



THE EMPLOYMENT TRIBUNALS

Claimant: Ms J Harridge
Respondent: Aspen Healthcare Limited
Heard at: East London Hearing Centre
On: 1 & 2 June 2017
Before: Employment Judge Allen (sitting alone)

Representation

Claimant: In person
Respondent: Ms R Barrett (counsel)

RESERVED JUDGMENT

The judgment of the Tribunal is that:-

1. The Claimant was not constructively dismissed.
2. The claim for (constructive) unfair dismissal fails and is dismissed.

REASONS

1. The Claimant, Jenny Harridge, was employed by the Respondent as a receptionist at the Holly House Private Hospital. Her employment had started in June 1995. She resigned on 20 September 2016 and her effective date of termination was 18 October 2016. By the time of her resignation in 2016 she was working part time. By claim form presented on 15 January 2017, she brought a claim for constructive unfair dismissal.
2. On 1 and 2 June 2017, the Tribunal read witness statements and heard oral evidence from the Claimant; and from Ross Wrenhurst, Unison Steward and Health and Safety Representative on her behalf (his witness statement was contained within the bundle at pp. 247-249); and on behalf of the Respondent from Luis Pedro, Director of Services and Patient Experience; Laura Fowler, Human Resource Business Partner; Susannah Nunn, Contracts Manager; and Barnette Lessem, Administration Manager. The Claimant also submitted a signed letter from Sally Purslow, a former employee, who had been senior receptionist.

3. The Tribunal was directed to specific pages in an agreed bundle of documents supplemented by a small number of documents submitted by both parties during the hearing. The Respondent supplied a cast list and chronology. The Claimant provided an updated Schedule of Loss dated 1 June 2017, replacing the Schedule in the bundle dated 9 February 2017 at p. 13A.
4. The Tribunal heard oral submissions from both parties after the conclusion of the evidence. The Respondent relied upon written closing submissions and provided a bundle of relevant authorities.
5. Following the hearing on 1 and 2 June 2017, the Tribunal's decision was reserved.

Identification of Issues

6. The issues were clarified at the outset of the hearing. The Respondent provided a proposed list of issues, which was agreed and approved subject to the addition of the grievance outcome as a factor in the fundamental breach of contract alleged by the Claimant. This had not been expressly referred to in the Claimant's ET1, however it was something that she referred to in her letter of resignation. The Tribunal permitted the Respondent to submit additional documentary and oral evidence in relation to this matter. The Claimant confirmed that she was not relying on any failure to pay or pay correctly statutory sick pay and she was not relying on a failure to get a pay rise or attempting to bring a claim relating to unpaid wages. She also clarified that whilst arguing that the Respondent's treatment of her which caused her to resign was based in part on their reaction to a grievance that she had brought in 2015 about a breach of her confidentiality, she was not seeking to argue that the only or principal reason for her dismissal was the making of a protected disclosure. The Claimant agreed that she had not presented a complaint of age discrimination and the Tribunal made clear to the Claimant that as she had not brought such a complaint, the 'injury to feeling' element set out in her updated Schedule of Loss dated 1 June 2017 was not recoverable in an unfair dismissal claim. The Respondent confirmed that it was no longer relying on an argument contained in the ET3 at paragraph 11 of the Response that if she had been dismissed, the reason for the dismissal may have been misconduct.
7. The final list of issues was therefore:

Liability

- 1) Was the Claimant constructively dismissed?
 - a. Did the Respondent commit a fundamental breach of the Claimant's employment contract?

The Claimant makes the following factual allegations:

- i. The Claimant was called to an investigatory meeting on 21

August 2015 without being forewarned, informed of the subject matter, or given the opportunity to be accompanied;

