



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Stephanie Powell

**Respondent:** Lifeways Community Care Limited

**Heard at:** Birmingham Employment Tribunal **On:** 26-27 July 2023

**Before:** Judge L Mensah

## **Representation**

**Claimant:** In person

**Respondent:** Ms L Gould (Counsel)

# JUDGMENT

1. The Tribunal orders are:
  - (i) The Claimant's claim for constructive dismissal is not made out and is dismissed.
  - (ii) The Claimant's claim for either breach of contract or an unauthorised deduction of wages in the form of non-payment of a discretionary bonus is not made out and is dismissed.
  - (iii) All claims are therefore dismissed.

## Background

2. This matter came before me over two days on the 26 and 27 July 2023 by video. Unfortunately, there was insufficient time to conclude all the Respondent's evidence and by the end of the second day, at least two of the Respondent's witnesses had not yet been called.
3. On behalf of the Respondent, Miss Gould took instructions and confirmed the Respondent were not going to call their last two witnesses as they felt the issues had been covered by the witnesses they had presented, and they

wished to avoid having to return for a third hearing day and the cost implications of the same. I therefore agreed to apply flexibility in accordance with the overriding objective and to allow written submissions. Due to the holiday period and availability, it was agreed written submissions would be filed and I gave orders for the same. I indicated the Respondent could file a response to the Claimant's written submission only if they were taken by surprise by matters raised therein.

4. I received the written submissions on the 3 October 2023. I note the Respondent's submissions are dated 1 September 2022 and 7 September 2023 and the Claimant's submission is undated but was sent under cover of email dated 31 August 2023. The Respondent's second submissions is a response to matters raised by the Claimant in her submissions. To the extent those submissions go beyond my instructions they are limited in value as they tend to repeat or reemphasis what has already been said in the main submission.

#### The issues before the Tribunal

5. This matter went before the Employment Tribunal on the 13 February 2023 before Employment Judge Smith. In Judge Smith's case management orders, a list of issues was prepared and exhibited to the order, as well as a case summary. This confirmed that the complaints were as follows:
  - Constructive unfair dismissal
  - Breach of contract or unlawful deduction of wages (failure to pay a bonus)
6. In terms of the constructive dismissal claims, the questions that I needed to answer were as follows:
  - (i) Did the Respondent act unreasonably and unfairly when it investigated and concluded a grievance into the Claimant?
  - (ii) Did the Respondent fail to investigate and conclude the claimant's grievance properly and reasonably?
  - (iii) It is the case the Respondent does not conduct proper weekly recruitment calls.
  - (iv) Is it the case the Respondent (as named below) did not check in regularly with the Claimant (Sarah Cole and John Billings)?
  - (v) Did the Respondent not provide a training handbook or guidelines?
  - (vi) In June or July of 2021 did Miss Sarah Cole refer to a number of the team as "gobshites."
  - (vii) In August 2021 did Sarah Cole say Steve is not a man, he is gay?
  - (viii) In February or March 2022 decide to place the claimant with an area manager (who is the sister of the person who raised the grievance against the claimant and was a personal friend of a witness in the grievance against the claimant),
  - (ix) In February or March of 2022 JM's role was not advertised?

