



# EMPLOYMENT TRIBUNALS

## Claimant

Mrs C Lambert

v

## Respondent

Woolpit Health Centre

**Heard at:** Bury St Edmunds

**On:** 11 & 12 March 2019

**Before:** Employment Judge Tynan

## Appearances

**For the Claimant:** Mr W Lambert, Claimant's Husband

**For the Respondent:** Ms Smeaton, Counsel

## RESERVED JUDGMENT

1. The claimant's complaint that she was constructively unfairly dismissed by the respondent is well founded.

## RESERVED REASONS

### Background

1. As its name suggests, the respondent is a GP's practice and health centre. For convenience I shall refer to it in this Judgment as the Practice. The claimant was employed as a receptionist at the Practice for 12 years from 2006 to 23 March 2018 when she resigned her employment. Prior to resigning her employment, she had been on extended sick leave since 26 July 2017.
2. The claimant filed a claim form with the Employment Tribunals on 12 July 2018 following a period of early conciliation. The claim form originally included complaints of unfair dismissal and discrimination on the grounds of age. However, the latter complaint was withdrawn following a preliminary hearing on 10 October 2018. The case management summary notes that the complaint of unfair dismissal is one of constructive unfair dismissal

based on a series of acts which the claimant claims, in isolation or collectively, amount to a repudiatory breach of her contract of employment, specifically, the implied term of trust and confidence. Furthermore, the claimant relies on the last straw doctrine.

3. Paragraph 11 of the case management summary records that the acts relied upon as constituting a repudiatory breach are:
  - a. a meeting of 25 July 2017 between the claimant and Ms Bloom, the respondent's practice manager;
  - b. a return to work meeting on 23 August 2017;
  - c. notification of the outcome of the claimant's grievance in the letter to her from the respondents dated 20 November 2017;
  - d. notification of the outcome of the claimant's appeal against the grievance outcome in a letter to her from the respondent dated 28 February 2018, received by her on 5 March 2018.
4. There was an agreed single hearing bundle of documents running to 223 pages. The claimant's letter of resignation dated 16 March 2018 is at page 217 of the hearing bundle and sets out the claimant's stated reasons for resigning her employment.
5. The claimant gave evidence in support of her claim and was represented, very ably, by her husband who also gave evidence. For the respondent I heard evidence from Ms Bloom, and also from Dr McCann, Dr Spriggs and Dr West, all of whom are partners in the Practice and were each involved in the grievance and grievance appeal process. In the case of **Dr McCann**, he had also been present at the return to work meeting on 23 August 2017.

## **Findings**

6. The claimant had an unblemished disciplinary record at the respondent. Her evidence, which I accept, is that she took the job with the respondent over a better paid position elsewhere as she had been attracted by what she described as the lovely people and lovely atmosphere and the opportunity as she saw it to make a positive contribution to the wider community served by the Practice.
7. At the heart of this case is a disputed meeting between the claimant and Ms Bloom on 25 July 2017. The claimant's claim that she was constructively dismissed is not brought solely by reference to what is alleged to have occurred during that meeting, but it provides the essential background and context for the interactions that followed, culminating in the claimant's resignation. Accordingly, it is the matter I deal with first.

8. Inevitably, where two individuals disagree as to what transpired in the course of a meeting, the focus can be on the areas of disagreement between them. That is certainly how the claimant and, to a lesser extent, Ms Bloom, approach the meeting of 25 July 2017 in their respective witness statements. In fact, they were in agreement as to various aspects of their meeting, not least the various issues of concern that were raised by Ms Bloom in the course of their discussion. These concerns went back over a period of approximately 18 months. It was common ground between them that they had identified during the meeting that one of three potential patient complaints did not in fact relate to the claimant, and they also agreed that the claimant had become distressed in the course of the meeting.
9. The claimant makes four specific allegations at paragraph 17 of her witness statement regarding the meeting on 25 July 2017:
  - a. the meeting commenced with a tirade of complaints, prefaced by Ms Bloom informing the claimant that she was at the end of her tether with her;
  - b. on each occasion the claimant sought to address particular areas of concern, Ms Bloom held up her hand and said, *“this is not open for discussion”*;
  - c. the concerns or allegations were delivered by Ms Bloom in a harsh and aggressive manner;
  - d. towards the end of the meeting Ms Bloom said to the claimant, *“you need to reconsider your career as a receptionist”*.
10. The four allegations are denied by Ms Bloom. As regards the fourth allegation, Ms Bloom’s evidence is that in response to allegedly unhelpful comments by the claimant about her dislike of certain patients and to the effect that her conduct was explicable in the context of having to deal with rude and complaining patients over the course of a typical shift, she had invited the claimant to reflect on her expressed views and to consider how these might impact on her ability to effectively perform her role.
11. In reaching any conclusion as to what was said during the meeting on 25 July 2017, I do not approach the matter on the basis that it is simply a matter of whose account should be preferred. That was the respondent’s approach when it heard the claimant’s grievance and it got itself into difficulty as a result because it found that it did not know whom to believe. In any event, such an approach carries with it the risk that conscious and sub-conscious preferences and biases may influence any decision, at the expense of a more rigorous evidence-based assessment. It is also obviously the case that any discussion between two people is finely nuanced and may be perceived at the time, and recollected after the event, by them very differently. And, of course, recollections can become entrenched in the re-telling over an extended period, particularly in the context of litigation. I approach the question of what occurred during the

meeting of 25 July 2017, having regard to the available surrounding evidence, including what the claimant says at paragraphs 5 to 15 of her witness statement about the changes at the Practice in the period leading up to the ill-fated meeting.

