# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Kimberley Cairns

**Respondent:** The Wellness Zone Ltd t/a Klnik

**Heard at:** Manchester (final hearing in public via CVP)

**On:** 5-6 January and 7-8 February 2023

**Before:** Judge Brian Doyle (sitting alone)

**Representation:**
Claimant: Ms Adele Akers, Counsel
Respondent: Mr Paul Gilroy, King's Counsel

**JUDGMENT** having been signed by the judge on 8 February 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Introduction

1. This is the final hearing of the claim of the claimant. Mrs Kimberley Cairns, against the respondent, The Wellness Zone Ltd t/a Klnik. The sole remaining complaint to be determined is one of alleged constructive unfair dismissal contrary to sections 94, 95(1)(c) and 98 of the Employment Rights Act 1996.

2. References in square brackets below are to the pages of the electronic hearing bundle.

3. The claimant's employment with the respondent ended with her resignation effective on 12 July 2021. Acas early conciliation started on 12 July 2021 and ended on 23 August 2021 [6]. The claimant's ET1 claim was presented to the Tribunal on 12 November 2021 [7-17]. At that time, it contained complaints of unfair dismissal, disability discrimination, whistleblowing detriment/dismissal and claims for a redundancy payment, notice pay and holiday pay. Particulars of the claim were set out at [18-19].

4. The respondent's ET3 response was presented on 22 December 2021 [20-24]. The original grounds of resistance can be seen, with present amendments highlighted, at [25-37]. The response was accepted by the Tribunal by undated letter on 14 January 2022 [38].

5. A case management hearing took place by telephone on 4 May 2022 before Employment Judge Sharkett. Judge Sharkett's orders and record of that hearing appear at [39-53]. Both parties were represented by counsel (not those who appeared at the final hearing). As disability for the purpose of the disability discrimination complaint was in issue, a preliminary hearing was listed for 9 September 2022 (subsequently vacated), with a final hearing to take place over 5 days commencing on 3 January 2023 (subsequently shortened).

6. Judge Sharkett noted that, although the claimant was represented by counsel and had the services of solicitors, the claimant's counsel was without instructions as to the particulars of the claim, despite the respondent's solicitors having requested further and better particulars of the claim since December 2021 [41]. It was not possible to make progress with identifying the allegations being made or the issues to be determined. The judge ordered the provision of further particulars of the claim (additional information) by 20 May 2022 [44-45]. Other case management orders were also made, including as to the claimant's disability status [46-47].

7. Subsequently, the claimant withdrew her complaint of disability discrimination, which was dismissed by the Tribunal on 30 May 2022 [54].

8. Further and better particulars of the claim were provided by the claimant on 20 May 2022 [55-62]. At this point, the claim comprised complaints of constructive unfair dismissal; public interest disclosure detriment and/or dismissal (the detriments being in respect of sick pay and a request to return company property); holiday pay; and notice pay.

9. By 8 December 2022, the claimant had advised the Tribunal that she had withdrawn her complaints in respect of public interest disclosure detriment and/or dismissal [63]. The final hearing was reduced to 2 days commencing on 5 January 2023 [64-68].

10. At the final hearing, all that was left to determine was an ordinary constructive unfair dismissal complaint. The cross-examination of the claimant understandably took the best part of the 2 days allocated for the hearing. The hearing went part-heard and was re-listed. It resumed for two days on 7 and 8 February 2023. An oral decision with outline reasons resulted on the conclusion of the fourth day. The respondent requested written reasons at the hearing and indicated its application for costs against the claimant.

**The issues**

11. At the hearing, a draft list of issues was amended and finalised. It was then treated as agreed. The issues are set out in the discussion section below.

**The evidence**

12. The Tribunal had before it an electronic bundle of documents running to 782 pages (inclusive of index). It had witness statements from Mrs Kimberley Cairns (the claimant) and her husband, Mr Dominic Cairns; and witness statements from Mr Ryan Parkes and Dr Roshan Ravindran for the respondent. It was agreed that Mr Cairns's evidence did not touch upon a matter that was in issue and he was not called to give evidence.

**Assessment of the evidence**

13. This is a case in which the credibility of the witnesses, and especially that of the claimant, has been put centre stage. Mr Gilroy's cross-examination of Mrs Cairns was extensive and directed to that objective.

14. The Tribunal reminded itself, therefore, that in making findings of fact this is not just a question of witness demeanour or questions of plausibility and honesty. The modern judicial approach to the task of assessing witness evidence and finding facts is set out in extra-judicial writings and reflective judgments in the higher courts (in cases such as *Gestmin* and other similar authorities).

15. The Tribunal has looked at whether each party has presented a consistent or inconsistent pleaded case – in the original particulars of claim or grounds of resistance; in any further and better particulars or additional information; in the amended particulars or grounds; in witness statements; and in response to questions in cross-examination or from the Tribunal.

16. Is a party's witness statement – their evidence in chief – consistent with their pleaded case? Is the witness statement itself internally consistent or is it contradictory of and within itself? Is it consistent with or corroborated by other witness evidence? Perhaps crucially, is it supported by (or indeed, contradicted by) the contemporaneous documentary evidence? The record of events, recorded at the time or as close in time as possible, as contained in contemporary documents, is likely to be the strongest possible indicator of probability and a positive finding. In a case such as this, the proximate evidence of conversations, meetings, phone calls, text messages, WhatsApp exchanges, social media postings, and primary documents such as contracts, letters, minutes and so on are likely to be the most helpful and compelling indicators of reliable evidence leading to confident findings of fact.

