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# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs P Davis  
**Respondent:** Essex County Council  
**Heard at:** East London Hearing Centre  
**On:** 18-20 September 2018  
**Before:** Employment Judge Russell

**Representation**  
**Claimant:** Mr S Rahman (Counsel)  
**Respondent:** Miss R Azib (Counsel)

## JUDGMENT

The judgment of the Employment Tribunal is that:-

- (1) The claim of unfair constructive dismissal fails.
- (2) The protected disclosure claim is dismissed upon withdrawal.
- (3) The claim for notice pay is dismissed upon withdrawal.

## REASONS

1 By a claim form presented to the Employment Tribunal on 8 December 2017, the Claimant brought complaints of unfair constructive dismissal by reason of a protected disclosure and for failure to pay notice pay. The Respondent resisted all claims. The agreed list of issues is at page 47 of the bundle. The Claimant withdrew her claims in respect of protected disclosure and notice pay and the hearing proceeded without lay members to decide the constructive dismissal claim only.

2 I heard evidence from the Claimant and her husband on her behalf. From the Respondent I heard evidence from Mr Orhan Ismail (Interim Head of Operational Systems and Development); Mr Martin Organisciok (Senior HR Consultant); Ms Rudia Tsai (Fostering Team Manager for West Quadrant), Ms Sue Kearns (Fostering Team Manager for Mid Quadrant) and Ms Carrie Scott (Placement Social Worker). I

was provided with an agreed bundle of documents and I read those pages to which I was taken in evidence.

### Findings of fact

3 The Respondent is a local authority providing a range of services to residents within the county of Essex. These include foster care services within the School's Children and Families' Directorate. The county is divided geographically into quadrants, each with its own supervising social workers and placement social workers. The supervising social workers are responsible for providing support and oversight of foster carers within the area, each is allocated a number of foster carers to whom they offer advice, guidance and support as well as assisting the carers to ensure that they meet the national minimum standards and regulatory requirements. The placement social workers are responsible for placing children with available and appropriate foster carers either long term, short term or for respite care.

4 The Respondent uses a social care case management system (Mosaic) to maintain an electronic social care record for vulnerable adults and families. It is used to record contact with individuals and record assessments, reviews and details of support to meet identified social care needs.

5 The Claimant commenced her employment with the Respondent in 2007 initially as a temporary business support worker. From 14 January 2008, she was working in a permanent role as ICS Support Adviser based in the School's Children and Families Directorate. Her place of work was Goodman House, an open plan office in Harlow as part of the West Quadrant and her role involved working with the Mosaic system. She was managed at the relevant times by Mr Ismail.

6 The Claimant and her husband were approved as foster carers by the Respondent in 2011. Mr Davis is the primary foster carer. At the time of their application for approval, the Claimant disclosed that she was employed by the Respondent. In the approval report it is noted that the Claimant said she would like to give up work completely in time. Since their approval, the Claimant and her husband have provided foster care to a range of children, including the long-term placement of a child.

7 Until 2016, the Claimant and Mr Davis' were allocated to the West quadrant and their supervising social worker was Christina Torres-Eve. They enjoyed a positive and constructive working relationship and no actual difficulties arose from the Claimant's dual position as employee and also foster carer in the same quadrant.

8 Ms Tsai moved to the West quadrant in June 2016 as Fostering Team Manager for that area. Shortly after her transfer, Ms Tsai became aware that the Claimant was both a foster carer and employee in the West quadrant. Ms Tsai was concerned that this could give rise to a potential conflict of interest in several ways: first, where as an employee the Claimant became aware of confidential information about other foster carers in the same quadrant and with whom she networked in her capacity as a foster carer. Second, where Ms Tsai was concerned that other foster carers may accuse the Claimant of having improper access to information about a possible placement or other foster carer by virtue of her employment. Third, where

social workers may feel awkward discussing confidential matters relating to other foster carers in the open plan office and which may be overheard by the Claimant.

