EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4104658/16

Held in Glasgow on 24, 25 and 26 January; 12, 14 and 18 December 2017 and 12 and 13 January 2018.

Employment Judge: Lucy Wiseman

Mrs Anne Mackin	**Claimant** **Represented by:** **Ms L Bain - Solicitor**
Stirling Family Support Services	**Respondent** **Represented by:** **Mr R Lyons - Consultant**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claimant was unfairly dismissed. The respondent shall pay to the claimant a monetary award of £9,000 (Nine Thousand Pounds). The prescribed element is £3,671 (Three Thousand, Six Hundred and Seventy One Pounds) and relates to the period from 13 May 2016 to 13 February 2018. The monetary award exceeds the prescribed element by £5,329 (Five Thousand, Three Hundred and Twenty Nine Pounds).

REASONS

1. The claimant presented a claim to the Employment Tribunal on 1 September 2016 alleging she had been unfairly dismissed. The claimant resigned from

her employment and claimed constructive dismissal on the basis the respondent had breached the implied duty of trust and confidence.

2. The respondent entered a response accepting the claimant had resigned from her employment, but denying she had been entitled to do so.

3. I heard evidence from:-

- The claimant;
- Mr David Meiklejohn, the claimant's brother in law who accompanied the claimant to a meeting on 10 May;
- Mrs Margaret Meiklejohn, the claimant's twin sister who was the Chairperson of the respondent;
- Mrs Jean Nellis, Vice Chairperson;
- Ms Janice Beaton, the manager of the respondent;
- Mrs Jacqui Pollock, Treasurer and
- Mrs Catherine McColl (known and referred to as Twiggy to distinguish her from her daughter who was also called Catherine McColl and who is known and referred to as Kitty, who volunteered for the respondent) a committee member.

4. I was also referred to a large number of productions. I, on the basis of the evidence, made the following material findings of fact.

Findings of fact

5. The respondent is a charitable organisation involved in working with families affected by substance abuse. The respondent is managed and run by the management committee in accordance with the Constitution.

6. The management committee at the time of these events was: Mrs Margaret Meiklejohn, Chairperson; Mrs Jean Nellis, Vice Chairperson; Mrs Jacqui Pollock, Treasurer; Mrs Kate Fotheringham; Mrs Lynn Hoggan, Secretary and Mrs Catherine McColl (Twiggy).

7. Ms Janice Beaton was employed as the Manager of the respondent. She commenced employment with the respondent in 2012, although she had been seconded from Stirling Council to work with the respondent since 2002.

8. The claimant started work with the respondent as a Family Support Worker on 20 August 2007. The claimant's Statement of Particulars was produced at page 34.

9. The claimant and Ms Beaton worked well together and enjoyed a friendly and supportive working relationship.

10. The claimant gave notice to Ms Beaton and the committee that she had to go into hospital for an operation and would be absent from 4 June until 5 October 2015. The claimant was very stressed about the operation, but she recovered well and with the support of her GP and sister, took a week's holiday from the 23 – 30 September 2015 before returning to work.

11. The claimant notified Ms Beaton of the fact she intended to have a week's holiday prior to returning to work, and she formed the impression Ms Beaton was not happy about this.

12. Ms Beaton was on annual leave at the beginning of September and returned to work on 16 September 2015. Ms Beaton injured her hip and back on 29 September and was in severe pain. Ms Beaton was absent from work and signed off as unfit for work on 5 October 2015.

13. Mrs Meiklejohn and Ms Beaton exchanged a large number of texts regarding Ms Beaton's situation (page 310). Mrs Meiklejohn understood that Ms Beaton was in a great deal of pain and expected to be off work for at least 2 – 3 weeks. Mrs Meiklejohn considered it important to make arrangements for work to be covered, so she asked Ms Beaton, on 29 September (page 310) to put an out-of-office on her computer and to forward a message to all members of the committee advising them that Mrs Meiklejohn would ask the claimant to forward all emails to her [Mrs Meiklejohn] who would contact the author of the email to see if she could help or if a response could be delayed until Ms Beaton had returned to work.

14. Mrs Meiklejohn also considered it important for Ms Beaton to take a break and not aggravate her injury.

15. The claimant was told by Mrs Meiklejohn to do what she could and answer as many emails as possible, but not to respond to enquiries from funders, as that would need input from Ms Beaton or Mrs Pollock. The claimant acted on that instruction but learned Ms Beaton was continuing to undertake work at home and that she would on occasion visit the office.

16. The claimant became increasingly frustrated by the confusion regarding when Ms Beaton might be in the office and what work would be covered by Ms Beaton whilst off on sickness absence and what was to be covered by her or the committee. The claimant, for example, learned both she and Ms Beaton had responded to an email from the McRobert Centre regarding tickets. Ms Beaton's response referred to a change in the way tickets were used, whereas the claimant's response had not referred to this because she had

been unaware of it. The claimant also found it difficult to know what to tell people who contacted the respondent.

17. The claimant was informed by Ms Beaton in October that she had removed the petty cash. The claimant, thinking Ms Beaton was only going to be absent for a few weeks, used her own money. The claimant subsequently learned that Ms Catherine McColl (known and referred to as Kitty) had visited Ms Beaton at home to get money for purchases and events.

18. The claimant also learned Kitty and others were visiting Ms Beaton at home and receiving updates and information regarding events, which the claimant had not been told about. The claimant, for example, overheard Kitty speaking about a cookery course. The claimant knew nothing of this and was hurt and upset when she learned Kitty had been given this information by Ms Beaton. The claimant felt undermined and isolated, and she also felt it not appropriate to visit Ms Beaton at home regarding work matters when Ms Beaton was absent because she was unfit for work.

19. Ms Beaton's ill health continued and she did not in fact return to work until 3 March 2016.

20. Mrs Meiklejohn text Ms Beaton on 17 November (page 314) stating she would prefer Ms Beaton not to do any work from home. Mrs Meiklejohn asked Ms Beaton to keep her informed of the expected date of return to work and to forward the medical certificates to her.

21. Mrs Meiklejohn was concerned because Ms Beaton had not provided any medical certificates and therefore she did not know exactly what was wrong with her or what the respondent could do to assist her return to work. Further, although Ms Beaton wanted to do work at home, she was not fit for work and had told Mrs Meiklejohn that she was in so much pain at times that she found it difficult to cope.

22. Ms Beaton responded later the same day to say there were funding matters already in motion that needed to be dealt with as they arrived. Mrs Meiklejohn text back to inform Ms Beaton that she was happy for the emails to be sent to her and she would respond stating Ms Beaton was off on long term sickness absence.

23. Ms Beaton had been due to return to work on 16 November 2015 but did not do so. The claimant telephoned Ms Beaton on 17 November because a message had been received from a funder, and the claimant wanted to know if it had been dealt with. The claimant told Ms Beaton she was unhappy about not knowing if Ms Beaton would be in the office, or whether she had contacted the funder. Ms Beaton told the claimant she was off sick, and the claimant responded that Ms Beaton had said she would be coming in to the office. Ms Beaton stated she could not deal with it now, and the claimant responded "*well neither can I"* and she put the phone down.

24. Mrs Meiklejohn had, at this time, decided to resign from the committee because she had health issues. Mrs Meiklejohn text Ms Beaton on 18 November 2015 (page 315) to inform her that she intended to resign because of her health and that she would notify the other members of the committee.

25. Ms Beaton pre-empted Mrs Meiklejohn's notification to the committee, by informing them herself of Mrs Meiklejohn's resignation.

26. Mrs Meiklejohn had intended to resign once Ms Beaton returned to work. However, she had second thoughts about this because she felt there was still work to be done and she was worried about the fact Ms Beaton had not yet provided any medical certificates.

27. Mrs Meiklejohn met with Mrs Pollock on 23 November to seek her advice about staying on or resigning with immediate effect. Mrs Meiklejohn expressed concern about the fact no medical certificates had been provided

by Ms Beaton. Mrs Pollock told her the issue could only be tackled if there was committee support.

28. Mrs Meiklejohn decided not to resign and notified the members of the committee of this by email on 23 November (page 325). Mrs Meiklejohn confirmed she would stay on as Chairperson until at least the end of the Fiscal Year (March 2016) unless her health deteriorated. Ms Beaton was annoyed when she heard Mrs Meiklejohn was not going to resign.

29. Mrs Meiklejohn asked the claimant to provide her with a copy of the respondent's Absence policy. The claimant accessed the shared drive in the office where policies and procedures were kept, and forwarded a copy of the absence policy to Mrs Meiklejohn.

30. The Absence Management (Sickness Absence) Policy and Procedure (page 248) provided that in the case of the absence of the Manager, the Chair of the Board was to manage their absence. The Policy also included notification procedures which referred to the provision of medical certificates and, in cases where there was a failure to produce medical certificates this could result in payment not being made or absences being considered as unauthorised.

31. Mrs Meiklejohn text Ms Beaton on 5 December 2015 (page 316) stating she would contact Ms Beaton on Monday to arrange a long term absence meeting, and reminding Ms Beaton that she had not yet received her medical certificates.

32. A further text was sent on 8 December (page 316) asking for an update to be provided regarding the provision of medical certificates. Mrs Meiklejohn noted this was now urgent and failure to provide them may result in deductions being made from salary. Mrs Meiklejohn emphasised that a long term absence review was necessary so the committee could understand the problems and offer help and support.

33. Mrs Meiklejohn and Ms Beaton exchanged a significant number of texts between 29 September and 8 December (pages 310 – 317). Ms Beaton at no time told Mrs Meiklejohn she had medical certificates or to whom the certificates had been given.

34. A committee meeting was held on 9 December 2015, and the agenda for it was produced at page 326. The main purpose of the meeting was to discuss the continued absence of Ms Beaton and to carry out a review of the respondent's policies and procedures. The claimant would usually be in attendance at committee meetings, but she was informed by Mrs Meiklejohn that she could not attend this meeting because there were matters of a confidential nature to discuss. The claimant was disappointed because she had wanted to raise the issues she had regarding Ms Beaton and communication.

35. Ms Beaton, prior to the committee meeting, sent an email to the members of the committee excluding Mrs Meiklejohn. The email (page 42) referred to Mrs Meiklejohn's text of 8 December and stated she was "*hurt and quite stressed*" by the formal tone of the message, when a degree of flexibility had always been permitted. Ms Beaton reminded the committee members that although she was off on sick leave she had voluntarily continued to deal with essential emails especially in relation to funding. Ms Beaton felt she was being unfairly treated, particularly in comparison with the claimant who had not provided medical certificates for her absence. Ms Beaton assumed Mrs Meiklejohn's demands for medical certificates had not been sent with committee approval otherwise it would be known that she had submitted certificates to the Treasurer. Ms Beaton concluded her email by stating she did not wish to meet with Mrs Meiklejohn or Jean Nellies.

