



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

AND

Mr D Byrne

Glen Cleaning Co Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Exeter ON 15 & 16 February 2018

EMPLOYMENT JUDGE A GORAJ

Representation

For the Claimant: in person

For the Respondent: Mr P Collyer, Consultant

RESERVED JUDGMENT

The Judgment of the tribunal is that:-

The claimant's complaint of constructive unfair dismissal is dismissed.

REASONS

1. This Judgment was reserved because there was insufficient time for the tribunal to deliberate and deliver its Judgment. There were a number of

reasons for this including (a) the parties provided the tribunal with a bundle of nearly 300 pages (notwithstanding that the directions limited the parties without further authorisation to a bundle of 75 pages) (b) the issues required further identification and (d) the outstanding preliminary issues between the parties relating in particular to witness evidence.

2. The claimant was employed by the respondent/ its predecessors in title from 1 May 2014 until 31 July 2017 which latter date is the effective date of termination for the purposes of the Employment Rights Act 1996 ("the Act"). By a claim form which was presented to the tribunals on 28 August 2017 the claimant claimed that he was constructively unfairly dismissed pursuant to section 95 (1) (c) and in breach of section 98 of the Act. The claimant relied upon a series of breaches of contract/ the implied term of trust and confidence culminating in the conduct and outcome of the grievance appeal hearing which he described as the "final straw".
3. The allegations were denied by the respondent in its response form. The respondent contended that the claimant had resigned his employment and denied that it had committed any breaches of contract entitling him to terminate his employment. The respondent further contended that if the tribunal held that the claimant had been constructively dismissed (a) any such dismissal was nevertheless fair (conduct or some other substantial reason) and (b) the claimant had in any event contributed to his dismissal.

Witnesses

The claimant

4. The tribunal received a witness statement and heard oral evidence from the claimant. The claimant had in addition obtained witness orders requiring two former work colleagues Mr Bailey and Mr Hoare to attend the Hearing. Neither of them attended the Hearing. The tribunal had not received any response from Mr Bailey to the witness order.
5. The respondent submitted a witness statement from Mr Hoare in which he explained why he did not wish to/ was unable to attend the tribunal Hearing. Mr Hoare contended that he had felt intimidated and pressurised by the claimant to attend the Hearing and that he could not in any event give evidence on the principal issues. A statement of fitness for work was annexed to the statement in which the claimant's GP had certified that Mr Hoare was unfit for work because of anxiety.
6. The tribunal sought the claimant's views on the failure of Messrs Bailey and Hoare to attend the Hearing in accordance with the witness orders and the statement which had been produced on behalf of the latter. The claimant confirmed that (a) he did not wish to pursue further the failure of Messrs Bailey and Hoare to attend the Hearing and (b) that he was content for the statement of Mr Hoare to be treated as a written representation (in recognition of the fact that the tribunal was likely to place limited weight on it in the light of his failure to attend to give oral evidence which could be challenged).

The respondent

7. The tribunal received witness statements and heard oral evidence from the following further witnesses on behalf of the respondent:-
 - (1) Mr Iain Lewis, Managing Director of the respondent.
 - (2) Miss Michele Thomas, Contract Manager.
 - (3) Mrs L Godfrey, Operations Director.
8. The respondent also made an application at the commencement of the Hearing to rely on a written statement from Mr Andy Burge, Regional Manager. The claimant objected to the admission of this statement which he had only received the previous day. Having given careful consideration to the matter the tribunal refused to admit Mr Burge's statement including (a) because of the late service of the statement without good cause (b) Mr Burge remained in the employment of the respondent and was based in Bristol and could therefore have attended the Hearing (c) the objections of the claimant and (d) Mr Burge's proposed evidence had, in any event, limited probative value to the matters in issue.

The List of issues

9. The tribunal identified the principal matters in issue with the parties at the commencement of the Hearing. The parties subsequently agreed a list of the alleged breaches of contract upon which the claimant relies (and the respondent's response thereto). The respondent also provided a list of the matters upon which it relies (if the tribunal finds that the claimant has been constructively unfairly dismissed) for the purposes of remedy in respect of contribution/ its contention that the claimant would in any event have been fairly dismissed if a fair procedure had been followed. A copy of the agreed lists are attached ("together the List of Issues"). The respondent no longer contends that if the tribunal finds that the claimant was constructively dismissed for the purposes of section 95 (1) (c) of the Act that such dismissal was also fair for the purposes of section 98 of the Act. One of the issues in this case relates to the health of one of the claimant's former work colleagues. This person is referred to in this Judgment as Mrs AR.
10. The tribunal was provided with a bundle of documents. Neither party provided the tribunal with a copy of any contract of employment issued to the claimant prior to March 2017. The bundle of documents contained at pages 39 -44 of the bundle undated job descriptions/ job profiles which contained details of the duties and responsibilities of a cleaning supervisor which were relied upon by the Claimant during the course of the Hearing. The claimant did not however identify in the List of Issues or otherwise during his oral evidence any alleged express breaches of any terms of any contract of employment (including of the contract issued in March 2017).

