



EMPLOYMENT TRIBUNALS

Claimant: Miss A Bickerdyke

Respondent: The Secretary of State for Justice

Heard at: Manchester

On: 22-25 January 2024

Before: Employment Judge Cookson
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Mr Hurd of Counsel

RESERVED JUDGMENT

It is the decision of the Employment Tribunal that:

1. For the purposes of section 95 of the Employment Rights Act 1996 (“ERA”) the claimant did not terminate the contract under which she was employed in circumstances in which she was entitled to terminate it without notice by reason of the employer’s conduct.
2. The claimant’s complaint of unfair dismissal is not well-founded and is dismissed.

REASONS

Introduction

1. The claimant in this case, Ms Audra Bickerdyke, referred to as “the claimant” throughout, was employed by the respondent as an Instructional Officer at HMPPS Styal Prison from 1 June 2015. Her role was that of Band 4 Facilities and Services Supervisor in Waste, Environmental and in Amenities and Conservation, based in the Garden Staff team. She gave the employer notice of resignation on 25 June 2021 and her resignation took effect on 13 September 2021. Following early conciliation

between 10 August 2021 and 3 September 2021 the claimant lodged her claim on 2 November 2021. She brought claims that she had been unfairly dismissed and subject to sex discrimination.

2. The claimant was unemployed for a time, but she has now returned to work with the respondent but as a prison officer at a different prison.

3. There was a case management hearing on 19 July 2022 before Employment Judge Buzzard which identified in broad terms the complaints brought and identified that the claimant had brought a direct sex discrimination complaint. The claim form suggested the claimant had brought a number of other claims, including claims over which the Tribunal has no jurisdiction, but she had referred to victimisation. However, at this preliminary hearing the claimant confirmed that complaint was not being pursued and was withdrawn.

4. Employment Judge Buzzard ordered the claimant to provide details of the events which she said formed the basis of her complaints. On the face of what the claimant had told Employment Judge Buzzard, it was clear that her sex discrimination complaints had been brought outside the statutory time limit and he listed a preliminary hearing to consider whether it would be just and equitable to extend time to enable the Tribunal to consider those complaints. That hearing was held before Employment Judge Doyle on 18 October 2022. He found that it was not just and equitable to extend time and those complaints were dismissed.

5. The issue which I had to determine was whether the claimant had been subjected to conduct which entitled her to terminate the contract under which she was employed without notice by reason of the employer's conduct (section 95 of the Employment Rights Act 1996). That is what is colloquially called a "constructive dismissal".

6. The claimant identified the conduct which she said entitled her to terminate her contract in a document submitted to the respondent and the Tribunal. It refers to 17 individual allegations of breach of contract from January 2017 until 25 June 2021.

Evidence

7. In reaching this judgment the Tribunal considered:

- a. A joint bundle of documents which ran to 766 pages and a small number of additional documents which the respondent wished to add to the bundle and to which the claimant did not object. The total bundle was 785 pages;
- b. The evidence in witness statements and given orally by the claimant and her witnesses, Ms Louise Weller, and Governor Vicky Sampey, and in a witness statement of Laura Burgess;
- c. The evidence in witness statements and given orally for the respondent by Ms Alison Margo Carney, Ms Anastasia Selby, Mr Edward Tarry, Mr Chris Hibbert, Governor Michelle Quirke and Governor Katrina Rose;

- d. Oral submissions from both parties on the question of liability.

The Relevant Law

8. This unfair dismissal claim was brought under Part X of the Employment Rights Act 1996. The employee must have dismissed. The circumstances in which an employee is dismissed are defined by Section 95. The relevant part of Section 95 in this sort of case is Section 95(1)(c) which provides that 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.”* This is what is often called a “constructive dismissal”.

9. The principles behind a “constructive dismissal” were set out by the Court of Appeal in **Western Excavating (ECC) Limited v Sharp** [1978] IRLR 27. The statutory language incorporates the law of contract, which means that the employee is entitled to treat himself as constructively dismissed only 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.

10. The term of the contract upon which the claimant relied in this case was the implied term of trust and confidence. I am guided by the House of Lords in **Malik and Mahmud v Bank of Credit and Commerce International SA** [1998] AC 20 in understanding the scope of that implied term. An employer must not: *“...without reasonable and proper cause, conduct itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.”*

11. It is also clear from this decision of the House of Lords that the test is an objective one, although the subjective perception of the employee can be relevant. *“The conduct must, of course, impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. That requires one to look at all the circumstances.”* The objective test also means that the intention or motive of the employer is not the issue. An employer with good intentions can still commit a repudiatory breach of contract.

12. In **Bournemouth University Higher Education Corporation v Buckland** [2010] ICR 908 the Court of Appeal confirmed that the test of the “band of reasonable responses” is not the appropriate test in deciding whether there has been a repudiatory breach of contract of the kind envisaged in **Malik**.

13. Not every action by an employer which employees may quite properly complain about will amount to a breach of trust and confidence. The formulation approved in **Malik** recognises that the conduct must be likely to destroy or seriously damage the relationship of confidence and trust. In **Frenkel Topping Limited v King** UKEAT/0106/15/LA 21 July 2015 the EAT chaired by Langstaff P put the matter this way (in paragraphs 12-15):

“12. We would emphasise that this is a demanding test. It has been held (see, for instance, the case of BG plc v O'Brien [2001] IRLR 496 at paragraph 27) that simply acting in an unreasonable manner is not sufficient. The word qualifying “damage” is “seriously”. This is a word of significant emphasis. The purpose of such a term was identified by Lord Steyn in Malik v BCCI [1997] UKHL 23 as being:

“... apt to cover the great diversity of situations in which a balance has to be struck between an employer’s interest in managing his business as he sees fit and the employee’s interest in not being unfairly and improperly exploited.”

13. Those last four words are again strong words. Too often we see in this Tribunal a failure to recognise the stringency of the test. The finding of such a breach is inevitably a finding of a breach which is repudiatory: see the analysis of the Appeal Tribunal, presided over by Cox J in Morrow v Safeway Stores [2002] IRLR 9.

14. The test of what is repudiatory in contract has been expressed in different words at different times. They are, however, to the same effect. In Woods v W M Car Services (Peterborough) Ltd [1981] IRLR 347 it was “conduct with which an employee could not be expected to put up”. In the more modern formulation, adopted in Tullett Prebon plc v BGC Brokers LP & Ors [2011] IRLR 420, is that the employer (in that case, but the same applies to an employee) must demonstrate objectively by its behaviour that it is abandoning and altogether refusing to perform the contract. These again are words which indicate the strength of the term.