- ii. The Respondent instigated to this disciplinary procedure against the claimant because she had previously raised a grievance about confidentiality;
 - iii. The respondent suspended the Claimant from 21 August 2015 and Laura Fowler HR business partner watched C collect her belongings causing her to feel humiliated in front of colleagues and patients;
 - iv. At the disciplinary meeting on 6 November 2015 the Claimant was “immediately verbally attacked” and accused of contacting consultants to ask for personal references;
 - v. Although the disciplinary charge against the Claimant was not upheld, the Claimant was told “maybe I should take a look at myself and see how I might be perceived by other people” and a recommendation was made that she attend “further customer care courses”;
 - vi. At a back to work meeting on 20 January 2016, Laura Fowler, HR business Partner, said to the Claimant that she should be mindful of what she was telling people as a staff member had complained that the Claimant had told colleagues “that management were begging me to come back to work and that the place was falling apart without me”, which made staff feel demotivated. Laura Fowler also said “You may not have said it but I wanted to let you know.”;
 - vii. That the grievance and grievance appeal outcomes in 2016 failed to resolve matters.
- b. Did the respondent by the matters set out above (if proven) taken singly or cumulatively, without reasonable and proper cause conduct itself in a manner which was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee?
 - c. Did the Claimant resign in response to the Respondent’s alleged conduct as set out above?
 - d. Did the Claimant affirm her employment contract after said alleged conduct by the Respondent?

Remedy

- 2) If the tribunal considers the dismissal was unfair, was it caused or contributed to by the claimants conduct?

- a. Would it be just and equitable to reduce the basic award pursuant to s122(2) ERA 1996?
- b. Would it be just and equitable to reduce the compensatory award pursuant to s123(6) ERA 1996?
- 3) If the tribunal considers the dismissal was unfair would the claimant have been fairly dismissed in any event and if so, when?

Findings of Fact

8. The Respondent is a private sector healthcare provider. One of its facilities is The Holly House Private Hospital ('The Holly'). The Claimant was employed by the Respondent for over 2 decades as a receptionist, initially full time and more recently part time. The Claimant has red hair and is the only receptionist with red hair working at the relevant times (which as an identifying characteristic is relevant to some of the issues below). Her assertion that she had a good employment record in the period before the matters referred to below was not challenged by the Respondent. The Holly had expanded significantly in the years prior to the Claimant's resignation.
9. As a private sector hospital, most of the patients attending The Holly had chosen it above other potential providers (there were some patients from the NHS and others whose choices may have been limited by the terms of their health insurance). As with any healthcare provider, public or private sector, The Holly's reputation for customer service was important to it. The Respondent operated a Customer Care Policy, which stated ". . . it is essential for service users to feel that they are being cared for in a pleasant environment by staff who consistently exhibit positive customer-oriented attitudes and behaviours." The Claimant accepted that she was familiar with and agreed with this policy. The policy includes a section on 'First Impressions' including the need to acknowledge the presence or arrival of someone; and a section on 'Good Manners' – which the Claimant accepted that she agreed with.
10. The Respondent also operates a Grievance Procedure; a Disciplinary Procedure and a Rules of Conduct Policy. In the Disciplinary Procedure, at 6.3 under the heading of 'Suspension' it states "In some circumstances we may need to suspend you from work where it is believed that the conduct to be investigated involves gross misconduct or where it is felt that your continued presence in the workplace could either prejudice an investigation, potentially be detrimental to you, colleagues, or potentially place out business at risk". At 6.4 under the heading of 'Investigation' it states: "Any investigatory meeting is entirely a fact finding exercise and employees do not have a statutory right to be accompanied at such meetings or be invited in writing in advance". In the Rules of Conduct policy, one of the examples of misconduct is "Failure to act in a courteous manner towards others" [p. 74]; one of the examples of gross misconduct is "Bringing Aspen Healthcare Limited into serious disrepute"

[p. 75].

