



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Harrell

Respondent: Mid & South Essex NHS Foundation Trust

Heard at: East London Hearing Centre (by CVP)

On: 25, 26 October and 24 November 2022

Before: Employment Judge N Walker

Representation
Claimant: Mr. D Harrell, Husband
Respondent: Mr A Ross of Counsel

JUDGMENT

The Claimant's claim for Unfair Dismissal fails and is dismissed.

REASONS

1 The Claim

- 1.1 The Claimant brought a claim for constructive unfair dismissal. Although there was a preliminary hearing for case management, this did not address the list of issues and we therefore considered the issues at the outset of the hearing.
- 1.2 The description of the Claimant's claim in the ET1 was very short. Employment Judge Feeney on 27 April 2022 ordered the Claimant by 20 May 2022 to provide particulars of her constructive dismissal claims, specifying each act she said led to her resignation, providing the date of the act, who was responsible and what happened.
- 1.3 The Claimant did supply further information in an email dated 28 April 2022. Her further information was very similar to a grievance she had lodged with the Respondent, but not always identical. In some respects, the further particulars went beyond the scope of the matters which had generally been referenced in the ET1. Leave to amend was never obtained.

2 The Issues

2.1 The issues we agreed were as follows.

2.1.1 Did the Respondent commit a repudiatory breach of contract (that is a fundamental breach of contract which was sufficiently serious to entitle the Claimant to resign).

2.1.2 The breach of contract was a breach of the implied term of mutual trust and confidence which arose out of the Respondent's conduct in relation to a series of matters which fell under the four headings below

(a) The Claimant was promised a revised pay grading which didn't progress.

(b) The Claimant suffered verbal abuse which was of an ongoing nature and amounted to bullying and harassment.

(c) The Respondent did not follow its own procedures.

(d) A confidential conversation between the Claimant and another person was shared.

2.1.3 The Claimant alleged that she resigned in response to a last straw which was:

(a) first that she was offered a job working with another employee called Sharon Tudor who she did not wish to work with and

(b) that she was sent a copy of a letter about the outcome of her grievance addressed to Mr Robson (who she had worked with and about whom she had submitted her grievance) and this noted that he had said he did not wish to work with the Claimant again.

2.1.4 There was no doubt that the Claimant had resigned.

2.1.5 Did the Claimant resign in response to the Respondent's breach of contract and the last straw?

2.1.6 If there was a dismissal, was it unfair applying section 98(4) of the Employment Rights Act 1996.

3 The Evidence

3.1 I heard evidence from the Claimant herself on her own behalf. For the Respondent, I heard from Mr Robson, Mr Nwonwu, Director of Operations and Facilities and Mr Heale, Employee Relations Manager. I had a bundle of documents.

4 The Proceedings

- 4.1 The Hearing took place by CVP. I was satisfied that it was appropriate for it to take place by CVP and that the witnesses could be seen and that all witnesses gave evidence with unmarked documents in a location where their evidence could not be influenced by anyone.
- 4.2 The case was originally listed as a one day hearing on 15 July 2022 but on that day, it was clear it could not be concluded in a day and that hearing was converted to a preliminary hearing for case management. Employment Judge Overton noted that during the hearing the Claimant confirmed that the last straw incident was the receipt of the email that had been sent to her by mistake in October 2021. I had not been aware of this when I agreed the list of issues with the parties.
- 4.3 The Claimant and her husband had no experience of Employment Tribunal litigation, and I therefore spent some time at the outset of the proceedings working through the list of issues and explaining the procedure the Tribunal would follow. I explained the process by which a witness would be sworn in, that that I would allow their representative to ask a few supplemental questions if they considered that there were matters in their evidence which they had not addressed, and also that there would be cross examination followed by the opportunity for re-examination. I explained that re-examination was only utilised when the witness had become confused or had been unclear in their evidence, but it was not an opportunity to revisit their evidence again.
- 4.4 I pointed out that although the Claimant receiving a copy of the letter addressed to Mr Robson was put forward as part of the last straw, there was no reference to it at all in her witness evidence. I also explained that cross examination is difficult and if the Claimant and her husband had difficulty I would do as much as I can within the bounds of impartiality to help frame the questions, provided she and her husband indicated what they wanted to challenge.
- 4.5 When Mr Harrell was offered the opportunity to ask supplemental questions of the Claimant, he declined. After the Claimant had been cross examined, I asked Mr Harrell if he had any re-examination and he appeared to want to start questioning her at some length. I reminded Mr Harrell of my explanation that re-examination was limited in scope. I pointed out that the witness statement was the Claimant's evidence in chief and was the place where she was expected to tell her complete story.
- 4.6 I note that the directions which were given by the Employment Tribunal which appear in the bundle explain the purpose of witness statements as follows:

"A witness statement is a document containing everything relevant the witness can tell the Tribunal..... Witness statements should be typed

if possible. They must have paragraph numbers and page numbers. They must set out events, usually in the order they happened.”

- 4.7 We only had two days to complete the case including remedy and I therefore asked the parties to focus and co-operate over at the timing. I was concerned that it would be unhelpful for the Claimant to be under oath during the lunch break as she would be unable to communicate with her husband and they were both at their home. In the circumstances I asked the Respondent’s Counsel to continue his questioning until he had finished, and this meant we had a late lunch break. I also asked the parties if they would be happy to take a shorter lunch break of 40 minutes rather than a full hour. Both of them agreed.
- 4.8 When we returned from lunch, we heard from the first of the Respondents witnesses, Mr Robson. Mr Harrell asked the witness for his home address. The witness had given a work address when he was sworn in, as he is entitled to do. The reason for asking the question, I was told, was to explore whether the witness and a colleague were residing together. That was a line of questioning which did not appear to be of any relevance in terms of determining the issues. The witness was entitled to give his work address. I therefore refused the question.
- 4.9 Mr Harrell then suggested he was not as prepared as he wished to be due to the short lunchbreak, so we adjourned for a further ten minutes, and I encouraged Mr Harrell to identify what he disputed in the witness’s evidence so that we could work through that, but after the break Mr Harrell did not have any additional questioning.

5 Facts

- 5.1 The Claimant commenced work with the Respondent as a Band 2 clerical receptionist working 24 hours a week on 13 June 2016. Over time she progressed through the organisation and in 2019 when Mr Robson commenced employment as site manager in the Estates and Facilities Department, The Claimant was working in that department. I am told she had been seconded to a role. There is some complexity around the banding and roles and process of secondment, but Mr Robson’s evidence was that the role in question was a Band 4 role, but it had been recognised that the Claimant should be seconded to Band 5.
- 5.2 The Claimant was unhappy about this situation and wanted to be in a permanent Band 5 position. I am satisfied that Mr Robson reassured her from time to time that he would resolve matters. Mr Robson told the Tribunal that he discovered the department was in a state of some disorganisation and required the management structure to be improved and this took time, so he focused on certain key roles first.
- 5.3 The Claimant says in her witness statement that Mr Robson, after his initial starting period, noted she was a highly efficient employee and

some initial difficulties subsided. She says she worked extremely well with Mr Robson until March 2020.

- 5.4 The deterioration that the Claimant perceived in her relationship with Mr Robson around March 2020 related to the arrangements for Covid. A dedicated room was set up to deal with covid arrangements and the Claimant was not involved. The Claimant could not access Mr Robson to talk to him and she was unaware what was happening in the Covid room. I understand that management manned that room, and all expenditure was kept separate from normal Estate and Facilities management so that it was not thought necessary for the Claimant to have access. The Claimant acknowledges they were all busy. The Claimant says that during this time, Mr Robson ceased to be her line manager and she was told that someone else was taking over that role. When the lockdown eased, and things went back to normal, there was a staff meeting at which she complained publicly about the arrangements having meant she did not have all the information she needed for audit purposes. She thought that Mr Robson started to call her names after that, and their relationship deteriorated.
- 5.5 Mr Robson says that the Covid expenditure was kept separate, and I accept there was no need for the Claimant to have that information. He also showed no concern about her having raised the matter in a public meeting.

Verbal Abuse Allegations

- 5.6 The Claimant raised a grievance towards the end of her employment, and many of the matters she refers to in her claim were in that grievance, so I have the benefit of her grievance letter and the grievance investigation in terms of the evidence.
- 5.7 The Claimant described an occasion in August 2020, when Mr Robson called her "Hagrid" and said he often called her things like fat and gobby and talked about her being off sulking. Mr Robson did recall that occasion and accepted that was probably August 2020. He accepted that he had behaved inappropriately. On that occasion he said he had been dressed more casually than usual and had a slight beard and when the Claimant made comments to him about his appearance, he recalled calling her "Hagrid" in response. He also admitted that he had referred to her as gobby on occasions which he admitted was not appropriate. The Claimant told the Tribunal that on the occasion when she was called Hagrid, there had been joking but it had got out of hand, and she had joked back as she felt she needed to defend herself.
- 5.8 Mr Robson denied ever calling The Claimant "fat" or making fat related comments as alleged, saying he was attending weight watchers, as she was, and he was sensitive about such issues and did not make those comments.

