



EMPLOYMENT TRIBUNALS

Claimant: Ms H Raval

Respondent: Ms D Royal t/a Happy Days Nursery

Heard at: Watford

On: 10, 11, 12 and 13 October 2022

Before: Employment Judge Bartlett

Appearances

For the Claimant: Mr Rhys Johns

For the Respondent: Mr Alex Francis

RESERVED JUDGEMENT

1. The claimant's claim to have suffered an unlawful deduction from wages is dismissed by consent.
2. The claimant's claim for failure to provide full and accurate written particulars of employment pursuant to s1 of the Employment Rights Act 1996 and s38 of the Employment Act 2002 is dismissed.
3. The claimant's claim for constructive dismissal fails.
4. The claimant's claim for wrongful dismissal fails.
5. The respondent's counterclaims for breach of contract are dismissed in their entirety.

REASONS

The Hearing of 10, 11, 12 and 13 October 2022

6. This case was listed for a four day full merits and remedy hearing commencing on 10 October 2022 and finishing on 13 October 2022. No CMRs or preliminary hearings had taken place. I did not have the tribunal's

paper file available to me as this had been misplaced and could not be found during the course of the hearing or afterwards.

7. At the start of the hearing both parties expressed their views that 4 days was insufficient time to deal with the case. They considered that almost all the four days would be taken up by witness evidence. The respondent's contractual counterclaim requires a careful and forensic analysis of a large amount of documentation. In light of the complexities of the issues, the large bundle and the lengthy time needed to hear from the witnesses, both representatives considered that the most efficient use of time would be to use the four days for witness evidence, representatives to make written submissions and judgement to be reserved. There was a discussion about how to proceed at the start of the hearing and at several points during the course of the four days.
8. The following was agreed by all parties:
 - a. the four days would be largely taken by witness evidence;
 - b. the representatives would send written submissions directly to the Watford Employment Tribunal and Judge Bartlett by 9 AM on 24 October 2022. The representatives did not wish to exchange submissions between themselves before submitting them to the Employment Tribunal; and
 - c. judgement would be reserved.
9. In the claimant's witness statement she had mentioned that she had not been permitted an interpreter at the interview with Mr Helsby and that this had had a negative effect on her. There was therefore some discussion as to whether or not the claimant required an interpreter to fully participate in these proceedings. Mr Johns assured me that the claimant did not. I stated very clearly that if an interpreter was required then we could and would obtain one. At no point during the hearing was it raised with me that the claimant had any difficulties participating in or following the hearing and neither did I observe any difficulties.

Witnesses

10. The claimant provided witness statements for six witnesses.
11. Mr Francis made an application for Ms Rifat Sultana and Ms Rajeshwari Patel to be excluded as witnesses on the basis that calling them was contrary to the overriding objective: these witnesses had left the respondent's employment many years before the events in question and their witness statements contained a large amount of highly prejudicial evidence against the respondent that was not relevant to the claim. I asked Mr Johns to identify, by reference to the list of issues, to which issues the witness evidence was relevant. He asserted that it went to the credibility of the respondent. I made my views known that it appeared that these witnesses were not providing evidence about the issues in this claim and it was hard to discern the relevance of their evidence. I refused Mr Francis's

application as I did not consider that it was in the interests of the overriding objective to prevent the claimant from calling witnesses that she wished to.

12. In the event Mr Johns did not call Ms Rifat Sultana and Ms Rajeshwari Patel as witnesses and the witnesses the Tribunal heard from are as follows:
 - a. Mrs H Raval, the claimant;
 - b. Mrs Kinjal Vyas, the claimant's sister;
 - c. Ms Paras Pisavadia;
 - d. Mrs Bhakti Shah, the claimant's daughter;
 - e. Mrs Arti Ved;
 - f. Mr Helsby; and
 - g. Ms Royal
13. At one point in the hearing, when the claimant was giving evidence, Mr Johns stated that his instructing solicitor had said that Ms Royal was acting in a distracting manner at the back of the court room. At one point when Ms Royal was giving her evidence she complained that parties at the back of the court room (and I assume she meant the claimant and her daughter) were looking daggers at her and distracting her. I reminded both parties that everybody was required to act in a respectful manner towards each other. They were at the tribunal because they disagreed and they could not expect to agree with evidence they heard but they were still required to act in a respectful manner. I had been observing the people in my tribunal room and, though there were some displays of emotion, I did not consider that anybody acted inappropriately.

Documents

14. At the start of the third day of the hearing Mr Francis sought to add several pages to the bundle. These were documents relating to DBS checks of the respondent's employees and a DBS check relating to the claimant's sister. Mr Johns had no objection to these documents being added to the bundle therefore they were admitted as evidence by consent.

The issues

15. Prior to the hearing the parties had agreed a list of issues which is contained in the bundle and which I have set out below. Mr Johns and Mr Francis confirmed that this list was agreed between the parties. I stated that some of the language used in it was emotive and I would not, for example, be making findings that a party had blackmailed another or similar. Mr Francis raised a concern about this and stated that the language had been taken directly from the claimant's claim form. I recognise this but I stated that I would make findings on the facts but I would not be making findings about whether something was blackmail etc, that is beyond my jurisdiction.
16. At the start of the hearing Mr Johns confirmed that the claimant's claim for unlawful deduction from wages was not pursued and it is dismissed by consent.

Wrongful/ constructive unfair dismissal

Liability

1. Did the Respondent:
 - a. Threaten or blackmail the Claimant on 3 June 2020 by telling her that she wanted £200,000 for the sale of the nursery and that if the Claimant did not pay this amount she would “go to jail and never get a job again”? [PoC §12]
 - b. Threaten or blackmail the Claimant on 3 June 2020 by telling her that if the Claimant did not purchase the nursery for £300,000 then disciplinary proceedings would be initiated against her? [PoC §12]
 - c. Send an email to the Claimant on 10 June 2020 threatening her with suspension and instructing her not to attend the nursery when it reopened on 15 June 2020? [PoC §13]
 - d. Conduct an investigation, through Mr Paul Helsby, that was a sham and was heavily biased against the Claimant, and which failed to follow a “credible, objective, fair and through investigatory process”? [POC §19 and 29(d)].
 - e. Inform Ms Chandni Butani about the investigation into the Claimant’s conduct before informing the Claimant? [POC §16]
 - f. Suspend the Claimant without good reason? [POC §29(c)]
 - g. Accuse the Claimant of fraud and taking funds from the Respondent without adequate evidence of/enquiries into the same? [POC §18, 29(g) and 29(o)].
 - h. Invite the Claimant to attend a disciplinary hearing on less than 2 working days’ notice? [POC §18]
 - i. Raise allegations in a letter dated 6 July 2020 which had not been properly investigated? [POC §20]
 - j. Intimidate/ bully Ms Butani, a potential witness in relation to the investigation, so that she would not give evidence in support of the Claimant? [POC §22]
 - k. Follow a disciplinary process that was biased/unfair by appointing herself as chair of the Claimant’s disciplinary hearing? [POC §23]
 - l. Fail to provide the Claimant with clear reasons as to why she was being subjected to disciplinary action? [POC 29(n)]
 - m. On 13 July 2020, refuse the Claimant’s request for an extension of 14 days to allow her to prepare for her disciplinary hearing? [POC §25]
2. Did any such conduct collectively amount to a repudiatory breach of the Claimant’s contract of employment, specifically a breach of the implied term of mutual trust and confidence?

3. Further/ in the alternative by appointing herself as chair of the disciplinary hearing, did the Respondent demonstrate an intention that she would not be bound by the Claimant's employment contract in the future? (I.e. was the Respondent in anticipatory breach of the implied term of mutual trust and confidence?)
4. If the Respondent was in repudiatory breach of contract, did the Claimant resign on 13 July 2020 in response to such breach (such that she was constructively dismissed) or did she resign for some other reason?
5. If the Claimant was constructively dismissed, was her dismissal fair or unfair (s.98(4) ERA 1996); in particular:
 - a. What was the reason for her dismissal? The Respondent relies on the potentially fair reason of misconduct.
 - b. Did the Respondent act reasonably or unreasonably in treating this as a sufficient reason to dismiss the Claimant?

Remedy

6. If the Claimant was constructively dismissed what damages are payable?
7. If the Claimant was unfairly dismissed:
 - a. What basic award is payable?
 - b. What compensatory award is just and equitable in all of the circumstances (including the Claimant's duty to mitigate)?
 - c. Should the basic or compensatory award be reduced on the grounds that the Claimant's actions caused or contributed to their dismissal and, if so, what reduction is appropriate?
 - d. Should the compensatory awarded be reduced under the principle in *Polkey v AE Dayton Services Ltd* [1987] ICR 142 and, if so, what reduction is appropriate?
 - e. Should there be any uplift or reduction to the compensatory award for a party's failure to comply with the ACAS Code?

Failure to provide written particulars of employment

8. If the Claimant succeeds in her breach of contract and/or unfair dismissal claims, is she entitled to award under s.38 EA 2002? In particular:
 - a. Did the Respondent fail to provide full and accurate written particulars of employment under section 1 ERA 1996?

- b. If so, what award is payable under s.38 EA 2002 (up to a maximum of 4 weeks' pay)?