15. Despite the stringency of the test, it is nonetheless well accepted that certain behaviours on the part of employers will amount to such a breach. Thus in Bournemouth University Higher Education Corporation v Buckland [2010] ICR 908 CA Sedley LJ observed that a failure to pay the agreed amount of wage on time would almost always be a repudiatory breach. So too will a reduction in status without reasonable or proper cause (see Hilton v Shiner Builders Merchants [2001] IRLR 727). Similarly the humiliation of an employee by or on behalf of the employer, if that is what is factually identified, is not only usually but perhaps almost always a repudiatory breach.”

14. In some cases the breach of trust and confidence may be established by a succession of events culminating in a “last straw” which triggers the resignation. In such cases the decision of the Court of Appeal in **London Borough of Waltham Forest v Omilaju** [2005] IRLR 35 makes clear that the last straw itself need not be a repudiatory breach as long as it adds something to what has gone before, so that when viewed cumulatively a repudiatory breach of contract is established. However, the last straw cannot be an entirely innocuous act or be something which is utterly trivial. In the case of **Dr P Leaney v Loughborough University** (EA-2022-000931-NLD) His Honour Justice Auberbach summarised the relevant general principles as follows. “The starting point is that where one party is in fundamental breach of contract, the injured party may elect to accept the breach as bringing the contract to an end, or to treat the contract as continuing, requiring the party in breach to continue to perform it—that is affirmation. Where the injured party affirms, they will thereby have lost the right thereafter to treat the other party’s conduct as having brought the contract to an

end (unless or until there is thereafter further relevant conduct on the part of the offending party, a point discussed in **Kaur v Leeds Teaching Hospital NHS Trust**[2018] EWCA Civ 978; [2019] ICR 1).

15. The case **Lochuak v London Borough of Sutton** EAT Nov/Dec 2014 provides further guidance on “last straw cases” and in particular what happens when conduct extends over time, but an employee chose not to resign at the time. What if something else happens? Can the employee rely on those past breaches? **Lochurak** highlights the judgment in **Logan v Commissioners of Customs and Excise** [2004] IRLR 63 which confirms that, depending on the circumstances, they may. What has to be considered is whether there has been a repudiatory breach. In cases where a tribunal looks at the effect of a series of alleged incidents which taken together are said to amount to a breach, the tribunal must look at what has happened in the particular context of the case and whether in the particular context of the case, that breach was so serious as to be repudiatory. Later incidents may add something to the totality of what has gone before, and in effect resuscitate what has happened in the past. What I must do is assess whether there is or has been a repudiatory breach which the employee is now entitled to accept having regard to all that has happened in the meantime - both favourable and unfavourable to the employee. If there has been such a breach and if the employee resigns at least partly for that reason, it will find in that case that there has been a constructive dismissal.

16. In terms of the reason for dismissal, if an employee has mixed reasons for resigning it is enough if the repudiatory breach played a part in that decision. It need not be the sole, predominant or effective cause. That was made clear by the decision of the Court of Appeal in **Nottingham County Council v Meikle** [2005] ICR 1. At paragraph 20 of Wright Langstaff P summarised it by saying “Where there is more than one reason why an employee leaves a job the correct approach is to examine whether any of them is a response to the breach, not to see which amongst them is the effective cause.”

17. What if the employee has waited some time before resigning? Does that mean the contract is affirmed? It is often said that an employee must not wait too long before resigning because they may affirm the contract but that does not correctly reflect the law. In **Chindove v William Morrisons Supermarket PLC** UKEAT/0201/13/BA the EAT emphasised that the matter is not just about the passage of time. The principle is whether the employee has demonstrated that he has made the choice to accept the employer’s conduct. Employees may do this by conduct; generally, by continuing to work in the job, or by what is said. There is no automatic time in which a contract will be treated as affirmed, it depends upon the context. Part of that is the employee’s position. For some employees resigning may have very serious and long-term consequences, others may be in a position to leave more easily. The law recognises that some employees may need some significant time to take a decision which may threaten their ability to pay a mortgage or rent for example and risk leaving family without financial support. An important part of the context will also be whether an employee was actually at work, and honouring the contract in a way which was inconsistent with a decision to leave. The context may be different for an employee who is sick and not working.

Findings of Fact

18. I made my findings of fact in this case on the basis of the material before me taking into account contemporaneous documents where they exist. I have resolved conflicts of evidence on the balance of probabilities and taking into account my assessment of the credibility of witnesses. I have not made findings of fact about every matter of contested evidence which was raised, but only those which I considered to be relevant and necessary for me to determine the legal issues.

19. I have taken the incidents which the claimant says were breaches of the implied term of trust and confidence (word for word) and included those as subheadings to explain my findings.

20. The claimant began working at Styal Prison in 2015. Her role was described as a hybrid one, working between waste management and horticulture. The claimant was new to working in a prison environment but coped well in her new role.

21. In 2016 Ms Carney joined the department as a Band 2 Waste Operative. This was a role junior to the claimant. Unlike the claimant, Ms Carney had previously worked at Styal Prison for a long period of time as a Prison Officer, then moved to another prison and had returned to Styal Prison as a civilian member of staff. This meant she knew some of the Styal staff including Mr Tarry, the line manager of both her and the claimant. In 2016 another new Band 4 grade employee was appointed, Mr Davies. However, it is difficult to recruit to prison roles and the department has long standing problems with understaffing and this inevitably caused impacts on workloads.

22. One of the themes of the evidence in this case was interpersonal difficulties within the team. Ms Carney and Mr Hibbert, who also later joined the team as a Grade 2 member of staff, gave evidence that they sometimes found the claimant difficult to work for. Ms Carney said that at first the claimant had been frosty towards her. Mr Hibbert gave evidence that when he joined Ms Carney had been on leave and comments made by the claimant about her were such that he had been very concerned about working with Ms Carney, although that had proved to be unfounded. For her part, the claimant says it was Ms Carney who was unfriendly, and she vehemently disputed that she had behaved in the way suggested.

23. Although the claimant disputed the accounts given by the members of staff, it is clear from comments made in the claimant's witness statement that she had doubts about the abilities of her colleagues at times and her description of the capability of the new Band 4 who joined the team in 2016 and the criticism she had of him is consistent with the evidence of others that the claimant had a tendency to be critical of her colleagues. The more senior managers gave evidence that that new Band 4 staff member had taken time to adapt to the prison environment. It seemed to me that the claimant is a competent and capable individual who expects all those who work in her team to be able to meet her standards and she is not very understanding of those who cannot, for whatever reason.

