



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

AND

Mrs J Coyle

Action for Children

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Exeter ON 10, 11, 12 & 13 January 2017

EMPLOYMENT JUDGE A GORAJ

Representation

For the Claimant: Miss K Gardner, Counsel

For the Respondent: Miss E Williamson, Counsel

RESERVED JUDGMENT

The judgment of the tribunal is that:-

1. The claimant was constructively and unfairly dismissed by the respondent pursuant to sections 95 (1) (c) and 98 of the Employment Rights Act 1996.
2. Any compensatory award shall be increased by 20% pursuant to section 207 (A) of the Trade Union & Labour Relations (Consolidation) Act 1992.

REASONS

1. The claimant was employed by the respondent from 1 September 2008 until 31 August 2015. The claimant claimed that she has been unfairly constructively dismissed. The respondent contended that the claimant resigned and that there was no dismissal.

Witnesses

The claimant

2. The tribunal has received witness statements and heard oral evidence from the following on behalf of the claimant :-
 - (1) The claimant.
 - (2) Mrs Caroline Foster, former Family Support Worker ("FSW") with the respondent.
 - (3) Mrs Claire Drummond (who is known professionally as Miss Claire Bowhay), former FSW with the respondent. Miss Bowhay is a qualified social worker.
 - (4) Mr Robert Miguel, trade union representative from Unite.

The respondent

3. The tribunal has received witness statements and heard oral evidence from the following on behalf of the respondent:-
 - (1) Miss Sally Kendrick, Children's Service Manager.
 - (2) Mr Lee Furniss, Operational Director of Children's Services.
 - (3) Miss Clare Wasey, Lead Practitioner.
 - (4) Miss Frances Laffan, Human Resources Business partner at the respondent.
 - (5) Miss Susan Turle, Children's Services Manager.
4. By a claim form which was presented to the tribunals on 23 December 2015 the claimant contended that she had been constructively dismissed contrary to sections 103A of the Employment Rights Act 1996 ("the Act") and /or section 98 of the Act and further that she had been subject to detriments pursuant to section 47 B of the Act. The respondent defended all of the claims.
5. At a preliminary hearing on 4 July 2016 the claimant's claims pursuant to section 47 B and 103A of the Act were dismissed on withdrawal by the claimant.

The agreed list of issues

6. At the commencement of the hearing the parties agreed a list of issues to be determined by the tribunal (“the List of Issues”). The List of Issues is attached to this Judgment. The respondent confirmed at the commencement of the hearing that if the tribunal held that the claimant had been constructively dismissed contrary to section 95 (1) (c) of the Act it accepted that such dismissal was unfair for the purposes of section 98 of the Act and moreover that it did not seek to rely on section 123(1) and /or 122(2) or 123(6) of the Act. It was agreed that the tribunal would confine its deliberations to the question of whether the claimant was constructively dismissed by the respondent and also whether, if the claimant established that she has been dismissed by the respondent, there should be any uplift pursuant to Section 207A of the Act for any failure to adopt a disciplinary procedure prior to the claimant’s dismissal.

The bundle of documents

7. The tribunal was provided with an agreed bundle of documents to which a number of additional documents were included/withdrawn upon application by the parties.

The application to postpone the Hearing

8. The respondent applied by e-mail dated 9 January 2017 to postpone the hearing following the service of the witness statements of Miss Bowhay and Mrs Foster on 6 January 2017 pursuant to an order of Regional Employment Judge Parkin. The respondent contended in summary, that it was unable to respond to the allegations contained in the witness statements within the available time and sought leave to serve supplementary witness statements in response to the new allegations. The application was resisted by the claimant.
9. Having given careful consideration to the competing arguments the tribunal was satisfied that it was in accordance with the overriding objective to allow the hearing to proceed as it was satisfied that any new matters could be addressed by the respondent's witnesses during the course of their evidence to the tribunal save in respect of one allegation involving Kim Symons. The tribunal was however further satisfied in respect of the latter allegation that this could be dealt with by another of the respondent's witnesses, Sally Kendrick and, in any event, gave the respondent leave to renew an application to call evidence from Kim Symons at the conclusion of the oral evidence. The respondent did not renew its application to call Kim Symons at the conclusion of the Hearing.

The Order pursuant to Rule 50 of the 2013 Rules of Procedure and associated matters

10. It was agreed at the commencement of the Hearing that no children or families would be referred to by name or any other identifying matter in any oral or written evidence. There are 2 families who are of particular relevance in this matter which it was agreed would be referred to by the initials P and Q. The tribunal also granted the respondent's application, which was not opposed by the claimant, to issue an Order pursuant to Rule 50 of the Rules of Procedure to prevent the publication of the names or any other identifying matter relating to any children or their families referred to in the proceedings until the conclusion of the proceedings unless otherwise directed. The parties are also liberty to apply for a further order preventing such publication at the conclusion of the proceedings.

Other documents

11. The tribunal was also provided with an agreed chronology, a cast list and a skeleton argument on behalf of the claimant.

THE FACTS

The respondent

12. The respondent is a Children's Charity which works with parents and professional partners to safeguard and support vulnerable children and families most of whom are known to social or other services. The respondent provides services via Children's Centres. The centres are normally each responsible for between 1, 200 – 1,500 children and provide services for vulnerable children and babies (including ante -nately) until they reach the age of five. The respondent employed approximately 4,400 staff nationally at the date of the termination of the claimant's employment and 11 people at the place of the claimant's employment (page 48 of the bundle).

13. In early 2014 Plymouth City Council awarded the respondent the contract for the children's services previously provided by Keyham Community Partnership ("KCP") based at Manor Street Plymouth ("Manor Street") and by the Children's Society at a Centre known as Green Ark ("Green Ark") (together the "the Plymouth Centre") by the respondent. Clare Wasey was the Centre Leader at Green Ark.

14. On 1 July 2014, the Plymouth Centre became a cluster managed by the respondent and the majority of the staff transferred to the respondent pursuant to the TUPE Regulations. The Plymouth Centre was managed by interim Services Managers until the appointment of Miss Sally Kendrick. The claimant had a good working relationship with the interim Manager prior to the commencement of Miss Kendrick's appointment, Ms Rowe (page 204 of the bundle).

15. In October 2014, Miss Kendrick took over responsibility as the Children's Services Manager at the Plymouth Centre including the line management of the claimant. Miss Kendrick was at the relevant times responsible for six children's centres including the Plymouth Centre. Miss Kendrick is a qualified social worker nursery nurse.
16. The tribunal has had regard to the respondent's policies and procedures contained in the Supplementary Procedures bundle including in particular the provisions of the Sickness Absence, Disciplinary, Investigations, Code of Code and Safeguarding Policies.

The claimant

17. The claimant commenced her employment with KCP on 1 September 2008. The claimant was employed by KCP as a Community Development Social Worker. The claimant is a qualified social worker. The claimant managed a team of four family support workers ("FSWs") together with several student social workers from the University of Plymouth who were on long-term placements.
18. The claimant had a good professional relationship and was highly regarded by the Project Manager at KCP (page 654 of the bundle).
19. The claimant commenced her employment with the respondent on 1 July 2014 as a Lead Practitioner having matched with this role during the course of the TUPE process.
20. The claimant's job description as Lead Practitioner is pages 184- 185 of the bundle. In summary, the stated purpose was the delivery of best practice through case management and reflective supervision and to support the achievement of safe and positive outcomes for children and young people.
21. The statement of terms and conditions of employment which was issued to the claimant by the respondent in October 2014 is at pages 192-194 of the bundle. The statement of terms and conditions stated that the respondent's Code of Conduct and associated policies including the disciplinary and grievance policies applied to the claimant.
22. The claimant attended regular supervision (referred to as performance) review meetings with Miss Kendrick during her employment with the respondent.
23. The 2 support teams from KCP and Green Ark were merged in October 2014. The case files were transferred to Manor Street. The case files from KCP and Green Ark required integration into the respondent's systems and procedures.

24. The claimant managed a team of FSWs together with student social workers on long term placements as referred to previously above.
25. The Tribunal is satisfied that there was a significant backlog of work at the Plymouth Centre following the transfer of the services to the respondent which was exacerbated by the necessary integration of case work files from KCP and Green Ark, the delays in implementing the respondent's computer systems and procedures and reduced staffing levels. The claimant advised Miss Kendrick during her supervision on 3 November 2014 that the staff felt overwhelmed by the FSW workload and that she had been providing higher levels of hands on support than usual to increase confidence and support some complex pieces of work (page 213 of the bundle). The supervision notes also record that there was an urgent need to get children reviewed, to close files and to adopt a tighter process of allocation and outcomes (page 214 of the bundle).
26. The respondent provided the claimant with some support, including in particular with regard to the integration, supervision and closure of files, during the months following the transfer of the services to the respondent including from Lucy Hextall (for a couple of days) Karen Pearce (for one or two days)(both Lead Practitioners from other centres)(the minutes of the claimant's supervision meeting on 1 December 2014 at pages 222- 225 of the bundle) and from Stacey Davis (casual worker / Interim Lead Practitioner during in particular December 2014- January 2015)(page 239 of the bundle). The Tribunal is however satisfied that such support was limited in nature and that the claimant and her team continued to carry a significant work load (including the respondent's notes of the Case Supervision and Planning Practice Lead Review meetings of 18 and 22 December 2014 at pages 226 – 229 of the bundle).

The thank you cards – October 2014 - (Issue 2 e i of the List of Issues)

27. The claimant contended that during a supervision meeting in or around October 2014 (page 113 of the bundle), Miss Kendrick asked the claimant in respect of cards which were displayed in her office, " Do you feel that people are dependent on you?" to which the claimant responded, " , No, I believe people just like to say thank you". The claimant further contended that she believed that the comment had been made by Miss Kendrick deliberately to undermine her. The respondent contended that Miss Kendrick had noticed that the claimant had received a large number of thank you cards and further that a number of families had been receiving help from the team for a long period of time and that Miss Kendrick had therefore raised the matter with the claimant as part of a wider discussion to encourage the claimant to consider whether people had become dependent on the service. The respondent denied that Miss Kendrick had acted inappropriately.

28. Having had regard to the available evidence, including the minutes of the subsequent meeting on 3 March 2015 (at page 276 of the bundle) and the outcome of the claimant's subsequent formal grievance (the letter from Mr Furniss dated 5 June 2014 at page 493 of the bundle) the tribunal is satisfied that (a) the alleged comment (or something broadly similar) was made by Miss Kendrick in order to encourage the claimant to reflect on her practice (b) that it was made in a clumsy and tactless manner and (c) that the claimant found the comment upsetting. The tribunal is not however satisfied that Miss Kendrick sought deliberately to undermine the claimant.

