



EMPLOYMENT TRIBUNALS

Claimant

J Trumpet

v

Respondent

Buckinghamshire Council

Heard at: Watford Employment Tribunal

On: 3, 4, 5, 6 March 2025

Before: Employment Judge W Anderson
S Johnstone
L Thompson

Appearances

For the claimant: In person

For the respondent: R Wayman (counsel)

JUDGMENT

1. The respondent's response is not struck out.
2. The claimant's claims of unfair dismissal and race discrimination are dismissed.

REASONS

Background

1. The claimant was employed by the respondent, a council, as a family support worker from 2019 until her resignation, which took effect on 31 August 2023. The claimant brings a claim of constructive unfair dismissal and direct discrimination on the grounds of race. The respondent denies that the claimant was dismissed and denies that it has discriminated against her. The claim was filed on 30 December 2023 following a period of early conciliation which commenced on 9 November 2023 and ended on 1 December 2023.

The Hearing

2. The parties filed a joint bundle of 1622 pages and a supplementary bundle of 40 pages. In addition, the claimant filed a further bundle on the morning of the hearing. This was handed up in person and had not been copied to the respondent. It concerned disputes between the parties over preparation for the hearing. Mr Wayman, counsel for the respondent, filed an opening and a

closing note. The tribunal received witness statements from the claimant, and the respondent's two witnesses, Jane Thomas and Jody Twycross. All witnesses attended the hearing and gave evidence on oath.

3. It was clear from the tribunal file that the parties had been in dispute throughout the litigation proceedings about the preparations for this hearing. They had both made strike out applications which had been refused. When the tribunal asked why it had received a bundle of 1622 pages and 82 pages of witness statements for a four day case, Mr Wayman said this was because it was unclear to the respondent what the claimant's case was, and it had erred on the side of caution in what had been included.
4. The claimant was upset and concerned at the outset of the hearing on 3 March 2025 that she had been disadvantaged by the way the respondent's solicitors had conducted the case. She said that she had not received the bundle until 26 February 2025 and even then, it was incomplete and contained documents she had not seen before. Witness statements were not exchanged until 21 February 2025. She said she had made an application to strike out the respondent's response for these reasons.
5. The tribunal located the application, which was made on 26 February 2025. It heard the application and refused it as set out below. However, it was concerned that the claimant, particularly as a litigant in person, was in the position of feeling unprepared for the hearing. The tribunal decided to adjourn until 4 March in order to give the claimant the opportunity to carry out further preparation. The tribunal also offered the claimant the opportunity to make an application to postpone the hearing, though noted that relisting of a four day hearing in Watford Employment Tribunal would be in April 2026. The claimant said she did not want to apply to postpone, and the tribunal adjourned until 10 am on 4 March 2025.

Strike out application from the claimant

6. The claimant filed an application to strike out the respondent's response by email on 26 February 2025. The tribunal heard that application at the outset of the hearing. The application was to strike out the response on the grounds of the respondent's unreasonable behaviour, specifically relating to the late production of the bundle, the contents of the bundle not having all been previously disclosed within the disclosure exercise and the delayed exchange of witness statements. The claimant's application was in writing. Mr Wayman resisted the application on behalf of the respondent. He said that the bundle had been a work in progress for many months and the claimant had repeatedly requested additions, while refusing to disclose documents sought by the respondent. The most recent delay to the witness statement exchange date was due to one of the respondent's two witnesses being ill.
7. Under Rule 38 of the Employment Tribunal Procedure Rules 2024 the tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds—
 - (a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

8. Although the tribunal understood the claimant's concerns in terms of the difficulties the late witness statement exchange and the late finalisation of the bundle had caused her, particularly where she is a litigant in person, it did not find the behaviour of the respondent was unreasonable so as to warrant the striking out of its response. Reasons were provided for the delay in both the finalisation of the bundle and of the witness statements exchange. The scenario described both by the claimant and by the respondent was not an unusual feature of litigation and hearing preparation, and the tribunal was not persuaded that the respondent's behaviour was unreasonable or that its actions had been the sole cause of the delay in completing preparation. The bundle was provided, and witness statements were exchanged before the hearing. The tribunal did not either find that failure to adhere to deadlines on the part of the respondent meant that it should be stopped from defending the claim. There was evidence of ongoing correspondence between the parties on this matter, including agreements to extend deadlines. The application to strike out the respondent's response is refused.
9. As set out above, the tribunal addressed any disadvantage to the claimant by means other than a strike out.

