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EMPLOYMENT TRIBUNALS

Claimant: Mrs D DeSouza
Respondent: London Borough of Havering
Heard at: East London Hearing Centre (by CVP)
On: 23rd and 24th June 2022 and 8th September 2022
Before: Tribunal Judge Overton acting as an Employment Judge

Representation:

Claimant: In person
Respondent: Mr Moher, Solicitor, One Source

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing Cloud Video Platform and was fully remote. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

RESERVED JUDGMENT

- 1. The Claimant's claim for unfair constructive dismissal is well founded and succeeds.**
- 2. The case shall be listed for a remedy hearing.**

REASONS

Issues

Constructive Unfair Dismissal

- 1 At the outset of the hearing the following issues were identified as relevant:

Was the Claimant constructively dismissed in terms of section 95(1)(c) of the Employment Rights Act 1996, applying the questions set out by the Court of Appeal in Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978?

- 1.1. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, her resignation?
 - 1.1.1 The Claimant contends that Evonne Hudson failed to adequately respond to Ms DeSouza's email of 20 May 2021, which described the physical and emotional effects upon the Claimant of the changes to her work circumstances from the week before. Ms DeSouza claims this was a neglect of the Respondent's duty of care to the Claimant. The Claimant says this failure was the most recent act on the Respondent's part that caused, or triggered, the Claimant's resignation.
- 1.2 Has the Claimant affirmed the contract since that act? The Respondent does not allege that this act was affirmed by the Claimant. If the Claimant relies on previous acts, however, the Respondent will contend that the Claimant affirmed the contract since those acts.
- 1.3. If not, was that act (or omission) by itself a repudiatory breach of contract?
 - 1.3.1 The Claimant contends that such an act took place, and by itself constituted a repudiatory breach of contract.
 - 1.3.2. The Respondent contends that the email of 20 May 2021 was appropriately responded to by Ms Hudson who suggested that Mrs DeSouza should meet with her new line manager, Ms Sharp, to discuss what support she needs from her. The Respondent also argues that any breach was not sufficiently serious to justify resignation without discussing the issues with the Respondent.
- 1.4. If the act was not itself a repudiatory breach of contract, was that act nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a breach of the implied term of trust and confidence? (If it was, there is no need for any separate consideration of a possible previous affirmation, because the effect of the final act is to revive the right to resign.)
- 1.5. The Claimant contends that there was a course of conduct which, viewed cumulatively, amounted to a breach of the implied term of trust and confidence. Specifically, the Claimant contends that the course of conduct was composed of the following 16 acts which were identified in the claim form or listed in the Claimant's grievance of 26 May 2021.
- 1.6 The acts complained of in the grievance letter are listed below. This list of acts was agreed between the parties following the preliminary hearing of 11 April 2022. Mrs DeSouza described these as acts of bullying and harassment by Ms Hudson:

- 1.6.1 Neglect of duty of care on Thursday 20 May 2021 when the Claimant emailed Evonne Hudson ('EH') and Amanda Sharp ('AS') describing the physical and emotional effects on the Claimant of the changes.
- 1.6.2 In the week commencing 17 May 2021, EH placing reminders in the Claimant's diary 'Dionne to send performance information to Evonne & Amanda'.
- 1.6.3 EH advising the Claimant and AS by email that EH would be setting the Claimant's objectives for the year.
- 1.6.4 EH providing an objectives list to the Claimant containing tasks that are the remit of Senior Management level employees, such as to design and deliver training in safeguarding and mental health for housing staff without any discussion or agreement with the Claimant.
- 1.6.5 13 to 21 May 2021, interfering and encroaching on the new line management by answering emails that the Claimant sent to AS that did not require EH's input.
- 1.6.6 13 May 2021 - Uninviting the Claimant from attending CIH Equalities and Diversity Project Board via spiteful email and removal of the Claimant from team meetings, projects, briefings & training without warning or agreement.
- 1.6.7 13 May 2021 - removal from management team without notice or right of appeal.
- 1.6.8 12 May 2021 telephoning the Claimant after the meeting to angrily accuse the Claimant of insubordination, being unprofessional, threatening disciplinary action and stating the Claimant is a 'baby throwing [her] toys out of [her] pram'.
- 1.6.9 12 May 2021 - EH attending a meeting uninvited between the Claimant and the Tenancy Management Officer (TMO). Taking over the meeting and using belittling language towards the Claimant such as 'I'm the Assistant Director, I get to ask for things' in the presence of the TMO and PA.
- 1.6.10 On 4 May 2021 - EH creating a work environment where the Claimant had no confidence to agree to a task requested by Katri Wilson, Assistant Director Supported Housing to deliver services at Brunswick Supported Housing, that the Claimant asserts was fully within her remit, without seeking EH's permission.
- 1.6.11 EH insisting the Claimant repeat a task for the 3rd time that had been completed on 2 separate occasions in the

preceding months (the contact list for housing staff) and refusing to listen to evidence that the contact list may not be needed a 3rd time.

