EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4100780/2017

Held in Glasgow on 23 and 27 April 2018 with further written submissions on 1 May 2018

Employment Judge: Mrs M Kearns (sitting alone)

Mrs P K Hamilton	**Claimant** **Represented by:** **Mr Baird** **Lay representative**
Clarins UK Ltd	**Respondent** **Represented by:** **Mr T Haddow** **Advocate**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal was that the claimant was unfairly constructively dismissed by the respondent and the respondent is ordered to pay to the claimant the sum of **£8,071 (Eight Thousand and Seventy One Pounds)**.

The Employment Protection (Recoupment of Jobseekers' Allowance & Income Support) Regulations 1996 do not apply to this award.

REASONS

1. The respondent is a well-known retailer of beauty and skincare products. The claimant was employed by the respondent as a member of their 'Angel Team' of national sales development specialists from 7 October 2013 until her resignation on 27 March 2017. Having complied with the early conciliation requirements she presented an application to the Employment Tribunal on 16 June 2017 in which she claims that she was constructively and unfairly dismissed and entitled to notice pay.

Issues

2. The issues for the Tribunal were:-

   (1) Whether the claimant was dismissed;

   (2) If so, whether that dismissal was unfair;

   (3) If it was unfair what financial award/compensation, if any is due to the claimant?

   (4) Whether the claimant is entitled to notice pay.

Evidence

3. The Tribunal heard evidence from the claimant on her own behalf. Both parties lodged bundles of documents ("C" and "R" respectively). The claimant referred to her documents by letter, for example "CA". The respondent referred to theirs by page number. The respondent called the following witnesses: Mrs Marie Schmid, Head of Training; Mr Stewart Clark, National Events Manager and Mrs Jamie Buddell, Head of HR.

Findings in Fact

4. The following facts were admitted or found to be proved:-

5. The respondent is a limited company engaged in the provision of beauty and skincare products and treatments. They do not operate stores of their own. Instead they have counter and treatment facilities (referred to as 'doors') in department stores around the UK. They also operate in some spas. The claimant was employed by the respondent from 7 October 2013 until her resignation on 27 March 2017.

6. The respondent has around 2,000 members of staff in the UK. Aside from the training of new staff, around 1,500 of the respondent's employees require regular training in new products and/or brand initiatives. The respondent's Head of Training is Marie Schmid. Her training team comprises two sections: commercial training and treatment training. There are two classroom trainers; five regional commercial training managers and five regional treatment training managers. There is also a band of around 35 elite trainers known as the 'Clarins Angel teams'. The 'Clarins Angels' are an events team who work nationwide supporting key stores and spa partners, setting up specific events and activities. Their purpose is to drive sales and recruit new customers to the business. There are three Clarins Angel teams: north, south and London. Each team has its own manager. The claimant was in the north team reporting to Jai Logan. The regional Angels team managers reported in turn to the National Events Manager, Stewart Clark. The claimant and her colleagues in the north regional Angels team have more contact with Mr Clark than the other regional team Angels because Mr Logan is deaf, and adjustments have been made to his role in relation to telephone calls with his direct reports.

7. In July 2016 an opportunity arose to apply for one of the five regional commercial training manager roles. The role was based in Scotland. The claimant applied and was interviewed on 26 July 2016 by Laura Wright, the respondent's Training Team Manager. The claimant was unsuccessful. However, she achieved a score of 85%.

8. The respondent uses a standard form to record its interviews (R65). Each form contains a statement of the respondent's selection protocol (R67) with instructions to the interviewer on how to carry out the selection process. This states *inter alia*: *"Selection Protocol This guide outlines the process that should be used when recruiting for a Commercial Training Manager. The process is designed to provide an opportunity for the candidate to demonstrate they have the experience, knowledge and skills, and demonstrate alignment to the Company values and competence in the behaviours required to be successful in the role. To ensure a fair and consistent approach to our recruitment process all candidates applying for this particular position will follow exactly the same process and score against the same criteria."*

9. With regard to "selection format", the protocol states: *"The interview should take approximately 60 minutes to complete. Allow approximately 10 minutes per question and make use of the probing questions where necessary to allow for thorough examples to be provided."* The answer to each question receives a score between 1 ("*Little or no evidence is provided. Examples are 'they' or 'we', not 'I'. Negative outcomes indicated."*) and 4 ("*Exceptional results produced from own initiatives with actions in place for future successes.*")

10. For the Commercial Training Manager interview there are 5 questions with suggestions given for "*probes*" on each. The questions are: "*1. When have you provided feedback to someone and what was the result?"*; "*2. Tell me how you have led by example and have developed customer service as a result of this?"*; "*3. Describe how you successfully share your expertise.*"; "*4. Talk me through how you prefer to organise your work and how you motivate yourself to achieve your goals.*"; "*5. How have you increased awareness/knowledge of a brand and its values?*"

11. A further commercial training manager post became available in September 2016 and on 9 September 2016 Laura Wright telephoned the claimant to ask whether she would like to apply for it. She sounded excited and told the

claimant that there was 'movement within the company'. Emily Goymer who held the post had become an area manager and the commercial training manager role in Greater Manchester had come up. She asked the claimant, as she had scored so highly in the previous interview, did she want to be re-interviewed for the post or use her high score from the previous interview. She said the claimant did not have to be re-interviewed as she had checked with HR and the claimant's original score would stand for 6 months. The claimant agreed to use her previous interview score. Ms Wright said she had spoken to Paula Grant McKenna, the Regional Manager for Greater Manchester and that she had come back to her to say there was no one in her area presently ready to be put forward for the role. The claimant was given the impression she was a 'shoo in' for the role on the basis of her previous interview score. However, before arrangements could be finalised Mrs Schmid received an email from the respondent's managing director to say that a global recruitment ban was in place until further notice. Mrs Schmid put forward a business case to fill the role on a temporary basis for a specific period and it was agreed that she could put someone into the role for a period of 5 weeks until the end of October 2016. Mrs Schmid asked the claimant to cover the role for 5 weeks.

12. The claimant undertook the commercial training manager role in the Manchester region from 26 September until 28 October 2016. She was promised feedback from Laura Wright, but Ms Wright suffered a bereavement and was on compassionate leave for three weeks at this time. Marie Schmid called the claimant and explained that Ms Wright was unable to deliver the feedback but that the claimant had done an "*absolutely fabulous job*"; that her training had been exemplary and that the feedback from managers had been exceptional. She said she would get Ms Wright to deliver the feedback in more detail when she returned.

