



EMPLOYMENT TRIBUNALS

Claimant: Mrs Michelle Griffiths
Respondent: Glasswell & LAST Ltd
Heard at: Bury St Edmunds Employment Tribunal
On: 18 and 19 October 2022
Before: Employment Judge Hutchings (sitting alone)

Representation

Claimant: in person

Respondent: Mr Bayne of Counsel

RESERVED JUDGMENT

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

REASONS

Introduction

1. The claimant, Mrs Michelle Griffiths, was employed by the respondent, Glasswell & LAST Ltd ('Glasswell'), as an Accounts Assistant from 19 January 2021 until she gave 1 weeks' notice terminating her employment on 25 November 2021. By a claim form dated 15 December 2021 Mrs Griffiths claims constructive dismissal, asserting she had no choice but to resign due to breaches by Glasswell of the term of trust and confidence which is implied by law into her employment contract (the 'term'). ACAS consultation began on 12 November 2021 and a certificate was issued on 15 November 2021. Mrs Griffith's particulars of claim set out several facts to support her assertion that Glasswell breached this term. Following a case management order dated 7 April 2022 requiring Mrs Griffiths to provide further particulars of her claim, by email dated 28 June 2022 Mrs Griffiths did so. In summary her reasons are:

1.1. Following the management buy-out on 28 January 2021 her workload increased without the necessary training or support from Glasswell's directors (who, over time, withdrew support from Mrs Moody, who was

- training and supervising Mrs Griffiths), resulting in Mrs Griffiths being signed off on sick leave from 27 October 2021.
- 1.2. An offer of a full-time position, was retracted;
 - 1.3. The behaviour of Mrs Christie Porter-Eggleton (swearing at Mrs Griffiths), in front of Mr Harris, during a discussion to resolve Mrs Griffiths' holiday entitlement, following an increase in her working hours.
 - 1.4. Conflicting instructions from Mr Harris and Mr Hall regarding payment of an invoice in October 2021.
 - 1.5. Language used by Mr Harris towards Mrs Griffiths.
 - 1.6. The way Glasswell's directors responded to Mrs Griffiths' email of 29 October 2021 (addressing it as a grievance in their response of 8 November 2021) and the arranging, and subsequent cancelling, of a meeting to discuss this matter.
2. The respondent is a Mechanical and Engineering Contractor based in Bury St Edmunds; it has approximately 30 employees. Glasswell's was founded in 1962 as a family business; a management buy-out on 28th January 2021 resulted in ownership by the current directors. By an undated response form (accepted by the Tribunal on 26 February 2021) Glasswell contests the claim. It does not accept that it has breached the term of trust and confidence implied into Mrs Griffiths' employment contract, submitting that there are reasonable explanations for the actions, where admitted, Mrs Griffiths alleges breached the term. Glasswell contends that (acting by its managers) it did not behave in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence it had with Mrs Griffiths and, therefore, it did not breach the implied term.

Procedure, documents, and evidence

3. The claimant represented herself and gave sworn evidence. She submitted a witness statement from Mrs Jennie Moody, former Managing Director and Consultant (post management buy-out) of Glasswell.
4. The respondent was represented by Mr Bayne of Counsel, who called sworn evidence on behalf of the respondent from:
 - 4.1. Mr Matthew Harris, the respondent's Operations Director;
 - 4.2. Mrs Christie Porter-Eggleton, the respondent's Office Manager;
 - 4.3. Mr Neil Kilbourn, consultant responsible for the mechanical design department, fabrication department and mechanical installation; and
 - 4.4. Mr Jonathan Hall, Commercial and Safety Director
5. The hearing was listed for 3 days; this listing was reduced to 2 days at the direction of the Tribunal. At the end of the second day I had heard the evidence from both parties but did not have time to hear closing submissions. Therefore, I made an order for written submissions from both parties. At the request of Mr Bayne, I allowed the parties the right to reply to the written submissions. The respondent did so. The written submissions and reply were forwarded by Tribunal Administration to me on 14 November 2022.
6. I considered the documents from an agreed 341-page hearing bundle and a 10-page supplementary bundle which the parties introduced in evidence. The Tribunal also received the following additional documents:

- 6.1. A letter dated 18 November 2021 from Mrs Moody to Glasswell; and
- 6.2. A Whatsapp exchange (undated) between Mrs Moody and Mrs Christie Porter-Eggleton.

