



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss A Noor

**Respondent:** Home-Made UK Properties Limited

**Heard at:** Croydon **On:** 23 March 2021

**Before:** Employment Judge Knowles

## **Representation**

Claimant: In person

Respondent: Mr Navot, CEO

# JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The correct title of the Respondent is Home-Made UK Properties Limited.
2. The Claimant's claim of unfair dismissal is well founded and succeeds.
3. The Claimant's claim of breach of contract is dismissed because an Employment Tribunal does not have jurisdiction to hear the type of claim brought by the Claimant in these proceedings.
4. The Respondent is ordered to pay to the Claimant the sum of £11,325 compensation for unfair dismissal.
5. The recoupment regulations do not apply.

# REASONS

## **Evidence**

1. This hearing was a fully remote hearing heard through HMCTS's Cloud Video Platform.
2. I heard evidence from the Claimant. The Claimant produced a written witness statement.

3. The Claimant served four witness statements in support of her claims. None of those witnesses attended the hearing.
4. On behalf of the Respondent I heard evidence from Mr A Navot, CEO and Mr T Bishop, Head of Sales. They both produced written witness statements.
5. The Respondent produced a witness statement and an updated witness statement from their Operations Associate. That witness did not attend the hearing.
6. The Respondent produced a bundle of documents (90 pages).
7. The Claimant produced a set of papers numbered 1-8 (with some sub-numbering).
8. Following representations from the Respondent I removed from the Claimant's bundle documents 5 and 6 as they were communications post dating the Claimant's resignation and were either covered by the without prejudice rule or were not relevant to the Claimant's claim.
9. I refused the Respondent's request that a number of the Claimant's supporting witness statements should be removed from the hearing papers because they were not relevant or were hearsay. In my conclusion the documents could remain in the case and if, as they suggested, those statements were not relevant or were comments about matters which the writer did not actually witness then no weight would be attached to them.
10. The Claimant produced an updated schedule of loss.
11. The parties confirmed to me that these were all of the documents necessary to deal with the Claimant's claim and the Respondent's response to that claim.

### **Issues**

12. The Claimant claims unfair constructive dismissal.
13. The Claimant also claimed breach of contract, seeking release from her post-termination restrictions which are set out in her contract of employment.
14. The issues for me to determine are:
  - a) What is the conduct that the Claimant complains of?
  - b) Did the respondent do those things?
  - c) Did that breach the implied term of trust and confidence? The Tribunal will need to decide:
    - (i) whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and
    - (ii) whether it had reasonable and proper cause for doing so.

- d) Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.
- e) Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.
- f) Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.
- g) If the claimant was dismissed, what was the reason or principal reason for dismissal i.e. what was the reason for the breach of contract?
- h) Was it a potentially fair reason?
- i) Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?
- j) Is the Claimant's claim of breach of contract one which an Employment Tribunal has jurisdiction to hear?
- k) If so, what were the terms of the Claimant's contract in relation to post-termination restrictions and did the Respondent breach those terms?

### **Findings of fact**

15. I made the following findings of fact in the balance of probabilities. This is not a recital of all of the evidence that I heard during the hearing but these are the main substantive points of evidence which were used to reach my conclusions.

16. The Respondent is a letting agent employing around 58 full-time employees.

17. The Claimant commenced employment with the Respondent 3 July 2017 as a Senior Co-ordinator.

18. Part of the Claimant's duties involved recording the receipt of tenant's holding deposits and registering them with the Tenancy Deposit Scheme, as is a requirement for new assured shorthold tenancies. This registration must be done within a specified timeframe. A breach of the rules could mean that the agency is fined.

19. The Claimant has recited several aspects of her employment history which she puts as the context to her resignation. These are:

- a. Pressure at work and being bullied by her line manager.
- b. Her line manager making her argue with her colleagues.
- c. Her line manager singling her out for taking her lunch breaks. She states that she would be pulled up for taking an hour for lunch whereas others would not. She has produced photographs of exchanges with her line manager over lunch breaks (Claimant's document 8.3). In these her manager is telling her that "1 hour for lunch is not an entitlement, unless of course you want to make

