



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4103167/2022**

**Held in Glasgow on 17 and 18 October 2022**

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**Employment Judge S MacLean**

**Mrs M Leonard**

**Claimant  
Represented by:  
Ms J McArthur -  
Lay Representative**

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**South Ayrshire Council**

**Respondent  
Represented by:  
Ms K Graydon -  
Solicitor**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Employment Tribunal is that the claim is dismissed.

### **REASONS**

#### **Introduction**

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1. The claimant sent a claim form to the Employment Tribunal on 8 June 2022 claiming constructive unfair dismissal. The respondent resists the claim.

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2. The case was listed for a three day final hearing in person. The Tribunal heard evidence from the claimant. For the respondent the Tribunal heard evidence from Douglas Hutchison, formally deputy director, people, and Wendy Wesson, chief HR advisor. The Tribunal was also referred by the parties to a number of documents from a joint file.

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3. The Tribunal has set out facts as found that are essential to the Tribunal's reasons or to understanding of important parts of the evidence. The Tribunal carefully considered the submissions during its deliberations and has dealt with the points made in submissions while setting out the facts, law, and application of the law to those facts. It should not be taken that a point was

overlooked, or facts ignored because a fact or submission is not part of the reasons in the way it was presented to the Tribunal by a party.

### The issues

4. This is a case in which it is alleged that the respondent breached the implied  
5 term of trust and confidence.
5. Accordingly, the Tribunal had to consider whether the claimant was  
constructively dismissed which involved considering the following four part  
test:
  - a. Was there a breach of contract by the employer?
  - 10 b. Was the breach sufficiently important to justify the employee resigning  
and terminating the contract?
  - c. Did the employee leave in response to the breach and not for some  
other unconnected reason?
  - d. Did the employee delay too long in terminating the contract in  
15 response to the employer's breach?

### The relevant law

6. The law relating to unfair dismissal is contained in the Employment Rights Act  
1996 (ERA). Section 94(1) states that an employee has the right not to be  
unfairly dismissed by her employer. Section 95(1)(c) states that an employee  
20 is dismissed if an employee terminates the contract under which she is  
employed (with or without notice) in circumstances in which she is entitled to  
terminate it without notice by reason of the employer's conduct. This is  
commonly known as "constructive dismissal".
7. In *Western Excavating Ltd v Sharp* [1978] IRLR 27, the Court of Appeal set  
25 out the general principles in relation to constructive dismissal. Lord Denning  
stated that, "an employee is entitled to treat themselves as constructively  
dismissed if the employer is guilty of conduct which is a significant breach  
going to the root of the contract of employment; or which shows that the

employer no longer intends to be bound by one or more of the essential terms of the contract. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle them to leave at once. Moreover, he must make  
5 up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract”.

8. The question of whether the employer has committed a fundamental breach “going to the root of the contract” is to be judged according to an objective test  
10 and not the range of reasonable responses test. (See *Tullett Prebon Plc v BGC Brokers* [2011] EWCA Civ 131; *Bournemouth Higher Education Corporation v Buckland* [2010] ICR 908 CA). The EAT has since confirmed in *Leeds Dental Team v Rose* [2014] IRLR8 that it is not necessary to show a subjective intention on the part of the employer to destroy or damage the  
15 relationship to establish a breach.
9. In *Johnson v Unisys Ltd* [2001] IRLR 279, Lord Millett said that the implied term of trust and confidence is usually expressed as an obligation binding on both parties not to do anything which would damage or destroy the relationship of trust and confidence which should exist between them.
- 20 10. The duty of mutual trust and confidence is a term which is implied in every contract of employment. This means that an employer must not, without proper and reasonable cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and the employee (*Mahmud v Bank of Credit and  
25 Commerce International SA* [1997] IRLR 462 HL; *Baldwin v Brighton and Hove City Council* [2007] IRLR 232 EAT).
11. When considering whether there has been a breach of the implied term, “the  
30 Tribunal’s function is to look at the employer’s conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it” (*Wood v WM Car Services Ltd* [1982] ICR 666 EAT). In *Brown v Merchant Ferries Ltd*

[1998] IRLR 682, the Court of Appeal introduced a useful test; the breach of the implied contractual term of trust and confidence must be viewed objectively and not through the filter of the claimant's perception.