12. The claimant's case, briefly, is that the working atmosphere at the Practice changed very quickly following Ms Bloom's appointment as Practice Manager in December 2016. She alleges that staff became very unhappy. The claimant describes Ms Bloom in her witness statement as standoffish and remote, and that her office door was often closed, making her unapproachable and causing a divide between herself and the staff. The claimant felt this was exacerbated by the fact that Ms Bloom worked from home on a Friday. She also referred to the fact she had not had an annual appraisal since Ms Bloom's predecessor, Sallie Crouch had retired as Practice Manager.
  
13. In setting the scene for the meeting on 25 July 2017, the claimant gave evidence that many staff had suddenly left the Practice without notice, having been called into a meeting with Ms Bloom and often without having the opportunity to say goodbye to their colleagues. The claimant alleges that they had cited Ms Bloom's behaviour towards them as a reason for leaving. In fact, the claimant's evidence at tribunal suggests she has, to an extent, conflated some of what she may have been told by others since she has found herself in dispute with the respondent with what she knew or understood to be the position prior to her meeting with Ms Bloom on 25 July 2017. Either way, the picture she sought to present in relation to the departure of her former colleagues, namely that they had left the Practice suddenly following a meeting with Ms Bloom and were then silenced under the terms of settlement agreements, simply did not stand up at tribunal. The respondent confirmed that one employee was managed out for poor performance, which I regard as unexceptional. I accept the evidence of the respondent's witnesses that a number of other staff simply left the Practice of their own accord. Of course, it may be that changes at the respondent were a factor in their decision to leave and they may or may not have identified Ms Bloom as someone they did not enjoy working with. However, the respondent's other staff did not cite Ms Bloom as their reason for leaving the Practice, nor did they raise grievances or complaints against her. With the exception of the four employees referred to immediately below, staff did not in my judgment leave the Practice following meetings with Ms Bloom or pursuant to settlement agreements with the respondent. I accept the evidence of the respondent's various witnesses that a long-serving member of staff left the Practice as a result of potentially serious conduct concerns. Three further employees left following allegations that they had bullied another member of staff. Following some debate amongst the partners, it was decided that the three employees in question should be compromised out of the Practice, on the basis this was felt to be a pragmatic way of dealing with a potentially fraught situation and ensuring that the alleged victim of the bullying was protected.

14. The claimant's evidence was that there was a culture of fear at the respondent, that Ms Bloom was viewed as a bully and that there was speculation amongst staff who would be next "*on the hit list*". For the avoidance of doubt, I do not accept, if indeed this is suggested by the claimant, that there was a hit list or that Ms Bloom's modus operandi was, or is, to bully staff out of the Practice, buying their silence with settlement agreements.
15. It is undoubtedly the case that a number of long serving staff left the respondent's employment over a period of approximately two years. The claimant omits to mention in her witness statement that Dr Aung, a long serving partner, retired a few months after Ms Bloom joined the Practice. It may be that the respondent could have better managed its communications around the changes brought about by Mrs Crouch and Dr Aung's retirements as well as other changes necessitated by the evolving political, regulatory, commissioning and funding environment in which the respondent operates. If, and I make no finding in this regard, there were shortcomings in the respondent's communications with its staff, I am clear from the claimant's evidence that she, and perhaps her colleagues, worried and speculated about the changes taking place, that they perceived that the essential character and culture of the Practice had changed, and that they unfairly cast Ms Bloom in the role of the villain of the piece. What none of them knew, and could not be told by the respondent, was that four of their departing colleagues may have behaved very badly.
16. In coming to a judgment as to what occurred on 25 July 2017, there is considerable force in Ms Smeaton's submission that the claimant's perception of and reaction to the changes above provides important background and context for the meeting itself. In my judgment there are further matters that provide relevant background and context. For example, the claimant volunteered when giving evidence at tribunal that she went to the meeting on 25 July 2017 fully expecting to be told off by Ms Bloom. In which case I consider that she was wary and defensive when she came to the meeting. She states in her witness statement that Ms Bloom was viewed as a bully; given it was also her evidence that she and Ms Bloom had few, if any, substantive interactions after Ms Bloom was appointed in 2015, I am unclear on what basis she felt able to offer that view. Nevertheless, and whether or not the claimant was justified in her views, in my judgment the fact she held these views is highly likely to have influenced her perception of how Ms Bloom conducted herself during the meeting itself.
17. It is also revealing that by July 2017 the claimant and her colleagues had, on the claimant's own evidence, begun to refer to Ms Bloom behind her back as "*she who must be obeyed*". I return to this below. However, and in spite of her evidence at tribunal that the comment was just "*jokey*", it strongly suggests to me that the claimant did not, as she claimed at tribunal, respect Ms Bloom. If the name for Ms Bloom had been intended as light-hearted fun it might have been shared with Ms Bloom, but it was not. It is slightly ironic in a case concerning trust and confidence, in which Ms Bloom has been

labelled as a bully, that the claimant has admitted to name-calling behind Ms Bloom's back.

