EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4109425/2021

Hearing held at Aberdeen on 13, 14 and 15 December 2021

Employment Judge McFatridge

Ms Angela Kemp	**Claimant** **Represented by:** **Mr Chalmers,** **Partner**
Aberdeenshire Council	**Respondent** **Represented by:** **Mr Taylor,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claimant was not unfairly constructively dismissed by the respondent. The claim is dismissed.

REASONS

1. The claimant submitted a claim to the Tribunal in which she claimed that she had been unfairly constructively dismissed. The respondent submitted a response in which they denied the claim. They did not accept that the claimant had been dismissed but stated that she had resigned. The case was subject to a degree of case management. The claimant submitted further and better particulars of her claim and the respondent produced further particulars of their response. Following a preliminary

hearing shortly before the final hearing it was agreed that the parties would lodge three videos of various meetings which had taken place, one of these being the video of the facilitated meeting which took place over Microsoft Teams on 11 February 2021 and that this would be viewed by the Employment Judge in advance of the hearing. At the hearing the claimant gave evidence on her own behalf. Evidence was then led on behalf of the respondent from Colin Hunter a Workshop Supervisor with the respondent and Paul Gray a Fleet Manager with the respondent. A joint bundle of productions was lodged which is referred to in the judgment below by document number and page. On the basis of the evidence, the documents and the video viewed by me I have made the following factual findings in relation to those matters which were relevant to the claim before the Tribunal.

Findings in fact

2. The respondent is Aberdeenshire Council. They are a local authority. The claimant commenced employment with the respondent as a Fleet Services Receptionist at their Mintlaw Fleet Repair Depot in 2016. At the fleet repair depot there is a workshop which deals with vehicle repairs and a stores area and an office. The claimant worked in the office. The claimant's line manager Colin Hunter also worked in the office as did a Chargehand. There were around 13 mechanics who worked in the workshop. There was also a Storesperson Fiona Scott who had an office in the stores area. The claimant and Fiona Scott were the only women who worked in the workshop although from time to time other women such as bus drivers would call in.

3. When the claimant started work she found that Mr Hunter, her manager, usually took his two Shar Pei dogs into the office. They had beds under the table and would sit in the office all day. Sometimes they would bark at visitors. Mr Hunter had obtained the consent of the respondent's HR department to take his dogs into the office. Before granting the consent the HR department had asked various questions regarding the welfare of the dogs. The dogs were Shar Peis. The claimant found the presence of the dogs to be uncomfortable and distracting particularly when they barked at visitors she was trying to talk to in order to carry out her receptionist

duties. The claimant did not however raise the matter with Mr Hunter or any of the other managers.

4. After a time the claimant also became aware that her manager Mr Hunter and the storesperson Ms Scott were in a relationship. Although neither of them advertised this fact Mr Hunter's managers were aware of the relationship and had simply advised Mr Hunter and Ms Scott that they required to keep matters on a professional basis at all times and not let their relationship interfere with the running of the business. Mr Hunter was not Ms Scott's manager. As storesperson Ms Scott reported to a Stores Manager who was based at the respondent's depot in Inverurie. Mr Hunter and Ms Scott's manager both reported to the respondent's Fleet Manager. When the claimant started this was a Mr Paisley however he left in late 2017 and was replaced by Mr Paul Gray.

5. In or about June 2017 the claimant had a meeting with Mr Paisley. The occasion of this meeting was that the claimant had finished her probation. During this meeting the claimant raised various issues about her working relationship with Mr Hunter and Ms Scott. Mr Paisley also raised with her that he was concerned about the dogs in the office and asked her the extent to which the dogs were there. Following the meeting the claimant sent Mr Paisley an email summing up her various concerns principally with Ms Scott. This email was lodged (J24). The principal concern was that although Ms Scott had her own office at the stores she very often came in to the office where the claimant worked with Mr Hunter and the claimant found her presence intrusive. She also felt that Ms Scott had too much influence over Mr Hunter.

6. Shortly after the claimant sent the email she was on holiday for a few weeks. When she returned from holiday the dogs were no longer in the office and she understood Mr Paisley had spoken to Mr Hunter about the dogs and the various other issues which she had raised. For a short time after the claimant's return from holiday Gordon Ross who was a manager at another office but lived close to the Mintlaw depot started working from the Mintlaw depot on Fridays. The claimant looked forward to the days he came in because she felt that Mr Hunter and Ms Scott were on their best

behaviour on those days. Mr Ross stopped coming in to the office on a Friday shortly after Mr Gray took over as Fleet Manager.

7. Following the claimant's return from holiday Mr Hunter no longer kept his dogs in the office. The claimant continued to be concerned about Ms Scott. From the outset the claimant had not got on with Ms Scott. Both tried to maintain a civilised working relationship but they simply did not get on.

8. As noted above Mr Paisley retired at some point during late 2017 and Mr Gray took over as Fleet Manager. Mr Paisley did not mention any particular issues regarding the claimant's working relationships during the handover to Mr Gray. The claimant did not raise these issues with Mr Gray when she met with him around the time of the handover.

9. During 2018 there continued to be friction between the claimant and Ms Scott. Part of the claimant's duties involved using a fleet management system known as Tram Master. Prior to the claimant starting in post Ms Scott had been the receptionist carrying out the same duties as the claimant for a period of around 17 years. She had left the job approximately six months before the claimant started in order to take up the job in Stores. Ms Scott had been heavily involved when the new fleet management system had been installed and was extremely familiar with it. Often when the claimant came across an issue and was unsure as to how to do something she would ask Mr Hunter and Mr Hunter's response was to tell her to ask Ms Scott since Ms Scott had a much more knowledge of the system than he did. The claimant found this difficult. She did not find Ms Scott particularly approachable on those occasions when she had to ask her for advice. On occasions Ms Scott would snap at the claimant and advise her that the claimant should have remembered how to do this from the last time she asked.

10. On 26 April 2018 an incident took place in the office between the claimant and Ms Scott which caused the claimant to write a formal complaint to Mr Gray. The claimant's email was lodged (document 25). The claimant related a history of arguing with Ms Scott which culminated with Ms Scott

pushing a door closed whilst the claimant was opening it and thus jerking her hand, wrist and arm.

