



## EMPLOYMENT TRIBUNALS

**Claimant:** Ms E McManus

**Respondent:** Wey Education Services Limited

**Heard at:** Cardiff **On:** 9 and 10 April 2025

**Before:** Employment Judge R Brace

**Representation:**

Claimant: Mr Skinner (lay representative) and Claimant in person

Respondent: Mr L Menzies (Solicitor)

## JUDGMENT

The Claimant was not constructively dismissed.

The claim of unfair dismissal is not well founded and is dismissed.

## WRITTEN REASONS

1. The following written reasons are provided, having been requested by the Claimant's representative at the hearing on 10 April 2025 after the decision had been announced and oral reasons given in accordance with Rule 60 Employment Tribunal Procedure Rules 2024.

### Introduction

2. The Respondent is a limited company that operates online schools. The Claimant was employed from 5 April 2021 until her resignation on 29 November 2023.
3. The Claimant entered into early conciliation on 13 December 2023 that ended on 21 December 2023 and on 17 January 2024 filed her ET1 claim. The claim is on the question of whether the Claimant was constructively dismissed by the Respondent and, if the Claimant was dismissed, the lawfulness of the dismissal.

### List of issues

4. The list of issues in this case was discussed at the outset of this two day hearing and a copy is attached to the Appendix to this judgment.

Evidence

5. The Claimant gave live evidence as did Ms Genevieve (“Eve”) Walton, an ex-employee of the Respondent, on behalf of the Claimant. The following witnesses gave evidence on behalf of the Respondent:
  - a) Mrs Helen Drane, HR Manager for the Respondent; and
  - b) Mr Tony Knowles, the Respondent’s Chief Operations Officer.
6. All witnesses relied on witness statements that were read in advance of the hearing and all witnesses were subject to questioning from the opposing party and some questions were asked by the Tribunal.
7. I also had before me an agreed Tribunal bundle of 164 pages (the ‘Bundle’) and references to pages in that Bundle are denoted by [ ] in these reasons.

Schedule of Loss

8. A Schedule of Loss to 30 December 2024 was included in the Bundle [50].

**Findings of Fact**

9. The Claimant began working with the Respondent, initially through a recruitment agency as a temporary member of staff in October 2020. She commenced her direct employment with the Respondent on 5 April 2021 in the Operations department of the Respondent business as an Outbound Call Handler, reporting to a Sarah Gardener until May 2021 when that line reporting changed.
10. The Claimant was employed on terms and conditions set out in an agreement dated 1 April 2021 [28] (the “Contract”). Whilst that agreement provides for a number of limited company entities being the ‘employer’, it is an agreed fact between the parties that the Claimant’s employer was the Respondent.
11. The Contract provided for the Claimant’s hours of work (Clause 6) and that an annualised hours scheme (“Annualised Hours Scheme”) applied with the Annualised Hours Scheme Rules (“Scheme Rules”) set out in a separate document, which contained details of how the scheme operated. It was expressly stated that the Scheme Rules did not form part of the Claimant’s contractual terms but that she was required to follow them and that the employer could amend the Scheme Rules from time to time in accordance with business needs. I was not taken to the detail of the Scheme Rules at all during this hearing and did not consider them to be relevant for my findings or deliberations.
12. The Claimant’s contracted hours under the Annualised Hours Scheme were based on a 37.5 hour week over a 52 week year, making a total of 1,950 hours per year. Clause 6.3 provided that if full time, a holiday entitlement of 25 days (187.5 hours)

and 8 public/bank holidays (60 hours) resulted in the employee being required to work the remaining 1,702.5 hours (Working Hours).

13. The Contract further contained further provisions at Clause 3 and 25 regarding duties and changes to terms of employment:
  - a) Clause 3.2 provided that the employee would perform such duties consistent with the position that may from time be assigned to them;
  - b) Clause 25.1 provided that the Respondent reserved the right to make reasonable changes without the employee's consent to any of the Claimant's terms and conditions as required by the changing needs of the business or legislation and that this may include changes to hours of work and/or duties;
  - c) Clause 25.2 provided that any minor changes would be by way of general notice; and
  - d) Clause 25.3 provided that the employee would be given not less than one months' written notice of any significant changes which would be given by way of individual notice and such changes would be deemed accepted by the employee unless they notified the Company in writing of any objection before the expiry of the notice period.

