



THE EMPLOYMENT TRIBUNALS

Between

Mrs A Ozmen

Claimant

and

Surrey & Sussex Healthcare NHS Trust

Respondent

Hearing at London South on 11-13 July 2016 before Employment Judge
Baron

Appearances

For Claimant: The Claimant was present in person

For Respondent: Hollie Patterson - Counsel

JUDGMENT

It is the judgment of the Tribunal that the claim that she was unfairly dismissed by the Respondent is not well-founded and the claim is consequently dismissed.

REASONS

Introduction and the claims

- 1 I must first of all apologise for the substantial delay in concluding the preparation of this judgment and the reasons for it. This has been caused by a shortage of judicial resources by comparison with the caseload of the Tribunal.
- 2 The Claimant presented a claim form to the Tribunal on 12 June 2015. She was employed by the Respondent as a Band 4 Infant Feeding Co-ordinator at East Surrey Hospital. She resigned by a relatively short letter dated 23 January 2015 of which further details are set out below. The details of the Claimant's claim were more substantial and were professionally prepared, although the Claimant represented herself at this hearing. The claim is one of 'constructive' unfair dismissal. There is no other claim before the Tribunal.
- 3 There was a preliminary hearing on 17 June 2016 and the following issues were agreed as being the ones to be decided by the Tribunal:

INTRODUCTION

1. The Claimant is pursuing a claim of constructive unfair dismissal (Section 95(1)(c) of the Employment Rights Act 1996).

CONSTRUCTIVE UNFAIR DISMISSAL

2. It is accepted there was a term implied into C's contract of employment that R shall not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.
3. The Claimant relies on the alleged breaches of contract detailed below:
 - a. The Line Management of the Claimant by Ms Chadd.
 - b. The incident between the Claimant and Ms Chadd on 27 November 2014 whereby the Claimant alleges Ms Chadd spoke to her in a sharp and confrontational manner.
 - c. The offer of informal mediation to the Claimant in response to her grievance of 15 December 2014.¹
 - d. The lack of response to the Claimant's email regarding her availability for a mediation meeting by Adaline Smith, Matron, on 2 January 2015.
 - e. The use of Bill Kilvington, Assistant Director, as the mediator in the mediation meeting.
 - f. The lack of organisation and guidance provided to the Claimant in relation to the mediation meeting.
 - g. The mediation meeting was not fair, impartial or neutral.
 - h. The failure by the Trust to allow the Claimant to be represented at the mediation meeting.
 - i. The attendance of Janice Blythman, Senior Matron, at the mediation meeting.
 - j. The conduct of Mr Kilvington during the mediation meeting.
 - k. Failure by Mr Kilvington and Michelle Cudjoe, Head of Midwifery to respond to the Claimant's email communication in January 2015.
 - l. The Trust's failure to support the Claimant through the mediation process.
 - m. The Trust's failure to assign the Claimant with an alternative Line Manager during the mediation process.
 - n. The Trust's failure to deal with and resolve the Claimant's complaints in relation to Ms Chadd's line management and clinical practice.
 - o. Attempts by the Claimant's senior colleagues to conspire

¹ Wrongly referred to as 2015 in the agreed list

against her and/or orchestrate meetings to discredit her, and to reduce the merit of her concerns.

- p. The way the Claimant was victimised and actively ostracised by senior colleagues as a result of raising issues.
4. If the Claimant establishes the above incidents occurred as alleged, did they separately or cumulatively amount to a fundamental breach of contract?
 5. If the Respondent did commit a fundamental breach of the Claimant's contract of employment, did the Claimant resign in response such a breach?
 6. If so, did the Claimant nevertheless delay in resigning and thereby affirm the breach?
- 4 The Claimant gave evidence herself. There were preliminary issues concerning the contents of her statement and her desire to call other witnesses. Miss Patterson objected to passages in the Claimant's witness statement as being a 'platform to launch a personal attack on Ms Chadd.' The allegations being made, said Miss Patterson, were not relevant to the issues before the Tribunal, but were relevant to Ms Chadd's reputation. If not redacted then supplementary questions of Ms Chadd ought to be allowed, said Miss Patterson. Having read all the witness statements I concluded that the passages of which Miss Patterson complained need not be redacted, but that additional evidence could be adduced if thought relevant. That is what occurred.
- 5 Miss Patterson also objected to evidence being given by four witnesses whom the Claimant wished to call (or whose statements were to be read by the Tribunal) on the basis that their evidence was not relevant to the issues before the Tribunal, and it constituted a further attempt to damage Ms Chadd's reputation. The Claimant wished to have the evidence included to demonstrate the inappropriate behaviour of Ms Chadd, saying that she had a duty to give evidence of her concerns about the practice of Ms Chadd.
- 6 Having considered the agreed list of issues to be decided, and having read all the witness statements, I concluded that the evidence of the proposed witnesses was simply not relevant, and its proposed introduction was indeed an attempt to besmirch the reputation of Ms Chadd, and wrongly using these proceedings for that purpose. If there was any justifiable cause for concern about Ms Chadd's clinical practice or her relationships with patients then the Tribunal was not the appropriate forum for them to be ventilated.
- 7 The Claimant therefore gave evidence herself and did not call any additional witnesses. Evidence for the Respondent was given by the following witnesses, listed in alphabetical order:
- Fiona Allsop – Chief Nurse
Janice Blythman – Senior Matron and the Claimant's line manager