- 5.9 The Claimant resigned in October 2020, but her resignation letter made no reference to the Hagrid comment or any verbal abuse or bullying. Moreover, the Claimant withdrew that resignation and remained in the Respondent's employ, so that she waived any breaches of contract which had occurred at, or prior to that time.
- 5.10 I have considered whether the Claimant complains of any other verbal abuse after October 2020. In her further and better particulars, the Claimant referred to Mr Robson shouting at her in March 2021 when she put forward a different proposal around a restructuring they were considering. In her witness statement the Claimant referred to that incident and a further incident when she said Mr Robson had shouted at her on 24 March 2021 after she had talked to a manager in another department about one of his staff being in Mr Robson's office. In the ET1 the Claimant complains that she was told she could not speak to other departments by Mr Robson. This is the same incident. Mr Robson says that he received a complaint from another manager in the Projects department that the Claimant had gone to his office and told him that another employee, Ms D, had gone to his Mr Robson's office the day before. The other manager had explained that Ms D needed some help with some rates and the Claimant had told him that it wasn't Robson's job to do this. Mr Robson says that having had the complaint from the other manager, he tried to talk to the Claimant about it. He says it was the Claimant who became angry and began shouting at him when he tried to tell her calmly that she should not get involved in matters that were did not concern her such as this matter. The Claimant was not refused the opportunity to speak to other departments but was asked to do so for work related matters. Mr Robson denied shouting on both of those occasions, and I accept his evidence.
- 5.11 In reaching this conclusion, I should point out that I was asked by the Claimant to bear in mind the statements from members of the Claimant's team who gave evidence to the grievance investigator and note that they did talk about the banter amongst the team. I considered those comments carefully, but I do not consider they are sufficient to support the Claimant's assertions. It was clear that there was banter within the team and the Claimant engaged in it. Comments were made describing the Claimant and Mr Robson has having had a volatile and unpredictable relationship which could be described as love/hate. Another comment was that it was hard to tell when Mr Robson was being serious or joking and he and the Claimant did have a lot of banter between them. One said that when Mr Robson had said things directly to the Claimant, she had shrugged them off. Another comment was that there were issues within the team that the Claimant was not happy about and she vocalises her opinion on a regular basis. Some suggested that the dynamic had changed over the last few months for the worse but gave no specifics and as I have noted, the two incidents that the Claimant described are denied by Mr Robson.

- 5.12 There is evidence that the Claimant and Mr Robson had a friendly relationship. The bundle contains text messages between them in April 2021 in which the Claimant tells Mr Robson that she and her husband are joining the sailing club and another where they exchange comments about the Claimant working from home one day. Mr Robson appears to refer to the Claimant working “from Walmart” to which she replies calling him a “cheeky bugger”. He then responds saying that his car types badly and he was trying to say work from home. He was using the voice activated system. There are lots of laughing emojis and when he then says “no skiving down the yacht club” she replies “busted” with champagne and glass emojis and laughing faces. The comments from the Claimant are not those of someone who is bullied or harassed but rather someone who is relaxed and friendly and used to engaging in banter with the correspondent on an equal basis.
- 5.13 Taking all the evidence into account it is my conclusion that the only inappropriate incident which did occur was in August 2020.

Career progression and pay grading

- 5.14 On 7 October 2020, the Claimant tendered her resignation to Mr Robson. In the resignation letter, she complained that over the 18 months she has had numerous line managers throughout her entire time with maintenance department and each of the managers had assured her that a full time non-seconded position would be created and that there was a career for her as opposed to just a wage which is something she had been hoping for. She then complained that over the last three months something seems to have changed and she no longer felt her efforts were appreciated, in fact she felt the opposite. She complained about others being seconded into alternative jobs and then being given that job on a full time basis within a couple of months and that she was deliberately being held back from progression. She then gave four week’s notice.
- 5.15 Mr Robson persuaded the Claimant to withdraw her resignation. Mr Robson worked to achieve the band 5 permanent status for the Claimant’s role. In order to do this, he had to re-write the job description for the role and go through the internal process in order to have the role identified as a band 5 role. The Claimant was then able to apply for the permanent role which she did and was successful. The upshot was that she was placed in a permanent non-seconded role at band 5, as she had wanted. It was accepted that she was doing a band 5 role previously and her service in that role was counted when considering how long she had been in the Band 5 role. The effect was that she was eligible for the increase to the mid-point of the band after two years, including the time on secondment. The Respondent is an NHS Trust, and it has a considerable number of policies and procedures. Matters such as pay increases and pay banding are the subject of detailed procedures. This was the best outcome that could have been achieved under those procedures. The Claimant complains that it

took Mr Robson three months to sort out the permanent role. However, I understand this was because as I have noted, the job description had to be re-written and then graded and then the Claimant had to apply for it. All of that process took time.

- 5.16 The Claimant also alleged that Mr Robson had promised that he would get her pay enhanced to the middle of the band 5 but Mr Robson said this was not something he could promise because he could not achieve it.
- 5.17 A number of the Claimant's pay slips were in the bundle. They all have a section on them stating the date when the pay can be revised. The system under which the Claimant worked at that particular time required her to do 2 years in the role before she was eligible to have her pay raised to the middle of the band and then a further two years until she would be raised to the top of the band. In practice after the two years, including the seconded time, the Claimant's pay was raised to the middle of the band. I accept the Respondent's evidence that Mr Robson could not have had the Claimant's pay raised any earlier and it is entirely consistent with that for Mr Robson to have said this was not something he could achieve.
- 5.18 The Claimant did point out during the hearing that there is a process for exceptional performance and there were situations in which an employee might receive enhancements outside the general structure, but she did not ever identify any circumstance which would have merited her being treated in that manner.
- 5.19 The Claimant also complained that Mr Robson had promised her a band 6 role. This related to a restructuring which has not yet been completed and is not likely to be completed until next year. Mr Robson did have a vision for the restructuring in which there could have been a revised role for the Claimant involving one desk which she might manage across all three hospitals within the Trust. This was an element of the restructuring which Mr Robson envisioned, but although it was discussed, no formal proposal has been shown to me. The Trust never reached the point where the cross hospital desk was created and the band 6 role for that type of role still does not exist. I have no doubt that the Claimant was well aware that she would only be able to apply for the band 6 role when the restructuring reached the level when the new hospital post had been created.
- 5.20 Additionally, the Claimant complains that there was a Project role which she was interested in and thought of applying for but was later told that Mr Robson had approached the Head of Projects, complaining that they were trying to poach his staff. The Claimant decided she would not actually apply for the role because, she says, she had no chance of getting it. In fact, another employee applied for the role and obtained it. At this point the Claimant complains in her grievance that Mr Robson told her he wasn't going to re-band her job.

- 5.21 This complaint appears to muddle two matters. First it relates back to the complaint about how long it took for the Claimant to reach the middle of band 5. The Claimant says that after she'd been doing the job for 18 months, she was told she would be moved to the middle of the band but that was not fulfilled, and she argues that Mr Robson's excuse that this was out of his control was false. As I have noted, that does not accord with the Respondent's procedure which requires the Claimant to be in a role for two years before she can be moved to the middle of the band. The dates appear on the pay slips. In short, I am satisfied that Mr Robson had no opportunity to move the Claimant to the middle of band 5 until she had completed two years in that role, including her secondment time, at which point she was moved to the middle of the band. It had no bearing on her telling him she was thinking about applying for another role and then not doing so.
- 5.22 Secondly, the Claimant complains that she was deterred from applying for the Projects role by Mr Robson's approach to the manager. I do not find the Claimant's explanation about why she did not apply for that role convincing. The Respondent's processes are detailed and transparent. That recruitment was carried out by other managers, and it is clear from the paperwork relating to a role she did apply for, that Mr Robson would not have had any influence over another department's recruitment. If he did appear to do so, there was a grievance process which the Claimant could have invoked.
- 5.23 The Claimant also complained that in May 2021 a contracts manager position came up at Chelmsford and she applied. She informed Mr Robson and got a message from him that he had spoken with the relevant manager in charge of this post. Mr Robson tried to call her about it but she did not take the call, Mr Robson said he left an inaccurate message as he was driving and in fact he had only left a voicemail for the manager in question and did not get to speak to him about it. The bundle contains documents showing the Claimant did not succeed in getting that post as she did not meet the full requirements. The Claimant and the other applicants were scored, and her score was towards the middle. Several other employees scored more highly than she did. In fact, no one has yet been appointed to that post. The Claimant's application was assessed by other managers, and Mr Robson could not have influenced that situation.
- 5.24 In summary, the Claimant's career progression and pay increases were progressed in accordance with the career progression system operated by the Respondent and there is no evidence that she was promised something which could have been provided but was not actioned unreasonably. There was no breach of contract.

First Allegation of Confidential information sharing

- 5.25 The Claimant complains that during meeting to discuss the merger of the switchboard and helpdesk, Sharon Tudor, another colleague who was in charge of the helpdesk, turned to her and said: "*why don't you*

want to work under me". The Claimant says that she had previously told Mr Robson she didn't really relish the thought of working under Ms Tudor, and she believed that the comment was made to him in confidence and thus he had caused friction between her and Ms Tudor.

- 5.26 Mr Robson states that he did not disclose any information of that nature and that the comment arose entirely naturally when in a meeting about the proposed restructure, Ms Tudor heard the Claimant's explanation of why she thought the merger would not work in the form proposed. He says that Ms Tudor enquired whether there were technical reasons for The Claimant's view or whether she simply did not want to work under her. The Claimant replied there were technical reasons. Mr Robson disputes having said anything to breach The Claimant's confidence. The grievance investigator looked into this matter and her notes of her discussion with Ms Tudor are in the bundle. In her interview, Ms Tudor said she had never heard any comments from Mr Robson in relation to the Claimant's preferred management line and that it only came up in a meeting when the Claimant made some comments about the proposed plan not working and Ms Tudor had asked her if she thought it wouldn't work for technical reasons or because she wouldn't be managed by Ms Tudor.
- 5.27 In all the circumstances, I prefer Mr Robson's description of events. The Claimant assumed there was a disclosure by Mr Robson of something she claims that she had said to him but there was no factual basis for that assumption. Ms Tudor, she confirmed the same facts. In the case of the alleged comment about Ms D, the Claimant felt free to relay what she claimed to have said to other staff members as well as apparently reporting what Mr Nwonwu had said to her in an informal grievance meeting about a sensitive matter, which does not indicate she regarded her own comments as confidential.

