EMPLOYMENT TRIBUNALS

Claimant: Ms R Gamwell

Respondent: AstraZeneca UK Limited

Heard at: Manchester **On:** 17-20 June 2025

Before: Employment Judge Phil Allen
Ms L Atkinson
Ms V Worthington

REPRESENTATION:

Claimant: In person
Respondent: Ms L Whittington, counsel

Judgment having been sent to the parties on 25 July 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

Introduction

1. The claimant was employed by the respondent from 27 February 2017 until 26 January 2024. At the end of her employment, she was a Sterile Support Team Technical Manager. The claimant alleged that she had been constructively unfairly dismissed.

Claims and Issues

2. There had been three previous preliminary hearings in this case. A list of issues had been appended to the case management order made after the third preliminary hearing on 14 January 2025. At the start of this hearing, the parties confirmed that remained the list of issues to be determined.

3. It was agreed that we would determine the liability issues first, but at the same time we would also determine issue 2.3.1 (recorded in the remedy part of the list of issues).

4. The list of issues is appended to this Judgment.

5. The claimant had originally included a complaint of sex discrimination in her claim. As at the date of this hearing, that complaint was no longer one which we needed to determine.

Procedure

6. The claimant represented herself at the hearing. Ms Whittington, counsel, represented the respondent.

7. The hearing was conducted in-person in the Manchester Employment Tribunal with both parties and all the witnesses from whom we heard, present in the Tribunal.

8. We were provided with a bundle of documents which ran to 556 pages. We read the documents in the bundle to which we were referred in witness statements, in the respondent's chronology, or during questioning. Where a number is referred to in brackets in this Judgment, that is a reference to the page number in the bundle.

9. We were provided with witness statements from the witnesses called to give evidence. We read those statements on the first morning of the hearing, together with the pages in the bundle referred to either in the statements or in the respondent's chronology.

10. In advance of the hearing, the claimant made a limited application under rule 49. She asked that in any Judgment the Tribunal did not record the identity of her new employer for reasons which she gave. At the start of the hearing, it was confirmed that we were not being asked to restrict what was said or asked in the hearing, but what was requested was simply focused upon our written reasons. We agreed that we saw no reason why we needed to identify the claimant's subsequent employer (after the respondent) in the Judgment, and we agreed to the claimant's application that we should not do so.

11. We heard evidence from the claimant, who was cross examined by the respondent's representative, and we asked her questions. Her evidence was heard during the afternoon of the first day and the first part of the morning of the second.

12. We heard evidence from four witnesses called by the respondent. They were: Nathan Wilson, Director of Manufacturing in Zoladex; Jonathan Potter, Human Resources Business Partner; Simon Hobbs, Technical Director for the Zoladex Department; and Mr Windus Smith, the Senior Director of Facilities Management. Each of the first three of the respondent's witnesses were cross-examined by the claimant, and (where required) we asked them questions and they were briefly re-examined. We were informed in advance of the hearing that the fourth named witness would not be giving evidence due to personal circumstances which we do not need to detail in this Judgment. We read his statement but did not give his evidence the same weight as he was not available to be cross-examined. The respondent's witnesses' evidence was heard during the remainder of the second day.

13. After the evidence was heard, each of the parties was given the opportunity to make submissions. They each made their submissions in writing, supplemented by verbal submissions. The written submissions were provided in advance of the start of the third day and oral submission were heard on the morning of the third day.

14. After hearing submissions, we adjourned and reached our decision. The parties were informed of our decision and the reasons for it verbally on the morning of the fourth day. As written reasons were requested, the written reasons for our decision are contained in this document.

Facts

15. The claimant was employed by the respondent from 27 February 2017. She commenced employment as a Process Leader and was promoted to Maintenance Manager on 5 August 2019.

16. On 5 October 2020 the claimant sent an email to her then manager, Mr Wilson, in advance of her one-to-one that week. The attachment was a document (287) proposing that she work 0.8 of working time. She set out why she wished to work eighty percent of working time. The proposal was discussed at the one-to-one. No formal process was followed. No written response was provided. Mr Wilson recalled speaking to the claimant about it in her one-to-one meeting. He described it as a general discussion, albeit he could not remember the details. It was common ground that neither the claimant nor Mr Wilson were at that time aware of the respondent's relevant policy (even though they both had line management responsibility).