Respondent's counterclaim (breach of contract)

9. Was the Claimant under an express or implied contractual duty to account to the Respondent for fees and other payments received by the Claimant in the course of her employment?
10. If so, was the Claimant in breach of such term by retaining any amount paid in respect of nursery attendance fees, lunch fees or registration fees? The Respondent relies on the particulars of breach set out in the schedule of discrepancies at B1043 (provided to the Claimant on 3 June 2020 and to her solicitors on 2 November 2021), further particularised in the Exhibit to her first witness statement.
11. If so, what damages are payable? The Respondent relies on the particulars of loss set out in the schedule of discrepancies at B1043 (provided to the Claimant on 3 June 2020 and to her solicitors on 2 November 2021), further particularised in the Exhibit to her first witness statement.

Background

17. The claimant and the respondent have a long history. The claimant was most recently employed by the respondent as manager of Happy Days Nursery from 2007 until her resignation in July 2020. Their relationship predates this period as from 1998 the claimant also worked for the respondent at one of her nurseries until she left to work elsewhere for some years.
18. This appeal arises from circumstances relating to an investigation carried out by the respondent around May 2020 in relation to the claimant's conduct. The claimant was invited to a disciplinary meeting to take place in July 2020 but prior to that the claimant resigned claiming constructive dismissal on 13 July 2020. The claimant alleges that numerous events preceding that date were a breach of the duty of trust and confidence.
19. The respondent disputes all of the claimant's claims and made a contractual counterclaim in the amount of £25,000 for payments she says should have been paid to the respondent as they were sums due to the nursery but which the claimant did not pass on to her and the claimant used as her own personal funds.

The Law and the Burden of proof

20. Both parties referred me to the court of appeal decision in Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978 which sets out the five questions a tribunal should ask to determine whether an employee was constructively dismissed. These are:

- a. What was the most recent act or omission on the part of the employer which the employee says caused, or triggered, their resignation?
 - b. Has the employee affirmed the contract since that act?
 - c. If not, was that act or omission by itself a repudiatory breach of contract?
 - d. If not, was it part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence (applying the approach explained in Waltham Forest v Omilaju [2004] EWCA Civ 1493)?
 - e. Did the employee resign in response or partly in response to that breach?
21. In relation to reductions of the basic and compensatory award for unfair dismissal Langstaff P in Steen v ASP Packaging Ltd [2014] ICR 56, EAT advised tribunals (in relation to reductions of both basic and compensatory awards) reminded tribunals to address four questions:
- a. what was the conduct in question?
 - b. was it blameworthy?
 - c. (in relation to the compensatory award) did it cause or contribute to the dismissal?
 - d. what extent should the award be reduced?
22. I must consider whether the claimant's actions caused or contributed to the dismissal itself not to the unfairness of that dismissal British Gas Trading Ltd v Price UKEAT/0326/15 (22 March 2016, unreported).
23. In relation to the respondent's counterclaim, this is a breach of contract claim and the burden of proof is a normal civil standard which is the balance of probabilities.

Decision

The witnesses

24. I did not find the respondent or the claimant reliable witnesses in considerable parts of their evidence. This is a case where both parties accuse the other of out and out lying and fraudulent behaviour. This is not a case where I or any other third party will be able to identify the truth about what happened. For reasons set out in this judgement, I find that neither party has been entirely truthful and that the truth lies somewhere other than what was presented at the hearing. I do not consider this is the case where I am able to determine the truth but neither is that my role: I must make my decision according to the burden of proof and the relevant law.

25. This is a case where the parties were friendly for many years before the case. Their relationship has now completely broken down and there is considerable ill feeling on either side. I consider that this relationship breakdown and the bitterness that this has created in both parties has contributed to the way that they have assessed the evidence and recalled events. Instead, and unfortunately, I consider that both parties and, in particular the respondent, have assessed past events through a prism of their emotions.
26. The claimant's evidence was that the respondent took up a considerable part of her working day by engaging in lengthy telephone calls with her. These calls covered all sorts of matters not related to the nursery but they were also the means by which information about the nursery was exchanged. Ms Royal was concerned about some aspects of the running of the nursery but in other respects she took a hands-off approach. For example, Ms Royal would only go to the nursery when she wanted to collect money but there was not a fixed or regular date or time when she did that and it varied considerably.
27. At the hearing the respondent demonstrated a very thorough knowledge of the documents in the bundle. In my experience, it is rare to come across a witness with such a firm grasp of documents in the bundle. The respondent had clearly prepared very thoroughly for the case, I commend her for that. However, excellent preparation is not the same as being truthful.
28. I found parts of the respondent's evidence inconsistent and lacking in credibility. For example, she said she was expecting an OFSTED inspection from January 2020 because of the time elapsed from when the nursery was classified as a new registration because of moving premises. I asked Ms Royal if the expectation of this OFSTED inspection changed her behaviour in relation to checking documents and the processes that the nursery followed. She confirmed that it did and that she went to the nursery more often, spoke to the claimant more often and wanted to check everything was in order. However, she stated that it was only around the end of March 2020 that she sought to check the nursery registers. She could not find them in respect of January onwards but eventually found them tucked in a folder of the claimant's inside a magazine with some pages missing. After giving some evidence about registers she then stated that OFSTED were not terribly interested in registers and I find that she was backpedalling from her previous evidence. The respondent's case is that around this time children were attending for sessions she did not know about or was not given money for. I find this incredible: if the respondent was on top of everything about the nursery due to the imminence of an OFSTED inspection I do not consider that she would be so unaware about who was attending the nursery.
29. I also asked the respondent about the claimant's claim that sometimes children were given free sessions in the form of paying for two days or sessions and getting one free and being allowed to attend the nursery without paying for example the term before their government funding started. In evidence, Ms Royal said that in 2015/2016 it was at the claimant's discretion to allow children to start without a deposit but it stopped after that.

30. Ms Arti Ved appeared as a witness for the respondent. She is now nursery manager for the respondent. I found Ms Ved to be a credible witness, she was clear about what she could give evidence about and what she could not. She gave clear and coherent evidence about matters within her knowledge. The only relevant aspect of her evidence was in relation to pupil one and the respondent's alleged lack of knowledge about this child attending the nursery. Ms Ved gave an account of telephone conversations with Pupil 1's mother which corresponded with that given by Ms Royal. She also gave evidence about Ms Royal visibly being in shock after the conversations.
31. Mr Helsby appeared as a witness. He is an independent HR professional. I found him to be a credible witness. There is no claim that he had any association with Ms Royal other than instructions for the events relating to this case. The claimant's case is that his actions did not meet an objective standard.
32. The representatives of both parties recognised that this is a case where the respondent and the claimant dispute the facts. Mr Francis submitted that I should rely heavily on the documents. However, whilst this is appropriate in some cases, I found the documents of limited assistance in this case. This is because, according to both parties, some or all of the documents were unreliable in that they did not reflect what happened. For example, the respondent and the claimant accepted that the registers in the bundle were not an accurate reflection of the children attending the nursery. The claimant alleged they were forged and the respondent alleged that they were not accurate due to failures or deception partly on the claimant's side. Further, the claimant disputed that the cash collected envelopes or slips were an accurate record of the cash handed to the respondent or received by the nursery. Added to this is the background that both parties and particularly the claimant stated that their working relationship was informal and that in some respects the nursery did not adhere to formal procedures or full and complete record-keeping. In light of this background, I have placed limited weight on the documents as I will set out below.
33. One document that I did find persuasive was the nappy change record as it was written in many different hands and persisted over a period of time.
34. The claimant's evidence included substantial background allegations that the respondent falsified documents for OFSTED inspections, did not carry out DBS checks on staff, the registers provided in the bundle were falsified documents, etc These are background allegations and therefore I will not make findings of fact about them. However, on the claimant's own case she was aware that the respondent did not put children on the register when she should have done and that this was a breach of regulations, she was aware that staff without DBS checks were permitted to work at the nursery which is a breach of her safeguarding obligations and the claimant, at least tacitly, went along with all of these unscrupulous actions of the respondent.
35. The claimant also stated that in relation to one child she gave the parents a receipt which showed that the child attended more sessions than they actually did so that the parents could claim extra state funds to which they were not entitled. As a result of these claims in the claimant's own evidence,

I have approached the claimant's evidence with some caution. If she is somebody that went along with or carried out these actions, which are in clear breach of safeguarding regulations and could have placed very young children in danger, simply because she told the respondent and the respondent did not do anything to address the issues raised this gives me some concerns. However, I also note that human beings are complicated and the fact that somebody is careless about some matters does not necessarily mean that they are untruthful about everything. The claimant did not have to provide this explanation, it reflected badly on her and I consider that if she was making it up she would have thought of a better explanation that did not implicate her in such a scheme.

36. The claimant's claim was that record-keeping and procedures at the respondent were lax, the failures came directly from the respondent and there was little the claimant could do about this. The respondent disputed that procedures were as lax as the claimant claimed they were. There was a substantial dispute between the parties about how formal communication was between the parties and the formality of arrangements generally. I did not find the respondent's disagreements with the claimant credible on this matter. The respondent alleged that she had a firm grasp of everything that was happening at the nursery in terms of which children were attending when, what fees she expected and all documentation such as registers were compiled to the best of her knowledge and she did not acquiesce in any staff failing to complete the documentation correctly. I did not find this evidence from the respondent credible. It was largely not supported by the documentation. I have been provided with a reasonable amount of documentation but it does not establish that there were robust processes in relation to core aspects of the running of the nursery. In addition, in oral evidence the respondent stated that she would be unable to identify children by sight. I accept this but it does point to a hands off approach. A theme running through the claimant's witness evidence was the lax processes at the nursery. I recognise that this was disputed by the respondent and the claimant's witnesses who supported her evidence were family members however, overall I have preferred the claimant's evidence in this regard as it is supported by the written evidence and in some cases lack of it.
37. In respect of the cash receipts, I was not satisfied that the cash receipts were an accurate representation of the money that was either received from parents or passed to the respondent. The cash receipts themselves are extremely brief. They do not identify when money was received and the date written on them is when it was collected and is written by the respondent. I am not satisfied in all cases that that reflects the date that it was collected rather than the date put on by the respondent when she, for example, dealt with the cash. I am also not satisfied that the cash receipts represent a totality of the cash handed over to the respondent. In her evidence the respondent tried to push back and assert that the collection of cash was a formal process. However, this is undermined by the poor record-keeping relating to receipts from parents of cash, expected attendance of the children and that the cash collected receipts are presented as the only evidence of cash passed to the respondent. In addition, there was no fixed or regular date when the respondent expected to collect monies. There was no deadline for the claimant to carry out cash related activities or reconciliations. This situation persisted throughout the claimant's

employment with the respondent. The respondent cannot argue that there were robust procedures relating to receipts to parents or communications about children's attendance when she was aware that procedures were either not in place or had not been followed for years. As I have set out elsewhere the claimant was the nursery manager and the respondent was the owner. The other employees were on the nursery floor or the chef. They were not managerial and there was nobody else but the respondent and the claimant who would have had any real involvement in these procedures.