17. Of course, a witness's demeanour is not to be discounted. How confidently a witness gives their evidence and how well it survives contact with cross-examination by the other party and testing by the Tribunal are factors to be weighed in the balance when assessing the evidence and drawing factual conclusions before it. However, the Tribunal is alert to the risk that an apparently honest witness may be capable of giving dishonest or untruthful evidence, in whole or in part – and that the reverse proposition is also possible.

18. It is also alert to the unreliability of memory and the risk of unconscious bias – a product of litigation as a party-witness persuades themselves of the veracity of their position and is prepared to embellish or exaggerate their evidence

(perhaps unknowingly). The litmus test remains whether the witness evidence is corroborated by the documentary evidence.

19. Mrs Cairns, Mr Parkes and Dr Ravindran appeared as witnesses with varying degrees of self-confidence, self-assuredness and self-possession. Mrs Cairns was reluctant to makes concessions or admissions – the self-doubt or reservation that is often the hallmark of a credible or plausible witness. Mr Parkes and Dr Ravindran less so.

20. In the Tribunal's assessment, the claimant's evidence did not survive intact her cross-examination by Mr Gilroy KC. She failed many of the tests of a credible and reliable witness.

21. There were obvious untruths in the face of the documentary evidence. Under cross-examination, evidence was introduced for the first time that was not to be found in the pleaded case or the witness statement. She was evasive in answering questions. She had a preference for answering questions which she wished she had been asked. She employed a distraction technique of long, rambling answers that sought to take the focus off the question asked. She sought to place reliance on documentary evidence to support her oral evidence, but where the documentary evidence simply did not bear the weight or interpretation she sought to place upon it. The Tribunal agrees with Mr Gilroy's observation that the claimant appeared to believe that she was telling "her truth" rather than "the truth". Her evidence was riddled with exaggeration and hyperbole. There were many examples of sheer contradiction – was Dr Ravindran excluding her or placing impossible demands upon her? Was he setting out to sabotage her or to promote her and to value her? In places her evidence was not simply honest but mistaken, but actually mendacious – as in the allegation made to the GMC regarding Dr Ravindran's compliance with the chaperone conditions placed upon him.

22. The net result is that, while the Tribunal does not reject the claimant's evidence in its entirety nor accept the respondent's evidence without some reservation in places, it does not feel at all confident in being able to rely upon the claimant's pleaded case nor her witness evidence. The Tribunal draws its primary findings of facts almost entirely from the respondent's pleaded case and the evidence in chief of Dr Ravindran and Mr Parkes.

**Findings of fact**

23. The respondent is a private limited company that operates an aesthetics and wellness clinic in Wilmslow, Cheshire. It directly employs fewer than 10 employees. Its Chief Executive Officer is Dr Roshan Ravindran, who is a GP and aesthetics practitioner. He is also a partner in a GP practice in Wolverhampton, in which his father is the principal partner and his mother is the business manager, and in respect of which Mr Ryan Parkes is the Practice Manager. Dr Ravindran's parents are the sole directors and the controlling shareholders in the respondent company. Mr Parkes is a board member of the respondent company (although not a statutory director).

24. The claimant's employment by the respondent company as a Personal Wellness Trainer commenced on 1 November 2017. She reported to Dr

Ravindran. He regarded her as a good fit for the respondent clinic. Her career with the respondent developed to include a management role and research activities (see paragraph 14 of Dr Ravindran's witness statement). She was very well regarded by Dr Ravindran as a hard-working individual, although lacking in business and management experience. The claimant and Dr Ravindran socialised together with their families and they had a good personal relationship. The Tribunal does not consider that there is indicative evidence to suggest that that relationship overstepped professional boundaries. The messages referred to at [275-285] do not bear that suggestion.

25. For the large part of her employment, the Tribunal finds, the claimant and Dr Ravindran had a close and positive working and personal relationship. As discussed below, some friction between them did arise in late 2020 and into 2021 over the claimant claiming overtime payments for additional hours that she claimed to have worked. This was despite this not having been agreed in advance with Dr Ravindran. It was also inconsistent with her contractual terms. She had been instructed not to work overtime due to the respondent's precarious financial position arising from the Covid-19 pandemic.

26. The Tribunal had before it 389 pages of messages between the claimant and Mr Parkes (between November 2020 and June 2021), Mr Lockley (between September 2018 and June 2021) and Dr Ravindran (between October 2018 and November 2021) [159-547]. The claimant had ample opportunity to take the Tribunal to examples in the documentary evidence to support her contention of hostile or negative behaviour towards her, including the suggestion that Dr Ravindran would ignore her or not engage with her. She referred to messages at [489, 504-505, 513-514, 518, 529, 531, 539, 543, 545, and note also 770]. The example at [531] might be capable of bearing an interpretation of the claimant being put under pressure to carry out an instruction from Dr Ravindran outside normal working hours and of Dr Ravindran being dissatisfied with how she handled that instruction – but it is an isolated example. The remaining references do not support the claimant's contentions.

27. The Tribunal notes the claimant's description of Dr Ravindran as being a "gaslighter", who does not leave a record of his behaviour. While being alert to the implication of what "gaslighting" inherently entails, the Tribunal is unable to accept that characterisation based on the positive evidence before it.

28. The respondent's staff handbook [69-110] provides an overview of the claimant's terms and conditions of employment and what she could expect from the respondent as her employer [70]. It refers to the provision of a separate statement of employment terms and conditions [73-74]. Overtime is stated to require prior explicit approval [84]. It notes that occupational sick pay is discretionary [86-87]. A three-stage grievance procedure is set out at [104-108].

