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## THE EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Lisa Penrose  
**Respondent:** Dignity Funerals Ltd  
**Heard at:** East London Hearing Centre  
**On:** 6, 7 and 8 February 2018  
**Before:** Employment Judge Burgher  
**Members:** Mr N J Turner OBE  
Mrs S Jeary

### Representation

**Claimant:** Ms T O'Hallaran (Counsel)  
**Respondent:** Ms M Hales (Counsel)

## JUDGMENT

1. The Claimant's claims for unfair constructive dismissal, unlawful victimisation and breach of contract fail and are dismissed.
2. The Claimant's claim for direct sex discrimination is dismissed on withdrawal.
3. The Respondent's counter claim for breach of contract by the Claimant is withdrawn.

## REASONS

### Issues

1 At the outset of the hearing the Tribunal identified and refined the issues which are as follows: The Claimant claims:

- 1.1 Unfair constructive dismissal;
- 1.2 Unlawful victimisation contrary to section 27 of the Equality Act 2010; and
- 1.3 Breach of contract relating to non-payment of bonus.
- 1.4 The Claimant initially made a claim for direct sex discrimination contrary to sections 11 and 13 of the Equality Act 2010 but during the Claimant's closing submissions this allegation was withdrawn.
- 1.5 The Respondent initially presented a counter claim for breach of contract by the Claimant but this was withdrawn during identification of the issues.

2 In respect of the unfair constructive dismissal claim the Tribunal identified the allegations necessary to be considered as follows:

- 2.1 Whether there was a campaign of bullying and intimidating behaviour undertaken by Kate Davidson against the Claimant;
- 2.2 Whether there was a failure to allow the Claimant's husband, Mr Paul Penrose, to properly represent the Claimant at the grievance appeal meeting held on 15 December 2016; and
- 2.3 Whether there was a failure to deal with the Claimant's grievance in a timely and professional manner.

3 In respect of the unlawful victimisation complaint the Claimant alleges that her grievance dated 6 August 2016 and her resignation letter dated 10 March 2017 amounted to protected acts. The Respondent denies that the 6 August 2016 grievance amounts to a protected act. However, the Respondent accepted that the letter of 10 March 2017 was a protected act. The acts of alleged detriment were:

- 3.1 The management of the grievance process; and
- 3.2 The non-payment of the Claimants alleged entitlement to bonus on the 31 March 2017.

### Evidence

4 The Claimant gave evidence on her own behalf and called her husband Mr Paul Penrose to give evidence in support. The Respondent called Mr Richard Portman, the Corporate Services Director, Ms Michelle Hales, Crematorium Manager and Miss Kate Davidson, Regional Manager to give evidence in support. All witnesses provided signed witness statements and, save for Mr Penrose, were subject to cross examination and separate questions from the Tribunal.

5 The Tribunal was also referred to relevant documents in an extensive bundle of over 600 pages.

6 The Tribunal makes the following observations in relation to the witness evidence that was heard. Mr Portman gave his evidence in a straightforward,

reasonable and reliable manner. Ms Hales' evidence was uncertain times but to the extent that her evidence was relevant to the issues we find that her evidence was reliable. Ms Davidson gave evidence in a forthright, reliable and grounded manner and we were impressed with the approach that she took to trying to assist the Tribunal.

7 In contrast, we found the Claimant's evidence to be confused, contradictory and at times incredible. The Claimant raised allegations for the first time in her oral evidence before the Tribunal, that did not feature in either her lengthy grievance or her claim form to the Tribunal. Examples included the allegation of not being on good terms with Mr Best, needing to attend Enfield Cemetery to pursue the professional ICCM course and the amount of time and responsibility she was able to spend at Enfield cemetery and crematorium given her responsibilities at Three Counties crematorium. These were three of a number of examples where we find the Claimant was not particularly seeking to assist the Tribunal in the evidence she was giving.