- 1.6.12 Refusing to discuss the situation when C informed her that the weekly report had become onerous and not good use of C's time.
- 1.6.13 EH instructing the Claimant to leave the secure unit of MASH and sit with the housing staff on a different floor for 2 days a week. Telephoning or emailing the Claimant querying her whereabouts when EH could not see the Claimant on the floor.
- 1.6.14 Micromanagement - EH instructing the Claimant to provide a personally written report every week of her work activities to granular detail and requesting that the Claimant organise for EH a further weekly report from the IT system.

In addition, the Claimant contends that the following two acts were also repudiatory breaches:

- 1.6.15 On 17 May 2021 Ms Hudson providing a document concerning Mrs DeSouza's health to her new line manager.
 - 1.6.16 Deciding to and informing Mrs DeSouza on 13 May 2021 of the decision that her line management would be changed (together with any changes to working practices and/or status).
- 1.7 The Respondent contends that there was no fundamental breach of contract and that earlier allegations, before the 20 May 2021, had been affirmed. The Respondent also argues that the Claimant did not resign in response to the alleged breaches but instead resigned due to the prospect of closer management in the future.

Evidence

2. The Claimant gave evidence on her own behalf and called a former colleague, Ms Lurleen Trumpet, to give evidence. The Respondent called as witnesses Ms Evonne Hudson (Assistant Director of Housing Estates and Operations), Ms Morris (Business Support Officer), Ms Sharp (Resident Services Manager) and Mr Smith (Resident Services Manager). All witnesses gave evidence by written witness statements which the witnesses adopted as their evidence-in-chief under oath or affirmation. The witnesses were subject to cross examination and separate questions from the Tribunal.

3. During the course of her evidence, Ms Hudson was finding it difficult to wait until the end of a question before starting her answer. Ms Hudson disclosed that she had a visual impairment which was making it difficult for her to know when a question was

ended. She suggested an adjustment of a raised hand to indicate that a question was finished and ready for answer and that was agreed to.

4. The witness statements referred to documents in an agreed hearing bundle of 653 pages. A further document was introduced on the third day, after evidence had been heard and before closing submissions. The Respondent sought to add to the bundle a blank Occupational Health consent form. Mrs DeSouza understandably objected to the lateness of this document however the document was accepted by the Tribunal as it was relevant to Mrs DeSouza's allegations concerning breach of confidentiality and had been referred to by both parties in evidence.

5. Although the late document was produced in breach of the Case Management Orders of 11 April 2022 in that it was not included in the agreed bundle of documents which was to be finalised by 14 April 2022, nevertheless it was within the overriding objective of dealing with matters proportionately to the complexity and importance of the issues and avoiding unnecessary formality and demonstrating flexibility by permitting the addition of this relevant document. It was a document that the Claimant had previous sight of and had referred to in her evidence so the Claimant was not unduly prejudiced by the late addition.

6. It was agreed that I would read the witness statements individually, in advance of each witness. I would also read the documents referred to in each witness statement and read other documents I was referred to during the course of the hearing. Along with the Claimant's witness statement and documents referred to, I indicated to the parties that I would also read the Claimant's grievance which listed the allegations she was relying upon.

7. The representative for the Respondent provided written submissions and also made oral submissions after the evidence was completed. The Claimant made oral submissions after the conclusion of the witness evidence.

Facts

8. I make the following findings of fact.

9. The Respondent is a local authority within London.

10. The Claimant was employed as a MASH/Link Officer from 30 June 2014 until her resignation with immediate effect on 24 May 2021. Mrs DeSouza's role involved working in the Multi Agency Safeguarding Hub (MASH), which sat within Children's Services, providing housing knowledge and expertise to the Multi Agency Safeguarding Hub team and acting as a link between the housing team and the MASH team. Her role fell within the housing team's budget. Her terms and conditions stated that she could be required to work from any Council site.

11. Because of various restructures undertaken by the Respondent, the person, job title and role of Mrs DeSouza's line manager changed a number of times over the course of her employment. Initially she was line managed by the Resident Services Manager, then the Tenancy Sustainment Services Manager. Another draft job profile

had Mrs DeSouza's role being line managed by the Tenant and Leaseholder Services Manager.

12. In October 2019 Ms Hudson was appointed to the Respondent as Assistant Director of Housing - a newly created role - and she became Mrs DeSouza's line manager. Ms Hudson and Mrs DeSouza had their first formal meeting in February 2020. Following this meeting Mrs DeSouza had the impression that Ms Hudson did not understand Mrs DeSouza's job role or see how it fitted with the rest of the housing unit.

13. Around 10/02/2020, Ms Hudson asked Mrs DeSouza to provide her with a weekly report giving an overview of cases and actions. Mrs DeSouza provided some reports (the first in an email on 28/02/2020). There was disagreement as to how many reports were provided and when, but Mrs DeSouza's production of these reports was not weekly. The initial report consisted of half a type-written page with 8 paragraphs of 1 or 2 lines each. The report did not go into detail but gave an overview of the meetings held and numbers of cases being dealt with. Later reports identified the number of activities undertaken by type (e.g. case consultations - homeownership; case consultations/advice to hostels), without significant detail.

