



**EMPLOYMENT TRIBUNALS
BETWEEN**

Claimant

Respondent

AND

Mrs S K Bains

Walsall Metropolitan
Borough Council

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Birmingham **ON** 11th and 12th December 2018

EMPLOYMENT JUDGE Richardson

Representation

For the Claimant: in person

For the Respondent: Mr Abdullah, Solicitor

RESERVED JUDGMENT

The judgment of the Tribunal is that

- (1) The claimant's claim of constructive unfair dismissal is well founded.
- (2) The matter is to be listed for a remedy hearing.

REASONS

Background

1. The claimant was employed by the respondent organisation (Walsall MBC) from May 2010 as a social worker in the Learning Disability Team. Following an incident when a service user, W, made threats of violence towards the claimant and her family during the claimant's absence on holiday in late October 2016, the claimant raised a grievance about the way in which the threats were notified to her on her return to work. She was concerned about the lack of procedure that was followed by her team leader following the threats; she eventually resigned due to the respondent's alleged failure to support her and to deal with her grievances of November 2016 and November 2017 appropriately or at all. She resigned on 3rd December 2017 and claims constructive unfair dismissal.

Evidence

2. I was provided with an agreed bundle of documents exhibited as R1. I heard evidence from the claimant and her husband Mr Lakhmir Baines. The witnesses appearing for the respondent were Ms J Harvey, Advanced Practitioner and the claimant's supervisor; Mr P Calder, Team leader; Mr N Gordon, Senior HR Advisor; Mr M Thom, Head of Community Care.
3. I was also provided with a statement by Ms S Cadman, retired, former employee in the Learning Disability Team and Trade Union representative. I informed the claimant that the evidence in a statement which has not been tested in cross examination will be attributed such weight as I consider appropriate.

Findings of Fact

4. I make my findings of fact on the basis of the material before me taking into account contemporaneous documents where they exist and the conduct of those concerned at the time.
5. I have resolved such conflicts of evidence as arose on balance of probabilities. I have taken into account my assessment of the credibility of witnesses and the consistency of their evidence with surrounding facts and documents. I did not doubt for a moment the honesty of the claimant. I also had no credibility concerns with any of the witnesses each of whom were straight forward and appeared to be doing their individual best to assist the tribunal with the facts as they perceived them to be. Both Mr Calder and Mr Thom, to their credit, made relevant concessions during cross examination.
6. My findings of fact which are relevant to the issues which have been determined are as follows:
 - 6.1 In 2015 the claimant was allocated to the case of W who was diagnosed with learning disability and mental health issues resident with Pathways 4 Care (Pathways), a social care provider providing 24 hour supported living. He had a deficit in his social skills and lacked the ability to understand social situations and relationship. He was easily influenced by others and had a history of being coerced to engage in criminal activities. He was a vulnerable adult, at risk of emotional financial sexual and physical abuse and had a history of being used as a modern slave.
 - 6.2 It was well known in the multi disciplinary team which supported W that his mental health deteriorated when he refused to take prescribed medication. He would disengage with his family and service providers. He could be unpredictable, agitated and physically and verbally aggressive putting himself and others at risk of harm.

At the relevant time W was the subject of a deprivation of liberty order (DOL).

- 6.3 Information about W's needs and behaviour, assessment, support plans and risk assessments, court reports and case records were recorded on the respondent's computer system. There was also recorded on the system known as 'Mosaic', a warning that W was not to be visited alone.
- 6.4 When W's family arranged his marriage in Pakistan against a court order and returned to the UK, the claimant was the social worker 'on the ground' dealing with the situation. The claimant liaised with the legal department, the Home Office and the Police and on instruction from the Home Office, with the Police, she intercepted W at the airport on his return from Pakistan to take him to a place of safety, a hospital, and later to supported living. The claimant submitted further reports to the Court and obtained a court order which she delivered to W's family with the assistance of the police on 10th May 2016. The claimant was also involved in subsequent Court of Protection hearings. W and his family members were unhappy that he was not permitted to return home and to continue with the marriage and as a result during the court process W refused to engage with the claimant. Through his advocate, WS, of Advocate Matters, W made a complaint about the claimant and requested a change of social worker. The complaint was not upheld following investigation, and a change of social worker was refused.
- 6.5 During the week commencing 22nd October 2016 the claimant and Ms Harvey, her supervisor, were on holiday.
- 6.6 On 24th October 2016 WS had left a voice mail message on the claimant's phone at 4.28pm asking her to return the call as a matter of urgency. The claimant did not pick up this call until she returned from holiday.
- 6.7 On the following morning 25th October 2016 Ms Riggon, an Advanced Practitioner dealing with W's case in the absence of the claimant, emailed her team leader Paul Calder, cc'd to J Harvey, reporting a call from WS that W had been very agitated the previous night and had made threats to leave his accommodation and had made some very graphic threats about the claimant. He had threatened to bury her alive, would harm her in front of her children, would find out where she lived and was sending friends to her address to harm her. WS did not think the threats were credible but felt she should nevertheless make the social care team aware of them. Ms Riggon stated she had not entered the information on Mosaic as she did not want to upset the claimant. Ms Riggon asked Mr Calder, the Team Leader what steps she should take about the threats as they had a duty to ensure that the claimant did not feel unsafe or intimidated whilst working.

There was already a marker stating that W should not be visited alone, so, she asked, what other steps could be taken?

- 6.8 According to the Respondent's Aggression and Violence Safety Management Standards, Ms Riggon, or the Team Leader should have immediately reported a serious incident such as this to the police.
- 6.9 Mr Calder's team did take steps to manage the situation – they liaised with Pathways, the community nurse and the advocate; 1 to 1 supervision of W was increased; increased 1 to 1 supervision; liaising with Pathways to ensure that he did not leave the premises. Mr Calder's team in conjunction with WS took the view that the claimant was not a risk when she returned from holiday. They were all aware that W regularly made threats of violence against all carers and professionals, including doctors and these had never been acted upon.
- 6.10 The claimant returned to work from annual leave on 31st October 2016, as did Ms Harvey.
- 6.11 On arrival at work and prior to speaking to the claimant, Ms Harvey, who had been copied in on emails concerning W during the previous week and knew of the threats of violence, asked Mr Calder the team leader whether he had informed the claimant about W's conduct the previous week and that threats to her had been made. He had not done so and went to speak to the claimant at about 9.30am on 31st October 2016.
- 6.12 Mr Calder informed the claimant that whilst she was on annual leave there had been a dip in W's mental health and behaviour, so a senior manager had to agree emergency additional 1 to 1 support funding that week. The claimant and Mr Calder had a brief discussion about W not engaging with the claimant as he blamed her for the safeguarding arrangements, breaking up his marriage and bringing shame on his family, the DOL order and the restrictions on family contact. The claimant confirmed that W had never before threatened her. The claimant asked Mr Calder what threats had W made. Mr Calder reassured the claimant that it was nothing serious, just stupid empty threats and nothing for the claimant to worry about.
- 6.13 Mr Calder told the claimant that a case had to be presented for the 1 to 1 funding panel on 1st November for approval and said that he needed the funding forms prioritised and if time allowed, the claimant should update the assessments and support plan onto Mosaic. He stressed that the claimant should concentrate on the funding application for tomorrow's meeting.
- 6.14 Ms Harvey instructed the claimant to prioritise work on W's case, to

