



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs Tracey Lewis

v

**North Central London Integrated
Care Board**

Heard at: London Central
2023

On: 1 – 3 February

Before: Employment Judge G Hodgson

Representation

For the Claimant: in person

For the Respondent: Ms Laura Robinson

JUDGMENT

The claim of constructive unfair dismissal fails and is dismissed.

REASONS

Introduction

1. On 31 July 2022 the claimant commenced proceedings at the London Central employment tribunal alleging she had been constructively dismissed.

The issues

2. At the hearing, the claimant's confirmed her sole claim was constructive unfair dismissal. The respondent submitted a list of issues which the claimant neither agreed was correct nor disputed. I have considered the claimant's claim form, the respondent's list of issues, and the claimant's written submissions.

3. It is clear the claimant alleges that there was a breach of the implied term of mutual trust and confidence, and she relies on a last straw.
4. In support of her allegation that the term of mutual trust and confidence was breached, the claimant specifically identifies four key elements as follows:
 - a. by the respondent removing from her team an 8B post, in April 2021, and thereafter not replacing it;
 - b. by adding three new team members to the claimant's responsibility from June 2021;
 - c. by denying the claimant permission to go on a secondment in September 2021;
 - d. by harassing the claimant to meet with an external consultant and complete psychometric testing in January and February 2022; and
 - e. by her line manager lying to her concerning engagement with the consultant.
5. As regards the last allegation, which is said to be the final straw, the claimant's position developed during the course of the hearing. It became the claimant's case that her line manager, Mr Anthony Browne, informed the claimant that she had no contractual obligation to meet with the consultant or undertake any form of psychometric testing. He is said to have lied because it is alleged he asked the consultant, Ms Ruth Ball, to continue to contact the claimant, thus contradicting and undermining his agreement with the claimant.

The evidence

6. The claimant gave evidence.
7. The claimant had obtained a witness summons against Ms Ruth Ball, the external consultant, prior to the hearing, which had been granted by EJ Stout. Ms Ball had written to the tribunal, shortly before the hearing, seeking to revoke the order. The circumstances in which the order was made, and the reason for making it, were unclear to me and I considered I had no reason to vary the order. Ms Ball attended, I noted that she had made the application and confirmed that I would not revoke the order, as I had insufficient grounds to determine whether there had been a sufficient material change in circumstances.
8. It was apparent that the claimant intended to cross-examine Ms Ball. It was unclear to me what was the potential relevance of Ms Ball's evidence. I confirmed the general position was the claimant's is not permitted to cross-examine her own witness, and it was unclear if Ms Ball's evidence was relevant. At the end of day one, the claimant indicated she would

release Ms Ball, I asked the claimant to consider it overnight, and in the morning she affirmed her decision. I therefore released Ms Ball, who gave no evidence.

9. For the respondent I heard from two witnesses, Mr Anthony Browne, the claimant's direct line manager, and Ms Rebecca Booker, who was a director and the claimant's previous line manager.
10. I received a bundle of documents. The claimant objected to the inclusion of documents concerning her grievance, as she considered them to be irrelevant. I agreed that it was likely they were irrelevant. However, I noted it is common for the parties to put significant amounts of irrelevant evidence before the tribunal. The general practice is to ignore evidence which is irrelevant. If any documents, contained in the bundle, were directly referred to in evidence, the claimant would have an opportunity to say that any document was irrelevant. I indicated it was unlikely that any evidence related to the grievance would be relevant. Ultimately, one document was referred to which the claimant objected to. That document clearly contained representations about the reasons for her resignation, which were made shortly after the resignation, and was relevant. I permitted cross-examination on it.
11. Both parties gave oral submissions, supplemented by written submissions which were subsequently filed.

The facts

12. In August 2018, the claimant commenced work for the former North Central London CCG to cover an employee who was on a sabbatical.
13. Around September 2018, the claimant took on the role of head of finance for Camden CCG, alongside her primary carer role. After a few months, it was agreed she would concentrate solely on primary care, the original role.
14. In September 2019, the claimant secured a permanent role as head of finance primary care. This was an 8C role. There are 8A, 8B, 8C, and 8D roles. Role 8A is the lower grade.
15. The permanent role started around November 2019.
16. Ms Kathuria, who had been on secondment, returned. The claimant became her line manager. The working relationship became difficult. The claimant believed that Ms Kathuria had performance issues she states, "If I ever spoke to [Ms Kathuria] about her performance she would just go running to HR to complain of victimisation." In addition, she believed that Ms Kathuria made inappropriate allegations about discrimination. The claimant found the situation difficult to deal with.