11. The NHS Choices website contains a section enabling people to leave comments about different health providers and rate them from 1 to 5 stars. The tribunal was given a print out of the comments about The Holly. The comments were mixed – some very positive and some negative.
12. On 2 April 2015, the Claimant was admitted to the hospital as a patient. A nurse on the ward at the time of the Claimant's admission complained to Sharon Gatland, Director of Nursing and Clinical Services by email also dated 2 April 2015 [p. 84] that the Claimant had made a fuss about not being given a room. The Claimant denies that this was the case – but that issue itself is not relevant to this hearing. The emailed complaint named the Claimant's consultant and contained a reference to a private medical matter which was not relevant to the behaviour complained of. Sharon Gatland forwarded the email to the Claimant's manager, Barnette Lessem, copied to Luis Pedro. There was no redaction of the private material.
13. The Claimant was spoken to about this matter on 10 April 2015. The Claimant felt that her confidentiality had been breached by the nurse and raised a grievance first informally and then in writing on 8 May 2015 [p. 88] and formally in writing on 23 May 2015 [p. 88].
14. In this same period of 2015, the Respondent was meeting with the Claimant in relation to her absence record and on 19 May 2015, Ms Lessem wrote to the Claimant informing her that she would be monitoring her absences over the next 6 months and that there should be no more absences in that period [p. 88c].
15. Following a grievance hearing, Ray Gilbert, Building Services Manager, concluded in a letter dated 24 July 2015 that the Claimant's confidentiality had not been breached on the basis that "The hospital is a public place. You are an employee at Holly House and are known as an employee by staff members. The information that was shared to your manager was that you attended the hospital as a patient. No classified information was shared about you to your manager." [p. 91-92]. That is a surprising conclusion.
16. The Claimant appealed and a more senior manager, Phil Bates, partly upheld the Claimant's appeal in a letter dated 14 October 2015 [pp. 163A-163], finding that some of Mr Gilbert's comments were not appropriate; that some of the information shared by the nurse should have been redacted before being sent to the Claimant's line manager; and that the failure to do this had caused the Claimant discomfort. Mr Bates' decision struck the tribunal as being a fair approach. That it took the Respondent 6 months to arrive at this conclusion struck the tribunal as being unimpressive. The person that Mr Bates concluded should have redacted the complaint before passing it to managers was Sharon Gatland.

17. Four separate complaints about staff behaviour had been received from different patients who had attended the outpatients' reception desk in the period July / August 2015.
- a. On 31 July 2015, Sharon Gatland reported to Barnette Lessem that Patient A felt that her arrival into Outpatient reception the previous week had been unsatisfactory in that she had been kept waiting without being greeted for several minutes. Sharon Gatland's email stated that "The staff members on duty were Sally and her team (red hair)?" [p. 97]. In a subsequent interview, Sharon Gatland stated that the complaint had been conveyed to her via a senior member of the management team at head office who was an acquaintance of the patient [p. 139].
 - b. Patient B in a feedback form on 1 August 2015 stated "The red haired receptionist was rude, not helpful and needs more training or sacked" [p. 99]. On that same day, the Claimant had emailed Anne Ruff to inform her that the family of a patient who had turned up without an appointment had been extremely rude and arrogant and that they might make a complaint [p. 98]
 - c. Patient C, a GP, made a complaint via Mary Elliot, outpatients manager and recorded by Barnette Lessem on 10 August 2015 as on 8 August 2015 having been "ignored by Reception (JH) chatting to colleague, continued to do so while serving patient" [p. 102]. Mary Elliot when subsequently interviewed, stated that the complaint had been passed to her by the phlebotomist, Grace Hammond [p. 125]. When Grace Hammond was interviewed she recounted the complaint but did not make any specific reference to the Claimant [p. 130].
 - d. Patient D had made a comment on the NHS Choices website on 15 August 2015 to the effect that she had been rudely told by the receptionist that reception wasn't open and that she shouldn't have come that early; and that the receptionist had shouted over to her to ask confidential details about her medical appointment and then told her off again for being 20 minutes early. Barnett Lessem was able to identify the patient and called her. Although the patient initially agreed to speak further to the Respondent, she subsequently declined to do so [pp. 110-111]. In a handwritten note from a Staff Nurse, a comment is recorded that "receptionist 50's with red hair v rude and unprofessional (Jenny was on) [pp. 105-106]".
18. 1, 8 and 15 August 2015 were all Saturdays. The Claimant worked on Fridays and Saturdays (with other colleagues).
19. The Claimant agreed that if the allegations made in these complaints were true, then the behaviour of the receptionist or receptionists involved amounted to a breach of the Respondent's Customer Care Policy. The Claimant also agreed that all complaints should be taken seriously.

