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**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4105191/2016**

**Held in Glasgow on 7, 8 9, 20, 21 and 22 March 2018 with written submissions  
by 4 April 2018**

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**Employment Judge: Mrs M Kearns (sitting alone)**

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**Ms Anne Collette Ormond**

**Claimant  
Represented by:  
Ms L Petrescu  
Strathclyde University  
Law Clinic**

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**North Lanarkshire Council**

**Respondent  
Represented by:  
Ms R Blair  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal was to dismiss the claim.

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**REASONS**

1. The respondent is a local authority. The claimant was employed by the respondent as an assistant janitor from August 1994 until her resignation on 3 June 2016. On 30 September 2016, having complied with the early conciliation requirements, the claimant presented an application to the Employment Tribunal

in which she claimed that she had been constructively and unfairly dismissed. The respondent resisted the application.

### Issues

2. The issues for the Tribunal were:-

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- (1) Whether the claimant was dismissed;
  - (2) If so, whether that dismissal was unfair;
  - (3) If it was unfair, to what remedy, if any is the claimant entitled?

### Evidence

3. The parties lodged a joint bundle of documents ("J") and referred to them by page number. The Tribunal heard evidence from the claimant on her own behalf. She also called her sister, Mrs Julie McLaughlin and a former colleague, Mr Martin Power. The respondent called the following witnesses: the respondent's Area Manager, Maria Wilson, their current Acting Senior Administrator and previous Administration Support Officer, Nichola Millen, their Assistant Business Manager, Margaret Reid, and their Human Resources Business Partner and previous Human Resources Officer Kirsty Carr.

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### Findings in Fact

4. The following facts were admitted or found to be proved:

5. The claimant was employed by the respondent from August 1994 until 3 June 2016. Her role was assistant janitor at Buchanan and St Ambrose High Schools, Coatbridge. The two schools are on a linked campus. The janitorial team comprised the head janitor, Helen Taylor supported by two assistants: Martin Power and the claimant.
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6. From time to time the claimant's area manager Maria Wilson would organise cluster meetings for the janitors working at the cluster of schools of which St Ambrose was a part. The meetings would take place two or three times a year. The purpose of the meetings was to pass on operational information to the janitors, raise any issues the senior janitor wanted to raise and to discuss operational issues generally. The claimant and Mr Power attended one such meeting with the other janitors in the summer of 2015. There had been a
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5 janitorial review and it had been decided that janitors would only be allowed to take a maximum of 5 days' annual leave during school term time. One of the male janitors at the meeting became very vocal about this. Mrs Wilson managed, with some difficulty to calm things down. She explained to him that on one occasion a janitor had gone on holiday in term time and she had not been able to find anyone to cover. She said she had eventually had to ask a cleaner to do the overtime. At this point the claimant interrupted to say that she and another janitor colleague could have done the overtime. She became quite heated and her voice grew louder and louder. Mrs Wilson was unable to get her to listen or to calm the meeting down. She indicated to those present that they would take a break and said to the claimant: "*Anne Collette, Anne Collette outside*". Once they were outside Mrs Wilson told the claimant that she had embarrassed her. The claimant apologised, and they returned to the meeting. Afterwards the claimant was in tears and would not speak to Mr Power that day.

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7. If a teacher or other member of school staff needed assistance from a janitor they would call the janitors' office. However, as at June 2015, the normal method by which the head teacher of either school could request the attendance of a janitor if they were not answering the telephone in the janitors' office was by using the school tannoy system. On 10 June 2015 the head teacher at St Ambrose High School, Mrs Douglas, made the following announcement over the tannoy: "*Could a janitor come to reception now*". She emphasized the word "*now*". The background to the request was that some glaziers had arrived at the school reception and a janitor was required to show them what needed to be done. The school office had requested a janitor's attendance over the tannoy more than once already but neither of the assistant janitors had heard because they were outside the building when the request was made. The school receptionist had gone to the janitors' office and was waiting for them there. When Mrs Douglas made her announcement there was a note of irritation in her voice.

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30 The claimant and Mr Power both heard the announcement and felt that Mrs Douglas's voice tone was inappropriate.

8. The next morning, 11 June 2015 the claimant telephoned the duty manager and made a complaint about Mrs Douglas's manner on the tannoy announcement the previous day. Shortly thereafter, the respondent's assistant area manager Brenda Mulholland came out to the school and took statements from the

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claimant and Mr Power (J1 74 - 6) regarding the claimant's complaint. Mr Power said he had felt embarrassed about the way the tannoy message had been delivered and had thought people were smirking at him. The claimant said she felt "*completely humiliated*" by the incident and felt that if she approached Mrs Douglas she would 'talk down to her'<sup>1</sup>. She told Ms Mulholland that she did not want to give the names of people who said they had heard the announcement, but she believed pupils and staff in both schools had heard it and some had commented to her.

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10 9. Having taken statements from the claimant and Mr Power, Ms Mulholland spoke to Mrs Douglas. As soon as she was aware of the complaint Mrs Douglas went to the janitors' office and apologised to them. She asked them: "*Have I upset you guys?*" The claimant replied "Yes" and said she had been annoyed about the tone of the tannoy announcement the previous day. Mrs Douglas said: "*Well I'm sorry*". The claimant decided that she was not prepared to accept Mrs Douglas's apology although she did not say so at the time. The claimant considered that Mrs Douglas ought to have known why she was upset and should not have needed to be told. She therefore regarded Mrs Douglas' apology as "insincere".

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25 10. A week later, by letter dated 17 June 2015 (J177) addressed to Maria Wilson, the respondent's area manager the claimant raised a formal grievance against Mrs Douglas regarding her "*dignity at work*". No further details were provided in the letter. Shortly thereafter, Maria Wilson came into the school to speak to the claimant and Mr Power about the claimant's grievance. With regard to the tannoy announcement the claimant said she was "*not putting up with it*" and wanted to put in a grievance notwithstanding the head teacher's apology. Mrs Wilson explained the grievance procedure to her and told her that the process involved taking statements from any witnesses. The claimant said a number of the  
30 teachers had heard the announcement and had spoken to her about it. Mrs Wilson asked for their names but the claimant refused to name any witnesses. The claimant told Mrs Wilson that her nephew had heard the announcement in his class. Mrs Wilson asked whether he could be a witness. At this, the claimant became heated and began shouting and talking over Mrs Wilson to such an  
35 extent that Mr Power intervened to tell her to listen to what Mrs Wilson was saying. The meeting ended with the claimant walking out.

11. The claimant was absent from work from 17 to 29 June 2015 by reason of work related stress (J178). An attendance review meeting (J189) was conducted with her by Nichola Donnelly, attendance support officer on 7 July 2015 under the respondent's Managing Attendance Policy. On the same date the claimant was also assessed by the respondent's occupational health provider (J194). Their report stated that she was medically fit for normal duties and recorded the claimant's reports of her perceived stressors. They stated that no OH review was required because there were no on-going medical issues. They also stated:
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10 *"A stress risk assessment is recommended to ensure the nature of the concerns are investigated and where appropriate addressed. Mediation may be an appropriate tool to consider if there are any on-going issues on site."* This assessment was carried out.
- 15 12. Margaret Reid, the respondent's assistant business manager responded to the claimant's letter of 17 June 2015 by letter dated 24 June 2015 (J181). She requested the claimant to provide further information regarding the nature of her grievance against Mrs Douglas. The claimant responded with details of her complaint. (Her letter was not produced). Ms Reid then wrote to the claimant on
- 20 14 July 2015 (J196) inviting her to a meeting on 28 July to discuss the matter further. The meeting took place on that date and was attended by Margaret Reid, assistant business manager and Kirsty Carr HR Officer. Ms Carr took handwritten notes which she used to prepare a letter to the claimant dated 27 August 2015 (J201). The letter recorded what had taken place. At the meeting the
- 25 claimant confirmed that Mrs Douglas had apologised for the tannoy announcement but said she felt that following this Mrs Douglas had displayed some intimidating behaviour which the claimant felt was because she had made the complaint. When asked for details the claimant described Mrs Douglas moving some tables about. She said that Mrs Douglas made her feel
- 30 uncomfortable and as if she should have something to do at all times. Ms Reid confirmed to the claimant that following the tannoy incident portable radios had been ordered to improve communication in the schools. Ms Reid inquired of the claimant whether the janitors had a rota for their duties. The claimant said that
- 35 they did not but that they had a routine. The claimant said she felt her area manager, Maria Wilson had not given her enough support. Ms Reid said she had noted that Ms Mulholland had taken a statement from the claimant about

the tannoy incident but that the claimant had not wanted to provide details of witnesses. She explained to the claimant the workings of the respondent's Dignity at Work Policy. At the meeting Ms Reid suggested that informal mediation should be arranged between the claimant and Mrs Douglas at the start of the school term and confirmed she would arrange it. The claimant said she felt better now a course of action had been agreed and said she wanted to move forward and get back to normal. A further meeting was arranged for 2 September 2015.