Preliminary matters

7. By email dated 11 October 2021, not copied to the respondent, Mrs Griffiths raised the following queries. A copy was provided to Mr Bayne.
 - 7.1. Whether Mrs Moody could give evidence remotely; and
 - 7.2. Questions regarding amendments she says the respondent's solicitor made to her witness statements and their submission of additional documents she did not receive until after she had sent her witness statements to the respondent's solicitor.
8. Mrs Griffiths told the Tribunal that Mrs Moody is currently on holiday in Cyprus. Under the Tribunal's Presidential Guidance Taking Oral Evidence by Video or Telephone from Persons Located Abroad (July 2022) the giving of oral evidence from a nation state usually requires the permission of that state. In any case where a party wishes to rely on oral evidence by video from a person located abroad the party seeking to reply on that evidence or their representative must notify the Employment Tribunal office with certain information to enable the Tribunal to establish whether permission is required for evidence to be given from abroad and, if it is required, to gain permission from the foreign state in question. Mrs Griffiths had not made this request.
9. The hearing was adjourned to allow Mrs Griffiths to consider whether she wanted to make an application to adjourn for permission to be sought or to continue with the hearing as listed. I explained that by continuing Mr Bayne would not have the opportunity to cross examine Mrs Moody on the evidence in her witness statement (some of which the respondent disputed); therefore, the Tribunal would give Mrs Moody's statement less weight. Mrs Griffiths told me that she wanted to proceed with the Tribunal as listed. She confirmed that she understood the implications for Mrs Moody's evidence.
10. I asked Mr Bayne to provide an explanation from his instructing solicitors in response to the concerns raised by Mrs Griffiths about her witness statement and documents in the bundle. Mr Bayne explained that exchange of witness statements did not take place simultaneously; Mrs Griffiths sent her witness statements to the respondent's solicitors on the morning of 3 October 2022 but did not receive the respondent's witness statements until later that date. Mr Bayne confirmed that as part of the process of drafting its witness statements the respondent had identified additional documents which were not contained in the hearing bundle. All parties have an ongoing duty of disclosure. On 4 October 2022 the Glasswell's solicitors did the following:
 - 10.1. Inserted into Mrs Griffiths and Mrs Moody's witness statement (in red) the page references in the updated hearing bundle, alongside the original page reference; and
 - 10.2. Sent an updated bundle with the additional documents to Mrs Griffiths.
11. Mrs Griffiths told me she felt at a disadvantage as a result. I checked the new page references in Mrs Griffiths' statement. I am satisfied this is the only amendment made and it was done, with transparency, to assist the Tribunal

and all parties to cross reference documents referred to in the witness statements to the correct page reference in the bundle. I asked Mrs Griffiths if she was concerned about any of the documents the respondent disclosed alongside its witness statements. She said she was not but felt at a disadvantage as she had complied with the dates given by the Tribunal. It is unfortunate that the respondent disclosed these documents late in the process, particularly to an unrepresented party who is not familiar with proceedings. However, mindful that both parties have a continuing obligation of disclosure under the Tribunal Rules, I am satisfied that the respondent's witness statements were prepared in accordance with Tribunal directions and that the only changes made by the respondent's solicitors to Mrs Griffiths' witness statements being the addition of updated page references in red. Given Mrs Griffiths' confirmation that she had no concerns about the additional documents, I am satisfied that the disclosure was fair.

Constructive dismissal - Issues for the Tribunal to decide

12. To determine whether Mrs Griffiths was unfairly dismissed first I must consider whether Glasswell breached the implied term of trust and confidence? The burden of proof is with Mrs Griffiths to prove that, on the balance of probabilities, Glasswell did breach this term. I must decide whether:

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

13. I have considered the information set out in Mrs Griffiths ET1 and her Further and Better Particulars of Claim dated 29 June 2022. The events Mrs Griffiths claims breached the implied term of trust and confidence can be summarised as follows:

- 13.1. After the management buyout, over the period January to October 2021, that her workload became excessive and she was required to take on new tasks without adequate training; in particular, Glasswell's management asking Mrs Griffiths to seek assistance from an external accountant rather than Mrs Moody. During this time, she felt there was a lack of support from the respondent.
- 13.2. In February 2021 allegedly being offered a full-time job by Mr Hall as an Administrative Assistant, which was subsequently withdrawn.
- 13.3. Events surrounding the calculation of Mrs Griffiths' holiday entitlement, in particular the language used by Mrs Porter-Eggleton and that Mrs Griffiths felt belittled by the behaviour of Mr Hall.
- 13.4. Contradictory instructions from Mr Hall and Mr Harris about the payment of an invoice dated 5th October 2021.
- 13.5. The use by Mr Harris of language she found offensive and demeaning: (*'girl', 'darling', 'are you ready for me?'*).
- 13.6. The way Glasswell investigated the matters Mrs Griffiths raised in an email dated 29th October 2021, by taking it as a formal grievance.
- 13.7. The contents of Glasswell's response to her email.
- 13.8. The scheduling and cancelling of a meeting in November 2021 to discuss her concerns.
- 13.9. Withdrawing support and training from Mrs Moody, who was told on 5 November 2021 not to attend Glasswell's premises in future.

