EMPLOYMENT TRIBUNAL (SCOTLAND)

Case No: 4113342/2018

Held in Glasgow on 7, 8 and 9 January 2020

Employment Judge M Robison

Ms S Cleary	**Claimant Represented by Ms L Neil - Solicitor**
Spark of Genius Limited	**Respondent Represented by Mr P Singh - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claim does not succeed and therefore is dismissed.

REASONS

Introduction

1. The claimant lodged a claim with the Employment Tribunal on 15 August 2018, claiming unfair constructive dismissal and public interest disclosure detriment. The latter claim was subsequently withdrawn. The respondent entered a response resisting the claims.

2. This final hearing followed several preliminary hearings including an unsuccessful application by the respondent for a deposit order.

3. The Tribunal heard evidence from the claimant. For the respondent, the Tribunal heard from Ms Frances MacDonald, a former colleague of the respondent engaged on a "bank" capacity; Ms Marie Reid, now assistant manager at

Sunderland House; Mr William McFadyen, service manager who decided the disciplinary outcome and Ms Claire O'Brien, head of HR.

4. The Tribunal was referred by the parties to a number of productions from a joint bundle of productions. These documents are referred to in this judgment by page number. Several documents were added by both parties during the hearing. Although e-mails were lodged, the way that they had been copied was not helpful, and nor was the fact that they were not in chronological order.

5. Where appropriate, I have referred to staff members and young people by their initials to protect their identity.

Findings in Fact

12. On the basis of the evidence heard and the productions lodged, the Tribunal finds the following relevant facts admitted or proved.

Background

13. The respondent is a provider of education and residential care throughout the UK and employs approximately 530 people. The respondent is registered with the Scottish Social Services Council (SSSC), the regulator of the social services workforce in Scotland.

14. The claimant worked for the respondent from 20 July 2008, latterly as a residential care worker (RCW), until she resigned by letter dated 12 March 2018.

15. The claimant worked at Sutherland House, Dunoon which is a residential children's home for up to five looked after children with challenging emotional and behavioural difficulties.

16. The claimant worked nightshift, commencing at 8 pm each evening until 8 am the next day. In addition to caring for the residents, and in particular settling them into their bedrooms by around 10 am each evening, the claimant undertook light household chores and completed paperwork as appropriate regarding movements of the young people. Given the number of young people in the home, at least two night shift workers would be required to comply with staffing ratios.

Respondent's policies and procedure

17. The respondent has issued a disciplinary policy (pages 82A – 82H). The following sections are of particular relevance in this case.

18. Under "General", it is stated as follows: "Within the limitation of responsibility delegated to him/her and only in accordance with appropriate advice from Human Resources, each Manager/Middle Manager will be responsible for the management and discipline of his/her department/location and have the right to issue a warning, to suspend, reduce the grade of, or dismiss an employee, subject to the employee's right of appeal against such disciplinary action taken in accordance with the procedure detailed below. The Service Manager can delegate responsibility to other nominated managers in his/her service. The Director/Service Manager will be responsible for ensuring that adequate investigation is undertaken in accordance with HR procedures. Human Resources must be made aware of all matters requiring investigation and will provide advice at any point in the operation of the procedure".

19. Under "Investigations", it is stated: "Where an incident occurs which it appears is due to an employee's misconduct or performance and it is considered that some form of disciplinary action may require to be taken, the employee's supervisor or manager should, in turn, report the matter to a Middle Manager and Human Resources Manager ensuring that the employee is advised of their intention. A report should be completed with the employee's details and details of the incident. The employee's supervisor or manager to whom the incident was first reported, will normally be nominated as the Investigating Officer and will conduct the subsequent investigation to seek to establish the facts of the incident recorded. The investigation may include carrying out investigatory interviews in the presence of a Human Resources representative and where possible, obtaining written, signed and dated statements/interview transcripts from witnesses who will be advised that they may be requested to appear at a subsequent disciplinary hearing."

20. Under the heading "Precautionary suspension" it is stated as follows: "Is a removal from the Workplace – an immediate supervisor has the authority to

suspend an employee on a precautionary basis to remove them from the workplace. This may happen if the employee is in personal danger or is creating a risk to others eg under the influence of alcohol or drugs…..In this case, the employee should be sent from the workplace and asked to report to a Middle Manager, usually the next working day. If necessary, a supervisor may need to consider making appropriate arrangements to have an employee taken home. When the employee reports to the Middle Manager as instructed, all the facts of the case should be considered and a decision taken as to whether the period of suspension should continue, to allow further investigation to be carried out or where sufficient details are known to make a decision to proceed with a disciplinary hearing or not….Suspension pending investigation – in the undernoted circumstances a line manager can recommend the suspension of an employee on full pay however, full consideration must be given to redeployment as an alternative to suspension. Suspension may be appropriate in the following circumstances: i) pending further investigation into the circumstances of the case and/or ii) when it is considered to be undesirable for the employee to remain at work as one of the following examples may occur: a recurrence of the original incident is likely; the employee could damage the successful operation of the business, eg by interfering with data held on a computer; or the employee may try to interfere with management's investigation of the matter eg try to influence or intimidate witnesses etc….Note there is no appeal against precautionary suspension."

Claimant's claims regarding staffing levels and experience

21. Until in or around mid 2016, the claimant mainly worked with one other long term member of staff. However, around that time a number of long term permanent members of staff left.

22. Thereafter the claimant required more frequently to work with bank or agency staff. Bank staff for Sunderland House were casual staff who lived locally and were included on a list to undertake ad hoc shifts as and when required. Agency staff were engaged through a recruitment agency, with a specialist health and social care division.

23. The bank staff and agency staff who were engaged, especially when initially appointed, were not necessarily trained in Therapeutic Crisis Intervention (TCI) techniques. This is an approved technique used to prevent or de-escalate a potential crisis situation with a young person. Nor had they necessarily undertaken training which would permit them to dispense medicines. Such training was not however a legal requirement. Staff were encouraged to undertake the relevant training as soon as possible.

24. For each night shift, a manager would be on call, and they could be called in the event of an incident or a member of staff requiring assistance.

25. On occasion two bank/agency might require to work together. Although some agency staff might be qualified to dispense medicines, there were occasions when neither was qualified to administer medicine in which case the manager on call would require to attend to administer medicine.