10 13. On 10 August 2015 the respondent's area manager, Maria Wilson wrote to the claimant (J197) following the respondent's receipt of the Occupational Health ("OH") report dated 7 July 2015. The respondent's absence management policy requires that where an OH report is received it should be discussed with the employee to find out whether support or adjustments may be required and  
15 explore any on-going issues. The claimant met with Mrs Wilson on 18 August 2015. Kirsty Carr HR Officer was also present and took a handwritten note which she used to prepare a letter from Maria Wilson dated 1 September 2015 (J203) confirming what had been discussed. At the meeting it was agreed that the proposed mediation with Mrs Douglas would be taken forward. However, the  
20 claimant then became quite heated explaining that a rota system had been introduced for the janitors' duties, which she felt was unnecessary and was a punishment for raising her issue with the head teacher. Mrs Wilson told the claimant that the rota had nothing to do with her complaint. She explained that the senior janitor was responsible for service delivery and was entitled to  
25 introduce a rota to assist with this if she deemed it appropriate. The claimant became angry and refused to accept Mrs Wilson's assurances that the rota was for operational reasons and not a punishment. She told Mrs Wilson she did not believe her and said that management were trying to make her feel and look stupid which she was not. The claimant's voice grew louder and louder and she  
30 talked across Mrs Wilson and refused to listen or let her speak. Mrs Wilson repeatedly asked her to calm down, but the claimant continued shouting. Her comments became personal and confrontational and Mrs Wilson had to tell her to stop shouting. Eventually the meeting broke down and was brought to an end. With regard to mediation, Mrs Wilson told the claimant that for it to be successful  
35 she would need to be receptive to the other person's point of view and willing to work toward resolving perceived issues and moving forward. Mrs Wilson

concluded from the claimant's behaviour that mediation would be unlikely to succeed. Indeed, Mrs Wilson was concerned that if the claimant's behaviour was similarly volatile at a mediation meeting, it would not only not result in a resolution but could lead to further problems in her working relationships.

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14. On or about 26 August 2015 the claimant wrote a letter (J197) to Anne Hanlon, Mrs Wilson's line manager. She stated that she had *"concerns with lack of support from my area manager Maha Wilson, who has tried to intimidate me from making my original complaint, by using my nephew as I had mentioned. Kyle's class had heard the incident Maria said that if I took this further I would need witnesses, which at the time I was reluctant to do as I didn't want my nephew involved but she said you have mentioned him now and he would need to be a witness."* The claimant referred to her absence management meeting with Maria Wilson on 18 August and said that Mrs Wilson had asked her if she had any other issues. She said that she had told Mrs Wilson that that morning, the head janitor Helen Taylor had told her that a rota would be being introduced for the janitors at St Ambrose High School. The claimant told Ms Hanlon that she thought this was being done *"as a form of punishment which I am not prepared to accept unless introduced by using the proper channels and in all high schools within North Lanarkshire Council."* The claimant went on: *"I feel I have no other option but to write this letter requesting a stage 1 grievance against Maria Wilson."*

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15. On 2 September 2015 Margaret Reid held the planned further meeting with the claimant. The claimant attended along with her trade union representative Chris Armstrong of Unison. Kirsty Carr, HR officer was also present. Ms Carr took a hand-written note which she used to prepare a letter dated 17 September 2015 recording what had happened (J205). At the meeting the claimant repeated her concern that the rota had been introduced "out of the blue" and that she thought it was a punishment for her complaint about the head teacher. She said she was already in a routine and knew what needed to be done. Ms Reid suggested that the claimant should sit down with her area manager, the senior janitor and Mr Powell to discuss the rota. She told the claimant she felt she was taking it personally when it was in fact an operational matter which could benefit her. Her representative agreed that such a meeting may be beneficial. There was some discussion about the meeting the claimant had had with Mrs Wilson on 18

August. The claimant acknowledged that she spoke loudly and that the meeting had become heated. However, she said that Mrs Wilson had also behaved this way. Ms Reid explained that as acknowledged, the claimant spoke loudly. If she then became upset and raised her voice she was in effect shouting and this could be viewed as aggressive and confrontational. She warned the claimant that she should be mindful of this in future because she could not be allowed to communicate with other members of staff in such a manner. The claimant said she had raised a grievance against Mrs Wilson. She said she was of the view that Mrs Wilson had intimidated her and tried to put her off raising a formal complaint against the head teacher by saying her nephew would be called into it. Ms Reid explained that if the claimant wished the complaint to be dealt with formally there would have to be an investigation and statements would need to be taken from witnesses. At her own previous meeting with the claimant the claimant had said she did not want to provide the names of any witnesses but had simply wanted to make the head teacher aware of how she felt. The head teacher had already apologised and she had accepted the apology. At this point in the meeting the claimant's representative requested an adjournment to enable them to have a discussion.

16. After the adjournment, the claimant's representative Mr Armstrong told those present that the claimant did not wish to pursue a grievance against her area manager and said that the claimant wanted to proceed with mediation. He acknowledged that the claimant had already received an apology from the head teacher. Ms Reid replied that she was keen to resolve matters. She suggested as an alternative to mediation, as the head teacher had already apologised for the tannoy incident, that Mrs Wilson should explain to the head teacher on the claimant's behalf how the incident had made her feel. The claimant agreed to this course of action. The three action points that were agreed to at the meeting were as follows: (i) the claimant would meet with Mrs Wilson, the senior janitor (Ms Taylor) and her colleague Mr Powell to discuss the rota; (ii) Mrs Wilson would take forward the claimant's concerns about how the tannoy incident had made her feel with the head teacher including the other issues she had raised; and (iii) portable radios would be introduced within the school so the claimant was contactable. The above agreed action points were confirmed to the claimant in a letter from Ms Reid dated 17 September 2015.



17. On or about 14 September 2015 the claimant attended a meeting with Maria Wilson, her assistant manager, Brenda Mulholland, the senior janitor Helen Taylor and Martin Powell. The purpose of the meeting was to discuss the rota, as agreed on 2 September. Helen Taylor, the senior janitor had let the claimant know two days prior to the meeting that Maria Wilson would be coming in and that they would all meet together. However, the claimant stated at the meeting that she was 'not here to talk about rotas'. She said she was 'here to talk about mediation.' She repeatedly said she was not listening and that she wanted her union involved. Mrs Wilson told the claimant that it was not necessary to involve the union as it was an operational matter, but the claimant refused to take part in the meeting and it was concluded.
18. On 24 September 2015 the claimant wrote a letter to the respondent (J209) in response to Ms Reid's letter of 17 September. In it she stated: *I wish to appeal against the decision that was made regarding my grievances. I feel now that the informal route has been exhausted, I have no alternative although I have made every effort to avoid this, I wish to raise a stage 2 grievance.* Ms Reid responded by letter dated 13 October 2015 (J21 1) saying she was disappointed as she had understood from the discussions on 2 September that the claimant's concerns had been resolved. She suggested a meeting on 3 November 2015 to enable the claimant to outline what she felt had not been resolved to a satisfactory conclusion. The claimant responded to this letter with a further letter received by the respondent on 29 October 2015 (J213). The claimant said in the letter that she was contesting what had happened on 2 September and that she was hoping for a mediation which the respondent had previously agreed to. She said *I see this as the only way forward...* She said she felt she was being bullied and punished in many different ways; that she had a right to be heard and that the respondent would like this to be 'swept under the carpet'. However, she said she would attend the meeting on 3 November.
19. The meeting took place on 3 November 2015. It was chaired by Ms Reid. The claimant attended along with Colin Murphy of Unison as her trade union representative. Laura Graham, HR officer was also present. Ms Reid told the claimant she was clear on the action points that had been agreed at the meeting on 2 September. She said she had clearly stated that a mediation meeting was not going to take place and that given that the head teacher had already