38. Both parties agree that the registers provided are not accurate. The claimant goes further and asserts that they are fraudulent. Below I have set out some comments on the registers but in summary I do not find them reliable in terms of either when children attended the nursery or when the respondent expected them to attend nursery.
39. I find that procedures concerning the running of the nursery including records of attendance and fees and money were relaxed and informal. I have not been provided with more than partial written records about communications between the claimant and the respondent about children starting or changing their hours at the nursery. I find that communications between the claimant and the respondent about matters pertaining to the nursery were oral with limited written records, receipts were not issued as a matter of course to parents for payments, there is limited written records of the communication between the parties about children's attendance. Further, the claimant's evidence which I accepted is that she repeatedly told the respondent when the written records were wrong but the respondent said things along the lines that she knew what she was doing and did not make the changes. This was consistent with the claimant's explanations about their relationship over many years and I consider that it had the ring of truth about it. I also found the respondent's evidence, that she was making sure everything was in order for a number of months in 2020 because of an expected OFSTED inspection but she had made no attempt to even check where the registers were the period from January 2020 until late March 2020 when the country was entering a lockdown, unconvincing. I found the respondent's answer that OFSTED were not really interested in looking at registers as the reason for her disinterest unconvincing because even if OFSTED were not looking at the actual registers, if one is sorting out one's procedures to be as good as they can be in the expectation of an inspection one tries to ensure that all of one's procedures including very basic ones like registers are in good order.
40. I find that this informal working environment and the lack of clear processes, which are there to protect all parties involved in the nursery's activities, created an environment in which the claimant had a sphere of operation. I do not accept, and it was not really claimed, that the respondent was hands-on in respect of the nursery and I find that at various times she was not aware of or taking notice of what was going on at the nursery and decisions were left to the claimant. As a result of later events, the respondent has since taken a much greater interest in the operation of the nursery and has interpreted these events through her changed and negative view of the claimant.

41. The claimant submitted that the respondent created the allegations against her after she would not pay the price requested by the respondent but just the nursery. The respondent has provided evidence that she was investigating the situation before the events relating to the purchase of the nursery. I accept that there is evidence that the respondent started some investigation before the end of negotiations about the purchase of the nursery. The bundle also contains considerable documentation between the respondent and the council (largely in 2019) in respect of the six-figure grant she received and the council seeking records about the number of fully funded places that were linked to this funding. The respondent seemed particularly upset that the council had disclosed the actual amount of the grant to the claimant.
42. Taking all of the findings that are set out in this judgement together, I have generally but not in all matters, preferred the claimant's evidence to that of the respondent. I have identified why I have given little weight to the documentary evidence. Fundamentally this case comes down to whether I prefer the claimant or the respondent's evidence. I recognise that the claimant had little or no documentary evidence to support her position. I do not find this particularly damages her case because she is an employee who was suspended and would not have had access to the documentary evidence which was in the respondent's control. I found that the claimant was open about her failings and she maintained her position which was that the respondent was aware about everything and had received all monies due. I found that the respondent's evidence was at times internally inconsistent about how concerned she was with matters relating to the nursery and the children and procedural matters at the nursery. I considered that these areas were material to the claims.
43. As a general finding I do not find that the claimant has been taking money and not accounting for it to the respondent. I have set out much more detailed reasoning below, however, I record here that the respondent relies heavily on the transcript of the interview between the claimant and Mr Helsby. I have reviewed the transcript and I have carefully considered the comments that Mr Helsby and the respondent rely on as the claimant admitting that she had been taking monies for her own use. I do not accept that this is what the claimant said. I interpret the claimant's comments as she was using them for nursery purposes. I note that the claimant says "yeah" at the start of many answers but I consider that this is a manner of speaking not a substantive agreement. Further, she was agreeable in her speech to issues that were put to her but I do not consider that this is substantive agreement rather than a manner of speaking. I observed the claimant giving evidence over a period of time and on a range of matters and she evidenced a similar manner of a times agreeing to things that later in her answer or answers she was clear that she did not agree with in substance. In addition, there was no system of receipts being issued to parents after payment, the cash collected receipts have limited evidential weight for reasons I have identified elsewhere, there is a lack of other evidence such as accounts or spreadsheets about monies received and expected to support the assertions, the cash collected receipts do not show in most years that much money was retained for petty cash or nursery expenses and despite the respondent's claims I consider that the amounts retained for petty cash for most years could have been too small to meet

the needs of the nursery i.e. they are consistent with the claimant's position. Further, I am not satisfied that the respondent was accurately recording the information given to her by the claimant. Finally, I do not give the evidence from the parents more than little weight for the reasons set out elsewhere and I have preferred the claimant's evidence to that of the respondent.

Findings of fact

44. Most of the factual circumstances in this claim are highly contested however I consider that there was no real dispute about the following:
- a. On 26 June 2020 the claimant was sent a letter inviting her to an investigation meeting;
 - b. on 30 June 2020 the claimant attended a face-to-face meeting with Mr Helsby. This was an investigation meeting. Both parties agreed to record the meeting and the transcript was in the bundle;
 - c. an invitation to a disciplinary meeting dated 6 July 2020 was received by the claimant on 8 July 2020. It invited her to a disciplinary meeting on 13 July 2020 and the claimant requested a 14 day extension;
 - d. the respondent granted a seven-day extension and said that if there were special circumstances you would consider a further extension;
 - e. on 13 July 2020 the claimant resigned via a letter on her solicitors headed paper.

The respondent's breach of contract counterclaim

45. I will take the respondent's counterclaim first. It was agreed at the start of the hearing that a sample of 12 children would be taken in this case and that the respondent reserved its position in relation to the other children. Therefore, I shall only make findings in respect of the sample of 12 children.
46. I have not identified the names of the children attending nursery in this Judgement. This was suggested by Mr Francis and Mr Johns was in agreement. I carefully considered Article 10 ECHR and the extremely strong public interest in the open administration of justice which has been repeatedly noted by appellant courts including the EAT recently in Mr R Frewer v Google UK Limited and Others [2022] EAT 34. I have also considered article 8 ECHR and that the individuals I am requested not to identify are very young children who have no interest in these proceedings and whose identity is wholly incidental to the claims. I concluded that the article 8 ECHR right to a private life of the very young children outweighed the article 10 ECHR right in the circumstances of the case.

General findings about the breach of contract counterclaim

47. The claimant's position in relation to the counterclaims relating to all the pupils is that all monies were paid over to Ms Royal except some extras

such as the lunch money which were retained in petty cash for the nursery's expenses.

48. The respondent's position is that the only cash she received is that evidenced on the cash collected slips or envelopes and the claimant received other monies from parents which she did not give to the respondent.
49. The respondent confirmed that she was the bookkeeper for the nursery but that she had an accountant who prepared the tax return. In evidence she stated that she had spreadsheets which set out the fees that she expected to receive from each child on a monthly basis and also because of her accounts she would have had records which included a monthly spreadsheet setting out what she did in fact received in respect of each child. Ms Royal stated that she did not disclose these because the bundle was large already and as it was argued that she had falsified other documents in the bundle such accusation could also be made that she had just made up these spreadsheets.
50. Mr Johns argues that the respondent has simply failed to discharge the burden of proof on her. She failed to disclose the documents I have identified above and therefore she has provided only partial disclosure which is insufficient to establish her case given the dispute between what the claimant and the respondent say each party did or said.
51. As a general finding in relation to the counter claim, I find that the respondent has some difficulties in discharging the burden of proof. The respondent claims that to some extent it is her word against the claimant's and she has provided all the documentary evidence she can. I do not accept this and would expect her to disclose her records of what monies were received in respect of each child and what she expected to receive. I recognise that the respondent says she has disclosed some records of expected attendance but I consider these are partial and it is unclear on what basis these expectations have been informed i.e. what the claimant communicated to the respondent. Further, accounts documentation would at the very least have made her calculations clear but it would also offer a complete record along with her accounts of what actually was received. When it is obvious that there is a dispute between what one party and another says happened, the documentary evidence can be more important. I recognise what the respondent said about allegations of forgery being made against any documents. The result of the nondisclosure is that I only have a partial amount of evidence about the factual situation.
52. The claimant also argues that the respondent has failed to discharge the burden of proof because in some cases she relies on discussions that were had with the children's parents, there are no witness statements from those parents and they were not proffered as witnesses. I agree with the claimant that the weight I can give to the evidence of the parents is substantially weaker than I would give if they were proffered as witnesses. In an unfair dismissal claim it would not be expected that such individuals would be witnesses however the respondent has brought a contractual counterclaim. She is required to establish on the balance of

probabilities that monies were owed to her which she did not receive. As the parents have not been called as witnesses their evidence cannot be tested.

