# EMPLOYMENT TRIBUNALS

**Claimant:** **Mrs. Karen Barron**

**Respondent:** **York Teaching Hospital NHS Foundation Trust**

**Heard at:** **Hull** **On:** **16-18 March 2020**
**19 May 2020**

**Before:** **Employment Judge Rogerson**

**Representation**
Claimant: Mr. Stephen Barron (claimant's husband)
Respondent: Mr. A. Sugarman (counsel)

# RESERVED JUDGMENT - CORRECTED

The complaints of wrongful dismissal and unfair dismissal fail and are dismissed.

# REASONS

## Issues

1. The claimant was summarily dismissed for gross misconduct and brings complaints of unfair dismissal and wrongful dismissal. The issues to be determined were identified at a preliminary hearing on 16 December 2019 and were confirmed at this hearing as follows:

## Unfair Dismissal

(i) What was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")? The respondent asserts that it was a potentially fair reason relating to the claimant's conduct section 98(2) (b), namely that the claimant had sent "inappropriate and potentially derogatory and/or threatening correspondence" and had "bullied a colleague via emails" resulting in the irreparable breakdown of the employment relationship.

(ii) If so, was the dismissal fair or unfair in accordance with ERA section 98(4), and in particular, did the respondent in all respects act within the so-called 'band of reasonable responses'?

(iii) The claimant asserts that the dismissal was unfair for the following reasons:

(a) the matters upon which the claimant was dismissed ought not to have formed the basis for any disciplinary process let alone a decision to dismiss.

(b) the respondent breached its own procedures by failing to deal with the bullying complaint by holding an informal meeting to attempt to resolve the issue.

(c) it also breached procedure by adding a new allegation (breakdown of employment relationship) without giving the claimant the opportunity to respond.

## Breach of Contract

(iv) The claimant was summarily dismissed. She had been employed for 20 years and was therefore entitled to a minimum of 12 weeks' notice (subject to any contractual provision allowing for longer notice).

(v) Did the claimant fundamentally breach the contract of employment by any so-called gross misconduct?

## Findings of Fact

2. The Tribunal heard evidence on behalf of the respondent from Karen Cowley (Care Group Manager). For the claimant, evidence from the claimant and her husband Stephen Barron was given. The Tribunal also saw documents from an agreed bundle of documents. From the evidence the Tribunal saw and heard the following findings of fact were made:

3. The claimant was employed by the respondent from 1 October 1999 until her summary dismissal on 6 October 2019.

4. The respondent is a hospital Trust which provides a comprehensive range of acute hospital and specialist healthcare services for approximately 800,000 people living in and around York North Yorkshire, North East Yorkshire and Ryedale.

## The Background

5. At the hearing, Mr. Sugarman provided a helpful chronology of events by reference to the contemporaneous documents which identified the timeline of events and provided some context to the dismissal in 2019.

6. On 6 February 2017, a grievance was raised by a colleague (Sister X) making a complaint of bullying and harassment against the claimant and 4 others. As a consequence, the claimant and the others were told they would be moved out of the department. On 6 October 2017, although the grievance was upheld, it was found that the removal of staff from the Department was outside the HR process.

*7.* The claimant raised a grievance about that move and was then absent from work with work-related stress from 10 April 2017. ***From 26 April 2019 - 3 September 2019, she returned to work on nursing duties under her new line manager Sophie Milner. From 3-6 September 2019, she was placed on authorised leave of absence by Karen Cowley.*** **She was dismissed on 6 September 2019.**

8. Not all the claimant's absence from work was due to her ill-health. On 26 October 2017, the claimant was suspended from work under the respondent's disciplinary policy, following allegations that she (or her husband on her behalf), had sent emails with inappropriate and/or concerning content to other employees. These allegations were investigated and that investigation was completed in March 2018.

9. On 27 March 2018, Polly McMeekin (Deputy Director of Workforce) informed the claimant that the respondent had decided not to proceed with a formal disciplinary hearing, but wanted the claimant to take note of the concerns that had been raised about her conduct. The investigation report and the disciplinary investigation findings were shared with the claimant "*to help her understand the full context of the situation*" to try to avoid any repetition.

10. The letter highlights the findings made that: "*the content of the emails was deemed inappropriate and/or unprofessional and had caused anxiety and distress for the staff members involved*". The letter refers to the "*relentless*" nature of the emails and the "*wide range of people*" the emails were sent to which had "*worn down*" the staff involved. While the claimant had stated that she found corresponding in writing "*therapeutic*" she was informed of the adverse impact the correspondence had on the recipients.

11. Although the disciplinary suspension was lifted, because the claimant was still unfit to attend work, the claimant remained on medical suspension until Occupational Health advice deemed otherwise.

12. Occupational Health advice did not deem otherwise until 21 February 2019 when the claimant was assessed by Dr. Sensky (Consultant Psychiatrist) and Dr. Millman (Consultant Occupational Physician) as being fit to return to work with "*no mental illness diagnosis"*.

**The material events leading up to dismissal**

13. On 5 April 2019, Sarah Tostevin (Assistant Head of Workforce) wrote to the claimant to confirm that the medical reports received had confirmed there was '*no underlying medical condition*' and the claimant was fit to return to work. Ms. Tostevin therefore lifted the medical suspension but identified the need, after such a long absence, to put in place a *"suitable return to work plan"*. She arranged a return to work meeting for 26 April 2019.

14. In the letter Ms. Tostevin also raises a formal bullying complaint made against the claimant by another employee based on recent "*written correspondence*" the claimant had sent that employee. She advised the claimant that the matter was being investigated and would be treated

separately from the return to work discussions. She also refers to other correspondence sent by the claimant that had come to her attention where the '*language and tone*' was potentially of an inappropriate nature. She confirmed these matters were to be investigated as potential misconduct under the disciplinary procedure and asks the claimant to stop sending "*inappropriate correspondence regarding others trust staff immediately".*

15. She warned the claimant that *"These behaviors are not reflective of the Trust's values and expected standards. They **may** breach the Trust's code of conduct the Trust disciplinary rules your professional codes of conduct".* She confirms the claimant will "*have the opportunity to input into the investigations and will be contacted separately about this in due course".* She ends the letter by providing the claimant with details of the confidential counselling/support line, if it was required. (*Any highlighted text is the Tribunal's emphasis*)

16. When the claimant refers to this letter in her witness statement she describes it as a letter telling her "*she was fit for work but was to be disciplined and was guilty of bullying and harassing an anonymous colleague at work*". The claimant has deliberately misinterpreted the letter to imply a prejudged outcome to fit the case presented at this hearing. There was nothing wrong with either the tone or the content of the letter. Ms. Tostevin was tasked with managing the claimant's absence from work. She was properly drawing the claimant's attention to matters of concern that had been raised that were to be investigated. The claimant was informed the she would have the opportunity to comment in the investigation. She was also warned the claimant that a potential consequence of sending **inappropriate** correspondence was that it **may** breach the code of conduct, the disciplinary rules and the claimant's professional code of conduct. By asking the claimant to stop sending inappropriate correspondence she was trying to help the claimant she was not prejudging the outcome of the investigation.

