



EMPLOYMENT TRIBUNALS

Claimant: Miss C Ellis

Respondent: York & Scarborough Teaching Hospitals

Heard at: Leeds Employment Tribunal (via CVP)

On: 25, 26 and 27 April 2023

Before: Employment Judge McAvoy News

Appearances

For the Claimant: In person

For the Respondent: Mr N Grundy, Counsel

RESERVED JUDGMENT

The Claimant's claim for constructive unfair dismissal is well-founded and succeeds.

WRITTEN REASONS

Form of hearing

1. This was a remote hearing which was not objected to by the parties. The hearing took place via CVP, the Tribunal's video conferencing platform.
2. This Reserved Judgment and Written Reasons have been sent as soon as practicable following that hearing, bearing in mind the complexity of the case (as can be seen from the length of these Reasons) and my other commitments (both judicial and non-judicial).

Issues

3. It was agreed at the outset of the hearing that the issues to be determined were as follows:

4. In accordance with section 95(1)(c) of the Employment Rights Act 1996 (the “ERA”) did the Claimant terminate the contract under which she was employed in circumstances in which she was entitled to do so by reason of the Respondent’s conduct.
5. In this regard the Claimant relied upon a breach of the implied term of trust and confidence. Some correspondence passed between the Claimant and the Tribunal prior to the hearing, the purpose of which was to clarify the specific breaches relied upon. This was discussed at the outset of the hearing, in particular with regard to the Claimant’s email dated 27 March 2023 [45]. I stressed to the Claimant the importance of everyone being clear about the basis of the Claimant’s claim before we started hearing evidence and, ideally, well in advance of today.
6. After doing so, the Claimant confirmed that she understood and it was finally clarified that the breaches relied upon were that the Respondent allegedly:
 1. Acted inappropriately by treating the disciplinary allegations concerning the Claimant formally rather than informally. In this regard, it was alleged that the Claimant had slept whilst on shift and had shared confidential information concerning a colleague’s (whose name has been abbreviated to LS in these Reasons) disciplinary process with another colleague. In this regard the Claimant specifically relies upon a comparison of how this matter was dealt with and how her complaint regarding LS’ conduct was dealt with;
 2. Failed to follow its grievance procedure when investigating the Claimant’s formal complaint dated 28 September 2021. In this regard, the Claimant specifically relied upon:
 - i. The Respondent’s alleged delay;
 - ii. The decision taken by the Respondent regarding who should be interviewed;
 - iii. The Respondent’s alleged failure to investigate her grievance; and
 - iv. The Respondent’s alleged failure to promptly share with the Claimant the outcome of the investigation into her grievance;
 3. Acted inappropriately by failing to acknowledge her resignation and/or granting an exit interview; and
 4. Failed to implement the recommendations following the above mentioned disciplinary process and the Claimant’s stage 2 and stage 3 grievances. In this regard the Claimant confirmed that the recommendation relied upon was for her and LS to no longer work with each other.

7. The Respondent's representative confirmed that they were prepared to deal with these allegations and no objections were raised.
8. This requires determination of the following:
 1. Did the Respondent behave in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent? Did it have reasonable and proper cause for doing so?;
 2. Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end. It is acknowledged that a breach of the implied term of trust and confidence would be a fundamental breach;
 3. Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation; and
 4. Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that she chose to keep the contract alive even after the breach.
9. If the Claimant was constructively dismissed, did the Respondent have a fair reason for such dismissal, considering those prescribed by sections 98(1) or (2) of the ERA? The Respondent confirmed it relied upon 'some other substantial reason' as such fair reason.
10. Did the Respondent act reasonably in all the circumstances in treating 'some other substantial reason' as a sufficient reason to dismiss the Claimant, accordance with section 98(4) of the ERA?

Last straw

11. During submissions the Claimant raised that the 'final straw' was the initiation of a fact find investigation in late June 2022 following an incident which occurred on 25 June 2022. She felt that, given the experience she had had with the Respondent thus far, they would not follow a fair process in respect to that fact find / disciplinary. I raised with the Claimant that this was not an issue that was discussed at the start of the hearing. It was not raised in the email dated 27 March 2023. It was not in the ET1. The Respondent's position was that it was not part of the claim and ought not be considered. The Claimant replied: "If I can't include it, that's fine".

Evidence

12. The Claimant served a witness statement and was cross examined on that statement. The following witnesses also gave evidence on her behalf and were cross examined too: Deborah Sharp, Nichola Churchill and Karen Hart. A further witness, Patricia Ellis, was available to give evidence on her behalf however, as

the Respondent's Counsel confirmed he had no questions for her, and was content for me to accept her evidence as it stood, she was not called to give evidence. I have accepted her evidence in full.

13. I made the Claimant aware that, whilst her statement was long and detailed, and I would read all of it as part of reaching my decision, my focus would be on the evidence relevant to the issues identified above.
14. The Respondent served witness statements for Anna Marie Goode, Alison Chorlton, Juliette Pilgrim, Michala Little and Gillian Locking. They were all cross examined on their statements.
15. I also had sight of a large bundle of documents of almost 500 pages. I informed the parties that I would only be reading those documents that were specifically brought to my attention during the evidence, which the parties acknowledged.
16. Having considered the evidence, both oral and documentary, I made the following findings of fact on the balance of probabilities.

Findings of fact

Background

17. The Claimant commenced employment with the Respondent, an NHS Foundation Trust, on 21 October 2019. She was employed as a Midwife based at the Scarborough Hospital undertaking 37.5 hours work per week. She worked primarily on the Hawthorn ward (ante-natal) although the hospital also had a Labour ward (where children are born). She rarely worked on the Labour ward as a result of an occupational health recommendation. She worked 12 hour shifts either from 8am until 8pm or 8pm until 8am. Her employment terminated on 28 August 2022, following the Claimant's resignation with notice, which she gave on 30 June 2022.

Contract and policy documents

18. The Claimant's contract of employment states:
 1. "Harassment at Work will not be acceptable in any form. Please refer to the Trust's Bullying and Harassment Policy" [59];
 2. "You must not attempt to gain access to any information you are not authorised to see and you should use confidential information only as necessary in the course of your work. You must not disclose, either during or after the termination of your employment, any information of a confidential nature relating to the Trust, its staff, its patients or any third party which may have been obtained in the course of your employment, without first obtaining the written permission of the Trust or the party concerned" [60];

3. "If you have a grievance relating to your employment you should, in the first instance, raise the matter with the person to whom you are directly responsible. If the matter is not resolved at this level, you may pursue it in accordance with the Trust's Grievance Procedure which is available on the Trust's Intranet or from your Line Manager" [61];
4. "The Trust's Disciplinary Policy and Procedure covers issues of misconduct and includes the Trust's right to suspend employees from work on full pay or no pay as appropriate. Any loss of benefits or discretionary benefits arising from the application of the policy is permitted and is not a breach of contract. A copy is available from the Trust's Intranet or your manager" [61].

19. The Respondent's Disciplinary Policy and Procedure [412] states:

1. All cases of misconduct should be dealt with in line with the informal and formal disciplinary procedures as outlined in this procedural document and the associated guidance notes as outlined in section 6 of this document;
2. Individuals who are applying or responding to this procedure, notwithstanding their role, are expected to maintain confidentiality at all times; an individual found to have breached confidentiality may be subject to disciplinary action;
3. Cases of alleged minor misconduct are often best dealt with informally. In a case of minor misconduct, the manager will meet with the employee, discuss the allegation (s) and expected future conduct. Discussions should take place with the emphasis on providing advice, support and guidance and in some cases additional training and coaching may be determined appropriate;
4. Where it is felt that the allegations of misconduct require a full investigation, an appropriate Investigating Officer will be appointed and supported by HR. An appropriate manager will notify the employee in person outlining the allegation(s); this meeting will be followed up in writing; and
5. Sleeping on duty, except when authorised, may be considered to be an act of gross misconduct.

20. The Respondent's Challenging Bullying & Harassment Policy states:

1. This policy is to be used when an employee is concerned about the inappropriate behaviour of others towards themselves (including bullying, discrimination and harassment). The Grievance Policy should be used for issues such as:
 - i. breaches of an employee's contract of employment or terms and conditions of employment;

- ii. unfair application of an employee's contract of employment or terms and conditions of employment;
 - iii. failure by supervisors and managers to comply with Trust policies and procedures;
 - iv. a health and safety breach;
 - v. changes to an employee's job role or working practice without due consultation; and
 - vi. lack of access to appropriate training opportunities;
2. In respect to mediation, "Every attempt should be made to help the two parties to resolve matters at this stage. Only if there is very clear evidence of bullying and harassment (e.g. specific examples) with no recognition, insight or willingness to resolve matters from the alleged bully / harasser, should the matter proceed directly to the Formal Stage (Stage 2)";
 3. Where an employee feels that their complaint has not been satisfactorily resolved at Stage 1 they can raise the complaint at Stage 2. The employee must write to the next level of management within 10 working days of receiving notification of the decision at Stage 1. The Hearing manager should acknowledge the complaint in writing within 5 working days of receipt of the complaint; and
 4. It is expected that a formal complaint will be resolved within 30 working days. If this is not achievable the reasons for this should be clearly communicated in writing to all parties, this may be done via email.

21. The Respondent's Grievance Policy and Procedure states:

1. Employees and Managers should aim to settle most grievances informally. Many issues can and should be raised and settled during the course of everyday working relationships. This also allows for issues to be resolved quickly;
2. Where an Employee feels that their grievance has not been satisfactorily resolved at Stage 1 they can raise the Grievance at Stage 2. The Employee must write to the next level of management within 14 calendar days of receiving notification of the decision at the Stage 1. The Hearing Manager should acknowledge the grievance in writing within 7 calendar days of receipt of the grievance; and
3. It is expected that Stage 2 grievance will be resolved within 30 calendar days. If this is not achievable the reasons for this should have been clearly communicated earlier in writing.

January 2021 incident

22. In January 2021, the Claimant witnessed an incident at work involving LS who was a Labour Ward Coordinator, therefore, senior to the Claimant. The incident also involved LS' daughter, BP.
23. The Claimant raised concerns about this incident to the Respondent's management team. She alleged that LS had falsified notes in retrospect of care given to a patient. The Respondent therefore commenced a serious incident investigation in relation to LS.
24. The Claimant believed that, after doing so, she was subjected to bullying by LS in particular, but including LS' family members who worked on the wards.

Complaints regarding the Claimant

25. Ms Locking's evidence was that, on 4 April 2021, she received an email from LS who alleged that the Claimant was bullying several members of staff, including making new midwives feel inferior and singling out staff members. LS said that she had asked the staff members to report their concerns to management directly however they would not do so as they feared repercussions from the Claimant.

