



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Helen Harper  
**Respondent:** Spire Healthcare Limited  
**Heard at:** Norwich Employment Tribunal  
**On:** 8 and 9 August 2022  
**Before:** Employment Judge Hutchings (sitting alone)

## Representation

Claimant: Ms L Redman of Counsel  
Respondent: Mr A Ross of Counsel

# RESERVED JUDGMENT

The claimant's complaint of unfair dismissal is not well founded. The claimant was not constructively dismissed.

# REASONS

## Introduction

1. The claimant, Ms Helen Harper, was employed by the respondent, Spire Healthcare Limited ('Spire'), as a Business Development Manager, based at the respondent's Norwich hospital, from 5 December 2011 until she gave notice by letter on 21 June 2021; her effective date of termination was agreed with Spire as 1 July 2021.
2. By a claim form dated 27 September 2021 Ms Harper claims constructive dismissal, asserting she had no choice but to resign because of Spire's breaches of the term of trust and confidence which is implied by law into her employment contract (the 'term'). ACAS consultation began on 22 August 2021 and concluded on 27 August 2021. Ms Harper's particulars of claim set out several facts to support her assertion that Spire breached this term. In summary her reasons are:

- 2.1. The way Spire's management addressed concerns about the professional relationship between Ms Harper and Fiona Syder (Operation Outpatients Manager);
  - 2.2. Spire's failure to satisfactorily address Ms Harper's grievance about how these concerns were handled;
  - 2.3. The behaviour of Ms Harper's line manager, Mr Haider, and the impact of his behaviour and '*demands*' on Ms Harper's health; and
  - 2.4. The way in which Spire handled Ms Harper's return to work ('RTW') meetings in January and June 2021.
3. The respondent is a private healthcare provider, delivering medical and healthcare related services to the NHS and private patients. By a response form dated 30 November 2021 Spire contests the claim. It contends that (acting by its managers) it did not behave in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence it had with Ms Harper and, therefore, it did not breach the implied term. Spire asserts that it had reasonable and proper cause for its actions in relation to the concerns it had about her relationship with Ms Syder. It submits that the grievance raised by Ms Harper concerned the way Spire handled the issues raised by Ms Syder, and that at no time did Ms Harper raise a grievance about Mr Haider's line management or behaviour, nor did his behaviour breach the implied term. Spire asserts it conducted a reasonable and fair investigation into Ms Harper's grievance. On 6 September 2021 Ms Harper started new employment with a law firm, Birketts. Spire submits this is the reason she resigned.

### **Procedure, documents, and evidence**

4. The claimant was represented by Ms Redman of Counsel and gave sworn evidence. The respondent was represented by Mr Ross of Counsel, who called sworn evidence on behalf of the respondent from:
  - 4.1. Mrs Helen Paterson, HR lead, Spire Norwich Hospital;
  - 4.2. Mr Nayab Haider, Hospital Director, Spire Norwich Hospital;
  - 4.3. Mr Benjamin Hume, Associate Director, Spire Norwich Hospital;
  - 4.4. Mr Neil McCullough, Hospital Director, Spire Hospital, Cambridge Lea; and
  - 4.5. Mrs Bernadette Bishop, Director of Clinical Services.
5. The hearing was listed for 2 days. At the end of the second day I had heard the evidence from both parties but did not have time to hear closing submissions. Therefore, I made an order for written submissions from both parties, which I received on 15 August 2022.
6. I considered the documents from an agreed 360-page bundles of documents which the parties introduced in evidence. The respondent also provided a chronology and cast list to the claimant and Tribunal. At the request of Mr Ross, the details of which are below, I ordered disclosure and inspection of additional evidence at the hearing; the claimant provided an additional bundle of 28 pages and made her ruled notebook available for inspection by the respondent on the second day of the hearing.

## Preliminary matters

7. At the start of the hearing Mr Ross expressed concerns as to whether parties could proceed, citing the following reasons:
  - 7.1. Ms Harper's claim did not particularise the events she alleges breached the implied term of trust and confidence.
  - 7.2. Her witness statement refers to additional events (not referenced in the claim) as grounds for a breach of that term. Accordingly, Spire had not had the opportunity to respond to these allegations in reply or written witness evidence.
  - 7.3. Despite requests, Ms Harper had not provided full disclosure of all communications relating to her search for, and securing of, a new job. Mr Ross requested additional disclosure and sight of a ruled notebook in which Ms Harper had made notes of meetings referred to in her claim.
  
8. I note that Mr Ross' instructing solicitors have not made any interim applications for further and better particulars of claim or supplemental disclosure, although there is email correspondence from them to Ms Harper's solicitor requesting the documents sought. The hearing was listed for 2 days, with 6 witnesses attending. Given there have been no interim applications, I considered it contrary to Rule 2 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 to adjourn the hearing to accommodate these late requests. I dealt with them in the framework of the listed hearing and address each below:
  - 8.1. I agree that Ms Harper's claim is not fully particularised; although events are not listed or pleaded specifically by reference to the implied term, there are sufficient events referenced to which Spire has had the opportunity to reply and adduce evidence. These events will be considered by the Tribunal as the facts on which Ms Harper relies to claim breach of the term. I have listed these events below when addressing the issues for determination by the Tribunal.
  - 8.2. Her witness statement does refer to additional events which are not referenced in the particulars of claim. The Tribunal will consider these references as evidence and context to the breaches Ms Harper does plead.
  - 8.3. Ms Redman informed me that Ms Harper could (i) provide a folder of correspondence relating to her search for employment, and new role at Birketts, in advance of day 2 of the hearing; and (ii) bring her notebook on day 2 to allow inspection by Spire. Therefore, on 8 August I ordered specific disclosure of all correspondence and remuneration information relating to Ms Harper's search for a new job and new role at the law firm for the period 1 January to 6 September 2021. I also ordered Ms Harper to produce her spiral notebook with a world map cover for inspection by Mr Ross.
  
9. Mr Ross also made a request for Mrs Bishop to give evidence to the hearing by CVP. I note that Spire's solicitor had not made an advance request for a hybrid hearing in line with best practice. I allowed the hearing to be converted to hybrid for day 2 to enable Mrs Bishop to give her evidence remotely as Tribunal Administration were able to accommodate this short notice request.

**Constructive dismissal - Issues for the Tribunal to decide**

10. To determine whether Ms Harper was unfairly dismissed first I must consider whether Spire breached the implied term of trust and confidence? I must decide whether:

- 10.1. Spire (acting by its managers) behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence with Ms Harper; and (if I find that it did)
- 10.2. It had reasonable and proper cause for doing so.