Marilyn (Min) Chadd – Infant Feeding Adviser
Michelle Cudjoe – Head of Midwifery
Bill Kilvington – Associate Director for Women and Child Health Services
Denise Newman – Divisional Risk Manager
Adaline Smith – Trust Matron

- 8 I was provided with a bundle of documents of 360 or so pages, and I have taken into account those documents, or parts of documents, to which I was referred.

The facts

- 9 I find the material facts to be as set out below. It is not appropriate to record all the evidence adduced, nor to resolve all differences in evidence. The findings are made in the context of the issues to be decided. Although that is always the case, I say that in particular here because there is a significant number of criticisms made by the Claimant in her witness statement about Ms Chadd's clinical practice in addition to those to which Miss Patterson made specific objection.
- 10 As already mentioned the Claimant was employed by the Respondent from a date in January 2012. The exact date matters not. The Claimant's role was that of Infant Feeding Co-ordinator. Ms Chadd was already employed by the Respondent when the Claimant joined, and Ms Chadd became the Claimant's line manager. Ms Blythman was Ms Chadd's line manager.
- 11 Before setting out the detailed facts in chronological order I deal with some of the general allegations made by the Claimant about the management of her by Ms Chadd. These were set out in the claim form, and also in the Claimant's witness statement. The Claimant alleged that Ms Chadd often took credit for the Claimant's work which was passed off as her own. There was no other evidence in support of that general allegation. The Claimant also alleged that Ms Chadd often coerced her into taking her (Ms Chadd's) teaching slots at the last minute. Some examples were set out in the Claimant's witness statement, but without any dates. Ms Chadd's written evidence was that the Claimant wanted to deliver the sessions and had time to prepare. Ms Chadd was not cross-examined on the point. A further allegation was that Ms Chadd had lied about certain audits, apparently of evaluation sheets. That was denied by Ms Chadd in her witness statement. The Claimant also alleged that Ms Chadd arrived late, left early and did not attend all her shifts. Further she took leave without discussing cover options. Again there was a significant lack of detail. Ms Chadd quite correctly pointed out that the Claimant was not her line manager, and that arrangements as to hours were made with Ms Blythman. None of these matters were pursued to any extent at the hearing, and I place no weight upon the allegations.
- 12 One other general allegation was that Ms Chadd was generally disorganised. As far as I can trace the sole specific example is that an email of 4 December 2014 relating to the Peer Supporters Group mentioned below was not sent to three individuals, and the Claimant then

- forwarded a copy to them. Ms Chadd's explanation was that she had not met all the members. This is a trivial matter.
- 13 The Claimant again made general allegations about appraisals saying that they were never carried out on time, and were often done in the staff lunchroom. Further, Ms Chadd had little experience in carrying them out. That latter point is not in dispute. I find that there was one incident, and on that occasion it was the Claimant who arranged to use the staff room as it was empty, but then a member of staff came in.
 - 14 There were some issues in late 2012 concerning the application to the Claimant of the Respondent's policy concerning the managing of sickness absence, but apart from that no difficulties arose until September 2014.
 - 15 On 16 September 2014 the Claimant had a conversation with Ms Chadd, and the substance of the Claimant's concerns were set out in a substantial email from her to Ms Chadd of 17 September 2016. A copy was sent to Ms Smith, the Trust's Matron. The general tenor of the concerns of the Claimant was that her own particular role was not appreciated within the wider midwifery environment and that she wanted to develop the role. She was clearly frustrated, but about her role rather than anything else.
 - 16 The Claimant asked to meet Ms Smith because Ms Smith had helped the Claimant on 30 September 2014 when Ms Smith had conducted an After Action Review between the Claimant and another member of staff. They met on 25 November 2014. There is a dispute as to what occurred on that occasion. Ms Smith prepared a file note of the meeting. It is agreed that the Claimant raised some concerns about the interaction between Ms Chadd and some users of the service, and also between Ms Chadd and professional colleagues. I do not accept the Claimant's evidence that she also made criticisms to Ms Smith of the clinical practice of Ms Chadd. I am satisfied that if she had done so then Ms Smith, as a Matron, would have made a note of them, and instituted action if necessary.
 - 17 A further area discussed at the meeting was Ms Chadd's management skills in certain respects. The Claimant complained about the incident mentioned above of one of her annual reviews having been carried out in a public area. She also mentioned friction between the Claimant and Ms Chadd concerning the organisation of a reflection day for the Peer Supporters Group, which was a group of volunteer mothers assisting others with breastfeeding. In this latter connection the clear impression I obtained was that the Claimant resented Ms Chadd being involved in a project which the Claimant considered to be her own. During the meeting with Ms Smith the Claimant said that she was thinking of leaving the Respondent for another post. The end result of the meeting was that Ms Smith recommended to the Claimant that her concerns should be raised with Ms Chadd direct.
 - 18 The advice was confirmed in an email of 1 December 2014 in which Ms Smith referred to seeking an informal resolution with Ms Chadd, but that if