24. The claimant's line manager was Mr Tarry. The claimant asserted that Mr Tarry was friends with Ms Carney and that he displayed favouritism towards her, something which both Mr Tarry and Ms Carney disputed, they were simply colleagues of long

standing. Mr Tarry reported to the Sectional Head, Governor Anastasia Selby who has since retired (and who is referred to as Ms Selby below for that reason).

Alleged breach of the implied term 1 “Jan – May 2017 Over several months raised complaints to Eddie Tarry & Anastacia Selby – re overload of work and imbalance of workload between me and other band 4 member of staff in the same role.”

25. Towards the end of 2016 the team were very busy. The claimant had an interest in floristry and had begun to run a new educational course at the prison and had also been asked to lead on a 12-month project to deliver a show garden at the RHS Tatton Flower Show. The claimant believed that the other Band 4 supervisor was struggling and not doing his fair share of the work, but this was disputed by Mr Tarry.

26. By December 2016 the claimant was starting to feel stressed, which she attributed to her workload. Between January 2017 and May 2017, the claimant says she made several complaints to her line managers about what she said was an imbalance in work and she asked for the workload to be apportioned more evenly.

27. On 18 May 2017 the claimant went off work due to stress. A referral to Occupational Health was made by Mr Tarry. Mr Tarry recorded that the claimant had reported that workload was not evenly balanced between her and her colleague and that it had been agreed the claimant's workload would be reduced on her return to work. Mr Tarry and Ms Selby disputed that there had been an unfair distribution of work, but it is not disputed that when the claimant returned there was some reallocation of duties between the claimant and the other Band 4 employee, MD. I am satisfied that this shows an employer doing what is expected – for whatever reason an employee says they are struggling to cope, and workloads are adjusted as a result.

28. The claimant herself says that from her return to work in May until December 2017 things were “fairly quiet and running ok”.

Alleged breach of the implied term 2: During the month of December 2017, a restructure had taken place within the function – a disagreement between me and ET around the way this would work took place and a result of this disagreement ET became quite hostile towards me on numerous occasions witnessed by staff and offenders – Band 4 other member of staff left the role

29. The claimant says that changed when there was a restructure in the department. The claimant's evidence about the reason for the restructure is somewhat difficult to follow. What is clear is that it was proposed that a new Band 4 position would be created, and the number of Band 2 roles reduced. The claimant suggests in her evidence that the restructuring did not make sense, but Mr Tarry explained that the level of pay offered by the Prison Service for the waste team made it difficult to attract and retain employees and I accept what he says about that.

30. The claimant also suggested that the new Band 4 position was created for Ms Carney, but the respondent's evidence was clear that a restructuring of this nature requires a robust business case which is subject to regional approval and will require trade union consultation. Recruitment into a new role is subject to standard Prison Service recruitment requirements. The claimant's suggestion of nepotism in favour of

Ms Carney seems to have been based on conjecture and I find no evidence to support her allegation.

31. In her witness statement the claimant says that Mr Tarry was hostile towards her because she had objected to the restructure and Ms Carney was hostile because she took the claimant's objections to the restructure personally. Both Mr Tarry and Ms Carney rejected that they had been behaved in a hostile way. The claimant has not explained in more detail she means by "hostility", so it is difficult for me to make detailed findings, although it is not in dispute that the claimant and Mr Tarry had something of a strained working relationship. However, there was nothing in the claimant's evidence which suggests that Mr Tarry was trying to force the claimant out of her job.

Alleged breach 3: May 2018 The overload of work was becoming unbearable again and this was raised to manager ET the conversation took place within the prison grounds ET become extremely annoyed with me for raising that I was not happy with the situation and he then began to shout at me and advised me to go and see the head of function if I were not happy.

32. In May 2018 the Gardens and Horticulture team were at full stretch. It was the peak growing season, and the claimant was also working on the garden for the RHS Tatton Flower Show. The claimant's evidence was that at this time she felt pressured by her workload again and that her concerns about restructure had proved to be right because when Ms Carney was on a rest day, the claimant was expected to take on Ms Carney's duties as well as her own. Mr Tarry and Ms Selby told me that the claimant was only expected to cover the essential requirements of Ms Carney's job when she wasn't there (and the reverse would be true when the claimant wasn't working) and that the claimant was only expected to work her contracted hours- in other words she was not expected to do more work in the time available. I accept that.

33. At around this time there was an altercation between the claimant and Mr Tarry in the prison grounds about the claimant covering waste duties. In the course of that altercation the claimant says that Mr Tarry shouted at her. Mr Tarry did not specifically recall the particular incident. He disputed that he would have shouted at the claimant, although he said he may have raised his voice in response to the claimant not listening and being difficult with him. I also heard evidence from Governor Sampey (who was based at Styal Prison at the time but who now works at another prison) who said that she had overheard Mr Tarry shouting. She had not heard specifically what was said but she had only heard Mr Tarry shouting and not the claimant. Governor Sampey told me that she had been very concerned about Mr Tarry's conduct, but she did not make any internal reports or complaints about that.

34. Based on the evidence I accept that on this occasion Mr Tarry had shouted at the claimant. The claimant suggests that she had simply tried to conduct a civilised conversation. I think it is likely that there was rather more to it given the evidence I have about other confrontations between them than that and the evidence of Ms Carney and Mr Hibbert about how the tensions between the claimant and Mr Tarry manifested themselves that it is possible there was at least some irritation or hostility had been apparent on both sides, but I accept the evidence of Governor Sampey that it was Mr Tarry who shouted, and I accept that the claimant was upset by the incident.

That said, given Governor Sampey's seniority it seems implausible to me that the incident can have been as serious as both she and the claimant now suggest because neither she nor the claimant reported it either within the prison or to the trade union and neither made any contemporaneous record. The reasons given by Governor Sampey for that make allegations against various other individuals, but I have no evidence to support what are very serious allegations. I make no findings on them. In any event whatever the truth of those allegations, it does not explain why no report was made by the claimant herself to the respondent or her trade union.

Alleged breach 4 – May 20th 2018 ET added extra work to my duties despite the short staff, the additional workload was to support the educational department in functional skills with horticulture – although this was raised as too much and I was struggling to cope with the extra work load I already had on since December, I was ordered to do it and was told I was being awkward.