36. Mrs Meiklejohn learned of Ms Beaton's email at the start of the committee meeting on 9 December, when Mrs Pollock raised it as a very serious matter and provided her with a copy of it. Mrs Meiklejohn considered she was entitled to ask for medical certificates and felt she had done so in a pleasant and

reasonable manner: she did not need committee approval or support to make this request. Mrs Meiklejohn invited the committee to take a vote of confidence in her. They did so and voted that they had confidence in Mrs Meiklejohn remaining as Chairperson.

37. Mrs Meiklejohn left the room whilst the vote was being discussed and taken. She asked the claimant to recover her medical certificates from her personal file. Mrs Meiklejohn knew these certificates had been provided to her by the claimant at the time she had been in hospital, and so she knew what Ms Beaton had noted in her email was wrong.

38. Mrs Meiklejohn returned to the meeting and confirmed medical certificates had been provided by the claimant at the relevant time. Twiggy then produced an envelope containing medical certificates and passed them to the Treasurer. Twiggy explained that Ms Beaton had provided the medical certificates to her, but she had kept them in her handbag and not produced them until the committee meeting. None of the other committee members were aware Twiggy had the certificates and Mrs Pollock did not consider it her role, as Treasurer, to accept the certificates.

39. The committee discussed Ms Beaton's absence and agreed to invite her to attend a meeting to discuss the situation. Mrs Meiklejohn drafted the letter to be sent to Ms Beaton (page 328) and once this had been agreed by all members of the committee, it was sent to Ms Beaton (page 334). The letter concluded by noting Ms Beaton was due to attend the doctor on 18 December and so the committee would wait to hear whether the doctor had signed Ms Beaton off as fit to return to work before agreeing the next step.

40. Mrs Meiklejohn was aware the committee meeting on 9 December had been a difficult one. In the email to members of the committee on 9 December (page 328) she noted the letter to Ms Beaton was lengthy but explained she considered it necessary because Ms Beaton's email had contained inferences regarding her ability to treat both members of staff fairly. Mrs

Meiklejohn noted this was a serious allegation against her professional integrity, but she was hopeful matters could move forward even though she was concerned that working relationships had been damaged. Mrs Meiklejohn confirmed the claimant had asked to meet with the committee regarding her position.

41. The claimant was disappointed she had not been able to speak to the committee members on 9 December regarding her concerns. She contacted Mrs Pollock, told her she had concerns regarding the working relationship with Ms Beaton, and they agreed to meet in the New Year. The claimant subsequently telephoned Mrs Pollock on 21 December to tell her she felt Ms Beaton was undermining her; Ms Beaton would not reply to texts; there was no petty cash; Ms Beaton was angry she had put the phone down on her and she felt the relationship had broken down.

42. The claimant returned to work in the New Year. She attended the Kids Club on 13 January and overheard Kitty (a volunteer) discussing a new cookery club with parents. The claimant knew nothing of this and questioned Kitty about it. Kitty told her she should speak to Ms Beaton at her home and reminded her she had to get cover for an event. The claimant knew nothing of this and felt completely out of the loop. The claimant told Kitty she was going to speak to the management committee the following week. Kitty lodged a complaint regarding the claimant's conduct, prior to the claimant speaking to the management committee.

43. The following day Ms Beaton sent an email to the claimant at 01.31 on 14 January 2016, on headed notepaper, marked with a red alert, and copied to the members of the committee. The email requested the claimant provide some statistics by the end of the week. The claimant was very upset when she saw this email because she suspected Kitty had told Ms Beaton of the incident and that the claimant was going to speak to the management committee, and that was the reason why the email had been sent on headed

notepaper, with a red alert at 1.30am and copied to the committee members. The claimant considered the email to be bullying.

44. Mrs Meiklejohn responded to Ms Beaton's email to state the database had not yet been updated and she had asked the claimant not to attempt to provide the information at the moment. Mrs Meiklejohn was concerned regarding the state of the claimant's mental health.

45. Mrs Pollock then emailed Mrs Meiklejohn (copied to the rest of the committee and the claimant and Ms Beaton) (page 345) stating she was concerned that the claimant had been asked not to provide the information, because this was not appropriate.

46. Mrs Nellies also emailed in response to Mrs Pollock's email (page 346) stating she was concerned the committee appeared to be conducting its business by email and that left too much scope for misunderstanding and misrepresentation. Mrs Nellies asked for an urgent meeting to begin the process of resolving the issues.

47. The claimant was copied in to these emails, and she was concerned about the volume and tone of the emails. The claimant also detected from the emails the fact Mrs Pollock was siding with Ms Beaton. The claimant felt Mrs Pollock had offered her support, but in an email dated 14 January (page 349) Mrs Pollock stated "*If Anne has an issue she needs to put it in writing so that the committee can deal with it formally*". The email was copied to Ms Beaton. The claimant was concerned Mrs Pollock was withdrawing support and that Ms Beaton would know her issues were with her.

48. The claimant sent an email to Mrs Pollock, Mrs Meiklejohn and Mrs Nellies (copied to Ms Beaton, Mrs Fotheringham and Twiggy) on 15 January (page 354) in the following terms:-

> "*I noted with interest the emails that were exchanged yesterday, which began with a red flag email sent at 1.30am. I found all this extremely upsetting. There were points in the emails that I felt tempted to respond to as a matter of urgency. However I have decided to defer these comments until I am able to make a more measured response. As Jean stated it is not helpful for emails to be sent that can lead to misinterpretation. For information I wish to advise the committee I will provide the stats Janice requires today. I would also like to advise everyone that I will consider my position over the coming days and make the committee aware of my intentions next week. .."*

49. The claimant sent an email to Ms Beaton on 15 January (page 359) providing the statistical information requested.

50. The claimant notified the committee of her intention to raise a grievance regarding Ms Beaton on 18 January 2016. The claimant had hoped her concerns could be resolved informally, but given the previous email exchange and the request to put her concerns in writing, the claimant felt a formal grievance was the only way forward. The grievance was, by agreement, handed to Mrs Nellies.

51. The claimant's grievance included issues relating to petty cash (the removal of the petty cash by Ms Beaton left the claimant feeling like she couldn't be trusted with money); the cookery course (the claimant had not known anything about this and felt excluded when volunteers knew of this before her); the letter asking for statistics had followed immediately after the incident with Kitty; the lack of communication with Ms Beaton and the claimant feeling she was placed in the position of being answerable to everyone including the volunteers. She felt she was getting mixed messages from Ms Beaton and that there was a reluctance by Ms Beaton to tell her what was going on.

52. A committee meeting took place on 20 January 2016, and the main item on the agenda related to staffing issues. All committee members were present

excluding Ms Hoggan, Secretary. The minute of the meeting, produced by Mrs Meiklejohn, was at page 369. Mrs Nellies advised the meeting she had taken receipt of the claimant's grievance which remained in a sealed envelope. It was noted Mrs Meiklejohn and Twiggy were in a conflict of interest position because although Twiggy was not related to Ms Beaton, she was a very close friend. It was agreed Mrs Meiklejohn and Twiggy would have nothing to do with the process.

53. Mrs Pollock informed the committee there was an insurance policy to deal with this type of situation and it was agreed the policy should be used to instruct an independent employment lawyer to deal with the grievance.

54. The meeting turned to discuss Ms Beaton's continued absence and how best to deal with it. Mrs Pollock and Twiggy left the meeting because they were not willing to discuss the matter. Prior to leaving Twiggy handed over the complaint from Kitty and one from herself concerning the continual practice of sending her emails when she had asked for things to be sent through the post.

55. The committee meeting continued after Mrs Pollock and Twiggy left. It was agreed the claimant's grievance would be acknowledged and that she would be advised that independent legal advice would be sought to deal with it.

56. The members of the committee also read the complaints and agreed communication with Twiggy would be by post, and that the claimant should be interviewed regarding Kitty's complaint. It was noted Kitty's complaint was dated 15 January but had only been handed in on 20 January. Mrs Meiklejohn told Mrs Nellies and Mrs Fotheringham the claimant had good reason to suspect the complaint had only been handed in because she [the claimant] had raised a grievance against Ms Beaton.

57. Ms Fotheringham informed the claimant of the complaint by Kitty. The claimant acknowledged she may have been a bit abrupt and if she had upset Kitty, she was willing to apologise.

58. Mrs Meiklejohn wrote to the claimant after the meeting on 20 January, to acknowledge the grievance and confirm it would be dealt with by an independent external organisation.

59. A committee meeting was arranged for 27 January. Mrs Meiklejohn, Mrs Nellies and Mrs Fotheringham were of the view the previous meeting had broken down badly, but hoped to recover things and enable the committee to deal with the issues.

60. Mrs Pollock and Twiggy asked for the meeting to be re-arranged because they could not attend on 27 January. Mrs Meiklejohn knew she could proceed in their absence, but that this would not help relationships. She agreed to postpone the meeting and re-arrange it for 10 February (it could not be earlier because Mrs Meiklejohn was on holiday).

61. Ms Beaton notified the members of the committee by email of 29 January (page 381) that her medical certificate expired that day and that she would return to work the following week.

62. Mrs Pollock instructed Ms Hoggan, Secretary, to arrange an urgent committee meeting on 3 February. Mrs Pollock arranged for the committee meeting to take place on 3 February in the full knowledge Mrs Meiklejohn would not be able to attend because she was on holiday.

63. Mrs Nellies sent a lengthy emailed response on 2 February (page 384) in which she asked for the meeting to be postponed until the following week to allow Mrs Meiklejohn to attend. Mrs Nellies confirmed she would not be attending the meeting on 3 February because she did not recognise it as an official meeting of the committee. Mrs Nellies also noted that Ms Beaton

should not return to work until such time as the committee had received a written summary of the return to work interview and a Plan of Action from the Fitness to Work programme.

64. Mrs Meiklejohn also sent an email on 2 February (page 387) stating she did not recognise the meeting called for 3 February and would not adhere to any decisions taken at that meeting. A Special General Meeting could only be called if one third of the committee asked the Secretary to arrange it.

65. The meeting on 3 February proceeded and was attended by Mrs Pollock, Twiggy and Mrs Hoggan. Mrs Pollock issued an email to all committee members on 8 February (page 392) stating a vote of no confidence had been taken and supported and therefore Mrs Meiklejohn's role as Chairperson and member of the committee had terminated. The email also instructed Mrs Nellies to deliver the grievance to the office.

66. The claimant submitted a medical certificate on 8 February 2016 (page 396). The certificate confirmed the claimant was not fit for work for a period of 8 weeks because of work related stress.

67. Mrs Meiklejohn, Mrs Nellies and Mrs Fotheringham were shocked at what had happened. Mrs Meiklejohn sent an email to Mrs Nellies, Mrs Pollock and Mrs Fotheringham on 10 February (page 398) in which she stated she remained the Chairperson of the respondent until such time as she resigned voluntarily or was removed constitutionally. She confirmed the committee meeting arranged for that night would proceed.