the Claimant felt that that was inappropriate then Ms Smith suggested mediation, with her acting as mediator. Ms Smith also suggested that the Claimant approach a Ward Manager for support in the light of Ms Chadd being her line manager. The Claimant responded saying that she would be happy with mediation, as she wished to retain the working relationship with Ms Chadd.

- 19 There was a conversation between the Claimant and Ms Chadd on 27 November 2014. It is agreed that during that conversation Ms Chadd said to the Claimant something similar to the following:

I don't know what it is you are looking for but if it's more of a challenge, you aren't going to find it here. And just so you know I'm staying, OK?

- 20 I find that by that time each of the Claimant and Ms Chadd were fed up with the attitude and conduct of the other. The phrase 'worn down' was used by Ms Chadd, and I consider that to be apt. I accept the adjective used by the Claimant that the comment made by Ms Chadd was 'sharp' but no more than that. The poor relationship can be seen from an exchange of emails of 27 November and 1 December 2014 concerning the venue and procedure for the reflection day mentioned above.

- 21 The emails commence with one from the Claimant referring to the proposed venue for the event on 10 January 2015. The Claimant said that if Ms Chadd insisted upon using the venue which she (Ms Chadd) had proposed then she (the Claimant) could not run the event. It is not necessary to set out all details of the exchange, but on 1 December 2014 the Claimant replied to an email from Ms Chadd as follows:

I implore you to re-read my email properly and really, listen to what I am saying in it because I feel from your response that the reason you are baffled is perhaps because you are hearing something entirely different and you had drawn conclusions that just aren't there.

This is simply about how I run a reflective session, for peer supporters for whom I am responsible. It's about me being present and congruent when it comes to my specialist skill as a peer supporter and supervisor.

- 22 The Claimant then presented a grievance to Michelle Cudjoe on 15 December 2014. The Claimant simply referred to 'a number of problems' she said that she was experiencing, without supplying any details other than 'the way I have been managed since joining the trust.' The Claimant sent an email to Ms Smith on 16 December 2014 thanking her for her support in recent weeks (no doubt with reference to the meeting on 25 November 2014) and informing her that she had raised the grievance.

- 23 The Claimant then was away from work because of back pain from 16 December 2014 until she returned on 14 January 2015.

- 24 Ms Cudjoe replied to the grievance letter on 18 December 2014 saying that the Respondent's policy recommended informal resolution in the first instance, and she said that the Claimant should raise the matter with a Maternity Matron. If the Claimant considered that approach to be inappropriate then Ms Cudjoe said that she could arrange for the grievance to be progressed through the formal process. Ms Cudjoe said that entitlement to be accompanied by a trade union representative or a

work colleague only applied to formal stages. She added that she would be happy if the Claimant wished to bring a colleague or representative for moral support.²

- 25 The Claimant responded referring to the discussions and emails with Ms Smith referred to above, and said:
- Do I now wait for this meeting to be set up?
- 26 I was supplied with a variety of emails sent in the first two weeks of January 2015, but I do not think that they provide a complete picture. I pick up two points from them. The first is that the Claimant was reluctant to work in a clinic with Ms Chadd until the issues had been resolved, and she wished to report to a different manager. The Claimant specifically stated that she was not happy to assist in the tongue-tie clinic. Ms Cudjoe stated that the Respondent would not expect an employee to report to the line manager if the issue is with that person. She said that interim arrangements could be put in place. The second point is that Ms Cudjoe had come to the conclusion that in the circumstances an external trained mediator was more appropriate than a session with a manager. That latter point is set out in an email from Ms Cudjoe of 9 January 2015.
- 27 The Claimant specifically complains that there was a lack of response to her email of 2 January 2015 concerning her availability for mediation. The email in question is from the Claimant to Ms Smith in which she said that she would fit in with her (Ms Smith) and Ms Chadd during the following week. She then sent a further email on 6 January 2015 saying that she would be available on the following Thursday (being 8 January), to which Ms Smith replied on the same day that she could meet on 15 January 2015.
- 28 On 13 January 2015 there was a discussion between the Claimant and Ms Cudjoe concerning a phased return to work for the Claimant following her absence due to back pain. In an email of that day concerning a return to work Ms Cudjoe said that she had not been able to find a trained mediator within a reasonable timescale, and that she had asked Mr Kilvington to undertake the mediation as a neutral and independent facilitator. She confirmed that the mediation would take place on 15 January 2015 at 13.30 hrs.
- 29 The Claimant returned to work on 14 January 2015. There was some evidence that it was the intention of the Respondent that Ms Johnson should manage the Claimant following her return to work. I accept that that was the intention, but find that no formal arrangements were made to that effect. That may have been because of the pending meeting.
- 30 The Claimant met Mr Kilvington on 14 January 2015 about the proposed meeting to be held on the following day. It was agreed that the Claimant would not be accompanied. She was told that also present would be Ms Blythman, who was Ms Chadd's line manager. As a consequence the Claimant sent an email that afternoon to Ms Cudjoe saying that she did