17. Ms Kathuria was a grade 8B employee. With the claimant's consent, and in order to facilitate the claimant's wish to cease management of Ms Kathuria, she was moved to another department, corporate finance.
18. The claimant's need for resource was reviewed and I will consider the detail, to the extent that I need to, below. I do not accept the claimant expressed any specific concern that the removal of Ms Kathuria left the claimant with a lack of resource.
19. On 28 April 2021, when Ms Booker was line managing the claimant, the claimant sought time off. Her email of 28 April 21 stated:

Hi Becky

I would like to take the week off commencing 10th May.

In short I am really not feeling myself lately and also feeling like I am not particularly able to cope well with work at present. Every day normal stuff just feels like a huge burden and irritation.

This is a worry to me as I don't want to take time off sick as that's not me and never has been. However work just feels relentless right now and somehow my normal coping mechanisms have disappeared.

I do have some personal family issues bothering me also which certainly doesn't help my own wellbeing.

...

20. Ms Booker enquired whether the claimant wished to take sick leave or annual leave. The claimant never asked for compassionate leave.
21. The claimant remained unhappy. On 8 June 2021, by email, she told Ms Booker that she intended to resign and she stated the following:

I wanted to give you prior notice of my intention to resign from NCL CCG and will be giving three months notice at the end of June with the aim to leave at the end of September.

I have been thinking about this for a while and wanted to let you know in good time as it may implicate your plans for the realignment exercise.

I am looking for something new as have decided this isn't what I want to be doing for much longer.

22. In or around June 2021, the claimant took on responsibility for managing three further members of staff concerned with non-delegated primary care work. There were two new 8As and a band 7. The claimant accepts this was part of her role, and that she agreed to the transfer. The claimant received the assistance of a 0.25 full-time equivalent 8C head of finance to deal with prescribing budget. The prescribing budget made up 74% of the non-delegated budget. This all occurred with the claimant's consent and was not objected to at the time. Ms Booker had no reason to believe the claimant was not happy with the arrangement

23. The claimant did not tender her resignation, which she had intimated in June. She carried on working.

24. In mid-June 2021, Mr Anthony Browne, a director of finance, became the claimant's line manager. He then undertook her one-to-one meetings.

25. On 24 August 2021, without prior warning, the claimant wrote to Mr Browne and stated the following:

I am very interested in a secondment opportunity with NHSE (East of England) to cover the newly created senior finance lead role for Covid vaccinations. A whole new team is being set up for this.

I know it's a big ask but what would the likelihood be of me being released for this role on a 9 month secondment basis?

Perhaps we can discuss when you have time as the closing date is first September.

26. Ultimately, the claimant did not apply for the role. The claimant did discuss this with Mr Browne on 25 August 2021. Mr Browne said he would consider it with his manager, Mr Goodwin. Mr Goodwin agreed that the application should not be granted. The claimant's position was pivotal, it would be difficult to cover her for those nine months and it was in the business interests of the respondent that the claimant remained in post. There was no obligation to grant the secondment. Refusing for business reasons was envisaged by the policy.

27. In September 2021, an external consultant, Ms Ruth Ball was brought in to support finance development work across the finance team. The organisation was going through a period of change. ICBs were replacing CCGs in the NHS from 1 July 2022. This was subsequent to a prolonged period of potential restructure. It follows the organisation was preparing for change and this led to uncertainty and concern among staff. It was perceived there was unrest amongst the heads of finance, having regard to the issues raised at senior management team meetings. Ms Ball was to lead a staff development programme.

28. The claimant viewed this program with some suspicion. I accept Ms Booker's evidence that the intention was to, in some manner, support heads of finance and it was envisaged that the input from Ms Ball would assist those heads of finance in the process of change. I accept the claimant's evidence that the parameters of, nature of, aims of, and the process envisaged by the respondent when appointing Ms Ball were poorly communicated and largely obscure. What is clear is the claimant viewed the process with suspicion. She did not wish to participate.

