



## EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr B Bashford**

**v**

**Portsmouth City Council**

**Heard at: Southampton**

**On: 21 and 22 August 2019**

**Before: Employment Judge Rayner**

### **Appearances**

**For the Claimant: Mrs Bashford (Claimants Wife)**

**For the Respondent: Miss A Athill (Counsel)**

## **JUDGMENT**

The Claimant's claim for unfair constructive dismissal is dismissed.

## **REASONS**

1. The Claimant in this case is Mr Brynmor Bashford and the Respondent is his former employer, Portsmouth City Council. Mr Bashford was employed as a fire safety adviser by the Portsmouth City Council from the 1st May 2013 until he resigned by a letter dated 25 May 2018 in which he gave 2 months notice terminating his employment on the 31 July 2018. At the point of his resignation he had 5 years continuous service.
2. Mr Bashford filed his claim the Employment Tribunal on 20 November 2018 and first approached ACAS on 12 October 2018. His ACAS certificate was issued on the 2 November 2018.
3. By a claim dated the 20 November 2018 Mr Bashford claims that he was constructively and unfairly dismissed by his employer. The City Council defends that claim.
4. Mr Bashford relies upon events which occurred in the last months of his employment as treatment which he says fundamentally breached the implied term of mutual trust and confidence in his contract of employment. He relies upon the cumulative effect of the treatment.

5. The treatment which he relies upon is as follows:
  - a. that he received no proper support from management;
  - b. that PCC and/or Mrs Sully made changes to the way that flexi leave was dealt with to his detriment;
  - c. that PCC and/or Mrs Sully denied his reasonable requests to work from home;
  - d. that PCC prevented him from taking part in CPD courses;
  - e. that PCC unreasonably refused to give him permission to carry out private work for other organisations in his own time and
  - f. unreasonably refused his request to provide services to Eastleigh Borough Council on one occasion.
6. The issues in the case are as follows
  - a. Did the Respondent treat Mr Bashford as set out above in 4 (a-f) and if so,
  - b. did any or all of the treatment amount to a fundamental breach of Mr Bashford's contract of employment?
7. At the start of the hearing I received an agreed bundle of documents and have heard evidence from Mr Bashford himself, and from Mr Groves and Mrs Sully for the Respondent. I am grateful to counsel for the Respondent Miss Athill and to Mrs Bashford who represented Mr Bashford for their careful representation and their helpful submissions.

### The Applicable legal principles

8. I start by reminding myself of the relevant legal principles when dealing with a claim of constructive unfair dismissal in which part of the criticism is of decisions made by managers in the process of exercising a discretion.
9. In this case Mr Bashford complains of the decision making of both Mr Groves and Mrs Sully about their exercise of discretion in respect of formal and informal policies dealing with flexible working; home working and undertaking private work outside employment.
10. At the heart of Mr Bashford's claim, is the response of both managers to his request to undertake private work in general, and in respect of their subsequent refusal of permission to him to do work for Eastleigh Borough Council.
11. Mr Bashford also makes reference to a request he made in respect of a job he had already turned down. He states that he was told that he would not have been granted permission, had he asked for it, to work for Croyden Council, because of a pre existing contractual relationship.
12. Both of the decisions criticised by Mr Bashford involved both managers exercising their discretion over the interpretation of a PCC policy and its application to a specific request being made under it.
13. A resignation may amount to a constructive dismissal if it an employee resigns in response to a fundamental breach of contract by the employer. (see Ss.95(1)(c) and 136(1)(c) Employment Rights Act 1996) . The employee must have resigned because of the employer's breach and not for some other reason. It is a question of fact for the employment tribunal to determine what the real reason for the resignation was.
14. In the case of **Western Excavating (ECC) Ltd v Sharp** 1978 ICR 221, CA, the Court of Appeal ruled that the employer's conduct which gives rise to a constructive dismissal

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

15. In order to successfully claim constructive dismissal, Mr Bashford must therefore establish that:
  - a. there was a fundamental breach of contract on the part of the employer and
  - b. the employer's breach caused the employee to resign; and
  - c. the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.
  