Cash collected

53. Part of the claimant's defence is that some of the cash she received was used for petty cash and deducted before the cash was collected by the respondent. The respondent's position is that all petty cash was accounted for on the cash collected receipts.
54. I have reviewed the cash collected receipts and make the following findings:
 - a. in 2015 the only record of a deduction for petty cash is on the slip representing cash collected on 16 February 2015 and what is undated but appears to be July 2015 in the amount of £86;
 - b. there are some deductions for what is called a chef's float in the amount of £50 in what appears to be July, June March, February and January 2015;
 - c. in 2016 there are more frequent references to deductions for a chef's float. These are on almost every cash collected receipt but there is only one entry for petty cash in the amount of £100 in June 2016. I recognise that it could be said that no more petty cash was required however in later years there were more substantial deductions for petty cash;
 - d. for example in 2018 there were petty cash deductions in the amount of £1400 and in 2019 it was £400.
55. This is a very significant difference between the years in cash being recorded on the cash collected receipts as being used for petty cash from around £100 to £1400. No real explanation has been proffered for this vast difference and I conclude that the difference lends support to the claimant's explanation that some cash collected by the claimant was diverted directly to petty cash or nursery expenses without being recorded on the cash collected receipts. Therefore, I reject the respondent's position and prefer the claimant's on this matter.

The Registers

56. The claimant's position is that she did not believe that the registers were not forgeries. She believed that they were manufactured by the respondent to support her claim. For example, in respect of pupil three he has an entry with no marks on the register from 9 September 2019 until 21 October 2019 when his entry on the register says in red three days random. At first sight this appears to support the respondent's claim that this is the arrangement she thought persisted at that time. However, he is the only name on the register that has a typed record of the days he was to attend. Registers for other children such as during morning sessions and afternoon sessions make no reference to the days

they were supposed to attend. I recognise that it was said that there was shading to mark the days when children were not expected but there are other children such as Z Mohammed which has no shading or typed record about his attendance but from 30 September to December 2019 he never attended five days a week. Another example is the register for the week commencing 28 March 2016 on the column for the Monday it has written bank holiday but under that writing at least six children have attendance times recorded. The register is not completed at all on the Wednesday morning sessions are not completed for almost all children for the rest of the week, the afternoon sessions are not completed at all. The week commencing for April 2016 has hardly been completed in respect of any child. Again the week commencing 31 May 2016 the register has finally been completed for most of the children. The week commencing 13 June 2016 there were no departure times for around of the children on Thursdays and Fridays

57. Another page (page 229) sets out that the Monday which was 26 August 2019 was a bank holiday and this is written on the days all year section. However, underneath the bank holiday all children have a start time written which has since been crossed out. These are just some examples about the registers, I have identified others below. Overall, I give them little weight as I do not consider they are reliable or an accurate reflection of what occurred.

Pupil one

58. In summary the respondent's claim is that she had no idea that this child was attending the nursery and she received no fees that should have been paid in respect of this child. Her evidence was that she first became aware of this child when she received a phone call from the child's mother in late March 2020. Ms Ved was present at the time and took the call and interpreted for the respondent because the mother did not speak English.
59. As a result of Ms Ved's collaborative evidence, I find that the respondent was shocked to receive the phone call from pupil one's mother. I am prepared to accept that she could not recall that this child attended the nursery. I accept that the child attended the nursery from July 2019 to March 2020 because this is established by the nappy changing register.
60. The claimant's position is that all monies were paid over to Ms Royal or some extras such as the lunches were retained in petty cash for the nursery expenses.
61. In the bundle there is a statement which Ms Ved says she wrote after speaking to pupil one's mother on the telephone. This sets out that she paid the claimant £60 per week from 7 September onwards for three mornings a week and from November onwards she paid the claimant £100 per week for five mornings a week. A typed note of conversations between the pupil's mother and the respondent in July 2021 sets out that the claimant had called her to ask her to tell her to say that pupil one attended the nursery for free and that she had not been charged. I recognise that this document is signed by the child's mother however

the evidence from all parties was that she did not have even a basic grasp of spoken English never mind written English. Even though it says it was translated by one of the respondent's staff I have decided it is appropriate to give it limited weight particularly as the witness was not available for the hearing.

62. I give little weight to the evidence from pupil one's mother. Her evidence suffers from the general weaknesses identified above and that she was not called as a witness in these proceedings. In addition, there are several other reasons why I have given her evidence little weight. One is that on both parties' accounts, the mother had some issue with her status which I take to mean she may not have been in the country lawfully or she was not permitted to work in the country or obtain public funds such as for nursery because of her immigration status. This circumstance places her at much higher risk of manipulation by another for their own purposes whether it is manipulation by the claimant or manipulation by the respondent. It also means that she may say whatever she thought she should say rather than the truth in the aim of protecting herself. Both parties had an obvious interest in obtaining evidence from her that supported their cases.
63. The claimant's account in the interview with Mr Helsby was at best confused. She denied that they paid cash of £60 a week but said that the mum told staff that she owed £60 the week preceding the start of lockdown, stated that the pupil was not on the register because the mum came in with him and that the respondent was aware of all of this. In oral evidence she stated that the mum came for two months and after that she kept telling the respondent to put his name on the register and she said to put it on there when he was 3. In both the interview and her oral evidence, she stated that the child's mother commenced work in March 2020 and this is when she started paying. Two payments were made and they were all passed to respondent.
64. Ms Ved's oral evidence was that she had not seen the child's mother but that she had the summer off. I find that Ms Ved's evidence does not conflict with that of the claimant because July and August would have been the summer and therefore she would not have seen the child's mother at the nursery during the 2 months when the claimant said she attended.
65. I have set out that I attach little weight to pupil one's mother's evidence and therefore this is an allegation where there is a disagreement between the respondent and the claimant. I repeat my findings above in relation to the lack of documentation from the respondent. I am prepared to accept that the respondent had a telephone conversation with pupil one's mother at the end of March 2020 and was shocked to find that the pupil had been attending more regularly than she had thought. I preferred the claimant's evidence which is that she was providing free sessions for this child which the respondent was not informed about until around about March 2020 when the mother was able to pay. Therefore I find that the respondent cannot establish on the balance of probabilities, that there were monies paid to the claimant in respect of pupil one that were not passed over to the respondent.

Pupil two

66. The respondent's claim is that pupil two attended the nursery full-time from 31 July 2018 to 28 September 2018. An email purportedly from the child's father sets this out and that they had paid £360 deposit, £780 for the first month and £420 for the second month. The email is clear that they paid cash but asked for the bank details to pay by bank transfer but the nursery manager made an excuse about it. He went on to state that two other nurseries were much more professional with proper invoicing and bank payment systems.
67. The claimant's witness statement says that she cannot recall this child. I find this to be reasonably credible because the attendance was for only two months over four years ago. In oral evidence she stated that she could not remember, the registers might be a forgery and if the child's name was not on the register that is because the respondent did not want it on there and because the child was only there temporarily the respondent did not want his name on the register. She disputed that she had ever said only cash payments were accepted. She stated that if cash was paid she would have handed it over to the respondent.
68. There are no cash collected receipts for the month of July and August 2018. The cash collected receipts for September 2018 makes no reference to pupil two.
69. I am not satisfied that the respondent has discharged the burden of proof on her to establish that the claimant received monies from the parents and she did not pass these monies onto the respondent. The pupil's parents did not attend the hearing to give evidence about the payments that they made, which is particularly relevant, in light of the lack of credibility of both the claimant and the respondent in this case which I have identified above. Further, I have set out that I am not satisfied that the registers or the cash collected receipts are good evidence of what happened to monies.

Pupil three

70. The respondent's position is that the child attended five days week but that only three days a week of cash was handed over to the respondent. The child attended from 4 September 2019 until lockdown in March 2020 with the last payment being made on 6 March 2020. They paid a monthly payment of £423.
71. There is an email purportedly from the child's parents setting out that they made a monthly payment of £423. The difficulty with the email from the claimant's parents is that their claim to have paid £423 every month is not supported by the other documentation. For example, the cash collected receipt from 11 October 2019 states that they paid a deposit for five days but that the child would do three days that month. This does not correspond with what the parents said. I recognise that the respondent's position is that she relied on what the claimant told and wrote that on the cash collected receipt.