14. On 22/05/20 Ms Hudson sent an email to Mrs DeSouza stating that repeated requests for a weekly report had not been complied with and that the issue could become a performance matter. In the exchange which followed Ms DeSouza referred to the task as 'tedious' and 'onerous'. Ms Hudson stated that she had asked for these reports, that Mrs DeSouza had agreed to provide them and that Mrs DeSouza had been given regular reminders. Mrs DeSouza agreed to provide a report in the coming days and asked for how long she would be expected to provide a weekly list. There did not appear to be an answer to Mrs DeSouza's query. On 29 May 2020 Mrs DeSouza provided a report and asked if Ms Hudson was happy with the format.

15. The requested reports were a significant change to the reporting requirements made of Mrs DeSouza before Ms Hudson's arrival. No formal action was taken against Mrs DeSouza for failing to provide these reports on a weekly basis.

16. Mrs DeSouza alleges that Ms Hudson then required her to provide a second type of report from the IT system. Ms Hudson says that this report was not a separate report but a way of automatically generating some of the information Mrs DeSouza was to produce in her weekly report. I was not given detail of how this report would be created but as the IT department was approached for their input, I find that it is more likely that Ms Hudson was searching for a way of automating a report with the detail she wished to see rather than requiring Mrs DeSouza to produce an additional report.

17. Mrs DeSouza did ask Ms Hudson on one occasion how long she would be required to produce these reports for and that question does not appear to have been answered, however the question was posed at the end of a fractious exchange about Mrs DeSouza's failure to provide the reports and I do not find that Mrs DeSouza tried to initiate an open discussion about these reports or that Ms Hudson refused to engage in such a discussion.

18. I was not shown any reliable evidence concerning the level of detail requested by Ms Hudson but the level of detail provided by Mrs DeSouza and apparently accepted by Ms Hudson was not of so onerous a nature that the instruction to provide such a report would amount to a breach of the implied duty of trust and confidence. I find that although this level of monitoring was new to Mrs DeSouza, it was not an unreasonable request of a manager in Ms Hudson's position to an officer of Mrs DeSouza's position. I do not find that these reports were incidents of micromanagement or bullying.

19. In February 2020, before the Covid-19 lockdowns and government instructions to work from home where possible, Ms Hudson asked Mrs DeSouza to mainly base herself in the building which contained the housing unit. Verbally, Ms Hudson asked Mrs DeSouza to spend a minimum of 2 days a week on the housing unit floor. The housing unit was based in the same building as the MASH team.

20. Mrs DeSouza's letter of appointment of 21st July 2014 stated that Mrs DeSouza may be required to work at any place within the Borough but initially, would be based at Mercury House. The Job Profile also stated that the post holder may be required to work at any Council site.

21. By 2020 the housing team and the MASH team were based in the same building (Mercury House) but on different floors. However, Ms DeSouza was in the habit of regularly working out of another Council building (Farnham Road) at which neither the housing team nor the MASH team were based. Ms Hudson requested that Mrs DeSouza base herself mainly at Mercury House with just one day a week being worked from Farnham Road.

22. Ms Hudson and Mrs DeSouza disagree as to whether Ms Hudson instructed Mrs DeSouza to spend at least 2 days of the week sitting on the Housing team floor at Mercury House. I find that Mrs DeSouza was asked to spend two days of the week on the housing team floor. As this instruction affected Mrs DeSouza personally, it is, on the balance of probabilities, more likely that Mrs DeSouza would accurately recall the conversation.

23. As Mrs DeSouza was the link worker between the MASH and the housing unit it was reasonable that Mrs DeSouza should be fully aware of the situation within the housing unit and be knowledgeable about the issues facing the housing unit and how that might impact upon the MASH service users.

24. There was disagreement between the parties as to whether Ms Hudson rang Mrs DeSouza to check on her whereabouts. Mrs Hudson denies it and Mrs DeSouza said it happened a number of times but gave no dates or specific examples. I find that it is likely that Ms Hudson did, on occasion, call Mrs DeSouza to ask where she was, if she was not on the Housing Team floor. This was not an unreasonable action to take and was within Ms Hudson's remit as Mrs DeSouza's line manager.

25. This working arrangement existed only for a few weeks before Covid-19 restrictions were put into place and the Respondent's workforce moved to working from home where possible. It was not an unreasonable requirement that Mrs DeSouza spend part of her week within the housing team and I find that being required to spend

time on the housing team floor and receiving occasional phone calls to establish Mrs DeSouza's whereabouts when she did work across different floors and buildings were not incidents of micromanagement or bullying.

26. In March or April 2020 Ms Hudson asked Mrs DeSouza to create a list of contacts to be circulated amongst the housing team. It was an issue of contention between the parties whether or not this was done by Mrs DeSouza. Mrs DeSouza says she completed the task within a few weeks of the initial request, was asked months later to do it again, which she did and when asked to do the same thing a third time in or around April 2021, she objected. Ms Hudson's position was that despite many requests, Mrs DeSouza never carried out this task.