Findings of fact

11. The claimant was employed by the respondent/its predecessor in title from 1 May 2014 until 31 July 2017 which latter date is the effective date of termination the purposes of the Employment Rights Act 1996 (“the Act”).
12. The claimant was originally employed by the respondent’s predecessor in title, Mitie, as one of their contract cleaners at a local college (“the College”). In or around the beginning of 2015 the respondent submitted a successful tender for the cleaning contract at the College and the employment contracts of the claimant and his colleagues transferred to the respondent pursuant to TUPE on 1 April 2015. The claimant was employed as a part-time cleaner at the time of the transfer. The contract of employment of Mrs AR, who was employed by Mitie as a cleaning supervisor at the College, also transferred to the respondent at that time. Mrs AR worked on the morning shift at all material times.
13. Following the transfer of the cleaning services the respondent decided to increase the level of cleaning supervision at the College for operational reasons. It is agreed between the parties that the claimant took on supervisory duties around this time. There is however a dispute between the parties regarding the circumstances/timing and nature of the claimant’s role. The tribunal has had limited documentary evidence to assist it in determining this issue. The tribunal has had regard to the job description/list of supervisors’ duties at pages 39-40 of the bundle which, it was agreed by the conclusion of Mrs Godfrey’s evidence, had been issued to the claimant around the time of his appointment as a supervisor at the College. The claimant was not issued with any particulars of employment confirming the revised terms and conditions of employment.
14. In summary, the claimant contended that shortly after the transfer of his employment to the respondent (a) he applied for and was appointed to the vacancy of morning supervisor (b) shortly thereafter he was approached by the respondent’s operations director Mrs Lorraine Godfrey who informed him that she had decided that the claimant would also be required to undertake supervision in the evenings, working split shifts from 6 AM to 10 AM and from 4 PM until 8 PM with joint supervisory responsibility in the mornings and sole supervisory responsibility in the evenings and (c) such additional duties were imposed upon him without consultation or agreement in breach of the TUPE Regulations.
15. This is denied by the respondent who contended, in summary, that (a) it offered the existing cleaning staff at the College the opportunity to apply for a combination of cleaning and supervisory duties for six hours per day for which the claimant applied and was appointed and (b) by September 2015 the

respondent was able to offer the claimant's cleaning supervisory duties at the College for eight hours per day (which included split shifts) which was accepted by the claimant on a voluntary basis.

16. Having given careful consideration to the limited documentary evidence and the disputed oral evidence between the claimant and Mrs Godfrey the tribunal is satisfied, on the balance of probabilities, that (a) by September 2015 the claimant was offered and accepted a position as a cleaning supervisor for eight hours per day on split shifts between 6 AM and 10 AM and 4 PM and 8 PM on a term time basis (b) the purpose of the change was to increase supervision including to improve the level of service to the respondent and (c) the changes were accepted by the claimant on a voluntary basis without objection or duress. When reaching this conclusion the tribunal has taken into account in particular that there is no documentary evidence to suggest that the claimant objected to or raised any concerns regarding his new role and that the changes were financially beneficial to him.
17. Mrs AR continued to work as a supervisor on the morning shift only. The respondent regarded Mrs AR as the senior cleaning supervisor at the College including as she had been employed at the College for a longer period of time than the claimant.

The respondent's Employee Handbook and associated documents

18. There was a dispute between the parties as to whether the claimant was issued with/ was aware of the terms of the respondent's employee handbook/IT and social media policy as referred to at pages 45-60 of the bundle. The respondent contended that the claimant was provided/made aware of the respondent's employee handbook and relied in support of such contention on the checklist which was completed when the claimant was issued with the contract of employment in March 2017 (page 41 of the bundle).
19. The claimant denied that he was ever provided with a copy/aware of the contents of above-mentioned employee handbook/policies and contended that (a) the document at page 41 of the bundle was completed as a checklist without proper discussion and (b) he believed the reference to the employee handbook was in any event a reference to a long-standing document which did not contain any of the policies referred to above.
20. Having considered the evidence the tribunal is not satisfied, on the balance of probabilities that the claimant was issued with a copy of the employee handbook/ IT policy referred to above. The tribunal is however satisfied that the claimant was aware of the fact that the respondent had a disciplinary/grievance policy including how to access it if required. When reaching this conclusion the tribunal has taken into account in particular (a)

paragraphs 14, 15 and 18 of the contract dated 6 March 2017 (pages 33-34 of the bundle) and (b) that it is clear that the claimant had scrutinised/queried and obtained amendments to the contract dated 6 March 2017 before signing it as referred to further below.

The claimant's relationship with Duncan Williams

21. Mr Duncan Williams was the respondent's Contract Manager at the College during 2015 and 2016. The claimant contended that he was victimised, bullied and harassed by Mr Williams who removed many of the claimant's supervisory duties including his responsibility for the completion of timecards and the ordering of supplies. The claimant relied in particular on the document at page 39 of the bundle and contended that the asterisks against the key responsibilities related to the duties which had been removed from him by Mr Williams.
22. The respondent denied the allegations. The respondent contended that the claimant had acted inappropriately towards Mr Williams and that it had been necessary to take action against the claimant on a number of occasions in respect of such conduct. The tribunal has not heard any evidence from Mr Williams who left the respondent's employment around the beginning of 2017.
23. The tribunal is satisfied, on the balance of probabilities, that (a) after the initial few months of the claimant's employment with the respondent the claimant and Mr Williams had a difficult working relationship and that each considered the other to have acted unreasonably (b) the claimant acted inappropriately on occasions towards Mr Williams as his line manager and (c) there is no evidence that any significant duties or responsibilities were taken away from the claimant during 2015-2016.
24. When reaching the above conclusions the tribunal has had regard in particular to the available oral and documentary evidence including:-
 - (1) The documents at pages 63-88 of the bundle including the recorded verbal warnings issued to the claimant dated 28 June 2016 and 19 September 2016.
 - (2) Although the claimant raised concerns in correspondence from time to time concerning the alleged removal of his duties such concerns were very general and unparticularised and inconsistent with the claimant's request in January 2017 for his contracted hours to be increased from a 36 week to a 52 week per year contract (page 117 of the bundle).

The events of October 2016

25. The claimant was suspended by Mr Williams on full pay in October 2016 for allegedly being under the influence of alcohol whilst at work and associated alleged inappropriate behaviour towards Mrs AR (pages 89-90 of the bundle).