The reference to OFSTED – November 2014 (Issue 2 d i of the List of Issues)

29. The claimant contended that she had raised with Miss Kendrick in November 2014 her concerns about a possible inspection by OFSTED in response to which Miss Kendrick was inappropriately dismissive of the claimant's concerns including questioning why the claimant kept raising OFSTED as they would not have visited so soon after the transfer and in any event would have understood the position (page 112 of the bundle). The respondent accepted that there was a discussion between the claimant and Miss Kendrick around November 2014 in broadly such terms. The respondent denied however that Miss Kendrick had acted inappropriately including that she had intended to undermine the claimant. The tribunal is satisfied in the light of the above, that there was such a discussion between the claimant and Miss Kendrick. The tribunal is not however satisfied that Miss Kendrick's comments were inappropriate and/or that Miss Kendrick intended to undermine the claimant. When reaching this conclusion the tribunal has taken into account in particular the context in which the comment was made including in particular the recent transfer of the services to the respondent.

The alleged reference in or around November 2014 to cutting ties with KCP (paragraph 2 b i of the List of Issues)

30. The claimant contended that during the course of a discussion with Miss Kendrick in or around November 2014, at which Miss Wasey was also present, Miss Kendrick stated that the respondent needed to cut all ties with Steve (the manager of KCP) and KCP (page 109 of the bundle). The claimant further contended that she understood this to be designed as an attack on her and her previous experience as Miss Kendrick did not suggest that the respondent should also distance itself from the Children's Society. The respondent denied that Miss Kendrick had made any such comment. Miss Kendrick contended that she would not have made any such comment as at that time the respondent and KCP continued to work together closely in respect of the nursery at Manor Street which was managed by KCP as part of the children's services provided in Plymouth and that KCP were also members of the respondent's advisory board. Ms Wasey stated in her oral evidence that she did not remember Miss Kendrick making any comment about cutting ties with KCP.

31. Having given the matter careful consideration, the tribunal is not satisfied, on the balance of probabilities, that Miss Kendrick made such comment. When reaching this conclusion the tribunal has taken into account in particular the conflicting oral evidence, the absence of any supporting documentary evidence and the respondent's continued working relationship at that time with KCP.

The alleged belittling of the claimant in December 2014 (paragraph 2 b ii of the List of Issues).

32. In summary, the claimant contended that in December 2014 during a conversation relating to training and supervision Miss Kendrick belittled the claimant in front of Ms Stacey Davis by saying that the claimant and other staff from KCP were not properly trained to work with the vulnerable and that when the claimant challenged the statements Miss Kendrick told the claimant that her life would change after she had received the respondent's training (page 109 of the bundle). The claimant has not provided any further details regarding this allegation (including whether it is contended by the claimant that this comment was allegedly made by Miss Kendrick during the meetings on 18 and 22 December 2014 or on another occasion).
33. Miss Kendrick has denied making any derogatory comments regarding (including belittling the claimant) during the meetings on 18 or 22 December 2014). The tribunal has not heard any oral evidence from Ms Davies.
34. The Tribunal is not satisfied, on the balance of probabilities, and having had regard in particular to the lack of any further details from the claimant regarding the date or context of such comments/ any supporting documentary evidence and the denial by Miss Kendrick that Miss Kendrick made such comments.

The meetings on 18 and 22 December 2014

35. Miss Kendrick conducted practice review meetings with the claimant and Ms Davis on 18 and 22 December 2014. These meetings were held by Miss Kendrick because she was concerned about the large number of open case files which were allocated to the claimant's team and the discrepancy in the number of files reported by Miss Davies and the claimant. The respondent's notes of the meetings are at pages 226- 229 of the bundle. The minutes were circulated by Miss Kendrick to Ms Davis and the claimant for comment (page 166 of the bundle). The claimant responded to this e-mail confirming that whilst she was happy to proceed with the proposed plan she believed that the minutes were not accurate and required amendment and that she had been subject to a lot of derogatory comments which she would challenge in the future as they arose. The claimant did not however provide any further details of any alleged inaccuracies in the minutes.

36. Having given careful consideration to the available documentary evidence and conflicting oral evidence, the tribunal is satisfied that by the end of December 2014 (a) Miss Kendrick had genuine concerns regarding the large number of open case files which appeared to be allocated to the claimant's team and potential safeguarding issues (b) the claimant and her team were carrying a significant workload at that time which was exacerbated by the merging of the services including the different systems which were operated by KCP and the respondent for the recording of children and outstanding work in relation to the integration of such workload into the respondent's systems and procedures and lack of resources (c) there was an increasing perception by the claimant that she was being marginalised and unsupported by the respondent and (d) that Miss Kendrick dealt with the claimant at times in a clumsy and tactless manner but that she did not deliberately seek to undermine the claimant (pages 222- 232 and 275 – 276 of the bundle).

Putting the claimant into a small office (paragraph 2 d iii of the List of Issues).

37. The claimant contended that on or around 29 December 2014 she was placed in a small office (approximately 8 x 7 feet with little natural light and filing cabinets) which segregated her from her team. The claimant further contended that this move had been implemented by Miss Kendrick despite the claimant previously raising her anxieties and fears about being in such a confined space because of a previous traumatic incident (pages 111-112 of the bundle) (an incident in 1997 when she unlocked a door and an individual who had hung themselves the previous day had swung into her).

38. The respondent accepted that the claimant was allocated such office but contended that the claimant was provided with such office to assist her with regard to supervisions and that it was unaware of any concerns regarding such move until the grievance meeting in May 2015. The respondent further denied that it had been made aware by the claimant of the incident in 1997.

39. Having given careful consideration to the conflicting oral evidence and the limited documentary evidence (including in particular pages 273-276, 383-385 and 493 of the bundle) the tribunal is satisfied, on the balance of probabilities, that (a) there was a brief discussion about the matter between the claimant and Miss Kendrick in the latter part of 2014 (b) that the claimant did not raise any particular concerns with Miss Kendrick regarding the proposed move at that time including that she did not make Miss Kendrick aware of the incident in 1997 (c) Miss Kendrick relocated the claimant to the room between Christmas and New Year as part of a wider office re-organisation which was undertaken by Miss Kendrick and Ms Davies whilst the claimant was away on leave and without any further discussion with / the agreement of the claimant and (c) the claimant was unhappy about the move but did not raise any concerns about the matter until her grievance meeting on the 15 May 2015 at

which time she indicated that she found the room uncomfortable but did not inform the respondent of the incident in 1997.

The complaint by P and associated matters – January/February 2015

40. In or around January 2015 the respondent received a complaint from a parent (Parent P) regarding the inadvertent disclosure of confidential information provided to the claimant by reason of the failure by a member of the claimant's team, Bev Wain, to obtain the approval of the minutes of the discussions prepared by the claimant prior to their distribution at a meeting with other services and also in respect of the handling of the initial complaint by the claimant (pages 245- 250 and 269 of the bundle). No further action was taken by the respondent and/or the claimant against Ms Wain in respect of the matter.

The events during the early part of 2015

41. The claimant and her team continued to have a heavy workload during early 2015 notwithstanding reductions in workload which were implemented by Miss Kendrick during this period to assist them (the supervision notes dated 9 February 2015 pages 252-256 of the bundle).

42. By this time of the claimant was responsible for four FSWs including Bev Wain, Caroline Foster and Claire Bowhay together with four social work students.

43. Around this time the claimant was required to deal with concerns raised by one of the social work students concerning the nature of the work/quality of experience which she had obtained at the respondent (pages 260-262 of the bundle). During such dealings the student raised concerns with the claimant regarding the proposed involvement of Miss Kendrick as she contended that she had found Miss Kendrick overpowering during her previous dealings with her. Such concerns were discussed between the claimant and Miss Kendrick at the supervision meeting on 23 February 2015 (page 267 of the bundle).

The meeting on 23 February 2015 and the Performance Improvement plan February 2015 (Issues 2 d ii and e (ii) (iii) and (iv) of the List of Issues).

44. By the middle of February 2015 the respondent decided to place the claimant on an informal performance improvement plan ("a PIP"). Miss Kendrick contended that she was asked by Mr Furniss to place the claimant on the informal PIP. Mr Furniss contended in his oral evidence that although he discussed the matter with Miss Kendrick during their supervisions (and agreed with Miss Kendrick's decision) it was Miss Kendrick's decision as the

claimant's line manager to place the claimant on the informal PIP. The tribunal prefers Mr Furniss' evidence regarding this matter.

45. Miss Kendrick conducted a supervision meeting with the claimant on 23 February 2015. Miss Kendrick informed the claimant at this meeting that she was placing her on an informal PIP. The respondent's notes of that meeting are at pages 265-268 of the bundle.
46. The claimant contended that Ms Kendrick made a number of inappropriate and insulting comments during that meeting including those referred to at paragraphs 2 e ii, iii and iv) of the List of Issues.
47. Miss Kendrick denied stating at the commencement of the meeting that, "That this is not going to be a good meeting" as contended by the claimant. Miss Kendrick accepted however that she stated during the meeting that the claimant was paid at the top of her pay scale and that she therefore expected her to function to the full range of her role. Miss Kendrick further accepted that she made comparisons between the claimant and her colleagues including that she stated at that the claimant was paid more than her practitioner colleagues namely Lucy Hextall and Ms Davies and that she wanted to understand what prevented the claimant from working at the same level as them.
48. The tribunal is satisfied, having considered the available evidence, that Miss Kendrick made the comments alleged by the claimant in the List of Issues at the meeting on 23 February 2015 including that she made unfavourable comparisons between the claimant and her colleagues in an inappropriate and insensitive manner and that the claimant would reasonably have felt distressed and undermined by such comments particularly in the context of the initiation of the formal PIP.
49. When reaching its conclusions the tribunal has had regard in particular to the notes of the meeting on 3 March 2015 (in particular at pages 274 and 275 of the bundle), the notes of the grievance meeting on 14 May 2015 (pages 383-385 of the bundle) and the outcome of the claimant's grievance dated 5 June 2015 (and in particular at page 492 of the bundle).

The initiation of the informal PIP

50. It is the claimant's case that she was continuing at this time to work to the best of her ability to address the outstanding workload and give effective management and support to her team and social work placements notwithstanding the unacceptably high workload and unresolved issues relating to systems and procedures and understaffing and that in all the circumstances the proposed PIP was unjustified and unfair.