The issues

10. The issues to be decided by the tribunal were set out in the case management order of EJ Quill dated 22 November 2024. Mr Wayman said that the size of the bundle and the length of the respondent's witness statements were as a result of the further issues raised in the claimant's two further particulars documents. The tribunal asked the claimant if she thought that her claim was wider than those issues set out by EJ Quill in that order, and she said it was not. She confirmed that the allegations set out in the list of issues were all of the issues the tribunal was being asked to decide. Those issues are as follows:

1. *Time limits / limitation issues*

- 1.1. *Were all of the claimant's complaints presented within the time limits set out in*

- 1.1.1. *section 123 of the Equality Act 2010 ("EQA")*

- 1.1.2. *section 111 of the Employment Rights Act 1996 ("ERA")?*

- 1.2. *Dealing with this issue may involve consideration of subsidiary issues including: when the treatment complained about occurred; whether there was an act or conduct extending over a period, and/or a series of similar acts or failures; whether time should be extended.*

- 1.3 *Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 10 August 2023 is potentially out of time, so that the tribunal may not have jurisdiction to deal with it, subject to consideration of the matters mentioned in the previous*

paragraph.

2. *Constructive unfair dismissal*

2.1. *Was the claimant dismissed, i.e.*

2.1.1. *was there a fundamental breach of the contract of employment, and/or did the respondent breach the so-called 'trust and confidence term', i.e. did it, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between it and the claimant?*

2.1.2. *did the claimant affirm the contract of employment before resigning?*

2.1.3. *did the claimant resign in response to the respondent's conduct (to put it another way, was it a reason for the claimant's resignation – it need not be the reason for the resignation)?*

2.2. *The conduct the claimant relies on as breaching the trust and confidence term is:*

2.2.1. *Allocate excessive workload*

2.2.2. *Allocate too many complex cases.*

2.2.3. *Require her to work outside her normal working hours*

2.2.4. *Require her to work outside her normal working practices*

2.2.5. *Ignore the Claimant's emails and phone calls about workload and duties*

2.2.6. *In around September 2022, Jane Thomas, in a supervision meeting, criticised the standards of the Claimant's Family Support Plans*

2.2.7. *In around March or April 2023, Jane Thomas formally placing the Claimant on PIP (performance improvement plan)*

2.3. *If the claimant was dismissed: what was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA"); and, if so,*

2.4. *was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the respondent in all respects act within the so-called band of reasonable responses?*

3. *EQA, section 13: direct discrimination because of race*

3.1. *Did the respondent subject the claimant to the following treatment:*

3.1.1. *From January 2022 onwards, the Claimant's line manager Jane Thomas gave her excessive workload, and workload which continued to many complex cases.*

3.1.2. *In around April 2023, the Claimant was required to by line manager Jane Thomas and Area Manager Jody Twycross to go to London in the evening (after 7pm) to carry out a home visit.*

3.1.3. *Jane Thomas attended a particular school meeting (attended by school representatives and the child's parents) on the Claimant's behalf (the Claimant could not attend the meeting) and heard criticism of the Claimant which she (Jane Thomas) believed without giving the Claimant the opportunity to comment.*

3.1.4. *In around September 2022, Jane Thomas, in a supervision meeting, criticised the standards of the Claimant's Family Support Plans*

3.1.5. *In around March or April 2023, Jane Thomas formally placing the Claimant on PIP (performance improvement plan)*

- 3.2. Was that treatment “less favourable treatment”, i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others (“comparators”) in not materially different circumstances? The claimant relies on hypothetical comparators. [if the Claimant also seeks to rely on actual comparators, she must supply details by 18 October 2023]
- 3.3 If so, was this because of race?