17. On 10 June 2021 the claimant and Mr Wilson discussed flexible working. The claimant followed up the conversation with an email on 11 June (292). That attached a flexible working request form which the claimant had completed (293). The form was taken from the respondent's policy. It stated that it should be sent to the individual's line manager. It explicitly stated that the writer would receive an outcome in writing. The claimant sought to drop to 0.8 full time, meaning she would work one day fewer a week. She explained why she wished to do so. In her covering email, the claimant said, "*I would like to stress that this does not remove my wish for career progression*". In his response on the same day, Mr Wilson said he would come back to the claimant in the coming weeks. There was no dispute that he did not do so and that he did not provide a written outcome.

18. The claimant alleged that Mr Wilson said during the discussion that she needed to decide whether she wanted a career or a part-time job. Mr Wilson said that he did not recall making the comment and it was not the sort of comment that he would make. We accepted that Mr Wilson made the comment alleged both because we appreciated that the claimant would have a clearer recollection of the conversation as she considered it more important than Mr Wilson did, and we noted what the claimant said in her subsequent email of 11 June 2021 which supported that something along those lines had been said.

19. In his evidence, Mr Wilson told us that, as this was the first flexible working request he had received, he was not fully versed in the flexible working request policy. He said that, in hindsight, had he received the request now he would have arranged a formal meeting and posted a written outcome letter (which he acknowledged he had not done). He said that he thought that following the one-to-one conversation, the request had been resolved. The claimant continued to work full time.

20. The respondent has a flexible working policy (226). It states that the manager will arrange a meeting to discuss the request made and the individual has the right to

be accompanied at the meeting. The outcome will be confirmed in writing. It will only be rejected for one of a defined list of reasons. Importantly, a right of appeal is also provided. None of the things set out were followed when the claimant made her formal written flexible working request.

21. We found it incomprehensible that Mr Wilson did not seek to identify the procedure or to follow it, once a formal request had been made (using the correct form). He did not even appear to have sought advice from HR about the process. As a result, we found that the respondent fundamentally failed to follow its own procedure, or to even follow anything which could represent a fair way of dealing with a formal flexible working request.

22. We noted Mr Wilson's evidence that he believed that even had he followed the procedure he did not believe that it would have changed the outcome. We found that the respondent's contentions about this, and Mr Wilson's evidence in particular, had the appearance of rendering the respondent's procedures (which mirror the statutory procedures) as being a charade. Obviously, if a full and fair procedure had been followed, the outcome may have been different if the process had not been commenced with a pre-determined outcome. That is why such a process includes the safeguards of considering the request, allowing accompaniment, having a meeting, considering whether it could be granted (with only limited grounds for refusal), and providing for an appeal.

23. The claimant did not raise a grievance at the time or take any steps to raise with anyone else Mr Wilson's complete failure to follow the respondent's policy.

24. On 30 October 2021 Mr Hobbs sent the claimant the details of a recruitment campaign for Sterile Support Team Technical Manager. The claimant applied for the role on the same day and was interviewed for it that day. She was offered the role on 14 December and accepted it on 15 December. It was announced to the team on 4 January 2022 and the claimant commenced working in the role on 1 March 2022. The role was a promotion for the claimant, and she received a pay increase.

25. On 25 January 2022 Mr Windus Smith sent an email to his team informing them that four jobs had been given to male employees. This included Mr Capper being promoted to the role of BAU Engineering Lead, to start on 1 March 2022. That was a role in which the claimant told us she had already expressed an interest. It was a role of equivalent seniority to that which the claimant also started on the same date. The claimant was not given the opportunity to apply for the role. She questioned Mr Windus Smith about it. She sent an email to a member of the respondent's HR team (Ms Jones) on 3 February 2022 (304) in which she said that she did not feel that it had been handled in an open and honest way with no selection policy and she said it certainly did not appear to match the respondent's values and behaviours.

26. We were shown some emails in which the claimant's complaint was considered. Ms Jones provided a draft response to Mr Windus Smith in which it was said that it was understood that the approach taken represented a departure from the usual way of doing things. It was said that the respondent had adopted an agile approach to staffing and had chosen to act with urgency. Within that email, and Mr Windus Smith's response, there was reference to the claimant having been told it was a moot point. Mr Windus Smith expressly said in his email that the decision had been made and the

claimant could not get it overturned. Ms Jones sent the claimant the agreed response on 8 February (308), in which she explained that it would be disingenuous of the respondent to enter into a lengthy process and raise expectations, when there was already a preferred outcome.