29. The claimant's initial statutory statement of employment particulars may be found at [120-142]. There is a reference to a job description, but no such document was before the Tribunal. Her original working hours were 16 hours per week, with no extra pay for additional hours unless previously agreed with her manager [130]. There is an entitlement to statutory sick pay only after 3 days absence, although the implication is that there is a discretion to pay a

higher rate of sick pay [132]. There is a cross-reference to the grievance procedure in the employee handbook, but those procedures are said not to form part of the contract of employment, but amount to guidance only [133]. However, the statement says that the statement together with the provisions of the employee handbook comprise the contract of employment, but with the statement taking precedence [136]. There is an "entire agreement" clause [135].

30. In or around November 2018 the claimant was appointed to the post of Assistant Practice Manager in tandem with her role as Personal Wellness Trainer. Then, in November 2019, following the departure of the then Practice Manager, Mr Gwion Lockley, the claimant became the Acting Practice Manager alongside her existing role. In due course, Ms Debbie Lomas was appointed as Assistant Practice Manager, with a view to supporting the claimant. It may that in effect the claimant became the "actual" Practice Manager, but the Tribunal does not consider that this is significant, and it is a matter that does not need to be resolved. Mr Lockley continued to provide remote support to the respondent after his departure

31. The hearing bundle also contains a later draft statement of employment terms dated October 2019 [143-158]. This appears to have been intended to vary the claimant's job title to "Wellness Trainer, Research Associate and Practice Manager", while increasing her working hours to 30.5 hours per week. This document appears to be a work in progress. It remained subject to finalisation and agreement.

32. From March 2020 onwards, the respondent became adversely affected by the restrictions placed upon it by the Covid-19 pandemic. The clinic closed or was operating at reduced capacity, although from April 2020 it began to offer private Covid-19 tests. See paragraphs 15-19 of Dr Ravindran's witness statement.

33. In June 2020, Dr Ravindran became subject to a fitness to practice investigation by the General Medical Council (GMC). The allegations were of inappropriate behaviour in a clinical setting. In July 2020, the GMC referred Dr Ravindran to the Medical Practitioners Tribunal Service (MPTS). An interim order was made placing conditions on Dr Ravindran, including that, except in life-threatening emergencies, he should not carry out consultations with female patients without a chaperone being present and he should keep a chaperone log.

34. By November 2020, Dr Ravindran and Mr Parkes had become aware that the claimant was claiming payments for overtime working. See the subsequent audit evidence dated 22 July 2021 at [720]. Mr Parkes met the claimant, who explained that she was struggling to manage a full workload on her own. Overtime payments could be claimed if authorised. They had been paid despite not being authorised. Mr Parkes explained the position to the claimant and that she should not be claiming overtime in the circumstances. On Dr Ravindran's instructions, he asked her to furlough herself [553, 556-557] and to delegate work to others where necessary. In his view, the claimant's strengths lay on the clinical side rather than in practice management. As a result, Ms Lomas was brought back to assist and to deal with day-to-day management issues. At the end of January 2021, Dr Ravindran asked Ms Lomas to deal with patient queries, relieving the claimant of sole responsibility for so doing [567].

35. It does not appear that the claimant complied with the instruction to furlough herself. See paragraph 16 of Dr Ravindran's witness statement and [510]. In February 2021, the claimant confirmed to Dr Ravindran that she had not furloughed herself. On 15 March 2021 he renewed his instruction that the claimant should flexi-furlough herself and that she should not work more than 10 hours per week.

36. In March 2021, the respondent suggested that the claimant's role should concentrate on Research Management, alongside her role as Personal Wellness Trainer. It was agreed that she would move to this revised role at the same salary. She accepted this change, or at least she did not raise objection or express dissatisfaction.

37. On 9 March 2021 Dr Ravindran met with the claimant. The purpose of the meeting was to discuss her overtime claims, her role within the practice, her working hours and to place her on furlough for part of her contracted hours. The detail of this meeting is set out in Dr Ravindran's witness statement at paragraphs 20-34. The Tribunal accepts that account.

38. The claimant was informed that she should not claim any unauthorised overtime and that she should take time off in lieu rather than claim overtime payments. Dr Ravindran informed the claimant that she had had little insight in not placing herself on part-furlough despite requests to do so and in circumstances where she had claimed overtime payments without prior authority, when the clinic had been closed, or while she was working from home, or while work was restricted by the Covid-19 pandemic. Dr Ravindran did not describe the claimant as an "embarrassment" or as "difficult to talk to".

39. The claimant agreed that some of her practice management responsibilities would be passed to Ms Lomas. The claimant accepted that she would then focus upon her research role and her Personal Wellness Trainer duties. She did not then or subsequently raise concerns about these changes. She was supportive of giving Ms Lomas more responsibility [229]. The changes in job duties were the subject of messages between Mr Lockley and the claimant on 25 March 2021 [234, 573-574]. She raised no objections. Further confirmation of the change in distribution of duties is recorded without objection at [568-572]. Responsibility for the furlough scheme remained with the claimant. Her timesheets at that time illustrate the range of her duties [584-586, 597, 612, 625].

40. There is no convincing evidence that from March 2021 onwards the claimant was excluded from all key partner contact or meetings, inductions, recruitment and all current or future business affairs. See the claimant's witness statement paragraphs 26-28 and contrast with the documentary evidence and messages at that time: [216-219, 496-497, 540-541, 544, 771].

41. Following discussions with Dr Ravindran and others, the claimant had agreed to move to an amended role as the respondent's Research Manager. She ceased to be the Acting (or actual) Practice Manager, although she retained some practice management responsibilities, such as payroll and checking chaperone logs. In the respondent's view, this made better use of the claimant's

medical/aesthetic research skills. Her revised role did not include inductions or recruitment. At this time, the claimant had been furloughed and she was working 10 hours per week. As a result, there was inevitably reduced contact with key partners and patients. The claimant continued to attend meetings with key clients. She was a member of the respondent's WhatsApp group and she was not removed from it [715].

