



Case No. 2304852/2019

EMPLOYMENT TRIBUNALS

Claimant: Mrs R Wells

Respondents: Clarion Housing Group

Heard at: London South (By CVP) **On:** 19-22 April 2022

Before: Employment Judge Self

Appearances

For the Claimant: In Person

For the Respondent: Mr J Cook - Counsel

JUDGMENT

The Claim of unfair constructive dismissal is not well-founded and is dismissed.

REASONS

(As Requested by the Claimant)

1. The Claimant seeks compensation for what she contends was her unfair constructive dismissal. I have heard oral evidence from the claimant, Mr More, Mrs Jones and Mrs Hathaway Batt. Each of those witnesses have been tendered for cross examination having produced a written witness statement.
2. There is a bundle of documents that runs to almost 900 pages. I have considered such documents as I have been directed to either by the witness

statements or in cross examination. Both parties have provided written closing submissions which they supplemented briefly orally.

3. During the course of the hearing there were applications from the Claimant to submit more documents. Despite the relevance of these documents not always being clear, the Respondent took a sanguine view about admitting them and did not object. Evidence was heard on the first two days of this hearing, closing submissions on the third day and Judgment has been given on the fourth.
4. The Respondent is a substantial provider of Social Housing with a stock of some 125,000 properties which houses approximately 250,000 residents. It is a not for profit organisation which is in receipt of public funds and audited by Homes England. The Respondent provides affordable housing to rent or buy and also has a range of supported housing services, two of which are relevant to this case being part of the Vulnerable Persons Resettlement Scheme by housing Syrian refugees and also assisting with the housing needs of victims of domestic violence.
5. The Claimant commenced her employment with Centra on 1 November 2016 and TUPE'd over to the Respondent in April 2019. On 17 January 2017 the Claimant began her role as a Syrian Family Support Officer. In essence Syrian families who had been displaced would be housed by the Respondent (delegated by Kent County Council) and the Claimant's role would be to support those families in their new homes.
6. In March 2017 Ms Tessa Grandi became the Claimant's Line Manager and the service was a fast growing one with more families coming to live in the area. The Claimant agreed in oral evidence and it was clear from documents we saw that she had a good relationship with Ms Grandi for quite a substantial part of her employment. It would appear that the Claimant was operating to the satisfaction of Ms Grandi, as the Claimant was marked at the highest grade on her Performance Review in May 2018 and when there was an opportunity to apply for a Team Leader role in June 2018 the claimant did so and Ms Grandi was on the panel that appointed her following an interview in late July. The Claimant took on that role on 9 August 2018.
7. On 13 February 2018 Ms Susan Caldwell joined the team and the Claimant asserts that she was known to and friendly with Ms Grandi. It was part of the Claimant's role to show Ms Caldwell what was required and to help train her. The Claimant's evidence was that Ms Caldwell did not perform well or act appropriately on a number of occasions and cited times when Ms Caldwell lost control and shouted or otherwise acted inappropriately. It was clear that Ms Caldwell and the Claimant did not see eye to eye.

8. On 1 September Ms Grandi informed the Claimant that she had received complaints from the Claimant's team members that they were having difficulties contacting the Claimant. This was not supported when the Claimant raised the issue at a Team Meeting the next day. Looking through the correspondence around that time, the mood between Ms Grandi and the Claimant appears still to be relatively relaxed.
9. On 4 October the Claimant received a text from Ms Grandi to the effect that she was ill and unable to make an event that day and the Claimant needed to get £250 to pay an interpreter and to put the request through against a family otherwise the sum would not be authorised. The Claimant explained that ultimately the meeting did not happen but that she considered that the request was a fraud and told Ms Grandi that and that Ms Grandi got angry. Ms Grandi has not given evidence before us so we have not heard her version of events. The Claimant concluded that this was the day that Ms Grandi turned against her and decided that she no longer wanted the Claimant in her Team.
10. On 8 October the Claimant saw Ms Grandi in the office and stated that Ms Grandi appeared to be in a bad mood with her. I have seen other correspondence in October that appears to be in keeping with earlier times i.e. that there appeared to be a relatively relaxed and informal relationship.
11. On 1 November the Claimant had a meeting with Ms Grandi. Ms Grandi told the Claimant that she had received complaints from staff about the Claimant but she did not give any concrete examples. The Claimant was upset by this and stated that if people were dissatisfied with what she was doing then she would have to rethink what she was doing.
12. There is an unsigned file note dated 2 November which is said to have been drafted by Ms Grandi. It reads:

“Met R to go through issues raised. I advised our that complaints had been raised by staff regarding different aspects of the support she was giving her families and also the staff. They were not happy.

R was very surprised and asked for examples of what the staff had raised - I said I would have these for her the following Friday

We then discussed work and families and I raised my concerns that Rachel was not integrating with the team and seemed to be working very solo and that the team were still coming to me for everything . Rachel said she had asked them to approach her.

We talked about her not being to meet a deadline and I expressed my concerns with the general lateness to meetings etc (this is a normal

subject for Rachel and I. Meeting did not last long as Rachel said she had to meet a family in Swale”.

