EMPLOYMENT TRIBUNALS

Claimant: **Mrs. S Craven**

Respondent: **Lincolnshire County Council**

Heard at: **Via Cloud Video Platform**

On: **26th, 28th, 29th April 2021 & 17th June 2021**

Before: **Employment Judge Heap**

Representation
Claimant: **In person**
Respondent: **Miss. N Twine – Counsel**

COVID-19 Statement

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was V – fully remote. A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing.

RESERVED JUDGMENT

The claim of constructive unfair dismissal fails and is dismissed.

REASONS

BACKGROUND & THE ISSUES

1. This is a claim brought by Mrs. Sharon Craven (hereinafter referred to as "The Claimant") against her now former employer, Lincolnshire County Council (hereinafter referred to as "The Respondent") presented by way of a Claim Form received by the Employment Tribunal on 29th July 2020. The Claim is one of unfair constructive dismissal contrary to Section 95 Employment Rights Act 1996. The Claim Form was prepared by the Claimant's then solicitors, although by the time that the hearing came around she was representing herself as a litigant in person.

2. On 9th February 2021 there was a Preliminary hearing before Employment Judge Ahmed at which the Claimant represented herself. Amongst other things, Employment Judge Ahmed Ordered the Claimant to provide further and better particulars of her claim. The Claimant complied with those Orders and a copy of the further particulars appear at pages 65 to 72 of the hearing bundle. Those particulars set out that the Claimant relied on the assertion that the Respondent had breached the implied term of mutual trust and confidence and relied upon the following summarised acts in that regard:

    a. That there had been a misrepresentation at the time of a transfer of undertakings in October 2017 and a lack of honesty over planned impending changes;
    b. That her caseload had been covertly and arbitrability doubled and reached an excessive level;
    c. There had been no risk or impact assessment of the effects of the increased caseload;
    d. That there had been a breach of Regulation 18 of the Health & Social Care Act;
    e. That there had been a lack of transparency about a G10 contract that the Claimant had been offered and that she had not been given sight of the contract or job description in a timely way;
    f. That during a period of industrial action work was stockpiled for returning practitioners;
    g. That she was identified as being at risk of "burn out" following a return to work from a period of stress related absence but no risk assessment or review was put in place and there was no timely referral to occupational health;
    h. That the Claimant was told to manipulate key performance indicators and was given an indication that there would be a further increase in workload;
    i. The way in which the Claimant's grievance was dealt with; and
    j. The receipt by the Claimant of telephone calls/a message from a third party organisation who had been given her contact details in breach of data protection requirements.

3. The latter point is said to be the final straw which resulted in the Claimant's resignation although it should be noted that in earlier communications to the Respondent the Claimant had identified the last straw as being receipt of a letter inviting her to a grievance meeting.

4. It should be noted that the Claimant's written submissions went rather further in respect of the acts relied upon as being destructive of trust and confidence. However, I have confined matters to the pleaded case and the way in which the claim had previously been advanced and the evidence deployed to address.

5. The Respondent denies that there has been any breach of the implied term of mutual trust and confidence; that the last straw (in either case) was utterly trivial and that she could not have resigned in response to it because she was already in negotiations with another employer elsewhere. It is said that with regard to any events found to be a breach, the Claimant had waived her right to rely upon them.

6. At the outset of the hearing I also raised with the parties whether in fact this may be a case where the Respondent had in fact expressly dismissed the Claimant by

effectively cutting short the period of notice that she had given. I referred the parties in this regard to the decision in **Beadnell v James Howden and Co Ltd ET Case No.71141/95** and, although of course not binding upon me, heard evidence and submissions on the point.

7. Prior to commencing the evidence I dealt with an issue as to disclosure because the Claimant contended that the Respondent had not disclosed all documents that were relevant to the proceedings. I determined that no further disclosure was necessary. I gave oral reasons for that at the time and neither party has asked that they be include within this Judgment. However, in short terms the documents were either said not to exist – in which case I could not Order disclosure but the Claimant could cross examine on that if she did not believe the Respondent – was too wide and generic in scope, had already been disclosed or was not a document but was the seeking of some sort of explanation.

8. The Claimant raised a further issue that she had only received the witness statement of Catherine Churchill three hours after the exchange of statements and after the Respondent had received hers. She had received an earlier incarnation of the statement and believed that it was possible that Ms. Churchill's statement had been changed after receipt of her own. The Claimant had not drilled down into what the differences were said to be and absent that I indicated to her that this was a serious allegation to make and she would need to deal with the matter in cross examination of Ms. Churchill. The Respondent's position was as set out in the email to the Claimant that the earlier version had simply been attached in error. The allegation as to alteration of the statement was not put to Ms. Churchill and therefore I say no more about it.

THE HEARING

9. The claim was originally listed for three days of hearing time. Unfortunately, there was insufficient time to conclude the evidence and submissions within that time and a further day of hearing time was therefore allocated during which I heard from the Respondent's final witness, Linda Dennett, and considered both written and oral submissions from both parties.

10. The hearing was a remote one which was facilitated by Cloud Video Platform. Whilst a few technical issues were encountered, those were overcome and I am satisfied that we were able to have an effective hearing.

11. I apologise to the parties for the delay in this Reserved Judgment being promulgated which has been caused, in part at least, as a result of difficulties working remotely on this and other cases during the pandemic without access to typing facilities, a period of leave taken and unforeseen circumstances. I have attempted to update the parties and their patience in await the Judgment has of course been appreciated.

WITNESSES

12. During the course of hearing, I heard evidence from the Claimant on her own account.

13. On behalf of the Respondent I heard from Catherine Churchill who was the Practice Supervisor of the Lincoln South HV team in which the Claimant was

employed at the material time. She was also the Claimant's line manager. I also heard from Linda Dennett, a Lead Nurse with the Respondent who had been involved in the process which saw the Claimant transfer into the Respondent's employ.

14. In addition to the witness evidence that I heard I also considered the documents contained in an agreed hearing bundle running to just shy of 850 pages.

15. I have also paid close attention to the oral and written closing submissions of both parties. Although I do not repeat them in any detail, they can be assured that I have carefully considered all that each of them has had to say.

CREDIBILITY

16. One issue that has invariably informed my findings of fact in respect of the complaints before me is the matter of credibility.

17. I begin with my assessment of the Claimant. Ultimately, I found her evidence to be overly defensive and somewhat evasive so that questions inevitably had to be repeated during cross examination. Often an answer was given which bore no relevance to the question that had been asked despite the need to answer the questions actually asked being raised both before and during the course of the Claimant's evidence. That affected my assessment of the credibility and reliability of her evidence. Similarly, the Claimant was not prepared to make any concessions even where those should plainly have been made. A prime example of that was that there was no acceptance that there had been a rolling recruitment process to try to attract other HV's into the Respondent even where that was plain from a CQC report to which the Claimant was taken (see page 225 of the hearing bundle). That was not the only example of such matters.

18. I formed the view that she has a great strength of feeling in respect of the issues that led to her resignation and how she perceives that she has been treated, but that caused her evidence to lack objectivity and ultimately everything is seen through the prism of unfairness.

19. I also found her evidence in some areas to be exaggerated. For example, paragraph 10 of her witness statement set out very precisely that between 46 and 50 school nurses were made redundant when the reality was that a small proportion of people either resigned, retired or left for other reasons. The Claimant did not explain that inconsistency and when challenged by Miss. Twine that it was misleading simply replied "ok". Again, exaggeration of that nature to seek to bolster her claim made me doubt the veracity of other statements that she made and this was also not an isolated incident.

20. I found the witnesses for the Respondent to be credible in the evidence that they gave. Unlike the Claimant, they were, where appropriate, prepared to countenance different points of view and I did not have any concerns as to the accounts that they gave.

21. In short, therefore, unless I have expressly said otherwise, I prefer the evidence of the Respondent to that of the Claimant.