20. As a result of these complaints, there was a discussion between Luis Pedro, Laura Fowler and and Barnette Lessem on 17 August 2015. Mr Pedro stated that he wanted to suspend the Claimant [p. 108]. Ms Fowler advised that there should be a fact finding investigation involving an interview with the Claimant before any decision to suspend her was taken.
21. The Claimant was called to a fact finding meeting with Susannah Nunn and Laura Fowler on 21 August 2015. She was not told in advance about this meeting or what it would be about or given any right to be accompanied. That is all in accordance with the Respondent's disciplinary policy and is not in the tribunal's experience, unusual in situations of this type. Nevertheless the Claimant was understandably upset to be confronted with allegations of potential misconduct at this meeting but was able to give her account in relation to the days in question [pp. 116-120]. Ms Nunn's evidence was that the Claimant did not seem shocked by the complaints and both Ms Nunn and Ms Fowler gave evidence that the Claimant was angry during the meeting – which the Claimant denied – saying that she was upset. After a short adjournment at the end of the meeting, the Claimant was informed by Ms Nunn that she was being suspended. She was told that suspension did not indicate that any formal decision had been made and that she should not contact any other employee, supplier or customer of the Respondent without the Respondent's consent. A letter confirming the suspension and its terms was sent to the Claimant dated 25 August 2015 [pp. 126-127].
22. Ms Fowler's evidence was that the decision to suspend was based on the potential seriousness of the complaints – which could amount to bringing the Respondent into serious disrepute – and also the need to separate the Claimant from colleagues yet to be interviewed and what tipped the balance was the Claimant's angry reaction to being told about the complaints and her behaviour at that meeting. The Tribunal accepted Ms Nunn's evidence that she perceived the Claimant to have been angry and to have behaved oddly when told of the complaints.
23. The Claimant went to get her belongings and leave and very shortly afterwards, Ms Fowler followed her to reception and apprehending that the Claimant was talking to her colleagues about what had happened, advised the Claimant that she must leave immediately.
24. The Tribunal accepted Ms Nunn's evidence that was not involved in the Claimant's confidentiality grievance – and that she was unaware of it. The Claimant was surprised by this and pointed out that Ms Fowler was aware of the confidentiality grievance, which the Tribunal accepted.
25. Other receptionists and other relevant employees were subsequently also interviewed as part of the investigation. However unlike in the case of the Claimant, there was no information pointing towards any other specific receptionist being responsible.

26. Ms Nunn completed an investigation report dated 22 September 2015 – concluding that there was a case to answer [pp. 144-149]. This was passed to Mr Pedro, who considered that the matter should go forward to a disciplinary hearing – but only in relation to the matter dated 15 August 2015 (Patient D). He determined that there was insufficient evidence in relation to the other 3 matters. The Claimant was invited to a disciplinary hearing by letter dated 24 September 2015 [pp. 150-151]. That letter set out the charge against her and informed her that as the allegations may be deemed to be gross misconduct, an outcome of the disciplinary meeting could be dismissal.
27. The Respondent did not take the opportunity at this point to review the Claimant's suspension – in part because the Claimant was now off sick.
28. The disciplinary hearing took place on 6 November 2015 before Mr Pedro.
29. The Claimant had provided character references to the disciplinary hearing from some Consultants during her suspension. Mr Pedro gave evidence that some Consultants approached by the Claimant had felt uncomfortable about being involved by the Claimant. At the start of the disciplinary meeting, Mr Pedro raised this matter with the Claimant – as it appeared to him to be a breach of the terms of the Claimant's suspension, because she had not requested permission to make these approaches [pp. 172-178].
30. After the meeting, Mr Pedro concluded that no disciplinary sanction would be imposed on the basis of insufficient evidence and he communicated this outcome to the Claimant at an informal meeting and it was confirmed by letter dated 24 November 2015 [pp. 179-180]. He stated that “. . . we also discussed that it is important that you use this as an opportunity to reflect on the way that you may be perceived by others in order to ensure that your customer service is of a high standard as expected by us. Whilst there is some doubt that the service you provided had upset the patient, I have to accept that if you did then you did not do so intentionally.” He also stated that he had nominated the Claimant to attend the next Aspen Values training. This is a training session that she would have attended in due course in any event.
31. The Claimant felt aggrieved that although the allegations were not upheld she was asked 'to take a look at herself'. The Tribunal considered that given the evidence before him, Mr Pedro's intention was constructive – although the Tribunal notes again that it took the Respondent a long time to get to this outcome.
32. Since her suspension the Claimant had been certified sick with stress and anxiety. Ms Fowler wrote to her on 2 December 2015 inviting her to an Absence Review Meeting and an OH report was obtained dated 9 December 2015 [pp. 186-187] which stated that the Claimant was medically unfit to work which was based in her reaction to her treatment at work including an exacerbation of IBS.