- update existing assessments and a support plan and complete the funding forms to request retrospective 1 to 1 funding at a panel meeting on the following day.
- 6.15 At about 3.50pm just before he left the office, Mr Calder checked how the claimant was progressing with the funding forms and reminded her that they were required the following day.
- 6.16 The claimant was concerned that something was going on that she didn't know about – another colleague, R, had warned her to be vigilant and think about her personal safety and she had wondered why. The claimant asked Ms Harvey and Ms Riggon who were still in the office, what had gone on with W last week and would someone tell her? Ms Riggon asked hadn't Mr Calder told the claimant? The looks and body language between Ms Harvey and Ms Riggon concerned the claimant; she said that she really needed to know what had happened. Ms Harvey then forwarded to the claimant the email she had received from Ms Riggon on 25th October 2016 referring to the detail of the threats to kill and harm the claimant's family.
- 6.17 The claimant was shocked by the threats to her family. She was speechless. She told Ms Harvey she was very concerned as W and his family were directing their anger at the claimant because of the court proceedings and the threats should not be taken lightly given W's forensic history and his family's disregard for authority. The claimant believed that W's family had 'long arms', that is, they 'knew people' and she did not know what they were capable of. The claimant was frightened and felt very vulnerable. Ms Harvey suggested that the claimant raise the issue with the funding panel and ask for the allocation of an alternative social worker. Ms Riggon who had handled the events of the week, who had been party to the decision making process about steps to be taken in response to W's threats, did not contribute to the conversation or give the claimant any assurances.
- 6.18 The claimant left the office early as she was concerned about her safety. She phoned her husband before she left the office and remained on the phone with him whilst she walked to her car.
- 6.19 The claimant discussed the events of the day with her husband. She was deeply anxious about her family's health and safety. She was disappointed and upset about the threats and the failure of Mr Calder to inform her of them or what steps had been taken to contain the situation.
- 6.20 Later in the evening of 31st October Mr Calder reported the threats made by W on 24th October for the first time to his senior managers including the legal section. He stated that he had had the opportunity to speak to the

- claimant that day about it and whilst there was no reason to believe the threats would be acted upon, they had been understandably upsetting for the claimant. He stated that he was meeting the claimant first thing on 1st November to discuss it further and would ensure that it was updated onto Mosaic and that they would liaise with the police although he thought the police would not take any action. He referred to making a short term arrangement regarding the claimant's car being registered to her place of work.
- 6.21 Mr Calder received an email at 08.42 on the morning of 1st November 2016 from Mr Orcott of the respondent's legal department that the matter should be reported to the police.
- 6.22 On 1st November 2016 the claimant was anxious about going to work but nevertheless after a sleepless night, attended an appointment already in her diary with another service user. She was unaware of Mr Calder's intention to meet with her that morning to discuss the situation concerning the threats by W.
- 6.23 In the morning of 1st November 2016 as Mr Calder could not reach the claimant by phone, he left a voice mail message requesting an update on the funding meeting later that day.
- 6.24 The claimant called him back and said that the news of the threats yesterday had had significant detrimental impact on her and she had not been able to finish the funding forms. Mr Calder said the claimant should nevertheless deliver the retrospective funding application to the funding panel verbally and when the claimant voiced her concerns about W's threats and why he, Mr Calder, hadn't told her about them, he commented "Well you know about them now". The claimant asked Mr Calder why he had not discussed reporting the incident to the police yesterday. He replied that it had been reported to the police at 9.30am that morning 1st November.
- 6.25 The claimant informed Mr Calder that she was not in a fit state to make an oral delivery to the funding panel in the circumstances. The claimant asked Mr Calder for his support to convey that message to the funding panel. Mr Calder was reluctant and arranged to see the claimant at the office later that day. The claimant was very unhappy at Mr Calder's attitude, his overriding concern appeared to her to be about the funding panel presentation rather the safety of his staff; the claimant thought that Mr Calder had dismissed too easily her concerns about W's threats against her and her family's safety.
- 6.26 It transpired that Mr Calder's assurance that the matter had been reported to the Police was not an accurate statement. Ms Riggon had contacted

- the police on the morning of 1st November 2016 but the police would not take a report from someone other than a person who had witnessed the verbal threats. Ms Riggon immediately emailed WS, There was no explanation for why she had not also contacted the claimant.WS explained to Ms Riggon that the police needed WS to contact them urgently to give them a statement about W. WS declined to contact the police because she did not believe that W's threats should be taken seriously. The claimant was unaware of this.
- 6.26 The claimant, still deeply concerned about W's threats and her perceived lack of support from her team leader, had confided in a work colleague, SC who was an experienced social worker and also a trade union representative. She told Ms Cadman about W's threats to her and her children and how vulnerable she felt. She told Ms Cadman about what she saw as Mr Calder's dismissive attitude to the threats. Ms Cadman told the claimant that nothing should be left to Mr Calder given, in her opinion, his negligent attitude and that the claimant should report the matter herself to the police.
- 6.27 On 1st November 2016 at about mid day, the claimant emailed Mr Calder. She informed Mr Calder that she was shocked by the source and the threats that were made against her, her children and her home. She complained that Mr Calder had not made her aware of the threats when she spoke to him on her return to the office on the morning of 31st October. She and her husband were very concerned that Mr Calder not only failed to disclose the threats made, but also did not discuss police involvement or re-allocating the case to another worker. He hadn't discussed the claimant's health & safety with her. She stated that she was now not able to continue to work on the case and that it should be reallocated to another social worker ASAP. She asked for a formal meeting at Mr Calder's earliest convenience.
- 6.28 The claimant also forwarded a copy of her email to Mr Calder to Ms P Furnival, executive director Adult Social Care, for information. Ms Furnival forwarded the email to Mr Thom.
- 6.29 Mr Calder responded by email that he would arrange a meeting room and that he was happy to qualify the steps taken and plans made following their phone conversation earlier that day.
- 6.30 Mr Thom emailed the claimant to confirm that he would meet with Mr Calder and his Group Manager to look into the issues that the claimant had raised.
- 6.31 Mr Calder suggested to the claimant by a further email that they could meet at 2pm on 2nd November 2016 and asked if the claimant would want

a chaperone. The meeting at 2pm was in fact a scheduled supervisory meeting between the claimant and Ms Harvey which Mr Calder thought would be convenient time to also discuss W's threats to the claimant and what steps had been taken in response.