**The disciplinary investigation.**

17. By letter dated 24 May 2019, the claimant was informed that Amanda Mullin was the investigating officer appointed to investigate the 2 allegations that the claimant had:

    - sent inappropriate and potentially derogatory and/or threatening correspondence to senior staff members of the trust. The correspondence includes that sent on 2 February 2019 to the RCN, 5 February 2019 to Simon Morritt, 16 February 2019 to Vicky Mallows, 1 March 2019 to Mike Proctor, 7 March 2019 to Vicky Mallows, 21 May 2019 to Carol Popplestone (CP).

    - bullied CP via emails received on 3 March 2019 and 16 March 2019 which have been raised under the bullying and harassment policy.

18. The letter identifies the relevant disciplinary rules that applied under which this could be treated as gross misconduct and the Trust's Code of Conduct

and the NMC code of conduct. It warned the claimant that if gross misconduct was found a possible outcome was summary dismissal.

19. The claimant attended an investigatory meeting on 3 July 2019. She admitted she sent the letters but denied they were inappropriate. Her response to the bullying allegation was that the email she had sent was 'private and confidential' and that CP should be subject to disciplinary action for relying on it.

20. After the interview, Ms. Mullin sought further clarification from the claimant about some of the she had given to better understand them. She asked a series of probing written follow up questions. The claimant was given time to consider those questions before providing her answers. Even with the time to reflect she did not defer from the approach she had adopted at the interview.

21. A few of the questions and answers illustrate her approach;

> Question 17; "*Do you filter what you put in the correspondence or is it exactly what you are feeling at the time?*"
>
> Answer: "*I get relief raising concerns as I feel they should be encouraged by all managers.* ***I feel I should not be under any restriction of filtering my concerns*** *as this would discourage me from raising them in the first place".*
>
> Question 18; "*looking back at the correspondence that has been highlighted to you, do you feel any of it is inappropriate?"*
>
> Answer: "I believe that all managers should encourage their staff to raise concerns and deal with them expediently, failure to do so will allow the issue to fester, leading to poor staff morale, sickness, recruitment and retention problems and possible legal action (or similar) and as such it is entirely appropriate to raise concerns unless Trust Management wants to discourage me from raising concerns. If managers are not "open" to receiving concern letters and want to discourage them, then the Trust should change their advertised Values and my contract of employment to reflect this.
> (*all highlighted text is the Tribunal's emphasis*)

22. The claimant was asked about the letter Ms. Tostevin had sent her on 5 April 2019, which had asked her to stop sending inappropriate correspondence and had warned her of the potential consequences. The claimant's response was that she was entitled to raise her concerns without any restriction.

23. For the bullying allegation, the claimant's position was that sending two emails to CP was not "*persistent unwanted behavior that may cause either mental/or physical harm*" falling within the bullying and harassment policy.

24. On 16 August 2019, Ms. Mullin provided the claimant with a detailed investigation report with several appendices running to 253 pages. At the beginning of the report the two allegations are set out and the following question is posed for the disciplinary panel to consider:

> *"in addition to the above allegations the investigation concludes by **asking** whether the relationship between Karen Barron and the Trust moving forward has broken down irreparably"*.
> (*highlighted text is the Tribunal's emphasis*)

**25.** The report includes an introduction, some background, it explains the investigation process, the key points taken from the interviews conducted with the claimant, Carol Popplestone, Polly McMeekin and Sarah Tostevin, and it ends with the conclusions and recommendations. The conclusions at page 343-346 are set out in a table form listing the allegation and the evidence gathered for each allegation.

26. For the first allegation of "inappropriate and potentially derogatory and/or threatening correspondence sent to senior staff members of the Trust". Extracts from 10 letters/emails the claimant had sent to various individuals were identified in the investigation report and are set out below:

    26.1 Email to Simon Morritt, Chief Executive on 5 February 2019 stating: "*I do not want to come across as threatening and almost jokingly I give the following fact-with the help of my MP Sir Greg Knight I have seen off the last two chief executives, and I would not wish for there to be third*"

    26.2 Email to Mike Proctor, Chief Executive dated 1 March 2019 stating: "*so Mr. Proctor before you slink off with your enhanced pension… and to Dame Donna Kinnair are you going to hold management to account or let your representatives continue to be disregarded and used as pawns by managers".*

    26.3 Email to Vicky Mallows dated 7 March 2019 stating: "*When the new Chief Executive does get released from his contract and takes up post he will probably be looking for a scapegoat ….. I expect like most cowardly bullies that are caught out in public, Polly will offer you up as a sacrifice rather than accept responsibility herself, so I suggest, if you haven't done so already, you get all instructions from your 'superiors' in writing".*

    26.4 Letter to Donna Kinnair dated 16 March 2019 stating: "*as the Camp Commander (York Trust CEO) has made your Carol Popplestone (RCN rep and on various RCN "policy leading" committees, the "Champion Bully" Chair for Bullying and Harassment or suchlike) and your members know that if they report anything to her, she will tell the Trust, who will then arrange a public flogging session, to teach the "dissenters" not to say anything negative about management, as she did in my case".*

    26.5 Letter to Joe Lewis, RCN dated 23 March 2019 stating: *"I had written to **Dame Donna Kinnair** I am not sure if she's Scottish" "regional office representatives had obviously "closed ranks" "membership*

*number 214 7964 of the once relevant and respected leading Nurses Union-RCN*".

26.6 Email to Carol Popplestone dated 20 May 2019 stating: "*as the only correspondence that I have sent to any colleagues in the past two years is two emails to yourself and I feel sure you would not have divulged this confidential Union business correspondence to Sarah, as it would be like going to an STD clinic, only to find that when you get back to work everyone is 'avoiding you' for fear of 'catching' something*".