13. Pausing there for a moment the Claimant had only just been appointed to her new role in August and so was new in post. There are often teething troubles where new reporting lines exist. It is Ms Grandi’s job to manage the Claimant and to bring to her attention issues that arise or that she becomes aware of. It would have been far more helpful if she had have had examples at this meeting rather than deal in generalities only.
14. There are no examples in the bundle of any of the complaints that were being made about the Claimant that would have led to the comments being made by Ms Grandi at this meeting. It is unknown what the totality of the complaints were as at 1 / 2 November. The Claimant went on leave on 2 November and on balance I accept that the meeting took place on Thursday 1 November 2018.
15. It would appear that on 6 November 2018 Ms Grandi started a formal investigation. It is marked as being authorised by Mrs Jones from HR but she denied that was the case in her oral evidence and I accept that the investigation was not authorised by Mrs Jones on that date.
16. The background to the investigation cited complaints on 9,10 and 17 October re the Claimant allegedly not providing sufficient support to families. Ms Grandi indicated that she had the meeting with the families to get first-hand accounts after the claimant went on leave on 5 November. The report suggested that formal disciplinary action be taken although it is not clear when the report was concluded or who it went to.
17. Ms Grandi met with the Claimant on 9 November and her account was as follows:

“Met R as agreed the previous week to go through the complaints that I had received from staff and service users.

I gave her a copy and we went through them together . R became very tearful. And said she felt she'd let the team down. I suggest that more importantly she had let the clients who are very vulnerable down. She said - yes of course. R did not deny any of the subjects the complaints raised.

I asked her what had happened over the last few months. I asked her if losing her brother had affected her but she said no and that the issues raised went back before then. I asked her about going through the change as she had said she wasn't sleeping properly - again R said no she didn't think so. She had personal issues she had also had personal

issues that had occurred about 18 months ago but felt that hadn't affected her performance. R asked me if I would send her a copy of the document listing the complaint so that she could respond. I said I was happy to do that as she had the right.

To respond R then asked if she could leave as she was still very upset I agreed to this as I didn't want her colleagues to see her crying at this would cause her more embarrassment I felt. R and I agreed that we would meet up next Friday and discuss further once she had responded.

18. The Claimant's account of the meeting is different. She stated that the complaints when told to her made no sense and that she did ask for them in writing so she could respond to them. She did not agree that she accepted any of the allegation or indeed that she had let any of the individuals down. She believes that she was told by Ms Grandi that after a discussion with Mr More, her line manager, the Claimant was to take two weeks off as sick leave because she had not got over the death of her brother in July of that year. Mr More explained in his evidence that he did not make that suggestion but merely queried whether there were any external factors which may have contributed to any fall in performance levels.
19. In the absence of hearing any oral evidence from Ms Grandi and considering all that is known I prefer the evidence of the Claimant that she did not make any acceptance of fault at this meeting. I do so because I consider it highly unlikely having heard her at this hearing, that the claimant would make such a concession at all, let alone before she had had a chance to examine the allegations against her in full detail.
20. At 2114 that evening the Claimant wrote to Ms Grandi saying that she would respond fully to the issues when they were received and providing possible explanations as to why staff were having difficulty contacting her after speaking with the IT department and also external mobile phone providers. It would appear that the Claimant had taken those issues on board and was seeking to rectify any possible problems. At this point in time the Claimant even states **"Thanks for today – I feel much happier now that we have discussed the issues that both staff and families have experienced (174)."**
21. It seems that from what was discussed there had still not been a full breakdown of the relationship and I find that was because not all of the five pages of criticisms had been touched upon. That would not have been feasible had the meeting been for 40 minutes. The Claimant was absent on sick leave from 12 November initially being signed off for two weeks.
22. On 12 November 2018 Ms Grandi sent through all of the complaints both from staff members and service users. It is not clear but it appears that Ms

Grandi canvassed views from the staff and asked for them to air their concerns. It is not clear that this was done in a neutral fashion. There are also complaints from service users. It appears that Mrs Caldwell had a number of issues she wished to raise.

23. On 20 November 2018 the Claimant responded very fully to the complaints and expressed her disappointment in the manner that Ms Grandi had gone about the process. At this point the Claimant had no idea at all that she was formally being investigated and that one of the outcomes was that she could be disciplined or even dismissed. I find that she should have been so informed.
24. The Claimant provided a detailed response or as detailed as she could as some of the allegations still lacked particularity and provided specific responses to each issue (58 in total) and provided documentary evidence where she could in response to the allegations made. Having reviewed them myself I find that many of the allegations were minor in nature. The Claimant also asked for Ms Grandi to speak to four individuals who would support her position. None of those individuals are mentioned as being spoken to within Ms Grandi's investigation report. In order to report properly they should have been spoken to if an even-handed investigation was being carried out.
25. On 22 November at 07.27 the Claimant wrote to Ms Grandi asking what she needed to do to step down from the Team Leader post and to return to being a Support Officer. This was understandable. The Claimant had been ranked very highly as a Support Officer and the alleged issues had only arisen since she was a Team Leader.
26. There was a meeting on 23 November and again there are differing accounts of it. The Claimant asserts that at this meeting the Claimant had actually been on suspension and not sick leave and the Claimant responded by saying that she did not even know there was a formal process in train. The Claimant was told that if HR got involved then she would be dismissed for gross misconduct and may not be able to get another job doing a similar scheme. She was told that she should resign and then she would be able to get another job. The Claimant states that she was sobbing and was so upset she wet herself and then was physically sick on leaving.
27. Again, I have not heard from Ms Grandi orally about this meeting. There are notes of the meeting which have not been agreed as being accurate. The notes are far more detailed and suggest that it was the Claimant who wanted to give notice and that she accepted that she had let service users and colleagues down. Again, I am unable to accept that the Claimant made any admissions, especially taking into account the detailed rebuttal and the position she had maintained now for a substantial period of time. On balance I accept that Ms Grandi did seek to persuade the Claimant that resignation

would be the best way forward at this meeting and placed pressure upon her to do so. I find, in the absence of any evidence from Ms Grandi, that she had decided that she no longer wanted the Claimant working in the team