The Law

11. S95 Employment Rights Act 1996 - Circumstances in which an employee is dismissed
 - (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2)...only if ...
 - (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of his employer’s conduct.
12. This is what has become known as “constructive dismissal”. The leading case of Western Excavating (ECC) Ltd v Sharp 1978 ICR 221 makes it clear that the employer’s conduct has to amount to a repudiatory breach. The employee must show a fundamental breach of contract that caused them to resign and that they did so without delay.
13. s13 Equality Act 2010 - Direct discrimination
 - (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
14. s136 Equality Act 2010 - Burden of proof
 - (1) This section applies to any proceedings relating to a contravention of this Act.
 - (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
 - (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
 - (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
15. The tribunal must make findings of fact and apply the legal tests to those facts. The tests for direct discrimination were discussed in Igen v Wong [2005] ICR 931 and it is clear that all evidence before the tribunal can be taken into account, not just that put forward by the claimant. The test is: is the tribunal satisfied, on the balance of probabilities that this respondent treated this claimant less favourably than they treated or would have treated a white employee.

16. If the tribunal is satisfied that the primary facts show less favourable treatment because of sex and race, the tribunal proceeds to the second stage. At this stage, the tribunal looks to the employer for a credible, non-discriminatory explanation or reason for such less favourable treatment as has been proved. In the absence of such an explanation, proved to the tribunal's satisfaction on the balance of probabilities, the tribunal will conclude that the less favourable or unfavourable treatment occurred because of sex or race discrimination.

Findings of Fact

17. The claimant was employed by the respondent from 1 July 2019. She was a Family Support Worker (youth) from September 2019 and on 1 May 2022 became a generic Family Support Worker. The claimant has continuous service from 2017 due to a change of employer under TUPE legislation.
18. The claimant was line managed by Jane Thomas, then Assistant Team Manager in Family Support Services, from November 2020 until her resignation in June 2023.
19. The claimant worked full time but compressed hours, Monday to Thursday.
20. The claimant's work involved case work with families and children who were struggling in diverse ways including school attendance issues and problems in the home.
21. The claimant had a supervision meeting with Ms Thomas every month. The supervision sessions involved a general discussion of the claimant's workload and specific case supervision. The meeting was recorded on a proforma entitled 'Record of Supervision'. Specific points raised or work agreed on particular cases were recorded separately on the case notes after the supervision meeting, on a system called EHM.
22. The claimant's job description sets out responsibilities including managing a caseload and maintaining records and documentation with a clear record of actions, circumstances and decisions. A willingness to work unsocial hours is also a requirement.

Workload

23. The claimant alleges that her workload was excessive from January 2022 onwards. The tribunal had before it a number of supervision records in which it was clearly recorded that the claimant had a low number of cases after returning from sick leave in August 2022. She was allocated no new cases in August and September 2022. It is noted in the October supervision that her case load is still low and again in January 2023.
24. The tribunal also had before it two spreadsheets showing the claimant's level 3 cases from September 2022 until June 2023, and the whole team's level 3 cases during the same period. This shows her to have 14 level 3 cases over that period, though they were not all active for the whole period. From the whole team figures it is clear that the claimant did not have a high number of these cases in comparison with other colleagues. The tribunal noted that the

spreadsheets do not show if employees are full or part time, or periods of absence, but also that it was not put to the respondent's witnesses that the conclusions that could be drawn from the spreadsheet were misleading.

25. The claimant said that casework was not the only work carried out and Ms Thomas agreed that workload also included facilitating parenting groups, youth groups and drop-ins, being the link person for specific schools and the link to a specific family centre. Information before the tribunal showed that the claimant was allocated to fewer schools in 2022 than her colleagues.
26. The claimant presented no evidence to show that she had a high workload through the allocation of non-casework duties and did not put such an allegation to Ms Thomas. Neither was any argument made that the claimant had an excessive number of level 1 and 2 cases. i.e. that the spreadsheets were unrepresentative in relation to the point being made.
27. The tribunal finds that the claimant's workload was not excessive in comparison with the workload of her colleagues.

