EMPLOYMENT TRIBUNALS

Claimant: **Dr B Roy**

Respondent: **HCRG Care Limited**

HELD at Newcastle **ON: 27 to 31 January 2025**

BEFORE: Employment Judge Aspden

REPRESENTATION:

Claimant: **Mr McHugh, counsel**
Respondent: **Mr Ohringer, counsel**

JUDGMENT having been sent to the parties on 21 February 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Procedure Rules 2024, the Tribunal provides the following:

REASONS

The claim and issues

Claims

1. When this hearing began, the claimant was pursuing the following complaints.
   1.1. Claims that the respondent made unauthorised deductions from wages and/or breached the claimant's contract of employment by failing to review her salary and/or failing to pay her the amount which she was entitled to be paid.
   1.2. A claim in respect of notice pay.
   1.3. A claim in respect of holiday pay.
   1.4. A claim of unfair dismissal.
2. During the course of this hearing the claimant withdraw all of her claims except the claim of unfair dismissal.
3. The claimant's case is that the respondent constructively dismissed her by doing one or more of the following things (which the claimant says amounted to a breach of the implied term of trust and confidence):

3.1. Requiring the Claimant to perform an unmanageable and excessive workload from November 2020 until February 2022.
3.2. Failing to support the Claimant when she raised issues about the conduct of her colleagues in November 2021.
3.3. Failing to properly consider and investigate her grievance dated 05.09.22, timeously or at all.
3.4. Failing to take any or any adequate steps to resolve the workplace issues which would have assisted the Claimant's return to work, specifically by:
3.4.1. recognising the Claimant's excessive workload and offering an apology;
3.4.2. taking steps to reduce the Claimant's workload;
3.4.3. taking steps to deal with the conduct of the Claimant's colleagues, for example by holding a formal meeting with the Claimant and undertaking an investigation into the Claimant's allegations;
3.4.4. resolving the grievance more quickly (rather than being put on hold)
3.4.5. determining the grievance in the Claimant's favour;
3.4.6. resolving the grievance appeal more quickly and in the Claimant's favour;
3.4.7. consulting with the Claimant to see what steps could have been taken to assist her back to work.

4. At the outset of this hearing the claimant was also alleging that:

4.1. the respondent committed a repudiatory breach of contract by failing to review her salary and/or failing to pay her the amount which she was entitled to be paid; and

4.2. the respondent breached the implied term of trust and confidence by failing to resolve adequately or at all the pay concerns which she had raised frequently during her employment.

5. On the second day of the hearing Mr McHugh confirmed that those allegations were withdrawn by the claimant and were no longer relied on in support of her claim to have been unfairly (constructively) dismissed.

6. In a list of issues prepared ahead of the hearing it was also suggested that the claimant was also alleging that the respondent breached the implied term of trust and confidence by 'causing the claimant to suffer work related stress'. When I discussed the claim with the parties on the first day of the hearing Mr McHugh confirmed that this was not a separate allegation but rather was alleged to be a consequence of the alleged treatment referred to at paragraphs 3.1, 3.2 and 3.3 above. This had been discussed at a case management hearing before Employment Judge Loy and it was agreed at the time the allegation should be removed.

Issues

7. The issues to be decided to determine liability were therefore as follows.

8. Was the claimant dismissed ie

8.1. Did the respondent do any of the following things:

8.1.1. Require the Claimant to perform an unmanageable and excessive workload from November 2020 until February 2022.
8.1.2. Fail to support the Claimant when she raised issues about the conduct of her colleagues in November 2021.

8.1.3. Fail to properly consider and investigate her grievance dated 05.09.22, timeously or at all.

8.1.4. Fail to take any or any adequate steps to resolve the workplace issues which would have assisted the Claimant's return to work, specifically by failing to do the things listed above.

8.2. If so, did that amount to a repudiatory breach of contract.

8.3. If so did the respondent resign in response.

8.4. If so, did the Claimant resign without first affirming the contract.

9. If the claimant was dismissed, was the dismissal unfair ie

9.1. What was the reason or principal reason for her dismissal (ie the reason for the respondent's conduct that amounted to a repudiatory breach and in response to which she resigned)?

9.2. Was the reason of principal reason a potentially fair one under s.98(2) ERA 1996?

9.3. If so, was the dismissal for that reason fair or unfair applying s.98(4) ERA 1996?

Findings of Fact

10. I heard evidence from the claimant. On behalf of the respondent I heard evidence from Ms Lunt. I took into account documents to which I was referred.

11. The claimant was originally employed by an NHS Trust as a speciality doctor from May 2002. Following a TUPE transfer she was employed by Virgin Care from February 2011 and then following a further TUPE transfer in December 2021 the claimant's employment transferred to the respondent.

12. The claimant's contract incorporated terms from the national terms and conditions of service for speciality doctors and those terms included at Schedule 15 a mechanism for pay progression.

13. At various times since 2013 at the latest, and possibly as early as 2011, the claimant complained to her employer that she had not received pay rises she believed she was entitled to under Schedule 15.

14. In 2017 Ms King of Virgin Care looked into the claimant's complaint about her pay and this did not result in any increase in the claimant's pay. In 2018 Mr Pratt of Virgin Care undertook a review of the claimant's pay. The claimant remained dissatisfied and in 2020 through to early 2021 managers at Virgin Care conducted a further investigation into the claimant's complaint concerning her pay in which the claimant and her union rep were given the opportunity to make representations and provide evidence.

15. Meanwhile the Covid pandemic had taken hold and that had a severe impact on the health care sector, not only because of the numbers who required treatment, but also due to staff falling ill or needing to shield. Also changes had to be made to services to reduce the risk of infection and there were issues relating to the availability of PPE which also had an impact. The demands on all doctors and other healthcare workers increased hugely in this period. It was undoubtedly a very difficult time. In the claimant's department one consultant began self-

isolating and that at some point before February 2022 another left. The claimant, like other healthcare professionals, was under increased pressure.

16. On 24 September 2020 the claimant sent an email to Ms Lawty and Dr Tayal in which she said that recently too many face to face appointments with patients had been booked for her to carry out. She added that she had been exposed to the Covid vaccine too much. She also said there were issues with a chaperone and expressed her concern that on several occasions staff had been reluctant to co-operate with her when she needed assistance.

17. I infer from Ms Lawty's response by email that day that the claimant had raised these issues with her on previous occasions and that Ms Lawty had previously taken some measures to change the claimant's responsibilities to address concerns raised. She refers to removing some work and arranging for the claimant to have a day at home working. She explained that there was a need to keep staff in the room and staff movement to a minimum due to Covid. In her response Ms Lawty asked the claimant to say what assistance she had been asking for from staff and why they were reluctant to provide it and she asked the claimant to be more specific about when she had been exposed to Covid, reminding the claimant of steps that had been put in place to reduce the risk of infection.

18. The claimant simply replied by email that day that she had reviewed everyone's face to face consultations and that she was seeing too much. She said she was not happy at all and referred to 'my health concern.' She did not provide the specific information that Ms Lawty had asked for.

19. The next day Ms Lawty sent another email saying she was reviewing the rota as there 'may be a better way of working for you to reduce some clinics.' She said she was reviewing rostered hours as a whole and 'will let everyone know.' I infer she carried out that review.

20. However the claimant still believed she was having to do too many face to face appointments and on 15 December that year she sent an email to Ms Lawty to that effect. Ms Lawty replied that day. In her reply Ms Lawty referred to previous discussions and repeated what had been said previously ie that all staff have similar face to face appointments. Ms Lawty accepted however that the claimant's appointments may be more 'focused' as she put it as the claimant was only doing three face to face days. Ms Lawty said:

> *'As this is a continuing issue I think we need to look at a solution and perhaps the best way is to start and work back in the service instead of your work from home day. This could be from Middlesbrough so that the pressure for face to face appointments can be spread across more days.*
>
> *I will look at the rota and see if this can be altered so you don't have too much pressure over 3 days and for now your 4 days can be spread across Middlesbrough and Stockton.*
>
> *I think this will help the situation for both yourself and patient access.*
>
> *Ill let you know when it is altered.'*

21. The evidence before me was that at some point during the period with which the case is concerned, Dr Tayal was given other duties to spread the workload around and I find that was the case.