- up the time at the end of the day, or arrive early (additional ~40 mins)".
- d. Her line manager accusing her of lying and stealing in the past.
  - e. Her line manager giving her a verbal warning near to the beginning of her employment for making a typographical error. The error was quickly rectified and did not cause any damage to the company. She states that others were not given warnings for more serious errors. She states that she discussed this difference in treatment with her line manager and he referred to the other employee as a new employee to which the Claimant replied that she was new when she received her warning. She states that her line manager laughed and said "I know".
  - f. Her line manager asserts her contract provides that she should work 48 hours a week, whereas her contract does not state this. Her contract merely states that she agrees to work more than 48 hours average if the company requires her to. The contract actually states that her working hours are 08:45 to 18:00 Monday to Friday, i.e. 9 ¼ hours per day, or 46 ¼ hours per week. The contract is silent on breaks. The Claimant states that she was told she was entitled to a 1-hour lunch break. The Respondent has not disputed that evidence. The Claimant's line manager told her when she was appointed (Claimant's document 1) that the clause relating to waiving the 48-hour average limit was only there for in "exceptional circumstances". This can be contrasted with his statement in June 2019 where he tells the Claimant "it wouldn't be in the contract if you wouldn't be expected to work those hours".
  - g. There are other examples of the Claimant's line manager behaving oddly. For example, he gives her permission to leave work early to attend a 16:00 physio appointment, following her offer to book time off. He then messages her suggesting that he thought she would return after the appointment and make the time up and forces her to book the time off (8.1). The Claimant's line manager's approach to her appears, from the documentary evidence she has submitted, to be petty and confusing. He requires evidence of appointments after the event, then challenges the evidence which the Claimant provides in a manner which appears unwarranted.
  - h. The Claimant also has screenshots of her line manager messaging her to say "reflecting on our conversation from earlier, it's true, I've been less than respectful to you at times in the last couple of weeks and for that I apologise" (8.4).
  - i. Not receiving support at work. She recites asking her line manager if she could be provided with a calculator and being patronised, her line manager pulling up a calculator on her computer and telling her "there you go, there's your calculator".

20. The Claimant states that the 'last straw' came on 21 and 22 August 2019. Her line manager alerted the Claimant to two late reports of tenant deposits under the Tenant Deposit Scheme. There is an exchange of messages between them, (Respondent's bundle pages 63-64). It is clear that the Claimant takes responsibility for the errors on her part. Her line manager refers to having to make a provision in the accounts for a £25k liability, and states that he needs details of all deposits the Claimant registered with the TDS since 1 June 2018 in order to

she speaks to the accountant's first thing the following morning. The Claimant exchanges messages with him about how to do that within the time he has given her. The Claimant has an appointment booked with her doctor for 5pm that day. She is expressing that she does not feel it can be done before she leaves and asks if tomorrow would be OK. Her line manager replies that "tomorrow isn't fine, I need to speak to the accountants first thing in the morning about this". They exchange messages about her other work commitments and he says "think we need to pay it the attention it's due". She states that she is not feeling great to which he retorts "yep, I'm not feeling great either".

21. It is clear from the messages that the Claimant's line manager originally asked for 4 items of information concerning deposits but when she asked for help he sent to her a template spreadsheet which required more information than he originally asked for. The Claimant managed to send the information he had originally requested by 5pm but not the additional information he had requested. His concluding message finishes "Not really good enough I'm afraid".

22. There are further exchanges in the morning by WhatsApp, in which her line manager tells her "I sent you the spreadsheet I wanted completed (which you asked for) where is that, completed? I can't use the TDS report to cross reference as it doesn't have a) the property reference; b) the move-in date and c) the actual date we received the money (not what's written on the Prescribed Information). You asked for the sheet, which I spent 15 minutes doing when I had a load of other stuff on, and then you ignored it". The Claimant replies "It has the same information you asked for. Also, you didn't ask for the property reference or the move in date? Secondly, the date on the prescribed information is the actual date we received the money. I didn't ignore it, I just used my initiative and found a quicker way of getting the info for you so I could make my GP appointment". The Claimant's line manager replies "You asked for the report, in the format I wanted, which I did. You just ignored that, because it would have meant extra work, and you couldn't go home early. I think you are underestimating the severity of the situation here. Also, why couldn't you pick up your prescription at lunch? And as requested, for our records, please send the appointment confirmation for your doctor's appointment yesterday. Thanks".

23. The Claimant sends the additional information at 09:41, but her line manager is unhappy with that and requests changes at 10:53. There is further explanation from the Claimant at 12:30 then a response 13:23. In between those exchanges, in any event, the Claimant has spoken to Mr Navot and resigned, and confirmed her reasons for resignation to him by email that day at 11:24.