12. There may be a series of individual actions on the part of the employer which do not in themselves amount to a fundamental breach; but which may have the cumulative effect of undermining the mutual trust and confidence implied into every contract of employment. A course of conduct can cumulatively amount to a fundamental breach of contract entitling the employee to resign and claim constructive dismissal. This is commonly referred to as the "last straw" (*Lewis v Motorworld Garages Ltd* [1985] IRLR 465 CA).

## Findings in Fact

### *Background*

13. The respondent is a local authority employing around 5,000 people in Great Britain. The respondent employed the claimant from 19 July 2012 as a senior internal auditor which was graded level 11. The claimant had 38 years of continuous local government service.
14. The claimant reported to the programme review manager. The internal audit team also comprised two auditors, graded level 10 and, an audit assistant, graded level 6.
15. In August 2015 the respondent's programme review manager retired. The programme review manager post was graded level 15. The chief executive felt that this was an opportunity to consider that role and the responsibility of the internal audit function.

### *Acting Programme Review Manager*

16. The chief executive approached the claimant who agreed to commence acting up to the performance review manager position on 11 August 2015. The claimant held the position through a series of fixed term contracts that extended until 31 August 2017. The claimant's substantive post was kept vacant.

17. The claimant took on additional responsibility as the chief internal auditor of the South Ayrshire Health and Social Care Partnership. Around September 2016, as part of the annual internal audit plan, two counter fraud officers in the corporate fraud team, a senior investigations officer, grade level 9 and an investigations officer, graded level 7 transferred from the revenue and benefits section and reported directly to the claimant.
18. During the two year period of acting up the claimant reported directly to the chief executive and the audit and governance committee. The claimant believed that she was carrying out the duties and meeting objectives measured against the competencies of a graded level 15 post. The claimant believed that she was progressing up the salary grade points.

*Proposed Chief Internal Auditor Post*

19. As part of the 2017 budget savings exercise, the chief executive identified savings targets in the internal audit team. Around March 2017, the chief executive advised the internal audit team that she was considering options to achieve the best budget saving. She prepared a draft report in which it was proposed that the senior internal auditor post (the claimant's substantive post) and the programme review manager post be deleted and a new post of chief internal auditor be created, graded level 13.
20. Under the framework for managing workforce change, the claimant would not have had a direct match to the new post. As elements of her substantive post sat within the new post the claimant would have had a matching option.
21. The chief executive provided the claimant with a copy of the draft report. The claimant was concerned that the graded level 13 was not commensurate with the responsibilities of the chief internal auditor post and the need for that post to be independent and objective with unfettered access to the chief executive. The claimant considered that by reevaluating the chief internal auditor post role to level 13 the postholder would have less authority.
22. The claimant also raised her concerns privately with an elected member of the audit and governance panel.

23. After concerns and feedback from trade unions and elected members, the draft report was delayed to allow further consideration and to explore alternative options.
24. In June 2017 revised proposals were made: the deletion of a full time equivalent auditor post; and the redesignation of the programme review manager as position of chief internal auditor (graded level 15) to be advertised internally and externally. There was no change to the claimant's substantive post senior internal auditor position which was the substantive post held by the claimant. It was also proposed that the line management responsibility be transferred from the chief executive to the head of policy and performance with the chief internal auditor continuing to have direct and unequivocal access to the chief executive. The revised proposals were approved in June 2017.

*Vacancy - August 2017*

25. The chief internal auditor vacancy was advertised in July 2017. Interviews took place on 28 August 2017 before a panel that included the chief executive, the head of finance and the head of policy and performance. The claimant was the only internal candidate interviewed.
26. On 29 August 2017 the claimant accompanied the head of policy and performance to a meeting of the audit and governance panel at which the annual report that had been submitted was discussed. The head of policy and performance knew that the claimant had been unsuccessful at interview. She was unaware of this.
27. On 30 August 2017, the head of policy and performance advised the claimant by telephone that she was not being offered the post of chief internal auditor. The claimant was told that she had not had a good interview. She had come across negative in her answers. Her presentation focused too much on public sector internal audit standards.
28. The claimant was devastated. She thought that her comments about the proposed structure and the impact on the internal audit team was the reason

for her not being appointed. She could not understand why, having covered the post for the past two years, that she should not have been told face to face of the situation rather than being informed by telephone. The claimant was not offered development or training. She felt very hurt and betrayed.