42. Following a discussion, the claimant's workstation was changed. The move was intended to assist collaborative working. It was a short distance [548-550]. The claimant did not object to the change. Had she done so, it is likely that the change would not have taken place.

43. There is also no convincing evidence that from March 2021 onwards the claimant was excluded from any meaningful contact with patients. Her primary patient contact role was in her capacity as a Wellness Trainer or as a chaperone in relation to Dr Ravindran. The respondent had introduced a Covid-19 safeguarding policy [111-117] and guidance [118-128], and their requirements necessarily limited patient contact. The furloughing of the claimant also served inevitably to reduce her patient contact. The claimant did not object to this at the time. The timesheet evidence illustrates her continuing patient contact and involvement in meetings [584-586, 597-598, 612-613, 625, 655, 661).

44. There is no convincing evidence that the claimant was expected to work "24/7". Contact from Dr Ravindran "out of hours" did not mean that the claimant was inevitably or invariably expected to respond immediately to him outside of normal working hours.

45. There was a further meeting on 13 April 2021 between Dr Ravindran and the claimant. He did not describe her as a "hypocrite" or that she was "damaging the business" or that she had failed to learn from being performance-managed. She had not been performance-managed. What Dr Ravindran did say to the claimant was that it was hypocritical of her not to place herself on furlough, when she had been asked to do so, and when she had furloughed other members of staff. He did not say that she was a threat to the business; that he did not know where she fitted in; that she had caused irreparable damage to the business; that she would suffer the consequences of that damage; and that she was unmanageable. Her claims for overtime were damaging for the business financially and that was explained to her. See further paragraphs 41-45 of Dr Ravindran's witness statement.

46. There is also no convincing evidence that during the week of 13 April 2021 Dr Ravindran threw the claimant's work on the floor; was dismissive of her; and constantly ignored her. The better view of Dr Ravindran's relationship with the claimant at this time is represented by the evidence from 17 June 2021 of the considerable assistance and generosity of Dr Ravindran in providing her with a presentation for an international conference [545-547]. See also paragraph 44 of Dr Ravindran's witness statement.

47. The GMC's interim order was varied in June 2021 so that it applied only to in-person consultations rather than consultations conducted remotely. However, unknown to the respondent at the time, the claimant wrote to the GMC on 18

June 2021 alleging persistent breaches of the interim order conditions and endangerment of health and safety. It appears that she also made a report to the police.

48. On 18 June 2021 the claimant also wrote to the respondent's directors (Dr Ravindran's parents) stating that she wished to take out a formal grievance against Dr Ravindran. The initial grievance is brief, vague and difficult to understand [658]. It appears to be alleging that unreasonable changes had been made to the claimant's work without her agreement; that she could no longer do her job because barriers had been created; that her job role had been varied without her approval; that she had unspecified concerns about workplace health and safety, and about workplace relationships; that she was being "discriminated against"; and that there was a breach of the implied term of trust and confidence.

49. Given the lack of detail in the grievance, the respondent's directors asked Mr Ryan Parkes, the Practice Manager of the Wolverhampton medical practice, to carry out an initial investigation. He contacted the claimant on 18 June 2021 to arrange a meeting the following week. She responded on 19 June 2021. They arranged to speak on 22 June 2021 [166-167].

50. Mr Parkes's intention was to try to understand what the grievance was about. He was familiar with the respondent's grievance procedure. He had previous experience of handling grievance matters. His initial thinking was that it might not be possible to resolve the grievance within a relatively tight timescale.

51. There was a brief discussion between Mr Parkes and the claimant on 22 June 2021. They agreed to meet on 24 June 2021. He explained the procedure he anticipated following in a message to the claimant [167]. The respondent thought highly of the claimant and Mr Parkes wanted to resolve her concerns.

52. The grievance was acknowledged on 23 June 2021 [671]. Mr Parkes also confirmed the arrangements for the meeting the next day and what he hoped to achieve [672].

53. Mr Parkes met the claimant on 24 June 2021. He explained that the purpose of the meeting was to obtain more information about the grievance and understand it better so that it could be investigated. The claimant explained that she had been working throughout the pandemic with Dr Ravindran, in the form of providing Covid tests and dealing with other matters, including a high number of telephone calls on the business phone which she took home with her. She explained that Dr Ravindran had spoken to her in November 2020 regarding the overtime and asked her to reduce it. She then had had a further meeting with Dr Ravindran in March 2021 and was asked to work only minimal hours and to furlough herself for the remaining hours.

54. The claimant alleged that Dr Ravindran started to ignore her emails and removed her from WhatsApp groups and that she was to only work on research-related duties. She stated she was informed of the hours she would be required to work at the clinic and when she could work from home. She stated that the respondent's system would not show her correct hours. The claimant also explained that she was involved with HR and that she was no

longer aware of who was starting work. She also stated that a member of staff who had been in contact with lycodine did not follow the standard procedure in terms of reporting the incident and health and safety. The claimant also alleged that Dr Ravindran had thrown her work on the floor in front of other staff members, talked down to her and constantly ignored her calls, emails and messages.

55. The claimant informed Mr Parkes at this meeting that she believed that the chaperone logs were not up-to-date and that some were missing. She did not go further. The claimant went home after the meeting. Mr Parkes returned to the clinic. He found that the chaperone logs were on the desk where they should be and that they were all up-to-date. He looked to see if any pages were missing. He found that all was in order. He did not consider this aspect any further at that moment. See also [625].

