



THE EMPLOYMENT TRIBUNALS

Claimant: Mrs P Bridges
Respondent: Mendlesham Medical Group
Heard at: Bury St Edmunds
On: 19 & 20 March 2018
Before: Employment Judge M Warren (sitting alone)

Representation

Claimant: Ms Bewley, counsel
Respondent: Mr Matovu, counsel

RESERVED JUDGMENT

1. The Claimant's case that she was unfairly dismissed succeeds.
2. The remedy to which the Claimant is entitled shall be determined at a remedy hearing on **21 June 2018**.

Note: At the end of the hearing I listed the remedy hearing in consultation with the parties for 19 June 2018. I neglected to consult my own diary. Unfortunately, I am committed to a work related matter on 19 June. I have now listed the matter for the alternative date of 21 June 2018, in the hope that everyone will still be able to make it. If that is not so, the parties can apply for an adjournment and an alternative date will have to be re-arranged by the administration. I am sorry for that.

REASONS

Background

1. By a claim form dated 31 January 2017, Mrs Bridges brings a complaint that she was constructively unfairly dismissed when she resigned her employment with the Respondent, (a GP medical practice) as a Lead Dispenser on 31 October 2016 after 18 ½ years' service.
2. This case was originally listed for hearing on 17 May 2017, but was adjourned to a 2 day hearing when it became apparent that one day would not be sufficient time to hear the matter. It was then listed for 2 days on 2 and 3 October 2017 in sad circumstances related to the terminal illness of the mother of the Respondent's key witness, Ms Clare.

The Issues

3. Notwithstanding that she was represented by solicitors, Mrs Bridges provides scant particularity as to her claim. Her claim form merely states that she claims constructive dismissal after long term bullying by Practice Manager Ms Clare and Dr Tanna which was brought to the attention of the senior partner, in response to which no action was taken. Had this case crossed my path on its way to hearing, I would have ordered the Claimant to provide further and better particulars as to which contractual terms she says that the Respondent was in breach of such as to amount to a fundamental breach of contract and if it is the implied term requiring the employer to act in a way that maintains mutual trust and confidence, what allegations she relies on as placing the Respondent in breach of that term. However, no such order was made.
4. Surprisingly, the Respondents did not seek further and better particulars themselves and consequently, the Response is equally uninformative.
5. At the outset of the hearing, I asked Ms Bewley to prepare for me during a break I was to take in order to read the witness statements, a bullet point list of the allegations upon which Mrs Bridges relies, as amounting to a fundamental breach of contract on the part of the Respondent. The list with which I was subsequently provided, reads as follows, (the numbering is mine, I have rearranged the allegations into chronological order, but otherwise, I quote word for word):
 - 5.1. March 2013 Ms Clare told Hayley Everett not to assist the Claimant with the DSQS folder she was required to produce, (paragraph 5).
 - 5.2. April May 2014 Ms Clare would not tell the Claimant whether the DSQS folder had passed.
 - 5.3. Circa February 2015, a friend of Ms Clare was hired without

consulting the Claimant despite it being part of her role, (paragraph 10).

- 5.4. Circa March 2015 Ms Clare stated, “heads would roll” if there was an early see CQC visit to the Respondent, (paragraph 8).
 - 5.5. April 2016, Ms Clare was obstructive in giving information needed for a jury service form, (paragraph 9).
 - 5.6. 10 May 2016 Dr Evans and Dr Herman failed to deal with the Claimant’s complaint of bullying, (paragraph 12).
 - 5.7. Circa 10 May 2016 Ms Clare blamed the Claimant aggressively for ruining her relationship with Dr Herman by complaining, (paragraph 12).
 - 5.8. Circa 9 June 2016 Ms Clare rearranged the rota so dispensers she favoured had ½ day every other Friday, (paragraph 13).
 - 5.9. Mid June 2016 Ms Clare hired an apprentice without involving the Claimant who was supposed to be involved in recruitment, (paragraph 10).
 - 5.10. Circa end of June 2016 at the Dispensary Meeting, Dr Tanna stated he was fed up with bickering between the dispensers and that, “he had got rid of a shit stirrer and he didn’t want another one”. He also pointed at the dispensers including the Claimant saying, “do you understand”, (paragraph 13).
 - 5.11. The treatment by Ms Clare on the telephone call of Wednesday, 19 October 2016, (paragraph 15 of the Claimant’s statement).
 - 5.12. Ongoing failure to provide a safe place of work where Ms Clare was the Claimant’s manager.
 - 5.13. Ongoing failure by Ms Clare to cooperate with the Claimant in her job role.
 - 5.14. Ongoing failure to address bullying at the Respondent.
6. The foregoing are said to amount to a breach of the implied term requiring the maintaining of mutual trust and confidence.
 7. Mrs Bridges also says that the Respondent is in breach of its obligation to maintain a safe system of work.