26.7 Letter to Sarah Tostevin dated 6 April 2019 stating: "*the last time a manager stated outside of Trust policies, that my behavior was inappropriate without affording me the opportunity to answer those charges was two years to the day – happy anniversary".*

26.8 Email to Professor Sensky dated eight 8 April 2019 stating: "*the story of a line keeper letting a lion out and people dying*".

26.9 Email to Sarah Tostevin dated 19 April 2019 stating: "*once I have written proof that I have not sent any correspondence that is relevant to the trust disciplinary procedure (subsection bullying and harassment policy) to any colleague at work then I will be reporting you personally to the **police** asking them to investigate you under common law…".*

26.10 Email to Polly McMeekin dated 19 May 2019 stating: "*from your fine words clear that you give lip service to the York Trust Bullying and Harassment policy".* (*highlighted text is the Tribunal's emphasis*).

27. For the second allegation that the claimant bullied CP by sending 2 emails on 3 March 2019 and 16 March 2019. The first email dated 3 March 2019, was sent by the claimant to the RCN and was copied to CP, includes comments that CP "*was rewarded for her management support by getting a cushy job from Patrick Crowley" and* had been "*promoted up the rounds in the RCN. She should hang her head in shame and offer her resignation and she should accept it*". In the email to the RCN dated 16 March 2019 copied to CP the claimant describes CP as a "*Champion Bully*".

28. In the report Ms. Mullin set out the mitigation put forward by the claimant for this allegation which was that correspondence, although copied to CP was sent to the RCN, for them only and should not have been sent to the Trust to deal with. Ms. Mullin did not agree that the emails should be excluded. She viewed CP as a recipient and an employee of the Trust who had raised a complaint about this correspondence, as she was entitled to, under the bullying and harassment policy.

**29.** Ms. Mullin concluded based on the evidence gathered that the claimant did send correspondence that could be perceived as inappropriate potentially derogatory and/or threatening and that the derogatory correspondence pertaining to CP could be viewed as bullying and harassment. Ms. Mullin recommended a referral to a formal disciplinary hearing.

**The claimant's complaints about the investigation process**

30. Mr. Barron complains that Ms. Mullin added a further new allegation for consideration at the disciplinary hearing, which was unfair. He also complains that further letters/emails were considered which were not identified in the initial letter making the allegations. The claimant accepted that all the letters/emails that had been relied upon were letters/emails she

had sent. She had the opportunity to comment on them during the investigation process and all the letters/emails were included in the report. She had the opportunity at the disciplinary hearing to comment on the investigation report, to challenge the contents and to express her views about the 'future' relationship.

31. The investigation carried out by Ms. Mullin was balanced detailed and thorough. A very comprehensive and detailed investigation report was provided to the claimant. It provided the claimant with all the evidence. In the investigation the only 'relevant' documents were the letters/emails sent by the claimant which were not in dispute. All 'relevant' witnesses were interviewed. The claimant has not identified any other lines of enquiry that could have been pursued. Ms. Mullin did all she could do, to explore the claimant's perspective on the correspondence to give her the best chance possible, to put her case.

**The disciplinary hearing**

32. Although the claimant had requested and the respondent arranged for witnesses to attend the hearing, the claimant then withdrew her request and no witnesses were called by the claimant. In advance of the hearing the claimant had also indicated that Mr. Barron would provide '200' pages of documents at the hearing. She provided her statement of case.

33. The disciplinary hearing took place on 3 September 2020. It was conducted by Karen Cowley, the Care Group Manager. She had no prior dealings with the claimant. She had no prior involvement in the disciplinary process. She has conducted at least 10 disciplinary hearings prior to this one and was familiar with the disciplinary process.

34. She prepared for the disciplinary hearing by reading the investigation report and appendices and the claimant's statement of case. At the hearing she was supported by Lydia Larkham (HR). The claimant attended with Mr. Barron.

35. There were 2 significant disputes of fact about the disciplinary hearing involving very serious allegations made against Ms. Cowley and others, alleging a predetermined outcome and a conspiracy to dismiss.

36. Dealing with the first dispute of fact about the predetermined outcome. Ms. Cowley's evidence (paragraph 17 of her witness statement) was that at the start of the hearing she stood up and went to shake hands with the claimant and Mr. Barron. Mr. Barron refused to shake her hand. He appeared to be aggressive from the start. He handed her a document and a large bundle of papers (pages 611-1140 in the bundle). On top of the bundle of papers there was a statement (page 374 set out below) which was read out by Mr. Barron on the claimant's behalf. The claimant and Mr. Barron then left. The claimant said nothing during the time she was there. Ms. Cowley describes the statement made by Mr. Barron and his conduct at the hearing as 'threatening' intended to intimidate her. She refutes the account of the meeting that is given by Mr. Barron made for the first time in his witness statement.

37. Mr. Barron deals with the hearing at paragraph 16 of his witness statement. He says that the meeting started with him giving Karen Cowley a brief letter (page 374). He says Karen Cowley's opening statement to the claimant was: "*I am pleased you have come today to face the consequences of your actions*" and "*I hope you will realise what harm you have done to many colleagues who have tried to help you*". He says the claimant got up and said: "*I can't listen to this, you've raised things going back over three years that I thought I had recovered from, you've made your decision and I'm off*". He says the claimant then left the room.

38. Given that account it was odd that the claimant made no reference at all to Ms. Cowley's comments in her own statement.

39. The second factual dispute about the disciplinary hearing involves the alleged 'conspiracy to dismiss'. Mr. Barron in his witness statement (paragraphs 10 to 13) alleges that on '*18 July 2019 'ish*' he received in the post an anonymous letter enclosing 4 emails which he says disclosed the conspiracy to dismiss the claimant. He refers in his statement to the content of the 4 emails as follows:

    40.1 5 July 2019 from Brian Tomlinson to Amanda Mullins it said: *"Amanda I have asked Michael about Mrs. Barron and he has said get on with sacking her and I have checked with Sarah and the emails sent by Carol were only to be RCN, what shall I do".*

    40.2 6 July 2019 from Amanda Mullins to Brian Tomlinson it said: "*you send me your response to KB, I will amend it and then forward it to KB".*

    40.3 26 March 2019 from Glen Turp Regional Director RCN to Polly McMeekin "*the RCN demands that you discipline Mrs. Barron for what she has done to Carol Popplestone (or words to that effect)"*

    40.4 4 July 2019 from Polly McMeekin to Amanda Mullins "*to help you with your investigation I will make a statement and provide you with all the documentation to show KB and her husband to be despicable people (or words to that effect)."*

40. Mr. Barron said that in July 2019, he was in a dilemma as to whether he should tell the claimant about this conspiracy. He decided not to as "*my wife's only objective at any cost was to return to work within the NHS and finish a career on a high. The dilemma was, what could I do, the Chief Executive had ordered a code 'red' on Karen so there was no point in begging him again to listen to Karen"*.