13. The claimant suffered an attack of bursitis in her hip at the end of October 2016. She was absent from work on sick leave from 30 October to 13 November 2016. When she returned to work on 14 November adjustments were made to her role for a period to allow rest at the end of her shifts and

reduce travel time as far as possible. In particular, arrangements were made to enable the claimant to stay over in Glasgow, where she was working two nights a week. The adjustments lasted until 24 December 2016.

14. In December 2016 the respondent's recruitment freeze was lifted and Mrs Schmid was able to start the recruitment process for the permanent position of commercial training manager for the Manchester Region. Laura Wright telephoned the claimant on 16 December to ask whether she would like to be put forward for the role. She said because the claimant had done so well in the previous interview and had been so successful in covering the role did she want to interview again, and would she be interested in relocating to Manchester. Ms Wright explained that the role would involve a lot of driving, including occasional trips to London for meetings and to carry out training courses. She told the claimant there was a concern about her fulfilling the capabilities of the role given her hip injury. She explained that it might sometimes be necessary to drive to Wales and Leeds in the same day. She asked her: *"Are you sure you're able to fulfil these duties?"* The claimant confirmed that travel was not an issue for her, that she understood the expectations of the role and would like to be put forward for it. The claimant said she would choose not to be re-interviewed as she had scored so highly before and had come second out of four. However, Ms Wright told the claimant that she would have to re-interview for the role for the sake of fairness and consistency because the position being interviewed for was a permanent position. Ms Wright confirmed the terms of the conversation to Mr Clark and Mr Logan in an email of the same date (R101).

15. The claimant called her line manager Jai Logan after her call with Ms Wright. She told him *"There's no way after that telephone call I'm going to go for the role."* At that point she was working at Frasers in Glasgow. Jai Logan went in to see her the next day and said: *"Come on. We're going for a coffee."* Over coffee he said to her: *"Please, please don't pull out. You've worked so hard. This is your job. Please go for it."* The claimant told him what Laura Wright had said to her. He said: *"I think she was having a bad day. I'm going to call*

her now and put you back in for the job. Stewart and I want you to go for the job." The claimant decided she would do so.

16. Three candidates applied for the post including the claimant. Applicant X was interviewed at the respondent's head office by Laura Wright on 13 January 2017. She scored 60% (R104). The claimant was interviewed by Marie Schmid and Laura Wright on 19 January 2017 in a hotel lounge at the end of a training day they were all attending. No private room had been booked for the interview. Laura Wright apologised to the claimant for the venue saying it was not ideal, but they had run late in the training and the training room was not available. (It was being set up for a gala dinner.) She asked the claimant whether she was ok to carry on and the claimant said fine and took a seat. The claimant said that she was excited and looking forward to the interview. However, once they got started the claimant could hear the bar staff setting up and colleagues chatting in the bar area. At one point, the chef approached and interrupted the interview to discuss the evening dinner menu and the claimant lost her train of thought. Ms Schmid asked her if she was ok to carry on and she said *"Fine. These things happen."* At the end the claimant asked whether there were any more questions because the interview had finished quickly, lasting 35 or 40 minutes. (Her previous interview for the same role in Scotland had lasted an hour and three quarters). Ms Wright said: *"No. You've answered them all before we asked them."* The claimant scored 87.5% (R114). Applicant Y, the successful candidate was interviewed at the respondent's head office on 23 January 2017 by Laura Wright and Marie Schmid. She scored 100% and was appointed to the post. Her interview lasted an hour and a quarter. The successful candidate was asked five questions. The claimant was asked four questions. However, this fact was not known to the claimant at the time of her resignation.

17. The claimant was advised her application for the role had been unsuccessful on or around Thursday 2 February 2017. At the time the claimant was working in Newcastle. On that date she spoke to Stewart Clark on the telephone about it. At the start of the call Mr Clark asked the claimant: *"How are you?"* The

claimant explained to Mr Clark what had happened and how she felt about it. She described the interview process and said she was very disappointed and upset. Mr Clark said: *"Be honest. You're fucking raging. So am I. I can't fucking believe they didn't give you the fucking job. That job was yours. You'd worked so hard for it."* He advised the claimant to write to Laura Wright and get written feedback from the interview. Mr Clark also had under his remit the respondent's 'door' at the Jenner's store in Edinburgh and he gave the claimant an outline of a role that had become available as business manager at that store. The respondent categorises their 'doors' with letters from A to E, where A is a flagship store. In certain 'A' rated flagship stores where the respondent has both counter and treatment facilities and where turnover is above a certain level they employ a business manager. Jenner's in Edinburgh is one such 'door'. Jai Logan had previously discussed with the claimant the business manager ("BM") job at Jenner's. He had offered her an opportunity to be interviewed for it and Mr Clark raised this as a possible alternative role during the telephone conversation on 2 February. The claimant said she would get back to him.

18. At 9:18 on Friday 3 February 2017 the claimant texted Stewart Clark to say that after discussing the BM position with her husband she had decided she would like to be put forward for it. She thanked him for the "*chat yesterday*" and the advice he had given her. In his reply later that morning he stated: "*I completely understand how upset and disappointed you are about the training position.*"

19. At 12:21 on 3 February the claimant emailed Laura Wright and requested her interview feedback for the interview. This (CD4) was sent to her by Ms Wright by return email at 12:46 pm that day. The feedback included the following advice:

> *"Before answering, listen and digest the questions to allow you to select the best examples to share your experience, skills and knowledge that is most suited to that question. At times you went straight into the example without*

fully answering the question being asked. Although you shared your answers in great detail they were not specific enough in relevance to the question being asked.

When answering a question give the answer first then expand on your examples as to the how and why you achieved this.

On an example you gave regarding how you coach others, you showcased how you are able to coach making individuals aware of what change is needed, get them to accept the need for change. However, for the final action element the solutions are provided for them rather than you coaching them to reach the solutions themselves."