11. Following this incident Mr Gray started to investigate matters. The claimant was concerned that his investigation was taking too long and contacted the respondent's HR department on 16 May. She was advised that Mr Gray had interviewed the other person involved (presumably Ms Scott) on 14 May and would be dealing with the matter on his return from a course. The documentation showing this interaction with HR was lodged (J27). Mr Gray advised the claimant through HR that he was investigating the matter in line with the respondent's disciplinary policy and that he was Investigating Officer. He spoke to both the claimant and Ms Scott and asked if they would be prepared to attend mediation with a view to repairing their working relationship as an alternative to going down a formal disciplinary route. Both the claimant and Ms Scott agreed with this. Thereafter the claimant attended a number of mediation sessions with Ms Scott. The claimant found these helpful and her relationship with Ms Scott was improved. During the course of the mediation Ms Scott told the claimant that she had been under pressure at the time because her uncle was sick and had since died. The claimant had also had a sick uncle who had in fact died on the same day as Ms Scott's. The claimant had a better understanding of Ms Scott's position and their relationship improved after this.

12. Mr Gray's understanding was that the mediation had been successful and that matters had improved after this. The claimant did not raise any further issues with the respondent's management thereafter until 23 March 2020.

13. On that date an altercation took place in the workshop area between the claimant's manager Mr Hunter and one of the mechanics. Monday 23 March 2020 was the date that the Covid lockdown in the UK started. The argument started when Mr Hunter asked the mechanic to carry out a particular task. This would involve the mechanic interrupting the task he was already doing. The mechanic objected and confronted Mr Hunter. There was a physical confrontation between them which was variously described as a chest bump or a belly charge. Neither sought to use their hands to strike the other. Both of them spoke to each other in an

intemperate and loud way. Mr Hunter stepped back from the initial altercation and then went into the office. The mechanic followed him and started shouting at Mr Hunter through the hatch in the office. The claimant and the chargehand were also present in the office while this was happening. The claimant then left the office and phoned Mr Gray. Whilst she was doing this the mechanic was still being noisily aggressive in the workshop. The claimant described what had happened to Mr Gray. Mr Gray told her to hang up so that he could speak to Mr Hunter.

14. Just as she was doing that the mechanic left the workshop area and got into his car and drove away. In fact the mechanic drove to Inverurie where Mr Gray was based and then immediately spoke to Mr Gray about the incident.

15. Shortly after this Mr Hunter told the claimant that he had spoken to Mr Gray on the telephone. He said Mr Gray would be coming through to the Mintlaw depot the following morning. Mr Hunter told the claimant that if the mechanic involved was in the depot before Mr Gray arrived then the claimant should immediately phone Mr Gray and tell him this. The following morning the mechanic turned up for work at his usual time. The claimant phoned Mr Gray who said that he was just a few minutes away from the depot. On arriving, Mr Gray spoke to the mechanic. He also spoke to Mr Hunter. The content of these conversations were not reported to the claimant. Mr Gray decided that he did not require to speak to any of the other people who were potentially witnesses. Both Mr Hunter and the mechanic had been in substantial agreement as to what had occurred. Both accepted that there had been a completely inappropriate argument between them. Both said there had been no-one else nearby when the argument had started in the workshop. Mr Gray understood from this that no-one had actually witnessed the start of things. They both accepted they had behaved in an inappropriately aggressive and confrontational way. Mr Gray decided that given the attitude of both parties there was no necessity for him to launch a formal investigation under the disciplinary policy but that he should deal with the matter informally. The respondent's disciplinary policy was lodged (J12). This provides on page 3 that

> "Managers should first seek to resolve minor disciplinary issues informally and expediently wherever possible. Any support training and required expectations should be confirmed to the employee in writing."

Mr Gray decided to deal with the matter informally in accordance with this part of the policy.

16. As one would expect the policy also contains standard terms regarding what constitutes misconduct and gross misconduct. This is set out on page 8. This states

> "The following list provides examples of types of behaviour which the council normally considers to be misconduct or gross misconduct. This list is prepared for the purposes of illustration and is not intended to be exhaustive or exclusive."

Amongst the matters described as gross misconduct are physical violence and harassment/bullying where this is with serious and/or prolonged nature. Mr Gray's view was that it was appropriate to deal with the matter informally as he had and that it was not appropriate to institute formal proceedings with a view to prosecuting both for gross misconduct. As the manager of both parties involved he was absolutely entitled to do this..

17. The claimant was aggrieved that she had not been approached for a statement but did not mention this to Mr Gray or to anyone else at the time.

18. As is well known the first Covid lockdown started on 23 March 2020 and was not relaxed until early June. People were urged to stay at home. People were not allowed to visit relatives even in their own homes. Parties were banned. Where people were in a relationship with some-one they did not live with then they were not permitted to visit that person. The parties lodged an excerpt from a newspaper article at the time which confirmed that the effect of this was that in such a case the couple must either rapidly move in together or stay apart until the end of the lockdown. The claimant was in a relationship which had started in about January 2020. She did not move in with her partner at the start of the lockdown.

19. The claimant uses Facebook. She posts occasionally in relation to family matters. On or about 11 May Mr Hunter was approached by several members of staff who expressed concerns that the claimant appeared to be breaching the coronavirus rules which applied at that time. They appeared to have obtained at least some of their information from her Facebook posts. Mr Hunter himself did not have access to the claimant's Facebook as he understood the claimant had previously blocked him from this. Mr Hunter referred the matter to Mr Gray his manager and a meeting took place between Mr Gray, a representative of HR and Mr Hunter. Mr Gray and the HR representative accessed the claimant's Facebook posts.

20. Effectively the rules meant that if individuals were in a relationship they could move in together provided they did so at the start of lockdown and they then required to stay there. Throughout the UK many individuals found themselves in difficult situations where they were unable to see close family members for considerable periods of time. The claimant's Facebook posts and the information provided by other members of staff to Mr Hunter suggested that the claimant had started lockdown living with her family in Mintlaw but had at some point moved house to move in with her partner. There was also a concern that the claimant appeared to have had a birthday party for her daughter. There was a concern that the claimant appeared to have visited her son who was spending some time with her ex-husband, that she had visited her aged parents and that she had also visited another daughter who lived in Aberdeen. The HR representative advised Mr Gray that the next step would be for him to formally investigate the matter and that he should speak to the claimant to obtain some background information regarding these allegations.

21. On 14 May Mr Gray telephoned the claimant and advised her of the concerns. He advised her of the nature of the concerns and asked a number of questions. He advised her that there was a concern that the claimant had breached the coronavirus regulations and as a result placed her colleagues and their families at risk.

22. Following the telephone call Mr Gray spoke to HR and advised them of the claimant's responses. Mr Gray was advised by HR that he should

launch a formal disciplinary investigation and that the claimant should be suspended in the meantime. Mr Gray required to obtain the agreement of his head of service to the suspension which he duly obtained. Mr Gray telephoned the claimant back at around 12:30 to advise that formal disciplinary investigation was being instigated and the claimant was suspended. The claimant was advised that she would be contacted in due course and invited to an investigatory meeting.