28. At 1748 on 22 November the Claimant emailed Ms Grandi resigning on a month's notice. Ms Grandi had spoken with HR and I find did not tell them an accurate account of the meeting. Ostensibly Ms Grandi was suggesting that the Claimant should take time to reflect but in reality she was content for her to go. The email sent on 23 November at 1807 was drafted by Mrs Jones at HR and reflected the Respondent's view but not that of Ms Grandi herself.

29. On 26 November the Claimant emailed HR Admin, Mr More and Ms Grandi in the following terms:

"I would like to retract my resignation sent to you on Friday afternoon as it was made under duress.

I would like an independent person to investigate the alleged complaints made against me, including the additional ones that you would have advised me on Friday (they are identified) I no longer wish to have any further communication with Tessa Grandi regarding this or any other matter.

30. The Claimant had reflected over the weekend and had clearly decided that she wished to clear her name in relation to the allegations that had been made and that her relationship was at a particularly low ebb with Ms Grandi. The Respondent had no obligation to accept that retraction but they did and the Claimant's employment continued.

31. Later that morning Ms Wells emailed Mr More informing him that she did not feel fit enough to attend work the following day and that she would remain on sick leave. She subsequently sent in a Fitness for Work Statement which signed her off until 12 December on account of stress.

32. The Claimant spoke with Mr More in the following week and sent him a further email on 4 December. Mr More was on leave at this time. The email indicated that she had secured further evidence in respect of the matters raised against her and she supplied that information. She further asked for time scales and whether a meeting would be necessary and she asked whether she was on sick leave or whether she had been suspended.

33. Pausing there for a moment what was the situation. I am satisfied that there were some complaints against the Claimant which had come to the attention of Ms Grandi and she was entitled to raise those with the Claimant. Looking at them, most appeared to be fairly minor and, on the balance of probabilities, arose as a result of the Claimant bedding into the new role. It was a matter

that could and should have been capable of resolution within the one to one process. It appears that Ms Grandi escalated matters by effectively providing staff and residents open season to raise what complaints they wished against the Claimant and Ms Caldwell in particular was happy to oblige. This led to an avalanche of again mainly minor complaints for which the Claimant had a ready answer. Ms Grandi decided without HR input to escalate to a formal investigation.

34. The Claimant defended her position in a very clear and cogent way which emphasised to Ms Grandi that there would be difficulties to resolve and I find that she did place pressure on the Claimant to resign at the meeting in November. For Ms Grandi it was just easier that way. The Claimant resigned but then rethought the position and retracted her resignation asking for an independent investigation into ***“the alleged complaints made against (her).”*** She did not ask at that stage for there to be an enquiry into whether or not the allegations were fabricated.
35. It follows that in the email of 4 December the enquiry which the Claimant sought and wanted details of was an enquiry into the original allegations made against the Claimant and also other allegations Ms Grandi had made during the November meeting.
36. The Claimant was signed off again from 10 - 24 December. On 10 December her access rights to internal files was removed. I have not received a satisfactory reason for why this would be done to an individual on sick leave even if there was an investigation ongoing. I can see no need for it being done and it should not have been done.
37. On 19 December Mrs Jones from HR wrote to the Claimant. It was identified that the Claimant had been absent sick and that it had been agreed with Mr More that the Claimant would take leave owing to her and it was hoped that she would return to work on 9 January 2019. She also stated that:

“We are keen to resolve the ongoing investigation and given the additional information that you have provided since your meeting with Tessa I would like to propose that we speak with you in the new year to update you and ascertain whether a further investigatory meeting should take place with you before the investigation can be concluded.”

38. On 7 January the Claimant emailed Mrs Jones to confirm she would be returning to work on 9 January and asked whether she would be required to attend a meeting in respect of the investigation. On 8 January Mrs Jones confirmed the Return to Work process and also confirmed that Samantha Anderson would consider the information that formed the subject of the investigation. I am satisfied that Ms Anderson was well away from the individuals involved in this process and was an appointee that met the

Claimant's expressed wish when she rescinded her resignation. The Claimant made no complaint about the appointment. I am satisfied that if the Claimant thought that Ms Anderson was inappropriate in any way she would have said.