The Law

8. The right not to be unfairly dismissed is provided for at section 94 of the Employment Rights Act 1996, (ERA).

9. Section 95 defines the circumstances in which a person is dismissed as including where:
- “(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.”*
10. That is what we call constructive dismissal. The seminal explanation of when those circumstances arise was given by Lord Denning in Western Excavating(ECC) Ltd v Sharpe 1978 ICR 221:
- “If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employers conduct. He is constructively dismissed.”*
11. The Tribunals function in looking for a breach of contract is to look at the employer's conduct as a whole and determine whether it is such that the employee cannot be expected to put up with it, (see Browne – Wilkinson J in Woods v W M Car Services (Peterborough) Ltd [1981] IRLR 347)
12. A fundamental breach of any contractual term might give rise to a claim of constructive dismissal, but a contractual term frequently relied upon in cases such as this is that which is usually described as the implied term of mutual trust and confidence.
13. The leading authority on this implied term is the House of Lords decision in Mahmud & Malik v BCCI [1997] IRLR 462 where Lord Steyn adopted the definition which originated in Woods v W M Car Services (Peterborough) Ltd namely, that an employer shall not, without reasonable or proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee.
14. The test is objective, from Lord Steyn in the same case:
- “The motives of the employer cannot be determinative or even relevant...If conduct objectively considered is likely to destroy or serious damage the relationship between employer and employee, a breach of the implied obligation may arise.”*
15. Individual actions taken by an employer which do not in themselves constitute fundamental breaches of any contractual term may have the cumulative effect of undermining trust & confidence, thereby entitling the employee to resign and claim Constructive Dismissal. That is usually referred to as, “the last straw”, (Lewis v Motorworld Garages Ltd [1985] IRLR 465).

16. The last straw itself need not be unreasonable or blameworthy conduct, all it must do is contribute, however slightly, to the breach of the implied term of mutual trust and confidence, see London Borough of Waltham Forrest v Omilaju [2005] IRLR 35. However, an entirely innocuous act cannot be a final straw, even if the employee genuinely but mistakenly interprets the act as hurtful and destructive of mutual trust and confidence.
17. A fundamental breach by an employer has to be, “accepted” by the employee, to quote Lord Browne-Wilkinson in the EAT in W.E. Cox Toner (International) Ltd v Crook 1981 IRLR 443 :-

“If one party (the guilty party) commits a repudiatory breach of the contract, the other party (the innocent party) can chose one of two courses: he can affirm the contract and insist on its further performance, or he can accept the repudiation, in which case the contract is at an end...

But he is not bound to elect within a reasonable or any other time. Mere delay by itself (unaccompanied by an express or implied affirmation of the contract) does not constitute affirmation of the contract; but if it is prolonged it may be evidence of an implied affirmation...

Affirmation of the contract can be implied. Thus, if the innocent party calls on the guilty party for further performance of the contract, he will normally be taken to have affirmed the contract since his conduct is only consistent with the continued existence of the contractual obligation. Moreover, if the innocent party himself does acts which are only consistent with the continued existence of the contractual obligation, such acts will normally show affirmation of the contract. However, if the innocent party further performs the contract to a limited extent but at the same time makes it clear that he is only continuing so as to allow the guilty party to remedy the breach, such further performance does not prejudice his right subsequently to accept the repudiation...”

18. Another way of putting it is, that affirmation is essentially the legal embodiment of the everyday concept of letting bygones be bygones, see Cantor Fitzgerald v Bird 2002 IRLR 267. In that case, waiting 2 months did not amount to affirmation because Mr Bird had made his discontent known and was giving clear signs that he intended to leave.
19. In a recent review of the law of affirmation in the employment contract context, HHJ Burke QC in Hadji v St Luke’s Plymouth UKEAT 0857/2012 summarised the law as follows:

(i) The employee must make up his [her] mind whether or not to resign soon after the conduct of which he complains. If he does not do so he may be regarded as having elected to affirm the contract or as having lost his right to treat himself as dismissed. Western

Excavating v Sharp [1978] QB 761, [1978] 1 All ER 713, [1978] ICR 221 as modified by W E Cox Toner (International) Ltd v Crook [1981] IRLR 443, [1981] ICR 823 and Cantor Fitzgerald International v Bird [2002] EWHC 2736 (QB) 29 July 2002.

(ii) Mere delay of itself, unaccompanied by express or implied affirmation of the contract, is not enough to constitute affirmation; but it is open to the Employment Tribunal to infer implied affirmation from prolonged delay – see Cox Toner para 13 p 446.