26. Following an investigation into the matter which included an investigatory meeting between the claimant and Miss Michele Thomas (who subsequently became the Contract Manager at the College) the claimant was invited to a disciplinary hearing by the respondent's then Regional Manager Mr K Lanigan (letter dated 24 October 2016 page 97 of the bundle).
27. Mr Lanigan conducted a disciplinary hearing with the claimant on 1 November 2016 following which he wrote to the claimant by letter dated 8 November 2016 (pages 105-106 of the bundle) issuing the claimant with a first and final written warning for 12 months in respect of conduct referred to above.
28. The claimant was advised of his right of appeal and of the proposed arrangements for his return to work. The claimant informed the respondent that he had sought advice from the local CAB regarding a possible claim for constructive dismissal in respect of what the claimant considered to be an unnecessary and lengthy suspension from work (pages 107-108 of the bundle).
29. The claimant appealed against the above-mentioned warning. Following a grievance appeal meeting with the claimant, the respondent's then regional manager Mr Andy Burge wrote to the claimant by letter dated 15 December 2016 downgrading his warning to a written warning for six months (pages 112-113 of the bundle). The claimant was advised that the decision was final and that there was no further right of appeal.
30. The claimant wrote to Mr Burge by email dated 17 December 2016 informing him that he considered Mr Burge's decision regarding the warning to be unacceptable and informing him that unless the warning was removed immediately he would, with the assistance of the local CAB take the matter further including that it would very probably lead to a tribunal. Mr Burge responded to the claimant informing him that he considered that the claimant had failed accurately to interpret the matters raised in his letter and advising him that the appeal decision was final.

The claimant's email dated 31 December 2016

31. The claimant contacted the respondent's Managing Director, Mr Iain Lewis by email dated 31 December 2016 (pages 121-122 bundle). The claimant asked Mr Lewis to assist him in resolving a number of issues including in respect of alleged bullying and harassment by Mr Williams, the removal of duties, the alleged conduct/failure of Messrs Lanigan and Burge to address such matters including his inappropriate suspension and the associated disciplinary action taken by them. Mr Lewis replied the same day advising the claimant that he would contact him on his return from leave.

The claimant's email to Mr Lanigan dated 4 January 2017

32. The claimant emailed Mr Lanigan on 4 January 2017 requesting that his contractual hours be increased from a term time contract of 36 weeks a year to a 52 week contract to bring him in line with his colleague Mrs AR. This was refused by Mr Lanigan on the grounds that there was no business need for such a change.

The claimant's dealings with Mr Lewis

33. Mr Lewis contacted what he described as a, "without prejudice" meeting with the claimant to discuss the issues which he had raised. The claimant was accompanied by his work colleague Mr Hoare.

34. Mr Lewis subsequently wrote to the claimant by email dated 25 January 2017 setting out his proposals to resolve the claimant's grievances.

35. In summary, Mr Lewis offered to:-

- (1) Remove the written warning from the claimant's record.
- (2) Increase the claimant's rate of pay.
- (3) Increase the claimant's contractual hours to 52 weeks per year on the condition that the claimant would undertake periodic cleaning duties during college holidays.

36. Mr Lewis concluded his email by stating that if his proposals were acceptable the claimant he should confirm in writing that his grievance had been concluded and Mr Lewis would then instruct Mr Lanigan to issue the necessary paperwork.

37. The claimant replied the same day confirming to Mr Lewis that his proposals were acceptable and that his grievance had been dealt with (page 120 of the bundle).

The claimant's contract of employment

38. The claimant was subsequently issued with a contract of employment as a term time supervisor and periodic cleaner ("the Contract"). A copy of the Contract (an updated version of which was supplied by the claimant during the course of the Hearing) is at pages 29-38 of the bundle. The claimant signed the Contract on 6 March 2017 confirming that he had read and understood it and accepted the terms and conditions contained therein. Following discussion and agreement with Mr Lanigan two of the provisions in the Contract (in respect of matters which are unrelated to the issues in dispute in this case) were amended in manuscript by the claimant at that time. The tribunal is accordingly satisfied that the claimant was given an opportunity to consider and seek amendments to the Contract. Further, there is no evidence to indicate that the Claimant was in any way unhappy with any of the other terms of the Contract. The tribunal has noted in particular, the provisions in

the Contract at paragraphs 2.1 – 2.2 (relating to job title and duties), 14 (relating to the respondent's disciplinary procedure), 15 (relating to the respondent's grievance policy), and 18 (relating to the employee handbook and other policies) (pages 29, 33, and 34 of the bundle). The respondent's disciplinary and grievance procedures are stated to be non- contractual.

The claimant's dealings with Miss Thomas

39. In around January 2017 the employment of Mr Williams transferred to another cleaning contractor and Miss Thomas became the Contracts Manager at the College. It was agreed between the parties that the claimant and Miss Thomas had, overall, a good working relationship. Further, the tribunal accepted the evidence of Miss Thomas that she "took a step back" from the day-to-day management of the contract at the College as the claimant and Mrs AR were experienced supervisors and she was aware that the claimant felt that he had been managed too closely by Mr Williams.

The claimant's overtime payment

40. The claimant emailed Mr Lewis in April 2017 informing him that he was experiencing difficulties obtaining payment for overtime worked in February 2017 and asking for his assistance. Mr Lewis replied that he understood that the matter had been appropriately addressed by Miss Thomas after it had been brought to her attention and that the monies would be paid in the claimant's salary that month. Mr Lewis also advised the claimant that any further concerns should be pursued in accordance with the respondent's procedures for such matters (pages 130 -131 of the bundle).

41. The outstanding overtime monies were paid to the claimant. The tribunal is satisfied on the evidence that the delay in making payment of the claimant's overtime monies was due to an administrative error and that it was appropriately addressed by the respondent when it was brought to their attention.

The email dated 4 April 2017

42. On 4 April 2017 Miss Thomas emailed the claimant requesting that any future stock orders should be submitted on an order sheet for stock control purposes and completed by the senior supervisor (page 129 of the bundle).

43. The claimant contended that this email constituted a removal of his duties by Miss Thomas. The claimant further contended however that he continued to undertake such duties following the receipt of the email as Mrs AR did not like dealing with such matters. Miss Thomas contended in her evidence that she issued such instructions as she had been receiving a lot of orders from the claimant which had caused her to exceed her budget and that she believed the ordering of stock was one of the duties of the senior supervisor (in this case Mrs AR).