Informal meeting – 16 July 2021

26. On 16 July 2021, the Claimant raised her concerns about the above and other issues during a meeting with senior management and HR. The notes do not however suggest that the Claimant raised these formally, as either a grievance or bullying and harassment complaint. The notes suggest that the meeting was prompted by a difficult shift that the Claimant had had the day before. As well as referring to conflict between her and LS, and other people on the ward, she referred to problems arising from staffing levels and her concerns about patient safety.
27. The Claimant's position was that nothing was done following this meeting. The Respondent's position however was that the Claimant was offered an option to work from the York site and/or engage in mediation with LS. The notes record that the Claimant refused to engage in mediation and, in respect to the move to York, they state: "Carrie suggested a move to York hospital but when clarification was sought, Carrie did not wish to move. She wanted [LS] to be moved to York" [77].

Fact find concerning the Claimant

28. It was alleged that, on 7 August 2021, the Claimant had been sleeping whilst on duty.
29. The Claimant believed that LS had purposely made this allegation against her in retaliation for the matter that the Claimant had raised concerning LS in

January 2021 (considered earlier). The Claimant focused heavily on this as part of this hearing. However, I have seen no objective evidence of her having done so. In addition to what Ms Hart states below, the only evidence that the Claimant could adduce regarding this point was that LS was on duty on the night in question but those conducting the fact find hadn't explained to the interviewees that she was on duty. The Claimant believed that, had it been explained that LS was on duty that night, the questions would have been answered differently.

30. Ms Little denied that LS was even spoken to about the matter. She also wasn't listed in the names of witnesses for the subsequent formal investigation [201] (considered later).
31. Ms Hart, one of the Claimant's witnesses, gave evidence about this shift. She explained that the atmosphere between LS and the Claimant was tense and uncomfortable. Later in the shift, Ms Hart said that LS said that she and other members of staff could not find the Claimant and said 'she must be asleep'. LS confirmed that she had not seen the Claimant asleep and Ms Hart informed her that she should not make such accusations without evidence.
32. During a meeting between Ms Spicer and one of the Claimant's colleagues, MT, the notes record that MT stated words to the effect of: "I went to handover a patient and I couldn't see Carrie anywhere. I asked where Carrie was? and I was told she was asleep. [M] told me Carrie was asleep. I think around 02:00" [72].
33. The Claimant's position was that MT had a vendetta against her and this was why she had given this information against her.
34. Ms Little's evidence was that another colleague, AM, had said that the Claimant was absent from the ward for a number of hours and that she had seen the Claimant sleeping on shift before.
35. The Claimant put to Ms Little that it was strange that only two colleagues raised concerns and they were both on the other ward. Ms Little said that she did not recall finding it odd and it was usual for the members of staff to cross between the wards.
36. It was also alleged that, on 21 August 2021, the Claimant shared confidential information with another member of staff concerning a disciplinary investigation involving LS.
37. Ms Hart, gave evidence that, on 22 August 2021, LS had been disparaging about the Claimant towards her and LS had made her feel intimidated. She explained in her statement that LS was "publicly screaming at me, verbally abusive swearing and pointing in my face". Ms Hart decided not to complain about this through fear of repercussions.
38. On 8 September 2021, the Claimant attended a fact finding meeting with Matron, Louise Spicer.

39. The outcome of the fact find was that a formal investigation would be initiated against the Claimant. Ms Little was the manager who decided this and her evidence was that she spoke to the Claimant about this who confirmed that she understood and no further explanation was needed. Ms Little took advice from HR and decided that, following such advice, a formal investigation was required.
40. On 13 September 2021, the Respondent wrote to the Claimant stating that an investigation pursuant to its disciplinary process would be undertaken to consider the following allegations:
1. "On the night of Saturday 21 August 2021, you inappropriately shared/disclosed confidential information with [LSi] in respect to an internal disciplinary investigation against [LS] that you were previously involved with"; and
 2. "You were asleep on duty during the night of Friday 7 August 2021 without authorisation to do so".
41. Ms Little's evidence was that it was appropriate for these allegations to be investigated formally because an allegation of sleeping on duty is a serious matter which may amount to gross misconduct. She said that both allegations were considered serious enough to warrant formal investigation.
42. The letter explained that the allegations may, if proven, amount to gross misconduct for which the appropriate sanction might be summary dismissal [86].
43. On 14 September 2021, AM sent an email stating: "After more thought about the night I now remember Carrie been absent from Hawthorn ward for a number of hours. I did take a wonder over on and off during the night for a "leg stretch" and to see if Margot need me to help her. ? to where Carrie was but I didn't see her or hear her during some of these wonders" [89].

Claimant's formal complaint – 28 September 2021

44. On 28 September 2021, the Claimant raised a formal complaint in relation to bullying, harassment and victimisation by three individuals in particular LS and members of LS' family who worked on the ward [91]. It contained allegations dating back to January 2021 and cited up to 30 potential witnesses.
45. As part of this grievance, the Claimant alleged that LS had maliciously made the allegation that she had been sleeping on duty which led to the earlier mentioned fact find [96].
46. Sara Collier-Hield, Head of Midwifery, acknowledged the Claimant's grievance the following day, letting her know that a decision would be taken by HR regarding who would be asked to investigate it [98].
47. On 4 October 2021, Gemma Flood of the Respondent's HR team formally acknowledged the Claimant's complaint. She said in her email: "I have asked a member of the care group, not directly linked with your disciplinary investigation,

to look into the grievances you have brought. Once confirmed, the member of staff will contact you to arrange further discussion” [100].

Threatening phone calls

48. Going back in time shortly, the Claimant’s evidence was that, on 29 September 2021, she received abusive and threatening phone calls from an unknown number. She believed that the caller was related to work. The Claimant told me that she did not require me to consider these recordings as part of this case.

Claimant’s disciplinary investigation meeting and subsequent investigations

49. On 5 October 2021, Robert Woodward, Deputy Head of Financial Management, wrote to the Claimant inviting her to an investigation meeting concerning the disciplinary allegations regarding the Claimant [101]. Mr Woodward had been appointed as the independent investigator in respect to those allegations. It was proposed that the meeting take place on 13 October 2021. He explained that Juliette Pilgrim, HR Advisor, would support him during this meeting.

50. On 13 October 2021, the disciplinary investigation meeting took place. The Claimant attended with her trade union representative, Ms Sharp. A statement was produced based on the representations given by the Claimant [112].

51. The Claimant also had a handwritten list of questions which she emailed to Mr Woodward after the meeting [110]. The Claimant had asked Ms Pilgrim some of these questions during the meeting. Ms Pilgrim said she did her best to answer those that she was able to answer, and had explained to the Claimant that a more senior HR colleague would revert regarding them separately.

52. Ms Sharp gave evidence at this hearing and her evidence was that HR “agreed that the fact find related to the disciplinary hearing had not been done correctly and that this had not necessarily needed to go to a disciplinary hearing at all”.

53. On 19 October 2021, Gavin Lawrence, a more senior member of the Respondent’s HR team, emailed the Claimant [119] and:

1. Explained that disciplinary investigations do not amount to disciplinary action;
2. Stated that, although each situation would be assessed on its own merits, allegations of gross misconduct, for which sleeping on duty would normally be considered applicable, would be dealt with formally; and
3. Stated that, if the disciplinary investigation proceeded to a disciplinary hearing, the Claimant would be given a further opportunity to present her representations.

54. On 21 October 2021, the Claimant emailed Mr Woodward with a significant number of amendments to her statement [121]. Towards the end of this

document, the Claimant expressed disappointment that answers allegedly given to her by Ms Pilgrim had not been recorded in the notes. These included:

1. In respect to the Claimant's question regarding the Respondent's decision making process concerning informal and formal processes, the Claimant recorded: "JP replied, hesitantly, It was a difficult question to answer, because it depends who it is". The Claimant recorded that she had asked: "is it normal for the trust to take a blanket approach across all misconduct and gross misconduct cases? so the answer is no - what you are basically saying is it depends who it is and what mood they are in on that day, there is no guideline/criteria as such. No answer for JP";
 2. In respect to the above, the Claimant suggested that she was an exception to this approach. She explained that she knew of two gross misconduct cases within the department, in particular a colleague sleeping. She said this was discussed informally before going formal. She asked Ms Pilgrim whether she believed an informal conversation with the Claimant ought to have taken place first. She recorded the following reply from Ms Pilgrim: "JP replied the informal process is to see if there are any mitigating circumstances that have contributed to the alleged misconduct and to see if there can be any support put in place for the colleague. It also allows them to take ownership of what they have done. They could then write a reflection based on the incident that would be held on record for 12 months. Obviously if they didn't take responsibility for what they did then the formal process would follow". She then recorded Ms Pilgrim allegedly going on to say: "JP replied as it is a first offence with no previous issues, then yes, the informal meeting would have been appropriate, and I will add this to my report"; and
 3. A question from the Claimant about the adequacy of the fact find to which the Claimant recorded Ms Pilgrim as stating: "JP replied based on the information she has heard she agreed the fact find was inadequate and that will also go in her report. She also stated that they could look at doing it again".
55. In evidence Ms Pilgrim explained that she was new to her role and this was the first investigation she had supported management on. Ms Pilgrim's evidence was that, notwithstanding this, the Claimant pressed her for answers in relation to the Respondent's disciplinary policy, informing her that all allegations must be dealt with informally before formal action was considered.
56. The Claimant continued to press Ms Pilgrim regarding this point during this hearing. In cross examination she put to Ms Pilgrim that she did not want the emailed answers, stating: "I got the answers I wanted from the meeting".
57. Ms Pilgrim's evidence was that she explained that whether the matter was dealt with formally or informally depended upon the circumstances and, when pressed to do so by the Claimant, gave hypothetical examples of when informal action would be considered appropriate. Ms Pilgrim's evidence was that she did

not say the Claimant's case should have been handled informally or that the policy had not been followed correctly for her.

58. On 21 October 2021, the Claimant emailed Mr Lawrence in reply to the answers he had given to her questions. Mr Lawrence sent a further reply the following day. The Claimant alleged that Mr Lawrence's answers contradicted those given by Ms Pilgrim during the meeting.