18. There is further relevant background to the meeting of 25 July 2017. A year prior to the meeting, but eight months into her role, Ms Bloom had written to the claimant as follows:

*"The work of the reception team is most important to the practice. As front line staff you have a lot to deal with, interacting with patients, GPs and the unknown! A role not to be underestimated and, at times, a difficult one to undertake. I can assure you that the good work of the team does not go unnoticed and is discussed at the monthly meetings with both the Head Receptionist as well as the Partners meetings."*

Those words of encouragement do not sit well with the claimant's evidence about Ms Bloom's alleged attitude and approach.

19. I also have regard to the one-page summary of concerns provided to the claimant on 9 August 2017 (page 113 of the hearing bundle). On the one hand, the summary does not support what I understood to be Ms Bloom's evidence at tribunal, namely that she had called the claimant into her office for a brief discussion of three potential patient complaints. Instead, the note indicates that Ms Bloom came to the discussion on 25 July 2017 with a wider range of concerns. Whether or not she had intended to discuss these with the claimant, at the very least she prepared for the meeting on the basis that she had other examples of concerns to hand to provide to the claimant should the need arise. On the other hand, the summary note evidences to me that Ms Bloom was well prepared for the discussion and it leads me to conclude that there was a structure to the discussion, rather than, as the claimant alleges, simply a tirade of allegations. I can fully understand that the claimant would have been caught off guard by the number of matters raised, but I do not accept the claimant's evidence that at the outset, or very early in the discussion, Ms Bloom told the claimant that she was at the end of her tether with her. Such comments would indicate someone not in control of their emotions or of the meeting whereas, to the contrary and as the summary evidences, I think Ms Bloom was well prepared and, certainly at the start of the meeting, fully in control. Her alleged comments are also at odds with the claimant's own portrayal of Ms Bloom as emotionally remote and aloof. I find that Ms Bloom was clear and focused in terms of what she wanted to relay to the claimant. For all the same reasons set out above, and notwithstanding my findings at paragraph 21 below, I do not uphold the claimant's allegation that the concerns were delivered by Ms Bloom in a harsh and aggressive manner.
20. I accept Ms Bloom's evidence that she met with the claimant on 25 July 2017 because the claimant's line managers, Mrs Cole and Mrs Sharman were reluctant to do so, as they believed the claimant would not be receptive to what they had to say.

21. I find that as the meeting on 25 July 2017 progressed, Ms Bloom became frustrated by what she perceived to be the claimant's failure to take on board the concerns that were being raised with her and, in particular, what she saw as the claimant's inability to reflect on why her comments and reaction were serving to reinforce the concerns raised with her. I conclude that in the course of the meeting Ms Bloom did hold up her hand to the claimant and twice said to her that the particular matter was not for discussion. However, I do not accept the claimant's evidence that Ms Bloom would not listen to anything that she said. That is not supported by the fact it was identified and agreed between them in the course of the meeting itself that one of the three potential patient complaints did not in fact relate to the claimant. That evidences to me that Ms Bloom was in fact actively listening to and taking on board what the claimant was saying. I further note that Ms Bloom sent Mrs Cole and Mrs Sharman a detailed note of the conversation by email later that day (pages 104A and 104B of the hearing bundle). The email documents in some detail the claimant's comments on the various matters raised, which again supports that Ms Bloom had listened to what the claimant had to say even if the claimant did not perceive it that way.

22. Further pertinent evidence in this matter are some notes from 2016 when a misunderstanding arose between the claimant and Dr Pearson. The claimant's note of that incident is at page 101 of the hearing bundle. Dr Pearson's account is at page 102 of the hearing bundle. Dr Pearson did not attend tribunal and accordingly was not questioned on his note. Nevertheless, Dr Pearson's note, which was not prepared for this litigation, includes the following comments:

*"I was concerned that Carolyn took no responsibility for failing to notify me of the visits. She showed no evidence of insight into the importance of the matter.*

*On being given feedback, I would have expected, at least, an acknowledgement that things had not gone as well as they should have done, a reasonable explanation, and a constructive attitude that visit requests would be managed better in the future...*

*I found Carolyn's manner to be offensive, but this is not a major issue and I do not expect an apology as I am sure she spoke in the heat of the moment."*

23. Dr Pearson's note is supportive of Ms Bloom's feedback to the claimant on 25 July 2017, documented the same day to the claimant's line managers, namely that there was a lack of reflection and insight on the claimant's part when faced with critical feedback. Having heard the claimant give evidence, that is my observation also. In particular, in the course of giving her evidence, the claimant seemed unable to reflect on why it might be inappropriate for Ms Bloom to be referred to behind her back as, "*she who must be obeyed*". The claimant persisted in saying it was "*jokey*" and indeed sought to downplay its significance on the basis she had not coined the expression. Instead of acknowledging that it was disrespectful, she maintained that she had nothing but respect for Ms Bloom. That is not

evidence I can accept uncritically given what the claimant says about Ms Bloom at paragraphs 5 to 15 of her witness statement and in various correspondence in the hearing bundle.