20. The claimant sent the interview feedback on to Mr Clark under cover of an email (CD2). In the email she told Mr Clark: *"I'm not happy with my feedback as my answers to the questions quickly was nerves and environment purely to when my interview was held after a full day of training and being interrupted by the chef to discuss the evenings menu and where my interview was held not being given a proper private room I felt open and vulnerable, I felt rushed, I expressed this in my interview, I apologised for my rushing to answer so I was aware but I was told I had already answered the questions fully before they had asked them. My interview lasted no more than 35/40 minutes. I am aware that the position I was interviewing for was Commercial training so my comparison to the successful candidate having Spa background is unfair. I feel the whole interview environment was wrong, I could hear the bar staff working etc. I feel as if I have been treated very unprofessionally by Laura. I had tremendous feedback from my five weeks of cover from area managers and Paula Grant McKenna. I have never received any positive feedback whatsoever from Laura Wright to date for my cover. I did receive a very negative phone call in December questioning my hip injury due to a fall I had incurred and was I capable of doing a trainers role due to this. I explained that I had bursitis, I had received a cortisone injection and had supportive duties in the workplace for six weeks. I was very open and transparent and assured*

Laura that my hip was getting better and I was more than capable of for filling the role.

Due to the conversation I did email my management and Laura to say I was having second thoughts about re applying. Jai then came to see me and I relayed to him why I had doubted myself and it was due to Laura's phone call. Jai reassured me and built my confidence back up to go for the role, only to be treated so unprofessionally.

I should of stuck to my gut instinct as I knew after that phone call I was never getting the role as I think perhaps they saw me as too much of a risk. That and I do ask a lot of questions, always asking the why because during the five week cover you are thrown in at the deep end so I needed guidance I know Stewart I did really well and I adapted and grew, to not be given a role that THEY melded me for is a kick in the teeth. Please could you read my feedback and give me your feedback. Sorry for the rant. I would like to lodge a complaint."

21. In a later text the same day the claimant said to Mr Clark: *"I have emailed you feedback from Laura. I am raging*."

22. Mr Clark telephoned the claimant again on the afternoon of Friday 3 February 2017 once he had read the feedback the claimant had emailed him from her interview. She was very aggrieved and they discussed the feedback. The claimant asked Mr Clark what her grievance options were. He told her there were two options: informal or formal. He said the informal option involved an informal sit-down face to face with Laura Wright and Marie Schmid. The claimant said: *"I feel more strongly about it than that."* He said if she wanted to put in a formal grievance she should set it out in writing to him using bullet points; she should not make it too long. He said *"Give me the points. Make the complaint. I want you to know you have Jai and I's 100% support in this. I definitely think there's a grievance here."* Mr Clark did not say to the claimant during this conversation that she had a right to be accompanied at a grievance

meeting. He did not ask her whether she waived her right to the use of the respondent's formal grievance policy or process or agreed to a telephone meeting. He did not ask whether she agreed to the grievance being determined without a meeting.

23. After his telephone conversation with the claimant on or about 3 February 2017, Mr Clark telephoned Jamie Buddell, the respondent's head of HR. He told Mrs Buddell that he had had a conversation with the claimant who was unhappy with the outcome of a recruitment exercise to the regional trainer role. He asked Mrs Buddell for advice about whether *he* should hear the grievance. He explained that although the claimant reported to Mr Logan she had approached him directly. He told Mrs Buddell that he had gone through the claimant's options with her; mediation or raising a grievance. He said he had explained the procedure to her. He asked Mrs Buddell who would be the best person to handle it if the claimant took out a grievance. Mrs Buddell advised that if the claimant was comfortable with him doing so, he should hear it for two reasons; firstly, he was senior to Jai Logan and to refer her to someone junior to the person she had initially contacted would look as though they were not taking it seriously; secondly, Mr Logan's deafness would make it more challenging, although he had done grievance hearings in the past. Mr Clark also wanted Mrs Buddell's advice about the challenges of meeting with the claimant as they were both field based. He said he was concerned that he might not be able to meet the claimant as quickly as he wanted. Mrs Buddell said: '*if Paula agrees it, you could give her other options. If you explain all the other options and explain she has the right to representation, even if it is not a face to face meeting, you give her the options*.' Sometime later, after the claimant's grievance had been submitted, Mr Clark met Mrs Buddell when he was in her office and told her that the claimant had "*agreed to the option of a call grievance*".

24. By email at 13:41 on 5 February 2017 the claimant sent her grievance (CE) to Stewart Clark in the format he had instructed. It included the following bullet points:

"On the 19th January why was my interview held in an open bar in a hotel? Why was there no private room organised?

Why was my interview only 35/40 minutes long when other candidates get up to 2 hours at head office?

Why was I told in the interview when I asked if there was any other questions by both managers I was told, 'No you've answered them fully before we've asked you them'.

Why did my interview lack direction and quality compared to my first interview at head office on the 26th of July with Laura Wright and Emily Goymer?

When the chef came to me to talk about the menu for the evenings gala dinner mid interview which completely made me lose my train of thought, why wasn't my interview cancelled and rescheduled for a later date?

Why is my feedback for my interview from Laura Wright vague and lacking constructive direction?

Why for a Commercial trainer's role am I being measured against a Spa manager with a 'Wealth of experience in both retail and spa'

Why as Head of Training has Marie Schmidt let all of the above happen?

I have time line notes in details to collaborate my grievance.

Many thanks for your continued support Stewart, Kind regards, Paula."

25. The respondent's grievance policy (R58) states: "*The following procedure should be adopted where an employee has a grievance arising from their employment…..The procedure is designed to provide for the grievance to be referred through specific stages of management…*

<u>Stages</u>

1. *If an employee feels talking to their Manager on an informal basis has not resolved the issue or would prefer or feel it appropriate to make their complaint formal, they should write to their Line Manager, (or the Human Resources Manager should the grievance concern the Line Manager) setting out the grievance and the basis for it and asking for a meeting.*

   Please note that the employee has the legal right to be accompanied at that meeting, and at any further such meetings, by a Clarins (UK) Limited work colleague or a Trade Union Official of their choice. The meeting may be postponed for up to five working days, at the employee's request, if the chosen companion is not available to attend on the date set for the meeting in question. The Manager will record details of the grievance and after due consideration will give a decision, if possible within 14 working days of the matter being raised…"

26. Paragraph 2. of the grievance policy provides a right of appeal to the next level of management or the Human Resources Manager.