59. On 22 October 2021, Ms Pilgrim confirmed the following in respect to the Claimant's email [136]:

1. "Carrie stated she had some questions and held up 2 sides of A4. I told her if she could forward them on I would get someone to answer them for her in writing as I may not be able to (can't remember if I said Gav or not). Carrie wanted to ask them anyway so I said would try to answer them as I'm new in post so may not know";
2. "I said yes, we do try and resolve things informally. I explained the informal process as Carrie asked what might happen, so I gave hypothetical details of staff owning their mistakes and writing reflective pieces for their files, mitigation for an employees behaviour and if they show insight. I did not say Carries case should have been dealt with informally. I stated she could have had an informal discussion (but that it may still have gone to the Disciplinary process even after that) and that in my experience this normally happens. I don't believe I said 'the formal route would follow if the colleague did not take responsibility', as mentioned, I said even after an informal discussion the disciplinary process could still proceed. Carrie said she didn't know about the disciplinary / allegations until she received the letter and I agreed this was unusual in my experience. I must have said a few times that each case is individual and I know both Rob and I said the disciplinary process is not a disciplinary action in itself"; and
3. "I categorically did not admit any failure on the Trusts part and I also did not conduct the meeting – Rob did. There was no cover up – we said we'd get answers from a senior colleague to Carries questions and stated this in the statement. I didn't write down my answers to Carries questions as I was focussed on trying to answer them as accurately as possible bearing in mind I'm very new to post and not wanting to say anything incorrect. I apologise for forgetting to add this section and will include it in the report".

60. On 25 October 2021, an investigation meeting took place with LSi. The report produced after the meeting recorded LSi saying: "I said to CE that she should really sort it out with LS as we'll be working together for a long time. I didn't know the full details but I knew there was conflict. CE said she didn't think that was necessarily true as there was an investigation into LS that had gone to the NMC and she could lose her job due to falsifying records" [132]. The report records LSi going on to say: "CE was talking about LS like it was a known thing but I took it with a pinch of salt as CE talks about a lot of things and I don't think some

of them are true. I didn't know what she was talking about, LS investigation wasn't known to me".

61. On 28 October 2021, one of the Claimant's colleagues, CT, confirmed in writing that she was on shift with the Claimant on the night of 7 August 2021 and she did not see the Claimant sleeping, there was nowhere anyone could have slept and nobody told her that the Claimant was sleeping [149].
62. On 29 October 2021, Ms Hart, who was the Labour Ward Co-ordinator on 7 August 2021, the night that the Claimant was accused to have been sleeping, stated: "It is common knowledge that since C Ellis midwife escalated serious concerns about a patient related incident involving [LS] and her daughter [BP] also a midwife at Scarborough and them altering/adding in patients notes post an incident [LS] who was Labour ward Co-ordinator on shift not listening to C Ellis concerns re a antenatal woman the atmosphere between [LS] to Carrie is extremely tense and unworkable. [LS] went to Hawthorn to hand a patient over on the night of the 7 th August and because C Ellis was not at the desk she came back to Delivery Suite saying Carrie was asleep I asked her if she had actually seen her asleep and she said no. I told her she cannot make assumptions that because she wasn't at the desk or visible why does that mean she was asleep and she should not accuse someone of something without fact" [150]. She also said there was no evidence of the Claimant being asleep on shift.
63. On 1 November 2021, the Claimant emailed Mr Woodward alleging that colleagues had been discussing confidential information concerning her disciplinary process and she would like this to be looked into [152].
64. On 3 November 2021, an investigation meeting took place with another of the Claimant's colleagues [157]. During this meeting, the individual said: "I was told Carrie was asleep on that shift. I didn't see Carrie asleep. I took this woman to Hawthorn to hand her over, I didn't see Carrie on the ward so I just asked where she was". Later in the meeting she said: "I just wanted to add that I didn't see Carrie for the majority of that shift and I would normally go over a fair few times to transfer patients".
65. She explained that she believed the HCA had said she was asleep. That same HCA confirmed in an email dated 2 November 2021 that she did not recall the shift in question in response to questions about whether she saw the Claimant was asleep or whether she told anyone that the Claimant was asleep [154].

Informal meeting – 4 November 2021

66. Ms Little's evidence was that, in November 2021, she was contacted by the Ward Manager who said that the environment on the unit in which the Claimant worked had become very bad due to the conflict between LS and the Claimant.
67. An informal meeting with the Claimant took place on 4 November 2021. It was chaired by Ms Little. The Claimant was accompanied by Ms Sharp. At the outset of the meeting, Ms Little explained that the purpose of the meeting was to talk

about feedback and the atmosphere on the ward and to hear the Claimant's perspective. Ms Little noted that the Claimant's working relationship with LS was challenging. She confirmed she had already met with LS. Ms Little explained that the situation was difficult for her to manage because no one was escalating matters to her. The Claimant referred to her concerns about members of staff gossiping about the disciplinary investigation that involved her. Ms Little asked that any concerns be raised with management and not to either the Claimant or LS, to assist with managing the issues.

68. During this meeting, the Claimant requested that her and LS work on different shifts. Ms Little replied: "I cannot guarantee you this". In exploring what shift patterns the Claimant could do, she replied: "I can only work night shift on alternative weekends due to child care" [165]. In evidence Ms Little referred to the fact that other members of the Claimant's team had flexible working requests which needed to be accommodated. As the Claimant requested flexible working herself which had been declined, Ms Little suggested that she resubmit a flexible working application which could be re-reviewed.
69. Ms Little asked whether the Claimant would consider mediation. The Claimant responded: "My IBS is stress related. I could not bear to be in the same room as her. I had an argument when I worked in Leeds and that caused a flare up that made me ill". Ms Little suggested that the mediation could take place with the Claimant and LS in separate rooms.
70. On 5 November 2021, Ms Sharp emailed the Respondent's HR team raising concerns about the delay in the progression of the Claimant's grievance [168]. The Claimant did the same directly, explaining the impact of the delays on her health [175].

Bullying and harassment investigation

71. On 5 November 2021, the Respondent's HR team contacted Ms Chorlton and asked her to investigate the Claimant's complaint.
72. On 8 November 2021, the Respondent informed the Claimant that the investigating officer who had been appointed to investigate the complaint would no longer be doing so and an alternative investigating officer, Ms Chorlton, had been appointed [174]. In this email, the Respondent stated: "I have urged the team to proceed with your case as a priority given the delays and the impact this has had. Alison and Susan will be in touch as soon as possible to progress your case".
73. On 9 November 2021, Ms Little wrote to the Claimant to confirm the outcome of the meeting which took place on 4 November 2021 [179].
74. On 11 November 2021, the Claimant self-certified as sick [185].
75. On 12 November 2021, the Respondent's HR team emailed the Claimant to update her on the grievance. They said that, subject to witness availability, they

hoped to have concluded the investigation into her grievance by 3 December 2021 [188].

Disciplinary investigation report

76. The disciplinary investigation report was submitted on 15 November 2021 by Mr Woodward [199].
77. In respect to the first allegation (disclosure of confidential information), the investigation found that there was a culture of confidential information being discussed on the ward and this is a wider problem than one person sharing information. As there were no other witnesses to the conversation (and there were discrepancies between the evidence of the Claimant and LSi) the investigation concluded that it was not possible to prove whether confidential information had been disclosed inappropriately or not. In respect to the second allegation (sleeping on duty), the investigation found that there was no evidence to support this.
78. In the recommendations part of the report, it was recorded that: "There seems to be a toxic culture on Hawthorn/Labour ward at Scarborough and this is creating a working environment, which is making it difficult for staff to escalate concerns about staff behaviour and is beginning to impact on patients. It is recommended that this is investigated as a matter of urgency. Carrie has asked not to work with [LS] any more, it is recommended that this is implemented".
79. On 24 November 2021, Ms Little wrote to the Claimant following the disciplinary investigation undertaken by Mr Woodward. She confirmed that there was no case to answer in respect to the disciplinary investigation being considered against her and therefore the matter would be closed.
80. In this letter, Ms Little stated: "The report also recommended that you should not work with [LS] going forward, however I am unable to implement this recommendation because as we have discussed, the maternity unit at Scarborough is small and we cannot guarantee this, given the limited number of midwives available to roster. We are also facing significant staffing issues across the Trust, which will further make this very challenging to enact. Instead I will ask your line manager to work with you both on your working relationship and ways of working together moving forward" [218].
81. In the cover email attaching this letter, Ms Little explained that she would speak internally about the Claimant's offer to work on the Respondent's York site for a short period. Also in this letter, the Respondent informed the Claimant that this investigation had uncovered an overall negative culture within the midwifery service at Scarborough Hospital and this would be looked into further.

Bullying and harassment investigation (ctd)

82. Going back in time slightly, on 22 November 2021, a meeting between the Claimant and Ms Chorlton took place [209]. The purpose of this meeting was to discuss the Claimant's complaint. The Claimant was not accompanied to this

meeting but was happy to proceed without a companion as she did not wish for there to be any further delays.

83. The Claimant explained that the issues on the ward started happening following the incident with LS on 23 January 2021. She said: "I raised concerns which lead to an investigation. It started the next night. [LS] disagreed with me and the Registrar about a decision. [LS] was on shift and it was [BP] who made a mistake. [LS] tried to cover this up and so she was investigated for falsifying records. The following night we could have had a bad outcome with a baby. [LS] was screaming at me with a 20 minutes argument". BP is LS' daughter. She explained that, subsequently, LS made false allegations about her which were investigated which led to the Claimant lodging her grievance.
84. She explained that, wherever possible, she would avoid LS on the ward when they were working on the same shifts. She said that 80% of her shifts were rostered with her. She dreaded seeing her.
85. The Claimant explained that, as a result of OH advice, she only worked on Hawthorn.
86. A discussion regarding potential mediation took place. The Claimant said: "Sorry but I am not putting myself through it. I [cannot] bear the thought or seeing her face to face, not with my medical condition. I experienced a one off disagreement when I worked in Leeds and it made me ill. Following in a meeting in March, it put my IBS into flare up which continued into the October. I then had to have surgery in December".
87. During this meeting, Ms Chorlton asked the Claimant to confirm whether she was challenging [LS]'s behaviour under the bullying and harassment policy or making a grievance. She said: "it is important that we work to the right policy". The Claimant replied: "There is bullying and harassment but also some other factors relating to general behaviour". She referred in depth to the matters set out in her complaint and also some matters that had occurred subsequent to lodging her complaint.
88. The notes record that the Claimant said that she was looking for a new job [211]. Ms Chorlton confirmed in evidence that she remembered the Claimant saying this. Also in evidence, the Claimant disputed this.
89. Relevant to this is that, on 25 November 2021, the Respondent emailed the Claimant a copy of the notes of the investigation meeting, and asked her to confirm whether any amendments were needed [224]. On 9 December 2021, the Claimant replied with over a page of notes, asking for changes to be made to the minutes. Nowhere in these notes does the Claimant refer to the reference to her looking for a new job was an error. She accepted in evidence that she "missed this".
90. On 25 November 2021, the Respondent's HR team emailed the Claimant regarding her grievance. It stated: "As you know there are two policies – the Grievance policy and the Bullying and Harassment Policy I would not like to

presume which policy you would like this matter to be dealt with. Please will you give this your kind consideration and confirm which policy you would like to be applied to address your complaints. I have attached both policies for you to read through". Ms Chorlton chased the Claimant for a response on 1 December 2021. On 3 December 2021, the Claimant replied and confirmed: "I will ask Debbie Sharp to reply to ensure we are challenging the correct policy, surely my grievance is against [LS] for bullying and harassment? As well as her treating me differently and victimising me for my part in an investigation- which is gross misconduct". On 8 December 2021, the Claimant then stated: "in relation to [LS] this is bullying and harassment, my grievance is really how the process has been handled and how nothing was done for a number of months, but I will raise this separately as yourself and [AC] are there to deal with [LS] alone I believe" [222]. Consequently, Ms Chorlton considered the Claimant's complaint pursuant to the bullying and harassment policy as opposed to the grievance policy. In evidence the Claimant disputed that this was an agreement on her part for the Respondent to consider the complaint pursuant to this policy.

