kay had succeeded in obtaining new employment at a higher wage than that she was paid by the Committee. The Committee confirmed that it did not argue that she had failed to take reasonable steps to minimise her loss of earnings.

103. The Tribunal had to decide whether it would be just and equitable to reduce the compensatory award to reflect the chance that Mrs Kay would have resigned even if the Committee had not constructively dismissed her.

104. The Committee argued that certain aspects of Mrs Kay's own conduct were culpable or blameworthy and her basic and compensatory awards should be reduced on that account. A Tribunal can reduce the basic award for unfair dismissal to the extent it considers just and equitable to reflect the Claimant's conduct before dismissal (Section 122(2) ERA). Similarly, if the Tribunal considers that the Claimant has caused or contributed to their dismissal to any extent, it can reduce the compensatory award by such proportion as it considers just and equitable to reflect that (Section 123(6) ERA). The Tribunal therefore also had to decide whether to reduce Mrs Kay's compensation on account of her own conduct.

Conclusions on remedy

105. The Tribunal has found that Mrs Kay's service began on 16 July 2019. It ended on 15 May 2023 when she resigned. At that date she had worked for the Association for three full years. Mrs Kay was aged 48 at that date. Her agreed

week's pay was £165. The basic award for unfair dismissal in Mrs Kay's case is calculated as follows: $3 \times 1.5 \times £165 = £742.50$.

106. Mrs Kay found new employment at a higher rate of pay on 18 March 2024. She is not entitled to recover twice for her notice period. Because of the level of her pay, Mrs Kay did not pay income tax or National Insurance contributions and therefore her loss of earnings was also at the rate of £165 a week. The Tribunal therefore calculates her total loss of earnings as £165 per week for the period from 15 June 2023 to 17 March 2024 (39 weeks), totalling £6,435.
107. The Tribunal also considers it just and equitable to award Mrs Kay £350 in compensation for her loss of statutory rights (that is, the fact that she will need to work for a further two years in her new employment before she qualifies for protection from unfair dismissal and a right to a redundancy payment).
108. That makes the total compensatory award £6,785.
109. The Tribunal has considered whether it would be just and equitable to reduce the compensatory award to reflect the chance that Mrs Kay would have resigned even if she had not been constructively dismissed.
110. There was a significant amount of evidence before the Tribunal that Mrs Kay and Miss Ferguson had a very poor relationship. Miss Ferguson was the person with whom Mrs Kay had to have the most dealings in her work but Mrs Kay clearly did not like her and was convinced that Miss Ferguson was conducting a witch hunt against her. From her communications with the Committee whilst she was on sick leave, Mrs Kay showed how let down she felt by the Committee in general but by Miss Ferguson in particular. This was confirmed by the way in which she put her claim to the Tribunal, in that she attributed much of the responsibility for the conduct that led to her resignation to Miss Ferguson. She believed that Miss Ferguson had prevented her being given a Christmas gift by the Committee and implied to NFU staff that she had been acting dishonestly, even though that was not in fact the case.
111. The Tribunal accepts that Mrs Kay loved her job and got on well with the members and most of the Committee. Nevertheless, it considers that, even if the Committee had not committed any of the acts of omissions that breached the relationship of trust and confidence, there was a very significant chance that Mrs Kay would have resigned soon after she did because she would not have wanted to return to work alongside Miss Ferguson after all that had passed between them. The Association's Chairpersons are elected annually but usually serve for two years and so Mrs Kay knew that it was likely she would need to work closely with Miss Ferguson for at least another year. In order to reflect that chance that

Mrs Kay would have resigned even if she had not been constructively dismissed, the Tribunal considers it just and equitable to reduce her compensatory award by 30%, to £4,749.50.

112. The Tribunal has also considered whether it would be just and equitable to reduce the basic and compensatory awards on account of Mrs Kay's conduct. It has decided not to do so. Whilst Mrs Kay could have co-operated more in assisting the Committee with accounting details, it would be unfair to view her failure to do so as culpable or blameworthy in all the circumstances. She was on sick leave due to work-related stress, she had provided the Committee with the relevant details in the past and she understandably felt angry that she was being asked for details that she considered the Committee should have made sure it had before now.

113. In summary, therefore, the Tribunal awards Mrs Kay £5,492 in compensation for unfair dismissal.

Employment Judge Cox
Date: 18 April 2024

Reserved Judgment and Reasons sent
to the parties on:

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For the Tribunal