23. The claimant was extremely upset at being suspended. Her view was that she had acted in accordance with the coronavirus regulations. Posts which she had made on Facebook relating to her daughter's birthday party had in fact been photographs from a birthday party from the previous year. Her daughter had not had a birthday party in 2020. For various reasons her son had moved in with his father for the duration of lockdown and her understanding was that she was allowed to visit him given that there was joint custody. She believed this was in accordance with the rules. With regard to the visit to her parents she had simply dropped off some items for them which she had left outside their house. Her position was that she had not actually been inside their house. Similarly with her daughter. With regard to moving in with her partner her understanding was that the regulations prohibited one from visiting a partner if one did not live with them but that if one decided to move in with them then one could do this even part way through the lockdown. She had in fact moved in with him around 14 days before 14 May.

24. The claimant's suspension was confirmed in a letter dated 19 May 2020 which was lodged. This referred to the fact that she would be invited to a telephone investigatory hearing. She was told the allegation was

> "From Monday 23 March 2020 you have knowingly and openly failed to comply with the necessary social distancing measures when conducting your personal life which have been implemented by the Scottish Government and adopted fully by Aberdeenshire Council to slow the spread of coronavirus. Whilst attending the workplace your actions have consequently placed the health and safety of your colleagues and their families at risk of coronavirus and

> undermined the relationship of trust that exists between yourself and the Council as your employer."

25. On 20 May 2020 the claimant was invited to a telephone investigation hearing which was to take place on 28 May. This letter was lodged (J30). Within the letter the claimant was advised

> "Please note that the Council's Employee Assistance Programme (EAP) may be of support to you during this period. This confidential counselling service can be accessed by telephone and is available to you 24 hours a day 365 days a year. Information can also be found on their website. Please find enclosed contact details of Aberdeenshire Council's providers."

In the meantime the claimant had consulted her GP. An extract of the claimant's GP records was lodged for the period from 14 May 2020 to 6 October 2020. This shows that the claimant went to her GP on 14 May. The entry by her GP for 14 May 2020 states

> "Anxiousness for a few weeks – increasingly stressed with covid lockdown. Was living with six other members of family but trying to keep herself apart from them as she was the only one going out to work. Two weeks ago moved in with partner to relieve stress and distance herself. Rang surgery this morning for advice but since then has been suspended from work. Aberdeenshire Council – accusing her of endangering lives at work by moving house. Seems completely inappropriate to me and obviously highly distressing. Patient hoping to get something to help her sleep and take edge off stress. Used diazepam occasionally in the past. Escitalopram made her feel unwell. She thinks review as needed."

26. The claimant wrote to the respondent on 25 May 2020 advising she would rather the meeting took place in a safe room with all parties attending rather than by telephone. She also said to have obtained a medical report from her GP which was lodged (J32). This set out the background to the

matter. Her GP stated that she had suffered from relapsing anxiety and depression associated with panic attacks prior to the Covid-19 lockdown. It was noted she had suffered a relapse of this. The GP stated that there were two issues the first being concerns regarding health and safety in the workplace and noted that the claimant had approached her union regarding this. The second was in relation to her having decided to move in with her partner and being disciplined for this. The respondent's Mr Skilling who was to hold the meeting asked Mr Gray to arrange the claimant to be referred to Occupational Health to decide whether the claimant was fit to attend meetings in relation to a disciplinary matter being investigated. The occupational health referral was lodged (J33). On 8 June Mr Skilling wrote to the claimant advising that Occupational Health had now issued a report following the claimant's meeting with them and confirmed that they were of the opinion she was fit to attend a meeting. Mr Skilling provided the claimant with various dates.

27. The claimant duly attended the disciplinary investigation meeting which took place remotely on 12 June 2020. The claimant was accompanied by Janice Lynch a GMB trade union representative. The meeting was conducted by Mr Skilling a Business Collaboration Manager with the respondent. He came from a different part of the respondent's "infrastructure" group" from where the claimant worked. A note of this meeting was provided (J38). Following this a draft statement was provided which the claimant was asked to sign. The draft statement was lodged (J37). A copy of this was sent to the claimant on 24 June for her approval. The claimant indicated that she was not prepared to sign the statement until the respondent provided "full minutes of my investigation meeting under the Freedom of Information Act". Mr Skilling responded on 25 June 2020 to advise that he did not understand the claimant's concerns. She was at the meeting and either her statement was correct or it wasn't. He stated that the statement had been produced by an independent note taker and that any request under the Freedom of Information Act would be dealt with separately. He then wrote again to the claimant on 30 June asking if she had any specific concerns regarding this. The claimant responded to the effect that she was not prepared to sign it. Mr Skilling responded to the effect that the draft statement together

with the e-mail trail detailing the claimant's concerns would be lodged in the file. The e-mail trail is lodged (J44).

28. On 15 July the respondent wrote to the claimant stating they would not be taking any further action in respect of the disciplinary allegation against her. It is as well to set out the terms of this letter in full. It states

> "Disciplinary investigation – no further action
> Following the conclusion of the recent disciplinary investigation and the submission of the report to me by the Investigating Officer I write to advise that at this stage I do not intend to take further formal disciplinary action on this matter. The investigation as to our raised concerns in respect of your conduct and your role as Fleet Service Receptionist and it is my decision that you would benefit from advice, guidance and counselling to provide you with relevant support going forward as you return to the workplace. Therefore I have requested that you attend a meeting with myself and one of my colleagues from HR on Thursday 23 July 2020 at 2pm to discuss these concerns in greater detail. This discussion will be held virtually using the Team's system …."

29. The claimant duly attended a meeting on 23 July 2020. No evidence was led at the hearing regarding this meeting.

30. In the meantime the claimant had submitted further sick notes. She was absence managed during this initial period of sickness by Mr Hunter. Her sick notes expired on 6 August. She was in touch with Mr Hunter and it was agreed that she would return to work on 12 August. A phased return to work was suggested and it was agreed that she would have a formal meeting with Mr Hunter on 11 August prior to returning to work on the 12th.

31. The claimant duly attended the return to work meeting with Mr Hunter. She was accompanied by a trade union official.

32. Mr Hunter had produced a list of bullet points for the meeting which were lodged (J51). At the hearing Mr Hunter went through the bullet points with the claimant. After he had done so he asked her how she was feeling.