Fraud

- 5.28 The Claimant complained in her ET1 that she was asked to participate in a fraud by Mr Robson. She raised this in the further and better particulars and had raised it in her grievance. It was considered whether it should form part of the grievance and be investigated but it was decided not to add it to the matters under the grievance investigation, but the Claimant did refer to it as part of the alleged bullying and harassment.
- 5.29 The Claimant alleged that Mr Robson caused a contractor to be paid more than the time they needed for certain work. She says this was fraud. The Respondent operates a system under which there is a national schedule of rates called Measured Time Contract rates ("MTC") which specifies the hourly rate, number of hours and equipment costs which can be attributed to any specific form of maintenance work. In her witness statement the Claimant says that the company in question were working 7 hours a day but claiming 11

hours. A decision was taken by other managers not to investigate this allegation on the basis that the number of hours to be attributed to this work was specified on the national rate system as well as the prices and that if the contractor was able to do the work in less hours, they gained but if they took longer, they lost. This was the effect of the nationalised system. The conclusion reached was that there would be no scope for Mr Robson to have committed any fraud as the Claimant suggested, nor did he have the scope to reduce the hours if the work took the contractor less time than the MTC rate system envisaged. I accept their conclusion was correct and the Claimant was not asked to participate in any fraud.

Events leading up to the Claimant's sickness absence

- 5.30 When the Claimant returned from her holiday in June 2021, Mr Nwonwu asked her to a meeting to discuss a matter. The Claimant telephoned Mr Robson to ask him if he knew what it was about. He did not know.
- 5.31 Mr Nwonwu had been approached by Ms D at the end of May 2021. Ms D had explained to him that she was concerned about the Claimant's behaviour towards her. She told Mr Nwonwu that the Claimant had been spreading malicious rumours about her and her sons who also worked in the department as well as rumours regarding her and Mr Robson. Ms D did not want to raise a formal grievance but wanted someone to have a conversation with the Claimant first in the hope that the matter could be dealt with informally. This led Mr Nwonwu to arrange a meeting with the Claimant on her return from her holiday.
- 5.32 At the meeting, Mr Nwonwu told the Claimant about the concerns Ms D had raised with him and advised them to discuss the matters together in a mature manner as Ms D did not wish to go through the grievance process. The Claimant denied any wrongdoing towards Ms D and explained she had no issues with her.

Second allegation of confidential information sharing

- 5.33 In her further and better particulars the Claimant complained that she was called in to meet Mr Nwonwu after her holiday to discuss a remark allegedly made by her about Ms D relating to the employment of her son. The Claimant says that she made the comment regarding Ms D to Mr Robson in confidence and in private so the only person who could have informed Ms D is Mr Robson. Mr Robson denied having said anything about Ms D's son to anyone.
- 5.34 The complaint Mr Nwonwu describes which was raised by Ms D was a wider complaint about the Claimant having spread malicious rumours about Ms D and her son, as well as rumours about her and Mr Robson. When she met with Mr Nwonwu, In the light of the Claimant's witness statement in which she says she did make comments to Mr Robson about Ms D, but they were made in

confidence, I conclude that despite her denial to Mr Nwonwu, the Claimant had talked about Ms D. I also note that one of the witnesses in the grievance investigation recounted to the investigator what the Claimant was supposed to have said to Mr Robson about Ms D and what Mr Nwonwu had allegedly said to the Claimant when he called her into that meeting. The Claimant had clearly told other colleagues her version of what she had told Mr Robson and what Mr Nwonwu had said to her. While the account relayed by the other member of staff was not entirely accurate, it clearly came directly from the Claimant. There was no suggestion that the Claimant her comments about Ms D as confidential. Mr Robson did not breach any confidence in this respect.

- 5.35 After Mr Nwonwu had talked to the Claimant about Ms D, the Claimant raised concerns that Mr Robson had removed her own access to his e-mail inbox and given access to Ms D instead. Mr Nwonwu took the view that the Claimant was considering raising her own grievance and he told the Claimant that he would send the relevant trust policies to her so that she could decide how she wished to proceed with her concerns about Mr Robson. The next day the Claimant went on sick leave.
- 5.36 While the Claimant maintains that she did not make malicious comments as alleged about Ms D and Mr Robson, she has repeatedly raised issues with regard to Ms D. She objected to Ms D working closely with Mr Robson. In her grievance meeting with the grievance investigator she is noted as having complained about this, saying she felt it was unprofessional and uncomfortable that Mr Robson and Ms D are together 24/7. She talked about them spending lunch, breaks and meetings together and describing them as joined at the hip. She informed the grievance investigator that her troubles with Mr Robson started shortly after Ms D joined the Trust and it was the both of them, Mr Robson and Ms D that were causing the nastiness towards her. What she meant by the nastiness is not clear.
- 5.37 Mr Nwonwu sent the Claimant the bullying and harassment policy and the Trust's grievance policy and procedure and told her about the support available to her through the employee assistance programme. He also said that Mr Hurst (who was her line manager by that time) could facilitate an Occupational Health referral. Mr Hurst wrote to the Claimant sending her the stress documentation which I have referred to above. Additionally, the Claimant was made aware of the Trust's health and well-being pages where there was further information to support employees.
- 5.38 On 13 June the Claimant submitted her formal grievance. The grievance was primarily aimed at Mr Robson. The grievance concluded with a statement from the Claimant about her end game as she referred to it. The Claimant stated:

“There is no way I will be returning to work for the Manchild bully Phil Robson.

If I am to return to work for MSE in a capacity where Phil has no access or control then I would consider a return to work, should Phil gain access to a new department I am employed within then I will re-raise this accusation.

Should redeployment not be an option then I will be handing in my resignation and speaking with employment law specialists and will endeavour to meet representatives of Mid Essex Trust at the employment tribunal services.”

- 5.39 It took some time to identify a grievance investigator with suitable seniority and then the Terms of Reference for the investigation were set out. Mrs Arnold had to arrange interviews with various members of staff including the Claimant, which she did. Those interviews took place on 25 August, 31 August, and 1 September 2021.
- 5.40 Each of the interview notes were typed up and each were checked with the individuals concerned before they were finalised, except for one who had not commented by the time that Ms Arnold finalised her report.
- 5.41 The Claimant’s interview had taken place on 25 August 2021. On 13 September 2021 she applied for a post as a Band 5 Hard FM contract monitoring officer with Barking National Health trust. She received an e-mail on 21 September confirming that she had been selected for interview and her interview was arranged for 23 September 2021. The Claimant was successful at interview and her application was progressed.
- 5.42 In the meantime there had been an exchange between the Claimant and various people over her potential return to work as her fit note was due to expire on 15 September. Mr Harrell emailed Ms Arnold on 1 September asking for the Claimant to be allowed to return to work in a capacity where she was removed from contact with Mr Robson. The Claimant emailed Ms Arnold on 13 September asking about the investigation time frame and stating that she would like to return to work in a capacity where Mr Robson had no control over her. HR then took over and on 22 September the Claimant emailed HR saying she was more than happy to return to work and they were correct that she did not want to return to work in a department that Mr Robson managed, as that would make her working life difficult at this present time. She still wanted to work as Estates Service Manager and suggested she could be managed with her team by an alternative manager at the same level or higher. She was happy to work from home a couple of days a week but felt her team would also need her support and drive by her also attending the office. The exploration of alternative roles continued and on 15 October HR emailed Mr Nwonwu explaining that they had met with the Claimant regarding her return to work. She was keen to return to work as soon

as possible but did not want to have contact with Mr Robson. The Claimant had confirmed that she could do a temporary alternative role, however she insisted that this would need to be within the Estate Facilities team, but it could be at any of the sites including Basildon and Southend. They enquired whether there was any role within the team that she could temporarily perform or perhaps a project she could undertake while the grievance process was concluded. They noted that as part of Mr Robson's role he worked across the sites and therefore they could not guarantee any no contact with him.

- 5.43 It is clear that while the grievance was ongoing, the Claimant would not return to work under Mr Robson but did wish to work in her role and suggested they find another a manager of equal or more senior level to take over that department.

Procedures not followed

- 5.44 The Claimant has complained that the Respondent failed to follow its own procedures. The ET1 stated:

“during the investigation into my allegations (that I requested to be undertaken) policies were not followed correctly at any stage”.

- 5.45 That is a claim about policies relating to the grievance process. In her further and better particulars, the Claimant complains that when she submitted her resignation in October 2020, Mr Robson should have treated that as a grievance and initiated the grievance process. He did not do so. The reference is to a policy which states that in such circumstances the manager should clarify whether the material (i.e. in this case the resignation) is to be treated as a grievance and begin the grievance procedure as necessary. In this case it is clear that the discussion focused on resolving the Claimant's concerns. The Claimant has never suggested previously that she had wished to raise a grievance when she resigned. The policy does not mandate that every resignation should be treated as a grievance but highlights the possibility that some resignations might in fact be a matter which should be treated as a grievance. In this case the Claimant's concerns were addressed by resolving her complaint so much so that she withdrew the resignation.
- 5.46 In her particulars, the Claimant says that she was asked to complete a stress questionnaire and there was also a management referral form to the occupational health department when she had not asked to be referred. This relates to a stress questionnaire and occupational health referral sent to her just after she went on sick leave. The Claimant alleges this was a failure to follow policies as the trigger point for doing so after an absence is, she says, 28 days of leave and she had only been gone for a number of hours. This is not correct. The policy document in the bundle provides that when the matter is stress, the manager should immediately initiate the stress questionnaire and refer to Occupational Health. The Claimant's then line manager (who was no longer Mr Robson), did exactly what he

was required to do under the Respondent's policy and sent her these forms.