- 6.32 The claimant emailed Mr Calder to inform him that she had asked SC to accompany her to the meeting and requested Mr Calder to change the meeting to 1pm which was more convenient for Ms Cadman. Mr Calder had already confirmed in person to the claimant in the office that the arrangement was fine. Later in the evening of 1st November 2016 he emailed the claimant to reassure her that the Complex Team were taking the claimant's health and safety concerns very seriously and at their meeting (on 2nd November) he would be able to reassure her of the steps that had been taken and to be taken moving forward. He also confirmed that on advice from the senior management team and HR, it was not appropriate at this point for a colleague to sit in.
- 6.33 In cross examination Mr Calder was vehement that he was never going to accept Ms Cadman as a representative for reasons he was unable to disclose for privacy purposes. However, Mr Calder did not inform the claimant at the time that the issue of representation was Ms Cadman personally rather than refusing her emotional support at the meeting. The claimant wanted to be accompanied for emotional support in a meeting with Mr Calder, not to be represented. From my observation of the claimant during the two day hearing she was more capable of presenting the issues to Mr Calder - they were already committed to writing in any event. Mr Calder and Mr Gordon who had advised Mr Calder, had not realised that the claimant wanted emotional support rather than trade union representation. This was one of a catalogue of failures in communication between the parties, the majority attributable to the respondent.
- 6.34 The claimant forwarded Mr Calder's email to Mr Harrison of Unite saying she felt very vulnerable and without support.
- 6.35 On the morning of 2nd November the claimant emailed Mr Calder that she would have to speak to Unite before she attended the proposed meeting at 1pm that day.
- 6.36 The claimant spoke to Mr Harrison who was of the view that by not giving the claimant the information concerning W, Mr Calder had placed the claimant and her family at risk. He recommended that the claimant did not meet Mr Calder alone.
- 6.37 The claimant forwarded Mr Calder's email refusing to allow Ms Cadman to attend the meeting, to Mr Thom explaining that she had attempted to

- arrange a meeting with Mr Calder to discuss her concerns about how he had mis-managed the risks and the claimant's situation. She had attempted to meet with Mr Calder and resolve the issues on an informal basis. However, Mr Calder had refused to allow the claimant the emotional support she required at the meeting at such a stressful time for her. She asked Mr Thom to invoke the formal grievance procedure. She confirmed that she would forward a formal grievance form in due course.
- 6.38 On 2nd November the claimant also contacted the police to follow up on the report that Mr Calder said had been made at 9.30am that morning on 1st November. The claimant did not know that FR had unsuccessfully attempted to report the matter to the police or that only herself or W could report the matter. The claimant also did not know at this stage that W had refused to report it. Not surprisingly the claimant was astonished to be informed by the police that no report about W had been logged from the respondent or the advocate. The claimant was shocked and believed that Mr Calder had deceived her when he told her that it had been reported to the police on 1st November. She was now worried about how she was going to address her concerns with Mr Calder. She had already received advice on being vigilant with regard to her health & safety.
- 6.39 By 2nd November the claimant was exhausted by her anxiety and concerns about her and her family's security because of the threats made by W and by what she perceived to be a failure of her employer to be concerned for her and her family's health and safety. She could not focus on anything else and could not work. She self certified absence from work and in fact never returned to work before her resignation a year later.
- 6.40 At 1.15pm on 2nd November Mr Calder left a voice mail message for the claimant as he had been expecting her into work that morning and he didn't know where she was; there was nothing in her calendar. He wanted to know about her welfare and whether she was going to attend their meeting arranged for 2pm that day.
- 6.41 At 1.50pm the claimant emailed her supervisor Ms Harvey to confirm that she was unfit to attend work for the week due to work related stress. She asked that Mr Calder did not contact personally her again. She had been advised (by her trade union representative) not to have any contact with him especially not by telephone.
- 6.42 On 2nd November the claimant requested Pathways to provide her with the incident report and daily log of 24th October 2016. On receipt of the incident report and daily log, the claimant was further distressed to read the full extent of W's violent threats which were recorded in detail. The incident log also stated that at 10pm that night W had been watching You

- Tube videos of people in Pakistan with guns. The claimant knew that W had a previous criminal conviction for possession of an imitation fire arm. The claimant was concerned that if W's mental health dipped again, that unless any police officer attending an incident was fully aware of the threat made by W to 'knife the police' they would be at risk.
- 6.43 The claimant phoned the police to provide them with the Pathways incident report. The police updated their intelligence and immediately requested to bring forward their diary appointment with the claimant and W's advocate, from 7th November 2016. The claimant phoned W's Advocate, to see whether she was available to meet the police that day, 2nd November. WS informed the claimant that the agency had taken the decision that they would not report W's threats to the police and she had already emailed this decision to Ms Riggon. WS then forwarded to the claimant the email she had sent to the Advocacy Matters management team relaying this information. WS stated in the email that she did not think that the threats made by W were serious and had she thought they were serious she would have reported it to the police. WS stated that the remarks made by W had been reported to the claimant as a matter of good practice, not because they were felt to be serious. WS said that had phoned Ms Riggon merely to inform her of the threats so that the claimant would be made aware of them. The claimant did not think that this accorded with WS's voice mail message to her asking the claimant to contact her urgently.
- 6.44 The claimant met the police on the evening of 3rd November 2016. They provided the claimant with advice on security and reassurance. The threats were to be investigated as an offence. The police intended to speak with the Advocate regardless of her refusal to report the matter to them; it was their view that the Advocate should not be making a judgment on the credibility of any threats to life; good practice was to report the threats to the police. W's threats were not reported to the police by Advocacy Matters until 5th November 2016.
- 6.45 On 3rd November the Pathways manager emailed the claimant, probably not knowing the claimant was off sick, to inform her about the steps they had taken at W's accommodation to contain the situation with W and that she had taken the unilateral decision to put in place additional 1 to 1 hours over 24th and 25th October because it had been initially refused by Ms Riggon in the Social Care Team. The Pathways manager had been concerned that W did not abscond whilst he was in a highly agitated state. The Pathways manager wanted the claimant to know what steps Social Care had taken and wanted Social Care to acknowledge the steps the Pathways manager had taken, and to acknowledge the support that she was asking for; she wanted someone at Social Care to take responsibility. The Pathways manager stated that it might have been a very different