The claimant was unhappy at one of the arrangements which had been made in respect of access to the workshop. Mr Hunter had gone over with her certain of the Covid requirements which had been put in place. One of these was in relation to the ladies' toilet. As with every workplace around the country the respondent were having to cope with the effects of coronavirus and set up specific cleaning schedules for their toilets. In the workshop at Mintlaw there were only two female staff. There was a ladies' toilet which consisted of one cubicle. There was also a gents' toilet. There was a handyman who dealt with cleaning of the gents' toilet. So far as the ladies' toilet was concerned Mr Hunter indicated that Ms Scott had agreed to take the lead role in ensuring that this was sanitised. The only people using the toilet would be the claimant and other visiting women such as bus drivers. The claimant felt aggrieved at having to let Ms Scott know when she had used the toilet so that Ms Scott could clean this.

33. At the meeting the claimant agreed a phased return to work. Mr Hunter wrote to the claimant on 11 August confirming the outcome of the meeting which was her return to work (J48). He also enclosed a schedule showing a phased return which indicated she was due to return to work from 8 until 12 on Wednesday 12 August (J49).

34. On 12 August the claimant set out to go to work however by the time she had driven to within a few miles of the depot she was suffering a panic attack. She stopped in a layby to compose herself and ended up driving home. She did not return to work. She contacted the respondent to advise them. She subsequently provided fit notes declaring she was unfit for work from 6-12 August and also from 12 August onwards. The respondent indicated that they would arrange for Mr Gray to deal with her return to work meetings after that. This was confirmed in an email sent to the claimant by HR on 25 August (J55).

35. In the meantime before this could happen Mr Hunter was advised by one of the claimant's colleagues that they had noticed on Facebook that the claimant appeared to have another job. Mr Hunter wrote to the claimant on 25 August 2020 enquiring if this were correct. Clearly, since the claimant was still on sick leave and receiving sick pay from the respondent it would have been a breach of contract for her to be working at another

job. As it happens the claimant had simply put an entry on Facebook to the effect that she was now working at another job. This had been unintended by the claimant and she described it as simply pressing the wrong button. The claimant explained this to Mr Hunter and the matter did not go further. Mr Hunter's letter to the claimant was lodged (J57).

36. On 11 September 2020 the claimant lodged a grievance under the respondent's Grievance Policy. A copy of the grievance policy and guidance was lodged (J8 and J9). The claimant's written statement of grievance was lodged (J61). The claimant complained of

(1) that she had witnessed the altercation (erroneously referred to in her statement as an "incarnation" on 23 March) and this had not been dealt with appropriately by the respondent,

(2) the claimant had been suspended on 14 May for breaching the Covid regulations,

(3) that when she was verbally advised of her suspension Mr Gray had stated that the reason was for putting her colleagues and their families at risk of death,

(4) that she had not been given any point of contact as a support at the time of her suspension.

37. The respondent acknowledged her grievance and in a letter dated 29 September 2020 the claimant was invited to attend a grievance meeting which was to take place on 8 October. The Grievance Manager was Martin Hall a Strategy Manager from the respondent's Transportation Department which is another part of the respondent's infrastructure section. Mr Gray was also advised of the meeting (J66).

38. The meeting eventually took place on 8 October. Mr Hall was accompanied by Ms Lockhart of HR and the claimant was accompanied by a trade union official.

39. The claimant produced her own note of this meeting which was lodged (J62). Following the meeting Mr Hall wrote to the claimant setting out his findings. This was lodged (J70). Mr Hall noted that the claimant had

requested an in-depth investigation into the circumstances of her suspension. He indicated that he had carried out an investigation and considered the evidence and indicated that at the hearing Paul Gray and Jackie Lockhart had explained clearly to the claimant how the policy and procedure was applied and how the decision to suspend was taken in line with Council policy. This aspect of the grievance was not upheld. Mr Hall then went on to consider the claimant's second point which is that she felt she had been treated differently compared to the incident which had taken place in March. Mr Hall did not uphold this grievance. He confirmed that both cases had been dealt with appropriately within the respondent's disciplinary policy. He confirmed that full details of the outcome of the earlier process could not be shared with the claimant as these matters were confidential. With regard to the third part Mr Hall partially upheld the claimant's grievance in relation to the respondent's failure to provide a contact person. He noted that a contact person had been provided but there was a delay in this. He noted that at the hearing Paul Gray had apologised for the time it took to appoint a Welfare Officer. Mr Hall also responded to a further point made by the claimant to the effect that she had stated that a return to work meeting as advised by Euan Wallace had not happened and that she requested clarity over her concerns regarding work performance. This grievance was not upheld as it was noted the claimant had in fact met with Mr Wallace on 23 July.

40. In actual fact the claimant had had further absence management meetings with Paul Gray on 24 September and 5 October. A note of the 24 September meeting was lodged (J64). The claimant was accompanied at this by Mr Massey of GMB. Another absence meeting took place on 5 October and a note of this was lodged (J67). Once again the claimant was accompanied.

41. At the end of his letter (J70) Mr Hall referred to a proposed way forward and suggested that a facilitated meeting take place with Paul Gray and Colin Hunter where HR would be in attendance. This was to provide support and clarity over the process for returning to work. It was noted

> "The meeting will include discussions on the matters found in the Audit Report however it should be noted that this is to

> resolve the matters highlighted in the report across the service and is not being carried out under the disciplinary process. If it is believed to be useful by all parties I am happy to participate in the facilitated meeting."

42. Reference to the audit report was a reference to the fact that whilst the claimant was off between 14 May and 12 August an internal audit had been carried out at the Mintlaw depot. Such internal audits are part of the respondent's standard processes so as to ensure that they comply with all statutory requirements. A number of points had been raised which related to the way that files had been kept. Some of the matters raised would have been the responsibility of the claimant. Mr Hunter had mentioned these to the claimant at her return to meeting on 11 August. There was no question of the claimant being subject to any disciplinary process or indeed any other process. It was simply a standard procedure within the respondent that if the internal audit raises issues then these should be discussed with all of the employees involved so as to ensure that they can be avoided for the future.

43. The claimant was dissatisfied by the way Mr Hall dealt with the grievance and submitted a grievance appeal. The grievance appeal document was lodged (J71). She set out her detailed position in a substantial paper apart to this (J71(2)-71(4)). The claimant made the point that she had asked the respondent which policies and procedures were followed in respect of her suspension and in respect of what she considered to be the comparator incident on 23 March. She indicated that she did not feel she had received the response to this. Her belief was that since the council had a zero tolerance policy in respect of violence it was inappropriate that they had dealt with the incident on 23 March in the way that they had. The claimant raised the issue that she felt Aberdeenshire Council had a duty of care towards her and noted that she had not yet received an occupational health referral. In fact the claimant had been referred to occupational health prior to the disciplinary meeting taking place and the issue of a further occupational health referral had also been discussed in a return to work meeting on 5 October. The claimant raised the issue that she considered the complaint against her to have been malicious. She

complained that she had not been formally offered counselling although she had been in touch with the respondent's EAP service.

