THE EMPLOYMENT TRIBUNALS

BETWEEN

Mr E Petrica

Claimant

and

Central London Community Healthcare NHS Trust ***Respondent***

Judgment & Reasons

HELD AT: London Central **ON**: 9, 10, 11, 12, 15 and (in chambers) 16 & 17 April 2019

EMPLOYMENT JUDGE: Mr Paul Stewart **MEMBERS:** Mr George Bishop and Mr Jim Carroll

Appearances:
For Claimant: in person
For Respondent: Ms Rachel Owusu-Agyei of Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that all the claims are dismissed.

REASONS

1. The Claimant began to work for the Respondent on 12 January 2015 as a Senior Administrator for the National Child Measurement Programme (NCMP). As he describes it, his job was "to collate and analyse statistics on children in Reception and Year 6 measurements in terms of height and weight". He resigned from his employment on 14 November 2017. He gave no notice claiming that he had been left with no choice but to resign and asserted that his resignation was constructive dismissal.

2. Before his resignation, the Claimant had launched a claim in the Watford Employment Tribunal on 6 September 2017 asserting that he had been discriminated on the grounds of race. In his claim form, he did not provide any particulars of the protected characteristic of his race which had led him to be discriminated against. He also claimed he was owed other payments. Later, on 21 November 2017, in a letter to the Watford Employment Tribunal, the Claimant asserted that he felt he "was discriminated because of my nationality (I am from

Eastern Europe)".

3. On 21 December 2017, he presented a second claim to the Tribunal alleging that he had been unfairly and constructively dismissed.

4. On 22 February 2018, the Claimant provided further and better particulars of his claims which he set out as comprising the following:

   - Direct race discrimination under section 13, Equality Act 2010
   - Victimisation under section 27 of the 2010 Act
   - Unfair constructive dismissal contrary to section 95 of the Employment Rights Act 1996

5. In these further and better particulars, the Claimant described himself as being "East European from Romania" and later claimed that he had:

> been treated less favourably because of my Eastern European national origins, treated as a bargain cheap, in the context of Brexit and this led to do admin for Enuresis without being paid. I am being compared with British female Nikita Voralia (Admin for Enuresis Service) and clinical staff for Enuresis Service (Cathy Linton, Priscilla Chaba) but being paid for this.

6. The Respondent provided a Response to those further and better particulars on 13 April 2018. In due course, the Respondent produced a draft List of Issues to which the Claimant added comments, mostly not expanding the issues but providing a commentary on what his case was in respect of each issue. This List of Issues was referred to at the hearing as being agreed.

7. We heard evidence from the Claimant who did not call any witnesses. We then heard evidence, in order of appearance, from the following:

   a) Ms Nicola Ireland, who had been the Team Leader for the 0-19 Children in the Community Service, part of the Children's Division of the Respondent. That job involved managing Health Visitors and School Nurses and the attached Administrators to those teams as well as having responsibility for the Healthy Weight Nursing Team and the Enuresis Service, both based at Grahame Park Health Centre. As such, she was the Claimant's line manager from March 2015 through to March 2016.

   b) Ms Cathy Walker who, since July 2015, has been the Divisional Director of Operations (North) for the Respondent. Ms Walker was appointed to chair a disciplinary hearing relating to allegations of intimidation and sexual harassment brought against the Claimant by a nurse at the Grahame Park Health Centre - we shall refer to this nurse as X.

   c) Ms Angela Cody, the manager of the Clinical Business Unit ("*CBU*") for Barnet, Brent and Harrow in the 0 - 19 Service which includes School Nursing, Health Visiting & Family Nurse Partnership, School Immunisation and the Paediatric Eye Service. She acted as line manager to Ms Ireland and Ms Ireland's replacement as Team Manager, Ms Hazel Domb.

   d) Ms Janet Lewis who, since May 2014, has been the Divisional Director of Operations. She commissioned the investigation into the allegations made by X

against the Claimant in January 2016. Previously she had had no dealings with either the Claimant or X. The investigating officer, Ms Zoe Bloomfield had reported to her, and she had reviewed Ms Bloomfield's report satisfying herself that a thorough investigation had been conducted and that the evidence uncovered by Ms Bloomfield did not, as Ms Bloomfield had concluded, amount to sufficient evidence to call for an answer from the Claimant. She later learned that a decision had been taken to conduct a new investigation into the same allegations by a person from outside the Respondent's organisation.

e) Mr Stuart Barrett who, since 2015, has occupied the role of Workforce Business Partner for Children's Health and Development. His role involves providing professional advice to managers on employee relations matters.

f) Mr Ian Jones who was at all relevant times the CBU Manager for the Inner London Division, responsible for managing a number of clinical services in the community. He was appointed by Ms Lewis in June 2017 to conduct an investigation into two matters relating to the Claimant, first a grievance which the Claimant had raised in May 2017 and second into complaints relating to the Claimant's conduct which were made at the end of May 2017.

Facts

8. On the Claimant's first day at work, he signed a statement of the principal terms and conditions of his employment with the respondent. In the summary statement of those terms and conditions, the post he was appointed to was entitled "NCMP Senior Administrator", his pay band was "Band 4" and his place of work specified as being "Graham [*sic*] Park Health Centre, the Concourse, Grahame Park Estate NW9 5XT".

9. The terms and conditions included the following:

> **13. FLEXIBILITY**
>
> In order to insure the Trust's ability to respond to changes in the needs of the service, after appropriate consultation and discussion (including consideration of personal circumstances current skills, abilities and career development), the Trust may make a change to your location, duties and responsibilities that are deemed reasonable in the circumstances.
>
> **14. PLACE OF WORK**
>
> Your normal place of work will be set out in section 1. In order to meet any changing needs of the Trust, you may be required after consultation, to perform your duties at other locations within the Trust. The Trust reserves the right to move your place of work, either on a temporary or permanent basis, after giving reasonable notice of such a change.

10. The Claimant was provided with a Job Description for his post. This specified he was accountable to the 0-19 Team Lead. Included in the many operational duties and responsibilities of the job description was:

- To be a flexible member of the team, providing basic cover for colleagues as appropriate.

11. The Claimant appears to have been fairly industrious and successful in fulfilling the post to which he was appointed because he referred us to a supportive appraisal

from Ms Angela Cody dated 7 February 2017 and notification of his nomination for an award in the 4th Annual Unsung Hero Awards, described as "the only National award for Non-Medical / Non-Clinical NHS and Health Care Staff and Volunteers who go above and beyond the call of duty" which he received on 28 September 2017.