9 The Claimant and Mr Davis do not agree that these were real concerns. They are entitled to that opinion but I accept as truthful Ms Tsai's evidence that her concern was genuine and objectively it was for good reason. Ms Tsai was not exaggerating or embellishing her evidence about the conversations with social workers in the team shortly after she joined in which they said that they felt at times that it was difficult to have conversations about other foster carers because the Claimant may overhear. In order to minimise any potential or apparent conflict of interest, Ms Tsai decided that the Claimant and her husband's fostering should be transferred for allocation and supervision to another quadrant. The Claimant retained access to Mosaic and could, in theory, have accessed information about foster carers in her new quadrant but there was never any suggestion that the Claimant was anything other than entirely honest and reliable. The risk to be mitigated was inadvertent acquisition of sensitive information either from records on Mosaic or conversations in the open plan office, not deliberate misuse by the Claimant of her position as an employee.

10 The Claimant was not the only foster carer to be affected by concern about a possible conflict of interest. I accepted as credible and reliable Ms Scott's spontaneous response to a question in cross-examination when she gave the example of a situation where another foster carer had been transferred to her supervision to avoid any conflict because her daughter worked at Goodman House. I also accept as credible and reliable Ms Kearns' evidence that she was not permitted to continue as a foster worker and to work for the Respondent as a supervising social worker senior or team manager in the same locality.

11 Ms Tsai was sufficiently concerned about the potential conflict caused by the Claimant's dual roles that she approached her own manager, Julie Bridger, and discussed it with her in supervision. The notes were not initially in the bundle and it was put to Ms Tsai that this was because they did not exist and that she was not a witness of truth. Ms Tsai was able not only to produce two relevant sets of notes the next day of the hearing but also the supporting evidence to show that they were contemporaneous and genuine. The note of a meeting in late June 2016, under the heading "Conflict of interest", records concern that the Claimant might hear personal talk and discussions about other foster carers. It was agreed that this needed to be considered, that Ms Bridger should speak to the Claimant's manager and there be a further discussion. In fact, there was no discussion with Mr Ismail but at the supervision meeting on 6 July 2016, it was agreed that another quadrant team would be approached to take over supervision and that Ms Tsai would explain the rationale.

12 Following the supervision meeting, Ms Tsai contacted Ms Kearns, her equivalent fostering team manager in the Mid quadrant and asked if the Claimant and Mr Davis could be transferred as foster carers. Ms Kearns identified Ms Carrie Scott as a potential supervising social worker. In her evidence, which I accepted as credible and reliable, Ms Kearns confirmed receiving the phone call from Ms Tsai and that she shared the concern that the Claimant's dual role as an IT supervisor and foster carer gave rise to a potential conflict of interest and that steps must be taken to minimise the risk.

13 At the time, Ms Torres-Eve was about to start a period of maternity leave. A foster care supervision meeting took place on 25 July 2016 attended by the Claimant, Mr Davis, Ms Torres-Eve and Ms Scott. A record of the discussion appears in the bundle. I accept that a copy of that record was provided to Mr Davis shortly after the meeting and that he subsequently signed to confirm that its content was accurate. The note contains the following:

**“Change of SSW to Mid Team/Hand over to Carrie Scott**

**I had spoken to Mick the previous week about the reasons why Mick and Pauline are transferring to Mid quadrant. For Pauline’s benefit, I explained again that this is happening due to a conflict of interest and issues of confidentiality given that Pauline works in the same office as the fostering and CIC (Children in Care) team. All foster carers who work for ECC are supervised by fostering teams from different quadrants, and Rudia made the team aware of this when she joined as manager.**

**I introduced Carrie to Mick and Pauline. Carrie explained that she is also the Placement Social Worker in Mid. Pauline wondered why they had not been allocated to South, as K is a south child. We discussed how supervision from Mid would work in the same way as when they had been allocated to West, and Carrie would have contact with K SW Ellyse. Carrie said that Mid is used to supporting carers out of quadrant. We agreed that Mick and Pauline should come off any West mailing lists, but they are more than welcome to attend West support groups – they have all the dates on an email from outreach worker Dawn.”**

14 The agreed action item was that Ms Torres-Eve would take them off the West fostering email list and that Carrie Scott would add them to the Mid fostering email list. The Claimant’s evidence was that she did not think that the move was unreasonable at the time. Her case was that the reasons for the move should have been discussed and it was not; she and her husband were led to believe that the reason for the transfer was Ms Torres-Eve’s imminent departure on maternity leave. On the balance of probability, I find that the conflict reason for the move was discussed in the supervision on 25 July 2016. It is consistent with the contemporaneous supervision notes of Ms Tsai in terms of the reasons for the transfer and the need to explain the rationale to them (albeit by Ms Torres-Eve rather than Ms Tsai in person). A copy of the note was provided at the time to Mr Davis and no challenge was raised to its accuracy or the reason for transfer. The Claimant accepted that it would have been out of character for Ms Torres-Eve to have recorded a discussion which did not in fact take place. Ms Scott gave oral evidence to confirm that the note was accurate. Whilst the Claimant sought to give evidence to the best of her recollection, and I do not believe her to have been knowingly untruthful, she was mistaken when she said that the first time that the conflict of interest point was brought to their attention was in April 2017.