(iii) If the employee calls on the employer to perform its obligations under the contract or otherwise indicates an intention to continue the contract, the Employment Tribunal may conclude that there has been affirmation: Fereday v S Staffs NHS Primary Care Trust (UKEAT/0513/ZT judgment 12 July 2011) paras 45/46.

(iv) There is no fixed time limit in which the employee must make up his mind; the issue of affirmation is one which, subject to these principles, the Employment Tribunal must decide on the facts; affirmation cases are fact sensitive: Fereday, para 44.

20. The employee must prove that an effective cause of his or her resignation was the employers' fundamental breach. However, the breach does not have to be the sole cause, there can be a combination of causes provided an effective cause for the resignation is the breach, the breach must have played a part (see Nottingham County Council v Mikel [2005] ICR 1 and Wright v North Ayrshire Council UKEAT/0017/13).
21. An employee is perfectly entitled to wait for a period of time to seek alternative employment before resigning, see for example Walton & Morse v Dorrington [1997] IRLR 488.
22. There is an implied term in every contract of employment that the employer will provide a safe system of work and take reasonable care of its employees.

The Evidence

23. This case was heard over the course of 2 days. I had before me:
 - 23.1. For the Claimant, witness statements from:
 - 23.1.1. Mrs Bridges herself;
 - 23.1.2. Mrs Hayley Everett, one, (of two) of the Respondents' former Assistant Practice Managers;
 - 23.1.3. Mrs Debbie Taylor, the second of the Respondents' former Assistant Practice Managers, and
 - 23.1.4. Ms Julie Marshall, former Dispenser with the

Respondents.

23.2. For the Respondents, I had witness statements from:

23.2.1. Dr Sarah Evans, partner in the Respondent practice;

23.2.2. Dr Raj Tanna, partner in the Respondent practice;

23.2.3. Dr Jon Herman, senior partner in the Respondent practice,
and

23.2.4. Ms Terri Clare.

24. I had before me a paginated and indexed bundle of documents running to page 157. We added during the hearing without objection, a copy of the Claimant's jury expenses claim form, at page 158.

Statement of Ms Marshall

25. The Respondent objected to the witness statement of Ms Marshall and submitted that I should not hear evidence from her. It had been served on the morning of the first day. Mr Matovu had not had a chance to read it. The explanation from the Claimant is that Ms Marshall had left the employment of the Respondents under the terms of a settlement agreement, which she understood forbade her from giving evidence connected with her employment with the Respondent. She had been unwilling to come forward as a witness. However, she had been persuaded by the Claimant's solicitors that she could give evidence, on the basis that if she was asked questions about the circumstances surrounding the ending of her employment, she could refuse to answer unless directed to do so by the Judge, in which case she would not be in breach of the terms of the settlement agreement.

26. Ms Marshall signed her witness statement on 21 February 2018. The Claimant's solicitors informed the Respondents' solicitors that they had the signed statement and offered to send it, but oddly, did not serve it. The Respondents' solicitors, (equally oddly) declined to receive the statement, telling the Claimant's solicitors to bring a copy to the hearing and make an application. Thereby, it seems to me, the Respondents' solicitors appear to have deliberately placed themselves in a position whereby they could argue that they were prejudiced by only having seen the statement on the morning of the first day of the hearing.

27. Mr Matovu argues that the statement is not relevant because it does not deal with things that had happened to the Claimant and in particular, does not provide evidence in relation to the incidents in the bullet point list produced by Ms Bewley this morning. I did not agree with him. Mrs Bridges complains about the way that she was treated by Ms Clare, Ms Marshall gives evidence that she was treated in a similar fashion. It is evidence which potentially corroborates that Ms Clare has a certain management style which should, in the submission of the Claimant, be

regarded as bullying.

28. In deciding to allow the evidence of Ms Marshall, I had regard to the overriding objective and sought to balance the relative prejudice to the parties.
29. If I did not allow the evidence, I would preclude potentially corroborative evidence which may assist the Claimant in proving her case. The corollary of that is of course the prejudice to the Respondents, in that it may make it harder for the Respondents to succeed. The Respondents were prejudiced by the fact that they had only seen the witness statement that morning, although to a degree, that was a situation of their own making. They were also prejudiced by the fact that, as I shall explain shortly, Ms Clare was not there in tribunal and so they would not be able to rebut the evidence in so far as it related to her; Mr Matovu would have time to read and take instructions from the Respondents during the reading break, but not from Ms Clare.
30. In terms of the overriding objective, which is to deal with cases justly, taking into account in particular, certain factors as follows:
 - 30.1. The parties are on an equal footing, both represented by experienced counsel;
 - 30.2. It seemed to me proportionate to allow the evidence given all the surrounding circumstances as I have outlined them above;
 - 30.3. Avoiding unnecessary formality and allowing flexibility points towards allowing the evidence;
 - 30.4. There is no question of delay as no one has suggested I delay things by adjourning this twice already postponed case, and
 - 30.5. Expense does not appear to be a factor.