72. There are two cash collected receipts which state that cash was collected on 11 October 2019. The first one states that £513 was paid as a deposit for five days but that the child will do three days for this month. The second states that a payment of £254 which was £19 short was paid for the fees for 6 October 2019. Another cash collected receipt dated 16 November 2019 records that £254 was paid in respect of this child for 5 November and the same for 5 December 2019, the same for 5 January 2020, the same for 5 February 2020 and £338 for four days in respect of this child in respect of 6 March 2020. The 5 February 2020 cash collected receipts sets out that there had been an underpayment of £78 for this child.
73. The claimant's evidence was that the child mainly did three afternoons a week but sometimes he did more. She considered that the registers showing him regularly attending five days week in November 2019 could have been fraudulent. What the parent said did not make any sense and she thought that parents feel under pressure when they are asked questions and are concerned that they may have to pay extra money and so agree to what is said to them. She said that the respondent was very pushy to make people agree with her, that is why the claimant followed her instructions.
74. The claimant stated that if the registers did record that the child attended five afternoons per week regularly over a period of 5 to 6 months, how could the claimant possibly expect to hide this from the respondent. It is worth noting that the registers were not completed by the claimant and I find that the claimant would have no expectation that the child's attendance was not accurately recorded by other staff members completing the registers and therefore it was likely that his attendance of five days a week would be recorded and that this information would be available to the respondent whenever she chose to look at it. I recognise that the respondent said that when she looked for the registers for January and February 2020 in March 2020 she could not find them. However, I find that as all staff would have known when the child attended and his attendance was recorded in the registers the argument that the claimant was somehow disguising his attendance and retaining the difference in monies between three days a week and five days a week is not credible. This is particularly because of the overt nature of his attendance that was visible to all staff and the respondent, if she chose to look at it. I find that this also supports the claimant's claim that the respondent had been informed about this pupil's attendance accurately.
75. The cash collected receipts were not a contemporaneous record or full accounts. They are not contemporaneous because the respondent wrote on them after she had collected the cash. I do not accept that they are complete records because, as I have referred above, there were other records that have not been provided.
76. I recognise that there is the email from the parents but again I give this evidence little weight because they have not attended as witnesses. Therefore, I am not satisfied that the respondent has discharged the

burden of proof on her to establish that monies were paid to the claimant and they were not paid to the respondent. The respondent cannot establish to the standard of proof required that she was not accurately informed by the claimant about this child's attendance.

Pupil 4

77. The claim in respect of this child was that the claimant received a cash payment in respect of lunches at £6 per day 2 days per week over the period of September 2019 to March 2020 and £36 for one extra session over and above funded sessions. In support of this claim, there is an email from the child's mother which says that she paid £48 per month. In cross-examination the claimant said that she thought that the child's mother paid £51 per month. Mr Francis referred to the receipt book and receipt 83 which appeared to confirm receipt of £52 in respect of the child's lunches.
78. I found the photocopy of the receipt book unclear and the respondent was able to provide the original receipt book at the hearing. I reviewed this receipt book and I found it to be unclear. It took the form of a copy of the receipt which was made through the impression of the original writing. The problem with the receipt book was that the receipts had what appeared to be writing from several previous receipts on them. This made them very unclear in respect of dates, amounts and what the receipts were for.
79. I also note here that the claimant and her sister and daughter who gave evidence disputed that this was the receipt book that was used. All three witnesses said that smaller receipt books were used. I did not find the evidence on this by the claimant's sister and daughter to be helpful because they had not been employed by the respondent for some years before the events in question. Therefore, I did not think they could comment in any meaningful way on which receipt book was used at the relevant time. The claimant accepted that the receipt had her signature on it and it did appear to be her signature. As I said above because of the lack of clarity of the other information on the receipt, I do not find the receipts were of any evidential value.
80. The other issue with receipts issued by the claimant, and which goes to the background about the lax procedures in place at the nursery, is that the claimant said she often did not give receipts to parents. This was partly because that is the way it was done and the respondent did not require it to be done but also because parents were not always interested in receiving a receipt.
81. I do not accept that the respondent enforced or expected receipt issuing at the nursery. If she had, she would have been able to present the receipts for all payments at this hearing. I recognise she had the receipt book and I recognise that she said that she only had this because she had searched the office for it. However, if she had enforced the process and had a process of regularly checking it against her accounts for bookkeeping purposes, she would have had historic receipts and there would be no room for the claimant to have misplaced or hidden the

receipt book. I recognise that the respondent says that she did not know that monies were received at all. The respondent's claim is that the claimant has misappropriated monies going back to 2015 but there is no evidence of any other receipts except this receipt book which related to 2019/2020. If she had enforced a system of receipts, I would have expected her to have the receipts book going back some years but she does not.

82. In the claimant's interview with Mr Helsby, she stated that she kept extras. A lot has been made of this and it has been asserted by the respondent that the claimant said that she kept the extras for her own personal purposes. The claimant's position is that she never said that and what she meant is that she kept the money for extras for the nursery and the reimbursement of expenses she had incurred in the nursery business. I have carefully reviewed the claimant's interview with Mr Helsby. The claimant repeatedly referred to the respondent knowing about everything and it being agreed with her and she repeatedly referred to the lack of processes. I recognise that the claimant at one point refers to the respondent being kind in relation to her keeping the extras. However, she did not say that she used them for her own personal use. I find that what was said by the claimant could be interpreted in different ways.
83. Mr Helsby interpreted the claimant's evidence in light of what was said during the interview, instructions he received from the respondent, the emails he had been given from the parents and the cash collected receipts. I find that his interpretation was reasonable however I have set out in this Judgement the limited weight I gave to the emails from parents, the lack of integrity of the cash collected receipts and the difficulties in the credibility of the respondent and the claimant. When I take all of these factors into account, I do not interpret the claimant's statement and saying that she was keeping monies for her own personal use. I recognise that in the interview transcript she is recorded as saying "yeah" frequently at the start of answers to questions but then she went on to give a fulsome answer and I consider, having seen her given evidence, that this is a style of speaking rather than a substantive agreement with the question posed.
84. Taking all of the above into account, I do not accept that the respondent has established on the balance of probabilities that the respondent was not aware of the extra sessions attended by the child and that the claimant received monies from the parents but did not pass on the full amount to the respondent.

Pupil five

85. The claim in respect of pupil five is similar to that of pupil four. It is that she was charged £6 a day for lunches over a period of 40 days and £257 for extra sessions which were paid in cash to the claimant. All of which is over the period of June 2019 to June 2020. Again, the basis of the claim is that the cash was not handed over to the respondent and she was not aware of the extra sessions the child attended.

86. The respondent relies on an email from the child's mother confirming the payment she made to the claimant in cash. This email chain consists of an email from the respondent setting out what they discussed and the response from the child's mother is simply "Yes I confirm". I find that this is particularly weak evidence. It does not satisfy me that she carefully considered the email's contents and fully agrees with it. I have set out elsewhere in this judgement that there is an incentive for the parents to agree with the contents of the emails from the respondent because they do not wish to pay extra monies and it can be easier to agree with somebody than disagree if one has no particular reason to disagree. In relation to these parents, to accurately confirm what was paid they would have had to check their own records and many people do not keep accurate financial records particularly those relating to cash for lunches. They had no incentive to do this because they have no personal interest in the matters discussed, if they had underpaid they may be required to pay extra and people may wish to avoid that for obvious reasons. Fundamentally there is no incentive for any of the parents to provide accurate information about the fees they paid. They are not involved in this dispute. Checking one's financial records over a period of months takes some time and I do not accept that any of the parents had any motivation to do this accurately.
87. Due to the difficulties I have identified with the integrity of the cash collected receipts as evidence of cash received by the claimant and paid to the respondent, the lack of credibility of both the respondent and the claimant, the unreliability of the registers and the little weight I have given to the evidence of the child's mother for the reasons set out above, I find that respondent has not discharged the burden of proof in respect of these allegations.

Pupil six

88. The respondent's claim is that the child attended nursery from September 2019 to March 2020 for 3 mornings a week and that the mother paid fees each month of £254 in cash to the claimant. The respondent asserts that she was told by the claimant that the child attended just two mornings a week and that is what was entered on the registers. However, the cash collected slips showed payments in respect of September 2019, November 2019, January 2020 and February 2020 corresponding to fees for attending two mornings a week which was £169 per month. The September cash collected was £272 because this included registration fee and deposit as well as the first month fees.
89. The respondent refers to receipt 87 which it was said showed that £254 had been paid by the child's mother to the claimant. This receipt does have a date of 15/10/2019, refers to Pupil six and is in the amount of £254. In cross examination the claimant said that the child was allowed to attend for three days a week for the price of 2 days per week. She also said that the difference in the amount actually paid and the receipt was explained because she gave a false receipt to the child's parents to assist them in making a fraudulent claim for public funds relating to their childcare.

90. The respondent has asserted this is obviously not true. However, I consider that it has the ring of truth about it. As I have set out in this judgement the claimant has admitted to failing to comply with basic safeguarding procedures and this is another action which does not reflect well on her. If she was lying about all of this, I see no reason why she would not have come up with lies that reflected better on her. The other issue this goes to is that of practices and procedures at the nursery and arrangements that were not strictly by the book. This was alleged by the claimant and denied by the respondent. I have set out elsewhere that I consider that the processes were lax or hardly in existence.
91. Further, if what the claimant said is true then there are some obvious motives for the child's mother to have said what she did to the respondent, particularly as it was in writing, rather than admit to the arrangement that was in place which could have placed her at risk of a charge of fraud or losing/having to repay money.
92. Whilst the child is largely entered on the register three mornings a week there are periods when he was only entered 1-2 mornings a week and a number of weeks when he did not attend at all. I have already and repeatedly set out that I do not find the registers to be a reliable document. Even if the registers were reliable, this would again be a situation where the claimant made no effort to disguise wrongdoing and it was in fact out of her control if and when the respondent found out that the child was attending for three rather than two mornings a week (which would have been easily discoverable when she had checked the register, spoken to other staff or observed the children). It is another situation where the claimant is alleged to be hiding fraudulent activity in plain sight. I do not find this credible.
93. In relation to giving the child a three for the price of two deal, I asked the respondent specifically about this and she said that it had happened during particular periods such as when the nursery had moved premises and had very few children attending. Her evidence was that after around 2012 this sort of marketing strategy was not needed.
94. The claimant referred to affording parents some free sessions in relation to pupil one in her interview with Mr Helsby and has been consistent in identifying this as a practice used at the nursery.
95. Taking all these pieces of evidence together, I prefer the claimant's evidence. I find that she has offered free sessions and the respondent either forgot about this or was not aware of the full extent of the arrangements. I have therefore decided that the respondent has not discharged the burden of proof on her in relation to this allegation.