68. Mrs Meiklejohn, Mrs Nellies and Mrs Fotheringham attended the committee meeting on 10 February: the remaining committee members did not attend and did not give apologies. The committee members present satisfied themselves that in terms of the constitution the meeting on 3 February had not been constitutional and therefore any decisions taken at that meeting were not binding. The committee also discussed the claimant's grievance and

agreed to proceed as detailed at the meeting on 27 January. It was also agreed Mrs Meiklejohn and Mrs Nellies would meet with Ms Beaton to discuss her well-being and current workplan.

69. The committee also noted the letters of complaint and agreed a letter of apology would be sent to Kitty to reflect the apology noted by the claimant when the matter was discussed with her.

70. Mrs Nellies, by email of 17 February, resigned from the committee. She referred to:-

> "*the appalling behaviour and lack of professional courtesy by some members of the committee towards me, namely Jacqui Pollock (Treasurer), Catherine McColl (committee member) and to a lesser extent Lynne Hoggan (Secretary) over the past 5 months, as well as the shocking standards of behaviour from the Service Manager, Janice Beaton .."*

71. Mrs Meiklejohn also resigned by email of 17 February (page 423), as did Mrs Fotheringham.

72. Mrs Pollock wrote to the claimant on 25 February (page 487) to acknowledge the letter of grievance and ask if the claimant agreed for the matter to be dealt with notwithstanding she was absent with work related stress. Mrs Pollock confirmed she and Mrs Hoggan wished to meet with the claimant to discuss the grievance.

73. Mrs Pollock did not receive a response from the claimant and so she wrote again on 9 March (page 111) to advise the claimant a meeting had been arranged for 16 March. The claimant did not attend.

74. Mrs Pollock and Mrs Hoggan interviewed Ms Beaton and Twiggy on 7 March (pages 86 – 89).

75. Mrs Pollock and Mrs Hoggan prepared a Grievance Investigation and Outcome Report (page 121 - 143). The Report set out the investigation carried out, the allegations made and their conclusions. The grievance was not upheld because there was insufficient or inconclusive evidence to substantiate the allegations.

76. A letter was sent to the claimant on 21 March (page 119) giving the outcome of the grievance and confirming the right of appeal.

77. Mrs Hoggan subsequently wrote to the claimant on 29 March (page 145) seeking consent for a medical report to be obtained. The claimant gave consent, and a report from the claimant's doctor was obtained dated 13 April (page 433). The report confirmed the claimant had been seen on the 8th February; she had been upset, stressed and tearful and was prescribed Fluoxetine. The claimant was reviewed in March, but from a work perspective, the situation from the claimant's point of view remained absolutely unchanged. The doctor noted the claimant felt extremely stressed and anxious and was depressed and agitated. She was prescribed Propranolol. The claimant had been given an 8 week medical certificate and was thereafter due to be reviewed. The doctor confirmed it was clear the claimant would not be able to render proper service until her grievance and problems with her workplace have been resolved. He noted the respondent would need to address the issues in a constructive way in order to re-establish a mutual trust and respect which is an essential component of a healthy working relationship.

78. The claimant's pay was reduced to half pay on 18 April.

79. Ms Beaton sent a letter to the claimant on 3 May (page 154) inviting her to meet with two members of the management committee on 10 May. The claimant attended this meeting and was accompanied by her brother in law David Meiklejohn. Mrs Pollock and Twiggy were in attendance for the respondent.

80. The meeting did not start well when Twiggy told Mr Meiklejohn he could not ask or answer questions on behalf of the claimant. Mrs Pollock and Twiggy wanted to know when the claimant would return to work. The claimant confirmed she could not return until the grievance had been resolved. The claimant became very upset when she learned the grievance had been dealt with without her knowledge or input. The claimant had not received the letters from the respondent. The meeting became heated and hostile: the claimant got up to leave and was told by Twiggy that there was an outstanding complaint which would have to be dealt with upon her return to work and there was also one other issue that had recently come to light that would also have to be dealt with.

81. The claimant left the meeting feeling distressed and bewildered by the fact Twiggy had been present. She had not received the letters from the respondent, and when Mr Meiklejohn had questioned them about proof of postage they had not been able to answer the questions. Mrs Pollock had handed Mr Meiklejohn a copy of the outcome letter, but the claimant had never seen this before.

82. The respondent wrote to the claimant on 11 May (page 159) giving her until 17 May to confirm whether she intended to return to work. The letter also referred to the fact that prior to leaving the meeting on 10 May the claimant had been made aware that on her return to work there would be an investigation relating to two outstanding matters which had been raised against the claimant.

83. The claimant was "*in pieces*" and discussed the situation with Mrs Meiklejohn. The claimant decided that what had started as an issue with Ms Beaton, had ended as an issue with the whole committee. She decided to resign.

84. The claimant's letter of resignation dated 13 May 2016 (page 435) gave notice of her resignation with immediate effect. The claimant referred to the meeting on 10 May and to the fact she had not received the letters allegedly

sent by the respondent. The claimant had not had an opportunity to speak to the grievance or to appeal. The claimant also felt Mrs Pollock and Twiggy had tried to bully her into providing a return to work date in circumstances where they knew, from the doctor's report, that the claimant was off with work related stress and not fit to return to work. The claimant also referred to being advised there were complaints to answer upon her return to work, which she felt was a bullying tactic. The claimant concluded by stating she felt it would be impossible for her to return to work because she would be bullied by the Manager and the trustees: she felt that mutual trust and confidence had broken down irretrievably.

85. Mrs Hoggan wrote on behalf of the respondent on 18 May to accept the claimant's resignation (page 163).

86. The claimant continued to be unfit for work following her resignation. The claimant's health deteriorated and she was not fit to attend the second part of this Hearing. The claimant was in receipt of Employment Support Allowance from 13 May 2016 at the rate of £73.10 per week.

Credibility and notes on the evidence

87. This was clearly a distressing case for all involved: the claimant's relationship with Ms Beaton broke down and the management committee also broke down. Two sides emerged with Mrs Meiklejohn, Mrs Nellies, and Mrs Fotheringham on one side supporting the claimant and Mrs Pollock, Mrs Hoggan and Twiggy on the other side supporting Ms Beaton. I preferred the evidence of Mrs Meiklejohn, Mrs Nellies and the claimant for the reasons set out below.

88. I found the claimant to be a credible witness: she was clearly in a very fragile state and very upset about what had happened. Mr Lyons suggested the claimant had, essentially, got hold of the wrong end of the stick and over-reacted because she thought there was a conspiracy against her. I could not

accept that suggestion because it did not accord with my impression of the claimant's evidence. I accepted the claimant had been placed in a difficult position when Ms Beaton took it upon herself to work from home notwithstanding Mrs Meiklejohn's instruction. Those difficulties were exacerbated when people took sides and suspicion arose regarding the actions and motives of others.

89. I also found Mr and Mrs Meiklejohn to be credible witnesses. Mr Meiklejohn's evidence did not add much to the proceedings, but Mrs Meiklejohn's evidence was important. Mrs Meiklejohn had very good recall regarding what had happened: her evidence was factual and she was able to explain what had happened and why it had happened. I found her to be a straightforward, honest and reliable witness, although this had to be balanced by the fact Mrs Meiklejohn is the claimant`s twin sister.

90. I also found Mrs Nellies to be an honest and straightforward witness. She clearly supported the decisions and actions of Mrs Meiklejohn, but she was also able to give her own view regarding events and why, for example, it had been appropriate for Mrs Meiklejohn to seek medical certificates from Ms Beaton.

91. I found aspects of Ms Beaton's evidence not reliable. Firstly, on the one hand, Ms Beaton was signed off as unfit for work because of hip and back pain. There was reference in the emails to severe pain; blood pressure plummeting in response to severe pain; and painkillers knocking her out. There was no dispute Ms Beaton was absent from work for almost six months. On the other hand, Ms Beaton wished to do some work from home and visit the office when she felt like it. I acknowledged that in a small organisation where there were only two employees, the desire to do what you can, and not let people down is very strong. However, I could not reconcile Ms Beaton's ill health on the one hand, with her reluctance to comply with Mrs Meiklejohn's instructions to take a total break. I accepted Mrs Meiklejohn's evidence to the effect the employer has a duty of care and the management committee had to ensure

Ms Beaton was not hampering or aggravating her recovery by undertaking work. Ms Beaton was unwilling to do as instructed by Ms Meiklejohn.

92. Secondly, Ms Beaton was asked repeatedly to provide medical certificates to Mrs Meiklejohn: she deliberately did not do so. Ms Beaton felt the respondent usually took a flexible approach to absence, and she resented being asked to provide medical certificates. Further, I did not find either Ms Beaton's evidence, or Twiggy's evidence to be credible when it was suggested Ms Beaton had given medical certificates to Twiggy to give to Mrs Pollock, Treasurer. If Ms Beaton had given the medical certificates to Twiggy, why did she not simply tell Mrs Meiklejohn what she had done? The evidence suggested the medical certificates had been given to Twiggy only at the time of the management committee meeting.

93. Thirdly, Ms Beaton sought to explain her email to the claimant at 01.31am as being sent at a time when she was in less pain and was able to work. I did not doubt that evidence, but whilst I could accept Ms Beaton drafting the email at that time, I could not accept the need to send an email on headed notepaper, with a red flag urgent alert, to the claimant at that time. The email could have been sent within normal working hours.

94. Fourthly, Ms Beaton was not pleased about several things that occurred. She was not pleased about (i) the claimant taking a holiday before returning from sickness absence; (ii) Mrs Meiklejohn intimating her intention to resign and then changing her mind; (iii) the claimant putting the phone down on her; (iv) Mrs Meiklejohn's endeavours to manage her and (v) the claimant's grievance.

95. Fifthly, I preferred the claimant`s version of events regarding the phone call on 17 November. The claimant accepted she had put the phone down on Ms Beaton, but denied swearing. I accepted her evidence in preference to the evidence of Ms Beaton which was to the effect the claimant had been abusive and swearing during the phone call.

96. Ms Beaton was suspicious of Mrs Meiklejohn asking for medical certificates and arranging a meeting in terms of the absence policy to discuss how Ms Beaton was getting on, the prognosis for a return to work and whether the respondent could take any action to assist in a return to work. Ms Beaton questioned why this was being done when it had not been done for the claimant (notwithstanding it was Ms Beaton's responsibility to manage the claimant). I formed the view that this fuelled the actions of Mrs Pollock and Twiggy at the committee meeting on 27 January when they refused to discuss the management of Ms Beaton's absence, and matters escalated from there.