39. On the Claimant's return she was to work with Karen Maidment at Medway because of the issues under investigation. The Claimant made no request to go back to her supervisory role or any objection to this and again I find that the Claimant's deployment on return from sickness absence was a prudent and sensible one and this was accepted on both sides.
40. On 22 January Ms Anderson asked to meet with the Claimant on 29 January. It appears that the letter was wrongly addressed but the Claimant agreed to meet with Ms Anderson after some email correspondence. The Claimant sent to Mrs Anderson documents in support of her position on the afternoon of 28 January. Mrs Anderson arranged to meet Ms Grandi on 5 February and also sought documents from her. There was a substantial amount of paperwork produced by both the Claimant and Ms Grandi and I am able to identify a number of requests from Ms Brewis who was the HR link to the investigation for documents to support certain points / block holes.
41. On 6 February Mrs Anderson provided the Claimant with information updating her on progress of the investigation indicating that it would not be completed before the end of February. Taking into account all the information that had been supplied, the time frames do not appear to me to be unreasonable.
42. On 24 February the Claimant raised an issue with Mrs Anderson in relation to Mrs Caldwell's mugging. She asserted that the mugging had been staged **"in an attempt to build more evidence for the five pages of complaints towards (her)"**. I consider that this allegation has little evidential foundation and is an example of the Claimant not being able to see the wood for the trees in respect of these matters. The Claimant is very concerned that her reputation has been impugned and is determined to defend herself but at times seems to take as fact matters which are highly unlikely on an objective view (416).
43. I have seen the notes in respect of the meetings Ms Anderson held with both Ms Grandi and the Claimant. The view I take is that Mrs Anderson sought to cover the ground in a logical and proportionate way with both individuals. She does not appear to have taken any short cuts and appears to have a genuine desire to get to the bottom of what she has been asked to consider.
44. On 7 March the Claimant asked Mrs Anderson for an update and was told that there had been leave commitments and the hope was that it would be concluded within 2 weeks.

45. On 25 March the Claimant was sent the outcome letter which was dated 22 March. That letter stated:

- a) That in relation to the concerns about the Claimant's performance at work was concerned that no disciplinary proceedings would result;
- b) The matter should not have been escalated to an investigation but should have been dealt with in the normal 1 to 1 processes with clear objectives being set;
- c) The one to one process had been ineffective and it was suggested that both Ms Grandi and the Claimant should take some ownership for this failing;
- d) Notwithstanding the finding above it would be difficult for the Claimant to return to the Syrian Team because "there had been a breakdown in relationships with Ms Grandi and the rest of the team" and that it was recommended that the Claimant continue working at Medway with Mrs Maidment;
- e) The Claimant's performance would continue to be monitored by her new manager and if there was a repeat of similar issues it could lead to formal action;
- f) That due to the failings identified training would be put in place for Ms Grandi to eradicate the shortcomings identified surrounding the **"one to one process and the lack of support / provision of clear guidance"**.

The Investigation Report was said to be included but it was not.

46. The Claimant stated that she had read the letter and the attachments on 30/31 July and was very concerned at the fact that Ms Grandi seemed to have raised a lot of other allegations in the meeting with Mrs Anderson (over 50 according to her calculation). On 4 April the Claimant lodged a complaint with the police alleging harassment. Whilst acknowledging that the Claimant was very upset at what she considered to be groundless allegations the referral to the police for the criminal act of harassment appears to me, on an objective basis, to be unnecessary.

47. On the same day the Claimant emailed Mrs Jones explaining how upset she was by the allegations made about her by Ms Grandi in her interview.

48. On 26 March Mr Prior who was Head of Care and support and to whom Mr More reported into emailed Mrs Maidment to confirm that the Claimant was remaining in her team. Mrs Maidment responded stating that she was happy for the Claimant to remain with her but queried in what role and would the pay be protected she also said that she had spoken to the Claimant and:

"I had a brief chat with R last night re the outcome of the investigation. R is not happy as it appears the investigation does not define any clear outcomes. R feels she is neither been cleared nor accused from the

investigation. But she is not able to return to a substantive post (no reason provided) . I understand it is a difficult situation for both R and the staff however for closure R would benefit from having a clear guide as to the reasons for the recommendation and the choice to return to her post . I've advised R to put her unanswered questions together and speak to HR read the outcome."

49. Mr Prior responded suggesting that the Support Worker role be offered to the Claimant and discussions were had about red circling her salary because of her inability to return to the Syrian team. There were discussions about those issues with HR. Mrs Jones did not agree with Mr Prior's proposed course and contended that ***"She needs to return to her original role with Nathan and Tessa and clear expectations agreed by both parties in terms of future behaviours and conduct. Either myself or Jade would be happy to facilitate a meeting between the employee and Nathan in which either one of us would attend so that we can draw a line under this and move forward"***. That advice proved persuasive to Mr Prior who concurred with it on 5 April.

50. On 8 April the Claimant wrote to Ms Anderson as follows:

"Thank you for the attachments and outcome letter the contents of which have caused me a great deal of distress. However, I'm glad that you have provided a copy of the statements and documents made by Tessa Grandi.

As discussed with you and Katie in my interviews my conduct and performance have never been brought into question. I would like my reputation cleared of any doubt that I have carried out the allegations made against me. The reason I got upset in the interview is because the allegations are not true. The statements made to you by Tessa Grandi are false and the documents provided to you are forged. I do not say this lightly I will provide the supportable evidence.

51. The Claimant was signed off absent on 8 April for one month on account of work-related stress and received the full outcome report on 10 April. On the same date Mrs Jones suggested to the Claimant a meeting on 26 April with herself, Mr More and Ms Brewis from HR so that the position could be considered once the Claimant had read the full Investigation Report.