### Facts

8 The Tribunal make the following findings of fact.

9 The Claimant commenced employment with the Respondent on the 9 April 2009 and worked as a crematorium manager for the Three Counties crematorium. She undertook a number of day to day duties including the finance, the booking of funerals and the management of staff. At various stages she line managed up to three members of staff and there were no issues relating to her performance. The Claimant was highly regarded by her previous line manager Mr Barber and undertook her duties effectively.

10 The Claimant's written contract of employment does not provide for any entitlement to a bonus. However, the Respondent operates a discretionary bonus scheme which it notifies to its employees from time to time each year. The relevant bonus scheme states at paragraph E, which is emphasised in bold on the fourth page,

*'The payment of bonus to individuals remains at the absolute discretion of Dignity PLC and is not in any way a legally binding commitment to between Dignity PLC and the individual to pay a bonus in any year. Dignity PLC reserves the right to modify suspend or cancel the EVA incentive scheme or an individual's entitlement at any point in time'*

11 The Respondent's grievance procedure provides that there is usually a time period of seven days from the grievance to give a written outcome and a requirement of seven days to appeal. The grievance procedure also states that if a grievance is raised whilst an employee is subject to disciplinary proceedings it will usually be heard only when the disciplinary process has been completed. Insofar as a grievance has a bearing on the disciplinary proceedings it can be raised as a relevant issue in the course of those proceedings.

12 In respect of appeals, the grievance appeals procedures states that if the employee's grievance relates to their dissatisfaction with a disciplinary performance review or dismissal decision they should appeal against the decision in accordance with the disciplinary appeal procedure. Therefore it is part of the Respondent's procedures that disciplinary proceedings are to be dealt with separately from grievance proceedings.

13 The Tribunal finds that the Claimant had a very proprietorial approach to her role at the Three Counties crematorium. She believed it was '*her domain*' and '*her site*' and she was very sensitive to any perceived encroachment on this.

14 From time to time up to June 2015, the Claimant also assisted in the management at the Enfield crematorium when she reported to Mr Barber, her then line manager. The Enfield crematorium is approximately a one hour drive from the Three Counties crematorium where the Claimant was based.

15 Ms Davidson commenced management of the Claimant in June 2015. There was initially a very good relationship between Ms Davidson and the Claimant. When Ms Davidson commenced her role she was not responsible for the Enfield crematorium management at all. Consequently, following discussions the Claimant was no longer required to go to work in Enfield. In around October 2015 Ms Davidson subsequently became involved in Enfield crematorium regarding the recruitment of a new manager there.

16 In November/December 2015 one of the Claimant's direct line reports, Ms Vicky Dunmow, submitted a complaint against the Claimant in respect of the Claimant's line management style. Ms Dunmow alleged that the Claimant was bullying her. This complaint was investigated and was handed to an independent investigating officer. Ms Davidson made it clear to the Claimant that as she was not the investigating officer it would not be appropriate for her to be involved in the progression or outcome of the grievance.

17 As part of this grievance made, Ms Dunmow made an allegation that the Claimant had made personal comments about Ms Davidson's sister. The Claimant alleged that she spoke to Ms Davidson to explain that she did not make any such personal comments about her sister and alleged that Ms Davison said '*well let's hope we can move on from this*'.

18 We find, contrary to the assertion made by the Claimant, that there was no change in Ms Davidson's attitude towards the Claimant following this grievance. The email correspondence and the evidence we have heard demonstrates this. Ms Davidson continued to be supportive to the Claimant, the email communications between them were convivial and Ms Davidson provided a very positive appraisal for the Claimant in 2016.

19 The Claimant alleges that Ms Davidson did not support her relation to Ms Dunmore's grievance but we find that Ms Davidson acted perfectly properly by stating that she could not be involved in the grievance process and she made it clear that she would support the Claimant in the her management of role and her responsibilities in the normal way.