16. Where a Claimant relies, as Mr Bashford does, on the implied term of mutual trust and confidence, there will only be a breach of the term where there is "no reasonable and proper cause" for the employer's conduct, and then only if the conduct is calculated and likely to destroy or seriously damage the relationship of trust and confidence. (See **Malik v Bank of Credit and Commerce International SA (in compulsory liquidation)** 1997 ICR 606, HL.)
  
17. Unreasonable conduct by an employer will not breach the implied term of trust and confidence, although it may be evidence of such a breach. The employer must have participated in conduct which is calculated or likely to cause serious damage to, or destroy, that relationship.
  
18. This is an objective test and does not require a finding of what the Employers intention was, "*If the employer acts in such a way, considered objectively, that his conduct is likely to destroy or seriously damage the relationship of trust and confidence, then he is taken to have the objective intention spoken of*" ( See Judge Burke in **Leeds Dental Team Ltd v Rose** [2014] IRLR 8, EAT. )
  
19. Because the test is subjective, it is not necessary for the employee's trust and confidence to have been undermined in fact. What is necessary is that, the conduct is likely to destroy or seriously damage the trust and confidence of the employee when viewed objectively. Similarly, there will be no breach simply because the employee subjectively feels that such a breach has occurred no matter how genuinely this view is held. If, on an objective approach, there has been no breach then the employee's claim will fail (see **Omilaju v Waltham Forest London Borough Council** [2005] EWCA Civ 1493, [2005] IRLR 35). 431]
  
20. Where the exercise of a contractual discretion is involved, it is not enough for Mr Bashford to argue that the decision was unreasonable; he must satisfy the ET that the exercise of the discretion was irrational, or **Wednesbury unreasonable** (or irrational), which means it must be so unreasonable that no reasonable person acting reasonably could have made it. (see **Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223**); **Braganza v BP Shipping Ltd** [2015] UKSC 17, [2015] IRLR 487) and **IBM UK Holdings Ltd v Dalgleish** [2017] EWCA Civ 1212, [2018] IRLR 4 in which the Court of Appeal extended this principle to applications of the terms and conditions in Employment contracts. )
  
21. I also remind myself that breaches must be serious. Parties are expected to withstand 'lesser blows' (**Croft-v-Consignia** [2002] IRLR 851).

## Causation

22. The breach relied upon does not need to have been the only cause of the employee's resignation in order that a claim succeeds; **Wright-v-North Ayrshire Council [2013] UKEAT/0017/13/2706**. It is sufficient for it to have been an effective cause of the employee's resignation.

#### Affirmation

23. A Claimant cannot rely upon a breach of contract which he/she has been taken to have affirmed. Affirmation can, have been express, but it can also be implied by inaction and delay, although simple delay is rarely enough. In **Chindove-v-Morrisons UKEAT/0201/13/BA**, Langstaff J said this (paragraph 26);
24. "He [Mr Bashford] may affirm a continuation of the contract in other ways: by what he says, by what he does, by communications which show that he intends the contract to continue. But the issue is essentially one of conduct and not of time..... It all depends upon the context and not upon any strict time test."

#### Issues and Discussion of the case

25. Mr Bashfords contract of employment is supplemented by the Employee's code of conduct to which I have been referred, at page A42 of the bundle.
26. Paragraph 11 of that policy deals with the circumstances in which employees may be given permission to take on outside and additional work. It states at 11.1 that *employees must ensure that any reward of fee they receive from employment outside the council has been authorised in advance in accordance with this code.*
27. 11.2 states *All employees are bound by a duty of fidelity where they should not breach confidence or participate in competing activities. The council has the right to take necessary and reasonable steps to protect its legitimate business interests.*
28. 11.3 states *any additional work (whether paid or unpaid) you wish to undertake must not conflict with the councils interests or in any way weaken public confidence in the authority. Accordingly all employees of the authority are required to obtain consent in writing (to be retained on their personal file), from their head of service in advance, and on each occasion, if they wish to engage in any other business, take up additional employment or work outside the authority. This provision also applies to Directors.....*
29. Paragraph 11.6 states that the council will not generally give approval for additional and /or outside work if it
- is for anyone is a supervisory or managerial relationship with the employee
  - if it places the employee position where official duties and private interests may conflict
  - affects the employee's health or ability to make acceptable standards work
  - Might weaken public confidence in the conduct of the councils business
  - involves the employee the competition the council.
30. Paragraph 11.7 places restrictions on the equipment that employees may not use when undertaking private work and paragraph 11.8 states that outside work should not be undertaken for *any person; company or contractor is known by the employee to have a contractual relationship with the council, or who is seeking work from the Council.*