56. Mr Parkes had indicated to the claimant that he would provide her with minutes of the meeting the next day. The claimant had sent him her private email address for that purpose [167]. On 25 June 2021 Mr Parkes informed the claimant that it was taking longer than he anticipated in providing her with minutes of the meeting. He would provide the minutes the following week.

57. Notes of the meeting were sent to the claimant by Mr Parkes on 30 June 2021. For one reason or another, there was a typographical error in the claimant's email address. The error was committed by Mr Parkes. It was unintentional. The email containing the meeting notes as an attachment was "bounced back" [681]. Mr Parkes messaged the claimant to advise her of the problem [167], but he received no reply.

58. The claimant was on annual leave between 28 June 2021 and 2 July 2021.

59. On 1 July 2021 the claimant emailed Mr Parkes to chase the meeting minutes [684-685]. He responded that day, confirming that he had sent them previously, and he re-sent them [684]. The claimant then responded, providing detailed amendments and additions to the notes [686-695]. She regarded the initial minutes as vague, and she suggested that her amendments gave a better picture of the meeting. She asked for a timeline on the investigation as she was due to return to work on 5 July 2021. She asked how her health and safety at work would be maintained given the nature of the grievance. Mr Parkes accepted the claimant's amendments.

60. Mr Parkes wished to minimise contact with the claimant while she was on annual leave. He intended to arrange a further meeting to go through the minutes to clarify a few points so that he could then properly investigate the issues raised. As Dr Ravindran was not due in clinic upon the claimant's return from annual leave, he felt it best to alleviate the concerns raised by the claimant around her health and safety, and collaboratively work out an approach she was comfortable with.

61. On 4 July 2021, again unknown to the respondent at the time, and without having raised them with the respondent first, the claimant made more detailed allegations to the GMC. She alleged that Dr Ravindran had persistently breached the interim order conditions by seeing female patients without a

chaperone; failing to keep a chaperone log from March 2021 onwards; and instructing staff to complete and to backdate chaperone logs for staff who were not present. These allegations did not form part of the claimant's original grievance presented to the respondent on 18 June 2021.

62. On 5 July 2021 Mr Parkes messaged the claimant to ask whether she would be at work on 6 July 2021 as he wished to discuss the grievance investigation with her further [704-706]. The claimant replied that she had a GP appointment that morning. Mr Parkes replied that he would arrange to meet another time [708-709]. In fact, the claimant had returned to work on 5 July 2021, but was feeling unwell [701]. She advised Mr Parkes that she was unable to remain at work.

63. The claimant alleges that on her return to work on 5 July 2021 she discovered that she had been blocked from the respondent's email system and its patient booking system. She had not been blocked. The respondent and most of its staff had suffered IT issues between May and July 2021 [614-624, 631], as had the claimant [599-603]. The respondent had instructed an IT Consultant (Mr Joshua Shaw) to take over the management of its IT systems [633-634]. On the morning of 5 July 2021, the IT system was down. The claimant did not raise the issue with Mr Shaw or Ms Lomas (the Practice Manager). In any event, in relation to the claimant's access to two particular email accounts ("info" and "accounts"), her access was withdrawn from those accounts from 18 May 2021 and 2 June 2021 respectively. This was as a consequence of the changes to her job role referred to above. She no longer needed access to those accounts as a result. The respondent did eventually withdraw the claimant's access to its IT system on 13 July 2021, but this was after her resignation.

64. Late in the afternoon of 5 July 2021, the respondent became aware of the allegations made by the claimant to the GMC. The respondent was informed of them by the GMC. The respondent's directors asked Mr Parkes to investigate the matter.

65. Mr Parkes attended the clinic on 6 July 2021. He again reviewed the chaperone logs. The logs all appeared to be in order. The logs had been completed in line with the respondent's procedure and as requested of Dr Ravindran. Mr Parkes spoke to members of staff regarding the chaperone logs and some of the other allegations raised.

66. He also spoke briefly and informally with Ms Lomas regarding the allegations raised by the claimant. He asked Ms Lomas if Dr Ravindran had thrown any of the claimant's work on the floor. She stated that this did not happen. He asked Ms Lomas if she had witnessed any other incidents involving Dr Ravindran and the claimant. She explained she had not witnessed anything untoward. The only issue she was aware of was the change in roles. He also asked Ms Lomas if she had ignored the claimant. Ms Lomas denied this. She explained that the claimant was working 10 hours per week and some of that time was at home. She explained that she did not ignore the claimant in any way. She stated that she did find the claimant difficult to work with in that she was more critical rather than constructive. He asked Ms Lomas if the claimant had raised any concerns regarding the changes to her role. She explained that to her knowledge no

concerns were raised, but she was pleased that some of the duties had been passed on and that the claimant was to focus more on what she enjoyed.

67. On 6 July 2021 the claimant provided a sick note signing her off work until 27 July 2021 due to "stress at work" [708-710]. The claimant also asked Mr Parkes whether he accepted her changes to the minutes [707].

68. On 7 July 2021, Mr Parkes and the respondent's Practice Manager, Ms Lomas, asked the claimant to arrange to return her company laptop and keys [711, 713]. This was only because of the length of time she was expected to be on sick leave. This would allow the company to make use of the laptop and the keys during that absence. The respondent gave the claimant the option of the property being collected from her rather than requiring her to return it.

69. In the event, her husband returned the property on the claimant's behalf on 8 July 2021 [732].

70. The claimant resigned her employment with the respondent on 12 July 2021 with immediate effect [714]. She stated that her reasons for resigning included her disappointment at the way her grievance had been handled.