26. During a supervision meeting in July 2016, the claimant expressed concerns to her then line manager, Laura Boyd, about the number of agency and bank staff that she was required to work with. She mentioned the matter informally to the then service manager for the House, Jim Vallance. She expressed concern to the assistant manager at Sutherland House, Lesley Ann Fitzpatrick.

27. In or around 19 August 2017, the claimant was on shift with an agency staff member who was working her first shift, who was not TCI trained, and who was unfamiliar with the young people living in the house. During an altercation with a young person, the claimant suffered an injury to her ribs. She was absent from work on sick leave for around two months, returning around the end of October 2017.

28. On return, she was concerned to note that agency staff whom she believed had not undertaken training were dispensing medicine. She was aware of this because of the initials in the log book for dispensing medicine. She raised this concern in discussion with colleagues. One such colleague was Frances Macdonald, who having been engaged by the respondent as a cook, working 4 hours each day, would also undertake ad hoc shifts as a residential care worker

on a causal or bank basis. Although the claimant would not necessarily have been aware, some agency staff were however trained to dispense medicines.

29. The claimant did not however make any formal written complaint about that or about working with agency/bank staff more generally, lodge a grievance or otherwise bring any concerns which she had to management or any external regulator.

30. In or around November 2017, Lynne Harvey commenced employment with the respondent as residential manager. Not having met her, the claimant attempted to arrange a meeting with her by text on 7 December, which was due to be her last week-end working before going on annual leave until 22 December (page 145). During that text exchange, Lynne Harvey said to the claimant "I look forward to meeting you, [young people] have good things to say about you", to which the claimant replied "thanks and you" (page 146). That meeting was subsequently cancelled due to weather issues (page 147). The claimant proposed another meeting on 13 December, but got no reply from Lynne Harvey (page 149).

Investigation following misconduct allegations

31. On 9 December 2017 Lynne Harvey sent an e-mail regarding serious incidents about which she had been made aware while on call. The copy lodged is not dated and while it would appear to have been sent to William McFadyen and Lesley Anne Fitzpatrick with Claire O'Brien copied in, that is not clear (page 94). One incident related to a report by a bank/agency member of staff (EB) that another member of staff was under the influence of alcohol. It also stated that "several wrongdoings had been reported regarding" the claimant, "who was reported to have been highly inappropriate several times throughout her shift on Thursday night as well as going to sleep in one of the spare rooms whilst on shift". She asked Lesley Anne Fitzpatrick for assistance to start an investigation and gather evidence. She concluded by saying, "Please be assured I am taking this matter extremely seriously and have dealt with similar in the past".

32. In what is understood to be a subsequent e-mail of that date sent at 15.05 (again it is not clear who it was sent to, although the recipients included Claire O'Brien, HR manager) Lynne Harvey advised that the fact-finding had begun and that she

had already gathered witness statements from three members of staff and a young person. She sent a further e-mail at 17.59 advising of "various very inappropriate findings" regarding the claimant, and concluding, "we really need to speak to Sheila. She is off on annual leave until the 22nd however would be beneficial to meet her prior to this. Claire, can you advise whether you'd like me to do this with HR? Or go ahead with Lesley Anne". She said she would write up the witness statements and send them over (page 97).

33. By e-mail dated 10 December 2017 at 00.56, Claire O'Brien replied stating it was not clear whether members of HR had been involved in any fact finding, but that HR would always need to be involved if it was an investigation. She said that she would need to read through the statements. She advised that there was an internal child protection and safeguarding group who need to be aware of incidents involving young people.

34. By further e-mail dated 10 December 2017, sent at 01.12, Claire O'Brien advised Lynne Harvey that it was apparent from her e-mails that she had commenced an official investigation. She advised that "HR should have been present at any interviews, including legal procedure and keeping yourself safe from allegation, although I think it's too late for that now so we will need to find a way around this. We will need to know all interviews you carried out although it may be we need to do these again officially (will be able to determine with more info). I see you had said you will write up witness statements – any relevant staff need to write their own witness statements. I think you have already gathered from one of the email trails. If you could share these with the group copied in asap which includes the child protection and safeguarding groups who I mentioned in email sent a few minutes ago…" (page 83).

35. Lynne Harvey responded by e-mail dated 11 December at 10.30 to advise that she was not aware of the HR group, how to contact and who was part of this. She continued, "I had cc'd Claire as I thought this would be the process. I can only apologise for this error…..regarding witness statements and the writing up of these, the witnesses, I already had asked to write up their own statements. I have some of these with the others on the way today. I perhaps wasn't clear on what I had meant with regard to me writing up witness statements – I should have said

that “in addition, to the witness statements, I will write up any supplementary evidence gathered from the witnesses whom I spoke with regarding these incidents” (page 87).

36. On Monday 11 December, EB set out her concerns about staff on 7 and 8 December in a lengthy e-mail sent at 12.50 (pages 88-89). This was forwarded to Lacey Easton, HR advisor at 17.21 that day and to the child protection and safeguarding concerns group at 17.31, as well as Claire O’Brien, Kim McMillan and William McFadyen.

37. The witness statements following interviews with two young people with Lynne Harvey in the presence of Lesley Anne Fitzpatrick were typed up on the form “immediate statement post incident” on 12 December 2017 (pages 103 – 106).

38. A statement on an immediate statement post incident form was also typed up by Frances Macdonald following an interview with Lynne Harvey on 9 December and signed by Frances Macdonald on 12 December 2017.

39. Lacey Easton was subsequently appointed as the HR staff member allocated to this investigation. Lynne Harvey was appointed investigating officer. By letter dated 12 December 2017 (page 101), she wrote to the claimant advising that the following allegations of misconduct were being investigated: “that you had inappropriate or violent conduct towards fellow employers, customers, clients or suppliers and threatening conduct or swearing at fellow employees, customer, clients or suppliers; that you were sleeping while on shift on 7 December 2017; falsifying house documents”. She was advised that she was required to attend an investigation interview on 22 December 2017.

40. That investigation meeting took place on 22 December at 9 am. It was conducted by Lynne Harvey in the presence of Lacey Easton, HR Advisor. A record of the meeting was typed up (pages 109 – 114).

41. By letter dated 22 December 2017 from Lacey Easton, the claimant was advised that she was to be suspended pending further investigation. The claimant was informed in that letter that staff are entitled to six free counselling sessions per

year from an independent provider, and advised that she could have a named contact from HR. There was no mention of the SSSC in that letter (page 116).