31. Mr Bashford's contract is one which allows him to benefit from the city council's flexible working policy. Over the years Mr Bashford developed a practice approved by management of taking an occasional day off to set off against the long hours and unsociable hours that he was often required to work due to the nature of the job he did. This was agreed on an informal basis.
32. Mr Bashford had attempted to negotiate a variation to his working hours in order to enable him to work regularly from home. It had not been agreed by the PCC, although it had been the practice of PCC to allow Mr Bashford to work from home on occasions in order that he might catch up with report writing for example .
33. Mr Bashford was required to take part in continuous professional development, and often flagged up courses or sessions that he felt would be useful to him, or which were necessary.
34. Mr Bashford relies upon a refusal to grant him CPD opportunities as part of the breach of his contract. He states in his evidence that he requested a level 2 Foundation Course on 30 October 2017 and chased managers on the 15 November . the course was for 2 days, and he was refused the time to go on the course because he could not be spared for two days.
35. On 27 November 2017 Mr Bashford was refused the opportunity to attend a for CPD with Apollo fire alarms, because of the need to do a job at the Civic centre.
36. In early 2018 Mr Bashford was approached by a colleague asking about the possibility of him providing some private work outside his PCC employment in his capacity as a fire safety adviser. Mr Bashford was interested in doing the work and approached his line manager, Mrs Sully, on 5 February 2018 to ask about the process for getting consent to do private work.
37. Following that conversation he made a written request the same day providing information about his request to undertake additional work. (P A36). In his email he states that  
*"over the last few months I have received a number of enquiries from different sources some following fire service recommendations both here in Portsmouth and Southampton several enquiries other counties Dorset, Surrey after seeing my details on the registers and some from London (colleagues in the LFB) I have also had some interest from a small housing association and another local authority."*
38. Mr Bashford states that he would conduct the assessment in his own time or at weekends and during evenings, or would take leave as required. He states that *any prospective jobs within Portsmouth would probably be done of a weekends to avoid any conflict. I have no intention of working every weekend as my full-time job as you know full on, with zero capacity to take on extra work, however I would like the opportunity to utilise my skills in my own time*
39. In this email there is no request in respect of any specific or defined piece of work. It is a general enquiry about the possibility of doing work of the types described.
40. Mrs Sully passed the email to Steve Groves and replied to Mr Bashford on 8<sup>th</sup> February 2018. She reminded him that *until we have had the approval you cannot carry out any additional work.*
41. On the same day, 8 February 2018 Mr Bashford received a further email from Mrs Sully referring to Mr Bashford's flexi sheets and noting that he had been working from

home in the evenings making long days. She states that she did not want him to work from home in the evenings, and that if there was an issue with workload and capacity they should discuss it.