52. The Investigation Report indicated that the original complaints related to "poor work performance." Under Facts established:

- a) ***There are occasions where R has failed to complete requirements in order to support families***
- b) ***Communication needs to be improved between R and Ms Grandi.***

- c) ***Processes need to be clear in terms of deadlines expectations and job roles***
- d) ***Lack of management support throughout the business***
- e) ***Unable to confirm or deny the allegation about R taking 200 pounds from N to buy a dehumidifier***
- f) ***Due to the complexity of the allegations the fact that many of them were dated back to 2018 and the confusing nature of the evidence provided which was often he said / she said or otherwise difficult to prove, it was not prudent to attempt to investigate every allegation.***

53. Mitigating factors were identified:

- a) Lack of 1 to 1s and no clear expectations / standards set
- b) No support or development plan offered to the Claimant upon promotion
- c) Many of the complaints are old and detail was not originally provided
- d) Ms Grandi's initial handling of the investigation has led to a breakdown of trust in the working relationship.

54. I have considered the report and conclude that:

- a) Mrs Anderson was presented with a substantial task;
- b) She approached matters reasonably and proportionately;
- c) Her conclusions are ones which she was entitled to come to on the evidence provided;
- d) Her suggested outcomes are also reasonable ones in the circumstances too;
- e) Her outcome letter is a little clumsy at points.

55. On 14 April 2019 the Claimant sent to Mrs Jones what she described as a statement that outlined the serious misconduct of Ms Grandi and Mrs Caldwell. The Claimant alleged that:

- a) The original statement to Ms Grandi by Ms Caldwell was fabricated and created with malice;
- b) Statements from families were also fabricated;
- c) Ms Grandi had abused her position;
- d) The sole purpose of the original fabricated allegations was to cause as much hurt and distress to the Claimant as possible by attempting to discredit the Claimant and force her out from her Team Leader post;
- e) That Ms Grandi and Ms Caldwell acted with deceit, fraud and manipulation in the investigation process.

56. Ms Jones spoke with the claimant and it was agreed that the meeting on 26 April would explore the outcomes of the investigation and the subsequent statement.
57. That meeting took place on 26 April. The Claimant confirmed that her ongoing sickness absence was caused by the investigation outcome and the HR representatives sought to explore with the claimant the best way to get the Claimant back to work. The Claimant indicated that she could not go back and work with Ms Grandi and could not countenance mediation with her at this time. Mr More reiterated that no allegation was substantiated and no action had been taken against the Claimant because of that.
58. On a number of occasions, the Respondent's representatives asked the Claimant as to what solution she could bring to the table to allow matters to move forward constructively. The Claimant, as at this hearing, was unable to come up with any instead appeared to dwell on certain problems as opposed to having a realistic view of solutions..
59. The meeting ended and the Claimant was advised certain matters and certain action points were agreed:

“R had been completely exonerated following the investigation carried out by Samantha Anderson. The allegations made against have not been substantiated and no formal action will be taken in relation to the matter.

The meeting acknowledged R's concerns regarding the statement in the outcome letter linking further misconduct further formal action. This complaint has been upheld and will be addressed with R in writing.

The organisation did not transfer R to Karen's team as a sanction but only to support her well-being and at the time it appeared that this was acceptable to all parties. Based on R's feedback and questions raised regarding the impact this move has on job role and salary it is recognised that she cannot remain there on a permanent basis. However, it is agreed by all that allowing her to come back to work on a phased return to work plan with Karen may be helpful.

R keeping regular contact with Nathan in relation to her absence any adjustment regarding method of contact will be agreed with Nathan and R.

R will engage with her GP to discuss the option of a phased return to work plan and any further adjustments this can be agreed in conjunction with our H services.

R engaged with her counsellor so that further counselling sessions can be considered and funded by the organisation. R to seek advice on whether penning an open letter to Miss Grandi would assist in the reconciliation process.

Nathan and ER -OH referral to consider adjustments and plan for a structured and phased return to work

Nathan to provide guidance to Ms Grandi and oversee R's management to ensure R is integrated back into the team."

60. I accept that the notes of this meeting are accurate and the impression I get from them is of the Respondent genuinely seeking solutions to move the situation forward for the benefit of the Claimant and the organisation. It is equally clear that the Claimant is in no position to make any such steps and is still firmly focussed on what has gone before.
61. The Claimant is sent a letter dated 3 May from Mrs Jones. The Claimant's upset and inability to go back and work with Ms Grandi was noted. It was also noted that the Claimant wished to raise a complaint against Ms Grandi. Mrs Jones stated that she had reviewed the outcome letter and following the Claimant's representations at the meeting she reconfirmed that the allegations made against the Claimant were not substantiated and there was no clear evidence of wrongdoing. It was confirmed that the move to Maidment's team had been done with the Claimant's best interest at heart and not as a sanction. Indeed, on the Claimant's own case she was not prepared to go back to the Team and so the transfer was merely acting upon what the Claimant wanted.
62. The meeting is said to have concluded with Mr More and the HR Representatives expressing how important it was to reach a resolution and for the Claimant to be able to return to work in a safe and supported environment. I am quite satisfied that was indeed the genuine wish from management and what they were seeking to work towards. The Respondent had the opportunity of not accepting the retraction of the resignation and then not putting the substantial work in investigating the matter via Miss Anderson and that of HR and the additional funding of counselling sessions, but that is the route they chose.
63. On 10 May the Claimant confirmed that she wished to instigate a formal grievance against Ms Grandi ***"in relation to her conduct and actions towards me"***. The Claimant attached a statement of her concerns (with attachments) and also indicated that she would be bringing a grievance against Ms Caldwell in due course.