24. There is further support for the fact the claimant struggled with critical feedback in Mrs Cole and Mrs Sharman's reluctance to share their concerns directly with her because they believed she would not be receptive to what they had to say. And this is further reinforced by the claimant's and Ms Bloom's respective accounts of the 25 July 2017 meeting itself. I found Ms Bloom to be the more measured and reflective witness, readily acknowledging that the meeting had not gone as she had anticipated and describing how she had tried to get the meeting back on track. It was less easy for the claimant to recognise her own part in the meeting, even accepting as I do, that she was at a comparative disadvantage given she had no prior notice of the discussion or an opportunity to prepare for it. I find that the claimant found the critical feedback and Ms Bloom's direct style of communication to be unwelcome and threatening. She would have experienced it as a very different discussion to her various interactions with Dr Aung and Mrs Crouch. As was the case with Dr Pearson in 2016, I find that the claimant became very defensive. That is not necessarily intended as a criticism, it was perhaps an understandable reaction on her part. However, unfortunately I believe it fed into the claimant's perception that she was, "*next on the hit list*" and clouded her perception and ultimately her recollection of the meeting itself. As noted already, I do not accept that the concerns were delivered by Ms Bloom in a harsh and aggressive manner.
25. Looking at Ms Bloom's email to Mrs Cole and Mrs Sharman on 25 July 2017, it is unfortunate that the claimant was not given advanced warning of the meeting and an outline of the issues to be discussed, with confirmation that it was intended as an informal discussion. All of the respondent's witnesses were consistent in their evidence that difficult discussions with staff had been avoided over many years and that the appraisal process was not fit for purpose. In which case the respondent may have given insufficient thought to the possibility that its feedback to the claimant might come as a shock to her given it would be a marked departure from the mostly positive feedback she had received in the past. In my judgment it is little wonder that the claimant was, by turns, surprised, defensive and upset. I do not consider that the respondent set out to ambush her, rather it failed to think through the likely reaction of a long-serving employee with a history of good performance appraisal to being told directly, possibly for the first time, that her performance could improve.
26. Finally, I accept Ms Bloom's evidence that she invited the claimant to reflect on what she had said during the meeting, particularly in so far as she had given the impression to Ms Bloom that she should be afforded a degree of latitude because patients could often be rude and complaining. I am not persuaded on the balance of probabilities that Ms Bloom told the claimant she should reconsider her position as a receptionist, rather, that she invited her to think more carefully about the impact of her comments on her ability to undertake her role. They are two different things. I am in no doubt that



the claimant came to the view on 25 July 2017 that she was being told to reconsider her career and that she remains convinced that this was said to her, but I consider Ms Bloom's comments were more nuanced than the claimant recalls them to have been. Ms Bloom's account is also supported by the notes she sent the same day to Mrs Cole and Mrs Sharman in which she wrote,

*"I explained patients are a core part of our business, in particular when working as a receptionist: we need to provide excellent customer service regardless of how a member of the public / patient / staff member approaches us. I have asked her to think about why she was so immediately negative about the patients when discussing her role with me. I also pointed out that she had indeed undertaken this role for many years, therefore this was about learning the skills to manage the situation and not inflame it (and that she must be fully aware of what it is like working with the public). It seems that Carolyn is always 'on the attack' thinking that a patient contact will be a negative one and she tends to inflame the situation and she is aware of this (see below)."*

27. Ms Bloom's note was intended to communicate the points raised with the claimant and their outcomes to Mrs **Cole** and Mrs Sharman for them to take forward as the claimant's line managers. The note was written before there was any suggestion of a grievance or litigation and indeed before the claimant went sick.
28. In reaching my findings above, I have weighed in the overall balance that the claimant immediately became ill following her meeting with Ms Bloom and was subsequently prescribed sleeping tablets and then anti-depressant medication. I have given careful thought as to whether this reaction supports the claimant's account of the meeting, in particular what she claims to have been Ms Bloom's aggressive and hostile approach. Whilst it certainly evidences that the meeting had a significant impact upon the claimant and that her sense of injustice at how she perceived she had been spoken to and treated led her to become very unwell, it does not in my judgment disturb the other more persuasive factors which point more strongly to what was said in the meeting.
29. The claimant was certified unfit with a 'stress related problem' on 1 August 2017. Her fit note covered the period 27 July 2017 to 22 August 2017. On 31 July 2017 the claimant wrote to Ms Bloom (pages 107 of the hearing bundle), requesting that she provide *"a list of all the alleged misdemeanours in writing, as set out in the Acas Code of Practice, so that I may address these allegations"*. She said she would pursue a Data Subject Access Request if this information were not forthcoming. I understand why she wanted to know the respondent's concerns in circumstances where she had been caught off guard, but the tone of her letter, borne out in subsequent correspondence, was that she intended to rebut the concerns rather than reflect on what might have led to them being raised with her and whether there might be some basis for them.

30. Ms Bloom responded immediately on 2 August 2017 to say she would provide a comprehensive and substantive response, and indeed this followed on 9 August 2017. The letter addressed the claimant's allegation that Ms Bloom had told her that she should reconsider her career. Although Ms Bloom recorded that she had not said this, her response is measured and she immediately apologised to the claimant if that is what she had understood from their conversation. Ms Bloom went on to summarise the issues that had been discussed and the concerns that she had been endeavouring to relay. Critically, she wrote,

*"As per our meeting, I stated that all the issues discussed are resolvable. I have asked you to reflect on how you view our patients, given that all our roles centre on interacting with patients, this said I will liaise with our Senior Receptionists to ensure you continue to receive the required training and guidance.*

*...I am confident that if you are prepared to work with our Senior Receptionists, they will be able to help you better understand not only the above mentioned processes, but also to have a positive attitude to dealing with patients and colleagues."*

Her letter concluded,

*"We very much look forward to seeing you back in the workplace and are happy to work with you to ensure you feel better equipped to undertake on your role".*