29. At some point, there was reference to psychometric testing. The claimant did not want to participate in that. It is unclear to me what was envisaged to be the purpose of psychometric testing.

30. There was an initial workshop on 18 October 2021. Ms Booker and Ms Ball agreed there would be a separate workshop for heads of finance.
31. On 6 January 2022, Ms Ball sent to the claimant and others an email confirming that she would ask them to complete an "insights discovery evaluator." This was designed to "describe your behavioural preferences." Mrs Ball's email is poorly drafted in that it does not set out the purpose of the evaluation, whether it will be confidential, or how it will be used. It may have been that the purpose of the test was addressed in more detail in the meeting; however, it is surprising that her email is so brief and lacking in detail. I have no doubt that it was the claimant's concerns about this which led to a discussion on 11 January with Mr Browne.
32. Mr Browne discussed the claimant's reservations with her on 11 January 2022. There is some conflict of evidence as to what happened at that meeting. I accept that Mr Browne made it clear the claimant was under no obligation to participate. She had no contractual obligation to take part in the process or to complete psychometric testing. I am satisfied that Mr Browne thought that the process may be helpful to the claimant and encouraged her to consider taking part. There may have been a degree of misunderstanding. I am satisfied that Mr Browne communicated to Ms Ball that she could contact the claimant and provide more information. I do not accept that he contacted Ms Ball contrary to any express agreement with the claimant.
33. On 14 January 2022, Ms Ball sent an email to the claimant and others stating it was "a reminder that the closing date for your questionnaires... is next Friday 21st." It states, "If anyone has any questions about this, do please get in touch."
34. On 14 January 2022, the claimant, by email, stated "As notified to you earlier, this is not something I wish to participate in and I've discussed my reasons for this with Anthony." The claimant copied in a number of people, including Ms Booker. She did not send it to Mr Browne.
35. Ms Booker forwarded the email train to Mr Browne.
36. Mr Browne responded to Ms Booker stating "Yes we picked up on this in Tracey's 121 and I'm happy to run through. I don't think we agreed that she wouldn't do it more that some further context about next steps will be useful. The general feeling is the HOFs are unclear what this is being used for and why it is just them..."
37. On 17 January 2022, Ms Ball sent to the claimant and others a longer email explaining what she perceived to be the purpose of the psychometric testing. She stated that it was widely used in the NHS and did not relate to competency. It is said "the evaluation is your response to the questions asked with the report reflecting your preferences in the workplace." Whilst the email does give some explanation as to the nature of the test, it fails to set out adequately, or at all, its purpose or how it will

be used. The respondent's basic position is that Ms Ball was hired to assist HOFs in the process of change. Whilst that may have been Ms Booker's intention, such intention is difficult to glean from Ms Ball's email.

38. On 19 January 2022, a Teams meeting was set up for the claimant and Ms Ball. The claimant did not make it plain that she was unwilling to speak to Ms Ball. In a WhatsApp message to Mr Browne on 25 January 2022, the claimant noted there were 10 minutes before she would speak to Ms Ball; this does not suggest the claimant was unwilling to have a discussion. In her evidence, the claimant indicated her intention was to speak to Ms Ball and make it plain that she was not going to participate in, or complete, the psychometric test. The claimant believed that she was sanctioned to do this by Mr Browne, who had agreed that she had no obligation to participate.
39. The claimant did not attend the call on 25 January 2022, but stated, by email, that it would need to be rearranged she states, "Apologies – I was tied up with another call. We will need to reschedule as I pretty much have back-to-back meetings all day."
40. Ms Ball responded on 3 February asking the claimant to let her know when she would be free.
41. On 3 February 2022 at 19:34, the claimant wrote "I have agreed with Anthony that I am not participating in this exercise."
42. On 4 February 2022 at 6:25, Ms Ball wrote "I've had confirmation from Anthony that he wants us to go ahead with the session, so there seems to be some confusion here?"
43. The claimant did not respond to Ms Ball. The claimant did not contact Mr Browne and seek any clarification as to what confirmation he had provided, or when. The claimant made an assumption that, in some manner, Mr Browne had misled Ms Ball and failed to confirm that he had stated the claimant did not have to participate, but instead he instructed Ms Ball to pursue the claimant.
44. On 4 February 2022, at 08:30 claimant wrote to Mr Browne as follows:

In light of the continued pressure that is being applied to me by Ruth Ball, seemingly based on your instructions and contrary to what we agreed, I wish to tender my formal resignation.