7. Did the above, breach the implied term of trust and confidence?
  - (i) The Tribunal will have to decide whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damaged the trust and confidence between the Claimant and the Respondents and whether it had reasonable and proper cause for doing so?
  - (ii) The Tribunal will also have to decide if the breach was fundamental. 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?
  - (iii) Further 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.
  - (iv) Did the claimant affirmed the contract before resigning, the Tribunal will need to decide whether the Claimant 's words or actions show that they chose to keep the contract alive even after the breach?
  - (v) If the claim it was dismissed, was the reason or principal reason for dismissal. The Respondent contends it was 'some other substantial reason.'
  - (vi) Was it a potentially fair reason?
  - (vii) Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?
8. In terms of the legal principles relevant in this case the *Malik* test remains the measure of a repudiatory breach of contract, as confirmed Leeds Dental Team Ltd v Rose [2014] IRLR 8, namely was Respondent's conduct likely to destroy or seriously damage the relationship of trust and confidence? It is not necessary to show subjective intention on the part of Respondent.
9. Unreasonable behaviour by the employer will not be enough, although "*reasonableness is one of the tools in the employment tribunal's factual analysis kit for deciding whether there has been a fundamental breach*": Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445.
10. Ultimately the test will always be a contractual one – was there a breach of a fundamental term of the contract of employment. Where an employee relies on a 'last straw' to assert a repudiatory breach of his contract by Respondent, that last straw must contribute, even if only slightly, to the breach of trust and confidence: Omilaju v Waltham Forest London Borough Council [2005] IRLR 35. Kaur v Leeds Teaching Hospitals NHS Trust [2018] IRLR 833, [2019] ICR 1 sets out the most recent test relating to the last straw doctrine, expounded by Underhill LJ.
  - a. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
  - b. Has he or she affirmed the contract since that act?

- c. If not, was that act (or omission) by itself a repudiatory breach of contract?
- d. If not, was it nevertheless a part .... of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term?"

11. In terms of the bonus, I need to make findings as to whether the Claimant was contractually (whether written or oral) entitled to receive the bonus and whether there was a breach of contract or an unauthorised deduction of the claimant's wages in accordance with Section 13 of the Employment Rights Act 1996,

***"13 Right not to suffer unauthorised deductions.***

*(1) An employer shall not make a deduction from wages of a worker employed by him unless—*

*(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*

*(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.*

*(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—*

*(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*

*(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*

*(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.*

*(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.*

*(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.*

*(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.*

## Findings

12. Turning first to the constructive dismissal claim. I heard evidence for Mr John Billings, one of the Respondent witnesses, who told me that on the 4 August 2021 he held a 'teams' (platform) meeting in which he gave training on the correct process for notifying Managers prior to internal candidate's interviews. It is this process which ultimately the Respondent found the Claimant had not followed. The agenda for that meeting is exhibited at page 84. He says that he assumed the Claimant attended the meeting as it was mandatory for the whole team, and the Claimant was not on annual leave during this time. The effect of this training was to require the Claimant to add a note to the Respondents internal applicant tracking system, otherwise known as a 'TS' when a recruiter had informed an internal candidate of their responsibility to tell their line manager about applying for a new role.

13. Miss Cole in her witness statement also attended the team meeting on the 4 August 2021 and confirms the information and training given by Mr Billings during that event covered this procedure. The Claimant had not clearly addressed this, but I accept the Respondent's position that the Claimant admitted she knew the correct procedure and did not follow it (see pages 95 and 96 of the bundle). Therefore, whether she did or did not attend is of little material consequence. However, given my overall view of the Claimant's evidence, I do not consider her recollection of events reliable, and she has not adduced any evidence to show she would not have been present at the training. I prefer the Respondent's evidence and find on balance she also had the training and was in any event fully aware of the correct procedure. I therefore do not accept the Respondent failed to provide training, whether by a handbook or otherwise that was material to the constructive dismissal claim. The Claimant has not particularised what training she required that would have made any difference to the outcome of this case. The Respondent does not suggest she was not capable of doing her job, and the Claimant does not point to anything she was not able to do and required training for. The reality is this is about her not wanting to work with staff, or staff associated with the staff, against whom she had lodged a grievance, she described this in her written submission as "the lion's den". I address this below.

14. Turning to the weekly recruitment calls the Claimant complains there was no clear structure to these calls, and she found them a waste of time and of no

real purpose. Having heard the evidence of Miss Cole I understand these meetings were to allow otherwise an otherwise dispirit pool of staff to meet and to raise issues regarding the day-to-day business. Whether they were weekly or bi-weekly, nothing of substance has been shown to have been missed. They were informal and Miss Cole explained that is why there was no note taken. They were intended to encourage open discussion about work problems. I found the Claimants claim to have founded a constructive dismissal claim based upon this weak and unreliable. See below. I do not accept this played any part in her decision to resign. I do not accept the holding of the same could or ought to be construed as a repudiatory breach entitling the Claimant to resign.