Statement of Ms Clare

31. Ms Clare did not attend the tribunal. At the start of the case I was not told why. Later I was told that she no longer worked for the Respondents and when recently reminded that she would need to attend this hearing, she had a panic attack and has not been well. I did not know this at the time I was asked to rule on whether her witness statement should be considered, (nor did Ms Bewley). There was no medical evidence. There was no application for an adjournment.
32. Ms Bewley submitted that I should not read and should not take into consideration in any way, the evidence of Ms Clare. She said that the statement is highly contentious and full of untruths. She said that one of the earlier adjournments had been to accommodate Ms Clare and that the other witnesses for the Respondent were peripheral.

33. Mr Matovu submitted that as I had allowed in the evidence of Ms Marshall, I ought also in fairness read and take into account the witness statement of Ms Clare. Certainly, I should seek to be consistent in my decision making, but I do not think that just because I allow one side's application, it follows that I should allow the application of the other. However, that said, I do not think that there can be any serious doubt that it is right, in accordance with the interests of justice and the overriding objective, that I should read Ms Clare's witness statement on the understanding that, (and Mr Matovu does understand) I will attribute to it such weight as I consider appropriate, bearing in mind that she is not here to have her evidence tested in cross examination under oath. The Respondent will clearly be significantly prejudiced if I refuse even to take into account what the person against whom an allegation of bullying is made, has to say. The Claimant would be prejudiced if I were simply take at face value and accept what Ms Clare had to say in her, (unsigned) witness statement but of course, that was never going to be how the statement was to be regarded and she would not be significantly prejudiced by Ms Clare not being here, provided I approach her evidence in the appropriate balanced way. Not to read the witness statement would have been contrary to the overriding objective: it would have been disproportionate, inflexible and would have imposed unnecessary formality.
34. I therefore agreed to allow the witness statement of Ms Clare in evidence, attributing to it such weight as I considered appropriate, bearing in mind that she was not here to have her evidence tested under oath in cross examination.

Credibility of Evidence

35. I found no particular reason to doubt the credibility of the evidence of either Mrs Bridges, nor of the 3 Doctors, Dr Evans, Dr Tanna and Dr Herman. I am sure all 4 came to tribunal intending to tell the truth about events as they genuinely recall them and were anxious to do so when giving their evidence. None of us have perfect memories, the events in question are now 18 months to 2 years ago and it is not unusual when thinking back, for one's memory to be unconsciously selective.
36. The 3 former employees, Ms Everett, Ms Taylor and Ms Marshall were compelling witnesses.
37. Ms Everett resigned her employment with the Respondents in July 2013 and so the events she is recalling were 4 ½ to 5 years ago; its cogency may be affected by the passage of time. She resigned she says, because of the way she was treated by Ms Clare; her evidence may therefore be tainted by ill-feeling toward Ms Clare. However, she had worked for the Respondents as Practice Manager's Assistant for a period of almost 6 years, since October 2007. She resigned within 6 months of Ms Clare being appointed Practice Manager and recites a tale of derogatory name calling, of being shouted at, of inappropriately aggressive behaviour, of intimidation. She explained the effect of this treatment on her health, which

is very similar to the way Mrs Bridges described the effect on her health of Ms Clare's alleged treatment of her. Ms Everett corroborated Mrs Bridges complaint that Ms Clare had told Ms Everett not to help Mrs Bridges with IT problems. Ms Everett made it clear she bore no ill will toward the doctors. She did not have to come forward and give evidence and indeed had good reason not to, for her husband provided a garden maintenance service to the Respondents. I have to say, I found her oral evidence entirely convincing.