14. Mrs Griffiths told me the 'last straw' event took place after her letter to Glasswell's directors dated 9 November 2021 and whichever of the following events occurred later she considered to be the final straw which triggered her resignation:
- 14.1. The decision by the respondent to cancel the meeting to discuss the concerns she set out in her email of 29 October 2021.
 - 14.2. Finding out that Mrs Moody would not be returning to the business to continue training her. Mrs Griffiths was unclear when she found out Mrs Moody would no longer be able to support her; therefore, she could not tell me if this news was before or after Mr Hall's email of 11 November cancelling the meeting.
17. If I find trust and confidence has been breached, I must decide whether the Mrs Griffiths' resignation on 25 November 2021 was in response to that breach.
18. If so, I must determine whether the resignation took place within a reasonable period of time or did Mrs Griffiths affirm the contract before resigning? This means I will need to decide whether Mr Griffiths' words or actions showed that he chose to keep the contract alive even after any breach.

Findings of fact

1. The relevant facts are as follows. First, the Tribunal makes a general finding on evidence. In assessing credibility, I have borne in mind the period of time which has passed (around 18 months) since many of the events occurred.
2. In oral evidence Mrs Griffiths made some factual concessions and, for some events, accepted the respondent's explanation when it was put to her in cross examination, I consider an analysis of some of her documentary evidence relevant in considering the overall credibility of Mrs Griffiths' evidence. Mr Bayne directed Mrs Griffiths to sentences in her statement which were identical to Mrs Moody's statement, save for references to names (I, being Mrs Griffiths substituted for Mrs Moody and vice versa). Mrs Griffiths explained the similarities as coincidence. She told the Tribunal that the witness statements were prepared entirely separately, the only contact being exchange of messages, and that the only changes she made was formatting so that the statements had the same structure. She told me the similarity of language was because she had worked closely with Mrs Moody.
3. This explanation is simply not credible. The similarity between the statements goes beyond language and tone. Parts of paragraphs are identical; this simply cannot be coincidence. I find that the statements were prepared in collaboration; either Mrs Griffiths had sight of Mrs Moody's statement in writing hers, or the other way round, or that Mrs Griffiths prepared both statements. This is the probable explanation as Mrs Moody's statement is not signed. I understand that an unrepresented party may be unfamiliar with the approach they should take. What concerns me is, under oath, Mrs Griffiths gave a completely implausible explanation to the Tribunal. This calls into question the accuracy of Mrs Griffiths' evidence generally.

4. I find Mrs Griffiths' explanation of her letter dated 9 November 2021, in which she replied to the respondent's response to her complaint email, curious. She says she sent it by first class post. The respondent says it did not receive the letter. All communications to date between the parties, including Mrs Griffith's complaint, were conducted by email. In submissions Mr Bayne asserts that to use post for a letter which formed part of an exchange of correspondence is difficult to understand. I agree. When I asked Mrs Griffith why she used post on this one occasion she told me she felt the correspondence warranted a more formal approach. The explanation is simply not credible. Mrs Griffith's implausible explanation about the witness statements and 9 November letter inevitably affects my overall view of her credibility.
5. In her written submission Mrs Griffiths made several statements attributing admissions in oral evidence to the respondent's witnesses. These were challenged by the respondent in a written response. On checking my notes of the hearing, I find that the statements are not an accurate record of what was said in evidence. Mindful Mrs Griffiths was representing herself, I attribute these statements to her interpretation of what was said, rather than the admissions she purports them to be.
6. Glasswell's witnesses provided direct, factual, honest answers and were transparent in recognising situations where they did not understand the question or could not recall details. I found them keen to assist the Tribunal with their understanding of events. They were willing to concede that on occasion their behaviour had upset Mrs Griffiths, and apply hindsight. The documentary evidence before me corroborates their recollections of the support the respondent gave to Mrs Griffiths during her employment. Examples include increasing working hours at her request, being flexible with holiday requests and responding to Mrs Griffiths email promptly, providing the reply she requested prior to meeting. Individuals were supportive. Mrs Griffiths' line manager, Mr Kilbourn was supportive, remaining in touch when on unwell. Mr Harris addressed the errors with her holiday entitlement appeared. Mr Hall agreed unpaid leave, incurring additional cost to the business by arranging for Mrs Moody to cover. Ms Porter-Eggleton answered the phone, something which caused Mrs Griffiths anxiety. The evidence of the respondent's witnesses was reliable and consistent with the contemporaneous communications. For the reasons stated, where recollections of events and conversations differ, I prefer the evidence of the respondent's witnesses.
7. I turn now to my findings of fact relevant to the issues in dispute. Mrs Griffiths started her employment with Glasswell on 19 January 2016. At the time the business was owned and managed by Mrs Moody, Mrs Griffiths' aunt. Until the management buy-out Mrs Griffiths worked with Mrs Moody's, sharing an office. On 28th January 2021 the business was subject to a management buy-out by Mr Harris, Mr Kilburn and Mr Hall, who became directors. Mrs Moody stepped down; under the terms of the agreement she continued to work for Glasswell for 18 months as a consultant to facilitate the transition. Following the buyout line management of Mrs Griffiths transferred to Mr Neil Kilbourn, Glasswell's Mechanical & Finance Director. Mrs Moody continued to occupy the office she shared with Mrs Moody. Under the terms of her consultancy agreement Mrs Moody would come into the office to train Mrs Griffiths on tasks she had taken over post buy-out. Mrs Griffiths' role involved inputting various accounts records into the SAGE accounting system and administration tasks.