27. In his evidence to us, Mr Potter explained the approach taken. He was critical of the open application processes which the respondent had previously operated because he felt that had resulted in too many applications and applicants being put through a stressful process. He explained how the respondent had moved towards a different approach, where the senior management team identified those they thought should progress, and then appointed those identified to roles when they became available. He acknowledged that those decisions were based upon the knowledge which the decision-makers had about the experience and skills of employees, and that the skills and experience of other employees could be overlooked.

28. We were provided with a copy of the respondent's policy global standard for managers – talent acquisition (152). That policy stated that the respondent would conduct all recruitment activity in line with global standards. It said that the respondent would ensure that all job postings were advertised internally. It set out a process which would be followed of screening candidates and undertaking interviews or assessments before roles were offered. Mr Potter accepted that the policy was not followed for the recruitment exercise being considered. It was his evidence that, instead, the respondent had followed an alternative policy which he said existed but which was not provided to us.

29. There was some dispute about whether the roles had initially been filled as secondments and what people had been told. Mr Potter explained to us in evidence that he had personally said the secondment process should be stopped and had said the appointments should be permanent, something which was then decided by Mr Windus Smith. From the evidence and the timing of the relevant emails, it was clear that Ms Jones' email was incorrect when it said that at the time of the announcements the roles were still secondments, when they clearly were not (Mr Potter accepted that in cross-examination).

30. We entirely accepted the claimant's criticism of the process followed, as it was not open or honest and did not comply with the respondent's procedure.

31. The claimant did not raise this issue further following the exchanges with Ms Jones. She did not raise a grievance. We also noted the timing coincided with the claimant being appointed to, and starting in, her new role (something which Ms Jones explained in the email as meaning that the decision would not have been changed for the claimant in any event).

32. On 25 June 2022 the claimant submitted an application for the external employment which she went on to fulfil after she left employment with the respondent. She undertook an initial interview on 7 September 2022. The claimant's evidence was that she had not decided to take that new career path at the time, and she said that she had not even informed her husband.

33. We were provided with some emails which the claimant exchanged with her potential new employer between 18 April and 10 May 2023 (525). The claimant

enquired about how quickly an offer could be made saying that she was conscious that dates were getting close "*again*" and asked about potential start dates. There was a discussion about the claimant's need to give the respondent three months' notice and how that conflicted with the potential start dates. On 26 May 2023 the claimant attended a pre-employment day for her new employment which included a number of elements set out in an email (529) (which we would observe were rigorous tests which someone would not undertake lightly) and which lasted from 8.15 am, with an expectation they would be completed by 1 pm. On 2 June 2023 she attended a medical appointment for that new job. On 28 June 2023 (530) the claimant corresponded about references which the proposed new employer was waiting to come through. On 5 July it was confirmed to the claimant that the pre-employment was complete for her new role, and she was offered start dates of 21 August or 11 September (537). Following an email exchange, the claimant asked if she could defer to January due to the notice period required and said (535) "*I am really keen to take up the position and it would be great if we can find a solution to this*".

34. We found that the claimant had clearly decided to leave the respondent's employment and take up the new role (which was an entirely new career path) by July 2023. Whilst we accepted the claimant's evidence that she was not formally committed to the new role and leaving the respondent until she was formally offered and accepted the role in December 2023, nonetheless we found that in practice (barring the role not proceeding) she was committed to taking the new role by July. We reached this decision based upon what was said in the emails, the time and commitment involved in undertaking the pre-employment day and the medical appointment, and the fact that the claimant was focussed upon finding the right start date (she was not at all equivocal in the emails about whether she was going to take up the new employment). We found that what ultimately caused the claimant to resign from the respondent's employment was her intention to take the new role, and we found that was something which the claimant had clearly decided to do by July 2023 (albeit when an appropriate start date was agreed and subject to a formal offer).