33. On 18 December 2015 the Claimant emailed a complaint to Ms Fowler complaining about the disciplinary process and stating that she felt bullied and victimised by management. In this email she asked for the Respondent to consider a severance agreement. [p. 188]. Ms Fowler replied that there would be no settlement agreement [p. 188A].
34. At an absence review meeting on 6 January 2016, at which the Claimant was accompanied by Mr Wrenhurst, he suggested that either the Claimant could return as a sort of 'new starter' with induction and training (which the Claimant was not happy with) or that there be a severance agreement [pp. 192-196]. Ms Lessem and Ms Fowler told the Claimant that they wanted her to return to work. A subsequent OH report dated 13 January stated that the Claimant was fit to return to work to undertake training [p. 200].
35. On 14 January 2016 Ms Lessem emailed Ms Fowler to report that she had been told by Karen Bastick, a Customer Service Advisor, that the Claimant had attended The Holly and told colleagues in reception that she had been begged to return to work and that Mr Pedro had told her that the team was unable to cope without her. Ms Bastick reported that the team had felt insulted by this [p. 202].
36. At the next Absence Review Meeting on 20 January 2016, [pp. 203-205] the Claimant indicated that she would return to work. The meeting appeared to mark a turning point in the relationship between the Claimant and Respondent. At the end of the meeting, Ms Fowler raised the issue that Ms Bastick had communicated to Ms Lessem and told the Claimant that she needed to be mindful of what she told people. The Claimant denied that she had said the words attributed to her by Ms Bastick. Ms Fowler's evidence was that the Claimant did not appear upset by this exchange and that the meeting appeared to end on a positive note. The Claimant agreed that she had said 'it is just like Chinese whispers'.
37. There followed a letter from JW Employment Law dated 19 February 2016 on behalf of the Claimant instigating a grievance based on her treatment – primarily during the disciplinary process but including the comment made by Ms Fowler on 20 January 2016 and a complaint of age discrimination. The letter treated constructive dismissal [pp. 210-212].
38. A grievance process followed. The grievance outcome letter from James Clark, Chief Financial Officer was dated 3 May 2016 [pp. 224-227] and the grievance appeal outcome letter from Donna Gibbs, Development Director was dated 25 August 2016 [pp. 282A-282D]. The grievance was not upheld. The Claimant offered no evidence in her witness statement about her feelings in relation to this grievance process and it is notable that although mentioned in her resignation letter, it is not referred to in her ET1.
39. The Claimant had remained off sick during this period and on

13 September 2016, the Claimant was invited to a further Absence Review Meeting. On 20 September 2016 the Claimant resigned. The resignation letter stated:

"I am currently off sick and completely feel my absence is due to the treatment I have received from the company. I took a grievance in the hope that would resolve matters but it has done nothing to improve my feelings. I have totally lost trust and confidence in you as my employer because of your behaviour towards me. For that reason I am resigning my position with the company. I hereby give four weeks' notice and my final date of employment shall therefore be 18 October 2016.

My reasons for terminating my employment are due to a catalogue of incidents that reveal the poor treatment that has left me unable to return to a job that I have loved doing for so many years:

1. Having attended as a patient I was appalled to find my entitlement to confidentiality as a patient was ignored simply on the ground that I worked there.
2. My grievance against that was a whitewash and did nothing to correct the detrimental effect on me.
3. I was then subjected to the most heavy-handed treatment when I was suspended and marched off the premises for allegations of misconduct even though, others in similar situation, were allowed to simply explain their actions or take words of advice. The allegations were 4 weeks old in one case. I was is squirted from the premises apparently because the HR person needed to "check that I had left"! To be walked off in such a way suggested I was accused of some criminal act and that was how I was made to feel. It was all totally unnecessary. The subsequent finding that I was not to be disciplined did not stop the feeling that I was looked upon as if I had done something wrong. I was suspended in that way on 21st August and my name wasn't cleared until November.
4. Then at a meeting allegedly designed to try to get me back to work following the resulting ill-health, you then went on to indicate that I had told other staff "the place was falling apart without me" Whilst it is now suggested that you only wanted to let me know about the accusation; that was not how it was presented. It was presented as if that was exactly what had happened; hence you went on to say "This made the staff feel very demotivated and they have done a good job recently". You also said "We want you to know to be mindful of what you tell people". You made me feel like I would be walking back to a place where staff disliked me and didn't trust me and that things would always be twisted to try to get me out. . . .
5. Whilst off work I was denied a pay rise that only find out about by accident. This was not said not to be personal but it feels personal when someone removes your name or omits your name from a pay increase.
6. Finally my grievance that I took in the last attempt to resolve matters just simply failed to do so. As part of the grievance everyone else was always believed above me and I was not even given a chance to have my say on statements made at the original hearing. It took so long to go through the process. I do not see why it took from 19th February 2016 to September 2016 to conclude the grievance and appeal! It was as if I was just not important enough