15. The Claimant alleges that in July 2021 Miss Cole called a number of the team “*Gobshites*”, and in August 2021 Miss Cole said something like “*Steve is not a man, he is gay.*” Miss Cole denies both. Given my overall view of the Claimant as an unreliable witness and accepting Miss Cole’s overall evidence is reliable and much of which is supported by the written record, I do not accept the Claimant has shown these comments were made by Miss Cole.
16. If this formed any part of the Claimant’s decision to resign, which I do not accept given my findings, I note she did not raise a grievance about it at the time and appears to have continued to work in accordance with her contract. It is unclear therefore how she says the Respondent as her employer is liable for this or how it is said this was conduct which caused her to resign some seven or more months later. There is not a shred of supporting evidence she raised this with anyone. The Claimant says she didn’t realise the manager she mentioned it to had left but there is no detail to show she sought to pursue this or put it on a more formal basis. I reject this evidence. I can find no link between these allegations and the other more central claims being relied upon to find a constructive dismissal claim. Even if I had accepted, they had occurred, which I do not, the Claimant would have clearly affirmed the breaches by continuing to work to her contract without raising this or registering any objection.
17. A staff member commonly referred to as MB, was a deputy manager at a small four bedded shared living service known as “Mill Water” care home. The Respondent had advertised a new role for a twelve bedded residential service for complex care with extreme autism where all the residents were nonverbal. This is known as “Greenland’s view.” I understand MB has indicated an interest in applying for this role. The Claimant says that when she looked at the job description for this role, she felt that MB did not have experience of complex care and none of the other essential requirements required for that role and the banding was higher than MB's current position. The Claimant says at the time they were another vacancy, as a service manager position and she did discuss that with MB. MB was said to be happy with the role and links were sent by the Claimant regarding an application for that role.
18. The Claimant accepts that she didn't provide the link for the role at Greenland’s view. The Claimant says that no formal application had been made and no application on ‘higherserve’ (the Respondent’s internal system)

19. I understand then that there was the Christmas break and on return the Claimant said she took a call from MB's Current manager, EW who was also inquiring about the registered managers role at Greenland's view. Apparently, EW was at that stage at the same level at this role and wanted to transfer due to personal reasons. The Claimant says she referred this interest to HR and her area manager. Ultimately, EW resigned without being recruited into the position and MB was successful in that application.
20. Mr Billings confirmed that on the 11 January 2022 MB raised a grievance against the Claimant and this is exhibited at pages 85-88 of the bundle. The grievance raised the following issues:
- (i) Why the Claimant had told the internal candidate's current line manager about the application for another role, and whether this was a breach of confidentiality?
  - (ii) Whether the Claimant breached any company policy 's
  - (iii) Whether the Claimant mocked or laughed at the internal candidate for applying for another role?
21. Mr Billing said he was appointed by the Human Resources manager, Ms Bola Okenla ask the grievance officer to investigate this matter. On the 24 January 2022, Mr Billings met with MB to discuss the grievance. On the 25 January 2022 he met with the Claimant and thereafter two other members of staff.
22. Mr Billings accepts that during his investigation he accidentally sent a message to an old 'Teams' group chat with members of staff from an entirely different region who may have been able to see the message and referred to the "SP grievance." He says that when he realised the mistake he deleted the message, it was an innocent mistake, he had no malicious intent and he had deleted the message within 10 minutes of having sent it. He also says that he was not aware that his outlook calendar was not set to private, and the other members of staff could see the meetings that he had diarised. The Claimant complains about this disclosure, but it was not raised as a specific allegation in the list of issues.
23. During the hearing the Claimant was cross examined about the list of issues that had been prepared before Judge Smith. In particular, the list of allegations at paragraph 39 of the list of issues, in which the Judge had sought to identify with the Claimant new matters which she had sought to raise in her witness statement for the hearing that had not been raised or pleaded in the claim form. It is apparent that none of these matters were raised in the Claimant's grievance or her resignation letter.
24. The Claimant told me that these matters formed part of her decision to resign apart from 39.2, which she confirmed came after the decision to resign. So, she now says that the disclosure was part of her decision but not raised and pursued as such. I accept the Respondent's submission, the innocent disclosure on 'teams' ought not to be viewed as being capable of destroying trust and confidence. The Claimant received an apology, the entry was quickly