11. I have considered the particulars of claim. As they do not list the events which Ms Harper alleges are the basis of her claim that Spire breached the implied term of trust and confidence, I list below the events referred to in the particulars on which Ms Harper bases her claim for constructive dismissal:

11.1. The way Spire's management addressed concerns it had with the professional relationship between Ms Harper and Ms Syder, including:

- 11.1.1. That Mr Hume '*chose to act on the one-sided information [from a 1:1 meeting on 17 November with Ms Syder] before hearing [Ms Harper's] version of events separately.*'
- 11.1.2. Requesting that Ms Harper '*attend a perceived formal meeting with Benjamin Hume, Helen Patterson and Fiona Syder....at short notice to discuss Benjamin Hume's allegation that [Ms Harper] and Fiona Syder had a fractious relationship*', which Ms Harper denied, that was '*spilling over into other departments within the hospital*'.
- 11.1.3. That this initial request to meet the same afternoon '*compelled her to reschedule a meeting with Helen Patterson to discuss her recent Occupational Health report*'.
- 11.1.4. That '*[t]he urgency and formality of the [requested] meeting caused [Ms Harper] great distress*'.
- 11.1.5. The use of the language '*fractious relationship*' and '*spilling over into other departments within the hospital*'.

11.2. Spire's failure to satisfactorily address Ms Harper's grievance (set out in an email dated 19 November 2020) about its handling of these concerns. Ms Harper alleges Spire failed to:

- 11.2.1. Address her grievance satisfactorily; she asserts the process took 6 weeks, and the investigation did not uphold the points raised or take account of all the evidence.
- 11.2.2. Act on recommendations of the grievance appeal outcome, in particular by failing to discuss the recommendations with her and not ensuring an acknowledgement by Mr Haider of the upset she experienced.

11.3. Ms Harper's relationship with her line manager, Mr Haider, in particular:

- 11.3.1. The impact of his approach to her appraisal;
- 11.3.2. His '*demands*' which Ms Harper alleges impacted her health;
- 11.3.3. Conducting a meeting on 11 January 2021 on a virtual platform despite Ms Harper's requests for a meeting in person, and Mr Haider's handling of this meeting.

- 11.4. The way in which Spire handled Ms Harper's return to work in June 2021. This is alleged to be the 'final straw' event'.
12. If I find trust and confidence has been breached, I must decide whether the claimant's resignation on 21 June 2021 was in response to that breach.
13. If so, I must determine whether the resignation took place within a reasonable period of time or did the Ms Harper affirm the contract before resigning? This means I will need to decide whether Ms Harper's words or actions showed that she chose to keep the contract alive even after any breach.

### Findings of fact

14. The relevant facts are as follows. First, the Tribunal makes a general finding on evidence. In written submissions Mr Ross invited me to consider Ms Harper's credibility as a witness. In her claim form (dated 27 September 2021) she states she did not have another job. In fact, at the time the claim was submitted Ms Harper had been working in her new job at Birketts for 3 weeks. Ms Harper applied for this role on 28 May 2021 and orally accepted an offer on 16 June, accepting it in writing on 24 June. In oral evidence Ms Harper told me that the claim form was completed by her solicitor, saying it was an oversight that the box indicating she did not have a new job was ticked. While this is a fair explanation, when read with the lack of evidence in the hearing bundle about the process of application for and acceptance of her new role, despite this evidence being pertinent to the issues in dispute, it is difficult to believe. Ms Harper did not give full disclosure of correspondence relating to securing her new job, despite requests from Spire's solicitors to do so prior to the hearing. For example, the hearing bundle did not contain the email dated 16 June from Ms Harper to the law firm stating that she '*would resign*'; this was produced by Ms Harper following my order for specific disclosure. The timeline leading to the new role is not referred to in Ms Harper's witness statement despite being relevant to issues of liability and remedy. The schedule of loss is not an accurate reflection of the period and remuneration of Ms Harper's new employment.
15. In assessing Ms Harper's credibility, I have borne in mind that the documents provided by Ms Harper following my order for specific disclosure reveal a different version of events regarding her search for and securing of new employment than stated in her claim form, witness statement and schedule of loss. The picture presented by Ms Harper (prior to my order for specific disclosure) of the timeline and process of her application and acceptance of her role with Birketts and remuneration package is incomplete and misleading. This inevitably affects my overall view of her credibility. To give effect to Rule 2 [the parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal] parties to proceedings are obliged to disclose all documentation which supports their case and also all documentation adverse to their case, where that documentation is relevant to issues of liability and remedy; the purpose is to assist parties in narrowing issues, where possible, and to ensure the Tribunal has a complete picture of facts relevant to the claim and response. Ms Harper was legally represented throughout her claim. Evidence of the timeline application to acceptance and remuneration of the role at the law firm was relevant to both. Ms Harper's approach to disclosure calls

into question the credibility of her oral evidence where unsupported by contemporaneous documents.

16. I consider an analysis of Ms Harper's note taking also relevant in considering the credibility of her evidence. The hearing bundle contained 7 pages of manuscript notes of a meeting Ms Harper had with Mr Haider and Mrs Patterson on 21 June 2021. Ms Harper told me she did not write anything at this meeting, writing her notes '*as soon as [she] got home*'. The notes are extremely detailed; they read as a monologue with recollections recorded in full sentences of prose. Ms Harper denied that she had transcribed these notes from a recording. It seems to me implausible that this level of detail could have been memorised and recalled from memory, even later the same day. I find it is more likely that the notes were transcribed from a recording, possibly since deleted. Indeed, Ms Harper comments in emails to Mrs Patterson that she is happy for meetings to be recorded.
17. A copy of Ms Harper's notes of a second meeting on 21 June 2021 with Mrs Patterson (immediately after the first meeting) was also disclosed in the hearing bundle. In cross examination Ms Harper said she wrote the notes of both meetings at the same time. The style of the notes taken at the second meeting is very different to the notes of the first meeting; short and bullet style (although I note this was a shorter meeting). The spiral bound notebook Ms Harper brought to the hearing, following my order for inspection, contained the original notes of the second meeting. However, it did not contain the notes of the first meeting. In oral evidence Ms Harper told the Tribunal that the notes of the first meeting were not written in the same notebook, but in a different notebook, which has since been lost. It is curious that 2 meetings which took place back-to-back were noted in different styles in different notebooks, one of which is lost. The copies of the notes from both meetings in the hearing bundle are spiral bound notebooks, with the same number of spiral binds, of the same size, on the spine. When the discrepancy as to why the notes were recorded in different books was explored in cross examination, I found Ms Harper to be evasive. This lack of a clear explanation for the discrepancies and the missing notebook calls into question Ms Harper's credibility as a witness.
18. In places, Ms Harper's allegations in her particulars of claim do not accurately reflect the contemporaneous documentary evidence before me. I address these in my findings of fact below. I am also concerned about the way Ms Harper described her meeting with Mrs Paterson on 21 June 2021 in her witness statement. She refers to a conversation about constructive dismissal, including a quote she attributes to Mrs Patterson, followed by a reference to personal injury. In oral evidence she reversed these references and accepted that the quotation was not an accurate reflection of what Mrs Patterson said at this meeting. This calls into question the accuracy of Ms Harper's written recollections. Mr Ross challenged these, and other comments attributed in quotations to Mrs Paterson, including quoted references in a telephone call on 11 May 2021 about Mr Haider. Mrs Patterson denies she said the words as quoted. For the reasons stated, I prefer Mrs Patterson's evidence where recollections of events and conversations differ.
19. I found Spire's witnesses to be clear and consistent in their evidence throughout the hearing; their recollections were generally consistent with each other and corresponded to the contemporaneous documentary evidence. Their answers to Ms Redman's and the Tribunal's questions were forthcoming and certain;

they were open when they could not recall details of events. The witnesses were genuine in their reflections and willing to concede that some of the language used in communication and actions caused Ms Harper upset and to acknowledge, without invitation, that some matters should have been handled differently.