35. On 26 June 2023 the claimant was asked to be an investigator in a disciplinary case. She undertook an investigation, and a report was prepared on 18 July (316). In summary, she did not find that the concerns had been substantiated and she did not believe there had been a deliberate failure to follow the relevant procedures (albeit she did recognise that there were performance issues). After writing her report, the claimant was telephoned by two people who challenged the outcome and told the claimant that they were going to progress a further investigation. On 18 July, David Jamieson (Process Execution Team Leader) emailed the claimant and said he was not in agreement with her conclusion that it was not a breach of procedure, and the claimant was told it would be prudent to request support from the experienced colleagues in Quality (312). The claimant sent an email to Laura Wildgoose (HR Business Partner) saying she was not sure what to do and (unsurprisingly) "*This whole thing has made me feel very uncomfortable and I do not feel I can add anything further unless they want me not to report the facts*". The claimant also spoke to Mr Hobbs about her concerns and forwarded her email to him on the following day. In an email on 25 July (314), the claimant was told that the investigation could now conclude as the employee "*will not be remaining with the company*". We understood why the claimant considered that this reinforced her concerns about the respondent not adhering to its own policies and to fair procedures.

36. The claimant was not the decision-maker, she was tasked with undertaking the investigation. She did raise her concerns about what occurred as we have described, but she did not raise them further or formally. She did not raise a grievance at the time.

37. The claimant suffered a significant back injury in September 2023. We were shown some emails which suggested that the new employer required updated occupational health advice as a result, in order to proceed. On 27 November 2023 the new employer confirmed that the fitness certificate had been received. It was the evidence of both the claimant and Mr Hobbs that they spoke about the claimant leaving to take up the new employment. In an email of 27 November (546) the claimant informed her new employer that she had spoken to the respondent and said, "*I have verbally told work that I intend to leave*". We have already explained what we found about the position in July 2023, but in any event the email of 27 November 2023 clearly identified that the claimant was certainly leaving her employment by that date.

38. The claimant received a formal offer from the new employer on 6 December. She formally accepted the offer on 7 December 2023.

39. During 2023 the respondent undertook a process of streamlining the job titles used. Mr Potter gave evidence to us about the respondent's reasons for doing so, which we accepted. On 8 December the claimant emailed Mr Potter and Mr Hobbs saying that she had noticed that the changes affected her team around job titles (342). Mr Potter overlooked the email and did not respond. The claimant took no further action. The claimant's job title was not affected. It was Mr Potter's evidence that no one else raised any concerns. In her evidence to us, the claimant explained her concerns by reference to the use of job titles in the standard operating procedures and the lack of any process for updating those titles. It was clear from the evidence we heard that the claimant attached much greater importance to this issue than did either Mr Potter or Mr Hobbs.

40. We were shown a number of procedures which recorded that steps would be undertaken by the respondent annually. These were the respondent's own procedures; they were not regulatory standards. During 2023 there were discussions about changes to the periods within which those steps would be undertaken. The claimant told us that at one stage there was a suggestion that the period would be extended to sixteen months (something Mr Hobbs confirmed). The claimant raised concerns about this. We were shown an email of 14 December (344) in which she referred to speaking to Mr Hobbs earlier that day and in which she said there must be an alternative to what she described as a "*huge compliance risk*". We were also shown an email of 20 December (346) in which the claimant said it followed time spent with others the previous day. A change control document (403) recorded that the respondent had decided that the time between (what was described as) "annual" maintenance would not exceed four hundred operational days (and it acknowledged that meant that in real terms there would be more than four hundred days between relevant activities). The document recorded that the business approval for this occurring was said to have been in February and July 2024 (after the claimant left the respondent's employment).

41. The claimant accepted that she was not required to sign off the change control process; it was the responsibility of others. In her witness statement, the claimant said

that her concerns were not being heard, she felt profit was being put above safety and sterility, and she said that was the final straw.

42. The claimant resigned from her employment with the respondent on 22 December 2023. She did so by way of the respondent's relevant HR system, and without providing a reason for doing so. The claimant did not describe herself as being forced to resign, or resigning in response to issues at work, at any point prior to her resignation (or at the time when she resigned).

43. Following the claimant's resignation, there was a dispute between the claimant and the respondent, because she contended she was entitled to the 2023 bonus and the respondent contended that she was not (as she would not be employed on the payment date). Mr Hobbs agreed with the claimant (at least initially). In his unchallenged evidence, Mr Hobbs told us that he had conversations with the claimant where she proposed working part time for the respondent until April 2024 so that she remained employed on the bonus payment date.

44. The claimant raised a grievance on 16 January 2024 (351). The bonus issue appeared to be the primary point of the grievance, albeit the grievance did also include the matters raised in the Tribunal claim/hearing. In her grievance, the claimant said that the personal grievance had contributed to her decision to leave. She also said that she had not raised the issues formally previously, as she believed she would have been treated unfairly.