- 5.47 The Claimant also says that she asked for departmental stress risk assessment which should be done annually, and she was sent one some three months later. This appears to be correct, but it is not a breach of contract.
- 5.48 The Claimant complains that Mr. Robson was allowed to remain in his post throughout her grievance investigation which was against policy. There is no policy which expressly required Mr Robson to be suspended or taken out of the department. Section 512 of the bullying and harassment policy to which the Claimant refers in her witness statement notes:

“in some circumstances it may be considered appropriate to transfer one of the parties involved on either a temporary or permanent basis. The decision on whether to move one party and which party to move will be dependent on a range of factors and practicalities but should never be on the basis that either party may appear to be discriminated against.”

In this case, the Claimant was on sick leave and therefore the question of needing to protect her from Mr Robson by suspending him (which is generally the reason for considering moving someone who is alleged to be the perpetrator of bullying or harassment) did not arise. It was not considered appropriate to transfer Mr Robson while the Claimant's grievance was considered and there was no failure to follow policy or breach of contract in that decision.

- 5.49 During the course of the hearing Mr Harrell raised a concern about the length of time the grievance process took, and it is right to say that there are some emails in the bundle where the Claimant and her husband ask why the investigation into her grievance is taking so long. That was not a matter raised in the further and better particulars of the Claimant's claim. There is a policy document which does indicate that an investigation should usually aim to be completed within eight weeks, but it is not a mandatory time limit and applies from the date of the Terms of Reference. However, for the sake of completeness, we looked at this during the course of the evidence.
- 5.50 On 13 June the Claimant submitted her formal grievance. The Claimant chased for a response on 21 June and Mr Nwonwu responded that he had been unable to open the grievance as it had been attached to the e-mail in an encrypted form. It was re sent on 22 June.
- 5.51 The Claimant said she expected a reply within seven days, but Mr Nwonwu says he needed to find a Band 8D investigator because the grievance was largely about Mr Robson who was senior to the Claimant and therefore it was normal to find somebody who was at least the same level of seniority, or preferably more senior, to

investigate. It took him a while, but Mr Nwonwu found Ms Arnold, a commercial director, who agreed on 7 July 2021 to conduct the investigation.

- 5.52 On 8 July 2021 Mr Nwonwu informed the Claimant that he had taken a decision to commission an investigation in line with the policy and he specified what he had extrapolated as 14 allegations raised in her grievance. The Terms of Reference for the investigation were drawn up and dated 12 July 2021.
- 5.53 There was an exchange of correspondence between the Claimant and Mr Nwonwu about the progress of her grievance and she endeavoured to impose a 7 daytime limit, but Mr Nwonwu replied on 6 August explaining that as she knew he had commissioned an investigation to look into her grievance which was now being facilitated. Unfortunately, the investigation could not be completed within the suggested time frame in her correspondence due to the number of issues that need to be investigated and the number of people to be interviewed as witnesses. He emphasised that her well-being remained a priority and she should he would prefer she got well and sound before considering a return to work.
- 5.54 Mrs Arnold had to arrange interviews with various members of staff including the Claimant, which she did. Those interviews took place on 25 August, 31 August, and 1 September 2021.
- 5.55 Each of the interview notes were typed up and each were checked with the individuals concerned before they were finalised, except for one who had not commented by the time that Ms Arnold finalised her report and sent it to Mr Nwonwu.
- 5.56 In the meantime there had been an exchange between the Claimant and what I understand to be the HR department over her return to work as her fit note had expired on 15 September. In practice, the discussion was whether she could work in part from home and she made it clear in writing that she would not return to work under Mr Robson but did wish to work in her role and suggested they find another a manager of equal or more senior level to take over that department.
- 5.57 When Mr Nwonwu got the report from Ms Arnold, he wrote to the Claimant asking her to come to a meeting to discuss it. The report was dated 27 September 2021 and sent to him on 30 September 2021. Mr Nwonwu wrote to the Claimant on 13 October 2021 to invite her to a meeting to discuss it before he decided on the action required. There was a meeting on 20 October 2021.
- 5.58 On 22 October, Mr Nwonwu sent emails to both the Claimant and Mr Robson with letters confirming the outcome of the formal stage 2 grievance meeting.

- 5.59 There was no mandatory policy regarding the length of time a grievance should take and therefore no failure to follow policy. The Claimant had raised a large number of matters taking place over several years, so the grievance took a longer time, but there was not an excessive delay.
- 5.60 In the claim form the Claimant also complains that she was called “a nobody” by the director, Mr Nwonwu, when she complained about the allegations. Mr Nwonwu gave evidence and denied any such comment. I note that in the Claimant's witness statement she says specifically in relation to that she did not look too deeply into the nobody comment as she did not believe they are the director's words but rather Mr Robson's. She gives no context for the allegation.
- 5.61 Given the fact I am presented with evidence from two people which is wholly contradictory and no other corroborating evidence at all, I have to decide who is telling the truth. I have concluded that Mr Nwonwu's evidence is preferable. As I will explain the Claimant's credibility is an issue in this case.

Grievance outcome

- 5.62 When Mr Nwonwu got the report from Ms Arnold, he wrote to the Claimant asking her to come to a meeting to discuss it. The report was dated 27 September 2021 and sent to him on 30 September 2021. Mr Nwonwu wrote to the Claimant on 13 October 2021 to invite her to a meeting to discuss it before he decided on the action required. The Claimant asked to bring her husband with her. Mr Harrell had been allowed to attend her grievance hearing meeting. There was a meeting on 20 October 2021.
- 5.63 On 22 October, Mr Nwonwu sent emails to both the Claimant and Mr Robson with letters confirming the outcome of the formal stage 2 grievance meeting. The Claimant received a letter because it was her grievance and Mr Robson received a letter because, to a large extent the allegations related to his conduct. Unfortunately, Mr Nwonwu inadvertently sent the letter to Mr Robson to the Claimant as well as sending her the letter addressed to her.
- 5.64 The letter to the Claimant explained the outcome of the investigation. It started by setting out the allegations. The report found there was insufficient evidence to support the allegations of derogatory comments and the report reflected a common notion of banter which had gone too far with in the office, not only from the Claimant but other team members. The investigating officer added that at times she could not identify if this banter has portrayed in a joking or serious manner. Mr Nwonwu considered this was not acceptable and confirmed that training would be done with the whole team to address this. The Claimant had responded that she was retaliating to Mr Robson's comments and that his behaviour was childish. Mr Nwonwu said that he would be addressing this with Mr Robson directly.

- 5.65 As regards other allegations, there had been insufficient evidence to support them. Some detail was provided about certain allegations and then the letter went on to address the future. It explained there had been a discussion about future work. As before, the Claimant had said she did not feel she could work with Mr Robson. She declined mediation with him, but she requested to remain within the Estates Management team as long as she wasn't under Mr Robson's direct line management. The letter explained that Mr Nwonwu would look for roles within EFM and also within the wider Trust to ensure her opportunities were not limited. He said that in the meantime he would locate a temporary role for the Claimant. The letter confirmed that the Claimant had been told that she had a right to appeal against the decision and if she wished to do so she had she was told the process of completing a Notification of Appeal form within 14 days of receipt of the letter. The letter ended by Mr Nwonwu reminding the Claimant that he had closed the meeting by thanking the Claimant for coming and confirming that he would be in touch with her on 22 October to discuss a temporary role for her.
- 5.66 As noted, there was a second letter sent out about the outcome to Mr Robson, but that letter was emailed to the Claimant as well by accident. This version of the outcome explained the findings and went on to note that Mr Robson had confirmed he did not feel he could line manage the Claimant moving forward. The letter stated:

"I responded that you are both valuable members of staff within FM and your contracted job roles require you to work together as part of the team professionally".

The letter went on to state that Mr Robson had confirmed he would consider a facilitated conversation with the Claimant to enable this but needed to reflect on the meeting and whether he wanted to take any further steps. It also confirmed Mr Robson was required to take 306 degree training, respectability training and unconscious bias training. Mr Nwonwu also said he felt a stress management workshop would be beneficial. The letter to Mr Robson expressly stated that the matters which had been found to have occurred by the grievance investigation were not being taken forward as a formal conduct issue, but Mr Nwonwu had been clear that should similar incidents occur in the future, that might lead to formal action.

- 5.67 As I have noted, the HR team had encouraged Mr Nwonwu to find a role to which the Claimant could return and as I have noted, she had been told that Mr Nwonwu would be in touch with her to discuss a temporary role for her. By an email dated 22 October 2021 Mr Nwonwu confirmed a telephone conversation he had with the Claimant that morning. His e-mail states that he had called her as a follow up from investigation outcome meeting on Wednesday 20th October when he had said he would make contact that day to discuss temporary placement options. The Claimant had asked if it was to work with Sharon Tudor and he had replied yes. She had said she would not accept the offer as she did not want to work with Sharon. Mr Nwonwu said it was disappointing that she declined the offer, but

he would now pass it on to John Henry/Rebecca Berry to discuss with her in his absence as he was going away on annual leave. The heading of the e-mail was temporary placement telephone conversation.

- 5.68 Mr Nwonwu was very clear in his evidence that the Claimant knew that she was not being asked to take a pay cut and that the role was temporary.
- 5.69 By an email dated 28 October 2021, the Claimant resigned giving one month's notice.