35. Two days later there was a further confrontation between the claimant and Mr Tarry, this time about the claimant supporting the tutor from the educational function providing functional skills to a class of prisoners from within the Horticulture Department. There was a dispute between about precisely what happened. Mr Tarry said that the claimant could provide appropriate training to the tutor in about an hour so that she would be able to show prisoners how to use the tools. The claimant said that it would be unlawful for that to happen and that only she could instruct the prisoners on how to use the tools, although I had no evidence the instruction given to her was unlawful. The claimant alleged that as a result the task would require significant time. The claimant's case was that Mr Tarry had told her that it was an order and she had to do it. When she then said she needed to go home she was told her absence would be unauthorised absence. The claimant subsequently left the prison and saw her GP for an emergency appointment. Her GP diagnosed her with "stress and exhaustion and she was signed off work. There is no suggestion that Mr Tarry took any disciplinary action against the claimant for leaving the site and failing to follow his instructions.

36. I see nothing wrong in what Mr Tarry asked the claimant to do. Clearly providing functional training to prisoners is an important thing to happen. The claimant had been asked to do was to help a colleague to facilitate that. On the basis of the evidence, I do not find that the instruction was unlawful. From the claimant's own description of her abilities, it seems she would have been well placed to do offer guidance to the colleague. It was a reasonable request. I accept the claimant felt stressed and went off work, but Mr Tarry did not take any inappropriate action against her as a result as the claimant alleges was threatened.

Alleged breach 5: July 2nd 2018 "Mediation was arranged for me and ET arranged by Governor A Selby hostile towards me it felt like everything, I did was wrong and the way he spoke to me was rude and this was witnessed by staff member Robert Whitworth"

37. Although the claimant alleged that when she returned to work Mr Tarry's hostile behaviour continued, no specific incidents are set out in her evidence. What is clear is that the working relationship between the two was under significant strain and Ms Selby as the governor responsible for the area, became involved. She arranged for a

mediation between Mr Tarry and the claimant which took place on 2 July 2018. The claimant alleged Ms Selby was favouring Mr Tarry, but the fact that it was a mediation rather than, for example, some sort of disciplinary action against the claimant, suggested to me that rather than taking sides (as the claimant alleges) Ms Selby was trying to find a way to bring both parties together and rebuild their relationship.

38. In her witness statement the claimant asserted that the conduct of the mediation was improper because of the identity of the mediator, although she did not allege that the individual concerned had in fact done anything wrong. The claimant also complained that the mediator was not qualified or independent, but Ms Selby told me that they were trained in mediation skills. The claimant has not produced evidence of any particular policy or contractual requirements in relation to the mediation process and the claimant's complaints appear to be based on assumptions on her part.

Alleged breach 6 July 16th 2018 "A team meeting took place where ET led the meeting, in that meeting ET raised his voice at me whilst we were in discussion of working practices as I did not agree to some of the points he raised his voice and told me I was disgusting and needed some discipline"

39. There was a team meeting on 16 July 2018 for the Gardens Team. Mr Tarry explained that the meeting was not minuted because he wanted to give the team the opportunity to talk about the communication issues and speak freely following the mediation. The claimant alleges that during this meeting Mr Tarry told her that she was "disgusting and needed some discipline". Mr Tarry disputed he said that, but I accept that in the course of the meeting there had been significant criticism of the claimant's behaviour towards Ms Carney. It seems significant in terms of how serious the incident was at the time that the claimant did not refer to this meeting specifically in her grievance.

Alleged breach 7: July 2018 "A Selby conducted an investigation with an outcome of not upheld – she failed to speak to one of the witnesses in the complaint who had witnessed the bullying I was having off ET she also did not consider colleague Robert Whitworths comments and did not uphold my complaint. She invited me for a meeting to discuss the outcome with ET present I felt completely let down by the way the whole process was conducted and felt intimidated by ET in the meeting."

40. The claimant subsequently submitted a grievance against Mr Tarry in that the claimant says:

"I feel the way he speaks to me and other staff in the location is absolutely disgusting, the rise to his aggression towards me is because I don't always agree with him, however this does not give him the right to speak the way he does to me, this is abusing his position."

The grievance does not specifically refer to the meeting on 16 July, although it does refer to the earlier incident witnessed by Governor Sampey.

41. Ms Selby considered the grievance. She spoke to other members of the team, but it appears no records were kept of those investigations, or if they were they have not been kept. She spoke to Mr Whitworth as the claimant had requested but he said

he did not want to get involved. Ms Selby's evidence to me was that other team members did not support the claimant's account but that they did report tensions between the claimant and Mr Tarry which made everyone feel uncomfortable. That is consistent with the evidence I heard from Mr Hibbert and Ms Carney. Ms Selby told me that she had sought to contact Governor Sampey about the shouting incident, but Governor Sampey denies ever receiving that email, and no email was produced. On the basis of the evidence, I accept that the team members did not want to get drawn in and did not support the claimant's account, but I am not satisfied that any email was sent to Governor Sampey to investigate that.

42. Ms Selby met with the claimant and Mr Tarry to inform them that she had decided not to uphold the grievance. Ms Selby gave evidence that she had previously explained the outcome of the grievance to the claimant, but there is no evidence at all of that and this was disputed by the claimant. She also told me that the claimant had been made aware that Mr Tarry would be there, but I accept the claimant's evidence that she was taken by surprise that Mr Tarry was also present and that she was made to feel uncomfortable given that Ms Selby's conclusion was that her grievance should not be upheld.

43. The staff grievance procedure refers to individuals having a right to be accompanied at a meeting to discuss their grievance and to be informed in writing of the response. There is no reference to joint meetings being held between the person who raises the grievance and their manager. There is nothing in this procedure which could have caused the claimant to expect to be invited to a joint meeting in the way that she was and despite Ms Selby's insistence that she saw nothing inappropriate with conducting the meeting in this way, I accept that the claimant was upset by the way that grievance outcome was delivered.

Alleged breach 8: August 2018 "I was approached by acting DEPT Steve Pace regarding the appeal, he apologized for the way the complaint had been handled and assured me there would be no more issues with ET, as he was going to speak with him regarding complaints, he had received he then asked me if I would consider cancelling the appeal on his word that there would be no more incidents off ET."

44. The claimant appealed against the grievance outcome on 3 September 2018. The claimant says that around this time she was approached by Acting Deputy Governor Pace of the prison who told her that he was aware of some issues around Mr Tarry, apologised for the way the grievance was conducted, and told the claimant that the various issues around the prison were to be addressed and asked if she would consider dropping the appeal on the assurance that the issues with Mr Tarry would be settled.

45. Mr Tarry denies that he was spoken to by Mr Pace.

46. I did not receive any evidence from Mr Pace, but I did hear evidence from Ms Rose one of his colleagues who had a conversation with him and was told Mr Pace had spoken with the claimant. She confirms that Mr Pace spoke to the claimant, but her evidence was that Mr Pace told her and the governor at the time that he had suggested to the claimant that it would be better if the issues between her and Mr Tarry could be resolved at a lower level, without a formal appeal.