45. The claimant's employment ended on 26 January 2024, as the respondent had agreed to the claimant not working her full notice period. There was a gathering. The claimant left on good terms with her colleagues and exchanged positive messages with her manager after she left. The claimant commenced her new employment on the next working day.

46. A grievance outcome was provided to the claimant on 28 February 2024 (371) written by Mr Selvester, a Human Resources Manager. The decision was somewhat brief and entirely lacking in any relevant detail. We were not provided with any evidence about the process undertaken to consider the grievance, but rather bizarrely were provided with a note of a conversation between Mr Selvester and Mr Hobbs which took place on 29 May 2024, that is three months after the grievance decision had been made.

47. The claimant in evidence referred to her neurodiversity and emphasised her work ethic with reference to it. She explained that meant that she was not able to resign with immediate effect as she did not consider it to be the correct thing to do. The claimant was clearly somebody who considered that adhering to rules and procedures was very important and a key part of her professional responsibilities.

48. This Judgment does not seek to address every point about which we heard or about which the parties disagreed. It only includes the points which we considered relevant to the issues which we needed to consider in order to decide if the claims succeeded or failed. If we have not mentioned a particular point, it does not mean that we have overlooked it, but rather we have not considered it necessary to refer to it in these reasons in explaining the decision that we reached.

The Law

49. An unfair dismissal claim can be pursued only if the employee has been dismissed as defined by Section 95 of the Employment Rights Act 1996. Section 95(1)(c) provides that an employee is dismissed by her 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 it without notice by reason of the employer's conduct."*

50. The principles behind such a constructive dismissal were set out by the Court of Appeal in **Western Excavating (ECC) Limited v Sharp** [1978] ICR 221. The statutory language incorporates the law of contract, which means that the employee is entitled to treat herself as constructively dismissed only if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which showed that the employer no longer intended to be bound by one or more of the essential terms of the contract.

51. The term of the contract upon which the claimant relied in this case was the implied term of trust and confidence. In **Malik and Mahmud v Bank of Credit and Commerce International SA** [1997] ICR 606 the House of Lords considered the scope of that implied term, and the Court approved a formulation which imposed an obligation that the employer shall not:

> *"…without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.***"**

52. The test is an objective one in which the subjective perception of the employee can be relevant but is not determinative.

53. Not every action by an employer which can properly give rise to complaint by an employee amounts to a breach of the duty of trust and confidence. The formulation approved in **Malik** recognises that the conduct must be likely to destroy or seriously damage the relationship of confidence and trust. The respondent submitted that it was for the claimant to show the absence of a reasonable and proper cause (relying upon **RDF Media Group Plc v Clements** [2007] EWHC 2892).

54. The respondent acknowledged that a failure to adhere to a proper procedure is capable of amounting to a breach of the implied term of trust and confidence, but highlighted that it was for the Tribunal to assess in each case whether what had occurred was sufficiently serious as to amount to a breach of that implied term. The respondent referred to **Blackburn v Aldi Stores Ltd** 2013 IRLR 846, a case in which the Employment Appeal Tribunal observed that breaches of procedure come in all shapes and sizes and contrasted a wholesale failure to respond to a grievance (that case concerned a grievance procedure), with a failure to comply with some aspect of it (such as a timescale).

55. The respondent also submitted that:

a. we must consider whether the claimant would have left irrespective of the employer's conduct (**Walker v Josiah Wedgwood and Sons Ltd** 1978 ICR 744);

b. the employee must resign in response to the repudiatory breach, but it is not necessary to prove that the breach was the sole cause (**Nottinghamshire County Council v Meikle** [2004] IRLR 703 - in which it was acknowledged that in a constructive dismissal case there may be concurrent causes operating on the mind of the employee, and the proper approach is to ask whether the employee has accepted the repudiation found by treating the contract of employment as at an end – it must be in response to the repudiation); and

c. there must be sufficient causal connection between the repudiation and the resignation (**Abbycars (West Horndon) Ltd v Ford** UKEAT/0472/07 was quoted in the submission).