apologised, Mrs Wilson would instead arrange to meet the head teacher to explain to her how the incident had made the claimant feel and to conclude the tannoy matter. She said the claimant had agreed to this and it had all been confirmed in Ms Reid's letter to her of 17 September. The claimant said that was not what had been agreed. She said she had understood that a mediation meeting was still going to take place with the head teacher. She said she had subsequently gone along to a meeting with Mrs Wilson, the head janitor and Mr Powell thinking it was the planned mediation meeting and had asked where the head teacher was. The claimant said that Mrs Wilson must have spoken to the head teacher and that her relationship with the head teacher had improved. Ms Reid asked her whether she felt the issue with the head teacher was now resolved but she said it was not and that she felt it had been 'swept under the carpet'. Ms Reid said she felt this comment was unjustified. The head teacher had apologised. It had been agreed that Mrs Wilson would nevertheless speak to her to conclude the matter, which she did. Therefore, the matter was concluded. The claimant said that there had been other issues. Ms Reid pointed out that her grievance had only concerned the tannoy incident and that if there were other issues the claimant wanted to raise she should do so separately following discussion with her TU representative.

20. The claimant then said she had issues with Mrs Wilson and was still awaiting an apology from her. Ms Reid asked what this was about and the claimant said that Mrs Wilson had tried to intimidate her to stop her making her complaint against the head teacher by saying that her nephew would be brought in as a witness. Ms Graham explained the investigation process to the claimant outlining that witnesses could be asked to attend investigatory meetings to establish the facts. Ms Reid asked her whether she thought Mrs Wilson had been trying to explain this process to her, but she said she had not and she felt intimidated. The claimant then said Mrs Wilson made rules up as she went along, would not listen and put her out of a meeting for saying something she wanted to say. She said the rota was put in place to punish her. She then raised some issues about her lunch breaks and said she felt that she raised things with her senior janitor and Ms Taylor did not then raise them with Mrs Wilson. The claimant then went on to say that she felt there was a lack of support and the matter had not been dealt with professionally. Ms Reid said this was untrue. She pointed out that she had now met with the claimant on three occasions to attempt to resolve her issues

and to offer support. Mrs Wilson had met with her on two occasions, both of which had concluded prematurely because of the claimant's behaviour.

21. On several occasions during the meeting on 3 November Ms Reid had to ask  
5 the claimant to calm down as she was becoming heated. The claimant said she  
was aware she talked loudly and apologised. Ms Reid said she felt the claimant  
may have missed some of the content of their conversations as she had a  
tendency to talk over people. Ms Reid explained that the claimant had previously  
10 said she was happy with the proposed actions regarding the tannoy incident.  
The claimant said she had always wanted mediation. Ms Reid said that the  
claimant had previously withdrawn her grievance against Mrs Wilson. The  
claimant said she had not done so. Ms Reid referred to their meeting on 2  
September when her representative had clearly said that she did not want to  
15 pursue the grievance. The claimant disputed this and Ms Reid referred her to  
the letter of 17 September confirming the position. Ms Reid said she would  
rearrange the operational meeting to discuss ways of working within the school.  
This would involve Mrs Wilson, Ms Mulholland, Ms Taylor, Mr Powell and the  
claimant. Ms Reid emphasized that it was imperative for the claimant to remain  
20 calm and respectful at the meeting. The claimant said she would attend the  
meeting but that she wished to leave her grievances open. Ms Reid said this  
was not happening. Agreed actions had been taken in relation to the tannoy  
incident following the previous meeting. Furthermore, at that meeting, the  
claimant had also withdrawn her grievance against her area manager.  
Therefore, both matters had been concluded. Ms Graham took hand-written  
25 notes during the meeting and prepared a letter dated 17 November 2015 (J215)  
to the claimant confirming what had been said. Thereafter the janitorial team  
held a positive operational meeting and they all worked well together and within  
the school going forward.

30 22. On 14 January 2016 an incident occurred in the school which involved the  
claimant's colleague Mr Power apprehending a pupil and taking him to a  
teacher. The claimant was not present. After the incident, Mr Power returned to  
the janitors' office and began discussing the incident with the claimant and the  
head janitor. During this conversation the teacher came into the office and  
35 confronted Mr Power for "*embarrassing him in front of a pupil*". The following day  
Mr Power was suspended following a complaint from the pupil. On 20 January

2016 the claimant went on sick leave with work related stress arising partly from the incident on 14 January. On the same day the claimant wrote to Maria Wilson (J222) stating that she wished to raise a grievance against the teacher in respect of the incident with Mr Power. Ms Reid replied to the claimant's letter (J234) informing her that as the incident was already being investigated it would not be considered separately under the grievance procedure at that time.

23. The claimant's sickness absence lasted for 11 weeks from January 2016. She was again referred to Occupational Health ("OH") who were asked to assess her fitness for work. It was reported that the meeting in November between the claimant and her team had been positive and that the claimant and the team had been working well together from November 2015 (J225). OH met with the claimant on 26 January and reported on 27 January 2016 (J229). They recommended that the claimant's perceptions be 'sympathetically explored, perhaps involving the assistance of trade union officials and people with mediation experience'. They advised that the claimant should be able to return to her duties 'within the next week or so'. No follow up appointment was deemed necessary.

24. The claimant's absence lasted until around 11 April 2016. During her absence she had periodic absence management meetings with Maria Wilson in accordance with the respondent's Absence Management Policy. At an absence management meeting on 17 February 2016 Mrs Wilson asked the claimant if she could see herself returning to St Ambrose. The claimant responded that she would 'not be bullied out the door and that if the issues were resolved she would be able to return. Mrs Wilson stressed that she wanted to support the claimant and facilitate her return to work. She offered to arrange either a temporary or permanent transfer to another school if the claimant wished. The claimant stated that her perception was that the head teacher was trying to get Martin Power and herself 'out the door' and that she would not move because 'they' would love it if the claimant were to move and 'they would have won'. She was clear that she would not consider moving to another school and the only place she would return to was St Ambrose. She asked why her senior janitor was not being moved. At no point during the course of these absence management meetings did the claimant inform the respondent that she considered Maria Wilson the cause of her stress, nor did she raise this with OH.

25. On 22 February 2016 the claimant telephoned Maria Wilson and behaved inappropriately to her by shouting, talking over her and becoming heated over the phone. The claimant later apologised for her behaviour.

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26. On 23 February 2016 the claimant was requested to attend a meeting in relation to the disciplinary investigation of Mr Power stemming from a complaint by a pupil following the incident on 14 January 2016. The purpose of the meeting was to take a witness statement from the claimant. The claimant attended the meeting on 24 February and gave a statement about what she had seen in the aftermath of the incident. Maria Wilson was present along with Nichola Millen, administrative support officer.

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27. On 1 March 2016 (J240) the claimant wrote a letter to the respondent's director of education. In the letter she stated that she had been to two absence management meetings at which she had been told that she would not be returning to work at St Ambrose and that she felt aggrieved by this. This was not a correct representation of what had been discussed at the meetings. The claimant had been offered a transfer as an option to facilitate her return. At no point had she been told she would not be returning to St Ambrose.

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28. In relation to the Power investigation, the statement the claimant had given on 24 February was typed up and she was asked to come back on 3 March to sign it. The statement (J243) said: *"It was the end of the day and the kids were all away. Myself and Helen were in the office. Martin came in the office. He was really angry. Helen and I didn't know what was going on. Martin started to tell Helen and I what had happened when X..... teacher burst into the Janitor's Office and started shouting at Martin. X told Martin that he had just embarrassed him in front of that kid. Martin replied that X had put his arm around the child and that wasn't right. X then moved towards Martin's chair and Martin leaned back on his chair X was in his face asking what Martin wanted him to do the wee boy was really upset. Martin swivelled on his chair to get away from X."* When the claimant attended to sign the statement on 3 March she said she was not happy with it and wanted to make some changes. In particular, she wanted to say that Martin was "annoyed" instead of angry; that X had burst into the Janitors' office

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7n an aggressive manner”; and to delete the reference to 'the wee boy' being upset. The changes were marked up by her on the statement (J243) and a clean copy (J245) was prepared for her signature. In the meantime, the claimant emailed Ms Wilson at 06:52 on 7 March 2016. The email contained the text of what she wanted her statement to say.