20. I turn now to my findings of fact relevant to the issues in dispute. Ms Harper started her employment with Spire as a Business Development Manager on 5 December 2011. From March 2017 to her resignation her line manager was Mr Haider. By her own admission the first 9 years of her employment were happy. The last 9 months were challenging; during this time Ms Harper had periods of sick leave (2 weeks from 25 September 2020, 4 weeks from 4 December 2020 and 6 weeks from 11 May 2021) which led to Occupational Health ('OH') assessments and reports on 9 November 2020, 12 January 2021, 24 May 2021 and 14 June 2021 and Ms Harper completing a stress risk assessment on 11 June 2021. The reports were shared with Mr Haider and Mrs Patterson.
21. On 17 November 2021 Mr Hume had a regular one to one meeting with Ms Syder at which Ms Syder raised issues in her working relationship with Ms Harper. Due to Mr Haider's temporary, short notice move to Spire Bushey hospital, Mr Hume had taken over some management responsibilities from Mr Haider. Therefore, as Mr Haider's delegate, on 18 November 2020 Mr Hume sent Ms Harper and Ms Syder an email (copied to Mrs Paterson) to arrange to meet them *'independently'* to address the matter. In her claim Ms Harper states this email requested a *'meeting the same afternoon'*. The only email I have in the hearing bundle dated 18 November does not request a meeting the same afternoon. In fact, this email refers to a planned meeting which was cancelled due to Mr Haider having to attend an emergency meeting with the NHS. It must be that Ms Harper is alleging that the timing of an initial meeting *'compelled her to reschedule a meeting with Helen Patterson to discuss her recent Occupational Health report.'* However, there is nothing in the evidence which supports the allegation that she was compelled to cancel this meeting. Given my findings on credibility and lack of contemporaneous evidence I find that while Ms Harper cancelled the OH meeting she was not compelled to do so.
22. In the 18 November email Mr Hume suggests to Ms Syder and Ms Harper that they meet with him and Mrs Patterson independently *'to help you both find a solution'* and *'so a plan can be developed'*. He comments that he was keen to send the email as the planned meeting was cancelled and he is *'very keen to maintain open communication'*. In closing he comments:
- 'We both [a reference to Mr Hume and Mr Haider] fully appreciate that life can be particularly unpredictable and stressful at the moment, our aim is to support the best possible outcome for both of you. I have discussed this with Nayab and he is in full support of the process.'*
23. Ms Harper alleges a formal meeting was scheduled, stating in her claim that *'the urgency and perceived formality of the meeting caused [her] great distress'*. She took exception to Mr Hume's approach and language. Her claim she *'surmised that Fiona Syder had made a vexatious complaint to Benjamin Hume who chose to act on one-sided information'* and that the email requested *'her presence at a perceived formal meeting before hearing her version of events separately'*. This is an inaccurate summation. I make the following findings about Mr Hume's email. Read objectively, there is no bias or predetermined

judgment in his approach or language. He does not directly reference that Ms Syder has raised an issue; the reference is more oblique [*it has become apparent*]. However, the general intention of the meeting is clear. It does not read as an urgent communication, nor is it flagged as such. In evidence Mr Haider comments that he wanted any issues to be addressed before his move to Spire Bushey Hospital. This is a reasonable management approach, which the email reflects, indicating a desire of management to resolve issues. The email does not suggest a formal meeting. Mr Hume invites Ms Harper and Ms Syder to meet with him independently. The campaign against Ms Harper, which she presents in her claim, does not exist, other than in her mind. This is Ms Harper's subjective, and possibly oversensitive interpretation (mindful she had recently returned from a period of sick leave), interpretation of the email. Ms Harper read things into the email that simply are not there, possibly because she was in fact aware there were issues with Ms Syder, despite denying these at the time.

24. Indeed, Ms Harper was not consistent in her evidence about her relationship with Ms Syder. In November email communications, she said there were no issues between herself and Ms Syder, yet she concluded on receipt of Mr Hume's email that Ms Syder has made a vexatious claim; this conclusion of itself suggests complexities to a working relationship. Indeed, in an email of 15 October 2020 Ms Harper had raised concerns to Mr Haider about Ms Syder's conduct. Ms Harper's view she had *no issues* does not align with Mrs Patterson's evidence that there were *tensions* or the findings of Mrs Bishop's investigation (see post) that there were tensions between these colleagues and their respective departments. In raising concerns with Mr Hume, it is clear that Ms Syder did feel there were matters that needed to be addressed. In oral evidence Ms Harper accepted that, *on reflection there was some tension* and *times when interactions could have been described as tense*. This aligns with the contemporaneous evidence of Mrs Patterson, Mr Hume and Mr Haider. I find there were issues between Ms Harper and Ms Syder at that time.
25. Therefore, as a hospital manager, on the receipt of information from Ms Syder, acting on the direction of Mr Haider, Mr Hume was justified in approaching both parties by email with the intention of addressing the concerns raised. An email approach was appropriate; indeed, in evidence, Mrs Patterson describes Ms Harper as preferring to deal with matters by email.
26. On 19 November 2021 Ms Harper met with Mr Hume and Mrs Paterson over zoom to share her concerns about the email; these concerns are recorded in an email the same day and a 5-page note. At the 19 November meeting Ms Harper asks for a meeting to share her feelings in a more formal way. Mr Haider spoke to her the following day, agreeing to a formal review of her concerns and suggesting she could work from home to improve her work life balance. Mr Haider confirmed his agreement to a *formal review* by email on 20 November, stating *I really want to make sure we support our team*. The email informs Ms Harper of his imminent (on 23 November) move to a Spire Bushey Hospital (due to challenges presented by the Covid-19 pandemic) and that Mr Hume will lead the Norwich hospital in his absence. Mr Haider's correspondence with Ms Harper at this time is responsive and supportive, directing Ms Harper to Mr Hume and Mrs Patterson for further support during in absence. Mr Hume's response is also warm, wishing Ms Harper *a lovely couple of days annual leave*. I find that Mr Hume and Mr Haider's responses to Ms Harper's concerns supportive and professional.