5 29. The claimant discovered that the successful candidate was a colleague from East Ayrshire Council, Laura Miller who was immediately going on maternity leave and so would not be taking up the post until July 2018. The claimant expected to be asked to remain in post until Ms Miller returned from maternity leave. The claimant was informed that this would not be the case.

10 30. The head of policy and performance provided the claimant feedback on the interview. The feedback included comments from the chief executive but not the head of finance who was also on the interview panel.

31. Anne McGregor was appointed on a fixed term contract to cover Ms Miller's maternity leave.

15 *Sick absence and return to work*

32. The claimant developed severe depression and suicidal thoughts. The claimant's doctor issued fit notes for the period 18 September 2017 until 5 March 2018 for depression. The claimant was absent managed under the respondent's absence framework. She met with the head of policy and performance and an HR advisor.

20 33. Around February 2018 the claimant returned to work into her substantive post reporting to initially to Ms McGregor. The claimant continued to attend occupational health and obtain therapy. She felt stressed being back at work and considered that she had been demoted and was humiliated.

25 34. Around March/April 2018 the claimant contacted the service lead employee services to ascertain if she could be made redundant rather than her colleague, the auditor graded level 10. The claimant considered that it was her post that was originally to be deleted and her colleague had not wanted to leave. She found it difficult to work in internal audit. The claimant was  
30 advised that her post was not redundant.

35. Around August 2018 Ms Miller returned from maternity leave. The claimant wrote to the head of employee and customer services to ask if there was any chance of her being redeployed. The claimant was advised that this would be a possibility but she would need to take a lower grade as most of the recent  
5 restructure had removed most of the posts graded level 11. The claimant did not pursue redeployment further. She felt helpless.

36. The claimant had a further period of absence from work between 17 May 2021 until 8 July 2021. The fit notes provided by the claimant's doctor stated the reason was bereavement.

10 *Vacancy - August 2021*

37. Around July 2021, Ms Miller resigned and the post of chief internal auditor became vacant. The post was advertised. The claimant decided to apply for the post. Had the claimant been offered the post she would have accepted.

38. The interview panel consisted of the deputy chief executive, the director of  
15 people, the head of finance and ICT, and the assistant director. The usual interview and selection process was followed. All candidates were asked to prepare an entry exercise and then asked the same questions with a view to the candidates demonstrating competencies. All candidates were asked the same questions which were provided in advance to allow the candidates to  
20 consider the best examples to demonstrate the competencies. Some of the follow-up questions varied as they were largely based on clarification of the initial responses. The candidates were then scored individually.

39. The claimant had a solid performance in the entry exercise. Other candidates performed better than her in demonstrating the competencies. The deputy  
25 chief executive considered that some of the examples used by the claimant to demonstrate her competencies were dated.

40. It was decided in respect of two of the candidates that it could not be determined which should be offered the post. It was agreed that they would both receive a second interview as one attended the first interview remotely.



41. The deputy chief executive contacted the claimant to advise that she had been unsuccessful. He provided feedback that the claimant had given examples which were historical. The claimant felt that she had been interviewed because she had met the criteria but had not been considered.
- 5 42. At this stage the claimant was, in effect, the only employee in the internal audit team. The assistant director was line managing her. There was discussion whether the claimant would be willing to undertake the post in an acting up basis for a few months. The claimant was willing to act up if invited to do so. The assistant director said that he had spoken to the deputy chief executive.
- 10 The claimant was subsequently advised that the chief internal auditor post was to be readvertised immediately. The claimant felt she was being bullied and ignored and was unwanted at work. The claimant did not resign.

#### *Grievance and whistleblowing*

- 15 43. In September 2021 the claimant approached the union for advice about raising a grievance. She was advised that, given her emotional state, raising a grievance was not recommended. The claimant decided not to proceed with the grievance. The claimant knew that she would be eligible to retire in January 2022 when she turned 50. The claimant felt that she had nowhere else to turn.
- 20 44. Around September 2021 the claimant received a confidential whistle blow about payroll/pension information to which she considered the senior management were privy. The claimant felt compromised. She did not know how best to deal with matters while preserving her professional integrity. The claimant contacted Audit Scotland. She felt that she had lost confidence in
- 25 her own ability and did not know what best to do internally.