29. The claimant's email of 7 March 2016 was in the following terms:

*“Dear Maria Wilson*

*I am sending this email regarding the statement I was to sign on 3<sup>rd</sup> March 2016. The statement I was shown is not a true account of which I gave to you the previous week. I would like to question the integrity of your investigation as things I had said were omitted and others added, this really concerns me. I feel the only way I would get to give my true account of what actually happened would be to send you this email. Mr X's words and actions which I had specifically stated on the day I made my statement..! will start my written statement. At the end of the school day on 1[4] <sup>h</sup> January 2016 Martin Power came back to the janitors office and started to explain to Helen what had Just happened, he was a little annoyed Mr X didn't support him and he asked Helen if she could deal with the issues in the corridor as Mrs Douglas the head teacher demands us to be there although we are not adult supervision we need support from other members of staff otherwise there is no point in us being there. Shortly after explaining what had happened Mr X burst into the janitors and shouted at Martin “don't you dare embarrass me in front of a kid again” Martin replied “well you put your arm round him” Mr X then proceeded to go towards Martin and shouted in his face “well what did you want me to do?” At that point Martin leaned back on his chair and then swivelled round towards Helen to avoid MrX who was very much in his face, I then looked at Helen thinking she is the senior janitor what is she going to do about this aggression displayed by Mr X, Helen eventually jumped up and said “right that's enough guys” although Martin did not raise his voice, all the shouting was done by MrX. Mr X's actions really shook me up at the time, I have never seen a teacher display this kind of behaviour in all the years I have worked at St Ambrose. Mr X had time to think of what he was doing before he came to the janitors. I think*

5 *he may be regretting taking this decision. I think this is all a result of Mr X's wrong doing and he has to cover his behaviour on that day. I feel when I gave my statement I was being suppressed by only being allowed to say things you thought were relevant when this is very concerning behaviour by Mr X especially as he is working with children I feel his actions cannot and should not be underestimated. Yours Sincerely .."*

10 30. In a telephone call with Emma Jones of HR on or around 17 March 2016 the claimant said she had received a call from Mrs Wilson in which she had been abrupt with her and had told her she should be telephoning weekly to update on her absence. The claimant said she thought the correct procedure was to call her supervisor, Helen Taylor. She told Ms Jones she was off with work related stress and would be back at work if it were not for Mrs Wilson. She mentioned the word 'bullying' during the conversation. Ms Jones advised her that there were policies and procedures in place if she wished to raise anything formally. She said she was aware of this, but nothing had been done previously. The claimant was reminded about the respondent's employee counselling service. She said she would like to receive counselling and a referral was made for her on that date (J259 - 60).

20 31. After the claimant had sent Mrs Wilson the email of 7 March Mrs Wilson phoned her and asked her to come in and sign it. The claimant said she wanted trade union representation. Mrs Wilson said 'you can just come yourself but the claimant said she wanted a witness. Mrs Wilson tried to arrange various dates, including 17 March (J257). The claimant refused as she did not have anyone to attend with her. Eventually a meeting was arranged for 21 March.

30 32. At the meeting on 21 March 2016 the claimant was accompanied by her sister Julie McLaughlin. Maria Wilson was present along with Nichola Millen. The claimant was given by Mrs Wilson a statement to sign. The claimant told Mrs Wilson she had come to sign her email with her version of events and not any other version of the statement. Mrs Wilson then took back the amended statement and gave the claimant a copy of her email to sign. Mrs Wilson said to the claimant: "You emailed me at 6:50 in the morning. I have a blackberry and I keep it on at all times. Your email disturbed me." The claimant read the email

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and signed it. She asked if she could leave. Mrs Wilson said the claimant would have to call her on Monday morning in accordance with the absence policy.

5 33. By letter dated 4 April 2016 (J263) Anne Hanlon, Business Manager, FSS responded to the claimant's correspondence of 1 and 7 March. In the letter she explained that the offer of the opportunity to transfer to another school had been intended to aid her return to work by removing her from the stress she was experiencing. She referred to a telephone conversation she had had with the claimant and stated: *"Following a recent discussion with you regarding your*  
10 *absence and your perception that you are being bullied, I have asked Jim Brown, Assistant Business Manager to meet with you to discuss this and also your return to work."* With regard to the claimant's email of 7 March questioning the integrity of the Power investigation, Ms Hanlon stated: *7 can confirm that the investigation has been carried out in line with Council policy and procedure and*  
15 *that the panel have carried out their roles with professionalism, honesty and impartiality."* In relation to the claimant's allegation that she had been "suppressed", Ms Hanlon said that the investigation panel had informed her that they had not prevented the claimant from speaking about the incident but that on a number of occasions she had brought up issues not relevant to the  
20 investigation. She had been advised that these issues could not be discussed as part of the investigation procedure.

25 34. Mrs Wilson also wrote to the claimant on 4 April 2016 (J265) under the absence management policy. She again offered the claimant the opportunity to return temporarily to another school in order to assist her return to work but recorded in the letter that the claimant had again refused the offer and had stated that the only place she would return to was St Ambrose.

30 35. By letter dated 6 April 2016 (J269) Jim Brown, operations manager referred to the claimant's on-going absence from work and invited her to a meeting on 15 April 2016. Following a telephone call to Anne Hanlon, the claimant returned to work on 11 April 2016 on the expiry of her medical certificate. Jim Brown met with her that morning to welcome her back. The claimant told him that she wanted to 'draw a line under\* the issues and move on.



36. The claimant attended the meeting with Jim Brown on 15 April accompanied by her trade union representative Colin Murphy. Sheena Houston, HR officer was also present and took hand written notes from which she prepared a letter to the claimant dated 27 April 2016 recording what had taken place at the meeting (J271). The letter records that Mr Brown enquired how the claimant was coping with her return to work and that she responded that she was "getting there". It went on: *"I explained that as you are aware your previous concerns in the workplace have been dealt with and I re-iterated that they take time to run their course. I reminded you that if you have any concerns over issues within the workplace then you know to raise them with your Senior Janitor in the first instance; then your Assistant Area Manager and if it can't be resolved you would refer it to your Area Manager then ultimately to the Assistant Business Manager, Margaret Reid. You confirmed your understanding of this.// You explained that following on from your previous referral to the Council's Medical Officer you had expected a mediation meeting due to issues with the Head Teacher, I re-iterated that all issues you have raised during previous meetings had been discussed and finalised."* Mr Brown provided the claimant with a copy of the Dignity at Work Policy and explained the process should the claimant choose to raise a complaint. He explained that any complaint she made would be considered in accordance with the procedure. The claimant stated that she had lost all trust and confidence in FSS managers and felt she had a valid reason to raise a complaint.

37. On or about 3 May 2016 the claimant was sitting in the janitors' office. The pupils had gone home, and the claimant was waiting to lock up. She began a conversation with one of the cleaners, Ella McGhee. They were discussing Mr Power's disciplinary process and speculating about whether he would be able to return to being a janitor. It was inappropriate for the claimant to discuss a disciplinary matter with another member of staff. She had been involved in the investigation as a witness and the matter was private and confidential. Helen Taylor, the senior janitor overheard the conversation and called the senior cleaner. The claimant went to lock up. When she came back, Ms McGhee told her she had been spoken to by her supervisor and had got into trouble for speaking to the claimant. The claimant took this personally and jumped to the conclusion that there was 'something going on if people were getting victimised for speaking to her\*. This incident made the claimant decide to resign.