- outcome if she had not put the extra support in place for W. She was also unhappy about the response from Ms Riggon in the days immediately following concerning W's contact with his family and Social Care requiring the Pathways manager to tell W and his family that they should not visit him. She believed that it would affect W's relationship with Pathways who were at the front line of supporting him on a daily basis.
- 6.46 The Pathways manager's email deepened the claimant's anxiety.
- 6.47 The claimant was by now suffering from extreme stress anxiety and sleep deprivation. She had not attended work since 2nd November and was signed off on 10th November 2016 with work related stress.
- 6.48 The claimant believed that her managers had regarded W's threats as being 'just part of the job' and had not taken them seriously and had therefore not acted upon them despite HSE advice that violence and aggressive incidents being the third biggest cause of injuries reported to the HSE from the health and social care sector. She believed Mr Calder as team leader, had failed to disclose to her personally the content of W's threats to her, had not discussed police involvement, did not reallocate the case to another social worker or discuss measures to protect the claimant's health and safety at work. Finally Mr Calder had refused to allow the claimant the emotional support she wanted at a proposed meeting with her.
- 6.49 The claimant emailed Mr Thom to lodge a grievance against Mr Calder. Mr Thom replied on 3rd November and attached a copy of the Grievance and Dignity at Work Procedure and asked her to complete a grievance form. He referred to the procedure commencing with an informal grievance but as it involved the claimant's line manager he would appoint a Group Manager to look into the grievance.
- 6.50 The claimant forwarded Mr Thom's email to Mr Harrison at Unite and asked how she should respond as she did not think that this was a matter which could be dealt with informally any longer.
- 6.51 On 5th November Ms Harvey informed the claimant by text that Advocacy Matters had now reported the incident of W's threatening behaviour to the police.
- 6.52 On 7th November 2016 Mr Harrison informed the claimant by email that he did not think the stage one informal grievance process was appropriate in the circumstances given the seriousness of the failings of the claimant's managers.
- 6.53 As a result the claimant emailed Mr Thom on 10th November 2016 to

- request again a formal grievance investigation into her complaints about Mr Calder's conduct. She was requesting, on the trade union's advice, that given the serious nature of her concerns and the impact the threats had had on her and her family, she wanted a full investigation to be carried out by a senior manager who had had no direct involvement in managing or overseeing the case. She confirmed that she had started to collate information but it was very distressing to her to do so. On GP advice she was resting to manage the symptoms of work related stress and that she would forward the grievance form in due course.
- 6.54 On 10th November 2016 the Group Manager Mrs Pugh, Mr Calder's line manager, phoned the claimant to inform her of her involvement in the investigation process and requested a meeting with the claimant. Mrs Pugh had been appointed by Mr Thom to pursue the informal grievance raised by the claimant. The claimant told Mrs Pugh she was currently not feeling well. Mrs Pugh asked the claimant to contact her when she felt better and provided her contact details.
- 6.55 The respondent subsequently alleged that Mrs Pugh had tried several times to contact the claimant without success. The claimant was clear that Mrs Pugh had never tried to contact her on several occasions as there had been no emails or missed calls or voice mail calls from Mrs Pugh. There was no documentary evidence of Mrs Pugh's alleged calls or when they were made, and no witness statement from her on the point. Given the anxiousness with which the claimant wanted a grievance investigation to start, I think it unlikely that if Mrs Pugh had subsequently followed up her initial call, it was likely the claimant would have acknowledged it. I accept the claimant's evidence that she had no further follow up contact from Mrs Pugh.
- 6.56 On 10th November 2016 the claimant emailed Mr Harrison to check whether there was a deadline for lodging her formal grievance as she was not sleeping well and her GP had told her to rest and get her strength back.
- 6.57 Mr Harrison advised the claimant that Mrs Pugh, as Mr Calder's line manager, was not an appropriate person to investigate the claimant's grievance against Mr Calder.
- 6.58 On 21st November 2016 Mr Thom emailed the claimant to explain he had to be satisfied that the informal grievance process had been completed without a resolution and ask for confirmation the claimant wanted to move to a formal grievance procedure.
- 6.59 On 27th November 2016 the claimant completed the respondent's formal grievance form requesting a full investigation into: (i) why critical

- information regarding her family's health and safety had not been shared with her on her return to work on 31st October 2016; (ii) why the matter had not been reported to the police on 24th October 2016 and (iii) why the respondent's own policy on Aggression and Violence Safety Management had not been followed. It stated she wanted an apology from Mr Calder acknowledging the stress and upset as a result of poor practice and neglect of the duty of care of the respondent.
- 6.60 The content of the formal grievance had already been covered in the claimant's emails to Mr Calder and Mr Thom. As a result, on 16th December 2016 Mr Thom emailed the claimant to confirm that despite the claimant not having yet met with any manager to discuss her grievances informally, given the email exchanges which had already taken place between the claimant and Mr Calder and other Advanced Practitioners, he was prepared to treat the informal grievance stage as completed and would appoint another manager to fully investigate the claimant's grievance formally. Mr Thom reminded the claimant that he was still waiting to receive her formal written grievance.
- 6.61 The claimant did not receive Mr Thom's email of 16th December and was unaware that he had not received her formal grievance of 27th November 2016. She was waiting for her grievance to be progressed.
- 6.62 On 20th December 2016 the claimant's husband showed her a reply he had received from the respondent to a complaint he had personally raised with them. In that response reference was made to the matters that the claimant had raised "in accordance with [the respondent's] grievance procedure". The claimant was not therefore alerted to the fact that the respondent was still waiting to receive her grievance form.
- 6.63 On 16th January 2017 Ms Harvey paid a welfare visit to the claimant accompanied by Mr Harrison, at which it was agreed she would be referred to Occupational Health and that she should attend counselling which had been suggested by her GP.
- 6.64 On 2nd February 2017 the claimant attended an occupational health assessment arranged by the respondent which recommended a speedy resolution to her grievance to assist her return to work.
- 6.65 On 27th March 2017 a further welfare visit took place, attended by Ms Harvey and Mr Gordon of HR with Mr Harrison of Unite also in attendance. The claimant informed them that she was still very unwell, has sleep issues and anxiety and that she had been informed by her doctor to rest. Ms Harvey's handwritten record of the meeting included the comment:

"Grievance resolution

Explaining grievance made her fell worse GP said park it for now. Not in right place.