24. Her reasons for resignation are stated in that email (Claimant's document 3) as follows:

- *I feel bullied by line manager and negative attitude from him 90% of the time*
- *[He] has made me argue with colleagues in the past by presenting them in a false light and providing me with false information*
- *[He] requested work from me and once produced, changed it to say he needed something else just to try and make me work late (knowing I had to be at the doctors)*
- *Unreasonable requests (i.e. at 5pm asking for something to be done by 8.30am the next morning when I'm at my GP appointment)*

- *Empty promises about pay (been here for 2 years and 3 months). I can see others being promoted and being recognised, so makes me feel demotivated and not valued*
- *More workload/high expectations — when I already work very hard*
- *I don't feel like [he] trusts me (i.e. asks for doctor notes, questions why I have 2 surnames on my doctor notes etc.)*
- *Singles me out and tells me I shouldn't take an hour lunch when everyone in the company does*
- *The job has made me depressed and ill — given medication from my GP — as work stress is harming my health*
- *Unable to sleep at night due to my anxiety which has made it harder for me to work during the day*
- *Horrible working atmosphere/difficult work environment*
- *Line manager talks down to me and is manipulative*
- *Feel awkward to ask questions as I get spoken to like I am useless*
- *I do not feel like a valued member of staff. I put 100% in everything I do and feel like I have brought a lot to the company with no reward or recognition*
- *My job description changed drastically with no reward*
- *Feel like there is no progression*
- *Line manager doesn't know how to manage a team or make someone want to come into work every morning*
- *I don't get support when it comes to training for e.g. ARLA (which will only benefit the company)*
- *No in house compliance support, have to check google and do other research (i.e. what the correct way is to calculate daily rate for rent)*
- *No HR support, so I feel like I have no one to talk to*
- *I am not the only one who struggles to work with [him].*

25. The Claimant has produced her doctor's consultation note (Claimant's document 7). This records an entry of a record of appointment at 17:44 on 21 August 2019. It states the problem is headaches and describes the Claimant as tearful re: work relationship with supervisor who is a co-founder of the business.

26. The Claimant's line manager left the Respondent's employment soon after the Claimant left did. The Respondent did not call him or produce any evidence from him.

27. The Respondent has disputed the Claimant's assertion of bullying. However, it should be noted that the Claimant is mainly relying on exchanges with her line manager which are documented. The Respondent does not challenge the authenticity of the documentation she has produced.

28. The Respondent's witnesses have said that they did not witness bullying, harassment or any ill treatment of the Claimant. They appeared to me to be telling the truth but appear also to be avoiding the issue that the Claimant has documents supporting her claims and by their own admission, they were not directly privy to the most of the matters she complains about.

29. The Respondent's witnesses have given evidence that the Claimant was a poor performer whose behaviour at work was wanting. However, this appears to me to be an after the event attempt to undermine the Claimant. She had one verbal warning issued in 2017 for a typographical mistake but an otherwise clean employment history. The Respondent refers to previous performance discussions

with the Claimant but is unable to show any documentation and the discussions to which they refer appear minor matters of development discussed in ordinary personal development one-to-ones. They certainly did not take matters any further than that.

30. The Claimant's line manager appears to me to have treated the Claimant in a petty, confusing and undermining manner. He has previously had to apologise to her for treating her in a less than respectful manner.

31. The Respondent's witnesses, other than restating the urgency of the information required on 21 August 2019, were unable to explain why it was so urgent.

32. Mr Bishop agreed that it would be unreasonable to ask for information like this outside of normal working hours.

33. Mr Navot and Mr Bishop were at pains to explain to me the culture and ethos of their company, being one which is supportive of employees and seeks to nurture their development and promote from within. They appeared to me to genuinely aspire to these values and ambitions. However their aspirations appear completely at odds with the type of communication that the Claimant received from her line manager over time and particularly on 21 and 22 August 2019 immediately before she resigned.

34. The Respondent has provided a witness statement from their Operations Associate, who was unable to attend the hearing for personal reasons which I acknowledge were quite compelling reasons. I do take her evidence into account however there is limited weight that I can place upon that evidence because this witness was not available to be questioned during the hearing. I take into account the evidence this witness provides which suggests that the writer never witnessed any inappropriate behaviour from or bullying by the Claimant's line manager towards the Claimant.