27. Mrs Paterson emailed Ms Harper on 24 November 2020 offering her the opportunity to deal with her grievances informally or by a formal process. On 25 November Ms Harper confirmed she would prefer a formal process. This email provides further details of the issues Ms Harper wanted to formalise, referencing the language in Mr Hume's email, the *'ill-judged nature'* of a joint email communication, her upset at the initial proposal of a face-to-face meeting when she had recently returned from sick leave, the forwarding of another email, her view that there are no tensions in her relationship with Ms Syder and her conclusion that a vexatious complaint has been made about her.
28. I find that in places the wording of the 18 November email is unprofessional. The reference to the relationship being *'fractious'* and *'spilling over into respective teams throughout the hospital'* is not appropriate language. However, it is clear to me from the evidence that Mr Hume did not intend to upset or offend Ms Harper. In his meeting with Ms Bishop as part of the grievance process (see post) Mr Hume acknowledged these references were inappropriate and could be misunderstood. The grievance investigation upheld Ms Harper's complaints about the language. In his written and oral witness evidence he expressed genuine regret at having referred to the relationship as fractious and agreed that individual emails would have been more appropriate. I find that Mr Hume did not intend by this language to cause the distress to Ms Harper she describes. On balance, I find the email was sent in good faith; read in its entirety the email makes clear Mr Hume's intention was to resolve a situation between two colleagues. Ms Harper's allegations of bias, predetermination in Ms Syder's favour, and formality do not exist.
29. Mrs Bishop was appointed to chair a formal process and Ms Harper was invited to a grievance meeting on 3 December 2020 ('the grievance meeting'). In preparation for the grievance meeting, on 30 November 2020 Ms Harper sent Mrs Bishop an email summarising her concerns with Mr Hume's approach and details of interactions concerning Ms Syder; attached to the email was correspondence Ms Harper had with various colleagues and notes of periods for the period 18 September to 19 November 2020. Neither the email nor the attachments refer to the issues Ms Harper alleges in her claim and evidence about her professional relationship with Mr Haider. The grievance process was not about Mr Haider. As part of her investigation Mrs Bishop made various enquiries, asking questions of Mr Hume, Mr Haider, Kerry Ducker (a member of Ms Harper's team) Linda Page (Deputy Director of Clinical Services at Spire, Norwich), Lisa Wright (outpatient sister), and Ms Syder. Mrs Patterson took, and I have seen, notes of these meetings. Ms Page spoke of different style of communication creating difficulties and Ms Wright described the relationship as *'a bit awkward'* with *'frustration on both sides'* and Ms Bishop records Ms Syder as being upset about difficulties she experienced in the relationship. This confirms my finding that there was tension in the relationship between Ms Syder and Ms Harper in 2020 and that Mr Hume's action of sending an email seeking to find a way to address this was justified.
30. Ms Harper raises the way in which her grievance was handled (generally and by reference to Spire's grievance policy) as one of the events which led to the alleged breach of the implied term of trust and confidence. The policy timeline is not a pleaded complaint. However, it is relevant generally to Ms Harper's allegation that the grievance was not satisfactorily addressed. The April 2019 procedure provides that an employee will be informed of the outcome after the

final meeting usually within 10 days. The policy also states: *All grievances will be fully investigated ...hold further meetings as required with the aim of ensuring speedy resolution of the grievance and it is policy to create safe, fair and healthy environment. 'Final meeting' is not defined.* Mrs Bishop met Ms Harper on 3 December. Then she needed to speak to all individuals involved, during a challenging time when the hospital was subject to Covid-19 restrictions. Mrs Bishop interviewed Ms Wright and Ms Syder on 15 December 2021; she issued the grievance outcome letter on 30 December 2021. The policy states this process is *'usually within 10 days'* [emphasis added]. The reference to 10 days would be working days. The Christmas holidays fell during this period. It was also during a period of government lockdown due to the Covid-19 Pandemic, which Mrs Bishop explained in oral evidence was particularly challenging for the hospital. The grievance outcome letter detailed Mrs Bishop's findings; she upheld some of Ms Harper's grievances: concluding some of the language in Mr Hume's email was inappropriate and that Mr Hume should have spoken to Ms Harper individually before arranging a joint meeting with Ms Syder as well as making recommendations.

31. I find that Mrs Bishop's timeline was reasonable in all the circumstances and aligned to the purpose of Spire's policy. Her investigation was full and fair and the outcome letter made detailed findings; Spire satisfactorily addressed Ms Harper's grievance. In written submissions Ms Redman refers to the fact that Ms Harper was expected to continue working with Ms Syder even though she had raised concerns about doing so with Ms Paterson. This is not raised in Ms Harper's particulars of claim and it not one of the pleaded events on which Ms Harper relies to assert her claim for constructive dismissal. Therefore, I make no finding in respect of this.
32. Ms Harper appealed on 3 January 2021 asserting that her grievances had not been fully investigated, something I have found not to be the case. Mr McCullough was appointed appeal officer. Ms Harper was informed of the appeal process in an exchange of emails with Mrs Patterson between 4 and 7 January.
33. On 11 January 2020 Ms Harper returned to work and attended a RTW meeting with Mr Haider by zoom, arranged by Mrs Patterson. In her claim Ms Harper alleges that she had *'repeatedly asked that this was undertaken face to face'*. Her claim is misleading. In an email of 5 January 2021 Mrs Paterson offers a face-to-face meeting with Mr Haider, but this could not take place on 11 January due to Mr Haider not being in the Norwich hospital until 14 and 15 January. On Mr Haider's instruction Mrs Paterson gives Ms Harper the option of working from home 11-13 January. Ms Harper replies that she does not want to work from home on her return so *'if Nayab [Mr Haider] is unable to be available on Monday [11 January] for a face-to-face RTW, then I will work onsite and see Nayab virtually for this.'* In fact, Ms Harper does not repeatedly ask for a face-to-face meeting; this is an exaggeration. Face-to-face is her preference, but when it could not be accommodated on the day of her return due to Mr Haider being at the other hospital, she agreed to meet virtually. Mr Haider had a valid reason for not being in Norwich (where he was required to work part of the week) and this was explained to Ms Harper. In her claim Ms Harper describes Mr Haider's behaviour at his meeting as *'aggressive and hostile'* but does not specify (either in her claim or witness statement) any behaviour to illustrate this allegation nor was any alleged behaviour put to Mr Haider in cross examination (other than raising his voice, which he did not recall, but explained by way of

hearing difficulty). I find Ms Harper's allegation unsubstantiated and not an accurate description of Mr Haider's conduct of the meeting. My finding is evidenced by contemporaneous communications.