THE LAW

22. Before turning to my findings of fact, I remind myself of the law which I am required to apply to those facts as I have found them to be.

Constructive Unfair Dismissal

23. A dismissal for the purposes of Section 95 Employment Rights Act 1996 includes a situation where an employee terminates the employment contract in circumstances where they are entitled to do so on account of the employer's conduct – namely a constructive dismissal situation.

24. Tribunals take guidance in relation to issues of constructive dismissal from the leading case of **Western Excavating – v – Sharp [1978] IRLR 27 CA**:-

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains; or, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."

25. Implied into every contract is a term that an employer will not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and the employee. Breach of that implied term, if established, will inevitably almost always be repudiatory by its very nature.

26. The question of whether or not there has been a repudiatory breach of the duty of trust and confidence is to be judged by an objective assessment of the employer's conduct. The employer's subjective intentions or motives are irrelevant. The actual effect of the employer's conduct on an employee are only relevant in so far as it may assist the Employment Tribunal to decide whether it was conduct likely to produce the relevant effect.

27. If there is a fundamental breach of contract, an employee must, however, resign in response to it. That requirement includes there being no extraneous reasons for the resignation, such as them having left to take up another position elsewhere or any other such reason if that is unrelated to the breach relied upon.

28. However, if the repudiatory breach was part of the cause of the resignation, then that suffices. There is no requirement of sole causation or predominant effect (see **Nottinghamshire County Council v Meikle [2004] IRLR 703**).

29. It is possible for an employee to waive (or acquiesce to) an employer's breach of contract by their actions. In those circumstances, an employee will affirm the contract and will be unable to rely upon any breach which may have been

perpetrated by the employer in seeking to argue that they have been constructively dismissed.

FINDINGS OF FACT

30. I ask the parties to note that I have only made findings of fact where those are required for the proper determination of the issues in this claim. I have inevitably therefore not made findings on each and every area where the parties are in dispute with each other where that is not necessary for the proper determination of the complaint before me. The relevant findings of fact that I have therefore made against that background are set out below.

31. References to pages in the hearing bundle are to those in the bundle before me and which were before the Tribunal and the witnesses. I should note that whilst I had a very large bundle of documents I was ultimately not taken to a considerable number of them and it is perhaps questionable why the bundles needed to be of the size that it was.

The Claimant's employment and transfer to the Respondent

32. The Claimant commenced employment with Lincolnshire Community Health Services ("LCHS") on 13th September 2017 as a Health Visitor ("HV"). HV's come from a nursing background but are specialist practitioners who support families with young children in the community. That will often include health visits to the homes of those families.

33. Upon commencement of employment with LCHS the Claimant retained a period of earlier continuous service within the National Health Service ("NHS") from 17th September 2001. The Claimant is an experienced HV and there is no doubt that she was dedicated to her role and well regarded. She has a wealth of experience in the health care sector over a varied and successful career. She is, quite rightly, proud of the achievements that she has made in her career.

34. The Claimant continued on an Agenda for Change ("AFC") contract with LCHS and was placed on a band 6.

35. On 1st October 2018 the majority of HV's employed by LCHS were transferred to the Respondent under the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE"). By that time the Claimant was at the top of the band 6 pay scale.

36. The reason for the transfer was that the Respondent wanted to take HV services back in house to integrate the HV's within the Children's Social Care directorate. The HV's and others within the Children's Social Care directorate were engaged to deliver the Healthy Child Programme to children aged 0 – 5 years (later 0-6 years) who were registered with a General Practitioner in Lincolnshire.

37. The role of an HV is pivotal to delivery of the Healthy Child Programme which includes five universal checks that must be carried out and which are as follows:

    (a) Ante-natal health promoting contact;

    (b) New baby review – primary birth visit;

    (c) 6-8 week post-natal assessment;

(d) One year post-natal assessment; and

(e) Two to two and a half year assessment.

38. In addition to that work, HV's also provide packages of care and safeguarding to families within their locality where that is necessary.

39. The transfer to the Respondent was not particularly popular with a number of HV's who wanted to remain within the NHS and felt that that was where health visiting "sat". Nevertheless, the transfer took place and this saw the Claimant and other HV's transfer to the Respondent. Post transfer the Claimant was based in the Lincoln South team.

40. Prior to the transfer there were a number of consultation events which those transferring could attend. That encompassed both a presentation and the opportunity to ask questions. I am satisfied that the Claimant had the opportunity to attend such an event and frequently asked questions ("FAQ") documents were also issued by the Respondent (see pages 123 to 140 of the hearing bundle). There was also collective consultation with the relevant trade unions, of which the Claimant was a member and I accept that on or around the time of the transfer those who were transferring were provided with a summary of comparisons between AFC terms and conditions and those which applied to those already in the Respondent's employ (see page 647 to 663 of the hearing bundle). Whilst the Claimant's evidence was that she did not recall seeing that document, I accept that it was sent to all HV's.

41. The Claimant contends that there was a misrepresentation at the time of the transfer and a lack of honesty over planned impending changes. There appear to be two issues in that regard. The first of those was the ability of those who transferred to the Respondent to retain their continuity of service if they left to re-join the NHS. That would affect issues such as redundancy and sickness pay entitlements.

42. The question of whether "outside" employment is recognised by the NHS is something which is entirely outside the control of the Respondent. That is provided for by the NHS Terms and Conditions of Service Handbook and is entirely a matter for the NHS employer itself (see page 101 of the hearing bundle). There is no evidence at all that the Respondent in any way misled the Claimant or other HV's about that position and the Claimant at all times had access to that handbook.

43. Indeed, I accept the evidence of Catherine Churchill that she herself attended a consultation event where the question of a transfer back into NHS service was raised. Whilst this was in all likelihood not the same event as was attended by the Claimant, it is demonstrative of the fact that the Claimant and others were able to raise such questions if they were of concern and that the Respondent did not mislead over the answers. There has also been no explanation as to why the Respondent would have wanted to mislead transferring HV's on this point.

44. The second issue which the Claimant contends that she was misled about was regarding "planned changes". Those were in relation to pay and workload and I come to those matters further below.

45. In April 2018 there was a relatively generous 6% pay increment for NHS staff. The pay award had not been known about or pending at the time of the transfer either by HV's or by the Respondent. As the Claimant was no longer employed by the NHS she did not receive that increment and as the increase had occurred post transfer I

accept that the Respondent was not required to implement it for the Claimant and the other HV's who had transferred under TUPE. I do not accept the Claimant's unsupported suggestion in her evidence that the Respondent should or would have been aware of the pending award as "pay was always on the agenda". The Respondent was not involved in any discussions about pay increases post transfer and, in all events, even if they had been the Claimant still would not have been entitled to it.

46. However, I accept that the award given to NHS staff which those who had transferred to the Respondent did not receive was a source of frustration for a number of HV's, and for the Claimant particularly. Whilst the Claimant did not appear to dispute that she was not entitled to the NHS increase, she contended that there should have been greater awareness of that at the time of the transfer. However, that ignores the fact that the Respondent was not aware at the time of the transfer that there would be a significant pay award within the NHS some 6 months later. I do not accept, therefore, that the Respondent could or should have included this within either the consultation sessions, the FAQ's or the terms and conditions comparison document. Not every single scenario that might at some point in the future present itself could ultimately be covered but in all events, there was the opportunity to ask questions on any matters of concern at the consultation events.

47. Matters were then compounded when those who were employed on the Respondent's terms and conditions were awarded a one percent pay increment. The Claimant and the other HV's who remained on AFC terms and conditions were not entitled to that pay increment either because they were not engaged on LCC terms and conditions and accordingly did not receive it from the Respondent.

48. In reality, I accept that the pay matters, the TUPE transfer out of the NHS and the lack of the NHS pay award were the root of the Claimant's dissatisfaction with the Respondent and came to taint the relationship and all that followed.

Introduction of the pay progression scheme

49. The Respondent attempted to resolve the matter of any potential for inequality of pay by introducing a pay progression scheme.