44. The claimant was invited to attend a grievance appeal meeting which was to take took place before Euan Wallace the Acting Head of Service on 11 November. Prior to this the claimant wrote objecting to Mr Wallace carrying out the grievance appeal. In a letter dated 26 November the claimant was advised that the grievance appeal would then be carried out by Mr Mackay who was the Head of Roads, Landscape and Waste Services. He wrote to the claimant confirming this on 26 November inviting her to a hearing which was to take place on Thursday 10 December.

45. In the meantime the claimant continued to attend further absence management meetings. These were held along with Mr Gray and the claimant was accompanied by a trade union official at each one. A further absence meeting took place on 26 October 2020. A note of this meeting was produced (J74). At this meeting Mr Gray was concerned that whilst he had up until then been hoping that progress was being made in getting the claimant back to work he noted that the period for which she was being signed off as absent was in fact getting longer with each fit note.

46. At this meeting the claimant raised the issue that she was frightened to go back to work and mentioned a lack of trust and confidence. She advised that her specific problem was Mintlaw depot and that "there is a long history of issues". Mr Gray's understanding was that there had been historic issues in 2018 which had been resolved by a referral to mediation. The claimant had raised the incident on 23 March 2020 in the context of her grievance which was in the course of being addressed at stage 2. The claimant did not go into any further details about issues. Mr Gray also suggested either redeployment or secondment as possible ways of getting the claimant to return to work. If the claimant agreed to secondment then she would, for a fixed period of time, be seconded to another part of the council to work. If she agreed to redeployment then this would take place in terms of the respondent's redeployment policy. This essentially involved the claimant going on a redeployment register however it was pointed out to the claimant that if no suitable alternative employment was

found after a fixed period on the register then the claimant's employment with the council would end. The claimant did not accept either of these alternatives. The claimant raised the issue of her occupational health referral and it was explained that this had been discussed previously but the decision had been made to wait until this could be discussed with the claimant. It was agreed an occupational health referral would be done prior to the claimant confirming she was able to return to work and that in advance of this the claimant would be sent a stress questionnaire.

47. The occupational health referral was prepared and a copy of this lodged (J78). The claimant duly attended the occupational health consultation on 5 November and on that same date a report was produced. This report was lodged (J81). Essentially the Occupational Report confirmed the claimant was currently unfit for duties and that until her perceived work issues were resolved then this would impact on her ability to return to work. It was recommended that a further OH report from an OH physician may be of assistance.

48. A further absence management meeting took place on 20 November 2020. A report of this was lodged (J84). Once again the claimant was accompanied by her trade union official, in this case Mr Massey. There was a discussion of the claimant's use of the EAP system and it was noted that Cognitive Behavioural Therapy might assist and that it was suggested this could be arranged either through EAP or the claimant's GP. The claimant was advised that the EAP service she used could not at that time do a referral for CBT and therefore she should arrange CBT through her GP. The claimant also discussed going to a stress reduction workshop which was being organised by the respondent to take place on 25 November. The claimant said she had been doing her own research online into services which might be able to help her.

49. There was also a discussion about getting a further occupational health report for the claimant to be assessed by a physician rather than an occupational health nurse as previously. Mr Gray indicated he would organise this.

50. Mr Gray did this and a further report was produced. The referral was lodged (J87). The report itself was lodged (J91). It is dated 4 December. It confirmed that the claimant's return to work was likely to depend on the resolution of her work related concerns.

51. In the meantime Mr Mackay conducted the grievance appeal hearing on 10 December. Once again the claimant was accompanied by a trade union representative. The claimant's hearing was held over Skype. The meeting was recorded. Mr Gray was in attendance at the meeting. During the course of the meeting the claimant raised the issue of the effects of the way she perceived she had been treated on her health. Mr Gray did not respond to this. Mr Mackay wrote to the claimant on 16 December setting out the outcomes. He did not uphold the claimant's appeal. He maintained the original outcome. His letter went into some detail regarding his reasons for this and was lodged (J106).

52. In the meantime a further absence meeting took place on 14 December. The note of this was lodged (J105). The claimant confirmed she had not attended the stress reduction workshop. The claimant was advised that the respondent would go through the stress questionnaire with her closer to her return to work.

53. The position at this stage was that the claimant had by this time been off work since her suspension in May 2020. She had lodged a grievance but the grievance procedure had been exhausted and her grievances not upheld. She was being signed off as unfit for work due to her mental health. The occupational health reports which had been obtained indicated that the claimant required her work issues addressed before she would be in a position to return to work. The original grievance outcome had suggested that in order to assist the claimant's return to work a facilitated meeting should be held but this would normally be held once the claimant's GP had indicated she was able to return to work and a return to work date was in contemplation. As a result of what appeared to be the impasse Mr Gray decided that it would be appropriate to move towards holding the facilitated meeting.

54. The claimant was seeking to access counselling through her GP and in fact had been advised that she had been referred to a Community Care Psychologist by letter from the NHS dated 11 December.

55. A further absence management meeting took place on 21 January 2021. A note of this was lodged (J112). The note does not in fact contain a date of the meeting but I was satisfied from the evidence that it took place on 21 January. At this meeting the claimant raised a number of criticisms of Mr Hunter as a manager going back over a lengthy period. The claimant referred to the stress of going back to work in the workshop as being the main stressor. At the meeting the claimant raised an issue relating to an allegation that at some stage prior to the claimant joining the department Mr Hunter had kicked a hole in the wall. When she went to the workshop there was a hole in the wall and someone had written the words “Ouch” above this. The claimant understood that this was Colin Hunter. When the claimant sought to raise this matter again her union representative advised her that she had to let go and that the meeting was all about moving things forward. During the meeting Mr Gray indicated that the claimant seemed to be painting the Mintlaw depot as some sort of Wild West. He indicated that there was no evidence to suggest this. He had not seen any evidence himself and on occasions had turned up unannounced. Mr Gray accepted that the claimant had to perceive that she was safe in the workplace. The claimant also sought to raise issues which had been raised with Mr Gray’s predecessor Mr Paisley back in 2017. Mr Gray was unaware of these at the time. The claimant raised the issue of having regular one to ones with Colin Hunter when she went back. Mr Gray’s position was that these were not usually held within the council where the parties worked together in the same office however if it would assist the claimant then he was happy to ask Mr Hunter to schedule them.

56. At the end of the meeting it was agreed that the facilitated meeting would take place on 11 January.

57. A few days before the meeting on 11 January Mr Gray received an email from the claimant with which she enclosed a copy of the email she had sent to his predecessor Mr Paisley in 2017. She stated that she was sending this to Mr Gray as things had not changed. She stated

> "I don't mean to bring the past up but looking back things have never changed in the past three years for the better. I do feel there is issues around the points raised way back. I only wish clarity on how to move forward. Given these issues have been going on for so long."