97. I did not find Mrs Pollock to be an entirely credible or reliable witness. Mrs Pollock had a habit of being unable to recall matters when it suited her to do so. This contrasted sharply with her recall of other matters. Mrs Pollock told the Tribunal the three members of the committee who attended the meeting on 3 February did not consider postponing it to allow for the attendance of Mrs Meiklejohn. Mrs Pollock initially told the Tribunal that Mrs Meiklejohn could not have attended the meeting in any event because of the conflict of interest, however the real reason came out subsequently in her evidence when she stated it was Mrs Meiklejohn's fault the organisation was in a mess. I inferred from this evidence that Mrs Pollock had deliberately excluded Mrs Meiklejohn from the meeting on 3 February, and did so because she, and her supporters, wished to vote Mrs Meiklejohn off as Chairperson.

98. I found Twiggy to be, on the whole, a reliable witness, although she refused to acknowledge any conflict of interest because of her close friendship with Ms Beaton.

99. There was a dispute regarding which Absence Management Policy and Procedure was the current document. The claimant obtained the document at page 248: the respondent maintained the document at page 190 was the current document. The difference in the documents was that in the document produced by the claimant, responsibility for managing the absence of Ms Beaton rested with the Chairperson of the management committee whereas

in the document produced by the respondent, responsibility rested with the Executive Board.

100. I did not consider this to be a material point in circumstances where I accepted the claimant's evidence that she was asked by Mrs Meiklejohn to obtain a copy of the Absence Policy, and did so by printing off the document at page 248 which was the only Absence Policy in the shared drive. Mrs Meiklejohn acted in accordance with that Policy which was the policy she believed to be applicable.

101. I noted that at no time during these events did anyone suggest to Mrs Meiklejohn that she did not have authority to ask Ms Beaton for medical certificates.

102. There was also a dispute regarding the letters sent to the claimant regarding the grievance. The respondent sent the letter dated 9th March (page 111) inviting the claimant to attend a grievance meeting on the 16th March, by recorded delivery and post. The respondent produced a proof of postage at page 462. The claimant produced a receipt for a letter sent first class post which had to be signed for. This was the proof of postage for the letter dated 16 March. The proof produced by the claimant noted the address as number 2, rather than number 21. The claimant also produced a Track and Trace document (page 463) which indicated the letter had been returned to sender.

103. The grievance outcome letter dated 21 March (page 119) was sent to the claimant by recorded delivery and post. The claimant produced a proof of postage (page 464) which noted the destination address as number 2, rather than 21. The Track and Trace document (page 466) indicated the letter had not been delivered.

104. The claimant's representative contrasted the above letters with the letter sent by the respondent seeking consent for a medical report. The proof of postage noted the address as number 21, and there was a signed for receipt.

105. Ms Bain suggested to Mrs Pollock and Twiggy that the address on their proof of postage for the letters of 9 and 21 March had been altered from 2, to 21. Mrs Pollock and Mrs McColl denied this.

106. I, based on the evidence before me, found the letters sent by the respondent to the claimant on 9 and 21 March were not received by the claimant. I considered that if the claimant had known of the grievance, she would have attended. I was not prepared to go so far as to find the address had been altered on the proof of postage, although the same "*error"* on both documents was mysterious.

107. Mrs Pollock acknowledged the claimant may not have received the documents, and, with the benefit of hindsight, she accepted it may have been wiser to have telephoned the claimant regarding the matter and to check if letters had been received.

108. There was also a dispute regarding whether the meeting on 3 February was constitutional. The Constitution was produced at page 447. Clause 7 was entitled "*Meetings of the Group*" and noted arrangements for the annual general meeting. It also noted the Chairperson of the management committee may at any time at his/her discretion call a special general meeting of the Group. The Secretary shall call a special general meeting of the Group within 28 days of receiving a written request to do so by not less than one third of the members and giving reasons for the request.

109. Clause 8 dealt with Rules of Procedure at all Meetings and noted the quorum for an annual general meeting shall be six of the members of the group entitled to vote, and the quorum at a meeting of the management committee shall be three members entitled to vote including two office bearers.

110. There was no provision in the Constitution regarding the calling of management committee meetings.

111. Mrs Pollock told the Tribunal she had called an urgent meeting under clause 5F. Clause 5 deals with Office Bearers and clause 5F provides that the management committee will have the power at their sole discretion to suspend one or more of the office bearers pending confirmation of the suspension and subsequent removal from office of the said office bearer by the group in general meeting.

112. Mrs Meiklejohn's position was that if the meeting on 3 February was a special general meeting, then the Constitution makes clear that a quorum for a special meeting is six members entitled to vote. Further Mrs Pollock had no authority to arrange for a management meeting to take place; and any decision taken on 3 February to remove her from office had to be confirmed by the Group in general meeting and this had not taken place.

113. I was not at all convinced, on the basis of the evidence before me, that Mrs Pollock had authority to call the meeting on 3 February. Further, I was satisfied there was no authority to remove Mrs Meiklejohn from office at the meeting.

114. The claimant and Ms Beaton spoke to some of the issues raised in the claimant's grievance. I have not made any findings regarding these matters beyond the material fact that a grievance was raised. I have adopted this approach because it was clear from Ms Bain's submission that it was the actions of the employer in dealing with the grievance and their conduct of the meeting on 10 May which formed the basis for the claimant's position that there had been a breach of the implied duty of trust and confidence.

Claimant's submissions

115. Ms Bain confirmed the claim was one of constructive dismissal based on the respondent's fundamental breach of contract: the claimant asserted the respondent had breached the implied duty of trust and confidence in relation to their handling of her grievance and the return to work meeting on 10 May.

116. Ms Bain invited the Tribunal to make a number of findings of fact as set out in her submission. The facts in dispute included the issue of the letters sent to the claimant. The first letter was dated 25 February (page 489) but no proof of postage had been provided in support of this letter. The second letter was the letter of 9 March (page 111). The proof of postage at page 462 indicated the letter had been sent to the wrong number and the Track and Trace confirmed the letter had been returned to sender. The third letter was the letter of 21 March. The proof of postage also noted it had been sent to the wrong address. Ms Bain invited the Tribunal to find neither the recorded delivery letters nor the normal posted letters had been received by the claimant; and, that she had no knowledge of the grievance meeting or the outcome.

117. Ms Bain invited the Tribunal to prefer the evidence of the claimant and her witnesses to that of the respondent's witnesses. Ms Bain suggested the claimant had given her evidence clearly and honestly. She had not been able to remember some events, but had been candid about this. Mrs Meiklejohn was, it was submitted, a credible witness although Ms Bain acknowledged less weight had to be attached to her evidence because she was the claimant's sister.

118. Ms Bain also suggested Mr Meiklejohn and Ms Nellies had been honest in giving their evidence and their recollection of events.

119. Ms Bain submitted Mrs Pollock had not been a credible witness, and she had been unable to recall events or answer questions when it suited her and when she did not want to acknowledge something adverse to the respondent's case. The evidence suggested Ms Beaton had undermined the claimant and had been angry when the claimant hung up.

120. Ms Bain submitted the respondent had breached the implied duty of trust and confidence. The claimant had raised a grievance against her line manager, Ms Beaton. She understood the grievance was being dealt with by her

employer. The claimant was not involved in the investigation process, was not given the opportunity to attend the grievance meeting and was not notified of the outcome. The claimant was shocked at the meeting on 10 May, to learn the grievance had been concluded in her absence.

121. Ms Bain invited the Tribunal to accept the claimant's account of the meeting on 10 May insofar as the meeting was aggressive in nature, with Mrs Pollock and Twiggy keen to know when the claimant would be returning to work. The claimant could not understand why this was being raised in circumstances where she had a medical certificate and the grievance had not yet been concluded. The claimant felt pressured at the meeting. The nature of the meeting, together with the respondent's decision to deal with the grievance in her absence, demonstrated to the claimant that there had been a breakdown in the employer/employee relationship.

122. Ms Bain noted the respondent, upon being told the claimant had not received the letters regarding the grievance, did not offer a re-hearing or to extend the time for an appeal to be presented. Furthermore, it was submitted that by this time, everyone on the committee was too close to what had happened.

123. There had been a suggestion by the respondent that the grievance was a smokescreen to deflect attention from the real reason for the resignation which was to escape from potential disciplinary action. The claimant disputed this. The claimant made the decision to resign after the hostile meeting on 10 May, when she had been bombarded with questions by the respondent regarding a return to work, and after learning of the way in which the grievance had been dealt with.

124. The claimant resigned in response to the breach. Ms Bain invited the Tribunal to have regard to the terms of the claimant's letter of resignation.

125. Ms Bain referred the Tribunal to the cases of ***Western Excavating Ltd v Sharp [1978] IRLR 27***; ***Morrow v Safeway Stores Plc [2002] IRLR 9***; ***British Gas plc v O'Brien LELR 64****;* and ***Wright v North Ayrshire Council [2013] UKEATS/0017/13****.*

126. Ms Bain invited the Tribunal to find for the claimant and to make an award of compensation as per the schedule of loss. The claimant is still not fit for work and was diagnosed with cancer in June 2017. In the circumstances, and taking into account the date of diagnosis, compensation to the date of the continued Hearing in December 2017 was sought.

Respondent's submissions

127. Mr Lyons referred to Section 98(1)(c) Employment Rights Act, and to the cases of ***Western Excavating Ltd v Sharp*** (supra) and ***Malik v BCCI [1997] IRLR 462***. The latter case confirmed that it is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee; and that the conduct must be considered objectively as to whether or not it is calculated or likely to destroy or seriously damage the relationship.

128. Mr Lyons also referred the Tribunal to ***Tullett Prebon plc v BGC Brokers LP [2011] EWCA Civ 131*** and in particular to paragraph 27 of the Judgment where it was stated:-

> "*At its heart, it is concerned with the specific dynamics between employer and employees, not with the indirect effect of corporate behaviour on employees. The issue is repudiatory breach in circumstances where the objectively assessed intention of the alleged contract-breaker towards employees is of paramount importance.*

129. In ***Burton McEvoy & Webb v Curry 2010 UKEAT/0174/09*** it was stated that:-

> *"Although the Malik term is not equivalent to a term simply that the employer will behave reasonably, nevertheless in deciding whether it has been* breached *it will generally be relevant to consider whether the conduct complained of was reasonable: if it was, the employer will generally have 'reasonable and proper cause' for it, and if it was not, that fact is likely to be at least material to the question of whether it was such as to destroy or seriously damage the relationship of trust and confidence.*

130. In ***Leeds Dental Team Ltd v Rose IKEAT/0016/13*** it was held that an employer's conduct had to be looked at from the perspective of a reasonable person. Mr Lyons submitted the respondent in this case had acted with the best of intentions at all times.

131. In ***London Borough of Waltham Forest v Omilaju [2004] EWCA Civ 1493*** it was held that an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as harmful and destructive of their trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is objective.

132. In ***Moghal v (1) M Hudda and (2) N Hudda t/a Playhouse Montessori UKEAT/0210/08*** it was stated, in paragraph 14 that:-

> "*It seems to us that it was necessary for this Tribunal, if not to deal with each and every allegation by itself, certainly to make clear enough findings and to give reasons for those findings in relation to the overall nature of the complaints being made by this Appellant."*

133. Mr Lyons also referred the Tribunal to the case of ***Sainsbury Supermarkets plc v Hitt [2003] IRLR 23*** and submitted that if the claimant was constructively dismissed, the Tribunal should consider whether the dismissal for that reason, both substantively and procedurally fell within the range of reasonable responses and was fair.