*Admissions Team Leader*

14. In April 2022, the Claimant was offered and accepted the position of Team leader, a role within the Admissions team that the Claimant had applied for. She was again reporting to Sarah Gardener, Operations Manager. She was very pleased to be successful in that application. The role was confirmed by way of letter dated 8 April 2022 [45], which also confirmed that all other of her terms and conditions of her employment remained the same. The Claimant signed a copy confirming her acceptance of a role as 'Team Leader'. She therefore continued to be employed on the same terms as those set out in the April 2021 Contract in her new role.
15. Another Team Leader, Jessica Beechey, was also appointed at the same time reporting to Sarah Gardener.
16. The Claimant complains that she was not informed of any key performance indicators, was given little or no training or support for her role, and was not given a job description. Whilst that may or may not be right, there was no evidence before me that this played a part in the Claimant's resignation.

*September 2022 Meeting*

17. In and around August / September 2022, the Claimant says that she raised concerns regarding operational matters at interdepartmental meetings and that Sarah Gardener degraded her at these meetings; that after the third meeting she raised such concerns with Sarah Gardener, directly emailing her on 23 September 2022 [52]. In that email, the Claimant accepted that she had perhaps raised an irrelevant issue at a particular meeting but explained that she felt that the way it had

been dealt with in a public setting was humiliating and had made her feel uncomfortable; that it had 'flattened her'.

18. I have no evidence from Sarah Gardener, Sarah Gardener no longer being employed by the Respondent and no other documentation was included in the Bundle but the Claimant admitted in live evidence that this issue had been resolved between her and Sarah Gardener at that stage albeit she felt that Sarah then became 'absent' for her and became 'cold'. She accepted that she was not complaining of Sarah Gardener's subsequent conduct, only the conduct at the meetings. The Claimant did not complain to HR or raise a grievance, informal or otherwise about Sarah Gardener's conduct at the time.

*Annualised Hours was removal*

19. In January 2023, Sarah Gardener informed the Claimant that she should stop recording her annualised hours as it was expected of Team Leaders that they work additional hours and not receive them back. No formal notice of the change was provided to the Claimant and no amendment to the written Contract to vary it so as to remove the provisions of Clause 6 or otherwise, were given or agreed.
20. The Claimant again raised no grievance, informal or otherwise and I accepted the evidence from Helen Drane that no other team leader formally objected to this either.
21. The Claimant has given evidence that a Customer Service Team Leader reclaimed two weeks' worth of Annualised Hours to recover from surgery in the Spring of 2023 with it being implicit that this had not been removed from all Team Leaders. Helen Drane and Tony Knowles were asked about this in live questioning and denied that this had arisen, that the employee had in fact been off on sick leave and had received occupational sick pay. The parties' oral evidence was contradictory but I was not persuaded by the Claimant's evidence, preferring the clear evidence from Tony Knowles that this employee had received sick pay as he had himself signed off the payroll for that payment.
22. Either way, it appears that from January 2023 through to September 2023, a period of 9 months, whilst the Claimant may have been unhappy about the removal of the Annualised Hours Scheme, she continued in her role as Admissions Team Leader without recording her Annualised Hours and without complaint or grievance from her, formal or informal.

*Administration Team Leader role - September 2023*

23. At some point at the end of September 2023, Eve Walton stepped down from her role as Administration Team Leader. She had been struggling in that role due to an increase in workload for her and had been offered a removal of her Team Leader responsibilities. She accepted. In addition, at around the same time a second Team Leader also resigned.
24. As a consequence of this, both the Claimant and Jessica Beechey were asked to help cover the two Team Leader posts. Due to Eve Walton stepping down, the Administration team was without a Team Leader and the Claimant was temporarily

assigned by Sarah Gardener, the duties of the Administration Team Leader role to undertake in addition to her existing Admissions Team Leader duties, a change that was effective immediately. The Respondent considered the Claimant a very good Team Leader and they had confidence that she would be able to take on that additional task at that time.