22. The outcome of the review of the claimant's pay progression was set out by Ms Adams in a letter of 9 February 2021. The conclusion was that the claimant had failed to produce sufficient evidence to demonstrate that she had passed the requirements for threshold 2. Nevertheless a decision was taken to move the claimant up an increment with retrospective effect. This decision appears to have been influenced by the fact that the claimant had not received increments some years earlier due to being suspended. Managers also identified that the claimant had been overpaid for several years and offset the backpay against the overpayment.

23. The claimant was not satisfied with that outcome. In particular she disagreed with the decision that she had not met the requirements for threshold 2. She also believed the increment should have been backdated to 2013 ie beyond the date that it was; in this hearing in her evidence Dr Roy said she was angry about the decision and I find that she was.

24. In April 2021 the claimant was provided with a new contract of employment which consolidated her previous two contracts. She refused to sign this. I find the reason for that was she remained unsatisfied that the issue she raised about her pay had been resolved properly.

25. At some point after August 2021 the Care Quality Commission carried out an inspection of the respondent's health centre at Lawson Street. The CQC noted that the service and staff remained under significant pressure with the impact Covid-19 was having on staffing together with managing a local syphilis epidemic and an increasing wait-list for patients requiring coils to be fitted. A report produced by the CQC records that 'all staff mentioned the extra pressures the new staffing structure had put on them both for the administrative and clinical staff, following the new contract award in August 2021. A plan to alleviate the pressure for staff was in the process of being approved at the time of our inspection and if approved, additional staff would be recruited into the service.' The CQC report observed that workloads were high but that the service had enough staff with the right qualifications, skills, training and experience to keep patients safe from avoidable harm and to provide the right care and treatment.

26. The claimant took periods of sick leave on a number of occasions in 2021 including in October 2021. The respondent referred the claimant to occupational health. As a result of that referral an occupational health assessment was undertaken on 27 October 2021. The claimant had recently had a week off work but had since returned. In a report produced by the occupational health advisor following this assessment, the advisor said, amongst other things:

> *'…Dr Roy has been suffering with symptoms of stress relating to several perceived work related stressors….it is unlikely her symptoms of stress will resolve until resolution of the perceived work related stressors has been found.*
>
> *…In my clinical opinion Dr Roy is fit to continue in her current role with support and appropriate adjustments….*
>
> *…*
>
> *Dr Roy's fitness for work has been impacted by her perceived work related issues, therefore it is now paramount from employer and employee to engage in constructive dialogue to address these concerns and seek resolution. If a mutual resolution cannot be reached, the prospects of Dr Roy maintaining a*

sustainable return to work and offer regular service in the future would seem unlikely...'

27. The report did not say in terms what the perceived work related stressors were. However I infer that the claimant told the occupational health advisor that they included her workload as the OH advisor made certain suggestions about considering continuing to review the claimant's workload and responsibilities and undertaking a workplace stress risk assessment with the claimant.

28. On that same day, 27 October 2021, the claimant had a meeting with Ms McLaughlin and they discussed the concerns the claimant had raised about stress and work demand. The claimant identified the factors causing her stress as too many face to face patients being booked into her clinics, not enough admin time being given to her to support letters and emails, and the amount of time that it took to clean her room in between patients (the cleaning being a Covid measure). Ms McLaughlin made adjustments to the claimant's working practice to give her additional admin time and they agreed the claimant would keep a diary for the next two weeks to identify how much admin time was needed. The claimant raised a concern about lack of support from healthcare assistants and staff at Stockton and Ms McLaughlin asked the claimant to tell her of any obstructiveness from staff at the time it happens. They also discussed how the claimant could obtain support from other staff. This was confirmed in an email from Ms McLaughlin of 9 November 2021. In that email Ms McLaughlin said she had now received the occupational health report and was pulling together a stress risk assessment.

29. On or before 16 November 2021 the claimant got in touch with Ms Hirst, Service Support Manager, and said she felt she was being met with resistance from certain members of staff when she asked them to assist her with tasks. This led to Ms Hirst sending an email to Ms McLaughlin, copying the claimant in, on 16 November. In that email Ms Hirst said she had advised the claimant to discuss the matter with Ms McLaughlin but that the claimant had said she was too busy and had asked Ms Hirst to email Ms McLaughlin for her. Ms Hirst said in her email that the claimant felt one individual in particular was very hostile and confrontational towards the claimant and was influencing others to act in the same way. Ms Hirst asked the claimant to confirm that that was the correct information she wanted to have passed on to Ms McLaughlin. The claimant replied copying in Ms McLaughlin on 17 November 2021. In her email the claimant said she had faced difficulties, as she put it, 'since the Covid outbreak'. The claimant named three individuals who the claimant said had 'ganged up' against her. The claimant went on to say that when she approached a healthcare assistant for help, two of those individuals obstructed the HCA from helping her and, as the claimant put it, were 'shouting at me.' The claimant also said the three individuals she named 'used to shout at me to finish clinic quickly' when she was late finishing her clinic, which clinic she described as 'overbooked'. The claimant did not say when those things had happened, only that they had happened since the Covid outbreak ie since early 2020.

30. The claimant also referred to emails she had sent to Ms Lawty previously, expressing her opinion that her clinics were overbooked and she had too many face to face appointments. She claimed in this email that no support was offered and that two of the individuals she named had fewer patients to see and were, as the claimant put it, 'gossiping/chatting around' while she was 'struggling.' The

claimant said she would like to have formal meetings about what she described as 'this long-standing problem.'

31. On 22 November 2021 the claimant and Ms McLaughlin had a meeting and discussed the claimant's work situation and the matters the claimant said were causing stress. That was followed up by an email dated 30 November. In the meeting the claimant and Ms McLaughlin discussed the perceived resistance and obstructiveness that the claimant believed some members of staff had demonstrated towards her. I infer from the email that followed that the claimant said things that gave Ms McLaughlin the impression that the claimant felt that those issues had settled somewhat lately. In her follow up email Ms McLaughlin said 'this will be part of my review with you in one month's time. I'm hoping this will continue to improve.'

32. In the claimant's evidence to the Tribunal, although the claimant referred to the matters raised in her email from 17 November 2021 regarding people shouting at her and obstructing an HCA from helping her, she did not say when those incidents had happened. Nor did she say in her 17 November 2021 email that those things had happened recently (as opposed to, say, in September 2020 when the claimant had been complaining about lack of assistance). The claimant's evidence to the Tribunal was that what she described as 'threatening behaviours' in her witness statement made her physically frightened to return to work. However, that is not what she said in her email on 17 November 2021. If Dr Roy had genuinely felt like that at that time, it is surprising that she did not say so in her email. Indeed I have found that the claimant gave Ms McLaughlin the impression that the issues had settled recently. Furthermore, when in December 2021 the claimant was told she could raise grievances formally if she felt they had not been properly addressed as the claimant suggested, the claimant said she did not want to and just wanted her pay resolved. Looking at the evidence in the round, I find it more likely than not that:

    32.1. when the claimant referred in her email of 17 November 2021 to people shouting at her and obstructing an HCA from helping her, she was not referring to incidents that had occurred recently ie shortly before the claimant's email in November 2021;

    32.2. the claimant did not say to Ms McLaughlin that she was frightened to go into work because of the behaviour of the individuals she named in her email or anybody else; and

    32.3. the claimant did not in fact feel frightened to go into work at this time.