27. Neither Mr Clark nor anyone else from the respondent requested the 'time line notes' the claimant had offered at the end of her grievance. Two weeks after submitting her grievance the claimant called the respondent's head office to find out what was happening. She spoke to James Edon Williams and explained that the 14 working days specified in the grievance policy had

elapsed and she had not heard from anyone. She asked when someone would get in touch. Mr Edon Williams said: *"They won't. If you've put enough information in your grievance you'll just get an outcome."*

28. On 14 February 2017 the claimant was interviewed by the respondent for the post of business manager at Jenner's, Edinburgh.

29. On the same date, Mr Clark interviewed Laura Wright about the claimant's grievance and took a statement from her. On 15 February he interviewed Marie Schmid and took a statement from her.

30. By email dated 20 February 2017 (CH1) the claimant asked Stewart Clark: "*I was wondering if there is any further progress with my complaint as it has been two weeks since I have filed it? I just wanted to know what the next stage is please."* Mr Clark replied to say that he had dropped an email to the claimant's work email the previous day. He attached a copy (CH3). It said: *"I'm writing to let you know that I am in the final stages of investigating your formal grievance. We always endeavour to respond to any grievance points within two weeks of receipt. As I'm sure you can imagine, the logistics of speaking to both Marie Schmid and Laura Wright has been difficult due to diary commitments with Roadshow training etc. For this reason, I aim to be in a position to have your outcome to you by the end of this week. I hope this is in order and thank you for your patience."*

31. On 24 February 2017 the claimant was offered and accepted the post of business manager at Jenner's.

32. The respondent's grievance policy and normal practice was departed from in relation to the claimant's grievance without her consent. The usual letters arranging a meeting and advising her of her right to be accompanied at it were not sent. The claimant was not given an opportunity within the process to explain her grievance and discuss how it could be resolved and her additional material was not considered. Without convening a meeting, either face to face

or by telephone call and without discussing the claimant's grievance with her in detail after receipt and without requesting the timeline referred to in the grievance, Mr Clark issued a grievance outcome letter on 8 March 2017 (CJ). He stated: *"I write further to the grievance points raised by you on the phone to me on Friday 3rd February 2017 and in your email dated 5th February 2017."* Mr Clark then proceeded to give his response to the 13 points raised. With regard to the claimant's interview being held in a hotel lounge, Mr Clark stated: *"I have been made aware that in exceptional occasions managers hold meetings in quiet coffee shops or hotel facilities, if they are unable to find an available meeting room. This is not a practice we encourage at Clarins as it does not align with our brand. I will make sure that this is raised with all managers so that it does not happen in the future. Marie explained that she held the meeting at the hotel because she did not want to postpone the meeting."* At the end of the outcome letter Mr Clark stated: *"I have taken your grievance seriously and I have thoroughly investigated all the points raised as outlined above and have not found any evidence to uphold your grievance."* He advised the claimant of her right of appeal to Jamie Buddell, Head of HR.

33. The claimant was appalled that Mr Clark had carried out a grievance investigation and not included her. She sent a letter of appeal to Ms Buddell dated 14 March 2017 (CK). In her grievance appeal letter she stated: *"Can I also record my disappointment at the failure to carry out a fair process which not only breached the company procedure but failed to notify and afford me the statutory right of a grievance hearing and the right to be accompanied.// It is with regret that I must also include Stewart Clark in my grievance due to his failure to conduct a fair investigation of my complaint and follow a proper process. // One point I would make in support of this that it clearly states in my grievance that I have time line notes in detail to collaborate my grievance. The failure to afford me a proper hearing and to explore this information prior to reaching a conclusion renders the whole process unfair."*

34. The claimant was invited (CL) to an appeal hearing by Sam Murray, Regional Manager in Edinburgh on 24 March 2017. She was advised of her right to be

accompanied. She contacted the respondent on 23 March to say she was unable to attend and to request that the meeting be rescheduled. The meeting was rescheduled (CM) for 28 March 2017. On 27 March 2017 the claimant contacted one of the respondent's HR business partners to say that she would not be attending the appeal hearing. The claimant considered that she could not attend an appeal hearing for something she had had no part in. In her view, the grievance process ought instead to have been started again and done properly. The claimant decided that instead of going to the appeal hearing she would resign. Her reason was that she felt isolated and stressed, unsupported and disillusioned. She had lost all trust and confidence in the respondent.

35. The same day, 27 March 2017 the claimant wrote to Jamie Buddell tendering her resignation (CN). In the letter the claimant stated: "*I would like to advise you of my resignation due to unreasonable treatment, discriminatory behaviour and the failure to follow a fair process in relation to my grievance which was lodged on 5 February 2017.* The claimant then set out in detail the grounds of her original grievance. She went on: *"Can I also record my disappointment at the failure to carry out a fair process which not only breached the company procedure but failed to notify me and afford me the statutory right of a grievance hearing and the right to be accompanied. I asked to include Stewart Clark in my grievance due to his failure to conduct a fair investigation of my complaint and follow a proper process. One point I made in support of this is that it clearly states in my grievance that; I have time line notes in detail to collaborate my grievance. The failure to afford me a proper hearing and to explore this information prior to reaching a conclusion renders the whole process unfair.*

"I also bring to your attention the conduct of James Edon-Williams. My Formal grievance was submitted on 5 February 2017, after 2 weeks I called HR and spoke to James Edon-Williams and asked how long my grievance would take as I hadn't heard anything. His reply was usually 7 to 14 days but it could take longer. I asked when I was to be interviewed as I have

more information, he said if there is enough information in the grievance in writing then we don't need to interview you, you will just be contacted with the outcome. Is he not aware of the need to follow a fair process and adhere to company and statutory procedures.

I received a letter dated 21 March 2017 from Sam Murray asking me to attend an appeal hearing on 24 March 2017. It was perfunctory in nature with no enquiry as to my health and wellbeing. There was no explanation as to why a proper process had not been followed to date.

I have lost all trust and confidence in your ability to address my issues in a fair manner and as such you have unlawfully breached my contract of employment leaving me no alternative other than to resign."

36. At the time of her resignation the claimant's salary was £24,990 per annum gross. Her bonus for the year ending 31 December 2016 was £2,438, giving total annual pay of £27,428 (CF). Her weekly gross pay was £527.46. Take home pay from a salary of £27,428 deducting the usual amounts for tax and National Insurance brings out a net weekly salary of £421.74. The claimant's date of birth is 1 January 1964. She was over 41 for the whole of her employment with the respondent. She did not claim Jobseekers' Allowance.