42. By e-mail dated 22 December 2017 at 11.02, Lacey Easton advised the SSSC, as required by their registration, that the claimant had been suspended to allow further investigation of the allegations, enclosing all relevant paperwork collated to date (page 117). The claimant was not informed of this referral at the time.

43. On 3 January 2018, Lynne Harvey completed her report into the investigation of the claimant's conduct (pages 112 – 127) with 18 appendices, including the respondent's disciplinary policy, child protection policy and SSSC codes of practice. This included a recommendation that a disciplinary hearing should be held, and listed those policies, including the disciplinary policy, which the claimant was said to have breached (page 127).

44. By letter dated 5 January written by Lacey Easton, the claimant was invited to a disciplinary hearing (page 129) to take place on 12 January with Kim MacMillan HR Advisor and William McFadyen as decision maker. The claimant was advised in that letter that the purpose of the disciplinary hearing was to allow her to answer the allegations of gross misconduct regarding incidents namely "not [including] accurate information on house documentation, falsifying email updates, failing to update regarding an accident, using inappropriate and threatening language towards young people, ignoring B's RAMP and providing him with coffee, allowing B to use the staff computer within the staff office, reading magazines on shift, using your phone upstairs for over an hour while on shift, not contacting on call and leaving the house, staff and young people in a vulnerable position".

45. The letter sets out the relevant provisions of the disciplinary policy, which had been referred to in the report, and also states that "As a responsible employer who is governed by SSSC codes of conduct, we believe the allegations may also fall under a breach of the SSSC Codes of conduct", referring to the relevant paragraphs referenced in the report. The claimant was advised that "these matters" would be discussed at the disciplinary hearing, when she would be given the opportunity to give her side of events. A list of supporting documents was enclosed with copies of the appendices. This included the report dated 3 January.

The claimant was advised of her right to be accompanied by a colleague or trade union representative. She was advised of the possible consequences ranging from no sanction to dismissal.

46. By letter dated 8 January 2018 from SSSC to the claimant (page 231) headed "Registration with the SSSC", it was stated, "we have received information about you that may affect your registration with us and we need to ask you about it. Please read the enclosed information before completing and returning the enclosed personal statement form. The information is that on 22 December 2017 you were suspended from your post of residential child care worker with Spark of Genius (Training) Ltd. The specific information we are considering is detailed in the personal statement form". The letter enclosed fact sheets and asked the claimant to complete and return the enclosed personal statement within 14 days. It concludes that they will let her know the outcome of the investigation as soon as possible.

47. The claimant did not initially complete the personal statement because she wrongly believed that Lynne Harvey or William McFadyen would deal with it.

48. The disciplinary meeting took place on 12 January 2018, and was recorded on a meeting summary sheet (page 133). The claimant was advised following an adjournment that she was to be issued with a verbal warning.

49. On 13 January 2018, Lynne Harvey texted the claimant saying, "Can we get you back to work two days next week please". The claimant responded to say, "Hi Lynne, what days?". Lynne Harvey responded "shall we go for Tuesday and Thursday. There's already two staff on Tuesday so you'd be the third. Then on with Shaun on the Thursday. Will give you a chance to resettle". The claimant responded, "that's fine thanks". In response Lynne Harvey said, "Great stuff. The following week Mon, Tue and Wed where you'd be on with another two staff as well for two of these. And then we'll review and check on how things are for you. I'm here to help. Thanks Lynne" (pages 148 – 151).

50. On 14 January, Lynne Harvey texted the claimant to ask if she could cover a late shift that day as she had staff off sick (page 151 – 152). The claimant replied, "sorry Lynne have made plans for today with my family", to which Lynne Harvey

replied “Could you do tonight? CC has fallen down the stairs and injured her arm”, to which the claimant replied, “Sorry I’m at my dad’s tonight”, the response being “Ok Sheila Thanks and sorry for bothering you”. The exchanged concluded “No problem”.

51. By text dated 16 January at 09.27, the claimant advised Lynne Harvey, “contacted the house, I am unable to work this week due to still feeling ill from stress of last month, I have an appointment with doctor this afternoon. Sorry for inconvenience” (page 153), to which she received no reply. The claimant was signed off sick from that date.

52. The outcome of the disciplinary hearing was confirmed to the claimant in a letter dated 16 January 2018, which was that she had received a verbal warning for the following conduct: “Whilst on duty on 7 December 2017, you failed to provide adequate level of supervision for the young people residing at Sunderland House, namely by going upstairs to use your phone for an extended period of time; you also allowed a young person access to the office computer where confidential documents are stored”.

53. This decision was made by William McFadyen who had discounted all other allegations where there was a factual dispute between the account presented in the investigation report and the claimant’s account. In issuing a verbal warning he also took account of the fact that the claimant had worked for the respondent for 10 years with an unblemished disciplinary record.

54. The claimant acknowledged receipt of that letter on 17 January 2018 and intimated that she wanted to appeal the verbal warning. She stated that she “disagree[d] with the minutes of both meetings (E’s statement). As stated on paperwork B entered office with knife, due to high risk of B escalating, being on with an inexperienced staff member who was not TCI trained I was unable to remove him from office. All staff will confirm that they have to use their phone for work purpose. Staff were ordered to sit upstairs on nightly basis. Emails to confirm”.

55. There was some confusion on the part of the respondent regarding whether the claimant was on sick leave or annual leave at this stage. On 17 January, Kim

McMillan e-mailed Lynne Harvey to advise "As discussed Sheila is adamant that her agreed return to work date was w/c the 22nd as she was taking annual leave this week due to it being disrupted over Christmas. As far as she is concerned, although she is a bit anxious about returning to work, she isn't currently absent with stress. The call that she made to HR was in relation to her shifts and concern over who her shift partner would be on her first day back. Would it be possible to call her later today?" (page 232).

56. Claire O'Brien, who appears to have been copied into this exchange, responded to Lynne Harvey, "Based on the fact there seems to be confusion as to the current absence with Sheila being under the impression she is on annual leave, I would suggest disregarding this absence notification and counting the time as leave. We will need to ensure evidenced communications about leave etc going forward to not end up in the same situation again." (page 232)

57. On 20 January Lynne Harvey contacted the claimant by text as follows, "What would your normal work pattern look like 5 nights one week and 2 nights the next week? What days are best for you? And I'll accommodate. I didn't know you had caring responsibilities. I'll just fit around what you need. Just let me know what days are best for you to work. I'm doing the rota just now therefore it would be ideal to know what suits" (page 154).