41. Mr. Barron said he handed over '500' pages of documents and told Ms. Cowley they "*clearly show a conspiracy to sack Karen involving Michael Proctor and Co and the RCN right down to Amanda Mullin and Brian Tomlinson"*. He added "*all Karen wants is to get back to work and get re-validated and so she doesn't want a drama but in the end this conspiracy will be uncovered if she does get sacked"*. With that he says he then left the meeting.

42. Ms. Cowley was asked to comment on this evidence in her evidence in chief. She confirmed that Mr. Barron had not said anything to her about any 'conspiracy to dismiss the claimant'. The emails were not referred to or included in the bundle which had however contained other communications the claimant had sent/received of a similar nature to the correspondence she was considering at the disciplinary hearing.

43. In cross-examination, Mr. Barron asked Ms. Cowley if she had '*come across'* these emails in the 500 pages he had provided. She confirmed the 500 pages she had been provided with at the hearing were in the bundle and did not include the emails, which she has never seen.

44. Mr. Barron's evidence was tested in cross examination. He was asked about the anonymous letter. He denied there was any letter. Although he initially said the 4 emails were in the bundle, he then changed his evidence, and said they were not in the bundle. He said he specifically told Ms. Cowley about the 4 emails and he did not keep a copy of the emails because he *'did not feel he needed to*'. He was happy to leave his only copy of the emails at the disciplinary hearing. He then said his previous solicitor had a copy of the emails which had been lost. He said he did not disclose the 'existence' of these emails at any time after 18 July 2019, because he did not want to get the claimant suspended. He could not explain why he did not refer to the emails in the statement he made at the disciplinary hearing at a time, when he knew the claimant was facing the risk of dismissal or in the grounds of appeal, when the claimant had already been dismissed and had nothing to lose.

45. In cross examination, Mr. Sugarman confirmed to Mr. Barron, that the respondent had conducted a thorough search of the email accounts of the individuals named on the dates provided, and no such emails existed. It was put to Mr. Barron that it was 'odd', that he was, able to recall the contents of all the emails in so much detail now, based solely on his memory, when he had not kept a copy of them or had not seen them for many months. Mr. Sugarman suggested Mr. Barron was not being truthful and that he had deliberately made this evidence up to mislead the Tribunal to try to bolster the claimants case. Mr. Barron maintained that he was telling the truth.

46. The Tribunal did not find Mr. Barron to be a credible or honest witness. The inconsistencies in his account were exposed during his cross examination. His account of the meeting was false. The Tribunal preferred and accepted Ms. Cowley's evidence about the disciplinary hearing. She is an experienced manager who had no reason to start the disciplinary hearing with the words *"I am pleased you have come today to face the consequences of your actions*". She had no prior knowledge of the claimant, so why would she start by telling the claimant she had already made her mind up. Why had the claimant made no reference to this allegation in her own evidence if that was what had happened? Ms. Cowley had prepared for the hearing. She was going to hear evidence from 2 witnesses, called by the investigating officer which could have been challenged by the claimant. Ms. Cowley started the hearing in the welcoming manner she describes because she wanted to hear what the claimant had to say. Mr. Barron made no reference at all to any 'conspiracy to dismiss' or to the emails, he now relies upon. This evidence has been used to deliberately

mislead the Tribunal to bolster the claimant's case and to try to portray Ms. Cowley in an unfairly negative way.

47. Mr. Barron's conduct in this regard is a serious matter and is viewed by the Tribunal as unreasonable conduct of these proceedings by the claimant's representative. While the claimant's witness statement is silent on this matter. She has, it appears, been content for her case to be advanced in this way by Mr. Barron. She has not taken the opportunity she has had under oath to tell the truth and distance herself from that approach. She is by her silence complicit in the deception.

48. Ms. Cowley on the other-hand has been truthful and honest. The allegation made against her of inappropriate conduct was a serious one which was completely unfounded. She has accurately described what happened at the hearing. Mr. Barron adopted a hostile and aggressive manner from the outset, consistent with the words he used in his written opening statement. He used those words and that manner to try to intimidate Ms. Cowley to intimidate her and try to influence the outcome of the disciplinary hearing. He was not interested in staying to discuss the 'merits' of the case. Given the seriousness of this finding the Tribunal has sets out the words used in full, with highlighted text to show the Tribunal's emphasis:

"*Dear NURSE Karen Cowley*

*Karen **has asked me to alert you to the following**, she wants to have a clear conscience in the event you **may face criticism from outside organisations in the future**, these are my comments (Steve Barron) and I have a clear conscience, I believe that **everyone should accept the consequences of their actions.***

*No matter what advice you received from HR, **it will be your name on the letter confirming that you have considered the unlawful breached emails** sent from Carol Popplestone's RCN iPhone to Sarah Tostevin.*
***It will be your name on the letter that ACAS will want you to confirm that you arrived at your decision fairly and in line with the ACAS disciplinary procedure - they will not be interested in the merits of the case, or any buts, that HR said it was all OK.***

*It may be nurse Sophie Miners that will have to confirm that she asserted in the NMC on 31 July 2019 that Karen B over the past three years had met the highest professional standards and she saw nothing to suggest Karen B would maintain those high standards over the next three years.*

*In my experience (Steve B) NURSES have an innate sense of fairness and are generally quick to accept criticism, whereas generally HR people tend to react badly to criticism and tend to go on the defensive, and then they go on the attack ……*
*Regards,*
*Steve Barron"*

49. The respondent's disciplinary procedures provide that all parties will have an opportunity to query or question any evidence provided to the panel. Ms. Mullin presented the management case. Oral evidence was given by 2

witnesses, Carol Popplestone and Sarah Tostevin, whose statements were included as appendices in the investigation report.