71. After the claimant's resignation, Mr Parkes uncovered allegations made against the claimant of bullying, acting in a controlling or passive-aggressive manner, intimidation and misuse of patient data. See, for example, in respect of the exit interview of Hayley Pollock [673].

72. The claimant's resignation was accepted by the respondent on 21 July 2021 [719]. It was confirmed to the claimant that the respondent was continuing to conclude the grievance investigation and that if there was any further input required from her then Mr Parkes would be in touch. Once the grievance was concluded, the respondent would investigate allegations which had been raised against her by other staff who had been interviewed as part of the grievance investigation. If there were concerns, these would be addressed at an investigation meeting where she would be given an opportunity to respond.

73. The claimant was paid outstanding holiday pay. She was not paid full sick pay because such payments were discretionary. Despite two pre-Covid-19 examples of a positive exercise of that discretion, since the start of the pandemic the respondent had paid absent staff statutory sick pay only.

74. On 26 July 2021, in the light of the claimant's allegations made against Dr Ravindran on 18 June 2021 and 4 July 2021, the GMC suspended Dr Ravindran from practice.

75. As a result of advice which had been received by the respondent, Mr Parkes was asked to continue with the investigation concerning only the allegations which had been made to the GMC. His consideration of the claimant's grievance was placed in abeyance. His investigation report, together with documentary evidence and witness statements, was sent to the GMC.

76. Having reviewed that material, the decision to suspend Dr Ravindran was overturned and chaperone conditions were put in place. Following a hearing by

the Interim Orders Tribunal, on 13 October 2021, the relevant authority was not satisfied that Dr Ravindran had committed any breach of the interim conditions relating to consultations with female patents. The suspension was set aside, and the interim orders made on 10 June 2021 were restored. These were subsequently revoked and Dr Ravindran was not subject to any restrictions or conditions from 25 March 2022.

**Submissions**

77. Although no directions for written submissions had been made, Mr Gilroy KC had prepared a written closing note. The Tribunal gave Miss Akers an opportunity to prepare a written note or written submission if she wished and she availed herself of it. Written notes or submissions were exchanged before the commencement of the fourth day of hearing. The Tribunal had read them before it listened to the parties' oral submissions.

78. The written notes or submissions of both counsel are not reproduced here. They are incorporated by reference.

79. The claimant's claim in relation to the grievance is that: (a) The respondent's grievance policy was contractual and so the failure to follow it was a fundamental breach of contract; (b) Alternatively, the failure to provide the claimant with a reasonable opportunity to obtain redress in respect of her grievance of 18 June 2021 amounted to a breach of the implied term of mutual trust and confidence (*WAA Goold (Pearmak) Ltd v McConnell* [1995] IRLR 516); (c) The respondent's failure as above entitled the claimant to resign (*Western Excavating (ECC) Ltd v Sharp* [1978] QB 761; *Morrow v Safeway Stores plc* [2002] IRLR 9); (d) The claimant resigned in response to the breach subject to section 95(1)(c) of the Employment Rights Act 1996; (e) The claimant did not waive or affirm the breach by waiting too long to resign; and (f) The dismissal was unfair.

**Relevant legal principles**

80. The relevant legal principles were not in issue. This summary of them is taken from Mr Gilroy's written note.

81. Section 95(1)(c) of the Employment Rights Act 1996 provides that for the purposes of unfair dismissal, an employee is dismissed by her employer if (and, subject to subsection (2) and section 96, only if) the employee terminates the contract under which she is employed (with or without notice) in circumstances in which she is entitled to terminate it without notice by reason of the employer's conduct.

82. It is trite law that a term is to be implied into all contracts of employment to the effect that an employer will not, without reasonable or proper cause, conduct himself in a manner calculated or likely to destroy that relationship. In *Woods v WM Car Services (Peterborough)* [1981] ICR 666 (EAT), the matter was expressed in these terms: "To constitute a breach of this implied term, it is not necessary to show that the employer intended any repudiation of the contract: the tribunal's function is to look at the employer's conduct as a whole and

determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it."

83. Whereas the reasonableness or otherwise of the employer's action may well be evidence as to whether there has been a constructive dismissal, it is clear that the test remains contractual (*Lewis v Motorworld Garages Limited* [1985] IRLR 465, and *Abbey National Plc v Robinson* [unreported - Appeal No: EAT/743/99]).

84. The seminal case on constructive dismissal is still *Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221, which is essentially authority for the proposition that an employee alleging constructive dismissal must show that the employer committed a serious breach of the contract of employment; that she resigned in response to that breach; and that she did not delay or acquiesce in relation to the breach, or affirm the contract notwithstanding the breach. Although the *Western Excavating* test has been the subject of criticism, the above test remains good law.

**Discussion**

85. This discussion is structured by reference to the agreed list of issues and the written and oral submissions of both counsel.

86. The first question (Issue 1.1) is did the respondent make unreasonable changes to the claimant's work without agreement in the form of: (a) from March 2021 "excluding the claimant from all key partner contact/meetings, inductions, recruitment and all current or future business affairs"; (b) in April 2021 by Dr Ravindran moving the claimant's workstation "where she had worked for several years previously"; and (c) from March 2021 "excluding the claimant from any meaningful patient contact unless they were regarded to be in psychological crisis".

87. The Tribunal's findings of fact strongly point towards a conclusion that the claimant was not excluded from all key partner contact/meetings, inductions, recruitment and all current or future business affairs. Her workstation was moved, but after discussion with her, and the move was a relatively minor change made as part of a necessary reorganisation of working arrangements arising from Covid-19. Had she objected to the move, it is likely that her objection would have been accommodated. She was not actively excluded from any meaningful patient contact unless they were regarded to be in psychological crisis. Her patient contact reduced as a result of a combination of reasons arising from Covid-19, changes to her job role and reduced activity in the clinic. See further Mr Gilroy's written submissions at paragraphs 41-54, with which the Tribunal agrees.