64. Mr More was asked to consider the grievance by HR and he confirmed receipt of the same on 16 May 2019. The Caldwell grievance was subsequently joined to the Grandi grievance on 25 May. A meeting was set for 30 May 2019. (695). On the same day the Claimant's pay was reduced because of the length of her sickness absence. On 22 May 2019 the Claimant was signed off for work stress between 22 May and 31 July. Around this time the Claimant was also referred to Occupational Health.
65. I have seen the notes from the grievance meeting on 30 May. Mr More sets out his proposed way forward and the Claimant is in agreement with it. Mr More goes through the grievance and groups together similar allegations. The Claimant is given ample time to put across the points she wishes to make and Mr More makes diligent enquiries of the Claimant related to the issues raised in the grievance.
66. On 14 June Mr More responds to the Claimant's grievances. In summary he concludes as follows:
- a) That the Claimant had been exonerated of the allegations against her by Grandi and Caldwell;
 - b) That there was no clear evidence to suggest that she had been forced to resign;
 - c) That the grievance about the suggestion that the Claimant's brother's death may have been part of the reason for lowered performance was partially upheld.
 - d) That there was conflicting evidence on numerous matters for which there was no hard evidence either way.
67. On 19 June the Claimant appealed the grievance outcome and the appeal was set for 2 August. I accept that there were difficulties in getting somebody of a sufficient level to deal with the appeal. The Claimant was asked what outcome she required and in her response she asked that matters be properly investigated (753). Shelley Hathaway-Batt who was Head of Enterprise Change and Planning was appointed to consider the appeal.
68. There is an OH report dated 29 July where it is stated that it is anticipated the Claimant will be fit for work the following week. There was a suggested phased return to work and it was suggested that a return to the Syrian team would be difficult at this time and a further view should be taken as to whether she could return there in 3-6 months.
69. On 31 July the Claimant raised an issue with Mr More as to why he had left the word "fabricated" out of the outcome letter and whether he had completed the outstanding task. The Claimant asked for annual leave the day before the appeal so she could prepare and was granted it by Mr More.

70. On 1 August the Claimant was told that it was anticipated that she would need to return to work in her substantive role as a Team leader. The Claimant was not happy with this turn of events as she had not been for some time. The conversation was cut short and Mr More was not able to discuss the matter with her further. The Claimant accepted that she deliberately did not respond because she did not feel able to do so.
71. Further reviews were taking place behind the scenes and it was finally decided that the Claimant would go to work with Ms Gouldthorpe's team for an initial three-month period. It was intended that at a scheduled return to work meeting on 5 August this change could be discussed as a hoped for mutually acceptable way forwards.
72. The Grievance appeal meeting took place on 2 August with Mrs Hathaway - Batt. I have carefully considered the notes of the meeting and it appears to be a civilised two-way conversation at which both parties are able to be heard and raise whatever issues they wish.
73. On 5 August 2019 the Claimant resigned without notice. The letter is lengthy and the Claimant described the appeal process which had not yet concluded as being "pointless." Mrs Jones swiftly responded internally stating that she did not wish to accept the resignation until the appeal had been concluded and efforts had been made to get the Claimant back to work with Ms Gouldthorpe. Ms Hathaway Batt indicated that in her view there had been "some contribution" by the Respondent to getting to this point and so she supported still making efforts to get the Claimant back.
74. On 6 August Mrs Jones wrote to the Claimant indicating that the Respondent hoped to persuade the Claimant to rescind her resignation and suggested a meeting with Mr Prior, who would take over the main contact with the Claimant from Mr More. She told the Claimant that there was a possible solution on hand which would involve a new line manager which they wanted to discuss and in order to show again that they were willing to try and assist the Claimant where possible her pay was to be reinstated and any back pay made up (804). I have seen correspondence which indicates that Ms Hathaway-Batt was continuing with her enquiries post resignation.
75. On 28 August Mrs Jones chased the Claimant for an answer to her previous email and on 29 August the Claimant reiterated that she had resigned with immediate effect of 5 August and that she wanted her P45. Even after that date Ms Hathaway Batt still sought information to investigate the appeal.
76. On 29 October 2019 a letter was sent out with the appeal outcome.

77. The Law

The statutory basis for constructive dismissal is set out **at section 95 (1) (c) of the Employment Rights Act 1996 (ERA)** and that section states 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 in which he is entitled to terminate it without notice by reason of the employer's conduct.