² Misspelt 'morale support'.

not feel that it was fair, and that she wanted someone to accompany her. Ms Cudjoe responded first thing on 15 January 2015 saying that Ms Blythman was to be present to deal with 'any service related questions' as Mr Kilvington was not a midwife. She did not comment upon the Claimant's request to be accompanied.

- 31 One of the matters raised in these proceedings concerns the 'ground rules' for the meeting. This is a document at page 215 of the trial bundle. From the footer it appears to have been printed on 15 January 2015. It is headed 'Mediation Meeting Ground Rules'. In brief summary it sets out good practice to be followed in such a meeting in order to have the best opportunity of reaching a solution to the problems. There is nothing in my view contentious or surprising about it.
- 32 Mr Kilvington provided copies to Ms Blythman of the ground rules for herself, and also to be given to Ms Cudjoe and the Claimant. Ms Blythman left a copy on the Infant Feeding Desk where she assumed that the Claimant would see it, with a cover sheet with 'Alexis' written on it. The Claimant did indeed see the document when she went to the office at about 12.30.
- 33 Although not specifically identified in the list of issues, one of the points about which the Claimant complains is a conversation between Ms Chadd and Ms Blythman on 15 January 2015 shortly before the mediation was due to start. The Claimant says that she clearly overheard the conversation taking place in an office when the Claimant was using an adjacent bathroom. It is agreed that there was a conversation about the time of and venue for the meeting. It is also agreed that Ms Chadd and Ms Blythman briefly discussed the fact that the Claimant had changed the off-duty rota and effectively withdrawn from the tongue-tie clinic.
- 34 The mediation meeting took place on 15 January 2015 as planned although it appears that the start time may have been brought forward to 13.00 hrs. Two of the specific points in the list of issues relate to the meeting. The Claimant alleges that the meeting was not fair or impartial, and also complains about the conduct of Mr Kilvington during the meeting. It is inevitably generally difficult for a judge to make specific findings as to what I might call the 'atmosphere' of a meeting. It would be necessary to have been at the meeting for a proper informed view to be reached. This is particularly the case where there were no notes made of the meeting. I have to do the best I can based upon the written witness statements, and the oral evidence, of those present. I do not propose to seek to write full 'minutes' of the meeting from the evidence provided.
- 35 At the outset of the meeting the Claimant again raised the issue of Ms Blythman being present. Mr Kilvington explained that she was there only because he was not a midwife, and she would be able to deal with any clinical issues which may arise. There was also a discussion about the conversation mentioned above about the Claimant not being prepared to be on the off-duty rota. Mr Kilvington did not consider that to be relevant to the matters to be discussed.

- 36 A specific issue arose concerning an occasion when a baby had suffered bleeding after a tongue-tie procedure carried out by Ms Chadd. The Claimant questioned the ability of Ms Chadd to carry out such a procedure, and Ms Blythman confirmed that she was fully trained and competent to do so. Mr Kilvington's evidence was that the Claimant raised this matter in a hostile manner towards Ms Chadd, rather than simply expressing a concern. I accept that evidence. The Claimant stated that she did not wish to continue working in the tongue-tie clinic.
- 37 After the conclusion of the meeting Mr Kilvington had further enquiries made as to whether the incident in question had been properly reported and dealt with. He satisfied himself that that was the case.
- 38 I do not accept the Claimant's allegation that the meeting was unfair, and not impartial, nor that the conduct of Mr Kilvington was in any way inappropriate. I have reached that conclusion based, as already stated, on the evidence before me. I have specifically taken into account the fact that three of the relevant witnesses gave evidence on behalf of the Respondent, as opposed to only the Claimant giving evidence herself.
- 39 At the conclusion of the meeting Mr Kilvington invited the Claimant and Ms Chadd to reflect on the detailed discussions which had taken place and consider how to move forward, with a view to having a further meeting in the following week. He also said that if a resolution could not be achieved then he would need to consider how to manage the Claimant's refusal to work in the tongue-tie clinic. Mr Kilvington proposed that there should be a further meeting on 20 January 2015.
- 40 The Claimant sent an email to Mr Kilvington on 16 January 2015 saying that she felt anxious about confidentiality as a result of having overheard the conversation between Ms Chadd and Ms Blythman. She asked for reassurance. She also referred again to Ms Blythman being present and said that she felt anxious about how the process was being handled. The Claimant said that she would like to take advice before confirming her attendance at the next proposed meeting, and said that she would confirm her attendance later that day.
- 41 The Claimant sent a long email to Ms Cudjoe on 19 January 2015 saying that she had had time to reflect on the mediation meeting. It is not easy to summarise the various points made. She said that Mr Kilvington had not been independent or neutral in the way he handled the meeting in various respects. She said that she was on her own with three people representing the Trust. The Claimant said that she was therefore not prepared to attend the further meeting proposed for the following day.
- 42 At the conclusion of the email the Claimant said the following:
- I love my job and I just want to continue to do it well. I have highlighted the very valid reasons why I simply cannot continue to work for [Ms Chadd] in both informal discussions with [Ms Smith] and [Ms Newman] in the meeting on Thursday.
- Although I am confident in taking this to a formal hearing, because I feel that the issues I have raised need to be addressed, I must consider the impact this is having on me and I am not prepared to sacrifice my personal wellbeing any further.