50. This included introducing a new G10 contract which was for a senior HV alongside a G9 contract for a less experienced HV role. The G10 roles required some further skills over and above the G9 contract – such as some elements of supervision - and attracted a higher rate of pay. I accept that its purpose was to enable career progression for HV's who were able to demonstrate the skills required for G10 and enable fairness of pay. Although there was some concern raised by HV's and Unite that this amounted to division among the HV's creating a two tier service, I do not accept that that was either the purpose or the effect. The reason was to enable HV's to progress both professionally and financially and I am satisfied that the G9 contract still encompassed all the key elements of the HV role.

51. I do not accept that there was any pressure on HV's to accept those contracts or transfer onto the Respondent's terms and conditions. The opportunity was there to do so but equally HV's could remain on their existing AFC terms and conditions as, indeed, the Claimant did. As I shall come to below, the Claimant applied for and was offered a G10 contract but rejected it. She accordingly remained on her AFC terms and conditions.

52. The idea behind the pay progression scheme was to ensure a fair rate of pay for HV's and I accept that in reality over time it would have enabled them to earn more than HV's who remained employed within the NHS. Whilst there would have been some delay in that, the main reason for that was the 6% pay award to which I have already referred. In time, however, HV's would be earning more than their NHS counterparts in employment with the Respondent.

53. Whilst the Claimant's evidence was that there would have been better ways, in her view, of dealing with pay progression I accept that fairness of pay was what the Respondent was ultimately attempting to achieve.

KPI's and changes in caseload

54. At the material time the Lincoln South team had 8 HV's although not all were full time. The Claimant for example worked 0.8 FTE. The team operated a duty HV on a rota basis and also had the support of an administrative unit – the SPA - who dealt with practical matters such as making and cancelling appointments for HV's. The work of HV's was also supported by nursery nurses in conducting some reviews. The Claimant sought to downplay their involvement during her evidence, but I accept that this was an additional layer of support for HV's.

55. A small number of HV's chose to leave the Respondent either before or after the transfer and there had to be a redistribution of work. That included an increase in the caseload of the Claimant but I accept that other HV's were also affected. I did not accept the Claimant's position that it was only her that was affected and I am satisfied that the Respondent sought to reorganise the work as equitably as possible.

56. Another HV did, however, leave in the months after the transfer and her cases were transferred to the Claimant in October 2018. I accept that the reason that the Claimant was selected to have those cases transferred to her was because of the geographical distribution of her cases. I do not accept that this was done in any way arbitrarily or that all of the cases that the Claimant had required constant or even regular contact. In addition, a student HV was appointed to assist the Claimant. She did not have a caseload of her own and could therefore be deployed to undertake assistance in suitable cases.

57. I accept the evidence of the Respondent that there were difficulties generally and across the profession in a recruitment of HV's. There was an ongoing campaign by the Respondent to attempt to recruit (see for example page 225 of the hearing bundle) but the aforementioned difficulties meant that that did not resolve the shortage. Historically, there has always been a shortage of HV's since circa 2017; that was a nationwide problem and not just one that affected the Respondent. The Respondent was running at a vacancy rate for HV's of 11.3% (see again page 225 of the hearing bundle). Whist that was not constant for each of the 13 teams across the Lincolnshire area I did not accept the Claimant's evidence that this was as significant as 50% for her particular team.

58. There were further issues as a result of a change in the age limits which HV's would be required to assist. That changed from 0-5 years to 0-6 years. However, I accept the evidence of the Respondent that that change had a negligible effect on workloads because it would be rare to need HV intervention at the 5-6 year age range and would generally only involve children or families with more special needs. In addition, for those needs such as bedwetting and the like there would be support from the Children and Young People's Community Nurses ("CYPCN").

59. I accept the evidence of Ms. Churchill that the main group who required support were the 0-2 age group because they were not yet in an educational setting (i.e. nursery or primary school care) and were therefore less visible in terms of what support might be required. I am satisfied that there was a review of those categories so that they were equitably distributed between HV's depending on need. In reality, this change had a negligible effect on workload and I consider that the Claimant has again exaggerated that position.

60. There was also support from the wider team and for local and wider duty cover to assist and from which additional resource could be pulled. Whilst there are generally five mandatory points of contact, the named HV only needed to complete the first three and the remaining two could be allocated to any other HV to undertake.

61. I am satisfied that when the Claimant raised concerns about her workload, caseload reviews of the HV's were carried out to take account of the volume and dependency rating of the children allocated to each HV. The Claimant's area covered a larger geographical area than some of the other areas to which HV's were allocated but I am satisfied that the Respondent sought to ensure as equitable split as was possible and that assistance could be pulled from other teams within the service where that was necessary. In that regard, the Respondent operated a Capacity Escalation Pathway which allowed Ms. Churchill to review the workload of the team for which she was responsible and take action, including requesting support from other localities and prioritising work (see page 665 to 667 of the hearing bundle). Whilst the Claimant appeared to suggest in her evidence that this required a dialogue with her, I accept that it was simply the Supervisor's role to deal with the Escalation Pathway and there was no need for any detailed discussion or consultation about that.

62. Separately to that caseload there was also a safeguarding caseload which was allocated by the Respondent via a matrix system and not arbitrarily as the Claimant suggests. Whilst the Claimant contends the matrix to be flawed, there is no evidence of that or that it created unfairness to the Claimant in respect of her caseload. Indeed, it is based on the same tool, the Benson Wintere model, that was previously used by LCHS. The purpose of that model is to allow a fair allocation of resources and I accept that it was used by the Respondent for that purpose.

63. There are no set number of cases which an HV should be assigned but guidance, including from the Institute of Health Visiting and within the Laming Report (see page 76 of the hearing bundle) makes recommendations of a case load of no more than 250 in high dependency areas and 400 in other areas.

64. Whilst the Claimant on paper had a caseload of approximately 1,000 I accept that a significant number of the cases were "inactive" in that little or no interaction was required. Whilst the Claimant points to the fact that she was named and therefore responsible for those inactive cases, there is no evidence that they practically added anything to her actual workload and I am satisfied that she had the support of Ms. Churchill in relation to any capacity issues. Indeed, those matters were often discussed at supervision sessions. One such example is in September 2018 (see page 175 of the bundle) where the Claimant had commented that her caseload was manageable and Ms. Churchill had nevertheless offered any necessary support.

65. Moreover, the most time and labour intensive cases were the safeguarding cases and the Claimant did not have a caseload which differed to other HV's in that regard

and, indeed, in some cases she had fewer allocated to her (see pages 253 and 279 of the hearing bundle).

66. I am satisfied that the Respondent and the tooling systems which they utilised ensured that they only allocated a caseload which the Claimant and other HV's could safely deliver and, indeed, that was reflected in the report from the CQC about the Respondent service. Ms. Churchill also monitored caseloads and made herself available if there were any concerns from any of the HV's, the Claimant included, and would have been able to pull resource from elsewhere to provide assistance as I have already touched upon. The Claimant also managed her own diary and was able to prioritise important tasks.

67. I am also satisfied that the Claimant had the opportunity to discuss with Ms. Churchill any concerns around training and that arrangements could and were made for HV's to complete necessary training. Whilst she contended that she would have to take training sessions out of her diary, the Claimant was not able to take me to any mandatory training that she had missed or not been able to attend because of her caseload and it is notable that she was able to renew her professional registration in January 2020 without issue. That was dependent upon her being up to date with mandatory training. She was also able to arrange her own diary and appointments on a day to day basis and thus schedule in any necessary training.

68. Ms. Churchill also regularly ran reports on the caseloads of HV's to ensure that they were manageable and I am satisfied that the Claimant's workload, although not ideal, was nevertheless such that she was able to cope with it.