38. Ms Taylor had worked for the Respondents since February 2000. She resigned in August 2015. She too had been Assistant Practice Manager and so had to work closely with Ms Clare. Perhaps her evidence too may have been tainted by ill will toward Ms Clare. However, she did not have to come forward to give evidence. She too gave corroborative evidence consistent with that of her 3 colleagues, about the inappropriate management style of Ms Clare; her aggressive, belligerent, sometimes frightening demeanour. She heard Ms Clare speak of Mrs Bridges in derogatory terms. She too was compelling in her live evidence.
39. Ms Marshall had worked for the Respondents for 9 years, leaving in May 2017. She had worked in the dispensary. Whilst giving evidence, she seemed to me to be frightened, not I think because she was not telling the truth, but because she was a reluctant witness and found the process frightening, which is understandable. She too has become unwell with stress and anxiety and has had to seek medical help in that regard. She puts her illness down to having been bullied by Ms Clare. She spoke of Ms Clare being hostile and intimidating. She had heard use of the expression, "heads would roll". I do note that she also spoke of Dr Tanna being threatening and intimidating and that her letter of resignation had named him as the bully, not Ms Clare.
40. Ms Clare's witness statement not surprisingly, paints a different picture. She wrote that she adopted a, "listening, sympathetic and supportive role". She portrays Mrs Bridges as a person who could not cope with new technology and who became emotional and stressed as a consequence. She suggested Mrs Bridges was a person who could not cope with the pressures of the dispensary, (notwithstanding her having managed it apparently trouble free for 5 years before Ms Clare started). She suggests that their relationship was good, as it was with all other staff. During the latter part of the period in question, Ms Clare suggests that Mrs Bridges became tearful, (that much at least, is not controversial) verbally hostile and that on occasions she raised her voice at Ms Clare, who in response, remained calm and professional. She described an email from Mrs Bridges dated 28 April 2016, (page 127) as aggressive; it does not seem to me to be aggressive at all, it opens with, "*Hi hope you had a good holiday. Well done with the dispensary looks good*". It seems to me the use of capitalisation in the text is by way of emphasis, not shouting, as is sometime the case in the conventions of modern electronic communications. She complains that she herself was browbeaten and bullied by Mrs Bridges and others.

41. At paragraph 7 of her witness statement, Ms Clare suggests that Mrs Bridges' relationship with her colleagues Ms Taylor and Ms Everett was not good. That is contradicted by the evidence of Ms Taylor and Ms Everett.
42. It is true to say that the text messages in the bundle at pages 49 to 70 and the email correspondence in the bundle at pages 105 to 121 of the bundle, appear amiable and do not exhibit a tone of aggression or intimidation. That is certainly a factor. However, people can be careful about what they put in writing, which is not necessarily reflective of how they behave face to face. If one is on the receiving end of bullying conduct, one can be motivated to be careful and amiable in written correspondence, so as not to provoke anything more.
43. In summary, the evidence of Ms Clare is broadly and roundly contradicted by the evidence of Mrs Bridges and her 3 former colleagues, whose evidence I found entirely credible. There are invariably two sides to every story and I have read and taken into account Ms Clare's side. However, she was not here to have her evidence tested. Ms Bridges and her witnesses were credible. I accept their evidence as to fact where it is contradicted by that of Ms Clare and I accept their evidence as to the demeanour and behaviour of Ms Clare in both general and specifically, toward Mrs Bridges.

Findings of Fact

44. The Respondent is a medical practice consisting of five doctors in partnership operating out of two surgeries at Mendlesham and Bacton, in Suffolk. They have 34 employees.
45. Mrs Bridges employment with the Respondents commenced on 7 January 1998. Originally, she was employed as a Receptionist/Dispenser. Within a short space of time that changed and she worked as a Dispenser only.
46. The Respondent has a harassment and bullying policy appended to its staff contract of employment, including the contract of Mrs Bridges. The policy explains what bullying is:

“The abuse of power or authority, irrespective of the position held by the perpetrator, to intentionally belittle or intimidate colleagues, or groups of people, through malicious or insulting behaviour, which makes the recipient feel upset, threatened, humiliated or vulnerable, which undermines their confidence and causes them to suffer stress will be defined as bullying”.
47. The bullying policy also explains the effect bullying can have on the individual:

“Any type of harassment or bullying can create a threatening, intimidating and humiliating environment for an individual who was

at the receiving end. It can cause distress, make working life intolerable and also affect an individual's personal life".

