EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4100519/17

Held in Glasgow on 19, 20, 21, 22 and 27 March 2018

Employment Judge: Robert Gall

Ms Cheryl Joyce McFarlane	**Claimant** **Represented by:** **Mr S Connolly - Solicitor**
South Lanarkshire Council	**Respondent** **Represented by:** **Mr G Stewart - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claim of unfair (constructive) dismissal brought in terms of Section 95 (1) (c) of the Employment Rights Act 1996 is unsuccessful.

REASONS

1. This case called for hearing at Glasgow on 19, 20, 21, 22 and 27 March 2018. The claim brought was one of constructive unfair dismissal. The claimant was represented by Mr Connelly. The respondents were represented by Mr Stewart.

2. Evidence was heard from the following parties: –

- the claimant.
- David McInarlin, the claimant's partner.
- Jim Gilhooly, who heard and determined the outcome of the disciplinary hearing.
- Carole McKenzie, who decided that it was appropriate to hold a disciplinary hearing, having considered the terms of the fact-finding investigation.
- Elaine Melrose, who carried out the fact-finding investigation.

3. The following parties are also relevantly mentioned:-

- OB, who made the report to the respondents in relation to the claimant.
- CS, who said she had an awareness on a hearsay basis of a concern being reported by OB to the claimant.
- AD, the child involved in the matters about which the report was made.
- AM, the teacher who OB stated to the respondents she had named to the claimant when reporting concerns to the claimant.
- Joyce Marshall, the respondents' then employee who carried out the initial fact-finding meetings and from whom Elaine Melrose took over.

- Isobel MacDougall, the respondents' Head of Education at the time when the report was made by OB and CS to the respondents. Carole McKenzie took over from Ms MacDougall.

- Marion Kelly, trade union representative for the claimant. She attended in particular a meeting on 15 June 2016.

- Alan Scott, trade union representative. He attended the disciplinary meeting and the meeting at which the outcome of the disciplinary meeting was made known to the claimant.

4. A joint bundle of productions was lodged. A joint agreed statement of fact/chronology was also lodged. I was grateful to Mr Connelly and Mr Stewart for the time and effort taken to produce the joint agreed statement of fact/chronology. The hearing ran far more smoothly due to there being such a document than it would have had nothing been discussed or agreed. Where the Judgment contains an agreed fact detailed in the joint agreed statement of fact/chronology, that is indicated by ("A") appearing after that fact.

5. The following are the relevant and essential facts as admitted or proved.

6. The claimant was born on 18 December 1983. She was employed by the respondent ("A"). She commenced her employment on 15 August 2006 ("A"). She was initially employed by the respondent as a Primary School teacher ("A"). Throughout the duration of her employment, the claimant worked at Chatelherault Primary School ("CPS") ("A").

7. The claimant took up employment with the respondent following on from leaving Strathclyde University ("A"). Her 1st year of employment with the respondent was her standard probationary year which all teachers require to complete to fully qualify ("A"). The claimant's probationary year was spent at CPS, in a mainstream primary 3/4 class ("A").

8. Following completion of the probationary year, the claimant applied for and was appointed to a permanent position with the respondent at CPS ("A"). The role the claimant applied for was within a specialist Autism Spectrum Disorder ("ASD") base within CPS ("A"). The claimant had a wish to specialise in this area and had committed free time during her probationary year to the ASD base to gain experience in this area ("A"). Following on her permanent appointment, the claimant undertook a further degree in Support for Learning ("A").

9. The claimant received an offer of appointment dated 21 July 2006 ("A"). This document appears at pages 1.66 to1.79 of the bundle.

10. The Head Teacher of CPS, Lesley Winters-McCann, was the line manager for all teachers. Tricia Smith was the line manager of all school support workers ("A").

11. The duties fulfilled by the claimant in working in the ASD base saw her deal with children with a variety of needs and behavioural issues ("A"). The children who attended the ASD base presented with multi-diagnoses, behavioural and learning difficulties ("A"). Many were non-verbal and some were not toilet trained ("A"). It required a close working relationship with colleagues and parents of pupils with in her care ("A"). The nature of the ASD base meant that children from a wider area than CPS's normal catchment area would attend ("A").

12. The claimant applied for and was appointed to the role of acting principal teacher ("APT"). She fulfilled this role from August 2014 onwards ("A"). The letter of offer, with associated documentation appears at pages 1.70 to 1.80 of the bundle. The claimant's salary as from this date was £39,606 per annum gross ("A"). She was also a member of the respondents' final salary pension scheme ("A").

13. At page 1.75 of the bundle. The following clause appears, the document being the conditions of employment of the claimant:–

> "**Work Location**
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> *Your work location will be as detailed in your Offer of Appointment. However, you are liable to transfer to such other place of employment/designated centre in the Council's service as may be required and as is deemed to be reasonable. This shall be operated within the terms of the Agreed Compulsory Transfer Agreement."*

14. In reality a teacher is transferred in circumstances where there is a surplus at one school, where a teacher requests a transfer and it is possible to accommodate that or where a final warning has been issued as a result of disciplinary action.

Policies and procedures – Disciplinary and Child Protection

15. The respondents' disciplinary procedures are set out in a document which appears at pages 1.80 to 1.102 of the bundle. The respondents' child protection operating procedure appears in the bundle at pages 1.104 to 1.133.

16. At pages 1.134 and 1.135 of the bundle a leaflet handed to all staff in CPS appeared. It is entitled "Child Protection Committee Guidance for all staff in Education Resources". Staff are reminded of the Child Protection provisions by the respondents at the start of each school year in August. Child protection is an important issue in any school. It is of even greater importance in an establishment such as CPS given that children have learning disabilities and special needs. In many instances the children are unable to speak and cannot therefore themselves voice any concerns or confirm events which may have happened.

17. In terms of clauses 5 and 6 of the disciplinary policy, pages 1.85 and 1.86 of the bundle, the following clauses appear:-

> *"5.6 Any investigation will be conducted as speedily as possible. A timescale will be set in advance based on the complexity of the investigation and the number of witnesses. In most cases the aim should be to complete an investigation within 15 working days. The investigating officer will notify the Executive Director or Head of Service if, for any reason, the set timescale requires to be revised and the teacher and his/her representative will be advised accordingly."*
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> *"6.2 During an Investigation*
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> *6.2.2 Where the total removal of a teacher from duty is not necessary, other options such as redeployment to other duties or relocation on the same or alternative duties may be considered. The decision to remove from the workplace on full pay or to redeploy and/or relocate will be confirmed in writing to the employee and the Executive Director of Finance and Corporate Resources advised.*
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> *6.2.3 The decision will be reviewed every 10 working days and the employee and the companion advised where appropriate. The Line Manager must also keen in regular contact with the teacher to keep them up to date on progress. This can also be arranged through the relevant companion if requested."*

18. The respondents' Child Protection policy refers to different types of abuse of children, physical, emotional and sexual. It also refers to neglect. It states *"Child Protection means protecting a child from child abuse or neglect. Abuse or neglect may not have taken place; it is sufficient for a risk assessment to*

have identified a likelihood or risk of significant harm from abuse or neglect." This passage appears at page 1.111 of the bundle.

19. The claimant was never subjected to any form of disciplinary or performance management process during her time of employment prior to the commencement of a disciplinary investigation in August 2015 ("A").

Complaint made to the Respondents' Confidential Telephone Line

20. In or around June 2015, the respondents received various complaints by a colleague of the claimant about concerns she alleged she held about certain practices which were occurring in the ASD Base ("A"). These complaints related to a number of individuals, including the claimant ("A").

21. These complaints were received on the confidential phone line provided by the respondents for intimation of any such issues.

Temporary Redeployment of the Claimant

22. The respondents contacted the claimant about the concerns raised in early August 2015, towards the end of the school summer holiday period ("A"). The claimant received a letter from Isobel MacDougall, Head of Education, dated 6 August 2015 ("A"). A copy of that letter appeared at pages 1.141 and 1.142 of the bundle. The letter advised the claimant that an investigation was being carried out into the following allegation:-

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> "*Allegation that you failed to follow Child Protection reporting procedures, and address concerns or take appropriate action, when you were notified by a colleague of inappropriate conduct towards pupils of CPS Base by a teacher"* ("A").

23. This letter went on to state that in terms of the Disciplinary Procedures for Teachers the claimant was to be temporarily redeployed to Hareleeshill

Primary School from 13 August 2015 to 26 August 2015. It stated that this would be reviewed after that time in relation to the progress of the investigation. It added that this was a temporary measure which would not be recorded in the claimant's personal record. The letter also asked the claimant to attend a fact-finding meeting with Dr Joyce Marshall on 26 August 2015, ("A").

24. The claimant reported to Hareleeshill Primary School on the first day of the 2015/16 school term ("A"). She was not allocated any particular class ("A"). Her duties at Hareleeshill did not, in the time she worked there, carry the same responsibility as was the case for her at CPS. The claimant was present at Hareleeshill from the start of the school term towards the end of August until she went on sick leave on 8 September 2015. In the final week before her absence through ill health she had worked as the teacher in a class, supported by 2 assistants.

25. The claimant was asked by the respondents to say, if asked, that she was at Hareleeshill doing "*development work".* This is what she said to staff at Hareleeshill. It is what she believes parents were told in relation to her absence from CPS. She did not return to teaching in the period from 8 September 2015 until her employment with the respondents ended.

26. Aside from attending meetings related to the respondents' disciplinary investigation process, 7 September 2015 was therefore the last date the claimant attended at work ("A"). Her absence for the period 8 September 2015 until the effective date of termination was as a result of stress and anxiety and further mental health issues ("A").

27. The claimant received regular letters from the respondents confirming her temporary redeployment to Hareleeshill Primary School was to be extended as a result of the ongoing disciplinary investigation ("A"). She received letters dated 26 August (page 1.145), 16 September 2015 (page 1.152), 23 September (page 1.153) and 12 October 2015 (page 1.154) confirming the

same ("A"). During her redeployment and subsequent absence the claimant was paid at the rate appropriate for an APT, subject to the contractual provisions in relation to pay during absence. She did not therefore suffer any deduction in salary.

Fact-Finding Investigation

28. The claimant attended a fact-finding meeting with Dr Joyce Marshall on 26 August 2015. ("A"). The minutes of this meeting appear at pages 1.146 to 1.151 of the bundle ("A"). These minutes are an accurate record of this meeting. Dr Marshall completed the initial fact-finding interviews before leaving the respondents' employment. When she left Elaine Melrose took over as fact-finding officer.

29. OB and CS also attended fact-finding meetings with Dr Joyce Marshall. Those meetings were held on 18 August 2015 (CS) and on 3 September 2015 (OB). Notes of those meetings appeared at pages 2.19 to 2.28 (CS) and at pages 2.39 to 2.47 (CS).

30. As a result of these fact-finding meetings the respondents were aware of a conflict in in the positions of OB and the claimant as to whether OB had spoken to the claimant about concerns which OB had as to AM "*losing the plot".* OB said this had been said. OB also said she had raised with the claimant concerns regarding AM and instructions which it was said were issued by AM as to the choosing of food for lunch by AD. AD was a vulnerable, non-verbal child. OB said that the claimant had not then explored with her the matters raised and that the claimant had not investigated them further. The claimant said that none of these matters had been raised with her by OB. CS said that OB had said to her that she (OB) intended raising these matters with the claimant and that OB had later confirmed to her (CS) that she had done that. CS said that OB informed her at that point that the claimant had not enquired further of her about the concerns she had raised with her. CS said she had witnessed OB speaking with the claimant just after

OB had told CS what she intended to raise with the claimant. Matters such as those which OB said she had reported to the claimant would be something which, if the claimant became of it, she would be obliged to take seriously and to investigate further as part of the Child Protection policy provisions. The claimant was aware of that and regarded herself as being obliged to ask questions about any such matter drawn to her attention and to investigate it further.

31. There was no previous difficulty or issue between the claimant and OB. The claimant regarded herself as having a good relationship with OB, one of friendship. The claimant considered that she had a relationship with CS which was on the basis of being colleagues rather than friends. There was however no "*bad blood"* between the claimant and either OB or CS. The claimant at no time alleged that there was any such "*bad blood".* OB and CS each had *"no axe to grind*" in relation to the claimant.

Pause in Fact-Finding Investigation

32. The intention was that the fact-find would conclude with a decision then being taken as to whether a disciplinary hearing was appropriately convened. Before that could occur however a police investigation began into matters involved AM. It was possible that criminal charges would as a result be brought against AM. The police investigation commenced in October 2015.