#### *Retirement*

45. On 5 October 2021 the claimant submitted her intention to retire. She felt that there was no option as she did not feel respected within the organisation. Her experience and skills were ignored and she was not appreciated. She had
- 30 lost confidence in herself and felt humiliated. The claimant felt this decision

was reinforced when she attended an audit and governance committee meeting on 3 November 2021 when she was not invited to speak to a report that she had prepared.

46. Following the committee meeting the claimant was sick absent and did not return to work. The claimant's doctor provided fit notes with the reason for the absence recorded as "stress at work".

47. The claimant retired on 23 January 2022 after a period of sickness.

*Observations on witnesses and conflict of evidence*

48. The Tribunal considered that the claimant gave her evidence honestly and answered questions as best she could in cross-examination. The Tribunal's impression was that the claimant was very professional and conscientious. There was no doubt from the documentation and Mr Hutchinson's evidence the claimant was held in high regard. The Tribunal considered that the claimant was devastated when she was not appointed to the post of chief internal auditor in August 2017. The Tribunal accepted that it was not just that decision but also how the claimant viewed her treatment by the respondent that had such a damaging impact on her.

49. The Tribunal considered that Mr Hutchinson gave his evidence candidly and was a credible and reliable witness. The Tribunal felt that Mr Hutchinson had no animosity towards the claimant. If anything, the Tribunal considered as previously mentioned that he had a high regard for her. His responses to the claimant acting up in the position of chief internal auditor following her unsuccessful application in August 2021 was out of consideration of the circumstances rather than any reflection on her professional ability.

50. Ms Wesson was a credible and reliable witness. She had no direct involvement in the matters giving rise to the claim, but she was able to provide clarity about the respondent's processes.

51. The Tribunal considered that in relation to the material facts as found there was little significant conflicting evidence. The Tribunal had the following observations.

52. The claimant accepted that while she was acting programme review manager the role was temporary and there was no guarantee that she would be appointed to that post on a substantive basis. She did however consider, not unreasonably, that having undertaken the acting role to the chief executive's satisfaction for two years, that she would be well placed to be appointed to the post of chief internal auditor when it was advertised in August 2017. Ms Wesson candidly confirmed that it was unusual for an acting up position to last as long as two years. Such contracts were normally issued to cover maternity leave or periods of sick absence. Ms Wesson also conceded that, while the post of chief internal auditor was a different post to programme review manager, during the course of the claimant acting up in that position she had assumed additional responsibilities which were now part of the new role including the line management of two fraud investigation officers transferred from the revenue and benefits section.

53. The claimant gave evidence about the interview in August 2017 at which she applied unsuccessfully for the chief internal auditor post. She explained that she had the reasonable expectation that she would be appointed to the new post given that she had been effectively doing the job. The claimant discovered that the successful candidate was known to her as she was a colleague in a neighbouring council with less experience than the claimant. There was no evidence about how the successful candidate, who presumably met the minimum require for interview, performed. The claimant explained that she had received feedback that her answers had been negative; that she was not offered any personal development or training to improve; that she was not invited to act up during the successful candidate's maternity. The claimant was not significantly cross-examined on these issues. The Tribunal did not hear any evidence from the respondent in relation to this period which was to the contrary. The Tribunal accepted the claimant's evidence that during this period she felt that the "rug had been taken from under her life" and that she felt "disrespected and invisible".

54. The Tribunal did not consider that there was significant disputed evidence in relation to the interview for the chief internal auditor post in August 2021. Mr

Hutchinson was able to provide evidence about the other candidates who applied for the post and were interviewed. He also explained the circumstances giving rise to second interviews for two of those candidates and why, ultimately, the post had to be re-advertised. The Tribunal felt that Mr Hutchinson was candid in his explanation about the reasons why decisions were reached, and his evidence was not challenged in cross-examination.

55. The claimant produced a psychological report from Dr Elizabeth McKenzie dated 22 September 2022. Dr McKenzie did not give evidence. From the report the purpose was stated as “to provide a comprehensive assessment of Mrs Leonard’s psychological health and well-being in connection with the events that have lead to the employment tribunal case”. The report set out the methodology which included a structure interview with the claimant on 22 June 2022 via telephone and review of medical records. The recommendations included that the claimant’s doctor be informed of the diagnosis. The Tribunal considered that the opinion in this report was not known to the respondent or indeed the claimant’s doctor at the time. The Tribunal was mindful that it was considering an unfair dismissal not a disability discrimination claim.