15 The relationship with Ms Scott did not progress smoothly. In particular, the Claimant and Mr Davis perceived a conflict in Ms Scott’s duties as a Placing Social Worker and her role as their supervising social worker; namely her obligation to make placements as a PSW made her put them under pressure to take particular children whom they felt were unsuitable under threat of losing the additional payment as

advanced carers. Ms Scott vehemently denied that there was any conflict in her roles or improper pressure or threats; her role was to ensure that a child is well placed and his or her needs met by well-supported foster carers. For reasons addressed below in my conclusions, it is not necessary or helpful for me to consider any further the rights and wrongs of the problems which arose, not least as the Claimant and her husband continue to be foster carers. What is relevant is that the relationship between Mr Davis, the Claimant and Ms Scott broke down in April 2017. In a telephone conversation on 27 April 2017, Mr Davis indicated that he felt bullied by Ms Scott into taking unsuitable placements, that he was not being sufficiently supported and he no longer wished Ms Scott to be his supervising social worker.

16 Ms Kearns became involved as team manager and proposed that there be a meeting to discuss the difficulties and try to find a way to resolve the issues. Ms Kearns forwarded her emails directly to the Claimant in order that she be aware of the issues. The Claimant emailed Ms Kearns in response on 27 April 2017 setting out why a proposed placement was unsuitable and the pressure under which they felt placed. When Ms Kearns again suggested a meeting, the Claimant replied that Mr Davis would be willing to meet with Ms Kearns but not with Ms Scott present, he wanted to request a return to West quadrant where there were no difficulties or the allocation of a new supervising social worker if they were to remain in Mid.

17 Ms Kearns replied on 27 April 2017 to the effect that she would have to discuss a return to West with Ms Tsai because, as far as she was aware, the reason for the move to Mid was her employment in West and the possible conflict of interest. The Claimant replied the same day indicating that she was not really sure why there was a conflict of interest given her role as secondary carer was countrywide, the approval panel had been aware that she worked for Essex and neither they nor any subsequent reviews had raised a problem. The Claimant did not know why after nearly five years of working with West without any issues, it all of a sudden became a conflict of interest. The Claimant repeated Mr Davis' disappointment in being placed in Mid and desire to pursue the opportunity to return to West. Ms Kearns said she was unable to discuss the conflict of interest as she was not a party to any discussions or decisions and that it would have to be taken up with Ms Tsai who was copied on the emails.

18 Later that day, Ms Kearns sent an email to both the Claimant and Mr Davis confirming that the reason for the transfer from West to Mid was to protect the Claimant from a potential conflict of interest caused by her working in the department, that she had now discussed this with Ms Tsai and she included an extract from the supervision meeting on 26 July 2016 to which I have referred earlier. A meeting was proposed for 17 May 2017.

19 On 1 May 2017, Mr Davis wrote to Ms Kearns stating:

**“Although previously Pauline’s position in West has been vaguely mentioned in the past, you are the first person who has actually taken the time to officially confirm that her position creates a conflict of interest and this is what necessitated my role as a foster carer to be moved to Mid. It was thought this was more to do with staffing issues at the time our previous worker left for maternity leave.”**

The letter concludes:

**“Having discussed the situation with Pauline and knowing that I desperately wish to move back to the West area, Pauline has decided to resign her position of Mosaic Support Advisor in West from the end of June. I would like to request that if not before but shortly after this date I would like to be transferred back to West.”**

20 Mr Davis’ evidence was that he been spoken to previously about the transfer but not the reason and that his reference in this letter to previous comments about the Claimant’s position referred only to a throw-away comment by a social worker. Such a comment, even if throw away, is consistent with Ms Tsai’s evidence about awkwardness felt by social workers, albeit discussed more fully with her than the Claimant or Mr Davis. Mr Davis accepted that they would have remained in Mid had the relationship with Ms Scott not broken down over what they regarded as requests to take inappropriate placements.