58. On 29 January, the claimant replied to that text, "Hi Lynne, just got your text message as I switched my phone off, this week is my two days week and five next week however I am still unwell and off for another two weeks again sorry for the inconvenience" (page 154).

59. By letter dated 30 January 2018, the claimant was invited to a disciplinary appeal hearing to be conducted by Stephen McGee depute managing director and Claire O'Brien HR Manager (page 143). The hearing was due to take place on 6 February 2018. On 5 February, the claimant contacted the respondent to ask to postpone the meeting, saying that she did not feel up to coming and that she would like the meeting when she was back at work (page 144).

60. By letter dated 14 February from Kim McMillan, HR Advisor the claimant was invited to a welfare meeting at a neutral location to take place on 28 February.

That letter stated, “As you have now been absent from work for over 4 weeks on Thursday and will then be classed as long term sick, we would like to meet you to discuss your absence and fully establish the nature and extent of your illness. Your [sick lines] state “work related stress” (latest sick line to 26th February 2018) which we would like to explore further with you. This meeting will also give us the opportunity to discuss any assistance we can offer, either during your absence, or in rehabilitating you back to work. There are many options available to you to return to work and we would like to open the channels of communication with you to identify the best solution. We would like to make it clear that, we are always keen to welcome those that have suffered from ill health back to work and we will consider all viable options in assisting your return. One option we may consider is to ask your doctor to prepare a medical report on your current health to establish the nature of your condition and take on board any recommendations made to assist your return”. The letter also advised that the claimant was entitled to five free counselling sessions per year from an independent counselling service (page 155A).

61. The claimant telephoned to say that she could not attend the meeting because she was still suffering from severe stress.

62. In or around the last week in February, the claimant received a telephone call from an employee at SSSC. He advised that she was required to complete the personal statement. She wrongly understood him to advise that she was suspended and that their investigation into whether she was fit to practice would take a minimum of six months.

63. By letter dated 5 March 2018, the claimant was sent a letter in similar terms to that dated 14 February, inviting her to a meeting on 8 March. That letter made reference to a sick line referring to work related stress and that the latest sick line which they had was to 26th February 2018. It went on to note that as the sick line had expired and the claimant had not made contact, her absence was considered to be unauthorised, and that unauthorised absence could lead to disciplinary action (page 155B).

64. The claimant said that she did not receive this letter.

65. By letter dated 12 March 2018, the claimant stated that "I am resigning with immediate effect as dated on top of the page. I would like to request ….company pay for any hours/TOIL that I am owed also I am owed…2.7 hours for Nov 17 and 19.1 hours for Dec 17 which I did not receive. I have enclosed photo id and Sunderland House key" (page 155).

66. By letter dated 14 March 2018, Claire O'Brien wrote to the claimant in the following terms (page 156): "I am aware you are currently on long term sick. As you will be aware, we had invited you to welfare meetings out with the business environment in a location closer to your home on 28th February and 8th March to explore and discuss your reasons for absence, however, you advised you were unable to attend on both occasions in the form of leaving a message with an HR assistant. The letters stated that if you wished to propose an alternative date/time or venue or wished to discuss the arrangements for any reason, to make contact with HR. Whilst you did make contact, the feedback from both calls was that you were not attending and no alternative date/time or venue was proposed by yourself. Thereafter we received a resignation with immediate effect dated 12th March 2018. I would like to arrange a meeting between yourself and HR to discuss the reasons for your immediate resignation as we have been unable to meet with you to date….I will hold your resignation until you have made contact as there may be reasons relating to your resignation we are able to address/resolve upon discussion" (page 156).

67. During a telephone call on 20 March between the claimant and Claire O'Brien, the claimant first raised concerns about the disciplinary process and confirmed that she did not intend to retract her resignation. Ms O'Brien asked her to put this in writing.

68. The claimant responded as requested by e-mail on 20 March stating "Thanks for phoning, as per your call I would like to keep my resignation as submitted before. Can I also request a copy of Staff Work Book, My Contract and my last 3 wage slips" (page 159).

69. By letter dated 21 March 2018 Claire O'Brien wrote to the claimant as follows: "As you are aware I previously wrote to you in relation to welfare meetings we had

tried to arrange with you to explore and discuss the reasons for your absence and thereafter sent an initial response in writing to your resignation asking to meet with you again to explore the reasons for your immediate resignation. I had asked you to make contact by this week and we did speak on the phone yesterday. On the phone call I advised the purpose of the meeting would be to discuss first of all the reasons for your absence and immediate resignation which would look to explore and resolve any issues. You advised there were issues you had with a disciplinary that was held with you and you felt you did not wish to return to Sunderland House. I advised that there was an appeal arranged for you which did not go ahead due to absence, meaning this was still pending and the aim of this would be for an impartial Manager who has not already been involved in the process to hear your appeal taking all points on board. I reassured you of the process as well as the wish to meet for welfare meetings to discuss your absence and/or meet to explore your reasons for leaving with an aim to resolve which could include exploring reasons and looking at alternative locations offering to put your resignation on hold until we had an opportunity to do this, however, you advised that you wished to pursue your immediate resignation. Given the communications and phone call where you re-iterated your wish to proceed, I am left with no option than to reluctantly accept your resignation of which you advised is effective 12 March 2018". The claimant was advised that she would be paid her untaken annual leave entitlement and any pay due on the usual pay day, ie 30 March; and that her requests for company sick pay for her current absence had been approved and that would be reflected in her final pay. The letter concluded "thank you for your efforts and contribution during your time with us, and best wishes for the future".

70. Subsequently the claimant received e-mails from former colleagues (page 160 and 161), which were sent to the claimant's union representative but not to the respondent. In one undated e-mail Lesley Anne Fitzpatrick advised of concerns regarding the investigation of Sheila Cleary which she suggested was not carried out to the appropriate standard and did not follow the policies and procedures, that protocol was not followed and that when Lynne Harvey spoke to the young people regarding Sheila she felt that was asking questions that were leading and putting words in the young people's mouths, and had misrecorded what one of

the young people had said. She concluded, "I asked Lynne Harvey what she thought would happen to Sheila and her reply was she will get sacked" (page 160). In an e-mail from another colleague (undated), she confirmed to the claimant that Lynne Harvey had said that she would be leaving, and expressed concern about her management style (page 161).