56. The claimant also relied upon a "last straw". The decision of the Court of Appeal in **London Borough of Waltham Forest v Omilaju** [2005] ICR 481 demonstrated that the last straw itself need not be a repudiatory breach as long as it adds something to what has gone before, so that when viewed cumulatively a repudiatory breach of contract is established. However, the last straw cannot be an entirely innocuous act or be something which is utterly trivial. Dyson LJ said the following in **Omilaju** (part of which the respondent's counsel cited in her submissions):

> *"The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase 'an act in a series' in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.*
>
> *I see no need to characterise the final straw as 'unreasonable' or 'blameworthy' conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred.*
>
> *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.*
>
> *Moreover, an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee's trust and confidence has been undermined is objective"*

57. Where there is a fundamental breach of contract by the employer, the employee may elect to accept the breach and bring the contract to an end, or treat the contract as continuing requiring the employer to continue to perform it – that is affirmation. Where the employee affirms the contract, they lose the right to treat the employer's conduct as having brought the contract to an end. Affirmation can be express or implied. Mere delay will not, in the absence of something amounting to affirmation, amount in itself to affirmation. However, the ongoing and dynamic nature of the employment relationship means that a prolonged or significant delay may give rise to an implied affirmation because of what occurred in that period. Acts which are consistent only with the contract continuing are likely to be implied affirmation. In submissions, the respondent quoted **Chindove v William Morrisons Supermarkets Plc** UKEAT/0201/13 and **Leaney v Loughborough University** [2023] EAT 155 and emphasised that affirmation is essentially an issue of conduct not of time.

58. The respondent relied upon **Kaur v Leeds Teaching Hospitals NHS Trust** [2019] ICR 1. In the decision in that case Underhill LJ said:

> *"In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:*
>
> *(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?*
>
> *(2) Has he or she affirmed the contract since that act?*
>
> *(3) If not, was that act (or omission) by itself a repudiatory breach of contract?*
>
> *(4) If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate*

consideration of a possible previous affirmation, for the reasons given…)

(5) *Did the employee resign in response (or partly in response) to that breach?"*

59. The respondent also relied upon **Kaur** in making the submission that an entirely innocuous act on the part of the employer cannot amount to a final straw, even if the employee genuinely but mistakenly interpreted the act as hurtful and destructive of her trust and confidence in the employer.

60. In her verbal submissions, the claimant questioned why reliance was being placed on case law from 1978 and she highlighted that we have moved on in understanding neurodiversity since that date. It is unusual for an Employment Tribunal to take into account case law as old as 1978, but we were satisfied that it was correct to do so for the case relied upon. The claimant was right that the law has changed since then on disability discrimination, but it has not changed in terms of the basic approach to constructive dismissal.

Conclusions – applying the Law to the Facts

61. We started by considering each of the things upon which the claimant relied as being the breach or breaches of the duty of trust and confidence, as set out in the list of issues at 1.2.1 to 1.2.5.

62. The first thing relied upon by the claimant was the failure to follow the HR procedure in response to the flexible working request made on 10 September 2020. We did not find that the failure to follow the procedure in response to an informal request made only in an email sent before a one-to-one meeting (at which it was discussed) was a breach of the duty of trust and confidence.

63. We found the position to be different, however, in respect of the second flexible working request on 10 June 2021. That was a request made formally using the form included in the respondent's flexible working policy. We have already recorded that we found that Mr Wilson did ask the question which the claimant alleged. We have also recorded what we found about his approach and the complete non-compliance with the respondent's procedure. In the section on the law, we have explained what was said in the case of **Blackburn v Aldi Stores Ltd** (a case included in her submissions by the respondent's counsel). We found Mr Wilson's complete failure to address the request made in accordance with the respondent's procedure to be a wholesale failure to respond to a flexible working request in the way which the respondent's policy said that it would be. We found that failure to have been a breach of the duty of trust and confidence.

64. We have already recorded what we found regarding the recruitment process followed in February 2022 (issue 1.2.2). The respondent did not comply with its procedures. However, we accepted the respondent's submission that viewed objectively the approach taken was not calculated to, or likely to, destroy trust and confidence. We understood the claimant's criticism of the approach taken, but did not find what occurred to be sufficient to be a breach of the duty of trust and confidence,

in circumstances where the claimant had just been appointed to a role of equivalent seniority, after the role had been sign-posted to her and she had applied for that role.

65. We considered the response to the claimant's investigation undertaken in June 2023 (issue 1.2.3). We have already recorded that we were unsurprised that the claimant felt uncomfortable with the responses received. We did not, however, find that the responses to the claimant's investigation report were sufficient to amount to a breach of the duty of trust and confidence. The claimant was not the decision-maker. We did not find that the respondent conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee in the way that people responded. In any event, whilst the email sent by the claimant showed her dissatisfaction with the responses, it was not indicative of her believing that she considered those responses to amount to such a breach.