33. When the respondents became aware of these police investigations they wrote to the claimant. This letter was dated 22 October 2015. It appeared at page 1.155 in the bundle. That letter stated that the fact-finding investigation in relation to the claimant was temporarily suspended . It said:-

> "*The reason for this is that there are matters covered in some aspects of your investigation that have been referred to the Procurator Fiscal as part of an ongoing criminal investigation. As far as we are aware this does not relate directly to you, however it is considered*

appropriate that the Council hold off from pursuing investigation into this matter at the moment.

…I am not in a position to advise you how long it may be temporarily stopped at the moment, however should this change, I will provide you with an update."

34. A copy of this letter was sent to the claimant's then trade union representative Marion Kelly.

35. The claimant was never spoken to by the police in respect of any asserted wrongdoing or criminal act on her part ("A"). The claimant was never charged with any offence ("A").

36. The claimant received regular letters from the respondents in respect of her ongoing absence in terms of the respondents' absence management process ("A"). She received letters dated 11 November 2015 (page 1.156) and 4 December 2015 (page 1.157) in this regard ("A"). She attended meetings with the respondents known as "Attendance Support Meetings" to discuss her absence and possible support and assistance from the respondents. The claimant was referred for Occupational Health Assessment on 23 February 2016 and a report was prepared following on from this assessment ("A"). This appears at pages 1.171 to 1.173 of the bundle. That report refers to the claimant being unfit for work. It says this is because of "*the uncertainty she feels about the future, lack of trust and an inability to be in public places by herself."*

37. The claimant was badly affected by the allegation made and the fact-finding investigation being carried out. Anxiety and panic attacks resulted. She found it very difficult to go out from her house. She found it difficult in particular to be in Hamilton and also at any school building. This made it very difficult for her to be at her son's school. She was given medication by her GP to try to assist. Notwithstanding that, she found it difficult to avoid being upset and

worried. She was inclined to stay in bed. If she was outwith her house she was concerned that people were talking about her and that they held a view that she was "guilty" of inappropriate conduct in her role as a teacher.

38. The criminal case against AM was duly set down for trial. It related to the actings of AM towards the child AD. The claimant was scheduled to appear as a witness for the defence. After hearing the prosecution case, however the case proceeded no further. The claimant did not therefore give evidence in the case. The evidence which was led included information as to those actings that were said to have been made known to the claimant. The parents of AD were aware of that evidence.

39. In February 2016 the claimant was sent by the respondents a letter intimating that a fact-finding investigation was to take place into a different allegation ("allegation 2") against the claimant. A fact-finding meeting in relation to allegation 2 took place on 29 February 2016. The letter informing the claimant of allegation 2 and the notes of the fact-finding meeting appear at pages 1.165 to 1.170 of the bundle.

40. By letter of 14 March (page 2.1) the respondents confirmed that the decision in relation to allegation 2 was now to be intimated to the claimant after completion of the fact-finding investigation. A meeting to confirm the outcome was convened for and took place on 17 March 2016. At that meeting it was confirmed that outcome of allegation 2 was that the claimant had no case to answer and the matter would proceed no further.

Recommencement and Conclusion of the Fact-Finding Investigation

41. By letter of 13 April 2016 (page 2.2) the respondents wrote to the claimant confirming that the fact-finding investigation which had been placed on hold would now recommence.

42. Given the passage of time the respondents decided to interview once again the parties to whom they had initially spoken in the fact-finding process. This round of second interviews was carried out by Elaine Melrose. The allegation remained the same as before, as confirmed by the respondents in their letter to the claimant of 20 April 2016, page 2.3 of the bundle.

43. Interviews with the claimant (3 May 2016, pages 2.76A to 2.80), OB (21 April, pages 2.50 to 2.56A) and CS (25 April, pages 2.58 to 2.67) took place. Ms Melrose also met with and took statements from Laura Fleming, the line manager of the claimant, Tricia Smith, line manager of OB and CS and Lesley Winters-McCann, head teacher at CPS.

44. From those statements there remained a conflict as to whether anything had been said to the claimant by OB or "witnessed2 by CS. OB said she had spoken to the claimant about her concerns. She said she had said to the claimant that she:-

- "*wasn't comfortable with the way AM was doing snacks at snack time."*

- "*wasn't comfortable with the AM was feeding the children".*

45. OB said that she " *Started to doubt whether she had put her concerns across forcefully enough"* in speaking to the claimant. She said that she had said to the claimant that AM was "*losing it".* OB described to Ms Melrose that the claimant did notenquire with OB in relation to the concerns which she had had highlighted to her. The claimant said however that no such comments had been made to her by OB. CS said she understood that the comments had been made by OB to the claimant, although she had not personally heard OB telling the claimant. CS relied on what OB told her as to the content of conversations between the claimant and OB. CS confirmed once more that she had witnessed conversations between the claimant and OB and had spoken with OB soon before and after those conversations.

46. Ms Melrose completed her fact-finding report. A copy of it appeared at pages 2.12 to 2.16 of the bundle. It was submitted to Carole McKenzie who was by then the Head of Education with the respondents.

47. The conclusions of the fact-finding investigations were in a section of the report which appeared at page 2.16 of the bundle. The fact-finding report did not offer any view on the allegations or whether a disciplinary hearing was appropriate or not. It narrated the difference in the positions in particular of OB and the claimant. It highlighted that the claimant was not the line manager of OB or CS and that the line manager of those employees, Ms Smith, did not know why she had not been approached. It recorded that the claimant did not know why OB was saying that she had spoken with the claimant regarding any concerns and that the claimant had no concerns as to the conduct of the teacher referred to in the allegations.

48. Ms McKenzie considered the fact-finding report. She wrote to the claimant by letter of 7 June advising the claimant that the fact-finding had been concluded and inviting the claimant to a meeting with Elaine Melrose on 15 June 2016 to discuss the outcome of the investigation and to be advised if any further action was appropriate. A copy of that letter appeared at page 2.99.

49. The claimant duly attended that meeting. She was accompanied by Ms Kelly. Ms Melrose and Ms McKenzie were present at the meeting. There are no minutes of this meeting. It was a short meeting, lasting some 10 or 15 minutes.

50. Prior to the meeting Ms McKenzie had considered the fact-finding report. She noted the conflict in evidence as to whether concerns had been drawn to the attention of the claimant. She considered the report and appendices, the appendices being the notes of the interviews with the witnesses. Her consideration took a number of hours. It involved revisiting the papers after initial consideration of them.

51. The conclusion reached by Ms McKenzie was that there was doubt as to whether these concerns **had** been reported to the claimant, however it was, equally, not clear that they **had not** been reported to the claimant. She noted that a vulnerable child was involved. She was concerned about there possibly having been harm caused to a child who was non verbal. She was aware of there having been delay in the process. This was due in large measure to the fact-finding being put on hold during the criminal investigation process by the police and the subsequent trial. The matter being investigated in relation to the claimant was also a complex one. Her view was that she should make a decision as to proceeding with a disciplinary hearing or not on the information before her. She did not regard a further "round" of fact-finding as being likely to add anything. It would be productive of delay, she thought, in circumstances where two "rounds" of fact-finding had already occurred.

52. Ms McKenzie decided in light of the behaviour potentially involved and the possible failing by the claimant, together with the denial by the claimant of there having been anything reported to her, that it was appropriate to take the matter to a disciplinary hearing. Such a hearing would involve evidence being heard from witnesses. Questioning of those witnesses could take place. The person who was to determine the disciplinary hearing could then make up his or her mind as to what they believed had happened.

53. At the meeting on 15 June 2016, Ms Melrose confirmed the information in the fact-finding report to the claimant and Ms Kelly. Thereafter Ms McKenzie said to the claimant and Ms Kelly that her decision was that there would be a disciplinary hearing. Ms McKenzie made no comment as to the strength or otherwise of the case. Ms Melrose made no comment on the strength or otherwise of the case. No comments were made at the meeting by the claimant or Ms Kelly on the decision Ms McKenzie reached and communicated to them.

54. The claimant received a copy of the fact-finding report and the statements taken in course of it being carried out. She received those documents shortly after 15 June.

The Disciplinary Hearing

55. Mr Gilhooly was appointed as the person who would conduct and determine the outcome of the disciplinary hearing. He looked on an initial basis at the material before him. He could have asked for further fact-finding to be carried out. He could have decided that no disciplinary hearing was warranted. He was of the view, however, that it was appropriate to hold the disciplinary hearing in order for there to be an opportunity to hear evidence to enable a clearer view to be formed as to what had actually occurred. In particular the issue turned on whether there had or had not been something said to the claimant which highlighted a concern to her which, in turn, ought to have seen the claimant further investigate.

56. The disciplinary hearing was scheduled for 15 August 2016. It was then rescheduled for 6 September as the claimant's trade union representative was unable to attend on the date in August. The claimant then sought and obtained a further later date as she was unfit to attend in September. The disciplinary hearing took place on 14 October 2016.

57. The claimant was referred for a further Occupational Health assessment on 2 September 2016 ("A"). A report was produced and sent to the parties. ("A") A copy of this report is at pages 2.105 and 2.106 of the bundle. ("A") That report states that, in the opinion of Occupational Health Adviser who saw the claimant, the claimant could not teach at that time. He foresaw that the claimant's problems would not improve until there was closure and resolution of the circumstance she found herself in at that point. He referred to possible CBT counselling as being potentially helpful. The respondents did not however arrange this in the period from 5 September 2016 when the

Occupational Heath Report was issued, until the time of the disciplinary hearing on 14 October 2016.

58. The claimant attended the disciplinary hearing. She was accompanied by Alan Scott, her trade union representative. Mr Gilhooly was present as was a note taker for the respondents and a member of the respondents' personnel department. Notes of the meeting appear in the bundle at pages 2.115 to 2.148. Those notes are an accurate record of that meeting.

59. Mr Scott is an experienced trade union representative. He was, at the time, the field officer for the union for the West of Scotland. He has substantial experience in dealing with disciplinary matters on behalf of members. He and Mr Gilhooly had been in situations of discussion or negotiation on various occasions over some years. Mr Gilhooly was aware that Mr Scott would negotiate towards resolution of an issue or would stand firm as he saw fit on any particular matter.

60. There was no comment made at the meeting by the claimant or representative that Ms McKenzie or Ms Melrose had said on 15 June that the claimant had no case to answer.

61. Mr Scott referred at the outset of the meeting to wishing to ask questions based on the fact that evidence given at court in the case against AM conflicted with the fact-finding report. Mr Gilhooly made a ruling on this point after adjournment. Questions were limited to the fact-finding report.

62. Ms Melrose spoke to her fact-finding report. The witnesses appeared and gave their evidence. OB and CS were witnesses, as were Lesley Winters-McCann (head teacher) and Laura Fleming (Principal Teacher). Questioning of the witnesses took place. The meeting adjourned after approximately 1 hour and 45 minutes from time of commencement of the presentation of her report by Elaine Melrose. Mr Gilhooly said he would consider the all the evidence and then reconvene on 26 October to give the outcome.

Outcome of the Disciplinary Hearing

63. Mr Gilhooly thereafter considered all the information before him. He came to a view on the question of misconduct on the part of the claimant. He had had no previous interaction with or knowledge of the claimant. He regarded the claimant as convincing in her evidence. There was no 3rd party who was able to confirm what, if anything had been said to the claimant by OB. CS had not overheard any conversation. She spoke to what OB had said to her before and after OB said she had spoken with the claimant. Mr Gilhooly regarded there as being some inconsistencies in what had been said by those who said they had drawn the claimant's attention to concerns which they had.

64 The conclusion reached by Mr Gilhooly was that he tended to accept the claimant's position, that nothing had been said to her. He had sufficient doubt as to there having been anything said to the claimant to lead him to conclude, also taking into account the claimant's work history with the respondents, that there had been no misconduct on the part of the claimant. His view was that the reporting to confidential helpline by OB and CS was not done maliciously. The calls had been made, in his view, in good faith. He was conscious that it was not said by the claimant that OB and/or CS had any "*axe to grind"* as far as she was concerned.

65. There then arose for Mr Gilhooly the question as to what was to be his disposal of the case. He could confirm to the claimant that she could return to CPS. He was aware, however, that OB and CS remained there. The claimant had said during the disciplinary hearing that the allegations by OB and CS had had a dramatically detrimental effect on her mental health (page 2.143). She had described the impact of the whole process on her. He was also, more particularly, aware that the child, AD remained a pupil at CPS and would be a pupil there for some time to come. Further, the parents of AD were very vocal about the welfare of their child and what they perceived as failings in relation to that. The parents were aware of the claimant having been at the school and having been mentioned in course of the evidence led by the

prosecution in the criminal case brought against AM. They were aware from the trial that concerns about behaviour towards their child were said to have been made known to the claimant without investigation on her part resulting.