71. By letters dated 26 February 2019 both the claimant (page 228) and the respondent (page 225) were advised of the outcome of the SSSC investigation which is that the claimant's fitness to practice is not currently impaired and that no further action was to be taken and the case closed.

72. The claimant has not worked since the termination of her employment with the respondent. She is in receipt of universal credit.

Relevant law

72. The law in relation to unfair dismissal is contained in the Employment Rights Act 1996 (the 1996 Act). Section 94(1) states than an employee has the right not to be unfairly dismissed by his employer. Section 95(1)(c) states that an employee is dismissed if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct. This is commonly known as "constructive dismissal".

73. In *Western Excavating Ltd v Sharp* 1978 IRLR 27, the Court of Appeal set out the general principles in relation to constructive dismissal. Lord Denning stated that "An employee is entitled to treat himself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract".

74. The duty of mutual trust and confidence is a term which is implied into every contract of employment. This means that an employer must not, without proper and reasonable cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and the employee (*Mahmud v Bank of Credit and Commerce International SA* 1997 IRLR 462 HL, *Baldwin v Brighton and Hove City Council* 2007 IRLR 232 EAT).

75. The question whether the employer has committed a fundamental breach of the contract of employment is to be judged according to an objective test and not by the range of reasonable responses test (*Tullett Prebon plc v BGC Brokers* [2011] EWCA Civ 131; *Bournemouth Higher Education Corporation v Buckland* 2010 ICR 908 CA). The EAT has since confirmed in *Leeds Dental Team v Rose* 2014 IRLR 8 that it is not necessary to show a subjective intention on the part of the employer to destroy or damage the relationship to establish a breach.

76. When considering whether there has been a breach of the implied term, "the Tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it" (*Wood v WM Car Services Ltd* 1982 ICR 666 EAT, per Mr Justice Browne Wilkinson).

77. There may be a series of individual actions on the part of the employer which do not in themselves amount to a fundamental breach, but which may have the cumulative effect of undermining the mutual trust and confidence term implied into every contract of employment. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal. This is commonly referred to as "the last straw" (*Lewis v Motorworld Garages Ltd* 1985 IRLR 465 CA).

78. The last straw must contribute something to the breach (even if relatively insignificant) (*Waltham Forest v Omilaju* 2004 EWCA Civ 1493).

79. Where there is a breach of the implied term of trust and confidence, that breach is "inevitably" fundamental (*Morrow v Safeway Stores plc* 2002 IRLR 9 EAT).

Claimant's submissions

80. In oral submissions, Ms Neil submitted that the claimant was entitled to terminate her contract by reason of the employer's conduct, in terms of section 95(1)(c) of the Employment Rights Act. She relied on the ET1 where the claimant asserted that the conduct relied on was the baseless investigation following the health and safety disclosures; the preventable injury and the pressure to return to work. Relying on *Kaur v Leeds Teaching Hospital* 2018 EWCA Civ 978, she submitted that this was a course of conduct, culminating in the last straw which amounted to a breach of the implied term of mutual trust and confidence.

81. With regard to the evidence, an investigation was undertaken by Lynne Harvey, who Frances Macdonald described as a manipulative bully, who put words into the mouths of the young people; who followed the respondent's policies when it suited her; but who failed to refer the investigation to HR as was required by the policy. And while Claire O'Brien stated that the statements may require to be re-taken in the presence of HR, there was no evidence that was done.

82. Further, there was no evidence that the policy in regard to precautionary suspension was completed; whereas she should have been suspended, and then consideration should have been given to whether further investigation was required, and whether it was necessary to continue with the suspension. That triggered the requirement for SSSC to be notified, however the conduct only merited a verbal warning.

83. The claimant asserts that she was being targeted, and held to a different standard from other members of staff, and in particular she was criticised for failing to record information, whereas others (in particular Frances Macdonald and EB) were not. Further, the e-mail of Lesley Anne Fitzpatrick states that Lynne Harvey inaccurately recorded the evidence of a young person, and had suggested to her that the claimant would be sacking.

84. The claimant made verbal complaints about understaffing and the use of untrained and unqualified bank and agency staff, and that it was due to that understaffing that she suffered an injury. She also complained about long hours

and the fact that her colleagues had to work long hours and to travel between different places of work when they were exhausted

85. There was also a failure on the part of the respondent to clarify the position with regard to the SSSC. The claimant was not advised that the SSSC would be informed when she was suspended. She was led to believe from the investigation report that she had breached the SSSC code of practice, whereas the letter inviting her to the disciplinary hearing suggested that she may have breached that code. Despite it being stated in that letter that any breach of that code would be discussed at the disciplinary meeting, there was no reference to the SSSC in the notes disciplinary notes It is therefore understandable why she would be confused about her status with the SSSC. Relying on *Rawlinson v Brightside Group* UKEAT/0142/17, she submitted that the respondent had an obligation not to deliberately mislead the claimant, but here the report to the SSSC and to suggest that she had breached their code was a deliberate attempt to discredit the claimant when the conduct turned out to be much less serious.

86. The result of the treatment by the respondent is that she suffered extreme stress, which she continues to suffer to this day.

87. The last straw which the claimant relied on was the pressure by Lynne Harvey for her to return to work, and the correspondence from the respondent regarding the welfare meetings. This “last straw” revives all of the other breaches which the claimant also relies on. The texts from Lynne Harvey pressurising her to return to work should be viewed in the context of a targeted campaign against her. While the letters inviting her to the welfare meetings might be an innocuous act, she relied on *Omulaji* to submit that she could rely on these even though they were not of the same character as previous conduct, and because this was more than trivial

88. Relying on *Buckland*, she submitted that the last two letters from Claire O’Brien were an attempt to cure any repudiatory breach, but the claimant’s evidence was that she had already lost confidence in the respondent by that stage.