51. The respondent contended that there were two main reasons for placing the claimant on an informal PIP namely the issues arising from the complaint by parent P and also the continuing concerns by Miss Kendrick (after undertaking further audits on files) that the claimant was still failing adequately to address the position with regard to the large number of open case files and the proper completion and recording of supervision sessions with her team.
52. Having considered the available evidence the tribunal is satisfied that (a) having carried out audits of files and having received feedback from other staff, Miss Kendrick had genuine and legitimate concerns in particular regarding the large number of open files and the recording of case supervisions and further (b) in the light of the circumstances of the unauthorised disclosure of the confidential information relating to parent P the respondent had reasonable and proper cause to initiate the informal PIP process. The tribunal is further satisfied however, that Miss Kendrick conducted the meeting on 23rd of February 2015 in an inappropriate and insensitive manner which made the claimant feel distressed and undermined as referred to at paragraph 48 above. When reaching this conclusion the tribunal has had regard in particular to the evidence referred to in paragraphs 45 and 48 above.

The meeting on 3 March 2016

53. Following the meeting on 23 February 2015 the claimant contacted Mr Furniss, Operational Director, to express her concerns about the way in which she had been treated by Miss Kendrick. The claimant indicated to Mr Furniss that she did not wish to make an official complaint at that time. There was an exchange of correspondence between the claimant and Miss Kendrick on 2/3 March 2015 (pages 555 – 556 of the bundle) in which the claimant advised Miss Kendrick that she felt that the conduct of the meeting on 23 February 2015 had been totally inappropriate and that it was the final straw for her. The claimant also informed Miss Kendrick that she had been unhappy for a while, felt ill and did not enjoy coming to work. The claimant also advised Miss Kendrick that she did not want to make an official complaint, that HR would mediate and that she would prefer to discuss their working relationship with a mediator in order to move forward and assist with the PIP. Miss Kendrick responded offering her support to the claimant.

The meeting on 3 March 2015

54. Following the exchange of emails between the claimant and Mr Furniss it was agreed that the claimant would attend an informal mediation meeting with the claimant which would be facilitated by a member of HR. The respondent stated that the purpose of the meeting was for the claimant to address the

issues which she had with Miss Kendrick so that she could engage with her on the PIP process (pages 271 – 272 of the bundle).

55. An informal mediation meeting took place on 3 March 2015 between the claimant and Miss Kendrick which was facilitated by Janina Patel an HR Business partner in the respondent who was covering during Miss Laffan's absence. Ms Patel's notes of that meeting are at pages 273 – 276 of the bundle. These notes were not shared with the parties following the meeting. The tribunal is satisfied however that they are a broadly accurate account of the discussions. When reaching this conclusion the tribunal has taken into account in particular that there is no evidence that Ms Patel had any prior involvement with either of the parties. Ms Patel left the respondent shortly after the mediation meeting.
56. In summary, the claimant raised 3 concerns namely (a) that Miss Kendrick disliked her and had subjected her to systematic bullying (b) she felt insulted and undermined by the PIP and the way in which the process was being handled and (c) that Miss Kendrick had also upset the student social workers on placement with the respondent. The claimant gave examples of the alleged issues.
57. In summary, Miss Kendrick contended that she was unaware of the claimant's concerns, that she liked to think that she was a good and fair manager and wanted to know what she needed to do to put things right. Miss Kendrick acknowledged that there had been teething problems following the transfer of the services to the respondent but contended that there were concerns relating to safeguarding and data protection which had had to be addressed.
58. In the joint session the claimant explained to Miss Kendrick her concerns and gave examples of when she had been distressed/ felt undermined by Miss Kendrick. Miss Kendrick acknowledged that it had been a very difficult time for the claimant and her colleagues following the transfer. Miss Kendrick also acknowledged that she used proactive language which was naughty and clumsy and that she was mortified by some of the things that the claimant had raised. Miss Kendrick apologised for offending the claimant and confirmed her commitment to work together with the claimant to resolve any issues.
59. At the conclusion of the meeting a number of actions were agreed including that Miss Kendrick would review training needs and would support the claimant to work to the objectives identified in the PIP with a view to withdrawing from the project when she was satisfied that the necessary processes were completed and that the service was running smoothly.

Subsequent events

60. The claimant sent an email to Ms Kendrick dated 18 March 2015 attaching her comments on the proposed PIP. These documents are at pages 278 – 289 of the bundle. The claimant raised in her response to the PIP a significant number of concerns and obstacles to implementation including with regard to the changing of systems without her input or knowledge and the lack of collaborative working, training and administrative support.

The meeting on 25 March 2015

61. The claimant and Miss Kendrick had a supervision meeting on 25 March 2015. Miss Kendrick's notes of the meeting are at pages 298 – 299 of the bundle. The tribunal is satisfied that the minutes are a broadly accurate but not complete note of the meeting. They discussed in particular the claimant's PIP. The claimant made it clear to Miss Kendrick that she did not agree with the concerns about her performance which had been recorded in the PIP including that she believed that the support systems and workload had made any tasks unachievable. The claimant also raised concerns that the training which she had been given on the respondent's computer systems did not adequately equip to deliver training to the team and it was agreed that the claimant would talk to Lucy Hextall to obtain further support. The claimant also raised further concerns about the comments which Miss Kendrick had made relating to the nature of her social work qualification and objected to Miss Kendrick raising again matters which the claimant had made reference to at the meeting on 3 March 2015. The T tribunal is satisfied that this was a difficult meeting which left the claimant feeling unfairly treated and undermined. When reaching this conclusion the tribunal has had regard in particular to Miss Kendrick's notes of the meeting referred to above and Miss Laffan's notes of her subsequent meeting with the claimant at pages 300- 301 of the bundle referred to below.

The respondent's letter dated 26 March 2015

62. Miss Kendrick wrote to the claimant by letter dated 26 March 2015 confirming that the claimant was being managed under the informal stage of the PIP. The letter confirmed the areas of concern which, in summary, related to the delivery of targets, monitoring the work of the team, the integration of agreed practice standards and delivery of quality case supervision. The letter was a formal letter which confirmed that the informal process would be continually monitored during supervision on a monthly basis, that a review meeting would be held on 15 June 2015 and that if the review concluded that there had been continued unsatisfactory performance the formal stages of the PIP would be invoked. The letter also stated that the aim of the informal stage was to support the claimant to improve her performance within the agreed time frame and agreed measures. The letter also confirmed that the claimant was

entitled to access counselling and that she could also discuss the matter with Miss Laffan. This letter and the accompanying informal PIP are at pages 296 – 297 and 409 – 420 of the bundle. There is a formal note at page 411 of the bundle that the claimant did not agree with the concerns raised in that section of the document. In summary, the relevant section related to alleged safeguarding issues including the lack of supervision and scrutiny of casework, that staff had been left for too long with unrealistic caseloads and inadequate reviews and assessment of children.

The meeting on 27 March 2015

63. The claimant met with Miss Laffan on 27 March 2015 to discuss her concerns relating to her management by Miss Kendrick. Miss Laffan's notes of the meeting are at pages 300 – 301 of the bundle. The tribunal is satisfied that these notes are a broadly accurate note of the matters discussed. In summary, the claimant advised Miss Laffan of her concerns relating to the matters referred to at paragraph 61 above. The claimant also advised Miss Laffan that she did not feel that the meeting on 3 March 2015 had been a successful meeting and that she had not received a copy of the notes to allow her to consider the outcome and proposed way forward. The claimant shared with Miss Laffan the correspondence which she had received from Ms Kendrick in relation to the PIP.
64. Miss Laffan recorded in her notes of the meeting that there appeared to be a block in communication and that it was possible that the claimant's perception of what Miss Kendrick was saying was at odds with her intention. Miss Laffan suggested that the claimant should write down her interpretation of what Miss Kendrick was saying and that some point in the near future there should be a three way meeting at which they could review the position after Miss Kendrick had had an opportunity to consider the claimant's observations.
65. There was a subsequent exchange of emails between the claimant and Miss Laffan on 31 March 2015 which is at page 302 of the bundle. Miss Laffan set out in her email a short summary of their discussions including that the claimant should write down her interpretation of Miss Kendrick's letters. Miss Laffan asked the claimant to let her know what she thought about her suggestion for a facilitated meeting. Miss Laffan also stated that she would put the proposal to Miss Kendrick and that she had already spoken to Mr Furniss who was supportive of such a course of action if it was agreed by the claimant and Miss Kendrick. The claimant replied the same day confirming that she felt that it would be a good way forward. There was however no further progress at that time. The claimant did not provide the information requested by Miss Laffan and Miss Laffan did not arrange a meeting to pursue the matter further.

April 2016

66. The claimant raised concerns at the beginning of April 2016 regarding the sharing of information including that members of her team had been complaining that they did not have access to relevant information and that the claimant believe that this was restricting her ability to perform her role (page 303 of the bundle).

The supervision meeting on 27 April 2015

67. Miss Kendrick conducted an interim supervision meeting with the claimant on 27 April 2015. The respondent's notes of the supervision meeting are at pages 316-320 of the bundle. The matters discussed at the meeting included that the claimant informed Miss Kendrick of the frustrations and concerns that had been highlighted by the child development and triage team including that there was a general feeling of being overworked and under valued. Miss Kendrick reported that she had completed a full day of closures on files on 10 April 2015 and there was a discussion between the claimant and Miss Kendrick regarding recruitment.

The discussion regarding family Q at the meeting on 27 April 2015

68. There was also a discussion at this meeting regarding a risk assessment for a family known as Q. It is recorded in the minutes that although the family had been accessing the centre to date the family Q were only to be seen in a safe place in the future until a clear assessment had been completed in the light of the further information which had been provided (pages 318-319 of the bundle). The claimant had previously e-mailed Ms Kendrick on 24 April 2015 indicating that she wished to discuss the risk assessments with her and that she did not consider it appropriate to deliver services in the home in the light of the known criminal offences (page 332 of the bundle). Miss Wasey had also had previous dealings with family Q.

The incident on 28 April 2015

69. In summary, on 28 April 2015 the claimant, who was accompanied by Miss Bowhay visited the home of a high-risk family (family Q) who were due to attend a course at the Green Ark Centre. Father Q was known to be a complex and erratic character with a large number of serious and violent criminal convictions including convictions involving the use of weapons and abuse of professionals. The claimant attended at the home of family Q with Miss Bowhay with a view to standing outside the property to request them to attend an appointment at Midland House instead of attending the course. The claimant and Miss Bowhay had attended at the property following a number of unsuccessful attempts to contact father Q to prevent him from attending the course.