66. Mr Gilhooly did not have power to order or enforce transfer the claimant to a different school in the circumstances which pertained. He was aware of that. He only held that power in circumstances where a final written warning was being issued after the teacher had been "found guilty" of misconduct. He formed the view however that it would be advisable if the claimant did move school, in order to have what he viewed as a fresh start. He regarded there as being a conflict of interest in her position and that of the child AD and his parents.

67. Prior to the reconvened disciplinary hearing Mr Gilhooly telephoned Mr Scott. He explained the way he was thinking in relation to the claimant moving school. He confirmed that this was not a punitive step. Rather it was, in his view, in the interests of the claimant's welfare and care. There would be no career implications for the claimant in moving to the same position in a different school. Mr Scott confirmed that he accepted it would be inappropriate for the claimant to return to CPS in the particular circumstances of this case. There was no further contact between Mr Gilhooly and Mr Scott prior to the reconvened meeting.

Communication of the Outcome of the Disciplinary Hearing

68. The disciplinary hearing reconvened on 26 October 2016. Notes of the reconvened meeting appeared at pages 2.146 to 2.148 of the bundle. Those notes are an accurate reflection of that meeting.

69. Mr Gilhooly informed the claimant of the fact that there was in his view no substantive evidence which demonstrated that the claimant was told of concerns as to feeding of AD. He confirmed his view as being that the claimant was not guilty of misconduct of the type alleged. He confirmed that

no further action would be taken against the claimant. The notes of the meeting go on to state:-

> *"Jim further advised that although not finding against Cheryl he is of the view that it would be inappropriate for her to return to Chatelherault base since the relationship between her and the family involved with this situation will have been affected by Cherylbeing referenced in the Court proceedings.*
>
> *Jim stated this was not a punitive measure but rather as a risk based supportive measure which takes account of the potentially negative relationship between Cheryl and the family involved with this case who may now have a lack of confidence in her capacity to work with their child."*

70. There was no negative reaction from either Mr Scott or the claimant to this comment being made. Mr Gilhooly took it, particularly in light of his discussion with Mr Scott, that this was an acceptable course. Had any issue been raised with his view, he would have discussed that further. He was not in a position to impose this outcome. If the claimant had wished to return to CPS, Mr Gilhooly would have discussed that with her and highlighted his concerns. He would however have had no option but to sanction her return to CPS. Both at the reconvened disciplinary hearing and thereafter the question of the claimant returning to CPS or changing location of her work was not raised by the claimant or by anyone on her behalf.

71. A letter confirming the outcome and that no further action would be taken was given to the claimant. It was dated 26 October. A copy of it appeared at page 2.149 of the bundle. It went on to say:-

> *"I also advised that it would not be appropriate for you to return to Chatelherault Base and you will be advised in due course of your new work location."*

Claimant's Health

72. Unfortunately, the claimant's health had not improved since her commencement of sick leave. It had, if anything, deteriorated. She was prescribed medication. She had regular GP appointments. A letter dated 20 September 2016 from the claimant's GP confirming those appointments and the medication prescribed to the claimant appeared at page 3.44 of the bundle. It contained the following sentence:-

> "*At the present time she remains significantly anxious and I would have very grave concerns that she would ever be able to return to her career."*

73. The claimant had become very concerned in the period prior to the disciplinary hearing at the time which was being taken to conclude the investigation into the allegation which had been made against her. She had also grown increasingly concerned in the time between the allegation being known to her and the disciplinary hearing that, as a teacher, she was in a position where an allegation could be made at any point which might result in an investigation and potential disciplinary hearing. As the disciplinary hearing drew closer, the claimant's health was such that could not, in September 2016, envisage a return to work.

74. The claimant found in around January 2016 that baking assisted her mental health. This had become clearer over time from March of 2016. In March she had baked a celebration cake for her son's birthday and had enjoyed doing that. She was encouraged by her family and friends to bake other such cakes. She did that as she felt able. She found it continued to assist her mental health. She did this in her own home. The claimant welcomed the feeling that she was in control and could accept or turn down requests to bake a celebration cake, taking a view on any other requests she had received and also as to her own mental health and stress levels. Prior to January 2016 the claimant had not baked.

75. Baking became more attractive to her over 2016. Her work was well received by those for whom she had baked cakes. In January 2017, as detailed below, she commenced trading, offering to bake, from her own home, celebration cakes.

Resignation

76. On being made aware of the outcome of the disciplinary hearing on 26 October 2016 the claimant considered her position. She was aware that the decision made was that she was not guilty of any wrongdoing. She was also aware that Mr Gilhooly's view was that it was inappropriate that she return to CPS. The claimant's own thought as to returning to CPS was that she was not sure that anything would have convinced her that it was a good idea.

77. The next contact between the claimant or anyone on her behalf and the respondents after 26 October was when the claimant submitted her resignation. She did that by letter of 28 November 2016. A copy of that letter appeared at pages 2.151 and 2.152 of the bundle.

78. In the period between 26 October 2016 and submission of the letter of resignation by the claimant she considered her position carefully. She consulted with her partner, with her family and with her trade union representative as to her next step. She concluded that resignation was the course which she wished to take. The reasons for resignation were as set out in the letter of resignation which she sent to the respondents on 28 November 2016.

79. The letter from the claimant resigning her position with the respondents was written by the claimant in conjunction with her trade union representative. It read as follows:-

> *"I am writing to notify you that I have decided to resign from my position with South Lanarkshire Council. I am resigning with immediate effect.*

I am resigning as a result of the Council's management of the recent disciplinary investigation which I was the subject of and which concluded following meeting on 14 October 2016. The outcome of the disciplinary process was confirmed to me on 26th October, with the allegation I was required to address not being upheld against me, no further action would be taken and nothing will be placed on my record.

Whilst this decision does appear to completely exonerate me from any wrongdoing, it is far too late in the day. The hearing which took place on 14th October followed on from me being advised that I was to be the subject of a disciplinary process in June 2015. The fact that the Council took in excess of 16 months to conclude the process is unacceptable, especially in light of the lack of any evidence which was produced by the Council's investigation at the fact-finding stage of the process which would suggest I had failed in my duties in any way.

I also believe that the interim measures taken by the Council, while the disciplinary process was ongoing were completely unacceptable and completely undermined my position. To be removed from my role as Acting Principal Teacher while an investigation was ongoing is understandable in theory. However, I was placed in a role at Hareleeshill Primary School, which effectively saw me being demoted to a part-time role of Classroom Assistant/part-time role of cover teacher. That amounted to a demotion and I believe significantly affected my reputation and standing when no allegation had (or has been since) been upheld against me.

Accordingly, I would confirm that I am resigning in response to what I believe is a material breach by the Council of my terms and conditions of employment. In particular, I believe that the Council's actions amount to a fundamental breach of the implied term of trust and

confidence. As indicated above, I believe the Council have breached this term by:-

- *failing to conclude their disciplinary process within a reasonable time period, with no decision being finalised for a period of approximately 16 months;*

- *failing to consider my professional reputation and standing by failing to redeploy me into a suitable role;*

- *redeploying me into a demoted post which had no proper remit and which was at a significantly lower level than that of my normal post/grade; and*

- *proceeding with the disciplinary process/the disciplinary hearing where the evidence uncovered during the fact-finding stage of the disciplinary process produced no evidence to point towards my failing to act in accordance with the Council's procedures or show reasonable grounds to suspect I had committed any act of misconduct at all.*

I have worked for South Lanarkshire Council for 10 years and I am extremely saddened to be ending my employment this way. However, the Council's failure to consider its duty of care towards me in respect of matters has left me in a situation where I can no longer return to work for it and, indeed, has left me in a situation where I foresee any return to teaching will be difficult."

80. The claimant, in her letter of resignation, set out the matters which she had in mind and which led her to the decision to resign. The anticipated relocation from CPS after the disciplinary hearing was not a matter upon which she relied in reaching the conclusion to resign.

81. The respondents acknowledged the claimant's letter of resignation. Her resignation took effect.

Earnings of the Claimant since Resignation

82. The claimant's health since resignation from employment with the respondents has improved. She is no longer taking medication for anxiety and panic attacks.

83. The claimant is concentrating on building up her business in baking and selling celebration cakes. She has not applied for any alternative jobs. It is important to her to control the level of work which she undertakes. In baking cakes she can decide whether to take on work to bake a particular cake by a particular time. She can decide how much work to accept and the timescales within which any such work requires to be produced. She is content that control of her work lies with her. It is of importance to her that she is not exposed to risk of someone making a complaint about her and of there potentially then being a fact-finding investigation and disciplinary hearing such as occurred when she was employed by the respondents. The experience of going through the fact-finding investigation process and disciplinary procedure in 2015 and 2016 and the consequent impact upon the claimant and her life with her family and in particular her young son, is not something which she wishes to have the risk of recurring.

84. The income which the claimant received in the period from May 2015 to March 2016, together with expenditure associated with her cake making, appears at page 3.3 of the bundle. Her income for those months totalled £2,189.50. Her expenditure was £2,093.15. She made a profit for those months of £96.35.

85. From April 2017 to end of February 2018 the claimant had sales producing an income of £11,424.50 . The expenditure of the claimant on her business in that time was £6,046.77. This resulted in a profit of £5,377.73.

86. The income of the claimant for the period from date of the Tribunal onwards for approximately a year is likely to be on the basis of a profit per month of £545.43.

87. The claimant has not made any claim in respect of benefits since date of termination of employment with the respondents. She received no state benefits in that time.

The issues for the Tribunal

88. The issues for the Tribunal were**: –**

1. Had the respondents breached the implied term of trust and confidence?

2. Had the claimant resigned in response to any such breach?

3. Had the claimant affirmed any such breach or had she delayed in reacting to any such breach to the extent that she had lost the ability to found upon it, and to resign, claiming constructive unfair dismissal?

4. If the claimant was to be successful in her claim, to what level of compensation was she entitled?

Applicable Law

89. A claim of constructive unfair dismissal is possible in terms of Section 95(1)(c) of the Employment Rights Act 1996 ("ERA").

90. There is implied into a contract of employment, a term that both parties will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust

and confidence between the parties. This principle emerges from the case of ***Malik v Bank of Credit and Commerce International Limited (in compulsory liquidation) [1997] ICR 606 ("Malik")***.

91. There will be in any employment relationship be ups and downs. A Tribunal is to consider "*an employer's conduct as a whole and to determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it*" **(*Woods, V WM Car Services (Peterborough) Ltd [1981] ICR 666) ("Woods").***

92. The well-known case of ***Western Excavating (ECC) Ltd V Sharp [1978] ICR 221 ("Western Excavating")*** confirms that, in the words of Lord Denning:-

> "*If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."*

93. A breach of the implied term of trust and confidence is, as confirmed in ***Morrow v Safeway Stores plc [2002] IRLR 9 ("Morrow")***, properly viewed as being a breach of a fundamental term of the contract of employment.

94. ***Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 ("Buckland")*** underlines that a Tribunal, in assessing whether there has been a breach of the implied term of trust and confidence entitling an employee to resign, requires to consider what is said to have been a breach of that term on an objective basis.

95. For a claim of constructive unfair dismissal to be successful it must be the breach by the employer which, in part at least, caused the employee to resign.

An employee must also resign within what is viewed as a reasonable time of the breach. If delay is involved, there comes a point where the employee will be held to have affirmed the contract and thereby to have lost the right to make a claim of constructive dismissal.

96. In assessing whether an employee has lost the ability to make a claim of constructive unfair dismissal by affirming the contract, consideration requires to be given to the length of time which has passed since the breach being referred to by the employee. Consideration also requires to be given by the Tribunal to what has been happening in that time. It may be the case that an employee is working under protest, having clearly highlighted the breach which he or she says has occurred and making it plain that he or she is working under protest. An employee may also be absent from work through ill health. That is something which a Tribunal would properly consider in its assessment of whether affirmation is taken place. Receipt of sick pay during that time, or indeed payment of salary would be relevant factors for consideration by a Tribunal in that scenario.