12. However, the first two years of his employment were not completely positive. On 4 January 2016 (close to the first anniversary of his appointment) nurse X at the Grahame Park Health Centre raised a grievance against the claimant that he had sexually harassed her. As a result, an investigation was launched in accordance with the Respondent's Grievance and Addressing Bullying and Harassment at Work Policy. A CPU manager, Ms Zoe Bloomfield, was appointed to conduct this investigation. She met with X on 14 April 2016 and with the Claimant on 5 May 2016 to inform them of her conclusions, conclusions which she then set out in a letter addressed to X dated 10 May 2016. The salient part of her letter for these purposes is as follows:

> Having taken full account of all the information received during the investigation, I have concluded that there is insufficient evidence to uphold the allegations of sexual harassment.

13. The news from Ms Bloomfield that she had concluded there to be insufficient evidence to uphold X's allegation of sexual harassment was counterbalanced for the Claimant to some extent by his receipt on the same day as his meeting with Ms Bloomfield of a Prevention of Harassment Letter by the Metropolitan Police in relation to X's complaints.

14. X was not happy with Ms Bloomfield's investigation. She raised certain concerns with the Chief Nurse of the Respondent, the result of which was that it was decided that the Respondent would appoint an external investigator to investigate the allegations again. The Respondent's Director of Human Resources and Organisational Development, Ms Emily Boynton, informed the Claimant of this development in a letter dated 18 May 2016. The new investigation was estimated as needing several weeks to complete. The Claimant's work locations had already been changed at the start of the Bloomfield investigation so that he did not find himself at the same site as X and these changes were to continue with the Claimant being reminded he "must refrain from having any contact with [X] in the workplace". Ms Boynton concluded:

> It is recognised that this is a difficult situation for you. You can seek support from your CBU manager or you can contact employment health… You may also request a management referral to Employee Health from your CPU manager.

15. The Claimant was very unhappy with the turn of events which had led to him being put, as he saw it, in double jeopardy. He remained dissatisfied with the decision to instruct an outside person to conduct a new investigation and was not persuaded by the argument advanced in closing submissions by counsel for the Respondent that it was better for him to be working for an employer who was receptive to representations that a grievance had not been investigated properly and was prepared to make arrangements for a second investigation to be carried out that corrected whatever was perceived to be wrong the first time around.

16. Of course, it would have been easier for the Claimant to have accepted Counsel's

arguments had the second investigation reached the same conclusion as Ms Bloomfield – that there was insufficient evidence to uphold the allegations of sexual harassment. As it was, the outside investigator – Ms Karen Charman, an HR Associate from Capsticks HR Advisory Service – after conducting her investigation concluded that there was a case to answer. As a result, the Claimant was invited on 19 August 2016 to a disciplinary hearing on 2 September 2016 to answer two allegations framed thus:

> (1) Your behaviour on several occasions amounted to harassment / stalking in respect of unwanted contact that caused [X] to feel intimidated and unsafe;
>
> (2) Your failure to follow a reasonable management instruction given on several occasions to cease or contact with [X].

17. The disciplinary hearing was conducted by Ms Cathy Walker. The Claimant was accompanied by a representative from his union, Unison. Ms Walker reserved her decision after hearing evidence from both the Claimant and from Ms Nicola Ireland whom the Claimant called. After reviewing what she had heard and read, Ms Walker upheld both allegations. Although she considered the allegations to be serious enough to constitute gross misconduct, she had regard to the mitigation she had heard rendered on behalf of the Claimant and decided the appropriate sanction to be not dismissal but a final written warning.

18. By letter dated 23 September 2016, the Claimant appealed Ms Walker's decision to a panel chaired by Dr Joanne Medhurst, the Medical Director of the Respondent. The Claimant did not attend the hearing of his appeal that had been scheduled for 19 December 2016 because, as he advised the panel by letter dated 12 December 2016, he wanted the panel to consider his appeal in his absence because of the length of the whole process and the anxiety it had generated for him. Accordingly, the panel did consider the appeal in his absence and reached the conclusion that it should uphold the disciplinary action. However, it reduced the sanction to a first written warning instead of the final written warning imposed by Ms Lewis.

19. The whole process that flowed from X's original complaint had ramifications in the performance of the Claimant's duties. For a start, he was required – in the interests of both himself and of X – on Wednesdays to work at some place other than at Grahame Park while the investigation was continuing, Wednesday being the day when X attended Grahame Park to perform her work. This led to stress on the Claimant arising out of the need to explain, when asked by those colleagues he came across on Wednesday at the other site, as to why he was working from that base instead of at his own against a background wherein he had agreed to honour the confidentiality of the fact of X's complaint and the subsequent investigation or, as it turned out, investigations. Added to this was his difficulty in accepting that the finding of the initial investigation of insufficient evidence to uphold the allegation against him could be put to one side and a new investigation be commissioned. Both he (and we) were never told precisely the concerns which X had raised concerning the adequacy or otherwise of the first investigation and, for the Claimant whose enquiry into that matter was met with an email from a Ms Malusky in the service of the Respondent informing him that:

> There is no document in the existence that is titled as "Concern raised by [*X*] with Chief Nurse" or similar, therefore there is nothing to disclose to you.

20. The stress the whole process created for the Claimant had a significant impact on him. He was referred by local management twice to Employment Health (the Respondent's Occupational Health service) and he made a self-referral to iCope, the Camden and Islington Psychological Therapies Service, where he had a face to face assessment on 2 November 2016. The tests he underwent revealed him to be displaying symptoms of both severe depression and severe anxiety. A letter from iCope to his GP contained this passage:

> Eugen [*the Claimant*] also disclosed he has been experiencing suicidal ideation for several days out of the last two weeks. He described thoughts such as "I can't live with this constant threat of dismissal", in relation to his ongoing employment difficulties. He denied any plans or preparations to act on these thoughts. Eugen found it difficult to elicit any strong protective factors, stating "It's hard to say. I feel that I can't cope sometimes. I'm not at my limits yet." Eugen has been provided with emergency contact information and stated that he feels confident contacting services if he had any urgent concerns about his mental health.
>
> We discussed suitable support options and we have agreed to offer Eugen 3 – 6 sessions of guided self-help. Thus far he has attended 2 sessions.