21 On 1 May 2017, the Claimant informed the Respondent in writing that she was resigning her employment with effect from 30 June 2017 to enable herself and her husband to continue as foster carers in the West quadrant. As the reason for the move to Mid was said to be a conflict of interest, the Claimant said that her resignation was the only resolution possible without them stopping fostering. The Claimant said that she would miss her team, colleagues, staff and managers with whom she had had a good relationship and she wished them the best for the future.

22 In oral evidence, the Claimant initially stated that she believed that the Respondent had lied about the reason for the move and that the alleged conflict of interest did not make sense. Ultimately, however, she accepted that the Respondent believed that there was a conflict of interest but their inability to explain it and failure to discuss it with her had caused confusion. Consistent with her references to her good relationship with her work colleagues, the Claimant said that she had no issues with her manager or the staff at Goodman House and was happy in her job and working relationships. I accepted her evidence that the decision to resign was because of the problems in the fostering relationship. The Claimant accepted that Ms Kearns had not told her on 27 April 2017 that she had to resign or given an ultimatum but she had offered no other resolution and the Claimant could not see what else they could do as they could not return to West as foster carers whilst she remained employed at Goodman House.

23 The Claimant’s evidence is consistent with Mr Davis’ evidence about her reasons for resigning. He said that it was a culmination of events: they had been offered children who were not suitable, it became too much and the Claimant decided to resign in order to return to West. He also described a good relationship between the Claimant and Mr Ismail and they had believed that he would intervene to find a solution to enable the Claimant to remain in employment.

24 The Claimant’s letter of resignation was sent to Mr Ismail on 4 May 2017 and its contents discussed with him in a supervision meeting on 5 May 2017.

25 The Claimant’s evidence is that she made clear that she did not consider that

there was any conflict of interest, the issue had not been raised previously and she was resigning due to an ultimatum from Ms Kearns that she either resign or stop fostering. Mr Ismail said he would speak to Ms Kearns to see if the issue could be resolved without her leaving her employment, but that beyond an email sent on 11 May 2017 in which he sought to ascertain the position, Mr Ismail did nothing. As such, it was clear to her that Mr Ismail had accepted her resignation and was not going to try to resolve her concerns so that she could remain. The Claimant denied that Mr Ismail had offered to discuss alternatives, noting that he had not sent her a list of vacancies. The Claimant also denied that she had wanted to retire or that she had expressed that wish to Mr Ismail.

26 By contrast, Mr Ismail's evidence was that he was keen to keep the Claimant as he regarded her as very professional and thoroughly enjoyed working with her. After receiving the Claimant's resignation letter, he spoke to his own manager and was advised to speak to the fostering team as the reason for resignation related to their decision, not the Claimant's employment. He and the Claimant discussed her view that there was no conflict of interest. Mr Ismail told that the Claimant that if she was required to relinquish her job in order to transfer to West as a foster carer, he would be willing to look at other opportunities in the Respondent to avoid her leaving. After the meeting, he met Ms Kearns who explained the conflict issue. Whilst nobody had previously discussed the potential conflict problem, he understood that there may have been an issue from the point of view of foster care team although he believed more due to overhearing conversations than access to records on Mosaic. After meeting Ms Kearns, Mr Ismail's evidence is that he met the Claimant again and again said that if she wanted to continue in employment, he would try his best to find her another role and was happy to liaise with HR to find a solution. His evidence was that the Claimant advised that by that point she was fed up and was just looking to retire or find another job. Mr Ismail's oral evidence was that the Claimant had been considering retirement to concentrate on her foster caring and that she was clear that she wanted to leave rather than have him investigate alternatives.

27 I found Mr Ismail to be a credible and impressive witness who clearly valued the Claimant and her work highly. Although potentially harmful to the Respondent's case, he candidly expressed his view that the concern about a possible conflict should have been brought to his attention sooner and certainly before the Claimant felt that she had no alternative but to resign. Had it been, he believed it could have been managed for example by her moving to work in another quadrant. It is entirely plausible that he persuaded her to stay and I accept that he did. On balance, I prefer his evidence to that of the Claimant. Whilst no list of vacancies was sent to the Claimant, that was because the Claimant had clearly expressed to Mr Ismail her desire to leave rather than to consider an alternative to her job which would have enabled her to remain employed and transfer as a foster carer to West.