6.66 Ms Harvey's note also says:

"Sukki still waiting for a reply from Paula Furnival re complaint."

6.67 It was recorded in the welfare report that the claimant was attending counselling for her anxiety and sleep issues and would be commencing a course of CBT over a period of 6 – 8 weeks. Mr Gordon, informed the claimant that they would be looking into hiring an independent investigating officer to carry out an impartial investigation. The claimant agreed to the proposal. Mr Harrison agreed that the investigation should proceed even if the claimant was not well. The claimant was still unaware that her formal grievance of 27th November 2016 had not been received as Mr Gordon did not mention that Mr Thom was still waiting for it.

6.68 On 24th May 2017 Ms Harvey informed the claimant by text that an independent person, Mrs P Downey, had been appointed to investigate the grievance and suggested that the claimant could speak to Ms Downey either by phone or in person. Ms Downey was an independent HR consultant taken on by Mr Thom to investigate several grievances for the respondent, of which the claimant's was one.

6.69 The claimant heard nothing more until a further welfare meeting on 25th July 2017 (although the form says, I believe mistakenly, 25th May) with Mr Gordon and Ms Harvey about the claimant's progress and possible return to work and what actions would enable a return to work. The claimant had completed a CBT course and had just started to receive counselling. The claimant explained that she had suffered an episode of severe stress a few years ago and had believed that those issues had been resolved but this current episode had made her realise that she still had unresolved issues from the previous occasion. The claimant agreed to be referred to Occupational Health in 3 – 4 weeks time.

6.70 No mention was made by Mr Gordon of the claimant's grievance process or that the respondent still awaited the claimant's formal written grievance.

6.71 On 31st August 2017 the claimant's new Team Manager, Ms B Wright phoned the claimant twice and left a voicemail message asking the claimant to phone her. Ms Wright introduced herself as the new team leader and said she wanted to check that the claimant had posted her sick notes since 8th August 2017 as without them Ms Wright was concerned that the claimant wouldn't be paid.

- 6.72 On 22nd September 2017 Ms Wright visited the claimant by arrangement. It was to be an informal meeting at which Ms Wright would introduce herself. The claimant was advised by her trade union not to discuss her sickness absence or return to work with Ms Wright and to stop the meeting immediately if Ms Wright attempted to do so. At the meeting with the claimant Ms Wright did start to question the claimant about her grievance; the claimant refused to continue the meeting, following her instructions from Unite. Ms Wright never mentioned that the respondent still awaited the claimant's formal grievance.
- 6.73 On 6th October 2017 the claimant had not received any update from Ms Downey on how her grievance was progressing. She contacted Ms Downey directly to ask what progress had been made and was informed by Ms Downey that she had not undertaken any investigation. She informed the claimant that she had informed Mr Thom months ago that she was unable to carry out the investigation.
- 6.74 On 9th October 2017 the claimant had a meeting with her Unite representative. It was almost a year since the claimant had raised a grievance. The claimant and her Unite representative were of the view that the delay was not acceptable. The claimant had lost confidence in Mr Thom's ability to follow the grievance process. The claimant felt the information from Ms Downey that she had informed Mr Thom month's ago that she could not carry out the investigation for personal reasons, and the respondent had done nothing else to progress her grievance, was the last straw. The claimant sought legal advice and considered her resignation. The claimant's Unite representative persuaded her not to make any rash decision and proposed a further meeting with the respondent. Unite recommended a second grievance should be raised to prompt the respondent into resolving the claimant's first grievance.
- 6.75 On 17th October 2017 the claimant attended Occupational Health again and informed the practitioner that her grievance was still outstanding. The Occupational Health report referred to the symptoms of anxiety and stress that the claimant was experiencing and that she experiences high levels of stress when she thinks about the situation or when having to deal with correspondence to any involved party. The report stated that a return to work would be facilitated if a conclusion to the grievance could be achieved. The claimant was continuing to engage with counselling sessions since July 2017.
- 6.76 Between 17th and 25th October the claimant's Unite representative had a meeting with the respondent. The respondent informed the Unite representative and therefore the claimant for the first time that it still had not received a formal grievance from the claimant.

- 6.77 On 25th October 2017 the claimant had still heard nothing from the respondent since May 2017 about her grievance. She emailed her Unite representative confirming that she had reluctantly decided to take their advice and extend her sickness absence by a further month. If Unite were unable to progress her issues with the respondent she requested access to legal advice via Unite to explore her options. She was considering another grievance but doubted it would have any effect.
- 6.78 The claimant believed the respondent was disingenuous about not receiving her formal grievance form. She forwarded to Unite a copy of her emails to Mr Calder and Mr Thom at the relevant time and a copy of her grievance form. She recited that her grievance had been acknowledge by Mr Gordon at a welfare visit in March 2016 and had said that an independent investigator was being appointed. She had then received the independent investigator's particulars.
- 6.79 Unite and the respondent entered into settlement discussions. The offer made by the respondent was considered by the claimant to be insufficient to compensate her for the breach of contract, breakdown of mutual trust and confidence that had resulted in her position at work becoming untenable.
- 6.80 On 2nd November 2017 the claimant was contacted via Unite by a manager, Ms S Lloyd appointed by the respondent to investigate the claimant's grievance. Ms Lloyd asked United whether the claimant wished to participate in the grievance process. This was the first time the claimant was made aware that Ms Lloyd had been appointed as investigating officer. The claimant asked Unite for assistance in escalating the grievance by lodging a further formal grievance about the respondent failing to progress her first grievance.
- 6.81 Unite wrote to Ms Lloyd to ask when did the respondent say that the claimant had refused to participate in the grievance process?
- 6.82 Ms Lloyd replied on 6th November 2017 by email to Unite confirming that her brief for investigating the grievance stated that the claimant was absent due to stress and did not wish to participate in the investigation. Ms Lloyd alleged that the claimant had initially submitted her concerns to Mr Thom and confirmed that she would provide a formal written grievance. As far as Ms Lloyd was aware, no formal grievance had been received from the claimant. Ms Lloyd understood that at the welfare meeting with Mr Gordon on 27th March 2017 the claimant had confirmed that she was not well enough to participate in a grievance and that therefore Mr Gordon had confirmed that the respondent would have to consider progressing the investigation as far as the respondent could do so. Ms Lloyd believed that there had then been no further contact from the claimant since then.