88. The second question (Issue 1.2) is whether in a meeting on 9 March 2021 Dr Ravindran said to the claimant that she had "no insight", was "an embarrassment", was "difficult to talk to" and that her "ego was out of control"?

89. The Tribunal has been unable to make a positive finding to that effect. It accepted Dr Ravindran's account. On the balance of probabilities, these things

were not said. See further Mr Gilroy's written submissions at paragraphs 55-63, with which the Tribunal agrees.

90. The third question (Issue 1.3) is whether in a meeting on 13 April 2021 Dr Ravindran (a) told the claimant that she was "damaging to the business"; that "if I were to treat you like you treat the business, there would be no you left, you have damaged the business - there is nothing you could say that would make me believe otherwise"; (b) called the claimant a "hypocrite"; and (c) stated to the claimant that "you have been performance management with me (*sic*) and haven't learnt", in circumstances whereby the claimant "had never had a formal or informal performance management" (*sic*) during her employment.

91. The Tribunal has been unable to make a positive finding to that effect. It accepted Dr Ravindran's account. He did describe the claimant as being "hypocritical", but that was in a specific and limited context of her not furloughing herself while furloughing other staff. The Tribunal's findings of fact of what was actually said at the meeting on 13 April 2021 is that, on the balance of probabilities, these things were not said. See further Mr Gilroy's written submissions at paragraphs 64-65, with which the Tribunal agrees.

92. The fourth question (Issue 1.4) is whether on 13 April 2021 Dr Ravindran accused the claimant of being a "threat to the business", stating that he did not know "where she fits", or that she was causing "irreparable damages (*sic*) to KLNIK", and/or did he threaten her by stating: "you will now suffer the consequences of this damage", and/or call the claimant "unmanageable".

93. The Tribunal has been unable to make a positive finding to that effect. It accepted Dr Ravindran's account. The Tribunal's findings of fact of what was actually said at the meeting on 13 April 2021 is that, on the balance of probabilities, these things were not said. See further Mr Gilroy's written submissions at paragraphs 64-65, with which the Tribunal agrees.

94. The fifth question (Issue 1.5) is whether in the week of 13 April 2021 Dr Ravindran threw the claimant's work on the floor in front of other staff members, and "dismissed her with other people around"?

95. This is a hearsay assertion. The claimant was not present. She says that she was told of it by another employee. That employee denied the allegation when put to her as part of Mr Parkes's investigation. She was not called to give evidence in these hearings of the fact of the allegation or what was said to the claimant about it. The strict rules of hearsay do not apply in employment tribunal proceedings, but the Tribunal must have some evidence (other than mere assertion) of this allegation. The allegation is denied. There is no other corroborative evidence of it. The Tribunal found that this did not happen and preferred Dr Ravindran's evidence under cross-examination. See further Mr Gilroy's written submissions at paragraph 66, with which the Tribunal agrees.

96. The sixth question (Issue 1.6) is did the respondent "constantly ignore calls, emails, and messages from the claimant on a daily basis from April 2021".

97. The extensive evidence of messages between the claimant and Dr Ravindran at the time simply do not bear out this allegation. The Tribunal has been unable

to make a positive finding to that effect. It accepted Dr Ravindran's account. See further Mr Gilroy's written submissions at paragraph 67, with which the Tribunal agrees.

98. The seventh question can most usefully combine Issue 1.7 and Issue 1.8. Did the respondent act in breach of its implied term that it would give the claimant a reasonable opportunity to obtain redress in respect of her grievance dated 18 June 2021? Did the respondent act in breach of its grievance procedure by: (a) failing to provide the claimant with copies of the grievance notes "despite chasing these with Ryan Parkes on 25 June, 1 July, 5 July and 6 July 2021"?; and (b) failing to provide the claimant with a response to her grievance within working two days?; or (c) failing to provide the claimant with an outcome in relation to her grievance?

99. In addressing these two issues, the Tribunal takes account of the claimant's written submissions at paragraph 9 and the respondent's written note at paragraphs 74-87.

100. In the Tribunal's assessment, it would have been better if Mr Parkes had acted in a way that ensured that the claimant's particulars of grievance were detailed and finalised properly before Dr Ravindran was made aware that a grievance had been raised against him. However, the grievance procedure was not contractual. The grievance had to be raised with the claimant' parents as directors of the respondent company. That was necessary if Mr Parkes was to be tasked with an initial consideration of it. Given the small size of the respondent business and the family nature of it, it is difficult to see how the matter could be effectively concealed from Dr Ravindran, who would be bound to learn of it sooner rather than later. Additionally, given the inadequate particulars of the grievance, Mr Parkes was bound to expect or to require further particularisation of it by the claimant.

101. The minutes of the initial meeting might well have been fuller. But it was for the claimant to particularise her grievance rather than for Mr Parkes to try to capture it for her in those minutes. The provision of draft minutes afforded the claimant that opportunity, which she readily embraced.

102. It is unfortunate that Mr Parkes did not produce the minutes sooner and/or that there was an error in the claimant's email address when Mr Parkes sent them to her and/or that Mr Parkes did not appreciate that she had not received them. None of that evinces a breach of contract on the respondent's part, intentional or unintentional, fundamental or minor, repudiatory or otherwise.

103. Events were then quickly overtaken by (a) the claimant reporting Dr Ravindran to the GMC and to the police; (b) seemingly doing so while pursuing an internal grievance in parallel without making the respondent aware; and (c) being on annual leave and then going off on sick leave.