28 Ms Kearns gave evidence of a conversation with Mr Davis in late April 2017 when he told her that as the Claimant had decided to retire and invest more in her fostering care, there was no need to change the supervising social worker in the period prior to their move back to West. Despite being denied by Mr Davis, Ms Kearns' evidence is consistent with Mr Davis cancelling the proposed meeting on 17 May 2017 to discuss the problems in the relationship with Ms Scott and alternative arrangements. The evidence of Mr Ismail and Ms Kearns that the Claimant

expressed a desire to retire is also consistent with comments noted in the approval meeting in 2011 and later foster care and supervision records. The notes for 8 September 2016 include:

**“Mick and Pauline had had the chance to talk about their future as foster carers during their holiday; they prefer to continue as advanced and if it is better once Pauline retires for her to become the main carer.”**

The notes for 12 December 2016 include:

**“In June 2017 Pauline may plan to retire and may reduce her working days to 4 from January as a preliminary to this.”**

29 Whilst the notes do not show a settled intention to retire at the end of June 2017, the date when the Claimant’s notice expired, I do not accept the Claimant’s evidence that she was only referring to vague future plans. On balance, and in light of the matters set out above, I consider it more likely than not that the Claimant did tell Mr Ismail not to look at alternatives to remain in employment as she had decided to retire.

30 In June 2017 before her employment ended, the Claimant completed an exit questionnaire which she sent to the Respondent. The Claimant says that it included a grievance about being forced to resign due to the conflict issue and that she put forward suggestions that could have resolved the problem, such as moving to a different location in Goodman House or to another job with the Respondent. Mr Ismail and Mr Organisciok gave unchallenged evidence that the grievance was not received by them and it had not been submitted in line with the grievance procedure. I accept their evidence that this was the reason why there was no exit interview or grievance hearing. Given that Mr Ismail wanted to keep the Claimant as an employee, it is not credible that he would have disregarded alternatives, which he also believed may be a solution, had he received the grievance.

## Law

31 Section 95(1)(c) ERA provides that a dismissal occurs if the employee terminates the contract under which they are employed (with or without notice) in circumstances in which they are entitled to do so by reason of the employer’s conduct. Whether the employee was entitled to resign by reason of the employer’s conduct must be determined in accordance with the law of contract. In essence, whether the conduct of the employer amounts to a fundamental breach going to the root of the contract or which shows that the employer no longer intended to be bound by one or more of the essential terms of the contract, **Western Excavating Ltd v Sharp** [1978] IRLR 27 CA.

32 It was agreed between the parties as a matter of law that the conduct of the Respondent in the foster care context could be relevant depending upon the connection and the findings of fact, particularly where in both relationships honesty is integral and the duty of trust and confidence is replicated.

33 The term of the contract which is breached may be an express term or it may



be an implied one. In this case, the Claimant relies upon breach of the implied term of trust and confidence. This requires that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. The employee bears the burden of identifying the term and satisfying the tribunal that it has been breached to the extent identified above. The employee may rely upon a single sufficiently serious breach or upon a series of actions which, even if not fundamental in their own right, when taken cumulatively evidence an intention not to be bound by the relevant term and therefore the contract. This is sometimes referred to as the “last straw” situation. This last straw need not itself be repudiatory, or even a breach of contract at all, but it must add something to the overall conduct, **Waltham Forest London Borough Council –v- Omilaju** [2005] IRLR 35.

34 The question of fundamental breach is not to be judged by reference to a range of reasonable responses, **Buckland v Bournemouth University Higher Education Corp** [2010] IRLR 445, CA. The tribunal must consider both the conduct of the employer and its effect upon the contract, rather than what the employer intended. In so doing, the tribunal must look at the circumstances objectively, that is from the perspective of a reasonable person in the claimant’s position.

35 In **Tullett Prebon Plc v BGC Brokers LLP** [2010] EWHC 484 QB, Jack J stated at paragraph 81 that the conduct must be so damaging that the employee should not be expected to continue to work for the employer and that:

“Conduct, which is mildly or moderately objectionable, will not do. The conduct must go to the heart of the relationship. To show some damage to the relationship is not enough.”