70. The claimant had advised Ms Wasey of the purpose and proposed circumstances of the visit and organised a buddy, Bev Wain to check in and out with them during the course of the visit.

71. The claimant was unable to make contact with family Q and therefore decided to endeavour to intercept them going into the course to ask them to meet elsewhere. The family however entered the premises without signing in and the claimant was therefore unable to prevent them from participating in the course.
72. The claimant met with family Q at the end of the course and agreed arrangements for the future relationship/ delivery of support. The claimant subsequently contacted Miss Kendrick, whom she understood to be uncontactable in a meeting, by e-mail on the afternoon of 28 April 2015 to explain her actions that day (page 343 of the bundle).
73. The claimant subsequently received praise from the safeguarding and welfare officer at Plymouth City Council for the way in which she had dealt with family Q (page 321 of the bundle).

The respondent's handling of the incident relating to family Q

74. On 28 April 2015 Mr Furniss was informed by Miss Kendrick that the claimant and a colleague had visited family Q at home. Mr Furniss was concerned that the claimant's actions could have led to a potentially serious incident in the light of the previous risk assessment dated 27 April 2015 which had stated that there should be no home visits. Mr Furniss therefore e-mailed the claimant on 29 April 2015 (page 323 of the bundle) setting out his concerns including that the claimant had not followed the agreed risk assessment or discussed the reasons for such departure with Miss Kendrick as the Centre Services Manager. Mr Furniss further advised the claimant that he had therefore asked Miss Kendrick to undertake a preliminary fact-finding investigation to understand what had happened and whether any further action was necessary.
75. The claimant replied to Mr Furniss' email on 29 April 2015 explaining her actions the previous day. The claimant further stated that although she was happy for the respondent to undertake a fact-finding investigation she felt that it was inappropriate for it to be undertaken by Miss Kendrick in the light of their previous history and would prefer it to be carried out by Miss Laffan if possible (page 322 of the bundle).
76. Mr Furniss responded by a further e-mail dated 29 April 2015 advising the claimant that an investigation needed to be undertaken by Miss Kendrick as her line manager in accordance with the respondent's investigation guidance, that Miss Kendrick's role would be limited to establishing what had happened and that he would make any relevant decision following such investigation. Mr Furniss further stated that he needed more information as, on the face of it, it was a potentially dangerous situation and that the claimant has not acted in accordance with the risk assessment (page 322 of the bundle). The tribunal is satisfied that the respondent had proper cause to investigate the matter

further in the light of the potentially dangerous circumstances of the incident and the departure by the claimant from the agreed risk assessment. The documentation relating to the preliminary investigation into the incident relating to family Q is at pages 324- 348 and 365- 368 of the bundle. Mrs Foster and Miss Bowhay were supportive of the way in which the claimant had dealt with the matter.

The meeting on 30 April 2015

77. Miss Kendrick met with the claimant on 30 April 2015 in order to investigate what happened in relation to family Q. The claimant's note of that meeting is at pages 324 – 325 of the bundle. The tribunal is satisfied that this is a broadly accurate account of the discussions between the claimant and Miss Kendrick on 30 April 2015. The tribunal is satisfied in summary that (a) Miss Kendrick confirmed that the allegation that the claimant had placed herself and others at risk was a serious matter which could end her employment (b) Miss Kendrick made inappropriate/insensitive remarks during the course of the meeting including that she questioned why the claimant, "had made such an on the hoof decision" and that the matter had only gone so far because the claimant had copied the correspondence to Mr Furniss. Miss Kendrick refused to allow the claimant to type up the minutes of the meeting. When reaching such conclusions the tribunal has taken into account in particular the contents of the claimant's notes and that Miss Kendrick accepted in her witness statement that she had questioned why the claimant had copied Mr Furniss into the correspondence (c) the claimant refused to continue with the meeting in the light of Miss Kendrick's comments and (d) Miss Kendrick gave the claimant a copy of the prepared questions during the meeting on 30 April 2015 and e-mailed her a further copy on 5 May 2015 (page 356 of the bundle).

The events of early May 2015

78. The claimant emailed Miss Laffan on 1 May 2015 asking to meet with her as soon as possible as she was feeling low and unable to carry on with things as they were (page 349 of the bundle. The claimant e-mailed Miss Laffan on 5 May 2015 advising her that she did not feel that the unofficial route was changing her situation and that she felt that her health and motivation was being affected. The claimant further advised Miss Laffan that she wished to raise an official grievance about the way in which she had been unfairly treated by her line manager since October 2014 and that she did not feel able to continue with supervisions by Miss Kendrick until the issue had been resolved. Miss Laffan advised the claimant to raise a formal grievance with Mr Furniss setting out her areas of concern for investigation by an investigating officer (page 301 of the bundle).

79. The claimant also wrote to Mr Furniss by e-mail dated 5 May 2015 raising a formal grievance. This e-mail is at page 355 of the bundle. In summary, the claimant advised Mr Furniss that she did not believe that the informal route had resolved the issues relating to her working relationship with Miss

Kendrick. The claimant raised a number of concerns including that the records of the supervision meetings did not accurately reflect the discussions which she had had with Miss Kendrick. The claimant advised Mr Furniss that she had visibly lost weight, regularly looked stressed and had sores on her face. The claimant further stated that she was aware that her practice did not look good on paper but that this was far from an accurate picture. The claimant further advised Mr Furniss that she felt that the only way that she could stop the unfair treatment was to raise a grievance so that it could be investigated thoroughly.

80. Mr Furniss wrote to the claimant by e-mail dated 6 May 2015 acknowledging her grievance and identifying what he understood to be the issues which required investigation. Mr Furniss also advised the claimant that he wished her to respond to the questions which Miss Kendrick had raised as part of her fact-finding investigation into parent Q so that Miss Kendrick could conclude her findings for him to consider. Mr Furniss also advised the claimant of available counselling support (This e-mail is at page 361 of the bundle).

The meeting on 4 May 2015

81. The respondent held a cluster meeting on 4 May 2015. The meeting was conducted by Miss Kendrick and Mr Furniss was also in attendance. Most of the staff (including the claimant) were present. The minutes of the meeting are at pages 350-352 of the bundle. In summary, the respondent discussed operational matters including with regard to matters such as operation of team meetings, training computer systems and the refurbishment of the Manor Street premises. The respondent responded to a number of matters during this meeting including with regard to workload, which was acknowledged to be high, the response to advertising and low morale. Mr Furniss acknowledged during the meeting that there had been a lot of upheaval during the first 3 to 6 months with a massive change process and reduction in funding and that staff should be praised for what they had achieved.

Subsequent matters

82. The claimant e-mailed Mr Furniss on 7 May 2015 confirming that he had accurately identified the matters at issue. The claimant further confirmed that the issues of feeling marginalised and treated differently unfairly had not been resolved. The claimant explained that she felt unable to prepare her grievance properly at work due to interruptions and confidentiality and proposed that she be allowed to work from home in order to prepare her grievance and the information which Mr Furniss had requested in relation to family Q. This e-mail is at page 371 of the bundle.
83. Mr Furniss replied by e-mail on 8 May 2015. This e-mail is at page 371 of the bundle. Mr Furniss instructed the claimant that given the serious nature of the matter relating to family Q he was very concerned that the claimant had not prioritised the request for information and that he had therefore instructed Ms Kendrick to carry on with the investigation. Mr Furniss advised the claimant

that he wanted her to submit any response by the end of the day or Miss Kendrick would conclude the investigation early the following week without the claimant's response. Mr Furniss also advised the claimant that if she failed to respond as instructed he would address separately her failure to comply with a reasonable request in relation to a safety incident and further that he did not consider it appropriate for the claimant to take a day working from home to prepare details of her original issues with Miss Kendrick. The claimant replied confirming that she was preparing the information which Mr Furniss had requested and that although it was difficult to prepare as she was in a busy centre and she would stay until she had completed it. The claimant also assured Mr Furniss that she was taking the matter seriously and explained that it was a very traumatic time for her (page 370 the bundle).

84. It was agreed that Mr Furniss would meet with the claimant on 14 May 2015 to talk through the details of the claimant's outstanding issues. Mr Furniss also advised the claimant that he would provide her with feedback on his decision in relation to the investigation concerning family Q.

The grievance meeting on 14 May 2015

85. The claimant met with Mr Furniss and Miss Laffan on 14 May 2015. Miss Laffan's notes of the meeting are at pages 383-385 the bundle. The tribunal is satisfied that these notes are a broadly accurate account of the matters discussed. In summary, the claimant identified four main areas of concern namely (a) that she had been treated less favourably than other members of staff, including with regard to being allowed to work at home (b) that Miss Kendrick had made unprofessional and derogatory comments about the claimant (as identified at page 384 of the bundle) (c) that she had been put down by Miss Kendrick, including with regard to the assignment of a small room which she found uncomfortable and the handling of the complaint in respect of family P and (d) Miss Kendrick wanted the claimant out of the work place by use of file auditing to find things to use against her and comparing her unfavourably with Miss Wasey.

86. The claimant also indicated that she wanted the alleged bullying to cease. In summary, it was agreed that (a) Mr Furniss would investigate the issues raised by the claimant including by speaking with Miss Kendrick in accordance with the respondent's grievance procedure (b) future supervision meetings would be attended by Miss Laffan pending the outcome of the claimant's grievance and (c) further actions in respect of the PIP process.

87. Mr Furniss also informed the claimant that he would commission a supplementary investigation into the incident regarding family Q as he did not consider that the preliminary investigation had allowed him to make a reasonable management decision. Mr Furniss contended in his witness statement that he considered that this was a reasonable course of action to take and in accordance with the respondent's Investigations Guidance (page 51 of the supplementary bundle) because the fact-finding had not allowed him to reach a reasonable management decision about potentially serious risks to health and safety.

88. The tribunal is not however satisfied on the evidence, that Mr Furniss had reasonable and proper cause to initiate a further investigation. When reaching this conclusion the tribunal is taken into account in particular the information which had been provided for the initial investigation which gave a detailed account of what had happened and the steps taken to mitigate risks and moreover that no further information has been provided by the respondent concerning the supplementary investigation other than in the letter from Mr Furniss to the claimant dated 4 September 2015 (page 612A of the bundle). Mr Furniss stated in this letter that a thorough supplementary investigation had been undertaken by another of the respondent's children's services manager. However, the claimant/the tribunal has not been provided with any further information concerning such investigation/its outcome other than the statement of Mr Furniss that although the view of the children's services manager was that the claimant's actions were misguided it was an issue of competency rather misconduct which would have been incorporated into the claimant's PIP if the claimant had not terminated her employment with the respondent.