I am very clear about the standard of care I bring to my role and I am confident that I offer value to the trust in my capacity as an IFC. I have a clear idea of the role I could perform with a different reporting line. I discussed this informally with the matrons in late November/early December and from my perspective this would be an acceptable resolution to my current situation.

If, however, my only option is to continue on this informal process or take this to a formal hearing if I am unhappy with the informal process, then I must consider my good reputation, my personal and professional integrity and the impact working for this manager is having on me, and tender my resignation because I feel I would have little choice.

- 43 The Claimant sent an email to Mr Kilvington also on 19 January simply saying that she would not be attending the proposed second meeting. He replied thanking the Claimant for letting him know, and then said:

I will consider the appropriate management course in light of the working restrictions you set out during the mediation meeting.

- 44 The Claimant replied:

I am not sure which 'restrictions' you are referring to? Are you referring to the concerns I raised about clinical practice during the discussions which took place at the meeting on Thursday 15th that you attended in the capacity of 'impartial and neutral' mediator? Please could you clarify your involvement in this issue is indeed that of impartial mediator as the tone and content of your email to me would suggest otherwise?

- 45 The Claimant then wrote to Ms Cudjoe as follows:

You said Bill was a 'neutral and independent facilitator'? I actually feel quite intimidated by this abuse of the mediator role. A trained, external mediator such as the one you originally suggested would not be communicating in this manner? I attended that meeting in good faith. How is this helpful?

- 46 There were other emails between the Claimant and Mr Kilvington to which I need not refer in detail. Mr Kilvington then wrote formally to the Claimant on 20 January 2015. He said that he was closing the informal mediation process. He said:

My role was that of an impartial mediator but as a senior manager within the division and a registered health care professional I also have a responsibility to act if there are concerns raised that could impact on the safety of patients or staff.

- 47 Mr Kilvington then commented on the procedure which had been adopted during the mediation meeting. The final three paragraphs of the letter are as follows:

As I explained towards the end of the meeting, if we were unable to find a solution I would have to consider the appropriate management of the situation going forward to ensure that the needs of the service were met. I also explained to you that you retained the option to raise a formal grievance. I have enclosed the Trust's Grievance Policy for your information.

In respect of the management of the situation and service needs, I have had a conversation with Michelle Cudjoe, Head of Midwifery. I have explained your very clearly stated position that you would not participate in the tongue-tie clinic again.

Michelle will arrange to meet with you in the very near future to set out any interim arrangements she can put in place regarding your working arrangements and to establish a long-term approach in order to meet the needs of the service.

48 There was then an exchange of emails on 21 January 2015 between the Claimant and Ms Cudjoe about the proposed meeting. The Claimant was asked to see Ms Cudjoe's secretary to arrange a date and time.

49 Also on 20 January 2015 was what appears to be a perfectly normal exchange of emails between Ms Blythman and the Claimant concerning duties for April 2015. Ms Blythman sent a proposed rota (for want of a better word) to the Claimant said to contain 'changes to the exciting (*sic*) rota to cover the needs of the service', and the Claimant responded with requests for some variations.

50 On 22 January 2015 the Claimant replied at length to Mr Kilvington. Many detailed points were made, but the main thrust of the letter was that Mr Kilvington had not acted appropriately as a mediator. On the following day the Claimant wrote her resignation letter addressed to Ms Blythman. The relevant parts are as follows:

....

I have a huge amount to offer the trust to support its journey towards attaining BFI accreditation but I cannot continue to work in clinical situations which make me feel deeply uncomfortable and I cannot continue to work under my manger's (*sic*) chaotic and inconsistent management style.