37. The claimant was unfit to work for two weeks from the date of her resignation (27 March 2017) due to falling downstairs in her home. Once she had recovered she went to Lisbon for a week to join her husband who was working there. The claimant began looking for work in or about mid-April 2017 and secured agency work from 6 May to 25 July 2017 (11 weeks), earning £240 per week. On 25 July 2017 the claimant started a permanent job earning £442.30 net per week.

Observations on the Evidence

38. The main conflict in the evidence concerned the telephone call of 3 February 2017 between the claimant and Stewart Clark. Mr Clark gave the following testimony about the content of that call: *"My response to the email* [R151] *was to call and discuss the points of the feedback. I offered two options: 1. Informal mediation to get the interviewers to elaborate; or 2. Raise a formal grievance against Laura and Marie and I said how the process could be handled. I explained that with us both being field based it could be challenging to meet face to face. I said there was a right of representation from another member of staff or a trade union rep. I said alternatively we could use telephone calls or if Paula put down the full details of her grievance points, that could form the basis of the evidence. There would then be investigations and an outcome letter would be sent within two weeks. Paula said she was happy for me to hear the grievance and felt comfortable I was handling it, and also telephone calls could be used as the basis of the grievance and obviously she would send through an email of bullet points of all the specific points she would like me to address within the grievance.* It was put to him that the claimant's evidence was that he had said nothing to her about the right to 'representation' or a face to face meeting and that he did not ask her whether she was happy to proceed without those things and he replied: *"That's not true".* A little later he was asked: *"Why didn't you have a face to face interview?"* and he replied: *"Because we had agreed mutually to use the telephone calls and email as a basis for the grievance."*

39. The claimant was adamant that no such discussion took place. She described the suggestion put to her in cross examination that she had agreed that 'if things got difficult' they would dispense with a grievance meeting as a "*bare faced lie".* Mr Haddow suggested to her in cross examination that she was prone to misunderstandings and apt to see things in 'black and white'. However, it seemed to me that this was a 'black or white issue'. She had either agreed with Mr Clark during his call on 3 February 2017 that there would be no grievance meeting at which she would be entitled to be accompanied, as he alleged, or she had not.

40. I preferred the claimant's evidence about this conversation to that of Mr Clark for the following reasons. It was clear from the claimant's subsequent behaviour that she had been expecting to be contacted about a meeting. When she emailed Mr Clark on 20 February 2017 (CH1) she asked what was happening as two weeks had passed. She enquired about the next stage. She did not ask if he had finished and where was his decision. Further, had Mr Clark really secured an agreement from the claimant to dispense with a grievance meeting, it would have been important to record this in his outcome letter (R183), which was quite lengthy, yet contained no such reference. He recorded at the top of (R187) that the claimant had been offered the opportunity to meet in person with Mrs Schmid and Ms Wright (the informal option 1.) but had turned it down. How much more important would it have been to record that the claimant had been offered a face to face grievance meeting with the right to be accompanied but had turned it down?

41. The second reason for preferring the claimant's evidence was the timing and content of Mr Clark's call with Mrs Buddell. Mrs Buddell testified that she was first aware of the claimant potentially raising a grievance "*around*" 2 February 2017. Although she (conveniently) picked the date 2 February, she did not offer any written record and it was clear from her evidence that she had only had one telephone conversation with Mr Clark about this in the period before he received the claimant's written grievance. Importantly, it was clear from her evidence that this call had taken place <u>after</u> Mr Clark had already told the claimant what her grievance options were. She reported the conversation with Mr Clark exactly as set out in the finding in fact at paragraph 23 above. Subject to the date issue I accepted her evidence about it and I therefore concluded on balance, that her conversation with him must have taken place on 3 February. (The alternative was that his conversation(s) with the claimant were on 2 February. The important point is that on her evidence, Mrs Buddell spoke to Mr Clark only once around this time and it was after he had already told the claimant what her grievance options were, so that his conversation with the claimant at this time was prior to and not informed by the advice Mrs Buddell gave him.) I noted her evidence that the initial focus of their discussion was

about who should hear the grievance, but that Mr Clark also wanted her advice about the challenges of meeting with the claimant as they were both field based. She stated that he was concerned that he might not be able to meet the claimant as quickly as he wanted. Mrs Buddell said that she suggested '*if the claimant agrees it, you could give her other options. If you explain all the other options and explain she has the right to representation, even if it is not a face to face meeting, you give her the options*.' She testified that Mr Clark had subsequently advised her that the claimant had "*agreed to hear it over the phone*". I asked her when this had happened, and she replied that Mr Clark had assured her the conversations happened whilst he was 'dealing with these issues', that he had mentioned it in the office and had told her the claimant had "*agreed to the option of a call grievance*".

42. The final reason for preferring the claimant's evidence to that of Mr Clark on this issue was that the main thrust of her grievance appeal letter of 14 March 2017 was that Mr Clark: *"failed to notify and afford me the statutory right of a grievance hearing and the right to be accompanied."* She complained forcibly that he had failed to follow a fair process and did not ask her for her timeline notes. She goes on: "*The failure to afford me a proper hearing and to explore this information prior to reaching a conclusion renders the whole process unfair."* It is implausible that the claimant would have written these things a few weeks after the telephone conversation of 3 February if she had agreed with Mr Clark to forego the opportunity to have a grievance meeting. Thus the claimant's actions at the time are consistent with her version of events whilst Mr Clark's own actions, (particularly his failure to record the alleged agreement in the outcome letter) do not support his account. For all these reasons, I concluded that the evidence of Mr Clark that the claimant had agreed to forego a meeting was not credible.

Applicable law

Constructive dismissal

43. The claimant resigned on 27 March 2017. The onus is on her to establish that her resignation constituted a dismissal. So far as relevant, Section 95(1) of the Employment Rights Act 1996 ("ERA") provides that an employee is dismissed if …. and only if

> "*(c) the employee terminates the contract under which he is employed…in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."*

44. The circumstances in which an employee is entitled to terminate a contract without notice by reason of the employer's conduct are to be judged according to the common law. A claimant must establish a repudiatory breach of contract by the respondent. In *Malik –v- BCCI SA [1997] IRLR 462 HL* this was described as occurring where the employer's conduct so impacted upon the employee that, viewed objectively, the employee could properly conclude that the employer was repudiating the contract.

45. The claimant in this case requires to prove that:-

    a. There was an actual or anticipatory breach of a contractual term by the respondent;

    b. That the breach was sufficiently serious (fundamental) to justify her resignation;

    c. That she resigned in response to the breach and not for any other reason; and

    d. That she did not delay too long in resigning.