### **Submissions**

56. Ms Graydon helpfully prepared written submissions setting out the relevant issues and applicable law. Ms Graydon then addressed the Tribunal before Ms McArthur provided a reply which she too set out in writing.

57. Rather than setting out the submissions in full, the Tribunal has dealt with those submissions in the following deliberations.

### **Deliberations**

58. The Tribunal started its deliberations by referring to the statutory provisions in section 94 of the ERA. The claimant’s position was that she relied upon a series of acts by the respondent which, individually and taken together, amounted to a fundamental breach of the implied term of trust and confidence which is found in every contract of employment.

59. The Tribunal reminded itself of the case authorities. A decision whether there has been a breach of contract by the respondent sufficient to constitute the claimant's constructive dismissal is one of mixed law and fact. An employer shall not without reasonable and proper cause conduct itself in a manner  
5 calculated or likely to destroy or seriously damage the relationship of confidence and trust between an employer and an employee.
60. The Tribunal agreed with the respondent's submission that the test is demanding. Simply acting in an unreasonable manner is not sufficient. It is an objective test in which the subjective perception of the employee can be  
10 relevant but is not determinative.
61. The Tribunal understood that the evidence relating to the August 2017 interview was by way of background information. The Tribunal did not understand the claimant to be suggesting that it was inappropriate for the post of chief internal auditor to have been advertised internally and externally in  
15 August 2017. The Tribunal considered that it was entirely reasonable for the claimant to consider that she had good prospects of being successful at this interview, particularly as she had been undertaking the role for two years and, as far as she was aware, had done so successfully. The Tribunal had no doubt that the whole restructuring process would have placed significant  
20 strains on the internal audit team, particularly against a backdrop of their being a need to make substantial savings. It was likely that a post would be deleted but it was not certain which one.
62. The Tribunal's impression was that the claimant was acting professionally but felt very conflicted given that initially her post was to be deleted, but as a result  
25 in part of her intervention a colleague's post was deleted instead. The Tribunal agreed with the respondent's submission that given the grading of the chief internal auditor post was initially two grades above the claimant's substantive post there would have been, in any event, a matching exercise. As this was likely to have been an internal exercise, the Tribunal felt that it  
30 was in all likelihood that the claimant would have secured this post. However, as she correctly identified, the result would have been a chief internal auditor post on a lower pay grade.

63. While the claimant was disappointed with the outcome of the interview process, the Tribunal appreciated that the claimant felt that she had more experience than the successful candidate and she felt it was unfair for a decision to be based on the 45 minute interview. While the Tribunal could understand and appreciate the claimant's disappointment the Tribunal did not consider that, viewed objectively, this process was unreasonable. The Tribunal's impression was that the claimant was very well-placed to perform successfully at that interview. However, from the information available the successful candidate performed better. Although the claimant said in her evidence that sometime later she learned that she was asked different questions, the claimant did not elaborate on the basis of this. The Tribunal felt that it was significant that Mr Hutchinson was surprised to hear this given that the format of the interviews tended to be standard with only follow-up questions differing depending on the candidates answer to the core question.
64. The Tribunal's impression was that the claimant performed well at the August 2017 interview but that another candidate performed better. The claimant did request training nor did it appear that training needs were identified. To the contrary the claimant had been performing the role.
65. While a decision about the claimant continuing in an acting up role could have been explored with the claimant, the Tribunal felt that, when viewed objectively, the respondent had reasonable and proper cause to fill the role externally. The claimant had just been unsuccessful during the interview process. She was understandably disappointed. The post was being offered to an external candidate. To ask the claimant to act up for a period of the new appointee's maternity leave would be adding insult to injury. In any event, the claimant went on long-term sick absence. Given the reasons for this absence, the Tribunal felt that to explore with the claimant an acting up role for a job for which she had unsuccessfully interviewed would have been unreasonable and may have caused further upset to the claimant.
66. The Tribunal noted that, when the claimant returned from sick absence in February 2018, she acted with upmost professionalism in working well with Ms McGregor who was covering Ms Miller's maternity leave and then with Ms

Miller when she returned to work. The Tribunal accepted that the claimant struggled with what she felt was humiliation following her unsuccessful interview in August 2017 and that she sought ways of dealing with this, for example by exploring the possibility of her post being made redundant rather than the post of auditor. While the Tribunal could understand the claimant's rationale for making this request, the Tribunal did not consider that, having gone through a restructure, it was unreasonable for the claimant to have been told that this was not an option which could be explored.