I have tried to raise my concerns directly with my manager, with you, with the other matrons in informal discussions and through the grievance procedure and feel very disappointed with the mediation meeting I was asked to attend as a result.

....

I have enjoyed working with you personally and wish you well. If you should ever require any help with the BFI project and feel you could use my skills as an independent practitioner, please let me know.

51 That letter was formally acknowledged by Ms Blythman in a letter of 30 January 2015.

52 The Claimant also completed a 'Leaver's Questionnaire' form. She ticked standard boxes to indicate that she had lacked support from her managers, and felt undervalued. She added text, part of which was lost in photocopying. The thrust was that her concerns about certain clinical situations with her manager had not been addressed, and that the mediation meeting was an ambush.

53 Having left on the previous day, the Claimant sent an email to Ms Cudjoe on 19 February 2015 saying that she would be happy to undertake bank work for the Respondent 'should things within that team change for the better.'

The law

54 It is not necessary to set out the statutory provisions, nor undertake a substantial review of the authorities. It is common ground that the Claimant resigned from the employment of the Respondent. To found a claim of unfair dismissal in those circumstances, the Claimant must prove that the Respondent has acted in such a way as to entitle the Claimant to terminate the employment contract without notice. The Claimant must

show that the Respondent was in fundamental breach of an express or implied term of the contract of employment. Here, as is usually the case, the Claimant clearly relies upon the term implied into all contracts of employment that neither party must without reasonable and proper cause conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties. The function of the Tribunal is to look objectively at the employer's conduct as a whole, and decide whether its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it. Any breach of such term is of necessity a fundamental breach. The conduct amounting to a breach of that term may be a series of actions which cumulatively amount to a repudiation of the contract by the employer. The final straw may be relatively insignificant, but must not be utterly trivial. Further, the Claimant must have resigned at least partly in response to the breach, and must not have affirmed the contract.

Submissions for the parties

- 55 Miss Patterson provided comprehensive written submissions on behalf of the Respondent. She dealt with each of the elements upon which the Claimant relies as justifying her resignation. They will be mentioned below. Miss Patterson accepted that the point as to delay mentioned in paragraph numbers 6 of the list of issues was not in issue in the circumstances, but said that on the contrary, the Claimant had acted too hastily. The Claimant had, she said, not waited long enough or fully explored potential resolutions to her issues before resigning. Miss Patterson also raised the question as to whether the Claimant expected her employment to end as a result of her resigning. That matter is explored further below.
- 56 The Claimant made oral submissions in response to the submissions of Miss Patterson. I refer to those where relevant below.

Discussion and conclusion

- 57 The first matter to be ascertained is what was the reason, or what were the reasons, which singly or in combination led the Claimant to resign from employment with the Respondent, doing a job which she obviously enjoyed, and which was valuable and fulfilling. The best evidence comes from the contemporaneous documents, being the resignation letter and the Leaver's Questionnaire. Three points were made. The first is the Claimant's concern about clinical aspects of Ms Chadd's competence. The second is her complaint about Ms Chadd's management style. The third relates to the mediation procedure.
- 58 Miss Patterson submitted that as far as allegations about Ms Chadd's clinical practice were concerned, it is not the function of the Tribunal to come to a conclusion as to the competence, or otherwise, of Ms Chadd. Rather, it is the function of the Tribunal to consider whether the Respondent acted appropriately to investigate any concerns which were raised, and to deal with justified concerns appropriately. I agree with that submission. I can easily accept that two people may have different views

as to the best practice to adopt in some clinical circumstances. That does not by itself justify a resignation, or contribute towards such justification. However, I can see circumstances where if the difference of views is raised with managers, and not properly considered, then that could damage the trust and confidence of the employee.

- 59 I make some general points about the individual allegations in paragraph 3 the list of issues. Some of them are very specific. Some vague. Some are in reality repetitious. What it is necessary to do is to make the findings of fact relevant to those complaints, and then stand back and consider whether overall there has been a fundamental breach of contract by the Respondent.
- 60 The first element in the factual allegations relates to the general line management of the Claimant by Ms Chadd. As recorded above the Claimant has made a variety of vague allegations, none of which I have found to have been substantiated. The Claimant may have had some genuine concerns about Ms Chadd's management, but the Tribunal needs to have evidence to justify those concerns, rather than the bare generalised assertions which have been made. There was an incident on 27 November 2014 during which I have found that Ms Chadd did speak sharply to the Claimant. I have set out the context above. In my judgment this is an entirely trivial matter.
- 61 The next point made is that informal mediation was offered to the Claimant. I entirely fail to understand the point being made. It is in my experience very common for grievance procedures to prescribe an attempt at informal resolution where possible as the first step to be taken after a grievance has been raised. I also have difficulty in understanding the point about an alleged lack of response to the Claimant's email of 2 January 2015. The Claimant confirmed in her oral submissions that it was the delay from then to 6 January 2015 about which she was concerned. On 2 January, a Friday, the Claimant sent an email to Ms Smith saying she was due to be back the following week and would fit in with Ms Smith and Ms Chadd. Then on 6 January, the following Tuesday, she sent a further email at 09.16 saying that she would be available on 8 January after noon. Ms Smith responded at 14.49 on the same day saying that the meeting would be on 15 January 2015. Miss Patterson submitted that there was no unreasonable delay, particularly in light of the fact that the Claimant was absent on sick leave. I entirely agree with her.
- 62 The Claimant complains about Mr Kilvington being the mediator. Miss Patterson made two points on behalf of the Respondent. The first was that too much weight was being attached to the word 'mediation' when what was being arranged was an informal discussion rather than a formal mediation. The second point was that although the Claimant specifically complained about Ms Blythman being present at the meeting on 15 January 2015, she did not object to Mr Kilvington running the meeting.
- 63 The Claimant submitted that the Respondent should have had a mediation policy and that ACAS guidelines should have been followed. I am assuming that the Claimant was referring to the ACAS Guide as