20 Ms Dunmow's grievance against the Claimant was not upheld by the grievance officer, Mr Chris Black. However, Mr Black made a management recommendation that the Claimant attend a people management course. The Claimant took umbrage to this recommendation and had to be persuaded by Ms Davidson to do so. Ms Davidson was determined that this was something that she required the Claimant to do and the Claimant finally acceded to this management request during her 2016 appraisal. We find nothing exceptional about Ms Davidson's decision to implement the

recommendation made by Mr Black and she cannot be properly criticised for insisting that the Claimant attend the training. Specifically we do not find that Ms Davidson was undermining the Claimant by requiring her attendance on the people management course.

21 Ms Davidson was not initially responsible for the Enfield area when Ms Davidson assumed line management of the Claimant and there was acceptance by the Claimant that she would no longer assist Enfield due to staffing issues and workload at Three Counties crematorium. As a result the Claimant was no longer required to go to Enfield to work. However, the Claimant stated before the Tribunal, for the first time, that not going to Enfield affected her progression with the ICCM professional course. This was not a matter that the Claimant raised as part of a grievance before the Respondent and it became evident that the Claimant was not in fact enrolled on the ICCM course.

22 The Claimant proposed that the Respondent run a recruitment day to address staff shortages at the Respondent's cemeteries and crematoriums in Enfield, Bentley and Three Counties. This was accepted as a very good idea. However, this plan was not actually implemented and a recruitment day took place limited only for vacancies in Bentley and Enfield areas. It was decided that the geographical distance meant that Three Counties would not be included in the recruitment day and that separate arrangements would be taken to recruit to the Three Counties. The Claimant found out about the more limited recruitment day through Ms Hales who attended the recruitment day. The Claimant was upset about her apparent exclusion from the recruitment day. We accept that the recruitment day did not concern the Claimant because it did not relate to Three Counties vacancies. It would certainly have been better for Ms Davidson to have communicated directly with the Claimant regarding the more limited scope of the recruitment day but we do not find that Ms Davidson was unreasonable in failing to do this.

23 The Claimant made allegations relating to Ms Davidson not inviting her to Enfield team meetings, she alleged an occasion when Ms Hales attended an Enfield team meeting even though Enfield was not part of Ms Hales' responsibilities. The Respondent's evidence relating to this is that Ms Hales was not at the Enfield meeting but was at Enfield to provide administrative cover while the meeting actually took place. This evidence was not challenged by the Claimant and Ms Hales was not cross examined on whether she participated in Enfield team meetings. In these circumstances there could be no reasonable criticism made by the Claimant for apparent exclusion from Enfield team meetings that she was not required to attend.

24 The Claimant alleged that there was no prior consultation with her when Ms Davidson turned up at Three Counties crematorium with Mr Ian Best who was selected to undertake the memorial consultancy work. Ms Davidson challenged the Claimant's evidence and stated that she did notify the Claimant on two separate occasions previously that Mr Best would be attending Three Counties crematorium to take over the memorial consultancy work. This is exactly what happened when she attended with Mr Best. In view of the conflict of evidence and the assessment we have made about the reliability and credibility of witnesses we find that Ms Davidson's evidence is more reliable. As such there was no failure to consult or unacceptable behaviour by Ms Davidson in attending the crematorium with Mr Best for him to take over the memorial consultancy role. The Claimant made a separate but related allegation about this for the first time in her evidence to the Tribunal. The Claimant

alleged that she did not have a good relationship with Mr Best and by allocating Mr Best to work with her Ms Davidson was undermining her. The Claimant did not allege this previously and Ms Davidson denied knowledge of any difficulties between the Claimant and Mr Best. As such we have a little difficulty in dismissing this as an allegation that is made for us.

25 Following the appointment of Mr Best, he identified that there was an overpayment in relation to material artwork in respect of a client. At this stage it was his responsibility to deal with and he contacted the client to arrange a repayment. The Claimant expressed serious concerns about this and alleged that Mr Best was undermining her position and he ought to have waited for her to get back from holiday to resolve the matter. We find that the Respondent's customer service and corporate processes seek to ensure repayment of overpayments as soon as possible. This was a justifiable step and not something that the Claimant can properly complain as amounting to an untoward act in support of her claim for breach of the implied term of trust and confidence.