58. The facilitated meeting was attended by the claimant, her union representative, Mr Gray, Mr Colin Hunter and Aileen Kennedy of the respondent's HR department. A video of this meeting was viewed by the Employment Judge prior to the hearing with the agreement of both parties. At the hearing the claimant was not present on video but her voice can be clearly heard. All of the respondent's representatives behaved in an entirely professional and proper fashion during the hearing. On various occasions the claimant was told by her union representative that she required to draw a line and to put events in the past. She was told the meeting was all about things going forward. At the end of the meeting Mr Gray believed that there was an agreement going forward as to how things would work once the claimant returned to work. Regular one to one meetings with Colin were agreed. It was agreed that if Colin was interrupted by anyone else whilst he was talking to the claimant about a work related matter then he would prioritise the discussion with the claimant and tell the other party they would have to wait until his interaction with the claimant was finished. There was a discussion regarding who the claimant should approach for advice if she was having difficulties with the software platform and all present agreed that Fiona Scott was the best person given her knowledge of the system. During the meeting at one point Mr Hunter was asked to comment on Fiona Scott's general demeanour and he noted that on occasions she could be "snappy".

59. The upshot was that these measures would be put in place once the claimant's medical advisers told her that she was fit to return to work and Mr Gray indicated that he was awaiting the claimant's fit note to that effect.

60. On 18 February the claimant sent a handwritten letter of resignation to the respondent. This was lodged. The claimant indicated that she was resigning with immediate effect. She referred to a breach of trust and confidence, bullying and harassment and unsafe working environment as

well as lack of duty of care and various other matters. On or about 22 February the claimant was successful in obtaining a post as a receptionist in a local vaccine centre working two mornings per week and she commenced this post that same week. On 22 February the respondent's Mr Gray wrote to the claimant confirming acceptance of her resignation. In the letter (J123) he stated

> "I was and remain concerned by the comments you made during your absence and facilitated meetings regarding the Mintlaw repair depot and the level of support you feel you have received. This is disappointing as a significant level of support and commitment in helping you return to work has been provided through our meetings along with your trade union rep and HR. At our meeting on 11 February we discussed the concerns we raised and all agreed on actions to be implemented on your return to resolve these."

61. The claimant responded to this in an email dated 22 February stating

> "To clarify my decision
> At the meeting on 11 February I was asked to not look at the past and draw a line and return to work. Given that I asked you whether you had witnessed or knew of any aggression by Colin Hunter you said you couldn't comment. I would have liked a better understanding of why you felt the need to be silenced given the fact you witnessed another employee distressed, driving 30 miles from Mintlaw to Inverurie to inform you of aggression by Colin Hunter which was never fully investigated and was part of my original grievance over concerns of safety in the workplace.
> Colin Hunter's own denial of violence, intimidation and aggression also led to my concerns to return to work. Also now cover up or damage to council property.
> He also confirmed with Colin that Fiona Scott is the best person to turn to for help and advice even though Colin's admission she can be snappy but that's just Fiona which leads me to deterioration of trust and confidence."

62. The claimant continued to work at the vaccine centre until around May 2021 where she took up a post with her local GP practice as a receptionist.

Matters arising from the evidence

63. In this case I was satisfied that both of the respondent's witnesses were giving their evidence in a patently truthful manner and were seeking to assist the Tribunal by recalling matters to the best of their recollection. I found their evidence credible and reliable. I considered that the claimant was an honest witness but it was clear to me that at times she had allowed her own strong feelings about events to colour her recollection and I did not feel that her evidence was entirely reliable in relation to a number of points. The claimant has clearly brooded on matters over a period of time and her reaction to events was not always appropriate or balanced. She appeared to entirely lack any sense of proportion. I accepted in general terms her evidence about the events in 2017, and 2018 since I did not have any other evidence with which to compare it. I considered that the claimant was probably a bit concerned at the presence of dogs in the office when she first started and it was clear to me that it could be a difficult situation where one's manager was having a relationship with someone who worked in a nearby office who was continually coming in. I tended to accept Mr Hunter's evidence regarding the relationship between Ms Scott and the claimant. It appeared to me that what happened here was simply a case of the two individuals not getting on. I considered Mr Gray expressed the matter clearly when he stated that people do not have to get on or be friends in order to work together. What is required is that they are both prepared to agree to have a reasonable working relationship. It was clear to me, not least from the claimant's own evidence, that this was what the respondent sought to achieve by the mediation in 2018 and the claimant's own evidence was that this had in fact been successful for a time. This was confirmed by Mr Hunter's evidence. The claimant and her representative put considerable emphasis on the admission by Mr Hunter at the facilitated meeting that Ms Scott could be "snappy" at times. I listened to the recording of the meeting and my understanding was that all that Mr Hunter was saying was that on occasions if Ms Scott was asked a question which she thought one ought to know the answer to then she

would make this clear. I would simply observe that some individuals in a workplace setting can be snappy and an employer is not in breach of contract if they employ individuals who may on occasions have this trait. Indeed, if an employee is being honest there will be few employees who in their lives have never been snappy to a colleague.

64. I accepted Mr Hunter's evidence that he had absolutely nothing to do with the hole in the wall. When the respondent's representative drilled down to the claimant's evidence on this point all it really consisted of was that the hole had been there when she arrived and she assumed that Mr Hunter had deliberately kicked the wall in anger when this was not in any way the case.

65. What was clear to me from the evidence was that the claimant had not herself raised any issues about her workplace from the conclusion of the mediation with Fiona Scott up until the point of her own suspension.

66. With regard to the incident on 23 March there were marked differences between the evidence of the claimant and the evidence of Mr Hunter and Mr Gray mainly in relation to where the initial incident had taken place and how much of this could have been observed by the claimant. I preferred the evidence of Mr Hunter and Mr Gray in relation to this. The claimant's position was that there had been one seamless incident where she had seen Mr Hunter and the mechanic "chest bump" each other and that she had left the office to phone Mr Gray and had been on the phone to Mr Gray when the mechanic stormed out past her. Mr Hunter's evidence was that the chest bump (which he referred to as a belly charge) had happened in the workshop and was unlikely to have been seen by the claimant, that he had then returned to the workshop and the claimant would have most certainly seen and heard the mechanic shouting at Mr Hunter through the reception hatch. The claimant in her various statements referred to Mr Gray telling her the next day that the matter was none of her business. She did not in fact give any evidence that Mr Gray had ever used these words directly to her and I considered that this is the claimant simply putting a gloss on the undoubted truth which is that the claimant had absolutely no right to information regarding any disciplinary process involving Mr Hunter or the mechanic.