21. On 23 November 2016, the Claimant by email asked Ms Angela Cody to be moved to a permanent work base away from Grahame Park in line with a recommendation that had been made by Ms Walker in the outcome of the disciplinary hearing she conducted on the Claimant. In the course of the Claimant's email, he referred to the way the Respondent had handled the whole process of the allegation against him

> … changing back the decision already taken, and the unbelievable length of the process (far too long), this generated me a lot of unnecessary stress and I have severe sleeping problems and I have a severe level of anxiety and depression and I am under treatment.

22. Ms Cody discussed the Claimant's request with Mr Barrett before rejecting it because she considered removing the Claimant to another site would impact on the effectiveness that she wanted the two Band 4 administrators working at the Grahame Park Health Centre to develop with the nurses there.

23. The core work that the Claimant and Ms Halai, the other Band 4 administrator, performed was on the NCMP. Ms Halai's nationality is recorded as British and she is of Indian origin. From almost the start of November 2015 to almost the end of January 2016, Ms Halai had been on sick leave. During that time, the Claimant covered elements of her role. When she returned from sick leave, Ms Cody suggested to the Claimant that he provide Ms Halai with training and support on his work so that she could cover him when he was on leave.

24. The Claimant was not entitled to any extra pay for covering Ms Halai's role during her sick leave.

25. At the Grahame Park site, the Respondent's Enuresis service was run by a number of clinicians. A certain amount of admin work that had not been attended to immediately had been allowed to develop into a backlog and Ms Nikita Voralia who, at one time had been a Band 3 Administrative Officer and then had come back as a temporary bank worker, was brought in to clear the backlog. However, Ms Voralia moved off in September 2016 and the work of attending to the admin generated by the Enuresis Service was transferred on a temporary basis to the NCMP team, that is, to Ms Halai and the Claimant. It was estimated that the admin work for the

Enuresis Clinic would take between 6 and 9 hours per week.

26. However, Ms Halai and the Claimant did not work well together as is evidenced by the fact that the Claimant was making suggestions on 25 January 2017 to Ms Cody "to bring clarification and to eliminate possible duplication task between me and my colleague Sima [*Halai*]". One of these suggestions was that the Claimant be moved to a workplace different from Grahame Park. The lack of harmony is also evidenced by the minutes of the Admin Team Meeting conducted on 31 January 2017, a meeting which was set up following concerns raised by Ms Kathy Linton, the Senior Nurse within the Health Weight Team based at Grahame Park. These minutes show that interaction between the two Band 4 Administrative Officers was so bad that nurses would avoid, if possible, going into the room where the two of them worked.

27. On Wednesday 1 February 2017, the Claimant sent a message to Ms Cody pointing out that he could not sleep the previous night and repeating his request of 25 January to have his permanent workplace in a different place to Grahame Park. He pleaded for help on this request "because I feel I can't cope with the stress of work at Grahame Park".

28. On 3 February 2017, the Claimant emailed Ms Cody setting out "some of the factors that stress me at work" which, in summary, were the following:

    1. The confidentiality clause concerning the allegation by X and the disciplinary sanction that had resulted had not been respected;

    2. He was not being paid any additional payment for the enuresis support he provided; and

    3. The behaviour of his colleague Ms Halai and her "incapacity to do her job";

29. On 7 February 2017, Ms Cody appraised the Claimant in terms that generally were positive. However, her appraisal gave no indication that the Claimant was experiencing considerable stress at his work as was his fellow Band 4 Administrative Officer, that their inability to co-operate with one another in the same room had produced an atmosphere that caused nurses to avoid, if at all possible, entering their room.

30. Ms Cody had earlier in December responded to the Claimant's return to work on 8 December 2017 after a week's absence caused by "Stress at work causing low mood, sleep disruption" by referring the Claimant to the Employee Health Service. Her referral reached the Service on 19 December 2016 and the report from a Dr James Preston at the Service followed on from an assessment on 16 February 2017. Dr Preston recorded that the Claimant had a number of ongoing concerns regarding workplace arrangements:

    > He told me that he would like to be redeployed on a permanent basis to provide the opportunity for a new start to avoid the situation whereby he needs to be absent from the usual place of work once a week.
    >
    > With this background of ongoing concerns Mr Petrica also communicated to me his difficulties with sleep, his low mood and his high anxiety levels. His GP is aware of the situation and has provided access to a number of different counselling / psychological means of support.

> Some of the support is ongoing and therefore I do not think there is a role for Employee Health Department to provide additional psychological or counselling intervention.

31. As to what, if any, adjustments were required to the Claimant's day or his hours of work to facilitate a return to his usual work, Dr Preston wrote:

> Given that Mr Petrica has ongoing concerns with regards to a number of different work aspects, I would advise you to have a meeting with him or through whatever process you choose, ensure that you are satisfied that you fully understand his concerns; so that you can determine which of these concerns you can identify with, such that appropriate management intervention can take place to provide the support necessary from a work-orientated point of view.

32. The report would have arrived with Ms Cody just around the time that the Claimant finished the month of February and started March with a further 12 days' absence caused by "Depression".

33. On 8 March 2017, the Claimant wrote to Ms Cody setting out his position regarding the request she had made of him to continue to provide administrative support for the Enuresis Clinic. He wrote:

> I didn't have Return to Work interview to see you if I am fit to work after being off sick, so I would like to do this first;
>
> My fragile recovery from anxiety and depression caused by stress at workplace will be ruined if I am dealing with the same stress factors again. As I mentioned in my employee health report, doing enuresis support without [*it*] being my role and without being paid for more than six months it's one of the stress factors in my workplace. I informed you and HR about this since last month.
>
> Doing administrative support for Enuresis Clinic from September 2016 since Nikita Voralia left the service, without [*it*] being my role, without being paid, without written amendments on my contact is just not legal. You told me that this help will be on a temporary basis for couple of months in September. More than this I understood that the nurses that are doing Enuresis are paid but administrative support not.
>
> It is a pure form of exploitation and discrimination at workplace. This just aggravates my depression and anxiety.
>
> I need a written request from HR to modify my contract and I need to have approval from my union representative that this is legal.
>
> I raise formal concern about this issue and I dispute the legality of this request.
>
> In an exceptional way I will do today the administrative support for Enuresis clinic and I inform you that I can't do it any more in this condition.

34. With the Claimant having a further day's absence from work on 24 March 2017, Ms Cody arranged for an informal sickness meeting to be held on Wednesday 5 April 2017. She set out the results of that meeting, as she saw it, in a letter dated 7 April. She wrote:

> At the meeting, we discussed in detail the reasons for your sickness absence and reviewed the Employee Health reports following your assessment by Employee Health on 31 May 2016 and 16 February 2017.
>
> You stated that anxiety, depression and stress of work for the reasons given for absence, and underlined lack of sleep to be the reason is that sickness may likely

following the disciplinary hearing in 2016, you were advised to work from Mill Hill on Wednesdays only.