- 6.83 Unite forwarded Ms Lloyd's email to the claimant for whom this was the first time she was informed that the respondent had not received her formal written grievance form. The claimant confirmed to Unite that she had no knowledge of Ms Lloyd's involvement in the grievance process and had been waiting for 5 months for an independent investigating officer to contact her. That is why she had tried to contact the Independent investigator (Ms Downey) in early October to find out what was happening and had only then discovered that Ms Downey had told Mr Thom several months previously that she could not undertake the investigation and that nothing had been done by the respondent. She was concerned that the respondent believed she had declined to participate in the grievance investigation process which was not true.
- 6.84 The claimant wrote a further grievance on 2nd November 2017 complaining that there had been a year long delay and failure to investigate her grievance of November 2016. This second grievance was lodged with senior management, P Furnival and with the Council's chief executive, Mr Sheehan. The claimant recited the history of her original grievance and confirmed that she had been waiting for 12 months for it to be investigated. The 12 month delay had resulted in the claimant having an extended period of sickness, loss of earnings causing financial hardship and a break down in confidence in the respondent's seniors managers' ability to follow internal policies and procedures. There had furthermore been no acknowledgment or reassurance that practices had improved at Walsall Council and no attempts had been made to facilitate and support the claimant's return to work.
- 6.85 Mr Sheehan's office confirmed that the grievance had been forwarded to Ms Furnival.
- 6.86 On 6th November 2017 Ms Lloyd wrote again to Unite to confirm that according to her brief, the claimant had not provided any further statement or information after her initial email to Mr Thom in November 2016. She stated that at the welfare visit on 27th March 2017 the claimant was asked if she would be willing to participate in a grievance investigation and she replied that she wasn't well enough to do so. She had been informed by HR at that meeting that they would have to consider progressing the investigation as far as they could without her involvement and there had been no further contact from the claimant since that date.
- 6.87 The claimant contacted Ms Downey to find out if she had been given the same brief which Ms Lloyd said she had been given and was told by Ms Downey that she had not.
- 6.88 Unite informed the claimant that S Lloyd was an unsuitable investigator as

- she was not a sufficiently senior manager, she was a team manager. On 10th November 2017 the claimant emailed Unite asking for legal support as the continuing delays and uncertainty were impacting her health further.
- 6.89 The claimant also emailed the Chief Executive on 10th November 2017 say that although she had received his acknowledgment, she had heard nothing from P Furnival. She stated that the issues she had raised with Mr Sheehan continued to have an impact on her psychological and physical health. She stated that she would appreciate the matter to be given some priority given the nature of her grievances and her request to higher managers for support and resolution.
- 6.90 On 15th November 2017 the claimant emailed Unite asking for a report on what they were doing on her behalf as the lack of information was causing her more stress and she was unable to make a decision on the way forward without understanding what her situation vis a vis the council, now was.
- 6.91 On 17th November the claimant emailed Unite seeking further detail on what progress if any they had made in discussions about her grievance with the respondent and pressed them again for access to legal advice. She set out clearly her position regarding the respondent's conduct since 31st October 2016. She was dismayed that since her email of 2nd November 2017 to the Council confirming her willingness to participate in the grievance process no one had contacted her or Unite to move matters forward. She again asked for access to a solicitor via Unite and confirmed that she would not accept any offers from the respondent at this stage of her grievances without guidance from a solicitor.
- 6.92 The claimant received no response from either Unite or the respondent. She resigned on 3rd December 2017 without notice. The resignation letter addressed to the Chief Executive. The claimant stated: *"despite my email to you dated 02.11.2017 one month ago and follow up email on 10.11.2017 requesting support at the highest level in the council, no one responded back to me during this month. I have tried my best to work with Walsall Council to resolve my grievance but there continues to be a lack of interest from managers to support me in this process. In the light of all the difficulties I have experienced with managers since 31st October 2016 and the reluctance to even communicate with me during the last month you have left me no choice but to resign from my position."*
- 6.93 The claimant set out in the letter the failures by the respondent's managers which the claimant considered to be a fundamental breach of contract:

- *Failure to warn me and my children of death threats made on 24.10.16*
- *Failure to report on the death threats to the police*
- *Failure to carry out a duty of care under health and safety legislation*
- *Failure to follow policy and procedures to manage aggression and violence*
- *Failure to provide an update of the grievance investigation since May 2017*
- *Failure to ensure that my grievance is investigated within a reasonable time frame*
- *Failure to follow the internal grievance processes, to investigate and bring serious concerns to an appropriate resolution.*

6.94 I record the following to complete the facts although they post date the claimant's resignation as it gives an insight into the respondent's (collective) mind set. Following her resignation the claimant received two letters through the post from the respondent during December despite them having her email address and having used it for correspondence previously. One of the letters was a letter from the Chief Executive dated 29th November 2017 refuting the claimant's complaints and exonerating the respondent, but nevertheless inviting her to a grievance investigation meeting with S Lloyd. The Chief Executive was of the view that Mr Calder had acted appropriately and the claimant had refused to engage with him in an informal process; that the claimant had failed to send in a formal grievance and had refused to engage in an investigation process.

6.95 The second letter was from Ms P Furnival dated 6th December 2017 commenting that as the claimant's Unite representative had been actively engaged in settlement discussion with the respondent since October and the claimant's final response in the settlement negotiations was not received until 27th November 2017 from Unite, the timing and content of the claimant's letter of 3rd December 2017 was wholly unjustified.

6.96 Ms Furnival offered the claimant the opportunity to reconsider her position and to engage in the investigation process. This offer was open until 12th December and if by that date Ms Furnival had not heard from the claimant she would proceed that the claimant wished to proceed with her resignation without contractual notice and her employment would terminate on 12th December 2017.

6.96 The claimant entered into ACAS early conciliation. Her ET1 was filed on 28th March 2018. There are no limitation issues.

Submissions

7. I heard oral submissions from both parties of which I have a detailed note kept on the tribunal file. The respondent's principal submissions were that the claimant was never at any time in danger from W. Mr Calder and the Social Care Team had undertaken a risk assessment, had put in place

appropriate measures and reached that conclusion which corresponded to the conclusion reached by W's advocate, WS, that the claimant was not in danger.