67. With regard to the claimant's suspension I noted that from the tenor of the claimant's evidence the claimant appeared to consider that the respondent had been completely unjustified in their actions. The claimant sought to minimise the seriousness of the allegations against her and in fact suggested that at all times she had been acting within the relevant guidelines. She went so far as to state that the letter sent to her by the respondent after the investigation meeting confirmed that she had no case to answer. She persisted in this despite being challenged by the respondent's agent who pointed out that the letter says no such thing. My view on the evidence, which was fairly limited on this point, was that certainly on the basis of the various excerpts from the guidance at the time which was lodged before the Tribunal the claimant probably was in breach of the rules so far as her move was concerned. The rules suggested that a decision had to be made at the outset of the lockdown and then stuck to. The claimant did not do this.

68. Overall I found the claimant's evidence to be less credible and reliable than that of the respondent's witnesses. It is clear that she has a very fixed view of those matters which have led to the exacerbation of her depression. Where there was a conflict I preferred the evidence of the respondent's witnesses and indeed the evidence of the contemporary documents.

Issues

69. The claimant claimed that she was unfairly constructively dismissed by the respondent. The respondent's position was that the claimant had not been constructively dismissed but had resigned. It was their position that the claimant's resignation was not covered by the terms of section 95(1)(c) of the Employment Rights Act 1996 in that she had not been entitled to resign as a result of the respondent's conduct.

Discussion and decision

70. Both parties made full submissions. Rather than repeat these at length I will refer to them where appropriate in the discussion below.

71. Section 95(1)(c) of the Employment Rights Act 1996 provides that an employee is dismissed by his employer

> "if the employee terminates the contract under which he is employed with or without notice in circumstances which he is entitled to terminate it without notice by reason of the employer's conduct."

72. The well-known case of ***Western Excavating v Sharp [1978] IRLR 27CA*** makes it clear that the matter must be determined in accordance with the law of contract. Lord Denning stated in that case

> "An employee is entitled to treat himself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The employee in those circumstances is entitled to leave without notice or to give notice but the conduct in either case must be sufficiently serious to entitle him to leave at once."

In this case the claimant alleges that the respondent were in breach of the implied term of trust and confidence. It is well recognised that such a term is implied in every contract of employment. The employer will not without reasonable and proper cause conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Any breach of the implied term is a fundamental breach amounting to a repudiation since it necessarily goes to the root of the contract. In the case of ***Woods v WM Car Services (Peterborough) Ltd [1981] IRLR 347EAT*** it was noted that the Employment Tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its cumulative effect judged reasonably and sensibly is such that the employee cannot be expected to put up with it. The case of ***London Borough of Waltham Forrest v Omilaju [2005] IRLR 35CA*** confirms that a final straw which is not of itself a breach of contract may be an act in a series of acts which cumulatively

amount to a breach of the implied term. The essential quality of such a last straw is that when taken in conjunction with the earlier acts of 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 test of whether the employee's trust and confidence is being determined is an objective one.

73. In this case I am required to look at the whole of the employer's contract over the period of the claimant's employment and establish whether there has been a breach of the implied term of trust and confidence and whether as alleged by the claimant the conduct of the respondent at the facilitated meeting on 11 February was capable of being a last straw.

74. In this case I am in absolutely no doubt that the answer to both questions is no. There was no breach by the respondent of the implied term of trust and confidence in this case. Nothing that happened at the meeting on 11 February could be regarded as a last straw.

75. I entirely appreciate that the claimant was giving genuine evidence about how she felt about her work. That having been said, it appeared to me that throughout her employment the claimant had been treated entirely fairly and in accordance with the respondent's policies.

76. With regard to the initial difficulties the claimant had with the dogs in the office at Mintlaw the position is that the respondent's HR department had consented to them being there. The claimant did not raise any issues about them. It was clear from her own evidence that Mr Paisley had asked her about them and that when he discovered the dogs were in the office virtually full time the matter had been addressed. The claimant at this time had also raised various other issues with Mr Paisley and the evidence is that he dealt with these by having another manager go into the office from time to time. Given that the claimant never raised these issues again until well after her suspension the respondent were entitled to assume that they had been dealt with.

77. With regard to the incident which took place in 2018 once again the respondent appear to have dealt with this properly in terms of their own

disciplinary policy. Both parties agreed to mediation. The respondent facilitated a mediation and so far as they were concerned the mediation had been successful.

78. Matters then move on to the beginning of 2020. As noted above there was an incident between Mr Hunter and a mechanic on 23 March. The claimant's view was that the respondent dealt with this matter inappropriately. The respondent's position is that as an employer they have established a number of procedures and processes which govern the way which they deal with their employees. It was their position that the manager Mr Gray made his decision entirely in accordance with the disciplinary policy. It is clear that in fact he did. There is no doubt that other managers may have chosen to deal with the matter differently and indeed the claimant made it clear that she feels that Mr Gray should have but at the end of the day there is nothing in Mr Gray's behaviour which contributes to any breach of the implied term of trust and confidence so far as the claimant is concerned. The claimant was aggrieved that she was not asked for a statement. Mr Gray's position is that the claimant had spoken to him the day before while the incident was taking place and he already knew what she was saying about it. He had spoken to both parties and did not believe there to be any significant differences between them which would affect the outcome. The decision he made was one which any manager was entitled to make.

79. The claimant did not make any complaint about this at the time. Matters then move on to around 11/12 May when the respondent are advised that the claimant has committed various serious breaches of the Covid rules. Mr Hunter contacted Mr Gray to advise of the information which had come to his attention. Mr Gray took advice from HR and was asked to call the claimant to ascertain whether there was anything to these allegations. As a result of his discussion he then found

(1) that the claimant had moved house to move in with her partner which would appear to be a breach of the regulations

(2) the claimant had put up posts on Facebook about a birthday party for her daughter in breach of the regulations albeit her explanation was that she had put up photographs from the previous year

(3) that the claimant had carried out various breaches of the rules to stay at home by visiting various family members albeit the claimant's explanation was that she had not actually had any contact with her parents or her daughter but had simply dropped off items for them outside their doors.

80. This was in the context of the first lockdown where the clear advice of the government was to stay at home and this advice was mirrored by the council. It appears to me to be absolutely inevitable that if an employer was to receive a colourable allegation that such breaches had taken place the employer in those circumstances, had absolutely no option but to start a disciplinary investigation which was what the respondent did.