You have stated that professional working arrangement with your colleague is the real reason for your current stress at work and therefore I have referred both of you for mediation which will be held on 24 April 2017. I also intend to make your work roles and responsibilities clearer on Monday, 10 April, to minimise confusion.

I informed you that I will continue to monitor your sickness for the next 6 to 8 weeks and will review your progress on Wednesday, 31 May, at 1000 at Parsons Green.

I do not expect you to come to work when you were not well enough to do so but I hope that our discussions at the meeting will lead to significant sufficient improvement. However, you should note that if your sickness record continues to be of concern. This will be addressed under the provisions of section 5.2.4 of the Central London Community Healthcare NHS Trust Sickness and Absence Policy.

35. On 11 April 2017, the Claimant and Ms Halai attended a meeting with Ms Cody at her request to review their roles as outlined in their job descriptions. In a letter to the Claimant dated 12 April 2017, Ms Cody rehearsed the main points of their discussion including a number of points of agreement concerning the key functions contained within the job descriptions. She wrote:

As previously highlighted to you, I explained that, with every employee of [the Respondent], there is an understanding and a clause within every job description, that states "*the set duties are not to be exhaustive, you will be required to undertake any other duties commensurate with the grade and in line with the requirements of the post. The duties and responsibilities may be subject to change, which will be done in discussion with the post-holder*."

Also, as part of the meeting, we addressed the fact that you have had recent sickness absence, and have reported that this is related to anxiety, depression and stress of work. You stated that the stress of work is caused and made worse by not having a clear understanding of roles and responsibilities in relation to your colleague. My response to you on these issues was that I was somewhat surprised and concerned that, after two years in post; this was the real reason for the meeting. However, you both agreed to try another way of working and assess and review any improvements after a three-month trial period. Therefore, we would review at the end of June 2017. However, I made it clear to you that if there are further issues, we would need to reconvene and reassess or potentially revert back to how the work has been allocated and divided between you previously.

The main issue you both explained and highlighted was that you both work very differently, however, this does not mean your way or your colleague is right or wrong. I explained the main priority for the service was to be able to record, collate, analyse and report the key performance indicators to the Commissioners to demonstrate public money is being used in the right way, to have an impact on outcomes and make a real difference to children and young people and families who are affected by obesity. The service needs to be accessible, professional and responsive. You agree with this as a principle.

I asked you both for suggestions, ideas and solutions to address the areas of work without it all becoming too fragmented, then indirectly become disruptive and lack of service continuity for families.

After some discussion we agreed to split the core elements of the service, namely the Tier 1, Tier 2 service elements together with the quarterly key performance indicator metrics management. You said you have no real preference which service element you will be largely responsible for and neither did your colleague. We discussed the routine elements of the administrative service management such as

the post, phones, ordering, and outcome sheets. You both agreed and said these were not so much of an issue and could be managed between you both.

I need to reiterate that I do not intend to have another conversation to clarify your role and responsibilities as a Band 4 administrator within the service. I have set aside and tried on more than one occasion to explain the above and to provide you with support in your role.

I have also explained to you several times that there is no additional payment for duties that are deemed in line and appropriate with your banding, role and responsibilities.

Furthermore, there is an understanding between both you and your colleague that when one of you is on annual leave or absent, Service priorities will need to be addressed and Kathy Linton, Senior Healthy Weight Nurse or one of the other Nurses on duty will need to be updated as well as Hazel Domb, Team Leader and your direct line manager at Grahame Park.

We also agreed that in order to promote and strengthen your professional working relationship; you will resume working from Grahame Park for today every day apart from Wednesday each week.

36. The Claimant wrote to Ms Cody twice on 12 April 2017. The first letter appears to be a clarification of his 8 March letter:

Hi Angela,

I want to be very clear about the reason that I raised this formal concern.

My concern is about **Discrimination at workplace** (Unequal treatment).

My concern is about **additional factor of stress** at workplace.

The facts:

The **Enuresis admin support role** was assured by member of staff Nikita Voralia until September 2016.

Nikita Voralia was paid to do this work. Also, it was budget to pay for wages. As financial year end on 05/04/2017 it means it was budget to pay this role. Considering that Nikita Voralia wouldn't have left the service she would have been paid for this.

Since September 2016 when Nikita Voralia left, the management just reallocate this role to me and my colleague without been paid and added up more stress on top of my NCMP role.

So from this point of view **I feel discriminated**.

More than this the clinical part of Enuresis it is paid to do this role, whilst admin role is not.

Again, **I feel discriminated**.

Also, an aggravating factor there is the fact that Kathy Linton, one of the clinical Enuresis role, who is paying for this service, **threatened me** that if I will not do Enuresis admin support I will lose my job and how I would pay my rent afterwards.

I informed you and Bukky Marquis during my Return To Work interview and Bukky said that this is not right.

Considering all of these I expect written management answer to my concern – why am I treated unfairly and not equal as Nikita Voralia and Kathy Linton?

37. In the second letter, the Claimant set out amendments he considered should be made to the outcome letter for the Return To Work interview. This comprised an expansion of the factors which caused stress to the Claimant in the workplace. These were:

> – The disciplinary process. The fact that the Trust take back the decision that is "No case to answer' after the first investigation it was a shock from me and affected bad my health. There is a **breach of trust and confidence** between partners. I couldn't believe that as possible from a NHS trust.
>
> – Subsequent the appeal outcome, I understood that I will have my permanent workplace change to a different dictation, on a permanent basis, I expected that this to be followed by a HR decision to confirm this. But it wasn't. The way that I have to work at the moment put me in an embarrassing situation and there is a **double punishment** for me.
>
> – The fact that the management relocated to me additional role (Enuresis admin support) which is a systematic role and with priority amongst my NCMP role and without being paid as previous staff in this role, that made me feel **Discriminated** there is an additional **factor of stress**
>
> – The fact that Kathy Linton threatened me that if I will not do the Enuresis admin support I will lose my job, had a negative impact of my well-being
>
> – – My work relationship with my colleagues Sima [*Halai*], as explained in detail before.