47. Ms Rose's evidence about this was hearsay and I have to approach how much weight I can attach to it with care. It is possible of course that Mr Pace said one thing to the claimant and something else to his colleagues. On balance I accept that the claimant perceived that Mr Pace thought her appeal had merit and that he persuaded her to drop her appeal but, in terms of this claim, I find that what is significant is what happened next, which is not disputed. The claimant withdrew her appeal and although she says that matters did not resolve themselves, at no time did she reinstate that appeal or complain that Mr Pace had failed to take any promised action.

Alleged breach 9: Nov – Dec 2018 "I was asked to attend a well being meeting with ET and Emily Przybyla within that meeting I was informed it was to assess how I was feeling because my behavior in the work pace towards colleagues was concerning, I asked if complaints were made against me and he said no just a few comments, I asked who and when and ET refused this information, I informed him I had no idea what he was talking about and my life was perfectly fine other than to be falsely accused of things.

48. From September 2018 the Gardens department was fully staffed. However, matters came to a head again during December.

49. The claimant raised concerns with Ms Selby about being overloaded with work and that she felt her areas of work were neglected due to her being required to cover waste management and she raised concerns about job description not reflecting the work she was doing.

50. Ms Selby discussed what to do with Governor Kate Robinson and then sought advice from Graham Warren. Mr Warren told Ms Selby to separate the claimant's concerns about her job description and the structure and balance of work from complaints which had been raised about the claimant's relationships with colleagues. Ms Carney and Mr Hibbert had both expressed concerns about whether they could continue to work with her.

51. On 11 December 2018 the claimant attended a meeting with Mr Tarry and HR. The claimant was told the meeting been arranged because the number of complaints had been made about the claimant by members of staff. She was asked that if there was anything in her personal life which she wished to tell the managers about. The claimant said that she had no concerns other than how she was treated in the workplace by Mr Carney and Mr Tarry. The claimant asked for details of the complaints which had been made against her but was told that they were confidential and that this was a welfare meeting. The claimant did not perceive that that this was meeting concerned about her welfare, but rather something more akin to a disciplinary investigation hearing. I accept that the meeting was not handled well.

52. On 13 December 2018 there was a meeting to discuss the concerns the claimant had raised about her job description, attended by Ms Selby and Mr Warren. In the course of that meeting there was the discussion about the possibility of the claimant working in a different role at Styal Prison perhaps at a different establishment.

53. There was a further welfare meeting on 17 December as a follow up on the meeting on 11 December. This time the claimant also accompanied by her trade union

representative and by a business partner from HR, Mr Ikin. The claimant was told that a further occupational health referral would be progressed, and she was asked again if there was anything which she wished to raise to explain her behaviour. The claimant reported that she felt she was being pushed out. There was some discussion about a possible mediation with colleagues as a way of resolving the issues between her and her colleagues.

Alleged breach 10 Jan 2019 "I was asked to attend a meeting with Gov A Selby and Et, I was accused again of being unpleasant to my work colleagues with no evidence, I stressed to management that this was not the case and I felt isolated within my role and I disagreed with them and asked them to look all sides of the people involved."

54. Although this allegation is dated by the claimant in the list of issues to January it is clear she is referring to the meeting in December and it seems she had conflated the meeting involving Mr Tarry and Mr Ikin with the meeting with Ms Selby and Mr Warren. In her statement the claimant said that mediation had been arranged for the new year, but the notes of the meeting are clear that the claimant was told that if she was interested in mediation this would be discussed with her colleagues, but the mediation would depend on all being interested.

55. The colleagues who had raised concerns about the claimant were Ms Carney and Mr Hibbert. In early January Ms Carney told the respondent that she did not wish to enter into mediation with the claimant. The claimant suggests in her evidence that the reason for that was that Ms Carney knew her complaints were without foundation. A formal agreement investigation is much more likely to expose false or unmerited allegations than a mediation process, but I do not find that plausible or consistent with the evidence of Mr Hibbert and Ms Carney. I accept Ms Carney's concerns were genuinely held and while the claimant may not have intended to bully or isolate Ms Carney, that did not mean that Ms Carney had been dishonest. Ms Carney could not face a mediation process. Mr Hibbert was prepared to enter into mediation but he too had genuine concerns about, and had been upset by, the claimant's conduct.

Alleged breach 11 identified as February 2019 "I was contacted by OH for my assessment, In the conversation with the nurse she asked me did I know what I was being assessed for I said apparently stress, because I said the word, she informed me that my line manager ET had said I was behaving erratic and my behaviour was having a detrimental effect on the rest of the team which was a complete and utter lie."

56. In January 2019 the claimant broke her foot, and she was forced to go off work until April. While she was off, she was contacted by occupational health who wished to assess whether the claimant was being affected by stress. Although the claimant appeared to be critical of that, it was consistent with the discussions in the meeting before Christmas.

57. The claimant alleges the information given to the OH service was a lie by Mr Tarry because he had referred to the affect that the claimant's behaviour had on others. However, I accept that concerns had been raised by colleagues. The claimant disagreed with what they said about her but that did not mean the information provide by Mr Tarry to occupational health was dishonest or untrue.

58. When she returned to work, the claimant attended a mediation with a colleague, Mr Hibbert which was conducted by Mr Warren. It was successful and in fact the issues between them had largely been resolved before the meeting.

59. Later in April 2019 Ms Carney completed a formal grievance document about the claimant which made allegations of bullying and isolating behaviour. The grievance records that the previous December Ms Carney had asked if she could avoid attending any meetings with the claimant because of the conduct being directed towards her. That had led to an informal HR meeting with Mr Warren. Mr Warren had asked Ms Carney if she would consider voluntary mediation, but Ms Carney said she did not feel able to do that because of her fragile mental state. The claimant had then been off work with her broken foot and Ms Carney had a period of annual leave around the time of her return to work. When Ms Carney returned from leave, she was told she must fully engage with the claimant and other members of staff and that if she failed to comply with that instruction, disciplinary action would be taken against her. She was also told by Mr Warren that because she had refused to participate in mediation, she had had to draw a line on everything that had happened and any grievance she raised would be rejected by Mr Warren.

60. This tribunal is not considering complaints raised by Ms Carney. This is relevant insofar as the claimant suggests what happened with Mr Warren supports her account of events. I have had no explanation for Mr Warren's actions, and I find what he did somewhat difficult to reconcile with both the respondent's procedures and ACAS guidance on handling grievances. I accept that what Ms Carney's grievance says is corroboration for the claimant's account of what Mr Warren said to her and that he was supportive of the claimant's position. However, I do not find, as the claimant seems to argue, that this is evidence that Ms Carney's concerns about the claimant were not real or well-founded. There is no evidence to suggest that Mr Warren took any steps to investigate Ms Carney's concerns. What this does show however is that the respondent was not taking a one-sided or biased approach which favoured Ms Carney over the claimant. I accept that the evidence shows that Ms Selby and Mr Tarry faced a difficult situation of two colleagues in conflict with each other which they had to try and manage bearing in mind their responsibilities to each.