91. On 25 November 2021, the Claimant emailed the Respondent's HR team to let them know that she intended to raise a formal complaint about the handling of the disciplinary investigation. On 10 January 2022 she confirmed that she wished to pursue this complaint and provided further information regarding it [266]. This was in addition to the grievance raised in September 2021 which, at this point, remained outstanding. There is no evidence of the Respondent taking any specific action in respect to this specific complaint, above and beyond the investigation undertaken into the 28 September 2021 complaint.
92. Notwithstanding the recommendations from the above mentioned investigation report, the Claimant and LS continued to be rostered on shifts together. The Respondent said that the maternity unit was small with a limited number of midwives. It was also facing significant staffing issues across the entire Trust, it said. Therefore, the Respondent asked the Claimant whether she and LS could work on building a good working relationship.
93. On 3 December 2021, the Claimant emailed the Respondent's HR team and, in addition to the points referred to above:
 1. Asked the Respondent to definitely investigate the following individuals (whose names have been abbreviated): MC, AS, Dr MM, LD, MD, JH, CT, KH and LB;
 2. Stated: "The whole process I am really struggling with, I am happy for things to take longer so we can ensure all the evidence is in properly" [233].
94. Also on 3 December 2021, Ms Collier sent an internal email advising that the Claimant would like to work most of her shifts on the York site during the winter period. After this, she would return to Hawthorn as her core site. She also requested that the Claimant work on antenatal or the post-natal ward, not the labour ward. Following a further exchange it was confirmed that the Claimant should work the majority, not all, of her shifts in York. On that same date, the

Claimant emailed Ms Collier and said she would be happy to work all of her shifts at York. Ms Locking replied to her saying: “we have put you over to York for as many shifts as we can accommodate without compromising the SGH roster”.

95. In an email on 10 January 2022 the Claimant explained that she had been in contact with Ms Collier regarding being allocated to work shifts at York. In this email she stated: “During my 1st shift at York [Ms Collier] spoke to me and said she was happy to authorise my going to York for the Majority of my shifts until the end of March, to allow me time away from SGH and the ongoing stress during the investigation re the bullying and to solve the staffing issues. I was copied into the email sent to Gill Locking stating that I was to work the majority of my shifts at York. This agreement hasn’t been fulfilled having only worked 5 shifts in 7 weeks. I feel I was misled in returning to work and the agreement not being honoured” [227] .
96. In evidence the Claimant explained that members of staff were being asked to work at York but did not want to do so. The Claimant could not understand why she was not being allocated those shifts, rather than the Respondent ask those members of staff to cover them. The Claimant’s evidence was that she believed the Respondent had done this deliberately.
97. The Respondent’s representative put to the Claimant that there were only 16 shifts available during this period in York. Out of this 16, 11 of which the Claimant was not rostered to work on shift. This was the reason why the Claimant had only done 5 shifts in York. The Claimant could not answer. The Claimant also confirmed that she did not follow up on any suggestions regarding shift swaps, where she would swap her shift for a shift at York. This was because the Claimant considered the shift swap to be irrelevant to her as it had been agreed that she could work the majority of her shifts in York.
98. Ms Sharp gave evidence that the Respondent was moving people between York and Scarborough on a daily basis which was causing upset. She said that the staffing issues in midwifery was widely documented. She explained there had been difficulties for a long time, in terms of having sufficient staff to cover rosters.
99. On 19 January 2022, an interview took place with Ms Chorlton and LS [230]. In relation to the investigation into the incident in January 2021, LS said that she considered both herself and the Claimant to have been intimidating. In respect to the sleeping on duty allegation, LS said: “I did not go looking for her. I avoid her at all times. I find her bullish and I feel she has tried to rile me. I put a complaint in to the Head of Midwifery- Michala Little. After I spoke with her, I decided to be more adult in my approach. I want to move forward and go past all this and so I did not pursue my complaint. Now I don’t go and seek her out for a general chat. If she comes to see any staff in the Labour Ward, I did not engage with her. I did not seek her out”. She also said: “I think people find Carrie intimidating and some were frightened of there being repercussions to their complaints. Already some had a negative opinion of Carrie and it would have impacted more. It was a lovely unit up to two years ago but it has changed

to being a toxic culture. People don't want to come into work. That was another reason why I wanted everything to stop. I have to work with Carrie and vice versa. I know that some midwives refuse to work with Carrie and if they are rostered to work with her, they will call in as being sick. There needs to be something done because we are after all working in a caring profession".

100. LS said that she felt as the Claimant had been bullying her, that the January 2021 serious incident had caused the difficulties between them and she would be willing to engage in a mediation with the Claimant. She explained that she had spoken to the Claimant subsequent to her raising her grievance and said: "Yes. I did speak to Carrie before the Christmas holidays. I want our working relationship to improve. She advised me that she had been subject of an investigation and that it was my fault. I told her it was not my fault. She told me that she had been investigated. For me, I had wanted to have a conversation with her about a month before I actually did but we did have a conversation, in December and it was before Christmas. I suggested that we move past what had happened in the past and when at work to be polite and civil to one another. Carrie was upset. I apologised to her for the upset I had caused her and I promised that there would be no repetition and that I would not talk about her to anyone else behind her back. I suggested that we both made an effort to speak to one another and that it was the right thing for us to do. There was no need to have a vendetta, we should move on and put past history behind us". She went on to say: "I think we have a better relationship after having this conversation. I told I was glad that we had spoken to one another. I feel that the tension between us has gone. Carrie agreed with me. She also felt we should move on from the past". To conclude, Ms Chorlton said: "Please can you forget our conversation. My reasoning for this is that Carrie may have understood the situation in a particular way and yet, now we are all in a different place because you have had a conversation with her. I cannot say whether Carrie feels the same way as you feel. I will need to speak to her and understand how she is now feeling. If we can have both of you together in a mediation environment you can work out your relationship going forward. I think this could incorporate the Trust values and the interests of patients and colleagues. We want to prevent any recurrence".

101. Ms Chorlton accepted in evidence that there was a delay in arranging the interview with LS, which took place around eight weeks after her interview with the Claimant. She explained this was due to availability issues but they did their best to ensure this interview went ahead as quickly as possible. The Claimant asked whether Ms Chorlton considered it essential to speak to the other people named as witnesses during this period, whilst waiting to conduct an interview with LS. Ms Chorlton answered "no". She also said that she cannot recall anything happening regarding the Claimant's bullying and harassment allegation during this time, save as for waiting for the interview with LS to take place.

102. Ms Hart gave evidence that she did not notice any difference in LS' behaviour towards the Claimant on shift after the exchange that she and the Claimant had had in December 2021. Ms Hart did not agree that the relationship with the Claimant and LS had improved after this point.

103. On 26 January 2022, an interview took place with Ms Chorlton and Ms Little [237]. During this meeting, Ms Chorlton said: “It has been difficult as there are different stories or versions of events from different people. Carrie raised and escalated things to me, and I must be mindful of confidentiality here, but Carrie has said to me that she does not wanted to work with [LS]. To keep them separate is problematic with such a small cohort of staff. This was requested to the roster-creator and Carrie was told ‘where possible’ we would try to accommodate Later there has been some mud- slinging which has led to difficulties in the ward areas. This is paraphrased – comments by other staff members, not my opinion”. She went on to say: “[LS] spoke to me as I called both of them into my office separately in December. I had feedback coming from Rosie Pease and Gill Locking that it was an unpleasant working environment, described as. This was due to warring factions between “Team Carrie” and “Team [LS]”. There was actual talk of discomfort in the ward areas and so I spoke to both Carrie and [LS]”.
104. On 30 January 2022 the Claimant emailed Ms Chorlton expressing her concerns about the delay in concluding the grievance process. She also explained that LS had approached her on shift during the weekend of 10 December 2021 and that the Claimant had told her that she did not wish to speak with her. She concluded: “[LS] no doubt has stated we have cleared the air, and things are ok, we haven’t at all. She forced a conversation on me despite me stating I did not wish to talk to her, this was to give her the opportunity to say that she has tried to resolve things, it just happens to be 11 months too late” [257].
105. On 14 February 2022, Ms Little emailed Ms Locking asking that the Claimant and LS not be rostered together going forwards. She said: “I know that the off duty is really challenging but we need to do this please”. Ms Locking responded saying that given the working patterns both LS and the Claimant had, this “will not be easy”. She suggested moving one to the opposite site instead. Ms Locking gave further evidence about this at the hearing. She explained that, at the time, there were about 20 staff members and they needed a team of 6 on every shift to cover both of the wards in the unit. The Claimant was only able to work on one of the wards due to her occupational health recommendations. She had also requested set shifts due to childcare. Additionally, LS was a shift co-ordinator and every shift required a shift co-ordinator.
106. The Claimant was asked questions about this in cross examination. She agreed there were either 6 or 7 midwives on each shift. These were generally a Co-ordinator on the Labour ward, 2 midwives in Hawthorne and 3 midwives on the Labour ward. The Respondent’s Counsel put to her that there were only 20 full time equivalent midwives on the roster but the Claimant could not confirm. She mentioned that, in addition to the rostered midwives, there were multiple community midwife teams.