38. On 6 May 2016 the claimant telephoned Anne Hanlon, the respondent's business manager and asked how much notice she required to resign. Ms Hanlon asked her what had happened to make her want to resign. The claimant said she was unhappy at work, did not like the way she was being treated, felt unsupported and had not had her return to work interview done. Ms Hanlon said that the claimant had returned to work two weeks previously and had been met by Jim Brown but that she was unaware that her return to work interview had not been done and this could easily be resolved. The claimant then went on to talk about Mr Power and the outcome of his disciplinary investigation. She said she felt it was not fair that he had been punished when the other teacher was not. Ms Hanlon explained that this was a separate matter which was nothing to do with the claimant and she could not discuss it with her. Ms Hanlon said she did not understand why the claimant wanted to resign and that she would sit down with her again and try to sort out what issues she felt were unresolved. She pointed out that numerous meetings had been held and outcomes reached but the claimant was not letting go and moving forward and this was not healthy for her. The claimant said she was very unhappy at work and Ms Hanlon offered to move her to another school. The claimant replied that it would not matter where she went, she needed a change. Ms Hanlon advised that if she was not happy and wanted to change career direction then to stay in her present job until she had decided what she wanted to do. Ms Hanlon said she would not accept the claimant's resignation until they had had a meeting. The claimant said she was going to do it anyway and Ms Hanlon could not stop her.

39. The claimant wrote a resignation letter dated 16 May 2016 (J276) to Maria Wilson. In the letter she stated that her final day of employment would be 3 June 2016 and that she would use up her annual leave. With regard to the reason for her resignation she stated: *7 have no other option due to the untenable conditions due to lack of trust and confidence in management especially regarding dignity at work and many other issues that have left me feeling totally disgusted. It has become evident I am the next person to be targeted in this agenda.*" The reasons for the claimant's resignation were: (i) she considered that the respondent had made promises they did not keep such as that there would be a mediation meeting; (ii) she felt that Mrs Wilson had not conducted herself properly and that no one would do anything about it. In particular she

was annoyed that she had gone to sign a statement in relation to Mr Power's disciplinary and it had not, in her view, accurately recorded what she had said. She believed (erroneously) that what she had said had been twisted, (iii) Following the incident with Ella McGhee she thought (wrongly) that people were being victimised for speaking to her.

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40. The respondent's Jim Brown, operations manager replied to the claimant's resignation letter on 19 May 2016 (J278) by inviting her to a meeting to discuss the content of her letter. The meeting took place on 30 May 2016. The meeting was attended by Jim Brown, Sheena Houston, HR officer, the claimant and her sister, Julie McLaughlin. At the meeting Mr Brown referred to the earlier meeting he had had with the claimant on 15 April and reminded her that he had given her a copy of the respondent's Dignity at Work Policy but that she had said she wanted to 'draw a line' under past issues and move forward. He said he was concerned that she had been unable to do this and asked her to talk him through her concerns. The claimant said she felt that nothing would change and that the problems she had had since June 2015 had been 'left to fester\*. She referred to the tannoy incident and acknowledged that she had received an apology from the head teacher. She said she had understood there was to be a mediation meeting but that it had never been arranged. She also said that she had never had an apology from Maria Wilson over issues and felt that Mrs Wilson could 'get away with anything she wants'. Mr Brown told the claimant that he was keen to provide her with any possible support and assistance in order to enable her to remain in her post of assistant janitor and said that if she wished to reconsider her decision to resign the respondent could consider redeploying her to another unit. The claimant responded that Maria Wilson was the big problem for her and that she felt Mrs Wilson had now "*got what she wanted*" and that now the claimant and Mr Power were both out of the school. Mr Brown again referred to the meeting on 15 April when he had informed the claimant of the respondent's Dignity at Work Policy should she wish to pursue this. He explained that without undertaking a full investigation this could not be substantiated. He asked if she wanted to reconsider this option as without knowing the detail of the issues the claimant was alluding to he could not help or put in place any support. He reiterated that he wanted to try and help but that the claimant was not allowing him the opportunity to exhaust all the respondent's internal procedures. The claimant responded that her decision was made based on legal advice she had

received, and she did not want to reconsider. Mr Brown wrote to the claimant a letter dated 30 May 2016 confirming what had been discussed (J280).

### Observations on the evidence

41. On a couple of occasions during her cross examination by Ms Blair the claimant  
5 started talking over Ms Blair before the question was finished. The result was  
that she misunderstood the question she was being asked. One example was  
in relation to an email Anne Hanlon sent to Margaret Reid dated 6 May 2016  
recording a conversation she had had with the claimant that day. The context  
10 was that the claimant had telephoned Ms Hanlon to say she was planning to  
resign and Ms Hanlon had said she would not accept her resignation and that  
they would need to sit down and sort out what issues the claimant felt were  
unresolved. Ms Hanlon had told the claimant that numerous meetings had been  
held and outcomes reached but the claimant was not letting things go and  
moving forward and this was not healthy for her. She was trying to discourage  
15 the claimant from resigning in haste. At the end of paragraph 2 of the email Anne  
Hanlon records: *'7 also explained to her to take time out to think about it after all  
she had financial responsibilities and that this wasn't something to undertake  
without planning. If she wasn't happy and wanted to change career direction  
then stay in her present job until she decided what she wanted to do. She again  
20 refused and went on to go over the same things we have already gone over with  
her.'* The cross examination became heated because the claimant did not listen  
to the question, talked over Ms Blair and as a result, misunderstood both the  
email in front of her and the question she was being asked about it. The  
questioning went as follows:

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*"Ms Blair: Do you accept that what Anne Hanlon put in her email accurately  
records what you discussed with her?"*

*Claimant (after reading email): No. I never said I wanted to change my  
career direction.*

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*Ms Blair: Anne Hanlon is not saying you did say that. She's saying 'if you're  
not happy, stay where you are till you decide what to do. Do you accept  
Anne Hanlon was trying to help and support you?"*

*Claimant: Why would she tell me to change career? I wanted support in  
the Job I was already in."*

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42. The evidence in this case (including the claimant's own evidence) suggested that the claimant did not listen carefully to others, and sometimes talked over them causing her to frequently misunderstand and misinterpret what people were saying to her. The evidence also suggested she was quite volatile and inclined to jump to conclusions and make rash judgments about colleagues, especially those senior to her.
43. One of the main issues in dispute in this case was the agreement reached at the meeting of 2 September 2015. The claimant disputed the accuracy of the letter Ms Reid wrote on 17 September 2015 in which she recorded that at that meeting, following an adjournment, the claimant's representative had stated that the claimant did not wish to pursue a grievance against her area manager, Mrs Wilson. Ms Reid's evidence was that the letter accurately recorded what had happened. Her evidence was corroborated by Kirsty Carr, the HR officer who had taken hand written notes of the meeting and then prepared the first draft of the 17 September letter (J205) for approval by Ms Reid. In cross examination the claimant accepted that she and her representative, Chris Armstrong had 'gone outside for a couple of minutes'. It was put to her that when they came back in, Mr Armstrong had said that the claimant did not wish to pursue a grievance against Mrs Wilson. She replied: "*No that's not correct*". It was put to her that she could have called Mr Armstrong to give evidence on this, but she had not done so. She claimed not to have known it was an issue and not to have read the letters for a while. This was a fairly major plank of the claimant's case. Part of her argument was that her grievance against Mrs Wilson had not been addressed and that it was a further breach of trust and confidence for the respondent to assign Mrs Wilson to manage her sickness absence in January 2016 when the claimant had a live grievance undetermined against her. If the grievance had been withdrawn, both arguments fall away. The respondent had recorded their position in a letter sent to the claimant at the time. They had called two witnesses present at the meeting who both testified that the position recorded in the letter was accurate. Given the lack of corroborating evidence of the claimant's position from Mr Armstrong on the point, and the claimant's tendency to misinterpret statements and situations (evident from the facts of this case) I preferred the respondent's account of events and concluded that the grievance was withdrawn.