44. The tribunal is satisfied that the above instruction was issued for the reasons and in the circumstances contended by the respondent. Further the tribunal is not satisfied that (a) having regard to the nature of the instruction and to paragraph 2.2 of the Contract that this constituted a breach of the claimant's contract of employment and/or (b) that the claimant regarded such instructions as a breach of contract/ of any significance at the time. When reaching these conclusions the tribunal has also taken into account in particular that (a) there is no evidence that the claimant raised any objections or concerns in response to Miss Thomas' email notwithstanding that it is accepted that he had a good relationship with Miss Thomas and (b) on his own evidence, the claimant continued to undertake such duties in any event.

The use of the College computer

45. Around the beginning/ middle of March 2017 Miss Thomas received a telephone call from Mrs AR advising Miss Thomas that one of the managers at the College had seen the claimant sitting at the respondent's allocated office computer on site at the College ("The Computer") watching documentaries when he should have been working. Miss Thomas contacted the Head Caretaker at the College who confirmed that he had also been made aware of the allegation, Mrs Thomas requested the Head Caretaker to provide the respondent with a record of relevant computer use (page 195 a of the bundle).

46. The Head Caretaker contacted the respondent further on or around 3 May 2017. The Head Caretaker informed the respondent that he had obtained from the College's IT department a summary report of internet search contacts/links between 4 PM and 10 PM for the week of 20-27 March 2017 ("the Report"). The Head Caretaker went through the Report with Mr Lanigan. The Report showed that there had been approximately 10,000 hits on the Internet during that period/times ranging from such sites as BBC I player, dating sites and purchasing property in the Philippines

47. Mr Lanigan invited the claimant to an investigatory meeting on the 11 May 2017 to discuss the Report. Mr Lanigan invited the claimant to an investigatory meeting in the light of reported sightings of the claimant on the Computer and because the claimant's working hours were between 4 PM and 8 PM. The claimant and Mrs AR both had login access to the Computer. Mr Lanigan did not however pursue the matter further with the Mrs AR at that time as she was not at work at the relevant times.

The meeting on 11 May 2017

48. Mr Lanigan conducted the investigatory meeting on 11 May 2017. Miss Thomas was also in attendance as a note taker. Miss Thomas' notes of the

meeting are at pages 136 A – 136B of the bundle. The tribunal has also been provided with a further note of the meeting which is at pages 136C-136H the bundle. It emerged during the course of the Hearing that the latter note was transcribed by Mrs Godfrey from a tape-recording of the meeting. The tribunal accepted the evidence of Mrs Godfrey that she transcribed the recording using her experience as a former secretary and is accordingly satisfied that this is a broadly accurate account of the matters discussed. It is agreed between the parties that there was a discussion at the beginning of the meeting as to whether the meeting should be recorded. The claimant refused to allow the meeting to be recorded. In the circumstances, the tribunal is satisfied that this recording was obtained by the respondent without the knowledge or consent of the claimant. The tribunal is however satisfied that it is nevertheless appropriate, in the light of the probative value of the document, to take it into account.

49. In summary:-

- (1) The respondent informed the claimant that it had been brought to their attention that he had been accessing the Computer for personal purposes including sitting in his office in the dark watching something on the computer screen.
- (2) That the College's IT department had carried out an inspection into the respondent's access code during March 2017 and showed the Report to the claimant. The respondent described to the claimant a number of the sites referred to in the Report including that they related to a dating site, a programme called Sex Drugs Murder Life in the Red zone on BBC I player, and a site relating to the buying property in the Philippines.
- (3) The claimant contended that he was not the only person who had access to the Computer and that the people could have accessed the Computer whilst he was elsewhere in the building.
- (4) The claimant accepted that he had accessed the BBC I player whilst on his break and had looked at a site relating to the purchasing of property in the Philippines. The claimant however denied that he had accessed any dating sites or done anything inappropriate including that he had accessed episodes of Sex Drugs Murder Life in the red light zone between 16.10 and 19.50 on 27 March 2017. The claimant also contended that he had never been given any advice about the use of the Computer for personal use.
- (5) The respondent advised the claimant that they considered the matter to constitute potential gross misconduct for the following reasons :- (1) using the College's Computer for personal reasons during work time

(2) fraudulently claiming wages for hours spent on the Computer/ accessing websites which were not connected to the business and therefore not carrying out the supervisory role for which the claimant was employed (3) accessing inappropriate websites.

(6) The respondent advised the claimant that they were suspending him on full pay pending further investigations.

(7) The claimant requested and the respondent agreed to provide the claimant with a copy of the approximately 10,000 internet hits. The respondent also subsequently decided to obtain a copy of the computer records for the morning shift to ascertain whether there were similar issues when Mrs AR was at work in the light of the matters raised by the claimant during the investigatory meeting.

(8) The claimant advised the respondent that he would be abroad from the following week and that they would not be able to contact him for 23 days.

The claimant's grievance dated 11 May 2017

50. The claimant emailed Mr Lanigan later on 11 May 2017 advising him that he had spoken to ACAS and that no matter what the result of the respondent's investigation he was making an official grievance complaint against Mr Lanigan and the respondent for harassment in the workplace. The claimant further advised Mr Lanigan that he fully intended to take the respondent to a tribunal regardless of the outcome of the investigation (page 137 the bundle).

The respondent's letter dated 12 May 2017

51. Mr Lanigan wrote to the claimant by letter dated 12 May 2017 confirming his suspension on full pay together with the allegations of potential gross misconduct relating to the claimant's alleged improper use of the Computer and associated matters as broadly identified above and as set out above. Mr Lanigan further advised that the claimant that suspension was a holding measure pending further investigations and that the claimant would be suspended only for the time that it took to complete the investigation. This letter is a page 143 of the bundle.

The claimant's" formal grievance" dated 14 May 2017

52. The claimant sent a detailed formal letter of grievance to the respondent's managing director, Mr Lewis on 14 May 2017 in which he contended that he had been the subject of constant harassment and false allegations culminating in his suspension for alleged gross misconduct relating to alleged computer misuse. This e-mail is at pages 144-145 of the bundle. In summary,

the claimant denied any wrongdoing in respect of the use of the computer and contended that the respondent's actions were retribution for his testimony against Duncan Williams in a tribunal hearing. The claimant further contended that he had been discriminated against in contrast to Mrs AR who was allowed to continue with her duties notwithstanding that he had raised concerns on behalf of other employees regarding her state of health which had resulted in her passing on work to others on a daily basis.