Pupil seven

96. The respondent's claim is that this child attended the nursery without the respondent's knowledge for a period of more than 18 months from January 2015 to August 2016. The respondent claimed that she received no payments for this child.

97. The child's name is hand written on the registers. The respondent says this is an indication that she did not know that the pupil was attending because if she had the name would have been added to the register in typescript.
98. The claimant's evidence was that initially this child was offered a free place to make the nursery look busy and they were then entitled to government funding which meant that no fees were collected by the claimant so there was no cash to pass on to the respondent. In cross-examination she stated that she could not remember the child. She kept telling the respondent to add her to the register but she did not so she kept telling the staff to handwrite the name on the register.
99. The respondent's claim is based on the handwritten registers. There were no other records about payments that were or were not made, funding that may or may not have been obtained from the government for the child and the attendance of this child was almost 7 years ago. The registers themselves are not rigorously completed: there are many examples of children being signed in but not signed out or even vice versa. The registers do not correlate with the nappy changing charts which indicates that at least one or both of those documents is inaccurate and unreliable. I do not accept that the registers establish the attendance the respondent's claims they do. I am not prepared to accept the respondent's position that she did not receive payment for this from 7 to 6 years ago in light of the lack of other supporting documentation such as more detailed financial records and funding claims in respect of children who attended at that time combined with the impact on the respondent of her changed and negative views of the claimant.
100. The respondent has failed to establish this allegation to the required standard of proof.

Pupil eight

101. The respondent's claim is that she was only informed about this child in April 2018 when he became eligible for free funding and that is when his name appeared typed on the registers. However, his name is handwritten on the registers from September 2016 to July 2017 and then appeared only on the nappy changing charts from September 2017 to March 2018. The respondent claims in the alternative that the claimant is in breach of contract by giving out free places without proper authorisation and this should result in a reduction to any award of compensation made to the claimant.
102. The claimant's evidence is that the child attended for free until he was eligible for funding. The claimant said that it was not possible that the respondent came to the nursery for 18 months and did not see the child, they had just had an OFSTED inspection there would have been paperwork for this child including observations and a folder with the child's name on it. She said she would have asked the respondent to put his name on the register but the respondent did not do so. She also said that a child would not attend on a free place for 18 months.

103. After reviewing the evidence, I find that there was insufficient evidence to establish an accurate record of this child's attendance. I also find that it is not incredible that the child would have attended for 18 months without the respondent having had any knowledge of it. I also do not find it credible that the claimant would have believed that she could have got away with a child attending the nursery for 18 months whilst claiming all the fees and not accounting to them to the respondent for such a period of time. As the owner, the respondent was free to look at any records and go on the nursery floor at any time she wished. She could speak to any of the staff and any of the staff could come and speak to her about any issues that they had with the child, parent or other issues. Somebody or some people were adding the child's name to the register and to the nappy change charts. These persons were unlikely to have been the claimant and instead those working on the nursery floor. I do not find it credible that this child was hidden in plain sight for 18 months with numerous individuals knowing about and recording the child's attendance and the respondent having no awareness of the child or interest in the fees that were paid.
104. Further, the initial attendance by the child was almost 6 years ago now and when the time elapsed combined with the informal practices at the nursery including limited written communications between the claimant and the respondent about which children were attending when, how much they were paid and how fees were paid, I find that the respondent has not discharged the burden of proof on her.

Pupil nine

105. The respondent's claim is that this child first started attending nursery in November 2015 for five days a week full-time and that his parents paid £650 a month in cash for this. However, the cash collected receipts for the period November 2015 to May 2016 show that only £403 in cash was being handed to the respondent each month. So the claimant was retaining £247 a month which over a six month period amounted to £1482.
106. I reviewed the registers carefully and in respect of this child I make the following findings about the registers:
- a. the respondent's position was that the registers contained shaded boxes for the days the child was not due to attend;
 - b. the first record of the child attending is in the week commencing 30 November 2015 when he is marked as attending three days per week possibly four (on one day there is a sign in time but no sign out time);
 - c. in the next week, commencing 7 December 2015 the child's name is handwritten on the register, he has a start time for five days a week but only in extra time on one day;

- d. by the following week commencing 14 December 2015 he appears typed on the register;
 - e. there is no shading on the registers of any of the days for this child;
 - f. there were numerous weeks with sign in times but no sign out times;
 - g. though the register is supposed to be alphabetical this child appears erroneously before a child who is below him in the alphabet and is in fact before him in the register until the week commencing 6 June 2016;
 - h. for a number of months before the week commencing 6 June 2016, this other child had LL marked on every day (which means a late finish to 6 PM) but when the register order changes on the week commencing 6 June 2016 that child loses the LL marking and pupil nine gets it. Then from the week commencing 18 July 2016 the LL marking changes back to the other child and pupil nine loses it and 2/5 days, later 3/5 days, become shaded for pupil nine but the entries continue in some weeks even when it is shaded.
107. Drawing the above together, the registers set out that somebody was recording this child's attendance at five days per week when he appeared as a typed name on the register. This was two weeks after he first started. However, as can be seen from the above the registers are littered with errors and I find that they have limited evidential weight. The respondent's claim is that the child attended full days five days per week for a period of six months for which she did not receive the correct funds from the claimant.
108. The respondent relies on an email from the parents which sets out some detail about being asked to pay the extra in cash and that this was burdensome. There is detail in the parents' email which lends it a ring of truth. However, I given it little weight for the general reasons I have set out elsewhere and because it relates to events that were about five years predating that email and that the parents have not appeared as witnesses and therefore the extent and accuracy of their recall cannot be scrutinised.
109. The tribunal was asked to find that the claimant disguised the full extent of the pupil's attendance so that the claimant could take the cash fees for her own purposes. However, again this is a child who it is alleged was in plain sight at the nursery every single day of the week all through the day. The respondent alleges that other members of staff filled in the registers and they could have spoken to the respondent about the child at any time. The respondent could have discovered the child at any time.
110. The registers also do not support the view that it was agreed with the respondent that this child would only attend three days per week because there is no shading for this child during substantial periods of time.

111. I accept that the cash collected receipts say what they say which is that only £403 was collected by the respondent in respect of this child. Elsewhere, I have recorded the lack of integrity around the receipts.
112. I have considered what the claimant said to Mr Helsby in his investigation. The claimant's answer is confused, she refers to payment by direct debit and passing any cash she received onto the respondent. Even at the date of the investigation these allegations concerned events 5 or so years earlier and I do not draw any adverse consequences from the claimant's difficulties in remembering all the different arrangements that were in place in relation to the children because they would change periodically for many children and children had bespoke attendance patterns.
113. As I have set out above, I find that the evidence is lacking about what payments were actually received by the claimant and the respondent. These events happened many years ago, the evidence of both parties is that instructions were passed between the claimant and the respondent orally. I am not satisfied that the evidence is sufficient to discharge the burden of proof which lies on the respondent.
114. Another part of the respondent's claim in relation to this child, is that he was charged £30 per week when there should have been no charge and when a charge was due he was overcharged giving a total amount that the claimant did not pass on to the respondent of £2,195.90. Again the respondent relies on the cash collected receipts and the parents' email.
115. I repeat my findings above and I am not satisfied that in all the circumstances the evidence relied on is sufficient to discharge the burden of proof.

Pupil 10

116. The respondent asserts that this child was charged for lunch at £30 per week between September 2017 and July 2018 when there was no charge applicable. Further, when a charge was payable the claimant accepted monies but failed to account to the respondent for any of it.
117. For the reasons I have set out above which relate to the lax processes and the limited weight I have given to the documentary evidence, I find that the respondent has failed to discharge the burden of proof which lies on her.

Pupil 11

118. The respondent relies on the registers and her recollection of what money she received to form the basis of her claim that the child started the nursery November 2015 and attended for four extended mornings per week. In January 2016 the claimant told the respondent about the child because the claimant mistakenly believed the child was eligible for free funding. When the respondent identified that the child was not eligible for free funding until March 2016, the claimant told the respondent that the child would attend one morning per week. The fee

for attending one morning week was £68 per month and this is what the respondent was paid as is recorded in the cash collection slips. There is no record of the cash collected in January 2016 but the respondent accepts that £68 was paid to her in this month. However, the respondent asserts that the child attended four mornings per month which attracted the of £450.67 per month and that the claimant was misappropriating the difference which was £382.67 per month. This amounts to a total of £1,148. Further, from April 2016 to July 2017 the child became entitled to 15 hours free funding per week but she continued to attend for four extended mornings. This means an additional £30 should have been paid per week. Receipts evidence that the parents paid £48 per week which amounts to £192 per month but this money was never passed on to the respondent and amounted to £3,328. Finally, from September 2017 to July 2018 the claimant charged £6 per day which amounted to £24 per week for lunch when nothing should have been paid and these amounts were not received by the respondent. Reliance was also placed on the receipt book.