I will now seek another opportunity.

I am disappointed that my views and ideas for continuing to develop and support Primary Care Finance at NCL have not been listened to.

I have enjoyed working with and developing my team over the past 3 years or so and I believe I leave them in a good position to continue to provide a quality service to our internal and external stakeholders.

It is with regret that my position now feels untenable.

I will agree a mutually convenient departure date with you.

45. Mr Browne suggested the claimant should take the weekend to reflect on her decision. I understand this was a discussion. I accept that he encouraged the claimant to withdraw her resignation. On 7 February 2022, the claimant confirmed by email that her resignation would stand.
46. The claimant deals with her resignation at paragraphs 31 of 32 of her statement

31. It was at that point I determined that I could not work for a line manager who had blatantly lied to me and failed to support me in my role. I was denied an 8B deputy, I was denied a secondment to get me into a new and happier role, I was denied the opportunity to carry out the strategic and transformational aspects of my 8C job description. I was at breaking point for many months and this was the last straw event that proved exactly what type of managers I had and the type of organisation I was working in. They clearly showed every intent to unfairly constructively dismiss me from my position. I just didn't fit their profile for their organisational structure going forward into the ICB. This was proven by the appointment of 8D posts above the 8C Heads of Finance, further diminishing our status in the organisation, with the so called "unqualified" being told that they needn't apply.

32. I have a huge amount more knowledge and experience in NHS finance than the people leapfrogging me into the 8D roles. I had in fact been line managing one of the very same people. My future prospects in the organisation have been denied. I was even told by AB that I wasn't even eligible to apply for a job at a grade lower than the one I was working in with NCL for the last 4 years. Utter disrespect for my worth and value to the organisation by AB. This made me feel very upset and worthless to be told this having always worked so hard in my role with NCL CCG.

47. It is clear that the claimant's concerns encompass not only the matters she raised before me as breaches of contract but more generally, matters about career advancement and the "leapfrogging" of others into senior positions.

The law

48. Section 95(1)(c) of the Employment Rights Act 1996 states that there is a dismissal when the employee terminates the contract, with or without notice, in circumstances in which he or she is entitled to terminate it, with or without notice, by reason of the employer's conduct.
49. The leading authority is **Western Excavating ECC Ltd -v- Sharp [1978] ICR 221**. The employer's conduct which gives rise to constructive dismissal must involve a repudiatory breach of contract Lord Denning stated:

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 then that terminates the contract by reason of the employer's conduct. He is constructively dismissed.

50. In summary there must be established first that there was a fundamental breach on the part of the employer; second, the employer's breach caused the employee to resign; and third, the employee did not affirm the contract as evidenced by delaying or expressly.
51. In so called last straw dismissals there can be a situation where individual actions by the employer, which do not in themselves constitute a breach of contract, may have the cumulative effect of undermining the implied term of mutual trust and confidence. One or more of the actions may be a fundamental breach of contract, but this is not necessary. It is the course of conduct which constitutes the breach. The final incident itself is simply the last straw even if in itself it does not constitute a repudiatory breach. The last straw should at the least contribute, however slightly, to the breach of the implied term of trust and confidence.
52. The question of waiver has to be considered. A clear waiver, or simple passage of time, may demonstrate that the employee has affirmed the contract at any particular moment. However, it may be that a final incident would be sufficient to revive any previous incidents for the purpose of showing a breach of the implied term.
53. In cases where there has been a course of conduct, the tribunal may need to consider whether the last straw incident is a sufficient trigger to revive the earlier ones. In doing so, we may take account of the nature of the incident, the overall time spent, the length of time between the incidents and any factors that may have amounted to waiver of any earlier breaches. The nature of waiver is also relevant in the sense of was it a once and for all waiver or was it simply conditional upon the conduct not being repeated.
54. There is no breach of trust and confidence simply because the employee subjectively feels that such a breach has occurred no matter how genuinely this view is held. If, on an objective approach, there has been no breach then the employee's claim will fail (see **Omilaju v Waltham Forest London Borough Council** [2005] EWCA Civ 1493, [2005] ICR 481, CA). The legal test entails looking at the circumstances objectively, i.e., from the perspective of a reasonable person in the claimant's position. (**Tullett Prebon PLC v BGC Brokers LP** [2011] IRLR 420, CA.)
55. The repudiatory breach or breaches need not be the sole cause of the claimant's resignation. The question is whether the claimant resigned, at least in part, in response to that breach. (**Nottinghamshire County Council v Meikle** [2004] IRLR 703, CA; **Wright v North Ayrshire Council** UKEATS/0017/13.
56. **Omilaju v London Borough of Waltham Forrest 2005 ICR 481 CA** is authority for the proposition that the last straw does not have to be of the