66. Issue 1.2.4 was the change control process and the changes made to job titles. We accepted the respondent's representative's submission that the respondent had reasonable and proper cause for the action it took, as evidenced by Mr Potter. Analysed objectively, the harmonisation of job titles and the changes to the titles of those in the claimant's team (but not the claimant herself), was not calculated or likely to destroy the claimant's trust and confidence. We heard the claimant's contention about the problems which would result from the titles being changed and the impact that had on standard operating procedures, but considered that to be a difference of opinion about a process, it was not a repudiatory breach of the claimant's contract. The claimant raising the issue in the limited way which she did at the time, also did not support the claimant's argument that the action should be treated as being so serious (for her employment relationship) as she contended it should be.

67. The final issue was the steriliser validation project (issue 1.2.5). The respondent submitted that the events did not occur as they were pleaded and recorded in the list of issues, and we agreed. There was no extension of regulatory time limits. The claimant was not forced to sign off validation documents. What was evidenced was the claimant raising concerns about what was proposed, with meetings taking place and two emails being sent about it. At the point at which the claimant's employment ended, the project had not been signed off. We did not find that what occurred was a fundamental breach of the claimant's contract. The claimant also relied upon this issue as the last straw. We did not find that what occurred added something to what had gone before so that when viewed cumulatively a repudiatory breach of contract had been established. What occurred added nothing to the respondent's failure to follow the flexible working policy and, in practice and in the context of the claimant's employment relationship, it was an entirely innocuous event which we did not find amounted to a last straw as required for a meritorious constructive dismissal claim.

68. We also considered the matters collectively as well as individually. As we have already explained, we found that the complete failure to follow the flexible working procedure in June 2021 was a breach of the duty of trust and confidence on its own. We found that the last straw relied upon was neither capable of amounting to the last straw as required for a successful constructive dismissal claim, nor was it the reason why the claimant resigned (see below). As a result, the claimant's claim could not have succeeded in any event. However, considering all of the matters relied upon together,

we did not find that collectively there was a breach of the duty of trust and confidence (to any greater extent than issue 1.2.1 alone constituted such a breach).

69. Issue 1.3 asked whether a fundamental breach of contract was the reason for the claimant's resignation? We did not find that any of the matters relied upon were the reason for the claimant's resignation. The reason for the resignation was that the claimant had new employment which she wished to take up. We also did not find that either issues 1.2.1 or 1.2.2 were genuinely the reason for the claimant's resignation, as the considerable period of time between those events and the claimant's resignation showed that was not the case. In particular, the flawed response to the claimant's flexible working request which took place in June 2021, was not the reason why the claimant resigned approximately eighteen months later. Issues 1.2.3, 1.2.4 and 1.2.5 were not the reason for the claimant's resignation because those events post-dated July 2023, being the time when we found that the claimant had decided to leave the respondent's employment to take up the new employment.

70. Issue 1.4 asked whether the claimant had affirmed the contract after any breach? For the breach we found (the respondent's failure to follow the flexible working policy), the claimant had clearly affirmed the contract. After the event (and indeed after both 1.2.1 and 1.2.2), the claimant applied for and was appointed to an alternative role, being a promotion with a pay increase, which she accepted. That alone would have amounted to affirmation. The considerable period of time after all of 1.2.1, 1.2.2 and 1.2.3 during which the claimant continued to work and receive pay, in the absence of the claimant raising the matters in the interim or more formally, also amounted to affirmation in the circumstances of this case. For all of the allegations, the claimant's willingness to stay in employment until April 2024 (to receive the bonus) as discussed with Mr Hobbs, also amounted to affirmation (as well as evidencing that what had occurred was not seen by the claimant as being such a fundamental breach of the contract that she had no choice but to end the employment relationship).

71. We would add, on affirmation, that we did not accept the respondent's argument that the claimant continuing to work for six weeks of her notice period, in and of itself, meant that she had affirmed the contract. We understood the claimant's wish to give the notice contractually required and the emphasise which she placed on her integrity and ethics (particularly notable in the context of neurodiversity). We did not find that working for six weeks post-resignation in this case amounted to affirmation. The affirmations we found were: applying for and accepting the promotion in early 2022; working for the length of time without further protest, objection or grievance (whilst receiving salary); and the wish to remain employed part-time until April 2024.