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67. While the claimant referred to talking to Ms Miller about her situation, there was no evidence that the claimant requested training. On the contrary, it appeared that Ms Miller acknowledged that the claimant was doing her substantive role well and, in many respects, was more experienced than her.

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68. The claimant applied for the post of chief internal auditor when it was advertised in July 2021. Given the impact that the previous interview had had on her, the Tribunal was somewhat surprised that the claimant decided to apply for the vacancy. The Tribunal, however, acknowledged that from the claimant's perspective this may have been what she needed and if she had been successful it would have made a significant difference to her.

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69. Given that the claimant was invited for interview in August 2021 the Tribunal had no reason to doubt that the claimant's application was sufficient to merit an interview. The Tribunal felt that the respondent was in a no-win situation. There was bound to be a degree of apprehension as to how the claimant might perform at the interview and the impact any unsuccessful interview would have on her. Again, this was a situation where the respondent would not wish to dissuade an internal candidate from applying for a vacancy for which they were eligible. The Tribunal understood that Ms Miller had left before the interview process. This was unfortunate as it may have been that Ms Miller could have assisted the claimant in preparing for the interview. That said, the Tribunal formed the impression that the claimant may have been disinclined to have sought her support.

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70. In relation to the August 2021 interview the Tribunal considered that the respondent had reasonable and proper cause for holding the interviews and conducted them in the manner that they did. While it was unusual for a second interview to be offered, the explanation provided by Mr Hutchinson satisfied the Tribunal that there was reasonable and proper cause for doing so in those particular circumstances. In any event, neither of these candidates took up the post and it was readvertised.
71. The Tribunal then considered the circumstances in which the claimant was not invited to act up pending the post being refilled. The Tribunal did not hear evidence from the assistant director who was then line managing the claimant. The Tribunal had no reason to doubt the claimant's evidence of what she said the assistant director had said to her at the time. The Tribunal agreed with Mr Hutchinson that it seemed strange for the assistant director not to have been candid in reporting back to the claimant Mr Hutchinson's position: he did not consider that it was appropriate in the circumstances to ask her to do the acting up job, particularly when she had been successful at interview and that at that time she was effectively the only employee in the internal audit team.
72. The Tribunal suspected that the assistant director was very sympathetic towards the claimant and was endeavouring to be kind. In any event the Tribunal did not consider that, when viewed objectively, it was unreasonable for the claimant not to be asked to act up in those circumstances.
73. While the claimant was undoubtedly devastated at being unsuccessful at interview, at no point had she been demoted as she continued to hold her substantive post. The Tribunal considered that the claimant was in a difficult position in that her self-confidence had been shaken and that she felt humiliated. She did, however, apply for the new post and was will to accept it is successful. This suggests that she wished to continue working for the respondent and was also willing to act up if invited to so do.
74. The Tribunal noted that the claimant considered raising a grievance but decided not to do so. The Tribunal also noted the claimant's concerns about the whistleblowing issue. However, the Tribunal considered that the



respondent had procedures in place for employees to raise concerns but could not force them to do so.

5 75. The Tribunal accepted that the claimant did not intend to retire at 55. However, having been unsuccessful on the second occasion of applying for the chief internal auditor post, the Tribunal felt that retirement offered the claimant an opportunity to resign with some financial security without having to apply for an external post and undergo an interview process.

10 76. While the Tribunal noted that the issue about the committee meeting in November 2021 this post-dated the claimant's decision to retire. It therefore could not have been a reason for it.

77. The Tribunal was not satisfied that the respondent was in fundamental breach of the implied term of trust and confidence. Accordingly, the claim is dismissed.

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**Employment Judge: S Maclean**  
**Date of Judgment: 21 November 2022**  
**Entered in register: 22 November 2022**  
20 **and copied to parties**