removed and there is evidence supporting it being a mistake through the Respondent's IT department who confirmed Mr Billing's setting were not correct. At the hearing the Claimant's position regarding this issue did change. Her focus appeared to move from the fact of the disclosure being part of her resignation to the lack of a direct apology from Mr Billing. This shift does not assist her, and I consider it undermines her claim that this had anything to do with her reasons for resigning. The Claimant had received an apology, even if not direct, and there is no rationale basis for her to have viewed this as anything other than an innocent error. I do not accept it formed the basis for her decision to resign and I find, objectively viewed this could not and ought not to be viewed as being capable of destroying or seriously damaging mutual trust and confidence (whether individually or cumulatively). The evidence from the Claimant appears to be one other person read the entry. I also separately do not accept her evidence that others else saw this entry. Her evidence was vague and unsupported. I gained the impression she had taken a rather negative and suspicious view of the Respondent, perhaps in reaction to the complaints against her and overall, she seemed to be adding and changing her case as we progressed through the hearing.

25. Further the Claimant added, in the hearing, a new dimension when she suggests that one of the reasons why she resigned is because she had to wait from Sunday 21 January 2022 to the 28 January 2022 to get written confirmation of her grievance. The Claimant said she expected to have received an acknowledgment within 48 hours. This was again not part of her pleaded case, her resignation letter or grievance.
26. Miss Gould took the Claimant to the time frame for acknowledgement of the grievance raised against her which amounted to about 9 days. There appeared to be no difference in treatment of the claimant about the time frame for acknowledgment between her and the individual who had raised a grievance against her. I was also referred to evidence in the form of an e-mail exchange between the Claimant and Miss Okenla, in which the Claimant on the Friday following her grievance asks for an update in terms of the grievance. On Monday the 28 January 2022 Ms Okenla acknowledges the grievance. I do not accept this was part of her reason for resigning or that the delay amounts to a conduct capable of meeting the threshold. Whether taken individually or cumulatively with the other matters.
27. Turning to the list of issues at 39.3 through to 39.5 of the list, the Claimant accepts that she did not specifically raise any of these matters in her grievance or in her resignation letter, in her appeal or in the claim form. The Claimant suggests that she was referring to some complaint about her work in the appeal meeting with Mr Ferdinand Foyne, but having read the document there are references to all sorts of matters in vague terms which she complains occurred after she raised the grievance and none of them are specified as complaints, to enable Mr Ferdinand to investigate them. I am satisfied they did not form part of her grievance or her appeal. I am also satisfied that the reason for that is because these matters did not form part of the reason for her resignation.