33. At the meeting with Ms McLaughlin the claimant said part of the stress she was experiencing was due to the salary concerns she had. The claimant told Ms McLaughlin that was causing her sleeping problems for which she had been prescribed medication and that she felt she was being financially exploited. The claimant said she was not willing to undergo certain training that was discussed until the salary issue was resolved. It was agreed that Dr Tayal would look into the issue of the claimant's pay progression again.

34. In a follow up email on 30 November 2021 Ms McLaughlin said she would 'look to ensure that timeslots allocated for LARC patients are correct and in line with National Appointment timings.' I infer from that that this is what Ms McLaughlin intended to do. There is no evidence that she did not do it and I infer that she did.

35. I also find that Ms Loughlin did carry out a stress risk assessment for the claimant about this time. I reach that conclusion notwithstanding that no such document has been produced as part of the disclosure exercise because: Ms McLaughlin told the claimant at the time she was doing one; in a sickness absence review meeting in May 2022 the fact that one had been done was referred to; and Ms Lunt's evidence to this Tribunal was that she saw one had been produced when she looked into the claimant's concerns. I found Ms Lunt to be a compelling and credible witness and I accept her evidence that one had been prepared and did exist.

36. I find that the respondent gave the claimant an allocated time to work from home and gave her additional administrative time to complete patient assessments, additional time between patients, allowing for time for her to catch up, and additional support from the respondent's admin team to complete any necessary patient letters. All of those matters were recorded as having been put in place in a subsequent sickness absence review meeting in May 2022. I also accept the respondent's evidence that, by the end of November 2021, the pressure on the service (and consequently staff) arising from the Covid-19 pandemic was subsiding.

37. The claimant remained unhappy about her salary. She raised her concerns again with managers. By this time it had already been agreed that in light of the claimant's continued unhappiness Dr Tayal would carry out a further review. Pursuant to that review Dr Tayal had decided the claimant's pay would be upgraded. The claimant was told this and that the backpay calculations were still being worked out. That was reiterated in a meeting between the claimant, Ms Kitchen and Ms Adams in December 2021. At that meeting the claimant said her salary had been incorrect since 2011, she was under stress due to the salary and she felt deprived of the pay she was entitled to. During this meeting the claimant said words to the effect that she felt previous grievances had been covered up and not resolved and Ms Adams advised the claimant she could raise grievances formally if she wished. The claimant replied (I have already noted this in my earlier findings) that she did not want to and just wanted her pay to be resolved.

38. In January 2022 the claimant was told that Dr Tayal was satisfied the claimant had demonstrated her eligibility to pass through threshold 2 as of 2016 and the respondent had agreed to re-grade the claimant's pay and backdate payments. The claimant received the backdated pay on 25 February 2022.

39. On 31 January 2022 the claimant emailed Ms McLaughlin saying there were too many face to face patients booked for her clinic. Ms McLaughlin replied that day asking if she was okay, reminding her that all patients were all now face to face and that she now had extra admin time as previously agreed and asking the claimant to let her know what the issue was. On 1 February, the next day, the claimant sent an email to Ms McLaughlin saying that she had booked too many face to face patients in her clinic. She said this issue 'needs to be reviewed for better patient's care and my health.' Ms McLaughlin emailed Ms Hirst within minutes of receiving that email asking Ms Hirst to review the claimant's patient list to ensure adequate time had been given for all patients and feedback.

40. The claimant remained dissatisfied about her pay. She sent an email saying as such on 9 February 2022. She indicated in that email her pay increase should

have been back dated to 2015 in her view not 2016. She also raised an issue concerning her contracted hours.

41. Because the claimant was unhappy it was agreed that Ms Lunt would take over looking into the claimant's concerns.

42. The claimant began a period of sickness absence on 16 February 2022 from which she did not return to work except for a period of a few days in March when she worked from home. The absence followed the claimant experiencing an episode of palpitations, confusion and disorientation. The claimant had experienced a similar episode in October 2021 which led to the week off work that I have already mentioned. Following this recent episode the claimant told Ms McLaughlin she felt these episodes were due to work related stress.

43. During the claimant's absence Ms Lunt carried out a thorough review of the concerns the claimant had raised about her pay and she also reviewed an issue the claimant had raised regarding her contracted hours. On 14 March Ms Lunt wrote to the claimant setting out her conclusions, those being that the claimant was not entitled to anything further. She said the matter was now closed and there would be no opportunity for further review.

44. The claimant remained dissatisfied and continued to send further emails about her pay. She also raised new concerns about mileage expenses, course fees and pay for hours worked during lunchbreaks which Ms Lunt looked into and corresponded with the claimant about over the following months.

45. In the meantime the respondent referred the claimant to occupational health on 14 March 2022 and there followed an occupational health report dated 14 April. The OH advisor explained in that report that in her view the claimant was unfit to work. The advisor advised that it was too early to consider a return to work and said cardiology investigations were ongoing. The OH advisor said she could not comment on a likely return to work date or whether the claimant would be able to render a reliable service and attendance in the future as the heart issues remained under investigation. The advisor said:

> *'Due to the nature of the medical condition Dr Roy may benefit from adjustments to facilitate rehabilitation back into the workplace, when she is fit for work. As she is still undergoing cardiology investigations I recommend a review with occupational health when her symptoms have settled and she has received results from the outcome of these tests.'*

46. In the report the advisor made certain recommendations. She said:

> *'- It may be helpful to consider a review OH assessment once all medical investigations have been completed and prior to a return to work. We may then be in a better position to provide guidance regarding any adjustments which may apply and a return to work plan.*
>
> - *As Dr Roy states her current ill health has being caused by work related issues, in my opinion, when she is fit for work there needs to be further dialogue between Dr Roy and her employer to discuss her perceptions and the various issues she reports at work to facilitate a way forward. This review meeting may well prove the best course of action for both parties.*

> *I therefore recommend that you may consider the completion of a review/stress risk assessment so as to help clearly identify the sources of stress. A stress risk assessment can help explore possible solutions or actions to help reduce perceived stress at work. I would advise that an agreed review date is established so as to evaluate solutions or actions taken forward and that monitoring continues.'*

47. On 20 May 2022 the claimant had a formal sickness absence review meeting with Ms McLaughlin. The purpose of the meeting was to have an update on the claimant's current state of health, to review the outcome of the recent OH assessment and to explore what if any further support the respondent may be able to provide her. The claimant told Ms McLaughlin she was still experiencing cardiology symptoms although she was taking beta blockers and aspirin which was helping with those symptoms. The claimant also updated Ms McLaughlin on the cardiology investigations that were ongoing. The claimant told Ms McLaughlin she believed her symptoms were as a result of work related stress due to ongoing issues with her salary, additional work she felt had been put on her and issues around her mileage. Ms McLaughlin told the claimant her salary was now correct and that issue was now resolved, the dispute about her mileage pay was currently being investigated with payroll and that if she was owed any back pay she would be notified. They discussed the additional work which the claimant felt had been put on her and Ms McLaughlin said that the claimant's work levels remained in line with other doctors in the service and no additional work had been put on her. Ms McLaughlin reminded the claimant of the adjustments that had been made previously to help her manage her workload. The claimant said in this meeting that she felt her job plan made up of 40 hours per week should be inclusive of the paid lunchbreak. Ms McLaughlin explained that as had been discussed previously on several occasions the claimant was entitled to time off for lunch breaks but that time was not paid and was not inclusive of the job plan. Ms McLaughlin said that was consistent with the rest of the doctors across the business unit and organisation, but if the claimant had evidence that it was wrong she would consider it. The claimant also said that on several occasions she worked additional hours over her weekly contracted hours due to what she described as inappropriate appointments being booked and Ms McLaughlin asked the claimant to evidence the additional hours worked.