27. Mrs DeSouza said that her response to the first request was to produce an 'almost encyclopaedic' document with contact details and links to internal and external support and information sources. There were no documents in the bundle demonstrating that this document had been sent or when. Mrs DeSouza did not receive any feedback concerning this document.

28. A few months later Mrs DeSouza sent the same document a second time following a request from Ms Hudson with an explanation that a colleague did not know how to make a referral to social services.

29. On 19 April 2021 Mrs DeSouza was again asked to send a contact list to colleagues. Mrs DeSouza objected to doing what she considered to be a repeat of an activity she had performed twice before and she asked for an explanation as to why this was needed again. Mrs DeSouza was then instructed by Ms Hudson to send the service area contact list to her and Ms Hudson inserted a deadline into Mrs DeSouza's calendar. This deadline 'appointment' was declined by Mrs DeSouza who refused to complete that task without knowing the context and for whom it was needed.

30. It was quite late in this dispute between Mrs DeSouza and Ms Hudson before Ms Hudson clarified in writing just what the controversial list was meant to contain. Taking together the emails of 12 May 2021 at 14.56 and 15.30 from Ms Hudson to Mrs DeSouza it appears that Ms Hudson required a list of the key team contacts (email and telephone) in each of the Council's service areas, for distribution to the Housing Service staff. This was a much briefer document than the 'encyclopaedic' list of people and resources both external and internal that Mrs DeSouza had circulated the previous year. This was an administrative activity that many members of staff could have undertaken but it was not outside of Mrs DeSouza's remit to be required to provide this list and it was within Ms Hudson's remit to request it. I do not find this to be an incident of micromanagement or bullying.

31. Mrs DeSouza alleges that Ms Hudson created a particular work environment whereby, on 04/05/2021, Mrs DeSouza had no confidence, without first obtaining Ms Hudson's permission, to agree to undertake a piece of work suggested by Ms K Wilson, Assistant Director of Supported Housing that was within Mrs DeSouza's remit.

32. There was a lack of detailed evidence as to the incidents or acts or omissions of Ms Hudson that had created a work environment whereby Mrs DeSouza had no

confidence to take on appropriate work without Ms Hudson's permission. Given the frank and forthright tone of some of Mrs DeSouza's emails and her refusal, just a few weeks before, to undertake the creation of the contact list without explanation from Ms Hudson as to why it was necessary (which Mrs DeSouza described as 'establishing a boundary' with Ms Hudson), I am not persuaded that Mrs DeSouza's confidence had been affected to the extent described or that lack of confidence was the reason for Mrs DeSouza's decision not to immediately agree to take on the work suggested by Ms Wilson.

33. On 12 May 2021 Ms Hudson attended a meeting with Mrs DeSouza and the Tenancy Management Officer, Linda Powell. Ms Hudson had arranged the meeting and was noted on the digital invite as one of the attendees, but Mrs DeSouza did not expect her to be in attendance as Mrs DeSouza understood that Ms Hudson had asked Mrs DeSouza to meet Ms Howell on an individual basis. In addition to Ms Hudson attending the meeting, Ms Hudson's PA/Business Support Officer, Joanne Morris, also attended. Mrs DeSouza says that Ms Hudson raised the issue of the contact list during this meeting. Mrs DeSouza asked why the list was necessary and indicated that she did not believe it was needed.

34. It is clear that this meeting became tense. Mrs DeSouza felt belittled and referred to particular language used by Ms Hudson. Ms Hudson denied using that language and both Ms Hudson and Ms Morris felt Mrs DeSouza had been rude in her responses. I find that it was this meeting and the subsequent email exchange between Mrs DeSouza and Ms Hudson that precipitated the change in Mrs DeSouza's line management.

35. Ms Hudson agrees that she raised the issue of the contact list during this meeting. This was unfortunate and perhaps an error of judgment. However, Mrs DeSouza chose to tackle the issue head-on in this meeting, in a forthright manner that was challenging of Ms Hudson's authority as her manager, and Mrs DeSouza did not take any steps to avoid the issue. On balance, the weight of evidence before me indicates that Mrs DeSouza's responses inflamed the situation and her email to Ms Powell after the meeting, which was cc'd to Ms Hudson, continued to air her differences with Ms Hudson.

36. Ms Hudson does not recall making a telephone call to Mrs DeSouza after the meeting. No telephone call is referred to in the email exchange between Mrs DeSouza or Ms Hudson even though the meeting ended before 3pm and the email exchange continued until 6.50pm. Nevertheless, I find both Mrs DeSouza and Ms Hudson to be truthful in giving evidence as to how they recall events and how they perceived them. On the balance of probabilities, Mrs DeSouza is more likely to recall the telephone call than Ms Hudson given that Mrs DeSouza appears to have been very sensitive to Ms Hudson's management and so I find that the call took place, however, even if the call contained the disputed comments alleged to have been made by Ms Hudson, there was good reason for Ms Hudson to challenge Mrs DeSouza's recent conduct including pointing out to her the possibility of disciplinary action. The evidence indicates that Mrs DeSouza had a heightened sensitivity to Ms Hudson exerting her authority and that her response to such incidents was to challenge Ms Hudson about decisions or instructions that she did not agree with.