28. Turning back to the list of issues at 39.6 through to 39.9 these are matters which are said to have occurred prior to the Claimant's resignation. At least three of the allegations occurred in 2021. I considered her grievance documentation and nowhere are they specified in the manner she now pleads them, whether in her appeal to Mr Foyne or in her claim form. The first time they appear in this format is in her witness statement. It was put to her that the reason why these matters have only been formulated in the witness statement is because since lodging the claims she had thought about any complaints that she had during her employment and sought to add them to bolster her claim. The claimant denied this in her oral evidence but has not sought to explain why she would fail to raise such matters if she considered them to be an important part of the reason why she resigned. I am not satisfied overall that they played any part in the reason for her resignation. I accept she has now sought retrospectively to add new perceptions of events to her case. I consider this is a negative factor which undermines her reliability.
29. Turning to 39.10, the Claimant refers to another employee called Mr Justin Mord, whose role was not advertised in around February or March of 2022. The Claimant couldn't recall when she first found out that the role had not been advertised but her complaint is that it should have been advertised and that was part of one of the factors that formed the grievance against her.
30. The Claimant also says this formed part of the reason for her resignation. This wasn't in fact discussed in the grievance process and at page 14 of the bundle there is the record of the meeting, and the Claimant mentions the role for this individual. I accept that this may have formed part of her reason for resignation. However ultimately, I conclude this does not assist the Claimant for the reasons I now give.
31. The result of the grievance against the Claimant was that Mr Billings decided to issue a verbal warning, this was identified as an informal outcome. The Claimant's complaint around that appears to be that the Respondent had no authority to give this informal warning. During the hearing Miss Gould took the Claimant through the disciplinary and grievance procedures and the Claimant accepted that they were non contractual. At 2.2 of the grievance procedure, it is clear also that the grievance procedure is intended as a guide, to be applied consistently but is non-contractual.
32. The Claimants accept that the Respondent could very well have taken her down a disciplinary path by virtue of the potential breach of her contract of employment and in particular clause 25 of the same. This was because the nature of her role meant she had access to personal data relating to staff and there was an argument and complained that she had breached that particular provision. When it was put to her that the decision to give her an informal verbal warning was reasonable and a light touch, she agreed.
33. Therefore, the way that she was treated and whether that was different from the way that Mr Mould was treated is not material to her decision to resign and in fact she goes on to say that it wasn't part of even her grievance and accepted that it was a reasonable outcome. I also take the view that her

evidence is inconsistent with her claim to have resigned because of the short delay. I do not accept this played any part in her decision.

34. The Claimant had provided an e-mail said to be from a Mr. James Hinges dated 17 May 2022. He did not attend the hearing and did not give evidence and therefore I placed limited weight on the e-mail. It is not in the form of a witness statement and there is no statement of truth attached. In reality the statement does not take the case any further because it confirms that Mr Billings calendar had been shared and was not set to private and this is a matter that Mr Billings accepts occurred in any event. I do not consider any of the other evidence that he gave relevant to the issues in this case.
35. Turning to the document said to be from Miss Gemma Prince, again this is not in the form of a formal witness statement, no statement of truth has been attached, and Miss Prince did not attend to give evidence. I therefore attached limited weight to this document. Miss Prince gives evidence about matters that seem to have no relevance to the issues in this case, does not address the material issues in the case other than to say that to her knowledge there was never a procedure for internal candidates, but does not provide sufficient evidence to enable me to safely determine that she was or was not present at the meeting and training given by Mr Billings.
36. Miss Prince says that she was able to leave with one month's notice, but no evidence has been provided in support of that contention and I am unable to determine if her circumstances were the same as the Claimant's because I have not been given any documentary or other evidence in support.
37. I am told by the Claimant that an e-mail dated 8 July 2022 from a 'JoJo' is in fact an e-mail from a Ms Joanne Highfield. The e-mail purports to be a statement but is not set out in a statement form, there is no statement of truth attached and so I give this document limited weight. The document refers to the disclosure by Mr Billings and again this is not something that is denied and so this statement takes the case no further.
38. Turning finally to the email dated 01.03.2022, which I understand is from Miss Prince, I repeat what I have already said above.
39. In concluding his investigation, he found the Claimant had informed the candidates line manager that MB had applied for an internal role and had failed to put a note on the system. Mr Billing says the Claimant admitted to failing to tell MB to inform her line manager about the application, failing to upload a note to the internal system and subsequently telling the line manager about the application, which was a clear breach of confidentiality. On that basis Mr Billings says that he gave an appropriate and proportionate informal warning and a refresh of the original training to the Claimant. He said he did not consider her conduct severe enough to validate formal disciplinary proceedings, but he did feel the Claimant needed to be reminded of the correct procedure and recognition be made of her failure to follow it. Miss Sarah Cole gave evidence that she was not involved in deciding the outcome

of the grievance against the Claimant and it was Mr Billings who decided to issue the informal warning.