44. The other main conflict in the evidence also concerned the discussions at the meeting on 2 September 2015. The respondent's case was that immediately after the withdrawal by Mr Armstrong of the claimant's grievance against Maria Wilson, the issue of mediation with the head teacher was discussed. Ms Reid's letter of 17 September 2015 records that she said that she was keen to resolve any issues in the school and that she suggested that in view of the fact that the head teacher had already apologised for the tannoy incident, and in order to progress the outstanding issues as quickly as possible, Mrs Wilson should speak to the head teacher on the claimant's behalf to tell her how the tannoy incident had made the claimant feel and to put forward any other issues the claimant had raised. Ms Reid's evidence was that she had made it clear at the meeting that this had been suggested as an alternative to mediation and that the claimant had agreed to it. The claimant disputed that this had been agreed. Again, had the claimant's position been correct, and given that she was disputing a matter recorded in writing at the time, and the testimony of two witnesses, I would have expected her to call Chris Armstrong to corroborate her position. As already mentioned, the claimant's evidence displayed a tendency to misinterpret statements and situations. For example, on 1 March 2016 (J240) she wrote to the respondent's director of education saying she had been told at two absence management meetings that she would not be returning to work at St Ambrose. This was not a correct representation of what she had been told. She had been offered a transfer as an option to facilitate her return but at no point had she been told she would not be returning to St Ambrose. For all the foregoing reasons, where there was a conflict in the evidence I preferred the testimony of the respondents' witnesses.

45. I therefore preferred the evidence of Ms Reid and Ms Carr about what was agreed at the meeting of 2 September 2015. It is true that the claimant wrote a letter received by the respondent on 29 October 2015 (J213) in which she attempted to depart from the way forward agreed at the 2 September meeting and renewed her request for a mediation. This was discussed at the meeting of 3 November 2015, after which matters settled until the claimant's sickness absence in January caused by an unrelated matter.

46. A further evidential conflict concerned the meeting of 21 March 2016. The claimant alleged that at that meeting Mrs Wilson had behaved aggressively,

shouted at her, grabbed her amended statement and thrown an email at her. This was supported by the claimant's sister Julie McLaughlin who was also present. With regard to Mrs McLaughlin, her evidence was general and not specific. She did not remember much that had been said. I considered that she was being asked to interpret the tone and actions of Mrs Wilson at a meeting two years ago. She conceded that she did not have a detailed recall. For all these reasons I was cautious about accepting her characterisations of Mrs Wilson's tone of voice and manner. With regard to the claimant's own evidence, this was muddled about the changes to the statement. She made much of the original statement taken from her referring to a 'wee boy being really upset'. She testified: *7 thought 7 didn't say that because I didn't see any wee boy*". In fact, the statement as originally drafted does not suggest she saw a wee boy but that she originally recalled Mr X saying to Mr Power in response to Mr Power observing he had put his arm round the pupil: *"What did you want me to do? The wee boy was really upset"* There was no suggestion in the statement as drafted that the claimant had said she had seen a wee boy. Ms Blair submitted that the claimant knew how to raise concerns with the respondent and had done so on numerous occasions. She suggested that if Mrs Wilson had behaved as the claimant now suggests, the claimant would have refused to participate and sign the statement and would have immediately complained about this at the time. I considered that this submission was correct and, for all the reasons given above I preferred the evidence of Ms Millen and Mrs Wilson to that of the claimant and Ms McLaughlin.

## Applicable law

### Constructive dismissal

47. The claimant resigned with effect from 3 June 2016. The onus is on her to establish that her resignation constituted a dismissal. So far as relevant, Section 95(1) of the Employment Rights Act 1996 ("ERA") provides that an employee is dismissed if .... and only if

*"(c) the employee terminates the contract under which he is employed. ...in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."*

48. The circumstances in which an employee is entitled to terminate a contract without notice by reason of the employer's conduct are to be judged according to the common law. A claimant must establish a repudiatory breach of contract by the respondent. In Malik -v- BCCI SA [1997] IRLR 462 HL this was described as occurring where the employer's conduct so impacted upon the employee that, viewed objectively, the employee could properly conclude that the employer was repudiating the contract.
49. The claimant in this case requires to prove that:
- a. There was an actual or anticipatory breach of a contractual term by the Respondent;
  - b. That the breach was sufficiently serious (fundamental) to justify her resignation;
  - c. That she resigned in response to the breach and not for any other reason; and
  - d. That she did not delay too long in resigning.
50. The claimant's argument in this case is that beginning in June 2015, a number of incidents occurred which, taken together, amounted to a material breach of the implied term of trust and confidence by the respondent and that the breach was such that the claimant was entitled to resign and make a claim for constructive unfair dismissal.
51. The implied term of trust and confidence was described by the House of Lords in Malik -v- BCCI SA [1997] IRLR 462 HL as a term that *"the employer shall not, without reasonable and proper cause conduct itself in a manner calculated and [or] likely to destroy or seriously damage the relationship of trust and confidence between employer and employee ."*
52. The test is an objective one. Ms Petrescu for the claimant cited the case of Lewis v. Motorworld Garages Ltd. 1985 IRLR 465 CA as authority for the proposition that an objective test should be used: *"the employer's conduct was repudiatory if, viewed objectively, it evinced an intention no longer to be bound by the contract"* (page 166 para A).



Discussion and decision

Constructive dismissal

53. The key issue in this case is whether the claimant has shown that the respondent  
5 breached her contract of employment. The particular term alleged to have been broken is the implied duty of trust and confidence.
54. The implied term is set out in *Malik* (above). It is that:-
- 10 *“the employer shall not, without reasonable and proper cause conduct itself in a manner calculated and [or] likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.”*
55. As Ms Petrescu submits, in Lewis v. Motorworld Garages Ltd (supra) it was  
15 established that *“the repudiatory conduct may consist of a series of acts or incidents, some of them perhaps quite trivial, which cumulatively amount to a repudiatory breach of the implied term of the contract of employment. . \* Another way of looking at it is that: “the employer’s conduct was repudiatory if, viewed objectively, it evinced an intention no longer to be bound by the contract.”* It was  
20 the claimant’s case that if an objective test is applied to the facts of this case, the respondent’s actions demonstrate an intention no longer to be bound by the employment contract. With regard to the specific acts or omissions relied upon, they were said to be as follows:
- (i) The head teacher’s tannoy announcement on 10 June 2015;
  - 25 (ii) The cluster meeting in the summer of 2015 when the claimant was *“abruptly asked to leave the meeting when she put her hand up to signal that she wanted to contribute to the discussions”*.
  - (iii) The respondent *“not investigating or seriously considering*  
30 *the claimant’s grievances”*;
  - (iv) The respondent not arranging mediation with the head teacher as initially promised;

- (v) The claimant being required to report to a member of staff against whom she had raised a grievance.
- (vi) The handling of her stage 2 grievance;
- (vii) Mrs Wilson's behaviour towards the claimant at the meeting on 21 March 2016;
- (viii) The cleaner, Ms McGhee being told off for speaking to the claimant.

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56. It was submitted that the foregoing course of conduct represented the respondent conducting themselves in a manner which destroyed the relationship of trust and confidence between employer and employee.

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*(i) The tannoy announcement on 10 June 2015*

57. Ms Petrescu submitted that the first incident relied upon by the claimant was the tannoy announcement on 10 June 2015 which made the claimant feel humiliated. Mr. Power also said he felt embarrassed by the tone of voice used to call for the janitors. The tannoy announcement was not specifically directed at the claimant. However, the respondent accepted that the head teacher's voice tone expressed irritation. To that extent, the incident is taken into account below in assessing whether a cumulative breach of the implied term occurred.

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*(ii) The claimant was asked to leave a cluster meeting in Summer 2015*

58. Ms Petrescu's submission was that the claimant had shown that during a cluster meeting in the summer of 2015 she was abruptly asked to leave when she put her hand up to signal that she wanted to contribute to the discussions. She argued that this was "*clearly behaviour designed to humiliate and suppress any form of dissent or discussion and constitutes a breach of the implied duty of trust and confidence*". She stated that Mr Power in his evidence had said it was the first time he had seen anyone put out of a meeting. He also gave evidence as to the impact this incident had on the claimant "*she was in tears and wouldn't speak to anyone until home time*". Ms Petrescu submitted (incorrectly) that Mrs Wilson denied that she spoke to the claimant after the incident or that she apologised to her. Her explanation for asking the claimant to leave the meeting

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was that the claimant was becoming heated and disruptive. Ms Blair submitted that the claimant may have felt emotive about the topic being discussed, and this may have been the only way to control the meeting at that time. Even Martin Power said that the claimant had difficulty listening and that he was one of the people who could talk to her. Ms Blair submitted that had this issue of being asked to leave been such a concern, it would have been raised at the time either by the claimant or one of the number of janitors present at the meeting.