8. Following the Mrs Griffiths' return from furlough in February 2021, Mr Hall discussed with her the possibility of increasing her hours to full time in an administrative role, asking Mrs Griffiths how she would feel about a full-time role. She said she *'was excited about job proposition'*. This was no more than an opening conversation which took place in Mr Harris office. No job offer was made, so there was nothing for Glasswell's to retract. The reason Mrs Griffiths was not offered a full-time role was that under the terms of the consultancy agreement, Mrs Moody has the final say; she vetoed the idea so Mr Hall did not take it further. In evidence Mrs Griffiths accepted at that time she felt valued by her employer. She also said she was not aware, at that time, of Mrs Moody's ability to veto this kind of decision, but that she became aware subsequently and accepted that the possibility was not explored further by Mr Harris as Mrs Moody had vetoed it.
9. In June 2021 Mr Kilbourn became ill. By her own admission in her evidence to the Tribunal Mrs Griffiths acknowledged that Mr Kilbourn continued to make himself available to support her, even when he was based at home. Indeed, when he was able, he continued to come onto Glasswell's premises.
10. By email dated 8 June 2021 Mrs Griffiths asked Mr Kilbourn if she can increase her hours from 16 to 22.5 per week. He agreed. There is a discrepancy with her revised annual holiday entitlement. Mrs Moody suggests it is 13.5 days; Mr Hall says it should be 20 days. Mr Harris, Ms Porter Eggleton and Mrs Griffiths had a discussion in the office to resolve this. I find that Mr Harris' description that *'several of us worked hard in getting it right'* is accurate. Mrs Griffiths alleges Ms Porter-Eggleton swore at her during this conversation. Ms Porter-Eggleton denied swearing at Mrs Griffiths but accepted that she may have said something along the lines of asking what Mrs Griffiths did not understand. Mr Harris described a frustrated discussion. Ms Porter-Eggleton swore in irritation at challenges thrown up by the calculations; she was not directing her language at Mrs Griffiths. In submissions Mrs Griffiths says: *'It has never been adequately explained as to why I should have been privy to a conversation debating my own annual leave entitlement, or why the administrator had the authority to be part of personnel decision making, or why Neil Kilbourn hadn't decided this himself. This amplifies the lack of clear line management and unprofessionalism.'* There is no evidence of a lack of line management or of the respondent intending to behave in an unprofessional way to Mrs Griffiths. Mr Kilbourn was unwell at this time. Mr Harris stepped in and was seeking to resolve an error with Mrs Griffiths' holiday entitlement (in her favour) which he, rightly, believed Mrs Moody had made. Mrs Griffiths was part of the conversation. The overall approach is constructive and inclusive. Frustrated language was used; Mrs Griffiths did not object to this at the time.
11. By his own admission Mr Harris called Mrs Griffith and other females in the office *'darling'*; he was prone to swearing. Mrs Griffith did not object to this language during her employment. She did not raise it with him or tell him at any time not to speak to her in this way. She has not brought a sexual harassment claim. Mr Harris and Mr Hall admitted the language was commonplace as the business operates in the construction industry. Mrs Griffiths alleges Mr Harris said *'are you ready for me...'* What Mr Harris actually said was *'are you ready for my singing, that is the question'* in the context of a proposed desk move where they would share an office. Based on my findings on credibility I find his explanation honest and genuine, not least as he was willing to concede that, with hindsight, some of his language could be interpreted to offend.