61. Despite the difficulties, it seems matters in the team did settle down again after that for until later in the year.

Alleged breach 12 28/07/2019 "Gov Selby invited me to her office for a meeting, within the meeting she told me I was there to be reminded of my professional behaviour, she made it clear that no complaints had been made. Gov Selby accused me of stealing flowers I had taken from the flower shop, she also raised how disappointed with me she was at no point did she want to listen to what I had to say she informed several intelligence reports had gone in from all different staff around the establishment and if I wanted, I could go and speak with the security governor who was Nicola Corrie."

62. In July 2019 some issues were raised by prisoners working in the flower shop. On 28 July 2019 the claimant was invited to Ms Selby's office. Ms Selby's evidence was that she had been asked by the governor with responsibility for security matters to remind the claimant about ensuring there could be no perception of improper conduct in the flower shop, although it was her evidence there was no belief the

claimant actually had something wrong. She says if that was the case the matter would have been handled differently.

63. The claimant alleges that Ms Selby accused her of theft and the claimant perceived that as unfair. She is adamant she had done nothing wrong. However, I am persuaded by Ms Selby's evidence. I accept that if there had been a suspicion of dishonesty the matter would not been raised as it was, and that the point being made to the claimant was that she needed to ensure she did not put herself in a position where there could not be any grounds to suggest possible dishonesty. In other words, ensuring that the claimant was scrupulous in how procedures were followed. I can see the claimant was offended by the issue being raised, but I accept the respondent had good grounds to so and that it was in the claimant's interests for this to be raised given the prison environment to ensure moving forwards that the claimant did not put herself in a position where accusations or suspicions could be raised, even if unfounded.

64. *Alleged breach 13 2 October 2019 "I was asked to go and attend a meeting with ET EV7 and yet again came the false allegations with no official complaints".*

65. *Alleged breach 14 3 October 2019 "I was invited for another meeting with Gov Selby, for the 4th Oct 2019 I took my union rep Andy Barton with me, Gov AS accused me of talking about other staff and yet again refused to hear my plea that I felt bullied and victimized by ET, she threatened me with suspension and investigation if she heard another thing, I asked her to investigate my allegation against ET, which she ignored on the 4th time I asked her my union rep intervened and reminded her of her obligation to investigate a complaint EV 9 union rep statement."*

66. The events in early October 2019 were clearly linked and I have considered them together.

67. Things had remained quiet for some time, but in late September concerns were raised against about the claimant conduct towards her colleagues including Ms Carney.

68. On 2 October 2019 there was a meeting between Ms Selby and the claimant about the allegations. Ms Selby suggested a formal investigation into the claimant's conduct would be required if things continued and the claimant would be suspended. The claimant denied what was said in strong terms. She accused those of raising the concerns of being dishonest and accused Ms Selby and Mr Tarry of being biased. The claimant's trade union representative suggested that there should be formal investigation into all of the allegations.

69. In the meantime, what the ongoing issues had come to the attention of the most senior governor in the prison, Governor Khan. He instructed a message to be replayed to both the claimant and Ms Carney that the situation of concerns being raised informally could not be tolerated any longer. They were both told that if either had a compliant or concern about the other that must be raised by a formal grievance and an investigation would be undertaken. If this poor behaviour continued, he would instigate an investigation. If the individuals wanted a transfer to another prison, they would need to find a vacancy. This it seems was a response to the claimant raising a request for a transfer.

70. In her statement the claimant alleges that she told Ms Selby that she wanted a formal investigation to be undertaken but that had never been done but the claimant accepted in cross-examination that she had not raised a formal grievance using the prison's forms. She also seems to suggest that she should have been transferred to another prison, but I accept that the claimant can have had no reasonable expectation that a job would or should be found for her if she wished.

71. Things then settled down significantly. The following March, in 2020, the covid pandemic hit and the country went into lockdown. The claimant suggested in her statement that the team worked well together during this time because Mr Tarry was shielding but there is no suggestion of any untoward matters between October 2019 and March 2020 either. It seems more plausible to me that Governor's Khan strict warning had the desired effect and forced both the claimant and Ms Carney to moderate their behaviour or be more willing to tolerate each other.

alleged breach 15: 9/06/2021 Due to another restructure in the department, the team had to work in each other areas, my area was left and not maintained, and conversations had been taking place behind my back which were overheard by prisoners, I took this complaint to ET and he ignored it, I also informed him I felt very isolated in the team but again this went on deaf ears. EV 12 complaint doc

72. The respondent disputed that there had been a restructure but says that rather a change to working patterns especially for weekend working had been out into place. The claimant does not allege that this in itself was a breach of contract and nothing it seems turns on this. What is significant is that it is not disputed that one weekend when Ms Carney was on duty the plants were not watered and a very significant number were lost. The claimant thought that had been deliberate. She also says that prisoners had overheard Ms Carney and Mr Hibbert being critical of her. That was disputed by them, but Ms Carney's evidence was that the claimant had been spreading rumours about a relationship between them and it seems plausible to me that discussions which were critical about the claimant had been overheard by prisoners and reported to her.

73. Although the claimant is critical that Mr Tarry did not take action when she told him she had complaints, she does not suggest that she raised any formal complaint in accordance with the respondent's procedures despite Governor's Khan's explicit instruction. I also accept that Mr Tarry had investigated what had happened with the plants and had been concerned himself by the plant losses but had accepted that a genuine mistake had been made.

alleged breach 16 June 2021 ET came up to gardens with an envelope containing a £20 of a prisoners partner to purchase a bunch of flowers, this was facilitated in this way the previous year as the visits centre was closed due to Covid, this method was approved by Gov Selby and payment methods going forward were going to be raised at the next financial meeting, however despite the discussion of getting a card machine nothing progressed. I informed ET of this happening the previous year and that I was told to facilitate the purchase. Later that week I was informed by ET he had submitted a mercury report in against me, this is the highest level of report that can be submitted and is generally submitted against staff who are under suspicion for something like corruption.