53. Mr Lanigan replied to the claimant's e-mail to Mr Lewis by letter dated 16 May 2017 confirming that the respondent was investigating his allegations regarding Mrs AR and that the respondent's investigations concerning his alleged misuse of the Computer were ongoing (page 181 of the bundle) .

The claimant's complaint regarding Mrs AR

54. During April 2017 the claimant advised Miss Thomas that he had issues regarding Mrs AR's health. The claimant reiterated his concerns in two e-mails dated 10 May 2017 which are at pages 133-134 of the bundle. In summary, the claimant advised Miss Thomas that he had received complaints from staff regarding the alleged serious health issues which were being experienced by Mrs AR which meant that she was no longer able properly to carry out / had any interest in carrying out her duties placing unacceptable pressure on him and other staff. The claimant also complained about the conduct of Mrs AR on a College community day the previous Saturday when it was alleged that she had arranged for a family friend to attend the College and had spent her entire working time escorting her friend around the premises.

55. Mrs Thomas emailed the claimant on 10 May 2017 thanking him for raising his concerns which she agreed to investigate (page 133 of the bundle).

The respondent's investigations relating to AR

56. The respondent interviewed Mrs AR and members of staff regarding the claimant's concerns. The notes of such interviews are at pages 148 A - 180 and 184-191 of the bundle.

The claimant's leave

57. The claimant was absent on leave abroad from 22 May 2017 until 12 June 2017.

The grievance meeting on 22 June 2017

58. Mr Lanigan conducted a grievance meeting with the claimant with a note taker in attendance on 22 June 2017. The tribunal is satisfied that the notes of the

meeting, which are at pages 203-226 C of the bundle are a broadly accurate account of the meeting.

Mr Lanigan's outcome letter to the claimant dated 27 June 2017.

59. Mr Lanigan wrote to the claimant by letter dated 22 June 2017 confirming the outcome of the claimant's grievance. This letter is at pages 227 – 229 of the bundle.

60. Mr Lanigan informed the claimant that his grievance had been unsuccessful. In summary, Mr Lanigan rejected the claimant's grievance on the following grounds :-

- (1) The staff complaints that Mrs A R was unable to carry out her duties due to poor health - Mr Lanigan stated that having spoken to staff on site they expressed the view that Mrs AR was still able to perform her duties albeit that two members expressed slight concerns regarding Mrs AR's health.
- (2) The community day – Mr Lanigan stated that having spoken to staff who had been on duty although some concerns had been raised concerning Mrs AR's conduct that day, including that she had been seen in the pig pen and spent time with her friend, Mrs AR had also been seen working that day.
- (3) Claims that staff had told the claimant that they were too frightened to speak out against Mrs AR - Mr Lanigan stated that members of staff had made it clear that they were not frightened to speak with Mrs AR. Mr Lanigan also informed the claimant that some members of staff had mentioned that Mrs AR had struggled at times but had still got her work done.
- (4) Mr Lanigan informed the claimant that five members of staff had raised with him concerns regarding the manner in which the claimant had spoken to them and dealt with issues and that one member of staff had described the claimant as vindictive.

61. Mr Lanigan also addressed in his letter other matters which he stated had been raised by the claimant in his letter of grievance dated 14 May 2017 including (a) the claimant's belief that the respondent's actions were retribution for the claimant's testimony in a tribunal regarding his former line manager Mr Williams, which was denied by Mr Lanigan and (b) the belief that the claimant's terms and conditions of employment had been changed drastically from the original terms upon which he had been transferred from Mitie. Mr Lanigan did not give any reasons for such decisions.

62. Mr Lanigan concluded his letter by advising the claimant of his right of appeal to Mrs Godfrey, Operations Director.

The claimant's email dated 28 June 2017 and subsequent correspondence

63. Mr Lanigan's letter dated 27 June 2017 crossed with the claimant's e-mail to him dated 28 June 2017 in which the claimant requested Mr Lanigan to provide an update on the position relating to his suspension and subsequent grievance as the deadline for submitting his application to an employment tribunal was very close.

64. Mr Lanigan replied to the claimant by email dated 30 June 2017 advising him that the disciplinary proceedings had been placed on hold pending the outcome of his grievance and that he would be notified in due course of the date of the disciplinary hearing. The claimant responded by e-mail dated 2 July 2017 complaining that he had not been informed at any time during his suspension that it had been placed on hold whilst his two grievances had been dealt with. The claimant further stated that he had expected that his grievances relating to matters other than Mrs AR would have been dealt with separately.

The claimant's letter of appeal dated 4 July 2017

65. The claimant wrote to Mrs Godfrey by letter dated 4 July 2017 appealing against the outcome of his grievance (pages 233 -234 of the bundle).

66. In summary, the claimant's grounds of appeal were as follows:-

- (1) The claimant contended that his grievance hearing on 27 June 2017 had been handled by Mr Lanigan in a biased unprofessional and discriminatory manner including as Mr Lanigan had wished to discuss matters which were unrelated to the grievance relating to Mrs AR which Mr Lanigan had previously indicated would be dealt with separately.
- (2) Mr Lanigan had given a misleading account of the extent to which concerns had been expressed in the statements of staff regarding the health of Mrs AR / the impact on the performance of her duties and the conduct of Mrs AR on the community day.
- (3) The claimant requested Mrs Godfrey to review and reconsider Mr Lanigan's decision.

The grievance appeal hearing on 20 July 2017

67. Mrs Godfrey conducted a grievance appeal hearing with the claimant on 20 July 2017. A note taker was also in attendance. A copy of the respondent's

notes are at pages 242-253 of the bundle. The tribunal is satisfied that these notes, which were signed by the claimant, are a broadly accurate account of the hearing.