25. There was no consultation regarding the change. No notice under Clause 25 or otherwise was provided to the Claimant. She received no handover of duties, no job description or training for the additional role and she was informed by Sarah Gardener that she was not able to request support from Eve Walton. Equally, there appears to be no evidence that the Claimant raised issue with this at the time.
26. That said, I accepted that the Claimant found it impossible to perform effectively in the two roles and on 24 October 2023, disclosed to Sarah Gardener that she was burnt out, fatigued and had symptoms of stress from taking on the additional Team Leader responsibilities for the previous three weeks. She sought assistance in managing her workloads. She was advised by Sarah Gardener how to prioritise her work, but the Claimant was left feeling more stressed and anxious however as result of that conversation.
27. As a result, a week later and on 1 November 2023 she approached Helen Drane, HR Manager to ask for support due to her severe stress. Helen Drane recommended that the Claimant book an appointment with her own GP the following day to discuss her mental health. She also sent the Claimant a link to the providers that the Respondent used to offer medical support and counselling. The Claimant tried to log in to that service that day but had difficulties and was unable to do so. She ceased attempting to do so after that day.

*Meeting on 2 November 2023: Tony Knowles*

28. On the following morning, 2 November 2023, the Claimant booked an appointment with her own GP for later that day. Later that day, the Claimant attended a meeting with Tony Knowles, arranged after Jessica Beechey had spoken to him earlier that day regarding concerns held with by the Operations department more generally with Sarah Gardener [65].
29. Tony Knowles gave evidence, evidence which I accepted, that he had asked for a meeting to discuss those concerns and had asked Jessica Beechey to arrange it. The meeting was held remotely through Microsoft Teams, a Teams appointment having been arranged by Jessica Beechey and sent to the Claimant and Tony Knowles.
30. The Claimant and Jessica Beechey attended that meeting with Tony Knowles and whilst I found that it was likely that at that meeting the Claimant did raise concerns regarding her employment, I did not consider that in the context of Tony Knowles requesting this meeting and inviting the Claimant and her colleague to share with him their views about the amount of support they were, or were not getting from Sarah Gardener as their manager and her general management, that it could reasonably be said that anything said by the Claimant at that meeting amounted to a grievance, whether informal or otherwise. Rather, I found that it was a discussion

in the context of a senior manager seeking information from a more junior member of staff.

*Claimant's Sick Leave*

31. The Claimant left the meeting to attend her GP appointment. Her GP advised her to self-certify and that thereafter he would provide a Fit Note, advising a minimum of two weeks sickness absence. The Claimant did not return to work and remained on sick leave, obtaining a follow up Fit Note on 16 November 2023 as she was still experiencing stress and anxiety (stating 'Stress at Work/Work related stress') [66/67]. Her GP at around that time advised that she have a phased return to work.
32. On 16 November 2023 and whilst still on sick leave, the Claimant spoke to Sarah Gardener through video call on Microsoft Teams, who advised the Claimant that she had not been briefed on the Claimant's sick leave. The Claimant explained that her health had suffered as a result of the increased workload since the end of September and that a phased return had been recommended. She confirmed that she did not feel comfortable with leading the Administration Team as she lacked experience.
33. Later that day, the Claimant also spoke to Helen Drane and advised a phased return to work due to her work related stress. Helen Drane assured the Claimant that this would not be an issue.
34. The Claimant returned to work on 24 November 2023 on a phased return of 4 hours per day. The Claimant returned to an unchanged workload and still responsible for Team Leader roles in both Admissions and Administration, with the workload in her absence not having been dealt with.

*Meeting 28 November 2023*

35. During the Claimant's sick leave, the Respondent had decided to restructure the Operations Department. This followed the acquisition by the Respondent of another online school and part of the restructuring involved moving the Family Liaison Team and the Administration Team from the Operations team to its Education Operations Department. They wanted to discuss with the Claimant a move from Admissions Team Leader to Administration Team Leader within the Education Operations business and determined that they would not inform the Claimant of this until she returned from sick leave.
36. As a result and on 28 November 2023, the Claimant was sent a Microsoft Teams meeting invite entitled 'Catch-up'. The Claimant attended as did Sarah Gardener and Helen Drane. What was said at that meeting has been the subject of much dispute in this hearing. The Claimant understandably believed it was a 'catch' up regarding her health but asserts that instead it was about a permanent change to her job role.
37. The meeting was not taped but I accepted that a 'script' was prepared in advance in order to assist Sarah Gardener to manage that meeting. More detailed notes were provided to the Claimant subsequently:

- a) By email on 30 November 2023 [83]; and
  - b) In a fuller note prepared after the Claimant's resignation from Helen Drane's recall and based on the script [74].
38. As these fuller notes were based on Helen Drane's recall, I did not consider them a wholly accurate reflection of exactly what was discussed save that I did find it more likely than not that at the meeting, the Claimant's health was not discussed and that the sole focus on the meeting was to discuss the proposed changes to the Claimant's role.
39. At that meeting the Claimant was told that Administration would be moving to a different department and that a competency based exercise had indicated to them that the Claimant was better suited to the Administration Team Leader role whereas Jessica Beechey's skills were more suited to an Operations Team Leader role and that it was proposed that the Claimant would manage the Administration Team on a permanent basis and that she would no longer be Admissions Team Leader.
40. The Claimant made clear that she did not want to remain within Administration, as part of the reason she had been off work with stress was that she was not happy in the Administration Team.
41. As an alternative to the role of Administration Team Leader, the Claimant was offered the option of remaining within the Operations Team and taking up a Customer Service Lead role, in a role that would amount to a demotion from the Team Leader role.
42. It is agreed that the Claimant was to go away and think about the options. Again, there is a dispute on what was said and the live evidence from the Claimant and Helen Drane was contradictory as to what the Claimant had been told.:
- a) The Respondent says that she was told to think about what had been discussed and that the following day she could let them know her thoughts or any questions;
  - b) The Claimant's evidence is that she was told that she had to make a decision by the following day about the alternative roles.
43. The notes prepared by Helen Drane referred to the Claimant reverting with her '*thoughts*' by the following day. The notes prepared by Sarah Gardener, embedded in the email of 20 November 2023 referred to '*questions/decision*' [85]. On balance, I considered it more likely than not that the Claimant was expected to make a decision and ask questions by the following day not least as this had been supported by the contemporaneous notes written by Sarah Gardener.
44. Whilst that timeframe for a decision was tight and in isolation unreasonable, unreasonable conduct is not sufficient in isolation to amount to a fundamental breach of contract. Moreover, I found that the Claimant was also told and was also aware that she had further opportunity to ask questions, with it reasonably implicit that the deadline to make a decision the following day was not an absolute one.

*Resignation*

45. The Claimant did not revert with more questions. Instead on the following day, 29 November 2023, the Claimant resigned, first verbally which she then followed up with an email. She indicated that her resignation was taking place with immediate effect [80,77].
46. Tony Knowles responded to her email indicating that he would welcome the opportunity of having a discussion with her. The Claimant in turn responded that whilst she was open to communication, she would like all communications to go through email with the option to have a phone call in future [79].
47. The following day, Tony Knowles wrote a more lengthy response to the resignation ending that email confirming that he looked forward to hearing from the Claimant [78].
48. Nothing further was heard and instead the Claimant contacted ACAS and entered into early conciliation and thereafter issued her ET1 Claim form.

**Submissions**

49. The Respondent relied on detailed written submissions, which are incorporated into these written reasons by reference. I do not propose to repeat them here.
50. The Claimant asked to make her own submissions, Mr Skinner having represented her during the hearing, and this was permitted.
51. The Claimant submitted that there were 'two critical periods':
  - a) In September 2023, when the Respondent unilaterally doubled her workload without consultation, training, support or notice; and
  - b) On 28 November 2023, when the Respondent attempted to make permanent changes to her role at a 'catch up meeting', to a job role known to have caused her illness, or to a role that would represent a demotion.
52. The Claimant argued that the 28 November 2023 change, which she also relies on as the 'last straw', was in itself a fundamental change to her Admissions Team Leader role, following a period following work stress and amounted to a fundamental breach entitling her to resign. She submitted that Clause 25.1 of her Contract only entitled reasonable changes to her terms and conditions, that such changes were not reasonable (due to the other breaches). In any event, she submitted that she was still entitled to one month written notice under Clause 25.3 of her Contract, whereas the change of duty at the 28 November meeting was imposed with immediate effect.
53. The Claimant also relied on prior breaches of implied duties of trust and confidence and to provide a safe system of work for her. She argued that the Respondent knew or ought to have known of her stress, reminding me of the instances where the Respondent had been told, also of their knowledge her sick leave and content of her sick notes. She submitted that because of the knowledge of her stress in the temporary role from September 2023, the Respondent knew or ought to have known that the permanent changes to the role would seriously undermine her trust



and confidence, that they knew that the Administration Team Leader role was onerous and had put employees' health at risk.