74. There is no dispute between the parties about the underlying facts. Mr Tarry handed the claimant an envelope addressed to her which it turned out contained a handwritten letter from a prisoner's partner with a £20 note stapled to it. The claimant explained it was for flowers and that the same thing had been done the previous year. Mr Tarry was shocked, and he alleges that he said that the claimant she needed to submit an Intelligence Report 'IR' about it. The claimant disputed that, although she admitted it was clear Mr Tarry was concerned. Mr Tarry then decided to make an intelligence report himself which he did and informed the claimant so she too could make one. He also told her that he had spoken to the Security Governor and made clear that he did not think the claimant was corrupt. Although the claimant suggested that Mr Tarry had acted unreasonably and to get her into trouble, she also acknowledged that a member of staff receiving cash from a prisoner's family was something which could be a cause for concern.

75. The incident was recorded but no further action was taken against the claimant.

alleged breach 17 I wrote my resignation letter after discussing with Gov Selby options for me to consider staying in post, I expressed I could not continue to work under ET management, nothing was offered to resolve this.

76. The claimant made an appointment to see Governor Quirke. She was aware in general terms about the tensions in the team but had not been directly involved. The claimant did not tell Governor Quirke or her PA what the purpose of the meeting was. The claimant met Governor Quirke first on 25 June 2021. The claimant told her she felt she had been treated unfairly over a period of time and gave the governor her resignation letter. They discussed the letter and the claimant told Governor Quirke that there should be a management restructure. Governor Quirke encouraged the claimant not to do anything rash. The claimant was asked to think it over and a further meeting was arranged for 2 July 2021 but at that meeting the claimant confirmed her intention to resign.

77. The claimant's resignation letter is detailed. It refers to a number of the disputes which were raised in these proceedings including the tensions with senior management and her unhappiness with the restructure in 2018 but, significantly in my view, it does not refer explicitly to any of the last incidents in June 2021 which are now relied upon. The letter also refers to other complaints not referred to me such as a dissatisfaction with a decision taken the year before for the prison to pay some or all of the tuition costs the claimant had incurred obtaining floristry qualifications despite the fact she felt she had been encouraged to take the qualifications and had gone on to use her skills to offer courses at the prison.

78. There was considerable dispute before me about whether the claimant told Governor Quirke that she had found another job. The claimant says that she simply told the governor about a new part time role that was in line with work she had always done during her employment with the respondent but had to change with the new working hours. The respondent suggested that the claimant had in fact found a new job to replace her job with the respondent but that is not consistent with the evidence, and it seems likely to me that Governor Quirke had simply misunderstood what she was told.

79. The claimant resigned with notice but was signed off sick with stress throughout her notice period.

Discussion and conclusions

80. The claimant summed up the facts she relied upon to support her claim, but she did not make any legal submissions. I took her submissions into my findings of fact above but, as explained to her at the time, I disregarded the new evidence she sought to introduce at that stage.

81. Mr Hurd for the respondent drew my attention to the key legal principles as set out in **Western Excavating v Sharp** and **Malik v BCCI** referred to in the legal summary. He acknowledged that any breach of the implied term of trust and confidence will be fundamental but highlighted just how serious conduct must be to amount to a breach with reference to the guidance in **Frenkel Topping** and he reminded me that conduct which is unreasonable will not be sufficient.

82. Mr Hurd drew my attention to the decision in **Kaur** to explain how I should approach the question of a last straw case and affirmation where there have been a series of alleged breaches and then a lapse of time before the final act or acts.

83. Turning to how I should apply that law to the facts in this case I have explained how I have taken into account Mr Hurd's submissions as I have explained my conclusions.

The events in June 2021 – breaches 15,16 and 17

84. The respondent argues that the events over the summer of 2021 were innocuous. The incident involving the watering of the plants was a genuine mistake and there was no suggestion the respondent could be vicariously liable for the things which had been said by prisoners. In terms of the incident report about the receipt of the £20 report, Mr Hurd points out that it was not suggested to Mr Tarry that he acted maliciously and what Mr Tarry had reported was factual. He had made a report to the Security Governor to protect both himself and the claimant and he had stressed to the Security Governor that he did not think the claimant was corrupt.

85. In terms of the actions of Governor Quirke at the final meeting, she had not been challenged about giving the claimant alternative options. The claimant had asked for a management restructure but that would be matter for the respondent at a senior level and it is submitted it cannot be a breach of contract for the respondent to decline to propose that if Governor Quirke could not see any objective reason to do so.

86. I agree with these submissions. I see nothing inappropriate in what happened in 2021 and find nothing of what happened in the summer of 2021 had the nature of something capable of reactivating or resuscitating any early breach of contract.

87. To be clear I accept that the failure to water the plants was unfortunate. I am sure the claimant was upset and frustrated by that, but I accept Ms Carney made a mistake and the fact that she had did not in any sense mean the respondent had

breached the claimant's contract of employment or behaved in a way which suggested that it did not intend to be bound by it moving forwards. The respondent was not responsible for the claimant's colleagues complaining about her behind her back when they thought the claimant was gossiping and spreading false rumours about them nor for the prisoners overhearing that and repeating that. When it came to the incident of the £20, I accept that there was no corruption on the part of the claimant, but it is obvious why such a matter – a member of a prisoner's family giving a staff member cash, is one which it is appropriate to record as a potential security incident. I accept what Mr Tarry says about that and that he had to make a report. I see nothing in the report he made which was hostile towards the claimant, it is simply a report which has to be made.

88. Finally in terms of the meeting with Governor Quirke it appears that the claimant had already decided to leave before that meeting, and I do not see how what happened at the meeting was a contributing factor in why she left. The decision had already been taken. Putting that to one side, I accept that Governor Quirke acted appropriately at the meeting. The claimant had not raised a formal grievance about Mr Tarry which had not been considered. She had not suggested a reason why he should be suspended or removed from post. The claimant can have had no reasonable expectation that she could attend that meeting and require Governor Quirke to make significant changes to the role of a senior manager because the claimant wanted it. I also find that it is not part of the implied term of trust and confidence for an employer to seek to change the mind of an employee who announces that they want to leave but Governor Quirke did try and understand the reason for the decision and sought to get the claimant to think again and not to take a decision in the heat of the moment. That was a fair thing to do.

89. Mr Hurd argued that if I came to this conclusion, I should consider whether the claimant's claim of constructive dismissal could succeed because the contract of employment must have been affirmed in the circumstances.

90. Mr Hurd points to the significant period of time between "breach 14" in the claimant's list which happened on 3 October 2019, and the breaches in 2021. Of course, the passage of time is not enough for me to find that the claimant had affirmed her contract, but I do have to consider if the claimant had affirmed the contract during that time through her conduct.