46. The claimant's argument in this case is that by behaving towards her as it did, the respondent was in breach of the implied term of mutual trust and confidence.

47. The implied term of trust and confidence was described by the House of Lords in *Malik –v- BCCI SA [1997] IRLR 462 HL* as a term that "*the employer shall not, without reasonable and proper cause conduct itself in a manner calculated and* [or] *likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.*"

Discussion and decision

Constructive dismissal

48. The key issue in this case is whether the claimant has shown that the respondent breached her contract of employment. The particular term alleged to have been broken is the implied duty of trust and confidence that:-

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

49. In Woods v WM Car Services (Peterborough) Ltd 1981 ICR 666 EAT Browne Wilkinson J (as he then was) put the test like this: *"The tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect judged reasonably and sensibly, is such that the employee cannot be expected to put up with it."*

50. Although the claimant put forward the whole record of her dealings with the respondent in relation to the regional trainer post as background, it was Mr Baird's submission that the following acts or omissions of the respondent, taken cumulatively amounted to conduct likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. I have examined each in turn to determine whether they constituted or contributed to a breach of the implied term:

i. the format and location of the interview for the regional trainer post, the discrepancy between the questions asked of the

successful candidate and those asked of the claimant and the difference between the length of the respective interviews; all of which disadvantaged the claimant.

ii. Mr Clark failed to adopt a fair procedure to hear the claimant's grievance. In particular, he did not follow the respondent's grievance procedure. He failed to offer the claimant a meeting to discuss her grievance and failed to advise her of her right to be accompanied. Indeed, he failed to even follow up the time line information referred to by the claimant in the grievance itself.

51. I considered whether the conduct of the respondent set out above, taken cumulatively, amounted to a breach of the implied term. I asked myself whether, taken as a whole it was calculated or likely to destroy or seriously damage the relationship of trust and confidence. With regard to paragraph i, there was no evidence that the claimant knew at the time of her resignation that the successful candidate had been asked one more question than herself. That could not, therefore have been any part of the reason for her resignation. While the arrangements for the interview were not ideal, I did not conclude that they were so bad as to constitute or contribute to a breach of the implied term. The length of an interview may well depend on how much the interviewee says in response to questions asked and given that the claimant scored highly and, indeed increased her score from the interview she had had in July 2016, it was not obvious that she had been disadvantaged. The successful candidate scored 100%, which would clearly have been hard to beat, even if everything had gone smoothly.

52. With regard to paragraph ii, Mr Baird submitted that Mr Clark had failed to adopt a fair procedure to hear the claimant's grievance. In particular, he did not follow the respondent's grievance procedure. He failed to offer the claimant a meeting to discuss her grievance and failed to advise her of her right to be accompanied at that meeting. Indeed, said Mr Baird, he failed to

even follow up the time line information referred to by the claimant in the grievance itself.

53. The respondent's grievance policy (R58) states so far as relevant: "*The following procedure should be adopted where an employee has a grievance arising from their employment…..The procedure is designed to provide for the grievance to be referred through specific stages of management…*

Stages

1. *If an employee … would prefer or feel it appropriate to make their complaint formal, they should write to their Line Manager….setting out the grievance and the basis for it and asking for a meeting.*

   Please note that the employee has the legal right to be accompanied at that meeting, and at any further such meetings, by a Clarins (UK) Limited work colleague or a Trade Union Official of their choice. The meeting may be postponed for up to five working days, at the employee's request, if the chosen companion is not available to attend on the date set for the meeting in question. The Manager will record details of the grievance and after due consideration will give a decision, if possible within 14 working days of the matter being raised…"

54. Although the claimant did not technically ask for a meeting in her grievance email, the procedure certainly envisages that one will take place. While not legally binding, the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 sets out good practice in relation to handling grievances. Paragraph 33 of the Code advises an employer to *"**Hold a meeting with the employee to discuss the grievance"*** and states: *"33. Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received. 34. Employers, employees and their companions*

should make every effort to attend the meeting. Employees should be allowed to explain their grievance and how they think it should be resolved. Consideration should be given to adjourning the meeting for any investigations that may be necessary." Mrs Buddell's evidence about her advice to Mr Clark was not that he could dispense with a grievance meeting but that, with the claimant's consent, he could hold it by telephone. She said in her evidence that a telephone meeting was what Mr Clark had told her the claimant had consented to, not that the claimant had consented to dispense with a grievance meeting altogether.

55. The first time Mr Clark was asked about the conversation with the claimant on 3 February he stated: "*Paula said she was happy for me to hear the grievance and felt comfortable I was handling it, and also telephone calls could be used as the basis of the grievance and obviously she would send through an email of bullet points of all the specific points she would like me to address within the grievance."* Thus, initially he referred to 'telephone calls' being used as the basis of the grievance. The second time, he answered a question about it this had become: *"We had agreed mutually to use the telephone calls and email as the basis for the grievance".* Since he did not offer the claimant a hearing of her grievance by telephone either, I assumed he was now suggesting that his calls of 2 and 3 February counted as a substitute for a face to face or telephone meeting. For the reasons given in the observations above, I did not accept that the claimant had made any such agreement. I accepted her evidence that she was appalled that Mr Clark had carried out a full investigation and not included her. The question is whether the respondent's conduct, viewed objectively, was a breach of the implied term.