same character as the earlier acts, nor must it constitute unreasonable or blameworthy conduct, although in most cases it will do so. But the last straw must contribute, however slightly, to the breach of the implied term of mutual trust and confidence. An entirely innocuous act on the part of the employer cannot be a final straw. The test is objective. It is unusual to find a case where conduct is perfectly reasonable and justifiable, but yet satisfies the last straw test.

57. I must consider causation, the employee must show that he or she has accepted the breach, the resignation must have been caused by the breach and if there is a different reason causing the employee to resign in any event irrespective of the employer's conduct there can be no constructive dismissal.
58. I note that where there are mixed motives the tribunal must consider whether the employee has accepted the repudiatory breach by treating the contract of employment as at an end. Acceptance of the repudiatory breach need not be the only, or even, the principle reason for the resignation, but it must be part of it and the breach must be accepted. The tribunal notes the case of **Logan – v Celyn House UKEAT/069/12**.
59. I note the case of **Bournemouth University v Buckland** 2010 IRLR 445 CA. the head note reads:
- (1) In constructive dismissal cases, the question of whether the employer has committed a fundamental breach of the contract of employment is not to be judged by a range of reasonable responses test. The test is objective: a breach occurs when the proscribed conduct takes place.**
- The following stages apply to the analysis of a constructive dismissal claim: (i) in determining whether or not the employer is in fundamental breach of the implied term of trust and confidence the unvarnished *Malik* test applied; (ii) if acceptance of that breach entitled the employee to leave, he has been constructively dismissed; (iii) it is open to the employer to show that such dismissal was for a potentially fair reason; and (iv) if he does so, it will then be for the employment tribunal to decide whether the dismissal for that reason, both substantively and procedurally, fell within the range of reasonable responses and was fair.**
- It is nevertheless arguable that reasonableness is one of the tools in the employment tribunal's factual analysis kit for deciding whether there has been a fundamental breach. There are likely to be cases in which it is useful. But it cannot be a legal requirement...**
60. In **Malik v Bank of Credit and Commerce International SA 1997 IRLR 462**. The House of Lords confirmed that there is an implied duty of mutual trust and confidence as follows:
- the employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.**

61. I would note that it is generally accepted that it is not necessary that the employer's actions should be calculated *and* likely to destroy the relationship of confidence and trust,¹ either requirement is sufficient.
62. In **Malik** the House of Lords held that the trust and confidence may be undermined even if the conduct in question is not directed specifically at the employee and second, it was not necessary for the employee to be aware of the wrongdoing whilst employed. Third, the term may be broken even if subjectively the employee's trust and confidence is not undermined. Whether the term is broken must be viewed objectively.

Conclusions

63. I have outlined the relevant facts above. To the extent I need to find further facts, I will do within my conclusions below. It is appropriate to consider my conclusions in relation to each of the matters relied on as forming part of the breach of the term of mutual trust and confidence. However, I bear in mind that it is the totality of the behaviour which falls to be considered. It is the accumulation of conduct which is relevant. No specific element relied on need be a breach in itself, provided that the totality of the behaviour amounts to a breach of the term of mutual trust and confidence. Nevertheless, in considering the totality, it is necessary to consider the detail of each element.