42. On the 21 March 2018 Mr Bashford received a letter from Mr Groves, the Asset Manager for Property & Housing Services at PCC. (A 50-1) regarding his request.
43. The response from Mr Groves quotes from the code of conduct highlighting the need for Mr Bashford to seek permission on each occasion he wants to undertake private work and giving details of each piece work he wishes to carry out.
44. Mr Groves highlighted that he could only provide approval on an individual case by case basis with knowledge of who the specific client would be that Mr Bashford was proposing to work for. He could not give an overarching approval for the carrying out of additional work in all instances as there remains a potential conflict of interest depending on who the client is that Mr Bashford was proposing to provide fire risk assessment or fire safety advice for.
45. He makes clear in the letter that before proceeding with any specific additional employment Mr Bashford must seek written approval from Teresa Sully as his line manager and must do so for every individual request to undertake fire risk assessment or fire safety advice providing full details of the scope of worker advice been carried out together with full details regarding the client work is being carried out for.
46. This letter is not a refusal of permission to carry out work of a private nature. Mr Bashford had not made any request in respect of any specific piece of work but had asked general question and had sought general admission to carry out private work. Mr Groves did not say that Mr Bashford could not carry out any private work but instead refers to the policy and the need to seek permission on each and every occasion.
47. Mr Groves also highlighted in this letter that approval would not be given in any instances where the council already had a contractual relationship with any client or potential would provide service to the client and gain an income. This is express within the policy. He gave examples of clients where permission would not be given, noting that it was not an exhaustive list. The list included other councils and local authorities, school academies within the Portsmouth area; organisations managing Portsmouth City Council assets such as BH live and leaseholders of Portsmouth City Council assets such as cafes and shops and other potential clients is business type and size the council could potentially provide a service to and gain a fee income.
48. The letter states *therefore I can inform you that approval will not be given in any instances where the council already has a contractual relationship with any client or potentially would provide the service to the client and gain a fee income.*
49. Mr Bashford was unhappy with the response and the restrictions which it would place on him in doing private work. He was also unhappy that it had taken 41 days from his initial request and Mrs Sully therefore arranged a meeting between Mr Bashford and Mr Billet, from human resources so that the matter could be discussed further.
50. Mr Bashford wrote to Mrs Sully 23 March 2018 in advance of the meeting stating that he was unhappy with the letter because he believed *the all-encompassing content/restrictions are unreasonable, unfair and possibly discriminatory nature, ( unless of course this letter is a generic all staff communication) and I believe the way its worded is so stacked against me as to be unworkable almost designed to prevent the working smacks of restricted practice? ( page A52) .* He ended the letter thanking Mrs Sully for arranging the informal meeting, and saying *I have been advised to see*

*what comes from this informal meeting and if not resolved to my satisfaction locally I will again seek advice as to how to progress the matter. I am hoping that this situation can be resolved amicably reasonably and fairly without the need for further informal or formal action.*

51. The meeting took place with Mr Billet and there was a discussion of the letter and Mr Bashford's concerns. Mr Bashford felt Mr Billet was rude; disrespectful and unprofessional in the meeting. Mr Bashford felt that Mr Billet did not recognise the merits of the concern which he, Mr Bashford was raising and felt that Mr Billet's attitude further compounded his disappointment.
52. On 27 March 2018 and following the meeting Mr Bashford sent a further email to Mrs Sully. stating that he was *really hacked off with this sledgehammer to crack a nut approach. I'm not asking anything out of the ordinary just the same as any other employee in PCC* p A53. Mr Bashford also referred to the letter he had received from Mr Groves and noted that he was being asked to provide services to others privately because of the work but that he had done in his work for PCC. He stated that he *went way and above what is required in my day-to-day work to provide a good service on behalf of PCC and as my manager you recognise this and assist where you can a little less stick and a tad more carrot from others.*
53. Following the meeting on 26 March 2018 Mr Bashford drafted a summary of the meeting with his comments. The note sets out the matters discussed and Mr Bashford's concerns and why he considers the decision the unfair. (page A54.) .
54. On 16 April 2018 following the meeting, the original letter from Mr Groves was reissued to Mr Bashford.
55. Meanwhile on 4 April Mr Bashford requested permission from Mr Sully to work from home in order to complete some report writing amongst other matters. Mrs Sully refused this request and sought to make alternative arrangements for him work in the office. In an exchange of emails between them (59 A) Mr Bashford makes clear that he is unhappy and sets out the reason for his concerns which include the lack of daylight; noise in the office and the fact that he believes it would be easier for him to use his home study than come into the office.
56. On 30 April 2018 Mr Bashford made a request to Teresa Sully to do some private work for Eastleigh Borough Council. Mrs Sully refused the request. She met with Mr Bashford and then confirmed the reasons for the refusal in an email on 1 May 2018. The email states that the request was refused following her having reviewed it with Mr Steve Groves. She states that the reason for the refusal was that Eastleigh Council was a local authority where PCC could offer to sell other services to, such as PV, Asbestos surveys, FRAs etc. She was referred to the original letter from Mr Groves giving the non exhaustive list of councils and organisations where permission would not be given. She notes that there is already a contract with Eastleigh, because they offered the out of hours service to support a Mobile Home Park in Eastleigh. Mrs Sally ended the email asking for Mr Bashford's contact at Eastleigh in order to try to set up a meeting to see what services PCC may be able to offer them.
57. Following this email Mr Bashford made no further request for permission to do private work in respect of any specific job.