Respondent's submissions

89. Mr Singh lodged written submissions which he summarised in oral submissions. He submitted that the claimant's claim had changed over time, giving various explanations as to any repudiatory breach, set out in the ET1 and two supplementary documents further specifying the claim, were inconsistent. By reference to *Western Excavating* and the four conditions to establish constructive dismissal, he argued that there was no breach of contract on the part of the employer, by reference to each of the claimant's complaints, which he argued both individually and cumulatively were not sufficiently serious to amount to a breach of contract.

90. With regard to her complaint about working practices, while it was accepted that the employee numbers at Sunderland House were at for a period of time reduced, there was no legal requirement that members of staff should be trained in regard to TCI or dispensing medication. The claimant in any event accepted that she had failed to put any complaints regarding staffing levels or the quality of staff in writing.

91. With regard to her complaints about the investigation, he submitted that the e-mail trail following the reporting of the serious incident makes it apparent that Ms Harvey did not single out the claimant, given reference to another member of staff. It is accepted that Ms Harvey did not adhere to the respondent's procedures in respect of the initial notification of the investigation, but he submitted that this was not down to malice, but to her being new in post. Ms O'Brien emailed her within six hours to give guidance on the respondent's investigation procedure. On review, HR found that there had been no fatal flaw, and this initial procedural flaw was minor and not a breach of contract given that the disciplinary policy is non-contractual.

92. With regard to the allegations of EB, the claimant admitted that a number of these were very serious and should be investigated.

93. Relying on *Working Men's Club and another v Balls* UKEAT/0119/11, *South West Trains v McDonell* UKEAT/0052/03, he submitted that the Tribunal should be slow to treat the initiation of an investigation as itself a repudiatory breach and even if

components of the investigation might have been dealt with differently, "it does not follow that an investigation is unfair overall.

94. Mr Singh submitted that it was entirely appropriate for the respondent to seek to instigate a precautionary suspension on 22 December 2017 in line with its disciplinary policy, especially with HR having become involved and issuing the letter confirming suspension. Further, Mr McFadyen confirmed that the respondent was then under a legal obligation to notify SSSC, who then take their own independent action.

95. With regard to the verbal warning, Mr McFadyen took the claimant's responses at their highest, but found that there were two clear issues of misconduct for which the claimant either had no explanation for or admitted. On imparting the outcome, another automatic trigger point was hit and the respondent required to inform the SSSC, as did the claimant. The claimant's position that she was not aware of this or that Mr McFadyen had informed her that he would take care of it is simply not credible, particularly as she was advised that the SSSC would be notified and that she had an obligation to notify them as well. By reference to *Buckland,* Mr Singh submitted that the decision to issue a verbal warning was reasonable, that being "one of the tools in the employment tribunal's factual analysis kit for deciding whether there has been a fundamental breach", and therefore there was no breach in this case.

96. With regard to her treatment while absent, when signed off sick she was sent one solitary text from Ms Harvey which did not request that the claimant return to work. Even if it is taken that the claimant was off sick from 13 January, he submitted that in the additional text exchange there is no evidence that the claimant indicated that she was unwell, unable to work or that the messages were unwelcome.

97. With regard to the letters sent during her absence, Mr Singh invited the Tribunal to find that this was a legitimate approach and entirely innocuous; and given that the claimant's evidence was that she did not receive the second letter, the claimant cannot rely upon this as the final straw.

98. Referring to *Private Medicine Intermediaries Ltd and others v Hodkinson* UKEAT/0134/15, he submitted this case could be distinguished because here the claimant had only been off sick for a relatively short period of time and the letters did not raise any concerns but were simply an attempt to meet the claimant in order not to fail in its duty of care towards her. The subsequent letters confirm that Ms O'Brien advised that the claimant could resume her appeal on her return and that she was open to allowing her to return to work at another location.

99. Mr Singh submitted that none of the acts complained of would amount to a last straw. By reference to *Omilaju*, he submitted that any actions of the respondent which were complained about were utterly trivial; none of the respondent's actions could be considered unreasonable or blameworthy in isolation; objectively this conduct cannot have undermined her trust even if she genuinely feels very strongly about her claim.

100. Mr Singh submitted that the claimant's true reason for resigning was that her integrity was questioned by a colleague in December 2019, or alternatively the claimant was unhappy about being issued with a verbal warning; but her response was disproportionate and in either scenario she had affirmed the contract by remaining in the respondent's employment for a considerable period of time.

101. If the claimant resigned in response to an act by SSSC, which is a third party, that is unrelated to the respondent's actions. While accepting that liability can arise where there is third party conduct for which the respondent is responsible (*Yorke v Moonlight* EATS/0025/06), he submitted that it had been established that the respondent had sufficient reasons for suspending the claimant, which in turn automatically necessitated the involvement of the SSSC; and the decision made by the discipling officer was reasonable so that the next step was automatically triggered again; from this point on, it was not within the remit of the respondent to legislate for the SSSC's approach.

Observations on the witnesses and the evidence

102. I found the claimant's evidence to be difficult to follow because it was lacking in coherence and clarity. She was apt on occasion not to answer questions directly and to go off on tangents, unrelated to the question, and to repeat herself.

103. Ultimately, while I did not take the view that the claimant was deliberately intending to deceive, I found her evidence to be totally unreliable. She was confused about what had happened and when. This confusion was illustrated for example by the fact that she said in evidence that she had not received the second "welfare letter", although this had been referred to in the pleadings by her solicitor and indeed relied on to seek to establish "the final straw". It would appear then that she had received it but did not pay attention to, or recall, the details in the letter until they were brought to her attention in evidence. Further, her response to many questions put was that the minutes of meetings were inaccurate, and although she was invited at the time to advise of any inaccuracies, she failed to do so. I was left with the impression that whenever the evidence did not match her position, she would claim that they were inaccurate.

104. The claimant did not do herself any favours, not only in the way that she presented her evidence, but also in regard to her substantive claim, in respect of her failure to make any formal complaints at all in regard to her concerns and in regard to her failure to take up the opportunity of support from the respondent or the offer of counselling. But it was perhaps in particular the claimant's failure to follow up with either the respondent or the SSSC to ascertain the exact circumstances of her status with the SSSC that really explains the circumstances she has found herself in.

105. With regard to the respondent's witnesses, while I broadly accepted what was said by Ms Mcdonald and Ms Reid, I did not find the evidence of Ms Macdonald and more so Ms Reid to be particularly forthcoming or candid, especially in regard to discussion which they had with the claimant. I did however note that Ms Macdonald was candid about her personal opinion of Ms Harvey.