69. In order to deliver the service that was required of them the Respondent operated Key Performance Indicators ("KPI's") for HV's. KPI's were introduced in or around April 2018. The Claimant takes issue over that and contends that it was a change of her terms of employment. However, she, eventually, accepted in cross examination that LCHS also operated KPI's and I do not find that there was any material difference between the two organisations in that regard save as what the Claimant termed as a requirement of "allegiance" to the Respondent. That is, in reality, no more than any employer would expect from its employees and it did not place any pressure on the Claimant. Equally, she also accepted in cross examination that it is usual for objectives to be set by an employer on an annual basis and it was not unusual for them to change. The objectives set by the Respondent were reasonable.

70. Insofar as the Claimant alleges that the KPI's amounted to some form of performance related pay or performance management process, I do not accept that. I accept that KPI's are an important tool used by the Respondent to measure the performance of the service as a whole and that the KPI's which were in place were designed to monitor the delivery of the Healthy Child Programme which is of key importance to the delivery of the HV role. The Claimant's pay was in no way dependant on the Respondent meeting its KPI's.

71. There is no evidence whatsoever that the Claimant or any other HV was taken to task, or had any suggestion made to them that they would be, for not meeting KPI's. They were a target only as is made plain at page 209 of the hearing bundle and the Respondent recognised that the service was understaffed and so did not have any intention of taking any action against any HV who did not meet their targets. I do not accept the Claimant's position in her evidence that there was any implication that not meeting KPI's would "regress" her; that she would be performance managed or that action would be taken amounting to the introduction of performance related pay "later

down the line". Equally, there can be no reasonable suggestion that the Claimant's pay – or that of any other HV – was linked to meeting KPI's. Indeed, as the CQC inspection at page 209 of the hearing bundle shows, the Respondent was not meeting the 95% target for their KPI's but there is no evidence that any action was taken as a result against any HV.

Industrial action

72. During the course of the Respondent seeking to introduce the new pay progressions scheme, Unite balloted to begin industrial action and a number of their membership commended strike action in July 2019. Not all HV's took part in the industrial action and as evidenced at page 343 of the hearing bundle only 31% of the HV's employed by the Respondent voted to take strike action.

73. The Claimant did take part in the industrial action, as of course was her right. She contends that work was stockpiled for HV's, herself included, during the industrial action and that when she returned to work her workload was heavier than ever. I do not accept that that was the case. I prefer the evidence of the Respondent that whilst the industrial action placed further strain on the HV service, measures were put in place to combat that and those included a triaging system with urgent matters being prioritised and dealt with so that only the routine work remained for HV's who had participated on their return to work. Particularly, all safeguarding work was dealt with as a priority during the course of the industrial action and that was not left for HV's to pick up upon their return to work.

74. Whilst there was inevitably some additional work because of the absence of some HV's taking part in the strike action, this was beyond the control of the Respondent and I am satisfied that they managed matters in the best way that they could, including the implementation and use of a Business Continuity Plan (see pages 669 to 698 of the hearing bundle). I also accept that there was no pressure placed on HV's to complete the backlog of non-essential work and that the Respondent dealt with matters in the best way that they could.

75. In short terms, the basis for the industrial action was that Unite believed that the Respondent was seeking in terms of introducing the new G10 Senior HV role alongside a lower grade G9 HV role to create a two tier system and de-skill the cohort of HV's. I accept the evidence of Ms. Dennett that that was not the case and that there had to be a process for HV's to move up from a G9 to G10 role. That was required as a result of the Respondent's job evaluation process and provided a HV could demonstrate the skills for a G10 role then one would be offered and would allow HV's to ultimately earn more than if they had remined in the NHS. I accept that there was no cap on the number of G10 roles available and those like the Claimant who had the necessary experience and skills would be offered one if they applied. Indeed, the Claimant was offered a G10 role having applied for one but then elected to reject it. As at January 2020 there were still HV's who had elected to remain on AFC contracts and they accounted for 17% of the HV cohort (see page 443 of the hearing bundle). I do not accept that there was any pressure placed on staff on AFC contracts to move to G9 or G10 contracts.

76. I also do not accept the Claimant's contention that the G9 role did not demonstrate all of the professional standards of a HV or have their full responsibilities and there is no evidence to that effect. I accept that the G9 role was a HV role and the G10 was a senior HV role for more experienced HV's and the idea was to allow HV's better pay and career progression.

77. I also accept that there was consultation by the Respondent on the pay progression scheme with the relevant trade unions, Unite and Unison, and I do not accept the Claimant's representations to the contrary which seemed to focus on there having been no consultation because there was no individual consultation with her. However, I accept that the Respondent kept the Claimant and other HV's informed of progress relating to the discussions via the Unions and she accepted that Unite also kept her up to date. I did not accept the Claimant's criticisms that the "multitude" of correspondence was confusing or that there was no time to keep up with developments. I consider it likely that had there been no or less correspondence the Claimant's complaint would have been about a lack of communication.

78. Ultimately, the terms of the pay progression scheme were agreed with Unite following conciliation with ACAS and came into force. The Claimant is critical that there were a number of incarnations of the pay progressions scheme which she contends added to a lack of trust but that was of course somewhat inevitable as the Respondent sought to agree terms which were acceptable to the unions. Part of the proposals included an agreement from the Respondent that any HV's on AFC could automatically transfer onto G10 contracts which would be of financial benefit to them (see page 341 of the hearing bundle). There had previously been a requirement to apply for G10 roles but as part of the consultation process with the Unions that requirement was removed. The Claimant contends that that amounted to moving the goalposts but again I am satisfied that that was a positive move forwards for HV's as part of the negotiation process. The Claimant had in fact already applied for and been offered the post of a G10 HV in July 2019 (see page 270 of the hearing bundle). The offer included answers to a number of potential questions that HV's might want to ask and a comparison between AFC terms and conditions and the G10 contracts. As I have already touched upon above, the Claimant did not accept the G10 contract. I do not accept that she was stalled or not able to access details of the terms and conditions on offer under the G10 contract or that there was any misrepresentation as she contends.

79. I also do not accept, as the Claimant appears to suggest at paragraph 35 of her witness statement that there was any intention to make her or other HV's redundant[1] – indeed that is entirely at odds with the Respondent's ongoing recruitment of HV's – or that the intention was to drive her out[2]. Again, that was at odds with the desire of the Respondent to attract and retain experienced HV's to complement its Children's Services.

80. Whilst the Claimant contends that there were "better ways" of dealing with the introduction of a pay progression scheme, I accept that the purpose of it was to seek to introduce a fair progression scheme for HV's that would enable them to be remunerated at levels above that which they could receive under their AFC contracts. I do not accept the Claimant's contention that the purpose was to remove HV's from AFC contracts "at all costs" and I am satisfied that the Respondent was simply trying to ensure fairness, particularly in view of the NHS pay award in April 2019.

81. By late December 2019/early January 2020 the industrial action had concluded with the majority of Unite members having voted to accept the revised pay proposals which are set out at pages 297 to 307 of the hearing bundle. The Respondent wrote to Unite in reply to a letter from the Union of 20th December confirming the position on acceptance of the proposal.

[1] Although the Claimant denied in evidence that that was what she had meant it is difficult to see how there could be another reading of it.

[2] Again the Claimant denied that in her evidence but again her statement is clear on that point.

82. Part of the letter said this:

"I can confirm that currently we have 20 G9 Health Visitors, 73 G10 Senior Health Visitors and 19 AfC Health Visitors across the workforce. This means that 83% of our Health Visiting workforce is now on LCC terms and conditions. As we have said previously there is no cap on the number of G10 posts available".

83. The window for G10 applications was also extended by the Respondent after the cessation of the industrial action.

84. I do not accept, as the Claimant appears to suggest, that the extract set out above was indicative of the Respondent wanting to force HV's onto LCC contracts "at any cost". It was clearly simply an update of the present position for Unites information.