opposed to the ACAS Code of Practice.³ In the Guide there is indeed reference to mediation by an 'independent third party or mediator' being appropriate in certain circumstances.

- 64 I find that the Claimant was not concerned before the meeting about Mr Kilvington being responsible for conducting it. I do accept that the continued use of the word 'mediation' was somewhat unfortunate in the light of the original plan of Ms Cudjoe being to use the services of an external trained mediator, and then having to change to an internal manager. However, the grievance procedure refers to informal resolution and not mediation. I also note that in the email from Ms Cudjoe on the point dated 9 January 2015 she also referred to external mediation as being more appropriate than 'a mediated session with a manager'. The word 'mediation' was therefore not used exclusively in connection with an external person.
- 65 The next point relates to the alleged lack of organisation and guidance concerning the meeting. Miss Patterson accepted that there may have been some confusion about the 'ground rules'. However, she said, the Claimant had them before the meeting. The Claimant's submissions on the point were twofold. The first was that there was confusion about the time of the meeting. The second was that Mr Kilvington could have sent the relevant document to her by email.
- 66 I accept that it appears that the time of the meeting was changed from 13:30 to 13:00 and it was not explained to me how that came about. It was at the least unfortunate that the Claimant was not formally notified of the change, as appears to have been the case. The allegation that Mr Kilvington could have sent a copy of the ground rules by email is factually correct. However, the Claimant did receive them and there is nothing surprising in them.
- 67 The Claimant alleges that the mediation was not fair, impartial or neutral. Miss Patterson submitted that the Claimant has lost sight of the fact that this was intended to be an informal process, and not run in the manner of a formal disciplinary hearing. Mr Kilvington was seeking to facilitate a discussion between the parties. The Claimant's position as mentioned already, is that he was not an appropriate person within the ACAS Guide.
- 68 From the evidence adduced I do not accept that allegation that the meeting was not fair, or that Mr Kilvington was not impartial. There were obvious difficulties between the Claimant and Ms Chadd, and I have not seen or heard anything to persuade me that Mr Kilvington favoured one over the other.
- 69 One specific aspect is that the Claimant complains that she was not allowed to be represented, and that links in with the point made by the Claimant about the attendance of Ms Blythman. I will deal with both aspects together. Miss Patterson submitted that this was not a formal meeting where representation was appropriate. Further Ms Chadd was

³ I note that the ACAS Guide has no statutory force.

not represented. Ms Blythman was there to assist Mr Kilvington in connection with clinical matters if required. The Claimant pointed out that the grievance procedure referred to an entitlement to representation at any stage of the procedure. The Claimant also submitted that in fact no clinical issues were raised so that the presence of Ms Blythman was not necessary.

- 70 I do not propose to analyse the wording of the grievance procedure. I consider it to be ambiguous. I find that the factual allegation that the Respondent would not allow the Claimant to be presented fails. There is no evidence of any refusal. I also do not accept the Claimant's submission that no clinical issues were raised at the meeting before Mr Kilvington. It is agreed by all present that the incident of bleeding following a procedure was discussed.
- 71 The next point raised is the alleged failure of Mr Kilvington and Ms Cudjoe to respond to an email from the Claimant in January 2015. Miss Patterson identified this as being the email of 16 January 2015 from the Claimant, and the Claimant did not dispute that. That day was a Friday. Miss Patterson pointed out that the Claimant said that she would contact Mr Kilvington further that day. The Claimant then sent further emails on 19 and 20 January 2015, following which Mr Kilvington closed the informal part of the process. The Claimant did not make any submissions on this point.
- 72 I do not understand the subject of the Claimant's complaint. At the time it was anticipated that there would be a further meeting on 20 January 2015. After the Claimant declined to participate further Mr Kilvington wrote to her in some detail on that day.
- 73 Although in fact dealt with above, there is a separate allegation that there was a lack of support for the Claimant during the mediation process. I can deal with it very quickly. In her oral submissions the Claimant referred to the points about the change of time, and the 'Ground Rules' document, and the alleged failure of the Respondent to reply to emails. I do not propose to repeat what has been set out above. Miss Patterson submitted that the Respondent had provided perfectly proper support for her in an effort to resolve the difficulties which had arisen. I agree.
- 74 There is a specific allegation that the Respondent should have provided the Claimant with another line manager during the mediation process. Miss Patterson submitted that in fact the Claimant did not report to Ms Chadd during the mediation process. She also referred to the email of 1 December 2014 from Ms Smith in which she suggested that the Claimant approach a Ward Manager. The Claimant submitted that there was no formal arrangement put in place. She referred to the exchange of emails with Ms Cudjoe of 9 January 2015. I have found that it was the intention that there should be a change of line manager, but that was overtaken by events.
- 75 The Claimant complains about the Respondent's failure to deal with and resolve the Claimant's complaints about Ms Chadd's line management