68. The claimant contended that the appeal hearing was conducted by Mrs Godfrey in a completely inappropriate manner. The claimant's witness statement describes Mrs Godfrey as aggressive and hostile with intimidating and extreme body language and contends that she talked over the claimant constantly and refused to take anything which he said seriously. Mrs Godfrey denies any such conduct. The tribunal is not satisfied that Mrs Godfrey conducted the hearing inappropriately including that she acted as contended by the claimant and is satisfied that the claimant's evidence regarding such allegations lack credibility.
69. When reaching this conclusion the tribunal has weighed the conflicting oral evidence in the context in particular of (a) the notes of the meeting (b) the reasoned outcome letter issued by Mrs Godfrey following the appeal hearing and (c) the description of other employees during the course of the investigation into the claimant's grievance relating to Mrs AR of the claimant's in appropriate /vindictive conduct.

Mrs Godfrey's letter to the claimant dated 21 July 2017

70. Mrs Godfrey wrote to the claimant by letter dated 21 July 2017 confirming the outcome of the grievance appeal hearing.
71. In summary Mrs Godfrey advised the claimant as follows:-
- (1) The complaint that Mrs AR was unable to carry out her duties due to the state of her health - Mrs Godfrey informed the claimant that having read all of the statements whilst some of the staff had noticed that Mrs AR had problems with her knees the overall consensus was that it did not prevent Mrs AR from performing her duties.
 - (2) The complaint regarding Mrs AR's alleged conduct on the community day-Mrs Godfrey informed the claimant that having studied the statements from the members of staff who were working with Mrs AR that day she was not satisfied that there was sufficient evidence to support the claimant's allegations for the reasons explained in her letter.
 - (3) The allegation that staff had told him that they were frightened to speak out against Mrs AR - Mrs Godfrey informed the claimant that having considered the statements from staff she was satisfied that members of staff did not have a problem dealing with Mrs AR.

- (4) The claimant's complaints relating to Mrs AR were therefore unsuccessful.
- (5) Mrs Godfrey advised the claimant that her decision regarding such matter was final.
- (6) The complaint that Mr Lanigan was biased during the grievance hearing - Mrs Godfrey advised the claimant that after reviewing the notes of the meeting and discussing the matter with the note taker she was not satisfied that there was any evidence to support the claimant's claim.
- (7) The complaints that Mr Lanigan had not informed the claimant that he would be dealing with the other elements of his grievance contained in the claimant's letter dated 14 May 2017 and that such matters should therefore have been dealt with separately- Mrs Godfrey confirmed that this element of the grievance appeal was successful and that it was agreed that she would arrange for a new hearing to held to deal with such matters.

The letter dated 26 July 2017

72. Ms J Verei, financial controller with the respondent, wrote to the claimant by letter dated 26 July 2017 (which was sent by e-mail that day) advising him that she had been appointed to conduct a grievance hearing on 3 August 2017 to determine the outstanding issues identified in the claimant's letter of grievance dated 14 May 2017. This letter is a page 257 of the bundle. Ms Verei sent an e-mail to the claimant dated 27 July 2017 informing him that she had noticed that her letter dated 26 July 2017 had contained two errors namely relating to the claimant's address and the point of contact in respect of the meeting. Ms Verei apologised for the errors and sent the claimant an updated version of the letter.

The claimant's letter of resignation dated 31 July 2017

73. The claimant e-mailed Mr Lewis on 31 July 2017 attaching his letter of resignation which he stated was tendered with immediate effect. The e-mail and accompanying letter are at pages 259-261 the bundle.

74. In summary the claimant advised Mr Lewis that he considered that he had no alternative but to resign his employment on the grounds of constructive dismissal in the light of:-

- (1) Fundamental breach of contract - which the claimant described as a drastic change in his contractual duties without proper notice or consultation resulting in a breach of the TUPE Regulations together

with a prolonged campaign of victimisation, bullying and harassment and a failure to conduct grievances and suspension in a timely, fair and objective way. The claimant further complained about the withholding of wages (unparticularised).

- (2) Breach of trust and confidence-which the claimant described as extreme and detrimental changes to his working environment, a failure to take his concerns seriously, damaging and wrongful accusations, suspension without reasonable and proper cause and refusal to communicate/ isolation.
- (3) The last straw doctrine-which the claimant described as misrepresentation of evidence, unprofessional conduct and the refusal to be take him seriously at the grievance appeal hearing.

Mr Lewis's letter dated 31 July 2017and subsequent correspondence

75. Mr Lewis responded to the claimant's resignation by letter dated 31 July 2017 which was sent by e-mail. The e-mail and accompanying letter are at pages 261-262 of the bundle.
76. Mr Lewis summarised his understanding of the position namely that following the commencement of a disciplinary investigation the claimant had submitted a grievance and subsequently a grievance appeal which had been addressed at an appeal hearing with Mrs Godfrey including that the respondent had agreed to hold a further grievance hearing which had been arranged for 3 August 2017. Mr Lewis advised the claimant that as he had forfeited his right to continue with the disciplinary proceedings his formal resignation would be accepted with immediate effect from the date it was submitted. Mr Lewis further advised claimant that the respondent recognised that the claimant had raised further issues of concern and that they would like the opportunity to discuss such issues with the claimant in accordance with the respondent's grievance procedures which would be addressed at the hearing on 3 August 2017.
77. Ms Verei subsequently wrote to the claimant by e-mail dated 2 August 2017 asking him to confirm whether in the light of his resignation he would be attending the grievance hearing the following day including whether he required transport to the meeting. The claimant confirmed during a telephone conversation with Ms Verei on 3 August 2017 that he was not going to attend as the matter was now been dealt with by ACAS. Ms Verei further confirmed that the respondent had wanted to an opportunity to address the issues which the claimant believed were outstanding from his previous hearing and to discuss the matters raised in his resignation letter however his refusal to attend the meeting had prevented them from doing so.

Closing submissions

78. The tribunal has had regard to the written closing submissions provided by the respondent together with oral submissions of the parties. The written submissions of the respondent were not submitted until the conclusion of the oral evidence. The tribunal therefore allowed the claimant an opportunity to consider such document prior to the commencement of the oral closing submissions.