85. However, I do accept that the Claimant was affected by what she perceived as being overworked and the other issues of dissatisfaction that she had been harbouring since the TUPE transfer. I accept that all that caused her stress. She was absent on the grounds of work related stress between 22nd November 2019 and 4th December 2019. At the point of her return to work the Claimant attended a return to work meeting with Ms. Churchill, the notes of which appear in the bundle at pages 367 to 372. It is plain from what is recorded at page 368 that workload was not the only cause of the Claimant's absence and that there were a number of issues, including the TUPE transfer and pay, that had contributed to the Claimant's sickness absence.

86. I am satisfied that Ms. Churchill offered support to the Claimant and that included providing her with time to catch up on administrative work upon her return and to give her the opportunity to raise with her any increase in stress. I do not accept the Claimant's position that no support or welfare plan was put into place for her.

87. During the meeting the Claimant referred to working on an "exit plan". That that was a reference to leaving the Respondent and I am satisfied that by that stage the Claimant had already determined that she was leaving the Respondent and it was simply a matter of securing an alternative role.

88. There was a comment in the notes that the Claimant was "at risk of burnout" (see page 370). It remains unclear to me whether that was a comment recorded as having made by the Claimant or Ms. Churchill's own observation.

<u>Offer of employment within the NHS</u>

89. The Claimant began to seek alternative employment elsewhere and by 10th September 2020 she had secured a post back within the NHS. There was a delay in the Claimant resigning from employment with the Respondent as a result of ongoing negotiations that she was having with the NHS over matters of pay and grading. I am satisfied that if those negotiations had concluded at an earlier stage to the Claimant's satisfaction then she would have resigned at that point. I am also satisfied that by December 2019 at the time of her discussion with Ms. Churchill at her return to work interview the Claimant had already started to seek alternative employment and intended to leave as soon as she had secured something suitable.

<u>The Claimant's grievance</u>

90. On 4th December 2019 the Claimant sent a lengthy letter to Ms. Churchill which she titled as a formal grievance. The entire content is not rehearsed here as a result of the length of that document but the summary section of the grievance said this:

"I am held under static tupe arrangement, the period has been extensive and unreasonable without job security or clarifying future business plans, this has cost me circa £4,000. I trusted LCC at that time who assured me of a good faith transfer. LCC have reneged on verbal assurances to me and appear content to let me waste away.

I have worked without cost of living back pay, this means and 8 year rolling deficit whilst NHS counter parts and LCC staff have been given cost of living allowances, I have been excluded from this and I am an LCC employee. Why?

LCC are essentially demoting me through pay are devaluing and deskilling my work being fully aware of my role dynamic without reasonable cause or grounds.

I consider LCC are fully aware of my dilemma, and that LCC has an army of Legal advisors that have purposefully constructed this untenable position for me, an Agenda for Change nurse, in attempt to get rid of this element of the workforce.

I have worked tirelessly with great effort for 2 years and through an exodus of demoralised staff, which have not been replaced in a timely or proportionate way. I believe have fulfilled the expectations of my contract and my duty of care to LCC service users. I am now fearful of unreasonable work expectations and performance; the KPI demands are especially relentless and the requested 100 percent performance target on my case load which covers a vast geographical area is simply setting me up to fail. Statistically, it is impossible to sustain. I never agreed to performance related pay upon TUPE or at interview for my post initially, it is not in my contract, why is this now embedded in my appraisals?

I consider that LCC has failed in its duty of care to me by not properly acting upon the knowledge of excessive caseload numbers in a timely way. Compounding this concern is that my work travel time is not longer measured or accounted for, my caseload numbers are manipulated as 'active' with relation only to KPI figures and recently, the KPI delivery time frames were manipulated and expanded to enable LCC to cruise through industrial action. LCC should be using meaningful health measures of the population and the true breadth and complexity of the health visitor role. If time frames can be expanded – why are we kept under so much pressure to abide by them otherwise?

I am afraid to take sick leave, I do not feel it is fair that I should be overworked into the situation of needing to, and as with the recent use of the business continuity plan, the work will simply be stockpiled waiting for my return. I am aggrieved that I have been forced in to writing a formal grievance.

LCC is restricting my professional development opportunities by me frequently having to cancel/defer even mandatory training, again forcing me in to a vulnerable position that amounts to direct deskilling making me less employable such (sic) *I wish to re-join the NHS or work elsewhere."*

91. Linda Dennett was initially appointed to deal with the grievance and the Claimant was notified of that by John Fletcher, Senior HR Adviser, on 17th December 2019. The Claimant is critical of that because she contends that Ms. Dennett was not independent because she was referenced within the grievance itself. However, it is notable that Mr. Fletcher did in fact raise that with the Claimant and that if she felt Ms. Dennett would be inappropriate then an alternative senior manager would be arranged (see page 379 of the hearing bundle). The Claimant indicated that she would prefer someone else to deal with the matter and as soon as she did so an alternative manager, Michelle Andrews, was assigned to deal with the grievance. There was no unfairness to the Claimant in relation to the appointment of Ms. Dennett but she was given the option at the outset to request a different manager and then matter was thereafter rectified. Ms. Andrews was Head of Early Years with the Respondent and I accept the evidence of Ms. Dennett that she had been heavily involved in the TUPE consultation process and had a good overview of the Children's Service. She therefore had adequate knowledge but was suitably independent to deal with the grievance.

92. Mr. Fletcher's email to the Claimant offered four possible dates for a meeting. The Claimant replied selecting the date that she preferred and that was the date that was then scheduled for the meeting. Mr. Fletcher indicated that he would write formally to confirm the location and meeting details and enclose relevant paperwork. He did so on 3rd January 2019 by letter which the Claimant would have received a day or so later. The Claimant is critical of that letter on two fronts. The first of those is that she contends that it was written in a legal tone, but I do not accept that. It is clearly a standard letter and is written in entirely appropriate terms given that the grievance had now moved to a formal stage. It is not usual practice for most employers, as the Claimant proposed, to telephone her and tell her the contents of the letter "gently".

93. The Claimant is also critical that it only gave her two days to submit paperwork (Mr. Fletcher having asked for this by 7th January 2020) but given that she had been aware of the date of the meeting for almost a month and therefore had time to gather any necessary paperwork and also had the support of a trade union representative, I do not consider that this caused the Claimant any unfairness. In all events, the meeting was postponed and rearranged on the Claimant's terms as I shall come to further below.

94. The Claimant is also critical of the fact that the Respondent did not appoint a health professional to deal with the grievance. That issue was raised by the Claimant in an email to Ms. Churchill which read as follows:

"I will not be attending the formal grievance hearing on Friday. I received a signed for formal invitation for the meeting yesterday, please can I just say that I am worried now also because there seems to be no health representation at the meeting."

95. Ms. Churchill raised the matter with Linda Dennett, Ms. Andrews and a John Fletcher of the Respondent's legal department. Ms. Dennett replied to set out her understanding of the position as to health representation. The relevant part of her email said this:

"'Health' representation at a senior level is challenging as due to the nature of the grievance it does have to be heard by a Head of Service as a minimum and with respect to LCC and 'Health', there is only me ad as this was not acceptable to Sharon there is little choice but to approach a different Head of Service and Michelle does have a very good working knowledge of our services and it is closely affiliated

with Early Years. It is also not unusual for grievances to be heard by someone from another discipline."

96. I am satisfied given the explanation above that the Respondent did its best to accommodate the Claimant's request for a different grievance officer and that Ms. Andrews was a suitable person to deal with the grievance. The Claimant has not taken me to anything to demonstrate that there had to be any panel including someone from a health background to deal with the grievance.

97. After indicating that she was not going to attend the grievance meeting on 10th January, the Claimant wrote a long email to Mr. Fletcher on 13th January 2020 complaining about the tone of the grievance invitation letter and requesting 22 items of information/documentation that she indicated that she required for the grievance hearing. She asked for that to be provided two to three weeks ahead of a revised grievance meeting.