50. The claimant accepted having been taken to each letter in cross examination that all the emails/letter she had sent were inappropriate. Some could also be perceived as threatening in part, some could be perceived as derogatory. Although she made that concession in evidence, in closing submissions Mr. Barron attempted to backtrack from the concession made by arguing 'the context justified the content' and was appropriate. The claimant's concession stands and is consistent with the assessment made by Ms. Cowley at dismissal that the emails were inappropriate, some could be perceived as threatening and some could be perceived as derogatory.

51. The claimant's lack of credibility in respect to some aspects of her evidence was also exposed during cross examination. An example was the email to Donna Kinnair (see paragraph 26.5 written ***Dame Donna Kinnair I am not sure if she's Scottish)***. At the investigation stage, the claimant had been asked if she was using a strange mix of font sizes in a derogatory way to highlight that Donna Kinnair 'Does not Care'. She said it was not it was a 'keyboard issue'. In cross examination she said it was a 'typographical error', again implying it was accidental not intentional. Mr. Sugarman invited the Tribunal to find that her explanation was not credible and the claimant was not being truthful in her evidence. The claimant could only have done this deliberately by choosing the mix of fonts she chose. The Tribunal agrees the claimant's evidence was not credible and it demonstrates the lengths the claimant was going to, in order to ensure her email had the desired effect.

52. On the 'bullying' emails the claimant in her statement of case for the disciplinary hearing had argued that if the emails she had sent to Carol Poppletsone could not be excluded on confidentiality grounds, they did not fall into the definition of bullying because she understood that 2 emails were not 'persistent' conduct as defined under the bullying and harassment policy.

53. She had not used the correct policy and accepted that in cross examination when she was taken to the correct policy. The actual words of the policy (page 67) provides that:

> "bullying may be described as offensive intimidating malicious or insulting behavior, and abuse or misuse of power through means intended to undermine, humiliate denigrate or injure the recipient. The key is that the actions or comments are viewed as demeaning and unacceptable **to the recipient**"

54. Ms. Popplestone's impact statement (page 326) sets out the hurtful effects of the conduct that had undermined her integrity as a nurse and RCN representative and had detrimentally affected her physical and mental health. Ms. Popplestone had felt unable to fulfil her duties as an RCN representative. As a nurse of 43 years she had never previously had to seek Occupational Health advice. She had received counselling to help her with the emotional distress the claimant's conduct had caused.

55. Ms. Cowley assessed the credibility of those witnesses and considered the personal and professional impact, the claimant's conduct had on them. The claimant had not challenged that evidence. She considered the warning given to the claimant by Ms. Tostevin in April 2019 to try to get her to stop sending inappropriate emails. She found that Ms. Tostevin and Ms. Popplestone had in their interactions with the claimant only been trying to do their jobs. They were targeted by the claimant because she felt frustrated at not being able to return to work.

56. At this Tribunal hearing, when the claimant was taken to the correspondence that she had sent relating to the bullying allegation and the impact statements of these individuals she accepted the content of her emails was inappropriate and had the effects described. Although she offered an apology at this hearing, it did not appear to be genuine when she qualified it by saying that the language she used was justified.

57. Ms. Cowley concluded that Ms. Popplestone had been bullied and harassed by the emails sent by the claimant. Having considered all the evidence presented she found that the allegations were substantiated and there was sufficient evidence to conclude it was gross misconduct justifying summary dismissal.

58. Ms. Cowley provided the claimant with a written outcome letter dated 6 September 2019 explaining her rationale for dismissing the claimant. The letter was not challenged and the Tribunal accepts those were her reasons for dismissing the claimant. The *relevant* parts of that letter are set out below:

**Allegation 1:**

"*The investigation has presented clear evidence of inappropriate derogatory and threatening correspondence to staff members of the Trust. This evidence was presented as part of the investigation report and is in the form of correspondence you have sent.* ***You have provided no mitigation or acknowledgement that the emails are inappropriate. Indeed, the letters and further information presented on your behalf by your representative is a demonstration that the derogatory and inappropriate nature of communications is still ongoing.*** *Your emails have both explicit and veiled threats throughout. These are made to a variety of people across a number of emails.*

*Again, the letter your representative handed in to me included a* ***threat to myself*** *of criticism from outside organisations. As such* ***I feel there is a clear pattern of behavior, which I believe would carry on should your employment with the organisation continue. I am satisfied that it has been made clear to you on numerous occasions that your communication is inappropriate.*** *As such the allegation is upheld"*

**Allegation 2;**

"*to understand if this constitute bullying and harassment we explored the impact the statements with the witnesses at the hearing. It is clear the allegations you have made had a* ***significant impact***"

**Breakdown of relationship**

> *"**given the evidence above, but also your lack of willingness to engage in the disciplinary process, I conclude that there is a fundamental breakdown of the relationship between you and the organisation. The level of negative feeling you have expressed towards members of staff, which in many cases you have never met, leads us to believe the relationship between yourself and the trust is broken beyond repair.***
>
> *I feel I must point out at this stage both myself and Lydia felt that your representative, Mr. Barron was aggressive, hostile and derogatory about the process and various members of staff. …. I do want to say how disappointed I was that you chose to leave and not a part in the hearing we very much wanted to hear from you first hand and are disappointed that you chose not to participate in the process".*
>
> (*highlighted text is the Tribunal's emphasis*)

59. Ms. Cowley considered the claimant's long service. She considered imposing an alternative sanction of a final written warning combined with a commitment from the claimant to change her behavior. However, she was not persuaded this was an appropriate sanction because of the claimant's complete lack of insight into her own behavior. The behavior was ongoing and there was a real risk it would continue. Ms. Cowley was not confident of any change in behavior in the future.

**The Appeal**

60. Ms. Cowley presented the management case for the appeal hearing which took place on 3 October 2019. The notes of the appeal hearing were not challenged. The appeal panel comprised Mrs. Heather McNair as the Chair and Mr. David Thomas (Care Group Manager). The claimant provided a statement of case for the appeal hearing.

61. In the claimant's grounds of appeal and at this hearing, the claimant agreed there was breakdown in the relationship between her and the Trust.

62. By letter dated 8 October 2019, the claimant was provided with a written appeal outcome confirming the dismissal. The letter addresses the points of appeal raised and provides the reasons why the dismissal was upheld.