37. I do not find that either Ms Hudson's attendance at this meeting or the discussion that took place during that meeting, were incidents of bullying or micromanagement by Ms Hudson. Mrs DeSouza may not have expected Ms Hudson's attendance at the meeting but Ms Hudson did not attend uninvited as Ms Hudson had arranged the meeting and was listed as an attendee. Considering the oral evidence of the attendees at this meeting (two of which criticised Mrs DeSouza's behaviour) and the history of the dispute, I do not find that Ms Hudson's conduct during this meeting were incidents of bullying or micromanagement. The meeting became a tense exchange between the two parties, each strongly maintaining their own position.

38. On 13 May 2021 at 9.34am Ms Hudson emailed Mrs DeSouza, cc'd to Ms Sharp, informing Mrs DeSouza that her line management was being moved with immediate effect from Ms Hudson to Ms Sharp. The email also stated that Mrs DeSouza's monthly team meetings would now be with the Resident Services Team and not with the Housing Managers Team.

39. The context to this move was Ms Hudson's wish to have the MASH/housing link role sit in what she considered to be a more appropriate place within the Housing team and management structure. The MASH/Housing link role had always been line managed by the most senior person within the service or unit. After a number of reconfigurations and renaming of roles, Mrs DeSouza's role continued to be line-managed at a senior management level despite this being out of synch with the line management hierarchy of other Grade 6 roles.

40. In 2020 Mrs DeSouza was asked to prepare a proposal for an intensive tenancy support scheme and included in this new 6 person team was a MASH/housing link role, with the team being headed by a team manager. This proposal was rejected due to the costs involved and a change in priorities due to the pandemic. The Respondent relies on this as evidence that Mrs DeSouza was in agreement with changes being made to her role. Mrs DeSouza gave evidence that she would never have been interested in this particular MASH/housing link role and in producing this report she was simply complying with Ms Hudson's instruction and the report reflects the 'wish list' of other members of the housing management team. It was not clear from the documentary evidence whether this particular MASH/housing link role was Mrs DeSouza's role being moved elsewhere, or whether it was a second MASH/housing link post. In any case, I accept Mrs DeSouza's evidence that she was following a work instruction in compiling this report and was not expressing preference for changes to her own role or agreeing to future changes to her role.

41. From the oral evidence of Ms Hudson and the statement from Mr Patrick Odling-Smee prepared for the grievance investigation, it is clear that a change of line manager was under discussion. It is agreed that Mrs DeSouza was asked her preference as to which of the Residents Services Manager she would report into. What would not have been clear to Mrs DeSouza at this time was that, along with a change of line manager, Mrs DeSouza would be removed from having direct engagement with the housing management team in the form of attending Housing Management team meetings, having the opportunity to deputise for Ms Hudson and being involved in various management-level panels.

42. Although the oral evidence of Ms Hudson was that the position of the MASH/housing link role within the organisation hierarchy was an historical anomaly and an oversight pre-dating Ms Hudson's employment with the Respondent, the Respondent's Housing Services Review of 2014 recommended a cultural shift within Housing to "embed safeguarding policies and practices within all aspects of service delivery". This was reflected in Mr Smith's witness statement which described a deliberate decision to have the MASH/housing link role feed into the management team. This was also reflected in a disputed statement which Ms Hudson alleged in her grievance investigation statement had been made by Mr Odling-Smee, which indicated that Mrs DeSouza's role had been initially envisaged as one with influence and input at a management level.

43. I find that Mrs DeSouza knew there would be a change in her line management at some point in the near future. She did not object to this change in principle, however the change took place much faster than Mrs DeSouza had been led to believe and the change was made on 13th May 2021, without advance notice to Mrs DeSouza, albeit it was a welcome change coming hot on the heels of the dispute with Ms Hudson of 12 May. I find that Mrs DeSouza did not know in advance of the email of 13 May 2021 that she would also be removed from having input into the management team, being now removed from Housing Managers' meetings and the other opportunities described above. This was a clear change in Mrs DeSouza's status, sphere of influence and the remit of her role. As per Mrs DeSouza's complaint, there was no means for appealing this decision.

44. On 13 May 2021 Mrs DeSouza began to cancel meetings that she would no longer be invited to attend. Ms Hudson requested that she stop cancelling the individual meetings as she had instructed Ms Morris to cancel them all. In the same email Ms Hudson advised that Mrs DeSouza would no longer be required to represent Ms Hudson at Chartered Institute for Housing (CIH) Equality, Diversity & Inclusion meetings. Ms Hudson gave evidence that these meetings were not work-related, that Mrs DeSouza had been invited to deputise for Ms Hudson only as a favour to Mrs DeSouza and that changes to Ms Hudson's commitments meant that a deputy was no longer needed. These meetings were clearly related to Mrs DeSouza's work and her involvement with diversity and inclusion. It was another opportunity to have input at a senior level that was removed from Mrs DeSouza along with the change to her line management. The change to Ms Hudson's commitments may have meant that a deputy would have been needed less often but I find that the total removal of Mrs DeSouza's involvement with the CIH meetings was related to the imposed change in Mrs DeSouza's status.