36 Establishing breach alone is not sufficient: the employee must also resign in response to it and do so without affirming the contract. Once an employee has affirmed the contract, the right to repudiate is at an end. Mere delay in itself is not an affirmation, but prolonged delay may be evidence of an implied affirmation.

37 The employee must satisfy the tribunal that he left in consequence of the employer's breach of duty. There may be more than one reason why an employee leaves a job; it is enough that the repudiatory breach was an effective cause with no requirement that it be the most important cause, **Wright v North Ayrshire Council** [2014] IRLR 4. Where there are mixed reasons for resigning, any repudiatory breach established must be at least a substantial part of those reasons, **United First Partners Research v Carreras** [2018] EWCA Civ 323.

38 As summarised by Underhill LJ at paragraph 55 of **Kaur v Leeds Teaching Hospitals NHS Trust** [2018] EWCA Civ 798, in the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:

- (1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
- (2) Has he or she affirmed the contract since that act?
- (3) If not, was that act (or omission) by itself a repudiatory breach of contract?

- (4) If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation)
- (5) Did the employee resign in response (or partly in response) to that breach?

## Conclusions

39 The first act relied upon in the list of issues as forming part of the conduct amounting to a breach of the implied term of trust and confidence was the initial transfer of fostering arrangements to the Mid quadrant in July 2016. At the time of the transfer, neither the Claimant nor her husband complained. Until the relationship with Ms Scott broke down in April 2017, neither expressed any unhappiness with the transfer. Indeed, in her evidence at Tribunal, the Claimant accepted that she did not think that the move was unreasonable, simply that the reasons should have been discussed with her. Considered overall, I am not satisfied that the transfer *per se* was capable of being conduct amounting to a repudiatory breach in the circumstances of this case.

40 Even if the transfer itself were capable of amounting to a breach, I would need to consider whether it was for reasonable and proper cause. This leads into the second and third of the issues – was the reason concealed, lacking or fabricated?

41 In his submissions, Mr Rahman characterised the concern about confidentiality and protecting other foster carer's personal data as "ridiculous". I disagree. As set out in the findings of fact, I have accepted that Ms Tsai's concern about a possible conflict was both genuine and objectively for good reason. The risk was not an actual conflict of interest because there was no suggestion that the Claimant would deliberately act improperly to gain or use information either as an employee or foster carer. Rather, the risk was one of potential conflict where she may inadvertently become aware of information to which she would not otherwise have had access. This caused the risk of discontented fellow foster carers and at the very least awkwardness amongst social workers, as stated by Ms Tsai, and consistent with the evidence of Mr Davis about a comment to him from a social worker (even if it was 'throw away'). The concern was not specific to the Claimant but applied generally and similarly affected Ms Kearns and the foster parent whose daughter worked at Goodman House.

42 The very sensitive and confidential nature of the information relating to children to be placed and the details of their foster care was reasonable and proper cause for the Respondent to transfer supervision of the fostering relationship to a different quadrant. As Ms Azib submitted, this was the most practical and pragmatic solution as it had no effect upon her duties as an employee and did not affect her relationship with her colleagues.

43 In her own evidence, the Claimant ultimately accepted that the Respondent's belief in a potential conflict was genuine but that confusion had been caused by their inability to explain it and failure to discuss it with her. I have found that the reason for the transfer was discussed in the meeting with the Claimant and her husband on 25

July 2016. The reason was the concern about potential conflict, it was not the impending maternity leave of Ms Torres-Eve. The rationale for the concern was recorded in the written record of the discussion which was agreed by the Claimant's husband and copy provided to him. I do not accept Mr Rahman's submission that the Respondent misrepresented the reason for the transfer in July 2016.

44 Part of the Claimant's case for doubting that there could have been a conflict concern was the fact that it had not been raised before July 2016 when her employment had been known to all from the outset of the fostering relationship. This is a reasonable point for the Claimant to raise. However, I consider that it is fully answered on the facts of this case by the fact that it arose upon the arrival of Ms Tsai as Fostering Team Manager for the West quadrant. It may be that the previous manager did not share her concern (as indeed the Claimant does not), nevertheless it was a genuine concern which was objectively for reasonable and proper cause. Ms Tsai discussed her concern with her line manager, who supported her view.