107. On 15 February 2022, Ms Chorlton sent her draft investigation report to the Respondent's HR team for comment. HR responded to state: "I have spoken with Nic and agree that there is more damage to be done in involving (interviewing) more individuals given the state of the unit and [LS]'s wellbeing" [245].
108. The investigation report acknowledged that, in her complaint, the Claimant had named three health care assistants, 26 registered midwives and 1 HR advisor who had allegedly witnessed or who the Claimant had discussed specific incidents related to LS with. The Claimant's expectation when she raised her complaint was that each of these individuals would be interviewed however they were not. She had subsequently made clear that a handful of these individuals should at the very least be interviewed. These had not been interviewed either.
109. Ms Chorlton concluded that she could not support the allegation of bullying raised by the Claimant. She felt that the investigation demonstrated a two way process of unprofessional behaviour on the part of both the Claimant and LS. She recommended mediation or, alternatively, individual coaching for both the Claimant and LS. She also recommended that, if mediation was not possible, the Claimant and LS not be rostered on shifts together.
110. In evidence, Ms Chorlton explained that there appeared to be a division in the unit and there were those who supported the Claimant and those who supported LS. She therefore found it difficult to identify witnesses who would likely be impartial. Also, she was concerned about the reliability of the evidence, given the amount of time that had passed since the incidents complained of.
111. In evidence Ms Chorlton said that she had in mind the impact on both individuals when deciding this approach. She felt that there was an ability to move forward to mediate and resolve the relationship.
112. On 28 February 2022 the Claimant met with Ms Little informally to discuss concerns that had been raised by LS that the Claimant had breached LS' confidentiality.
113. On 23 March 2022, the Ms Sharp emailed Ms Chorlton and HR requesting an update regarding the investigation into the Claimant's complaint [256].
114. The parties accept that the investigation report had not been sent to the Claimant at this point time, hence Ms Sharp's chaser, and she received it for the first time on 8 June 2022.

Grievance hearing

115. On 26 April 2022, the Claimant was invited to attend a meeting arranged for 4 May 2022. The Claimant requested that the meeting be adjourned so she had more time to prepare. The meeting was then adjourned.

116. On 1 June 2022, the Claimant submitted her statement of case [271]. She also listed some individuals who she wished to give evidence at the hearing, dependent on whether they had been interviewed as part of Ms Chorlton's investigation.
117. As mentioned above, on 8 June 2022, the Claimant received the investigation report into her complaint for the first time. This was the first point that she realised that the witnesses she had asked to be interviewed had not been interviewed.
118. On 28 June 2022, the Claimant attended a formal stage two grievance hearing. Although, for the reasons stated above, the Claimant's complaint had been investigated pursuant to the bullying and harassment policy, the Claimant had said that she wished for the matter to be considered pursuant to the grievance policy. During the grievance hearing, the Claimant confirmed that she would not be able to work in York because of her childcare arrangements.
119. The Claimant's evidence was that, during this meeting, it became apparent that there had been failings on the Respondent's part in dealing with her complaint. Ms Chorlton attended this hearing and the Claimant raised concerns with her directly about the lack of investigation undertaken.
120. Ms Chorlton confirmed that, during this hearing, the Claimant had said that she had found a new job and was in the process of selling her house and relocating to Doncaster.
121. In cross examination the Claimant denied saying on 30 June 2022 that she had received another job. She said that she had applied for a job that would result in her having to sell her home and move out of town. The Claimant asked Ms Chorlton to confirm whether she may have told her that she was applying for a new job in Doncaster, rather than she had found/been offered a job. Ms Chorlton replied: "Yes that's a possibility". This is considered in further detail below.

Further fact find concerning the Claimant

122. Ms Locking gave evidence that, on 25 June 2022, she was informed of an incident involving the Claimant allegedly shouting at a Health Care Assistant, RL, on the labour ward in the presence of patients and staff members.
123. The Claimant's evidence was that she had been rostered to work with LS again. Another midwife had contacted her at 17.15 saying they could not work on the Labour ward and the Claimant would need to do so instead. The Claimant spoke with JH who reassured her that she would not be required to work on the Labour ward save as for theatre cases, as had been previously agreed. The Claimant's evidence was that JH then told her that colleagues had been accusing her of having an affair and splitting up a young family and this is the reason why the Claimant had applied to work at Doncaster (considered later). The Claimant believed that RL initiated these rumours.

124. On 27 June 2022, a series of initial fact finding meetings took place with Ms Locking and two colleagues. It was alleged that, on 25 June 2022, the Claimant came 'crashing' or 'storming' through from Hawthorn Ward to the Labour Ward desk and shouting and pointing at RL saying: "what the f**k do you think you are saying? Why do you feel the need to talk about me?" It was alleged that the Claimant had spoken so loudly that she was heard by a patient. During her fact finding meeting, RL said that she felt frightened, shocked and had cried when she returned home.
125. The Respondent accepts that the patient, nor any other employees who allegedly heard her (save as for the two employees mentioned above), were interviewed.
126. At 9.30am on 30 June 2022, the Claimant attended an initial fact finding meeting regarding this incident. Ms Locking's evidence was that the Claimant accepted that her behaviour was not professional. The notes record the Claimant saying: "No probably not but I've called her out before and she never learns" in response to a question about whether she felt her behaviour was professional [296c].
127. In witness evidence, the Claimant explained that she was not abusive and they were in a public area where patients and staff could have heard the conversation. She noted that none of these were contacted to provide statements and she believed that the two colleagues who had provided statements were biased against her.
128. Ms Locking's evidence was that the Claimant had told her that she was going to resign as she was being forced to work with LS despite recommendations to the contrary. The notes record the Claimant saying: "I'm siting constructive dismissal in my notice today as senior management never upheld the actions from the 2 previous disciplinary findings".
129. The Claimant's evidence was that she "broke down during the meeting" because she "knew [she] couldn't take any more so left the office and immediately handed her notice in". She said that she had discussed this with her line manager that morning,

Claimant's resignation

130. On 30 June 2022, at 10.19am, the Claimant submitted her written resignation to her line manager. She stated: "My reasons for resignation are the following: The trusts failure to follow procedure during formal investigations and a grievance I raised, and the continued facilitation of bullying and harassment since my initial concerns were raised in July 2021. I feel the extreme stress I have been under during the past 18 months and how it has affected my Mental health and overall wellbeing has made it impossible for me to continue to work here. There has been multiple emails sent to HR about my concerns that were ignored". She said her last working day would be 25 August 2022 and requested an exit interview.

131. On 30 June 2022, at 11.38am, the Claimant confirmed to Ms Locking that she was willing to have a conversation with her and RL in order to 'clear the air'. She also agreed to apologise to RL and write a reflection. She said however that taking her down a formal route was a further example of bad treatment towards her. She repeated her resignation and confirmed her last day would be 25 August 2022 [298].
132. Ms Locking's evidence was that she and the Claimant spoke at length regarding her intention to hand in her resignation. Her evidence was that the Claimant had informed her that she was leaving the Respondent because she was relocating to Doncaster for family reasons.
133. The Claimant's evidence was that she started looking for another job in June 2022 after receiving the 8 June 2022 outcome. She couldn't recall when she received the job alert for the Doncaster role but believed it was after 21 June 2022. At one point of her evidence she said she was interviewed virtually at some point between 21 and 30 June 2022 and received the job offer on 5 July 2022. During another point of her evidence (on the following day) she said that she was interviewed 'within the first days of 21 June 2022'. The Claimant was insistent that she was not offered the job during the interview; she said she was told they had lots of people to interview and would have to get back to her afterwards.
134. Ms Sharp's evidence was that, to her knowledge, the Claimant had no such job to go to when she resigned.
135. Ms Churchill gave vague evidence on this point. In response to the question, "Did the Claimant tell you at some point she was looking for another job?", Ms Churchill replied, "Looking – I think due to the hostility it was talked about it being a consideration but hadn't looked for another job until significantly near to the end. Not actively looking". Then in response to the question, "When did she first tell you?", Ms Churchill replied: "Considering rather than looking. Towards the end of her employment she was considering looking for other roles but trying to resolve the situation at York". Ms Churchill said that she did not believe that the Claimant was looking for another job in November 2021 and, as Ms Churchill worked as a Recruitment Manager, she believed the Claimant would have come to her first had she been looking. Ms Churchill then said that she and the Claimant had talked about the Claimant moving to Doncaster a couple of months into the Claimant's relationship with her new partner. Ms Churchill said this was discussed as a hypothetical option. She could not give an accurate date, repeating the point several times that she was not good with dates but said that this conversation took place at some point in 2022.
136. The Claimant explained in evidence that she met her partner on 1 April 2022. He lived in Doncaster. They had had a conversation about the future. The Claimant's mortgage was up for renewal in March 2023. She said that she would either move to him or he would move to her then.
137. The Claimant gave confused oral evidence and submissions on the reasons for her resignation. On the first day of her giving evidence, the Claimant

said that her plans to resign were pushed forward by what happened at the Respondent. Specifically, she said: “what caused the resignation was another threat of formal investigation – hadn’t planned to resign, I didn’t tell my partner, I was beside myself”. When asked whether she was referring to the RL matter the Claimant said: “Yes that’s what forced my resignation that day”. This appeared to be the Claimant’s position when cross examining Ms Locking on the second day, when she put to Ms Locking: “Following this meeting [referring to the meeting concerning RL] triggered me to go and hand my notice in. I couldn’t take another investigation”.

138. However, on the second day of giving evidence, and before cross examining Ms Locking, she said: “what triggered me to leave was the sharing of the outcome report [on 8 June 2022]. Trust had chosen not to investigate bullying and harassment”.

139. On 1 July 2022, the Claimant spoke with Ms Locking and followed that conversation up with an email. The Claimant accepted responsibility for her unprofessional conduct towards RL and apologised for this. She raised however mitigating circumstances in relation to her mindset on the day in question.

140. On 1 July 2022, Ms Too confirmed the outcome of the Claimant’s stage two grievance [302]. In this letter, it was confirmed that Ms Chorlton had not interviewed the witnesses named by the Claimant because of “the number of staff involved, the duration of time which had passed from the dates of the incidents”. It was also explained that “she didn’t feel she could be fair and transparent given the clear (and acknowledged) issues within the unit which in effect meant there was a ‘camp Carrie’ and a ‘camp [LS]’”. She explained that she felt there would be ‘tit for tat’ and that it wouldn’t provide any clarity of the situation or establish the facts”. Notwithstanding this, Ms Too concluded: “Having considered the information, I have read and also heard today I find I am unable to come to a decision on the concerns raised in the grievance, as there is not enough evidence or information in the report to draw a conclusion”. Ms Too reinforced the recommendation that the Claimant and LS should not work together or, at least, have reduced shifts together. A right of appeal was offered.

New job

141. The Claimant received a conditional offer of employment of 5 July 2022. She insisted in evidence, under cross examination, that this was not received prior to this date. Nor is there any clear evidence before me that it was.

Grievance appeal

142. On 9 July 2022, the Claimant requested an appeal against the outcome of her grievance [307]. In relation to the extent of the investigation undertaken by Ms Chorlton, the Claimant stated: “I feel the trust have just wanted to sweep my grievance under the carpet and not investigate properly and fairly, which is exactly what has happened on two occasions”. She also stated: “There could have been an ad hoc approach and a handful of people selected to be spoken to from my letter, but instead a decision was made not to speak to anyone”.