40. It is accepted between the parties that the Claimant met Miss Sarah Cole on the 18 February 2022 and delivered the outcome. The Claimant says that on the 18 February 2022, Miss Sarah Cole advised her that Mr John Billings had concluded the investigation regarding the grievance and had decided to issue a verbal warning. The Claimant disputes the appropriateness of this warning based on a failure to follow any proper process and also alleges that this warning shouldn't have been given because there had been no formal application made by MB.

41. The claimant also complains about a delay in receiving the outcome letter and that the process from start to finish took three months and this had a negative impact on her mental health at a time when she was being treated for cancer. In paragraph fourteen of her witness statement the claimant says,

*“the whole process from start to finish took over three months in this time I was having fair the treatment of found the impact this had on my mental health was unbearable five of my team were cited to information regarding the grievance raised and I was in fair I was being Gosport about within my team. This caused me extreme distress. The operation team that i work closely with was also fragmented as i later found out that one of my am was indeed the sister of MB and the AM involved mac was a personal friend of them both whilst I remain supportive 2MB in her new role and totally professional at all times, I found this difficult to continue and therefore I felt the trust and confidence that I had with Sarah and John had gone and I was no longer able to continue in my role. The claimant says she then handed in her notice and had a call with Sarah Cole in which she expressed how the grievance had impacted upon her, how she felt she'd been unfairly treated, the impact of the events and that she questioned the integrity trust and confidence she had in both managers.”*

42. I heard evidence from Miss Bola Okenl, who is the Respondent's Human Resources manager, and she confirms in paragraph five of her witness statement that she considered the decision outcome of Mr Billings to issue an informal warning on the basis that the Claimant's conduct was not so serious as to warrant formal disciplinary action. Miss Okenl confirms she felt it was reasonable. I have also considered this, and I find the decision by Mr Billings was entirely within the remit of the Respondents to make. I do not consider that decision to be a fundamental or repudiatory breach of trust and confidence and I do not consider that to be a proper basis upon which the Claimant was entitled to resign and claim constructive unfair dismissal. The Claimant has failed to prove the process was either repudiatory or a breach of the Respondent's own procedures.

43. The Claimant complains about the failure to take steps to remove the three individuals who were connected to the grievances against the Claimant, which were not upheld (apart from as detailed here), MM, his sister and MB.

44. The Claimant says this caused her anxiety and distress as she had to work with these individuals. Ms Cole says she offered to move the Claimant to the south region and the west region (split) was offered. The Claimant denied the south region was offered, but accepts the split region was offered in the March. The Claimant maintains she should not have been left to work with these individuals, but I do not accept that complaint. I consider the behaviour of the Respondent was reasonable. They had completed their investigation and not upheld the complaints. The Claimant does not suggest any individual involved in any complaint did not accept the outcome or that anyone behaved in an appropriate way thereafter. The Respondent was not required to move three members of staff to accommodate the Claimant's perception.
45. The Claimant says that Miss Sarah Coles response to her resignation was that she stated she understood the operational concerns and offered to move the Claimant to a different region. The Claimant said she was due to go on holiday and asked if she could take time to think about matters and catch up on her return and if she took three weeks off to think about things and it was agreed that she would take this time to decide whether she would continue. The Claimant says she then took the holiday.
46. Miss Coles evidence is on the 28 March 2022 the Claimant emailed her resignation. This is exhibited at page 129 of the bundle Miss Cole says the following day she responded by confirming receipt of the resignation and offering a meeting, and this is exhibited at page 128 of the bundle. Miss Cole says the purpose of the meeting was to discuss the Claimant's resignation and if she wished to proceed then to discuss a date to leave. In paragraph twenty-five of her witness statement, she says she met the Claimant on the 30 March 2022 to discuss the resignation. Miss Cole alleges that the Claimant said that if she stayed in the organisation, she would be concerned about grievances being raised against her in the future albeit Miss Cole evidence is she had not witnessed any difficulties in the working relationships between the Claimant and other staff.
47. Miss Cole says she had previously offered an alternative role in another region, and it was agreed the Claimant would think about that and come back and discuss that on her return. Miss Cole says that she told the Claimant she was a valued member of the team, and she was sad to see her leave. There is therefore a dispute between the Claimant and Miss Cole as to what was said during that discussion. I prefer Miss Cole's evidence because she has remained consistent and is supported overall by the documentary evidence.
48. The Claimant returned and, on her return, spoke to ACAS and decided she could not continue with the Respondent. The Claimant says that in a telephone call with Miss Cole, Miss Cole told her that she had accepted her resignation. The Claimant also says she asked for immediate leave without having to work her notice. Miss Cole says that she met with the Claimant on the 8 April 2022 and the Claimant confirmed she did not wish to pursue the alternative role in a different region and requested a reduced notice period.