26 The Claimant complained that Ms Davidson, without consultation with her, agreed to pay a sponsor £1,000 for a wheelchair for a child. The Claimant readily accepts that if she was being involved in the matter she would have made a payment to pay £100. However she alleges that it undermined her to offer £1000 without consulting with her, especially as the sum would have come out of 'her' budget. Ms Davidson was the Claimant's line manager, she was with an important client of the Respondent and it would have been unreasonable for Ms Davidson to adjourn the meeting to seek permission from her subordinate as to whether £1000 should be offered or not. We do not find that Ms Davidson acted with any impropriety in this regard. Consequently we find the Claimant cannot reasonably complain that this was a matter of undermining her.

27 The Claimant also made allegations about the investigation that took place in relation to complaint by Robinsons, an important client, about not being able to book appropriate services. The Robinsons complaint was raised during the Claimant's holiday and is discussed as a separate issue of block bookings below in this judgment.

28 The Claimant alleged at the conclusion of the investigation into the block bookings investigation that Ms Davidson had an aggressive approach to her during an aborted protected conversation meeting on 16 June 2016. However, during her grievance the Claimant said that Ms Davidson had a '*couldn't care less attitude*' and did not mention any alleged aggression. Ms Davidson denied acting aggressively or inappropriately during the attempted protected conversation and we prefer the evidence of Ms Davidson in this regard.

#### *Block bookings*

29 A key issue in this case was the assessment of false bookings and block bookings. At the start of the hearing, the Tribunal identified that the issue we were to consider related to 'reserved bookings' as there were competing assertions as to whether block bookings were one and the same as false bookings. This was the Claimant's contention. However, it quickly became apparent during assessment of the evidence that there was an obvious difference between block bookings and false bookings.

30 The Respondent operates a computerised system called the CROPS which has a specific button to click to in order to reserve block bookings. Whether or not the block booking was authorised, the computer user simply needed to click that button for the computer system to register and record it as a block booking. For auditing purposes block bookings remained on the system. The Tribunal had no difficulty in finding that a computer user who selected the block booking on the CROPS system was making a block booking. The block booking button was specifically provided for on the CROPS system. The corollary of this is that a computer user, such as the Claimant, who made up a false funeral, with a false deceased and referred to a funeral director that did not make any booking was making a false booking, not a block booking. The false bookings that were subsequently cancelled by the Claimant were not easily identifiable during any audit as to how the crematorium was being utilised. We dismiss the Claimant's assertion that block bookings and false bookings were the same. The Tribunal's findings of fact relating to block bookings are relevant to the way in which the Claimant was subsequently dealt with in respect of potential disciplinary action and her grievance process.

31 On 12 February 2014 there was an email from Tony Davidson to all crematorium managers and regional managers regarding block bookings which initially referred to servicing of the cremation ovens. The email then stated that "*any block blocking of bookings are only to be done in exceptional circumstances and must be agreed by your regional manager beforehand*". The Claimant asserted that this sentence only referred to servicing of the crematorium. We cannot accept this. There was a requirement for the Claimant to notify her regional manager for any block bookings and we cannot reasonably construe that sentence in the way that the Claimant alleges.

32 The matter of block bookings came to the attention of Ms Davidson on 1 June 2016 as there was an email from the Robinsons funerals directors who wanted to check that booking they had made through the national call centre. They expressed concern about the arrangements at Three Counties crematorium for bookings generally. Following this Mr Paul Barrow from Robinsons funeral directors sent Ms Davidson an email expressing concern about the system of booking and requested a meeting with her to discuss booking slots. Ms Davidson attended the meeting as she wanted to understand the concerns and find out what was going on.

33 Following this meeting Ms Davidson was concerned that a lot of cremation services were being booked at Three Counties crematorium and then withdrawn from the system at the last moment.