48. The policy states that the Respondent is committed to dealing with complaints of bullying sensitively, firmly and effectively. It states that complaints will be thoroughly and promptly investigated. The policy does not actually state how one should raise a complaint about bullying.
49. The Respondent has a separate grievance policy. This provides for aiming to settle most grievances informally with the Practice Manager. Failing that, it sets out a three stage process which include setting out ones grievance in writing in order to set the process in motion.
50. Sometime in 2008 or 2009, Mrs Bridges was promoted to Dispensary Manager.
51. In January 2013, Ms Clare joined the Respondents as Practice Manager.
52. Mrs Bridges' first complaint in her witness statement, although not appearing in the list of bullet points produced by Ms Bewley, is that upon the Respondents having adopted a new IT system, Ms Clare appointed Mrs Bridges as, "champion" for the Dispensing Department. Mrs Bridges was able to attend one training session, which she had found unhelpful because the session had been dominated by Dr Herman. She was anxious that she had received insufficient training, she expressed that anxiety to Ms Clare, who reassured her that she would receive further training. Notwithstanding that reassurance and further repeated reminders, Ms Clare did not arrange for Mrs Bridges to have further training.
53. This was followed by an incident Mrs Bridges offers as an example of Ms Clare's attitude towards her. The new IT system had crashed during an evening surgery which had caused difficulties. The former senior partner of the practice, Dr Head and Mrs Bridges explained in passing conversation what had happened and the difficulties created. Ms Clare's attitude had been to ask of Mrs Bridges, "why didn't you help?". Mrs Bridges had replied, "someone had to look after the patients". As she walked away, she overheard Ms Clare say to Dr Head, "she's not talking to me like that".
54. There is a document which has to be produced every year, for which the Respondents received payment, called the Dispensary Service Quality Scheme, (DCQS). This had been produced each year as a collaborative effort, by the Practice Manager, an Assistant Practice Manager and Mrs Bridges as Dispensary Manager. After she had joined the practice, Ms Clare told Mrs Bridges that henceforth she would have to do this herself and she instructed the Assistant Practice Manager who normally worked with her on this task, Ms Everett, not to help. Ms Everett did help Mrs Bridges but she asked Mrs Bridges not to tell Ms Clare as she had been expressly told not to assist.
55. A year later, Ms Everett having left the practice, Mrs Bridges was left to

prepare the DCQS to on her own. In May 2014, Mrs Bridges was anxious to hear how it had been received and whether it had been of a sufficient standard so as to secure payment. Mrs Bridges asked Ms Clare several times for confirmation of the outcome and Mrs Bridges told her to stop panicking. Sometime later when Mrs Bridges asked again, Ms Clare's response had been that she'd known for ages that it was all fine.

56. During 2014, Dr Herman became senior partner, upon the retirement of his predecessor, Dr Head.
57. By January 2015, Mrs Bridges had come to feel that Ms Clare was deliberately not providing her with support and training on IT and had been deliberately putting her under pressure. She therefore decided to step down as Dispensary Manager before, in her words, it was forced upon her. Thereafter, her job title was Lead Dispenser and a job description was drawn up which included that with regard to personnel, she was to participate in recruitment, interviewing, training of staff, preparation of the rota and ensuring shifts were covered at both sites.
58. In February 2015, Ms Clare recruited a friend to work in the Dispensary. In the bullet point list it is suggested that this was done without consulting Mrs Bridges. That is not strictly true, as we saw from the text messages that Mrs Bridges was aware of the recruitment of this individual. However, I accept that Mrs Bridges was not involved in the recruitment process.
59. In March 2015, during an investigation into some missing drugs, Ms Clare said to Mrs Bridges that if this were to lead to an early CQC visit, "heads would roll". Mrs Bridges took this as a direct threat to her.
60. In April 2016, Mrs Bridges attended jury service. She had to claim her lost income from the HMCTS. On a form completed by the Respondents, details of her rate of pay were left out. At the end of her period of jury service, a member of the court staff explained to Mrs Bridges before she left, that this information was missing. From the court, Mrs Bridges telephoned Ms Clare and asked for the missing information. Ms Clare's response was that she was busy with Dr Herman and that she would ring Paydoc, (the payroll provider) when she had time. Mrs Bridges needed the information there and then. The court clerk standing with Mrs Bridges overheard the conversation and commented on how rude and unhelpful Ms Clare had sounded. Ms Clare had known that it was important to Mrs Bridges that she should be paid without delay and yet when she returned to work she found that Ms Clare had gone on holiday and had done nothing about it. As it happens, the court staff had helped Mrs Bridges calculate her tax and national insurance on her annual salary and complete the form.
61. During a medical consultation with Dr Evans, on 10 May 2016, Mrs Bridges sought medical help because she was not sleeping. There is some difference in the accounts of Dr Evans, Dr Herman and Mrs Bridges about what happened in the following sequence of events. As I indicated earlier, I do not think that any of them were deliberately not telling me the

truth. What follows is what I find, on the balance of probabilities and having heard evidence from all three, is likely to have happened.