45. I find that the removal of Mrs DeSouza from attendance at Housing Managers meetings, the removal of her input and attendance at other senior management meetings and panels and the removal of other management opportunities was a breach of the implied duty that neither employer nor employee will act so as to breach the duty of mutual trust and confidence that exists between them without good reason.

46. On 13 May 2021 Ms Hudson forwarded to Ms Sharp a copy of Mrs DeSouza's Occupational Health report. As part of the process of a referral to Occupational Health, Mrs DeSouza had given the OH service permission to share the report with Mrs DeSouza's employer. In the first instance it was sent to Ms Hudson as

Mrs DeSouza's line manager. Mrs DeSouza knew that Ms Hudson had received a copy of the report. Mrs DeSouza did not know in advance that the report was to be shared with Ms Sharp upon change of line management. I find that this was a reasonable step for the Respondent to take to ensure the new line manager had full understanding of Mrs DeSouza's additional needs and the ongoing adjustments that may be required. This was not a breach of confidence.

47. Between 13 and 21 May conversations took place between Ms Hudson and Ms Sharp with Ms Hudson advising or instructing Ms Sharp on how to manage Mrs DeSouza. These conversations came to light during the investigation into Mrs DeSouza's grievance which was raised after Mrs DeSouza's resignation and could not have been a factor in Mrs DeSouza's decision to resign.

48. Ms Hudson also realised that Mrs DeSouza had, upon being informed of the change in line manager, restricted Ms Hudson's view of her diary. Ms Hudson liaised with Ms Sharp to have Ms Hudson's full access restored. This was in line with the protocol in place throughout the service. As this was applied throughout the service, I do not find that this was an incident of micromanagement or bullying.

49. Upon receiving notice of the change in line management, Mrs DeSouza had responded that she was looking forward to meeting with her new line manager and agreeing her objectives for the year ahead. Ms Hudson responded to this email and confirmed that she, Ms Hudson, would be agreeing and finalising Mrs DeSouza's objectives. This made sense as the process of agreeing Mrs DeSouza's objectives for the year ahead had commenced in April.

50. Ms Hudson and Mrs DeSouza did not meet as planned on 17 May to finalise Mrs DeSouza's PDR targets. However, on 18 May 2021, at their first one to one meeting, Ms Sharp produced a document detailing the PDR targets identified by Ms Hudson. It was also at this meeting that Mrs DeSouza became aware that her Occupational Report had been shared with Ms Sharp.

51. Mrs DeSouza argued that the PDR targets were more appropriate for Senior Management level employees and that the targets were presented to her as finalised, without her agreement or discussion. The targets were lengthy and detailed but they did not appear to be outside of the MASH/Link Officer role. I agree that the targets were presented as final and were not the basis for discussion as they differed significantly from the draft PDR targets produced by Mrs DeSouza in April. I find that this was as a result of Ms Hudson and Ms Sharp deciding that Mrs DeSouza required more 'robust' management and imposing targets and objectives upon Mrs DeSouza was a means of exerting authority. I accept Mrs DeSouza's evidence that objectives and targets were to be discussed between manager and officer and this is in line with the email exchanges that took place between Ms Hudson and Mrs DeSouza earlier in the year. I find that this exertion of authority was not in itself a breach of contract but, nonetheless, it was not the appropriate means of reaching performance targets and objectives and I find that this exertion of authority was in response to the ongoing disputes between Mrs DeSouza and Ms Hudson and were inappropriately used as an alternative to making use of the Respondent's disciplinary procedure. This contributed to Mrs DeSouza's decision to resign.

52. Ms Hudson placed reminders in Mrs DeSouza's calendar for Mrs DeSouza to send weekly reports of her work to Ms Sharp and Ms Hudson, however Ms Sharp's team reported differently by entering case details into their housing management system from which Ms Sharp can run weekly reports. I find that this was another means of exerting management authority over Mrs DeSouza, in response to the ongoing dispute between Ms Hudson and Mrs DeSouza and was inappropriately used as an alternative to making use of the Respondent's disciplinary procedure. This, while not a breach of contract on its own, contributed to Mrs DeSouza's decision to resign.

53. On 20 May 2021 Mrs DeSouza emailed to Ms Sharp and Ms Hudson and said that she would not be attending their remote meeting today because she felt unsafe and she indicated that she was upset by and still coming to terms with the changes made to her 'working circumstances' in the previous week.

54. Ms Sharp did not respond to this email and although Ms Hudson did respond, her only acknowledgement of Mrs DeSouza's description of the upset she felt was a one line of advice, in an otherwise lengthy email, that Mrs DeSouza should speak to Ms Sharp about what support she needed and what expectations Ms Sharp would have of her.