48. Ms McLaughlin followed up the meeting with a letter summarising what had been discussed and providing the claimant with a copy of the sickness absence policy reminding the claimant of the information and support that was available from a service called Workplace Wellness including telephone support and counselling.

49. Notwithstanding that the claimant had been told the salary issue was now closed, she continued to send emails making it clear she was dissatisfied.

50. For the occupational health advisor, the claimant had prepared a document entitled 'stress factors at work.' The OH advisor suggested she send it to the respondent and the claimant did that although not until 1 July 2022. The first stress factor listed in that document concerned her pay. The claimant then referred to an issue with her mileage expenses. She also made complaints in this document about her workload being excessive since 2011 and alleged

management had ignored her when she raised concerns and had forced her to work extra hours by booking patients for longer than her contracted hours. She alleged she had had to come into work early to manage the work, was 'constantly forced' to work late into the night, and had been unable to eat and drink properly due to the workload. The claimant also alleged that during Covid lockdown period she was not provided with chaperones, that an HCA who had been keen to help had been obstructed by other staff, and 'on several occasions' she had received verbal abuse from the obstructing staff members. She did not say when that had happened or who the staff members were. The claimant alleged she had repeatedly raised these concerns with management but that no measures had been taken. The claimant also alleged she had not been provided with opportunities to do training. In addition she alleged that a health risk assessment was not carried out for her at the start of the Covid pandemic and she complained about not having been given an individual work computer and phone to reduce the risk of the spread of Covid until March 2021.

51. Ms McLaughlin and Ms Lunt agreed that Ms Lunt would look into the matters raised by the claimant and they agreed Ms Lunt would attend the next sickness review meeting.

52. On 1 July 2022 Ms McLaughlin held a formal sickness review meeting and informed the claimant that Ms Lunt would attend the next review meeting to ensure concerns were responded to. Meanwhile Ms Lunt continued to look into the matters raised by the claimant ie those that the claimant had raised before and also the new matters raised in the claimant's stress factors document.

53. On 2 September the claimant was invited to a meeting on the 12 September to discuss her sickness absence.

54. On 5 September the claimant raised a formal grievance complaining about a number of matters again, including her pay and that she was suffering from work related stress arising from her workload. The substance of the grievance was largely the same as that raised in the stress factors at work document on 1 July which Ms Lunt was already considering.

55. Ms Lunt or Ms McLaughlin sought advice from HR regarding how to deal with this. The advice from HR was that as Ms Lunt had not yet completed her investigation into the matters raised by the claimant in her stress factors document she should respond to those first and meanwhile put the grievance on hold.

56. A meeting was arranged with the claimant on 8 September with Ms Lunt and Ms McLaughlin. At that meeting Ms McLaughlin said the grievance would be put on hold pending Ms Lunt addressing the matters raised in the stress factors document.

57. There was then a further meeting to discuss the claimant's sickness absence on 12 September.

58. On 20 September the claimant emailed Ms McLaughlin reminding her she had sent a formal grievance in and Ms McLaughlin replied reminding the claimant that the grievance was being put on hold pending Ms Lunt addressing the matters raised in the stress factors document. Ms McLaughlin said in her email 'if you are still unhappy once concluded then we will investigate if required.'

59. On 21 October Ms Lunt sent her reply to the stress factors at work complaint. She apologised for the delay in responding and explained that as the claimant's concerns dated back a number of years she had had to request access to information in order to respond. Ms Lunt did not refer to the grievance in her letter because Ms Lunt believed, on the advice of HR, that she was responding to the stress factors document first. She did not consider herself to be dealing with this as a formal grievance. Nevertheless I find that Ms Lunt's investigation and response did in substance address the same issues as had by this time been raised in the grievance. I also find that before reaching any conclusions Ms Lunt made enquiries and gathered evidence concerning the matters raised by the claimant. Ms Lunt's enquiries were by no means superficial; far from it. Ms Lunt made significant investigations into the matters raised by the claimant and produced a detailed letter setting out her findings as follows:

    59.1. Ms Lunt concluded that the claimant had been paid correctly.

    59.2. Regarding expenses, Ms Lunt accepted that mistakes had been made regarding mileage and she arranged for underpayments to be corrected.

    59.3. Regarding course fees, Ms Lunt agreed to reimburse the claimant certain course fees despite concluding the claimant had not sought approval for the training. Reimbursement had already happened by the time of the 21 October letter.

    59.4. In relation to workload, Ms Lunt found the claimant's workload was high as it was for all medical professions during Covid but that she had not been subject to unreasonable or improper demands. Ms Lunt told the claimant they had recently managed to recruit a full time dual trained doctor to the service and they would be starting their new role at the beginning of November 2022. She also told the claimant they had secured additional bank hours from other doctors working in the service.

    59.5. With regards to chaperones, Ms Lunt said she was unable to find any evidence of verbal abuse and lack of chaperones. She explained why in her detailed letter.

    59.6. In regard to a complaint about not having been issued with a contract in 2011 Ms Lunt made the point that the claimant's terms and conditions had not changed due to TUPE and that therefore no new contracts had been issued.

    59.7. On the training issue, Ms Lunt did not agree with what the claimant had said and she set out the training the claimant had had.

    59.8. Regarding the Covid risk assessment, Ms Lunt said she had reviewed the risk assessments of all doctors in the service and she'd found everyone had been reviewed at the same time and it was not the case that the claimant's risk assessment had been delayed as she'd suggested.

    59.9. Regarding the laptop and phone the claimant had said she should have been provided with, Ms Lunt explained that laptops and phones were in short supply during Covid and those who were shielding had to be given priority meaning others had to share.

60. The claimant suggests in her witness statement that this letter did not address certain issues, specifically referring to lack of support, feeling ostracised and the unmanageable workload. I do not agree that that is a fair reflection of the report.

Whilst the claimant may not agree with the conclusions and she may feel Ms Lunt could have carried out a more extensive investigation, and whilst she may feel that Ms Lunt gave insufficient weight to the points the claimant had made, I find Ms Lunt did in fact engage conscientiously with the claimant's claim that she felt unsupported, her allegations about the way colleagues had treated her, the verbal abuse alleged, and the workload issues as well as the other matters the claimant raised.

61. I accept the evidence given by Ms Lunt about the matters she considered. I accept her evidence that she gave about the documents she considered, which were extensive. I also accept that the reason it took as long as it did to respond to the matters raised by the claimant was because Ms Lunt had to obtain information and documents going back several years from the corporate team concerning pay reviews, expenses and additional hours as well as reviewing a significant number of emails between the claimant, the service manager regarding the claimant's workload.

62. The claimant was not satisfied with Ms Lunt's conclusions. She sent an email on 26 November 2022 saying she was appealing the outcome. In essence the claimant treated Ms Lunt's conclusions as if they were a response to her formal grievance under the grievance procedure and purported to appeal under the grievance procedure.

63. On 28 November the claimant had a sickness absence review meeting with Ms McLaughlin. The claimant explained she had an appointment with a cardiologist in a couple of days. Before this meeting Ms McLaughlin had already agreed to refer the claimant back to occupational health. However the claimant told Ms Loughlin in this meeting that she did not intend to return to work and would prefer to retire. She made it clear to Ms McLaughlin that she had reached a settled decision to resign. That is set out in the correspondence that followed this meeting. The claimant said she had already spoken to the pension lead and was going to contact her again that week to process her retirement plans. Ms McLaughlin asked if there was any support the claimant needed from her as her manager or the organisation generally at that time or to aid her return to work. The claimant replied there was not and that she would be handing in her resignation.