31. It is relevant in my view that Ms Bloom was able to recognise that they each had their own perception of what had been said and further that Ms Bloom sought to reassure the claimant that the issues raised with her were entirely resolvable. She sought to manage the situation appropriately by moving beyond the immediate difference of opinion as to what had or had not been said, to the practical measures that would ensure the claimant continued to develop and feel supported to perform in her role. I note that Ms Bloom reiterated her comments from 2016, set out at paragraph 18 above.
32. Questioned by Ms Smeaton, the claimant accepted that Ms Bloom's letter of 9 August 2017 was measured. I find that the letter is consistent with Ms Bloom's approach more generally, including at a subsequent return to work meeting on 23 August 2017.
33. As the claimant's fit note was due to expire on 22 August 2017, she was invited to attend a return to work meeting on 23 August 2017. I regard the timing as unexceptional and indeed that it evidences that Ms Bloom was giving careful thought to ensuring there was a smooth return by discussing any issues at the point of return. 23 August 2017 was a non-working day for the claimant and Ms Bloom acknowledged this in her letter. She also asked the claimant to contact her if there was anything she wished to discuss.

34. On 21 August 2017 the claimant wrote to Ms Bloom stating that she was suffering with depression, anxiety and stress. She went on to take issue with Ms Bloom's account of their meeting on 25 July 2017 and stated,

*"this clearly represents an acute breakdown of trust".*

35. The claimant alleged in her letter that Ms Bloom's comments had made her realise,

*"I was about to join the list of previous long service ex members of staff who have all left suddenly and without explanation over the last 20 months".*

Given my findings above there was no basis for her to make that statement.

36. The claimant's letter went on to address the various areas of concern before concluding,

*"It is clear that you feel I am no good at my job and you have indicated that you, the Doctors and my colleagues don't want me here either."*

Again, there was no basis for her to make that statement, though it is further evidence of the claimant's lack of reflection and insight. Her letter continued,

*Against this background it would seem impossible for me to return to the job that I have enjoyed for the past 11 years.*

*Having been forced into this position, it would represent a clear case of constructive dismissal, and unless an alternative mutually beneficial agreement can be found, I will be taking legal advice to pursue this."*

37. On 22 August 2017 the claimant confirmed to Ms Bloom that she had been signed off work for a further period, but that she wished to attend the scheduled return to work meeting the following day, even though clearly, she would not then be returning to work.

38. It is not necessary for me to make detailed findings in relation to the meeting of 23 August 2017. The claimant's only criticism of the meeting is that Ms Bloom denied in the course of the meeting that she had said to the claimant on 25 July 2017 that she should reconsider her career as a receptionist. I have already found that Ms Bloom did not use those words. But in any event, it was unreasonable and unrealistic for the claimant to expect her to admit to having done so. In my judgment the claimant unreasonably concluded that Ms Bloom was lying. Again, there was no reflection on her part. Ms Bloom had already acknowledged to the claimant that she had evidently come away from the meeting with a very different understanding and she had attempted, in my view in good faith, to provide her own recollection of their meeting and, as the claimant had requested of her, to summarise the specific areas of concern. Most importantly Ms Bloom had sought to reassure the claimant. There was a genuine difference of opinion;

Ms Bloom's approach was to acknowledge it whereas the claimant's was to regard Ms Bloom's failure to accept her own account and to apologise as evidence that Ms Bloom was lying and that she could have no further trust in Ms Bloom. As I set out below, her position became more entrenched at the appeal stage. Whilst the claimant struck me as truthful, she has come to regard her interactions with Ms Bloom in absolute terms rather than allow for the possibility that their respective perceptions and recollections might differ. The claimant's evidence at tribunal was that Ms Bloom "*took a stance*". In fact, all the evidence is that it was the claimant who took a stance. I find that the claimant has been unable to make allowance for the reality that Ms Bloom would inevitably have a different perception and recollection of their interactions. On the claimant's own evidence, she had had very few dealings with Ms Bloom, yet quickly concluded that she was a bully and a liar. As I say, it is in my view unrealistic to go into a meeting on the basis that the other person must accept your perception and recollection, and apologise, and that they are lying and breaching trust and confidence if they fail to do so.

39. I turn to the ensuing grievance process that was invoked by the claimant in a letter to Ms Bloom on 6 September 2017. The grievance process finally concluded over six months later on 28 February 2018 when the claimant's appeal against the outcome of her grievance was not upheld. The claimant relies upon the outcome of the grievance (and grievance appeal) as a repudiatory breach of contract, in other words that as with Ms Bloom's failure to accept the claimant's account of their meeting on 25 July 2017, the respondent's failure to uphold her grievance about the meeting was in itself a repudiation of the contract. Whilst the claimant had a legitimate expectation that her grievance would be considered in good faith, she can have had no expectation that the grievance would be upheld if, following a reasonable investigation the respondent genuinely and reasonably concluded that the concerns should not be upheld. It suggests to me that the claimant had potentially unrealistic expectations of the grievance process. That is borne out by the claimant's required outcomes at the appeal stage confirmed in writing at page 165 of the hearing bundle. The required outcomes, which the claimant drafted with Mr Lambert's assistance, were as follows,

*"[Emma Bloom's] removal from surgery for gross misconduct;*

*Or*

*A written and unequivocal apology from [Emma Bloom] on every one of the allegations that she made against Carolyn with an acknowledgment that she / they will be withdrawn".*