97. It is not necessary that an employee has as the sole or main reason for resignation the repudiatory breach of contract by the employer. It is enough that the repudiatory breach played a part in the decision to resign. This is confirmed in the case of ***Wright v North Ayrshire Council [2014] ICR14 ("Wright").***

98. An employee may resign due to what is considered by that employee to have been a "last straw". That last straw need not be anything of huge or fundamental significance. It does not require in itself to be a breach of contract (***Lewis v Motorworld Garages Ltd [1986] ICR 157 ("Lewis")".*** The "last straw" must however contribute, even if only to a slight degree, to the breach of the implied term of trust and confidence. This is confirmed in ***Omilaju v Waltham Forest London Borough Council [2005] ICR 481 ("Omilaju").***

Submissions

Submissions for the Claimant

99. A summary of the submissions for the claimant is now set out.

100. Mr Connelly commenced his submissions by referring to the claim as advanced by the claimant in paragraph 17 of Form ET1. The claimant said that there had been a breach of the implied term of trust and confidence on the part of the respondents such that she was entitled to resign on 28 November 2016. The actions of the respondents upon which she relied were as detailed in the bullet points below.

101. The law in terms of ERA and ***Western Excavating*** was detailed by Mr Connelly. He also highlighted that the test in a constructive unfair dismissal claim was an objective one.

102. The Tribunal should consider, said Mr Connolly, all the facts and circumstances. There had been:-

- the decision taken to redeploy the claimant to Hareleeshill Primary School. That was a demoted role.

- The delay in the disciplinary process, in particular during the 6 month period when the criminal case had been in progress.

- The decision to proceed with the disciplinary hearing following the fact-find report. There was no evidence to support or justify that decision.

- There had then been what Mr Connolly said was a heavy handed decision by the respondents to redeploy the claimant permanently from CPS following the disciplinary, in circumstances where it had been found that there was no wrongdoing on her part.

103. The claimant's primary submission was that the decision to redeploy her permanently was the final straw. That had triggered her resignation. Viewed objectively, it showed that the respondents no longer intended to be bound by the contract of employment.

104. In the claimant's submission the decision to redeploy her after the outcome of the disciplinary process was in itself a fundamental breach of contract entitling her to resign. If it was not viewed in that light it was the last straw. Such a last straw could bring to life earlier assorted beaches. Mr Connolly referred to ***Morrow*** and paragraph 23 of that Judgment in particular.

105. A breach of the implied term of trust and confidence was a repudiatory breach. If the Tribunal was satisfied that the claimant had resigned in response to that breach then an issue might arise for the Tribunal as to delay in resignation and the impact of any such delay.

106. The submission for the claimant then turned to look at the acting is of the respondents upon which she relied.

1. <u>Temporary redeployment to Hareleeshill.</u>

107. An allegation had been reported to the respondents through the whistleblowing confidential telephone line. The claimant had then been redeployed to Hareleeshill for the start of the academic year 2015/2016. She worked there until 7 September 2015 when she went absent on sick leave on a long-term basis.

108. It was the claimant's evidence that she was not advised of any particular reason or justification for the redeployment. She was told by Ms MacDougall that she should say, if asked, that she was at Hareleeshill to carry out *"development work*". That did not have any particular meaning in teaching

circles. The claimant did not know what colleagues at CPS had been told or what parents of the pupils at CPS were told as to her departure.

109. When at Hareleeshill the claimant had had limited responsibility. She had effectively been shadowing someone. She had not been left on her own. It was only in the last week prior to her absence on sick leave that she was asked to lead a class. She then had two support members of staff with her. She had not therefore been carrying out her normal teaching duties whilst at Hareleeshill.

110. This redeployment had left her deflated. It had been sudden. She was known at Hareleeshill as having been an APT at CPS. There was an immediate impact on the claimant. She had given her evidence about the health issues. She was caused severe anxiety and panic attacks in particular. There had been no evidence to contradict that of the claimant in relation to what had been said to her about redeployment and the details of that. Her evidence should be accepted.

111. The respondents had led extremely limited evidence in relation to justification of redeployment and as to reasons for that. Mr Gilhooly had, Mr Connolly said, given evidence that he and others had taken the decision to remove the claimant from CPS and that this was to protect the protagonists OB and CS. He could not however recall what evidence he relied upon. The respondents letters did not coincide with his reasoning. Ms McKenzie had said that the flow of investigation would be easier due to relocation. She had been "parachuted in" in October, however, after the decision had been taken.

112. The respondents referred to clause 6.2.2 of the disciplinary procedure. That appeared at page 1.86 of the bundle. There was no evidence however that redeployment was in terms of that policy. The policy did not have contractual force. There was no provision for automatic redeployment where there was a disciplinary investigation. There had been no evidence that redeployment was actually necessary.

113. Mr Connolly said that the Tribunal could have regard to the employers reasoning process or lack of it, as well as to the decision made.

114. There been no evidence from the respondents, Mr Connolly submitted, of any concern on the part of the claimant of which they were aware as to her interface with those at CPS. There had been no evidence of concerns on the part of the protagonists as to the claimant working with them during the investigatory process. The protagonists were not in the same classroom as was the claimant. There was no evidence, in short, of any difficulty as between OB and CS on the one hand and the claimant on the other. It required to be borne in mind that the allegations did not point to any responsibility on the part of the claimant for inappropriate action towards the pupil.

115. Mr Connolly said that redeployment of the claimant did not of itself warrant resignation in his view, but it was however breach of contract of itself and part of the course of action relied upon by the claimant.

116. Assistance could be obtained by the Tribunal, in Mr Connolly's submission, from cases which dealt with the situation of an employee being suspended. He referred to the case of ***Mezey v South West London and St George's Mental Health NHS Trust [2007] EWCA Civ 106 ("Mezey").***

117. That case, he said, highlighted that whilst suspension might not be seen as punitive in strict terms, and as a neutral act, the Employment Appeal Tribunal ("EAT") did not see it in that light. It had referred in particular in paragraphs 11 and 12 to a qualified person and to suspension casting a shadow over the competence of such an employee. It might be that an employer suspended an employee in trying to do the best thing for the time being. That, however, was not the appropriate test.

118. It was accepted by Mr Connolly that this case related to an interim injunction restraining the employer from implementing intended suspension. He submitted, however, that the case was authority for redeployment in the case of the claimant being viewed in the same light. It meant that redeployment had the potential to be a breach of contract. For the claimant in this case, the decision to redeploy her had the same consequences for her professional reputation as did suspension in the case of ***Mezey***.

119. The claimant's submission was that the decision of the respondents was a knee-jerk reaction. It had not been properly considered. It could therefore be breach of the implied term of trust and confidence.

120. Mr Connolly next referred to ***Gogay v Hertforshire County Council [2000] EWCA Civ 228 ("Gogay").*** He referred in particular to paragraphs 55 and 59 of that Judgment.

121. This was also a case where suspension had occurred. The allegation had been of sexual abuse. The Court of Appeal held that to be accused of sexual abuse was calculated seriously to damage the relationship between employer and employee. It had then moved to consider whether there was "reasonable and proper cause" to do that. It held that there was no such reasonable and proper cause. The information had been difficult to evaluate. Referring to it as an allegation of sexual abuse put it far too high.

122. The next case referred to by Mr Connolly was that of ***Crawford and another v Suffolk Mental Health Partnership NHS Trust [2012] EWCA Civ 138] ("Crawford").***

123. The footnote of Lord Justice Elias and in particular, paragraph 71 and 72 of the Judgment was founded upon by Mr Connolly. Again this case dealt with the situation of suspension. The footnote emphasised that suspension was not automatically justified. It should not be a knee-jerk reaction. It would be a breach of the duty of trust and confidence towards the employee if it was.

This was so notwithstanding that suspension was often said to be in the best interests of an employee.

124. Looking at these cases in relation to suspension, Mr Connolly said that the exclusion of the claimant from her normal workplace was of significance. Reference had been made by the respondents to wide ranging concerns within CPS. The fact that allegations had been made and that the claimant had been removed or redeployed would, he said, "stick with" the claimant. No basis or reasoning for the decision to redeploy had been put forward. The allegation which she faced was a serious one. It was accepted that the allegation made against her was in that category, albeit the claimant denied that any comments had been made to her by OB and CS.

125. The case of ***Agoreyo v London Borough of Lambeth [2017] EWHC2019 (QB) ("Agoreyo")*** was next referred to by Mr Connolly. He referred in particular to paragraphs 24, 26, 81 and 82 of the Judgment in that case. Again this was a case where suspension was involved. Paragraph 26 referred to the letter of suspension not indicating who had made the decision, whether consideration had been given to the version of events of the employee prior to the decision to suspend having been taken, to there being no reference to consideration of any alternative route and to there being no explanation as to why the investigation could not be conducted fairly without the need for suspension in circumstances where the letter had said that suspension was in order to allow the investigation to be conducted fairly. The court in that case had concluded that suspension was the default position and was largely a knee-jerk reaction to the situation which had arisen. The court had held that, in those circumstances, suspension itself would have been sufficient to breach the implied term of trust and confidence.

126. The same logic as applied in the above cases in relation to suspension should apply in respect of redeployment of the claimant, said Mr Connolly. There been no preliminary investigation. It had not been explained why redeployment was necessary for there to be a fair investigation. The claimant

had been sent to a school where others knew of her. She had not been permitted to give any cogent explanation of why she was there. Given wider concerns about what was happening at CPS, speculation would be negative as far as the claimant was concerned. The allegations were very serious, Mr Connolly recognised. Although they had not been upheld, damage to the claimant's reputation had been caused. In short there had been no reasonable and proper cause to redeploy the claimant based on the evidence the Tribunal had heard.

2. <u>Delay in Disciplinary Process.</u>

127. There had been a general delay in the fact-find process and in getting to the disciplinary hearing. In addition, there had been delay caused due to the criminal proceedings with the decision being taken to "pause" the fact-finding investigation during that time.

128. Mr Connolly reminded the Tribunal that the fact-finding investigation had been triggered in terms of a letter of 6 August 2015 to the claimant. That letter appeared at page 1.141 of the bundle. The disciplinary hearing was convened for 15 August 2016, with notification been given to the claimant of that in terms of a letter to her of 11 July 2016. That letter appeared at page 2.101 of the bundle. The disciplinary hearing at not in fact taken place until October. The claimant accepted, however, that the delay between August and October was due to her own circumstances. It had, however, taken just over a year from the commencement of the fact-finding investigation until the disciplinary hearing as initially scheduled.

129. The claimant and her partner had given evidence about the impact on her mental health of the process. She was absent, to the knowledge of the respondents, due to work-related stress. The respondents had received fit notes. The claimant had attended absence management meetings. She had been to two occupational health assessments. The respondents had received the occupational health assessment reports. The first one of those

which appeared at page 1.171 to 1.173 of the bundle confirmed the impact of the process on the claimant.

130. In considering the time taken in the fact-finding investigation, the Tribunal should bear in mind the provisions of the disciplinary policy which referred to the aim being that most cases could see a fact-finding investigation completed within 15 working days. It also required to be borne in mind that 6 individuals were met with by the fact-finder. All of them were based at the same establishment as was the claimant.

131. The fact-finding investigation had taken an entirely unreasonable period, said Mr Connolly. There was no reasonable and proper cause for the time which had taken. It was not in accordance with the timetable specified in the disciplinary procedure. Indeed it do not adhere to the ACAS code.

132. The Tribunal should therefore bear in mind the overall time taken in the disciplinary process, particularly in the fact-finding stage.

133. Separately and as part of that, there was the pause in the fact-finding investigation which occurred when criminal proceedings were being considered. The pause occurred between 22 October 2015 and 23 February 2016. That was in terms of the letters which appeared at pages 1.155 and 1.165 of the bundle.

134. Mr Connolly submitted, however, that there had not been any reasonable and proper cause to pause the fact-finding investigation. He referred to the evidence which the Tribunal had heard from the respondents' witnesses. No one, he said, had explained why, in circumstances when the criminal charges did not relate to the claimant, there should be postponement of the fact-finding investigation. The claimant had not been investigated by the police regarding her conduct. There had never been a criminal allegation against the claimant in relation to the matters involved in the fact-finding. In fact, the criminal matter which was being investigated related to a potential charge

against AM. The respondents had no knowledge of any involvement on the part of the claimant in those proceedings. There was no need to await the outcome of the criminal investigation before proceeding with the disciplinary hearing in relation to the claimant.

135. In terms of the ACAS code the disciplinary hearing should take place without unreasonable delay. The Code said that a hearing need not wait the outcome of the criminal case. Mr Connolly cited the case of ***Ali v Sovereign Buses (London) Ltd [UKEAT10274/06]*** as being of relevance. That case had related to the situation where the claimant was the accused. It had been held that it was reasonable to postpone the disciplinary hearing due to criminal proceedings. That however was distinguishable from the situation with the claimant was not the accused.