34 To ensure that there was a definable process going forward Ms Davidson sent an email to the Claimant, and all other members of her team, on the 1 June 2016 stating that under no circumstances should any cremation slots in the diaries be blocked out or held back from funeral directors. She went on to say it was also unacceptable to hold bookings back through booking them in the name of family and then cancelling at a later date. She continued that there may be exceptional circumstances which it was necessary to book out slots but that she should be contacted beforehand. Ms Davidson concluded this email by stating that there was likely to be an audit. An audit is what took place and Ms Davidson instructed Ms Hales to do this and investigate the issue of these false bookings.

35 Ms Hales undertook an investigation and it became clear that Abbey Funerals was a name being used for false bookings which were booked and cancelled at the last minute. Ms Hales' audit enquiry was confirmed by her contacting Abbey funerals on 9 June 2017 and Abbey Funerals confirmed that there were no relevant bookings made by them at Three Counties crematorium. This exacerbated the concern that was held by Ms Davidson.

36 Ms Hales held an investigation meeting with the Claimant on 15 June 2016. Ms Hales wrote down three pre - planned questions for the meeting summarised as follows:

- 36.1 Whether the Claimant had seen Ms Davidson's email of 1 June 2016 regarding no booking out of block booking slots in the name of the family in respect of a funeral that you are later intending to cancel;
- 36.2 Whether the Claimant understood this; and
- 36.3 An audit was carried out looking into cancelled transactions and upon looking into the report provided by IT it was clearly shown that during the last three years over 4000 funerals have been cancelled many of them being from Abbey Funerals. The question was whether the Claimant could explain this.

37 In respect of the third question the Claimant replied that was correct that for over 7 years she undertook this fictional cancelled booking process because she wanted to maintain a smooth and efficient service throughout the day with limited staff and resources and had to have regard for the welfare of her staff. The Claimant stated that the site was pushed for 7 years and for the two previous years she kept the fictional cancellation booking system in place because of low staff levels and having to run the team with only two or three people. The Claimant accepted that her then line manager, Mr Barber, did not know of the process she was following but stated that he was aware that she was on a tight diary.

38 The Claimant was asked to explain why she continued to book using Abbey Funerals even after Ms Davidson's email on 1 June 2016 and she responded that she needed to protect the site and make it run smoothly, she only had two staff and that she did not expect them to work long hours. She stated that everyone was due a break and they had to do other duties which meant she had to block two sessions out each day to do tasks such chapel tours, families and gardening.

39 The Claimant also stated that many employees who have been at Three Counties Crematorium were aware that she had been operating the diary that way. Ms Hales asked the Claimant whether she would like to specify the names and the Claimant named 9 people, including Ms Hales herself. Further discussion then took place regarding the staffing levels.

40 Once the investigation information had been reviewed, Ms Davidson considered the matter to be sufficiently serious and she attended the Three Counties Crematorium on 16 June 2016 with a HR representative in order to having a protected conversation with the Claimant. The Claimant did not understand



what a protected conversation was despite Ms Davidson trying to explain it and as a result no protected conversation took place.

41 Ms Davidson then gave the Claimant a letter inviting her to a disciplinary hearing due to take place on 23 June 2016, to consider fraud against the company in respect of falsifying information bookings and a refusal to carry out direct management instructions. It was stated that it was considered to be gross misconduct in accordance with the Respondent's disciplinary policy. The Claimant alleged that Ms Davidson was harassing her following this letter.

42 The Claimant then signed off on sick leave and did not return to work. She was referred to occupational health and a letter dated 21 June 2016 from Ms Davidson to the Claimant expressed concern for the Claimant's health and also asked questions seeking information relating to other sites that were aware of the practice of fictional cancelled bookings. In this letter Ms Davidson explained that if the Claimant had a grievance against her she should refer it to Mr Gant.

43 During the Claimant's visit to occupational health on 13 July 2016 she made a number of assertions about the reasons for her ill health none of which related to alleged poor treatment by Ms Davidson.

44 On 27 July 2016 Ms Davidson again wrote to the Claimant expressing her wish to support the Claimant in relation to her absence. Ms Davidson reiterated the request for further information about the practice of fictional cancelled bookings on other sites. The Claimant did not respond to either of Ms Davidson's letters to provide further information.