40. Sensibly, both the claimant and Mr Lambert accepted at tribunal that the required outcomes were unrealistic.
41. In his cross examination of the respondent's witnesses and in his closing submissions Mr Lambert identified two procedural failings as having

breached the essential trust and confidence of the employment relationship, namely:

- a. undue delay in the grievance process; and
  - b. that in investigating the claimant's grievance the respondent had failed to interview Mrs Cole to ascertain what the claimant had said to her about the meeting of 25 July 2017 immediately following the meeting.
42. There was delay in this matter. Dr Spriggs acknowledged the claimant's grievance of 6 September 2017 on 11 September 2017, albeit in a letter sent by second-class post. In the meantime the claimant had filed a further fit note which certified her unfit to work by reason of a depressive episode. That would not have been a surprise to the respondent as she had already informed Ms Bloom in writing on 21 August 2017 that she was suffering with depression, anxiety and stress. There was some initial delay whilst consideration was given to whether the claimant's concerns would be dealt with formally or informally. For reasons that have not been explained, a grievance meeting with the claimant was deferred from 29 September to 6 October and then to 17 October 2017. In the meantime the claimant had written to Dr Spriggs on 29 September 2017 with further details of her grievance. Her letter concluded,

*"...I am now suffering from severe stress, anxiety and depression and am having to take medication."*

43. The claimant makes no criticism of the meeting on 17 October 2017 which was chaired by Dr Spriggs with Dr McCann in attendance. It was agreed that Mr Lambert could attend that meeting as the claimant's companion. The meeting concluded with Dr Spriggs informing the claimant that he would discuss the matter further with Dr McCann and let her know their decision. In fact, following the meeting, Dr Spriggs and Dr McCann met with Ms Bloom on 8 November 2017. In my judgment that meeting should have taken place sooner and Dr Spriggs should have written to the claimant to update her and to let her know that they were meeting with Ms Bloom. On 14 November 2017, it was necessary for the claimant to write to Dr Spriggs chasing him for a decision on the grievance. In her letter she noted again the anxiety that the situation was causing her and stated that with each week that passed the situation was becoming more intolerable. She referred to her sense of isolation and concluded her letter:

*"I cannot go on like this indefinitely and I need a resolution to this situation for the sake of my sanity ..."*

44. On 20 November 2017, Dr Spriggs wrote to the claimant to inform her that he did not uphold her grievance. There was no acknowledgement of any delay. His decision was explained in the following cursory terms,

*“As you and your husband, as your representative, acknowledged in our grievance meeting, it is difficult to uphold any grievance where both parties had differing recollections of past incidents, and where only two parties were involved without witnesses”.*

45. Given that was the extent of Dr Spriggs’ findings, the claimant may rightly have wondered why it had taken from 17 October, alternatively from 8 November, for Dr Spriggs to provide his decision.
46. The remainder of Dr Spriggs’ letter of 20 November 2017, focused on the claimant’s return to work, including a return-to-work plan, and confirmed that Ms Bloom would like to offer the claimant a meeting on her return to work in order to discuss how to progress their ongoing working relationship. The claimant was also advised of her right to appeal the outcome of the grievance.
47. By letter dated 28 November 2017, the claimant expressed her disappointment at Dr Spriggs’ decision. She did not state in terms that she intended to appeal the decision but instead expressed concern that she had not been provided with “any explanation or the reason why or how, the decision was made” or what evidence had been considered. She therefore asked to be provided with all documentation relating to the investigation including the notes and minutes of any interviews. Further correspondence ensued, including a letter from Dr Spriggs dated 30 November 2017, sent by second-class post and that was not received by the claimant until 11 December 2017, reminding her of her right of appeal and asking that any appeal be received by no later than 14 December 2017. This prompted a further letter from the claimant to Dr Spriggs reiterating her request for copy documentation and an explanation of the reasons for his decision. She referred once again to her stress and anxiety, which she said were being aggravated by the continuing delay.
48. Dr Spriggs provided the claimant with the evidence gathered during the grievance process under cover of a letter dated 21 December 2017. The claimant immediately responded to his letter on 23 December 2017 pointing out that she had still not been provided with the reasons why her grievance had not been upheld. Dr Spriggs responded to that letter on 3 January 2018. In terms of his decision he elaborated as follows,

*“I have explained the reasons that I reached my decision, namely that ultimately the evidence came down to one person’s against another’s and I could find no independent evidence that the allegations should be founded. I considered whether or not other staff should be interviewed given that none of them were said to have witnessed any of the alleged incident and given the sensitivity of this matter, I took the view that to involve more staff would cause unnecessary disruption and conflict.”*

Although Dr Spriggs said he had not found any independent evidence, it seems to me that he had not looked for any. Rather unhelpfully, the letter concluded with Dr Spriggs stating that he assumed the claimant did not wish

to pursue an appeal and accordingly that he would regard the matter as closed.