136. Whether or not AM was accused or found guilty of the matters with which she was charged did not impact upon the disciplinary hearing in relation to the claimant and whether that should be held. The allegation against the claimant was that she had been told by others that AM had acted in a particular way and had not done anything with that information. The allegation against the claimant did not therefore involve determination of whether AM did act in a particular way.

137. The fact-finding investigation had been paused for just under 6 months due to the criminal case against AM. This was part of the course of conduct of the respondents upon which the claimant founded. There was a serious allegation made against her. There was potential damage to career and reputation. Although she remained off on sick leave, the redeployment had not been revoked prior to her resignation. It required to be borne in mind by the Tribunal, submitted Mr Connolly, that the respondents were aware of the impact on the claimant's mental health during this time. The delay of itself was not a repudiatory breach of the implied term of trust and confidence. Taken, however, with the last straw of the permanent redeployment of the claimant, she was entitled to resign.

3. The decision to hold a Disciplinary Hearing

138. The claimant's position was that, at its highest, there was no support for the disciplinary allegation.

139. It was only the evidence of OB which was relevant to the allegation. Only OB spoke to comments said to have been made to the claimant. Ms McKenzie had decided that a disciplinary hearing was appropriate.

140. In relation to the evidence from Ms Melrose, she had accepted that two points required to be considered by her. Firstly there was the issue of whether there was any evidence to support the allegation that the claimant had had something reported to her. Secondly, if there was such evidence, the question arose as to whether what was said to have been reported to the claimant supported the allegation that she been informed of inappropriate conduct towards pupils at CPS by a teacher. Ms Melrose had said that she did not actually look at point two, Mr Connolly said. That was a key failure on the part of the respondents, he said.

141. Mr Connolly said that Ms McKenzie and Mr Gilhooly accepted that there was nothing in what was said to have been the reported by OB to the claimant which constituted specifically inappropriate conduct towards a pupil. They both referred to context as being necessary. Ms McKenzie had said that an issue with practice had arisen. She accepted, however, that that was not the same thing as inappropriate conduct towards pupils. Ms McKenzie and Mr Gilhooly had not been re-examined in relation to this area. Both had said that the could have halted the disciplinary hearing there and then. The disciplinary hearing had been arranged and taken place without there being reasonable and proper cause so to do, submitted Mr Connolly.

142. The reasons of Mr Gilhooly as to why he felt there should be a disciplinary hearing were a matter of concern, Mr Connolly submitted. He had said that he wanted to "test the matter further." He had said in evidence that he felt it

was unfair that at the trial of AM only one side of the story had emerged. The family of the child in question had been in court and so it was better that everything was heard, Mr Gilhooly had said. There were, however, other routes which were open if the parents of AD had concerns and this matter was to be explored further.

143. To proceed to a disciplinary hearing on the basis of giving matters an airing was not appropriate, Mr Connolly submitted. There was no evidence to support the allegation. That had been accepted, he said, in cross examination by the witnesses for the respondents. Their position was flawed. It was unreasonable and there was no proper basis for taking the course of action which they had.

144. Mr Connolly said that the decision to proceed with the disciplinary hearing was not of itself a material breach of contract. It was, however, in the chronology of the 4 items to which he referred. There was a course of conduct. Proceeding with the disciplinary hearing suggested that the claimant may have done something wrong. Building upon the delay and the stress caused by redeployment, it was clear that the duty of care had not been appropriately considered by Mr Gilhooly in his decision to proceed with a disciplinary hearing.

4. <u>Permanent redeployment of the claimant</u>

145. The Tribunal should accept, Mr Connolly submitted, that there was no discussion with the claimant regarding relocation on a permanent basis from CPS. That had been a decision taken by Mr Gilhooly. The claimant had simply been informed that there was a conflict of interest if she was permitted to return.

146. Mr Gilhooly's evidence had, Mr Connolly said, come as something of a surprise. In form ET3 there was no reference to there being agreement to any relocation. In fact, Mr Gilhooly could not speak to any agreement on the

part of the claimant as to relocation. He referred to discussion with Mr Scott. The claimant's evidence was clear. She had not discussed the position with Mr Scott. There was no reference by her in evidence to having authorised him to agree to any relocation. The question of agreement on the part of the claimant was not put to her during cross examination. The claimant's evidence should be preferred. Mr Connolly referred to the minutes of the reconvened disciplinary hearing at page 2.148 of the bundle and to the outcome letter at page 2.149 of the bundle. The language used in those documents contradicted the evidence of Mr Gilhooly, he said.

147. Although the respondents suggested that permanent redeployment was not a punitive action, there was no other way of looking at that decision in the circumstances. Redeployment only occurred, on Mr Gilhooly's evidence, where there was a surplus of teachers, where a teacher had requested a change or where a final written warning had been imposed. None of those situations pertained here. It was said not to have been in the claimant's interests to return to CPS. There was no proper basis for that view having been taken. The disciplinary policy referred to the ability on the part of the respondents under the heading of "punitive action".

148. This was therefore a breach of contract in and of itself, said Mr Connolly. It would substantiate there having been a basis for resignation of the claimant. It was a repudiatory breach. It required to be borne in mind that the claimant said that her role at CPS remained there at time of the resignation. There was no contradictory evidence.

149. This was therefore both the last straw in terms of the overall actings of the respondents but also was of itself a repudiatory breach.

Resignation

150. Mr Connolly then turned to the claimant's resignation. He referred to her letter of resignation and also to her evidence on this point. Her evidence was clear.

The decision of Mr Gilhooly as to the outcome of the disciplinary hearing was something which had been relied upon by her in coming to the decision to resign. It had in her evidence "tipped the balance.". She had been consistent on that point, both in evidence in chief and in cross-examination.

151. The case of ***Weatherfield Ltd (t/a Van and Truck Rentals) v Sargent [1998] EWCA Civ 1938*** , was of assistance. That confirmed, particularly in paragraphs which were at pages 5 and 6 of the Judgment, that an employee might write to an employer resigning on a particular basis. It might be that no reason was communicated to the employer for the employee leaving. It was said in that case that it would be the fact-finding Tribunal which would decide, considering all the evidence, whether the claimant had accepted repudiation. This case was authority for the view, Mr Connolly said, that although the letter of resignation by the claimant did not refer to Mr Gilhooly's decision, that was not a bar to the claimant now referring to this in the Tribunal hearing. It was for the Tribunal to determine on the evidence whether Mr Gilhooly's decision played a part in the claimant's decision to resign. It was not fatal that she had not mentioned it in a letter of resignation. The Tribunal should keep in mind her own evidence and that of her partner. Her partner said that this was part of her decision making. The timing of her resignation supported the fact that she had relied upon Mr Gilhooly's decision. She had resigned within a matter of weeks of being told the outcome of the disciplinary hearing.

152. There been no unreasonable delay on the part of the claimant, Mr Connolly said, in resigning. There had been no discussion by the respondents of the practicalities of a return to work for her. There had been no suggestion of affirmation or waiver by her in express terms. She was still suffering from stress and anxiety. Resignation was a significant decision and required consideration.

153. Mr Connolly referred to ***Malik.*** He said that in his submission the respondents had conducted themselves without reasonable and proper cause in a manner

which was likely to destroy the relationship of trust and confidence between the claimant and her employer.

154. It was relevant that OB and CS were still at CPS. They had failed to follow the proper child protection procedure yet remained at CPS.

155. For clarity, Mr Connolly confirmed that the claimant was not founding upon a matter which he had initially raised in pleadings, namely a letter which ought to have come to her but had in fact been sent to a different employee.

156. For all foregoing reasons, the Tribunal should uphold the claim of constructive unfair dismissal.

Remedy

157. A schedule of loss had been prepared and appeared at page 3.2 of the bundle. It set out the basic award sought and also the compensatory award sought. An element of the compensatory award related to future loss. That included pension loss. Mr Connolly accepted that there had been no evidence from either party about the loss of pension. There was an actuarial report. On this being raised with Mr Connolly, he accepted that this is not been spoken to. The respondents confirmed that they did not agree to the contents of the actuarial report. Mr Connolly said that funding could not be obtained for evidence to support the actuarial report. The claim is made was, in any event, above the statutory limit for compensation given the cap of one year's salary.

158. In relation to mitigation, the claimant had changed her career. Mr Connolly rehearsed the circumstances which had led to that. She had been unable to re-enter employment as a teacher. Her GP's report referred to the being very grave concerns on the part of the GP that she would be able to return.

159. It was reasonable that the claimant started a baking business. She did not want to be answerable to anyone or to be open to allegations of 3rd parties. Future loss of earning had been set out.

160. The case of ***Cooper Contracting Ltd v Lindsey [UKEAT/0184/15]*** would be of help to the Tribunal. In particular, at paragraph 16, the EAT had emphasised that the burden of proof in relation to assessment of mitigation was on the wrongdoer. The claimant did not have to prove that she had mitigated loss. The Tribunal was not to apply too demanding a standard to a claimant, who, after all, was the victim of a wrong if in the situation of having resigned appropriately due to the conduct of the employer. Such a claimant was not to be put on trial as if the losses were her fault when the central cause was the act of the wrongdoer.

161. Two other cases were referred to, ***Aon Training Ltd and another v Dore [2005] IRLR 891*** and ***Praxis Real Estate Management Ltd v Nichols [EAT 0502/12.*** Those confirmed that compensation for loss of earnings was possible where the claimant set up a new business and that it was not unreasonable for the claimant to take that step, even if the claimant had no experience in the business area in which the claimant had then chosen to operate.

162. Looking to the claims in this case, her mental health had been such that it was not unreasonable that she took the decision she did. It was therefore just and equitable that the losses claimed be awarded. She had not failed to mitigate her loss.

Submissions for the Respondents

163. Mr Stewart for the respondents submitted a written note of his arguments. He spoke to that note and supplemented it to a degree. What is now set out is a summary of his note as supplemented.

164. Mr Stewart accepted that the legal principles which applied to a case of constructive unfair dismissal were as Mr Connolly had outlined them. The Tribunal required to assess alleged breaches objectively. He referred to ***Buckland, Woods, Malik*** and ***Western Excavating***.

165. If a last straw was being referred to***,*** then that alleged last straw must contribute in some way to breach of implied term of trust and confidence. If an employee genuinely, but mistakenly, interprets the act in question as hurtful and destructive of trust and confidence in the employer, that is not enough if the act is entirely innocuous. That is confirmed in ***Omilaju.***

166. The burden of proof in a constructive dismissal claim lay with the claimant. The claimant had not established her case.

167. Mr Stewart referred to her letter of resignation. He highlighted the points which she referred to as being the reasons for her resignation.

168. Looking at those, Mr Stewart commented as follows.

1. <u>Timescale for investigation</u>

169. The allegation was that the decision had not been finalised for a period of some 16 months. Mr Stewart rehearsed what were agreed facts as to commencement of the disciplinary process, interviews with witnesses, the pause put on the fact-finding investigation given the criminal investigation and case, the re-commencement of the fact-finding investigation and the arrangements then put in place for the disciplinary hearing.

170. It was appropriate, said Mr Stewart, that the fact-finding investigation was put on hold whilst matters were *sub judice*. The witnesses to be interviewed in the fact-finding investigation were the same as those in the criminal trial. This was a matter within the discretion of the respondents. Mr Stewart referred to the case of ***Secretary of State for Justice v Mansfield [UKEAT/0539/09].***

In that case it was said that an employer had a wide discretion in relation to the connection between disciplinary proceedings and a criminal case. In that case the claimant had continued to be paid. That was the position in relation to the claimant in this case.

171. A delay of 5 months when a connected matter was proceeding to criminal trial was not something which could be objectively considered by the Tribunal to be calculated or likely to destroy seriously damage the relationship between the employer and the employee. Whilst Mr Connolly had said that the claimant was not the alleged person who was accused in the criminal case, that was not an appropriate interpretation of the consideration which the respondents had to give to the situation. The investigation in the fact-finding process in relation to the claimant might potentially prejudice the criminal matter proceeding. The issue for the respondents was whether the fact-finding investigation in the case of the claimant might impact on the criminal investigation such that it was inappropriate to proceed with the fact-finding investigation in the case of the claimant.