34. Mr Haider followed up on the 11 January meeting with an email summarising the discussion. The email reads as warm and supportive, apologising that a face-to-face meeting was not possible, recording points discussed and the constructive, flexible options on offer. Ms Harper suggests this email was an inaccurate account of the meeting. When asked in oral evidence why she did not challenge the email record, Ms Harper said she recalled writing to Mrs Patterson raising concerns. When asked why her reply was not disclosed, she said it would be on her Spire email, to which she did not have access. Even if this is the case, I find her explanation implausible: in her evidence Ms Harper does not refer to challenging (in January 2021) Mr Haider's contemporaneous record of this meeting or to an email to Mrs Patterson at that time. Given the 11 January meeting is one of the events on which she relies to allege breach of the term of trust and confidence, this reference in her witness statement would be expected. It is implausible that if there was a reply it is not in the evidence, or if the reply cannot be found, which is unlikely, the claimant would not provide an explanation that a reply did exist. Further, the email would have been disclosable by Spire. I find the respondent transparent in its disclosure obligations – it has disclosed adverse evidence and other emails sent by Ms Spire from her Spire account, but there is no record of any such challenge. Nor does Mrs Patterson mention a written challenge in her evidence. That is because Ms Harper's suggestion she wrote to Mrs Patterson is untrue. I find Mr Haider's contemporaneous email to be an accurate record of the meeting, unchallenged by Ms Harper. Further, Ms Harper's description of Mr Haider's behaviour as *'hostile and intimidating'* does not accord with what she told Mr McCullough a week later: that her relationship with Mr Haider was *'a good one, he respects me and values my input, he thinks I'm sensible. I can talk to him if I need to.'* When asked why she said this, when she now alleges Mr Haider's behaviour was hostile and threatening, her suggestion this was not the appropriate forum to raise concerns about Mr Haider again lacks credibility. If Mr Haider's behaviour was as described by Ms Harper it would be usual to raise this. She did not as Ms Haider did not behave in the way she describes.
35. Quite simply the email account does not align with Ms Harper's description of the meeting as unstructured and Mr Haider's behaviour at the meeting as *'hostile and aggressive'* and that *'he was persistent in belittling [her] health'* because Ms Harper's evidence is a wholly inaccurate account of the meeting. Objectively, when the evidence is considered as a whole, her description of this meeting is rhetoric, embellished (or even fabricated given the lack of particulars as to Mr Haider's behaviour) to a narrative to support her claim.
36. Following her RTW Mr McCullough met with Ms Harper on 19 January 2021. As part of the appeal process Mr McCullough spoke to Ms Syder and Mr Hume. He set out his decision in a letter dated 25 January 2021, upholding Mrs Bishop's findings and making further recommendations for management. In his findings Mr McCullough acknowledges that there were issues in the working relationship between Ms Syder and Ms Harper, describing them as *'difficulties neither wished to admit to'*, but concluded there was no evidence of anything malicious. This accords with my findings about the relationship and the intent behind the 18 November email. Ms Harper accepted these findings, telling Mr

McCullough it allowed a line to be drawn under some of the elements of the grievance.

37. In evidence Ms Harper alleges at a management meeting on 21 April 2021 Mr Haider made a *'threat'* [not specified] about her role. This allegation is not included in her particulars of claim. The allegation is more rhetoric. There is no evidence corroborating this statement; indeed, it contradicts her own notes that of the meeting in which she records that Mr Haider wanted to protect her role. These discrepancies further support my findings on Ms Harper's credibility and acceptance of Mr Haider's version of meetings.
38. On 11 May Mrs Paterson spoke by telephone to Ms Harper; their recollections of the conversation differ. In her claim form Ms Harper alleges she made a contemporaneous note of this conversation, quoting Mrs Patterson as saying (in response to Ms Harper telling her she suffered a panic attack) *'Was it due to Nayab'* and *'...something needs to be done as that's the majority of the SMT who have raised concerns.'* Ms Harper has not disclosed the contemporaneous note to which she refers. In sworn evidence Mrs Patterson says she does not recall making these comments. Mrs Patterson sent Ms Harper an email on 1 June 2021 which records pertinent points from this conversation, including some of the concerns Ms Harper expresses about Mr Haider. There is no record of the alleged comments. Given my findings on Ms Harper's credibility, and the lack of supporting evidence, I find that Mrs Patterson did not make these comments.
39. In an email to Ms Harper dated 18 June 2021 Mrs Patterson sets out some initial thoughts to support Ms Harper in her RTW, following a further period of sick leave, for her to consider before a scheduled RTW meeting on 21 June 2021. While the suggested measures may not have been exactly what Ms Harper wanted, the email is constructive and supportive and contains tangible and appropriate suggestions, some of which had been proposed by Ms Harper. She attended the 21 June RTW meeting in person with Mr Haider and Mrs Patterson. The meeting addressed RTW paperwork. Ms Harper describes the meeting as lasting almost 3 hours and says it was *'unpleasant, unsupportive and threatening'*; she claims she was threatened with formal action and refers to Mr Haider's presence at the meeting as intending to create *'an intimidating, hostile, degrading, humiliating and hostile environment for her'*. Ms Harper claims Mr Haider was *'the subject of an unresolved grievance'*. In her claim Ms Harper alleges it was inappropriate for Mr Haider to be *'orchestrating his requests for her return to work'* as he was *'at the heart of her deterioration in health'*.
40. I have addressed concerns with Ms Harper's notes when assessing credibility. I find Ms Harper's description of this meeting wholly inaccurate. Mrs Patterson made a note of this meeting, approved by Mr Haider which starkly contrasts Ms Harper's description; she recalls the meeting lasting about 2 hours, including a break. Ms Harper says she was *'threatened'* with a *'formal process'*. Mrs Patterson says that Ms Harper was not threatened with formal action or formal process. Indeed, this description does not align with her own notes of the meeting, which records that Mr Haider *'said there could be some discretion on his part regarding formal process should there be any sickness in [the] next 3 months'*. Again, this evidences that Ms Harper's descriptions cannot be relied upon.