Complexity

28. It is the claimant's case that she was allocated too many complex cases. The respondent provided a spreadsheet of level 3 cases allocated during the relevant time and a description of the complexity of cases. Cases are graded at levels 1 to 4, 4 being most complex.
29. The claimant said that the level may not represent the true complexity. Ms Thomas and Ms Twycross both said many of the cases of the Family Support Services team were complex. The claimant's evidence was that at peer group meetings other colleagues had wondered aloud why she had such a complex caseload.
30. The tribunal finds that although the claimant's caseload did involve complex cases and issues, she was not allocated more complex cases than her colleagues. There was no evidence before it to indicate that her cases had, for instance been graded at too low a level of complexity, or that she had raised such an issue with the respondent. Furthermore, when asked by Mr Wayman in cross examination if, when she said that she had too many complex cases she meant too many level 3 cases, she said yes.

Criticism of the claimant's family support plans

31. The claimant claims that Jane Thomas criticised her family support plans in September 2022. The respondent does not deny this, and the discussion is recorded in the supervision record for that month:

When Jennifer was off work her families had to be reallocated, the new workers commented on the plans. They were incomplete and it was difficult to pick the work up. JTH will be supporting Jennifer with plans going forward and it will be added as a development area on C4P.

32. C4P is Coaching for Support, the respondent's appraisal system.

33. Ms Thomas explained in her witness statement that making family support plans SMART (specific, measurable, achievable, realistic and time framed) was expected of caseworkers but from September 2022 making plans SMART became an increased focus. This followed an audit carried out by senior managers across children's services, which had led to a concern being raised about family plans not sufficiently addressing risk and cases drifting,
34. That the claimant's family plans were not SMART was a matter that had been raised with her before September 2022. It is noted in her appraisal of September 2020 that she recognised she needed to make more use of the SMART plan. In June 2022 in a quarterly review a goal was a particular focus on 'developing the quality of UYF assessments, reviews and SMART action plans.'

Performance Improvement Plan

35. At the supervision meeting in October 2022, it was noted 'JT and JTH will meet weekly to monitor plans and put support in as necessary.' The first meeting took place on 25 October 2022 and is minuted. The claimant's case plans were reviewed, and an example of good practice was suggested to her.
36. The claimant said that meetings did not take place weekly but did not specify their frequency. Ms Thomas said that they were not always weekly as they would not have such a meeting when it was the week for the monthly supervision meeting. The tribunal finds that meetings took place frequently if not weekly until January 2022 and then became less frequent.
37. Additionally, Ms Thomas's case specific advice was recorded on the EHM system after each supervision meeting and this might address issues about whether the family plan was SMART.
38. More generally, the respondent provided training for employees on the use of SMART plans, the matter was discussed at team meetings and there was an opportunity for peer review.
39. Ms Thomas said that the claimant's plans improved, but they did not improve sufficiently for her to be given an 'achieved' rating in her end of year appraisal (C4P) in 2023. She was notified of this in her March 2023 supervision meeting when she was told her grade would be 'needs development'. She was told that she would be given a performance improvement plan.
40. A meeting was held between Ms Thomas and the claimant on 6 April to discuss and implement the performance improvement plan. The claimant had asked for the meeting to be delayed pending the outcome of an appeal against her C4P grading. Ms Thomas responded after consulting Ms Twycross, the Team Manager, that the improvement plan would be required regardless of the outcome of the appeal. The invitation sets out that the process is at an informal stage and is about what the respondent can do to support the claimant to improve her performance.

41. At the meeting the claimant was offered various forms of support including a buddy, a new line manager and fortnightly meetings with Ms Thomas, as well as being sent examples of good practice.

Telephone calls on 7 March 2023

42. The claimant was due to meet with Ms Thomas on 7 March 2023. Ms Thomas did not turn up for the meeting. The claimant called four other assistant team managers and none of them answered the phone. The claimant did not leave a message. She contacted Ms Twycross who answered and later emailed the claimant at 10:46 to advise that she had just received confirmation from Ms Thomas that Ms Thomas was on sick leave.