Resignation letter

- 5.70 The resignation letter states that the Claimant's last working would be 28 November 2021, in line with the contractual obligations required by both parties. In practice the Claimant's obligation was not to give a full month notice but rather four weeks' notice which is the notice she had given when she resigned previously. The letter said she would be taking the remaining time to pursue a job outside of the Trust. The implication was that she was still looking for a job although the wording is a little vague.
- 5.71 The Claimant complained that instead of supporting her through the process, she felt the recipients, (Mr Nwonwu and John Henry, the Interim Estates and Facilities Advisor) had demonstrated a one sided investigation favourable to Mr Robson and presented no actual or physical evidence in the follow up meeting to discuss the outcome, despite her personally supplying evidence to the Trust in various forms. The Claimant complained that the fraud allegations were not part of investigation and she failed to see how they had concluded that.
- 5.72 The Claimant said that she would be seeking legal advice to bring a claim of bullying and harassments and/or constructive dismissal and suggested a figure of one year's annual pay would be sufficient to enable her to be redeployed and climb the ladder from the bottom again and make up for being held from her career progression. In fact, at the time this was written, the Claimant had accepted a new job starting immediately after her work with the Trust ended which was at the same level with a higher total salary.
- 5.73 The Claimant then stated the last straw was being offered a position within the helpdesk at Basildon being managed by Sharon Tudor who was mentioned in the allegations and investigation. She said this was obviously intentional and engineered to cause her deep personal distress, which it did. She said that her position within the Trust was untenable, and they could have redeployed her within a week or so of submitting her grievance and relieved Mr Robson of his duties for a week while investigation was undertaken but instead chose to constructively have her dismissed and cover up the evidence to avoid

disrepute. She stated I would just like to add “I thoroughly enjoyed my job until 18 months ago until things took a turn for the worse”.

Events Post Resignation

5.74 Mr Henry, the Senior Director for Estates and Facilities, e-mailed the Claimant on 2 November 2021 asking her to meet with him and try and explore a way forward before he accepted her resignation. He explained the delay in responding as being because he had taken a couple of days off. The Claimant replied to him the same day telling him that she thought he was a really nice guy and she had thoroughly enjoyed working with him. She did not want him to think her resignation had been it had been directed at him and she would not like to leave on bad terms with him. She explained she was very disappointed that Mr Nwonwu had offered her a job with Sharon Tudor in the switchboard. That made her wonder whether he had actually read and understood her grievance and she had felt insulted to have been offered a place within the switchboard. She said she was happy to meet with Mr Henry or speak to him on the telephone, but she failed to see how she could work back within the Trust when her complaint had not been taken seriously and conducted in a timely and professional manner and she felt that she could no longer work within the Trust.

5.75 Mr Henry and the Claimant did have a meeting. Mr Henry emailed the Claimant on 9 November to confirm it. He noted they had discussed the placement within the switchboard, and it had been discussed with her by Mr Nwonwu as a temporary measure pending commencement of the redeployment procedure and permanent opportunities within the Trust. He had confirmed this was currently the only opportunity that existed within the Estates and Facilities Directorate. The Claimant felt this was not a role she was prepared to consider as this was not a position within the Estates Maintenance Team. She also confirmed she would not consider any roles outside of the Estate's Directorate as she felt these would not be suitable and she confirmed that her resignation requests remained.

Alternative Employment

5.76 The Claimant has failed to provide the level of disclosure that had been requested by the Respondent and indeed ordered by the Tribunal, so that there is not a complete picture of her efforts to find alternative employment and mitigate her loss. Recruitment within the National Health Service is usually done using a specific computer process and website called Trac. The Claimant contended that she had not until very recently understood that she could access this website through a personal e-mail. She regarded it as beyond her control to access the documentation on it. When she did find out shortly before this hearing commenced, she did not attempt to copy the documentation and produce it to the Hearing. In consequence there is very little documentation recording her applications for other

work. However, it is clear that the Claimant had been looking for other work for a while and at least since early in September 2021.

- 5.77 The Claimant was ordered by Judge Overton to prepare a short supplementary witness statement dealing with the issue of remedy and steps taken by her since her resignation to mitigate her loss. She was also ordered to provide specific disclosure including copies of all job applications made by her and any related correspondence for the period 1 January 2020 up to the date of her resignation as well as copies of any correspondence to and from Trac (the NHS recruitment tracking system) for the same period, including correspondence relating to a specific Trac job reference. If she had no further documents to disclose, she had to write to the Respondent to confirm that a thorough search had been carried out. The Claimant's response to Judge Overton's order was minimal and the Respondent then applied to the Tribunal again. On Wednesday 13 October 2021 there was a preliminary hearing before Employment Judge Muir Wilson who made further detailed orders about the disclosure the Claimant was required to make and witness statements to confirm her efforts and the efforts that she had made to find alternative work.
- 5.78 The Claimant supplied a disclosure witness statement which said, amongst other things, that she had applied for a job with Barking and Dagenham on Trac on 13 September but did not hear anything for several weeks so around late September she telephoned the hospital to chase up the hiring manager. She was told the hiring manager had been delayed due to various covid related restrictions on hiring. Eventually she was interviewed and offered the position of employment and these documents have been forwarded. This explanation was inaccurate as the Claimant admitted during the course of the hearing.
- 5.79 The Claimant had applied for a role as a Band 5 Hard FM Contract Monitoring Officer with Barking and was offered an interview on 23 September 2021. If she applied on 13 September, she got an interview 10 days later. She was clearly notified that she had been successful subject to the formalities. She accepted in her evidence under questioning that she was in contact with the manager who was conducting the recruitment who, she said was very helpful to her in chasing along the various formalities required to finalise her position. She knew that she had completed the formalities and would be getting a formal written offer which was unconditional (all formalities having been completed) before she resigned. She got the unconditional offer on 1 November 2021.
- 5.80 At the time when the Claimant wrote her resignation letter, she had another job and it was not necessary for her to "climb the ladder" as she put it, as that job was at Band 5. She was earning enough to fully mitigate her loss but suggested that the Respondent should pay her one year's pay in order to make up for her being held from career progression.

- 5.81 The Claimant started the job at Barking but only worked for a short time before leaving that role. She told the Tribunal that she had not been ready to go back to work and it was too early. She also said that the travel to the job was very lengthy. The Claimant obtained another job close to home which she remains in.

Last straw

- 5.82 In the course of this hearing, and indeed very recently at a hearing before Judge Overton, the Claimant said the last straw was being copied onto the outcome letter and e-mail to Mr Robson. That did not appear in the Claimant's resignation letter or in the documentation relating to her claim, but it did appear in the further particulars which she supplied when she said:

"as the last punch in the face I was mistakenly sent a copy the outcome which was addressed to Phil Robson in which he states he cannot work with me any longer et cetera - this was upsetting".

- 5.83 The Claimant did not give any evidence in chief about this matter. In her witness statement the Claimant says:

"Roll forward a few months and during this I have been asking to return to work in a capacity where Phil has not control over my career (many times) but after six months was only offered a job working under the aforementioned Sharon Tudor who by now has a bad opinion of me (3 bands of pay below my then current level of pay) in a job I have no experience of. I had contacted HR but got no response – only to find out that the person dealing with my case has left the trust.

I subsequently resigned my position as it was clear by this time I had not only been bullied /harassed/ discriminated against by weight and asked to commit fraud but now I have also been constructively dismissed as I felt this was the only option I could take to improve my wellbeing. "

- 5.84 In circumstances where the Claimant gives no evidence in chief about a matter which she claims to be at the last straw, that cannot have been the motivating reason for her resignation. It is therefore my conclusion that receiving the email with a copy of the grievance outcome letter to Mr Robson was not a last straw. It's noticeable that there is no mention of it in the resignation letter; rather the resignation letter specifically refers to the helpdesk position being managed by Sharon Tudor.
- 5.85 At the previous hearing, the Claimant expressly confirmed to Judge Overton that the last straw was the being sent a copy of the letter to Mr Robson. She did not rely on being offered the position working with Sharon Tudor. Judge Overton 's order made on 15 July 2022 records:

“During the hearing the Claimant confirmed that the receipt of the e-mail that had been sent to her by mistake in October 2021 was the last straw incident that prompted the Claimant’s resignation.”

In contrast, it was only the offer of the post with Ms Tudor that the Claimant complained about at the time.

- 5.86 It is necessary to make a comment about the conduct of these proceedings. As I have noted, the initial trigger to the Claimant’s sickness absence and then her grievance was the fact that she was called into a meeting with Mr Nwonwu in order to discuss complaints raised by Ms D. I have also noted that in the grievance hearing, the Claimant expressed the view that Ms D and Mr Robson were, as she put it “joined at the hip”. In an e-mail dated 7 July 22, Mr Harrell corresponding on behalf of the Claimant wrote to the Respondent’s solicitor about the preparation for the case hearing and entirely gratuitously stated: *“I believe Phil Robson is romantically entwined and currently on holiday with one of the witnesses, “Ms D”. I would like to wish them a safe journey home.”* Mr Harrell also asked Mr Robson to provide his home address when cross examining him during the course of this hearing, which I understand was an effort to establish whether Mr Robson was cohabiting with Ms D. The Claimant’s declared annoyance with Ms D in the grievance hearing, coupled with the fact that there was an ongoing reference to Ms D’s personal situation which was wholly irrelevant to the matters at issue in the proceedings, suggests that this was a major issue for the Claimant. As part of reaching a conclusion it is necessary to decide why the Claimant resigned. It is my conclusion that the Claimant resigned because she wished to take up another post and because of her deep resentment of Ms D.