119. Questions about this child were put to the claimant in cross examination. The claimant's responses included that the respondent was aware about everything to do with this child. She did not consider the registers were accurate because the respondent had forged them in the past. The respondent had a practice of not putting children as typed names on the register until they were government funded. The claimant did not know why this was, when she had asked the respondent had told the claimant that she did not know what she was doing and should just get on with what she was told. The claimant remembered that the mother was working and there is no way that she would only have managed one day per week. The claimant's evidence was that the child was given free sessions, the register is forged and that the £68 that she was charged was the correct amount.
120. The receipt relied on by the respondent amounts to 1 receipt dated 7 June 2018 in the amount of £24 in relation to the lunch fees.
121. I find that the registers do not support the respondent's claim as she has alleged:
 - a. the first part of the allegation is that the child started in November 2015 at four extended mornings a week and the respondent did not know at all about this. The child's name is hand written on the registers in respect of this period of time and I am not satisfied that the claimant was hiding this child in plain sight and not accounting for monies to the respondent. I do not accept that the respondent did not know about this arrangement, I have attached little weight to the registers in this case for the reasons set out elsewhere. Other documentation does not provide good evidence and overall I have preferred the claimant's position;
 - b. the second part of the allegation is that from January 2016 the claimant told the respondent that the child was attending one morning per week and that is the only money that the respondent received. The child's name only appears typed from 25 January

2016. Her name is in the morning sessions group and there is no shading on any of the days. Her attendance is recorded as roughly 8:30 to 1:30, four days per week from 25 January until the week ending 22 April 2016. From the week commencing 25 April 2016 this child's name does not appear in the morning session section and has been moved to the full day session it is also noted that she would be doing Monday and Tuesday 9-3 and Thursday am. This is typed. Those hours would add up to 15 hours a week. However, she is still entered on the four mornings a week until (give or take a few weeks of lesser attendance) the week commencing 12 September 2016 when she then attends for roughly Monday and Tuesday 9 -3pm and Thursday am. By this time the typed entry about the child attending those hours has disappeared. The recording of her attendance continues on this pattern until around 7 November 2016 when it seems to revert to 4 extended. Having reviewed the registers closely I do not find that they support the respondent's claim. On the face of them the registers are not accurate and do not record what the respondent asserts they do at times. Elsewhere I have set out my findings about the limited weight I will attach to the cash receipts.

122. I find that the respondent cannot discharge the burden of proof which lies on her either in relation to establishing the attendance of the child, what she believed to be the attendance of the child and what was communicated to her, and the amounts paid to the nursery that were or were not passed on to the respondent. I have preferred the claimant's evidence about what was communicated to the respondent.

Pupil 12

123. There are several aspects to the respondent's claim in respect of this child and these are as follows:
- a. the child attended from October 2015 to July 2017;
 - b. the claimant said that he would attend one day per week;
 - c. on 8 October 2015 the respondent collected cash in respect of this child in the amount of £34. She did not receive any further payments and was told the child had not yet started;
 - d. the child had been attending two days per week until December 2015 and thereafter three days every week;
 - e. from November 2016 to December 2016, a period of seven weeks, the respondent was told that the child had started and was attending one day a week when he was attending three;
 - f. from January 2017 to July 2017 this child was eligible for 15 hours free funding and the claimant told the respondent he would use these hours across two days per week. He actually attended three days per week and the claimant did not account for the extra days to the respondent;

- g. The amount the respondent claims is a total of £3,773.
124. The respondent relies on the cash collected receipts and the registers to support her claim.
125. The claimant repeated in oral evidence that the register could be forged and that the respondent was aware of whatever arrangements were in place.
126. I find that the registers record largely what the respondent says the attendance was. I also found that from March 2016 his name is not typed on them and it is handwritten. There are some handwritten entries about times which have been scribbled out. I have identified above the reasons why I have given the registers little weight. In addition, no logical reason has been presented to me why the child's name was added in hand if the intention was to disguise attendance and further, why times were scribbled out but his name was not. On the respondent's account the claimant collected the registers in a folder and so she would have been able to scribble out the name if she wished. Overall, I find the attendance registers provide limited evidence of the days he attended.
127. I find that the respondent has not discharged the burden of proof which lies on her to establish that monies were paid to the claimant that were not passed on to her.

Conclusion

128. For the reasons set out above, the respondent's counterclaim for breach of contract fails.

Constructive dismissal - Breach of contract claim

129. The claimant relies on 13 acts that she claims individually and/or collectively amount to repudiatory breach of the implied term of mutual trust and confidence.
130. Some of these acts refer to specific events or actions and I have dealt with them individually below. However, a theme running through most of them is that the allegations against the claimant were untrue and had been made up by the respondent.
131. I have set out above my findings in relation to Ms Ved and pupil one. It is the conversation from pupil one's mother (to which Ms Ved was a part and then an observer of the respondent's actions) which is said to have started the respondent's investigation into the claimant and ultimately started the chain of events that led to where we all are now.
132. I have stated above that I found Ms Ved to be a credible witness. I consider that as a result of this phone call with pupil one's mother, the respondent became aware that the claimant had agreed to more favourable arrangements relating to the attendance of the child than Ms Royal had either been informed about or than she had understood to be the case. By more favourable I mean that the child had attended more sessions than the parent had paid for.

133. The claimant has steadfastly claimed that she had informed the respondent about all the arrangements in relation to all the children and she had passed on all monies she had received to the respondent except those that she kept for petty cash through an arrangement agreed with the respondent.
134. I find that as a result of the phone call with pupil 1's mother the respondent became unsettled and concerned about how the claimant had operated at the nursery. This led her to start the investigation and she started to look into various matters such as the attendance of children and monies received.
135. I find that the claimant cannot discharge the burden of proof to establish that the respondent's actions were in bad faith or a sham for the following reasons:
 - a. the phone call with pupil one's parents disclosed information that shocked the respondent;
 - b. the respondent is not as involved in the nursery as she sometimes made out and I also do not accept that she had as firm a grasp on the day to day practicalities or information about the running of the nursery that she made out;
 - c. the lax nursery practices gave rise to a situation in which there were inaccurate records and confusions to which different interpretations could be applied;
 - d. there were objective reasons which can explain the actions taken by the respondent. These include that I have found elsewhere that the claimant did not fully inform the respondent about attendance arrangements relating to pupils 1 and 6 and she agreed arrangements with the parents that were in breach of some regulations and not authorised by the respondent. It was legitimate for the respondent to have serious concerns arising from these issues and carry out an investigation and disciplinary process;
 - e. any flaws in the respondent's initial investigation were addressed by Mr Helsby's investigation;
 - f. Mr Helsby's investigation was independent and fair;
 - g. there is no real animosity in the communications about buying and selling the nursery and the investigation was commenced before the end of these negotiations. This weakens the reason put forward by the claimant.
136. In relation to Mr Helsby's investigation, I make the following findings:
 - a. he had no relationship with the respondent prior to his instructions on this matter;

- b. the instructions from the respondent identified the allegations against the claimant in detail;
- c. he considered the information provided by the respondent both in her instructions and in emails in response to his queries;
- d. he was provided with information relevant to the investigation by the respondent and he considered this;
- e. he carried out an investigation which included a comprehensive interview with the claimant in which he put the allegations to her;
- f. the claimant had been made aware in writing of the detailed allegations against her;
- g. he found, on an interpretation that was open to him (though I disagree with his conclusion for the reasons I have set out elsewhere) that the claimant admitted to taking some monies for her own use;
- h. he carefully assessed the evidence in relation to each allegation upholding some and not others and provided reasons for this;
- i. in conclusion it was a fair and comprehensive investigation.

137. I shall consider each specific allegation in turn.

Allegation 1 - On 3 June 2020 did the respondent say to the claimant that she wanted £200,000 for sale of the nursery and that if the claimant did not pay this amount would go to jail never get a job again?

- 138. In brief summary, the claimant's claim is that because negotiations between her and her sister and the respondent about the sale and purchase of the nursery broke down, the respondent has created false allegations and targeted her.
- 139. The respondent accepted that she had said something like "this is not a get out of jail free card" but she disputed that it was an offer to the claimant rather than a sarcastic comment to inform the claimant that she would be investigating issues around these whatever happened.
- 140. This is a disagreement between two individuals about what was said at that meeting. Both individuals have considerable common ground about things that were discussed but disagree about material parts of the conversation and the interpretation about what was said. I have identified concerns that I have with the witness evidence elsewhere in this judgement and, as a result of the lack of credibility of both witnesses, I am not satisfied that the claimant has discharged the burden of proof which lies on her to establish what she asserts was said at the meeting was in fact said. None of the written documents about the discussions were acrimonious and I am not satisfied that the claimant's recall or interpretation of these events is accurate.

141. Therefore, I conclude that the claimant has not established that the respondent said what she is alleged to in this allegation and she has not discharge the burden of proof to establish that this was a breach of contract.

Allegation 2 - Did the respondent threaten or blackmail the Claimant on 3 June 2020 by telling her that if the Claimant did not purchase the nursery for £300,000 then disciplinary proceedings would be initiated against her?

142. I consider this allegation is intrinsically linked to the first allegation. For the reasons I have set out above in relation to the first allegation, I find that the claimant has not discharged the burden of proof which lies on her.

Allegation 3 - Did the respondent send an email to the claimant on 10 June 2020 threatening her with suspension and instructed her not to attend the nursery when it reopened on 15 June 2020?

143. There is no dispute that this email was sent and contained what it is alleged to.

Allegation four – Did the respondent conduct an investigation, through Mr Paul Helsby, that was a sham and was heavily biased against the Claimant, and which failed to follow a “credible, objective, fair and through investigatory process”?

144. I find that Mr Helsby is an independent HR professional that had no prior connection to the respondent before her instructions to him in relation to this matter. I do not accept that he was a knowing or willing part in any sham investigation. I do not accept that Mr Helsby acted in a way that was biased against the claimant.