School Meeting

43. Jane Thomas attended a meeting with Holmer Green School on 27 March 2023 in place of the claimant who was on annual leave.
44. At that meeting it was raised by the school that the claimant had not met the school's expectations in relation to home visits to a particular child, and that she had told them that support in the mornings (early morning visits to the child's home) would not be possible. It was also raised by the head teacher that the claimant had failed to respond to two safeguarding matters.
45. In an email dated 3 April 2023 Ms Twycross set out what had happened at the meeting with the school. She referred to the lack of visits, early morning visits and two incidents. She said that in discussion with Jody Twycross they had decided that the child had been failed by the Family Support Service and had decided to reallocate the case.
46. The claimant responded by email on 5 April 2023 refuting the allegations and requesting details of the two incidents.
47. Ms Thomas met with the claimant on 6 April 2023 to discuss these matters. The claimant said in her witness statement that Ms Thomas looked into the two allegations at their meeting and agreed that they were untrue. Ms Thomas said in oral evidence that when she had looked into the matter by reviewing the EHM case notes that what the headteacher had referred to as safeguarding matters, were not what the family support service would classify as safeguarding concerns. This was relayed to the claimant at that meeting. After the meeting the claimant wrote to Ms Thomas asking her to go back to the head teacher about these matters.
48. Ms Thomas said, in relation to the matter of home visits, she could see from the case notes that the claimant had carried out seven home visits in a period in which she would have expected to see ten to twelve. Ms Thomas said that it was standard practice to attend homes in the early morning to support children attending school. It is set out in the review notes on EHM for this case that the claimant was given an action of carrying out an early morning visit on 6 February 2023.

Northwick Park Incident

49. On 12 April 2023 a child was hospitalised due to fears she would self-harm. The child's case had been the responsibility of the respondent until her move to another local authority just prior to this incident. The child's case had been allocated to the claimant and the case had yet to be closed. The claimant had met the child.
50. As the new local authority was not accepting a duty to help the child, the respondent's Director of Children's Services, Richard Nash, decided that the respondent would do so in terms of the urgent response required. He issued instructions that a caseworker from the respondent's Family Support Services should visit the child in hospital that evening.
51. The claimant had a full day of four home visits which she was not scheduled to finish until 6pm. Ms Thomas rang her, as the relevant caseworker, to tell her that Mr Nash had decided that a Family Support Services worker should visit the child that night. The claimant said she could not do so after her full day of visits and that she was exhausted.
52. Ms Twycross advised the person co-ordinating the visit, Catherine Smith, that it was unlikely the claimant could visit that evening as she was still working and not scheduled to finish until 6pm. Ms Smith raised that she was unable to find a duty social worker in any event. A visit could not take place without a social worker. In an email to Jennie Moore at 17:25 on 12 April 2023 Ms Twycross notes that the visit is unlikely to happen that evening and will take place the next day. The claimant was given instructions to call the hospital that evening to arrange a visit for the next day. The claimant attended the child in the hospital the following day from 10.30 until 4.30.
53. The claimant began a period of sick leave on 17 April 2023. She did not return to work and tendered her resignation, with notice, on 20 June 2023. The reasons she gave for her resignation was as follows:
- I am writing to let you know that after much reflection I have decided to tender my resignation as a Family Support Worker in the Wycombe Team. It has been a very challenging, demanding job role and difficult working environment which has not been a very healthy one for me. Sadly, I do not see anything changing, so feel I have been left with no other choice than to leave.*
54. The claimant's last day of employment was 31 August 2023. This claim was filed on 30 December 2023.

Submissions

55. The parties' submissions are summarised.
56. Mr Wayman made submissions in writing only. He stated the claimant had failed to make out any part of her claim. He said that she was unable to accept criticism and felt that there must always be another explanation rather than that criticism is justified. This subjective view was repeatedly contradicted by objective evidence. There was nothing in the respondent's treatment of the

claimant that could amount to a repudiatory breach of trust and confidence, and she had not shown that she received treatment different to the treatment received by her colleagues.