98. The Claimant initially denied having been provided with the information that she had requested until taken by Miss. Twine to page 483 of the hearing bundle which shows that Mr. Fletcher provided her with a full response on 6th February 2020. He also apologised if she had been upset by his grievance invite letter and quite reasonably explained that it was merely a standard letter. He dealt with the Claimant's position about having someone from a health background deal with the grievance and that Ms. Andrews was a suitable person to deal with the matter. He also dealt with the Claimant's concerns about dates to submit documents and that additional time could be provided if required. He concluded the letter by indicating that he would look to rearrange the grievance meeting at least two weeks after the Claimant had received the letter and enclosed documentation.

99. Michelle Andrews wrote to the Claimant on 14th February 2020 inviting her to attend a grievance meeting on 9th March 2020. She was advised of her right of accompaniment and that the meeting could be re-arranged if her chosen companion was not available.

100. The Claimant wrote to Mr. Fletcher by email on 2nd March 2020 to say that she would not be attending the grievance hearing. Her evidence before me was that she had felt intimidated because Ms. Churchill kept contacting her and that there was a closeness between Ms. Andrews and Linda Dennett because of their participating in seeking to resolve the industrial action and that there should have been an allied health professional present who was involved in the decision making process. Again, the Claimant has not taken me to anything within the grievance procedure or elsewhere to show that there should have been anyone else appointed to deal with her grievance.

101. The Claimant did not attend the grievance meeting on 9th March 2020 and as such it did not progress.

<u>Contact from Health Management</u>

102. On 24th December 2020 the Claimant emailed Ms. Churchill and other members of the team in connection with an email that she had sent regarding agreements that had been reached to book appointments. The Claimant's email set out that she had concerns about some of the proposals and made her own suggestions about how matters could be dealt with. Ms. Churchill replied to the Claimant addressing all of the points that she had made (see pages 387 and 388 of the hearing bundle).

103. On 6th January 2020 the Claimant emailed Ms. Churchill raising a complaint that she had been contacted on three occasions by an organisation called Health Management. She contends that that contact was in retaliation for the email that she had sent to Ms. Churchill on 24th December.

104. Her email to Ms. Churchill said this:

"I am emailing today as I am upset that whilst on annual leave I have been called on 3 occasions (starting on 27/12/2019) by a company called Health Management; they left a message stating that they have been instructed by my organisation's occupational health and "Require a meeting" with me. They left a number for me to call them and follow up. I have not.

I am very upset that this was done on my annual leave and as frequently as it was.

I am also very concerned that my personal contact details have been shared with an agency I know nothing about.

Please can you clarify

1) *who shared my personal contact details*

2) *who authorised me being contacted by this company whilst on annual leave?*

3) *why is this company contacting me?"*

105. That message was sent from the Claimant's personal email address. Ms. Churchill replied to that address a 16 minutes later to say that she had not made any occupational health referral. She asked the Claimant if she was sure that the reference had been to the Respondent and not to her new employer and said that she would investigate.

106. The Claimant forwarded that email to her husband to print off. I did not accept her explanation in cross examination for why she had done that and I am satisfied that by that stage she had already determined that she was going to bring a constructive dismissal complaint and was in the process of gathering the evidence to support it. That email is not the only one that was forwarded for printing in this way.

107. Ms. Churchill did undertake investigations as to the contact from Health Management and kept the Claimant informed of progress (see page 434 of the hearing bundle). The Claimant also contacted Health Management who told her that they had no record of her name or date of birth on their systems (see page 436).

108. Ms. Churchill discovered what had happened and emailed the Claimant on 6th January 2020 as follows:

> *"Hi Sharon, I have found out what has happened regarding the OCH dept.*
>
> *I am very sorry however it was my error, I put your home mobile number on a referral for another member of staff. I have checked the referral and there is no other information regarding you included, it was a human error. For which I apologise for. I will update Health Management as well."*

109. I accept the evidence of Ms. Churchill that that was an accurate account of what had happened and in error she had included the Claimant's mobile telephone number for a referral for another member of staff. There is nothing at all to suggest that the error occurred in retaliation or for any reason at all connected to the Claimant's email of 24th December 2019

110. The Claimant is critical that the email was never received by her because it was sent to her work email address. She points to the fact that earlier emails had been sent from and to her personal email address and therefore contends that the explanation and apology email should have been the same.

111. The Claimant did not see the email because she commenced a further period of sick leave on 7th January 2020 and never returned to work for the Respondent. It was for that reason only that she did not receive the email, but Ms. Churchill could not have been aware of that at the time that she sent it. I accept that she had a reasonable expectation that the Claimant would see the email when she was next in work.

112. It is also notable that whilst Ms. Churchill had replied to the Claimant at her personal email address in earlier emails, that had been in direct reply to her email chain whereas the email of 6th January was a completely new one and not part of a chain.

113. I am also satisfied that Ms. Churchill considered the matter to be serious as evidenced by the fact that she referred herself to the Respondent's Information Governance Department (see page 441 of the hearing bundle).

114. However, I do not accept the Claimant's account that she believed that the call from Health Management was in retaliation to her grievance. There was nothing in the message or contacts that made any suggestion at all of that and I did not accept the Claimant's evidence on that point. It was simply a mistake and there was no reasonable basis for the Claimant to have concluded – if indeed she did – that this was any form of retaliatory move.

The Claimant's resignation and termination of employment

115. On 13th January 2020 the Claimant tendered her resignation to Catherine Churchill. That followed her having received an acceptable unconditional offer of employment from the NHS on either 6th or 7th January 2020.

116. The Claimant's resignation email said this:

"Please accept this email as my formal resignation notification.

I feel I have been forced to move on from LCC. My resignation is in direct relationship to a catalogue of negative experiences leading to a complete breakdown of trust in my contract of employment with this organisation. This constitutes a major upheaval for me.

Reasons for resignation include the following:

My loyalty and strong work ethic has been exploited but also disregarded and undervalued by LCC. My expression of concerns regarding caseload and workload and training needs have not been acted upon in a timely or constructive way. I feel bullied and intimidated by the tupe and service transformation conducted by LCC.

I do not feel safe working for LCC, and consider that I am being professionally deskilled and devalued. I understand that there has been an increase in nmc referrals nationally that correlates directly with increasing HV caseload numbers, I am concerned about this along with my work load but LCC are not. LCC have normalised and become desensitised to the excessive workload placed upon me. We have discussed my caseload numbers at length on many occasions in appropriate forums and in an appropriate manner and at 1:1s we have reflected on the large volume of work I have in relation to TAC families.

I consider LCC does not care about me or my well being at work or value the role of a vital national profession; though LCC said it did at the time of tupe, it's subsequent actions do not reflect this at all. Indeed, health visiting wasn't even listed in the groups of staff list in the demographics element of the latest LCC staff survey.

Ultimately, I have lost trust and faith in my contract through several major negative experiences, cascading directly from the lack of transparency at the time of TUPE. I feel lied to and betrayed. If I were to choose a new mortgage or electricity provider or even pay a credit card bill, by law, I would be given far more details on the implications of such agreements than LCC gave me regarding my employment contract. I think LCC chose not to be explicit as LCC were disconcertingly vague at that time. LCC made lots of placating verbal assurances about static Tupe and stated that things would be sorted out quickly. But, it then took 2 years, whilst I endured a spiralling work load and unpredictable frequent work changes, for a service transformation proposal to manifest that in itself penalised me harshly despite my strong work ethic, performance, loyalty and trust.

LCC maintains that it has implemented the HV service transformation legally, I think it is very important to say here that I fully respect the law's mandate on this and do not contest the legality of it at all. I am not a lawyer but I do trust that legal team briefed LCC according to the law. However, choices and autonomy thereafter was and still is the domain of senior management.