78. It follows that the test for constructive dismissal is whether the employer's actions or conduct amounts to a repudiatory breach of the contract of employment (**Western Excavating (ECC) Limited v Sharp (1978) 1 QB 761**).
79. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee (**Malik v BCCI SA (1998) AC 20**).
80. Any breach of the implied term of trust of and confidence would amount to a repudiation of the contract of employment and the test of whether or not there has been a breach of the implied term is objective (**Malik at 35C**). There is no need to demonstrate intention to breach the contract. Intent is irrelevant.
81. A relatively minor act may be sufficient to entitle the employee to resign and leave the employment if it is the last straw in a series of incidents. The particular incident which finally causes the resignation may in itself be insufficient to justify that action, but that act needs to be viewed against a background of such incidents that it may be considered sufficient to warrant treating the resignation as a constructive dismissal. It is the last straw that causes the employee to terminate a deteriorating or deteriorated relationship.
82. It is clear that the repudiatory conduct may consist of a series of acts or incidents, some of which may be more trivial, which cumulatively amounts to a repudiatory breach of the implied term of trust and confidence. The question to be asked is whether the cumulative series of acts alleged, taken together, amount to a repudiatory breach of the implied term. Although the final straw may be relatively insignificant, it must not be entirely trivial. It must contribute something to the preceding acts. The paragraphs in "The Law" section of this Judgment above are a summary of aspects of Lord Dyson's Judgment in *London Borough of Waltham Forest v Omilaju* (2005) ICR 481.
83. In **Kaur v Leeds Teaching Hospitals NHS Trust (2018) EWCA Civ 978** it was identified that normally it will be sufficient to answer the following questions to ask the following questions to establish whether an employee has been constructively dismissed:

- a) What was the most recent act or omission on the part of the employer which the employee says caused or triggered his or her resignation?
- b) Has he or she affirmed the contract since that date?
- c) If not was that act or omission in itself a repudiatory breach of contract?
- d) If Not was it nevertheless a part of a course of conduct which viewed cumulatively amounted to a repudiatory breach of the implied term of trust and confidence?
- e) Did the employee respond to that breach?

84. Conclusions:

In the Case Management Order dated 13 May 2020 Employment Judge Fowell set out the Respondent's conduct which the Claimant relied upon to demonstrate that there had been a repudiatory breach of the implied term of mutual trust and confidence. These were the Claimant's choices and she has not sought to amend the issues at this hearing. I will deal with each in turn:

85. Failing to investigate her claims that Ms Grandi had forced the Claimant to resign in November 2018

Factually that is not made out. Mrs Anderson made enquiries of both the Claimant and Ms Grandi as to what had been said at the November meeting. She was unable to find as the Claimant wanted but she certainly investigated the issue and I can see little else that she could have done to elicit evidence that was relevant on that issue save to speak to both participants. It was a reasonable and proportionate investigation.

86. I have found as a fact that on the evidence before me that on the balance of probabilities Ms Grandi did encourage / persuade / cajole the Claimant into resigning. I only heard from the Claimant on the issue whereas Mrs Anderson heard from both. There were the notes of meetings and emails from which I could have concluded otherwise. The fact that Mrs Anderson and I have formed a different view is unsurprising as we have heard different evidence. It is also irrelevant because the complaint is that there was a failure to investigate which I reject and not specifically a complaint about the outcome. Further the Claimant accepted that there was investigation under cross examination.

87. Failing to investigate the source of the allegations, that had not been substantiated, even after a grievance had been raised

Factually this is not made out. Mrs Anderson concluded that no further action was necessary from a disciplinary standpoint. That does not equate to the Claimant having made no mistakes from which she could properly be the subject of management from her line manager. Following the meeting managers went further and stated that the claims against her were unsubstantiated. It is not clear to me how they formed that view and I find that

it was an attempt to assuage the very clear agitation that the Claimant felt about the situation as opposed to a forensic analysis of the facts. It was, in fact, a clear attempt by management to support the Claimant.

88. The source of the allegations was Ms Grandi asking for examples of things the Claimant had done wrong having had previous indications of dissatisfaction. Whilst I accept that a neutral stance would have been better i.e. please tell me the good and bad aspects of working with the Claimant I do not accept that the Claimant has demonstrated to me that the allegations were fabricated. Many were simply different perspectives on a set of facts and I am satisfied that some service users did make some minor criticisms of the Claimant.

89. I consider that Mrs Anderson undertook a proportionate investigation which was sufficient for the purpose required. Mr More's enquiry was just about sufficient and Mrs Hathaway Batt made significant efforts to get to the bottom of what went wrong. In any investigative situation there can always be more done but this is not a murder enquiry. These are investigations which are having to be made among a very busy work schedule and I am satisfied that investigations were made. Further the Claimant accepted that there were investigations under cross examination.

90. Informing the Claimant on 2 April that she would be required to take a role that was a demotion

The Respondent was looking for a solution to a tricky HR issue. A manager had not handled an employee well and as a result there had been a break down in the relationship which extended seemingly to other staff. The Claimant had to go somewhere when she returned to work and Medway was a suitable spot and the claimant made no initial complaint about it.

91. On 2 April the Claimant was told that it was a possibility that she would remain in Medway and that her pay would be red circled. I accept and the claimant agreed in cross examination that it was only mooted as a possibility. In fact, that position was reconsidered and rejected by Mrs Jones and then Mr Prior with the view the Claimant should return to her substantive role with careful management. The Respondents were continually trying to think of solutions but the Claimant was unable to assist them in that process. The Respondent was resourceful and had another option to offer the claimant due to her insistence that she would not / could not go back to her substantive role but she resigned before that could be communicated. This allegation is not made out factually.