57. The claimant made oral submissions. She said that she was overloaded with excessive casework which was complex and difficult as noted by many of her white colleagues. If her work was so poor why was she allocated cases, rather than being offered a buddy or an audit by another team manager? Why did the respondent not send someone else on the evening visit on 12 April? There were forty other people in the team, thirty-five of whom were white and in sending her this showed she was treated less favourably because of her race. Management treatment made her feel vulnerable. The environment was hostile and uncaring. Colleagues did not respond when she reached out and management failed to defend her against unfounded accusations. The claimant had done her best to support her clients and her clients liked her. The management team were a clique who had favourites. She was not one of those. They held a racially biased stereotypical view of the claimant and did not value her. They believed it was time for her to go so made life difficult for her and forced her out. The claimant had no option other than to resign due to the hostile working environment.

Decision and Reasons

Constructive Unfair Dismissal

58. The claimant claims constructive unfair dismissal under s95 (1) c) Employment Rights Act 1996 (ERA). The tribunal must decide whether there has been a dismissal in accordance with that section which states an employee is dismissed by their employer if the employee terminates the contract under which they are employed (with or without notice) in circumstances in which they are entitled to terminate it without notice by reason of their employer's conduct.
59. In order to succeed in a case of constructive unfair dismissal the claimant must show that a fundamental breach of the employment contract took place and that she resigned because of that breach without delay. The claimant relies on a breach of the implied term of trust and confidence. Such a breach if proven will always be a repudiatory breach (*Morrow v Safeway Stores [2002] IRLR 9*).
60. In the case of *Malik v Bank of Credit and Commerce International SA (In Liquidation)[1997] ICR 606* the tribunal defined the implied terms of trust and confidence as follows: the employer must not, without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between itself and the employee. The test is objective.
61. The claimant relies on seven breaches of the implied duty of trust and confidence. The first two of those are that she was allocated an excessive workload by the respondent and that she was allocated too many complex cases. The tribunal has found above that the claimant's workload was not excessive in comparison with her colleagues and that she was not allocated

too many complex cases in comparison with her colleagues. The evidence is that the claimant had a low caseload for a substantial period of time both due to returning from sick leave and also because Ms Thomas wanted to give her an opportunity to focus on the one area of her job in which she was struggling, namely the drafting of SMART family plans. Other than the claimant's assertion that at a peer group meeting a colleague or colleagues had remarked that her cases were complex, there was no evidence that within this reduced caseload there was a disproportionate number of complex cases.

62. As the tribunal has found that these alleged breaches did not occur, they cannot give rise to a right to for the claimant to terminate her contract under s95 Employment Right Act 1996.
63. The claimant relies on the breach of being required to work outside her normal working hours. Only one example was put forward by the claimant which was that she was told that she must visit a child in hospital on the evening of 12 April 2023. The claimant did not carry out the visit. After telling her line managers she was too exhausted to do so after a full day of work, and also because of a separate issue about the availability of a duty social worker to accompany her, the visit was delayed until the following day at 10.30am. It became apparent during the hearing that the claimant's complaint was that she should not have been asked to do this in the first place and should not have been put in the position of having to say no. The tribunal noted that in the claimant's job description it is set out that there is a requirement to work unsocial hours. It noted also that the claimant was the child's caseworker until the very recent transfer to another local authority and the only person working for the respondent who had any relationship with the child. The child was clearly in distress. Furthermore, the fact that no other example of working outside normal hours was presented to the tribunal would indicate that this was a rare occurrence.
64. For these reasons the tribunal finds that there was no breach of duty whereby the claimant was required to work outside her normal working hours.
65. The claimant relies on the breach of being required to work outside normal working practices. Ms Thomas set out in her witness statement that no details had been provided by the claimant of this allegation. The point was not addressed by the claimant in her cross examination of the respondent's witnesses or in her closing submissions. No details of this alleged breach were drawn to the tribunal's attention. In so far as the claimant pursues this breach, it is not made out.
66. The claimant relies on the breach of ignoring the claimant's emails and phone calls about workload duties. Only one example of this was brought to the tribunal's attention. This was the incident when on 7 March 2023 Ms Thomas was off sick and did not turn up for a meeting with the claimant. The claimant called four managers who did not answer the phone. She left no message with any of those managers. She was able to contact Ms Twycross who checked and advised her that Ms Thomas was on sick leave and apologised

for the claimant not having been told earlier. The claimant's position was that she should have been advised that Ms Thomas was sick without her having to try and find out that information for herself and that any of the assistant managers seeing a missed call from her should have rung back to check what she wanted. The tribunal noted that the claimant was advised by Ms Twycross at 10.46am that she had now been made aware of Ms Thomas's absence. The tribunal does not find that it is reasonable to expect busy people to check missed calls and call someone back where no message has been left. The tribunal finds that the allegation that the respondent breached the duty of trust and confidence by ignoring emails and phone calls is not made out.