45 Not only was the reason for the transfer discussed in July 2016, it was explained again in April 2017. Ms Kearns made a number of offers to meet with Mr Davis, had telephoned him out of hours and had provided a copy of the supervision note. Ms Kearns wanted to keep the Claimant and her husband as foster carers and the Claimant as an employee. I do not accept that there was concealment either at the time of the transfer or subsequently. Nor, on my findings of fact, have I found that the reasons for the transfer were lacking or fabricated.

46 Although not identified as an act or omission in the issues, the Claimant's initial case was that Ms Kearns had given her an "instruction to resign" on 27 April 2017 and that this was the last straw. In evidence the Claimant accepted that Ms Kearns had not given her an ultimatum or told her to resign, rather the Claimant had felt that she had no choice in the absence of any other suggested resolution. However, in the exchange of emails on 27 April 2017, Ms Kearns had suggested a meeting with the Claimant and her husband to take place on 17 May 2017. On 27 April 2017 the Claimant had suggested that one solution would be to stay in Mid but with a different supervising social worker. Mr Davis had also put forward this possible option. This proposal had not been rejected by Ms Kearns and was an alternative which could and would have been discussed at the meeting on 17 May 2017 had the Claimant not resigned. Objectively considered, an employee in the Claimant's position on 1 May 2017 could not reasonably have concluded that the only option was to resign her employment.

47 The other acts and omissions identified in the issues as part of the unfair constructive dismissal claim are the alleged failure to deal with the Claimant's oral complaint to Mr Ismail and failure to deal with her later written complaint under the grievance process. Both complaints were made after the Claimant had resigned her employment and, to that extent, could not be matters which were part of the conduct said to amount to a breach of the implied term of trust and confidence which caused her to resign. Moreover, I have accepted Mr Ismail's evidence that he made real efforts to resolve the situation. When he could not change the decision of the foster care team, he offered to look for alternative employment for the Claimant. Mr Ismail was supportive and, despite having been given very little opportunity to address the Claimant's concerns in circumstances where she resigned before speaking with him,

he tried his best to find a way in which she could remain an employee. The Claimant's written complaint was not made in accordance with the grievance procedure and was not brought to the attention of Mr Ismail or HR. This is the reason why there was no grievance process or exit interview and it constitutes reasonable and proper cause.

48 As Ms Azib submitted, the relationship between the Respondent and the Claimant as an employee and between the Respondent and the Claimant as a foster carer are governed by different agreements and they are separate roles. It is not a fiction as Mr Rahman submitted. The parties agreed, and I accept, that the conduct of the Respondent in the foster care context could be relevant to the employment relationship. It was common knowledge by all concerned in this case that the Claimant was both an employee and a foster carer. Honesty is integral to both relationships and the duty of trust and confidence is replicated in each. In short, I accept on the facts of this case that if the Respondent behaved in a way which was dishonest or underhanded in one role, then the Claimant's trust in the Respondent in her other role may also be destroyed or significantly damaged.

49 Based upon my findings of fact and conclusions above, I am not satisfied that the Claimant has proved any conduct by the Respondent as a whole (foster care and employment) which undermines the obligations of honesty and trust and confidence. There was reasonable and proper cause for the transfer of the foster care duties of the Claimant and her husband to the Mid quadrant, there was proper discussion and explanation of the rationale at the time and again in April 2017, there was a proposed meeting at which an alternative of changing supervisor could be discussed and there was no conduct by Mr Ismail which is capable of criticism.

50 Mr Rahman sought to rely upon an implied term of the contract of employment that the employer has to be flexible and/or co-operate with the employee so as not to destroy the relationship. Whether or not this is a discrete implied term or a facet of the implied term of trust and confidence, on the facts as I have found them, I do not accept that there was any failure to co-operate or be flexible. Whilst the Claimant genuinely and subjectively felt that she had no alternative but to resign on 1 May 2017, she did so before Ms Kearns' proposed meeting where alternatives could be discussed and without giving Mr Ismail an opportunity to find a solution. Even after resignation, Mr Ismail tried to accommodate the Claimant's concerns and retain her as an employee. It was the Claimant who declined.