72. In her closing submissions, the claimant referred to the way in which her grievance was handled. The way that the grievance was handled did not and could not be the reason why the claimant resigned, because it occurred after the claimant resigned. The claimant also referred to the respondent not following its own procedures and allowing individuals to disrespect her (there was evidence that the claimant had spoken to Mr Hobbs on occasion about such issues). Those were not the pleaded case and were not asserted to be the reason why the claimant resigned. We focussed on the claim as recorded in the list of issues, which the parties confirmed at the start of the hearing was the case to be determined. It was clear that, over time, the claimant had become increasingly disillusioned with the respondent and, in particular, its failure to comply with the policies and procedures which it had in place.

Nonetheless, having considered the matters which the claimant asserted led to her disillusion, we did not find that there was a breach of the duty of trust and confidence as asserted (save for the breach arising from the failure to appropriately consider the flexible working request, which we have specifically addressed and as a result of which the claimant did not resign).

73. The fairness of any constructive dismissal was not an issue (issue 1.5). We did say that we would also consider issue 2.3.1 alongside the liability issues, but in the light of what we found we did not need to (and in practice could not) find whether the claimant would have resigned in any event but for her dismissal.

Summary

74. For the reasons explained above, we did not find that the claimant resigned in circumstances in which she was entitled to terminate her contract without notice by reason of the employer's conduct. She was not constructively dismissed. As a result, her unfair dismissal claim did not succeed.

Employment Judge Phil Allen

29 July 2025

REASONS SENT TO THE PARTIES ON

29 August 2025

FOR THE TRIBUNAL OFFICE

Annex
List of Issues

1. **UNFAIR DISMISSAL Part X Employment Rights Act 1996**

Dismissal?

1.1 Did the respondent commit a fundamental breach of the claimant's contract of employment in that:

1.1.1 It conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties, and/or

1.1.2 It was otherwise guilty of conduct which was a significant breach going to the root of the contract of employment, or which showed that the Respondent no longer intended to be bound by one or more of the essential terms of the contract?

1.2 The claimant relies on the following alleged events, individually and cumulatively, as amounting to a breach of trust and confidence:

1.2.1 The Claimant requested flexible working twice (10/9/2020) and (10/6/2021). Both requests went to Nathan Wilson and in both instances the HR procedure was not followed. When the request was made in June 2021 Nathan Wilson told the claimant she need to decide if she wanted a career or a part time job.

1.2.2 The HR Recruitment process was not followed by Bryan Windus Smith on or around 3/2/2022 in respect of male appointees and the claimant was not told about the opportunity despite her interest in the role being known because she had previously attended an assessment centre for it.

1.2.3 HR Investigation – In June 2023 the Claimant was asked to be the investigation manager on a HR case. The Claimant conducted the investigation and then her conclusion was overruled by a senior leader. This whole process was belittling and uncomfortable. It also questioned the value of having an independent investigation manager.

1.2.4 HR Projects completed by Jonathan Potter without following the change control process which made the Claimant's teams and many others standard operating procedures incorrect.9/11/2023 - 8/12/2023

1.2.5 The final straw was around a project to move the dates of the quality critical steriliser validation to extend then over the regulatory time limits. The Claimant was not comfortable to be forced to sign off validation documents that were not in compliance with international and British standards. Tom Capper and Simon Hobbs were aware of this project and it was ongoing at the time of the Claimant leaving 26/1/2024

1.3 If there was a fundamental breach of contract, was that a reason for the claimant's resignation in December 2023?

1.4 If so, had the claimant lost the right to resign because she had affirmed the contract after any such breach, whether by delay or otherwise?

Fairness

1.5 If it is established that her resignation should be construed as a dismissal, the respondent accepts that the dismissal was unfair.

2. **REMEDY**

2.1 If the Claimant succeeds in either of her claims, is she entitled to any remedy from the Respondent?

2.2 Should the claimant be awarded compensation for unfair dismissal in the form of a basic award and a compensatory award including compensation for loss of earnings?

2.3 Should any award for compensation be reduced or uplifted, for any reason, including:

2.3.1 Because the Claimant's employment would have come to an end in any event (in reliance on *Polkey v AE Dayton Services Ltd [1987]);*

2.3.2 N/A

2.3.3 N/A

2.3.4 Because the Claimant has failed to take reasonable steps to mitigate her losses?