38. The Claimant and Ms Halai attended mediation on 24 April 2017 with the parties being seen separately and then together. However, the Claimant left the session early and matters remained unresolved. After that, the Claimant sought assistance from the Respondent's Freedom to Speak Up Lead and he was advised to make use of the Respondent's Grievance Procedure.

39. On 5 May 2017, the Claimant emailed a formal grievance to Ms Lewis, coping the same to Mr Barrett, Ms Cody and Ms Rena Nunes, an employee of the Respondent but a representative of his union Unison.

40. Under the first heading of his grievance "Stress at workplace and unequal treatment", the Claimant set out his view that he should have been paid extra for covering the Enuresis admin:

> So from this point of view I feel treated unequal and discriminated, probably because I am from Eastern Europe and I am considered a bargain cheap. More than this the clinical part of Enuresis it is paid to do this role, whilst admin role are not.

41. The second part of his grievance related to the period of the investigation when the Claimant, on one day a week, was required to work elsewhere than at Grahame Park so as to avoid coming into contact with X. He regarded it as a double punishment because not only did he had to work elsewhere but he had to explain to curious colleagues elsewhere as to why he showed up one day a week at their place of work. As he was constrained by the requirements of the confidentiality agreement he had entered into with regard to X's complaint, the Claimant found providing an honest answer to such enquiries.

42. Finally, he complained about the stress he experienced working with his colleague Ms Halai. He did not regard her as sufficiently motivated and focused on the job and, with various inter-personal clashes, he regarded working with her to be like

"swimming with a weight on his back". It is of note that, after compiling this long grievance and emailing it on Friday 5 May 2017, the Claimant was sick for the whole of the following week and Monday 15 May, returning to work on 16 May. The conditions which his Statement for Fitness for Work which had caused this absence were stated to be "Depression, insomnia, low mood".

43. The grievance email of 5 May 2017 was not acted upon. We heard oral evidence from all those to whom it was addressed or copied save Ms Nunes, the Claimant's trade union representative. All those we heard from asserted they had not received the email of 5 May 2017. The Claimant was asked whether Ms Nunes had received it. His answer was that he had not asked her and that, anyway, he and she did not get on and she was not going to be giving evidence on his behalf.

44. We noted that, around that time, there was a change in the format of the email address which the Respondent's personnel used. It was said by the Claimant that there was an automatic system for redirecting to the new email address any emails addressed to recipients at the old email address. However, he had not sought to check whether the automatic system was working as it should. Instead, he asserted in his oral evidence:

> These individuals pretending not to have received grievance.
>
> I have no explanation as to why these three people were not being honest with me.

45. We have no means of knowing the reasons for the non-arrival of the email which the Claimant purported to send on 5 May 2017 (making use of the old email address for Ms Lewis and those he copied in). We do know that, when he forwarded that email to the same people under cover of another email on 25 May (making use of the new email address), both arrived. However, we are satisfied that the 5 May 2017 email did not arrive on 5 May. We do not agree that Ms Lewis and those others from whom we heard were pretending not to have received the Claimant's email. We know of no motive that they might have had for denying receipt if, in fact, they received it.

46. In between sending his grievance by email on 5 May and forwarding it again on 25 May 2017, the Claimant told us that he had sent his grievance by post on 10 May. He produced a Track and Trace receipt for a numbered item of correspondence which showed that a person named Mustafa had signed for that item on 12 May. The Claimant did not produce the receipt for the letter which would have shown the Track and Case receipt was for an item of correspondence which he sent. However, on balance, we accept that the Claimant did send a copy of the grievance letter by post and that it was signed for by Mustafa, whose name was recognised by one of the Respondent's witnesses to be someone who worked in the Respondent's head office. Ms Lewis asserts she did not receive that letter. Again, it is not apparent to us as to why it would have gone astray after being signed for. However, we accept her evidence of not having received it. Ms Lewis acknowledged that, on 25 May, she received the Claimant's email forwarding that of 5 May. Thus, were she being dishonest in asserting she had not received the grievance sent by post, she would be dissembling so as to assert that she received the grievance 13 days later than she actually did. To us, this did not of itself provide a satisfactory motive for Ms Lewis to lie and there appeared to be no consequential benefit for either her or the Respondent that flowed from it being established that

the Claimant's grievance reached the Respondent only as late as 25 May.

47. On the day the Claimant forwarded his grievance of 5 May 2017, that is, on 25 May 2017, the Claimant had been involved in an altercation at his work. The altercation led Ms Kathy Linton, a Healthy Weight and Enuresis nurse, to complain in writing that same day to Ms Hazel Domb, the Claimant's line manager, to Ms Angela Cody to whom Ms Domb reported, and to Ms Nicola Boyle – the Service Manager in the Barnet locality in which the Grahame Park Health Centre was situated – that the Claimant had refused to assist Ms Halai by showing her how to access some files and that, after refusing to assist, the Claimant had shouted at Ms Linton that he was not well, that she should not speak to him and that he was going home. Ms Linton wanted something done because, as she emphasised making use of the upper case:

> I ACTUALLY SCARED OF HIM NOW AND WILL NOT ALLOW MYSELF TO BE ALONE IN A ROOM AGAIN WITH HIM ALONE.

48. The Claimant went home sick that day and remained off sick until he returned to work on 20 June 2017. The explanation given for his absence during this period on the Statement for Fitness for Work was "Work stress causing anxiety and depression".

49. Ms Linton's complaint was passed up the managerial line of command to Ms Lewis who, on or shortly after 25 May 2017, found herself in receipt of both the Claimant's grievance and Ms Linton's complaint. After consulting with HR, she decided that it would be appropriate to investigate the Claimant's actions as a conduct matter. Further, because the grievance raised by the Claimant involved many of the same personnel as were involved in the events leading to the complaints about the Claimant's conduct, she decided that the investigating manager could combine both the grievance and the disciplinary enquiries.

50. Ms Lewis asked Mr Ian Jones to investigate both matters. He wrote to the Claimant on 12 July inviting him to attend an investigatory meeting on 7 August. The Claimant was unable to attend that meeting so it was rescheduled for 8 September and, while the Claimant attended that meeting having provided a personal statement ahead of it, he would not consent to answer questions on the matters involved, preferring to rely on the personal statement. The investigation took some considerable time with Mr Jones having to arrange a number of other interviews with members of staff against a background of there being a considerable amount of organisational change going on within the Respondent. However, as he candidly admitted in his evidence, the resignation of the Claimant took some of the pressure off him to deal with the grievance and disciplinary matters as quickly as he would have liked.