64. On 1 December 2022 Ms McLaughlin sent a letter to the claimant in which she said:

> *'…To clarify, the response provided by Sarah [Ms Lunt] was not as part of a grievance, you did request to raise a grievance however, you were advised that the response from Sarah should be provided first before any grievance process is instructed…'*

65. To that extent the letter was consistent with what the respondent had told the claimant when she first sent in her formal grievance, ie the grievance would be put on hold while Ms Lunt looked into and responded to the stress factors document. Back then, the claimant had been told that if she was unhappy with Ms Lunt's response she could at that stage raise a grievance. Now, however, the position appeared to have changed as Ms McLaughlin said:

> *'… please be aware that any concerns that have already been responded to will not be considered again as part of any grievance process.'*

66. Ms Lunt said in evidence that this is what HR advised them to say at the time. She did not offer an explanation for what appeared to be a change in position regarding whether it was still open for the claimant to raise a grievance. There was also an implication in the letter from Ms McLaughlin that the claimant could not appeal Ms Lunt's conclusions. I note however that the claimant did not suggest in her witness statement that this change in position communicated on 1 December was of any particular concern to her or was a contributory factor in her decision to resign. Indeed I find, based on what the claimant had told Ms McLaughlin on 28 November, that she had already decided by then that she was not going to return and would be resigning.

67. Ultimately, the respondent did treat the 21 October letter from Ms Lunt as if it were a grievance outcome under the grievance procedure and permitted the claimant to appeal it and the claimant resubmitted her appeal at the end of January 2022 a couple of weeks after she had resigned. It has been suggested in this case that a delay in dealing with this appeal contributed to a breach of the implied term of trust and confidence in response to which the claimant resigned. I find as a fact that, in so far as there was any delay in treating the claimant's letter of 26 November as an appeal, that had no bearing at all on the claimant's decision to resign. She had already decided she was going to leave by no later than 28 November, which was only two days after she submitted her appeal.

68. Meanwhile, going back to the chronology, the claimant was reviewed again by occupational health on 5 December 2022. An occupational health report followed and that report confirmed that the claimant remained unwell and unfit for work. It was said that further medical input for her heart was awaited and it was therefore not possible to advise when she might be ready to return to work. The report explained that reasonable adjustments such as a phased return to work would need to be considered for implementation at the point when she was ready to return to work.

69. Ms McLaughlin subsequently sent the claimant a letter inviting her to a sickness review meeting on 20 December. In that letter Ms McLaughlin referred to the fact that it was unclear how long the claimant was likely to be absent from work. She said at the meeting they would discuss all the medical information to discuss whether a return to work was likely. She said 'I will make every effort to support you to return to work. However please be aware that one of the outcomes of this meeting could be that I make a decision to dismiss you on grounds of incapability to return in the foreseeable future due to ill health.' The claimant has alleged that this statement about possibly terminating her employment was the 'final straw' leading to her decision to resign. I find that as a fact that neither the fact that this statement was included in the letter nor the fact that the respondent had arranged a meeting at which termination may be considered were things that influenced the claimant's decision to terminate her employment. She had already decided to resign before her meeting on 28 November.

70. On 19 December 2022 the claimant made a phone call to Ms McLaughlin but it was answered by Mr Giles. The claimant said she could not take any more and felt she had no choice but to apply for ill health retirement, saying the respondent had failed to address her longstanding issues and had caused her illness.

71. On 20 December 2022 there was a further sickness absence review meeting. The respondent did not terminate the claimant's employment in that meeting.

72. On 21 December the claimant sent an email to the pension department informing it of her intention to retire early on grounds of ill health.

73. The claimant made an application to NHS pensions with the assistance of the respondent. She gave notice of termination to Mr Giles of the respondent on 12 January 2023 and the claimant's employment terminated with effect from 31 March 2023.

74. I accept Mr Ohringer's submission and find as a fact that at no point before the claimant resigned was the claimant well enough to return to work, the reason being that the claimant was still experiencing heart problems the cause of which was still being investigated.

75. The claimant's appeal was considered by Ms Wilkinson-Parish and by a decision sent on 19 May, after the claimant's employment ended. The appeal was not upheld.

76. One of the allegations made by the claimant in these proceedings is that the respondent required her to perform an unmanageable and excessive workload from November 2020 until February 2022. I must consider whether as a matter of fact the respondent did do that. There are a number of factors relevant to this. In particular the following.

    76.1. In the relevant time period the claimant was under increased pressure at work due to Covid-19, as were others. However, it does not follow from that that the claimant's workload was, as alleged, unmanageable and excessive.

    76.2. I note that the CQC, whilst referring to staff being under significant pressure and workloads being high, did not say in its report that anybody's workload was unmanageable or excessive.

    76.3. The respondent accepted there was a recruitment need (as is also demonstrated by the CQC report content and the fact that somebody was recruited to start in Autumn 2022). However, that in itself does not persuade me that the work the respondent expected the claimant to do was excessive or unmanageable.

    76.4. There is clear evidence that the claimant believed her workload was excessive:

        76.4.1. The claimant complained about her workload, especially the number of face to face appointments, in this period.

        76.4.2. The claimant had sickness absence in 2021 and referred to workload as a stressor. It is not disputed the claimant went off sick in February 2022 and that she cited stress factors contributing to her absence.

        76.4.3. Workload issues were also referred to by the claimant in the stress factors document she subsequently prepared and in her letter of grievance.

        However, the claimant's subjective perception, I find, is not a reliable guide to whether her workload was objectively unmanageable and excessive.

    76.5. The fact that the claimant went off sick citing stress is clearly a relevant factor, but it is clear to me from the witness evidence I heard and the documents I have been referred to that the main reason the claimant was off

sick was not work-load related. Rather, it was due to the claimant's entrenched belief that she had suffered a major injustice in relation to her pay, that she had previously raised over many years and that had not been remedied to her satisfaction.

76.6. I have considered whether the fact that the claimant experienced heart problems is evidence of an excessive workload. I have decided it is not because the evidence before me does not show that it is more likely than not that her heart problems were caused by stress or work factors.

76.7. When the claimant raised workload issues with managers, they responded and made changes. For example in September 2020 the claimant emailed about lack of assistance and received a response then. An occupational health report was obtained in October 2021 and changes were made and a stress risk assessment was carried out. In January/February 2022 the claimant raised concerns regarding the number of patients booked into her clinic and when she did that Ms McLaughlin asked for that to be looked into. I have rejected the claimant's evidence that managers offered no adjustment or support to her. The evidence I saw and the facts I've found do not bear that out; I did not find the claimant to be a reliable witness in this regard. The respondent gave the claimant allocated time to work from home and additional administrative time to complete patient assessments, additional time between patients which allowed her to catch up and additional support from the admin team to complete any necessary patient letters. All of those matters were recorded in the sickness absence meeting May 2022.

76.8. The claimant did not raise a formal grievance about her workload at the time she was experiencing the pressures she says she was under. When she was told it was an option for her to do so in December 2021 if she felt her complaints had not been dealt with she said she did not want to raise a grievance and just wanted her pay sorted out.

76.9. Ms Lunt conducted a review of the claimant's workload in the Summer and Autumn of 2022 and concluded it was not excessive or unmanageable. I have found this to be a conscientious review in which she considered what the claimant had said and also evidence of working hours and correspondence between her and her manager.