The meeting on or around 1 June 2015

89. There was an emergency meeting of the cluster team on 1 June 2015 which was conducted by Miss Kendrick and attended by the majority of the staff (and which included staff who were not members of the claimant's team) (pages 486 A- 486 D of the bundle). The claimant was also in attendance at the meeting. The meeting was called in response to concerns raised by staff at an earlier undated staff meeting. Extracts of the minutes from this earlier undated meeting are at pages 475 – 477 of the bundle. Those minutes record that the staff raised serious concerns relating to matters such as heavy workload, lack of resources including of administrative staff and problems with systems which were having a negative impact on their ability to put children first and on staff well-being (page 476 of the bundle). These notes further record that staff felt that their concerns were not being listened to by the Children's Services Manager, Miss Kendrick, that issues relating to their well-being were not being addressed by the respondent and that they therefore proposed an emergency meeting to discuss issues around staff wellbeing.

90. The notes of the meeting on 1 June 2015 record feedback from staff on matters such as problems with equipment including computers and telephones, poor atmosphere in the workplace and low staff morale, high workload with staff struggling to keep up and problems with staffing levels/recruitment and communication from management and between teams (page 486C of the bundle).

91. The tribunal is satisfied that the notes of the undated meeting and subsequent meeting on 1 June 2015 are a broadly accurate account of the nature of the concerns raised by the staff at such meetings. When reaching this conclusion the tribunal has taken account particular that the accuracy of the notes has

not been challenged by the respondent and further that the nature of the concerns were acknowledged in Miss Kendrick's subsequent e-mail dated 3 June 2015 referred to below.

The email dated 3 June 2015

92. Miss Kendrick e-mailed the staff at the Plymouth centre on 3 June 2015 thanking them for their contributions to the meeting on 1 June 2015 and acknowledging that staff felt very stretched and frustrated with the work which they were trying to manage. This e-mail is at pages 487-488 of the bundle. In summary, Miss Kendrick also advised staff (including the claimant) that (a) advertisements had been placed for vacancies and the respondent was trying to bring on board temporary staff to help with the workload (b) the respondent acknowledged that they were making a truly significant impact on the lives of local children (c) Plymouth City Council had asked her to feedback to the staff that they were delighted with the work which they had done to improve the lives of children and that it had received positive feedback from other services (c) she was really sorry that so many of the staff had felt so frustrated over the last few weeks and that she was hopeful that they would be able to address many of the challenges over the coming weeks to make their work seen more manageable and (d) that she was delighted to be working with such a passionate and strong team of highly skilled and motivated practitioners and that if they worked together to support one another they could progress from this challenging time to do all they could for local children and their families. There was no suggestion in this e-mail that Miss Kendrick had any serious concerns regarding the quality of the work which was being delivered by staff at the Plymouth Centre.

The grievance outcome letter dated 5 June 2015

93. Mr Furniss wrote to the claimant by letter dated 5 June 2015 confirming the outcome of her grievance. This letter is at pages 490-496 of the bundle. This letter followed a meeting between the claimant and Mr Furniss on 2 June 2015 in which he gave her a verbal outcome. Mr Furniss stated in the letter that he had investigated the claimant's grievance in accordance with the respondent's grievance policy and further documentation identified in his letter dated 5 June 2015. Mr Furniss also stated that he had interviewed Miss Kendrick. Mr Furniss did not uphold the claimant's grievance, including the alleged complaints of bullying and harassment save respect of the following matters. Mr Furniss partially upheld some aspects of allegations 2, 3 and 4 of the claimant's grievance but did not hold any of the grievances overall. In summary, in respect of allegations 2 c), d, and 4d) Mr Furniss upheld the claimant's complaints in respect of the language used by Miss Kendrick towards the claimant including that Miss Kendrick needed to be more aware of the way in which she communicated with the claimant including the use of phrases used albeit that Mr Furniss believed that Miss Kendrick had used such language with the best of intentions. Mr Furniss also upheld allegation 3 a) (relating to be claimant's move into a small room) in relation to the moving of some of the claimant's files. This allegation was upheld by Mr Furniss in the

light of the recognition by Miss Kendrick that the claimant could have felt that the move was being done to her rather than with her.

94. Mr Furniss made one overall recommendation in respect of the claimant's grievance namely that Miss Kendrick should be more direct and to consider/limit her use phrases and metaphors in her communications with the claimant. Mr Furniss did not make any recommendations in respect of the claimant's transfer to the small office including to address the claimant's concerns that she found the room uncomfortable. Mr Furniss advised the claimant that although he had not been able to substantiate the bullying and harassment claims which she had raised it did not detract from the obvious worry and distress which the matters has caused her. Mr Furniss further stated that when they had met the claimant had indicated that she did not consider that formal mediation would be helpful and that she could not identify any other useful support. Mr Furniss concluded his letter by advising the claimant of confidential counselling services and a right of appeal which should be exercised within seven calendar days of the date of his letter.
95. The claimant did not appeal against the outcome of her grievance within the seven-day period specified by Mr Furniss in his letter dated 5 June 2015. The Tribunal accepts the claimant's evidence that she felt unable, by reason of ill health, to pursue an appeal at that time. The claimant contended that she subsequently endeavoured to appeal against the outcome of her grievance but this was refused by Mr Furniss as she had not complied with the 7 day time limit. Mr Furniss accepted in his oral evidence that the claimant may have told him that she wished to appeal against the grievance outcome and that he may have told her that she could not as she was outside the time limit but he could not remember. The tribunal accepts on the balance of probabilities the claimant's evidence on this matter including in the light of the equivocal nature of Mr Furniss' response.

The claimant's sickness absence

96. Following the receipt of Mr Furniss' letter dated 5 June 2015 the claimant was signed off sick with stress and anxiety from 6 June 2015 for a period of four weeks. Miss Kendrick wrote to the claimant by letter dated 9 June 2015 acknowledging the notification by the claimant of her sickness absence and advising her of/enclosing a copy of the respondent's absence procedure. Miss Kendrick wrote to the claimant again on 18 June 2015 advising the claimant to refrain from continuing to check work e-mails whilst she was away sick. The claimant submitted a further sick note dated 6 July 2015 for a period of four weeks confirming that she was unfit for work by reason of work-related stress (page 517 of the bundle) and thereafter a further sick note dated 12 August 2015 confirming that she was unfit for work for a further period of six weeks by reason of the same condition (page 527 of the bundle).

The claimant's suspension by letter dated 30 June 2015

97. Mr Furniss wrote claimant by letter dated 30 June 2015 following a telephone conversation that morning advising the claimant that a preliminary investigation had been conducted in accordance with the respondent's disciplinary procedure following concerns which had been identified as a result of arrangements that has been put in place for the oversight of case files during the claimant's sickness absence. Mr Furniss further advised the claimant that (a) as a result of the preliminary investigation concerns had been raised that the claimant had potentially breached the respondent's code of conduct, safeguarding framework supervision and other policies in respect of three allegations (b) that in the light of the respondent's serious concerns the respondent would be reviewing all of the open case files (c) a supplementary investigation would be carried out in accordance with the respondent's investigations guidance (d) the claimant was required to remain at home on precautionary suspension until the investigation and any subsequent disciplinary proceedings had been concluded and (e) the outcome of the investigation could result in the matter being dealt with at a disciplinary hearing which could potentially result in the claimant's dismissal from the respondent.

98. The third allegation related to the claimant's supervision and oversight of 4 cases. The respondent did not identify the family/children concerned. Further the respondent did not enclose with the letter a copy of Preliminary Investigation Report prepared by Miss Kendrick referred to below. Mr Furniss' letter is at pages 507-508 of the bundle. Mr Furniss suspended the claimant because he did not consider that there was any reasonable alternative in the light of the potentially serious matters which had come to light. Mr Furniss did not however explain to the tribunal why it was necessary formally to suspend the claimant at a time when the claimant was already absence from work by reason of stress/ anxiety.

99. The tribunal has been provided with limited information regarding the allegations against the claimant. The allegations were not addressed by Miss Kendrick or Mr Furniss in their witness statements. There is a document entitled, "Record of Preliminary Investigation" at pages 502-506 of the bundle which appears to be a review of the claimant's Safeguarding Practice and Management undertaken by Miss Kendrick on 22 June 2015 which contains a number of potentially very serious allegations regarding the claimants conduct/practice. The tribunal has not however been provided with any further information relating to the cases referred to in that document.

The claimant's discussions with her Trade union representative

100. In or around the end of June/ beginning of July 2015 the claimant contacted her trade union representative Mr Miguel. The claimant asked to

meet with Mr Miguel to discuss a possible departure from the respondent. The claimant informed Mr Miguel that she had been subjected to inappropriate and unfair treatment and that she felt at that time that she could not take any more. The claimant explained to Mr Miguel that she was concerned however that if she left the respondent she would not have an opportunity to have any input into the ongoing investigation relating to her practice.

101. The claimant subsequently met with Mr Miguel to discuss the matter including whether she should leave the respondent. Mr Miguel advised the claimant to think it over and agreed to send her a draft resignation letter to use if she decided to resign her employment. It was agreed that Mr Miguel would discuss the matter with Mr Furniss.

The subsequent investigation

102. The respondent subsequently instructed Sue Turle, Children's Services Manager Dorset, to investigate the allegations. The respondent's terms of reference dated 28 July 2015 are at pages 518-519 of the bundle. The terms of reference identified nine allegations for further investigation. The terms of reference stated that a preliminary investigation had been carried out by Miss Kendrick and that the claimant had been placed on precautionary suspension. The terms of reference stated (incorrectly) that the claimant was on a formal PIP. Miss Turle was instructed to investigate nine allegations relating to the claimant's practice including with regard in particular to caseload and adequacy of supervision/compliance with the respondent's code of conduct and safeguarding framework. The terms of reference further advised that the claimant was currently signed off work by her GP and that she should not be contacted at that time as the respondent was in the process of ascertaining whether she would be fit enough to be interviewed. Miss Laffan was identified as the point of contact for human resource support and advice.

Mr Furniss' discussions with the claimant's trade union representative

103. In or around the week commencing 27 July 2015, Mr Miguel telephoned Mr Furniss. Mr Miguel informed Mr Furniss that the claimant wanted to resign and asked him about notice periods and what the respondent would pay the claimant. Mr Furniss agreed to consider the matter further and get back to Mr Miguel.