12. On 6 October 2021 Mr Harris tells Mrs Griffiths not to pay a 2019 invoice. He did so because the invoice had been raised several years late; Mr Harris explained in his evidence that given the time lapse the invoice could not be charged to the relevant project. His decision was reversed by Mr Hall who took the view the invoice related to a general overhead (drug testing kits) rather than a specific project. In her evidence Mrs Griffiths says: *'Jonathan Hall said "Matt is talking out of his arse again, pay them'*. This is the instruction not to pay. Mr Hall explained that the invoice had to be paid to enable the business to access a key drug testing kit and reversed the decision to ensure the business could keep operating. The frustration was aimed at the situation; it was not personal to Mrs Griffiths.
13. On 7 October 2021 Mrs Griffiths asks Mr Harris if she can have 14 October 2021 as holiday. He refuses telling her that Mr Kilbourn is already on holiday that day. In oral evidence Mrs Griffiths accepted this was a reasonable response. Subsequently Mr Hall reverses this decision, having arranged for Mrs Moody to cover Mrs Griffiths' work for the day.
14. On 27 October 2021 Mrs Griffiths is signed off sick by her GP suffering *'stress and mental health issues'*. At some point before this she removed personal items, including photographs of her children, from her desk. Mrs Griffiths' claim that her desk was cleared by someone else is not credible. There was no conceivable reason for the respondent to do so, nor did Mrs Griffiths offer any reason or explanation to the Tribunal as to why the respondent would have behaved in this way. At this time, she had not told any of the respondent's witnesses that she was unhappy. I find that Mrs Griffiths cleared her desk before sending her email of complaint; therefore, at the time the desk was cleared Glasswell had no reason to believe she was unhappy. In her statement Mrs Moody says *'I attended the offices on 29 October 2021... on this day I confirm that the Claimants [sic] family photographs, notes and pictures from her children were on the wall to the side of her desk and had not been removed...'* This is simply not true, as the photograph proves. On 28 October 2021 Ms Eggleton-Porter noticed the items were missing when she went into the office Mrs Griffiths shared with Mrs Moody to use the printed, which was located between their desks. Mr Harris also notices the missing items. The respondent takes a photograph of the desk as finding it empty is odd when Mrs Griffiths was still an employee, who was on sick leave. At no time did Mrs Griffiths ask where her photographs were; that is because she removed them.
15. On 29 October 2021 Mrs Griffiths sent an email to Mr Kilburn informing him she had been signed off from work by her GP for the period 27 October 2021 to 10 November 2021. She raises some concerns about her role, increased workload, new duties, expectation to complete management accounts, unavailability of line manager, training concerns, offer of full-time role and issues surrounding a holiday request. Mr Kilburn replied by email the same day. In oral evidence Mrs Griffiths acknowledged that Mr Kilburn's response was supportive. It is. Mr Kilburn states: *'An investigation will be launched to ascertain the accuracy of the statements made and ways we can look at providing effective support going forward. You are not letting me down, please do not think that.'* In this email Mr Kilburn acknowledges receipt of Mrs Griffiths' email by the words: *'Please accept this email as acknowledge of your grievance.'* Given the matters raised in Mrs Griffiths' email I find the use of the word grievance entirely appropriate. I find the respondent's initial response

reasonable and supportive; Mr Kilburn is clear as to the next step Glasswell will take.

16. That next step takes place the following week: on 4 November 2021 Mr Hall emails Mrs Griffiths suggesting a meeting *'to sit down and discuss the matters raised and also to come up with a plan to better support you in your role.'* He proposes 10 November 2021 on the basis this is the end of Mrs Griffiths' sick leave and asks her to propose a suitable time if the date is suitable. Again, the respondent's approach is supportive, reasonable and flexible.

17. On 8 November 2021 Mrs Griffiths replies by email stating she is happy to attend the proposed meeting on 10 November and suggests 9.30am. She also asks for a copy of the report from the investigation. This request is acknowledged by an email from Mr Hall later the same day asking for more detail: he suggest meeting to give her the opportunity to provide more information and proposes a virtual meeting if Mrs Griffiths attend in person. I find this offer was to be helpful and enable flexibility. Mr Hall also addresses Mrs Griffiths' request for a copy of the report, stating:

'In terms of our investigation, there are a number of subjective points raised within your letter that we need further details on in order to properly investigate, the proposed meeting is to allow you to expand upon these points to help us resolve the matter. I will produce our current responses to the matters raised and highlight the areas in which we require further information.'

18. This is a constructive approach, on which the respondent follows up with an 8-page provisional response, identifying the points Mr Hall wanted to explore in more detail. At the hearing Mrs Griffiths suggested that she raised concerns about her workload and line management prior to sending the email. There is no evidence to support this proposition.