45 However, the Claimant wrote a lengthy letter dated the 6 August 2016. The Claimant sent this letter directly to the chief executive and other board members of the Respondent. The Claimant was not able to provide us a tenable explanation as to why she chose to send the letter to all of the board members.

46 The Claimant's letter made a number of concerns about Ms Davidson bullying her. The Claimant mentioned issues of victimisation to Ms Davidson at the time and she was handed a disciplinary letter on the 16 June 2016 but only expanded upon this in her letter dated 6 August. The Tribunal dwelt upon on a paragraph in the letter to consider whether it amounted to protected act. Paragraph 4 on the fifth page the Claimant writes

*"I've never refused to direct management construction had a tremendous backlog of work at my site. I was coping with extraordinary working conditions at the time with flooding lack of Internet the backlog of work and no staff. I am dyslexic and explained to my immediate line manager that I had not been able to read the full email"*

47 There was also reference in the letter to ensure that employees are treated equally and fairly. These are the only two aspects that have been referred to the Tribunal as potentially bringing the letter into the auspices of section 27 Equality Act 2010 to amount of protected act.

48 The Claimant's letter of 6 August 2016 was treated as a grievance and Mr Justin Lewis was appointed as the grievance manager. A grievance meeting took place on the 15 September 2016. The Claimant had a workplace representative, Ms Paternally. The

Claimant had a full opportunity to raise all of the matters she wished to. She also attended with additional documentation with 24 points that needed to be considered. Consequently Mr Lewis explained that further time may be needed to consider the grievance.

49 Mr Lewis provided the outcome of the Claimant's grievance on 20 October 2016. He did not uphold her grievance. The Claimant appealed by letter on 2 November 2016 and presented five grounds of appeal. In respect of the five grounds, appeal grounds 2, 3, 4 and part of ground 5 related to block bookings/ false cancelled bookings which Tribunal find were directly relevant to the disciplinary proceedings that were stayed pending outcome of the Claimant's grievance. The Claimant was on sick leave and had agreed that her disciplinary process should take place after her grievance process.

50 The grievance appeal meeting took place on 13 December 2016 with Mr Baxter. The Claimant attended with her husband and part of the reason for the appeal taking place on that date was to accommodate the availability of the Claimant's husband. At the grievance appeal hearing it was made clear that Mr Penrose could not speak on behalf of the Claimant but it was stated that time would be allowed if he needed time to adjourn so that discussions could take place. We find that during the appeal meeting Mr Penrose did make comments and that the discussion about and the scope of the appeal was fully ventilated. The Claimant was able to get assistance from Mr Penrose at the grievance appeal.

51 It was clearly concluded at the grievance appeal meeting that Mr Baxter was not going to be dealing with appeal grounds 2, 3, 4 and part 5. There were a number of discussions about this and Mr Baxter stated that to the extent that matters related to the disciplinary process they would be dealt with as part of the separate disciplinary process and as such would not be dealt with by him. The Claimant seemingly accepted this and provided Mr Baxter with a document with 24 points consisting of 18 pages which Mr Baxter had not previously seen and did not know was going to be part of the appeal. Having seen this Mr Baxter stated that he needed time to consider it and would do so over the Christmas period.

52 Mr Baxter considered the matter and there was further correspondence with the Claimant about this. A resumed grievance appeal hearing took place on the 21 February 2017, which was delayed taking into account the diary commitments of Mr Penrose.

53 On 21 February 2017, the Claimant sought to revisit appeal grounds 2, 3, 4 and part of ground 5 and stated that she was not interested in considering the 24 points that the first grievance appeal meeting had been adjourned to consider. The resumed appeal hearing continued with Mr Baxter making clear he was not going to deal with grounds 2, 3, 4, and part of ground 5. Mr Penrose said that the matter would then have to end up in court.