76.10. As for the evidence the claimant gave to the Tribunal, there was not a great deal of detail about the respects in which her workload was excessive or unmanageable. I accept that it is clear she believed she had been given too many patients to see. However there was little if any cogent evidence by which I could reliably benchmark whether what the claimant was required to do was in fact objectively unmanageable and if so how often this issue occurred. There was also little evidence enabling me to understand the implications of that if it was the case. In this regard the claimant referred me in her statement to page 152 of the bundle which she says showed the duty rota and claimed it showed she was forced to work 42.5 hours compared with her contracted 40 hours from 11 November 2020 until 14 September 2021 and 40.5 hours thereafter until sick leave began. It was not clear how that conclusion is reached from that document. If anything it shows the claimant was rostered to work for 40 hours with, in addition to that, half an hour per day in breaks ie 2.5 hours of breaks over the course of the week. The respondent's position is that's what the contract provided. It is clear that the claimant felt she should

be paid for breaks or she should be allowed breaks within her 40 hours and was unhappy that she was not. However, the fact that the claimant felt she should be paid for breaks is not evidence that her work was unmanageable or excessive. The claimant referred in evidence to working late and working over lunch and there was evidence that she also worked before the start of her shift. But what was not clear was how often that happened and how much more time was needed on those occasions. The claimant referred to excessive pressure being put on her to maintain KPIs but does not spell out clearly who was putting that pressure on her, when and what they did or said that amounted to excessive pressure.

77. I do accept that the claimant's workload was high; that the claimant was under increased pressure during the period in question due to the effects of Covid; that carrying out work in those circumstances was undoubtedly difficult; and it is more likely than not that there were occasions when the claimant worked more than her contracted hours, for example in the morning before her rostered shift began or after the end of those hours or during time allocated for lunch. However, I do not accept it follows from that that the workload was unmanageable or excessive in any objective sense.

78. The burden is on the claimant to prove that it is more likely than not that the respondent required her to perform an unmanageable and excessive workload from November 2020 until February 2022. Looking at the evidence in the round I am not persuaded that the respondent did require that of the claimant as a matter of fact.

Legal framework

79. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed.

Dismissal

80. A claim of unfair dismissal cannot succeed unless there has been a dismissal as defined by section 95 of the Employment Rights Act 1996. It is for the claimant to prove, on the balance of probabilities (ie that it is more likely than not), that he has been dismissed.

81. In this case, the claimant claims he was dismissed within the meaning of section 95(1)(c), which provides that termination of a contract of employment by the employee constitutes a dismissal if he was entitled to so terminate because of the employer's conduct. In colloquial terms, the claimant says he was constructively dismissed.

82. For a claimant to establish that there has been a constructive dismissal, he must prove that:

    82.1. there was a breach of contract by the employer;

    82.2. the breach was repudiatory ie sufficiently serious to justify the employee resigning;

    82.3. he resigned in response to the breach and not for some other unconnected reason; and

    82.4. he had not already affirmed the contract before electing to leave.

Repudiatory breach of contract

Implied term of trust and confidence

83. Its established law that every contract of employment contains an implied term that the employer shall not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: Woods v W M Car Services (Peterborough) Ltd [1981] ICR 666, EAT; Lewis v Motorworld Garages Ltd [1986] ICR 157, CA; Mahmud v Bank of Credit and Commerce International SA (often cited as Malik v BCCI) [1997] ICR 606, HL.

84. The test is not whether the employer's actions were unreasonable. Nor whether they fell outside the range of reasonable actions open to a reasonable employer: Buckland v Bournemouth University [2010] IRLR 445, CA.

85. Case-law shows that the conduct needs to be repudiatory in nature in order for there to be a breach of the implied term of trust and confidence (see Morrow v Safeway Stores Ltd [2002] IRLR 9, EAT). This was emphasised by the Court of Appeal in the case of Tullett Prebon Plc & ors v BGC Brokers & ors [2011] EWCA Civ 131; [2011] IRLR 420. There, the Court of Appeal cited the case of Eminence Property Developments Ltd v Heaney [2010] EWCA Civ 1168 and stressed that the question is whether, looking at all the circumstances objectively, from the perspective of the reasonable person in the position of the innocent party, the conduct amounts to the employer abandoning and altogether refusing to perform the contract.' The High Court in the Tullett case held (in a judgment subsequently upheld by the Court of Appeal) that 'conduct which is mildly or moderately objectionable will not do. The conduct must go to the heart of the relationship. To show some damage to the relationship is not enough'; Tullett Prebon v BGC [2010] IRLR 648, QB.

86. When assessing whether conduct was likely to destroy or seriously damage the trust and confidence, it is immaterial that the employer did not in fact intend its conduct to have that effect: Leeds Dental Team Ltd v Rose [2014] IRLR 8, EAT.

87. Similarly, there will be no breach of the implied term simply because the employee subjectively feels that such a breach has occurred no matter how genuinely this view is held (Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493, [2005] ICR 481, CA).

88. The question is whether, viewed objectively, the conduct is calculated or likely to destroy or seriously damage the trust and confidence. The employee's subjective response may, however, be of some evidential value in assessing the gravity of the employer's conduct (see the Tullett Prebon case above in the High Court).

89. The duty not to undermine trust and confidence is capable of applying to a series of actions by the employer which individually would not constitute a breach of the term (United Bank Ltd v Akhtar [1989] IRLR 507). In Lewis v Motorworld Garages Ltd [1986] ICR 157, CA, Glidewell LJ said: '… the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term?'

90. In Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493, [2005] IRLR 35, CA the Court of Appeal held that where the alleged breach of the implied term of trust and confidence constituted a series of acts the essential ingredient of the final act was that it was an act in a series, the cumulative effect of which was to amount to the breach. Those acts need not all be of the same

character but the 'last straw' must contribute something to that breach. Viewed in isolation, it need not be unreasonable or blameworthy conduct but the Court of Appeal noted in Omilaju that will be an unusual case where conduct which has been judged objectively to be reasonable and justifiable satisfies the final straw test.

Implied duty in relation to grievances

91. In addition to the implied term of trust and confidence, employers have an implied contractual duty 'reasonably and promptly [to] afford a reasonable opportunity to their employees to obtain redress of any grievance they may have': W A Goold (Pearmak) Ltd v McConnell [1995] IRLR 516.

92. If that implied term is breached, it does not automatically follow that the breach will justify the employee resigning and claiming that he has been dismissed. An employee will only be able to establish they have been constructively dismissed if the breach is so serious or fundamental that it amounts to a repudiation of the contract.

93. The claimant did not rely specifically on this particular implied term. However, a failure to reasonably and promptly afford a reasonable opportunity to obtain redress of a grievance could, in principle, amount to a breach of the implied term of trust and confidence, provided it is sufficiently serious.

Termination in response to the breach

94. In light of my conclusions below it is unnecessary to say more about the law in this respect.

Conclusions

95. The claimant's case is that the respondent constructively dismissed her by doing one or more of the following things (which the claimant says amounted to a breach of the implied term of trust and confidence):

95.1. Requiring the Claimant to perform an unmanageable and excessive workload from November 2020 until February 2022.

95.2. Failing to support the Claimant when she raised issues about the conduct of her colleagues in November 2021.

95.3. Failing to properly consider and investigate her grievance dated 05.09.22, timeously or at all.

95.4. Failing to take any or any adequate steps to resolve the workplace issues which would have assisted the Claimant's return to work, specifically by:

95.4.1. recognising the Claimant's excessive workload and offering an apology;

95.4.2. taking steps to reduce the Claimant's workload;

95.4.3. taking steps to deal with the conduct of the Claimant's colleagues, for example by holding a formal meeting with the Claimant and undertaking an investigation into the Claimant's allegations;

95.4.4. resolving the grievance more quickly (rather than being put on hold)

95.4.5. determining the grievance in the Claimant's favour;

95.4.6. resolving the grievance appeal more quickly and in the Claimant's favour;

95.4.7. consulting with the Claimant to see what steps could have been taken to assist her back to work.

Requiring the Claimant to perform an unmanageable and excessive workload from November 2020 until February 2022

96. I have found as a fact that the respondent did not require the claimant to perform an unmanageable or an excessive workload in this period as alleged.

97. Therefore this part of the claimant's case is not made out.

98. I shall add that in so far as the claimant's workload was high and the claimant was under increased pressure and worked more than her contracted hours on occasion, I do not accept that the respondent conducted itself in a way calculated or likely to damage or seriously destroy the relationship of trust and confidence. I say that because given the circumstances of the pandemic it was not something the respondent could reasonably have avoided and I found that the respondent did in fact take steps to alleviate the pressures the claimant was feeling.