to you, even though this was supposed to be my gateway to finding our way back to earning some money. The delay means I feel worse and have had no pay coming in. Unsurprisingly, the outcome has failed to restore my trust and confidence in you as my employer.

I no longer feel safe at work and have no option but to resign I do feel I have been constructively dismissed and I will be pursuing the matter further “. . .

The Law

40. Section 95(1)(c) ERA 1996 states:

(1) For the purposes of this Part an employee is dismissed by his employer if

. . .

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

41. In order to establish a constructive dismissal, the Tribunal must be satisfied (*Western Excavating v Sharp [1978] QB 761*):

- a. That the Respondent committed a repudiatory breach;
- b. That the Claimant's resignation was caused by the Respondent's breach;
- c. That the Claimant did not waive the breach and affirm the contract.

42. The Claimant must show that the Respondent has, without reasonable and proper cause, conducted itself in a manner which is calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee (*Malik v BCCI [1988] AC 20*). A breach of the implied term of trust and confidence will by definition be fundamental breach going to the root of the contract (*Morrow v Safeway Stores Plc [2002] IRLR 9*). The test is not whether the employer acted reasonably.

43. The test is an objective one (*Meikle v Nottinghamshire County Council [2004] IRLR 703, para 25*) and not whether the employee has subjectively lost confidence in the employer. To amount to a breach of the implied term of trust and confidence, on an objective assessment, the employer must have clearly shown an intention to abandon the contract.

Conclusions

44. The Tribunal considered the issues as set out above, first individually and then taken as a whole.

45. That the Claimant was called to an investigatory meeting on 21 August 2015 without being forewarned, informed of the subject matter, or given the opportunity to be accompanied was in accordance with the

Respondent's disciplinary policy and is not a breach of contract.

46. The tribunal concluded that in August 2015 the Respondent instigated the investigation and subsequent disciplinary procedure against the claimant because it had received 4 complaints in a short period of time about treatment of patients by a receptionist – and there was some evidence that this receptionist could have been the Claimant. The Claimant accepted that complaints of this nature need to be investigated. The Tribunal did not consider that these processes were started because the Claimant had previously raised a grievance about confidentiality (the appeal process in that regard being on going at this time). The Tribunal took into account that only one of the original 4 complaints proceeded to a disciplinary hearing and that the Respondent did not in the end take any disciplinary action against the Claimant – not the likely actions of an employer motivated by a view of the Claimant based on her having troubled them with a confidentiality grievance. The Tribunal has accepted that Ms Nunn did not know of the confidentiality grievance.
47. The Tribunal did consider that the suspension of the Claimant on 21 August 2015 was not an action that all employers would have taken in this situation. However the Respondent's evidence was persuasive that the Respondent was particularly concerned for its reputation in customer care (which perhaps still needs some attention given the comments on the NHS Choices website printout) and that it had genuine concerns about the Claimant's ability to refrain from speaking to colleagues in a way that could influence the investigation (indeed later justified in part). The Tribunal also accepted Ms Nunn's evidence that in making the suspension decision, she was in part motivated by what seemed to her to be an intemperate and odd reaction by the Claimant to having the complaints put to her. At this stage of the investigation, there was some evidence that the Claimant may have been responsible for some of the complaints. Suspension in these circumstances was in accordance with the Respondent's disciplinary policy and does not appear by itself to be calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee.
48. The actions of Laura Fowler on 21 August 2015 in ensuring that the Claimant left the premises without speaking to colleagues are not unusual in situations of suspension and did not on this occasion appear to the Tribunal to have been carried out in such a way by itself to be calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee.
49. The Tribunal did not find that the Claimant was "immediately verbally attacked" at the disciplinary meeting on 6 November 2015 – even if this might have been the Claimant's perception. A concern had been raised with Mr Pedro by some Consultants about the Claimant approaching them and it was necessary and reasonable for him to raise it with the Claimant, who had been orally and in writing told that she needed permission to speak to colleagues during her suspension. It may have been understandable for the Claimant to have done this – but it was not wrong for the Respondent to remind her of the terms of her suspension.