145. The claimant also criticised Mr Helsby’s investigation because he did not interview the respondent. It is not disputed that Mr Helsby did not interview the respondent. Mr Helsby received instructions from the respondent and, during the course of his investigation, which included a lengthy interview with the claimant he asked questions of the respondent. The questions and answers are set out in some emails which are in the bundle. In this case Ms Royal is a sole trader. The claimant was the most senior employee and there was nobody else in the organisation who had the skills or seniority to undertake the investigation or the disciplinary process. Whilst Mr Helsby could have undertaken a formal interview with the respondent, I find that he sought the respondent’s position on the allegations by asking her questions in emails and from the respondent’s initial instructions which set out her position. I do not consider that a formal interview with the respondent would have achieved anything other than tick a box. Therefore, I do not accept criticisms of Mr Helsby’s investigation.

146. The claimant’s claim could also be interpreted that it was a sham investigation because the instructions of the respondent given to Mr Helsby were false. I have not accepted that the claimant has discharged the burden of proof to establish this allegation and to this extend the allegation is not made out.

Allegations five - Did the respondent inform Ms Chandni Butani about the investigation into the claimant's conduct before informing the claimant?

147. I find that the claimant has not established that this allegation occurred. The nursery was closed due to the national lockdown during this time and I consider it extremely unlikely that the respondent would have phoned staff members and told them about the situation before the claimant. Ms Royal's evidence is that she told the claimant on the day she made the decision to investigate and did not tell Chandni. I accept this evidence. This allegation is rejected.

Allegation six - did the respondent suspend the claimant without good reason?

148. The letter of suspension sets out that the claimant was asked not to attend work whilst there was an investigation into "potential discrepancies in accounting and nursery registration requirements and whether there has been any misappropriation/theft of nursery funds".
149. There are two ways of approaching this allegation. One, which appears to be the claimant's assertion, is that the entire process was falsely created by the respondent to attack the claimant. There are other possible explanations for the situation which could have arisen from the lax processes that operated between the claimant and the respondent relating to the running of the nursery. For the reasons set out above, I am not satisfied that the claimant has established that the entire process and investigation were a sham and designed to punish the claimant.
150. The other way of approaching this allegation is to consider whether or not there were sufficient grounds to suspend the claimant. It is not disputed that the respondent is entitled to suspend the claimant. What is disputed is if there were sufficient grounds to suspend her.
151. The respondent asserts that prior to the suspension she had carried out her own investigation which included the conversation with pupil one's parents, correspondence with parents of other children, a review of documentation such as nappy charts and attendance registers. I find that the concerns that the claimant was misappropriating funds and not accurately informing the respondent about attendances are serious allegation of the sort that justifies suspension.

Allegation seven - Did the respondent accuse the claimant of fraud and taking the funds from the respondent without adequate evidence of/enquiries into the same?

152. It seems to me that the real allegation here is that the allegations against the claimant were fabricated by the respondent. I have addressed this elsewhere.
153. So far as this allegation refers to an accusation of fraud and taking funds as set out in the suspension letter and/or the invitation to the disciplinary meeting, I find that the claimant has not established that there were inadequate inquiries into the situation or inadequate evidence. I have set out above my findings in relation to the suspension and in relation to the

investigation and disciplinary letter. I find that Mr Helsby carried out an independent investigation which upheld most of the allegations against the claimant and concluded that formal disciplinary proceedings were warranted.

Allegation eight – Did the respondent invite the Claimant to attend a disciplinary hearing on less than 2 working days' notice?

154. I find that the invitation letter to the disciplinary hearing was sent to the claimant on 8 July 2020 which left four clear days until the disciplinary hearing and two clear working days until the hearing. This is a very short period of time. However, an extension of seven days was given. Taken individually I do not find this is a repudiatory breach of contract but I have also considered this holistically with the other allegations elsewhere.

Allegation nine – Did the Respondent raise allegations in a letter dated 6 July 2020 which had not been properly investigated?

155. It is not disputed that the letter dated 6 July 2020 did raise allegations which had not been part of Mr Helsby's investigation. The respondent asserts that these were further instances of the same broad allegations that had been investigated by Mr Helsby.
156. I do not accept that the inclusion in the disciplinary letter of allegations which were not investigated in Mr Helsby investigation renders the investigation of them insufficient. The allegations are of a similar type to the other allegations which is failure to inform the respondent of the accurate attendance of children and failing to pass monies onto the respondent. The respondent's explanation was that she included all the issues which had come to light.

Allegation 10 – Did the respondent intimidate/ bully Ms Chandni Butani, a potential witness in relation to the investigation, so that she would not give evidence in support of the Claimant?

157. The email from Ms Butani to the claimant dated 9 June 2020 is included in the bundle. This makes some general comments about the respondent's attitude to staff and the relationship between the claimant and the respondent. It does not include any material evidence relating to the allegations against the claimant.
158. Ms Royal accepted in her witness statement that she spoke to Chandni after she received a copy of the email. She stated that they had a "*full and frank discussion where it was established that Chandni had made conclusions based on her interpretation of partial or inaccurate information received from the Claimant. Since then, I have worked closely with Chandni and we have built a very good working relationship, and in fact in March 2021 I promoted her to co-deputy manager along with Arti Ved.*"
159. Taking into account the respondent's position as the owner of the nursery and the ultimate decision maker as well as all the surrounding

circumstances, I concluded that the respondent did put influence Ms Butani not to provide further support to the claimant. However, when Ms Butani's evidence is considered, I find that it is not material to any of the allegations that were investigated or formed part of the disciplinary process. Therefore, all the respondent did is to point out to an employee that she did not have evidence to give about the material matters.

Allegation 11 – Did the Respondent follow a disciplinary process that was biased/unfair by appointing herself as chair of the Claimant's disciplinary hearing?

160. The respondent is a sole trader and the only person who had a senior position at the nursery. At the time of the events the claimant was the nursery manager and there was nobody else except for the respondent who could carry out the claimant's disciplinary hearing. The respondent had engaged an independent HR consultant for the investigation and it would have been possible for her to engage an independent person to carry out the disciplinary. However, just because it was possible does not mean she had an obligation to do it. Given the size, resources and other staff working at the nursery, I do not accept that it was unfair for the respondent to chair the claimant's disciplinary hearing.

Allegation 12 – Did the Respondent fail to provide the Claimant with clear reasons as to why she was subjected to disciplinary action?

161. This allegation fails because I find that the letter dated 6 July 2020 comprehensively sets out the reasons why the claimant was subject to the disciplinary action.

Allegation 13 - On 13 July 2020, did the Respondent refuse the Claimant's request for an extension of 14 days to allow her to prepare for her disciplinary hearing?

162. It is not disputed that the respondent refused the request for an extension of 14 days and instead granted an extension of seven days, stating that she might consider a further extension if reasons were provided.
163. I do not find that these facts can amount to a breach of the implied duty of trust and confidence.

Conclusion in relation to constructive/wrongful dismissal

164. I have found that the claimant has discharged the burden of proof to establish that allegations 3, 8, 9, 10 and 13 occurred as a matter of fact. I do not consider that these factual circumstances, taken individually or cumulatively, amount to a breach of the duty of trust and confidence. I am not satisfied that any of the acts amount to a breach of the duty of trust and confidence even taken together. I consider that the most serious allegation is influencing Ms Butani not to give evidence in support of the claimant. However, when Ms Butani's evidence is considered, I find that it is not material to any of the allegations that were

investigated or formed part of the disciplinary process. Therefore, all the respondent did is to point out to an employee that she did not have evidence to give about the material matters. Therefore, even taking the acts all together I do not accept that there can be a breach of the duty of the implied term of trust and confidence which does to the root of the contract of employment.

165. Going through the steps in Kaur v Leeds Teaching Hospitals NHS Trust I make the following conclusions:
- a. The acts the claimant can rely on (given my findings) as triggering her resignation are allegations 3, 8, 9, 10 and 13;
 - b. The claimant has not affirmed the contract;
 - c. Allegation 13 was the most recent act and that cannot be a repudiatory breach of contract;
 - d. It was a course of conduct comprising allegations 3, 8, 9 and 10 but cumulatively they cannot be a breach of the duty of trust and confidence.
166. The claimant also alleges that by appointing herself as chair of the disciplinary hearing the respondent demonstrated an intention that she would not be bound by the claimant's employment contract in the future (i.e. the respondent was in repudiatory breach of the implied term of trust and confidence).
167. I have set out above that I am not satisfied that the claimant has established that the respondent acted in bad faith or was conducting a sham investigation/disciplinary process. In light of this and my other findings above, I find that there is no basis on which the claimant can establish a repudiatory breach of contract on the respondent's part. The respondent was the only more senior person than the claimant at the business, the respondent acted as a sole trader. There was no one else who could carry out the disciplinary. I recognise that she could have hired an external person but I do not consider that she was obliged to do so or that a failure to do this is a repudiatory breach of contract.
168. Therefore, I conclude that the claimant was not constructively dismissed.
169. In relation to wrongful dismissal, as I have found that the claimant resigned (but not in response to a breach of contract by the respondent) and she was not dismissed by the respondent her claim for wrongful dismissal must fail.

Wages Act

170. Mr Johns confirmed that the claimant did not pursue the claim in respect of unlawful deductions from wages and this was dismissed by consent.

Failure to provide written particulars of employment

Case No: 3313408/2020 & 3305939/2021

171. I find that the claimant has failed to establish that she was not provided with written particulars of employment. The bundle contains a written contract of employment which contains all necessary information. I do not accept that this relates to some previous employment.

Employment Judge Bartlett

Date: 1 December 2022

JUDGMENT SENT TO THE PARTIES ON

5 December 2022

FOR THE TRIBUNAL OFFICE