56. I considered the facts found in relation to the conduct of the grievance process. Mr Clark told the claimant on 2 February 2017: *"Be honest. You're fucking raging. So am I. I can't fucking believe they didn't give you the fucking job. That job was yours. You'd worked so hard for it."* In the 3 February call he assured the claimant of his and Mr Logan's 100% support and told her: *"I definitely think there's a grievance here."* He then encouraged the claimant to

send the grievance to him to deal with. I concluded that by giving the claimant these advance assurances and by expressing an initial opinion on the matter to her, he had put himself in a position where he was no longer an appropriate person to hear the grievance. He had essentially created a conflict of interest. He could either give the claimant support as a manager and colleague or he could impartially adjudicate her complaint. He could not do both. Matters were then compounded by the failure to follow the usual process or to offer the claimant a meeting either face to face or by telephone. I inferred from Mr Clark's evidence that he assumed he could simply rely on what the claimant had already said to him during the calls he had made at the beginning of February to offer her his advice and support and that he could thereby dispense with a meeting. However, those calls pre-dated the grievance email and his appointment as grievance hearer and were not a proper substitute for a meeting. Finally, he failed to ask the claimant for her time line, or to ask her how she thought the grievance should be resolved. To be fair to Mr Clark, he had started off trying to be kind and supportive to the claimant in difficult circumstances. However, by failing to handle the matter with professional detachment and appearing to cut corners he ended up in a mess. Viewed objectively, Mr Clark's conduct of and in relation to the claimant's grievance was, in my view: *"likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.*" There was no reasonable and proper cause for it. Once Mr Clark had given the claimant his assurances and opinions about her grievance, he was compromised as a grievance hearer. The respondent's grievance policy and normal practice was departed from without her consent. The usual letters arranging a meeting and advising her of her right to be accompanied at it were not sent. The claimant was not given an opportunity within the process to explain her grievance and discuss how it could be resolved and her additional material was not considered. Taking all these matters together, I have concluded that this conduct by the respondent breached the implied duty of trust and confidence. Mr Haddow rightly pointed out that this is a high threshold because if the conduct was not intentional it must be likely to affect the relationship in the relevant way. I have taken that into account.

57. Mr Haddow also raised the matter of the grievance appeal. He pointed out that the claimant had resigned without availing herself of the opportunity to have her grievance appeal hearing. He argued that this was fatal to her claim because a reasonable employee would have followed through the grievance process and allowed the employer to investigate. There was, he said, no reason here for the claimant to assume the appeal process was not genuine. He submitted that there was a contradiction in the claimant refusing to take part in a grievance appeal that she herself had raised. Mr Haddow said that by failing to follow the grievance appeal process, the claimant had not acted as a reasonable employee. Therefore, neither individually nor cumulatively could the respondent's actions be capable of amounting to constructive dismissal. I did not accept this argument for the following reasons.

58. It is clear that a serious breach of an internal grievance procedure or a serious failure to properly handle a grievance are capable of amounting or contributing to a breach of the implied term. (See for example the line of authority from WA Goold (Pearmak) Ltd v McConnell [1995] IRLR 517 and Blackburn v Aldi Stores Ltd [2013] IRLR 846 EAT). Whether in any particular case it does amount to such a breach is a matter for the Tribunal to assess. Per HHJ Richardson in Blackburn "*Breaches of grievance procedures come in all shapes and sizes.*" Mr Haddow raised the cases of Abbey National v Fairbrother [2007] IRLR 320 and Claridge v Daler Rowney Ltd [2008] ICR 1267 as part of a round up of cases in which Goold was considered. Both cases contain a 'heresy' which was subsequently reversed by the Court of Appeal in Buckland v Bournemouth University [2010] EWCA Civ 121. Coincidentally, (standing Mr Haddow's mention of Fairbrother and Claridge in his supplementary submission), Buckland raised two issues before the Court of Appeal: (i) whether the conduct of an employer who is said to have committed a fundamental breach of the contract of employment is to be judged by a unitary test or a "range of reasonable responses" test. (Held – a unitary test reversing Fairbrother and Claridge); and (ii) Whether an employer

who has committed a fundamental breach of contract can cure the breach while the employee is considering whether to treat it as a dismissal. The ratio of the Court of Appeal's decision is succinctly summed up in Harvey paragraph 507.02 thus: *"If a breach by the employer is actual, rather than merely anticipatory, can the employer avoid liability for constructive dismissal by offering to make amends before the employee leaves? This point arose in Buckland….The case concerned allegations by a university professor that he had been pressured by the university to pass failing students; it was this that led him to leave eventually but the university argued that before he left, it had investigated the allegations, vindicated him and sought to put matters right. They claimed that they had therefore 'cured' their breach of trust and confidence and that the claimant had therefore had no cause to leave. The tribunal thought this was not a good argument; the EAT thought it was, but the Court of Appeal reinstated the tribunal's decision on it."* Sedley LJ held that *"from the time that the wrongdoer crosses the Rubicon, 'all the cards are in the hands of the wronged party': the defaulting party cannot choose to retreat. What it can do is invite affirmation by making amends. If therefore the claimant chooses to reject the offer of amends…he or she can still leave and claim constructive dismissal."*

59. Buckland was distinguished in Assamoi v Spirit Pub Ltd UKEAT/0050/11 in which it was held that "*There is a distinction between preventing matters escalating into a breach of the implied term of mutual trust and confidence and trying to cure a breach which has already taken place.*" The first was held to have occurred in Assamoi in the following circumstances in the case of a chef whose relationship with his manager (a Mr Cooper) had been somewhat stormy:

> "**45. […] in convening the Claimant to a kitchen team meeting during his holiday, asserting he was absent without permission on Sunday 6 December, whereas, on the facts as found by the Tribunal, [Mr Cooper] himself informally sanctioned it, and thereafter refusing to**

apologise (although he accepted in evidence before the Tribunal with hindsight that he should have done so); were acts likely to damage the relationship of trust and confidence between himself as manager and the Claimant." This was the inappropriate and over-reactive behaviour of an inexperienced manager which resulted in the costly loss of the entire kitchen team in the lead up to the busiest season of the year. The Respondent, however, in the persons of Ms Pera and Ms Neveldsen, prevented Mr Cooper's conduct from constituting a breach of the implied term of trust and confidence entitling the Claimant to resign and regard himself as constructively dismissed by believing and accepting the Claimant's account of events about his holiday during the investigatory meeting, stating that no further action would be taken and three days later offering the Claimant the option of a transfer to another pub under a different manager."