55. Given the speed with which the changes had been made on 13 May 2021 and the fact that Mrs DeSouza was then informed for the first time about the ending of her attendance at various management meetings, Ms Hudson's response to the email of 20 May 2021 and the lack of any response from Mrs DeSouza's new line manager was inadequate and demonstrated a lack of care for Mrs DeSouza's feelings and emotional wellbeing. Although this single line from Ms Hudson acknowledged that Mrs DeSouza had complained about feeling distressed by recent events, it was an inadequate response and the inadequacy was compounded by the email's conflating of support for Mrs DeSouza with performance expectations. I accept that this failure to respond appropriately to Mrs DeSouza's email of 20 May 2021 was the final act which precipitated Mrs DeSouza's decision to draft her letter of resignation over the weekend and to submit her resignation on 24th May 2021.

56. On 24 May 2021 Mrs DeSouza sent to Mr Odling-Smee a letter dated 23 May 2021. In this letter Mrs DeSouza resigned from her post with the Respondent citing the reasons for resignation as her 'demotion' to the resident services team, affecting her status, career development and overall position. She also referred to bullying, micromanagement and authoritative behaviour by Ms Hudson which, both together with her change in position and separately, breached the mutual trust and confidence between the Respondent and Mrs DeSouza. This letter also stated that details of the bullying behaviour and micromanagement would follow in a separate grievance letter.

57. In the days after Mrs DeSouza's resignation, Mr Odling-Smee attempted to speak to Mrs DeSouza about her decision to resign but Mrs DeSouza declined to discuss the matter and indicated that her decision was final.

58. On 26 May 2021 Mrs DeSouza sent a letter of grievance to Mr Odling-Smee. This letter complained about Mrs DeSouza's removal from the management team without a fair process, Ms Hudson's continued involvement in Mrs DeSouza's Professional Development and objectives-setting process, a number of acts of alleged

bullying and breach of confidentiality in the sharing of Mrs DeSouza's Occupational Health report with Ms Sharp. These allegations were particularised in the list of alleged acts of bullying and harassment that was agreed between the parties following the preliminary hearing of 11 April 2022 and which are listed at paragraph 1.6 of this judgment.

59. An investigator was appointed to look into Mrs DeSouza's grievance. Mrs DeSouza, Ms Hudson, Ms Sharp, Ms Morris, Mr Odling-Smee and Mr Smith were interviewed as part of the investigation. An investigation report was produced dated 27 July 2021. An outcome to the grievance was produced dated 13 December 2021. Because Mrs DeSouza was no longer an employee, her grievance was dealt with as a complaint and no grievance hearing was held. None of Mrs DeSouza's grievances were upheld.

Law

Constructive dismissal

60. Section 95 of the Employment Rights Act 1996 states:

95 Circumstances in which an employee is dismissed.

- (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) F1. . . , only if) –
 - (a) the contract under which he is employed is terminated by the employer (whether with or without notice),
 - ...
 - (c) 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.

61. The Court of Appeal in Western Excavating (ECC) Ltd v Sharp 1978 ICR 221 set out the three steps necessary to establish constructive dismissal, namely:

- 61.1 That there was a fundamental breach of contract on the part of the employer;
- 61.2 That the employer's breach caused the employee to resign;
- 61.3 That the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

62. A breach of contract may be in the form of a breach of an express or an implied term. The relevant fundamental implied term in this matter is the implied term of mutual trust and confidence.

63. Every contract of employment contains an implied duty that neither employer nor employee will act so as to breach the duty of mutual trust and confidence that

exists between them without good reason. In Malik v BCCI [1997] UKHL 23, the House of Lords stated:-

“... the employer will not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.”

Conclusions

Constructive unfair dismissal

64. When assessing the facts and law I conclude as follows.

64.1 The failure of Ms Hudson or Ms Sharp to respond sympathetically or with concern to Mrs DeSouza’s email of 20 May 2021, while not a breach of contract itself, was not trivial and was a contributing factor in Mrs DeSouza’s decision to resign. It should have been recognised that Mrs DeSouza, who clearly had managerial ambitions, would have been upset by the change in her status within the housing management team and her manager should have acknowledged Mrs DeSouza’s upset and responded more sympathetically and practically to an employee expressing distress. The absent response from Ms Sharp and the brief and somewhat dismissive response of Ms Hudson which conflated Mrs DeSouza’s immediate emotional needs with her work obligations was not a reasonable response.

64.2 The additional scrutiny of Mrs DeSouza by Ms Hudson, in the form of placing reminders in Mrs DeSouza’s diary to send performance information to Ms Hudson and Ms Sharp and Ms Hudson drafting Mrs DeSouza’s PDR targets to be delivered by Ms Sharp without consultation or discussion, were also contributing factors in Mrs DeSouza’s decision to resign. These acts were a means of exerting authority and managing Mrs DeSouza’s conduct as an alternative to following the Respondent’s own policies and procedures relating to conduct and discipline. Coming after Mrs DeSouza’s demotion following the argument of 12 May 2021, this continued control by Ms Hudson, albeit at arm’s length, would understandably have been perceived as ‘punishing’ Mrs DeSouza for the disagreement of 12 May, instead of the Respondent going through their own disciplinary process. These acts by the Respondent were not reasonable conduct.