49. Whilst I would not expect any employer to undertake the kind of detailed analysis that I have above, Dr Spriggs seems to have barely engaged with the issues or evidence in arriving at his decision. I regard his findings and explanation as inadequate.
50. The claimant responded to Dr Spriggs on 9 January 2018 confirming that she wished to appeal the decision on her grievance and setting out the grounds of her appeal. She referred to the fact that 12 weeks had by then elapsed since she had raised her grievance. She also asked Dr Spriggs to give serious consideration to her personal situation and the effect the delays were having on her mental health.
51. Although the claimant was by then technically out of time to bring an appeal, Dr Spriggs confirmed in a letter dated 16 January 2018 that the appeal would go forward and that it would be heard by Dr West, with Dr Davies in attendance. He criticised the claimant for delay, a criticism that in my judgment was unwarranted and grossly unfair.
52. The appeal hearing did not take place until 19 February 2018. Again the reasons for the delay are unclear, though were certainly not of the claimant's making. In a letter to Dr Spriggs dated 18 January, the claimant expressed concern about the ongoing delay and I cannot see from the hearing bundle that her concerns in this regard were ever addressed. Instead Dr Spriggs wrote to the claimant on 24 January 2018 asking that she put in writing her full grounds of appeal. These were provided by the claimant the same day. In her letter she continued to reference her health issues. The appeal hearing went ahead on 19 February 2018 and was conducted by Dr West with Dr Davies in attendance. The claimant was accompanied by Mr Lambert and also by Michelle Gibson from the Shaw Trust. The claimant makes no criticism of how the hearing itself was conducted. By letter dated 28 February 2018, Dr West confirmed the outcome of the grievance appeal. It was a three-page letter. Unlike Dr Spriggs, Dr West at least sought to engage with the issues and the claimant's detailed grounds of appeal, though it is troubling to note Dr West's observation at the second page of his letter to the effect that the respondent was under no obligation to investigate. Once again it seems his letter was sent by second-class post with the result that it was not received by the claimant until on or around 6 March 2018. By letter dated 16 March 2018 the claimant resigned her employment. She wrote,

*"From the day that Emma Bloom started at the surgery there has been a campaign to remove specific staff from their positions. It has now become clear that when she called me into her office on 25 July 2017 and subjected me to a tirade of false accusations, I was next on that list. A declaration that I should reconsider my career as a receptionist was clearly stated and I was left in no doubt that my resignation was required and expected. Her 15 page 'statement of evidence' indicates a complete lack of respect or trust, and*

*clearly goes back to within a few weeks of her starting at the surgery. The excessive delays that have been created in following the formal grievance and appeal process illustrate quite clearly that there has never been any intention of allowing me to return to work”.*

She went on to refer to Ms Bloom as a bully and a liar, comments she repeated in a subsequent letter to Dr Davies dated 23 March 2018.

53. When the respondent received the claimant’s resignation letter, Dr West was on annual leave. In his absence Dr Davies wrote to the claimant informing her that she would discuss the letter with Dr West upon his return. In the meantime, she stated that she felt it may be beneficial for the claimant to have some time to reflect on her decision to resign. She suggested that the claimant have five days to reflect on the matter and to confirm whether she did still wish to resign. She wrote,

*“You are however, a valued employee, and we hope that we can resolve this situation amicably.”*

54. Following a letter from the claimant, dated 23 March 2018, to Dr Davies, confirming her resignation, Dr West wrote to the claimant on 27 March 2018 acknowledging her resignation. The claimant responded to Dr West by letter dated incorrectly 23 March 2018 expressing disappointment,

*“that you chose this as an opportunity to further condemn me and trivialise my awful experience over the last 8 months.”*

Dr West had responded to the claimant’s statement that she was referring the matter to her solicitor and would be bringing a tribunal claim. In my judgment his letter in response on 27 March 2018 set out why the respondent did not accept that it had breached the claimant’s rights in the face of threatened litigation. I do not accept that Dr West sought to trivialise the situation in any way.



## Law and Conclusions

55. Subject to any relevant qualifying period of employment, an employee has the right not to be unfairly dismissed by her employer (s.94 of the Employment Rights Act 1996).
56. 'Dismissal', for these purposes includes, "...where the employee terminates a 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" (s.95(1)(c) of the Employment Rights Act 1996).
57. The claimant claims that she resigned by reason of the respondent's conduct. It is not every breach of contract that will justify an employee resigning their employment without notice. The breach must be sufficiently fundamental that it goes to the heart of the continued employment relationship. Even then, the employee must actually resign in response to the breach and to not delay unduly in relying upon the breach as bringing the employment relationship to an end. S.95(1)(c) of the Employment Rights Act 1996 recognises that an employee may elect to resign on notice in response to the employer's conduct and still be entitled to bring a claim of unfair dismissal. However, the employer's conduct must be such as to warrant summary termination.
58. It is an implied term of all contracts of employment that the parties will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to seriously damage or destroy the essential trust and confidence of the employment relationship – Malik v Bank of Credit and Commerce International S A [1997] ICR 606, HL.
59. In W A Goold (Peermak) Ltd. v McConnell and Another [1995] IRLR 516, the Employment Appeal Tribunal held that it is an implied term of a contract of employment that the employer will "*reasonably and promptly afford a reasonable opportunity to [its] employees to obtain redress of any grievance they may have*". Subsequently, in Hamilton v Tanberg Television Ltd. the EAT suggested that W A Goold (Peermak) Ltd may have been of limited scope as the case indicated that no procedure was available to the employees whereas in Hamilton the criticism was of the quality of the employer's investigation.
60. Given my various findings above, I am satisfied that Ms Bloom's conduct on 25 July 2017 and 23 August 2017 did not cause the respondent to breach the implied term of trust and confidence. My only minor criticism of Ms Bloom is that she held up her hand to the claimant on 25 July 2017, but in my judgment that falls very far short of amounting to a repudiatory breach of contract.
61. As regards the conduct and outcome of the grievance proceedings, I am mindful not to elevate the Acas Code of Practice on Disciplinary and Grievance Procedures so that it has contractual force and effect. Likewise, the respondent's grievance procedure did not form part of the claimant's