7.1 The claimant had refused to meet with Mr Calder. She had refused to meet Mr Calder's line manager Ms J Pugh; in the welfare meeting on 27th March 2017 the claimant refused to participate in the grievance investigation. Ms Lloyd got the same brief as Ms Downey and commenced the investigations.

7.2 The failure to reach a settlement was the last straw, the point at which her trust and confidence was broken but she then waited for another month before she resigned, thereby affirming her contract and losing her right to claim constructive unfair dismissal.

8. The claimant's submissions can be summarised to the principal points: the respondent, initially Mr Calder, had failed in its duty to inform the claimant of the threats against her; neither Mr Calder nor either of the two Advance Practitioners had informed and reassured the claimant of any steps that had been taken; the claimant had been told the matter had been reported to the police when it had not. It was not reported until 5th November 2016.

8.1 The respondent had failed to allow the claimant emotional support in her meeting with her line manager when the claimant felt vulnerable and highly stressed. The respondent had failed to give the claimant any support.

8.2 She refuted the allegation that she had refused to participate in the grievance process. When Mrs Pugh had contacted her, she had been too unwell to meet with her.

8.3 In March 2017 following the welfare meeting the claimant believed that the grievance process was being commenced with an independent investigator. The claimant was insistent that she did not refuse to participate.

8.5 The claimant discovered for herself in October 2017 that no grievance investigation had commenced at all. It was only after Unite was involved in without prejudice negotiations that S Lloyd was finally appointed.

8.6 The claimant had made it clear that she could return to work without knowing the outcome of the grievance.

8.7 The claimant had never refused to participate in the grievance process. It was the respondent who had failed to engage in the grievance process. That had not happened so after 13 months she resigned. No one had

taken any responsibility for anything regarding the investigation.

Law

9. Section 95(1) of the Employment Rights Act 1996 defines the circumstances in which an employee is dismissed. The parts relevant for consideration by this tribunal state the following:

“For the purposes of this Part an employee is dismissed by his employer if—

the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.”

10. To answer this question the tribunal must analyse the facts as follows. Did the employer terminate the contract? If not, did the employee terminate the contract? If so, was it in response to the employer’s conduct? If so, was the conduct a significant breach of one of the terms of the contract? If so, has the employee acted promptly? If these conditions are met, it is a constructive dismissal. If not, there is no dismissal. In the case before us there was no express dismissal by the respondent. The agreed facts are that the claimant terminated the contract on 3rd December 2018.

11. The important question in this case was whether or not the termination of the contract by the claimant was in response to the respondent’s conduct. Leading authorities from Western Excavating onwards show that the claimant must establish four conditions, namely:-

11.1 There must be a breach of contract on the part of the respondent and this may be either an actual breach or an anticipatory breach.

11.2 The breach must be sufficiently important to justify the claimant resigning or else it must be the last in a series of incidents which justify the claimant leaving his or her employment;.

11.3 the claimant must leave in response to the breach and not for some other unconnected reason.

11.4 He or she must not delay too long in terminating the contract in response to the employer’s breach, otherwise the employee may be deemed to have waived the breach and agree to vary the contract.

12. The claimant relies in part upon a breach of implied term of trust and confidence. The House of Lords in Malik v BCCI 119971 IRLR 462 held that the term was an obligation 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 confidence and trust between the employer and employee”.

13. The House of Lord looked at that proposition in Johnson v Unisys [2001] ICR 480 stating:

“This is usually expressed as an obligation binding on parties not to do anything which would damage or destroy the relationship of trust and confidence which should exist between them”.

14. Then, in the case of Safeway Stores -v- Morrow [2002] IRLR 9 the EAT gave authority for the view that a finding that there has been conduct which amounts to a breach of the implied term of trust and confidence will mean, inevitably, that there has been a fundamental or repudiatory breach necessarily going to the root of the contract.

15. In establishing items whether there has been a fundamental breach of the employee’s contract, an employee may rely on the “last straw” doctrine. The claimant may claim individual events or acts, none of which in themselves involve a breach of contract, but which taken together and cumulatively, amount to a breach of the implied term of trust and confidence.

16. That doctrine was considered in London Borough of Waltham Forest -v- Omilaju [2005] IRLR 35. The Court of Appeal, through Lord Justice Dyson said:

“Although the final straw may be relatively insignificant it must not be utterly trivial: the principle that the law is not concerned with very small things ... is of general application. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employer relies, it amounts to a breach of the implied term. It must contribute something to that breach, although what it adds may be relatively insignificant. I see no need to characterise the final straw as “unreasonable” or “blameworthy” conduct. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence”.

17. The guidance to tribunals in Omilaju was confirmed in the most recent case of Kaur v Leeds Teaching Hospital NHS Trust [2018] EWCA Civ 978.

Conclusions

18. It is clear to me that the trade union's formal involvement in guiding the claimant and their ultimate failure to respond to the claimant's requests for a report on what was happening and for legal advice was initially not helpful to the claimant and finally was a further cause of frustration and concern to her. However I have concentrated on the conduct of the respondent and whether or not there was a single act which repudiated the contract or whether this was a 'final straw case'.
19. I find that Mr Calder's conduct of the matter on the claimant's return from holiday was lamentable. Whilst he uttered concern about her well being in emails and in voice mail messages, the simple matter of informing the claimant on her first day back at the office and reassuring her what the social care team had done, would have avoided a great deal of anguish for the claimant and cost for the respondent. He could have done so in person on 31st October 2016 and over the phone or by email on 1st and/or 2nd November 2016 when it became clear that a meeting was not going to take place because a companion to the meeting with Mr Calder was refused.
20. Mr Calder made no real attempt to reach out and reassure the claimant, a person who reported to him, that she was not at risk from W and to explain what appropriate steps had been taken. Oddly neither did Ms Riggon, an Advanced Practitioner. Ms Harvey also an Advanced Practitioner who had spoken to both Ms Riggon and Mr Calder and was fully aware of the situation, also appeared to make no attempt to inform and reassure the claimant. It was plain to all three that the claimant was shocked and had been traumatised by the events of 31st October and 1st November and that she was bitterly disappointed in her team leader. None gave her the support and reassurance required.
21. To his credit, to an extent, Mr Calder accepted with hind sight that he "could have handled things better" but he still nevertheless believed that the claimant, as an experienced social worker, like all social workers, have to have some resilience when unpleasant issues arise with service users in the course of their work. That is undoubtedly true in principal. Mr Calder had taken the decision that the claimant was not actually at risk of harm from W because W had a reputation known to all the support providers that he could, when agitated and not taking his medication, make threats to his immediate carers, social workers and medical team. Unfortunately neither he nor any of his team, shared any of that information with the claimant, their work colleague. She had to make her own inquiries and find her own support. As a result she suffered unnecessarily, a great deal of anguish and fear for her family; She felt unsupported by her team leader and colleagues and she felt extremely

alone and vulnerable.