143. On 12 July 2022, the Respondent acknowledged the Claimant's grievance appeal.

144. On 25 July 2022, the Respondent's HR team emailed the Claimant, attaching a letter from Ms Little confirming that a fact find had been undertaken into an allegation that, on 25 June 2022 at 19:55, the Claimant was verbally abusive to a colleague in her team. Specifically, it had been alleged that the Claimant had raised her voice to the colleague and swore at them in a public ward area. She asked the Claimant whether she could agree to the following sanctions:

1. a written warning that will remain on her personal file for a period of 12 months; and
2. a requirement to issue a verbal apology to RL, witnessed by your line manager.

Exit interview

145. On 10 August 2022, the Claimant emailed Anna Goode requesting an exit interview. It was agreed that Ms Goode would come and find the Claimant on Hawthorn on either 22 or 23 August 2022. Ms Goode's diary was blocked out between 9am and 11am on 23 August 2022. In evidence, Ms Goode explained that she was not available to meet the Claimant on 22 August 2023 as she was in Scarborough on that date. She also explained that she went to look for the Claimant on 23 August 2022 and was informed that she had walked out of her previous shift and left as she had been involved in an argument. Ms Goode explained that, as she had been informed that the Claimant was upset, she did not proactively contact her again after this, expecting the Claimant to contact her if she wanted to rearrange the interview.

146. On 28 August 2022, the Claimant's employment with the Respondent ended.

Grievance appeal hearing and outcome

147. On 8 September 2022, the Claimant was invited to a grievance appeal hearing arranged for 15 September 2022. This was then rescheduled for 25 October 2022, which the Claimant attended with her representative, Ms Sharpe.

148. On 1 November 2022, the Respondent delivered the outcome to the Claimant's grievance appeal. In respect to the delays in progressing her grievance, the appeal was upheld and an apology was provided. The panel also agreed that conclusions from the investigation ought not have been drawn from LS' opinion, namely that the relationship between her and the Claimant had improved. The panel went on to state: "I feel the investigation process into your grievance was not of a sufficient standard I would have expected witnesses to have been interviewed to be able to draw out any facts and enable detailed

conclusions/recommendations to be made. I therefore uphold your grievance in relation to your grievance”.

149. The panel proposed that an investigating officer be appointed and that the Claimant’s grievance be re-opened, ensuring that all those witnesses who were still employed be contacted.

150. On 2 November 2022, the Claimant requested that the investigation not take place. This was due to fears of repercussions towards the Claimant.

151. One of the recommendations following this was that work be undertaken to improve the culture of the unit for patients and staff. Ms Little confirmed in evidence that she had started to implement this prior to leaving the Respondent.

The Law

152. Pursuant to section 95(1)(c) of the ERA:

*“.....an employee is dismissed by his employer if
..... the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.”*

153. Section 98(1) of the ERA states:

*“In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held”.*

154. Section 98(4) of the ERA states:

*“Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
(a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case”.*

155. In **Western Excavating (ECC) Ltd v Sharp 1978 ICR 221**, the Court of Appeal ruled that, for an employer’s conduct to give rise to a constructive dismissal, it must involve a repudiatory breach of contract. As Lord Denning MR put it: ‘If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract,

then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed.' In this case, the Court of Appeal expressly rejected the argument that S.95(1)(c) introduces a concept of reasonable behaviour by employers into contracts of employment. This means that an employee is not justified in leaving employment and claiming constructive dismissal merely because the employer has acted unreasonably.

156. The then House of Lords in ***Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) 1997 ICR 606*** confirmed that the duty of mutual trust and confidence is that neither party will, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.
157. In ***Morrow v Safeway Stores plc 2002 IRLR 9***, the EAT confirmed that where an employer breaches the implied term of trust and confidence, the breach is 'inevitably' fundamental.
158. In ***WA Goold (Pearmak) Ltd v McConnell [1995] IRLR 516 (EAT)*** the Employment Appeal Tribunal held that the Tribunal was entitled to conclude that a contract of employment contained an implied term that the employers would reasonably and promptly afford a reasonable opportunity to their employees to obtain redress of any grievance they might have. The right to obtain redress against a grievance was fundamental since the working environment might well lead to employees experiencing difficulties for a variety of reasons, including the fact that authority and control was sometimes exercised by persons insufficiently experienced to exercise it wisely.
159. In ***Blackburn v ALDI Stores Limited [2013] IRLR 846 (EAT)*** the Employment Appeal Tribunal held that a failure by an employer to adhere to a grievance procedure was capable of amounting or contributing to a breach of the term of trust and confidence in an employment contract.
160. In ***Abbycars (West Horndon) Ltd v Ford EAT 0472/07***, the Employment Appeal Tribunal held that 'the crucial question is whether the repudiatory breach played a part in the dismissal', and even if the employee leaves for 'a whole host of reasons', he or she can claim constructive dismissal 'if the repudiatory breach is one of the factors relied upon'.
161. In ***Nottingham CC v Meikle [2004] IRLR 703 (CA)*** it was held that the repudiatory breach need not be the sole cause or even the principal cause for the resignation provided the employee resigned in response at least in part to the breach. The fact that the resignation may have been as a result of a number of acts or inactions by an employer, some of which do not amount to a breach of contract, does not vitiate the resignation in response to those acts that constitute a repudiatory breach.

Submissions

162. Both parties provided written submissions and addressed me on the same orally. These submissions are not set out in detail in these reasons but both parties can be assured that I have considered all the points made, even where no specific reference is made to them. The Respondent's representative confirmed that there were no particular authorities that he would like me to consider, other than those which would ordinarily be considered in a constructive unfair dismissal claim (the relevant ones being cited above).

Conclusions

Was the Respondent in repudiatory breach of contract?

163. Yes.

164. The breaches of the implied term of trust and confidence relied upon were, in summary (although the issues are set out in more detail earlier in these Reasons):

1. treating the disciplinary allegations concerning the Claimant formally rather than informally. In this regard the Claimant specifically relies upon a comparison of how this matter was dealt with and how her complaint regarding LS' conduct was dealt with;
2. failing to follow its grievance procedure when investigating the Claimant's formal complaint/grievance dated 28 September 2021;
3. acting inappropriately by failing to acknowledge her resignation and/or granting an exit interview; and
4. failing to implement the recommendations following the above mentioned disciplinary process and the Claimant's stage 2 and stage 3 grievances by ensuring the Claimant and LS no longer had to work with each other.

165. As a matter of law, any breach of the implied term of trust and confidence is repudiatory. Consequently, what I have to decide at this stage is whether, in respect to any or all of the matters listed above, the Respondent breached the implied term of trust and confidence contained in the Claimant's contract of employment.

166. I am required to be mindful of the relevant legal test. As the Respondent's representative correctly highlighted, this is not a question of whether the Respondent acted reasonably or unreasonably or inside or outside of the range of reasonable responses. Instead, I have to assess whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the Claimant and the Respondent, without reasonable and proper cause for doing so. I have to approach this matter objectively.

167. The Respondent's representative asked me to firstly consider whether the Respondent had reasonable and proper cause for its conduct. If I found that it did, the claim in respect to that allegation should fail. If I found that it did not, I should go on to consider whether it behaved in a way that was calculated or likely to destroy or seriously damage the relationship of trust and confidence. I have agreed to do so.

(3): Exit interview

168. I deal with this first as it is the most straightforward. The Respondent is correct that, as this happened after the Claimant submitted her resignation, this cannot be relevant to her decision to resign. What is relevant is what was in the Claimant's mind at the time she resigned. As this happened afterwards, it can't have factored into her decision making to resign. Therefore, it has no relevance to this aspect of her constructive unfair dismissal claim and no further conclusions are reached regarding it.

(1): Late 2021 disciplinary involving the Claimant

169. I have concluded that it was understandable for the Respondent to seek to deal with the matters formally, as opposed to informally. According to the Respondent's disciplinary policy, sleeping on duty without consent may be an act of gross misconduct. The policy states that cases of alleged 'minor' misconduct are often best dealt with informally. Allegations of gross misconduct are far from minor.

170. I do have some sympathy with the Claimant's position that the evidence gathered during the initial fact find was not particularly reliable. No-one actually saw her sleeping. The supposed evidence was that the Claimant could not be found for a number of hours, that someone said she had been told that the Claimant was asleep on the shift and that someone had seen the Claimant sleeping during a shift in the past. None of this is reliable evidence that the Claimant was actually asleep on the evening of 7 August 2021.

171. That said, a report of the Claimant potentially sleeping on duty was made, even if it transpired through the investigation that that report was not reliable. That is a purpose of a disciplinary investigation: to find the relevant facts. This was not a disciplinary hearing, which would ordinarily take place after the investigation stage had been completed. In this case, having completed that investigation, the Respondent decided there was no case to answer. No further action against the Claimant was taken. The Claimant was never invited to a formal disciplinary hearing.

172. It was of course open to the Respondent to deal with the matter informally and, considering how the Respondent dealt with the Claimant's allegations concerning LS and others, I can appreciate why the Claimant thought it would be more appropriate for the Respondent to have done so.

173. Nevertheless, I do not conclude that, in light of the above, the Respondent acted without reasonable and proper cause. The Respondent took

a route which its policies entitled it to take even if it was a route that another employer may have chosen not to take.

174. I also do not conclude that the Respondent's conduct in treating this matter formally, was calculated or likely to breach the implied term of trust and confidence. There is no objective evidence of this being calculated. Nor was it, on the balance of probabilities, looking at the matter objectively, 'likely' to do so given the contents of the Respondent's policies and the fact that one of the allegations was, per the disciplinary policy, potential gross misconduct.

175. There does however appear to be an inconsistency in how the Respondent approached matters concerning the Claimant compared to how it approached matters concerning LS. I have considered this later, when dealing with allegation (2).

176. Further, I have concluded that the Claimant's criticisms of Ms Pilgrim are unwarranted. She expressed at the time and during this hearing that she was a relatively new member of the HR team. She was initially reluctant to answer the Claimant's questions but felt pushed by the Claimant to do so. Given the way in which the Claimant questioned Ms Pilgrim during cross examination at this hearing, I can understand why Ms Pilgrim may have felt that way. When cross examining Ms Pilgrim on this point the Claimant sought to draw a comparison between Ms Pilgrim's role in HR and the Claimant's role as a midwife. She suggested that Ms Pilgrim should not go into a disciplinary investigatory meeting in an advisory capacity unless she would be able to answer all of the questions asked. I do not agree with the Claimant regarding this. There was nothing unusual about Ms Pilgrim attending this meeting, answering the questions she felt able to answer and escalating questions that she could not answer to a more senior colleague. Had Ms Pilgrim conceded that there were inadequacies in the disciplinary process (which I note Ms Pilgrim denies) this would not have led me to conclude that the Respondent was in breach of the implied term of trust and confidence. Such concession could not have been relied upon given the pressure that the Claimant was putting on her at the time. Furthermore, there is a significant gulf between errors in a disciplinary investigation / fact find process and a breach of the implied term of trust and confidence.