63. The relevant parts of the letter are:

> *"your assertion that the original investigation did not follow the correct procedure and that the investigatory report prepared by Ms. Amanda Mullin included additional allegations which you were not made aware of. You reached this decision based on the content of the paragraph on the front page of Ms. Mullins investigatory report. The panel have considered the information you presented to us and have concluded that although the words "in addition" were used this was simply **to draw the reader's attention to a further consideration in relation to the***

***allegations which had been investigated. The words "in addition" were not an indication that further allegations had been investigated which you were unaware of. We therefore dismissed the point of your appeal***.

"*You stated that you had not been provided with an opportunity to present your views regarding further information which formed part of the disciplinary investigation report. The panel heard that you had received the investigatory report prior to the hearing and had attended on the date of the hearing. However, having presented panel members with a further bundle of documents, approximately 500 pages,* ***you did not take up the opportunity afforded to you to stay and participate in the hearing.*** *We were satisfied with the description from the management side regarding the time they had taken to consider the additional bundle of documents and their considerations about the information they provided.* ***You did not present any mitigation for the fact that you had declined to participate in the disciplinary hearing.*** *We therefore dismissed this point of your appeal.*

"*You did not feel you had been given the opportunity to respond to witness evidence. The panel saw evidence from the appeal pack that you have participated in an investigatory interview and had also responded to questions posed by email.* ***We concluded that having received the investigatory report prior to the date of the disciplinary hearing, you had been afforded sufficient opportunity to consider any disputes you had with witness evidence and present any mitigating circumstances you believe to be relevant****. The purpose of a disciplinary hearing is to afford appellants the opportunity to challenge and question evidence, however you had chosen not to participate in the hearing, despite being present on the day. We therefore dismissed this point of your appeal.*

(*highlighted text is the Tribunal's emphasis*)

64. The Tribunal accepts the outcome letter accurately reflects the reasons why the appeal panel upheld the dismissal. The claimant does not raise any complaints of unfairness in relation to the Appeal process or the outcome letter.

**Submissions.**

65. Evidence was concluded on 17 March 2020 and oral submissions were due to be heard on 18 March 2020. Unfortunately, the claimant and her representative did not attend for reasons relating to the claimant's ill health. In their absence case management orders were made for written submissions to be provided by both parties with each party, given time to comment on the other's written submissions, before a decision was made.

66. In the orders reference was made to the Presidential Guidance on Case Management and the guidance on closing submissions to assist the claimant and her representative. The claimant was also reminded of the concessions made in her evidence, that the emails she had sent were

inappropriate and the claimant was remined that the evidential stage of the process was completed.

67. For reasons relating to Mr. Barron's ill-health, he then applied for and was granted a stay of the case management orders. He then made an application to revoke those orders because he wanted oral submissions to be made at a public hearing, primarily, so that the members of the press/public could 'observe' the hearing.

**68.** By this stage, it appears that Mr. Barron had contacted the press, with his 'story' about the case to generate press interest. His communications with the press were copied to the Tribunal. After considering both parties representations at a telephone preliminary hearing, EJ Rogerson agreed to revoke the orders and listed a Public Skype hearing on 19 May 2020 for closing submissions to be made by the parties. The procedure and timetabling for that hearing were agreed with the parties. In the order the claimant was again reminded about the purpose of closing submissions. Paragraph (10.4) of the Presidential Guidance on Case Management was set out in the order to explain that closing submissions "*may summarise the important evidence in their case and may highlight weak parts of the other side's case. They may also refer the Tribunal to any legal authorities (statutory provisions or previous case law) which might be relevant*". Mr. Barron was urged to focus on those matters in his preparation of closing submissions.

**Claimants Submissions**

69. Unfortunately, Mr. Barron did not heed the guidance given. Instead he used the time allowed to make personal derogatory accusations about individuals in this case who, have worked for and may still be working for the respondent, knowing those individuals had no right of reply. He attacked the Trust for incurring costs in defending these proceedings and he misrepresented the evidence that was given at the hearing.

70. Mr. Barron suggested the concession made by the claimant that the letters were "inappropriate" had been taken out of context. Letters crying for help were ignored. The claimant wanted to return to work and get her revalidation. She reported it to the police and got a crime number so they would be ***'frightened off'*** so she could get her revalidation. It was a desperate act. Any reasonable fair-minded person would consider that the claimant was therefore entitled to complain in the way she did. A 'new/revised allegation' of the breakdown of the relationship was made at the investigation stage. He said that at every stage the claimant had offered to accept a final written warning until retirement, which would have saved the Trust costs, it would have kept the Trust values, and would have let 'management have their pound of flesh'. He suggests any reasonable fair-minded person would have used the informal process and all this could have stopped. He suggests an informal meeting should have taken place where the claimant should have been told *"if you can't keep your gob shut and you carry on you will go to a disciplinary hearing"*. He says 99.9% of cases can be dealt with informally avoiding the costs to the NHS. This was money which could have been better spent on providing services. He said Captain Tom would have to walk many more miles to pay for this case. When paying

salaries of £300,000 for HR and £350,000 it was wrong for the tax payer and the NHS to lose out financially because of this case.

71. The press did not join the hearing to hear the submissions made. Mr. Barron accepted in an email he sent to the Tribunal on the day of the hearing that they may have 'moved onto another story'.

**Respondent's closing submissions**

72. In his oral submissions, Mr. Sugarman referred to the evidence given at the hearing. In relation to the alleged conspiracy to dismiss, he submits that Mr. Barron's evidence was 'nonsense', manufactured to assist the claimant's claim. He gave inconsistent and implausible evidence about the emails which was unbelievable and incredible. The claimant was running a case that was completely misconceived which the claimant/her representative have continued to maintain. Medical evidence provided to the respondent which has not been challenged confirmed the claimant was fit and well by February 2019. She did not identify any mental health issues that could have contributed to her conduct. It was not the claimants case at the disciplinary/appeal hearing that she was sending these inappropriate emails because of any mental health crisis.

73. The investigation was a reasonable investigation. It was thorough and reasonable and within the band of reasonable responses. Looking then, at whether the respondent had a reasonable belief that the claimant was guilty of the misconduct, the claimant accepted in cross examination, when she was taken to each letter that all were inappropriate some were derogatory and some were threatening (police action). If she accepts they were inappropriate, then the respondent's belief that they were inappropriate must also be reasonable. For the 'bullying' emails, the Trust's code of conduct refers to treating others with dignity and respect. The definition of bullying covers the content and tone of the emails sent, particularly from the perception of the recipient (CP).