54. The Claimant argued that the allocation to her of the Administration Team Leader role in September 2023 was a fundamental breach in itself, particularly with no handover, training or job description and where she was not permitted to contact the previous Team Leader; that the incumbent, Eve Walton, had found the workload too much and that she had then been allocated the Team Leader role in addition to her existing Team Leader role.
55. She complained of the review and lack of consultation about the proposed change of role from November 2023, and of the process that the Respondent had followed for the 'catch-up' meeting on 28 November 2023, in terms of the invite, time-frames and alternative opportunities.
56. In relation to the Annualised Hours, she invited me to find that this had been a fundamental breach of contract as this had been a pay benefit that had been removed.
57. Finally, she invited me to find that she had resigned immediately on 29 November 2023, due to cumulative breaches of:
  - a) the September 2022 public humiliation by Sarah Gardener;
  - b) the removal of her annualised hours;
  - c) the lack of training and support throughout her employment and particularly September 2023,
  - d) that duties of the Administration Team Leader were imposed unilaterally to her existing role with no training or support;
  - e) the subsequent excessive workload causing stress
  - f) with the final straw being that having returned to work three days after sick leave, she had been sent an invitation for a 'catch up' on 28 November 2023, when permanent changes to her job were confirmed and where she was not permitted more than one day to give a decision.

## **The Law**

58. Section 95 ERA 1996 provides that for the purposes of unfair dismissal, an employee is dismissed by his employer if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate without notice by reason of the employer's conduct.
59. In those circumstances, if the Claimant was dismissed, consideration has to be given as to 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, was the dismissal fair or unfair in accordance with Section 98(4) ERA, and, in particular, did the Respondent in all respects act within the "band of reasonable responses".
60. In relation to the breaches I have to consider the following

- a) Did the Respondent breach the implied term of mutual trust and confidence i.e. did it, 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 it and the Claimant?;
  - b) If so, did the Claimant "affirm" the contract of employment before resigning (i.e. act in a manner that indicates the claimant remains bound by the terms of the contract) as if I concluded that he did, this would waive the breach?;
  - c) If not, did the Claimant resign in response to the breach of contract (was the breach a reason for the Claimant's resignation? It need not be the only reason for the resignation)?
61. The burden of proof is on the employee to demonstrate that the employer's actions have destroyed or seriously damaged trust and confidence or were calculated or likely to do so and that the employer had no proper cause for the actions in question.
62. Lord Denning, in **Western Excavating (ECC) Ltd v Sharp** [1978] 1 All ER 713 sets out the approach to constructive dismissal as follows: *'If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. he is constructively dismissed.'*
63. Lord Steyn in **Malik v Bank of Credit; Mahmud v Bank of Credit** [1998] AC 20 gave guidance for determining if there has been a breach of trust and confidence, when he said that an employer shall not: *'...without reasonable and proper cause, conduct itself in a matter calculated (or) likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.'*
64. Whilst conduct of the employer must be more than unreasonable, breach of trust and confidence will invariably be a fundamental breach.
65. The Claimant needs to establish her decision to resign, on the basis of the 'last straw', which need not in itself be a breach of contract. Dyson LJ in **Omilaju v Waltham Forest London BC** [2005] All ER75 said that: *'If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous, it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle.'*

66. The tribunal is therefore required to decide whether the Respondent's conduct in this case could objectively be said to be calculated, or in the alternative likely, to *seriously* damage confidence and trust between the Claimant and the respondent. Thereafter we are required to examine whether the Claimant resigned in response to that conduct, and that conduct must include a final event which contributes to earlier actions so as to make the entirety of the conduct, taken together, sufficiently serious so as to damage the relationship of confidence and trust between employer and employee.
67. Finally, the breach must cause the employee to resign which is a question of fact for the tribunal based on the evidence before it.