99. There was no breach of the implied term of trust and confidence in relation to the claimant's workload.

Failing to support the Claimant when she raised issues about the conduct of her colleagues in November 2021.

100. My findings of fact include the following:

100.1. When the claimant spoke to Ms Hirst on 16 November 2021, making complaints about certain staff, Ms Hirst promptly involved Ms McLaughlin, passing on information as the claimant had asked her too.

100.2. When the claimant made complaints in an email of 17 November 2021 about three named individuals, Ms McLaughlin promptly arranged to meet with the claimant to discuss her work situation. That meeting took place just five days later and Ms McLaughlin discussed the claimant's belief that others had been obstructed.

101. Those facts undermine the claimant's claim that the respondent failed to support her when she raised issues about the conduct of colleagues. The respondents' managers were responsive. Indeed managers had been previously when the claimant raised concerns about staff: I found that when the claimant raised concerns in September 2020 about a perceived lack of co-operation from other staff when she needed assistance, Ms Lawty asked the claimant what assistance she had been asking for and not getting from staff but the claimant did not provide that information. And when during a meeting on 21 October 2021 the claimant raised a concern about lack of support from staff, Ms McLaughlin asked the claimant to tell her of any obstructiveness from staff at the time it happened and they discussed how the claimant could obtain support from other staff.

102. The claimant criticises the respondent in these proceedings for not holding meetings in November 2021 with other staff about whom she complained. However, I have found that when the claimant alleged in November 2021 that certain staff had shouted at her and obstructed an HCA from helping her, she did not suggest that these incidents had happened recently and in fact told Ms McLaughlin when they specifically discussed this that the issues had settled somewhat lately. Furthermore, when she did raise the matters in November 2021, the claimant did not describe the incidents in the terms she did in her

evidence given in cross-examination in the Tribunal. In that evidence the claimant said individuals had shouted in her face and that she had felt frightened. That paints a different picture to that set out in her email of 17 November 2021. The claimant referred to shouting but not shouting in her face or being frightened. Furthermore, the context in which this was alleged to have happened was a situation during the Covid-19 pandemic where everyone was working under increased pressure and strain. In all the circumstances it was reasonable for Ms McLaughlin not to hold meetings with the staff the claimant had complained about. Moreover, when the claimant told managers the following month that she believed the issues she had raised had been brushed under the carpet, she was told she could raise the matter formally under the grievance procedure. The claimant chose not to, saying she just wanted her pay resolved. That indicates to me that even if the claimant might have preferred Ms McLaughlin to speak to the staff that the claimant had complained about their behaviour, the claimant herself did not feel strongly enough about it to raise a grievance.

103. I conclude that the respondent did not fail to support the claimant as alleged and to the extent the claimant feels the respondent should have spoken to the staff she complained about in November 2021, I consider that not doing so was not something that was calculated or likely to seriously damage trust and confidence. In any event the respondent had reasonable and proper cause for not investigating this further at this time these being non-recent alleged incidents that occurred at a time when all staff were under increased pressure.

Failing to properly consider and investigate her grievance dated 05.09.22, timeously or at all.

104. I found that Ms Lunt did in substance investigate the complaints that the claimant raised within the document headed formal grievance. Before the claimant sent in the formal grievance document she had referred her complaints to Ms Lunt in the form of her stress factors document.

105. Regarding timeliness I found as a fact that Ms Lunt started investigating the issues raised promptly. Indeed she had already started investigating matters raised by the claimant about expenses even before the claimant forwarded her stress factors document. It did take a considerable time to complete the investigation from its start in July. There was a reasonable and proper cause for that in that the complaints were wide ranging going back several years and covering a number of topics requiring input from other teams and consideration of a significant number of documents. In any event this was at a time when the claimant was absent from work and medical advice was that she was not fit to return to work because she was still undergoing investigations for a heart problem and I find the time it took to conclude this did not delay the claimant's return to work and there was no reason at the time for Ms Lunt to believe that it would.

106. It has been suggested that the consideration of the claimant's grievance was not carried out, or not carried out properly, because the respondent did not deal with the claimant's formal grievance in accordance with its grievance procedure but instead put it on hold. I do not agree that this was something that amounted to or contributed to a breach of the implied term of trust and confidence, for the following reasons. The respondent's internal procedure was not a straightjacket; it simply set out how grievances would ordinarily be dealt with. The purpose of a grievance procedure is to ensure employees have a reasonable opportunity to

have their grievances considered. The claimant's situation was unusual in that when she put in her formal grievance the respondent was already looking at the stress factors document. The respondent's decision at the time was to put the formal grievance on hold but there was reasonable and proper cause for doing that given that the claimant had already in effect raised a grievance informally and that was being looked into and that review was ongoing. It was not put to Ms Lunt that the decision to approach things in this way was made with the objective of circumventing the documented procedure in some way. Indeed at this point when the claimant was told her grievance was put on hold the claimant had been told that if she remained unsatisfied she could take matters further. It was only later after the claimant had decided to resign that the respondent suggested the claimant would not be able to challenge Ms Lunt's conclusions. To the extent that putting the formal grievance on hold, pending looking at the stress factors complaints represented a departure from the respondent's policy, it was a reasonable and proper thing to do. In any event in no way could it be said to be something that was likely to damage the relationship of trust and confidence and it was certainly not calculated to do so. The claimant knew Ms Lunt was looking into matters. The fact that she was doing so was something that, viewed objectively, was likely to preserve trust and confidence not damage it. Nor was the fact that Ms Lunt did not specifically address the formal grievance in the course of this investigation something that viewed objectively was likely to seriously damage the relationship of trust and confidence. The claimant's complaints had been considered in substance and I repeat that I found as a fact that Ms Lunt engaged conscientiously with the claimant's complaints having considered extensive documents. She provided the claimant with a reasoned response setting out her conclusions some of which were in the claimant's favour.

107. It has been suggested that Ms Lunt should have gone further, for example interviewing the claimant about the allegations of threatening behaviour in particular and interviewing those alleged to be responsible. Had the respondent dealt with this under its grievance process as a formal grievance it may well have done that and Ms Lunt acknowledged that she could have carried out a more extensive investigation into this issue. However the question for me is not whether the respondent could have done more or applied its own policy or complied with best practice. The information available to Ms Lunt indicated that: if the claimant had been verbally abused as alleged it had occurred many months previously; the claimant's line manager had spoken to the claimant about her concerns and the claimant had told the claimant's line manager that matters had improved; and there was no suggestion that there had been a repetition of the alleged behaviour since then. In all the circumstances the approach taken by the respondent at this stage in not holding meetings was proportionate and done with reasonable and proper cause.

108. The respondent provided the claimant with a reasonable opportunity to obtain redress of her grievances. The claimant does not come close to persuading me that the way the respondent dealt with her complaints, whether those raised in the stress factors document or the later formal grievance, amounted to conduct that was done without reasonable and proper cause and that was calculated or likely to seriously damage the relationship of trust and confidence.

Failing to take any or any adequate steps to resolve the workplace issues which would have assisted the Claimant's return to work, specifically by:

- recognising the Claimant's excessive workload and offering an apology;
- taking steps to reduce the Claimant's workload;
- taking steps to deal with the conduct of the Claimant's colleagues, for example by holding a formal meeting with the Claimant and undertaking an investigation into the Claimant's allegations;
- resolving the grievance more quickly (rather than being put on hold)
- determining the grievance in the Claimant's favour;
- resolving the grievance appeal more quickly and in the Claimant's favour;
- consulting with the Claimant to see what steps could have been taken to assist her back to work.