19. In her claim form she raised an issue with the respondent suggestion of a virtual meeting, and in evidence states this made her feel that she was not welcome back in the office. This claim is not an accurate reflection of the correspondence between parties arranging the meeting. The meeting is proposed for 10 November, the day before Mrs Griffiths was due to return to work. She is happy with this date, commenting in an email to Mr Hall on 8 November that she *'would like reassurance that matters will be resolved before I return on the 11'*. Mr Hall replies: *'If you cannot be physically present at the offices, we are happy to have a Google Meeting instead.'* This is a sensible response as Mrs Griffiths was not due in the office on 10 November. Mrs Griffiths replies that she would prefer the meeting to be in person. Mr Hall explains to her that an in-person meeting is not possible on 10 November as Mr Kilburn cannot be at the offices at 11.30am, the time proposed by Mrs Griffiths, due to a prior commitment off-site. Mr Hall proposes the following alternatives: the proposals are supportive and flexible, giving Mrs Griffiths options. He claim that she was made to feel unwelcome is simply not accurate.

*'10:30am latest Tomorrow - Physical Meeting
11:30am-12pm Wednesday 10th November 2021 - Physical Meeting
Any time Thursday or Friday via Teams, Google Meets etc.'*

20. I have considered the response of 8 November 2022 to the issues raised by Mrs Griffiths in her email dated 29 October 2022. The response was provided

as an initial report, following Mrs Griffiths' request that she receive the same before meeting. The response document breaks down each issue raised by Mrs Griffiths, setting out a clear explanation for the situation and actions it intends to take; for some issues raised Glasswell requested more information from Mrs Griffiths. Glasswell's response was explored in oral evidence. Mr Bayne considered the responses to issues 1 to 22. Mrs Griffiths accepted that, while in some cases she did not agree with them, Glasswell's responses to the first 14 issues were reasonable; the remainder were not addressed specifically at the hearing, however Mrs Griffiths' response is clear from her letter of 9 November. I find that Glasswell's response to the issues raised was comprehensive, provides clarity and explanation where the issues required this. It was appropriate for the respondent to refer Mrs Griffiths' email as a grievance; she raised several issues about her role with which she was unhappy and had caused her stress. There was no intention behind the use of this word other than to frame the process.

21. On 9 November 2021 Mrs Griffiths asks to move the meeting to 12 November, suggesting in person or by video; Mr Hall replies within the hour to confirm the change of date and a call by video. In oral evidence Mrs Griffiths told me that she preferred a meeting in person. While it is understandable that all parties were being accommodating of each other, Mrs Griffiths does make clear this preference in her email exchange with Mr Hall to schedule this meeting; initially she suggests in person, but subsequently offers an option of a virtual meeting. Her claim now that the fact the meeting was not arranged in person made her feel like the respondent did not want her to return to work is simply not borne out by the contemporaneous evidence and her own words at that time. I find that Glasswell's approach in arranging the meeting was constructive, supportive and flexible and that options were open to Mrs Griffiths for the meeting to be in person. Indeed, in oral evidence Mrs Griffiths accepted that there was nothing problematic about the approach taken by Glasswell between 29 October and 9 November 2021.
22. I have seen a letter dated 9 November 2021 from Mrs Griffiths to the directors of Glasswell responding to the initial investigation report. The respondent says that it did not receive this letter and was not aware of it until disclosure of documents between the parties. Mrs Griffiths told me that she sent it to Glasswell by first class post on 9 November 2021. At the end of the letter, she states: *'I'm not happy to return until such a meeting has been held through fear that I am returning to a workplace with unresolved matters.'* In oral evidence Mrs Griffiths told me that when writing this she had not made the decision to resign. Mrs Griffiths was unable to recall the final straw event which led her to resign. This is surprising; resigning from a job is a significant event. I find she was unable to do so as neither event put forward by Mrs Griffiths was the last straw.
23. On 10 November Mrs Griffiths sends Mr Hall and Mr Kilburn another sick note, signing her off work until 25 November 2021. In the email she says she would still like to attend the meeting on 12 November via teams. Concerned for her health Mr Kilburn asks Mr Hall to postpone this meeting, which he does on 11 November. Mr Hall is supportive, telling Mrs Griffiths that he is seeking advice from an Occupational Health provider to see how Glasswell could assist her in managing any work-related stress.

24. On 12 November 2022 Mrs Griffiths contacted ACAS to seek advice. She had made the decision to resign at this point, doing so by email on 18 November 2021, having already cleared her desk before 27 October 2021, her last day in the office. She states the reasons for her resignation as: surprise her 29 October email was treated as a grievance; shock at the 8 November reply saying it had '*seriously damaged and breached the trust and confidence*' between herself and Glasswell's management.
25. Mrs Griffiths had already investigated alternative employment. She told Ms Porter-Eggleton, who she admitted in evidence was a confidant, that she had had an interview with a firm of undertakers. Mrs Griffiths denies this; her denial is not credible. Mr Porter-Eggleton recounted details of the conversation. Seeking employment elsewhere accords with the claimant's removal of her personal effects.

