



# EMPLOYMENT TRIBUNALS

**Claimant:** Jana Jones

**Respondent:** Swindon Borough Council

**Heard at:** Exeter (via video)

**On:** 12 and 13 May 2025

**Before:** Employment Judge Hastie

## Representation

**Claimant:** In person

**Respondent:** Mr A Kumar, solicitor

## JUDGMENT

The Claimants claim of unfair constructive dismissal is dismissed.

## REASONS

### Introduction

1. The Claimant brings a claim of constructive unfair dismissal against her former employer, the Respondent, Swindon Borough Council. The Respondent contends that the Claimant resigned and there was no dismissal.
2. The Claimant was employed by the Respondent from 8 August 2016 to 1 April 2024 as a Community Meals Team Leader.
3. The Claimant started the ACAS early conciliation process on 3 April 2024. The ACAS certificate was issued on 15 May 2024. The ET1 was presented on 4 June 2024. In the papers, the Respondent raises an issue as to whether the acts alleged are all brought within the relevant time limit. This was not pursued at the hearing and each of the Claimants' constructive dismissal allegations, as contained in her witness statement, have been considered.

### The Hearing

4. The hearing took place over two days by way of a video hearing, with both parties and the witnesses joining remotely. The Claimant was not legally represented. The Respondent was represented by Mr Kumar, LA Solicitor.

5. The Tribunal was provided with two bundles, one prepared by the Respondent, and one prepared by the Claimant. In spite of extensive efforts, the parties had been unable to agree a joint bundle. A considerable number of the documents appeared on both bundles. The Claimant's bundle contained 130 pages, and the Respondents bundle contained 188 pages.
6. The solicitor for the Respondent had prepared a combined index that cross referenced both bundles. The parties agreed that the hearing should proceed with this combined index being referred to. As documents were referred to during the hearing, both page numbers, that of the Respondent's bundle, and that of the Claimant's bundle, were identified. This enabled the Judge, parties, and the witnesses to easily identify the document to which they were being referred. As the hearing progressed, the Judge ensured that each party and witness had identified the correct document to which they were being referred. The Claimant confirmed that she was able to refer to the combined index and that she had all of the papers.
7. The Respondent had provided a list of issues, and a 'Last Straw' excel spreadsheet. The Claimant confirmed that she had received these documents.
8. During the hearing, a further document was provided by the Respondent. This was a leaflet from Care First. There was no issue raised about the admission of this document. The Claimant confirmed that she had been sent it previously and had had an opportunity to read it. It was not in dispute that the Care First information had been sent to the Claimant during her period of sickness absence in 2023/2024.
9. The Tribunal had also been provided with witness statements from,
  - a) The Claimant,
  - b) Mr M Morrison Clarke – he did not give evidence.
  - c) Ms J Astley, Swindon Borough Council,
  - d) Mr R Anscombe, Swindon Borough Council,
  - e) Ms T Bozzuto, Swindon Borough Council.
10. The Claimant, Ms Astley, Mr Anscombe and Ms Bozzuto gave evidence and were cross examined. The Claimant confirmed that she was not calling Mr Morrison Clarke to give oral evidence. The Claimant did not call any other witnesses.
11. In December 2024, six months after submitting her ET1, the Claimant contacted the Tribunal to apply to amend her claim to add claims for disability discrimination and public interest detriment (whistleblowing). The Tribunal notified the Claimant that the application was currently refused as the Claimant had not copied the Respondent into the application. There was no response from the parties. The Claimant did nothing more to progress her application to amend.
12. The Claimant's witness statement is dated 14 April 2025. The Claimant confirmed in that statement that her claim is based on an asserted repudiatory breach of the implied term of trust and confidence, and that she was constructively dismissed. The statement also references disability discrimination and whistleblowing in relation to some of the incidents that she relies on in her constructive dismissal claim.
13. At the start of the hearing, the Judge raised with the Claimant that the only claim listed for hearing on 12 and 13 May was the constructive unfair dismissal. The Judge clarified with the Claimant whether that was her position, or whether it was

her intention to apply to amend her claim by bringing additional claims at this stage. The Judge explained to the Claimant that she would need to confirm what claims she was seeking to bring, and if there were additional claims, she would need to apply for amendment and to extend the time limit for those additional claims. The Respondent confirmed that it would oppose any application to amend the claims by the Claimant. The Judge further explained that any application to amend could be heard on 12 and 13 May, but that the substantive hearing would be adjourned if additional claims were added. This was because of a need to allow the Respondent to respond, consider any additional disclosure and witness requirements, and two days would not be sufficient to hear additional claims. The Claimant confirmed that she understood.

14. The Claimant confirmed that she had taken no further action since December 2024 in relation to her application to amend her claim. She confirmed that she had not sent the December 2024 application to the Respondent.
15. The Tribunal adjourned to allow the Claimant to consider whether she was making an application to amend, or whether her position was that she wanted to proceed with the claim of constructive unfair dismissal only.
16. The Claimant confirmed that she had had sufficient time to consider her position. She confirmed that she wished to proceed with the claim for constructive unfair dismissal only. The Claimant said, *"I am not pursuing other claims."*
17. Throughout the hearing, the solicitor for the Respondent stated that as there were no claims for discrimination or whistleblowing, he would not ask any questions on that basis. Each time the solicitor for the Respondent referred to this the Claimant did not raise the matter further and at no time did she refer to a claim in relation to discrimination or whistleblowing.
18. At the end of the hearing, the Claimant made her closing submission only in relation to constructive dismissal. She stated that she was satisfied she had had a full opportunity to put her case, and did not wish to raise any further matters.

### **The Issues**

19. As the Claimant was a litigant in person and because there had been no case management hearing, the Tribunal took care to identify the issues with the parties before any witnesses were called to give evidence.
20. The Claimant claims that the Respondent acted in fundamental breach of contract in respect of the implied term of mutual trust and confidence. The Claimant alleges the breaches were as follows,
  - i. The Respondent failed to address workplace conflict between the Claimant and Ms Loftus.
  - ii. The Claimants request for mediation with Ms Loftus in March 2023 was not progressed.
  - iii. The Claimant's requests to work from home on one day per week were not addressed promptly.
  - iv. The Claimant was told to attend the office instead of working from home on 11 May 2023
  - v. The Claimants authority as team leader was undermined by the Respondent treating employees differently.

- vi. The Claimant's grievance was not conducted properly or thoroughly and was not resolved for approximately nine months. The Claimant was denied an extension of the appeal deadline. The Claimant was not permitted to be accompanied by a friend at the grievance hearing.
  - vii. The Claimants' letter of August 2023 was inappropriately shared with Mr A Williams (Operations Manager) and a request for an investigation was ignored.
  - viii. The Claimant was subjected to an unfounded disciplinary procedure after writing the letter of August 2023. This process took an unreasonable amount of time.
  - ix. The manner in which Community meals employees discovered the business was closing down was inappropriate and caused unnecessary distress.
  - x. The Claimants request for subject access information was not dealt with for seven months and the Claimant's Freedom of Information request was not dealt with for four months. The Claimant's requests for information in relation to health and safety, staff shortages, and reasonable adjustments were not addressed.
  - xi. The Claimant was overlooked for a position as a mental health champion.
  - xii. The Claimant witnessed inappropriate treatment of others.
  - xiii. The Claimant was off sick from 7 August 2023 until March 2024. The Respondent did not follow its sickness absence policy, (including failing to close the Claimants' absence when she was fit for work in March 2024).
21. The last of those breaches (xiii) was said by the Claimant to have been the 'last straw' in a series of breaches. The Claimant identified the incidents in her statement that she said culminated in the last straw, which was the Respondents failure to contact her when she was on sick leave from August 2023. The Claimant could not put a date on the last straw incident that she relied on, rather that it was the ongoing failure of the Respondent to contact her that led her to resign.

### **Findings of fact**

22. In making my findings I have carefully considered all of the evidence provided, both documentary and at the hearing. It was apparent that some of the issues below were not in dispute but there was no agreed list of issues provided to the Tribunal. I make the following findings of fact on the basis of evidence both oral and written. I make the findings on the balance of probabilities.
23. The Claimant was responsible for organizing, scheduling, and coordinating the provision of meals to customers in their homes.

### **Conflict with Ms Loftus**

24. On 16 January 2022, the Claimant reported that one of the drivers, Ms Loftus, had shouted at her. A disciplinary process followed, and mediation was

suggested by the Respondent. The relationship between the Claimant and Ms Loftus continued to be strained. I find that the request for mediation was not progressed because Ms Loftus declined to participate. The Claimant accepted that participation in mediation would be voluntary. I accept the evidence of Ms Astley that mediation was offered to Ms Loftus. Ms Astley was able to account for the process that had taken place in the Respondent's attempts to resolve the tension between the Claimant and Ms Loftus. I do not accept that the document on the bundle from Ms Loftus, saying that she was not offered mediation undermines the evidence of Ms Astley, that she provided in cross examination.

25. The Claimant reported Ms Loftus again in March 2022 owing to further conflict between her and Ms Loftus.
26. I find that the Respondent supported the Claimant by advising her to have a team meeting and address any issues as she was the team leader. The Respondent properly conducted the disciplinary process, and made efforts to deescalate tension by not acting on rumours in relation to comments that were alleged to have been said by Ms Loftus and others. I accept the evidence of Ms Astley that the Claimant involved others in the disputes she had with Ms Loftus, and this raised tension in the team. The Claimant did not try to deescalate the tension between herself and Ms Loftus, rather, she involved others, for example, Frank and Beth, thus aggravating the situation.

#### **Application for a day a week working from home**

27. The Claimant requested reduced hours in the office after a period of sick leave in 2023. The Respondent agreed that the Claimant could work from home on one day per week. This was not a fixed day of the week. I find that the Respondent had taken time to seek advice from HR prior to agreeing to the change to the Claimant's working arrangements. I find as a fact that the period of time taken to consider the change was a reasonable length of time in all the circumstances. The Claimant was not denied adjustments to her working hours and working pattern but the Respondent took an appropriate period of time to consider and implement the change.

#### **Early May Bank Holiday 2023**

28. I find that the Respondent had agreed to the Claimant's request to work from home one day per week. The Claimant was contracted to work three days a week in the office, one day from home, and she had a contractual four day week. The week of 8 May 2023 was a bank holiday week. The Claimant was not at work on the bank holiday Monday, 8 May. The Claimant had sought to work from home on Thursday 11 May 2023. The Claimant was instructed by the Respondent to work in the office on the other three days of the week. I find that the Respondent took the view that the bank holiday Monday allowed the Claimant to have one day at home during the week of 8 May 2023. I accept Ms Astley's evidence, as a manager with over 20 years experience with the Respondent, that the Respondent issued the Claimant with a lawful instruction to attend the office.

#### **Grievance 2 June 2023**

29. On 2 June 2023, the Claimant issued a grievance covering a range of issues. A grievance meeting took place on 26 June 2023. The Claimant was accompanied by her union representative. On 16 February 2024, the Claimant was provided with a copy of the grievance report and invited to a hearing. On 8 March 2024, the grievance was not upheld. The Respondent accepted that it took an

unreasonable length of time (nine months) to resolve the grievance. The Claimant had resigned by the time the outcome letter was sent. I find that it was not part of the Respondents grievance procedure for a friend to accompany the Claimant to the grievance hearing. The Claimant was free to be accompanied by a union representative or a colleague. I find that the Respondent implemented its procedure in relation to employees being able to be accompanied. I find as a fact that the Respondent conducted a thorough and proper process. The Claimant did not challenge the process in her cross examination of the Respondent's witnesses. The appeal process took place after the Claimants resignation. The appeal process does not form part of the alleged repudiatory breach. The Claimant accepted in cross examination that the appeal played no part in her decision to resign.

30. The Claimant resigned on 1 March 2024. On 23 March 2024 she submitted an appeal against the decision not to uphold her grievance on 8 March 2024. There was a hearing on 24 May 2024, chaired by Ms Bozutto. The Claimant was denied an extension of the appeal deadline despite being on annual leave. The appeal was not upheld, and an outcome letter was sent dated 3 June 2024. Again, the Claimant accepted that the appeal process played no part in her resignation.

### **Carry-over of leave**

31. Ms Astley instructed the Claimant to allow Ms Loftus to carry over annual leave as an exception to the Respondent's previously stated position. The Claimant questioned this instruction on several occasions. The Claimant understood that annual leave was not to be carried over. The Claimant did not accept that anyone should be permitted to carry over annual leave and challenged Ms Astley's instruction in several emails. I find as a fact that the Claimant did not accept that Ms Astley had created an exception for Ms Loftus based on Ms Loftus' personal circumstances. I find that Ms Astley instructed the Claimant to carry over leave for Ms Loftus. I find that the Claimant did not want to do this as she had been informed that there would be no carry over allowed for anyone. I find that it was a reasonable management decision, made by someone more senior than the Claimant and the Claimant should not have continued to question the decision in the persistent way that she did. I find that it makes no difference that the Claimant thought the decision to be unfair. Ms Astley was entitled to make the decision that she did and should not have been challenged by the Claimant. I do not find that the Claimants authority was undermined. Ms Astley had the authority to make the decision that she did and appropriately informed the Claimant to implement that decision.

### **Potential closure of the meals service**

32. In the early summer of 2023, the Claimant became aware of the possibility that the meals service might close. She contacted local authority councilors and staff at Adult Social Care to make enquiries. On 28 July 2023, the Claimant was informed by the Respondent not to contact other people outside of her department to enquire about the cessation of the meals service. Despite this, the Claimant continued to make enquiries, for example, she contacted the head of the commissioning team on or around 3 August 2023.
33. I find that the community meals employees did not discover that the business was closing down at the time the Claimant alleges. There were rumours and consequent enquiries from customers. The Claimant took it upon herself to make enquiries with other departments and raised the issue with individuals beyond her immediate managers. The immediate managers were not in a position to detail whether the service was closing as they did not have that information. A decision

to close a service such as community meals would be taken after consultation, and by managers more senior than Ms Astley or Mr Williams. There should have been no distress at that time as the business was not closing. The business did not close until July 2024, after the Claimant had resigned. There was nothing inappropriate or distressing about the manner in which the Respondent acted.

**The letter of 14 August 2023**

34. On 14 August 2023, the Claimant raised concerns about the closure of the meals service in a letter to her MP, councilors and the manager investigating her grievance of 2 June 2023. I find that Mr Williams, in his position as a senior manager for the Respondent, would have been made aware that a member of staff was writing around raising her concerns. I do not find that the letter was shared with Mr Williams. My attention was not drawn to any evidence that it was shared with him. I accept that Mr Williams was aware of some or all of the content of the letter on 17 August 2023. I can find nothing inappropriate in this. The letter raised issues that the Claimant said she was concerned about. There is nothing inappropriate in one of her managers, Mr Williams, being aware of those concerns. There was no whistleblowing claim made by the Claimant. She had not pursued her application to amend and had confirmed that there was only one matter as pleaded for the tribunal to determine.
35. The Claimant raised the issue that she had requested that there be an investigation into the sharing of her letter with Mr Williams and that her request was ignored. This aspect of the claim was not pursued by either party.

**The disciplinary process**

36. On 18 August 2023, the Claimant was invited to an investigation meeting in relation to allegations of not following reasonable management instructions and contacting other departments. Mr Anscombe was the investigating officer. At the investigation meeting Mr Anscombe considered the alleged failure by the Claimant to produce a new menu without ice cream. He also considered the Claimant's contact with other departments in relation to the alleged closure of the meals service. The Claimant had been on sick leave since 7 August 2023. While on sick leave the Claimant was informed on 23 October 2023 that the matter would proceed to a disciplinary hearing. On 9 February 2024, the Claimant was informed that the Respondent was not proceeding with the disciplinary process. The Respondent accepted it had taken an unreasonable amount of time to resolve the disciplinary process.
37. I find that there is no evidence that the disciplinary process came about as a result of the Claimant's letter of 14 August. I find that the disciplinary process came about in relation to the ice cream issue and the failure to abide by instructions. Mr Anscombe was clear that if the disciplinary process had continued, he would have found the grounds made out in relation to both issues albeit he had some concerns about the clarity of the communication to the Claimant in relation to them. I accept the evidence of Mr Anscombe that the Claimant did not immediately follow an instruction to remove ice cream from the menu. Further that the Claimant contacted other departments against management instructions. I find that Mr Anscombe was a very experienced manager who had conducted disciplinary procedures before. His evidence was consistent and measured. It was clear that he had taken a fair approach to the investigation.

**The Claimants requests for information were not addressed.**

38. This particular aspect of the Claimant's claim was not pursued during the hearing. It was not positively put to the Respondent's witnesses. Her case was that this was a further aspect of the delays in dealing with her situation. She was asking for information, and it was taking weeks or months to get any response. The timings of her requests for information were not particularised. Some of the requests were responded to. New oven gloves were provided. A taxi for a staff member was agreed. The Claimant was citing these instances as being part of a culture of inefficiency and that this was the case for her too.
39. I find that although the Claimant was not satisfied with the speed of responses to her requests the delays were reasonable in the circumstances. I find that the asserted delays to the SAR and FOIA requests made by the Claimant were not explored in the hearing. I find that I can attach no weight to these aspects of the claim.

#### **Mental health champion**

40. The Claimant confirmed in evidence that she had no issue with Ms Astley being appointed as mental health champion and the decision to appoint Ms Astley did not contribute to her decision to resign. The role was a voluntary one and I do not find that it contributed in anyway to the Claimants assertion that the Respondent committed a repudiatory breach of the contract.

#### **Witnessing inappropriate treatment of others**

41. The Claimant confirmed in evidence that she had referred to the treatment of others in an effort to illustrate the management style of the Respondent. The Claimant did not state that it was the treatment of others that she relied on in establishing that the Respondent had committed a repudiatory breach of the contract. I find that the incidents in relation to other members of staff did not contribute in any way to any fundamental breach of the contract. There were incidents that were little more than part of the day to day running of a large organisation. None of these were inappropriate.

#### **Behaviour of Respondent toward Claimant during sickness absence**

42. The Claimant was on sick leave from 7 August 2023 to 4 March 2024. The Claimant was then on annual leave and garden leave until her effective date of termination, 1 April 2024.
43. The Claimant received Care First information when she was first off sick in August 2023. The Claimant was aware that Care First is the organisation used by the Respondent to support employees. Care First is the organisation that provides assistance to employees including counselling, stress management, information, advice, and mediation. The Claimant accepted that she was aware that Care First could assist and support with any issues an employee might have. The Claimant did not contact Care First. The Claimant was provided with a talking therapies referral via her GP.
44. The Respondent accepted that it did not contact the Claimant after the initial email from Ms Astley in August 2023. The Respondent accepted that the Claimant was not invited to Stage 1, 2 or 3 meetings in relation to her absence. The position of the Respondent was that if the sickness procedure had been followed to the letter, then the Claimant was at real risk of been dismissed from her employment.



45. Ms Astley had tried to ensure that the Respondent was managing the Claimants' sickness absence. There were emails in the bundle from Ms Astley to the HR department raising the need to manage the Claimant's absence appropriately. Ms Astley was unable to manage the absence as the Claimant had issued a grievance against her.
46. I do not find that the failure to contact the Claimant in accordance with the sickness policy constituted a repudiatory breach of the contract. The Care First information was provided. Ms Astley made efforts to arrange for a manager to deal with the Claimants absence. Unreasonable conduct is not sufficient to establish a repudiatory breach of the contract.
47. On 1 March 2024, the Claimant resigned from her position. Her effective date of termination was 1 April 2024. The Claimant began new employment on 2 April 2024.

**Relevant Law**

48. Section 95(1) (c) Employment Rights Act 1996 provides that there is a dismissal when the employee terminates the contract, with or without notice, in circumstances such that they are entitled to terminate it without notice by reason of the employers conduct. This form of dismissal is commonly referred to as 'constructive dismissal.'
49. In Westen Excavating (ECC) Limited v Sharp [1978] ICR 221 CA, the Court of Appeal determined that, for an employer's conduct to give rise to a constructive dismissal, it must involve a repudiatory breach of contract.
50. The burden is on the employee to prove constructive dismissal within s. 95(1)(c) ERA. In order to establish that he has been constructively dismissed, the employee must show:
- There was a fundamental breach of contract on the part of the employer that repudiated the contract of employment; and
  - The employers breach caused the employee to resign, and
  - The employee did not delay too long before resigning, thereby affirming the contract and losing the right to claim constructive dismissal.
51. The breach of contract may consist of a breach of the implied term of trust and confidence, which provides that employers (and employees) will not:
- without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties* (Malik v Bank of Credit and Commerce International SA 1997 ICR 606 HL)
52. In cases where a breach of the implied term is alleged:
- the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it* (Woods v WM Car Services (Peterborough) Limited [1981] IRLR 347).

53. The Tribunal has to decide whether the conduct in question amounts to a breach of the term, by considering:

- Whether there was a reasonable and proper cause for the conduct; and,
- If not, whether the conduct was 'calculated or likely to destroy or seriously damage trust and confidence.' Here, the Tribunal should consider the circumstances objectively, from the perspective of a reasonable person in the Claimant's position (Tullett Prebon plc v BGC Brokers LP 2011 IRLR 420, CA). The test is met where the employer's intention is to destroy or seriously damage trust and confidence, or where the employer's conduct was likely to have that effect.

54. Acting in an unreasonable manner is not sufficient. The employer's conduct has to be calculated or likely to at least damage the relationship of trust and confidence. In Frenkel Topping Ltd v King EAT 106/15, the EAT observed that this presents a high hurdle.

55. A breach of the implied term of trust and confidence can be caused by one act, or by the cumulative effect of a number of acts or a course of conduct. A 'last straw' incident which triggers the resignation must contribute something to the breach of trust and confidence but need not amount to a breach of contract itself (Omilaju v Waltham Forest London Borough Council 2005 ICR 481 CA).

56. If the Claimant establishes that she was constructively dismissed, it still remains for the Tribunal to determine whether the dismissal was fair or unfair.

## **Conclusions**

### **Alleged breaches of the implied term of trust and confidence**

*Issue 1 – The Respondent failed to address workplace conflict between the Claimant and Ms Loftus.*

57. I have found as a fact that the Respondent did not fail to address workplace conflict as alleged by the Claimant. This aspect of the Claimant's claim does not represent a breach of the implied term of trust and confidence. The actions of the Respondent do not in any way represent a breach of any term of the contract in relation to this aspect of her claim.

*Issue 2 - The Claimants request for mediation with Ms Loftus in March 2023 was not progressed.*

58. I have found as a fact that the Respondent progressed the request for mediation as far as was possible in the circumstances. This aspect of the Claimant's claim is not made out. The Claimant accepted that mediation could only take place if Ms Loftus agreed to it.

*Issue 3 - The Claimant's requests to work from home on one day per week were not addressed promptly.*

59. The Claimant relies on this issue as being a significant reason why she resigned. I do not find that the delay in determining the alteration to the Claimant's working arrangements is a breach of contract. The delay was appropriate while Ms Astley sought advice from HR. This aspect of the claim fails.

*Issue 4 - The Claimant was told to attend the office instead of working from home on 11 May 2023.*

60. The Claimant was told to attend the office. She was contracted to spend three days a week in the office. Due to the bank holiday this was a four day week. The Claimant was due to work three days this week. Her employers required her to be in the office for those three days. This was not a breach of the Claimants contract.

*Issue 5 - The Claimants authority as team leader was undermined by the Respondent treating employees differently.*

61. I do not find that the Claimants authority was undermined. The Respondent was entitled to make the decision that it did. Accordingly, this element of the Claimant's claim fails.

*Issue 6 - The Claimant's grievance was not conducted properly or thoroughly and was not resolved for approximately nine months. The Claimant was denied an extension of the appeal deadline. The Claimant was not permitted to be accompanied by a friend at the grievance hearing.*

62. The Respondent accepted that it was unreasonable in not concluding the grievance process for nine months. It was not part of the Respondents grievance procedure for a friend to accompany the Claimant to the grievance hearing. She was free to be accompanied by a union representative or a colleague. There could be no breach of the contract in this respect because there was no provision for the Claimant to be accompanied by a friend. I do not find any evidence that the process was not conducted properly or thoroughly save for the delay. I do not find the delay to be a fundamental breach of the contract. The Respondent was unreasonable in taking the time that it did but acting in an unreasonable manner is not sufficient. The employers conduct has to be calculated or is likely to at least seriously damage the relationship of trust and confidence. The failure to conclude the process in less time was due to oversight and was not a calculated decision. In isolation, the delay alone is not sufficient to seriously damage the relationship of trust and confidence. On an objective view, it did not do so. The Claimant accepted in cross examination that the appeal process was not relevant to her decision to resign. Consequently, this aspect of the Claimant's claim fails.

*Issue 7 - The Claimants' letter of August 2023 was inappropriately shared with Mr A Williams (Operations Manager) and a request for an investigation was ignored.*

63. It is appropriate that the letter was shared with Mr. Williams. There was no evidence that the letter was actually shared with him. He was aware of the letter and the content. I have found that sharing this type of letter in these circumstances would be normal practice. At the hearing neither party pursued the matter of the ignored request for an investigation into how Mr Williams came to have the letter shared with him. There was nothing inappropriate about a senior manager, being aware of the letter, or having a copy of the letter. There was therefore no breach of the implied term of trust and confidence. The allegation of the ignored request for an investigation had no evidential basis and was not pursued at the hearing. Accordingly, this aspect of the claim fails.

*Issue 8 - The Claimant was subjected to an unfounded disciplinary procedure after writing the letter of August 2023. This process took an unreasonable amount of time.*

64. I have found that the disciplinary procedure was not unfounded, it was not connected to the letter and that the Respondent accepted that it took too long to resolve. Implementing the disciplinary procedure cannot be a breach of contract. While there is an accepted delay, the failure to conclude the process in less time was not a calculated decision. In isolation, the delay alone is not sufficient to seriously damage the relationship of trust and confidence. On an objective view, it did not do so.

*Issue 9 - The manner in which Community meals employees discovered the business was closing down was inappropriate and caused unnecessary distress.*

65. I have found that the service was not closing down in the summer of 2023. At that stage it was just rumour. The Respondent could not provide any definitive information about the future of the service as they did not have that information. The service closed in July 2024, after the Claimant had left her employment. There was no breach of the term of implied trust and confidence. The Respondent did not act inappropriately. In fact, the Respondent did not take any active role in providing information as there was no information to provide at that time as alleged by the Claimant. Accordingly, this aspect of the Claimant's claim fails.

*Issue 10 - The Claimants request for subject access information was not dealt with for seven months and the Claimants Freedom of Information request was not dealt with for four months. The Claimant's requests for information in relation to health and safety, staff shortages, and reasonable adjustments were not addressed.*

66. The delays in responding to the Claimant's requests are not, individually or taken together, a breach of the implied term of trust and confidence. These were cited by the Claimant as examples of the management style of the Respondent.

*Issue 11 - The Claimant was overlooked for a position as a mental health champion.*

67. The Claimant did not pursue this allegation as part of her claim. Accordingly, I do not need to make a determination on this point. If a determination were required, I would have found that this in no way could have founded a breach of the implied term of trust and confidence as it was merely the allocation of a voluntary role.

*Issue 12 - The Claimant witnessed inappropriate treatment of others.*

68. The Claimant confirmed in evidence that she had referred to the treatment of others in an effort to illustrate the management style of the Respondent.
69. I find that the incidents did not contribute in any way to any fundamental breach of the contract. This aspect of the claim fails because there was no tangible evidence of actual inappropriate treatment. There was also no evidential link between how witnessing incidents could contribute to a breach of her contract.

*Issue 13 - The Claimant was off sick from 7 August 2023 until March 2024. The Respondent did not follow its sickness absence policy, (including failing to close the*

*Claimants' absence when she was fit for work in March 2024).*

70. Although no one took responsibility for the Claimants sickness absence, this is not a failing by the Respondent that is so significant that it can be said to be a repudiatory breach, either on its own or as a last straw. This aspect of the claim is pleaded as a failure by the Respondent to follow the sickness absence policy. The failure was not total. Information about Care First was provided. The Claimant chose not to use that service. The Claimant did have contact with her employer in August 2023. She was aware of how to contact her employer but took no steps to contact Care First who were in a position to positively assist the Claimant in her circumstances.
71. Behaving unreasonably is not enough to establish a repudiatory breach. There was no evidence that this was a calculated step by the Respondent. I do not accept in any way that it was. Could it have been an inadvertent breach that seriously damaged the implied term? In this case the breach was the failure to contact the Claimant. That alone is insufficient to seriously damage the implied term.
72. I have not found there to be a repudiatory breach of the implied term of trust and confidence, either on the basis of any individual finding or on a cumulative assessment of the delay to the grievance procedure, delay to the disciplinary procedure, and the lack of contact with the Claimant.
73. If I am wrong about there not being a repudiatory breach of the implied term of trust and confidence, I have gone on to consider the following parts of the test.

**Did the Claimant resign in response to the breach?**

74. The Claimant asserts that there was a repudiatory breach of the contract, and she resigned after the last straw event of not being contacted during her sickness absence from August 2023. In evidence, the Claimant said that there was no particular date that she decided to resign. It was just a decision she gradually came to as the months passed by. The Claimant resigned on 1 March 2024, her effective date of termination was 1 April 2024. She started a new job on 2 April 2024. The Claimant said that she might have been offered the new job prior to resigning from the employment of the Respondent. The evidence establishes that the Claimant resigned because she had a new job to go to. The new job began one day after her effective date of termination. I acknowledge the Claimants position that she had to find a new job before she could resign. I conclude though that her assertion that her position with the Respondent was intolerable is not made out. She did not resign until she had a new job, some seven months after going on sick leave. The Claimant resigned for this reason and not in response to any breach.

**Did the Claimant affirm the contract before resigning?**

75. The Claimant waited until March 2024 before resigning. This was some seven months after going on sick leave. The Respondent had not contacted her since August 2023. If the Respondent committed a repudiatory breach of the contract, the Claimant waited too long before she resigned in March 2024. If there had been a repudiatory breach, which I do not find to be the case, I would find that the Claimant had affirmed the contract due to remaining in the employment of the Respondent for such a considerable period of time.
76. The claimant has not shown that there was a dismissal. I do not need to consider

the fairness of any dismissal as the Claimant has not shown that a dismissal took place. The claim is dismissed.

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Employment Judge Hastie  
13 June 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON  
26 June 2025 By Mr J McCormick

FOR THE TRIBUNAL OFFICE