134. Mr Lyons noted Ms Bain had referred the Tribunal to the case of **Wright** but he considered that case concerned not properly answering the grievance, whereas in the claimant's case, the grievance was comprehensively considered and investigated.

135. The respondent's principal position was that there had not been a fundamental breach of contract. The claimant had made a number of allegations and it would be for the Tribunal to examine these and make findings on them as to whether the claimant resigned in response to these acts and if so, did these acts amount to a fundamental breach of contract.

136. The acts/omissions were:

(a) Lack of communication and consistency (Ms Beaton);

(b) Undermined (Ms Beaton);

(c) Denial of access to petty cash (Ms Beaton and Ms Pollock);

(d) Ms Beaton's email of 14 January 2016;

(e) Withdrawal of support by Mrs Pollock'

(f) The respondent's failure to use an external party for the grievance and

(g) Mrs Pollock and Twiggy's approach in the return to work meeting on 10 May.

137. Mr Lyons submitted the actions of the respondent prior to October 2015 did not amount to a fundamental breach.

138. Mr Lyons accepted the claimant only got to know, on 10 May, that the grievance had been concluded. It was not known what had happened to the letters. He acknowledged there had been a suggestion that the respondent should have telephoned the claimant, but she was off sick.

139. The meeting on 10 May was a return to work interview, and therefore, it was submitted, it had been entirely proper for Mrs Pollock and Twiggy to ask the claimant when she was going to return and what she thought they could do to assist. The respondent's approach was reasonable and innocuous.

140. Mr Lyons noted the last act complained of was the return to work meeting on 10 May. He submitted that as the claimant had not resigned up until this point, the constructive dismissal claim must rely on the last straw. The respondent accepted that it appeared the claimant resigned in response to the meeting and the revelations that arose from that meeting.

141. Mr Lyons invited the Tribunal to prefer the respondent's evidence to the effect the claimant had no intention of engaging with the meeting. She had decided long before that she would not be coming back and therefore, it was submitted, the meeting itself should play no part of the Tribunal's consideration of whether or not the implied term of trust and confidence was breached. Mr Lyons reminded the Tribunal that when the claimant was asked if she intended to return to work, she replied "*no way, no way*". My Lyons submitted the real reason why the claimant resigned was because she felt she had been treated differently to Ms Beaton. Alternatively, the claimant resigned in order to avoid the inevitability of disciplinary action against her. In the claimant's mind she had no friends left and so when disciplinary action was mentioned, she jumped rather than face what she perceived would be inevitable dismissal.

142. Mr Lyons noted the claimant in evidence had said the relationship started to break down on 14 October 2015, yet there had been no grievance until January 2016. The claimant's evidence in chief only touched on issues before October 2015, and only one issue (Easter eggs) was raised informally. All of these issues were investigated during the grievance process and rejected on reasonable grounds. Mr Lyons submitted the texts at pages 99 – 107 showed no sign of these earlier issues and at no point was Ms Beaton acting in a way that would infringe trust and confidence. At its height she issued a reasonable management instruction to an employee. It was submitted that any issue prior to 14 October 2015 should not be considered in determining whether there had been a breach of trust and confidence.

143. The text and email communications between the claimant and Ms Beaton showed a thoughtful and respectful relationship. The claimant's own evidence was that she would not contact Ms Beaton. This was, it was submitted, more than simply a case of lack of communication from Ms Beaton.

144. The claimant asserted Ms Beaton had removed the petty cash: Ms Beaton denied this. The grievance determined the petty cash was in fact still there. Mr Lyons submitted it was fundamental the claimant had not raised this with anyone, and in any event, if the petty cash was removed, why did the claimant not raise it with anyone. The claimant and Ms Beaton were still exchanging texts at this time and Mr Lyons invited the Tribunal to prefer the evidence of Ms Beaton on this matter.

145. The claimant admitted hanging up on 17 November. Ms Beaton's evidence was that the call had been extreme and there was evidence the claimant could react in a hostile manner. Ms Beaton expected the claimant to apologise and when this was not forthcoming the relationship cooled, but not to the extent of breaching trust and confidence. Mr Lyons pointed to the fact the emails after this incident indicated Ms Beaton adopting a supportive approach: she was concerned the claimant was given the support she

needed during Ms Beaton's absence. Mr Lyons submitted this was another example of the claimant simply getting things badly wrong.

146. Mr Lyons submitted there was a perfect storm: Ms Beaton and the claimant had worked well together for years, but at this time, they were both suffering from health issues and not speaking to each other on a regular basis. It was submitted that unintended miscommunication was almost inevitable. However, the claimant's perception of that was unreasonable.

147. The claimant told Kitty on 13 January that she thought Ms Beaton had fallen out with her. It was against this background that Ms Beaton's email of 14 January seeking statistics was received. The email request related to information necessary for funding: it was an annual exercise. Mr Lyons submitted this was a reasonable management instruction and was on headed notepaper because there appeared to be a move towards more formality.

148. The claimant felt the support initially offered by Mrs Pollock was removed when Mrs Pollock told the claimant to put her concerns in writing. The claimant stated in evidence that "*this was the one that nearly sent me over the edge"*. Mr Lyons submitted this was another over-reaction to something that simply was not there. Mr Lyons further submitted that Mrs Pollock's entire history was one that screamed fairness and transparency. It was reasonable for Mrs Pollock to ask for the claimant's concerns in writing and this was not calculated to upset the claimant. It was unfortunate the claimant was copied in to the string of emails between committee members, but in that sense, it was submitted the whole committee was guilty.

149. Mr Lyons described the claim was being one of two parts: (i) the alleged acts and omissions of Ms Beaton and (ii) the alleged actions of the committee but limited to Mrs Pollock and Twiggy. Mr Lyons submitted the claimant's selectivity regarding the committee undermined her case: it could not, for example, be reasonable to refer to the string of emails copied to her but to argue that it had been reasonable for some to copy her in, but not others. For

this reason, it was submitted, the claimant's argument regarding the committee had to be limited to events after the 17 February when the three members of the committee resigned.

150. The grievance was criticised by the claimant for its lack of independence and for not including the claimant. The respondent was clear the letters were sent. It now appeared clear two recorded delivery letters went astray, but there was every chance the letters sent by ordinary post reached the claimant. There was also evidence the respondent booked a room for 16 March. There was no evidence the letters were fabricated or deliberately not sent. Mrs Pollock stated consistently in evidence that the grievance was urgent and needed to be dealt with.

151. Mr Lyons considered it remarkable the letters were not received. He suggested there was a possibility the claimant had received them but ignored them; a possibility the respondent drafted the letters but did not send them; or a possibility the letters were lost. Mr Lyons submitted only the first possibility was plausible and if that was true, then it was likely the claimant had decided to leave the respondent long before 10 May meeting.

152. There was no guarantee of independence in dealing with the grievance. The insurance policy had to be reviewed before a determination could be made. There was nothing in the grievance to make Mrs Pollock's involvement unwise. The respondent took advice from ACAS and legal advice. The outcome of the grievance was to reject it, but recognise the relationship difficulties and put in place steps to address them. This was not an employer trying to get rid of an employee.

153. The claimant accepted in evidence that the minutes of 10 May meeting largely reflected the meeting. Mr Lyons submitted neither Mrs Pollock nor Twiggy did anything wrong at the meeting. The claimant was upset to see Mrs Pollock and Twiggy and this affected her view of the meeting: the claimant did not

want to engage in the meeting. The meeting was one which simply went wrong.

154. Mr Lyons submitted the meeting on 10 May did not of itself breach trust and confidence, and was not sufficient to be a last straw because it was innocuous. Further, reliance on a last straw in this case was weak and there was not enough to suggest the respondent had, over time, demonstrated an intention to no longer be bound by the contract of employment. Mr Lyons acknowledged there were difficulties in the relationship but submitted these emanated from the claimant's perception. Mr Lyons submitted the case of ***Assamoi v Spirit Pub Company UKEAT/0050/11*** may be relevant because the employer's actions sought to prevent the situation escalating further.

155. Mr Lyons noted credibility of witnesses would be an issue for the Tribunal to determine. He invited the Tribunal to prefer the evidence of the respondent's witnesses which was largely supported by contemporaneous documents. Mr Lyons invited the Tribunal to treat the claimant's evidence with caution: the claimant had twisted the reality of events. The claimant mistakenly believed there was a conspiracy.

156. Mr Lyons submitted the respondent's actions had been entirely reasonable throughout. The claimant's perception of those actions was not and this was in part driven by Mrs Meiklejohn's influence. The claimant and Mrs Meiklejohn are twin sisters who talk every day and holiday together. It was submitted that when viewed objectively, from the perspective of a reasonable person, the respondent's conduct could not be said to have been calculated or likely to destroy or seriously damage the relationship. He invited the Tribunal to find there was no breach of contract, either actual or implied; that the respondent had acted in a reasonable and fair manner throughout; that the claimant resigned for her own reasons and not as a consequence of the respondent's alleged breach of contract and to dismiss the claim.

157. In the alternative, if the Tribunal did not dismiss the claim and found the respondent's actions reasonable, the reason for dismissal was some other substantial reason being the breakdown in the relationship and the claimant's mind being unreasonably made up.

158. An award of compensation should be based on the basic award only. The claimant was unable to work and would have remained on SSP for 28 weeks and then moved to a no pay situation. There was no link between the claimant's stress and the absence in circumstances where there were other medical conditions.

159. Mr Lyons submitted the documentary evidence regarding continuity of service did not support the claimant's position. Further, any basic award should be reduced in terms of Section 122(2) Employment Rights Act because of the claimant's conduct in hanging up on her manager, arguing with Kitty, not contacting Ms Beaton and not engaging in the return to work meeting. It was the claimant's conduct which damaged the relationship and so the award should be reduced by 80%.