Credibility

- 5.87 There was an issue over the Claimant’s credibility raised by the Respondent and which I must address. It is my considered view that the Claimant’s resignation letter is erroneous and misleading, since it suggests she has to look for another job at a time when she knew she had another job. I recognise that the wording specifically refers to pursuing a job outside of the Trust which might not mean that she was job seeking. She does, however, indicate that she will have to climb the ladder from the bottom again when she knew that she had secured a band 5 role. The purpose of that statement was to try to elicit an offer from the Respondent of a year’s salary by way of compensation. The Claimant had no financial loss, yet in her resignation letter she was seeking a large financial settlement well beyond what she might have been offered, had she told the truth about her job status.
- 5.88 The Claimant was ordered by the Employment Tribunal to produce a disclosure witness statement explaining what steps she had taken to mitigate her loss, and she produced a statement which specifically required her to address the national recruitment system called Trac

and in particular to do so in relation to the role which she obtained and did in fact start on 29 November. The Claimant's response which was set out in a sworn statement was to say there had been no contact with or from BHR other than the full exchange supplied, and she had searched her e-mail history both inbox and outbox. As noted, she gave an incorrect description of the sequence of events at that time saying she had applied for the job on Trac on 13 September but did not hear anything for several weeks, so she telephoned the Hospital and chased the hiring manager and was told he been delayed by Covid but eventually she was interviewed and got the position and these documents have been forwarded.

- 5.89 The Claimant was ordered to set out a list of any contact including phone calls. In her evidence before this Tribunal, she admitted that she had in fact had a number of phone calls with BHR and that she had verbal confirmation of the offer before she resigned. Her disclosure witness statement made no mention of those calls. The offer that was made was an unconditional offer which means that all the checks had been completed by that stage. The Claimant's response in the disclosure witness statement obfuscated a key issue, namely when she had sought other work and been offered it and what the position was at the time of her resignation. That is an important issue as it goes to the reason for her resignation.
- 5.90 In the light of that, I have to conclude that the Claimant has been unwilling to admit the correct position and prepared to swear an affidavit which contained incorrect information. The fact that she resigned from the Respondent when she had an unconditional job offer and that job was at a higher rate of pay meant she had little or no loss. Indeed, she was better off since she got an extra payment equivalent to a London weighting. Bearing in mind the Claimant's approach to this, where there is a doubt or clash of evidence with no corroborating documentation, my conclusion is that the Claimant's evidence is unreliable.
- 5.91 Mr Harrell encouraged me to conclude that Mr Robson's evidence was unreliable, and he gave one particular example where he thought Mr Robson had been somewhat disingenuous. He referred to Mr Robson's message which he left which said he had spoken with another manager about the Claimant's job application. Mr Robson now said this was incorrect and he had only left a voice message for the manager. Mr Harrell found Mr Robson's explanation for the inaccuracy unsatisfactory. He argued that Mr Robson said that it had somehow been distorted by his car and that he had not said that he had actually spoken with the manager for the new job but that he had only left a voicemail. I did not understand Mr Robson's evidence to be that he had said something entirely different which was mis-recorded by the voice system, although the messages about Walmart which I have recited above suggest the car was not able to transcribe voice messages accurately. Rather, I concluded that Mr Robson's evidence was that when driving, there was a combination of the text voice system not working very well and his focus being on the driving,

which led to the error. Mr Robson openly admitted the error in his witness statement. I do not regard the matter raised by Mr Harrell as indicative of a general lack of honesty. Overall Mr Robson appeared keen to explain himself and open to answer questions. He had responded to the internal investigation by admitting the inappropriate comments and did so without any delay when it was put to him. He admitted the error in the text in his witness statement. He did not hide his errors. In all the circumstances my conclusion was that Mr Robson was honest and credible witness.

6 Submissions

Claimant's Submissions

- 6.1 The Claimant's submissions were made for her by her husband. The Claimant argued that the Respondent's policies had not been followed. He identified a series of policies which he said had not been followed.
- 6.2 The Bullying and Harassment policy at Section 3 applied. That policy describes bullying as offensive, intimidating, malicious or insulting behaviour and harassment as unwanted conduct affecting the dignity of anyone in the workplace. The Claimant said that she was called fatty or a fat cow and this was evidenced by the comments of one of the witnesses to the grievance and was in the bundle. The Claimant argued that Mr Robson should have been temporarily suspended during the investigation and when wrongdoing had been found he should have been subject to disciplinary action.
- 6.2 The Claimant referred to the statements of two witnesses in the Grievance investigation about aggressive behaviour from Mr Robson and she also complained about the investigation taking so long. The Respondent's Workforce Investigation policy provided at point 5.7 that an investigation should aim to be completed within eight weeks of the Terms of Reference being issued. The Claimant's grievance investigation took 18 weeks.
- 6.3 The Claimant also referred to the Disciplinary Policy which noted at 7.3 that if fraudulent activity is suspected, advice should be sought from the Employee Relations Team and/or the Local Counter Fraud Specialist (LCFS). Any evidence obtained should be retained. The fraud allegations were not referred to these entities.
- 6.4 The Claimant referred to the disciplinary policy in which identified suspension as a neutral act and stated that suspension may be carried out at any stage. Mr Robson was not suspended at any point which allowed him to build relationships with colleagues which potentially covered up vital evidence.
- 6.5 The Claimant referred to the Grievance Policy and in particular to section 4.3 which identified the roles and responsibilities of Managers and advised them to take care in identifying a potential grievance and

said they were required to treat written requests including resignation letters as a potential grievance. Managers were to inform the Employee Relations Team whenever potential grievances were considered or an actual grievance submitted. The Claimant's resignation on 7 October 2020 was not treated as a grievance.

- 6.6 Under the heading "Stage 2- Formal" in the Grievance Policy it provided for a meeting to take place with the relevant manager and a member of the Employee Relations Team within 7 calendar days of a grievance request being raised to discuss the formal grievance. This meeting was not action and or explained by Mr Nwonwu.
- 6.7 The Respondent's policy for the Management and Prevention of Stress at Work included at section 7, a reference to risk assessments and said there was a statutory duty to proactively assess the risk in the work environment to ensure that appropriate measures are in place to keep stress to minimum and a need to individually assess members of staff who were experiencing signs of stress. This involved a dual approach including an annual departmental stress risk assessment and individual stress risk assessments. The Claimant was never asked to complete an individual stress risk assessment even though she had been employed for five years and she had not received a departmental stress risk assessment.
- 6.8 The Claimant submitted that she was showing signs of stress including feeling anxious and tearful after dealing with Mr Robson. Her grievance was not replied to apart from an acknowledgment and the documents show that Mr Nwonwu struggled to find an investigator and then it took a further 7 weeks for the Claimant to be interviewed.
- 6.9 The Claimant submitted that when asked about certain messages, Mr Robson had said they were texts and then that they were WhatsApp's, and his evidence was contradictory. Similarly, Mr Robson had said contradictory things about the phone message he had left the Claimant about his call with another manager about her job application indicating first that he had spoken with him and then saying that he had simply left a voice message. His evidence was unreliable.
- 6.10 The Claimant made a general comment about the pressure of the Tribunal process and the difficulty of knowing what to do and when.

Respondent's Submissions

- 6.11 The Respondent provided the Tribunal with a note on the law which set out the legal framework for determining whether there had been a constructive dismissal.

- 6.12 The Respondent submitted that it was important to consider credibility from the outset. The Respondent submitted that the Claimant had not approached the proceedings and open and honest basis. The burden of proof lay on the Claimant to show there has been a constructive dismissal before the Tribunal could decide whether or not there was an unfair dismissal.
- 6.13 The Claimant had been evasive about her new role at BHR. On 15 July the Claimant was ordered to provide copies of any correspondence to or from Trac with BHR after the Judge explained why that was relevant. On 13 October another Employment Judge Muir Wilson had addressed the matter. The Respondent had made it clear it did not accept that the Claimant did not have access to Trac. Only during questioning had the Claimant conceded she could access Trac. She agreed she could have taken a screenshot of the applications she had made so that the Respondent could see all her previous applications, but the Claimant had only produced emails which didn't require her to log into Trac and then just a few emails. The Respondent did not accept that the BHR role was the only application she had made. The Tribunal were asked to draw an inference about the Claimant's failure to disclose relevant documentation. If the Claimant was making applications throughout 2021, there is a different appearance to her claim.
- 6.14 The Claimant's account of the amount of disclosure she had in relation to her efforts to get another job in her witness statement was virtually non-existent. She said she didn't hear for several weeks but was interviewed within 10 days and there was no explanation given for the absence of references in her witness statement to conversations she now acknowledged had taken place with BHR. When it was put to her that she had an unconditional offer, she had to acknowledge that there had been conversations. Her original evidence gave the misleading impression that she did not get the offer until after she had resigned which was obviously wrong. Additionally, the Claimant failed to disclose that she received a 15% higher cost area supplement and not provided pay slips for November or December 2021. Even if she did not have them, it was easy enough for her to request them.
- 6.15 While the Claimant represented herself on occasions and her husband had also represented her on occasions, it was not permissible for them to blame someone else for the incomplete disclosure. The pay in her current role included a fully taxable mileage allowance which was not an expense claim. That was another part of the Claimant's income and therefore relevant for the purposes of calculating her loss but only disclosed as a result of the various tribunal orders.
- 6.16 There were other matters which were concerning such as the Claimant's evidence about the colleague who suggested she was spreading rumours about her. In the correspondence between the parties during the course of the litigation, Mr Harrell acting as

representative for the Claimant had said he believed Mr Robson was romantically entwined and currently on holiday with the person in question. There was no need for that comment. During the course of this hearing, Mr Harrell attempted to quiz Mr Robson about his home address. The theme of both points was to infer a relationship. That had no bearing on the claim brought by the Claimant.