67. The claimant relies on the breach of Jane Thomas criticising the claimant's family support plans in September 2022. The tribunal finds that Ms Thomas did criticise the plans and there is no denial of this from the respondent. If the alleged breach is more properly set out as an unfair criticism of family support plans, the tribunal has set out above its findings that the plans had been of a poor quality for many months before September 2022, that the claimant's colleagues who had picked up her work while she was on sick leave had struggled because the plans were unclear, and finds that the criticism was justified. The tribunal finds that the criticism was not a breach of the duty of trust and confidence which would give rise to a right to resign under s95.
68. The claimant relies finally on the breach of Jane Thomas placing the claimant on a performance improvement plan in April 2023. The tribunal has set out its findings above on the assistance provided to and offered to the claimant from September 2022 in reaching the required standard in drafting SMART plans. Steps set out in the draft plan as noted in the meeting minutes for 6 April 2023 were clearly an attempt to provide further support. The tribunal finds that where the claimant was struggling with one particular aspect of her job, and despite efforts from the claimant and the respondent this had not been rectified, taking the next step of putting into place a performance improvement plan was reasonable. It does not accept that this action was one which could objectively be seen to be calculated or likely to destroy or seriously damage the relationship of trust between employer and employee.
69. The tribunal has considered whether the acts relied upon could have cumulatively amounted to a breach. It has been found above either that the breaches as claimed did not take place or that there was a reasonable explanation for the respondent's actions. The case is not pleaded as a final straw case but even if it was, it is the tribunal's view that neither individually nor cumulatively could these alleged breaches be said to amount to conduct calculated or likely to destroy or seriously damage the relationship of trust between employer and employee.
70. As the tribunal has found that the respondent did not breach the implied term of trust and confidence, there is no need to go on to consider whether the claimant affirmed the contract or whether she resigned in response to the breaches she alleged.
71. The claimant's claim of constructive unfair dismissal is dismissed.

Direct race discrimination

72. In direct discrimination cases it is for the claimant to establish, on the balance of probabilities, the factual basis of their claim including facts from which a tribunal could conclude, in the absence of any other explanation, that the employer has acted in breach of the Equality Act 2010. It is only once this is established that the burden of proof switches to the respondent, i.e., the respondent then has the responsibility of providing a reason for its act or omission which is not discriminatory.
73. The claimant claims that from January 2022 Jane Thomas gave her an excessive workload and a workload which contained too many complex cases. This was an allegation also raised under the head of constructive dismissal. The tribunal has found that the claimant was not allocated an excessive workload or too many complex cases. It therefore concludes that no claim of discrimination can be supported by this allegation.
74. The claimant claims she was required by Jane Thomas and Jody Twycross to go to London in the evening to carry out a hospital visit. Again, this is an allegation considered under constructive dismissal. The claimant's case in relation to race is that other people could have been told to do the visit, but she was told to do it and this is because of her race. The claimant is Black British. The evidence of Ms Thomas and Ms Twycross was that the claimant was told to do it because it was her case, and she had met the child before. The claimant did not dispute that it was her case or that she had met the child before. The claimant offered no evidence as to why the decision was based on her race, other than that she believed it to be so. Where there is a clear reason for the claimant's selection based on undisputed facts, the tribunal does not accept that the primary facts show less favourable treatment because of race.
75. The claimant claims that Jane Thomas heard criticism of the claimant at a school meeting on 27 March 2023 and believed the criticism without giving the claimant the opportunity to comment. The details of this matter are set out in fact finding above. There was some confusion in the hearing in that the respondent had understood the claimant's complaint to be about the school's claim that the claimant had not carried out enough home visits and had told the school it was not possible to carry out early morning home visits. The claimant said that the complaint was that Ms Hemmings, the school headteacher, had said that the claimant had not responded to two safeguarding issues, and Jane Thomas had accepted this information.
76. In the email of 3 April 2023 Ms Thomas refers to all four of these matters and concludes that the school has been failed by the Family Support Service and in discussion with Ms Twycross had decided the case would be reallocated. When the claimant met with Ms Thomas on 6 April 2023 and the two incidents, which were about safeguarding, were discussed, it became apparent to Ms Thomas that these were not incidents that the respondent would label as safeguarding incidents.