51. The Claimant resigned by letter dated 14 November 2017 with immediate effect. In his letter, he wrote:

> Please accept this as my formal letter of resignation.
>
> I feel that I am left with no choice but to resign without notice, to constructive dismissal.
>
> The Trust course of conduct mounted to as such extent that forced me to repudiate the contract.

Numerous breaches of trust and confidence, breaches of duty of care, not following its own policies and procedures and ACAS code of practices, unjustifiable delays in dealing with disciplinary and grievance processes, very poor communication, unequal payment, discriminatory treatment made me to consider constructive dismissal.

I was trying to be reasonable, to understand some circumstances but I can't take anymore.

I did Continuous Improvement Program– Cohort 5 and I have a project with improvement in my daily job, having savings as outcomes. I have been nominated for a National award "Unsung Hero".

I met a lot of resistance to change and lack of support as sustainability with my project, from line management.

As mentioned in my grievance I was working under protest.

As a result of the Trust course of conduct my health and well-being has deteriorated and I am suffering from insomnia, anxiety and depression for more than 12 months that led me to disability.

In attachments there are some of my medical evidence is to confirm this.

Examples of breaches of trust and confidence:

– take back the decision already taken from No case to answer in disciplinary process;

- trying to cover wrongdoing using whistleblowing policy;

- not receiving outcome when I raise concerns (on 10/08/2017) about the date when the Trust receive my grievance; how hard can be to check the date when the Trust receive my grievance?

- try to cover up the fact that I was long-term off sick (Not recording my sickness absence and not following the trust policy and procedures for long-term sickness absence;

- misled me regarding Enuresis additional admin support;

Examples of breaches of care:

- careless attitude when return to work interview after a long-term sickness absence, kept after 10 days;

- not following with the action plan after Stress to work assessment;

- totally unjustified length of disciplinary process and in the case of the grievance that affected me very badly;

- The Trust double punished me after the disciplinary process;

- allowed me to be threatened, bullied and harassed at work.

I would be grateful if you could acknowledge this letter at the earliest available opportunity.

52. Mr Jones completed and presented a report into the Claimant's grievance on 20 February 2018. He did not complete the investigation into the complaints about the Claimant's conduct given that the Claimant had resigned. As regards the grievance, Mr Jones' conclusions - somewhat hampered by the Claimant's lack of participation

in the investigatory interview – did not support the grievances. However, had the Claimant continued to have been employed, Mr Jones' recommendations would have been:

a. That [*the Claimant*] should continue to receive support from Employee Health in relation to anxiety, stress and depression; and

b. There should be further work with [*the Claimant*] and colleagues to reiterate the standards required in relation to team working, co-operation, communication and acceptable behaviours with a clear escalation process if [*the Claimant*] or any of his colleagues believed that the required standards had been breached.

Discussion

53. We are indebted to both the Claimant and counsel for the Respondent providing their closing submissions in writing. We will attempt to deal with the issues by reference to the order the issues have been set out in the agreed list of issues.

Direct Race Discrimination – Time Limits

54. Ms Owusu-Agyei has set out the legal framework for this claim and we adopt it in full:

> 5. Under s123(1) Equality Act 2010 ('EqA'), race discrimination complaints within s.120 must be brought within 3 months starting on the date of the act to which the complaint relates, or "within such other period as the employment tribunal thinks just and equitable".
>
> 6. Under s.123(3) conduct extending over a period is to be treated as done at the end of that period. The question for the tribunal is whether the conduct complained of is *""an act extending over a period" as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed'."* (*Commissioner of Police of the Metropolis v Hendricks* [2003] I.C.R. 530 at paragraph 52). Whether or not the same or different individuals were involved in the alleged incidents is also a relevant factor for the tribunal to consider (*Aziz v FDA* [2010] EWCA Civ 304).
>
> 7. When considering whether to extend time under s.123(1), the burden is on the Claimant to persuade the tribunal that it is just and equitable to extend time for the presentation for his claim. In *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ 640 Leggatt LJ explained that it may be useful for the tribunal to consider the list of factors set out in s.33 Limitation Act 1980 and is required not to leave a significant factor out of account:
>
> > *"…factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)"* [19]
>
> 8. The tribunal's exercise of the power to extend time is the exception, not the rule, and should be used with restraint [*Robertson v Bexley Community Centre* [2003] IRLR 434 CA].

55. Ms Owusu-Agyei then submits:

> 9. C first contacted ACAS on 21 August 2017 [1]. Therefore, any allegation of discrimination dated before 22 May 2017 is prima facie out of time. This means that allegations 8(a), 8(b) and 8(e) are out of time.

> 10. It is submitted that C is unable to rely on the concept of conduct extending over a period because the respective actors of the pre-22 May 2017 complaints are different to the actors of the post-22 May 2017 complaints (Emily Boynton and Cathy Walker compared to Angela Cody), they are in no way factually connected and they are significantly far apart (gap between 9 September 2016 and 16 August 2017).
>
> 11. C has also failed to provide any reason for the delay in bringing these complaints. The tribunal is invited to find that there is in fact no valid reason why these complaints were brought out of time. Allegations 8(a), (b) and (e) should be dismissed by the tribunal

56. We do not accept that the allegations set out at paragraphs 8(a) and (b) are out of time. Paragraph 8(a) of the List of Issues specifies as an alleged act of direct discrimination the failure to pay the Claimant for administrative work done for the Enuresis service over a period which that ends on 25 May 2017. That end date is after the 22 May 2017 which the Respondent asserts is the cut-off date.

57. Paragraph 8(b) relates to the continuing requirement, albeit instituted as a result of a recommendation of Ms Walker on 9 September 2016, that the Claimant do not work on Wednesdays at the Grahame Park Health Centre. As it was a continuing requirement, we consider the allegation that that was a detriment flowing from discrimination on the grounds of race is within time.

58. We accept that paragraph 8(e) – the decision to put to one side the investigation of Ms Bloomfield and institute another investigation - is out of time.