35. The Respondent has suggested in evidence that the Claimant resigned over the serious mistake she had made. They volunteered in evidence that it was extremely unlikely that the Claimant would have been dismissed for her mistake which was uncovered in August 2021. In my conclusion, again on the balance of probabilities, the principle cause of the Claimant's resignation was the treatment she had received from her line manager over time and particularly over the two days prior to her resignation. I think it is an overly simplistic suggestion to state that the Claimant resigned over worrying about the consequences of the mistake, her worries over the consequences of the mistake will of course have been influenced by the manner in which she had been treated previously by her line manager and cannot be separated from the history of treatment that she has produced evidence of.

36. In my conclusion on the balance of probabilities the Claimant resigned principally because of the way she had been treated by her line manager. This cumulated with the treatment on 21 and 22 August 2019 which she has expressed that as the last straw.

37. The Claimant attempted to obtain alternative employment and has produced evidence of substantial efforts. She had one offer of employment withdrawn because the Respondent intervened in that asserting that it would breach her post-

termination restrictions. The Claimant secured alternative employment 29 January 2020 and her claim is for (a) lost income between her date of leaving the Respondent (5 September 2019) and starting her new employment. She states that from that point she had mitigated her losses. She claims 100 days losses at £99.75 net income per day which is £9,975.

38. The Claimant also claims that she spent 50-60 hours looking for alternative employment and incurred travel expenses in attending interviews. However, in the hearing the Claimant was unable to explain to me how she came to calculate those costs at £5,000 for time spent including travel costs. She explained that she had attended interviews approximately 10 times and would have incurred £3-£4 travel costs each way; i.e. circa £75 travel costs. The Claimant could not explain how she had calculated the remaining £4,925 for time looking for alternative work.

39. The Respondent's only comments concerning the Claimant's loss calculations are that the claim for time spent looking for work appeared to be double recovery in that she claimed lost income for the same period.

### **Submissions**

40. The Respondent submitted that there was no breach of contract or trust on their side. The Claimant breached the contract by acting negligently. There is poor performance in evidence. There was and is a grievance process, see contract clause 23. Bundle page 6 contains the policies. The Claimant had a buddy, as well as good friends in the business, Mr Navot has an open-door culture, and the Claimant reached out to him before. The Claimant's negligence could have led to the Respondent's closure. Her mapping of the liability was unacceptable. The request was outside working hours, but it took only 45 mins, and was not much to ask in the light of the severity of the situation. The Claimant could, for example, have started early the next morning. Her line manager requested information, she submitted something else. This is clear from document 12 in the Respondent's bundle. The report the Claimant provided in the morning report was lacking information. There was a false data entry. 1:15 pm was the time of the original discussion with her line manager, which would not have been an issue with time of leaving. She chose to resign. The Respondent wouldn't necessarily have dismissed, although that would have been possible. The Respondent has no negative culture, the Claimant was treated fairly. Ms Brookes statement deals with assertions about her line manager. The Respondent provide feedback and training, monthly events, and upward feedback was encouraged. The Claimant never complained that she felt she was being bullied. The tribunal is urged to reject her accusation. The Claimant has caused the Respondent distress. It is sad to see the relationship not being in line with our successful business. There is no evidence to support this claim.

41. The Claimant submitted that her line manager unfairly treated her. She was left unemployed for 5 months despite efforts to find employment. She was further harassed by the Respondent when she obtained job offers. The Respondent says she did not acknowledge the severity of the situation, the information requested was requested of her the same day and then more by 09:45 the next day. Her errors were not intentional. They would cause further work. She was never issued with a formal warning for poor performance. These are false claims to defend her case. She had a good working history. The grievance procedure – one clause in our contract stating a policy – she was not given this. She could not escalate this further. She had no-one to turn to. She had to put her mental health first. She



gave her reasons, page 3, and this was not followed up. This shows that the claimed supportive culture is untrue. They should have been more supportive, she had a doctor's appointment. This affected her mental health, caused anxiety and stress.

### **The Law**

42. Section 94 of the Employment Rights Act 1996 (the 1996 Act) sets out the right not to be unfairly dismissed. Section 95 sets out the circumstances in which an employee is dismissed, and at subsection (1)(c) provides 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.

43. Where an employee has been dismissed, section 98 provides the test of fairness. In summary the employer must show the reason for the dismissal and that it is a potentially fair one as provided for further in subsections (1) and (2). Where the employer succeeds in so establishing a potentially fair reason for the dismissal, a tribunal will then assess the fairness of the dismissal in accordance with the provisions of subsection (4).