109. This allegation concerns the period from February 2022, when the claimant's sickness absence began, up to her resignation.

110. I have found that at no point during this period was the claimant fit to return to work, the reason being that the claimant was still experiencing heart problems the cause of which was still being investigated. Those cardiology investigations would not have been completed any quicker if the respondent had done anything differently. Nothing the respondent could have done would have helped the claimant return to work before the date she decided to resign.

111. If it is the claimant's case that there were such steps then the claim fails on that basis. However arguably that may be too narrow a reading of the claimant's claim. The claimant's claim could be read as meaning the respondent failed to take any or any adequate steps that may have assisted her <u>eventual</u> return to work.

112. Looking at the claim from that perspective then, in so far as the claimant's claim is that the respondent failed to take <u>any steps at all</u> to resolve the workplace issues, the claim fails on the facts. The respondent obtained advice from occupational health about the claimant's ability to return to work both at the start of her absence and later on in December and Ms Lunt investigated the matters that the claimant said were causing her stress in a conscientious manner.

113. In so far as the claim is that the respondent did not take adequate steps to resolve the workplace issues, the claimant's pleaded case is that the respondent failed to take the steps set out in the list of issues and that therefore the steps that were taken were inadequate.

114. I address those steps in turn.

<u>Recognising the Claimant's excessive workload and offering an apology.</u>

115. The claimant suggests the respondent should have recognised the claimant's excessive workload and offered her an apology. But the claimant has not established in this Tribunal that her workload was excessive and that the respondent had anything to 'recognise' or apologise for in this regard.

<u>Taking steps to reduce the Claimant's workload.</u>

116. The claimant suggests the respondent should have taken steps to reduce the claimant's workload and failed to do so. Given that the claimant has not established that in this Tribunal that her workload was excessive, that the respondent did not during her absence agree to reduce her workload should she return was not something that objectively could be said to be likely to damage the relationship of trust and confidence. In so far as the claimant might have benefited from lighter duties as part of a phased return to work, the time for considering what might be appropriate had not yet arrived given that occupational health advice was that the claimant was not yet fit to return due to the heart issues she was experiencing.

Consulting with the Claimant to see what steps could have been taken to assist her back to work.

117. That brings me on to the claim that a step the respondent should have taken that would have enabled her to return was consulting with her to see what steps could have been taken to assist her back to work.

118. Mr McHugh submits that the respondent had little interest in facilitating a return to work and he points to the fact that occupational health suggested updating the stress risk assessment and having discussions surrounding adjustments which Mr McHugh submits were not followed through.

119. In this regard, however, occupational health advice itself acknowledged that the time to discuss those issues was when the claimant was in principle able to return to work. This was not a situation where occupational health had advised that the perceived stressors were what was preventing the claimant being well enough to return to work. If the claimant disagreed with that advice she could have told managers that was the case but there is no evidence she did so. Clearly she had ample opportunity to do so including in meetings specifically arranged to discuss her health.

120. In the circumstances the respondent not updating the stress risk assessment or discussing particular adjustments is not something that viewed objectively could be said to have been calculated or likely to seriously damage the relationship of trust and confidence. In any event the respondent had reasonable and proper cause for not updating the stress risk assessment or discussing particular adjustments in the period in question in light of the occupational health advice about the claimant's ability to return at that time.

Taking steps to deal with the conduct of the Claimant's colleagues, for example by holding a formal meeting with the Claimant and undertaking an investigation into the Claimant's allegations.

121. The claimant also suggests the respondent should have taken steps to deal with the conduct of the claimant's colleagues, for example by holding a formal meeting with the claimant and undertaking an investigation into the claimant's allegations. As I found, Ms Lunt did consider what the claimant had said. In that sense she conducted an investigation. For reasons already explained I have rejected the submission that not carrying out a more extensive investigation amounted to or contributed to a breach of the implied term of trust and confidence.

Resolving the grievance more quickly (rather than it being put on hold)

122. The claimant also suggests that resolving the claimant's grievance more quickly rather than putting it on hold would have assisted a return to work. I found that

although the respondent told the claimant it was putting the formal grievance on hold, the respondent did not put the investigation into the concerns raised by the claimant in her stress factors document on hold. Ms Lunt's investigation into those matters continued. I have already dealt with the timeliness of that investigation and rejected the submission that this amounted to or contributed to a breach of the implied term.

Determining the grievance in the Claimant's favour.

123. Ms Lunt did determine a part of the grievance about expenses in the claimant's favour. As for the rest it is not clear what this adds to the claim that I have already dealt with and that I have rejected, ie that the respondent failed to deal with the claimant's grievance adequately. It was not part of the case made at this hearing that Ms Lunt's conclusions were perverse in the sense of not being ones that could be reached on the evidence. All that is then left is an argument that whatever conclusions Ms Lunt's enquiries led her to she should have upheld the grievance to mollify the claimant. Obviously such an argument would not be sustainable and to be fair that is not a case that was being put forward by Mr McHugh at this hearing; he neither put the matter to Ms Lunt in that way nor made that point in submissions.

Resolving the grievance appeal more quickly and in the Claimant's favour.

124. The claimant was not satisfied with Ms Lunt's conclusions and sent in an appeal document on 26 November as if it were a response to her formal grievance. I found as a fact that the claimant had decided to resign by 28 November.

125. After she had decided to resign but before she had actually handed in her notice the claimant was told that any concerns that had already been responded to will not be considered again as part of any grievance process and implied it was no longer open to the claimant to raise a grievance and that the claimant could not appeal Ms Lunt's conclusions. Ultimately the respondent did treat the October letter by Ms Lunt as if it were a grievance outcome under its procedure and permitted the claimant to appeal it and the claimant re-submitted her appeal at the end of January a couple of weeks after she had resigned.

126. I found that in so far as there was any delay in treating the claimant's letter of 26 November as an appeal that had no bearing at all on the claimant's decision to resign. She had already decided she was going to leave by no later than 28 November which was only 2 days after she had submitted her appeal. Therefore the way the respondent handled the 'appeal' cannot support the claimant's case.

127. In any event I would not have found this was a breach of the implied term of trust and confidence. The respondent could have been clearer in its communications with the claimant and its approach was confusing. However the claimant had already been given a reasonable opportunity to have her grievances considered. Furthermore she had made it clear she was going to resign and her doing so was imminent. In the circumstances, affording the claimant the right to appeal in the period before she resigned is not something that would have facilitated her return to work and considered objectively was not something that can have caused or contributed to a breach of the implied term in the circumstances that prevailed.

128. As for any delay after 12 January when the claimant resigned and as for the decision not to uphold the claimant's appeal those clearly cannot be relied upon by the claimant.

Other matters

129. The claimant refers to what is described as a 'final straw' being the letter sent in December 2022 and in particular the statement in that letter about possibly terminating the claimant's employment.

130. I have found as a fact that neither the fact that the statement was included in the letter nor the fact that the respondent had arranged a meeting at which termination which may be considered were things that influenced the claimant's decision to terminate her employment.

131. In any event there was nothing that could be said to be unreasonable in this letter. The claimant had been absent from work for 10 months and occupational health adviser could give no indication of when the claimant might be able to return. The respondent had reasonable and proper cause to consider whether the claimant's employment could be maintained at that point and it was right and proper that they tell the claimant that that might be the outcome of the meeting that was to follow so the claimant could prepare for it, indeed an employer could rightly be criticised for not alerting an employee to that possibility.

Conclusion as to breach of contract

132. I have concluded that the matters relied on by the claimant did not amount individually to a breach of the implied term of mutual trust and confidence and looked at cumulatively nor do they either.

133. There was no breach of the implied term of trust and confidence. Therefore, there was no dismissal as a matter of law. For that reason the claimant's claim fails.

Approved by Employment Judge Aspden

Date 23 April 2025