Discussion and Decision

160. I had regard firstly to the terms of Section 95 Employment Rights Act which provides that:-

> *"for the purposes of this Part, an employee is dismissed by his employer if .. (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."*

161. I next had regard to the case of ***Western Excavating Ltd v Sharp*** (supra) where the Court of Appeal held that the employer's conduct which gives rise to a constructive dismissal must involve a repudiatory breach of contract. It was stated:-

> *"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 of 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."*

162. The claimant in this case argued she had resigned because of a breach of the implied duty of trust and confidence by the employer. The duty of trust and confidence is a term implied into all contracts of employment. In the case of ***Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666*** it was stated:-

> *"In our view it is clearly established that there is implied in a contract of employment a term that the employer 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 employer and employee. To constitute a breach of this implied term, it is not necessary to show that the employer intended any repudiation of the contract: the Tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it."*

163. In ***Lewis v Motorworld Garages Ltd [1986] ICR 157*** it was stated:-

> *"The conduct must therefore be repudiatory and sufficiently serious to enable the employee to leave at once. On the other hand it is now established that the repudiatory conduct may consist of a series of acts or incidents, some of them perhaps quite trivial, which cumulatively amount to a repudiatory breach of the implied term of the contract of employment that the employer will not, without reasonable and proper cause, conduct himself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."*

164. The above approach was endorsed by the House of Lords in ***Malik v BCCI [1997] ICR 606*** when it was stated:-

> *"In other words, and this is the necessary corollary of the employee's right to leave at once, the bank was under an implied obligation to its employees not to conduct a dishonest or corrupt business. This implied obligation is not more than one particular aspect of the portmanteau, general obligation not to engage in conduct likely to undermine the trust and confidence required if the employment relationship is to continue in the manner the employment contract implicitly envisaged. Second, I do not accept the liquidators' submission that the conduct of which complaint is made must be targeted in some way at the employee or group of employees. No doubt that will often by the position, perhaps usually so. But there is no reason in principle why this must always be so. The trust and confidence required in the employment relationship can be undermined by an employer, or indeed an employee, in many different ways. I can see no justification for the law giving the employee a remedy if the unjustified trust-destroying conduct occurs in some ways but refusing a remedy if it occurs in other. The conduct must impinge on the relationship in the sense that, looked at objectively, it is likely to*

destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. That requires one to look at all the circumstances."

165. The question is whether the employer's conduct, objectively speaking, was likely to destroy or seriously damage the trust and confidence that an employee is entitled to have in his employer (***Meikle v Nottinghamshire County Council [2005] ICR 1***).

166. Mr Lyons referred me to the case of ***Burton, McEvoy & Webb v Curry*** (supra) and in particular to paragraph 17 of the Judgment. I noted that in the preceding paragraph the EAT had identified two questions which a Tribunal had to determine in a constructive dismissal case. The questions were (i) did the situation fall within the terms of Section 95(1)(c) so as to give rise to a (constructive) dismissal and (ii) was that dismissal unfair, applying the test in Section 98. The EAT noted that in the great majority of cases, answering the first question would in practice answer the second, but that was not always so, and it was well recognised that there could, albeit rarely, be a fair constructive dismissal.

167. The EAT further noted the answer to question (i) depended not on whether the employer had acted unreasonably but on whether he had committed a repudiatory breach of contract. In paragraph 17 it was stated:-

*"As Sedley LJ points out in **Buckland** the relevance of whether the employer has acted reasonably to the determinative question of whether he had committed a repudiatory breach will depend on what kind of breach is alleged. Although the **Malik** term is not equivalent to a term simply that the employer will behave reasonably, nevertheless in deciding whether it has been breached it will generally be relevant to consider whether the conduct complained of was reasonable: if it was, the employer will generally have "reasonable and proper cause" for it, and, if it was not, that fact is likely to be at least material to the*

*question of whether it was such as to destroy or seriously damage the relationship of trust and confidence between employer and employee. Thus Sedley LJ (in paragraph 28 of his judgment in **Buckland**) described reasonableness as "one of the tools in the employment Tribunal's factual analysis kit". By contrast, if the employer has committed a serious breach of an express term of the contract, it is irrelevant that he may, objectively, have acted reasonably in all the circumstances: he has repudiated the contract, and that is that."*

168. Mr Lyons also referred to the ***Leeds Dental Team Ltd*** (supra) case, where Counsel on behalf of the claimant quoted extensively from the **Tullett Prebon plc v BGC Brokers [2011] IRLR 420** case. The paragraph referred to by Mr Lyons was part of that quoted extract and suggested the objectively assessed intention of the alleged contract-breaker towards the employee was of paramount importance.

169. The EAT did not accept the submission made by Counsel for the claimant relying on the quoted extract because they concluded Kay LJ (whose paragraphs were quoted) had been emphasising that only objective intention was relevant, and was to be ascertained by looking at all circumstances of the case. I, for this reason, did not attach weight to the paragraphs referred to by Mr Lyons in his submission.

170. The claimant, in order to succeed with her claim for constructive dismissal, must establish:-

- that there was a fundamental breach of contract on the part of the employer;
- that the employer's breach caused her to resign and
- that she did not delay too long before resigning, thus affirming the contact and losing the right to claim constructive dismissal.

171. The first issue to be determined by the Tribunal is whether there was a fundamental breach of contract on the part of the employer entitling the claimant to resign. The claimant's position was that the implied duty of trust and confidence had been breached and that the breach arose from the respondent's handling of her grievance and the return to work meeting on 10 May.

172. There can be no doubt that prior to the claimant's grievance begin dealt with by Mrs Pollock and Mrs Hoggan, there had been a catalogue of incidents between, on the one hand, the claimant and Ms Beaton, and on the other hand, the committee. The incidents with Ms Beaton formed the basis for the claimant's grievance. The breakdown of the committee did not directly involve the claimant, but it was illustrative of the taking of sides.

173. Mr Lyons, in his submission, referred to a number of acts/omissions which, he said, were the basis of the claimant's claim. He listed seven acts/omissions which included the failure to use an external party to hear the grievance and the approach of Mrs Pollock and Twiggy to the meeting on 10 May. I could not accept the other five matters on the list were acts or omissions forming the basis of the claimant's case. Ms Bain was very clear in her submission that the breach of the implied term arose from the handling of the grievance and the return to work meeting.

174. I considered it was however helpful to have regard to the history of this case. The claimant and Ms Beaton had worked closely together for a number of years, and got on well. The relationship changed and I concluded that the cause of the change was the absence of Ms Beaton and the difficulties that created. I noted there was no dispute regarding the fact Ms Beaton was in severe pain with her back and ended up being absent from work for a much longer period than initially intended.

175. The text messages between Ms Beaton and Mrs Meiklejohn demonstrated a good working relationship: Mrs Meiklejohn sympathised with Ms Beaton's condition, but also made clear that the respondent could not allow a situation whereby working at home may exacerbate Ms Beaton's condition or her recovery. Mrs Meiklejohn gave a very clear instruction to Ms Beaton not to carry out work at home, but to ensure the claimant forwarded emails to Mrs Meiklejohn so that she could deal with them. Ms Beaton did not comply with that instruction.

176. I acknowledged the desire to do what is possible and to help out in a small organisation. However, I considered that it was Ms Beaton's failure to comply with Mrs Meiklejohn's instruction and the confusion this caused that impacted adversely on the claimant, particularly when the claimant knew of Mrs Meiklejohn's instruction and expected it to be carried out. The claimant was, essentially, left in the position of not knowing what Ms Beaton was doing, who she had spoken to or what work was required to be done by her. The grievance illustrated many examples of this.

177. I formed the impression that Ms Beaton resented Mrs Meiklejohn's interference in her work and her attempts to manage her, and this was when the problems for the committee started: sides were taken with those friendly with Ms Beaton (Mrs Pollock and Twiggy) taking her side against Mrs Meiklejohn.

178. Mrs Meiklejohn was entirely justified in seeking medical certificates from Ms Beaton given the length of her absence. Ms Beaton not only did not provide them to Mrs Meiklejohn, she – I inferred, deliberately – did not tell Mrs Meiklejohn she had given them to Twiggy. Ms Beaton could have stopped matters escalating by informing Mrs Meiklejohn she had medical certificates and had given, or would give, them to Twiggy to bring to the next management meeting.

179. The grievance (pages 53 – 66) opened, in the second paragraph, with reference to Ms Beaton being off on sick leave, but communicating with volunteers, service users, committee members, funders and fund raising consultants regarding the business of the respondent. The claimant stated "*and failing to inform me so that it is becoming almost impossible for me to do my job."* The claimant complained of a lack of communication with her, in contrast to Ms Beaton communicating with others and also to the fact any communication from Ms Beaton was delivered in such a way as to make her feel she was not respected.

180. The claimant listed a range of examples in the grievance letter which she considered demonstrated a deteriorating relationship. The claimant asked why Ms Beaton was being allowed to work and make decisions whilst on sick leave, without clear boundaries being put in place by the management committee; and why no-one was keeping the claimant up to date with what Ms Beaton was doing. The claimant also asked about the petty cash and why volunteers knew of new projects before she did.

181. The claimant concluded her grievance by stating:-

> *"I feel undervalued, undermined, excluded, unmanaged and deemed untrustworthy. I feel have {sic} nowhere to turn. I can't ask the Chair for support for fear of her being accused of being bias towards me, given that she is my sister. However, I find that Jacqui, who offered support to me appears to be withdrawing that offer and indeed implying she had no knowledge of my concerns. I feel I am no longer equipped to carry out my duties effectively and my mental health is being severely affected. I fear that my position in SFSS is becoming untenable."*

182. I considered, putting to one side the rights and wrongs of the issues raised by the claimant, that she made it very clear in her grievance that her mental health was being severely affected by the situation and, indeed, the claimant went off on sickness absence on the 9th February with work related stress.

183. The claimant was advised, by letter of 21 January (page 373) that her letter of grievance had been received and that *"the committee unanimously agreed last night that your grievance should be dealt with by an independent external organisation."* The letter went on to state the Treasurer had advised the meeting that the respondent was insured for legal cover and suggested the insurance policy should be examined with a view to securing the necessary legal input to deal with the grievance.

184. The claimant was not, at any time thereafter, notified that this was not going to happen. The claimant accordingly had a reasonable expectation that her grievance would be dealt with by an independent external organisation.

185. The grievance was not dealt with by an independent external organisation: it was dealt with by Mrs Pollock and Mrs Hoggan. They, together with Twiggy, were the members of the management committee who took part in the meeting on 3 February to effectively oust Mrs Meiklejohn as Chairperson. They, as Mrs Pollock told the Tribunal, blamed Mrs Meiklejohn for the organisation being in a mess; and, they effectively sided with Ms Beaton.

186. The other half of the committee comprised Mrs Meiklejohn, Mrs Nellies and Mrs Fotheringham. Mrs Meiklejohn is the claimant's twin sister. The claimant was inextricably linked, in all of "*the mess*" to Mrs Meiklejohn's side.

187. Mrs Meiklejohn, Mrs Nellies and Mrs Fotheringham resigned from the committee on 17 February 2016.

188. I acknowledged the breakdown of relations on the management committee did not directly affect the claimant, but she was indirectly caught up in the taking of sides. I considered that in that context, the decision not the involve an independent third party to determine the claimant's grievance, was significant. This was particularly so in circumstances where Mrs Pollock and Mrs Hoggan knew, from the committee meeting on 21 January, or from the minutes of that meeting, that a letter had been sent to the claimant to tell her an independent external organisation would deal with the grievance and that the claimant had never been told otherwise.

189. Mrs Pollock and Mrs Hoggan determined the claimant's grievance in her absence. The respondent's position was that three letters were sent to the claimant by recorded delivery and normal post, and the claimant did not respond to any of them. The letters were dated 25 February, 9 March and 21 March. The claimant's position was that she did not receive these letters.