172. The claimant was advised of the decision to put her fact-finding investigation on hold and the reason for that. That is confirmed in the letter of 22 October 2015. There was no challenge by the claimant to that decision as intimated to her. The letter of 22 October appeared at page 1.155 of the bundle. This had been a complex investigation. Ms Melrose had confirmed that. The delay had not in fact caused any detriment to the claimant, said Mr Stewart.

2. <u>Initial Redeployment</u>

173. The claimant had, said Mr Stewart, been redeployed at Hareleeshill Primary School to a teaching post. The duties she had carried out in the 3rd week of her redeployment were duties appropriate to a Primary School teacher. She had accepted that in evidence. The respondents had discretion as to redeployment of someone in the position of the claimant. Mr Gilhooly had explained that the decision was made for the protection of the people making

the allegations. Ms Melrose had confirmed that redeployment was often used by the respondents in circumstances where there were serious allegations. That was the position here. It required to be borne in mind that the child in question could not communicate. There was therefore an allegation by a colleague of the claimant as to the claimant having been made aware of concerns in relation to the actings of AM. No action had been taken by the claimant. It was appreciated that the claimant had denied that anything was said to her. Nevertheless, while the investigation was continuing, it was appropriate for there to be redeployment of the claimant. She worked at Hareleeshill for 3 weeks until she became unfit for work through ill health. She did not return to work until her resignation.

174. This redeployment in the circumstances which applied was not an act which, said Mr Stewart, the Tribunal could find as being one which was calculated or likely to destroy seriously damage the relationship between employer and employee. The claimant had not challenged redeployment to Hareleeshill.

175. Mr Stewart referred to the case of ***White v Reflecting RoadStudsLtd [1991] ICR 733.*** He said that in this case there was, as in ***White*** a mobility clause. ***White*** was authority for the view that where something is specifically permitted by an employment contract, carrying out that act cannot be relied upon as something which would breach the implied term of trust and confidence. The decision to redeploy was an exercise of discretion by the respondents and there were proper grounds on which to come to the view which they did. It was a reasonable option. Although the claimant through Mr Connolly had referred to cases in relation to suspension, suspension was a different scenario. There was in the cases in relation to suspension to which Mr Connolly had referred, comment as to whether the respondents had considered something short of suspension rather than deciding upon suspension of the employee involved. In fact, said Mr Stewart, that was what had happened here. The appointment had taken place. That was an appropriate decision and was not in the same category as was suspension.

The claimants authorities referred to her did not therefore support her position in the submission of Mr Stewart.

3. <u>Proceeding with the Disciplinary Hearing</u>

176. Whist the claimant said that the decision to proceed with the disciplinary hearing was not reasonable behaviour by the respondents, it was maintained on her behalf that there was no evidence in the fact-finding investigation and report to justify a disciplinary hearing being set down.

177. That was incorrect, said Mr Stewart. All of the respondents' witnesses had said that there was a dispute as to what the facts of the matter were as between the witnesses who were interviewed. One witness, OB, said that she had raised concerns with the claimant regarding the practices of a colleague. The claimant denied that that had occurred. The was therefore an evidential dispute which required to be addressed by the disciplining officer in a hearing. CS had given information to the fact-finding investigation. That was hearsay but nevertheless was of relevance. She had said that OB had raised with her the fact that OB had spoken to the claimant on the particular matters. CS also said that the claimant knew of the events. There were therefore contradictory assertions.

178. It was perfectly reasonable and justifiable for Ms McKenzie to conclude that a disciplinary hearing was appropriate. Mr Gilhooly had also given clear and rational evidence as to why he had preferred the evidence of the claimant at that hearing, having had before him a dispute as to what had happened. At page 2.147 of the bundle there appeared the consideration and assessment of credibility of witnesses in the findings of Mr Gilhooly. Having heard from them in evidence, that evidence required to be considered with judgment being exercised thereafter, resulting in a decision being taken.

179. If the respondents decided not to proceed to a disciplinary hearing then the claimant would have been left with an allegation being made and with the

evidence against her not been tested. The disciplinary hearing was the conclusion of due process.

180. Further, given that the claimant was cleared of any wrongdoing, it was illogical on her part to say that, in arranging the disciplinary hearing, the implied term of trust and confidence had been breached. In fact, totally the opposite was the case. The respondents had considered all the evidence and had come to a decision having assessed that. That allowed the claimant the chance to disprove the allegation, a chance which was taken and which the respondents accepted had been successful.

4. <u>Final Straw.</u>

181. By amendment the claimant introduced as a final straw the outcome from conclusion of the disciplinary hearing.

182. Mr Stewart said that the Tribunal should conclude that the claimant did not, the time of her resignation, have in mind as a factor the view of Mr Gilhooly that redeployment was the best solution. His view had been that it was inappropriate for the claimant to return to CPS. This was stated not to be a punitive measure, but rather to be a risk based supportive measure taking account of the potentially negative relationship between the claimant and the family involved who might now have a lack of confidence in the claimant working with their child.

183. The reasoning therefore for the view which Mr Gilhooly expressed was set out by him. Mr Gilhooly knew the circumstances of the criminal trial and knew that the claimant had been mentioned in the evidence which had proceeded. The trial did not conclude. There had only been evidence heard, therefore, for the prosecution. The claimant's evidence had not been heard.

184. The Tribunal should be cautious in its consideration of the claimant's evidence as to this being part of her reasoning in deciding to resign. Her

letter of resignation made no reference whatsoever to this element. She had taken over one month to decide the position. Her initial ET1 did not mention this point. It was only introduced into the claim by amendment.

185. Mr Stewart commented on the claimant's evidence in general as being in his view, lacking credibility and reliability. She had been unable to remember different meetings and events. She had said that the time involved was one of which she had little memory. Medication was indicated by as having a significant effect upon her. As an example of her lack of detailed recall, she had said in relation to the trial of AM that she had been cited as a witness for the defence and that she had probably provided a statement as part of the criminal investigation. In earlier evidence, however, she had said that she had no knowledge of the criminal trial until after the disciplinary hearing had concluded. Further, she had referred to a meeting on 15 June which had taken place with Ms McKenzie and Ms Melrose. That was the meeting at which Ms McKenzie had confirmed that the case would proceed to a disciplinary hearing. The claimant had said that at this meeting, Ms Melrose had said that there was no case to answer but that there would be a disciplinary hearing nevertheless. She also said that there was no evidence against the claimant, according to evidence given at this Tribunal by the claimant. Both Ms Melrose and Ms McKenzie were clear that no such comments had been made and that they simply would not make those comments. It would be inconsistent for them to say on the one hand, that there was no case to answer but, on the other hand, to say that they were proceeding to a disciplinary hearing.

186. Mr Gilhooly's evidence was that he had discussed the possibility of a change in workplace for the claimant with her union representative in the period after the disciplinary hearing but before the reconvened hearing. He had explained the view which he was forming, and his reasons for that. His evidence was that Mr Scott understood that thought process. Further, when he had said to the reconvened disciplinary hearing that his view was that the appropriate

course of action was for the claimant not to return to CPS, neither Mr Scott no the claimant expressed any disagreement or hesitancy about that.

187. This decision was therefore a decision taken in the interests of the employee acting reasonably. The Tribunal required to consider the matter objectively. Motive was not determinative but was of some relevance. Mr Stewart said it was accepted for the respondents that there could be a breach of contract even if the actings were innocent or supportive as far as the employer was concerned. When however considered objectively, the decision taken and the manner of its communication to the claimant was such that there had not been a breach of the implied term. The fact that the claimant had not mentioned this matter in her list of points which had led to resign lent weight to it not having been an issue when raised at the reconvened disciplinary hearing.

Affirmation

188. Mr Stewart referred to the case of ***Colomar Mari v Reutars Ltd [UKEAT0539/13].*** That case, he said, demonstrated that acceptance of sick pay by an employee could constitute affirmation of a contract of employment. In this case, the claimant had received pay and then sick pay. Her delay in resigning and acceptance of pay and sick pay was affirmative of the contract. In 3 of the 4 matters relied upon by the claimant some 6 or 12 months had passed prior to her resignation. She was redeployed in August 2015. The fact-finding investigation concluded in April 2016. In June 2016 it had been decided that the case would proceed to a disciplinary hearing. The claimant did not resign until the end of November 2016. She affirmed the contract by continuing to accept pay or sick pay. She had lost the right to found upon those as straws in her case of constructive dismissal, said Mr Stewart.

Loss

189. Turning to the submissions made in relation to loss, Mr Stewart said that there remained upon the claimant, a duty to take reasonable steps to mitigate her loss.

190. In this case, the claimant had not taken those steps, said Mr Stewart. She had not sought alternative employment as, for example, a teacher in North Lanarkshire, the local authority district within which she stayed. She had in fact made no effort to find alternative employment. She had said that this was because she did not wish to be an employee. She did not wish to be put in a position where an allegation could be made against her with investigation following, meaning she would be in the same position as she had been during the events which had led to this case.

191. She had said that she did not feel that she could return to a teaching environment. She produced however, no evidence to back that up. Indeed, any medical evidence did not suggest that return to teaching was an impossibility. Her GP's letter in September 2016 had referenced grave concerns but had not said anything more about an ultimate return to her career. The occupational health reports had not referred to an inability to return to her career. It was suggested that conclusion of the disciplinary process might result in an improvement in her position. The claimant herself had said she was no longer being treated for anxiety-related symptoms. There was therefore nothing in the evidence before the Tribunal which gave a reasonable basis on which the claimant could be viewed as having taken reasonable steps to mitigate her loss given that she had made no effort to obtain alternative employment.

192. The claimant had set up a cake baking business. She said that she did not consider herself to be very good at celebration cake baking when she started. She had no relevant experience prior to March 2016.

193. The fact of the matter was that the claimant remained qualified as a primary teacher. Compensation therefore if she was successful should be substantially reduced due to her failure to mitigate her loss.

194. I asked Mr Stewart as to what he was urging me to do in that regard. He said that loss over a three-month period might be appropriate on the basis that the claimant could have applied for another job within that time.

195. In summary therefore, Mr Stewart submitted that it had not been established by the claimant that there was any act by the respondents which could objectively be considered to have been calculated or likely to destroy or seriously damage the obligation of mutual trust and confidence between employer and employee. Her resignation was not acceptance on her part of repudiatory breach by the employer. There was therefore no dismissal in terms of section 95 (1) (c) of ERA.

196. In those circumstances the claim should be dismissed.

Brief reply by the Claimant

197. Mr Connolly replied briefly on behalf of the claimant. He said that in his view all parties had been doing their best to give their evidence honestly. Events were some time ago and reliability therefore in all areas of evidence might be difficult to assess. He urged me not to regard the credibility or reliability of the claimant as having been undermined by any of the evidence. As to the meeting on 15 June and the alleged remark made by Ms Melrose to the claimant, it was clear that the decision to proceed with the disciplinary hearing was taken by Ms McKenzie and then by Mr Gilhooly. Ms Melrose had not therefore taken that decision. Any comment which she had made was therefore irrelevant in his view.

198. There was reference by Mr Connolly to the disciplinary policy and to the passage which appeared at clause 6.2.2 at page 1.86 of the bundle. That

dealt with redeployment of teachers. It was in a disciplinary context. The provisions had no contractual effect. Even if redeployment to Hareleeshill was done on a temporary basis and was a discretionary decision of the respondents, there still required to be a reason for that decision. There had been no evidence led of why that decision had been taken.

199. As to there being no challenge by the claimant to the decision to relocate her in August 2015, the Tribunal should keep in mind that the letter of 6 August from the respondents which appeared at page 1.141 of the bundle said that relocation was a temporary measure which would not be recorded on the claimant's personal record and that consequently she had no right of appeal.

Discussion and Decision

200. This case, in many ways, reflected a very unfortunate set of circumstances. The claimant had been a teacher with the respondents for over 10 years. She had been promoted to APT. She enjoyed her job. The events which unfolded had a profound effect upon the claimant. They led to the view on her part that she no longer wished to be a teacher. The possibility of an allegation by a party leading to another investigation and potentially a disciplinary hearing was such that she could not face continuing in the job of teacher. Clearly the concern and worry which she experienced during the time of the fact-finding investigation and subsequent disciplinary hearing had had a major impact upon her health and home life. Aside from any medical evidence to which she pointed to support the extent of that impact, the evidence from the claimant and from her partner was powerful in describing how she had, in effect, gone from being happy and able to cope to being anxious, depressed and subject to panic attacks. Her ability to take part in family life and to look after her young son had been materially affected. That must have been distressing at the time. Even now, the claimant is clearly upset at recalling the way she was during this time and her inability to have been, as she sees it, a proper mother to her son in that period.