### **Flexible working**

58. The Respondent operates a flexible working scheme. The HR policy refers to the working day as 7 AM and 7:30 PM. Paragraph 5 of the scheme states that the

operational needs of the business must be foremost consideration when operating flexible working.

59. The policy goes on to say that it is expected that employees will arrange between themselves to keep the team properly staffed but that if agreement is not forthcoming the manager of the team has the right to require individuals to revise their working hours accordingly.
60. Further the policy states that if it has become custom and practice that individuals have developed a set working pattern the manager of that team has the right to alter the working arrangements in accordance with the needs of the business and where appropriate following due notice.
61. If an employee feels aggrieved about being asked to revise their working hours they should try and reach a mutually agreeable arrangement the line manager
62. Towards the end of April 2018 the flexible working leave policy was discussed at a meeting. Mr Bashford was not able to attend the meeting but received the minutes. One issue discussed was circumstances in which the reason for taking flexibly must be recorded. The minutes of the meeting recorded that typical examples for flexi leave which must have reason recorded in PBS request include doctors, dentist appointments for example. (page A66).
63. When Mr Bashford read the minutes, he was concerned because he understood there to have been a change in policy which *required* employees to give a reason for taking flexing leave and that flexi leave would only be granted in those situations set out in the minutes.
64. Mr Bashford had a conversation with Mrs Sully, but remained unclear about whether the policy had changed and if so how. He therefore sent an email dated 30 April 2018 to Mrs Sully setting out some issues around his working time and stating *as I said at the end of our meeting it was as clear as mud so could I ask you put it in writing in the simplest terms please what it is I'm now supposed to be doing.* (A 62.)
65. Mrs Sully attempted to speak to Mr Bashford about his email but he did not want to discuss the matter. Mrs Sully did not respond in writing.

### Findings of Fact

66. I make the following findings of fact
67. Mr Bashford was an experienced and valued fire safety adviser who has been recognised both through a grade enhancement in pay and through recommendations from elsewhere. His request to do external work for other organisations utilising his skill as a fire safety officer was an honest attempt to supplement his income with some private work. There is no suggestion that at any stage Mr Bashford acted other than entirely honestly. I find that this is the case.
68. The local authority officers who gave evidence tell me, and I accept, that there is increasing pressure on councils to raise money by providing services to other organisations. Mrs Sully had written a report dated 17 March 2017 which identified the possibility at paragraph 3.3 *that there was a potential demand externally for fire safety adviser service therefore creating more capacity fire safety officer role as the potential to generate more fee income from external clients this could include vital services responsive device or training other services AT BCC carry out our case commercially on private buildings.*