106. With regard to Mr McFadyen, I found his evidence to be particularly clear and credible. He gave his evidence in a matter of fact and straightforward manner. His evidence regarding the disciplinary meeting was very comprehensive and he gave a very full and clear explanation for his rationale in making the decision which he did, which I thought was very fair to the claimant. Ms O'Brien also gave her evidence in a straightforward and matter of fact way.

107. It was for these reasons that, wherever there was any conflict of evidence, I preferred the evidence of the respondent's witnesses.

Tribunal's deliberations and decision

108. In order for the claimant to succeed in her constructive dismissal claim, she must show that there was a breach of contract by the respondent. As I understood it, the relevant contractual term which the claimant alleges was breached was the implied term of trust and confidence. Following the *Malik* formulation, the requirement is to consider whether the respondent had conducted itself in a matter which was calculated, or if not, which was likely, to destroy or seriously damage the relationship of trust and confidence between the employer and the employee, where there was no proper and reasonable cause for the respondent's behaviour. Reference was however also made to the safe system of work implied term, but I understood that the claimant's concerns about working in an unsafe environment were presented as aspects of her claim that the implied term of mutual trust and confidence had been breached.

109. The focus then in a constructive dismissal claim, where it is argued that there has been a breach of trust and confidence, is on the conduct of the employer. This is argued as a last straw type case, that is that there are a number of actions by the employer which may not individually be considered to be a breach of that implied term, but which considered cumulatively can be said to amount to a breach. The claimant in this case relies on a course of conduct of the respondent which she argues cumulatively breaches the implied term, and in particular she argued that: she required to work over an extended period of time with various untrained and unqualified agency staff who often did not know the residents making her job much more difficult; that an incident with a resident which resulted in her being injured when working with an untrained agency staff could have been avoided if she had been working with a member of permanent night shift; she complained that "sleepover" agency staff were leaving before residents were in bed and that she was left as the only permanent member of nightshift staff; she expressed concern to that due to understaffing colleagues were being required to work a nightshift and then drive to Irvine to undertake additional shifts; that she raised these concerns frequently to management; she argued that as a result the

respondent embarked on a baseless and unmerited investigation into her conduct with unsubstantiated allegations, the majority of which were unfounded; that this in turn required an investigation by the SSSC which continued for over a year and which meant that the claimant was deregistered and unauthorised to work in the care sector; that she was pressurised to return to work under the same conditions, without any of her concerns having been resolved, that is with unqualified staff and to attend return to work meetings when she was absent from work suffering from stress.

110. I have found very few of these allegations to be well-founded; and where they were well-founded I have found that there was no breach of contract on the part of the respondent, and nor could it be said that those that were well-founded could be said cumulatively to amount to a breach of the implied term of mutual trust and confidence. I have come to that conclusion for the following reasons.

111. With regard to the claimant's concerns about working with agency and bank staff who were unqualified and untrained, the respondent accepted that for a period of time they were understaffed at Sunderland House and required to make use of bank and agency staff some of whom would have been unfamiliar with the residents. I heard evidence that the respondent had taken steps to recruit permanent members of staff and attempted to ensure some consistency in the agency members of staff who were engaged. I accepted the respondent's witnesses' evidence that while some were not trained in TCI techniques or in the dispensing of medicines, this was not a legal obligation for the respondent. However, the evidence was that some of the agency staff were trained in the dispensing of medicines, so that claimant may well have seen their initials in the MAR chart, but she may not have known that they were in fact trained to dispense medicines. Ms Reid's evidence was that on occasion the on call manager would require to attend to dispense medicines if neither staff member on night shift was trained in such procedures.

112. I accept that the circumstances would have put the claimant under some stress and that this would have made her job more difficult but I did not accept, giving the findings in fact, that this could in isolation be said to amount to a breach of contract by the respondent.

113. I accept too that her anxiety might have escalated after she was injured by a resident, but I did not accept that the evidence that I heard supported her contention that the incident would have been avoided had she been working with a trained permanent member of staff. Indeed, on her own evidence she said that a permanent member of staff would have been more likely to hear the commotion and come to her help, but that does not suggest that the incident would be avoided. Nor was there any evidence to support the claimant's contention that "sleepover" agency staff were leaving before residents were in bed and that she was left as the only permanent member of nightshift staff.

114. The claimant also expressed concern that she was working on shifts with people who were exhausted, such as Ms Macdonald, but her evidence was that she would rest between her shifts as a cook and any RCW shifts. The claimant's assertions that there were members of staff who were working night shift then travelling to work at other locations were unsubstantiated, and in any event her evidence was that she personally had never been required to do that.

115. Further and in any event, while the evidence suggested that the claimant had grumbled about these circumstances to her colleagues, and I was prepared to accept her unchallenged evidence that she had raised concerns informally with some managers on occasion, it was common ground she had made no formal complaint through the grievance route or any other method of bringing concerns to the attention of management, as relayed by Ms O'Brien, who pointed out that the claimant could also have reported concerns to external regulators. Nor did the claimant make reference to these issues during the investigation or the disciplinary hearing. These actions all point to the conduct of the employer not having been considered sufficiently serious at the time to amount to a breach of trust and confidence.

116. With regard to the claimant's complaint that the investigation which was undertaken was "baseless" and "unmerited", I did not accept that submission. As Mr Singh has pointed out, the claimant herself accepted that the allegations made by a member of agency staff were serious and that such allegations should be investigated. A great deal was made of how the investigation was conducted, but the main concern, that the investigation was commenced without the input from

HR, was remedied very quickly and was explained by the fact that the manager was new and had not been made aware of the respondent's policy. The claimant's position was that she had not even met the new manager by that stage, their text exchange was perfectly amiable, so it is difficult to reconcile that with any suggestion that she was "targeting" the claimant, then or subsequently.

117. The claimant raised other concerns about the handling of the investigation, and particularly the involvement of other managers and the procedure on suspension, but it was not clear to me that the process had not in fact been followed. If it was not, I concluded that any errors in how the investigation was conducted were minor and did not affect the overall reasonableness or fairness of the investigation, or could be considered a breach of mutual trust and confidence.