49. As notice had been running from the 28 March 2022, and the Claimant was made aware of this on the 28 April 2022 in a document exhibited at page 176, she confirms that the Claimant had queried whether she would be required to work the full 12 weeks' notice and it was agreed but his final working day would be the 27 June 2022, but would be sensible for her last working day to be Friday 24 June. Miss Cole told me that on the 5 May 2022 the Claimant emailed stating she did not wish to work here full notice and requested that her leave be brought forward to the 27 May 2022. This is exhibited at page 174.
50. The Claimant alleges that working her full notice would be untenable and asked if she could leave on the 27 May 2022. The Respondent agreed to reduce the Claimant's notice period to the 13 May 2022 but does not accept being required to work her notice in the circumstances was untenable. I have already addressed this above.
51. Miss Cole explained that she also informed the Claimant she wasn't entitled to the bonus because she did not meet the criteria of the bonus plan and the Claimant was wrong to think it had been withdrawn. The Claimant agreed to leave on the 13 May 2022, that being her last working day, and this was confirmed by letter dated 10 May 2022 (exhibited at page 144 of the bundle).
52. In her witness statement the Claimant makes some complaints about the level of contact she had with management, and I note in Mr Billings supplemental statement he responds to that. I do not consider those matters as relevant to the issues in the case because I am satisfied, they did not play any part in the reasons why the Claimant resigned on the 28th of March 2022. This includes any allegations about unprofessional or inappropriate conduct by Miss Cole, which I do not find is borne out by the evidence and which I conclude played no part in the reasons and motives for resignation.
53. At the same time, I also do not consider what is said by Mr Billings (regarding things the Claimant may have said, such as she had a chunk removed from her leg) to have any material bearing on the issues in the case. I also do not consider the claimants comments or allegations regarding a person known as 'Mac' to have any bearing on her decision to resign. I am satisfied the allegations made in the Claimant's witness statement regarding the person known as 'Mac' played no part in her decision to resign. In Miss Cole's supplemental witness statement, she responds to the same allegations. I have already referred to this briefly above. Miss Cole categorically denies some of the language the Claimant says that she used.
54. I do not find any of those matters are material to the issues in this case because I find they played no part in the reason why the Claimant resigned. I do not find that Miss Cole behaved in a way that was inappropriate or unprofessional as alleged by the Claimant. I have already note that some of the allegations that the Claimant has made did not form part of her grievance to the Respondents and have only been added into her witness statement.

55. I heard evidence from Mr Ferdinand Foyne, he is the Respondents' Financial Controller, he was appointed to investigate the Claimant's grievance. The Claimant raised a grievance on the 21 March 2022, just a week before her resignation on the 28 March 2022. On the 21 April 22 Mr Foyne wrote to the Claimant to invite her to a grievance meeting to take place on the 27 April 2022. The Claimant was told she had a right to be accompanied by a colleague or trade union representative.

56. On the 27 April 22 a meeting was held with the Claimant via teams. The Claimant chose not to be accompanied and a note taker also attended. The minutes of the grievance meeting can be found at pages 136 to 142 of the bundle Mr Foyne explains in his witness evidence that the Claimant had sought to try and introduce largely unrelated allegations against her team in this meeting, as she has sought to do in her witness statement before me, and he summarises her grievance as follows:

- There was a lack of professionalism and confidentiality, there was no note taker present at the grievance investigation meeting and she was not given the option of having a representative present.
- The outcome of the meeting was not delivered by the investigating officer but by her line manager.
- The outcome letter was titled 'informal'.
- The Claimant was issued with an informal warning when no disciplinary investigation or procedure was followed.
- The outcome letter was only issued after three weeks.
- There was a breach of contract because the Respondent does not issue verbal warnings.