41. Ms Harper did not raise a grievance about Mr Haider. I have already found that Mr Haider was not the subject of any grievance process; this proposition is untrue. The meeting centred on a discussion of Ms Harper's health, the Stress Risk assessment dated 11 June and suggestions for her RTW. This description accords with Mr Haider's recollection. Mrs Patterson recalls all parties at the meeting behaving in a *'polite, professional and supportive manner.'* The notes reflect this: they record Ms Harper's concerns, any discussion around each concern and note recommendations to address / alleviate them. I find that Mr Haider and Mrs Patterson were professional in their conduct of the meeting, listening to Ms Harper's concerns and attempting to address them. Neither their individual recollection of the meeting or the notes made shortly thereafter indicate a meeting of the nature described by Ms Harper. No doubt the meeting was difficult for all parties; the discussion included personal criticisms of Mr Haider and difficult subject matter. For example, Ms Harper was told her sick leave would be monitored; given that she had, unfortunately, experienced 12 weeks of sick leave in a year, it is standard practice for an employer to do this. It was not the threat Ms Harper has suggested. However, the meeting was professional and constructive. Ms Harper says that she did not have any faith in Mr Haider, and it would be detrimental to her health to continue working for him. I find Ms Harper's views of Mr Haider misplaced. The evidence supports his opinion that their relationship was professional, and he thought highly of her.
42. I find that Ms Harper has embellished her description of the first meeting on 21 June to create a dialogue which did not take place in the manner she describes, but which seeks to support a constructive dismissal action.
43. Immediately after this meeting Ms Harper asked to meet with Mrs Paterson alone. She handed Mrs Paterson a resignation letter, which she had written and sealed prior to the meeting with Mr Haider. In evidence she said went with *'open mind'* to the meeting. Ms Harper's recalls Mrs Patterson asking if she would *'pursue legal action on the grounds of constructive dismissal'*. Mrs Patterson said she wanted to know why Ms Harper was resigning and asked if it was constructive dismissal. In oral evidence Ms Harper accepted that Mrs Patterson did not refer to constructive dismissal until after Ms Harper said she might or would *'seek advice'*. I agree with Mr Ross' submission that, as Ms Paterson is an experienced HR professional, it is surprising that she would enquire if Ms Harper (resigning without mentioning that she had another job to go to) was suggesting that she had been constructively unfairly dismissed. Mrs Patterson did refer to constructive dismissal, but I do not accept she suggested legal action. Ms Harper also states that, prompted by Mrs Patterson's comments she said she may have a claim for personal injury. I have addressed the discrepancies in recollections of this conversation when stating my findings on witness credibility. There was no prompt. By her own admission in oral evidence, Ms Harper's claims about this meeting are inaccurate.
44. Nor do I accept that Ms Harper attended this meeting with an open mind, as she suggests. The evidence points firmly against this. Attending a meeting with a sealed resignation letter does not suggest an open mind. At this time Ms Harper had already verbally accepted the role with Birketts. Further, in an email to Birketts dated 16 June 2021 Ms Harper told the law firm *'I have yet to hand in my resignation, therefore once I've done that next week I will send you my reference details.'* When she sent this email the meeting with Mr Haider and Ms Paterson on 21 June had already been scheduled, and she was informed

of this on 11 June in an email from Mrs Patterson. As she told Birketts on 16 June, Ms Harper did resign the following week, on 21 June. Given my findings on Ms Harper's credibility I do not accept she had an open mind; this does not align with taking a sealed resignation letter to a meeting, nor does it align with telling a potential new employer that she will send reference details the following week, the week of a meeting to which she took a sealed resignation letter. If her mind was truly open to the possibility of working through the concerns she had about her current employment, Ms Harper would not have taken a sealed resignation letter to this meeting. She may have been hedging her bets, but when the 21 June meeting did not play out exactly as she wanted, she resigned with a letter ready to do so and a new job accepted. I also find it disingenuous to verbally accept a role if still hoping to remain at a current employer. I find the verbal acceptance represented her true intention. At the point of resignation all Ms Harper needed to do was finalise her new employment, which was mapped out.

45. Further, Ms Harper has not been transparent about her dealings with her new employer; the hearing bundle did not contain the 16 June email saying that 'would resign.' This was only disclosed as a result of the Tribunal's order. I find that Ms Harper had made up her mind to resign before the meeting on 21 June 2021, her new role was in place but could not be progressed further until her resignation, not least as, in line with current practice, one of the references she would need for Birketts was from Spire. Her new role may have been for a reduced salary and responsibility, but her role with Spire had broken down in her mind, the evidence suggests in large part due to her misinterpretations and perceptions of events, rather than the facts.
46. On 29 June 2021 Ms Harper told Birketts HR that she had '*popped the documents back.*' She asked to start on 1 September 2021, after a period of holiday (being too unwell to work in July and August, although there is no evidence before me to support this). Viewed objectively the evidence clearly indicates that Ms Harper had made the decision to resign before the meeting on 21 June 2021, had written her letter and had a new job. Her explanation that she had an open mind is simply not credible. In making this finding I am mindful that Ms Harper's claim form noted she did not have a new job, when she had been in the job for 3 weeks and had accepted it 3 months earlier, and that the timeline was only disclosed at the order of the Tribunal.
47. Ms Harper was not transparent as to her true financial position in her schedule of loss. There is no reference to her pay rise and the fact she may benefit from a profit-sharing scheme. These facts are relevant to any calculation of loss; their omission overstates Ms Harper's loss.

#### **Law – constructive dismissal**

48. Section 95(1)(c) of the Employment Rights Act 1996 (the 'Act') provides that an employee is dismissed by their 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.'*

49. In order to establish constructive dismissal, an employee must show that the employer has committed a breach of contract (express or implied) which

causes an employee to resign (Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27) and that the breach is sufficiently serious to justify the employee resigning or is the last in the series of incidents which justify their leaving. In this case the claimant relies on an alleged breach of the implied term of trust and confidence as the employer's conduct. A breach of this term occurs where an employer conducts itself without reasonable and proper cause in a manner calculated, or likely to destroy or seriously damage, the relationship of confidence and trust between employer and employee (Mahmud v BCCI [1997] IRLR 462, Yapp v Foreign and Commonwealth Office [2015] IRLR 112). A Tribunal must consider:

49.1. Was the conduct likely to destroy or seriously damage the relationship of confidence and trust between employer and employee?

49.2. If so, was there reasonable and proper cause for the conduct?

50. A breach of this implied term is likely to be repudiatory. The Court of Appeal considered the characteristics of a repudiatory breach of contract in the case of Tullett Prebon plc & ors v BGC Brokers LP & ors [2011] IRLR 420. Maurice Kay LJ, who delivered the leading judgment, held as follows at paragraphs 19 and 20:

*"The question whether or not there has been a repudiatory breach of the duty of trust and confidence is "a question of fact for the tribunal of fact": Woods v WM Car Services (Peterborough) Limited, [1982] ICR 693, at page 698F, per Lord Denning MR, who added:*

*'The circumstances ... are so infinitely various that there can be, and is, no rule of law saying what circumstances justify and what do not' (ibid).*

51. The question whether a repudiatory breach of contract has occurred must be judged objectively (Buckland v Bournemouth University Higher Education Corporation [2010] ICR 908); this requires the Tribunal to assess whether a breach of contract has occurred on the evidence before it. Neither the fact that an employee reasonably believes there to have been a breach nor that the employer believes it acted reasonably in the circumstances is determinative of this: the test is not one of 'reasonableness' but simply of whether a breach has occurred. When considering the question of constructive dismissal, the focus is on the employer's conduct and not the employee's reaction to it.

52. Furthermore, a claimant must show that they resigned in response to this breach and not for some other reason (although the breach need only be a reason and not the reason for the resignation) Kaur v Leeds Teaching Hospitals NHS Trust [2019] ICR 1; however, the breach must be a substantial part of the reasons for the dismissal United First Partners v Carreras [2018] EWCA Civ 323.