The respondent's letter dated 31 July 2015

104. Mr Furniss wrote to the claimant by letter dated 31 July 2015 advising her that a case file review had been completed as a result of which it had been identified that the claimant had potentially breached the respondent's Code of Conduct and associated policies in respect of which the respondent was pursuing nine allegations relating to her conduct and practice. This letter

is at pages 520-522 of the bundle. The claimant was informed that a supplementary investigation would be carried out by Ms Turle who would contact her to arrange a time to discuss the allegations following guidance from occupational health as to whether the claimant was well enough to attend an interview. Mr Furniss further stated in the letter that he was aware that the claimant was in the process of submitting her resignation and that she had verbally indicated to her trade union representative that she wanted to resign from her post. Mr Furniss confirmed that the claimant would remain on precautionary suspension pending the outcome of the investigation in the light of the serious nature of the allegations.

The correspondence between Mr Furniss and Mr Miguel and subsequent events

105. Mr Furniss discussed the approach by Mr Miguel with his line manager and subsequently e-mailed Mr Miguel on 2 August 2015. This e-mail is at page 524 of the bundle. Mr Furniss confirmed that if the claimant resigned her employment with the respondent she would continue to be paid full pay until 31 August 2015 at which time she would resign and would be paid two months' pay in lieu of notice. Mr Furniss also confirmed that he had sent the claimant a letter setting out the allegations against her for investigation and that they would like the claimant to be interviewed as part of such investigation. Mr Furniss further requested Mr Miguel to ask the claimant to send her letter of resignation directly to him by e-mail that week.
106. Mr Miguel replied by e-mail dated 7 August 2015 confirming that the claimant had been dealing with a bereavement that week and that they would get the resignation to him as soon as possible the following week. This email is also at page 524 the bundle. Mr Miguel subsequently sent the claimant a draft letter of resignation.
107. Mr Furniss went on leave around this time until mid August 2015 and had no further discussions with the claimant or her trade union representative at this time concerning any resignation.
108. The claimant went to Hull around this time following a family bereavement. Before she went to Hull the claimant prepared a letter of resignation before she went to Hull. The claimant discussed the matter with her family during her visit to Hull who advised her not to give up without a fight and the claimant destroyed the letter of resignation. The claimant returned from Hull around 11 August 2015.
109. The claimant texted Ms Laffan on 12 August 2015. A copy of her text is at pages 528- 532 of the bundle. In summary, the claimant informed Miss Laffan that (a) she had returned the previous night following another bereavement (b) she had been issued with a six week sick note for work-related stress (c) she had collected a letter from the Royal Mail from the respondent on her return which she had not been expecting and which had

made her feel devastated (d) that she would see her GP in order to ascertain whether she was fit enough to be part of the proposed investigation (e) that she did not feel that the bullying had been taken seriously or properly (f) that she had not been provided with the outcome of the investigation into Family Q as indicated by the respondent previously (g) that she felt helpless watching her career and the project which she loved so much being destroyed and (h) asked, as she stated that she had requested previously, for Miss Laffan to undertake a 360° investigation with the team and everyone involved as she believed that the bullying was continuing through the investigation processes. The claimant gave permission for Miss Turle to have her mobile number as long as she was independent of Miss Kendrick but indicated that she was unable to speak to Miss Turle that day as she felt sick inside. The tribunal has not been provided with any response by Miss Laffan to this text.

110. The claimant submitted a further doctor's sick note confirming that she was unfit for work due to work-related stress for a period of six weeks. The note states that the claimant was assessed by the doctor on 12 August 2015. This note is at page 527 of the bundle.

111. The claimant wrote out a further letter of resignation which she put in her handbag on 18 August 2015 (the day of the investigation meeting with Miss Turle). This is the letter dated 18 August 2015 (without the manuscript amendments) at page 550 of the bundle. The tribunal accepts the evidence of the claimant that she was having difficulty at that time deciding whether to leave the employment of the respondent as she was struggling between feelings that the perceived unfair treatment would never end and a desire to remain in a job which she felt so strongly about. When reaching this conclusion the tribunal has had regard in particular to the claimant's oral evidence, to the contents of her text referred to above and at pages 528-532 of the bundle and its findings below.

The claimant's response to the allegations

112. The claimant prepared a detailed response rebutting the allegations contained in Mr Furniss' letter dated 31 July 2015. This document is at pages 509-516 of the bundle. The claimant requested that the written response be included as evidence is part of the investigation. The claimant also stated in her response that she was waiting various minutes from the respondent including in respect of the informal grievance and preliminary and supplementary investigations relating to the allegations concerning family Q.

The discussions with Mr Miguel on 18 August 2015

113. The claimant and Mr Miguel had a meeting prior to the commencement of the investigatory meeting on the morning of 18 August 2015. They discussed the claimant's health and the claimant told Mr Miguel that she felt that she could not go on any more and that she thought the respondent was trying to get rid of her. The tribunal is however satisfied that the claimant had not made a final decision whether to resign her employment at that time. When reaching this conclusion the tribunal has had regard to the oral

evidence of the claimant and also to the evidence of Mr Miguel that he first became aware of the claimant's letter of resignation during the meeting on 18 August 2015.

The meeting on 18 August 2015

114. The claimant and her trade union representative, Mr Rob Miguel, attended a meeting with the investigating manager, Miss Turle and Miss Laffan on 18 August 2015. Miss Laffan's note of the meeting is at pages 546 – 549 of the bundle. The tribunal is satisfied that Miss Laffan's note is a partially accurate account of the meeting as explained further below.
115. The tribunal is satisfied that the claimant had made no decision at the commencement of the meeting on 18 August 2015 whether to resign her employment and further that there was no discussion regarding any resignation at that time. When reaching this conclusion the tribunal has taken into account in particular the oral evidence of the claimant and Mr Miguel, including that the claimant did not inform Mr Miguel of any intention to resign, together with the oral evidence of Miss Laffan and her minutes of the meeting. These minutes make no reference to any decision to resign by the claimant until the conclusion of the meeting on 18 August 2015. Further, Miss Laffan accepted in her oral evidence that she had no idea that the claimant was going to hand in a resignation letter until the conclusion of the meeting including that there was no discussion regarding any resignation prior to that point.
116. The tribunal is satisfied that this was a very difficult meeting for the claimant. The tribunal is further satisfied that this would/ should have been apparent to the respondent including as (a) it was necessary to adjourn the meeting for approximately 15 minutes when the claimant became upset when recalling her allegations of bullying and harassment (9th paragraph on page 547 of the bundle) (b) Miss Laffan would have been fully aware of the claimant's fragile state by reason of the sick notes which had been submitted and also the text which the claimant had sent to Miss Laffan on 12 August 2015 referred to above and (c) Miss Turle confirmed that she was aware that the claimant had been off sick prior to the meeting.
117. Miss Turle explored with the claimant the allegations contained in Mr Furniss' letter dated 31 July 2015. The case files relating to the matters under investigation were not available for consideration at the meeting. The tribunal is satisfied that Miss Turle expressed on a number of occasions her views regarding the inappropriateness of the claimant's practice including that (a) she questioned whether the claimant had defaulted to a support worker rather than being a leader (7th paragraph of page 547 of the bundle) (b) she described, in respect of a case involving a mother and unborn child (referred to in the 3rd paragraph of page 548 of the not) the practice as, "appalling" and (c) that the claimant had been incompetent and negligence in her actions (paragraph 4) of Miss Turle's witness statement).

118. The tribunal is also satisfied that Miss Turle raised her voice during the course of the interview when she considered that the claimant was failing properly to address the questions which she was asking. When reaching this conclusion the tribunal has taken into account not only the evidence of the claimant and Mr Miguel but also that Miss Turle accepted in her witness statement that she had raised her voice above a normal speaking volume to draw the claimant's attention back to the question she was asking (paragraph 4 of Ms Turle's witness statement). The tribunal has also taken into account that Miss Laffan has recorded in her notes of the meeting (following the reference to the mother and unborn child referred to at paragraph 118 (b) above) that the claimant felt shouted at.

119. The tribunal is further satisfied that the claimant was distressed by the above matters, that she felt that she had been pre-judged as incompetent and unprofessional by Miss Turle and that she decided that she had had enough.

The claimant's letter of resignation

120. The claimant submitted her letter of resignation to Miss Laffan at the conclusion of the meeting. This letter of resignation is at page 550 the bundle.

The letter states as follows:-

"Date: 18th August 2015

Attention: Fran Laffan

Dear Fran,

It is with much sadness and regret that despite my passion and dedication to my work and having the up most respect for the National Organisation Action for Children, I no longer feel able to work for Action for Children Plymouth: City Centre Cluster.

I am therefore giving you notice leave my employment with you, as previously agreed between Lee Furniss and my trade union representative.

My agreed 2 months notice period starts from 31 August 2015. Therefore my last day of employment with Action for Children will be the 31st October 2015.

I will arrange for independent person Ann Preece to deliver

Prior to leaving employment I would like to complete an exit questionnaire and will liaise with HR to do this, if it is agreed for me to do so.

Yours sincerely.

Janette Coyle BSC Hons.

121. The claimant's letter of resignation was accepted by Miss Laffan. It was agreed at the meeting that the letter would be amended so that the claimant's last day of employment with the respondent would be 31 August 2015 and that she would be paid in lieu of notice for two months. The signed manuscript amendments with confirming this are marked on the letter of resignation at page 550 of the bundle.

The claimant's exit questionnaire

122. The claimant subsequently completed an exit questionnaire dated 1 September 2015 which is at pages 557-561 of the bundle. The claimant raised a number of issues in the exit questionnaire including that she had left the respondent by reason of bullying, harassment and lack of management support. The claimant also stated that her claims of bullying and harassment were not taken seriously or dealt with properly.

123. The claimant also made official complaints dated 14 September 2015 which are contained in the document at pages 562-565 of the bundle. In summary, the claimant's complaints included allegations that (a) Mr Furniss had not followed policies and procedures regarding the alleged bullying (b) the alleged unprofessionalism of Miss Turle during the investigation and (c) that Miss Kendrick had not followed policies and procedures for the recruitment staff.

The investigation into allegations against the claimant

124. The tribunal was informed that the respondent's investigations into the allegations concerning the claimant's practice have not yet been concluded. Mr Furniss indicated to the tribunal that no concerns have been referred to any relevant regulators.