77. It is the tribunal's view that the way in which this matter was handled by the respondent was careless in relation to the claimant.
78. Ms Thomas said that she had the evidence before her that there were too few home visits and also knew that early visits were a service provided by Family Support Services. The claimant did not dispute the number of visits and there is written evidence before the tribunal that she had been instructed by Ms Thomas some time before the meeting with the school on 27 March 2023 to carry out an early home visit. Clearly, she had failed to do so and had also given incorrect information to the school when it requested that service.
79. On the matter of the safeguarding incidents, they are raised only obliquely in the email of 3 April, and it is not surprising that this caused the claimant to be upset and concerned. In the meeting on 6 April, she will have learned that the incidents were about safeguarding. The tribunal understands that to be accused of safeguarding oversights in this field would be extremely serious and worrying to the accused. It is the view of the tribunal that this matter could have been handled more sensitively by Ms Thomas and Ms Twycross. However, the allegation is that the school was believed by Ms Thomas, without the claimant being asked for her side. There is no evidence that the school was believed, and what in fact happened was that the claimant was advised that two incidents were raised, this was put to her at the meeting on the 6 April and Ms Thomas agreed that there was no failing on the part of the claimant, in respect of those two incidents. As noted above, the other two matters about visits were clearly matters in which the claimant had not met the requirements of her role.
80. The claimant referred repeatedly throughout the hearing to an incident in a different school in 2021 where the respondent had accepted criticism of her by that school instead of defending her. The tribunal pointed out on more than one occasion that this was not one of her allegations in this claim. Nevertheless, she cross examined Ms Twycross about it. The incident involved a complaint from a school about the tone of an email from the claimant. Ms Twycross said she read it, she agreed with the school the tone was not acceptable, and she apologised. She said she did not need to speak to the claimant about it as she agreed that the tone was unacceptable. The tribunal had sight of the email and did not find that Ms Twycross's conclusions or actions had been unreasonable.
81. The tribunal has referred to this matter as, though not entirely clear, it appeared that the claimant may be linking these two issues as showing a pattern of the respondent accepting criticism of her by clients without question. It is noted that the alleged perpetrators in each incident are not the same person.
82. The claimant's case is that criticism of her was accepted by Jane Thomas without giving her an opportunity to comment, and that was because of her race. The claimant provided no reason as to why the alleged actions should be construed as discriminatory on the grounds of race, stating simply that this was her belief and that white colleagues would have been treated differently.

83. The tribunal finds that, while accepting that the way in which the matter was addressed with the claimant caused unnecessary distress, the claimant was given an opportunity to comment on the criticism. It therefore concludes that no claim of discrimination can be supported by this allegation. For the avoidance of doubt, the tribunal does not find that the facts of this incident show less favourable treatment because of race and its findings do not change by taking into account the incident in 2021.
84. The final two allegations of race discrimination are of Jane Thomas criticising the claimant's family plans in September 2022 and placing her on a performance improvement plan in April 2023. These allegations were also brought under the head of constructive unfair dismissal. The tribunal has found that both of these actions were warranted in that they followed a protracted period in which the claimant had been unable to meet the standards required in drafting SMART plans. Where there are clear non-discriminatory reasons for the actions taken the tribunal does not find that that the actions were taken because of the claimant's race.
85. The claimant's claim of discrimination on the grounds of race is dismissed.

Approved by:

Employment Judge W Anderson

Date: 7 March 2025

Sent to the parties on: 15 March 2025

For the Tribunal Office