54 The appeal was adjourned for Mr Baxter to provide his outcome in writing. A brief grievance appeal outcome letter dated 6 March 2017 was written. There was also a letter dated 10 March 2017 from the Respondent inviting the Claimant to a disciplinary hearing on a date to be arranged. The Claimant stated that she did not receive either of these letters until after her letter of resignation dated 10 March 2017.

55 The Claimant's letter of resignation was written by her solicitors and stated that she was subjected to disciplinary action as an act of revenge for her bringing a grievance. This was chronologically incorrect and the Claimant accepted this in her evidence. The threatened disciplinary action was initiated first and was followed by the Claimant presenting her grievance of 6 August 2016.

56 The Claimant's resignation letter dated 10 March 2017 also stated that she had lost all trust in the company and that she considered herself to be constructively dismissed. She stated that she felt harassed and victimised and that she was treated differently to others because she is female. This was the first time that the Claimant mentioned any allegations of victimisation or less favourable treatment on grounds of being female.

57 The resignation letter indicated that the Claimant expected that she would be getting her bonus which would due at the end of the month. For these purposes the Claimant stated in her letter that she was giving notice that her resignation would take effect on the 31 March 2017, which was less than the month's notice that she was required to give Respondent under her contract.

#### Law and conclusions

58 The Tribunal was provided with and considered the helpful written and oral submissions made by Counsel for both parties and we had regard to the precedents relied on.

59 Unlawful victimisation is provided for by section 27 of the Equality Act 2010. It states:

#### *Victimisation*

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
  - (a) B does a protected act, or
  - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
  - (a) bringing proceedings under this Act;
  - (b) giving evidence or information in connection with proceedings under this Act;
  - (c) doing any other thing for the purposes of or in connection with this Act;
  - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

60 The Tribunal considered whether the Claimant's letter dated 6 August 2016 amounted to a protected disclosure. The Tribunal carefully considered the content and context relating to the Claimant's reference to dyslexia and concluded that, on balance, it amounted to a protected act tending to indicate that reasonable adjustments for dyslexia were not being considered relating to her ability to read emails. As such section 27(1)(c) of the Equality Act 2010 was engaged.

61 The Tribunal concluded that the Claimant's letter of 10 March 2017 amounted to a protected act. It refers to less favourable treatment on grounds of sex.

62 Notwithstanding our conclusions regarding the protected acts, we are satisfied that neither Mr Portman nor Mr Gant had them in mind at all when considering not to pay the discretionary bonus. We conclude that the decision not to pay the bonus was based on objective grounds, namely that the Claimant was out of the business on long term sickness absence for a significant part of the year and she had been subject to a serious disciplinary allegation which, given the content of the investigation notes, the Claimant had admitted. We therefore conclude that the non payment of bonus was not caused or influenced by the contents of the Claimant's letter of 6 August 2016 or the Claimant's resignation letter of 10 March 2017.

63 With the claim for victimisation relating to the Respondent's handling of the grievance, this can only be based on the protected act of 6 August 2016 as the grievance process had concluded before the Claimant made the protected act in her March 2017 resignation letter. We conclude that the way the appeal process was carried out was unconnected with the alleged protected act. Dyslexia and potential failure to make reasonable adjustments was not referred to as part of the grievance and there is no evidence that the letter or the allegation in it played any part in how the grievance was subsequently managed. The grievance was managed in a reasonable and appropriate manner considering the detail and scope of the allegations the Claimant was making. Further a number of the delays that occurred related to the Respondent but related to the logistics of arranging an appropriate time for the hearing.

64 In view of our conclusions the Claimant's claim for unlawful victimisation fails and is dismissed.

#### *Unfair Constructive Dismissal*

65 It is for the Claimant to prove that the Respondent committed a fundamental breach of contract, that she resigned because of the breach and that she did not delay too long thereby affirming the breach. The Tribunal were referred to Lord Steyn's description of the duty of trust and confidence in the case of Malik v BCCl namely:

*"the employer shall not . . . without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."*

66 The Tribunal also considered the case of London Borough of Waltham Forest v Omilaju when considering a course of conduct and the final straw. May LJ said:

*'an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee's trust and confidence has been undermined is objective' and 'Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents*

*it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the 'last straw' which causes the employee to terminate a deteriorating relationship.'*

67 In view of our findings of fact, outlined above, we conclude that the Claimant has failed to establish that the Respondent acted in such a way so as to fundamentally undermine the implied term of trust and confidence.