Staff absence and subsequent matters

125. Between in or around June and August 2015, seven members of staff (namely, Caroline Foster, Claire Bowhay, Bev Wain, Louise Luscombe, Kim Symonds, Donna Stephens and Emma Houston (and which included 4 members of the claimant's team)) went off sick from work.

126. It was contended by Miss Kendrick that the claimant's poor performance led to her colleagues going on sick leave as they were not provided with good supervision or case oversight which left them feeling overwhelmed and traumatised by the impact of the work which they were dealing.

127. The tribunal is not satisfied in the light of its findings of fact that such sickness was caused by the claimant as alleged by the respondent. When reaching this conclusion and the tribunal has taken into account in particular that (a) the staff going off sick included Donna Stephenson and Kim

Symonds who were not managed by the claimant and (b) Miss Bowhay and Mrs Foster stated in their evidence that they felt supported by the claimant. The tribunal has also taken into account that the claimant was not the subject of the collective grievance which was subsequently submitted by staff and further that the respondent held in the outcome of such grievance that the staff had received adequate supervision prior to the claimant's departure due to sickness on 8 June 2015 (The grievance outcome letter dated 19 January 2016 at pages 665 - 667 of the bundle and paragraph 128 below).

The staff grievances

128. In or around the beginning of September 2015, 6 members of staff raised a collective grievance concerning matters relating to alleged (a) poor management (b) inadequate supervision (c) lack of support from the respondent (d) being undervalued and undermined and (e) experiencing bullying from management. The allegations did not relate to the conduct of the claimant. The respondent did not uphold the grievance. The respondent's letter dated 19 January 2016 dismissing the grievance is a pages 665-667 of the bundle.

Closing submissions

129. The tribunal has had regard to the detailed skeleton argument/ closing submissions (including the submissions in reply served by the respondent) together with the various authorities relied upon by the parties.

130. The tribunal has had regard, in particular, to following statutory and associated provisions namely, sections 95 (1) (a) (c), 97, 98 of the Act and section 207 A (2) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") and the provisions of the ACAS Code of Practice 1 on Disciplinary and Grievance procedures 2015 ("the ACAS Code").

131. The tribunal has also had regard in particular to the authorities referred to below.

132. The tribunal has reminded itself in particular of following:-

(1) When dismissal is not admitted, the burden of proof falls on the claimant to show, on the balance of probabilities, that he/she was entitled to terminate the contract of employment for the purposes section 95 (1) (c) of the Act.

(2) In order to succeed in a claim for constructive unfair dismissal it is necessary for a claimant to establish (a) a fundamental breach of an express and/or implied term of a contract of employment by the respondent (b) that such breach / breaches caused the employee to resign and (c) that the claimant did not delay too long before resigning, thereby affirming the contract and losing the right to pursue such a claim.

- (3) The claimant relies on breaches of the implied term of trust and confidence, namely, that the respondent should 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 the employer and employee”. (Malik v the Bank of Credit and Commerce and International [1998] AC 20).
- (4) Any breach of the implied term of trust and confidence will amount to a repudiation of the contract as the very essence of such a breach is that it is calculated or likely to destroy or seriously damage the relationship.
- (5) The test of whether there has been a breach of the implied term of trust and confidence is objective. An employee’s actual perception is not material .**Horkulak v Cantor Fitzgerald International [2003] IRLR 756.**
- (6) In order to determine whether there has been a breach of the implied term of trust and confidence it is necessary to consider (a) the nature of the conduct complained of (b) whether the respondent had reasonable and proper cause for that conduct and (c) if not, was the conduct complained of calculated or likely to destroy or seriously damage the employer/employee relationship of trust and confidence.
- (7) Unreasonable conduct alone is not enough to amount to constructive dismissal. If an employee is relying on a series of acts the tribunal must be satisfied that the series of acts taken together amounted to a breach of the implied term of trust and confidence.
- (8) A course of conduct may cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive unfair dismissal following a, “last straw” incident. The last straw need not of itself amount to a breach of contract, be of the same character as earlier acts or constitute unreasonable or blameworthy conduct. The last straw must however contribute to the breach. An innocuous act on the part of employer cannot be a final straw, even if the employee genuinely, but mistaken interprets the act as harmful and destructive of his or her confidence in the employer (Lewis v Motor world Garages Limited [1986] ICR 157, CA) and Omiliaju v Waltham Forest London Borough Council [2005] IRLR 35 CA.
- (9) The tribunal is required to consider whether any repudiatory breach played “ a part in the dismissal” and was “an” effective cause of the resignation rather than being “the” effective cause accordingly it need not be the predominant , principal , major or main cause for the resignation (Nottingham City council v Meikle [2005] ICR 1 CA and Wright v North Ayrshire Council [2014] IRLR4 EAT.

(10) In this case the respondent accepts, if dismissal is proven, that the claimant was unfairly dismissed for the purposes of section 98 of the Act and does not seek to contend that the claimant contributed to such dismissal and/or that any award of compensation should be reduced pursuant to section 123 (1) of the Act

(11) If the claimant is successful the tribunal is required to consider whether to increase the compensatory award, if it considers it just and equitable to do so, by up to 25 % in respect of any failure by the respondent to “dismiss” the claimant without a disciplinary procedure pursuant to section 207 (A) of the 1992 Act and in accordance with the authority of *Bethnal Green and Shoreditch Educational Trust v Dippenaar* UKEAT0664/15/ JOJ.

THE CONCLUSIONS OF THE TRIBUNAL

133. The tribunal has considered whether the respondent breached the implied duty of trust and confidence towards the claimant as set out at paragraph 1 of the List of Issues in respect of all or any of the alleged acts identified in the subsequent paragraphs of the List of Issues. The tribunal has considered the allegations in the order set out below.

134. The tribunal has considered first the alleged acts referred to paragraphs 2 (b), 2 (d) (i) and (iii) and 2 (e) (i) of the List of Issues.

Paragraph 2 (b) (i) of the List of Issues

135. The tribunal is not satisfied, on the balance of probabilities, for the reasons explained in paragraph 30-31 above that Miss Kendrick made any such comment.

Paragraph 2 (b) (ii) of the List of Issues

136. The tribunal is not satisfied, on the balance of probabilities, for the reasons explained to paragraphs 32-34 above that Miss Kendrick made any such comment.

Paragraph 2 (d) (i) of the List of Issues

137. The tribunal is satisfied, on the balance of probabilities, for the reasons explained at paragraph 29 above that there was a discussion between the claimant and Miss Kendrick regarding OFSTED. The tribunal is not however satisfied that the comments which were made by Miss Kendrick regarding this matter were inappropriate and /or were intended to and/or undermined the claimant.

Paragraph 2 (d) (iii) of the List of Issues

138. The tribunal is satisfied, on the balance probabilities, for the reasons explained at paragraph 37-39 above that the claimant was allocated a small room which she found uncomfortable without/appropriate consultation by the respondent. The tribunal is further satisfied that Mr Furniss of the respondent did not take any action to address the situation following the outcome of the claimant's grievance notwithstanding that he upheld the allegation on the basis set out at paragraph 93 above. The tribunal is not however satisfied that the respondent was made aware by the claimant of the incident in 1997. Further the tribunal is not satisfied that this matter, of itself, constituted a breach of the respondent's implied duty of trust and confidence towards the claimant.

Paragraph 2 (e) (i) of the List of Issues

139. The tribunal is satisfied, on the balance of probabilities, for the reasons explained paragraph 27-28 above, that the alleged comment (or something broadly similar) was made by Miss Kendrick in a clumsy and tactless manner which the claimant found upsetting. The tribunal is not however satisfied that Miss Kendrick sought deliberately to undermine the claimant. Further the tribunal is not satisfied that this comment constituted, of itself, a breach of the respondent's implied duty of trust and confidence towards the claimant.

Paragraphs 2 (c) , d (ii) and 2 (e) (ii) – (iv) of the List of Issues.

140. The tribunal has considered the above issues together. It is agreed that the claimant was placed on an informal PIP by the respondent. The tribunal is satisfied for the reasons explained at paragraph 52 above, that the respondent acted with reasonable and proper cause in placing the claimant on the informal PIP. The tribunal is however satisfied for the reasons explained to paragraphs 48 -49 above, that Miss Kendrick conducted the meeting on 23 February 2015 in an inappropriate manner including that she made unfavourable comparisons between the claimant and her colleagues. Further, the tribunal is not satisfied that Miss Kendrick had reasonable proper cause for such conduct which, viewed objectively, was likely to damage the relationship of trust and confidence between the parties particularly in the context of a PIP process.

Paragraph 2 (f) of the List of Issues

141. The tribunal is satisfied, on the balance of probabilities, having had regard to the findings of fact at paragraph 61 above that Miss Kendrick raised matters which had previously been raised at "informal mediation meeting" on 3 March 2015 at the meeting on 25 March 2015. The tribunal is further satisfied that Miss Kendrick's notes of the meeting are not a complete record of the matters discussed at that meeting. The tribunal is not however satisfied that such matters of themselves, constituted a breach of the implied term of trust and confidence by the respondent.

Paragraphs 2 (e) (v), (g) – (k) of the List of Issues

142. The tribunal considered these allegations together as they relate to family Q.
143. The tribunal is satisfied that Mr Furniss of the respondent had genuine and legitimate concerns regarding the events of 28 April 2015 relating to family Q including in particular having regard to (a) the previous violent nature of the father of family Q and (b) the apparent departure by the claimant from the risk assessment which she had agreed with Miss Kendrick immediately prior to the incident in question.
144. The tribunal is also satisfied that Mr Furniss had reasonable and proper cause to delegate the investigation of the matter to Miss Kendrick as the claimant's line manager including as (a) it was in accordance with the respondent's procedures (b) there was no extant grievance against Miss Kendrick by the claimant at that time and (c) following the concerns raised by the claimant regarding the conduct of the meeting on 30 April 2015 by Miss Kendrick, the claimant was allowed to respond to questions in writing (paragraphs 76 and 77 above).
145. The tribunal is further satisfied that Mr Furniss had reasonable and proper cause to require the claimant to provide a response by 8 May 2015 (including to advise her that if she did not do so he would address the matter separately as a failure to respond to a reasonable request in respect of a health and safety matter (paragraph 83 above). When reaching this conclusion the tribunal has taken into account in particular, that this was a potentially serious matter and that the claimant had been provided with a copy of the questions at the meeting with Miss Kendrick on 30 April 2015.
146. The tribunal is not satisfied however that the respondent acted with reasonable or proper cause in respect of the following matters:-
- (1) The comments (and conduct) of Miss Kendrick at the meeting on 30 April 2015 (paragraph 2(e) (v) and (i) (paragraph 77 above).
 - (2) Initiating a supplementary investigation into the matter. When reaching this conclusion the tribunal has taken into account in particular its findings at paragraphs 76 and 87 – 88 above. Further (a) the claimant was not advised of the outcome of the Supplementary Investigation until 4 September 2015 (after the termination of her employment with the respondent) and (b) the respondent did not undertake any investigation into Miss Wasey's dealings with family Q prior to 28 April 2015.
147. The tribunal is satisfied that viewed objectively, the above were serious matters particularly as the respondent was aware at the beginning of May 2015 that the claimant was feeling low and expressing concerns regarding her ability to carry on. The tribunal is not however satisfied that the above actions

constituted, of themselves, a breach of the implied term of trust and confidence by the respondent.