terms and conditions of employment. The question instead is whether the respondent's handling of the grievance and grievance appeal struck at the heart of the essential trust and confidence of the relationship. In my judgment this is a case where it did. On balance I consider that the respondent acted within the band of reasonable responses in deciding against interviewing Mrs **Cole**. At the first stage of the grievance process the claimant had not suggested that she should be interviewed. In any event, I accept Ms Smeaton's submission that she was not present during the meeting of 25 July 2017 to be able to provide a first hand account of the meeting, and it was not in dispute that the claimant had become distressed, something that Mrs **Cole** might have been asked about if this was in issue. However, the claimant experienced unjustified delay. She was not afforded a prompt opportunity for redress of her grievance. The facts ultimately speak for themselves. It took the respondent over six months to determine her grievance and grievance appeal, in a case where its investigation extended to a single meeting with Ms Bloom. And throughout those six months it was aware, and was reminded numerous times by the claimant, that she was experiencing stress, depression and anxiety, and was on medication. I regret to say that the firm impression I am left with is that Dr Spriggs, Dr McCann and, to a lesser extent, Dr West were not sufficiently mindful of the claimant's health and wellbeing. Amongst other things it is very difficult for me to understand why correspondence, particularly in the period prior to Christmas, should have been sent by second-class post. There seems to have been a general lack of resolve on the part of the three doctors to progress matters on a timely basis and to secure the claimant's return to work. The fact that the respondent did respond to the grievance and grievance appeal, and encouraged the claimant to reconsider her decision to resign, does not, in my judgment, serve to detract from the significant unreasonable cumulative delays identified above. In my judgment, the respondent's handling of the grievance proceedings, particularly in the context of the claimant's ongoing ill-health, was such as to seriously damage the essential trust and confidence of the relationship. I consider that the respondent acted without reasonable and proper cause and that the claimant resigned in response to the breaches as found by me and did not delay in resigning such that she can be said to have waived any of the breaches. Her resignation letter clearly references "the excessive delays".

62. In the circumstances I conclude that the claimant was dismissed for the purposes of s.95(1)(c) of the Employment Rights Act 1996. There was no reason for the respondent to treat the claimant as it did, certainly no reason within s.98(2) of the 1996 Act. In the circumstances I conclude that the claimant was unfairly dismissed.
63. Pursuant to section 123(1) of the Employment Rights Act 1996, where a Tribunal upholds a complaint of unfair dismissal it may award such compensation as it considers just and equitable in the circumstances, having regard to the loss sustained by the claimant in consequence of the dismissal. In accordance with the well established principles in *Polkey v AE Dayton Services Limited 1988 ICR 142* the Tribunal may make a just

and equitable reduction in any compensatory award under section 123(1) to reflect the likelihood that the employee's employment would still have terminated in any event.

64. This is a case in which it is not in my judgment too speculative an exercise to determine what would or could have happened. On the contrary I am certain, having regard in particular to the entirety of the claimant's correspondence and evidence, and also drawing upon common sense, experience and justice, that the claimant would have resigned her employment with the respondent even had her grievances been heard and decided much sooner. The delays may have been one of the reasons why she resigned her employment, but the principle reason for her resignation was her perception of how she had been treated by Ms Bloom on 25 July 2017, Ms Bloom's subsequent failure to accept her account of their meeting and to apologise for it, and the respondent's failure to uphold her grievance about these matters. By 21 August 2017 the claimant was on record that there had been an acute breakdown of trust and although she subsequently wrote of her desire to return to work, she continued to state that it would in fact be impossible to return to her job and that trust had broken down. Her required outcomes at the appeal stage were unrealistic and could never have been met, but they further support that the claimant would inevitably have resigned her employment. In my judgment, it was 'her way or the highway'. She was emphatic that Ms Bloom was a bully and a liar, a view she has effectively held to throughout these proceedings. She is so entrenched in her views as to what happened on 25 July 2017 that in my judgment it is inconceivable she would have contemplated returning to work at the Practice as long as Ms Bloom continued to work there. Given it was in my judgment inevitable the claimant would resign her employment, even though Ms Bloom had not given her cause to do so, it would not in my judgment be just or equitable to make a compensatory award under section 123 of the Employment Rights Act 1996.
65. It should be clear from my findings above that I am critical of aspects of the claimant's conduct in this matter. This is a case in which I consider that the claimant's conduct before her constructive dismissal was such that it would be just and equitable to reduce the amount of the basic award. Having regard to all the circumstances, including the claimant's unwarranted attacks upon Ms Bloom's character and integrity, I consider that the appropriate reduction is 60%.
66. There may be no need for me to list this matter for a remedy hearing if the parties are agreed as to the amount of the basic award. The claimant has calculated the basic award as £3,106.78 (page 35 of the hearing bundle). This figure reduces to £1,242.71 applying a 60% reduction. If the tribunal has not received any representations to the contrary from either party within 14 days of this Judgment being sent to them, £1,242.71 is the amount I shall award to the claimant in respect of her unfair dismissal. However, in the event further written representations are received from either party I shall give consideration to whether I can determine the issue

on the strength of their correspondence or whether I shall need to list the matter instead for a short remedy hearing.

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Employment Judge Tynan

Date: .....27.03.19.....

Sent to the parties on: .....04.04.19.....

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For the Tribunal Office