57. Mr Foyne interviewed Mr Billings and Miss Cole, considered the Respondents policies and retained typed notes of all meetings (which are exhibited at pages 146 to 147 of the bundle). He accepted that Mr Billings had made an innocent and genuine mistake with his team's calendar and disclosure, and that there was no malice or ill intent behind this action. He also confirmed with the Respondents' Head of Information Security that there had been no breach of GDPR. Mr Billings had confirmed that he had taken the notes of the grievance meeting with the Claimant and the Claimants had made amendments to those notes and so there was a record, and it was reasonable to take a record in this way and without a separate note taker. As the meeting with informal he concluded there was no requirement for the Claimant to be represented and the matter never went to formal proceedings. He found no merit in any allegation regarding the fact that the line manager, rather than the grievance officer, gave the outcome of the decision. He concluded that an informal warning in an informal letter was appropriate in the claimant's case.

58. Finally, he accepted that there had been a delay in delivering the outcome letter to the claimant and there seemed to have been some IT issues which resulted in the outcome letter not arriving in the Claimant's inbox. He did not find any inconsistency or breach of any contractual terms given the

Respondent's disciplinary procedures stated that where there were minor breaches of conduct the manager will seek to support you to improve those through an informal meeting.

59. There was a short delay in delivering his outcome decision as regards the claimant's grievance, but in part that was due to matters outside of his control. I do not consider the period of time has any bearing on any of the matters in this case that are material to my decision. I also do not consider the delay unreasonable on the facts of the case as the Claimant had her already resigned and the outcome did not cause her any prejudice when received.
60. In the written submissions the Respondent have referred to evidence which they say shows the Claimant's real reasons for resigning. At paragraph 39 of their first submission they refer to the fact the Claimant had disclosed evidence she had been looking for another job around the late January/February 2022, well before some of the matters she now seeks to rely upon. The fact the Respondent received a request for a reference from the new employer on the 28 February 2022 (page 115 of the bundle) and the admission by the Claimant in the hearing that she did not resign until she knew she had an offer of better paid employment which she had accepted. The Claimant pursued a reduction in her notice period showed that she considered herself bound by the terms of the contract and is inconsistent with her claim to have been entitled to treat the contract as at an end. The Claimant also confirmed in cross-examination her new employer would have allowed her to start earlier. I agree these are relevant factors and further support my findings. I conclude the Claimant resigned because she had secured better paid employment and felt aggrieved because the Respondent issued an informal warning and had not upheld her complaints. Given my findings these factors did not entitle the Claimant to resign and pursue constructive dismissal against her employer as they did not amount to a repudiatory breach reaching the *Malik* threshold. I dismiss this complaint.

### Bonus

61. Dealing with the bonus payment, Miss Cole and Mr Billings confirmed that the payment is a discretionary payment and that no other colleagues on the bonus plan received a payment attributable to their bonus during a notice. Under the scheme known as the "regional recruitment coordinator incentive plan" as detailed in the bonus document before me, it makes it clear that no payment will be made under the bonus scheme if on the date of payment of the bonus the employee is not employed or is under notice of termination of employment by either side. The Claimant has not presented any evidence to demonstrate the contractual arrangements were anything other than those set out in the bonus scheme as documented in the bundle. The Claimant confirms that she resigned on the 28 March 2022 and that the payment that was due under the bonus scheme in April 2022 and therefore at a time when she was serving her notice. The evidence before me shows the Claimant was not entitled to the bonus scheme payment and she has not presented any evidence to counter this. I find she was not entitled to the bonus payment.

Employment Judge **Mensah**

Date 17.11.2023

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