59. I considered the submissions. The evidence as I noted it was not in accordance with Ms Petrescu's submission on a number of points. Firstly, the claimant's evidence in chief on this matter was that she had been at a cluster meeting in the summer of 2015. An issue had been raised about a cleaner being on holiday and Maria Wilson said she had not been able to get anyone else to do that overtime. The claimant did not say, as Ms Petrescu submitted, that she had put up her hand to signal that she wanted to contribute to the discussions. (The evidence she gave about that related to a different meeting.) The claimant stated in evidence: *I interrupted and was about to say I could have done that overtime'. I said "Maria". She said "Anne Colette, outside. I was just about to say I could have done that overtime... Once we were outside she said I had totally embarrassed her. She said at the next meeting that she could have took that further, the fact that I had embarrassed her at the meeting, probably because I wanted to say something"* Mr Power's evidence in cross examination was as follows: *"At the janitors' cluster meeting we were discussing overtime. [J] the janitor at St Bartholomew's mentioned a cleaner getting a janitor's overtime. Anne Collette was going to say herself and Molly Cunningham could have done the overtime but before she could say anything she was asked to leave."* He did say in his evidence in chief that it was the first time he saw anyone get put out of a cluster meeting and that the claimant was in tears afterwards and would not speak to him. Mrs Wilson also gave evidence about this meeting. For the reasons given in my observations on the evidence above, I accepted Mrs Wilson's evidence on this matter. It was more detailed about the issues and made more sense than the other versions. Parts of Mrs Wilson's account were corroborated by the claimant and Mr Power. To the extent that there was anything in this incident that could contribute in any way to a breach of the implied term the incident is taken into account below.

*{Hi) The handling of the claimant's grievances.*

60. In relation to the claimant's grievances, Ms Petrescu cited W A Goold (Pearmak) Ltd v Mr J C McConnell 1995 IRLR 516 in which Mr. Justice Morison held that *"there was an implied term in the contract of employment that the Employers would reasonably and promptly afford a reasonable opportunity to their employees to obtain redress of any grievance they may have"*. Ms Petrescu submitted that with regard to the claimant's grievances, no investigation was initiated although the respondent's grievance procedure states that there may be an investigation even for informal grievances. With regard to the grievance against Maria Wilson Ms Petrescu submitted that following the tannoy incident, the claimant wanted to raise a formal grievance against the head teacher and felt intimidated by Mrs Wilson when she mentioned the claimant's nephew as a potential witness. Ms Petrescu stated: *"This was clearly an attempt to intimidate the claimant into not pursuing a grievance against the head teacher. This indicated the climate in which the claimant was working which was hostile. It indicates an obstructive attitude to complaints and this adds to a diminution of trust in confidence in the relationship between employer and employee"* I did not accept this submission. The claimant accepted that she had refused to name any of the witnesses who could assist her in a formal grievance against Mrs Douglas. She had, however mentioned her nephew. A suggestion that if she wanted to go down the formal route notwithstanding Mrs Douglas' apology, then in terms of the procedure she should name any witnesses, one of whom could be her nephew is not *"clearly an attempt to intimidate he?"*. No reasonable person who had had the workings of the grievance policy explained to her would understand it in that way. Mr Power's evidence was that the claimant talked over Mrs Wilson at this meeting and would not listen to her. I did not find as a matter of fact that any aspect of this incident represented or contributed to a breach of the implied term.

61. The respondent's case regarding the grievance against Mrs Wilson was that the claimant's representative withdrew it after consultation with the claimant at the meeting on 2 September 2015. There was a conflict in the evidence on this point. I preferred the respondent's evidence on the issue of whether the grievance against Ms Wilson had been withdrawn for the reasons given in the observations on the evidence section above; particularly the lack of corroborating evidence from Mr Armstrong and the fact that a letter was sent to the claimant at the time recording what had happened at the meeting, which was consistent with the

evidence of Ms Reid and Ms Carr,. Whilst it is true, as Ms Petrescu submits, that the respondent accepted that there had not been an investigation, the withdrawal of the claimant's grievance is the complete answer to that. If the claimant withdrew her grievance, or if it was withdrawn on her behalf in her presence by her representative then that withdrawal was reasonable and proper cause for not investigating it or progressing it further.

*(iv) The respondent's failure to arrange mediation*

62. With regard to the grievance against the head teacher and the initial offer to resolve this by mediation, Ms Petrescu submitted that *"the respondent had no reasonable and proper cause" to renounce mediation and then not investigate the matters and instead ask the claimant to move schools because her relationship with the head teacher had been destroyed'*. For the avoidance of doubt, this characterisation of the respondent's actions was not consistent with the evidence. It is clear from the documentary records that the claimant was offered the opportunity to move schools on either a temporary or permanent basis to assist her return to work during sickness absence. She was offered a move, not *"asked to move"*. When she refused no one insisted. The reference to the claimant's relationship with the head teacher having been *"destroyed"* is not consistent with the claimant's own evidence from which it was clear that she had known Mrs Douglas a long time; had been told by her that she was *"really liked"* by her; and had no other complaints about her. Indeed, it was specifically put to her in cross examination that she had no other complaints about Mrs Douglas and she replied that she would have made a complaint if she had felt the need. Although the documents suggest that the claimant said something at the time about Mrs Douglas moving tables about, she did not mention this as an issue in her evidence to this Tribunal.

63. As set out above, I have concluded, for the reasons given that in relation to her grievance against the head teacher, a way forward was agreed with the claimant and her representative at the meeting on 2 September 2016, in terms of which Mrs Wilson would convey to the head teacher how the claimant felt about the tannoy incident. This was, in my view a perfectly reasonable way of handling the matter. The claimant's grievance against the head teacher was solely about the tannoy announcement. There was nothing innately offensive about the words used in the announcement. It was not directed at the claimant personally. The

claimant accepted in cross examination that she had no problem with the tannoy being used to contact the janitors when necessary. Her issue was that the head teacher had used the wrong tone and had failed to say 'please'. The head teacher had already apologised to the claimant and her colleague for that. It is unclear what more a mediation could possibly achieve. Furthermore, the claimant's behaviour at meetings was somewhat volatile and there was a risk that if a mediation meeting were held and the claimant became heated, her relationship with the head teacher might be damaged. In the foregoing circumstances I have concluded that the respondent's handling of the matter was not 'conduct calculated or likely to destroy or seriously damage the relationship of trust and confidence', nor did it contribute to a cumulative act of that nature. In any event, the foregoing factors would amount to reasonable and proper cause for the respondent handling the matter as they did. They discussed with the claimant a reasonable alternative to mediation to which the claimant agreed.

(v) *Requiring the claimant to report to a member of the staff against whom she had raised a grievance.*

64. If the claimant's grievance against Ms Wilson had been withdrawn, then it was not in my view repudiatory conduct (or any part thereof) for the claimant's absence to be managed by her.

(vi) *The handling of the claimant's stage 2 grievance.*

65. With regard to the handling of the claimant's stage 2 grievance, Ms Petrescu submitted that "*having seen no progress of her stage one grievances, the claimant raised a stage two grievance against both the head teacher, Mrs. Douglas, and her line manager, Maria Wilson in a letter dated 24/09/2015 sent to the executive director*" (J209). She submitted that "*If a grievance is not investigated this constitutes a breach of the employers implied duty to attempt to redress an employee's grievance (as per Goold mentioned above). This is fundamental to the employment contract and such a failure is a material breach.*" As explained above, I have concluded that the claimant's representative withdrew her grievance against Maria Wilson on 2 September 2015 and that her grievance against Mrs Douglas was appropriately resolved after discussion with her in the manner described in the letter of 17 September 2015. In these

circumstances, it was not shown by the claimant that the stage 2 grievance was competently raised in terms of the procedure. If a grievance is withdrawn or otherwise resolved, the later stages of the procedure can no longer be invoked. Thus, I do not find that this matter constituted or contributed to a breach of the implied term.