62. Mrs Bridges broke down during the medical consultation and explained to Dr Evans that she was feeling stressed due to work-related issues including difficulty that she was having in arranging the rota so that all shifts were covered and that she felt bullied by Ms Clare. Dr Evans explained that these work-related issues were not appropriate matters for discussion during a medical consultation and ought to be raised with Dr Herman. Dr Evans offered to speak to Dr Herman, provided that she had Mrs Bridges consent to do so. Mrs Bridges gave that consent. Dr Evans then spoke to Dr Herman, explaining the work related issues i.e. that Mrs Bridges was feeling stressed in organising the rota and felt bullied by Ms Clare. Dr Herman told Dr Evans, focusing on the rota aspect to the complaint, that Mrs Bridges should meet with Dr Herman and Ms Clare. Dr Evans passed that message onto Mrs Bridges. Mrs Bridges told Dr Evans that she was not brave enough to do that, Ms Clare scared her.
63. Dr Herman must have mentioned to Ms Clare that Mrs Bridges had suggested that she felt bullied by Ms Clare, for a week or so afterwards Ms Clare accused Mrs Bridges of ruining her relationship with Dr Herman.
64. Mrs Bridges never mentioned again to any of the doctor partners that she felt bullied by Ms Clare. Neither Dr Herman nor any of the other doctor partners raised the issue of potential bullying with Mrs Bridges.
65. There was an issue with the rota, which was Mrs Bridges responsibility to organise. A member of staff who worked on Wednesdays had left in May 2016 and no one else in the Dispensing Department wanted to cover that shift. Ms Clare told Mrs Bridges that she had to get it covered, or Dr Herman would and that she would not want that. Three people agreed to take it in turns to cover Wednesdays temporarily, but nobody wanted to work on Wednesdays on a permanent basis. Mrs Bridges had to admit to Ms Clare that she had been unable to resolve the problem permanently.
66. On the 9 June 2016, Dr Tanna and Dr Herman met with the Dispensing Department in order to resolve the difficulty with regard to the rota. The difficulty with regard to the Wednesday shift was resolved. After the doctors had left the meeting, there was further ill will as some felt Ms Clare had shown favouritism in respect of those who benefited from alternative Fridays off.
67. During the course of a later meeting of the Dispensing Department, (in June 2016) Dr Tanna said to those present that he was fed up with bickering between the dispensers and that he had just got rid of, "*one shift stirrer*" and he did not want another one. He asked each person present, gesturing towards each of them in turn with his hands, to confirm that they understood and each acknowledged that they did.
68. During June 2016, Ms Clare hired an apprentice Dispenser, excluding Mrs Bridges from the process.

69. During July 2016, Mrs Bridges began looking for another job. At the end of September, after having her car serviced at a local BMW dealership, she submitted her CV to them because they were looking to recruit a meeter/greeter/receptionist, (Mrs Bridges had previously worked in the motor trade before moving to the Respondents 20 years previously).
70. On 19 October 2016, the CQC visited the practice for an inspection. Several times before the visit, Ms Clare had said to Mrs Bridges, "if we fail it will be the dispensary and heads will roll". That could only be a threat to Mrs Bridges and that is how she reasonably interpreted it.
71. During the CQC visit, Mrs Bridges was interviewed. She was asked whether she was aware of an incident in which one of the dispensary staff had said that she felt unsupported and which had subsequently been discussed in a dispensary meeting. Mrs Bridges was extremely apprehensive about the question, she knew of such an incident, but it had not been discussed in a dispensary meeting, she therefore answered, not. Afterwards, she was very anxious. She was due to have a couple of days off, the next day being her birthday.
72. In her anxiety, Mrs Bridges called Ms Clare to ask how she thought the inspection had gone. She immediately detected in Ms Clare's manner, that something was wrong, which heightened her anxiety. Ms Clare explained the question that she had been unable to answer. Ms Clare then responded, "*if you are straight with me, I will be straight with you*" and then said, "*I'm not speaking to you now*" commenting that she had had, "*a hell of a day*". Ms Clare told Mrs Bridges that she would have to speak to one of the doctors. Mrs Bridges therefore asked for the call to be transferred to one of them. After trying to put her through, Ms Clare came back to Mrs Bridges and said that they had all gone. Mrs Bridges asked what it was that she had done wrong, thinking that she was going to be dismissed. Ms Clare told her not to shout, She then put the telephone on speakerphone, inviting her assistant, Ms Powell, into the room to listen. Mrs Bridges heard Ms Clare say, in an unpleasant and aggressive manner, "*can you ere er?*"
73. What Mrs Bridges left out of her account of this conversation in her witness statement, which she acknowledged in cross examination from the note at page 140 prepared by Ms Powell, is that Ms Clare had said to her that she did not know what the inspectors would write in their report, that if she had told the truth, she had nothing to worry about and that she should enjoy had time off. Nevertheless, I accept Mrs Bridges evidence that the way she was spoken to by Ms Clare was not respectful, her tone was unsettling and not reassuring. She felt that she was going to be dismissed.
74. Mrs Bridges was off work on leave for Thursday and Friday, 20 and 21 October. On Monday 24 October the BMW dealership invited her to attend an interview, which she did on Tuesday 25 October. She was verbally offered the job after the interview, but was encouraged to think about it before accepting. On Wednesday 26 October, she received a formal written offer of employment from the BMW dealership, (page 141). During

this week Ms Clare was away from work on leave.