Direct Race Discrimination

59. Again, we are indebted to the legal framework that Ms Owusu-Agyei has provided and which we adopt.

> 12. For a Claimant to succeed in direct race discrimination complaint (s.13 EqA 2010), it must be found that:
>
> (i) The Respondent has treated the Claimant less favourably than a comparator in the same relevant circumstances;
>
> (ii) The less favourable treatment was because of his race.
>
> 13. S.9 EqA 2010 defines race as follows:
>
> (1) Race includes—
>
> (a) colour;
>
> (b) nationality;
>
> (c) ethnic or national origins.
>
> 14. Discrimination on the basis of immigration status per se will not amount to 'race' discrimination under the S.9 EqA definition (*Onu v Akwiwu and anor; Taiwo v Olaigbe and anor* [2016] ICR 756, SC). There, the Supreme Court rejected the argument that two migrant domestic workers who had been treated less favourably because of their vulnerable immigration status were subjected to race discrimination. It was held that immigration status could not be conflated with nationality. While immigration status is a 'function' of nationality, in that British nationals automatically have a right to live and work in Britain, whereas non-British nationals (other than Irish citizens) are subject to immigration control, *'there is a wide variety of immigration statuses'*, with some non-British nationals subject to greater restrictions on their rights to live and work here than others. In that case, it was the terms of the

> claimants' domestic workers' visas that made them particularly vulnerable, in that they were dependent on their employers for their continued right to live and work in Britain. The court also noted that Parliament could have chosen to include immigration status in the list of protected characteristics in the EqA but did not do so.
>
> 15. Pursuant to s.136 EqA 2010, the Claimant bears an initial burden to prove facts from which the tribunal might draw an inference of direct race discrimination.
>
> 16. The Claimant's race must be an effective and predominant cause / real and efficient cause of the alleged less favourable treatment - *O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School and anor* [1996] IRLR 372, EAT.

60. Ms Owusu-Agyei submits:

> 17. The Claimant is Romanian. He also describes himself as 'Eastern European'.
>
> 18. C says that he is relying on race because, "I felt like a second-hand citizen who must accept any discriminatory treatment to get or maintain a job. Political context after Brexit and media pressure related to Government refusal to guarantee the right to work and stay in UK for East European citizens after Brexit, just created conditions for the Trust to take advantage and to discriminate me, knowing I am under threat to lost my rights to work and live in the UK and I will accept anything." [54]; "I have been treated less favourably because of my Eastern European national origins, treated as a bargain cheap [sic], in the context of Brexit and misled to do admin for Enuresis without being paid" [62]. In live evidence, C stated that he was "under pressure" and told to "be careful, if you don't accept you will lose your job."
>
> 19. These statements show that C relies on his race purely to the extent of his view that his immigration status was vulnerable in the wake of the European referendum. To that extent, his case is entirely analogous with that of *Onu v Akwiwu*, and he is not afforded the protection of the EqA. As such all his complaints of direct race discrimination must fail.

61. We agree.

62. And, lest we be wrong in asserting agreement with counsel's submissions, we should say that we did not find there to be direct race discrimination in any of the acts or omissions which constituted the Claimant's case on direct race discrimination and which counsel for the Respondent set out in her Chronological List of Issues. While we criticise the decision to put to one side the conclusion of the Bloomfield investigation and instigate a second investigation, see later under Constructive Unfair Dismissal, we are not satisfied that the decision constituted direct race discrimination.

63. It did seem to us that a number of the issues raised by the Claimant stemmed from his inability to accept that, as a Band 4 Administrative Officer, he could be required to perform work that was outside the ambit of the specific post to which he was appointed and that, while it may be that, in doing such work, he was doing work that previously someone else had been paid to be doing, it did not mean he was entitled to be paid something extra for doing the work he was contractually required to be doing.

64. Whether his fixed notion that he was entitled to be paid extra stemmed from observing some other person being paid extra for doing the job on a temporary basis of someone more senior – and who thus was paid more than the temporary replacement – a temporary assignment sometimes referred to as "acting up", we were unable to say. However, given that the temporary work he complained about

being given was work he had observed being done by a Band 3 Administrative Officer – and thus by someone being paid less than him – we fail to see how the Claimant could extrapolate from any exposure to "acting up" the belief that he should be paid extra for "acting down".

Victimisation

65. We accept that the Claimant's grievance of 5 May which the Respondent only received for certain on 25 May 2017 was a protected act. However, we are satisfied that, co-terminously with the arrival of the grievance, Ms Lewis received notification of the complaint which Ms Kathy Linton raised about the behaviour of the Claimant in the Health Centre. We are further satisfied that there were striking, and good, reasons for Ms Lewis to consider that one manager should deal with both the investigation of the grievance and of the Claimant's conduct. We are thus satisfied that the decision to investigate the Claimant's conduct was not a detriment which flowed from the protected act.

Constructive Unfair Dismissal

66. We accept and adopt, without setting out in full, the guidance on the law under this heading which Ms Owusu-Agyei has provided. The Claimant relies on there being a breach of the implied term of mutual trust and confidence, which is the shorthand description of the term set out in full in Malik v Bank of Credit and Commerce International SA [1997] IRLR 462, [1997] ICR 606 as follows:

> "The employer shall not **without reasonable and proper cause** conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee." (emphasis added by Ms Owusu-Agyei)

67. The Claimant in his letter of resignation had set out a number of what he termed "examples of breaches of trust and confidence". The first of these was the Respondent's decision to depart from the conclusion of Ms Bloomfield that there was no case to answer and instigate a fresh investigation. Ms Owusu-Agyei added the emphasis in the recital of the Malik full term to focus our attention on her submission that the Respondent had reasonable and proper cause to arrive at its conclusion. The Respondent was dealing with allegations of sexual harassment over an extended period of time. It needed to resolve the grievance which X had raised as a contractual obligation to her. The first investigation, carried out internally, had caused X to raise various concerns which caused Ms Boynton to conclude that that the investigation was insufficiently thorough. In those circumstances, Ms Owusu-Agyei submitted it was appropriate to appoint someone external to the organisation to conduct a second investigation.

68. However, Ms Owusu-Agyei's submission rests on the proposition that the concerns which X raised were valid and justified the abandoning of an investigation which had concluded that the Claimant was not required to answer the allegation made against him. But neither the Claimant, nor this Tribunal, were ever told what X's concerns about the Bloomfield investigation were. X brought her concerns to the attention of the Chief Nurse who presumably sought advice from Ms Boynton. From the way counsel has framed her submission, we conclude it was Ms Boynton, the Director of Human Resources and Organisational Development, who took the decision that a new investigation was called for into X's allegations. It certainly was

not Ms Lewis who was the person who had commissioned Ms Bloomfield to carry out the investigation, who was the person to whom Ms Bloomfield reported and who reviewed and agreed with Ms Bloomfield's conclusion that there was insufficient evidence to require the Claimant to answer the allegation against him.