This was not by itself action calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee.

50. For the Claimant to be told to take a look at herself and see how she might be perceived by other people at the conclusion of the disciplinary process – which did not otherwise result in a finding against her was a proper action for Mr Pedro to take. There had been a customer complaint – and there was clearly some evidence that the Claimant may have behaved inappropriately – just as there was evidence (from the Claimant) that she had not. It was accepted that the Claimant had done no harm intentionally. She was reasonably being asked to think about how her actions may be perceived by others. The recommendation for her to attend a customer care course that she would have been attending in due course in any event was very sensible. This was not by itself action calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee.
51. It is very unfortunate that the Claimant was upset by the comments made by Laura Fowler at the end of the back to work meeting on 20 January 2016, given that the indications were that the Claimant and the Respondent were moving towards one another again. Whether the content was accurate or not, Ms Bastick had raised a concern with Ms Lessem. The Tribunal accepted Ms Fowler's evidence that her intention was simply to pass on to the Claimant that she needed to be careful about any comments that she made to other members of staff – which could be misinterpreted. This appeared to be the most likely reason to have broached the subject at this meeting. This was not by itself action calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee.
52. The grievance and grievance appeal outcomes in 2016 were not referred to in the Claimant's witness statement. It is not a breach of contract in itself for an employer to investigate and not uphold a grievance. The grievance process did take a long time – although the Respondent's evidence had indicated some good reasons for this including a desire to thoroughly investigate what had become a rather intractable problem. There was no action by the Respondent in this regard which was identified in the Claimant's evidence which could have been calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee.
53. The Tribunal then took a step back and asked itself whether, if taken cumulatively, the Respondent's conduct may have amounted to a fundamental breach of the implied term of trust and confidence. As is clear from the findings of fact above, the Tribunal did consider that the delays in the two grievance processes and the disciplinary process were unimpressive. The Respondent must learn from this case. However, during this same time, there were efforts (sometimes misinterpreted) by the Respondent to encourage the Claimant to return to work and taken as a whole, the Respondents processes did not in the view of the

Tribunal cross the threshold amount to action calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee.

54. In considering whether the Claimant's resignation was in response to the Respondent's alleged conduct, the Tribunal was content that the Claimant's resignation was in large part for the reasons set out in her resignation letter which reflected her perception of what had happened, albeit that the tribunal does not agree that the Respondent had committed a repudiatory breach of the contract of employment – which requires an objective test. The Tribunal rejected the Respondent's alternative suggestion that the Claimant's resignation was primarily triggered by the anticipation that she would be dismissed for sickness absence. There was insufficient evidence before the Tribunal to arrive at that conclusion.
55. In considering in the alternative (i.e. if there had been a breach) if the Claimant affirmed her employment contract after said alleged conduct by the Respondent, the Tribunal took into account that the conduct relied upon by the Claimant took place over a long period of time – and prior to the grievance process, the most recent event was in January 2016 – 8 months before the resignation letter. Even after the grievance appeal outcome, the Claimant waited a further month before resigning. However the Claimant was ill from August 2015 onwards – with stress and anxiety and as referred to above, the Respondent took a long time to deal with the internal processes. There were points at which the Claimant had previously indicated that she regarded the Respondent's conduct as amounting to a breach. However there was no point at which the Tribunal was satisfied that she had waived the previous breaches.
56. Given the Tribunal's finding on liability, there is no need to go on to make findings on the Remedy issues.

Employment Judge Allen

Dated: 26 June 2017