51 As a further alleged breach of the duty to be flexible or co-operate, Mr Rahman submitted that the Respondent (presumably in the guise of the foster care team) was under a duty to engage with Mr Ismail but failed to do so, suggesting that nobody was talking to each other or taking responsibility for treating the Claimant properly as an employee. Whilst not repudiatory in itself, this failure to engage 'goes into the pot' as he put it. I have found that Ms Bridger had agreed to speak to Mr Ismail before the transfer in July 2016 but did not do so. However, this was not a matter known to the Claimant at the time or at the date of resignation. Nor did the Claimant express any concern about the transfer in July 2016 even though, as I have found, she was told that the reason was concern about a potential conflict. In the circumstances, there was nothing to discuss further at that time with Mr Ismail. After her resignation in May 2017, Ms Kearns and Mr Ismail did talk to each other about the Claimant's

decision and Mr Ismail took responsibility for trying to find an alternative. As set out above, it was the Claimant who resigned before alternatives could be discussed and, having resigned, who declined Mr Ismail's attempts to enable her to remain.

52 The agreed issues identified five acts or omissions relied upon as breach of the implied term of trust and confidence and, as the case progressed, the Claimant also identified the 'instruction to resign' by Ms Kearns as the last straw. Each is dealt with above. In re-examination of the Claimant, Mr Rahman asked her about the extent to which the conduct said to be whistle-blowing detriment as set out at paragraph 2.6 of the issues and/or paragraph 63 of the Claimant's witness statement were part of her reasons for resigning. The whistle-blowing detriments which are not also identified as acts or omissions in the constructive dismissal claim are: (1) introduction of a placement officer as a supervising social worker, (2) a constant requirement to take inappropriate placements, (3) the constant threat of the removal of Mr Davis' advanced carer status, (4) failure to attempt to resolve the issues with Ms Scott, (5) failure to follow its own procedures and requirements in relation to placements, and (6) failure to approach the Claimant to see if she would be willing to withdraw her resignation.

53 Ms Azib objected, asserting that the Claimant should not be permitted to rely upon alleged conduct outside of the parameters of her pleaded case not least as she had been legally represented throughout. The matter was left to submissions. In the event, Mr Rahman did not address the additional detriments in submission but relied upon the transfer and its rationale, lack of discussion with the Claimant and/or Mr Ismail, failure to look to alternatives and the efforts of Mr Ismail being too little too late. In other words, the conduct pleaded in relation to the constructive dismissal and set out in the issues. To the extent that the Claimant had sought to rely upon the additional matters, I would have preferred the submissions of Ms Azib and found that they were not part of the pleaded case. In the claim form and in the agreed issues, the Claimant's case was that her protected disclosure claim was brought as a worker in respect of her role as a foster carer, the protected disclosures relate to the placement disagreements and the additional detriments arise in the capacity of foster carer (with the exception of withdrawal of resignation where I have found that the Claimant was approached by Mr Ismail about withdrawing her resignation). For these reasons, I did not consider it necessary or helpful for me to make findings on the dispute about the causes of the breakdown in the relationship between Mr Davis and Ms Scott.

54 For all of the reasons set out above, I have not accepted the Claimant's case that the requirement to move to Mid quadrant for supervision was a bad faith attack by the foster care team, deliberately to make the employment untenable and to destroy the relationship of trust. There was no conduct which individually or cumulatively amounted to a repudiatory breach of contract and the Claimant was not entitled to resign and treat herself as dismissed.

55 Further, and in the alternative, even if there had been a breach of the implied term of trust and confidence in the employment relationship I would not have found that it was an effective cause of the decision to resign. As I have found on balance, the Claimant had decided sometime earlier to retire and focus upon her foster care responsibilities and even when offered the chance of remaining in employment in an

alternative role and being supervised in West quadrant had decided nevertheless that this was the time to retire. Whilst there is no legal requirement for the employee specifically to specify in her resignation letter the conduct later relied upon as a breach, here the Claimant expressly stated that she has a good working relationship with her colleagues and managers. As a matter of fact, I have found that her reasons for resigning were those expressed in the letter and not, as now suggested, some concern about the conduct of Mr Ismail.

56 For all of these reasons the claim of constructive unfair dismissal fails and is dismissed. At the conclusion of the hearing, I expressed my hope that the parties are able to put these proceedings behind them and continue in their important work in providing high quality foster care to children in need in the Essex area. I am confident that each of those involved in this case is sufficiently professional to achieve this.

Employment Judge Russell

10 January 2019