91. Mr Hurd points out that the claimant had been told about in October 2019 and, if she was dissatisfied, she would have to raise a formal grievance and the claimant had not done that. The facts show that the claimant had worked on for the next 20 or so months without raising any grievances and during that time she had worked without protest, and she had not taken significant time off work due to sickness during that time. That, he says, is conduct consistent with affirmation.

92. In brief I accept Mr Hurd's submission that what happened in June 2021 was innocuous. Even if there had been any repudiatory breach of contract in 2019 or before, whether individually or cumulatively, in the intervening period between October 2019 and June 2021 when the claimant had worked without protest and without giving any suggestion that she had reserved her position, for example by waiting for the outcome of a grievance process, that the claimant had by her conduct affirmed the

contract. She had lost the right to rely on anything that happened in 2019 unless there was a later breach, or something happened which could contribute to a past breach and “reactivate” it.

93. That could be the end of my judgment but for clarity I have set out in brief terms what I concluded on the earlier alleged breaches, based on my findings of fact.

94. Mr Hurd’s primary submission was as set out above, but he also went on to argue that the incidents referred to by the claimant do not, on the facts as he invited me to find them, amount to conduct of sufficient seriousness to amount individually or cumulatively to a fundamental breach of contract.

95. In brief terms in terms of breaches 1 and 2, I accept that the claimant was working in a busy department which at times was under pressure. Because of difficulties with staff turnover and recruitment the respondent had to manage in the best way it could. It is perhaps inevitable that created pressure on the workforce but in terms of the implied term of trust and confidence much depends in the employer responds to an employee who is struggling to cope. I accept that in this case when the claimant experienced stress from her workload occupational health advice was sought and adjustments were made. The employer did what it was required to do.

96. It was not a breach of contract for the respondent to seek to restructure roles within the team (but not the claimant’s) after management assessment and trade union consultation. The fact that the claimant did not think it was a sensible decision was not a breach of her contract of employment.

97. Breaches 3 and 4 relate to what happened between the claimant and Mr Tarry in the summer of 2018. Mr Hurd fairly acknowledges that he cannot escape the fact that there is corroboration that Mr Tarry shouted at the claimant, despite his email. I find that he did shout at her and that was unreasonable. However, an act of unreasonable conduct by a manager does not breach the implied term unless that conduct so seriously damages the relationship it meets the test in **Malik** and which could be said to go to the heart of the employment relationship. In terms of the dispute about the functional training I preferred the evidence of Mr Tarry. The claimant had been asked to brief a colleague. She disagreed that she should do. I do not accept that it was impossible for her to do what she had been asked because that would have been unlawful was made to me without any explanation or supporting evidence. If the claimant really had been given a manifestly unlawful instruction, I have no doubt she would have formally complained about that. In any event Mr Tarry did not insist the colleague training was given.

98. In terms of Breach 5 related to the mediation, I accept the evidence if the respondents witnesses that it was arranged because of tensions between the claimant and colleagues. I appreciate the claimant disputes that she acted inappropriately towards her colleagues, but the evidence I heard from Mr Hibbert and Ms Carney was consistent with her being someone who is sometimes difficult to work with. The claimant might not intend that, but it does not mean her colleagues could not have genuine concerns and it was right of the employer to seek to resolve those. The employer has responsibilities and duties to all its staff. I agree with Mr Hurd that the evidence suggests that what the respondent sought to do was to resolve matters at

the lowest possible level. There was a mediation hearing which it was understood had resolved the issues. I see nothing in the claimant's allegations about the mediation meeting itself which could be said to seriously damage the employment relationship or breach the implied term of trust and confidence.

99. The same is true of the team meeting which forms the basis of breach 6. I accept that Mr Tarry had held a team meeting following the mediation intended to try and "clear and air" between the team members but it did not go well. I think it is likely that the way Mr Tarry expressed management concerns upset the claimant, but the fact that no one else at the meeting complained appears to have supported her account and the fact that the claimant did not even refer to this meeting when she submitted a grievance strongly suggests that such comments as were made, were not as serious in their impact as now suggested.

100. I was somewhat concerned by the lack of documents produced by the respondent to show the grievance process had been properly managed. However, I accept that a process of sorts was followed. The claimant doubts that all witnesses were spoken to but what Ms Selby told me about staff not wanting to get involved was consistent with the evidence of Mr Hibbert and Ms Carney and I accept that colleagues were not prepared to support the claimant as she expected. I accept that Ms Selby had not contacted Governor Sampey but that single failure cannot be said to seriously damage the employment relationship.

101. I was concerned by the way the delivery of the grievance outcome had been handled. The claimant said that she felt humiliated by being told the outcome with Mr Tarry present. This was a matter which might have gone to the heart of the employment relationship bearing in mind what is said in *Frenkel Topping*.

102. I accept that the respondent had to respond to the workplace tensions which continued to exist between the claimant and her colleagues. Attempts had been made by managers to try and rebuild relationships on various occasions. Ms Carney and others raised concerns and those could not be ignored because the claimant rejected them. The claimant suggests bias by Mr Tarry and Ms Selby, but the repeated attempts at mediation are not consistent with that and the way Ms Carney's concerns were rejected by Mr Warren is wholly inconsistent with a biased approach being taken to the detriment of the claimant.

103. Governor Khan's eventual intervention seemed to be sensible one to bring matters to a head. Either there had to be formal grievance or complaint and investigation, or the claimant and Ms Carney had to stop raising concerns about each other. It is telling in my view that no such formal step was taken by either of the protagonists after that instruction was given.

104. That only leaves the concerns raised by Ms Selby about the flower shop, but I find no fundamental breach there. Ms Selby had been asked to make sure the claimant was aware that she needed to behave in a way which meant her conduct could not be called into question. That was not conduct on the respondent's part which could be said to seriously damage the employment contract.

105. In summary, in the circumstances I concluded that there the claimant was not dismissed by the respondent. There were two incidents in 2017 and 2019 which had the potential to seriously serious damage the employment relation - when Mr Tarry shouted at her, and Ms Selby told the claimant her grievance was not upheld in Mr Tarry's presence. Those incidents were clearly inappropriate and unreasonable. I am not satisfied that in fact they were so serious to individually or cumulatively amount to a serious breakdown in the employment relationship but in any event the claimant affirmed the contract of employment through her conduct in the many months that followed. The events of 2021 were innocuous and did not resuscitate earlier incidents.

106. The claimant had not been subject to conduct by her employer which entitled her to treat herself as dismissed. She voluntarily resigned her employment, and her complaint of unfair dismissal was not well founded.

Employment Judge Cookson

Date: 11 March 2024

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
Date: 22 March 2024

FOR THE TRIBUNAL OFFICE

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