201. This is a claim of constructive unfair dismissal. Parties were agreed on the legal principles which apply to such a claim and of its foundation in ERA. They were agreed that the onus is on the claimant to prove her case. They were further agreed that the Tribunal must apply an objective standard in considering the actings of the respondents.

202. For the claim to be successful, the Tribunal must be satisfied that the respondents did not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy the relationship of mutual trust and confidence which applies between employer and employee.

203. Without belittling in any way whatsoever the substantial impact all of the events had upon the claimant as mentioned above, that is only one element in the matters to which I have to have regard in determining whether there was a breach of the implied term of mutual trust and confidence. As mentioned, an objective standard is to be applied.

204. It was accepted that if there was such a breach, then it constituted a material breach of a fundamental term of the contract. There remained the question of whether the claimant had resigned, in part at least, in response to that breach and whether the claimant had delayed such that delay and/or acceptance of payment from the respondents of pay or sick pay constituted affirmation of the contract.

Was the Claimant's Reason for Resignation her Proposed Relocation from CPS in October 2016?

205. A critical question was that of whether the claimant had resigned, in part at least, due to the outcome of the disciplinary hearing and the view expressed that it was inappropriate for her to return to CPS. Even if that indication from the respondents was part of her decision making process when she resigned, the issue remained of whether, by waiting for just over one month, she had delayed too long in resigning.

206. The claimant resigned in terms of her letter of 28 November 2016. That letter makes no reference to the outcome of the disciplinary hearing in terms of which it appeared that the claimant was to be relocated from CPS. Her evidence at Tribunal was however, that this proposed relocation was the final straw. Indeed, Mr Connolly argued that it was of itself a fundamental breach of the implied term of trust and confidence entitling the claimant to resign had nothing else occurred in support of there being a breach of that implied term. If it was seen as at the final straw however, Mr Connolly referred on the claimant's behalf to the relocation of the claimant to Hareleeshill, to the delay in the fact-finding investigation, in particular the delay during the criminal investigation, and to the decision to proceed to a disciplinary hearing in circumstances where he said there was no evidence supporting such a step being taken.

207. I considered firstly whether or not I was persuaded on the evidence that the view expressed at the end of the reconvened disciplinary hearing as to relocation of the claimant was something which played a part in her decision to resign. As mentioned, the claimant's evidence was that it did play such a part. Her partner's evidence was to the same effect. Her resignation letter, however, did not mention this point at all.

208. The claimant's resignation letter is detailed and well-constructed. It was not composed in haste. Her evidence was that she recognised that resignation was a big step to take. It was something she wished to consider carefully and to discuss with her partner, family and friends before deciding whether to resign or not. She prepared the letter in conjunction with her Trade Union Representative. She therefore had advice at that point. I did not hear from the representative involved as to any reasons the claimant expressed to him or her as to her reasons for resignation.

209. The claimant accepted in evidence that her letter of resignation was fairly detailed and that it set out what she considered to be the breaches of contract

at the time when the letter was written. She was challenged in cross-examination as to why, if she said that the outcome of relocation was a matter which influenced her decision to resign, it was not in her letter of resignation and clearly set out there. Her reply was simply that "*It is not there.*" This was despite the fact that she said in a different part of her evidence that the outcome "*tipped the balance*" and led her to resign.

210. Reference to the outcome of the disciplinary hearing as being a factor in the claimant's decision to resign did not appear in form ET1. It was added some months later by way of amendment. The amendment was allowed following a hearing upon it on 6 November 2017, form ET1 having been presented on 30 March 2017.

211. The letter of resignation does refer to the outcome of the disciplinary process. The reference however is to the allegation against the claimant not being upheld. The claimant also says in the letter that it was confirmed that no further action would be taken and that nothing would be placed on her record. She does not go on in her resignation letter to refer to the fact that she was to be relocated, although it is common ground that the preference for relocation and the view held by Mr Gilhooly was aired at the reconvened meeting.

212. In the resignation letter the claimant makes reference to the time taken in dealing with the disciplinary process, what she perceives as the lack of evidence suggesting she had failed in her duties and to the interim measures taken involving her move to Hareleeshill Primary School.

213. The claimant then goes on to say that she is resigning in response to what she believes is a material breach by the respondents of her terms and conditions of employment, in particular constituting a fundamental breach of the implied term of trust and confidence. She states that she believes that the respondents have breached that term by particular actions which she details in four bullet points. The proposed redeployment of the claimant from

CPS after the disciplinary hearing had concluded is not set out in any of those bullet points.

214. I appreciate that the Tribunal has the ability to determine what the reason or reasons for resignation were, on hearing evidence. It is not constrained by the terms of a letter of resignation. Nevertheless, any such letter is strong evidence as to what was in the mind of the employee leading her to decide to resign at the time when resignation was intimated. That is particularly so in circumstances where, as with the claimant here, there is access to an external source of advice and where the letter is quite specific and full in its terms.

215. I do not require to be satisfied that the sole or main reason the claimant resigned was because the discussion with her was on the basis that she was not going back to CPS. It would be enough if it played a part in her decision to resign (***Wright***). Equally, as long as it did play a part, any consideration which might have been present in the claimant's mind as to not being attracted by the prospect of returning to teaching does not take away from a potentially successful claim. The fact however that the claimant gave evidence that she was not sure that anything would convince that returning to CPS was a good idea after the disciplinary hearing suggests to me that it is unlikely that she saw the suggestion of not returning to CPS as being either a final straw or as being a repudiatory breach of contract in and of itself. Her evidence also, in referring to her letter of resignation, was that she needed closure, needed the process to be done and that she did not want to think about the respondents ever again.

216. It is important to keep in mind in this element of the decision making which I have to undertake, that I am assessing whether or not the decision to resign was in some part attributable to the view expressed by the respondents that the claimant would not appropriately return to CPS after the disciplinary hearing outcome. Looking at whether, objectively, anything which Mr Gilhooly said constituted either a final straw or a repudiatory breach of

contract itself, does not enter the decision making of the Tribunal unless and until the Tribunal takes the view that it being said to the claimant that it did not seem appropriate for to return to CPS after the disciplinary hearing was something which featured in her thinking in deciding to resign.

217. I therefore had to weigh on the one hand the evidence from the claimant and her partner and on the other hand, the content of the letter of resignation and the circumstances in which it was written. I also had to weigh the fact that the claim form made no reference to the relocation of the claimant after the disciplinary hearing and that this ground of claim was added by way of amendment sometime after presentation of the claim.

218. In making this assessment, I kept in mind that the claimant had been affected to a significant degree by the events and was unfortunately not in the best of mental health and best able to recall events both at time of the reconvened disciplinary hearing and in the immediate aftermath of that.

219. The passing of time and specific content, however, of her letter of resignation point to full and proper consideration being given by her both to the decision to resign and as to the elements which fed into that decision. It is a contemporaneous record of her thinking. It is a letter composed with the benefit of an element of time having passed since the outcome of the disciplinary hearing was made known to the claimant. The opportunity was also there for discussion with family and friends. That opportunity was taken. The claimant had the benefit of advice and assistance from a trade union representative in composing the letter.

220. It was also relevant to an extent in my weighing up of circumstances that the claimant had not raised any point when the proposal that she move from CPS was raised at conclusion of the disciplinary hearing. Equally, Mr Scott had not said anything. The evidence was that Mr Scott is an experienced trade union representative. He would be likely to be well aware of the lack of ability on the part of Mr Gilhooly to insist upon the claimant moving to a location

other than CPS. Had that been mooted by Mr Gilhooly, either as a decision or as a proposal, it is likely that, if it was a decision, objection would be taken by Mr Scott on the basis that Mr Gilhooly did not have power to make such a decision in the circumstances of this case. If it was a suggestion then, if the claimant had a difficulty with it, it would be assumed that Mr Scott would raise this matter with Mr Gilhooly, or certainly that it would feature in the letter of resignation tendered by the claimant. The claimant said in her evidence that at this time she could not ever consider working for the respondents and that she could not put her family through this again on the basis that she did not wish someone to have the ability to say something and for the claimant then to have to face an investigation and disciplinary process, resulting in her domestic and family life potentially being ruined again for a further period. That suggested to me that she may not have been either particularly focused upon or concerned about the potential move away from CPS. That would be consistent with that point not being mentioned in her letter of resignation. As mentioned above, the claimant also said in evidence that she needed closure and needed this to be done. She did not wish, she said, to think of the respondents ever again. She wished a normal family life. She did not wish to take medication ever again. She wished to be able to trust people again, she said. She also said that she needed to feel like herself again.

221. I recognised that evidence had been given by the claimant and her partner that the proposed move from CPS following the disciplinary hearing featured in the decision of the claimant to resign. I did not conclude, for clarity, that the claimant and/or her partner had deliberately lied in giving this evidence. I was satisfied that, with the passage of time and rationalisation after the event, which often occurs, they were now of the view that this element had been part of the claimant's thinking time of resignation. Given the contemporaneous letter and its clear terms and the circumstances in which it was prepared, I found, however, that evidence for the claimant hard to accept. I concluded, after much deliberation and weighing of the evidence on both sides of this point, that the potential move of the claimant from CPS after conclusion of the

disciplinary hearing was not something which played any part in her decision to resign from employment with the respondents.

222. There was therefore no "last straw" or "self-contained" breach of the implied term of trust and confidence on 26 October 2016.

Alleged Comment at the end of the Meeting in June 2016

223. I next turned to consider whether the evidence supported the claimant's position in her testimony at tribunal that she had been informed on 15 June 2016 that there was no case for her to answer but that the respondents would nevertheless be arranging a disciplinary hearing.

224. I was satisfied, on the evidence, that the respondents had not made such a statement to the claimant on 15 June 2016.

225. At that meeting, the claimant was present as was her union representative, Ms Kelly. Ms Melrose and Ms McKenzie were present for the respondents. I did not hear in evidence from Ms Kelly. I had therefore competing evidence from the claimant on the one hand and Ms McKenzie and Ms Melrose on the other. In assessing this contradictory evidence, I took account of the fact that there was no representation by the claimant, either in the period after 15 June or at the commencement or in course of the disciplinary hearing questioning why the respondents had proceeded with such a hearing given their acceptance, as she had it, that there was no case for to answer.

226. It would be somewhat extraordinary if a respondent made such a comment in course of communicating that the disciplinary hearing was to be held. It would also be somewhat extraordinary, if such a comment had been made, for the claimant not then to react to that either at the time, immediately afterwards or at time of the disciplinary hearing itself. That is even more likely to be something which would occur in circumstances where the claimant was accompanied at the meeting by her union representative and was then

accompanied at the disciplinary hearing by her union representative, albeit the representative by the time of the disciplinary hearing was Mr Scott. It would have been quite a powerful opening position on the part of the claimant at the disciplinary hearing or indeed in the lead up to it for her to reflect back the comment which she said had been made that there was no evidence supporting there being any case for her to answer. The claimant did not however make any such comment at any point.

227. A further element in my assessment of the accuracy of the claimant's recollection was that she accepted that she was on medication at the time and that the events were somewhat hazy. Further, she was also subject to a fact-finding investigation in relation to a different matter, allegation 2. It was common ground that the outcome of that fact-finding investigation was that the respondents confirmed to the claimant that there was no case to answer and that they would not be proceeding to a disciplinary hearing.

228. It seemed to me that this was not a situation where the claimant had lied about the comment which he said was made at the meeting on 15 June 2016. In my view, given her unfortunate illness and the medication which she was taking at the time and also the other fact-finding investigation and the outcome of that, the claimant had become confused as to what was said on 15 June and did not accurately recall that. I was also satisfied that Ms Melrose and Ms McKenzie were credible in their evidence that no such remark was made as the claimant had described it.

Other matters said to contribute to Breach of Trust and Confidence

229. There remained the three other elements said by Mr Connolly on behalf of the claimant to be part of the picture and to build towards breach of the fundamental term implied into the employment contract of trust and confidence between employer and employee.

230. Those three elements were firstly the delay in proceeding with the fact-finding investigation during the course of the criminal proceedings, secondly the delay in general in the fact-finding investigation and thirdly the relocation of the claimant from CPS to Hareleeshill Primary School in August 2015.

231. In his submission Mr Connolly argued that none of these elements were in and of themselves repudiatory breach is of the implied term of trust and confidence. He argued that they formed part of the picture resulting in the implied term of trust and confidence having been breached by the respondents.