(2): Bullying and harassment complaint / grievance

177. For the reasons explained below, I have concluded that the Respondent's handling of the Claimant's bullying and harassment complaint / grievance was grossly inadequate. I have concluded that this amounted to a breach of the implied term of trust and confidence and, therefore, was a repudiatory breach of the Claimant's contract of employment.

178. There were severe delays throughout the entire process, flagrantly breaching the Respondent's policies, yet no meaningful investigation was carried out by the Respondent to justify such delays.

179. In this regard Ms Chorlton accepted that very little, if anything, happened regarding the investigation during the eight week period between the Claimant's

interview and Ms Chorlton's interview with LS. Even though the Claimant had said she was happy for the process to take longer than it should, this was on the understanding that a thorough investigation into her complaints would be undertaken. Although there were some slight delays on the Claimant's part in e.g. responding to emails / correcting minutes etc., the vast majority of the delay had been caused by the Respondent.

180. One of the reasons given by the Respondent for not interviewing the Claimant's witnesses was that too much time had passed since the incidents occurred meaning that the reliability of their evidence would be questionable. It is correct that the incidents alleged by the Claimant took place from January 2021 onwards. However, the Claimant raised her concerns informally in July 2021 and then formally on 28 September 2021. Save as for the meeting with the Claimant, the investigations were not undertaken until January 2022, around four months after they were raised formally. The report was not compiled until the following month. Therefore, a significant reason why too much time had passed was that the Respondent had not investigated the Claimant's concerns promptly or in line with its policies.
181. Another reason given by the Respondent for not conducting the interviews was that it would be difficult to obtain impartial evidence, given the existence of the "Carrie Camp" and the "[LS] Camp". However, this apparent concern did not prevent the Respondent from interviewing multiple people on the ward when investigating the disciplinary issues concerning the Claimant allegedly sleeping on duty and breaching confidentiality.
182. The Claimant expressed on multiple occasions the impact that the delay in progressing her complaint was having on her mental health. Her trade union representative, Ms Sharp, also chased on the Claimant's behalf on several occasions. Yet, when the report was compiled in February 2022, it wasn't even sent to the Claimant or Ms Sharp. They found out about it for the first time, months later, as part of preparing for the grievance hearing in June 2022. Months of further stress on the Claimant's part could have been avoided by ensuring that the report was at least sent to her. The Respondent is a large organisation, it has the resources to ensure that this can be done.
183. Ms Chorlton's approach to her investigation was also tainted by representations given to her by LS, which Ms Chorlton appears to have simply assumed that the Claimant had agreed to, even though the Claimant told her that she hadn't.
184. During Ms Chorlton's investigation meeting with LS, LS had explained that she and the Claimant had had a conversation and cleared the air. Ms Chorlton therefore felt that continuing to investigate the matters raised by the Claimant would be counterproductive. However, even though she said during the meeting with LS that she would do so, she did not check whether the Claimant agreed with what LS said. She also did not know that the Claimant had not wanted to speak with LS on this date and felt forced by LS to do so. Furthermore, prior to finalising her report, on 30 January 2022, the Claimant

corrected Ms Chorlton regarding what LS may have said to her. Yet she did not allow this to affect her approach to the investigation report.

185. Ms Chorlton's approach was also geared towards reconciliation between the Claimant and LS. However, the Claimant had made it patently clear on numerous occasions that mediation was not suitable. She raised medical reasons, which the Respondent was already aware of, about why this would not be appropriate.
186. Whether the Claimant was acting reasonably in this regard or not, in reality, what the Claimant wanted was for LS to be disciplined/dismitted or relocated to another site. From the Claimant's perspective, that was not going to happen unless an investigation into LS' conduct was undertaken and the outcome of such investigation was that LS had been at fault.
187. I have not heard any evidence from LS in respect to her position regarding the allegations that the Claimant has made. I note however the information she gave during the bullying and harassment investigation, namely that she considered both her and the Claimant to have been intimidating towards each other. I also note the Claimant's detailed evidence about the impact of LS' treatment towards her which was largely unchallenged. Further, I am conscious that another employee, Ms Hart, gave live evidence during this hearing explaining how LS made her feel intimidated at work as well. With all this in mind, it cannot be said that the Claimant's allegations against LS are misconceived.
188. The reality is, we cannot form an assessment of whether the Claimant's allegations of bullying and harassment, at the hands of LS and her family members, are well founded, because the Respondent failed to investigate them.
189. The Respondent did not need to interview all of the individuals that the Claimant asked it to interview. She even provided a shorter list of witnesses who could be interviewed. However, in interviewing just two (alleged perpetrator and their manager), the Respondent's investigation was grossly deficient.
190. I understand the Respondent's position that, if there was a Team Carrie and a Team LS, it would be difficult to get impartial witnesses to give evidence as part of the investigation. However, this should not prevent the Respondent from at least trying to uncover whether there was any truth behind the Claimant's allegations or not. Decisions could have been taken later about what weight to apply to whose evidence. Further, as I mentioned earlier, this did not appear to trouble the Respondent when dealing with the disciplinary allegations concerning the Claimant in late 2021.
191. I also understand the Respondent's position that, in interviewing all of these individuals, further friction might be created on the ward. However, this friction was already there and did not appear to be likely to go away. For the reasons explained above, a resolution between the Claimant and LS was not going to be possible. This was essentially the Respondent seeking to brush the

matter under the carpet, hoping it would get better by itself. However, in doing so, it was further damaging its continued relationship with the Claimant.

192. I also agree with the Claimant that the Respondent's approach to her complaint was inconsistent with its approach to the Claimant in respect to the issues at (1) above. After a report was made that the Claimant had been allegedly sleeping on duty and had breached confidentiality, a fact find was immediately undertaken which led to a formal investigation. As part of that formal investigation, numerous people were interviewed. On the other hand, when the Claimant raised concerns about LS and other employee's conduct, her complaints were, to a large extent, pushed to one side.
193. Looking at the Respondent's approach to the Claimant's bullying and harassment complaint / grievance as a whole, I am conscious that I am not assessing whether the Respondent acted reasonably or unreasonably. Nor am I applying a range of reasonable responses test.
194. I have concluded that, on the balance of probabilities, and considering the matter objectively, the Respondent did not have reasonable and proper cause for handling the Claimant's complaint/grievance in this way. My reasons for this are addressed above but are summarised here:
195. The Respondent had proceeded based on a misplaced assumption that the Claimant and LS had resolved their difficulties. However, Ms Chorlton did not check whether the Claimant agreed with LS in this regard before submitting her report. Indeed, prior to finalising her report, the Claimant informed Ms Chorlton that the difficulties had not been resolved. Ms Chorlton was focusing on finding a way in which the Claimant and LS could improve their relationship. However the Claimant had said, on numerous occasions, that this was not an option for her and she had good reasons for this being so. Ms Chorlton had not engaged with the Claimant's goal which, as I said above, was for the Respondent to undertake an investigation and ascertain whether there was culpability on LS' part and, if so, to take the appropriate action. The Respondent preferred to sweep the matter under the carpet, hoping that the situation would simply resolve itself.
196. I do not conclude that the Respondent's conduct was *calculated* to destroy or seriously damage the relationship of trust and confidence. There is no objective evidence of this being the case and, if such a serious allegation was to be pursued, I would expect there to be.
197. I do however conclude that such conduct was *likely* to destroy or seriously damage the relationship of trust and confidence. My reasons for this are addressed above but are summarised here:
198. Employees have a right to have their complaints/grievances investigated and heard. It's a right referenced in case law as well as, in this case, the Respondent's policies. In this case, the progression of the investigation and resolution of Claimant's complaints were significantly delayed. The timescales set out in the policy were breached. A report was produced but it wasn't even

shared with the Claimant at the time. When the Claimant saw the report for the first time, some 8-9 months after submitting her complaint, she realised that very little investigation had actually been undertaken. All the while, the strain of not knowing what was happening to her complaints was having a detrimental impact upon her health. This entire approach was at odds with how the Respondent had managed a concern that had been raised regarding the Claimant. On the balance of probabilities, and approaching this matter from an objective viewpoint, it is likely that this conduct as a whole would destroy or seriously damage the relationship of trust and confidence between an employer and an employee.

(4): Failure to implement recommendations

199. The Claimant made numerous requests to not have to work with LS. This was because of the impact of their working relationship on the Claimant, as well as their colleagues and the ward as a whole. It was also because the Claimant had rejected mediation, meaning that, from her perspective, there was no way in which the relationship could be resolved.
200. This allegation involves consideration of (a) whether the Claimant and LS could be rostered on different shifts and (b) whether the Claimant ought to have been transferred to York.
201. In respect to (a), at least three managers recommended that the Claimant and LS be put on separate shifts. Other managers sought to implement those recommendations.
202. The Respondent's witnesses confirmed that they attempted to facilitate this but, due to rota constraints, and the limited number of midwives available to roster, some of whom had particular requirements/flexible working arrangements (including the Claimant), they were unable to guarantee this. Further, LS was, at some point during this time, a shift co-ordinator and there needed to be one shift co-ordinator on the ward during every shift. Ms Locking said "it would not be easy". Ms Sharp agreed in evidence that there well reported staffing problems in midwifery.
203. In respect to (b), there was a very firm recommendation that, from December 2021, the Claimant should undertake the majority of her shifts in York. However, as of 10 January 2022, the Claimant had only worked five shifts in 7 weeks in York. Further, the Claimant's evidence, which Ms Sharp agreed with, was that York had been requesting staff from Scarborough to assist them which had resulted in some Scarborough staff being forced to work in York.
204. The Respondent's position was that there were only 16 available shifts in York during the relevant period. On the dates of these 16 shifts, the Claimant was only rostered to work on five shifts. She was therefore allocated these five shifts. She wasn't rostered to work the other 11 shifts because, on these dates, she was not rostered to work. The Claimant could not say either way whether this was true. She also agreed that she did not request any shift swaps with

employees in York because she did not consider the shift swap process to be relevant to her, given the agreement mentioned above.