Law – constructive dismissal

26. Section 95(1)(c) of the Employment Rights Act 1996 (the 'Act') provides that an employee is dismissed by their employer if:

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

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

- 27.1. Was the conduct likely to destroy or seriously damage the relationship of confidence and trust between employer and employee?
27.2. If so, was there reasonable and proper cause for the conduct?

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

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

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

29. The question whether a repudiatory breach of contract has occurred must be judged objectively (*Buckland v Bournemouth University Higher Education Corporation* [2010] ICR 908); this requires the Tribunal to assess whether a breach of contract has occurred on the evidence before it. Neither the fact that an employee reasonably believes there to have been a breach nor that the employer believes it acted reasonably in the circumstances is determinative of this: the test is not one of 'reasonableness' but simply of whether a breach has occurred. When considering the question of constructive dismissal, the focus is on the employers conduct and not the employee's reaction to it.
30. Furthermore, a claimant must show that they resigned in response to this breach and not for some other reason (although the breach need only be a reason and not the reason for the resignation) *Kaur v Leeds Teaching Hospitals NHS Trust* [2019] ICR 1; however, the breach must be a substantial part of the reasons for the dismissal *United First Partners v Carreras* [2018] EWCA Civ 323.
31. It is open to an employer to prove that the employee affirmed the contract despite the breach, perhaps by delay or taking some other step to confirm the contract *Cockram v Air Products plc* [2014] ICR 1065, EAT
32. A claim for in breach of the implied term of trust and confidence may be based on the 'last straw doctrine' (the name of which is derived from the old saying "the last straw that broke the camel's back"). This doctrine provides that a series of acts by the employer can amount cumulatively to a breach of the implied term of trust and confidence even though each act when looked at individually might not have been serious enough to constitute a repudiatory breach of contract. Inherent in the concept of a last straw is that there was one final act which led to the dismissal ('the last straw') and the nature of this was considered in *London Borough of Waltham Forest v Omilaju* [2005] IRLR 35 where the Court of Appeal held that the last straw need not be unreasonable or blameworthy conduct, all it must do is contribute, however slightly, to the breach of the implied term of trust and confidence. If the act relied on as the final straw is entirely innocuous however then it is insufficient to activate earlier acts which may have been, or may have contributed, to a repudiatory breach.
33. The breach of contract does not need to be the sole reason for the resignation. It is sufficient for the employee to prove, on the balance of probability, that they resigned in response, at least in part, to a fundamental breach of contract by the employer (*Nottinghamshire County Council v Meikle* [2004] EWCA Civ 859).
34. Of course, where parties are acting reasonably it is less likely that there will have been a breach of contract when judged objectively but this is not necessarily so. If, on an objective approach, there has been no breach by the employer, the employee's claim will fail.

Conclusions – constructive dismissal

35. Mrs Griffith's claim turns on the questions I set out in the list of issues. First, when judged objectively on the basis that Mrs Griffiths resigned on 25 November 2021 did Glasswell breach the implied term of trust and confidence?

I must decide whether Glasswell (by its managers / employees) behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between Mrs Griffiths and Glasswell and (if I find that it did) whether it had reasonable and proper cause for doing so. Mrs Griffiths alleges that her workload became excessive, and she was required to take on new tasks without adequate training. She was taking on new tasks because of the management buyout. Glasswell's management supported her, something she conceded about Mr Kilbourn in her oral evidence. They paid Mrs Moody to train her on unfamiliar tasks, adopted an accounting system with which she was familiar, Mr Kilbourn in particular was available for her to raise queries with. When he was ill and understandably not available Mr Harris of Mr Hall stepped in. To accommodate the increased workload Mrs Griffith asked to increase her hours; Glasswell's agreed without hesitation. In the conversation with Mr Harris about the potential for a full-time role, she did not raise issues of workload; rather she was enthused by the prospect, admitting she went home to discuss the possibility with her husband.