22. Mr Calder also did not report the matter to the police immediately. He did not report the matter to his senior managers and the respondent's legal team until he became aware that the claimant was very upset on 31st October 2016. He did not report the matter to the police despite it being in the respondent's own policy that it should have been, and despite being told on 1st November by the legal team to do so. When Ms Riggon did try to report the matter to the police and discovered that only the advocate or the claimant could report it, there was still no attempt to inform the claimant that the respondent was trying to report it to the police but they needed her assistance. The claimant was left completely in the dark and believing that she had been deceived by Mr Calder.
23. Mr Calder said that the department had learned lessons from the W incident and that changes had been made so that matters had improved. None of this was reported at any time to the claimant or to her trade union.
24. I accept the claimant's evidence that she had felt betrayed and belittled by Mr Calder by 2nd November and in those three days 31st October – 2nd November the claimant's trust and confidence had been broken and could not face meeting him personally. Viewed subjectively, I find that the claimant was entitled to feel as she did. The conduct of the respondent in the handling of the W incident was a fundamental breach of the claimant's trust and confidence.
25. The claimant did not resign immediately – she wanted to return to work with the respondent and she wanted Mr Calder to be called to account through the grievance procedure.
26. During the next twelve months no grievance investigation was carried out. The respondent sought to blame the claimant for this alleging that the claimant failed to file a formal grievance and also refused to participate in a grievance investigation. I accept neither of those premises as valid.
27. With regard to the alleged failure of the claimant to file her formal grievance in November 2016, the claimant believed it had been received by the respondent. She had emailed it. There was nothing to indicate to her that the respondent had not received it. She wondered in the course of her evidence at the hearing whether it had not been received because, when off work, her email account became full and for that reason she had not received the reminder from Mr Thom on 16th December 2016.
28. Whether or not that was the case, it remains a fact that despite several opportunities for the respondent to inform the claimant in person at no less than three welfare meetings and contact in person and by phone by two

- managers, that the respondent still awaited her formal grievance, it was never communicated to her that it had not been received until November 2017. If any one of the managers who had personal contact with the claimant between January – September 2017, had mentioned it, the claimant could have printed out a copy immediately. In any event, Mr Thom's evidence in cross examination was that he was sufficiently aware of the claimant's issues to progress the grievance from the claimant's emails in November/December 2016, without the formal grievance being received and this was evidence by his later appointing an independent (PD) investigator albeit 5 months later in May 2017.
29. With regard to failing to investigate the claimant's grievance, again inexplicably, Mr Thom did not know for month's that PD had withdrawn from her engagement to investigate the process and hence he had done nothing to progress the claimant's grievance after, at the latest, May 2017, already six months after he personally knew that the claimant had raised a grievance in emails copied to him and after she said she would forward a formal grievance to him.
30. Mr Thom said in cross examination that he had not been notified by PD that she no longer wished to undertake the instructions to investigate grievances for the respondent. Even if that were the case, it was unexplained why Mr Thom, or the HR managers, did not take any steps earlier to chase up a report from PD after the respondent had not heard from her after a few weeks. Mr Thom said having appointed PD he had just waited to hear from her.
31. The respondent's other principal allegation is that the claimant refused to engage in the grievance investigation procedure. That is not accurate. The claimant did not refuse to enter into the grievance process. She was too unwell for many months to participate in it – she explained to Mrs Pugh that she was too unwell and to Mr Gordon. It was clear that engaging in the process at least in the early months of 2017 had the effect of re-traumatising the claimant and her doctor recommended that she should not for the time being (March 2017). Mr Gordon had said they would progress the investigation as far as they could without the claimant. That claimant at the welfare meeting in March 2017 accepted that position. Ms Harvey noted at the March welfare meeting that the claimant was expecting some action from Ms Furnival. The claimant did not refuse to engage in the grievance process. The Claimant was told in May 2017 that an independent investigator had been appointed. She waited in vain for the investigation to commence. That failure was caused entirely by the respondent's lack of expedition or any sense that the matter should be given the necessary attention despite it being said twice by Occupational Health that the claimant's return to work depended on a speedy resolution of her grievance.

32. Between March – September 2017 there was no contact with the claimant requesting her to engage in the grievance procedure. The meeting with Ms Wright was for the purpose of introducing herself as the claimant's new team leader. No one communicated officially with the claimant about progressing her grievance until Ms Lloyd's approach to Unite in early November 2017 a year after the first grievance.
33. The excessive delay in commencing a grievance investigation and the failure to keep the claimant up to date was also a breach of the claimant's trust and confidence. By early October 2017 the claimant was at the point of resignation. The discovery that the independent investigator had not commenced the grievance investigation and she had had to discover that for herself, was, she said, the last straw.
34. The claimant however did still not resign; she was persuaded by Unite not to resign. There were settlement talks ongoing but there was no evidence before me that the respondent had agreed with the claimant, whether directly or through Unite that the grievance process was on hold. In any event, it could not have been as the respondent appointed Ms Lloyd in early November to progress the grievance even before the settlement talks ceased.
35. At late October/early November the claimant had affirmed her contract. However, the claimant's filed a second grievance on 2nd November 2017 addressed to the Chief Executive and Ms Furnival, the content of which is set out at paragraph 6.84 above. She received an acknowledgment from both the Chief Executive's office and Ms Furnival's office. The Chief Executive forwarded the grievance to Ms Furnival. The claimant then heard nothing and sent a further reminder to the Chief Executive on 10th November 2017 requesting that her grievance be given priority given the time that had elapsed. By 3rd December, a month after filing her second grievance, the claimant had no news from the respondent that her second grievance was being dealt with. I find in the circumstances of this claimant's case – more than 14 months since the index event and her raising valid and serious issues of concern of health & safety and good practise, the respondent had failed her repeatedly.
36. By 3rd December 2017 the claimant, on an objective view, was entitled to treat the lack of a meaningful response from the respondent as a further breach of trust and confidence which, cumulatively with the previous breaches of her trust and confidence referred to in paragraphs 24 and 33 above, was the final straw. She resigned in response to it.
37. The claimant was constructively unfairly dismissed on 3rd December 2017.

Employment Judge Richardson- 24th January 2019