81. The claimant was critical of Mr Gray for allegedly using the words "risk of death" when describing the allegation to her. I did not accept that Mr Gray had in fact said this. He denied it and it seemed much more likely that he had repeated the wording of the allegation which is contained in the suspension letter which was sent to the claimant soon afterwards. Even if he had however I do not consider that this would have been an inappropriate thing to say in the context of the time. The claimant's action in posting photographs of an apparent birthday party were singularly foolish even although the respondent and the Tribunal accepted that no such party had taken place in 2020.

82. The respondent at various times during the Tribunal hearing made impassioned pleas about the way that the respondent imperilled her health. Given that the respondent had received these cogent allegations which appeared to at least have some basis in fact they had absolutely no option but to start an investigation as they did.

83. It follows from this that I was not of the view that the respondent's decision to investigate the allegations against the claimant amounted to a breach of the implied term or contributed to any cumulative breach of the implied term.

84. The respondent's investigatory process was concluded with a decision to take no further action against the claimant. It is concerning that the claimant considered that this amounted to a decision that there were no grounds for taking action. It is quite clear that there were grounds but that the respondent decided that it would not be appropriate to take the matter further given the explanations provided by the claimant and in particular the domestic circumstances she found herself in before making the decision to move in with her partner.

85. I would agree with the respondent's grievance manager that the respondent would appear to have been in minor breach of their own processes by failing to nominate a specific point of contact for the claimant at the time she was suspended however in my view this does not even contribute to a cumulative breach of the implied term.

86. The claimant complained of the delay in dealing with the matter however given the facts that the respondent were in the middle of a pandemic I do not consider that the delay in convening the investigatory hearing was in any way out of the ordinary.

87. Please note that I do not in any way deny that the claimant found the entire process extremely upsetting. There is no doubt that it is stressful to be subject to a disciplinary investigation. In some circumstances that can amount to a breach of the implied term but the key point here is that the respondent were not acting without reasonable and proper cause. As noted above in my view they had very little option but to investigate the matter.

88. It appears clear that by August the claimant's health had taken a turn for the worse. I believe that this coloured her reaction to events. Although she had hoped to be in a position to return to work I accepted her evidence that by now, when it came to it, she found herself simply unable to face it. The claimant was critical of Mr Hunter for not being more welcoming at the return to work meeting on 11 August. I have no doubt that he could have made the meeting a better experience for the claimant and it was unfortunate that he raised the issue of the internal audit. That having been said, it was clear to me that as a manager he believed that the internal

audit issues had to be dealt with and that it was appropriate to raise them at this meeting. He also required to raise the issue that the claimant had not submitted an updated fit note and that her previous fit note which indicated she was unfit to work up to 6 August had expired. Mentioning these matters was not in any way a repudiatory breach of contract and could not contribute to any such breach. I also did not consider that the issue of Fiona Scott accepting responsibility for cleaning the female toilets and the instruction given to the claimant amounted to or cumulatively contributed to a breach of the implied term. The respondent were required to have a plan to keep the premises covid safe. The claimant completely overreacted to the matter.

89. From the period of 12 August onwards the claimant was involved in various attendance management meetings which were conducted by Mr Gray. She had a trade union officer with her at these meetings and indeed she had had one at the meeting with Mr Hunter on 11 August. It appears to me that these meetings were conducted entirely appropriately in line with the respondent's policies. Although it may be now clear to Mr Gray in retrospect I have some sympathy for his view that it was only as these meetings progressed that he realised that the claimant was effectively now saying that she could not return to Mintlaw because she had been bullied and harassed during the entire course of her employment there. I accepted Mr Gray's evidence that he had not seen the email from the claimant to Mr Paisley detailing her 2017 concerns until the claimant sent him a copy on 9 February 2021. More importantly however I consider that Mr Gray would be in genuine difficulty in dealing with these concerns as indeed was recognised by the claimant's own trade union advisers present at these meetings. Apart from generalised allegations about poor management the bulk of the claimant's allegations appeared to relate to matters which had already been dealt with. The claimant might not have liked the way they were dealt with but it would not be possible in terms of the respondent's processes for these matters to be re-opened. The claimant was now alleging that she had been assaulted by Ms Scott in 2018. At the time the respondent's position was that the matter had been investigated and both parties had agreed to mediation. It would no longer be possible for the respondent to re-open this matter with Ms Scott.

Indeed, if the respondent ever did so then they could potentially face an entirely justified unfair constructive dismissal claim from Ms Scott.

90. One of the claimant's criticisms of the respondent over this period is that they should have instructed an occupational health report sooner. I have to say I am not convinced that this was necessary in terms of their processes. The only purpose of an occupational health report would be to advise on what adjustments could be made in order to facilitate the claimant's return to work and in general terms such a report is usually ordered once there is a likelihood of a return to work. In this case the respondent agreed to instruct the report when asked by the claimant and indeed asked for a back-up physician report once this was recommended. The report indicated that the claimant's return to work was contingent on her work issues being resolved. I am entirely satisfied that the best the respondent could offer in respect of resolving the claimant's work issues at this stage was the facilitated meeting which they did offer and which took place on 11 February.

91. As noted above I listened to the recording of this meeting. The claimant's pleadings suggest that Mr Hunter laughed at her during the meeting. The claimant did not repeat this in evidence but in any event it clearly did not happen. What is notable during the meeting is that the only person who is in any way critical of the claimant is her own union representative who intervened on numerous occasions to tell the claimant that she required to draw a line under matters in the past and concentrate on the future in order to return to work. I consider this was good advice however it was advice that for one reason or another the claimant was not prepared to take.

92. There was absolutely nothing in the final meeting which could amount to a last straw as described in the ***Omilaju*** case.

93. The claimant then resigned on 18 January. The claimant started a new job at a vaccine centre very shortly thereafter. The claimant's position was that she had not known of the new job at the time she put in her resignation. She was not cross examined on this point by the respondent.

94. At the end of the day I am entirely satisfied that this is not a case of constructive dismissal. I accept that the claimant has developed an exacerbation of a stress related illness and may well be that the council's actions in suspending her, which have clearly upset her, contributed to this. This does not mean that the respondent were wrong to raise the issue and carry out an investigation. For the reasons previously stated I do not consider that the respondent came anywhere near breaching the implied term of trust and confidence in this case. The claimant's claim accordingly fails.

95. Finally in this case I would like to express my gratitude to both representatives for dealing efficiently with the evidence and the productions and allowing the case to conclude well within the time allowed. Although the claimant's representative (who was her partner) is not legally qualified he had clearly spent a considerable amount of time researching the subject and organising his materials. He clearly set out the claimant's criticisms of the way the respondent had dealt with matters and although I have not found in favour of the claimant in this case this is no reflection on the way he conducted matters.

Employment Judge I Mcfatridge

Date of Judgement 11 January 2022

Date sent to parties 12 January 2022