92. On 30 April 2019 preventing the Claimant from contacting colleagues during her sick leave

Mr More accepts that he did make this instruction although is unable to clearly recall in what precise terms. His concern was that the Claimant was acting inappropriately and he made what he considered to be a reasonable management instruction. My view is that this could have been handled more sensitively and that there was a lack of clarity in what was communicated. It was a blunt instrument to use and could and should have been narrowed down more specifically.

93. Delaying the grievance appeal process (July 2019)

This was withdrawn by the Claimant during the hearing

94. Refusing on 1 August 2019 to allow the Claimant to return to work at the Medway office;

Requiring the Claimant to work alongside Ms Grandi and Susan Caldwell from then on (1 August 2019); and

Requiring the Claimant to meet with Ms Grandi upon her return to work on 5 August 2019.

I am satisfied that Mr More's account of the telephone call is correct. The claimant's recollection in cross examination was erratic and inconsistent and Mr More was not challenged on his recollection. Mr More and others were busily trying to work on a means by which the Claimant could return. Medway as a long-term option was not feasible because of the pay differential. That was a reasonable management conclusion. In the background other matters were being canvassed. I do not accept that the Claimant was told that she would have to meet Ms Grandi as alleged. The Respondent had, in my view, done its very best to ensure that the Claimant's welfare was protected over a substantial period and it is not credible that Mr More would have simply told the Claimant that she would be meeting Ms Grandi at the Return to Work meeting. I accept his evidence that he simply alerted the claimant that Ms Grandi may be in the office vicinity, as a matter of common sense and courtesy.

95. I accept that there was the suggestion that the Claimant would be returning to her substantive role and I accept that this would have not been an outcome that the Claimant would have wanted. In my view it should have been apparent to the Claimant that the Respondent, who had worked hard on solutions and was genuinely trying to resolve matters and wanted the Claimant back, would at the very least listen to any further representations the Claimant wanted to put forward. In fact, of course, shortly after the conversation they had found another potential Team for the Claimant to work in and would have communicated the same to her either when the Claimant attended work the following week or when they tried to contact her over the

next day or so. The Claimant was out shopping when the initial 1 August call came through and then deliberately did not answer the phone thereafter preventing the alternative role from being communicated.

96. Taking into account all of the above I have come to the conclusion that the Claimant has not been constructively dismissed as the Claimant has not demonstrated that the Respondent were in repudiatory breach of the implied term of trust and confidence.
97. That is not to say that there were not errors from the Respondent along the way. I do consider that it is more likely than not that Mrs Caldwell took the opportunity to raise issues when presented with an open opportunity by Ms Grandi. I accept that Ms Grandi leapt into a formal process without the safeguards provided by HR but to some extent that was done to mask her own failings as a manager. I make those findings on the evidence before me and not having had the opportunity to hear from either of those individuals.
98. I consider that Mrs Jones is a highly competent HR professional and had she been brought in from the very start there would have been a very different feel to this case. I was impressed by the calm and thoughtful letters that she wrote both to the Claimant and also to other managers. I was also impressed with the thoroughness that Ms Hathaway Batt showed when considering the appeal and endorse the findings she made in her appeal outcome.
99. Whilst I am critical of the manner in which the initial matters were dealt with the outcome from Mrs Anderson seems to be entirely the correct one that there was no need for any formal disciplinary matters and that any issues should be dealt with via a one to one setting with a clear understanding of objectives and expectations. In my view that should reasonably have been the end of the matter and at that point the Claimant should have returned to her department or been redeployed to a suitable role. Unfortunately, the Claimant was unable thereafter to consider solutions but became absorbed in the problems and began to get caught up in ever more elaborate conspiracy theories for the actions of Caldwell and Grandi. These were laid bare as being groundless by Mr Cook's forensic cross examination.
100. I do not accept that the Respondent conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. In fact, I find HR bent over backwards to accommodate the Claimant and the concerns she had in an attempt to find a solution after the first resignation. Their actions were neither calculated nor likely to damage the relationship in the way required. In fact, most of the matters the claimant specifically preys in aid I have found did not take place. From November onwards the Respondent placed all of its efforts into seeking to resolve what had gone on before in a constructive and facilitative way and each of their actions had a reasonable and proper cause.

101. Using the questions posed in Kaur:

a) What was the most recent act or omission on the part of the employer which the employee says caused or triggered his or her resignation?

That would appear to be the telephone call of 1 August.

b) Has he or she affirmed the contract since that date?

There was no affirmation and the Claimant resigned promptly a matter of days later.

c) If not was that act or omission in itself a repudiatory breach of contract?

For the reasons stated above I do not consider that act alone to be a repudiatory breach of contract

d) If not, was it nevertheless a part of a course of conduct which viewed cumulatively amounted to a repudiatory breach of the implied term of trust and confidence?

For the reasons stated I do not consider that much of the specific conduct the Claimant complained of in the list of issues is factually correct and standing back despite clear errors by certain staff members of the Respondent especially early in the chronology I do not consider that cumulatively there is a repudiatory breach of contract.

d) Did the employee respond to that breach?

There was no breach

102. Whilst the Claimant has been unsuccessful I am quite able to see why she brought this claim. There were some failings on the part of the Respondent but insufficient for her to be successful. This claim is dismissed.

Employment Judge Self
18 May 2022