118. With regard to the claimant being suspended, while the disciplinary policy may not be as clear as it ought to be, I did not accept that the proper process was not followed in this case. This was not an immediate suspension by a line manager to be reported to middle management and the decision revisited, rather the decision to suspend took place following the involvement of HR and in regard to allegations which the claimant herself accepted, that if substantiated, were serious.

119. So I find that the suspension was legitimate, and that the respondent was thereafter under an obligation to report that to the SSSC, as they were the outcome of the disciplinary. Although the claimant was not advised of the referral to SSSC in the suspension letter (and perhaps ought to have been), reference was made to the SSSC code in the investigation report and in the invite to the disciplinary hearing. In the outcome letter of 16 January she was advised that she had an obligation to notify the SSSC herself. I did not accept that others had told her they would deal with the matter, particularly in light of the letter from SSSC and the subsequent telephone call. But even if she got that impression, there was an imperative for her to have followed up the situation herself, particularly having received the letter of 8 January and the subsequent telephone call. It seems too that the claimant must have misunderstood the import of that call, because as I understood it, while the investigation being conducted by the SSSC was ongoing it is not correct to conclude that the claimant was thereby "deregistered" or even

"suspended" from registration. Indeed, I noted that the intention was that the claimant would get back to work after the disciplinary hearing had taken place and the outcome was known, so that there was no suggestion that the fact that the SSSC investigation was ongoing meant that she could not continue to work for the respondent. Ms O'Brien's evidence was that members of staff were entitled to continue in their normal role unless they received an interim suspension order, and if that is not clear from the SSSC letter, then it is at least implied.

120. Again it is clear that the claimant has done herself no favours in burying her head in the sand about this and in failing to follow up with SSSC. While this may well be daunting for the claimant, especially when she was suffering from stress, it was critically important that she understood her status for her livelihood and given her reference to her union, presumably she could have sought help from them.

121. With regard to her argument that she felt pressurised to return to work under the same conditions, without any of her concerns having been resolved, and particularly that it meant her working with untrained and unqualified agency staff, I did not accept that submission. Although there was a lack of clarity about whether the claimant was on annual leave or sick leave in the days following the disciplinary hearing before 16 January, I do not accept that the text exchange can objectively be construed as putting the claimant under pressure to return, and indeed the claimant simply accepts the proposal. Further, I noted that the proposal was that she would be the "third" member of staff on the first night back, and then "on with Shaun" on the Thursday, whom I understood was a permanent member of staff, to which the claimant's response was "that's fine thanks". Then when it became clear that the claimant was on sick leave from 16 January, the manager only sent one text on 20 January asking what days suited her, which the claimant did not in fact receive until 29 January because she had switched her phone off.

122. With regard to her argument that she felt pressurised to attend return to work meetings when she was absent from work suffering from stress, I took the view that these were invites to welfare meeting which could not objectively have been viewed as putting her under pressure. The letters from Ms O'Brien were of course

sent after the claimant resigned so could not be relied onto support an argument that this further confirmed the imperative to resign.

123. One further difficulty for the claimant is that there is a lack of clarity over what is the last straw. This was not helped by the fact that the claimant made no reference to the reason why she was leaving in her resignation letter.

124. In her pleadings the claimant seemed to at least change the emphasis of what "last straw" that she was relying on. However, in her evidence she was quite clear in saying that the "last straw" was the phone call from SSSC, and more specifically her understanding that she was told that her registration was suspended. Further, and rather inexplicably, the claimant claimed in evidence not to have received the final welfare letter which she had said that she was relying on in her pleadings in regard to what was the last straw.

125. It may well be that the claimant resigned in response to the requests to meet in the welfare letters, although it is difficult to see how such an action could be said to be anything other than innocuous. Alternatively it may well have been the telephone call from the SSSC regarding their investigation. However I accepted Mr Singh's argument that in this case at least any action of the SSSC could not be laid at the door of the respondent, certainly once it is accepted that the investigation which led to the suspension was not without merit, since the respondent was only complying with required procedure.

126. Whatever the claimant may say is the final straw, this is nothing to the point in this case. That is because none of the events which the claimant relies on in support of her argument that there has been a cumulative breach of trust could, either individual or cumulatively, be categorised even as unreasonable far less conduct that the claimant or any other reasonable person could not be expected to put up with.

127. While from the claimant's perspective she may well have come to the view that trust and confidence was seriously damaged, I could not however say that the respondent's behavior was conduct which, viewed objectively, was likely to seriously damage the relationship of trust and confidence. In these circumstances, I have found that the employer's conduct, from an objective

standpoint, could not be said to breach the implied term of mutual trust and confidence.

128. While the respondent evidently did not follow their disciplinary policy in the first instance, which was explained by the fact it had not been brought to the attention of the new manager, that error was very quickly remedied. I found Mr McFadyen to be scrupulously fair when it came to the conducting of the disciplinary hearing.

129. It is not clear why she decided not to take the opportunity to appeal, beyond her position that by then she had lost trust in the respondent. But she had no objective evidence upon which she could rely on support her decision not to appeal, which was due to be heard by a more senior manager and the HR manager neither of whom had previously been involved. An appeal hearing was lined up and Ms O'Brien offered to resume the process once she had returned to work. Ms O'Brien suggested that the claimant could work at another location. She offered her whatever support was needed to facilitate a return.

130. These are not the actions of an employer which acts in a way which is calculated or likely to seriously damage trust and confidence when viewed from an objective perspective. In all these circumstances, I did not accept that the respondent had conducted itself in a manner which was intended or likely to seriously damage trust and confidence.

131. With regard to the claimant's concerns regarding her registration with SSSC, I came to the view based on the evidence, that the claimant had entirely misunderstood the circumstances of the involvement of the SSSC. The respondent was required to advise them that she had been suspended. Although I noted that the claimant was not advised that SSSC had been informed about her suspension, this related to a time when she was not in any event at work and she was informed of the need to contact them when she was due to return to work after the disciplinary. I find that if the claimant did not know or understand the procedure or what that meant about her status, then she ought to have known or ought to have found out.

132. I find therefore that there was no breach of the terms of the contract of employment by the respondent so that it could not be said that the claimant's

resignation amounts to a dismissal in terms of the relevant provisions of the Employment Rights Act. Her claim for unfair dismissal cannot succeed and is dismissed.

Employment Judge : M Robison
Date of Judgment : 31 January 2020
Date sent to parties : 06 February 2020