### **Conclusions**

68. Essentially, I was not persuaded that the series of acts cumulatively could be said to amount to a breach of the implied term of trust and confidence.
69. I concluded that whilst the Claimant may very well have been unhappy with her interaction with Sarah Gardener in the summer/Autumn of 2022, this had been resolved and whilst the Claimant felt that their relationship was more distant after such resolution, any interpersonal issues did not arise. In the context of the evidence before me, whilst I accept that time is not as relevant on 'last straw' cases, I was not persuaded that this interaction was relevant as the Claimant confirmed that it had been resolved. Neither did I consider that it could objectively be said to have contributed to any breach of the implied terms of trust and confidence.
70. Likewise, any issues raised by the Claimant regarding training or job description in relation to her substantive role as Admissions Team Leader from April 2022, could not objectively be said to contributed to a breach of the implied term of trust and confidence or, for the avoidance of doubt, amount to a failure to provide a safe system of work). The Claimant had worked in her role as Admissions Team Leader from April 2022 onward without specific training or job description and more significantly without concern. This was therefore not relevant in my view to the consideration of whether the Claimant could demonstrate she had been constructively dismissed.
71. I then turn to January 2023, and to the removal of the Annualised Hours Scheme for the Claimant and other Team Leaders. This was an express contractual right provided for under Clause 6 of the Contract. No written notice of the variation under Clause 25.3 of the Contract had been given. Whilst I concluded that the unilateral removal of the Annualised Hours Scheme did amount to a breach of the Claimant's Contract.
72. I did not consider that in isolation that unilateral variation to be a fundamental breach of contract. Whilst a change to contractual terms, the Claimant had affirmed that change by continuing to work. She did not complain or work under protest and continued working. She did not persuade me that the impact of the removal of the Annualised Hours Schemes could be said to be calculated or likely to destroy or seriously damage trust and confidence. This view was based on my further conclusions that the Claimant had not persuaded me that she suffered any pay detriment and on the basis that the Respondent had reasonable and proper cause

for that conduct; namely that Team Leaders would have the flexibility to work such hours as required within the parameters of that role.

73. That said, I accepted that this change of terms and the manner in which it was imposed on the Claimant, irrespective of my finding that the Claimant did not complain about contemporaneously, could objectively form part of the series of acts that contributed to an overall breach of trust and confidence.
74. I then turn to what I consider to be the events that precipitated the Claimant's resignation, the events from September 2023 when the Claimant was asked to temporarily pick up the Administration Team Leader duties in addition to her Admission Team Leader duties.
75. At that time, the Claimant was performing well in her Admission Team Leader duties and not indicating to her employer any stress with her workload. Indeed, there was no evidence before me that at this point the Claimant was suffering from any form of stress-related symptoms. In isolation and in that context, I considered that as the Respondent needed to provide cover for the role on a temporary basis and as the Claimant was considered an excellent performer, the Respondent did have reasonable and proper cause for requiring the Claimant to cover the Team Leader aspects of both roles on a temporary basis.
76. I concluded that there was nothing in asking the Claimant to take on the role of Administration Team Leader in conjunction with her role as Admissions Team Leader, that could be said in isolation to be calculated or likely to destroy trust and confidence in the employment relationship in isolation. Again, the Claimant did not complain and worked in that role for three weeks.
77. Again, however I did accept that this was an act that the Claimant could objectively rely on as part of the series of acts that she says led to her resignation even though in isolation it did not in my mind amount to a fundamental breach of contract.
78. By the beginning of November 2023, I had found that the Claimant had flagged up work-related stress on a number of occasions in the previous month:
  - a) on 24 October 2023 to Sarah Gardener;
  - b) on 1 November 2023 to Helen Dane;
  - c) She had also been off work with work-related stress in the period 3 November-24 November 2023 as reflected by her fit notes; and
  - d) She had returned on a phased 4 hour per day basis.
79. I was not persuaded however that the Claimant had demonstrated that the Respondent was in breach of any health and safety legislation in respect of the period since the end of September. No arguments were presented as to what specific breach of legislation, or breach of the Respondent's own Health and Safety Policy, that the Respondent was alleged to have undertaken despite the Respondent's representative having raised this issue in submissions. I further took into account that even if there had been some form of breach of failing to provide the Claimant with a safe place of work, there had been no indication from the Claimant prior to the beginning of September 2023, and she had been exposed to the two Team Leader roles for a very short time. I did not conclude

that the Claimant had persuaded me that, even with lack of training, this crossed into being a fundamental breach of contract on trust and confidence grounds and/or failure to provide a safe system of work.