Timescale of the Fact-Finding Investigation

232. It is certainly true that the fact-finding investigation took quite some time. It commenced in August 2015. It concluded with the determination that a disciplinary hearing would be held. From the fact-finding report which appeared at pages 2.12 to 2.16 of the bundle, appendices following in later pages, it was difficult to determine when the report itself was completed. The claimant was notified of its completion by letter of 7 June 2016. That was when the outcome of the fact-finding investigation was confirmed as being something which would be communicated to the claimant at the meeting on 15 June 2016. There was therefore a period of 10 months involved in the fact-finding investigation.

233. If an employer took that length of time without explanation, it would certainly seem, in my view, to be an excessive period of time. On the evidence I heard at Tribunal, there was no suggestion of witnesses being absent through ill health, other than the claimant herself. Those to be interviewed were not spread out into a wide geographical area. There certainly would be school holiday periods intervening and potentially a restricted element of time available during the working day for interviews to take place. The investigation involved matters at CPS in addition to the alleged reporting of concerns to the claimant. Nevertheless, a 10 month period is a long time. It

must have been a very difficult and worrying time for the claimant. She was subject to an allegation made by someone who she considered not just a work colleague but also a friend. From her evidence, she clearly struggled to understand what it was that she was said to have done wrong and why such an allegation would be made. She denied that the colleague in question had made any comment or report to her as the colleague had described. The impact on the claimant's health was clearly substantial. The respondents were aware of her absence from work through work related stress. They were aware from the occupational health reports of more detail in relation to her illness.

234. There was however an explanation given by the respondents for a meaningful part of the time taken in the fact-finding investigation.

235. It is arguable that the respondents could have carried on with the fact-finding investigation process and then proceeded with a disciplinary hearing, notwithstanding the criminal proceedings which were in prospect in relation to AM. It may have been the case that the respondents were erring on the side of caution in halting the fact-finding investigation in relation to the claimant in light of the criminal proceedings involving AM. The claimant was ultimately scheduled to appear as a witness in the case against AM.

236. There was however in my view a reasonable basis for them pausing the fact-finding investigation in relation to the claimant given those criminal proceedings. It is true that the criminal proceedings did not, at that point, involve any allegation as far as the claimant was concerned. A situation could be envisaged however where, in the fact-finding investigation, notwithstanding denial by the claimant that any concern about AM had been reported to her, the respondents found that such a concern had in fact been reported to the claimant. Whilst there would be evidence no doubt led at the trial involving AM, there could be repercussions in that trial from any such finding by the respondents. To take one example, it might be that the conclusion of the respondents, in that scenario, that concern had been

reported to the claimant and that the claimant had not taken any action upon such a report, would "improve" the potential evidence against AM. There might also have been potential issues for the claimant if, in the face of such a finding by the respondents in the disciplinary hearing involving the claimant, she maintained in evidence at the trial that no concern had been reported to her regarding AM. It is important that the rights of individuals at criminal trial are not prejudiced by anything which may have been said in course of the fact-finding investigation or determined as a result of the outcome of that process, whether by disciplinary hearing or otherwise.

237. It may therefore be that some employers would have carried on with the fact-finding process and would have proceeded to a disciplinary hearing notwithstanding the criminal proceedings in progress as against AM. The respondents did not take that course. They paused the fact-finding investigation. It seems to me that that was a step open to a reasonable employer acting in a proper fashion. Viewed objectively, this was not a breach of the implied term of trust and confidence. There was no suggestion that the pause was other than related to the fact of criminal proceedings against AM being contemplated and then taken.

238. Mr Connolly was open in his submission in saying that the pause during criminal proceedings did not of itself amount to a foundation for resignation. It was not repudiatory breach of contract. It was, rather, one element in what he submitted were actings of the respondents culminating in the relocation of the claimant being proposed in October 2016, all of which led to the claimant, in his submission, being entitled to resign due to a breach of the implied term of trust and confidence.

239. The precise dates on which the criminal allegations in relation to AM came to light is not known on the evidence before me. It was a matter of agreement, however, that the claimant was informed of the pause being placed upon the fact-finding investigation by letter of 22 October 2015. She was told at that point that as far as the respondents were aware the criminal proceedings did

not relate directly to her. The claimant was later informed that the fact-finding investigation was to recommence. This was in terms of the letter from the respondents of 13 April 2016, which appeared at page 2.2 of the bundle. There was therefore just under a six-month delay in the proceedings attributable to the respondents decision not to proceed with the fact-finding investigation during the currency of the criminal proceedings involving AM.

240. One course open to the respondents was to take a decision as to proceeding with a disciplinary hearing or not when the "*coast became clear*" after the ending of the criminal proceedings in April 2016. Had they taken that step, the fact-finding investigation would, excluding the period during which it was paused as a result of the criminal proceedings, have taken just over 3 months. The respondents' policy in the cause 5. 6 at page 1.85 of the bundle refers to an investigation being conducted speedily as possible with the aim "*in most cases*" that it be completed within 15 working days.

241. The appendices to the fact-finding investigation disclose interviews which touched on matters other than the specific allegation by OB in relation to her having reported concerns about AM to the claimant with no action being taken by the claimant. Those interviews extended into September 2015. Revisions were made by those interviewed resulting, for example, in the notes of the interview involving OB being "signed off" by OB on 17 November 2015, her signature and that date appearing at the conclusion of the interview notes at page 2.47 of the bundle.

242. Whilst the time taken (excluding the period of time during which the investigation was paused as a result of the criminal proceedings) seems lengthy, a sensitive matter was being dealt with involving an allegation against a teacher who had been employed for many years (the claimant). The issue was linked to the welfare of a child and concerns said to have been expressed about that by a colleague of the claimant. The respondents were dealing with a situation where the claimant denied that any such matters had

been drawn to her attention. Other areas appear to have been investigated at the same time as these allegations.

243. Looking at the matter objectively, I did not see the delay involved as being without reasonable and proper cause, given all the facts and circumstances. The investigation could perhaps have been dealt with quicker. The time taken was however not such as to amount to a fundamental breach of contract by breach of the implied term of trust and confidence. Mr Connolly seemed to me, from his submission, to recognise that this would be an element, at best, in building towards breach of the implied term of trust and confidence. He did not argue in his submission that the delay was in and of itself a breach of that term entitling the claimant to resign.

Initial Relocation of the Claimant from CPS to Hareleeshill Primary School

244. The remaining potential element which might constitute repudiatory breach of contract was the relocation of the claimant in August 2015 from CPS to Hareleeshill Primary School.

245. As with the items mentioned immediately above, Mr Connolly's position in submission was that this was not of itself a breach of implied term of trust and confidence. It was part however of the picture, he maintained, in establishing that there had been a breach of that implied term with the last straw being relocation of the claimant proposed in October 2016. Relocation at that time (October 2016) was also said, on behalf of the claimant, to have been of itself repudiatory breach of contract entitling her to resign.

246. Although Mr Connolly's submission as to relocation being in the same category as suspension was initially an appealing one, after consideration, I have come to the view that the two steps are different, one to the other.

247. I accept that if suspension is an automatic or "knee-jerk" reaction then, notwithstanding the fact that it is said to be non-punitive, it runs a clear risk of being viewed as a breach of the implied term of trust and confidence. There

may of course be circumstances justifying suspension. If that is so, then the decision to suspend would move away from being a knee-jerk reaction. It is interesting that the cases themselves refer to the possibility of transfer of an employee during investigation rather than suspension being the step taken. ***Gogay*** and ***Agoreyo*** are two such cases.

248. The situation facing the respondents was a tricky one. There was an allegation that the claimant had not responded to concerns regarding another teacher being mentioned to her by a colleague. That other teacher, the colleague and the child remained in the school. The start of the school term was almost at hand. An investigation was to be carried out. It was, as mentioned above, an agreed position that a close working relationship was required between colleagues and parents of pupils within the care of the claimant given the behavioural and learning difficulties of the pupils.

249. Against that background the claimant was transferred to Hareleeshill Primary School. The transfer was anticipated as being a relatively short-term one. It must, of course, have been difficult for the claimant when this situation arose. I can understand her concern as to how the decision might appear to the outside world. I can also understand her concern as to her arrival at Hareleeshill Primary School and the fact that she was unable immediately to "slot in" to a position equivalent to that which she held at CPS. It seemed, from the evidence, that the initial arrival of the claimant at Hareleeshill Primary School had, perhaps understandably, been in circumstances where there was no clearly defined role for the claimant. After that unsatisfactory position being the case for two weeks, in the third week the claimant had teaching responsibility for a class. She was then unfortunately absent from work through ill health. It is not possible therefore to know whether her teaching responsibilities would have continued or would have been focused in any particular way during her time at Hareleeshill Primary School. Had she not had teaching responsibilities over the period of her stay there (had she been fit enough to attend work), then there might have been closer scrutiny possible with an objective view being taken upon whether the transfer and

the duties which the claimant was assigned on transfer amounted to a demotion and potentially to a breach of the implied term of trust and confidence. It was certainly not ideal that, perhaps for understandable motives, the respondents said to the claimant that, if asked, she should say she was at Hareleeshill Primary School to do "*development work*". That, it appears, was the explanation given by the respondents to parents of children at CPS.

250. Some employers might have retained the claimant's services at CPS. Relationships between the claimant and OB and CS might or might not have been difficult in that circumstance.

251. Whatever view I may have as to what might have been a wiser or better course is not relevant to my determination in this case. I have to consider whether, viewed objectively, there were reasonable and proper grounds for the decision taken by the respondents. Other courses were open to them. I bore in mind the agreed fact that working with the children at CPS required that there be a close working relationship with colleagues and parents of pupil within the care of the claimant. I also bore in mind that the claimant's own evidence was that if the comments which OB said she had made to the claimant about AM had indeed been made, the claimant would have been under an obligation to investigate them further. There was therefore a potentially valid matter of concern from the point of view of the respondents and something which required investigation in circumstances where a vulnerable, non-verbal child was involved. The allegation, ultimately of course found not to have been proved, was that the claimant had taken no action when a matter of concern about the feeding of a child had been reported to her by OB as making her feel uncomfortable. There was clearly the possibility of bad feeling. There was a possibility of confrontation. Certainly the necessary close working relationship with colleagues and parents of AD was likely to be difficult to achieve in the circumstances. The investigation also required to be able to be conducted smoothly.

252. As stated, I have concluded that there was a basis on which transfer of the claimant could and was viewed by the respondents as being a decision based on reasonable and proper grounds. There was a judgment call to be made by the respondents. Other courses might have been adopted. I did not see however that the decision of the respondents that the claimant be moved to Hareleeshill Primary School could be viewed objectively as being without reasonable and proper cause such that it breached the implied term of trust and confidence between employer and employee.

Possible Affirmation or Waiver of any Breach

253. Had I been of the view that the delay in the investigation, the pause whilst criminal proceedings were dealt with or the initial relocation of the claimant in August 2015 either individually or when put together amounted to a breach of the implied term of trust and confidence, I would then have required to take account of the time which passed from those incidents until the point of resignation of the claimant. Setting to one side therefore the categorisation, objectively, of these acts and taking it for the moment that trust and confidence was indeed broken by these acts individually or collectively, the period between dates of these acts and resignation would require to be considered.

254. Looking at that point, it seemed to me extremely arguable that, if there had been a breach of the implied term of trust and confidence, the claimant had affirmed or waived that breach. I do not of course require to determine that matter given the decision I have reached that the claim is unsuccessful.

255. The transfer to Hareleeshill Primary School occurred in August 2015. The investigation was concluded, even allowing for the pause during criminal proceedings, by mid April 2016. The claimant did not resign until the end of November 2016. I appreciate that she had in that time significant and difficult health issues. She did however manage to attend the further fact-finding meetings, attendance support meetings, the disciplinary hearing and the

outcome meeting. She had representation and advice from her trade union representative. I understand that resignation is a big step to take and that it is sensible and appropriate to take time before resigning. The delay in resigning involved in this case, looking to these earlier alleged breaches of the implied term of trust and confidence is such however that I would have been inclined to find that any resignation based upon them would not properly found a claim of constructive unfair dismissal in that the breaches had been affirmed or waived due to the passage of time and absence of the claimant, for example, working "*under protest*".

256. I do have sympathy with the claimant's position and it is extremely unfortunate that her health has suffered to the extent which it has. Having reflected carefully upon the matter, when the facts are viewed objectively, I do not however regard that there as being grounds on which her claim constructive unfair dismissal can be successful. The claim is therefore unsuccessful.

Employment Judge: Robert Gall
Date of Judgment: 16 April 2018
Entered in register: 17 April 2018
and copied to parties