190. The evidence regarding proof of postage noted the claimant's address as 2 rather than 21 on the letters of 9 and 21 March. This might indicate an error by the Post Office, but I considered this possibility was undermined by the fact of it happening twice. It might also indicate an error by the respondent, and I considered this a very real possibility, particularly in circumstances where the letters sent by ordinary post were also not received.

191. The respondent suggested the claimant may have received the letters and not opened them. I acknowledged the claimant's mental health was fragile, but I could not accept the suggestion in circumstances where the claimant is well supported by family.

192. Mrs Pollock conceded, with the benefit of hindsight, that a phone call should have been made to the claimant to query why there had been no response. Mr Lyons suggested that it would not have been appropriate to telephone the claimant whilst she was off sick. I could not accept that submission in circumstances where the minutes of a committee meeting attended by Mrs

Pollock, Mrs Hoggan and Twiggy made clear that Mrs Hoggan was to telephone the claimant in respect of absence management.

193. There can be no doubt that it would have been better for the respondent to have contacted the claimant by telephone to ascertain whether the letters had been received and whether the claimant wished to attend a grievance investigation meeting and hearing. However, I was satisfied that it was reasonable for the respondent to think that a posted letter will be received. I decided, on that basis, that the decision by the respondent to proceed with the grievance in the claimant's absence was reasonable.

194. There was no dispute regarding the fact the claimant learned for the first time, at the meeting on 10 May, that her grievance had been dealt with and not upheld. I accepted this must have come as a complete shock to the claimant who was still waiting for the grievance to be heard, and by an independent external organisation.

195. The respondent sought a medical report from the claimant's GP, and the report (page 433) was provided on 13 April 2016 (and copied to the claimant). The report referred to the doctor seeing the claimant for the first time on 8 February 2016 when she was struggling emotionally at work. The doctor noted the claimant was clearly upset, stressed and tearful and he prescribed Fluoxetine which is an antidepressant.

196. The claimant was reviewed in March, but the doctor noted that from a work perspective, the situation remained unresolved. The doctor further noted the claimant was depressed and agitated and he prescribed Propananol in addition to the Fluoxetine. The doctor confirmed the claimant had been given a medical certificate dated 30 March, for an 8 week period, following which the claimant was to return for further counselling and assessment.

197. The doctor confirmed the claimant would not be able to render proper service until the grievance and problems at work had been resolved. He confirmed there was a need for the respondent and the claimant to "*address the issues in a constructive way in order to re-establish a mutual trust and respect which is an essential component of healthy working relationship."*

198. I attached significance to the fact the respondent determined the claimant's grievance and notified her by letter of 25 March of the outcome. The doctor's report makes clear that he saw the claimant in March (no indication of the date) and at that stage nothing had been resolved. Mrs Pollock and Mrs Hoggan knew – or ought to have known – from reading the doctor's report, that the situation, from the claimant's point of view, remained absolutely unresolved.

199. Mrs Pollock and Mrs Hoggan also knew from the doctor's report that the claimant felt extremely stressed and anxious and that she had been certified as unfit for work for a period of 8 weeks – that is, at least until the end of March. This was not a situation where the claimant was fit to return to work once the grievance had been resolved. It was difficult, against that background, to understand the respondent's rationale for inviting the claimant to a meeting to "*discuss [your] intention for returning to work following the report from your GP*".

200. I also considered that against a background of the claimant's grievance being against Ms Beaton, and given there had been no action to try to address/resolve relationship difficulties it was insensitive and inflammatory to have Ms Beaton sign the letter sent to the claimant inviting her to the meeting.

201. The claimant, at the meeting on 10 May, made clear that her grievance had not yet been dealt with. Twiggy informed her that it had been dealt with, but the claimant queried this in circumstances where she had not had an opportunity to attend. Mrs Pollock detailed the three letters sent to the

claimant. The meeting, at this stage, deteriorated with shouting, accusations and hostility.

202. I considered it must, at that meeting, have become crystal clear to the respondent that the claimant was learning for the first time that her grievance had been determined in her absence. The respondent, rather than look into this, tried to defend their actions. I formed the impression they did this because they did not believe the claimant had not received the letters.

203. The respondent, notwithstanding the shouting and hostility, asked the claimant directly "*Are you returning to work*?" and the claimant responded "*No way, No way*". Mr Lyons submitted Mrs Pollock and Twiggy had been right to ask the claimant if she was returning to work, because this was a return to work meeting. I could not accept that submission for two reasons: (i) there was no explanation by the respondent why they considered it appropriate to hold a return to work meeting with an employee covered by a medical certificate, when there was no indication when she may be fit to return to work. Mrs Pollock suggested the determination of the grievance might make a difference, but given the terms of the doctor's report, I found that explanation lacked credibility; and (ii) it was abundantly clear to the respondent that the claimant was only just learning that her grievance had been determined in her absence.

204. The respondent took no action to address the claimant's concerns: they could, for example, have adjourned the meeting and given the claimant time to calm down and read the letter of outcome and grievance investigation report, or they could have offered to extend the time limit for an appeal because the claimant, not having received the letter of outcome, had no knowledge of her right to appeal and was outwith the time limit for doing so. The respondent in fact concluded the meeting by telling the claimant that when she returned to work an outstanding complaint would need to be dealt with, as well as a new matter which had come to light. One of the matters related to the complaint by Kitty, which the claimant understood had been

dealt with by her apologising to Kitty. The claimant had no knowledge of the other matter.

205. The respondent reported back at the next committee meeting and agreed, having considered the levels of stress and anxiety, that it was necessary to determine the claimant's intention to return to work or not and proceed to deal with the complaints involving the claimant.

206. The respondent wrote to the claimant on 11 May (page 159) and gave the claimant until 17 May to state her intention to return to work or not. The letter concluded by reminding the claimant that prior to leaving the meeting she had been made aware that upon her return to work there would be an investigation relating to two outstanding matters that had been raised against her.

207. The claimant resigned on 18 May. The claimant referred to the grievance being determined in her absence, and to not receiving the letters; and, to the fact the grievance had been determined by Mrs Pollock and Mrs Hoggan rather than an independent external organisation. The claimant also referred to the meeting on 10 May when she felt Mrs Pollock and Twiggy had tried to bully her into providing a return to work date, suggesting she was not really ill. The claimant also considered the reference to complaints and having 'found something on her' was a deliberate bullying tactic. The claimant felt that in the circumstances it would be impossible for her to return to work.

208. I, having had regard to all of the above points, turned to consider whether the respondent's actions in dealing with the grievance and the meeting on 10 May, amounted to a breach of the implied duty of trust and confidence. In other words, did the respondent, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence. I concluded, above, that the decision by Mrs Pollock and Mrs Hoggan, to deal with the grievance themselves was significant in the circumstances of this case. I acknowledged

Mrs Pollock sought advice from ACAS and proceeded on that basis, but there was no evidence to suggest what information Mrs Pollock gave ACAS, and whether she told them there had been a fundamental split in the committee and a fractured relationship.

209. Mrs Pollock was not independent: she was steeped in the events leading to the breakdown of the management committee and, indeed, it was Mrs Pollock who instigated the meeting on 3 February which voted to remove Mrs Meiklejohn as Chairperson. Mrs Pollock was partisan, as were all members of the management committee by that stage. I inferred from Mrs Meiklejohn's action in suggesting, at the meeting on 27 January that an external organisation deal with the grievance that she recognised this, although did not articulate it as such in order not to inflame the situation.

210. I considered the decision of Mrs Pollock that she and Mrs Hoggan would deal with the grievance was a decision likely in the circumstances of this case to destroy or seriously damage the relationship of trust and confidence. They had sided with Ms Beaton, and the claimant could legitimately and reasonably feel they had sided with Ms Beaton's side of the story over hers. I could not accept Mrs Pollock and Mrs Hoggan had reasonable or proper cause to hear the grievance, in circumstances where it was clear the respondent had access to legal advice, and support from Stirling Council and could have explored avenues for an independent person to determine the grievance.

211. I noted above that I was satisfied there was reasonable cause to proceed to determine the grievance in the claimant's absence in circumstances where it was reasonable for them to think the claimant would have received the letters sent to her.

212. I further concluded Mrs Pollock and Twiggy, without reasonable or proper cause, conducted themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence on 10 May. I reached that conclusion for the following reasons:

(a) the respondent's explanation for calling the claimant to the meeting on 10 May lacked credibility in circumstances where the claimant was medically certified as being unfit for work, and there was no indication when she may be fit to return. The report from the doctor indicated the claimant would be reviewed at the end of May: accordingly that would be the earliest time for consideration of a return to work if the claimant's condition had improved. The suggestion that the resolution of the grievance would allow the claimant to return to work was not credible given the terms of the doctor's letter and the nature of the claimant's illness.

(b) Ms Beaton had been absent on sick leave for six months and had not been called to attend a meeting to discuss her return to work.

(c) Mrs Pollock and Twiggy acknowledged the claimant learned for the first time, on 10 May, that her grievance had been determined in her absence. The claimant was upset and angry about this (Mrs Pollock described the claimant as being "in pieces"), but they took no action to try to calm or resolve that situation. I considered that an employer, acting reasonably, would have adjourned the meeting to allow the claimant time to digest this information and read the grievance investigation report and outcome and/or would have given consideration to allowing an appeal to be heard.

(d) I formed the impression the respondent adopted the position which it did at the meeting on 10 May because Mrs Pollock and Twiggy did not believe the claimant had not received the letters.

(e) The claimant, notwithstanding what had occurred during the meeting, was asked directly if she was returning to work. I considered the respondent had no reasonable cause to conduct themselves in this way in circumstances where the doctor's report had made clear the claimant was not fit for work and was to reviewed at the end of May.

(f) The respondent, notwithstanding the meeting had deteriorated into a hostile shouting match, told the claimant, as she was leaving the meeting that there was an outstanding complaint to be dealt with upon her return to work and that another complaint had come to light. Twiggy told the Tribunal that she had felt it right the claimant know this. I considered that given what had happened at the meeting, given it was clear the claimant was not fit to return to work and given the claimant was *"in a terrible state*", I could not accept there was a reasonable or proper basis for this matter to be raised with the claimant. This was particularly so when (a) the minutes of the committee meeting on 10 February (page 408) noted "the member of staff wishes the committee to apologise to Catherine on her behalf". There was no suggestion this had not been done, and it therefore suggested the complaint from Kitty had been dealt with and (b) there were no details of the alleged new complaint.

(g) The claimant had a copy of the doctor's report and knew what information had been provided to the respondent regarding her health and fitness for work. I accepted the repeated questions by the respondent regarding a return to work could reasonably have been interpreted by the claimant as the respondent casting doubt on her medical condition and fitness for work.