Paragraph 2 (n) of the List of Issues

148. The tribunal is satisfied in the light of its findings of fact that:-

- (1) The respondent dealt appropriately with the claimant's grievance prior to May 2015 including as the claimant indicated in February/March 2015 that she did not wish to make an official complaint and would prefer to discuss her working relationship with Miss Kendrick with a mediator (paragraph 53 above).
- (2) Although the claimant raised further concerns with Miss Laffan on 31 March 2015 neither party (including the claimant) pursued the matter further at that time (paragraph 65 above).
- (3) When the claimant raised the matter again at the beginning of May 2015 Miss Laffan advised the claimant to set out her concerns in a formal grievance for investigation by an investigating officer (paragraph 78 above).
- (4) It was agreed at the grievance meeting on 14 May 2015 that future supervision meetings would be attended by Miss Laffan pending the outcome of the claimant's grievance.

149. The tribunal is not however satisfied that the respondent acted with reasonable and proper cause with regard to the claimant's formal grievance including:-

- (1) That the respondent carried out a proper investigation into the claimant's complaints. When reaching this conclusion the tribunal has taken into account in particular that (a) the tribunal has not been provided with a note of the investigation undertaken by Mr Furniss and (b) it appears that the only person whom Mr Furniss interviewed during the course of the investigation was Miss Kendrick and (c) although Mr Furniss upheld certain aspects of the claimant's grievance, including that some of Miss Kendrick's actions had caused the claimant worry and distress, he took minor action against Miss Kendrick and did not address the claimant's concerns regarding the allocation of a small room.
- (2) The tribunal is further satisfied that, although the claimant did not appeal against the outcome of her grievance this was because of her stress-related illness and Mr Furniss' refusal to allow the claimant to appeal outside such time limit (paragraph 95 above) and that the respondent's failure to investigate properly the claimant's formal grievance was a serious matter which, viewed objectively, constituted a breach of the respondent's duty of trust and confidence.

Paragraph 2 (a) of the List of Issues.

150. The tribunal is satisfied in the light of its findings of fact that :-
- (1) There was a significant backlog of work following the transfer of the services to the respondent which was exacerbated by the integration of case files and systems (paragraph 25 above).
 - (2) Although the respondent provided some support during the months following the transfer this was limited in nature and the claimant and her team continued to carry a significant workload (paragraph 26 above).
 - (3) There were ongoing issues with training on the respondent's computer systems in March 2015 (paragraph 61 above) and access to relevant information in April 2015 (paragraph 66 above).
 - (4) There were still ongoing issues with regard to training on computer systems, lack of resources/ difficulties in recruitment, high workload and low staff morale culminating in the staff meetings in May and June 2015 (81 89 and 91 above), at which the claimant was in attendance. Staff raised concerns at the meeting on 1 June 2015 that the issues which they had raised were not being listened to/addressed by the respondent (paragraphs 89-91 above).
 - (5) The respondent acknowledged the difficulties experienced by the staff including the high workload and lack of resources paragraphs 81 and 92 above).
151. Further, the tribunal is satisfied that there was no evidence that the claimant was responsible for such issues (paragraphs 126- 128 above).
152. The tribunal is satisfied that the respondent's failure to address such issues by June 2015 constituted a breach of the implied term of trust and confidence.

Paragraph 2 I of the List of Issues

153. The tribunal is satisfied that:-
- (1) The respondent's disciplinary procedure provided for suspension in cases of potential gross misconduct (page 27 of the policies bundle).
 - (2) By 30 June 2015 the respondent had genuine concerns regarding the claimant's practice following a review undertaken by Miss Kendrick on 22 June 2015 (paragraph 99 above) of the claimant's Safeguarding Practice and Management. The tribunal has also had regard to the fact

that the claimant acknowledged in an email to Mr Furniss dated 5 May 2015 that she was aware that her practice did not look good on paper (paragraph 79 above).

154. The tribunal is not however satisfied that the respondent had reasonable and proper cause to suspend the claimant at that time in the light of the following matters:-

(1) The respondent's disciplinary policy provided that where an employee was suspended from work and provided a certificate of sickness absence from their GP, consideration must be given to the continuance of the investigation/ payment to be made in accordance with the respondent's sickness absence policy and the precautionary suspension lifted until they were fit to return to work (page 29 of the policies bundle).

(2) At the time of her suspension the claimant was on certified sick leave with stress and anxiety and there was no suggestion of any return to work. Further, Mr Furniss has not explained to the tribunal why he considered it necessary to suspend the claimant at a time when she was already absent from work by reason of stress and anxiety.

155. In all the circumstances, the tribunal is not satisfied that the respondent had reasonable and proper cause to suspend the claimant whilst she was absence on sick leave. The tribunal is not however satisfied that such suspension constituted, of itself, a breach of the implied term of trust and confidence.

Paragraph 2 (m) of the List of Issues

156. The tribunal is satisfied that in the light of the concerns which the respondent had regarding the claimant's practice it had reasonable and proper cause to carry out an investigation into the allegations against the claimant.

157. The tribunal is not however satisfied that the respondent had reasonable and proper cause to carry out the investigation in the manner in which it was carried out at the investigatory meeting on 18 August 2015 including in particular (a) for Miss Turle to raise her voice when she was unhappy with the responses which she received from the claimant (paragraph 118 above) and (b) for Miss Turle to express the critical views of the claimant's practice identified at paragraph 117 above.

158. The tribunal is further satisfied that, viewed objectively, in the circumstances of this case, that such conduct by the respondent constituted a breach of the implied term of trust and confidence and /or, in any event " the final straw" entitling the claimant to terminate her employment for the purposes of section 95 (1) (c) of the Act.

159. When reaching this conclusion the tribunal has had regard in particular to the following matters :-

- (1) The matters referred to at paragraph 116 above including (a) that the respondent would have been well aware that the meeting was likely to be difficult for the claimant particularly as she was still subject to a sick note (b) Miss Laffan was aware of the claimant's fragile state of health in the light of the text which she had received from the claimant on 12 August 2015 (paragraph 109 above) and (c) the critical nature of the comments which were made by Miss Turle at the meeting notwithstanding that, as the investigating officer she had a fact finding role.
- (2) The contents of the respondent's Investigations Guidance Policy including the guidance at paragraph 12 of the policy regarding the contents of the report including that care should be taken not to jump to conclusions or to allow assumptions to influence judgment (page 58 of the policies bundle).

Paragraphs 3 and 4 of the List of Issues

160. In summary, the claimant contended that the alleged breaches of contract identified in paragraphs 2 of the List of Issues entitled the claimant, either singularly or collectively, to terminate her contract with the respondent, including, as far as required, that the conduct of the respondent on 18 August 2015 ,was the final straw.

161. The respondent denied that it committed any repudiatory breaches of the claimant's contract of employment and contended that the reason for the claimant's resignation was that the claimant was struggling with the role of Lead Practitioner. The respondent further contended that if, which is denied , it had committed any repudiatory breaches of contract the claimant, in any event, delayed for many months before resigning her employment and therefore affirmed the contract.

162. Having given very careful consideration to its findings of fact and conclusions referred to above, the tribunal is satisfied that :-

- (1) The claimant has established that, viewed objectively, the respondent committed a number of acts relating in particular to (a) comments and conduct by Miss Kendrick and the manner in which it dealt with (b) the supplementary investigation into family Q, (c) the claimant's formal grievance and outcome (d) the claimant's suspension and allegations into the claimant's performance/ competence and (e) which culminated in the conduct of the investigatory meeting on 18 August 2015 (which was the final straw) which cumulatively amounted to a breach of the implied term of trust and confidence.

- (2) The claimant terminated her employment with the respondent by reason of the matters referred to above and not as contended by the respondent because she was struggling with her role. When reaching this conclusion the tribunal has had regard in particular to its findings of fact at paragraphs 85, 86, 90-91, 100, 109, 111 and 113 – 123 above.
- (3) The claimant was entitled to terminate her employment with the respondent pursuant to section 95 (1) (c) of the Act by virtue of the above matters which culminated with the conduct of the investigatory meeting on 18 August 2015 and in respect of/ by reason of which the claimant had not affirmed such breaches.

The fairness of the dismissal

163. The respondent indicated at the commencement of the Hearing that if the claimant established that she had been constructively dismissed pursuant to section 95 (1) (c) of the Act it would not contend that any such dismissal was fair for the purposes of section 98 of the Act and /or that any awards should be reduced pursuant to sections 122 and/or 123 of the Act.
164. The tribunal is therefore satisfied that the claimant has been unfairly dismissed by the respondent for the purposes of section 98 of the Act.

ACAS uplift

165. Although the application of the ACAS guidelines is not on the List of Issues it was agreed that the tribunal would consider whether to reduce or increase any awards for any breaches of the ACAS Code.
166. The tribunal is not satisfied that it is appropriate to reduce any award in respect of the claimant's failure to pursue an appeal against the rejection of her grievance. When reaching this conclusion the tribunal has taken into account in particular its findings at paragraph 95 above.

167. The tribunal is however satisfied that it is appropriate to increase any compensatory award by 20 percent to reflect the fact that the claimant was not subject to any formal disciplinary hearing prior to her constructive dismissal. The tribunal has uplifted the award by 20% to also reflect the fact that although the claimant did attend an investigatory meeting on 18 August 2015 the claimant was not provided with full details of the cases in issue and further the inappropriate way in which the matter was dealt with at the meeting in breach of the ACAS Code (paragraphs 5, 7, 9, 11 and 12 of the ACAS Code)..

Employment Judge A Goraj

Dated 12 April 2017

Judgment sent to Parties on

_____13 April 2017____