THE LAW

79. The tribunal has had regard, in particular, to the following statutory and associated provisions namely, sections 95 (1) (a) (c), 97, 98, 122 and 123 of the Act and section 207 A 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”). The tribunal has also had regard to Regulation 4 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“the Regulations”)

80. The tribunal has reminded itself in particular of the 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 pursuant to 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 the 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 alleged 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.**

81. In this case the respondent accepts, if dismissal is proven, that the claimant was unfairly dismissed for the purposes of section 98 (4) of the Act. The respondent further contends however that :-

- (1) Any compensatory award should be reduced pursuant to section 123 (1) of the Act to reflect the percentage chance that the claimant's employment would, in any event, have terminated fairly if a fair procedure had been adopted by the respondent.
- (2) The claimant contributed to his dismissal and that any basic or compensatory awards should be reduced accordingly pursuant to sections 122(2) and 123(6) of the Act.

THE CONCLUSIONS OF THE TRIBUNAL

82. The tribunal has determined the issues in accordance with, and in the order adopted in, the List of Issues (save where otherwise indicated below).

THE CLAIMANT'S CONSTRUCTIVE DISMISSAL CLAIM

83. Issue 1 of the List of Issues – the claimant contends that in 2015 he was made to work the PM shift against his will/without his agreement.

84. The respondent denies the allegation. In summary the respondent contends that (a) the claimant applied for the role which amounted to a promotion on more favourable terms (b) the claimant was required to work split shifts as part of such promoted role (c) if which is denied such changes amounted to a breach of contract the claimant affirmed any such breach by continuing to work in accordance with such terms for around two years and, in any event, when he accepted the Contract in March 2017.

85. The tribunal is satisfied having had regard in particular to its findings of fact at paragraphs 12-16 above that (a) by September 2015 the claimant had been offered and had accepted a position as a cleaning supervisor for eight hours per day on split shifts (b) the changes were accepted by the claimant on a voluntary basis without objection or duress and (c) that the claimant continued to work for the respondent on that basis until he agreed the further changes to his contract with the respondent (following the involvement of Mr Lewis) in March 2016 (paragraphs 33- 38 above).

86. In the circumstances the tribunal is not satisfied that there has been any breach of any express term of the claimant's contract of employment and/or any breach of the implied term of trust and confidence as alleged. If any reason the tribunal is wrong the tribunal is, in any event, satisfied that the claimant has affirmed any such breach (a) by continuing to work on such terms without objection until he was issued with a new contract on more favourable agreed terms in March 2017 and (b) continuing to work on such revised terms without objection until the termination of his employment with the respondent. Further, for the avoidance of doubt, the tribunal is satisfied in the circumstances of this case that there has been no breach of the Regulations as the changes in 2015 were agreed between the parties on a voluntary basis for operational reasons including the need for an increase in staff at supervisory level.

87. The claimant has therefore not established any such alleged breaches of contract and this allegation is not upheld.

88. **Issue 2 of the List of Issues - the claimant contends that during 2015 and 2016 his duties were taken away from him by Mr Duncan Williams such as timecards and ordering which amounted to victimisation bullying and harassment.**
89. The allegations are denied by the respondent including on the grounds that (a) it was the claimant who had acted inappropriately towards Mr Williams (b) no grievance was raised by the claimant and (c) that the claimant had in any event affirmed any breaches of contract as referred to in respect of Issue 1.
90. The tribunal is not satisfied having regard in particular to its findings of fact at paragraphs 23 -24 above that the claimant has established any alleged breaches. Further, if for any reason the tribunal is wrong it is, in any event, satisfied that any such breaches were affirmed by the claimant who continued to work with the respondent following the departure of Mr Williams in January 2017 until the termination of his employment in July 2017.
91. The claimant has therefore not established any such alleged breaches of contract and this allegation is not upheld.
92. **Issue 3 - the claimant contends that Mr Lewis changed his contract of employment without his agreement/in breach of contract.**
93. This allegation is denied by the respondent. The respondent contends that (a) following discussion with Mr Lewis the claimant was provided with a more favourable contract which was accepted by him on 6 March 2017 after he had had an opportunity to review the contract and secure requested changes and (b) the claimant gave no indication that he was unhappy with the Contract or that he had been forced to sign it.
94. The tribunal is satisfied having had regard in particular to its findings of fact at paragraphs 33- 38 above that (a) the claimant agreed with the respondent in March 2017 the terms of the Contract after having had an opportunity to consider it and secure amendments and (b) there is no evidence to indicate that the claimant was in any way unhappy with such terms which were financially more beneficial to the claimant and (c) the claimant continued to work pursuant to such terms until the termination of his employment in July 2017.
95. Accordingly the claimant has not established any such alleged breaches and this allegation is not upheld.

96. Issue 4 - the claimant contends that he was unhappy about the task of ordering from stores been taken away from him by Miss Thomas.

97. The respondent contends that the ordering from stores was a relative minor administrative task and any removal of such responsibilities did not amount to a breach of contract. The respondent contends that the claimant continue to perform such duties and there was, in any event, no breach of contract.

98. The claimant has established on the facts that on 4 April 2017 Miss Thomas emailed the claimant requesting that any future stock order should be submitted on order sheet and completed by the senior supervisor (paragraph 42 and page 129 bundle). The tribunal is not however satisfied on the facts having had regard in particular to its findings at paragraphs 42-44 above that this constituted or was, in any event, regarded by the claimant at the time as a breach of contract/of any significance and moreover that the claimant in any event continued to perform such duties (paragraph 44 above).

99. The claimant has therefore not established any such and this allegation is not upheld.

100. Issue 5 - the claimant contends that the grievance which he raised in respect of Mrs AR in May 2017 was not properly investigated or treated seriously and further that the conduct of the hearings was inappropriate, the outcome was unreasonable and there was unreasonable delay in addressing his grievance.