69. In fact, no action had been taken since that date to progress any such external contract, and although Mr Groves told me that it was on the agenda, I find that this was not something that was being actively considered before Mr Bashford made his initial request in early February 2018 to do external work.
70. The initial letter sent by Mr Groves dated 8 February 2018 set out in clear terms the restrictions placed upon employees seeking to do external work. These reflect largely the matters set out in the employee code of conduct that permission would not be granted for additional external work where there was any conflicts of interest that permission would not be given where the work would be for any organisation where the existing contract with PCC in place .
71. I find that Mr Groves drafted his initial letter after giving due consideration to the workplace policy. I find that that he took advice and that it the letter he wrote is a fair and sensible letter reflecting a reasonable exercise of discretion. I note and find as fact that when the letter was first written and when it was reissued in early April 2018 that Mr Bashford had not made any actual request for permission to do a specific piece of work but had made a general request, and that the code of conduct specifically states that there must be a request made in writing in respect of each and every application to do external work.
72. The letter contains a further restriction which is not contained specifically in the code of conduct. This is on the first page of the letter. It states that approval will not be given in any instances where the council already has a contractual relationship with *any client or potentially would provide a service to the client and gain the income*. Mr Groves explained under cross-examination and following questions from me that it was his view that because the council might decide to enter into contracts for the type of work that Mr Bashford was doing in the future that there could be a potential conflict of interest. He also stated that he was concerned about work being done by a PCC employee in a private capacity where there might be a possibility of the PCC contracting because of how this might look to the public, and how it might reflect on the council, either if it was known that the work was being done by a council employee, or if any issue arose subsequently with the work.
73. I accept that Mr Groves reasoning was genuine and reasonable.
74. Whilst the provision was widely drawn, and could be capable of including any potential client for whom Mr Bashford might wish to provide work, Mr Groves did retain a discretion.
75. I find that the letter was intended to provide clear guidance to Mr Bashford, to help him if he wanted to make an application to do any specific piece of private work.
76. I also accept that Mr Bashford read the letter as being a blanket refusal in respect of any council where a service may potentially be provided, but I find that it was not one. Mr Bashford interpreted the letter as preventing him from doing private work, but that is not the effect of the letter and nor was it the intention of Mr Groves.
77. I find that Mr Bashford honestly concluded that the effect of the decision would probably be that that he would be denied permission for work with any other organisation. I find that his subsequent attempts to gain clarity and negotiate with PCC were frustrating for him and did have the effect of significantly undermining his confidence in the council.

78. I find that the refusal of permission to work from home in early April 2018 by Mrs Sully had the effect of compounding Mr Bashford's feelings that he was not being trusted.
79. However, I find that the refusal by Teresa Sully was not caused by lack of trust of Mr Bashford, but was an attempt by her to facilitate him working in the office because she wanted him to be available in the office in case issues came up with which he could help. This is a reasonable management action and was in line with the flexible working policy. I find that the timing of it was entirely coincidental. The fact that Mr Bashford felt that the timing of it was suspicious is unfortunate, but I find that it was simply an unfortunate coincidence.
80. I find that the refusal of the permission to do work for Eastleigh Council on a private basis was a reasonable exercise of decision taken in consideration of the discretion allowed to the local authority under the code of conduct. PCC did have an existing contract with Eastleigh Council and although I accept that it was of a different nature to the work which Mr Bashford was proposing to do, the council's own policy states clearly that permission will not be granted where there is an existing contractual relationship.
81. Whilst I accept that from Mr Bashford's perspective of the refusal on the grounds that there is a wholly different service contract could seem unreasonable, the explanations given by Mr Groves and by Teresa Sully that there was a potential for finding or seeking work with this authority is not unreasonable and was I find the true reason for the refusal.
82. Viewed objectively, in the context of the pressures on the Local Authority to deliver value for money to local tax payers and concerns about public perceptions, the decision not to allow Mr Bashford to do work privately was not irrational. It was a decision which Mr Groves was entitled to take, in line with the PCC policy.
83. In the context of what the authority might hope to do in the future and given the concerns Mr Groves told me and I accept that he had genuine concerns about how a council employee doing private work for another council might look to those outside the council. He also recognised the importance of developing the sale of services of existing employees to other authorities and other organisations. He was concerned about future commercial conflicts if Mr Bashford did private work where there was possibility of PCC providing the services themselves.
84. Mr Bashford was primarily a PCC employee, employed on a full time contract, and the decision on this occasion to refuse permission to work was not irrational, and is not therefore capable of breaching Mr Bashford's contract of employment. It is not a fundamental breach of contract, it is a decision which management were entitled to make.
85. I find that Mr Bashford did make a subsequent enquiry of Mr Groves about a hypothetical work situation, and I find that he did receive the negative response as he states. However a hypothetical request and a response to it, is not a decision made by the council refusing permission to take on a particular job, and whilst I accept that Mr Bashford genuinely felt that he was banging his head against a brick wall, an indication of a possible future refusal could only breach his contract of employment if it could be said that it was anticipatory breach. In order for that being the case I would need to be satisfied that Mr Groves stated intention to exercise his discretion in a wholly irrational and unreasonable manner and I find that that was not the case.
86. In respect of flexible working issue, I find that there was a genuine miscommunication between Mrs Sully and Mr Bashford. On the one hand Mrs Sully considered that the