53. It is open to an employer to prove that the employee affirmed the contract despite the breach, perhaps by delay or taking some other step to confirm the contract Cockram v Air Products plc [2014] ICR 1065, EAT

54. A claim for breach of the implied term of trust and confidence may be based on the 'last straw doctrine' (the name of which is derived from the old saying "the last straw that broke the camel's back"). This doctrine provides that a series of acts by the employer can amount cumulatively to a breach of the

implied term of trust and confidence even though each act when looked at individually might not have been serious enough to constitute a repudiatory breach of contract. Inherent in the concept of a last straw is that there was one final act which led to the dismissal (*'the last straw'*) and the nature of this was considered in *London Borough of Waltham Forest v Omilaju* [2005] IRLR 35 where the Court of Appeal held that the last straw need not be unreasonable or blameworthy conduct, all it must do is contribute, however slightly, to the breach of the implied term of trust and confidence. If the act relied on as the final straw is entirely innocuous however then it is insufficient to activate earlier acts which may have been, or may have contributed, to a repudiatory breach.

55. The breach of contract does not need to be the sole reason for the resignation. It is sufficient for the employee to prove, on the balance of probability, that they resigned in response, at least in part, to a fundamental breach of contract by the employer (*Nottinghamshire County Council v Meikle* [2004] EWCA Civ 859).
56. Of course, where parties are acting reasonably it is less likely that there will have been a breach of contract when judged objectively but this is not necessarily so. If, on an objective approach, there has been no breach by the employer, the employee's claim will fail.

### **Conclusions – constructive dismissal**

57. Ms Harper's claim turns on the questions I set out in the list of issues. First, when judged objectively on the basis that Ms Harper resigned on 21 June 2021 did Spire breach the implied term of trust and confidence? I must decide whether the Spire (by its managers / employees) behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between Ms Harper and Spire and (if I find that it did) whether it had reasonable and proper cause for doing so. I have summarised the reasons Ms Harper has set out in her particulars of claim for alleging Spire breached the implied term and address these in my conclusions.
58. First, I consider the manner in which Spire's management addressed concerns it had with the professional relationship between Ms Harper and Ms Syder. Ms Harper alleges Mr Hume '*chose to act on the one-sided information [from a 1:1 meeting on 17 November with Ms Syder] before hearing her version of events separately.*' The word chose indicates that Mr Hume made a conscious decision. While the initial meeting scheduled (and cancelled) was to be joint and when this was scheduled Mr Hume had not spoken to Ms Harper, there is no evidence that Mr Hume had made a conscious decision not to give Ms Harper the chance to respond to the allegation. Ms Harper also alleges that requesting that she '*attend a perceived formal meeting with Benjamin Paterson, Helen Patterson and Fiona Syder....at short notice to discuss Benjamin Hume's allegation that [Ms Harper] and Fiona Syder had a fractious relationship*' that was '*spilling over into other departments within the hospital*', and that this request to meet the same afternoon '*compelled her to reschedule a meeting with Helen Patterson to discuss her recent Occupational Health report*'. Again, there is nothing in the evidence that the scheduling of the meeting by Spire's managers '*compelled*' Ms Harper to cancel the meeting about her OH report. Ms Harper alleges that '*[T]he urgency and formality of the [requested] meeting [which] caused [Ms Harper] great distress*'. Ms Harper has not disclosed



evidence about the communications scheduling the planned meeting which was cancelled. I have found that the 18 November email neither communicates urgency or formality in the language used or timeline proposed (*'the aim is to complete [the meetings] on Tuesday 24 November'*). In the absence of evidence of formal and urgent communications of the meeting which was cancelled and in light of my findings about the 18 November email I conclude that Spire's scheduling of the meetings was neither urgent nor formal. These claims are embellished. If Ms Harper suffered distress this was her perception of what was going on (she refers to concluding a vexatious claim had been made) and it is not grounded in fact.

59. Ms Harper identifies the wording *'a fractious relationship'* that was *'spilling over into other departments within the hospital'* in the email as a factor in alleging that the way in which Spire's management addressed concerns Mr Haider and Mr Hume had with the professional relationship between Ms Syder and her breached the implied term of trust and confidence. I have found that some of the language Mr Hume used was unprofessional. However, from an objective reading of the email it is clear Mr Hume did not use this language in a calculated manner, intended to destroy a relationship between employer and employee. Nor, when considered objectively, is this language likely to do so; this is Ms Syder's subjective reaction to the language. Overall, Mr Hume's email is a constructive attempt to find a solution to an issue (the working relationship) which had been raised with him about which I have found other colleagues viewed as dysfunctional. Yes, Mr Hume could have communicated in a more appropriate manner; indeed, the grievance outcome found the same and Mr Hume has acknowledged this failing. However, I conclude that Mr Hume's intention was to be constructive and resolve any issues. The email was not urgent or formal in the way Ms Harper suggests; it did not threaten disciplinary action. I am also mindful at this time Spire's management were challenged by the impact of the Covid-19 pandemic. Ms Harper's response to the email is wholly disproportionate. While some words are inappropriate, the email does not satisfy the objective test that it was likely to destroy or seriously damage the relationship of confidence and trust between Spire's management and Ms Harper. The words used do not cross the line of breaching the implied term of trust and confidence.
60. Although significant parts of Ms Harper's evidence were not credible, and her allegations about how the issue with Ms Syder was handled were not substantiated in evidence (the formality, urgency, that Mr Hume chose, that she was compelled), my assessment is that she is genuinely offended by the claims made by Ms Syder. This may have clouded her response to the email. Objectively, I do not consider the manner in which Spire's management addressed concerns Mr Haider and Mr Hume had with the professional relationship between Ms Harper and Ms Syder breached the implied term. Indeed, Spire had reasonable and proper cause for the conduct; to address difficulties in the working relationship between colleagues, raised by one and apparent to a number of other colleagues who worked with them.
61. Next, I consider whether Spire failed to satisfactorily address Ms Harper's grievance (communicated to Mr Hume, Mrs Paterson and Mr Haider by email on 19 November 2020) and, if I find that it did, whether Spire's conduct breached the implied term. In witness evidence (although not specified in the particulars of claim) Ms Harper complains that Ms Bishop failed to follow the grievance policy procedure timeline. Ms Harper was notified of the outcome of

the investigation on 30 December 2020. I have found that, in the circumstances, Ms Bishop's timeline is acceptable and aligns to the purpose of the policy, bearing in mind this was a challenging time for the health sector, during a period of restrictions imposed by government due to the Covid-19 pandemic. I have found Ms Harper's grievance was properly investigated and satisfactorily addressed; Ms Bishop considered the evidence before her and interviewed all relevant parties (evidenced by her notes of meetings and the conclusions reached and explained in the outcome letter) and prepared a detailed outcome letter. While there was some delay, this was satisfactorily explained by Ms Bishop in her evidence; further, Ms Harper was updated as to the progress of the investigation by Mrs Paterson. In oral evidence Ms Harper acknowledged that she did not have any issues with the appeal process conducted by Mr McCullough. The fact that some of the recommendations were not followed up does not tip the balance. There is no evidence before me that there was any intent on the part of Ms Bishop or Mr Haider to cause damage to Ms Harper's relationship with Spire by the failure to follow up on recommendations. That they were not followed up does not in and of itself breach the term; there has to be an intent to do so and there is no evidence before me of such an intent. Objectively, there is nothing in the way the grievance process was handled that was intended to destroy or seriously damage the relationship of confidence and trust between Ms Harper and her employer.