- 6.17 The Claimant's resignation e-mail made no mention of either the Claimant's new role or salary payment and suggested she would be using her time to seek out work and would have to climb the ladder again, all of which was incorrect.
- 6.18 Taking account of the whole situation very little weight could be placed on the Claimant's evidence as she was not a reliable witness. In contrast to Respondent's witnesses had been candid and careful to give correct evidence. If there were disputes of fact between Mr Robson and the Claimant, the Tribunal was encouraged to prefer Mr Robson's evidence.
- 6.19 As regards the reason for the Claimant's resignation, the Tribunal were told it could not place any real weight on the reason for the resignation given by the Claimant in October 2021. The resignation e-mail was written with reference to potential tribunal proceedings. It talks about how much compensation she might receive. An e-mail dated 5 August 2021 from Mr said from Mr Harrell's e-mail but signed off by the Claimant, referred to having been in consultation with ACAS and to the time limits for bringing a constructive dismissal claim. The Tribunal were invited to draw the inference that the Claimant intended to bring proceedings and that anything she wrote about her resignation was written with that in mind.
- 6.20 The Respondent submitted that the reason that the Claimant had resigned was that she had accepted a new job and she couldn't be employed by two employers at the same time. She knew she had passed all the checks and agreed to a start date before she sent in her resignation. The Claimant been pressing for promotion and when she got a job paying more, due to the high cost area supplement, she took the higher paying job.
- 6.21 The Respondent referred to the case law which said that the breach of contract must be a reason not the reason for the resignation and the tribunal has to be satisfied that any repudiatory conduct was in part the cause of the resignation. Here the Claimant gave several days more notice than was contractually required. She was aware of the notice period from her previous resignation.
- 6.22 Anything that happened in August 2020 was irrelevant because the Claimant had handed in her resignation in October 2020 and then decided to withdraw the resignation. In circumstances that was a waiver of any conduct that she had complained about before.

- 6.23 Thereafter by October 2021 significant time had passed and unless there was a last straw, any breaches were old and had been waived. The Respondent argued that the Claimant's motivation for submitting her grievance was to distract from her own conduct.
- 6.24 The Respondent also submitted that there was no matter which amounted to a last straw. That was clear from the fact that Claimant was not clear in her own mind as to what the last straw was. In this hearing we have proceeded on the basis that there were two last straws. One was the Respondent accidentally sending the letter supposed to be sent to Mr Robson. At the hearing in July 2022, the claimant made clear that was the last straw that she relied upon. Notwithstanding that, the claimant did not refer to it in her witness statement and only gave evidence about it in cross examination. That indicated the claimant attach little importance to the matter. Moreover, the accidental sending her the letter was entirely innocuous and was not there was nothing surprising in it given what the Claimant had said about the Mr Robson.
- 6.25 The other matter which have been brought up was being offered a temporary role on the switchboard, which again was entirely innocuous. There was no suggestion her pay would be downgraded. Also, by that time it's clear that the Claimant already accepted a new role and didn't want the temporary job. There was nothing that happened that the claimant could have resigned in response to, and thus she could not argue she had been constructively unfairly dismissed.
- 6.26 Turning to the breaches that the Claimant relied upon, Mr Harrell had gone through the policies, but these were not part of the list identified as breaches in the claim form nor was it in the further information supplied by the Claimant or in her witness statement. They arose solely in relation to cross examination of witnesses and cannot be something that falls and to be treated as a breach. The Claimant's complaints about policies had the flavour of someone coming through the policies looking for a problem rather than something that was in the Claimant's mind at the time and there is no mention of it in her resignation e-mail. These were after the event rationalisations.
- 6.27 The question is whether police were contacted in relation to alleged fraud was not a contractual matter.
- 6.28 The time taken to address the grievance was again not a contractual matter. The Handbook does not say that it was contractual, and you have to look at whether there was any objective intention. There was nothing prescriptive or mandatory in the period of eight weeks in the Handbook. It was not a contractual obligation.
- 6.29 The fact of Mr Robson staying in his role was a matter within the managerial discretion. There was nothing to suggest that discretion was exercised in a bad way. The Claimant was off sick and therefore it was reasonable for Mr Robson to stay in place.

- 6.30 As regards promises not being kept about band 5 role and the possible identification the band 6 role, the Claimant had been treated properly as regards the band 5 role and the band 6 role required a reorganisation which had not yet taken place.
- 6.31 As regards the Claimant's assertion that others would be treated differently but was not part of the pleaded claim. The Claimant does make reference in her further information about how long it took to make her role permanent but that was a stale matter and had been resolved. Mr Robson said only one person had been promoted more quickly and that person had been promoted as they had been there for quite some time. He was trying to sort out the whole team. That was a reasonable explanation and there was a reasonable and proper cause for the conduct.
- 6.32 As regards the verbal abuse, the words complained about were not put to Mr Robson. The Tribunal was invited to accept Mr Robson's evidence. The Claimant's colleagues written evidence to the grievance investigation suggested there had been some comments, but the respondent argued that the team had been left together with the Claimant before being interviewed and that there had been an opportunity for the Claimant to persuade them to make statements. The Claimant when this was put to her initially denied it saying she was off sick and not present, but then when it had been pointed out she was interviewed the same day, she had accepted that she had been in the Respondent's premises on that day. All three of the individuals who had given statements had socialised outside work. However, to the extent that the Claimant disputed the findings of the investigation, she had not chosen to appeal the outcome.
- 6.33 With regard to the allegation that a confidential conversation relating to Ms Tudor had been disclosed inappropriately, it was not put to Mr Robson and not explained by the Claimant in her witness statement. Mr Robson had said on being questioned that Ms Tudor sensed antipathy to her in a meeting when the Claimant had been objecting to suggested proposals. There was nothing beyond that to indicate that there had been any breach of confidentiality.

7 The Law

- 7.1 In *Western Excavating (ECC) Ltd v Sharp 1978 ICR 221, CA*, the Court of Appeal ruled that the employer's conduct which gives rise to a constructive dismissal must involve a *repudiatory breach of contract*.
- 7.2 In order to claim constructive dismissal, the employee must establish that:
- there was a *fundamental breach* of contract on the part of the employer that repudiated the contract of employment
- the employer's breach *caused* the employee to resign, and

the employee did not *delay* too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

- 7.3 The House of Lords' concluded in *Malik v Bank of Credit and Commerce International SA (in compulsory liquidation)* 1997 ICR 606, HL, that there was an implied contractual term that an employer 'will not, without reasonable and proper cause, conduct his business in a manner likely to destroy or seriously damage the relationship of trust and confidence between employer and employee'. The EAT has held that where an employer breaches the implied term of trust and confidence, the breach is 'inevitably' fundamental — *Morrow v Safeway Stores plc* 2002 IRLR 9, EAT.
- 7.4 In the case of *Omilaju v Waltham Forest London Borough Council* [2005], 1 All ER, Dyson LJ explained the concept of the last straw as follows:

“The question specifically raised by this appeal is: what is the necessary quality of a final straw if it is to be successfully relied on by the employee as a repudiation of the contract? When Glidewell LJ said that it need not itself be a breach of contract, he must have had in mind, amongst others, the kind of case mentioned in Woods' case [1981] IRLR 347 at 351, [1981] ICR 666 at 671 where Browne-Wilkinson J referred to the employer who, stopping short of a breach of contract, 'squeezes out' an employee by making the employee's life so uncomfortable that he resigns. A final straw, not itself a breach of contract, may result in a breach of the implied term of trust and confidence. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase 'an act in a series' in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.

I see no need to characterise the final straw as 'unreasonable' or 'blameworthy' conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred.”

7.12 This was further clarified by Underhill in Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978 as follows:

“In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:

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

(2) Has he or she affirmed the contract since that act?

(3) If not, was that act (or omission) by itself a repudiatory breach of contract?

(4) If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation)

(5) Did the employee resign in response (or partly in response) to that breach.”

8 Conclusions

8.1 I have taken the issues in turn and considered them.

Did the Respondent commit a repudiatory breach of contract?

8.2 The alleged breach of contract was a breach of the implied term of mutual trust and confidence which arose out of the Respondent's conduct in relation to a series of matters which fell under the four headings below. I have considered them in turn.

The Claimant was promised a revised pay grading which didn't progress.

8.3 As I have explained in the fact section of this judgement, the Claimant was never promised a revised pay grading which did not progress at any relevant time. In October 2020 the Claimant resigned as she was not making career progress according to her resignation letter. She withdrew that resignation and Mr Robson worked with her to re-grade the role she was on, and she was able to apply for it. She succeeded in obtaining the role and she was given credit for time she had spent in the role on an acting up basis. The Respondent's procedures did not allow her to be pay grading to be increased any faster than it was. The pay slips show the dates when pay grading can be reviewed. The discussions about the Claimant getting a Band 6 role were always speculative and related to a restructuring which had not taken place while she was working with the Respondent and has still not

been completed. There was a proper and reasonable explanation for the other career steps which the Claimant was either unsuccessful in, or chose not to pursue.

The Claimant suffered verbal abuse which was of an ongoing nature and amounted to bullying and harassment.

- 8.4 The Claimant has only identified a few events clearly. The first event occurred in August 2020, and Mr Robson admitted to that. The Claimant resigned a few months later and then withdrew that resignation. By withdrawing that resignation, she waived any complaint she might have had. The two later events in March 2021 were not admitted to by Mr Robson and I accepted his evidence. I also note that the Claimant telephoned Mr Robson in June 2021 before her meeting with Mr Nwonwu. I do not consider she would have done so if she had felt bullied by him. She had a friendly relationship with Mr Robson. The fraud the Claimant suggested was part of this bullying was not a fraud at all but a proper application of the national system of rates.