74. As to the reasonableness of the sanction, there was a level and pattern of behavior that was persistent and continuing which was likely to continue. The claimant showed no personal insight into her own behavior. She gave the respondent no reasonable option but to dismiss. Informal resolution was not a reasonable option given the seriousness of the conduct. The history in this case is relevant in so far as the claimant had been warned previously about similar conduct and had been warned this type of conduct would be treated seriously, if it occurred again. Despite those warnings the claimant embarked on a relentless campaign sending a wide range of individuals, wholly inappropriate communications both in content and tone. Her case at the time, was that she was justified in sending the communication because she was the one that was badly treated. It was only at the Tribunal hearing for the first time, that the claimant offered an apology, albeit reluctantly, accepting this was not the conduct expected of a senior nurse.

75. Mr. Sugarman reviewed the letters and the evidence the claimant gave at the hearing. In respect of the Donna Kinnair letter the claimant had deliberately used a different font size to format the letter to make a derogatory suggestion that Donna Kinnair 'did not care'. In her evidence

when she said this was a typographical error she was not being truthful. This damages her credibility. Objectively viewed the tone and content of each letter as set out in the investigation report was clearly inappropriate.

76. As to the breakdown of the relationship between the claimant and respondent, both parties had reached that view. The respondent because of the claimant's conduct and her continuing behavior. The claimant because she had no confidence in management. She did not stop and would not stop. A lot of management time has been spent dealing with this issue and the conduct has impacted on a lot of individuals. In circumstances where the claimant was persisting with the conduct, the respondent was reasonably entitled to dismiss the clamant for gross misconduct and the dismissal was fair.

77. As to the procedural complaint there was no 'new' allegation. The claimant knew all the allegations and the matters to be considered at the disciplinary hearing because they had been identified in the investigation report. She chose not to participate in that haring and not to challenge the evidence (if it was disputed). The reasonable finding made by the respondent of gross misconduct entitles the respondent to dismiss summarily. The conduct was sufficiently serious and the complaint of wrongful dismissal should also fail.

**Applicable Law**

78. Section 98(1) provides that it is for the employer to show the reason for the dismissal and that reason is a 'potentially' fair reason. Section 98(2)(b) provides that a potentially fair reason for dismissal is one relating to the conduct of the employee.

79. Section 98(4) provides that "where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-

    (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
    (b) shall be determined in accordance with equity and the substantial merits of the case.

80. The guidelines established in **British Home Stores-v Burchell 1978 IRLR 379,** apply in conduct dismissals. Has the respondent shown it had a genuine belief that the claimant was guilty of the misconduct, and then applying a neutral burden of proof, did the respondent have reasonable grounds to sustain that belief at the stage it was formed, and was a reasonable investigation conducted?

81. Those guidelines are used regularly by Tribunals and have been upheld by the Court of Appeal in **Graham v Secretary of State for Work and Pensions (Jobcentre Plus) 2012 EWCA Civ 903 2012 IRLR 75**. Where Aikens LJ gave a useful summary of how the Tribunal should approach its task:

> 35 '…*once it is established that employer's reason for dismissing the employee was a "valid" reason within the statute, the ET has to consider three aspects of the employer's conduct. First, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case; secondly, did the employer believe that the employee was guilty of the misconduct complained of and, thirdly, did the employer have reasonable grounds for that belief.*
>
> *36 If the answer to each of those questions is "yes", the ET must then decide on the reasonableness of the response by the employer. In performing the latter exercise, the ET must consider,* ***by the objective standards of the hypothetical reasonable employer, rather than by reference to the ET's own subjective views, whether the employer has acted within a "band or range of reasonable responses" to the particular misconduct found of the particular employee. If the employer has so acted, then the employer's decision to dismiss will be reasonable.***

In the context of section 98(4) ERA 1996, the three relevant elements to consider are: Did the employer have reasonable grounds on which to sustain his belief; Had the employer carried out as much investigation as was reasonable; and was dismissal a fair sanction to impose in all the circumstances?

82. For the wrongful dismissal (breach of contract in relation to notice pay), a very different legal question must be answered because the Tribunal does have to decide on the balance of probabilities whether the claimant was in breach of contract to the extent that her conduct might be regarded as repudiatory which entitles the employer to summarily dismiss? It is only if the respondent was not so entitled, that the claimant is entitled to damages for the breach by way of notice pay.

## Conclusions

83. For the unfair dismissal complaint, the respondent has shown the reason for dismissal was related to the claimant's conduct and was a potentially fair reason under section 98(2)(b). There was no other reason for the dismissal there was no conspiracy to dismiss or predetermined outcome. The evidence presented in that regard by the claimant has been used to deliberately mislead the Tribunal to bolster her case and to try to portray Ms. Cowley in an unfairly negative way (see paragraph 46).

84. Applying the Burchell guidelines to that potentially fair reason, the Tribunal had no hesitation in finding that at the dismissal stage, Ms. Cowley had formed a genuine belief that the claimant had sent a number of emails/letters to employees, all were inappropriate, some could be perceived as threatening and some could be perceived as derogatory. Ms. Cowley also believed the claimant had bullied and harassed Ms. Popplestone. She believed the conduct and the impact of that misconduct was serious. The claimant was unwilling to change, she had not participated in the disciplinary process and had expressed general negativity towards many staff and was likely to continue with the same behavior in the future.

That led Ms. Cowley to genuinely believe the relationship of trust and confidence was irretrievably broken.

85. The second question the Tribunal had to decide was whether the respondent carried out as much investigation as was reasonable at the stage the belief was formed? The Tribunal found the investigation carried out by Ms. Mullin, was a thorough detailed and balanced investigation. A very comprehensive and detailed report was provided to the claimant setting out the findings made and all the evidence gathered. The claimant was given the opportunity to reflect on the answers she had given during interview and to provide further clarification in writing. The investigation considered the allegations in the context of the applicable disciplinary rules and codes of conduct, which set the required standards of conduct and behavior. All the 'relevant' witnesses were interviewed. All the evidence that was gathered during the investigation was disclosed to the claimant in good time. No other lines of enquiry were raised by the claimant in her defence/or in mitigation that could have been pursued. The report and the evidence could have been challenged at the disciplinary hearing if the claimant had participated. The Tribunal concludes that the investigation was reasonable and fair.