There is still Tupe dissatisfaction on my part around this as naively, I thought tupe was supposed to protect me from being exploit (sic) *or bullied. I really struggle to accept why senior management would decide that a cost of living pay rise would be kept back from me as a front line nurse practitioner working harder than ever before and after 8 years of pay freeze. I consider that this was about LCC's senior management manipulation and abuse of its position and power, despite being a publicly funded organisation. Management chose not to give cost of living payment to me, not the law. So why so there was no legal compulsion to award it? How incredibly unfair this is when I sit in an office surrounded by people who received it, we pay for the same food and fuel and pay the same government taxes. I simply cannot reconcile this as reasonable and trust enhancing behaviour of my employer. Cost of living allocation is not a bonus or a promotion or a luxury, it is given in recognition of the rise in the cost of living. I do take issue with the concept of being "starved out" it's simply not a civilised thing to do to nurses.*

With further concern regarding the LCC HV service transformation, it is important that I share that I experienced the potted protracted LCC compromises of transformation as very disappointing. We have discussed inequality and confusing changes with staff obligations in order to achieve those ever changing offers at length. I have experienced service transformations several times before, this comes with being a nurse for over 25 years, this one conducted by LCC however was by far the worst and most stressful.

Essentially, I could only tupe across to LCC from LCHS at that time as LCC have a monopoly on health visiting in Lincolnshire. Static tupe was never presented as a choice to me. So I was deeply saddened when senior staff later said publicly and crudely if health visitors don't like it then should leave. This was bullish and does not empower me to think I can express problems in the work place. Most importantly, I have worked and spent a lot of time building in during relationships with service users which is incredibly important in health visiting, and so leaving is not an easy option as has been inferred. This leads me to challenge LCC on how the voice of the child was weaved into the HV service transformation programme? I didn't hear it once. I have never heard or seen a vision or a plan regarding my place with LCC either. It seems to me that LCC has disregarded the principles at the core of its children's services and the core of the signs of safety we use that is voice of the child. I do not trust that there is a future for health visiting within LCC.

In fairness, I do consider it is reasonable to expect me to show patience and support over a period of time during organisation change, the key change for me started at tupe . I have showed patience support hard work and loyalty as far as possible. I also acknowledge that as a nurse I am expected to work hard, but in order to protect my health I am forced to consider the threshold limit for this has been truly crossed.

I am shocked at how little professional development is available or adequately facilitated to nurture my needs as a health visitor for the ultimate benefit of service users by LCC. I have no confidence or trust, based on the last two years, that this will change with LCC. I hardly have enough time to plan prepare share or maintain any potential knowledge gains whilst I work for LCC. I'm really worried that this also causes me great concern regarding mandatory training. It is within the NMC code that I engage in continuous professional development. I have tried but found it incredibly challenging and exhausting to do. Sadly, I have now been overworked to the point of needing sick leave, the long term impact is yet to be understood by me in personal and professional terms.

I'm also tired out by professional isolation in work and lack of opportunities for informal and meaningful formal supervision. To this end, I also find it untenable that despite covering a large geographical area, travel time is no longer accounted for either. The implications of this on KPI's and my other work has been explored on many occasions previously.

The production of my formal grievance should have facilitated some expression of care from LCC about what was happening to me, it took a lot of courage to write it, yet less than three weeks after submission there was the announcement of even greater workload expectations from me with implicit instability and lack of grounding in performance or capacity measures. I felt compelled to share concerns verbally amidst colleagues with you and I wrote to you in the team about this on Christmas Eve.

I was particularly aggrieved after this, I was then hounded on the 27th, and on two further dates, by a company I knew nothing about saying that they required a meeting with me, it was all utterly overwhelming for me and totally insensitive leading me to need to see the GP as soon as an appointment was possible.

Unfortunately, after making this appointment, I suffered further harassment from LCC in the form of a legal letter regarding process is for a grievance hearing. In response to the letter I received on 6/1/2020, I have today emailed John Fletcher with further worries.

I have never had sight of any strategic long term vision for health visiting with LCC, but in any case I simply cannot envisage future for me with LCC; I will never return.

For reasons expressed above and in grievance correspondence and verbal conversations with you, I have no choice but to terminate my contract with LCC. I consider LCC does not care about its duty of care towards me.

I do understand that I'm contractually obliged to give 8 weeks notice, I am worried about reprisals from LCC for not abiding to this. Therefore my last date of employment with LCC will be 08/03/2020.

My sick note expires 03 03 2019; I have approximately 75 hours annual remaining.

I politely asked for annual leave of 30 hours to be deducted for 25-28 February 2020.

May I also politely ask that 15 annual hours annual leave is deducted for 4th and 5th March. I will take the 6th as my non working day for that week. I do not usually work weekends.

Please can any remaining unused annual leave be financially remunerated via my final salary?"

117. Mrs. Churchill acknowledged receipt of the Claimant's resignation a few days later. She set out her regret about the Claimant's resignation and although she indicated that she could not address some of the issues raised in the email because it was the subject of the ongoing grievance process, she offered the Claimant the opportunity to meet to discuss any issues and offer support. She also asked the Claimant if a referral to Occupational Health or a counselling service might assist her. Finally, she indicated that she had calculated the Claimant's last day of her 8 week notice period to be 3rd March 2020 but that she could use annual leave for any later leaving date that she might have wanted so as to preserve her service as she was aware that she was re-joining the NHS.

118. The date of 3rd March 2020 was, of course, wrong. The Claimant had given the correct leaving date in her resignation email and her effective date of termination of employment should have been processed as 8th March 2020. However, she was paid until 3rd March and that was the date set out on her P45. The Claimant raised that point and was told by John Fletcher of the Respondent's legal services that he would look into it and respond to her. There does not appear to have been any response in that regard.

119. However, I am satisfied from the evidence of Mrs. Churchill that this was unintentional and she simply made an arithmetical mistake when calculating the termination date. There was no intention to bring forward the Claimant's effective date of termination and that is of course supported by her indication in her email that the Claimant could extend her termination date if she wanted to by using some of her accrued annual leave entitlement.

120. She also sent a further email the same day to offer the Claimant the option of ending her employment immediately due to her comments about the stress that working her notice period would cause her.

121. The Claimant replied to say that she was unable to make a decision about her notice period at that time (see page 295 of the hearing bundle). As it was, the Claimant spent her notice period on sick leave and did not return to work. She was paid by the Respondent during that time.

122. On 29th July 2020 the Claimant issued these proceedings which are now before me for determination.

CONCLUSIONS

123. Insofar as I have not already done so within my findings of fact above, I deal here with my conclusions in respect the claim.

124. I deal firstly with the question of whether the Claimant was in fact expressly dismissed by the Respondent by bringing forward her effective date of termination of employment. Ultimately, I am satisfied that they did not. Unlike the situation in **Beadnell**, there was no intention to bring forward the Claimant's date of termination of employment. The position was simply an arithmetical error and that is supported by the fact that Ms. Churchill offered to extend the Claimant's termination date by using her outstanding annual leave if that benefitted her. The error on Ms. Churchill's part in calculating the termination date therefore did not have the intention or effect of dismissing the Claimant.

125. I turn then to the question of whether the Claimant was constructively dismissed by the Respondent.

126. As already set out above, the Claimant relies on a breach of the implied term of mutual trust and confidence and she sets out six elements to that alleged breach. I deal with each of them below. I should observe that the Claimant's closing submissions go significantly further than that and include a number of other different aspects that she seeks to rely upon in establishing a breach of the implied term of mutual trust and confidence. I have, however, limited my consideration of the claim to the points advanced within the Claimant's further and better particulars.

127. The first of those matters was that the Claimant contends that there was a misrepresentation at the time of the TUPE transfer in October 2017 and a lack of honesty over planned impending changes. I do not accept that that was the case.

128. The Respondent did not misrepresent any position as to continuity of service on a return to the NHS and that was in all events not a matter that was in their gift. It was information that was, for the reasons that I have already given, available to the Claimant and the point could have been raised with the Respondent at the consultation events that transferring staff were invited to. It was not possible to cover every scenario that staff might want to question and the consultation sessions and the FAQ documents did their best to cover those matters.