44. The principles of constructive dismissal have developed over many years and consequently there are many authorities that guide employment tribunals in determining these claims. Harvey on Industrial Relations and Employment Law puts the position as follows.

*'In order for the employee to be able to claim constructive dismissal, four conditions must be met:*

- (i) There must be a breach of contract by the employer. This may be either an actual breach or an anticipatory breach.*
- (ii) That breach must be sufficiently important to justify the employee resigning, or else it must be the last in a series of incidents which justify his leaving. Possibly a genuine, albeit erroneous, interpretation of the contract by the employer will not be capable of constituting a repudiation in law.*
- (iii) He must leave in response to the breach and not for some other, unconnected reason.*
- (iv) He must not delay too long in terminating the contract in response to the employer's breach, otherwise he may be deemed to have waived the breach and agreed to vary the contract.'*

45. In this claim the claimant claims that the implied term of trust and confidence had been breached by the respondent. That term was refined by the House of Lords in **Mahmud v Bank of Credit and Commerce International SA [1997] ICR 606, [1997] IRLR 462** as providing that 'the employer shall not without reasonable and proper cause conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.'

46. From **Mahmud** I note that if the breach is not discovered until after the employment ends, the employee could not rely upon this as a ground for terminating the contract (since he is unaware of it).

47. I also note that this term may be broken even if subjectively the employee's trust and confidence is not undermined in fact. It is enough that, viewed objectively, the conduct is likely to destroy or seriously damage the trust and confidence. **Mahmud** therefore confirms the formulation applied earlier in the cases of **Woods v W M Car Services (Peterborough) Ltd [1981] ICR 666**, which was approved by the Court of Appeal in **Lewis v Motorworld Garages Ltd [1986] ICR 157**.

48. In **Lewis** it was held that the breach of this implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so.

49. In **London Borough of Waltham Forest v. Omilaju [2005] IRLR 35**, the Court of Appeal held that in order to result in a breach of the implied term of trust and confidence, a "final straw", not itself a breach of contract, must be an act in a series of earlier acts which cumulatively amount to a breach of the implied term. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant so long as it is not utterly trivial. The final straw, viewed in isolation, need not be unreasonable or blameworthy conduct. However, an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is objective.

50. In **Walker v. Josiah Wedgwood & Sons Ltd [1978] IRLR 105**, Mr Justice Arnold commented that 'there are circumstances which can very easily be envisaged in which the making of an unjustified complaint or the giving of an unjustified warning or, still more, series of warnings would be or could be a matter of which legitimate complaint could be made by a person who says that he has been constructively dismissed, particularly and most obviously if the case which he seeks to make is a case based on the view that those warnings were given not really with a view to improving his conduct and performance, but with a view to disheartening him and driving him out. In any case in which that sort of claim is made, it seems to us to be abundantly plain that nothing less than a full investigation of the merits of the warnings is required.'

51. The imposition of a punishment which is grossly out of proportion to the offence can amount to a repudiation of a contract (**BBC v. Beckett [1993] IRLR 43**).

52. The principles from **Mahmud** and **Woods** were confirmed in **GAB Robins (UK) Limited v. Triggs [2007] EAT/0111/07/RN**, from which it may be read that the three questions to be asked in a constructive dismissal case (in which the claimant relies upon the trust and confidence term) are:

- (i) What was the conduct of the employer that is complained of?
- (ii) Did the employer have reasonable and proper cause for that conduct?
- (iii) Was the conduct complained of calculated or likely to destroy or seriously damage the employer/employee relationship of trust and confidence?

53. The Employment Tribunals have jurisdiction to hear complaints of breach of contract through the powers given in the the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. Under article 4, it is stated that proceedings may be brought in the employment tribunal if “the claim is not one to which article 5 applies”. Article 5 is stated to apply to, amongst other things, “a term which is a covenant in restraint of trade”. A claim of breach of contract relating to a term which is a covenant in restraint to trade cannot therefore be brought before an Employment Tribunal.

### **Conclusions**

54. What is the conduct that the Claimant complains of?

55. The Claimant has clearly set out the treatment that she states she has received from her manager since very early on in her employment through to her resignation. These are set out in paragraphs 19 to 23 above.

56. Did the respondent do those things?

57. Whilst the Respondent’s witnesses have set out to convince me that such treatment would not be within the culture and ethos of their company, what I do not have is any direct evidence as to whether or not the Claimant’s line manager acted within the culture and ethos they aspire to. Furthermore, most of the matters the Claimant is complaining about are documented exchanges and are unchallenged by the Respondent. On the balance of probabilities in my conclusion the Claimant’s line manager treated the Claimant in the manner she complains of.

58. Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

(i) whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

(ii) whether it had reasonable and proper cause for doing so.

59. In my conclusion the Claimant’s line manager acted on 21 and 22 August 2019 in a manner which was likely to destroy or seriously damage the trust and confidence between the Claimant and her employer. I consider that would have been highly likely in the absence of the historical issues that the Claimant has raised and in that sense I do not consider this case to be one that needs to rely on the last straw doctrine, but were I wrong on that I consider that the cumulative impact of the historical matters raised, particularly those relating to managing the Claimant’s working time and hours, would be likely to destroy or seriously damage the trust and confidence between the Claimant and her employer. The Respondent has not presented to me any evidence about reasonable and proper cause, in relation either to the historical issues raised by the Claimant or in relation to the incidents on 21 and 22 August 2019. Although I acknowledge that the governance requirements concerning tenant deposits are important I have no evidence from the Respondent as to why the Claimant had requirements placed upon her to provide information immediately. Mr Bishop acknowledged it would be unreasonable to ask for information like this outside of normal working hours. But more particularly, the tone of the requests are condescending towards the Claimant. The Respondent has not provided evidence of reasonable and proper

cause either for asking for information within the time pressure placed upon the Claimant or for communicating with the Claimant in the manner that the Claimant's line manager adopted. In my conclusion, the Respondent did not have reasonable and proper cause for treating the Claimant in this manner.

60. Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

61. In my conclusion the breach is so serious that the Claimant was entitled to treat the contract as being at the end. The Claimant has been undermined by her line manager to such an extent that her trust and confidence in her employer had been completely broken.

62. Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

63. I find that the Claimant did resign principally because of the way she was treated by her line manager on 21 and 22 August 2019. There will have been other matters that contributed to that decision, including the historical treatment that she had received and the mistake she had made and fear of the consequences of that mistake. I have taken all of those matters into account. In my conclusion, the principle reason was the breach and that is why the Claimant resigned.

64. Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

65. Affirmation is not an issue in this matter; the resignation was effected during the flow of the communications at issue between the Claimant and her line manager.

66. If the claimant was dismissed, what was the reason or principal reason for dismissal i.e. what was the reason for the breach of contract?

67. The Respondent has not pleaded a reason for the dismissal in the event that the Claimant is found to have been dismissed rather than to have resigned. There is no reason for the dismissal for me to be in a position to consider whether or not the respondent acted reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant

68. Is the Claimant's claim of breach of contract one which an Employment Tribunal has jurisdiction to hear?

69. I have no jurisdiction to consider the Claimant's complaints relating to her post-termination restrictions. They are excluded from my jurisdiction under Article 4 of the the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.

## **Remedies**

70. The Claimant was aged 24 when her employment ended on 5 September 2019 and at that time she had completed 2 years continuous service.

71. She appears to have acted diligently in attempting to mitigate her losses, despite her initial attempts being thwarted by the Respondent imposing post-termination restrictions.

72. The Claimant obtained alternative employment fully mitigating her losses beginning on 29 January 2020.

73. Her claim for lost income is limited to the period of unemployment, based on a daily salary of £99.75 net and 100 working days, total £9,975. The Respondent has not challenged this calculation. These are her net losses arising from her termination of employment during the prescribed period.

74. I have also considered whether or not the Claimant has through her conduct contributed to her dismissal for the purposes of Sections 122(2) and 123(6) of the Employment Rights Act 1996. I do consider that the Claimant's failures to attend to required governance matters made a contribution to the end of her employment but I do not consider her mistakes to be culpable or blameworthy. It would not be just and equitable to reduce either the basic award or the compensatory award for the Claimant's admitted mistakes.

75. There was no prospect of the Claimant's mistakes leading to her dismissal had she not resigned. The Respondent has stated that this would not have been the outcome had a disciplinary process been followed in relation to the Claimant's mistakes.

76. I calculate the Claimant's basic award at 2 weeks pay at the relevant capped rate (£525 per week). This totals £1,050.

77. I calculate the Claimant's losses arising from dismissal as she does, £9,975. I add to this £300 for loss of statutory employment protection. The total compensatory award is £10,275.

78. The total award to the Claimant for unfair dismissal is £11,325.

Employment Judge Knowles

19 April 2021