64.3 The removal of Mrs DeSouza from her role on the management team was an effective demotion and a removal of opportunities for acting up, attendance on senior management level panels, and removal of her status within the housing service as an officer with specialist knowledge of safeguarding issues having direct input into the housing management team. This was a breach of the implied duty of trust and confidence and was unreasonable conduct by the Respondent.

- 64.4 I do not find that Mrs DeSouza was micromanaged by Ms Hudson by the requirement to produce weekly reports or asking her to commit to spending certain days on the housing floor. There were sound operational reasons for these requests. In the same way, there was a lack of clear communication around the request for a contact list, but this was within Ms Hudsons' remit to request and the evidence indicates that the document previously produced by Mrs DeSouza was somewhat different from the document Ms Hudson required.
- 64.5 Mrs DeSouza was forthright in challenging aspects of Ms Hudson's management of her that she disagreed with. I do not find that Ms Hudson created a working environment which robbed Mrs DeSouza of her confidence to agree to the task requested by Ms Wilson. I find the correspondence between Ms Wilson and Mrs DeSouza was another incident of Mrs DeSouza doing what she described as 'setting boundaries' with Ms Hudson.
- 64.6 I do not find that Ms Hudson bullied or harassed Mrs DeSouza in the meeting and telephone calls of 12 May 2021. I find that Mrs DeSouza had been accustomed to 'light-touch' management and Ms Hudson's style was to require more accountability and direct involvement and this led to a clash. The decision to change line manager may have resolved the situation but this was coupled with the removal of Mrs DeSouza from her position of input and influence into the management team and a corresponding loss of status and opportunity. In addition, Ms Hudson did not then step away from the line management of Mrs DeSouza, but continued to seek to exert direct influence and control over Mrs DeSouza through and in addition to, the line management by Ms Sharp.
- 64.7 I do not find that Ms Hudson bullied or harassed Mrs DeSouza by the removal of meetings from her calendar or by providing Ms Sharp with her occupational health report or by continuing with the objectives-setting which had already been started. These were natural follow-ons from a change of line management and position, had that change been carried out correctly.
- 64.8 Coming after the repudiatory breach of removing her from the housing management team, the setting of Mrs DeSouza's final PDR objectives without discussion or agreement, the placing of reminders in Mrs DeSouza's diary to continue reporting to Ms Hudson and the failure of Ms Sharp and Ms Hudson to appropriately acknowledge or respond to Mrs DeSouza's expression of hurt and distress in her email of 20 May 2021 were further acts which contributed to Mrs DeSouza's decision to resign.

65. The Respondent has accepted that there was no affirmation following the Respondent's failure to respond to the email of 20 May 2021. I also find that there was no affirmation following the removal of Mrs DeSouza from the management team. Having felt that she had been humiliated by the change in her status, Mrs DeSouza

made the comments and statements (e.g. 'It's good to be back in the fold') that were required by professional etiquette and personal pride. She continued to attend work and meetings for just over a week following this change which was an appropriate length of time for her to understand just what this change in line management would mean for her in practice. Overall, the conduct of the Respondent from the reduction in Mrs DeSouza's professional status on 13 May 2021 and including the manner in which the Respondent sought to exert its authority over Mrs DeSouza and the inadequate response to Mrs DeSouza's expression of distress at events, was not reasonable and was conduct that was likely to destroy or seriously damage the relationship of confidence and trust between Mrs DeSouza and her employer.

66. Having found that there was a constructive dismissal, I need to decide whether the dismissal was unfair. As identified in the list of issues agreed at the preliminary hearing of 11 April 2022, the Respondent has not relied upon any potentially fair reason for dismissal.

67. I find that the reason for the dismissal was the difficult relationship that developed between Mrs DeSouza and Ms Hudson from 2020 onwards. Instead of addressing the issues through the disciplinary procedure, the Respondent decided to change the line management and, when doing so, effectively demoted Mrs DeSouza in influence and status, if not in job title. I find that if a disciplinary process had been followed, with a third party exploring the issues and explaining the Respondent's expectations as regards conduct and dispute resolution, and with Mrs DeSouza having the opportunity to express her frustrations with her work situation, it is very likely that Mrs DeSouza would have been supported to change her response to Ms Hudson or alternative line management arrangements could have been reached through proper discussion and without impact upon Mrs DeSouza's status.

68. I considered whether Mrs DeSouza contributed to her dismissal by her conduct and I find that Mrs DeSouza challenged Ms Hudson's authority directly (for example in refusing to prepare a contact list) and in front of others (the meeting and emails with Ms Powell of 12 May 2021) rather than seeking clearer communication about disputed tasks or seeking less confrontational means of airing and discussing issues under dispute. I find that Mrs DeSouza's conduct contributed to her dismissal.

69. A remedy hearing will be scheduled.

**Tribunal Judge Overton
acting as an Employment Tribunal**

20 February 2023