62. Ms Harper alleges Mr Haider managed and communicated with her in a way to calculated or likely to destroy or seriously damage Ms Harper's trust and confidence with Spire. The evidence does not support this assertion. I have read Ms Harper's opinion of Mr Haider as a manager, but this is not substantiated by the written communications and Spire's meeting note I have seen. In her claim Ms Harper references the impact of his approach to her appraisal. The communications I have read relating to Ms Harper's appraisals are professional and supportive even when Ms Harper was disappointed in 2020. Ms Harper refers to Mr Haider's '*excessive demands*' alleging these impacted her health and to her job becoming a '*dumping ground*' and refers to him being '*not functional as a manager*'. However, she does not provide specific examples of events (either pleaded in her particulars of claim, set out in her witness statements – she uses adjectives to make general statements - or evidenced by documents in the hearing bundles) and there is no contemporaneous evidence to substantiate the assertions that she was overloaded with work. I have read the OH reports which make clear a combination of work and personal factor is in play; the reports make recommendations but do not provide any evidence the challenges she faced can be attributed to how she was managed. Ms Harper speaks of her health being impacted. While she refers to GP and counselling support, she has not adduced any evidence to the Tribunal to support these contentions. A Tribunal must determine allegations, objectively, based on the evidence presented to support assertions. In relation to Mr Haider's professional relationship with Ms Harper and the impact on her health, there is no evidence to support (i) the ill health to which she refers in her witness statement and (ii) the version of Mr Haider's behaviour she presents. In response to Mrs Bishop's questions as part of the investigation Mr Haider refers to Ms Harper as '*very professional and respectful*'. The allegations before me about Mr Haider are opinion; there is no evidence to substantiate fact.

63. Indeed, contemporaneous evidence (of documents and other witnesses) evidence that Mr Haider behaved in a professional way. In the many

communications I have read from Mr Haider to Ms Harper he is professional and speaks highly of her. The grievance Ms Harper raised was not about Mr Haider, although in evidence she alleges it was. This allegation is untrue. The grievance was about the way Mr Hume had approached the issue raised by Ms Syder. The RTW meetings provide another example of when Ms Harper's claims about Mr Haider are inaccurate. It seems to me that Ms Harper has extrapolated certain events where requests could not be accommodated in exactly the way she wanted them to be. For example, in response to the fact that Mr Haider did not come to Norwich (while working at Bushey) in January 2011 to meet with her face-to-face Ms Harper submits '*One of his colleagues in SMT who had a period of work related stress that he should have changed his diary to accommodate a face to face meeting with [her] on that Monday.*' This is an extreme view; Ms Harper had no visibility of Mr Haider's commitments at that time, a period of challenge for hospitals due to the Covid-19 pandemic. Mr Haider returned to the Bushey hospital earlier than planned and explains this in his 11 January email, along with constructive suggestions to support Ms Harper's return. I have found that Mr Haider did not behave at the meeting on 11 January 2022 in the way painted by Ms Harper and conclude that, on balance, Mr Haider's professional relationship with Ms Harper was professional and supportive. In the meeting with Mr McCullough on 21 January 2021 Ms Harper said she had a good working relationship with Mr Haider, that he *respected and valued her input*'. Ms Harper told Mr McCullough that she could talk to Mr Haider if she needed to. Ms Harper's allegations are subjective centres on the way she felt, not the reality of the situation. However, objectively there is no evidence before the Tribunal that any of Mr Haider's actions were unprofessional or likely to destroy or seriously damage the relationship of confidence and trust between Ms Harper and her employer.

64. Ms Harper alleges that the way in which Spire handled her return to work in June 2021 was the 'final straw' event'. Ms Harper's evidence of the meeting is not credible. In her claim and witness evidence she said it was not appropriate for Mr Haider to be at the meeting yet did not raise this at the time. In oral evidence Ms Harper said she cannot recall why did not object to Mr Haider attending at time, suggesting she went with an open mind in hope she would receive reassurances things would be better with him. Her allegations contradict her evidence. Furthermore, I have found Ms Harper's description of the meeting inaccurate. It is unusual, or a very unlikely coincidence, that Ms Harper's description of the 21 June meeting accords with the language of Section 26 Equalities Act 2010. I prefer Mr Haider and Mrs Patterson's descriptions of the meeting, which align to the documentary evidence; Mrs Patterson reports Ms Harper as commenting she had *found this meeting more helpful than she had anticipated*'. There is no breach of trust and confidence in relation to the conduct of the 21 June meeting.

65. Ms Harper alleges the 21 June meeting was the 'final straw'. Yet she took a sealed letter of resignation, written beforehand to the meeting, claiming in oral evidence this was a form of self-protection' if *'things got too difficult on 21 June.'* Writing ahead of time is a very unusual step for someone whose mind is truly open. A more plausible approach if the mind is open but subject to doubt as to the success of the meeting, is not to attend armed with a resignation letter but to consider an option to resign orally, or in writing after the meeting. In light of my findings on the timeline and communications regarding the role at Birketts and the sealed resignation letter, drafted without reasons for resignations, it is clear Ms Harper had made her mind up to leave Spire before 21 June, possibly

around 16 June 2021 when she told Birketts she would be resigning the following week. Accordingly, the only conclusion is that the 21 June meeting (which I have found did not take place as Ms Harper described) cannot have been a “final straw”.

66. In her letter of resignation Ms Harper says she ‘*enjoyed working for Spire*’. This does not accord with her witness evidence, which makes clear that she found working at Spire challenging and felt it impacted her health and caused her distress. Understandably if someone feels this way, they are likely to seek alternative employment. I conclude she took a lower paid job (with opportunities for salary growth and promotion, as evidenced by her correspondence with Birketts) based on how she felt in her role at Spire, and not because of anything Spire did. Objectively a large part of the description of the conduct of Spire and its managers alleged by Ms Harper in her claim did not exist in the way she describes. None of Spire’s behaviour can be interpreted objectively to destroy or seriously damage the relationship of confidence and trust between Ms Harper and her employer, nor can it be interpreted as likely to do so.
67. As I have found that trust and confidence was not breached, the second 2 questions set out as issues fall away. It is not a consideration whether resignation was in response to breach, as there was no breach. I conclude Ms Harper resigned because she was unhappy with her role at Spire; she had a new opportunity at Birketts lined up, which she decided to pursue.

Employment Judge **Hutchings**

31 August 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

9 September 2022.....

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FOR EMPLOYMENT TRIBUNALS