86. Did Ms. Cowley have reasonable grounds to sustain her belief that the claimant was guilty of gross misconduct? The letter of dismissal (paragraph 59) explains the reasons why Ms. Cowley dismissed the claimant. Ms. Cowley had considered all the evidence presented. She saw the letters/emails the claimant had sent. She saw the impact statements and heard direct evidence from those witnesses. The claimant did not participate in the disciplinary to provide any input. The claimant was content for Mr. Barron to speak on her behalf. He tried to intimidate Ms. Cowley to influence her decision. The claimant demonstrated a complete lack of personal insight into her own behavior. She showed no remorse, she offered no assurance that the behavior would stop and lessons had been learnt. As Ms. Cowley notes in her outcome letter, the further information provided by the claimant at the disciplinary hearing demonstrated that the derogatory and inappropriate communications were 'still ongoing'. She identifies the threatening content of the emails. She concludes there was a clear pattern of behavior which she believed would continue if the employment continued. For the second allegation of misconduct of the 'bullying' emails, she found the emails the claimant sent were derogatory and had a significant impact on CP. Ms. Cowley concluded based on all the evidence, the claimant's unwillingness to engage in the disciplinary process and the level of negative feeling expressed by the claimant towards so many other employees, that the employment relationship was broken beyond repair.

87. Although the claimant conceded in her evidence that her correspondence was inappropriate and some parts were threatening and or derogatory, Mr. Barron has tried to backtrack from that concession. As much as he would like to, he cannot change the evidence, just because it does not help the claimant's case. Mr. Sugarman has highlighted the difficulty this creates for the claimant, in now trying to challenge the reasonableness of the respondent's belief that the claimant had committed this misconduct at the time of dismissal.

88. At the Appeal hearing, the panel carefully considered the grounds of appeal. They addressed all the grounds of the appeal in the outcome letter and upheld the dismissal. The letter clearly sets out the reasons why the appeal was dismissed (paragraph 74). The appeal panel reasonably upheld the dismissal concluding that the claimant had received the investigatory report in good time and had "been afforded sufficient opportunity" to consider any disputes she had with evidence and to present any mitigating circumstances. The claimant had chosen not to participate in the hearing and had not offered any explanation for her failure to participate. The panel also reasonably concluded that there was no new allegation added to the investigation report which simply drew "*the reader's attention to a further consideration in relation to the allegations which had been investigated".* This conclusion was consistent with the Tribunal's finding that the investigation officer was simply posing the question (without expressing any view) that naturally arises about the future employment relationship in the context of the conduct issues under consideration. The Tribunal did not find any procedural unfairness in either the disciplinary or appeal process.

89. Considering next whether dismissal was a fair sanction to impose? The Court of Appeal's guidance in **Graham v Secretary of State for Work and Pensions (Jobcentre Plus)** reminds the Tribunal that this question must be answered by "*the objective standards of the hypothetical reasonable employer, rather than by reference to the ET's own subjective views, whether the employer has acted within a "band or range of reasonable responses" to the particular misconduct found of the particular employee. If the employer has so acted, then the employer's decision to dismiss will be reasonable".*

90. Mr. Barron advances 2 contradictory positions in his submissions: he says the misconduct was not sufficiently serious and only warranted informal resolution and also that it was sufficiently serious to warrant a final written warning. Mr. Sugarman submits that the respondent was faced with an employee who did not stop and would not stop sending inappropriate letters. A lot of management time has been spent dealing with this conduct which was having a significant impact on a wide range of individuals. He submits that in circumstances where the claimant was persisting with the conduct the respondent was reasonably entitled to dismiss.

91. The Tribunal had found that Ms. Cowley was considering a level and pattern of behavior that was persistent and continuing which was likely to continue in the future. She was satisfied it had been made clear to the claimant that she should stop sending inappropriate communication. The claimant had been warned it was conduct the respondent could treat as gross misconduct which could result in dismissal. Ms. Cowley reasonably concluded the bullying emails had a significant impact on the recipient. That conduct of itself was sufficiently serious misconduct to warrant summary dismissal. Judged by the objective standards of a reasonable employer it was conduct the respondent could not reasonably be expected to put up with and was entitled to conclude the employment relationship was broken. While the claimant's long service was considered, Ms. Cowley had no confidence that the claimant would change her behavior. The Tribunal concludes the decision to dismiss does fall within the band of reasonable responses. The

dismissal was procedurally and substantively fair. The complaint of unfair dismissal fails and is dismissed.

92. For the wrongful dismissal complaint, the Tribunal does have to decide whether the misconduct occurred and whether it was sufficiently serious to entitle the respondent to dismiss summarily. The claimant had sent many inappropriate letters, some of a bullying nature, some derogatory, some threatening (the threat to report to the police which Mr. Barron submits were intended to frighten the respondent off). The letters were sent to a range of individuals over a long period of time. The claimant had been warned in March 2018 and April 2019 to stop sending inappropriate emails and was warned it would be treated as a serious matter and the potential consequences, if the conduct continued. The respondent was trying to get the claimant to stop sending inappropriate letters. If she was frustrated by her work situation she could have raised matters in an appropriate way without including inappropriate content. If she had done that, she could have avoided any further action. Instead the claimant decided that she would continue to write letters to anyone she wanted, to say whatever she wanted to say. She did not have to 'filter' the content, because that was her right. She had no regard to the effect her words would have on the recipients of the letters. She did not pause to consider whether her behavior was appropriate for a senior nurse.

93. The Tribunal agrees with the respondent's view formed at dismissal, that the claimant's conduct was continuing and was likely to continue because the claimant had shown no personal insight into her own behavior. Miss Popplestone, a nurse with 43 years' experience for the first time in her working life, had to seek OH advice and treatment to help her cope with the effects of the bullying conduct. At the time of the disciplinary process, the claimant tried to defend her behavior and suggested that Miss Popplestone should be disciplined for making the complaint. She did not show any remorse or offer any assurances of a change in behavior in the future. At this hearing, she offered a belated but insincere apology and maintains that her conduct is justified. Her behavior confirms that there has been no change of mind. The Tribunal finds the claimant was guilty of conduct so serious as to amount to a repudiatory breach of contract that entitled the employer to conclude the relationship of trust and confidence was broken and to summarily dismiss. The claimant's claim for notice pay as damages for breach of contract therefore also fails and is dismissed.

94. In closing, the claimant might feel she was justified in her conduct and is not obliged to filter her words in any way because that is her right. In that regard Mr. Barron's words come to mind, that the claimant in taking that approach should also accept the 'consequences' of her actions.

Employment Judge Rogerson

Date:19 June 2020