80. When I looked at the Claimant's workload and stress in the context of trust and confidence more generally, the Claimant has argued that the excessive workload from September 2023 created an unsafe working environment for her and that it this was foreseeable due to history of the job role imposed on her. I did not conclude that this was the case. Whilst there was evidence that the previous incumbent had been stepped down for workload reasons and inability to cope, I was not persuaded that it would have been reasonably obvious or evident to the Respondent that the same issues would arise for the Claimant.
81. I had not been persuaded by the Claimant that she had provided reliable evidence that the work/workload that she had been doing since the end of September 2023 even without discrete training, for just over a month until she absented herself on sick leave, to conclude that the Respondent had exposed the Claimant to risk to the extent that it could be said that it was likely to destroy or seriously damage trust and confidence.
82. I then turn to the meeting of 2 November 2023 with Tony Knowles. In light of my findings that I did not conclude that this was an informal grievance meeting or that the effect of the discussion was that the Claimant was raising an informal grievance, I was not persuaded that the Respondent had failed to comply with either its own or a general obligations on dealing with grievances. This was not an act that could form part of a series of acts justifying resignation.
83. I therefore turn to the meeting on 28 November 2023, some 4 weeks after the Claimant has returned to work after a three week period of sickness for work-related stress.
84. In my findings, I had found it likely that that the Respondent had asked the Claimant for a decision about the proposed changes by the following day, but I had also found that the Claimant had also been informed that she had the opportunity to raise questions. I concluded that the Claimant would not have been justified in leaving simply because the time-frame was too tight and would have been insufficient to amount to conduct, that could be said to calculated or likely to destroy or seriously damage trust and confidence in itself.
85. At this meeting, the Claimant informed the Respondent that she did not like working in the Administration Team, and I repeat my findings as to the level of knowledge that the Respondent had of the Claimant's work-related stress at that point and the Respondent's knowledge of the previous Team Leader's inability to cope with the workload. However, I accepted the Respondent's submissions that a request for her to move to Administration Team Leader role on a permanent basis, from her Admissions Team Leader role was a 'step too far' in seeking to argue either that was a breach of safe systems of work or trust and confidence. Taking into account that there was a restructure, that the Claimant would not be obligated to undertake the two Team Leader roles, just the one, where she had been undertaking a Team Leader role, albeit not this Team Leader role since April 2022, it could not be said in my view that that it was

foreseeable that harm would come to the Claimant in simply proposing the isolated Administration Team Leader role. Objectively, I did not consider that proposing that role could amount to a breach of the implied duty of trust and confidence.

86. For the avoidance of doubt, I consider that there is no merit in the argument that Clause 23 was applicable to the meeting of 28 November 2023. Even on the basis that a decision had been requested by the following day from the Claimant, the notice requirements did not apply until the change was made. The Claimant resigned prior to a decision or any change and therefore this is irrelevant
87. Finally, I turned to the question of whether the series of events from January 2023, with the removal of the Annualised Hours, the lack of training for the Team Leader role in September and the Claimant's resultant stress with the workload over the previous month ending with the Claimant's meeting on 28 November 2023 as the 'last straw', cumulatively amounted to a breach of the implied term of trust and confidence. I concluded that it did not.
88. I accepted that what had been said to her at the meeting on 28 November 2023, had caused or triggered the Claimant's resignation and that she had not affirmed any breach but had resigned the following day. I reminded myself that the last straw need not by itself a repudiatory breach of contract however.
89. I concluded that, when viewing the series of events objectively, it could not be said that there was a course of conduct or series of acts, which cumulatively led to a breach of trust and confidence on a 'last straw' basis taking into account:
  - a) the Claimant's conduct in not responding to the Annualised Hours change in January;
  - b) that on each occasion relied on for the breach of trust and confidence the Respondent had reasonable and proper cause for their conduct; and
  - c) in the period from September through to 29 November 2023, whilst I accepted that there Claimant was indicating that she had been stressed, there had been little time for the Respondent to react overall to the Claimant's work-related stress that she had asserted had been caused by undertaking the dual roles over the previous month.
90. Whilst I endorse the comments made by the Respondent's representative that this has been an unfortunate case as the Claimant was clearly a very conscientious employee who felt that her health was a priority, and I too have sympathy for the Claimant in this case, I am not persuaded that she has managed to prove a fundamental breach of contract whether as individual breaches or as a cumulative series of acts and on either basis, the complaint is not well-founded and is dismissed.

**Employment Judge R Brace  
28 April 2025**

JUDGMENT AND WRITTEN  
REASONS SENT TO THE  
PARTIES ON  
06 May 2025

Katie Dickson  
FOR THE SECRETARY OF  
EMPLOYMENT TRIBUNALS

## **Notes**

Reasons for the judgment having been given orally at the hearing, written reasons were requested by the Claimant at the hearing. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

[www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/](https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)

**Appendix  
List of Issues**

The issues the Tribunal will decide are set out below.

- 1.1 Was the Claimant dismissed?
- 1.2 Did the Respondent do the following things:
  - 1.2.1 In August / September 2022, the Claimant's line manager (Sarah Gardener) on three separate occasions humiliated and belittled the Claimant in front of colleagues;
  - 1.2.2 In January 2023, Sarah Gardener told the Claimant to stop submitting and recording her Annualised Hours;
  - 1.2.3 In September 2023, the Claimant was given the Administration Team Leader role in addition to her existing responsibilities;
  - 1.2.4 As a result, the excessive workload created an unsafe working environment for the Claimant from September 2023. The Claimant says that it was foreseeable that the Respondent failed to provide a safe working environment due to history of the job role imposed on the Claimant;
  - 1.2.5 Failed to comply with company policies in relation to:
    - 1.2.5.1 Failure to comply with its own Grievance procedure after the meeting with Tony Knowles on 2 November 2023; and
    - 1.2.5.2 Failed to comply with the Respondent's Health and Safety Policy.
  - 1.2.6 Informed the Claimant at the meeting on 28 November 2023 that she would either have to take a demotion or become the Administration Team Leader and given 24 hour to make a decision? The Claimant relies on the meeting of 28 November 2023 as the 'last straw'.
  - 1.2.7 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:
    - 1.2.7.1 whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and
    - 1.2.7.2 whether it had reasonable and proper cause for doing so.
  - 1.2.8 Did the Respondent:
    - 1.2.8.1 In January 2024, fail to pay the Claimant Annualised Hours in breach of Clause 6.1 and/or 6.2 of the contract of employment



- 1.2.8.2 In January 2024, change the Annualised Hours Scheme without written notice in breach of 25.1 and 25.3 of the contract of employment
- 1.2.9 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end.
- 1.2.10 Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.
- 1.2.11 Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.
- 1.3 If the Claimant was dismissed, what was the reason or principal reason for dismissal - i.e. what was the reason for the breach of contract?
- 1.4 Was it a potentially fair reason?
- 1.5 Did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the Claimant?
- 1.6 The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

## 2. Remedy for unfair dismissal

- 2.1 The Claimant does not wish to be reinstated to their previous employment or re-engaged to comparable employment or other suitable employment?
- 2.2 If there is a compensatory award, how much should it be? The Tribunal will decide:
  - 2.2.1 What financial losses has the dismissal caused the Claimant?
  - 2.2.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
  - 2.2.3 If not, for what period of loss should the Claimant be compensated?
  - 2.2.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
  - 2.2.5 If so, should the Claimant's compensation be reduced? By how much?
  - 2.2.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
  - 2.2.7 Did the Respondent or the Claimant unreasonably fail to comply with it?
  - 2.2.8 If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?
  - 2.2.9 If the Claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?
  - 2.2.10 If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?
  - 2.2.11 Does the statutory cap of fifty-two weeks' pay or £105,404 apply?
- 2.3 What basic award is payable to the Claimant, if any?
- 2.4 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?