(h) I also accepted the claimant's conclusion, given two complaints were referred to as she was leaving the meeting, and in the letter of 11 May, and given her experience of the way in which the grievance had been dealt with, that she would not be treated fairly if she returned to work.

(i) Mrs Pollock told the Tribunal in her evidence that the claimant was in a terrible state during the meeting on 10 May. I noted that notwithstanding this observation by Mrs Pollock, she took no action at the meeting to address it.

213. I decided the respondent, by their action of deciding Mrs Pollock and Mrs Hoggan should hear the claimant's grievance, and by their actions/inactions at the meeting on 10 May breached the implied duty of trust and confidence. This was a fundamental breach of contract.

214. I next had to determine whether the breach caused the claimant to resign. The respondent suggested the claimant resigned rather than having to face the two complaints to be resolved upon her return to work. I could not accept that submission because I considered it clear the claimant, at the meeting on 10 May, was upset at what she had heard and the way in which she had been treated, before the issue of the complaints was raised. Furthermore, the evidence pointed to the claimant believing reference to the complaints illustrated the way in which the respondent intended to treat her upon her return to work, rather than any concern about facing those complaints. Indeed, one of the complaints had already been dealt with.

215. I was entirely satisfied that the claimant resigned in response to learning the grievance had been determined by Mrs Pollock and Mrs Hoggan in her absence, and in response to the way in which the respondent dealt with the meeting on 10 May. I decided the claimant resigned in response to the breach of contract.

216. I, in conclusion, decided the respondent breached the implied term of trust and confidence; this was a fundamental breach; the claimant resigned in response to that breach and did not delay in doing so. I decided the claimant was constructively dismissed.

217. I, having decided the claimant was constructively dismissed, noted the burden of proof now shifted to the respondent who, in order to show the dismissal was not unfair, must show the employee was dismissed for a potentially fair reason falling within Section 98(1) or (2) Employment Rights Act.

218. I had regard to the case of ***Berriman v Delabole Slate Ltd [1985] ICR 546*** where it was stated that, in the case of a constructive dismissal, the reason for the dismissal is the reason for the employer's breach of contract that led the employee to resign. This approach has been adopted by the EAT in subsequent cases (**Crawford v Swinton Insurance Brokers Ltd [1990] IRLR 42**).

219. Mr Lyons submitted the reason for the dismissal in this case was some other substantial reason being the breakdown in the relationship and the claimant's mind being unreasonably made up.

220. I asked myself whether the reason for the employer's breach of contract (that is, the decision that Mrs Pollock and Mrs Hoggan hear the claimant's grievance, and the way in which Mrs Pollock and Twiggy conducted the meeting on 10 May) was the breakdown in the relationship and the claimant's mind being unreasonably made up. I answered that question in the negative for two reasons.

221. Firstly, the submission was not supported by the evidence. Mrs Pollock did not explain to the tribunal why the decision had been taken that she and Mrs Hoggan hear the grievance. She simply stated "*Lynne and I agreed to hear the grievance"* and that she was "*confident*" she could be fair. They thereafter took advice from ACAS, and legal advice, about how to conduct the process.

222. The breakdown in the relationship (which in any event did not occur until the meeting on 10 May) had nothing to do with the decision that Mrs Pollock and Mrs Hoggan hear the claimant's grievance. The evidence clearly

demonstrated that no consideration was given to the fact (i) Mrs Pollock and Mrs Hoggan were partisan; (ii) Mrs Pollock had instigated the deliberate exclusion of Mrs Meiklejohn from the meeting on 3 February in order to vote her off as Chairperson of the committee and (iii) the consequences of Mrs Pollock's actions (supported by Mrs Hoggan and Twiggy) which led to the resignation of Mrs Meiklejohn, Mrs Nellies and Mrs Fotheringham. Furthermore, no consideration was given to the impact the decision would have on the claimant, and her trust and confidence in the respondent dealing with matters fairly and reasonably.

223. Secondly, I could not accept Mr Lyons' submission that the claimant's mind was unreasonably made up and she never intended to engage with the meeting on 10 May. I considered that if the claimant had not intended to engage with the meeting on the 10 May, she would not have attended. I considered it clear the claimant wanted to have her grievance heard; and, she had co-operated with the respondent and consented to a medical report being obtained and agreed to attend the meeting arranged by the respondent. Those actions did not support Mr Lyons' submission, but instead suggested to me that the claimant was an employee who was endeavouring to co-operate with the employer.

224. In addition to the above points, I had regard to the fact the reaction of the claimant on 10 May was caused by learning the grievance had been dealt with, in her absence and by Mrs Pollock and Mrs Hoggan. It was this news which caused the claimant to become upset and angry and not because the claimant had unreasonably made up her mind.

225. I concluded, for these reasons, that the respondent had not shown the reason for the dismissal. Accordingly, the dismissal of the claimant is unfair.

226. The claimant is entitled to an award of compensation. There was a dispute between the parties regarding the length of the claimant's service. There was no dispute regarding the fact the claimant commenced employment with the

respondent on 20 August 2007. The dispute centred on whether the claimant's service with Stirling Council was recognised by the respondent. The claimant's position was that she had a permanent post with Stirling Council and would not have accepted a fixed term post with the respondent unless her service was recognised. The claimant told the Tribunal she had asked Ms Beaton about this and had been told her service would be recognised. Ms Beaton disputed this and pointed to the claimant's letter of offer and statement of employment particulars which both stated the date of appointment as 20 August 2007.

227. I had regard to the letter of offer which stated the appointment would be effective from 15 August 2007 (there was no dispute this date should have stated 20 August). The letter also stated that for certain purposes the respondent would recognise any previous continuous service with appropriate authorities as outlined in the redundancy payments (Continuity of Employment in local government etc) (modification) (amendment) order 2001.

228. I also had regard to the statement of employment particulars which stated the date of appointment was 20 August 2007, but included at clause 7, a clause entitled Statutory Provisions: Unfair Dismissal and Redundancy. The clause provided that for the purposes of claiming unfair dismissal and qualifying for redundancy, the respondent only recognised service with the respondent, Stirling Council and its predecessor authorities. It was stated that continuous service for these purposes dated from 20 August 2007.

229. I was satisfied these clauses gave the claimant an entitlement to have service with Stirling Council taken into account in the calculation of a redundancy payment. This Tribunal is not concerned with the calculation of a redundancy payment and accordingly I was satisfied the date to be used in the calculation of compensation was 20 August 2007.

230. The claimant is entitled to a basic award of £4,929 (being £410.76 gross per week x 12 weeks).

231. Mr Lyons invited the Tribunal to make a deduction in terms of Section 122(2) Employment Rights Act. This section gives a Tribunal power to reduce the basic award where it considers that any conduct of the complainant before the dismissal was such that it would be just and equitable to do so. Mr Lyons submitted a reduction of up to 80% should be made because of the claimant's conduct in hanging up on Ms Beaton; arguing with Kitty; not contacting Ms Beaton and not engaging with the return to work meeting. I could not accept Mr Lyons' submission because I did consider the claimant's conduct to be such that a reduction would be just and equitable. I reached that conclusion having had regard to (i) the fact Ms Beaton refused to follow a reasonable instruction issued by Mrs Meiklejohn, and in doing so caused confusion for the claimant in terms of what Ms Beaton was doing, to whom she had spoken and what work was expected of the claimant; (ii) the fact the argument with Kitty was part and parcel of the confusion caused by Ms Beaton, and the fact the claimant had offered to apologise to Kitty; (iii) the fact the claimant was unsure about contacting Ms Beaton in circumstances where she was off ill and had been told not to work at home and (iv) the fact the claimant did engage with the meeting on 10 May. I decided, for these reasons, not to make any reduction to the basic award.

232. Ms Bain invited the Tribunal to make an award of compensation for the period from the date of dismissal to the date of the continued Hearing in December 2017. I, in considering that submission, had regard to the fact the claimant is unfit for work and has been so since (before) the time of her dismissal.

233. I, in considering this matter, had regard to the case of ***Seafield Holdings Ltd (t/a Seafield Logistics) v Drewett [2006] ICR 1413*** where the EAT held that the task of a Tribunal in assessing the contribution of ill health to an employee's losses is different in respect of immediate and future loss. The EAT held that in determining immediate loss the Tribunal had adopted the

correct approach in asking "*but for*" the actions of the employer would the claimant have been able to return to work. However, such an approach was not suitable in relation to future loss, where Tribunals had to estimate the chance that, had the employer not acted in the way it did, would the employee's illness still have prevented her from working.

234. In ***Devine v Designer Flowers Wholesale Florist Sundries Lt [1993] IRLR 517*** the EAT stated that the fact an employee's incapacity was caused by the unfair dismissal did not necessarily mean the employee was entitled to compensation for the whole period of incapacity. It was for the Tribunal to decide how far an employee's losses are attributable to action taken by the employer and to arrive at a sum that is just and equitable. The Tribunal may want to consider whether the illness would have manifested itself in any event.

235. In ***Dignity Funerals Ltd v Bruce [2005] IRLR 189*** the Inner House of the Court of Session noted the Tribunal should have decided whether the employee's depression in the period after dismissal was caused to any material extent by the dismissal itself; whether, if so, it had continued to be so caused for all or part of the period up to the hearing; and, if it was still caused at the date of the hearing, for how long it would continue to be so caused.

236. There was no dispute in this case regarding the fact the claimant commenced a period of sickness absence in February 2016. The claimant was signed off as being unfit for work due to work related stress. The claimant continued to be unfit for work at the time of her dismissal and thereafter. The claimant was subsequently diagnosed with cancer in June 2017. I considered it clear, on the basis of these facts, that it could not be suggested the claimant's condition of stress was caused to any material extent by the dismissal.

237. I had regard to the claimant's immediate loss in the period from the date of dismissal to the date of the Hearing. The claimant was, at the time of the

dismissal, in receipt of half pay. The claimant had been advised in a letter of 13 April 2016 that her pay would be reduced to half pay for 26 weeks. The claimant would thereafter have moved to a nil pay situation.

238. The claimant, in the period from 13 May 2016 to the date of the Hearing has lost 22 weeks of half pay (£166.88 net per week). I calculate this to be £3,671.

239. I next had regard to future loss. I considered the diagnosis of cancer in June 2017 was an intervening event which broke the chain of causation. I did not consider the claimant was entitled to an award for future loss in circumstances where the evidence tended to suggest the claimant may not be fit to work again.

240. I also awarded the claimant the sum of £400 in respect of loss of statutory employment rights.

241. I, in conclusion, found the claimant had been unfairly dismissed and I order the respondent to pay compensation to the claimant in the sum of £9,000 comprising a basic award of £4,929 and a compensatory award of £4,071.

242. The claimant was in receipt of Employment Support Allowance and the Recoupment Regulations will apply (the effect of the Regulations is set out in the attached notice).

Employment Judge: Lucy Wiseman
Date of Judgment: 05 March 2018
Entered in register: 07 March 2018
and copied to parties