101. The respondent denies the allegations. In summary the respondent contends that (a) it carried out a proper and reasonable investigation and that the claimant's allegations were treated seriously (b) overall the claimant's allegations were not substantiated and (c) there was no unreasonable delay having regard in particular to the investigations and to the fact that the claimant was absent on leave between 22 May and 12 June 2017

102. The claimant has established on the facts that (a) he advised Miss Thomas during April 2017 that he had concerns regarding the health of Mrs AR and (b) the claimant reiterated his concerns in emails dated 10 May 2017 including that he had received complaints from staff regarding such issues including that Mrs AR was no longer able properly to carry out her duties placing unacceptable pressure on him and other members of staff. The claimant also complained about Mrs AR's alleged conduct during a community day (paragraph 54 above).

103. The tribunal is further satisfied however on the facts that (a) the respondent interviewed Mrs AR and relevant members of staff promptly following the receipt of the claimant's emails regarding the claimant's concerns (paragraph 56 above) (b) the claimant was absence on leave from 22 May 2017 until 12 June 2017 (paragraph 57 above) (c) Mr Lanigan

conducted a grievance meeting with the claimant on 22 June 2017 and wrote to him with the outcome of his grievance on 27 June 2017 (paragraphs 59-62 above) (d) Mrs Godfrey conducted a grievance appeal hearing on 20 July 2017 following which she wrote to the claimant on 21 July 2017 concerning his allegations regarding Mrs AR and upholding his complaint concerning Mr Lanigan's determination of other grievances and (e) Mrs Godfrey also arranged for such grievances to be considered promptly at a further hearing by the financial controller of the respondent (paragraphs 67 -72 above)

104. Having given careful consideration to the claimant's allegations and in particular to the following findings of fact at paragraphs 54 and 58 -72 the tribunal is satisfied that:-

104.1 The respondent carried out a proper and reasonable investigation into the claimant's concerns relating to Mrs AR including interviewing staff, meeting with the claimant to consider his concerns and allowing the claimant an opportunity to appeal against the findings of Mr Lanigan.

104.2 The conduct of the grievance hearing by Mr Lanigan (save in respect of the additional grievances dealt with during the hearing as addressed further below) and of the grievance appeal hearing by Mrs Godfrey were carried out in a proper and reasonable manner and the claimant was given an opportunity to raise any matters of concern. Further, for the avoidance of doubt, the tribunal rejects for the reasons explained in paragraphs 67 -72 above any suggestion that Mrs Godfrey acted appropriately at the grievance hearing as contended by the claimant.

104.3 There was no unreasonable delay in dealing with the claimant's grievance regarding Mrs AR/ his appeal against Mr Lanigan's decision. When reaching this conclusion the tribunal has taken into account that timescales were slightly outside those indicated in the respondent's grievance procedures. The tribunal is however satisfied that there was no reasonable delay such as to constitute any breach of contract having regard in particular to (a) the number of witness interviewed and (b) the claimant's absence on leave between 22 May 2017 and 12 June 2017.

104.4 The outcome of the claimant's grievance relating to Mrs AR and the subsequent grievance appeal were in the light of the evidence reasonable in all circumstances.

105. The tribunal is satisfied that Mr Lanigan acted inappropriately in seeking to redress the claimant's other concerns (unrelated to Mrs AR) at the grievance hearing (paragraph 61 above). The tribunal is not satisfied however that such conduct by Mr Lanigan constituted a breach of the claimant's contract of employment including a breach of the implied term of trust and confidence. Further, the claimant was offered an opportunity to have his outstanding grievances determined without delay by the respondent's financial controller (including after the termination of his employment) which he did not accept paragraphs 72 and 77 above).

106. In all the circumstances the tribunal is not satisfied that the claimant has established the alleged breaches of contract and this allegation is therefore not upheld.

107. **Issue 6 - the claimant contends that he was inappropriately suspended for the misuse of the college's computer system including that there was no basis to suspend or investigate such allegation and it was further evidence of bullying, harassment and victimisation by the respondent.**

108. The respondent denies the allegations. In summary the respondent contends that (a) in March 2017 a member of staff from the College reported to the respondent that the claimant had been inappropriately using the Computer on site when he should have been working (b) that following further investigations including the provision of detailed information from the College relating to computer usage between 20 and 27 March 2017 it reasonably concluded that it was necessary to investigate further the claimant's alleged conduct in respect of such usage and (c) that suspension was a reasonable step in all the circumstances at that time.

109. The tribunal is satisfied having had regard in particular to its findings of fact at paragraphs 45-49 and 52 above that :-

110.1 The respondent acted appropriately in respect of the allegations relating to the alleged computer misuse including (a) as the allegations were raised by the College (b) the allegations were potentially serious particularly given the nature of the College setting and the nature of some of the material which had been accessed/ the extent of the access during working hours (c) deliberately accessing internet sites containing offensive material was classed as an act of potential gross misconduct in the respondent's disciplinary procedure (page 52 of the bundle) (d) the evidence appeared to indicate that such access had occurred when the claimant was at work and (d) the claimant admitted at the meeting on 11 May 2017 that he had accessed some of the identified sites.

110.2 There was no unreasonable delay on the part of the respondent in pursuing such allegations/the length of the claimant's suspension having regard in particular to (a) the respondent's reliance upon the provision of information from the College including the substantial amount of computer records involved (b) that the respondent had sought to address first the grievances which the claimant had raised in respect of Mrs AR and (c) the claimant's absence on leave as identified previously above.

110.3 There is no evidence that the claimant's suspension was inappropriate and/or that it was initiated by the respondent in response to grievances which he had raised. When reaching this conclusion the tribunal has

taken into account in particular that (a) the concerns were initially raised by the College in March 2017 and (b) the respondent was dependent upon the college's IT department to provide it with the relevant documentation.

110. The tribunal is not satisfied in all the circumstances that the claimant has established any of the alleged breaches of contract and this allegation is therefore not upheld.

111. Finally having reviewed all of the above findings and conclusions the tribunal is satisfied that the claimant has not established for the purposes of section 95 (1) (c) of the Act that the respondent committed any breaches of any contract (which either singularly or cumulatively or by way of a final straw) which entitled him to terminate his contract by reason of the conduct of the respondent.

112. The claimant's complaint of constructive unfair dismissal is therefore dismissed.

Employment Judge A Goraj

Dated 28 March 2018

Judgment sent to Parties on