and clinical practice. Miss Patterson submitted that the only clinical issue raised relating to the bleeding. Mr Kilvington took advice from Ms Blythman, and then checked to make sure proper reporting procedures had been followed. Therefore, she said, the Respondent had dealt with the clinical issue. She further submitted that the Respondent was in the process of seeking to resolve any matters relating to management, but the Claimant declined to attend a further meeting and then resigned. It was, she said, the Claimant who failed to engage in the process. I agree with that submission.

- 76 In reply the Claimant referred to her complaint about the 'Japanese Breast Syndrome' not being addressed. The allegation that Ms Chadd used this phrase is set out in the Claimant's witness statement. As far as I can see the Claimant did not assert in her witness statement that she had complained about it.
- 77 The penultimate specific issue raised by the Claimant is that there were attempts by senior colleagues to conspire against her, orchestrate meetings to discredit her, and reduce the merit of her concerns. The final allegation is that the Claimant was victimised and ostracised by senior colleagues. I cannot find any evidence to support those generalised allegations.
- 78 As already mentioned, Miss Patterson submitted that apart from anything else, the Claimant resigned prematurely before the Respondent had been able to complete the process to consider her complaints. The Claimant refused to engage in the processes available to her. Further, submitted Miss Patterson, it was highly possible that the Claimant resigned to seek to advance her career as she had demonstrated in September 2014 that she was dissatisfied with her lot. Finally, Miss Patterson drew my attention to an exchange during the cross-examination of Ms Blythman by the Claimant. The Claimant asked Ms Blythman why she had not sought to retain the Claimant after she had submitted her resignation, and she referred to the 'basic' acknowledgement letter dated 30 January 2015. The answer from Ms Blythman was that the letter was written for her in her absence. However, it is the question from the Claimant which is of interest.
- 79 I return to the summary of the law set out above. The first matter to be decided is whether the Respondent acted such a way as to entitle the Claimant to resign without notice. I must look objectively at the accumulation of events which have been found to have occurred, and decide whether singly or together they were of such gravity as to constitute a fundamental breach of contract. I have come to the very clear conclusion that they were not sufficiently serious.
- 80 As a general proposition, it is obvious that not every complaint or grievance that an employee may have about issues in the workplace must automatically entitle an employee to resign and present a claim of constructive unfair dismissal. That includes procedures for dealing with existing complaints. Nearly all, if not all, working relationships will have their ups and downs. To constitute a fundamental breach of contract the

conduct must be such, assessed objectively, as is calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties.⁴

- 81 Here we have differences arising between the Claimant and Ms Chadd. I find that the conduct of the Claimant towards Ms Chadd was not sufficient by itself to create a fundamental breach of contract. There was some friction over management issues, but no more than that. Further, in my judgment the Respondent took perfectly proper steps to seek to resolve those differences on an informal basis. I accept that the Claimant genuinely felt concerned about the one meeting which had taken place with Mr Kilvington. I do not accept that the complaints which the Claimant makes about that process and her other complaints, where they are factually justified, are of such weight as materially adversely to affect her overall working relationship with the Respondent. I therefore find that the Respondent was not in breach of contract and the Claimant was not entitled to resign without notice.⁵ The claims fails.
- 82 The Claimant herself pulled out of the informal process. I have noted and taken into account that she thought that that was the appropriate step to take. She could thereafter have utilised the formal process set out in the Respondent's grievance procedure. It is not necessary or appropriate for me to consider what might have happened if the Claimant had attended a second meeting with Mr Kilvington, or commenced the formal process. That would be pure speculation. I do not need to consider whether the Claimant was seeking to further her career by her resignation.

**Employment Judge Baron
10 February 2017**

⁴ My emphasis.

⁵ That is the relevant test in section 95(1)(c) of the Employment Rights Act 1996.