discussion that had taken place at the team meeting and her explanation to Mr Bashford following it was clear, because she knew that there had in fact been no change flexitime.

87. Mr Bashford genuinely, although mistakenly, understood the minutes from the meeting to mean that there had been a change and that he was now required to give reasons if he wished to take flexitime. He attempted raise this with Mrs Sully verbally and then put his concern in writing. Mrs Sully did not respond because she had attempted to speak with him and he had declined to discuss the matter.
88. With the light of hindsight it is possible to say that Mrs Sully should have responded in writing as requested by Mr Bashford but her failure to do so was not a breach of contract which goes to the root of the contract. It was a genuine oversight following her attempt to discuss the matter with Mr Bashford.
89. Mr Bashford has given 2 examples of occasions when he asked for but was not allowed to attend for CPD. I accept that both happened, but do not find that they are capable of breaching his contract of employment. Both examples given were refused by management for good reasons. Mr Bashford does not suggest that he was prevented from ever attending CPD events.
90. I also find that Mr Bashford was supported by his managers both in being facilitated to work flexibly and in being able to work from home. His own evidence and some of his emails, point to the support he has received. I find that the managers attempts to ensure that he was available in the workplace, and able to carry out the work required was an indication of the importance of Him and his role to the Respondents, and not of them mistrusting him, or failing to support him.
91. Mr Bashford has told this court and I accept that he was deeply hurt and upset treatment that he received that he interpreted the refusal of his request for homeworking and the refusal of permission to do external work with Eastleigh as being a sign of a loss of trust in him by the council. I accept that this is how he felt and I accept that he is honest when he says this.
92. However, I find that he was wrong in his belief that because a request to work from home had been refused on one occasion and because he had been refused permission to work for one Local Authority, that he would always be refused.
93. I also find that Mr Bashford did in fact resign because of the treatment which he received. He did not resign for any other reason and the matters set out in his resignation letter of 20 May 2018 are a fair and true reflection of his reasons for resigning. I also find as a matter of fact insofar as it matters that Mr Bashford did not affirm his contract.
94. He acted as he had done throughout his employment in an honourable and sensitive way to ensure that the council was not left in the lurch by him leaving without working his notice. He continued to work diligently until the end of his contract and the fact that he worked 2 extra days was the result of the council's inflexibility and not his own.
95. I find therefore that Mr Bashford was not constructively unfairly dismissed, because I find that there was no fundamental breach of his contract employment. Whilst Mr Bashford's trust in his employer was clearly undermined and whilst he clearly lost trust and whilst he is honest about the reasons for that, the decisions made by the council in exercise of their discretion will ones which they were entitled to make and the decisions in respect of flexitime CPD and homeworking were reasonable management decisions explained adequately by the context and the timing of them.

Employment Judge Rayner

Date: 22 August 2019

Reasons provided to admin office: 19 October 2019

Reasons sent to the parties: 29 October 2019

For the Tribunal office

Note: online publication of judgments and reasons

The ET is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. It has recently been moved online. All judgments and reasons since February 2017 are now available at: <https://www.gov.uk/employment-tribunal-decisions>.

The ET has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in any way prior to publication, you will need to apply to the ET for an order to that effect under Rule 50 of the ET's Rules of Procedure. Such an application would need to be copied to all other parties for comment and it would be carefully scrutinised by a judge (where appropriate, with panel members) before deciding whether (and to what extent) anonymity should be granted to a party or a witness