36. Her allegation that she was overworked, and this resulted in a breach of trust and confidence does not sit with the enthusiasm she showed at the time. By her own admission her list of tasks became longer (hence requesting extra hours) because of the management buy-out; they did not become more complex. Mrs Griffith admitted she was supported by Mr Kilbourn before his illness and that she was able to contact him by telephone and email when he was away from the office. She was supported and trained by Mrs Moody; naturally this reduced as Mrs Moody's involvement was phased out post buy-out and the Sage accounting system introduced. A system about which Mrs Griffith had some knowledge. There is no evidence she was required to seek assistance from an external accountant rather than Ms Moody. I conclude, on balance of the evidence before me, Mrs Griffith was neither overworked (relative to her working hours) nor did she lack support from the respondent; when Mr Kilbourn was not available due to his illness Mr Hall and Mr Harris stepped in; the direction not to contact Mr Kilbourn was for his wellbeing.
37. By her own admission Mrs Griffiths' allegation that in February 2021 she was offered a full-time job by Mr Hall as an Administrative Assistant is simply not true. Mrs Moody's intervention meant an offer was never made; as Mrs Moody was her aunt Mr Harris reasonably felt it inappropriate to address this with Mrs Griffiths, considering it to be a family matter, saying: *I didn't go back and explain to Michelle why the position had changed, because I didn't want to get involved in family matters. I assumed that conversation would have naturally happened.* I conclude, in the circumstances his approach was sensible. There was no offer of a job, no withdrawal, and no breach.
38. Mrs Griffiths alleges that events surrounding the calculation of her holiday entitlement, in particular the language used by Mrs Porter-Eggleton and belittling behaviour of Mr Hall as part of that discussion breached the term of trust and confidence. While some of Mrs Porter-Eggleton's language may have been inappropriate, it was not directed at Mrs Griffith, but in frustration due to the complexities of the allocation calculation. Indeed, the aim conversation was to resolve a query for Mrs Griffiths, which they did in her favour. It was appropriate for her to be part of this conversation. While Mrs Griffith may have found the conversation uncomfortable, neither the language, frustration expressed, or her presence constitute a breach of the term of trust and confidence.

39. The contradictory instructions Mrs Griffiths received from Mr Hall and Mr Harris about the payment of an invoice dated 5th October 2021 were due to their different interpretations of the importance of the invoice and how it would be processed through Glasswell's accounts. The confusion between the directors was genuine. Both had recently taken over the management of the business through the buy-out and were muddling through in the absence of Mr Kilburn, who as Finance Director was more familiar with the accounting processes. Their confusion was understandable. It is spurious at best to link this event to Mrs Griffiths' employment. There is no breach of the implied term of her employment contract.
40. Mrs Griffiths has not alleged that Mr Harris knew or ought to have known that she found his use of: 'girl', 'darling' and the singing comment demeaning or offensive. I have accepted Mr Harris' explanation that he did not intend the use of these words to be degrading to Mrs Griffith. They were words he admitted to using repeatedly; this was confirmed by Mr Hall and Ms Eggleton-Porter. There was opportunity for Mrs Griffith to raise any concerns with Mr Harris or one of the other directors. She did not. The use of this language was not intended to offend and there is no suggestion it did until Mrs Griffiths issued her claim; there is no breach of the term of trust and confidence.
41. The way Glasswell investigated the matters Mrs Griffiths raised in an email dated 29th October 2021, by taking it as a formal grievance does not breach the term of trust and confidence. In her email Mrs Griffiths sets out various concern and complaints with her employer. In evidence it became clear her concern was the substance of the letter not the form of referring to it as a grievance. Their response was constructive; asking for detail and agreeing her request to meet.
42. Glasswell's cancelling of a meeting on 12 November 2021 did not breach the term of trust and confidence. The decision was taken following receipt of a second sick note and the respondent's concern for Mrs Griffiths; health. The email is supportive, informing Mrs Griffiths that it was in discussions with an occupational health provider to support her.
43. As owners of the business the directors were entitled to send Ms Moody the letter of 5 November 2021 to cease her attendance at the office. This was a business decision made following the transfer to the Sage accounting system, made in line with the terms of her consultancy agreement. The decision did not relate to Mrs Griffiths' employment and did not breach the term of trust and confidence.
15. In oral evidence Mrs Griffith has identified the last straw event as taking place after her letter to Glasswell's directors dated 9 November 2021, telling the Tribunal that whichever happened second in time between (i) the decision by the respondent to cancel the meeting to discuss her concerns and (ii) finding out that Mrs Moody would not be returning to the business to continue training her was the final straw event which triggered her resignation. Mr Bayne submitted that it was astonishing that she was not able to recall what the final trigger for her resignation was, suggesting had she genuinely resigned in response to a final straw, she would surely have remembered what it was. I agree. In evidence she told me: *'As time went on I remembered a series of*

things that were a breach of trust and confidence. Glasswell had reasons for these decisions: the meeting was cancelled when the respondent received Mrs Griffiths' second sick note and they were concerned for her health. It was always Glasswell's intention that Mrs Moody's involvement in the business would reduce and she would step away; this was inherent in the management buy-out and her consultancy agreement.

16. As I have found that trust and confidence was not breached, the second 2 questions set out as issues fall away. It is not a consideration whether Mrs Griffiths' resignation was in response to breach, as there was no breach, nor must I determine whether the resignation took place within a reasonable period of time or whether Mrs Griffiths affirmed the contract before resigning.

Employment Judge **Hutchings**

25 November 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

16/12/2022

Nn Gotecha

FOR EMPLOYMENT TRIBUNALS