Removing the 8B person in April 2021 and not replacing it

64. The claimant agreed to the realignment of the 8B post to the corporate finance team. The claimant received additional resource, being an 8A role filled by a corporate reporting accountant. At all times, the claimant had the option of Ms Kathuria returning. The claimant approved the level of resource allocated to her team on 10 June 2021 and confirmed the resource was adequate on 20 July 2021. In June 2021, the claimant confirmed the resourcing structure was appropriate.
65. At all material times it was open to the claimant to confirm her concern. I have preferred Mr Browne's evidence that at all times the resource needed was discussed. On the balance of probability, had the claimant objected to the removal of the 8B post, or had she concerns that it should be, but was not being, replaced she would have made her concern clear in writing. When asked in evidence when she raised her concern in writing, the claimant cited only one email from 23 December 2021. I considered that email; it does not raise a complaint about removal of the 8B post, or the failure to replace it. It is simply an ongoing consideration of necessary resources, consistent with an ongoing and active review as part of the claimant's responsibility.

Adding three new team members the claimant's responsibilities in June 2021

¹ See, for example *Baldwin v Brighton & Hove City Council* [2007] IRLR 232

66. The non-delegated primary care finance role was part of the claimant's job description. From June 2021, she became responsible for line management of a non-delegated primary care work team being two new 8As and a band 7. She accepted this was part of her role, and consented to the transfer. I note that the claimant had lost her responsibility for supervising Ms Kathuria. In addition, she received additional resources described. It follows that she consented fully to the change.

Denying permission to go on secondment of September 2021

67. I have considered the circumstances above. I have considered the respondent's policy. The claimant had no right to secondment. Denying her request was consistent with the policy. I am satisfied that the request was denied because the respondent had an ongoing business need for the claimant to remain in post. It appears to be the claimant's case that she was so stressed that secondment should have been granted as some measure to reduce her stress. It may be that the claimant was under significant stress. However, I am satisfied that there are multiple reasons for that. The claimant's job was stressful. The workload at times was burdensome and heavy. That is not uncommon in a job which has significant responsibility and fluctuating demand. At all times Ms Booker and Mr Browne were careful to assess with the claimant the level of demand and the reasonable resources needed to meet that demand. The fact that the demand fluctuated and the fact the resource provided changed over time simply reflect the dynamic and ongoing demands. Management of the response to that demand primarily fell to the claimant in the first instance and it was to be discussed with her line manager.

Harassment by an external consultant/being lied to by her manager

68. The nature of the claimant's case in relation to this changed during her evidence. The claimant does not allege that the process itself was a form of harassment. In principle, she accepts Ms Ball had a right to approach her and to seek to engage the claimant with the process. The claimant makes no specific criticism of Mrs Ball, or of the nature, content, frequency, or timing of Mrs Ball's communications. In brief, she does not consider that the actions of Mrs Ball amounted, in themselves, to harassment.
69. To the extent that she alleges harassment, the claimant alleges that she was contacted after she had made it clear to Mr Browne that she would take no part in the process conducted by Ms Ball. Mrs Ball had no reason to believe that she should not contact the claimant. At the meeting on 11 January, Mr Browne had made it clear that the claimant had an obligation to participate in the project. The claimant understood that; she intended to tell Mrs Ball that she would not participate. Mr Browne's belief that the claimant may benefit from the project, and that she may be prepared to participate in the project following further explanation, is not inconsistent with his statement that the claimant need not participate. I do not accept

that Mr Browne, in some way, lied when he indicated to Miss Ball that she may contact the claimant.

70. During her evidence, the claimant confirmed that the last straw was not being contacted by Ms Ball, but her belief that Mr Browne had fundamentally lied about the claimant's position and actively encourage Ms Browne to contact the claimant contrary to the agreement.