129. The Claimant also complains in this regard of the introduction of KPI's and the introduction of the G9/G10 contracts which were not dealt with at the time of the transfer consultations. However, as accepted by the Claimant in her evidence the KPI's were something that she was used to with LCHS. They were no different in reality to those which she had been required to work to and I do not accept, for the

reasons that I have given, that they amounted to the introduction of performance related pay. KPI's did not form part of the Claimant's contractual terms and as such there was no requirement for those matters to be dealt with as part of the TUPE consultations nor was there any misrepresentation about them.

130. As to the introduction of the G9/G10 contracts, that was as a direct result of seeking to address the problems which were caused by the NHS pay increase to which transferring HV's had not been entitled. That was not something that that Respondent could have envisaged at the time of the transfer because it did not occur for a further six months and therefore the Respondent could not consult about that pay rise if they were not aware of it nor what might be done to try to achieve a fair pay and career progression scheme. That was, however, the subject of extensive consultation with Unite and Unison and all HV's, the Claimant included, were kept informed. There was therefore no misrepresentation in that regard either.

131. The second element upon which the Claimant relies is the contention that her caseload had been covertly and arbitrability doubled and reached an excessive level. For the reasons that I have already given I do not accept that. There was no covert increase in caseload and I am satisfied that that was managed fairly and as equitably as possible by Ms. Churchill and that she monitored the position and offered support. Whilst the Claimant had a high caseload on paper, not all of those were of course active and things were put in place to pull resource from other areas to help the Claimant and other HV's in the team.

132. The third issue relied upon by the Claimant is her contention that had been no risk or impact assessment of the effects of the increased caseload. As I have already set out above, I am satisfied that Ms. Churchill used appropriate tools for workload allocation, kept matters under review on a regular basis and during supervision sessions and offered support to the Claimant. As such, this element of the complaint is also not made out on the facts.

133. The next matter is the contention that there had been a breach of Regulation 18 of the Health & Social Care Act. The Claimant's witness statement did not deal with that point nor was there any cross examination of the Respondent's witnesses about the matter. Therefore, I can make no findings about any such alleged breach.

134. There then comes the contention that there was a lack of transparency about the G10 contract that the Claimant had been offered and that she had not been given sight of the contract or job description in a timely way. Again, for the reasons that I have given in my findings of fact above, I do not accept that to be the case. The Claimant was given a document setting out the comparisons between the AFC contracts and the G10 contracts and whilst she did not accept it because she considered the terms to be inferior, it is plain that in the long term the idea was to ensure that HV's were able to progress in terms of career prospects and pay and that they would in time eclipse the earnings of the NHS counterparts. There was no lack of transparency and the Claimant was not pressured to more from her AFC contract if she did not wish to do so.

135. The next issue is that the Claimant contends that during the period of industrial action work was stockpiled for returning practitioners. Again, factually I do not accept that to be the case. Whilst it was inevitable that some tasks would be awaiting HV's who had not been at work because they were participating in industrial action, those were the more routine tasks which were not time sensitive. Steps were taken by the Respondent to minimise the disruption of the strike action and all work was triaged and

prioritised according to need so that there were no urgent tasks outstanding. Particularly, all safeguarding referrals were actioned and completed and were not left to wait for the return of HV's. There was certainly no stockpiling of tasks as the Claimant contends and the Respondent did the best that it could in an already strained service which was further impacted by the industrial action. The Business Continuity Plan was put into place and it is difficult to see what else the Respondent could have been expected to have done.

136. The next matter relied upon is that it is said that the Claimant was identified as being at risk of "burn out" following a return to work from a period of stress related absence but that no risk assessment or review was put in place and there was no timely referral to occupational health made. I do not accept, for the reasons that I have already given, that the Claimant was not supported on her return to work. She made plain that she was fit to return and Ms. Churchill continued to monitor the caseload of all HV's, the Claimant included. She asked the Claimant to let her know if there were any issues with her stress levels and I am satisfied that she was available to provide support. Workload was also not, as I have already set out above, the sole or even main cause of the Claimant's absence and it is plain that there were many factors at play. I do not consider that at that time an Occupational Health ("OH") referral was necessary as the Claimant had indicated that she was fit to return to work; no adjustments were suggested to be needed nor did she indicate that she felt that OH involvement was necessary.

137. The next matter is that it is said that in November/December 2019 the Claimant was told to manipulate key performance indicators and was given an indication that there would be a further increase in workload. I have not heard any cross examination on this on either side and so am not able to make any finding about it but even if this event occurred as the Claimant contends, it would not be sufficient to amount to a breach of the implied term of mutual trust and confidence and I would not have accepted – for the reasons that I give below in respect of the last straw argument – that the Claimant had resigned in respect of it.

138. The penultimate matter relied upon by the Claimant is the way in which her grievance was dealt with. I am satisfied that this is unjust criticism of the Respondent. The grievance was dealt with in accordance with the Respondent's grievance procedure. The initial appointment of Linda Dennett was flagged with the Claimant at the outset and it was made plain that an alternative senior manager would be appointed if she wanted that to happen. When the Claimant said that she did, that was arranged within a short period of time. There was no issue with Michelle Andrews being appointed to deal with the grievance as she was suitably independent and a senior manager. The fact that the Claimant wanted the involvement of a health professional was not to the point and she has not taken me to anything that would have demanded that that needed to happen or that it was unfair for Ms. Andrews to deal with the grievance.

139. Similarly, there was nothing wrong with the letter which Mr. Fletcher sent to the Claimant inviting her to a grievance meeting and I do not accept that it was legal in tone. It was clearly simply a standard letter. The timescales that Mr. Fletcher set for provision of documentation in support should not have been problematic given the fact that the Claimant had been aware of the date of the meeting for over a month and had trade union support. Even if they had, the meeting was rearranged in accordance with the precise requirements of the Claimant over timings and the provision of information and the process only stalled because the Claimant would not thereafter engage and attend a meeting.

140. Therefore, for all of those reasons I do not find that, either singularly or cumulatively, the Respondent breached the implied term of mutual trust and confidence and I am satisfied that it ultimately did it's best to support the Claimant and other transferring HV's in what was a difficult set out circumstances.

141. Ultimately, I am satisfied that the Claimant's perception of how she was treated by the Respondent all stemmed from her dissatisfaction over the transfer out of the NHS and the 6% pay increment which NHS staff received but which the Claimant was not entitled to. Everything that followed was met with dissatisfaction by the Claimant, whether that was justified or not, and whilst I am certain that she has a genuine perception of how she feels that she has been treated, that does not align with the reality of the situation for the reasons that I have already set out above.

142. Finally, even had I found there to have been a breach of the implied term of mutual trust and confidence the Claimant relies on the last straw doctrine with the last straw being the contact from Health Management. However, it is abundantly clear that that was a simple mistake for which the Claimant was sent an apology and explanation. Whilst the last straw need not of itself be a breach; it still needs to add something and this position in reality was entirely trivial in nature and did not add anything to the overall picture when viewed objectively.

143. Moreover, and perhaps more importantly, it was not that contact which prompted the Claimant to resign when she did. She had already secured alternative employment within the NHS and the only thing that delayed her resignation was the discussions and negotiations about pay and grading that she was having with that employer. I am satisfied that if those had come to fruition earlier then the Claimant would have resigned at that stage. It was not, therefore, the "last straw" relied on by the Claimant which prompted her resignation but the satisfactory conclusion of the pay and grading negotiations just a few days prior to her resignation. It is plain that the Claimant had been intending to leave the Respondent since her discussions at her return to work meeting with Cathy Churchill. The Claimant did not, therefore, resign in response to the "last straw" on which she relies.

144. For all of those reasons, the claim of constructive dismissal is not well founded and it is dismissed.

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Employment Judge Heap

Date: 7th September 2021

JUDGMENT SENT TO THE PARTIES ON

9 September 2021

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FOR THE TRIBUNAL OFFICE

Note:

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