205. I do not conclude that, in light of the above, the Respondent acted without reasonable and proper cause. This is an objective test, not a matter to be viewed from the subjective point of view of the Claimant. There were significant rostering challenges for the Respondent that made putting the Claimant and LS on different shifts challenging. The Respondent agreed to roster the Claimant for as many shifts as possible in York without compromising the Scarborough roster. It just so happened that they could only put the Claimant on 16 shifts, 11 of which were on dates she was not rostered to work.

206. I also do not conclude that the Respondent's conduct in this regard was *calculated* to destroy or seriously damage the relationship of trust and confidence. There is no objective evidence of this being calculated although I recognise the Claimant's position that she believed that it was intentional.

207. However, on the balance of probabilities, this conduct is *likely* to destroy or seriously damage the relationship of trust and confidence. A recommendation was made by at least three managers that the Claimant and LS should not work on shift together.. Other managers then attempted to implement this. Resolution between the Claimant and LS was not going to be possible. It was recommended that the Claimant be able to work the majority of her shifts in York. Looking at the situation objectively, the fact that the Claimant was required to work up to 80% of her shifts with LS, despite this background, is likely to destroy or seriously damage the relationship of trust and confidence.

208. Nevertheless, as I have found that the Respondent had reasonable and proper cause for acting in the way it did, this of itself does not amount to a breach of the implied term of trust and confidence. This is not therefore a repudiatory breach of contract.

Did the Claimant resign because of such breach?

209. Yes.

210. The law states that, when assessing this, I have to consider whether the repudiatory breach 'played a part' in the reason for the resignation. It is acknowledged by the cases that an employee can resign for a 'whole host of reasons' and therefore I need to consider whether the repudiatory breach was one of the factors relied upon. Also, the repudiatory breach need not be the sole or principal cause of the resignation, provided the employee resigned at least in part because of the breach.

211. There are a number of potential reasons for the Claimant's resignation to be considered:

1. The fact that the Claimant and LS were required to continue to work together, notwithstanding the recommendations that had been made for them to not do so;

2. The Respondent's handling of her complaint/grievance culminating in the Claimant receiving the report on 8 June 2022 which was then discussed on 28 June 2022;
 3. The fact that the Claimant may have applied for/secured a new job; and/or
 4. The fact that the Respondent had initiated a further fact find in relation to the Claimant and an incident that occurred on 25 June 2022.
212. The only repudiatory breach I have found concerns (2) above. I have therefore had to determine whether this played a part in the Claimant's decision making when resigning.
213. For the purposes of assessing this, my starting position is the reasons given in her resignation in her letter namely (my emphasis added):
214. **"The trusts failure to follow procedure during formal investigations and a grievance I raised**, and the continued facilitation of bullying and harassment since my initial concerns were raised in July 2021. I feel the extreme stress I have been under during the past 18 months and how it has affected my Mental health and overall wellbeing has made it impossible for me to continue to work here. There has been multiple emails sent to HR about my concerns that were ignored".
215. In oral evidence, the Claimant's reasons were confused, as I said earlier. They included a mixture of receiving the outcome of the bullying and harassment investigation on 8 June 2022 and the initiation of the fact find in late June 2022. Based on the evidence that she gave, it appeared her reasons were weighted more towards the fact find rather than the bullying and harassment investigation. She referred to the fact find initially and more often in her own evidence and when putting her case to the Respondent's witnesses.
216. There is also support for the proposition that the Claimant resigned because of the June 2022 fact find in the Claimant's own evidence. She said that she broke down during this meeting with Ms Locking because she couldn't take anymore. However, the fact that she says she spoke about her decision to resign with her manager that morning suggests that, upon entering the fact finding meeting, she already knew she was resigning. This calls into question whether it was the fact find that caused the resignation or events preceding it.
217. The evidence also supports the proposition that it was, in fact, the requirement for LS and the Claimant to work together which caused the resignation. This is in what the Claimant said to Ms Locking on 30 June 2022, when she said she was about to resign, which she did shortly afterwards, as recorded in the fact find mentioned above. This was therefore clearly in her mind immediately prior to her resignation.

218. The evidence in support of the Respondent's assertion that the Claimant resigned because of the new job is less clear.
219. I do agree that, on a balance of probabilities, the Claimant is likely to have said that she was looking for a new job during the November 2021 meeting mentioned earlier. This was recorded in the minutes which the Claimant had an opportunity to challenge, but did not, despite challenging many other aspects of these notes. The Claimant had also challenged records of other meetings. The Respondent's witness, who attended this meeting, recalled the Claimant saying this. However this was some 7 or so months before her actual resignation.
220. I have concluded that there must have been at least a discussion about the Claimant potentially leaving the Respondent and moving to Doncaster prior to 25 June 2022. This is because, on the Claimant's own evidence, part of the reason for her behaviour that evening was driven by comments made by her colleagues about the fact she was doing so.
221. The Claimant herself said that she was interviewed for the Doncaster role at some point between 21 and 30 June 2022 which was later clarified as being 'within a few days of 21 June 2022'. I consider it likely that the Claimant was interviewed prior to 25 June 2022 and felt confident that her application would succeed. Hence, the rumours that were circulating that day.
222. Ms Chorlton's evidence about what the Claimant had told her, on 28 June 2022, was clarified in cross examination. Ms Chorlton confirmed that it was possible that the Claimant had told her that she was *applying* for a job in Doncaster, rather than that she had found/been offered such a job by this point.
223. Ms Locking gave similar evidence, namely that the Claimant had told her that she was relocating to Doncaster for family reasons and this was the reason for her decision to resign.
224. However, the conditional offer was not received until 5 July 2022 and the Claimant was insistent that an offer was not made orally during the interview because other candidates needed to be considered. Although I suspect the Claimant was, prior to 30 June 2022, confident that she would be successful, there is no reliable evidence before me of her actually being successful prior to this date.
225. In her submissions, the Claimant stated that she resigned because of the following (and I have listed these for ease):
1. "The lack of response to challenging bullying behaviour;
 2. the Trust failure to implement recommendations following all 3 investigations;
 3. the refusal to acknowledge my grievance on 10/1/22 by HR resulting in my grievance not being investigated (226);

4. the unfair application of policies applied during the disciplinary Process and;
 5. the threat of further unfair formal disciplinary actions were the direct cause of my resignation on 30/6/22... The final straw came during the meeting on 30/6/22 when it became apparent Gill Locking had no intention of carrying out a fair fact find and threatened me with a formal investigation”.
226. At the end of this hearing, the Claimant said that the initiation of the fact find in late June 2022 was the ‘last straw’. As the Respondent’s representative correctly observed, this was never a last straw case. It would be significantly prejudicial to the Respondent for me to treat it as such.
227. Whilst I have some evidence from the Respondent regarding the fact find, I expect, had the Respondent known this was going to be a live issue in this case, it would have adduced other evidence as well, including why it chose to interview the people it had interviewed and no-one else.
228. Although the Claimant did not seek leave to amend her claim to include this point, it would not have been appropriate for me to grant it. Whilst applications for leave to amend can be granted at any stage in the proceedings, including during the hearing, to do so in this case, after all of the evidence had been heard and the parties were providing their submissions, would have been severely prejudicial to the Respondent’s defence. Therefore, I have not treated this as a ‘last straw’ case.
229. However, for the following reasons, I have concluded that the Respondent’s handling of the grievance process ‘played a part’ in the reason for the Claimant’s resignation. I do not consider it to be the sole or principal cause of the resignation but as the cases mentioned above make clear, it doesn’t need to be. I have concluded that it was principally the handling of the grievance process, the fact find and the requirement for the Claimant to continue to work with LS despite the various management recommendations which caused her to resign. I also suspect that part of the Claimant’s rationale was that she may have felt confident in her success with the Doncaster application.
230. My reasons for concluding that the Respondent’s handling of the grievance process ‘played a part’ in the reason for the Claimant’s resignation are:
1. “The trusts failure to follow procedure during formal investigations and a grievance [she] raised” was the first reason cited in the resignation letter. This therefore was likely to have been at the forefront of her mind when she resigned;
 2. Although the evidence was conflicting in parts, the Claimant’s oral evidence during part of the hearing was that it was receipt of the investigation report on 8 June 2022 that caused her resignation; and

3. A large thrust of the Claimant's case concerned the handling of the complaint/grievance and her concerns about the same. This culminated in the Claimant receiving the report on 8 June 2022, which was then discussed on 28 June 2022, knowing that the same ought to have been sent to her four months before (and much sooner, had the Respondent complied with its policies).

231. I have been conscious of the conflicting oral evidence on the part of the Claimant in this regard and I have given it careful consideration. I understand that it could be said that the evidence she gave on day one, namely that the late June 2022 fact find caused her resignation, was the truthful account, with her changing her position overnight, because she may have realised the difficulties this could have created for her claim.

232. However, after careful consideration, I do not consider this to be likely. The Claimant is a litigant in person who has had difficulties understanding the test for a constructive unfair dismissal claim as well as Tribunal procedure. She believed that events post-dating her resignation could be relevant to the test and could not understand why the Respondent's representative submitted that they could not. She also initially thought that she could introduce a 'last straw' event at the very end of the hearing, after all of the evidence had been heard, without this creating any issues.

233. With this in mind, I do not consider it likely that the Claimant would have appreciated a need to potentially change her evidence as to the reason for resignation from what she said on day one to what she said on day two. I consider it more likely that both of these reasons formed part of her overall reasons for resigning.

Did the Claimant delay too long in resigning?

234. No.

235. The repudiatory breach culminated in the Claimant realising, on 8 June 2022, that she had not been sent the investigation report, despite it being prepared four months before. This was then discussed with her at the grievance meeting on 28 June 2022. The Claimant resigned on 30 June 2022. Whether the relevant date is 8 or 28 June 2022, this is not a significant period of time following the repudiatory breach and it is clear from the evidence that the Claimant was aggrieved during this time, having learned that no meaningful investigation into her grievance had been undertaken.

Did the Respondent have a fair reason for the dismissal?

236. No.

237. The Respondent relied upon SOSR however did not particularise what other substantial reason was being relied upon and why.

238. It could be said that SOSR would have been applicable given the relationship breakdown between the Claimant and LS. However, the Respondent did not seek to persuade that this was a fair reason for the Claimant's dismissal and I note the burden of proof is on them to do so.

Did the Respondent act reasonably?

239. No.

240. If the Claimant was dismissed because of SOSR, namely the relationship breakdown between her and LS, no fair dismissal process at all was followed beforehand. Considering the size and administrative resources of the Respondent's undertaking, it did not act reasonably in dismissing her for SOSR.

241. Accordingly, the Claimant's claim for constructive unfair dismissal is well-founded and succeeds. Directions for a remedy hearing will follow in due course.

Employment Judge McAvoy Newns

15 June 2023