The Respondent did not follow its own procedures.

- 8.5 In her ET1 the Claimant alleged:

“during the investigation into my allegations (that I requested to be undertaken) policies were not followed correctly at any stage. “

This is a clear reference to the policies about the grievance process.

- 8.6 In the further particulars of her claim, the Claimant described the following procedures she did not consider had been followed.

8.6.1 paragraph 4.3 of the grievance policy and procedure which advised managers to treat written requests, strongly worded correspondence and including a resignation letter or exit interview as a potential grievance. In such circumstances they will clarify with the correspondent whether or not such material is to be treated as a grievance and begin the grievance procedure as necessary.

8.6.2 an email sent to the Claimant when she was unsuccessful in her application for the contract manager's position at Chelmsford stating that the Claimant was unsuccessful in her application and no reason will be given;

8.6.3 an email from the Claimant's then line manager sending her the stress questionnaire and the management referral form for an Occupational Health referral immediately she went sick, rather than 28 days after she went on sickness absence;

- 8.6.4 the length of time taken to send the Claimant the departmental stress risk assessment which should be done annually;
- 8.6.5 Mr Robson being allowed to stay in his job throughout the investigation into the Claimant's grievance.
- 8.7 I note that none of the policies are contractual. Insofar as the Respondent failed to comply with any of these policies, it was not of itself a breach of contract.
- 8.8 As regards the first allegation, this is a reference to the Claimant's resignation letter in October 2020. There is clear evidence that the resignation letter was taken seriously, and that Mr Robson acted on the complaint in it and resolved that matter. The Claimant explained to the grievance investigator that she had sent the resignation letter to the director, Mr Nwonwu and copied in Mr Robson who had said he wanted to handle it. Mr Robson had told her she wasn't allowed to leave and had recited all the good work she had accomplished. She said Mr Robson had agreed to change his behaviour towards her and the Band 5 role was promised on the basis that she stayed in her current position. She agreed and the changes were made.
- 8.9 Resolving the matter to the Claimant's satisfaction was the outcome she required and when she withdrew her resignation, the Claimant waived any possible breach. As I have noted in the fact section of this judgment, there was no obligation on Mr Robson as the manager who received the Claimant's resignation in October 2020 to treat that letter as a grievance.
- 8.10 As regards the Claimant's complaint about a message sent to the Claimant when she was unsuccessful in her application for the contract manager's position at Chelmsford stating that the Claimant was unsuccessful in her application and no reason will be given, the Claimant did not identify a policy that required applicants to be given a reason for their failure when applying for a job and it is not unusual for employers to not wish to discuss applications in any detail. There is no evidence of any breach of policy. The bundle contained documents showing the Claimant was unsuccessful because the managers scoring her did not think she had the level of desirable criteria required and there were other applicants who displayed greater desirable criteria, but in the event no one was offered the position.
- 8.11 As regards an email from the Claimant's then line manager sending her the stress questionnaire and the management referral form for an Occupational Health referral immediately after she went sick, rather than 28 days after she went on sickness absence, we established that in fact that was the correct process under the policies and procedures when dealing with stress. The Claimant had misinterpreted the policy.

- 8.12 As regards the length of time taken to send the Claimant the departmental stress risk assessment which should be done annually, there is no evidence that the Claimant was entitled to the assessment. This was not a contractual requirement.
- 8.13 As regards Mr Robson being allowed to stay in his job throughout the investigation into the Claimant's grievance, the Claimant was on sick leave and so there was no risk of contact between them. The policy did not mandate that the alleged perpetrator should be suspended. There was no breach of contract.

A confidential conversation between the Claimant and another person was shared.

- 8.14 The Claimant alleged that a confidential conversation being her telling Mr Robson that she was not keen on Ms Tudor had been shared. As noted in the fact section of this judgment, it was my conclusion that the Mr Robson did not share that information, but Ms Tudor asked about it as a result of the Claimant's approach towards a proposal for restructuring. The Claimant assumed that a conversation had been shared but she had no basis for her assumption.
- 8.15 In so far as the Claimant was referring to her conversation with Ms D, again the Claimant assumed a confidential conversation had been shared but Mr Robson denied it and I accept his evidence. Further, it is not clear that anything said by the Claimant about Ms D was confidential. The Claimant discussed her meeting with Mr Nwonwu about this with other colleagues.

Looking at the allegations together

- 8.16 I have not found any evidence of any breaches of contract as such. However, I did consider whether the Respondent's conduct, taken as a whole, would be such as would be calculated or likely to destroy the mutual trust and confidence which is an essential requirement between employer and employee. I am satisfied that there is no intention on the part of the Respondent, or any of its managers, to damage the relationship of trust and confidence. However, it is possible for behaviour which is not intentionally designed to damage a relationship to nevertheless be likely to destroy that relationship. I therefore looked again at the conduct to consider whether it might have been likely to have had that effect.
- 8.17 Overall I do not consider that the conduct taken together, could have been likely to destroy the relationship of mutual trust and confidence. The Claimant brought her grievance very largely against Mr Robson and the Respondent investigated it carefully and thoroughly. The only matter the Respondent was able to identify as inappropriate conduct was the bantering within the team. As I have noted, the Claimant participated in that bantering. I do not consider the bantering described amounted to bullying or harassment. However, to the

extent it could be said that there was any breach of contract which could have been a repudiatory breach, the Claimant continued working in circumstances which indicated that she had waived any such breach.

Last Straw

8.18 The Claimant is entitled to rely on a breach of contract which has to all intents been waived, if there is a last straw event. In this case, the Claimant has raised two possible last straw events. The first event that she referred to and her resignation letter as the last straw was being offered a position within the helpdesk at Basildon being managed by Sharon Tudor. She was aware on that position was offered to her that it was the only vacancy that could be located at that time and that it was a temporary post. There was never any suggestion that the Claimant's salary would be reduced. The Claimant had been restrictive about the type of work she would undertake, insisting that she would not work with Mr Robson, but she demanded that she remain within the Estates and Facilities Management Team which gave the Respondent very little options in terms of finding her an alternative post. The Claimant had denied to Ms Tudor that she had any difficulty working with her. Importantly when the Claimant was asked at the last hearing in July 2022 whether what she relied on as the last straw, she said she relied on a totally different matter. In the circumstances, I do not consider this is a last straw in that it was a minor matter, The Claimant knew she was not under any compulsion to accept the role. It was simply an effort to offer her the only option available at the time and the Respondent made it clear it was continuing to work with her on looking for a role she felt she could return to.

8.19 The other matter which the Claimant said at the last hearing that she relied on was being sent a copy of the letter to Mr Robson in which it noted that he had indicated he did not think he could line manage the Claimant in future. The Claimant put forward no evidence in chief about this matter. She said nothing about it in her witness statement or when she had the opportunity of giving supplemental evidence. It clearly was not a matter which weighed on her mind particularly. It was not referred to in her resignation letter.

8.20 It is my view that neither matter described by the Claimant amounted to a last straw. Indeed, I do not consider the Claimant resigned because of the Respondent's conduct as set out in the claim as I will explain.

8.21 There was no doubt that the Claimant had resigned.

Did the Claimant resign in response to the Respondent's breach of contract and the last straw?

8.22 I do not consider the Claimant resigned in response to the Respondent's alleged breaches of contract or in response to either

matter relied upon by her as a last straw. The Claimant had been extremely evasive about the effort she made to find alternative employment. She did not disclose the Trac records, despite a Tribunal order. When the position became clear in the course of the hearing, the Tribunal was told that the Claimant only resigned when she was confident that she had a firm unconditional offer of an alternative job which paid her more than the job with the Respondent. While I accept that it can be difficult to resign without the confidence of an alternative position, in this case it is my view that the Claimant's main reason for resigning was to take up the better paid job.

- 8.23 It is noteworthy that the Claimant's sickness absence commenced immediately after she had been spoken to regarding her comments to other members of staff and contractors about Ms D, whom she believed was in a relationship with Mr Robson. Having been subjected to a complaint, albeit an informal one which was not to be pursued on any formal basis at the request of the complainant, the Claimant then went off on sick leave and lodged her own grievance. This had all the hallmarks of a retaliatory grievance and not one born out of any genuine concern.
- 8.24 Because the Claimant has failed to disclose her efforts to find alternative employment fully and in accordance with the tribunal orders, it is not possible to identify precisely when she began to look for other work, but it is clear that she had done so by early September, a week or so after her meeting with the grievance investigator and long before any outcome or report.
- 8.25 I have no doubt that the Claimant had decided she would not remain with the Respondent and that her decision was not driven by the alleged breaches of contract or any breakdown of trust and confidence or indeed by the alleged last straw events, but rather because she was always keen to improve her financial position. She was unhappy that she was taken to task informally about the manner in which she had spoken about Ms D. At various stages after that, the Claimant openly raised the question of compensation. It was clear that she wanted to leave the Respondent but wanted a financial package to go. When she found another well paid job and was confident that job was definite and there were no outstanding conditions, she resigned.
- 8.26 The fact that the Respondent had a discussion with the Claimant following a complaint by Ms D was not raised by the Claimant as a breach of contract and would not have been a breach of contract. It was a proper step to be taken by an employer faced with a complaint of the nature it had from Ms D.

- 8.27 In the light of the fact that is my conclusion that not only were there no breaches of contract, but the Claimant did not resign in response to any of the matters alleged, the Claimant's claim must fail.

Employment Judge N Walker
Dated: 29 November 2022