69. We consider the abandonment of Ms Bloomfield's investigation and conclusion and the instigation of a new investigation was, without more, conduct on the part of the Respondent that was calculated and likely to destroy or seriously damage the relationship of confidence and trust between the Respondent and the Claimant. Where, as here, the Respondent relies on there being reasonable and proper cause for its actions, it must be the case that the onus of proof of having such cause rests on the Respondent. And since the Respondent chose not to disclose to us the concerns X raised about the Bloomfield investigation, we cannot conclude that the Respondent had reasonable and proper cause.

70. We should say that the arrival of a Prevention of Harassment Letter by the Metropolitan Police on the same day as Ms Bloomfield disclosed to the Claimant her conclusion did not, in our understanding, mean that the Respondent had reasonable and proper cause to take the approach it did. As we understand it, such a Letter gets sent as a result of a complaint being made to the police and without the police conducting any investigation or certainly not one as full as that Ms Bloomfield conducted.

71. Before we leave the topic of the Respondent's decision to instigate a new investigation, we note that Ms Owusu-Agyei has submitted that the Claimant makes no complaint about the thoroughness of the second investigation carried out by Ms Charman. That seems to us to miss the point about the onus of proof being on the Respondent to justify the radical change of direction it took in the processing of X's grievance. Without reasonable and proper cause being established by the Respondent, the Claimant was entitled to consider the first investigation commissioned by his employer as being thorough.

72. The other breaches of the implied term as to trust and confidence relied upon by the Claimant did not carry anything like the same weight as did the decision to take abandon the Bloomfield conclusion of "No case to answer". "Trying to cover wrongdoing using whistleblowing policy" was an allegation we found difficult to understand but which we believe relates to the complaints which the Claimant brought to the attention of the Freedom To Speak-up Guardian in April 2017 (the Claimant asserting that FTSG represents the Whistleblowing policy for the NHS) and, in respect of which, he was advised to make use of the Grievance procedure – which he did. The grievance that the Claimant brought in due course was not upheld. Given that all the Guardian did was to advise that the Claimant's complaints about wrongdoing should be submitted as a grievance, it is difficult to see how that advice can be construed as a breach of the implied term of trust and confidence. The only other mention of the whistleblowing policy in the case came when it was said that X had presented her concerns about Ms Bloomfield's report under the whistleblowing policy. If that be the use of the whistleblowing policy that the Claimant referred to in his letter of resignation, it would appear to add nothing to the first allegation of breach on the part of the Respondent.

73. The third "example" of breach of the implied term was the following:

> not receiving outcome when I raise concerns (on 10/08/2017) about the date when the Trust receive my grievance; how hard can be to check the date when the Trust receive my grievance?

74. The Claimant here is citing a failure – as he sees it – to get a proper outcome to the concerns he raised in a letter dated 10 August 2017 addressed to the Respondent's Chief Executive, Mr Andrew Riley. And, in whatever outcome he did receive, he was not provided with the date upon which the Respondent received his grievance. Given that he did not accept the evidence of the Respondent's witnesses that his grievance sent by email on 5 May 2017 was not received until he forwarded it on 25 May 2017, evidence which we accepted, it is difficult to see how "not receiving outcome" is different to "not receiving an outcome that I was prepared to accept".

75. The next example of a breach of the implied term that was cited was:

> try to cover up the fact that I was long-term off sick (Not recording my sickness absence and not following the trust policy and procedures for long-term sickness absence;

76. This relates to a failure on the part of the Respondent, either through itself or through its sub-contractor for payroll matters, Capita plc, to record that the Claimant was absent through illness for the period 26 May 2017 through to 19 June 2017 and not just 1 June 2017 through to 19 June 2017. While we accept Ms Boynton asserted to the Claimant that the incorrect recording of his sickness dates was down to a mistake on the part of Capita and that Capita, when approached by the Claimant, suggested he see HR about the incorrect recording, we do not accept there to have been any attempt to cover up the fact the Claimant was ill for that period.

77. The final example advanced by the Claimant as being a breach of the implied term is that described by the Claimant as the Respondent having:

> misled me regarding Enuresis additional admin support

78. This relates to the fact that, after Ms Volaria left in September 2016 and the two Band 4 Administrative Officers were asked to cover the Enuresis admin work, it was on a temporary basis. However, as the evidence we received, and accepted, from Ms Cody demonstrated, the honest intention on the part of Ms Cody when she asked the two Band 4 Administrative Officers (the Claimant and Ms Halai) to cover the Enuresis admin work was that it would be for a short time. However, circumstances changed and what had been a short-term assignment became a longer-term assignment not through any action on the part of Ms Cody but because she had to react to circumstances that had changed.

79. We do not accept the proposition that the Respondent, acting through Ms Cody, deliberately misled the Claimant and Ms Halai as to the length of time they would be required to do the Enuresis admin work.

80. However, all the examples of breach of the implied term, including the only one which we accept was actually a breach of the implied term, were all known to the Claimant when he filed his first ET1 on 6 September 2017 alleging discrimination. That he continued to work until 14 November 2017 indicates to us that he affirmed the contract in the light of the breaches as he must have seen them in early September 2017.

81. And, in respect of the breach of the implied term which we accept, it is clear from the contemporaneous documentation that the Claimant claimed the Respondent to have breached that term as far back as 2 September 2016, a claim which can be found to be repeated in correspondence several times thereafter, 22 September 2016 and 12 April 2017 being but two examples, before he decided to act upon it. During that time, he continued to work for the Respondent and to receive the benefit of his salary. A period of over 14 months between repudiatory breach and the acceptance thereof goes well beyond that "reasonable time" which Lord Denning suggested an employee should be allowed, see *Western Excavating (ECC) Ltd v. Sharp* [1978] IRLR 27 CA, per Lord Denning at p. 29, 15. And, for the avoidance of doubt, we regard Lord Denning's "reasonable time" to have been exceeded by the time the Claimant wrote his resignation letter on 14 November 2017 in respect of the breaches of the implied term that the Claimant perceived as having occurred when he presented his first ET1 to the Tribunal on 6 September 2017.

Conclusion

82. In the light of the above, and despite having considerable sympathy with the Claimant for the stress and anxiety he has had to deal with as a result of being denied a full explanation for the decision to dispense with the Bloomfield investigation and launch another investigation, we must - and do - dismiss all the claims made by the Claimant.

Signed:

Paul Stewart

_____

EMPLOYMENT JUDGE

On:

31 May 2019

DECISION SENT TO THE PARTIES ON

18 June 2019

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FOR SECRETARY OF THE TRIBUNALS