(vii) *Ms Wilson's behaviour towards the claimant at the meeting on 21 March 2016.*

66. Ms Petrescu submitted that a further incident upon which the claimant was basing her constructive dismissal claim was the meeting with Mrs Wilson, Julie McLaughlin and Nichol Millen on 21 March 2016. The purpose of the meeting was for the claimant to sign her statement in an investigation into a complaint brought by a pupil against her colleague. (I have anonymised the teacher's name as he has not had the opportunity to comment on the material placed before me and it would not, therefore be fair to identify him). During this meeting Ms Petrescu alleged that Mrs Wilson intimidated the claimant by grabbing one of the documents in front of her and throwing another at her to sign. She stated that Mrs Wilson also shouted at the claimant. She submitted that I should prefer the evidence of the claimant and Mrs McLaughlin to that of Mrs Wilson and Ms Millen; that the behaviour was intimidating and hostile towards the claimant and that it amounted to a breach of the implied duty of trust and confidence. Ms Petrescu cited the case of Palmador v. Cedron 1978 IRLR 303 in which a distinction was made between abusive language in the heat of the moment and intolerable language "*which is such that even if the person using it is in a state of anger, an employee cannot be expected to tolerate it*". She stated that it is the claimant's submission that the language Mrs Wilson used, and her general demeanour towards the claimant humiliated her and was thus intolerable.

67. I considered the evidence before me. With regard to the language Mrs Wilson used, the claimant testified that Mrs Wilson said to her at the meeting: "*You emailed me at 6:50 [in the] morning. I have a blackberry and I keep it on at all times. Your email disturbed me*". She also stated that Mrs Wilson asked her to call her on Monday in accordance with the sickness policy. Her evidence contained no details of any other language'. Likewise, Mrs McLaughlin testified that she remembered Mrs Wilson saying something about an email the claimant had sent early one morning and said Mrs Wilson had made it clear she was not

happy about getting emails early in the morning. There was no evidence before me of any other statements alleged to have been made by Mrs Wilson at this meeting, whether intolerable or otherwise. The evidence given by the claimant and her sister in relation to this meeting consisted of general allegations regarding Mrs Wilson's tone of voice, an allegation that she 'shouted', with no indication of what she was said to have shouted about and an allegation that she 'grabbed' the statement and 'threw' the email. These are all matters of interpretation. For the reasons given above I preferred the evidence of Mrs Wilson and Ms Millen to that of the claimant and Mrs McLaughlin in relation to this meeting and I did not conclude that anything untoward occurred. For the avoidance of doubt, I also did not conclude that anything about the way the claimant was treated as a witness during the investigation process constituted or contributed to a breach of the implied term. Indeed, I had a serious concern about the claimant's behaviour in relation to this investigation which coloured my view of her reliability. The claimant made some very serious allegations in her email to Mrs Wilson of 7 March 2016, questioning the integrity of the investigation, and suggesting that a teacher had been guilty of unspecified wrong-doing. A disciplinary investigation into the conduct of a colleague is a very serious matter. The claimant had not herself witnessed the incident which had given rise to the complaint under investigation. The investigators needed her to tell them the facts about the encounter she saw between the teacher and her colleague in the janitors' office; what she saw and what she heard. Nothing else was relevant. Her speculations about what other people might have been thinking and about aspects of the matter which she had not witnessed were irrelevant and improper. Her email which she insisted on submitting as her statement contained the following inappropriate remarks: *"MrX had time to think of what he was doing before he came to the janitors. I think he may be regretting taking this decision. I think this is all a result of Mr X's wrong doing and he has to cover his behaviour on that day. I feel when I gave my statement I was being suppressed by only being allowed to say things you thought were relevant when this is very concerning behaviour by Mr X especially as he is working with children I feel his actions cannot and should not be underestimated."*

(viii) *The cleaner Ms McGhee was told off for speaking to the claimant.*



68. Ms Petrescu submitted that the last straw for the claimant was an incident (on 3 May 2016) when she learnt that one of her colleagues had been told off for having spoken with her. Ms Petrescu submitted: *"This may not seem significant if regarded in isolation, but it should not be seen in isolation. This came after a series of incidents [as] a result of which the claimant felt intimidated, was treated with hostility and was effectively being thwarted in her attempts to resolve matters. None of her complaints had been properly addressed and she was made to feel she was not being taken seriously. The day after this incident, the claimant complained but she was not told the reason why that person had been told off for having spoken to [her]. This made the claimant think people were prevented from speaking with her. This felt like a further attempt to isolate her and taken together with the previous incidents was an attempt to diminish her confidence and thus her efforts to resolve matters with her employer."*
69. Based on the claimant's evidence of her conversation with Ms McGhee, I have found as fact that on or about 3 May 2016 the claimant was sitting in the janitors' office when she began a conversation with one of the cleaners, Ella McGhee. They were discussing Mr Power's disciplinary process and speculating about whether he would be able to return to being a janitor. It was clearly inappropriate for the claimant to discuss a disciplinary matter with another member of staff, particularly when she had been involved in the investigation as a witness. Disciplinary investigations are private and confidential. Helen Taylor, the senior janitor overheard their conversation and called the senior cleaner. When the claimant came back from locking up, Ms McGhee told her she had been spoken to by her supervisor and had got into trouble for speaking to the claimant. The claimant took this personally and thought there was 'something going on if people were getting victimised for speaking to her\*. On her own evidence, this was the incident that made the claimant decide to resign.
70. Looked at objectively, it was clearly inappropriate for the claimant to be discussing with another employee a confidential disciplinary matter in which she had been a witness. Given that the conversation was overheard it is unsurprising that Ms McGhee was told to desist. As Ms Petrescu correctly submits, with reference to London Borough of Waltham Forest v Omilaju 2005 ICR 481 (CA), the main characteristic of a last straw incident is that it must contribute something to the breach although what it adds may be relatively insignificant

(para 19). It does not need to be unreasonable or blameworthy conduct (para 20) but it must be the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer (para 20). Ms Petrescu drew attention to paragraph 22 of Omilaju in which she quotes Dyson LJ as saying that *“an entirely innocuous act (...) cannot be a final straw*. The full sentence of paragraph 22 of which only part was quoted is this: *“Moreover, an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee’s trust and confidence has been undermined is objective”* That dictum applies to this case. It was a clear act of misconduct for the claimant to discuss with another employee a confidential disciplinary matter in which she had been a witness. It is obvious that if such a conversation is overheard by a manager it must be stopped. To do so is not just innocuous but obligatory. The claimant misinterpreted this act as hurtful and destructive of trust and confidence because she imagined some sort of conspiracy against her but looked at objectively it was nothing of the sort. Under normal circumstances the claimant herself might have been reprimanded by her senior janitor but doubtless by this stage the claimant’s managers were ‘walking on eggshells’ with her and disinclined to challenge her.

71. Ms Petrescu stated that it was the claimant’s submission that all the above incidents gradually damaged the relationship of trust and confidence between the claimant and her employer eventually leading to a material breach of the implied term. She reminded me that according to Lewis v. Motorworld Garages Ltd. 1985 IRLR 465 CA (page 170 para H), these incidents much be considered cumulatively and not individually.

72. Having considered the facts found regarding all the incidents which were put forward by the claimant as cumulatively amounting to a breach of the implied term, it appeared to me that put at its highest, the matters for which the respondent could be criticised were Mrs Douglas’ irritated tone of voice and failure to say please in a tannoy announcement in June 2015, and Mrs Wilson requesting the claimant to leave a cluster meeting in which she was becoming heated in the summer of 2015. Overall, I have concluded that viewed objectively, the course of action complained of by the claimant in this case comes nowhere

near conduct (carried out without reasonable and proper cause) which is calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. Nor did it evince an intention no longer to be bound by the contract. I conclude that there was no repudiatory breach of the claimant's employment contract by the respondent in this case and the claim for constructive dismissal therefore fails at the first hurdle and is dismissed.

73. I would like to thank both representatives, Ms Petrescu and Ms Blair for their professional and effective presentation of their respective cases. Although the claimant did not succeed, she can rest assured that every point that might have been made for her was well made and that her case was presented as thoroughly and effectively as was possible.

**Employment Judge: M Kearns**  
**Date of Judgment: 19 April 2018**  
**Entered in register: 20 April 2018**  
**and copied to parties**