60. It should be pointed out that Ms Pera and Ms Neveldsen had believed and accepted the claimant's account of events prior to him resigning. The matter is discussed further, and a helpful example given in paragraphs 36 to 38 of the EAT Judgment:

"*36….There is a fundamental distinction, which it is perhaps more easy to recognise than to define, between there being a fundamental breach of contract that an apology by an employer cannot cure and there being action by an employer that can prevent a breach of contract taking place. The members of this Tribunal with industrial experience point out that the whole object of a grievance procedure and a disciplinary procedure is that an employee has the opportunity to articulate his concerns about the behaviour of management and to defend himself against allegations that in some way he is unfit to remain in the employment of the employer.*

37. If, for example, in a large industrial undertaking an employee called John Smith were to be given notice of a disciplinary hearing concerning a sexual assault perpetrated by him on a female employee, and it later transpired that due to an administrative mix-up the letter should have been sent to another employee of the same name, would the recipient of the first letter, sent in error, be entitled to say there had been a breach of an implied term, albeit that as soon as he had taken up the matter there was a profuse apology and an acceptance that the recipient of the letter was wholly innocent of any such inappropriate behaviour? It might be that the most cursory enquiries by the employer would have revealed that the recipient of the letter did not work on the same site or in the same section as the female employee concerned and may indeed have never met her. In those circumstances, we venture to suggest that an Employment Tribunal would consider that the employer's prompt apology for the mistake and the removal of the apprehension that the recipient of any such letter would undoubtedly have, might well be said to have prevented such a breach. However, if the employer had not acted to check the protests of the innocent employee and allowed the matter to drag on before finally accepting the mistake must have been made by them, then different considerations might apply.

38. Having looked at the Tribunal's decision in a robust way, we find nothing to support the suggestion that the Tribunal came to a view that there had been a breach of contract that was cured by the emollient approach of Ms Pera and Ms Neveldsen. We consider that, properly construed, the decision amounts to findings by the Tribunal that, although Mr Cooper had behaved badly towards the Claimant, his behaviour was not so serious as to justify the Claimant leaving and there was a finding that the fair minded way in which the investigatory meeting proceeded was such that it prevented the matter escalating into a state of affairs that would have justified the Claimant leaving and claiming he was constructively dismissed."

61. Clearly, in the present case, as Mr Haddow points out, the claimant still had available to her a right of appeal under the respondent's grievance policy in terms of which a hearing had been fixed for the day after her resignation. He argued that it was 'fatal to her case' that the claimant had not followed through with the grievance process and that a reasonable employee would have followed through with it. I did not agree with that analysis, which was not developed further. The question is whether Mr Clark's conduct of the grievance process to that point was sufficiently serious to amount to a breach of the implied term and justify the claimant leaving. A breach of the implied term is always repudiatory. Was it a breach of the implied term, in which case the appeal was an invitation to affirm the contract, and the claimant was entitled to refuse it if she elected to do so? Alternatively, was it not sufficiently serious as to amount to a breach of the implied term and justify the claimant leaving, in which case the appeal hearing might have prevented the matter escalating into such a breach? I have concluded that the conduct in question *was* sufficiently serious to amount to a breach of the implied term and that the claimant was entitled to refuse the invitation to affirm the contract by attending the appeal. I accepted her evidence that she had, by that stage lost all trust and confidence in the respondent.

62. I also concluded that the claimant resigned in response to the breach and not for some other reason. This was clear from her evidence which I accepted. It is also clearly set out in her resignation letter. I concluded that she did not delay or affirm the contract. In all the circumstances, the claimant was dismissed for the purposes of Section 95(1)(c) of the Employment Rights Act 1996. The dismissal was unfair, there being no discernible potentially fair reason for it on the evidence before the Tribunal. The claim therefore succeeds.

Remedy

63. The claimant is entitled to a basic award. Her salary at the time of dismissal was £24,990 per annum gross. Her bonus for the year ending 31 December 2016 was £2,438, giving total annual pay of £27,428 (CF). That gives a weekly gross figure of £527.46. At the date of termination of employment the maximum week's pay for calculation of the basic award was £479. The claimant was over 41 for the whole of her employment with the respondent and the age factor of 1.5 for each year of employment applies. She had three completed years of employment with the respondent. 4.5 x 479 = £2,155.50.

64. The claimant also seeks a compensatory award. Section 123(1) Employment Rights Act 1996 provides that "*the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer*".

65. The claimant was unfit to work for two weeks from the date of her resignation (27 March 2017) due to falling downstairs in her home. Once she had recovered she went to Lisbon for a week to join her husband who was working there. Ordinarily she would not be able to claim for that period. However, she is entitled to three weeks' statutory notice pay (effectively the measure of damages for breach of contract) which she has claimed. This covers the period in question. The claimant began looking for work in or about mid-April 2017 and secured agency work from 6 May to 25 July 2017 (11 weeks), earning £240 per week.

66. The claimant did not state in evidence what her net pay was. Take home pay from a salary of £27,428 deducting the usual amounts for tax and National Insurance brings out a net weekly salary of £421.74. Since the claimant has been earning £442.30 per week since 25 July 2017 in her new role, there has been no on-going loss from that date and there is no future loss on the evidence before me.

67. It is appropriate to make an up-lift to the compensatory award to reflect the respondent's failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. The relevant statutory provision is section 207A of the Trade Union and Labour Relations Consolidation Act 1992. The claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies. The respondent failed to comply with the Code by failing to hold a grievance meeting. That failure was unreasonable. In those circumstances, the Tribunal may, if it considers it just and equitable in all the circumstances to do so, increase the compensatory award by no more than 25%.

68. Circumstances relevant to the consideration of uplifts vary from case to case but normally include consideration of whether the procedures were applied to some extent or ignored altogether; whether the failure was deliberate or inadvertent; and whether there were any mitigating factors. Taking account of these considerations, I have concluded that there was partial compliance with the Code in that investigations were made, and an outcome letter issued. However, the failure to meet with or consult the claimant during the grievance process was inexplicable. I concluded that the failure was inadvertent and that there were no real mitigating factors. I assess the percentage uplift at 20%.

69. I did not consider that the claimant's failure to proceed further with the grievance process was unreasonable in the circumstances for the reasons outlined above. She was faced with a breach of the implied term and was entitled to accept it and resign. There is accordingly no corresponding reduction.

Basic award

3 full years of completed service @ £479	
Statutory maximum) x 1.5 (age factor)	£2,155.50

Compensatory award

Past loss	
Loss of net earnings from 27 March to 6 May (6 weeks) @ £421.74 Shortfall in net earnings 6 May to 25 July 2017 (11 weeks. (£421.74 - £240 = £181.74 x11	£2,530.44
Net loss of earnings from 26 July 2017 to date of Tribunal	£1,999.14
Future loss	
Nil	Nil
Loss of Statutory rights	£400.00
Total Loss before uplift	£4,929.58
Add 20% uplift	£989.92
TOTAL COMPENSATORY AWARD	**£5,915.50**

Employment Judge: M Kearns
Date of Judgment: 13 July 2018
Entered in register: 17 July 2018
and copied to parties

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