104. None of this evidences the complaint that the claimant makes through her counsel's submissions at paragraph 9iv that "the respondent being fully aware of the deterioration of the claimant's mental health specifically caused by the respondent, but failing to prevent any further exacerbation of this, by communicating with the [claimant] to let her know that the grievance was being

progressed in a timely fashion and/ or that steps were being taken to enable to the claimant to return to a safe working environment". The matter might have been handled differently – and may have been handled better – but what happened and why emerges clearly from the evidence and the sequence of events.

105. At paragraph 9v of her submissions, the claimant's counsel refers to "the fact that Mr Parkes, as someone with experience in dealing with "HR matters including grievances and disciplinary investigations" … had intended to update Dr Ravindran after the meeting prompting the claimant to have to question his impartiality and to have to require Mr Parkes to rethink his strategy". What is alleged here is better understood as Mr Parkes seeking to find a way forward and rethinking the matter in the light of involving the claimant in the process. The grievance would have been dealt within a reasonable period but for the actions of the claimant, which calls into question whether she had raised an inadequately particularised grievance as a result of a lack of good faith while simultaneously pursuing a parallel course with the GMC and the police.

106. None of the above leads to a conclusion of the kind that is necessary to support a resignation that amounts to a constructive dismissal. There was no breach of the implied term of mutual trust and confidence. The grievance procedure being non-contractual, there was no breach of an express term. It was unrealistic to interpret the procedure as requiring an outcome within 2 days; or, if that is what the procedure required, then the circumstances point to this being an obvious exceptional case in which such a timeframe was unrealistic. The Tribunal prefers the way in which the matter is explained in paragraphs 74-87 of Mr Gilroy's submissions.

107. The eighth question (Issue 1.9) is whether the claimant was "blocked out from various email address and booking systems" in the weeks leading to her resignation? Specifically: (a) Was the claimant blocked from accessing the "info" address on 18 May 2021? (b) Was the claimant was blocked from accessing the "accounts" address on 2 June 2021? (c) Was the claimant blocked from accessing the respondent's patient booking system at some point before her return from annual leave on 5 July 2021? (d) Was the claimant blocked from accessing her work email address at some point before her return from annual leave on 5 July 2021?

108. The Tribunal has dealt with each of these matters in its findings of fact. The suggestion that the claimant was "blocked" from these accounts or systems implies a negative connotation. It is not possible to draw such an adverse inference. The respondent has provided perfectly innocent explanations for what occurred in respect of these four matters, which the Tribunal has accepted. The claimant was not "blocked" in the way suggested. See further Mr Gilroy's written submissions at paragraphs 68-73, with which the Tribunal agrees.

109. The ninth question (Issue 1.10) is did Ryan Parkes send the claimant a text at 19.02 on 5 July 2021 asking what time she was due in the next day despite the claimant having told him on 5 July 2021 "about her damaged mental health and wellbeing and the fact she was experiencing physical symptoms of stress

as a result of the respondent's conduct", and that "she was making an immediate and urgent appointment with her GP that day"?

110. In the Tribunal's analysis the claimant misrepresents this exchange between Mr Parkes and the claimant. The exchange is unobjectionable. See further Mr Gilroy's written submissions at paragraphs 101-102, with which the Tribunal agrees.

111. The tenth question (Issue 1.11) is whether the claimant was asked by Debbie Lomas on 7 July 2021 to return her laptop and keys and all confidential information the following day?

112. The answer is "yes". There is an entirely innocent and rather prosaic explanation for this routine request, as explained in the Tribunal's findings of fact above. See further Mr Gilroy's written submissions at paragraph 103, with which the Tribunal agrees.

113. Next, there is Issue 1.12. If the answer to any of the questions posed in Issues 1.7 to 1.10 above is in the affirmative, what is the explanation for the conduct in question? The respondent has provided a wholly satisfactory explanation for the conduct in question.

114. Then, Issue 1.13. If the answer to any of the questions posed in Issues 1.1 to 1.11 above is in the affirmative: (a) did the conduct in question amount to a breach of any express term of the Claimant's contract of employment. If so, what was that term?; alternatively: (b) did the conduct in question amount to a breach of the implied term of mutual trust and confidence?

115. In the Tribunal's judgement, there was no breach of any express term nor a breach of the implied term of mutual trust and confidence.

116. The remaining issues thus fall away. If there was a breach, contrary to the Tribunal's finding that there was not, then the breach or breaches were not serious enough to amount to a repudiatory breach of the claimant's contract of employment. The questions of whether the claimant waived any breach or affirmed her contract, and whether she resigned in response to any such breach, do not survive for determination.

117. It is implicit in the Tribunal's findings above that the claimant engineered her resignation and made a false allegation against Dr Ravindran to the GMC (and apparently to the police). The respondent would have been entitled to dismiss the claimant summarily or within a relatively short period of time, thus engaging the *Polkey* exceptional principles.

118. For these reasons, the claimant was not constructively dismissed or unfairly dismissed by the respondent. Her sole remaining complaint of unfair dismissal is therefore not well-founded and it is dismissed.

## Disposal

119. The claimant was not dismissed or constructively dismissed by the respondent. Her claim of unfair dismissal is thus not well-founded. The claim is dismissed.

120. The respondent's application for written reasons is granted. Written reasons will be provided as soon as possible.

121. The respondent applies for costs. A written application for costs and a schedule of costs shall be presented to the claimant and the Tribunal within 14 days of the receipt of the written reasons. The parties may then apply for a costs hearing.

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Judge Brian Doyle

DATE: 10 February 2023

REASONS SENT TO THE PARTIES ON

13 February 2023

FOR THE TRIBUNAL OFFICE