Summary

71. It follows that the claimant, when saying that the term of mutual trust and confidence was breached, first of all says that she had resources removed, which were not replaced, and which put undue pressure on her. I do not accept that is correct. The removal of Ms Kathuria was for the claimant's benefit because the claimant did not wish to supervise her. She did receive further resource, and the level resource was kept under active and reasonable scrutiny.
72. Her complaint that she was given extra responsibility is unconvincing.
73. The claimant did become the line manager for three further people, this was within her job description, and it was consented to by the claimant. It was well within the duties that the respondent could reasonably expect of the claimant.
74. Thereafter, the claimant objects to the fact that she was not allowed to go on secondment. The respondent acted properly and reasonably in refusing the application because it had a legitimate business need which it was entitled to give precedence to. As for the circumstances surrounding the work of the external consultant and the psychometric testing, I am satisfied that the respondent acted appropriately and within the claimant's contract. There is some force in the claimant's arguments that the purpose of the project was not adequately explained. The purpose of the project in general, and the relevance of psychometric testing in particular, were not adequately explained to the claimant. The respondent was aware that there was some disquiet amongst the heads of finance, and the project, at least in part, sought to address that. If the sole purpose of the project was to support individuals during a period of change, that was not adequately communicated at any time. The respondent should reasonably have anticipated the claimant and others, may view with some caution the project, the relevance of the project, and the use of psychometric testing. I am satisfied that the nature of the project was poorly defined and communication as to its purpose and effect was inadequate.
75. The claimant was able to express her concerns and she was assured that she had no obligation, whatsoever, to participate. The claimant fully understood that. She had been told that by Mr Browne. Mrs Ball's final communication referred to a conversation with Mr Browne and said there appeared to be confusion. The claimant then made an assumption and

reacted in relation to her own assumption. Her assumption was that Mr Browne had lied; she had no basis for that assumption. To the extent that Mrs Ball had referred to Mr Browne's instruction, the claimant did not seek further clarification. It is unclear what conversation Ms Ball was referring to, or when that conversation took place. Ms Ball made it clear that there may be confusion. Had the claimant approached Mr Browne again, I have no doubt that he would have confirmed that she had no obligation to take part in the project at all, or to complete any psychometric testing. The claimant could then have communicated that to Mrs Ball, as indeed was her set intention when accepting that there could be a further conversation. The last straw in this case was not an action by the respondent, but an assumption by the claimant based on inadequate facts, when she could have checked the position.

76. In order for there to be constructive dismissal, the respondent must have breached the term of mutual trust and confidence. The matters identified do not in themselves, or cumulatively, amount to a breach of the term of mutual trust and confidence. I accept that there could be some criticism of the way the project, which was led by the independent consultant, was approached. There was poor communication, and it should have been obvious that it may lead to questions and mistrust. Mr Browne flagged the difficulty and the confusion. However, the running of the project was not itself a breach. The poor communication was not in itself a breach.
77. Finally, the last straw must be blameworthy and must contribute. Here the blameworthy conduct is alleged to be Mr Browne lying. The claimant made an assumption that he had lied. I am satisfied that he had not lied. It may have been that there was confusion as to whether the claimant would consider participating in the project. However, the claimant's action in saying that she would speak to Mrs Ball indicates that she would, at the very least, consider the matter further. That was what Mr Browne had understood. To the extent that he communicated with Mrs Ball, he agreed that she could contact the claimant further. That does not indicate dishonesty. In the circumstances, the last straw as relied on by the claimant did not happen: Mr Browne did not lie. Mr Browne's conduct was not blameworthy at all. The alleged last straw could not contribute to any cumulative action said to be a breach of contract.
78. It follows that there was no breach and the claim must fail, as there was no breach to accept.
79. I should consider the reason for resignation. The claimant's reason for resignation had a number of elements. She had already made it clear that she wished to leave and that she was dissatisfied with the job. I have no doubt that she found the job stressful. The claimant had decided to resign by no later than the first notification of her proposed resignation. The fact the claimant then wished to have a secondment simply underlines the fact that she no longer wanted to be in the job. I have no doubt that she found her job stressful and she wished to have a change. The continuing process of organisational change, and in particular the appointment of the

external consultant, simply increased the claimant's dissatisfaction and prompted her to lose trust in the respondent. She saw the process as some form of assessment of her work and she found it unwelcome. In addition, she was clearly dissatisfied with other matters. She referred to individuals who had less experience than her "leapfrogging" into higher roles. The claimant was disgruntled and unhappy. It was the fact that she was discontented which led to her not checking the position with Mr Browne, and ultimately led her to decide to resign.

80. I accept that the claimant's belief that Mr Browne had lied was a material part of her reason for resignation. Had he lied, and had it been a final straw, there would have been a constructive dismissal. As there was no dismissal. I need not consider fairness.

Employment Judge Hodgson

Dated: 21 February 2023

Sent to the parties on: 13 March 2023