75. On Wednesday 26 October, Dr Tanna spoke to Mrs Bridges to ask her how she felt the CQC visit had gone. During this conversation, he asked her, "off the record" what her relationship with Ms Clare was like? Mrs Bridges responded that she was a bully, that she bullied her. He asked her whether she wished to discuss that with him and she said that she would another day. After this discussion, Mrs Bridges became anxious, recalling what had happened previously when Dr Herman had been told that Mrs Bridges felt bullied by Ms Clare. She found herself increasingly anxious, dreading Ms Clare's return from leave and she therefore decided to accept the offer of employment with the BMW garage and resign.
76. By letter dated 31 October 2016, Mrs Bridges resigned her employment. The letter is at page 143. Excerpts read as follows:

"Ever since the Practice hired a new Practice Manager, I have been in turmoil... our current manager uses bullying and verbal abuse as a management style... Not only is it unreasonable to expect me to work in such a hostile environment, it is also physically and mentally a torment to work under such stressful circumstances.

These facts can be verified by my in-house GP Dr Evans to whom I complained and gave permission to take this up with the Partners. Regrettably I received no replies which contravenes section 4 of my contract of employment...

Resigning for these reasons is extremely disconcerting but, given the circumstances, I do not feel that I have much choice. Senior Management does not seem troubled by Terri's inappropriate behaviour towards her employees and I, therefore, doubt that changes are imminent. These present difficulties do not negate the fact that I have derived much enjoyment in years past from my employment here."

77. I find as a fact that Ms Clare's demeanour toward Mrs Bridges was regularly, (two or three times a week in accordance with Mrs Bridges evidence) verbally abusive, aggressive, demeaning and undermining. I find that favoured expressions of hers included expressions such as, "if she doesn't like it she knows what she can do", "I wouldn't care if she left tomorrow" and, "heads will roll".

Conclusions

78. In my judgment, the accumulated effect of the incidents listed in the bullet points prepared for me by Ms Bewley at the outset, which I uphold as allegations of fact, including the demeanour of Ms Clare toward Mrs Bridges throughout, amount to conduct which was in each respect, without reasonable and proper cause and was conduct which was likely to destroy or seriously damage the relationship of trust and confidence between the employer and the employee.

79. Indeed, on the evidence, I find it more likely than not, that the conduct was calculated on the part of Ms Clare to have that effect.
80. The incidents in June 2016 amounted to the last straw from Mrs Bridges perspective. It was then that she was prompted to start looking for alternative employment, as she was entitled to do.
81. Ms Clare's manner toward Mrs Bridges after the visit from the CQC on 19 October 2016, was a further breach of the implied term requiring the employer to maintain mutual trust and confidence.
82. I reach the foregoing conclusions ignoring the Respondents' failure to investigate the complaint of bullying. I appreciate entirely the complication of matters being raised during medical consultations. However, with Mrs Bridges consent, the senior partner, Dr Herman, was informed that one of his employees was distressed and felt that she was being bullied by a member of management. That in my view is sufficient to raise an obligation on the part of an employer to take the initiative and make further enquiries of the individual concerned, having regard to the obligation to maintain a safe place of work.
83. The existence of a grievance procedure is not a, "be all and end all". It is not acceptable for an employer to sit back and wait for somebody to raise a grievance if the spectre of bullying, or in another example, of discrimination, is to their knowledge, raised. A reasonable employer would have made further enquiry and investigated. It is unreasonable to do nothing.
84. Mr Matovu said that an employer has a duty of care to an employee against whom allegations are made and that un-particularised allegations ought not to be made against an employee. That is true. However, it is no excuse for ignoring the fact that one of one's employees has said that they are being bullied. It is incumbent upon the employer to then initiate enquiry and seek details, which can then be put to the accused individual.
85. The failure to investigate the suggestion that the Practice Manager was bullying Mrs Bridges was a breach of the implied term that requires employers to maintain a safe place of work and is a further freestanding breach of the implied term to maintain mutual trust and confidence.
86. Mrs Bridges cannot be said to have affirmed the contract. She is entitled to look to secure alternative employment before resigning. A pause between June and July is not a long period of time. There was a further breach on 19 October 2016, a delay between 19 October and 31 October is not a long period of time. In my judgment, Mrs Bridges has given no indication, actual or implied, that she was prepared to accept the treatment and put it behind her once the final straw had broken the back of the metaphorical camel.
87. Mrs Bridges resigned because of the Respondent's fundamental breaches

of contract, as set out above.

88. For these reasons, Mrs Bridges complaint of unfair dismissal succeeds.

Dated: 23 March 2018

Employment Judge M Warren

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE