



EMPLOYMENT TRIBUNALS

Claimant: Mrs Lucy Maira

Respondent: Shaw Trust Limited

Heard at: Reading (by CVP video link)

On: 7 July, 8 July and 9 July 2025

Before: Employment Judge Skehan (sitting alone)

Appearances

For the Claimant: Mr Maira, lay representative.

For the Respondent: Ms Redman, counsel.

JUDGMENT

- 1) The claimant's claim for constructive unfair dismissal is not well-founded and dismissed.
- 2) The claimant's claim for breach of contract/ unauthorised deduction from wages is unsuccessful and dismissed.

REASONS

- 1) Judgment in this matter was given to the parties and approved in writing by me on 9 July 2025. The judgment was not processed prior to completion of these reasons due to an administrative backlog within the employment tribunal. Oral reasons were given to the parties on 9 July 2025. A request for written reasons was received from the claimant on 11 July 2025.

Documentation

- 2) Time was taken at the commencement of the hearing to identify the relevant documentation. There was some confusion between the parties in respect of

bundles. Following discussion with both parties, it was identified that a comprehensive bundle of 693 pages had been provided by the respondent. Page numbers within this judgment are references to this main bundle unless stated otherwise. Further, the respondent had provided a cross-referenced index to assist the claimant to find specific pages within the bundle. Following the conclusion of the claimant's evidence, the respondent made an application to add further documents to the bundle. I heard submissions from both sides. While the timing of this additional documentation was most unfortunate, the documents appeared relevant to the issues to be determined. I also accept the respondent's submissions that this correspondence may have been very difficult for the respondent to locate by reference to the passage of time and changes within staff. Further, while the documents were relevant to the claimant's terms and conditions of employment, they were not generated with reference specifically to the claimant in 2020 and this may have made these documents more difficult to find. It was also the case that this documentation is likely to have been familiar to the claimant as she had received the substantive part of it by email in 2020. I considered that it was in line with the overriding objective to deal with the matter fairly and justly to admit this documentation. I discussed how best to deal with the matter with both parties. We finished slightly earlier on day 1 and the claimant and Mr Maira were given the evening to consider the new documentation. The claimant produced a short witness statement on day two that was accepted by the tribunal and the claimant was recalled to give evidence on this matter only on the morning of day two. We had no issue with our tribunal timetable.

The Issues

- 3) There had been no in-person case management prior to this final hearing. Therefore, at the commencement of the hearing we took time to identify the list of issues. It was agreed that the claim was for constructive unfair dismissal and unauthorised deduction from wages only. I noted references in the documentation to protected characteristics. Both parties confirmed that there was no allegation of any form of discrimination within this litigation.
- 4) In relation to constructive dismissal, the claimant had set out the matters she relied upon in respect of the constructive dismissal claim within her ET1. These were revisited, discussed and clarified prior to the hearing. It was agreed that the claimant relied upon the following matters as breaches (either cumulatively separately) of the implied term of trust and confidence that led to her constructive dismissal:
 - a. That the respondent required the claimant to continue to interact with MM.
 - b. That the respondent denied the claimant's request to work from home two days a week made orally on 31 January 2024.
 - c. Mr Allen sending the claimant an email on 5 February 2024 that omitted to include an access link.
 - d. Mr Allen requiring the claimant to sign an official document with false statements. This refers to the occupational health review document under the heading 'actions to date' and the reference to 'the contractual requirement to be at Feltham full-time'.
 - e. The respondent's failure to implement the grievance outcome by reference to a recommendation that, 'appropriate formal action' would be taken.
 - f. The respondent's failure to pay contractual sick pay.

- 5) The above matters were said to be a breach of the implied term of trust and confidence. It was identified during cross examination that the issue in respect of sick pay only arose in July 2024. The claimant had submitted her resignation on 2 June 2024, therefore the claimant agreed that this element could not form part of the reasons why she tendered her resignation. [Mr Maira's alternative legal arguments are noted and addressed below]
- 6) The unauthorised deduction from wages relates to the claimant's alleged entitlement to contractual sick pay only.

The Law

- 7) Section 95 of the Employment Rights Act 1998 sets out circumstances in which an employee is dismissed:

“(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if)—

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.”
- 8) ‘Constructive dismissal’ as set out in sub-section 1(c) is the statutory version of a principle originally from common law. The burden is on the employee to prove constructive dismissal. In order to establish that she has been constructively dismissed, the employee must show:
 - a. there was a fundamental breach of contract on the part of the employer that repudiated the contract of employment or a breach of the implied term of trust and confidence - ;
 - b. the employer's breach caused the employee to resign, and
 - c. the employee did not delay too long before resigning, thereby affirming the contract and losing the right to claim constructive dismissal.
- 9) The implied term of mutual trust and confidence 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. 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.
- 10) The tribunal has to decide whether the conduct in question in a particular case amounts to a breach of the term, by considering:
 - a. Whether there was a ‘reasonable and proper cause’ for the conduct; and
 - b. If not, whether the conduct was ‘calculated or likely to destroy or seriously damage trust and confidence’.
- 11) Where the claimant does satisfy the Tribunal that there was a repudiatory breach of the implied term of trust and confidence (noting that all breaches of this implied term are repudiatory) There are two further hurdles:

- a. Has she nevertheless affirmed the contract; and,
 - b. Did she resign, at least in part in response to the last straw claimed. The breach must have caused the resignation, but it need not be the only cause. The test is whether the employee resigned in response to the conduct which constituted the breach. This is a question of fact for the tribunal.
- 12) If the claimant was dismissed, the tribunal must then consider whether the dismissal was unfair dismissal in accordance with the provision of the Employment Rights Act 1996. Ms Redman sensibly submitted that should the employment tribunal conclude that the claimant was dismissed, which the respondent denies, the respondent does not seek to argue that that dismissal was for any potentially fair reason. A finding of unfair dismissal would therefore follow. For this reason I do not set out the relevant law on unfair dismissal.
- 13) The general prohibition on unauthorised deductions from wages is set out in S.13(1) ERA, which states that: 'An employer shall not make a deduction from wages of a worker employed by him.' The key issues involved in determining whether or not there has been a deduction that infringes the provisions are whether the wages are 'properly payable' to the worker; and whether the payment of less than the properly due sum is authorised. The courts have consistently held that the question of what is properly payable to a worker turns on the contract of employment.
- 14) The Transfer of Undertakings(Protection of Employment) Regulations 2006 (TUPE) provides a regulation 4(4) that, '... Any purported variation of the contract of employment that is ...transferred... is void if the sole or principal reason for the variation is the transfer'.

The Facts

- 15) As is not unusual in these cases, the parties have referred in evidence to a wider range of issues than I deal with in my findings. Where I fail to deal with any issue raised by a party, or deal with it in the detail in which I heard, it is not an oversight or an omission but reflects the extent to which that point was of assistance in determining the issues within this litigation. I only set out my principal findings of fact. I make findings on the balance of probability taking into account all witness evidence and considering its consistency or otherwise considered alongside the contemporaneous documents.
- 16) All witnesses gave evidence under oath or affirmation. Their witness statements were adopted and accepted as evidence-in-chief and they were cross-examined. I heard from the claimant on her own behalf. I heard from Mr Allen and Ms Barnett on behalf of the respondent.
- 17) The respondent is a provider of educational services within the prison service and the claimant worked at Feltham HMYOI. The respondent is a large employer with approximately 2760 staff within Great Britain however the claimant's workplace at Feltham Young offenders Institute was relatively small with approximately 39 people working there. The Claimant's continuous employment commenced on 3 April 2006. It is common ground that a TUPE transfer occurred in March 2015 transferring the claimant's employment to 'Prospects Services'. Prospects

Services later through merger became the Shaw Trust, the respondent. The claimant was employed from 1 July 2015 as, SEN & Inclusion Development Lead'. She tendered her resignation on 10 June 2024 and her employment came to an end on 30 August 2024.

Entitlement to sick pay

- 18) It is common ground that the claimant's continuous employment commenced in April 2006. The claimant's employment was transferred by TUPE to Prospects Services on 1 March 2015. At the time of that transfer, it is common ground that the claimant's entitlement to sick pay was for six months full pay and six months half pay.
- 19) Within her witness statement the claimant states that her original contract of employment remained in place until 30 June 2015. From 1 July 2015 a new contract commenced and she was appointed to the post of SEN & inclusion development lead. The claimant's witness statement sets out that her role should be read in conjunction with her job description and the 'prospects that Handbook' (revised). The claimant states that the purpose of the job was to lead on SENCO statutory requirements and manage all aspects of learner support. The claimant was also a member of the senior management team. During the course of cross-examination the claimant accepted that:
- a. The appointment letter dated 23 June 2015 starts with, 'Further to the recent restructuring in Feltham, I am writing to confirm that you have been successful in securing the SEN & Inclusion Development Lead'. The letter is said to enclose the staff handbook. The appointment letter is signed by the claimant on 6 July 2015. The claimant has also signed a form on 6 July 2015 confirming receipt of and agreement with the terms of the 'Prospects (September 2013) Staff Handbook'. The claimant expressly confirms this position within her witness statement at paragraph 4, '...I confirmed having read a copy of the Staff Handbook, and agreed to any terms, conditions, and rules of employment contained therein by signing it on 06 July 2015'.
 - b. The staff handbook provides: [page 29e para 5] terms and conditions that apply to staff employed after 1 December 2011 also apply to staff who TUPE transferred into the company on or after that date who may be appointed to a new post after 1 December 2011 which requires them to move onto Prospects terms and conditions of employment.
 - c. The sick pay entitlement is set out [on page 29U/ 50] as follows:
For those employed before 1st December 2011
...
Over 5 years of service 6 months full pay, 6 months half pay

A For those employed on or after 1st December 2011
...
Over 2 years of service 2 months full pay, 2 months half pay
 - d. The above handbook provisions mean that any employee who started a new role in July 2015 would, regardless of any previous entitlement, would be

entitled to sick pay at the rate of two months full pay and two months half pay.

- 20) While the claimant accepted that a new position on 1 July 2015 would mean that she would be eligible for the sick pay entitlement under the heading, 'for those employed on after 1 December 2011', the claimant said that this did not apply to her as her position of SEN & Inclusion Development Lead from 1 July 2015 was not a new job, it was a continuation of her old job and was protected by TUPE.
- 21) The claimant accepted that she was provided with a salary increase however she stated that she remained in the same duties, within the same position. There is no available background documentation produced by either party in relation to the TUPE transfer or the subsequent restructure.
- 22) The claimant's argument within the ET1 is in relation to the proper construction of the contract by reference to her appointment letter signed on 6 July 2015. The claimant does not allege that the appointment letter erroneously or wrongly refers to a restructure and/or a new position. The claimant's witness statement similarly concentrates on sick pay that is properly payable with reference to her appointment letter and the handbook referred to therein. The claimant's arguments in respect of entitlement to sick pay as set out by Mr Maira are based upon the correct reading of her entitlement with the appointment letter and handbook *not* those changes being void by reference to the previous to be transfer TUPE.
- 23) It is also the case that the claimant raised an internal grievance in relation to sick pay on 7 August 2024 [page 557] that was considered by the respondent. The claimant does not raise the argument within this grievance that her proposed new terms and conditions as set out in the appointment letter signed on 6 July were void due to the TUPE transfer that happened in March 2015. All previous reference to TUPE appear only in respect of the common provision that her employment transferred to Prospects in March 2015 under the provisions of TUPE and there were no changes to the terms and conditions at that time.
- 24) I conclude that the claimant first raised the suggestion that the changes reflected by the appointment letter of 23 June 2015 and signed by the claimant on 6 July 2015 were void by reference to the TUPE transfer of March 2015, in cross-examination.
- 25) The documentation provided by the parties includes:
 - a. the claimant's contractual documentation set out above;
 - b. the respondent's internal HR 'PSPO4' form. This form was not provided to the claimant at the time but it records under the heading 'employment details' that the claimant is subject to 'prospects v2', being the 2013 Handbook referred to above. This form also records under the heading 'reason for change', 'change of job role following restructure. Prospects v2 apart from annual leave which is protected'.
 - c. I also noted the harmonisation documentation generated by the respondent in September 2020. It is common ground that there is no change to the claimant's terms and conditions of employment at this time, however, the e-mail sent to the claimant in September 2020 confirmed that contact was made with all employees relating to potential changes within the terms and conditions. The

claimant also received an email from the respondent stating that, 'according to our records you are currently on a prospects V2 contract' and offering a change to a 'Shaw Trust' contract. A spreadsheet setting out the pros and cons of the 'new Shaw Trust offer' in comparison to 'prospects 2', was attached to the email. This attachment states that 'prospects 2' provided up to 2 months full pay and two months half pay in sickness entitlement. The claimant made no comment at this time querying her terms and conditions.

- 26) Mr Allen said that he joined Prospects Services as an employee in about May 2015 on the 'prospects 2' contract. He had previously worked within the business as a consultant and was part of the preparation for the Prospects bid that resulted in the claimant and her colleagues transferring under TUPE to Prospects. His evidence was that there was no change within the claimant's role of SENCO due to the TUPE transfer in March 2025. Following that time, there was a management restructure and the claimant was successful in securing the SENCO Development and Inclusion role. Mr Allen described this role as including additional responsibility for the high proportion of students who due to vulnerability or the types of crimes with which they were involved, were unable to attend education classes. The claimant's new role encompassed responsibility for the obligation to provide education in an alternative way. The claimant's role included additional duties, a promotion to the senior management team and a salary increase. His evidence was that the reason for the changes to the claimant's terms and conditions in July 2015 related to the management restructure rather than the previous TUPE transfer.
- 27) I conclude on the balance of probability that the respondent carried out a restructure as it has claimed in June/July 2015. As part of this restructure the claimant secured a new role of SEN & inclusion development lead. This was a promotion for the claimant. There is no evidence to support any finding that the sole or principal reason for the changes to the claimant's contract was the previous TUPE transfer. I conclude that the sole or principal reason for the change in the claimant's terms and conditions on 1 July 2015 relates to the respondent's restructure and the claimant securing a new role.
- 28) A fair reading of the contractual documentation provided to the claimant in June /July 2015 reduces the claimant's entitlement to sick pay as set out above and accepted by the claimant in cross-examination. While the claimant's bespoke arrangements in respect of holiday pay are expressly protected, previous sick pay entitlement is not. The respondent's internal documentation clearly reflects this position. The email communication of 2020 reinforces the respondent's position. I conclude that the respondent has taken all reasonable steps to ensure the claimant's entitlement to sick pay has been brought to her attention. No comment was made by the claimant either in 2015 or in 2020. By her expressly signing the documentation in 2015 and her continued employment since receiving clarification in 2020, she is deemed to have accepted these terms. I therefore conclude that the claimant's entitlement to sick pay is as set out in the Prospects version 2 Handbook with reference to her new role accepted in July 2015, i.e. two months full pay and two months half pay.

Background to the claimant's relationship with Mr Morgan (MM) and their relationship from 10 January to her resignation.

29 I have looked at the background to this complaint. In 2023 the respondent introduced a new role being the 'deputy head of pastoral provision'. The claimant was encouraged to apply for this role but chose not to do so. MM applied for the role and the claimant informed Mr Allen in May 2023 that if MM was successful, and became her line manager, she would resign. There were obviously historic issues, at least on the claimant's part, between the claimant and MM to which the tribunal was not privy. In the event MM was successful and became the claimant's line manager in approximately July 2023.

30 The claimant told the respondent on 9 January 2024 that she would be submitting a formal grievance later that week. On 11 January 2024 the claimant raised a grievance in relation to MM's conduct as her line manager. Under the proposed outcome of a grievance the claimant requested:

- a. That she be separated from MM;
- b. Shaw Trust to arrange for Occupational Health Consultation
- c. Shaw Trust to facilitate Stress-Specific Risk Assessment for the claimant

29 The documentation generated by this grievance is within the bundle. From 10 January 2024, Mr Allen acted as the claimant's line manager. From this time, all day to day managerial interaction the claimant required in relation to duties, work allocation, time off, sickness or other day-to-day matters were dealt with by Mr Allen. The claimant confirms that on or around 31 January 2024, Mr Allen informed her that Mr Morgan would no longer be her line manager, and he was taking over that role.

30 There is an email within the bundle, where the claimant is dealing with a RTW issue in relation to a colleague, and the outcome is copied into MM. I was unable to identify any further documentary evidence at all of any contact between the claimant and MM from 10 January 2024 to the claimant's resignation. The claimant said dealing with MM caused her anxiety and she was permitted to skip meetings where MM was present. The respondent's team within Feltham was relatively small with approximately 39 employees. Within this environment it was common ground between the parties that it would be difficult to entirely avoid any member of staff.

31 There is no allegation on the claimant's part of any particular interaction between her and MM from 10 January 2024 to her resignation. Within her witness statement it states that she was required to keep Mr Morgan informed on all matters concerning Learning Support staff and references made to the cc email mentioned above. The claimant says that correspondence occasionally led to discussions and those interactions were stressful. The claimant did not raise any issue with the respondent or Mr Allen in relation to any ongoing contact with MM prior to her resignation.

Failure to implement the grievance outcome by reference to a recommendation that, 'appropriate formal action' would be taken.

32 This allegation relates to the grievance outcome. When looking at the grievance I note that the three requests made by the claimant within her grievance as set out above were met by the respondent at an early stage. The claimant's grievance was

predominantly upheld. The claimant's complaint under this heading relates to the reference that '*appropriate formal action would be taken*'. It is common ground that the claimant had no information as to whether 'formal action' was actually taken by the respondent in respect of Mr Morgan and if so, what that was. This information was not before the tribunal. During the course of cross-examination it was put to the claimant that it was right that the claimant would not be involved in any subsequent disciplinary action taken by the respondent. The claimant respondent that she 'would have no issue with that'.

The claimant's relationship with Mr Allen.

- 33 The claimant's complaints about Mr Allen are at odds with the picture painted by the contemporaneous documentation. For example, during the period February to June 2024 the claimant shared with Mr Allen that she was applying for alternative roles and asked him to provide a reference. One of the roles pursued by the claimant was in Kenya. Mr Allen was happy to support the claimant and provided his personal contact number to facilitate direct personal conduct from prospective employers. There is email correspondence from the claimant to Mr Allen on 16 April 2024 stating, 'thank you so much Patrick. I shall forever be grateful'. Mr Allen believed that he had a good relationship with the claimant at this time and recalls that the claimant invited him and his family to visit her in Kenya. The claimant says she cannot recall this conversation. Within her resignation letter of 10 June 2024 addressed to Mr Allen, the claimant includes the sentence, 'thank you for your understanding and support throughout my tenure'. Mr Allen was aware that the claimant had been offered and accepted a new job in Kenya expected to commence in September 2024. I have considered the specific allegations against Mr Allen below.

Denied flexible working

- 34 The claimant says that on 31 January 2024 during a one-to-one discussion the claimant made a request to work from home for 'one or two days a week'. The claimant says that she cannot recall Mr Allen's exact words but his response was not in the affirmative. Mr Allen's evidence is that he has no recollection of any discussion between him and the claimant on that day in relation to working from home. Mr Allen referred to page 396 /440 of the bundle which contained his handwritten notes from the meeting he had with the claimant on that date. He said that if working from home had been discussed it was likely that it will be recorded in some way within the notes.
- 35 In relation to working from home in general terms, Mr Allen noted the nature of the role in a young offenders facility generally required in person attendance. He explained the concept of the 'operational rota', where there was an absolute requirement for the senior member of staff to be on site.
- 36 There were two emails within the documentation where the claimant had requested working from home. Both were responded to promptly by Mr Allen both requests to work from home were accommodated, subject to operational requirements. On one of the occasions working from home was approved for a half day and a half day was designated as annual leave as the claimant wished to use that time to have a private meeting with her trade union representative.

- 37 If the claimant had made an oral request to work from home one or two days a week on an ongoing basis, this request was refused and considered a fundamental breach of her contract, it is most odd that there is no mention whatsoever of this within any follow-up email or indeed anywhere until her resignation. It is most odd that the claimant, being a member of the senior management team, would not set out her request at least in an email addressing any potential obvious business need or implication, for example dealing with the 'operational rota'.
- 38 It is common ground between the parties that the claimant did not make any written request reflecting what is claimed to have been requested on 31 Jan 2024. It is obvious that the claimant did not believe that working from home was prohibited for her as she subsequently requested and was granted by Mr Allen authorisation to work from home. When reviewing the entirety of the evidence I conclude that Mr Allen's version of events is more likely. I conclude that the claimant did not make any identifiable oral application to work one or two days a week from home on 31 January 2024. The claimant made two requests to Mr Allen to work from home and both were approved. It was factually correct from Mr Allen to state that 'ad hoc requests to work from home were granted' as he has done within the occupational health referral.

The missing link within the email of 5 February 2024

- 39 It is common ground that Mr Allen sent the claimant an email on 5 February 2024 referring to a link to a Stress-Specific Risk Assessment but not including that link. The claimant responded, to confirm that the link was not attached as stated. The claimant received the link from Mr Allen on 27 February 2024, the same day as her occupational health referral form. Mr Allen said that his delay in forwarding the link was caused by a combination of human error and annual leave. He refers to a good relationship with the claimant during this time and notes that the claimant would have had access to this link in her own managerial capacity in any event. In reviewing this matter I conclude that the failure to include the link within the original email was more likely than not to be for the reason of human error and absence on annual leave as explained by Mr Allen. The claimant's confirmed that she had previously sent this link within her managerial role to other staff. She noted that she had difficulty at the time with that particular link and sought assistance from HR to send the link again. The claimant did not contact HR for assistance with the link in the absence of a response from Mr Allen. The claimant did not complain about the delay at the time. The claimant on receiving the link did not take prompt steps to utilise it. This suggests that the importance placed by the claimant upon Mr Allen's delay in sending of this link has been exaggerated..
- 40 During this time the claimant and Mr Allen continued to interact normally. For example on 8 February 2024 they claimant emailed Mr Allen at 7:12 AM asking to work from home one day next [week]. Later that morning on 8:34 AM Mr Allen responds, 'yes of course, please choose a day when you are not down to be operational'. The claimant emails Mr Allen on 9 February with 'can I have Monday? And receives an email by response asking her to liaise with Yasmin. It can be seen from the email train that Yasmin has charge of the operational timetable.

Mr Allen requiring the claimant to sign an official document with false statements.

- 41 This allegation refers to the occupational health review document completed by Mr Allen. The particular parts of the form referred to by the claimant are under the heading 'actions to date' and the reference to 'the contractual requirement to be at Feltham full-time'.

Actions to date:

'Stress assessment has been provided – Currently waiting for Lucy to complete the assessment. Increased home working has been accommodated in the interim. – There are no official days for working from home, since Lucys return she requested to work from home on a number of occasions all of which have been granted. '

- 42 Taking the statements one by one:

- a. 'Stress assessment has been provided.' It is correct that this has been provided. There was a delay in providing the link but it is common ground that it was provided by the time this form was completed. From the documentation it appears it was sent on the same day.
- b. 'Currently waiting for Lucy to complete the assessment' - this is factually correct. The claimant has only just received the link at this point and there is no criticism of the claimant.
- c. 'Increased home working has been accommodated in the interim'. There is no suggestion that prior to 31 January 2024 there was any request from the Claimant to WFH. There is nothing in the evidence to suggest that the days requested and authorised do not constitute an 'increase'. This sentence was not questioned by the claimant.
- d. 'There are no official days for working from home, since Lucys return she requested to work from home on a number of occasions all of which have been granted.'. This is a factually correct statement. I refer to my findings above on this matter.

- 43 The claimant also objects to the statement, 'the contractual requirement is to be at Feltham fulltime'. I had difficulty in understanding the claimant's objection in respect of this statement. Her offer letter at page 30 under 'location' says that her usual place of work will be HMP/ YOI Feltham. The email correspondence between her and Mr Allen demonstrated a clear understanding on the claimant's part that she was required to work from Feltham. unless provided with authorisation to do otherwise. The claimant's workplace is unusual in that it is a young offenders institution and by its nature it reduces the capacity for individuals to work remotely.. There is no suggestion that any time during her employment at Feltham that the claimant has done anything (with the exception of sick days, holidays and ad hoc agreements to be elsewhere there) other than work from Feltham. Therefore taking the entirety of the evidence into account I conclude that this statement is a factually correct statement made in good faith by Mr Allen.

- 44 On review of the entirety of the claimant's complaints in respect of the occupational health referral I conclude that the statements within it were not factually incorrect as alledged. In addition, the covering email sent to the claimant by Mr Allen enclosing the occupational health report, clearly allows the claimant to raise any issue within the form, should she wish to do so. The claimant took no such action. The OH referral was being made at her request and it was open to her to suggest alternative wording should she wish to do

so.

Deliberation and decision.

- 45 In deciding this matter I am obliged to make findings of fact on the balance of probability as set out above. I have worked through the issues set out at the commencement of the hearing.

That the respondent required the claimant to continue to interact with MM

- 46 I refer to my findings of fact are set out above. When considering this part of the claimant's claim, my starting point is that the claimant's has raised a successful grievance in relation to Mr Morgan's behaviour in 2023. The subject matter of that grievance was not within the litigation however it was common ground between the parties that the grievance was in the main, upheld. I have kept this in mind when assessing the respondent's actions.
- 47 I have considered whether there was a 'reasonable and proper cause' for the conduct. In this case Mr Morgan retained his position. There is no allegation of any inappropriate conduct on his part during 2024. Significant steps have been taken by the respondent to limit the claimant's required contact with Mr Morgan. The claimant had been separated from Mr Morgan as she had requested. The claimant had minimal ongoing interaction with Mr Morgan from January 2024 until her resignation. The claimant had an ongoing good relationship with Mr Allen. The claimant was sufficiently comfortable with Mr Allen to ask for and receive help by way of references for alternative positions. The claimant is obviously familiar with the grievance process having brought a successful grievance previously in respect of Mr Morgan and bringing a grievance subsequently relating to her sick pay issues. The claimant raised no issue at all in relation to her ongoing contact with Mr Morgan during the period from January 2024 to her resignation. The respondent was entirely unaware of any ongoing concern the claimant may have had in respect of ongoing dealings with Mr Morgan.
- 48 When considering the respondent's actions, I conclude that there was reasonable and proper cause for the claimant to retain a very low level of continued conduct with Mr Morgan. This was required due to Mr Morgan's position within the respondent organisation. It can be seen that the respondent has taken the steps requested by the claimant. Further where ongoing residual contact with Mr Morgan (for example meetings) may cause the claimant anxiety, a workaround was identified and agreed. These are steps taken by an employer with a view to maintaining trust and confidence. I do not consider that the respondent's conduct in the circumstances could be reasonably said to be 'calculated or likely to destroy or seriously damage trust and confidence'.

That the respondent denied the claimant's request to work from home one or two days a week made orally on 31 January 2024.

- 49 I refer to my findings of fact above and conclude that the claimant did not request to work from home one or two days a week on 31 January 2024.

Mr Allen sending the claimant an email on 5 February 2024 that omitted to include an access link

50 I have reviewed 'Whether there was a 'reasonable and proper cause' for the conduct. The conduct in question is sending an email in the normal course of work but making an error failing to include a link. This failure to include the link in an email was a slip that was rectified, albeit with a delay. The circumstances of the case are such that should the claimant have placed particular importance upon receiving the link, there were alternative ways the claimant could have received it. For example the claimant could have contacted HR (the same department that has helped her previously with the same link) noting that the link was missing from the email and asking for it to be resent.

51 Even if it could be argued that there is not 'reasonable and proper cause' for Mr Allen's the delay in rectifying the error, I conclude by reference to the nature of the slip and ongoing cooperation between the claimant and Mr Allen that it cannot be sensibly argued that this delay was conduct 'calculated or likely to destroy or seriously damage trust and confidence'.

Mr Allen requiring the claimant to sign an official document with false statements. This refers to the occupational health review document under the heading 'actions to date' and the reference to 'the contractual requirement to be at Feltham full-time'.

52 I refer to my factual findings above and conclude that the claimant was not requested to sign an official document with full statements as alleged. There is obvious 'reasonable and proper cause' from Mr Allen's actions in completing the referral for and sending it to the claimant. This is what the claimant had asked the respondent to do. I do not consider that there can be any sensible argument that his conduct in doing this was 'calculated or likely to destroy or seriously damage trust and confidence'.

53 For the sake of completeness I note that Mr Maira has submitted considerable legal argument relating to flexible working policies and flexible working legislation. The gist of the argument is that Mr Allen's comments are not in line with the flexible working policies/statutory provisions and flexible working and therefore false. I confirm that I have read these arguments however I consider them to be misconceived. The existence of the possibility of discussion or agreement between the parties, whether by way of ad hoc discussion, employer policy or statutory right, to request flexible working does not alter the claimant's terms and conditions of employment. Terms and conditions of employment are not altered by the employer policy or statutory provision relating to flexible working unless agreement is reached between the parties.

The respondent's failure to implement the grievance outcome by reference to a recommendation that, 'appropriate formal action' would be taken.

54 The claimant's complaint under this heading appears to be based around the lack of transparency in respect of any disciplinary procedure carried out relating to Mr Morgan as a result of her successful grievance. The recommendation from the claimant's grievance was that 'appropriate formal action' be taken. It was appropriate to share this finding with the claimant. However, the next step for the respondent is to address matters directly with Mr Morgan. The claimant as a senior manager was likely to be fully aware of the respondent's disciplinary procedure

and in the course of cross examination she said that she had no issue with this being kept confidential between the respondent and Mr Morgan. The claimant did not ask for any clarification on this point during her employment. I conclude that there is reasonable and proper cause for the respondent not to share further information with the claimant. The respondent did not 'fail to implement the grievance outcome'.

55 When the respondent's dealing with the claimant's grievance as a whole is considered, it can be seen that the grievance was mostly upheld and the steps that the claimant requested to be taken by the respondent were taken promptly. Those steps were all obviously steps that would rebuild trust and confidence that may have been damaged by Mr Morgan's previous behaviour being the subject matter of the first grievance. The respondent was entirely unaware that the claimant had any ongoing issue in relation to residual contact with Mr Morgan. I conclude that the respondent has not failed to implement the grievance outcome. I do not consider that there can be any reasonable argument that the respondent's dealing with the claimant's initial grievance was conduct 'calculated or likely to destroy or seriously damage trust and confidence'.

56 I also take this opportunity to address the query raised by Mr Maira in respect of the respondent's alleged failure to provide a meeting between the respondent and claimant to discuss the outcome of the grievance as he queried this at the conclusion of my oral reasons and this point was addressed orally. He refers to:

[para 73 of the submissions]_The relevant provision for the purpose of the Claimant's case was under stage one and provided as follows:

*"The manager will give a respond in writing to the individual within a reasonable time **after the meeting confirming the outcome of the grievance.** If there are any delays the employee should be told when he/she can expect a response and the reason for the delay explained."*

[page 619, para 9]. [Emphasis added]

57 My reading and understanding of this provision is that the 'meeting' referred to above relates to the initial meeting that an employer has with an employee to discuss the grievance. Thereafter the outcome of the grievance is decided by the employer and it should be provided in writing to the employee within a reasonable time after this initial meeting. There is no obligation within the employer's procedures to have a further meeting with the employee once a decision has been made. Further, the claimant did not request any such meeting to discuss the grievance at any time. The claimant did not raise any dissatisfaction with the respondent in relation to the grievance outcome. In the circumstances I do not criticise the respondent's actions in failing to have a further meeting with the claimant. I am unable to identify any sensible arguments that the respondent's failure to have a further meeting that was not set out within their standard policy and not requested by an employee could be an omission calculated or likely to destroy or seriously damage trust and confidence between employer and employee. I conclude that Mr Maira has misread the respondent's grievance procedure.

The respondent's failure to pay contractual sick pay.

- 58 I refer to my findings above and I conclude that the claimant's entitlement to sick pay changed in July 2015 as she had accepted a new job within a restructure. There was no evidence to support any finding that the sole or principal reason for the change in terms and conditions in July 2015 was the transfer of undertakings that occurred earlier in 2015. The claimant is not entitled to the additional sick pay as she has claimed under the terms and conditions of her employment as set out above.
- 59 I confirm that I have considered the allegations raised by the claimant both separately and cumulatively. I have been unable to identify conduct on the part of the respondent that would breach the implied term of trust and confidence. I do not go on to consider the further hurdles required to satisfy the legal test for constructive dismissal.
- 60 For completeness I also note that the claimant during evidence agreed that she was unaware of the deductions made by the respondent and any issue as to sick pay at the date she tendered her resignation. My exercise above in determining the constructive unfair dismissal claim under Section 95 of the Employment Rights Act 1998 is to examine the employer's conduct that may justify resignation. It is not possible for post-resignation conduct on the part of the respondent to form part of the reason for resignation or be part of the rationale for the claimant's constructive dismissal claim. Mr Maira argued otherwise and submitted that the sick pay claim fell within the constructive unfair dismissal heading. The sick pay claim is an unauthorised deduction from wages claim and/or a breach of contract claim. I consider his argument that it falls within the constructive dismissal claim to be misconceived. In any event, this is academic in light of my factual findings above, this part of the claim cannot succeed under any heading.
- 61 I acknowledge the lengthy submissions made by Mr Maira. These stretched to over 40 pages. I appreciate that Mr Maira is a lay representative. I have not addressed these representations in detail within this judgment where they did not assist me in determining the issues within this litigation as agreed by the parties at the outset of the hearing. However, I confirm that I have read them and taken them into account as appropriate.

Approved by:

Employment Judge Skehan

Date: 29 July 2025

JUDGMENT SENT TO THE PARTIES ON

5 August 2025

AND ENTERED IN THE REGISTER

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FOR THE TRIBUNAL OFFICE