68 We entirely dismiss the allegations the Claimant makes against Ms Davidson concerning her conduct. We conclude that the Claimant felt that she was the owner of the Three Counties crematorium and this affected her perception of management encroachment on her domain. Ms Davidson's conduct towards the Claimant were reasonable management behaviours that were appropriate in the circumstances. Whilst there were some shortcomings in communication and information sharing by Ms Davidson to the Claimant from time to time the Claimant was properly consulted in all matters that affected her.

69 We conclude that the handling of the Claimant's grievance was reasonable and appropriate. The Claimant's husband Mr Penrose was able to consult with the Claimant during the grievance appeal meeting and, although he was not permitted to speak on the Claimant's behalf, he was able to make statements and engage with the appeal officer. Mr Penrose was given a proper opportunity assist the Claimant during her appeal, he was able to give advice, suggest questions and request time and there were number of adjournments where this was done.

70 There was a delay in concluding the grievance. We have found that there were justifiable reasons for this, including the scope of the Claimant's grievance and the logistical difficulties of arranging meetings to accommodate Mr Penrose.

71 Therefore we do not conclude that the handling of the grievance was such as to undermine the implied term of trust and confidence.

72 In view of these conclusions, the Claimant's claim for unfair constructive dismissal fails and is dismissed.

### *Bonus*

73 The Claimant made a contractual claim for bonus which she alleged was due to her on 31 March 2017. The Claimant delayed the effect of her resignation to this date. The Claimant claims that the failure to pay her bonus was arbitrary and capricious and that a bonus entitlement of approximately £7000 should have been paid to her but was not.

74 We conclude that Mr Portman and Mr Gant had objective reasons for not awarding the Claimant a bonus, namely that she had been on long term sickness absence and there were serious disciplinary conduct issues.

75 We therefore conclude that the Claimant was not entitled to payment for discretionary bonus. The Respondent did not exercise its discretion unreasonably and therefore the Claimant's claim for breach of contract fails and is dismissed,

*Ms Hales knowledge of false bookings*

76 The Claimant made a number of forceful criticisms relating to the conduct Ms Hales and the fact that she had been allegedly responsible for making false bookings at the Three Counties crematorium using the Abbey Funerals name in November 2015. The Claimant made criticisms of the fact that Ms Hales should not have undertaken the initial investigation as she was conflicted and this demonstrated that the Respondent did not really consider there to be an issue of misconduct. The Claimant maintained that the Respondent was unreasonable in failing or refusing to investigate this.

77 We conclude that whilst these concerns would have been highly relevant to disciplinary proceedings including dismissal, this was not a matter that the Respondent was specifically aware of at the time of the grievance, nor would it have been reasonable for them to be aware of it. Following a review undertaken by the Claimant of the 4000 false bookings that was done prior to the Tribunal hearing, the Claimant was able to identify 3 instances out of the 4000 of Ms Hales making Abbey Funeral bookings at Three Counties crematorium. Ms Hales denied making the false bookings before the Tribunal. There was no pattern of Ms Hales making false bookings which was not an issue before us. The Claimant's alleged misconduct did not progress to a disciplinary hearing and she did not provide any information of others making false booking to Ms Davidson despite being asked to do so on two occasions in the summer of 2016. In any event, the Claimant was not aware that Ms Hales actually undertook false bookings at Three Counties crematorium before her resignation on the 10 March 2017 and therefore any alleged inconsistent treatment in comparison with Ms Hales could not have been a basis for the resignation or support her allegation of constructive dismissal.

78 In all of these circumstances the Claimant's claims are dismissed.

Employment Judge Burgher

1 March 2018