EMPLOYMENT TRIBUNALS

Heard at: Croydon (by video) **On:** 24 to 26 September 2025

Claimant: Mr Christopher Mundy

Respondent: Medaax Limited

Before: Employment Judge E Fowell

Representation:

Claimant In person

Respondent Thomas Wood of counsel, instructed by Arag Law

JUDGMENT

The complaint of constructive dismissal is dismissed.

REASONS

Introduction

1. These written reasons are provided at the request of the claimant following oral reasons given earlier today. As usual some editing has taken place for the sake of clarity, and here and there some points are expanded, so these written reasons shall stand as the final version.

2. By way of background, Mr Mundy worked for the company as a Sales Executive for a little over three years. He was taken ill with stress in late February 2024 as a result of overwork and did not return. During his absence the company became aware of a number of concerns about his work, some to do with his performance and some to do with conduct, although Mr Mundy does not accept that those concerns were at all valid. He also feels strongly that those issues should not have been raised with him before he was back at work.

3. As it was, he was invited to an investigation meeting and in due course to a disciplinary hearing. In the meantime he raised a grievance about this and the disciplinary process was paused while that was looked into. The disciplinary action resumed and resulted in a final written warning. He appealed that decision and on appeal the sanction was reduced to a written warning. He then raised a further grievance, alleging harassment by the Chief Executive. This was essentially a revival of the original grievance. That second grievance was dismissed and he appealed that decision too. Following the rejection of that appeal he resigned, and brings this complaint of constructive dismissal.

Procedure and evidence

4. There were a good many procedural issues to deal with on the first morning of the hearing. They arose largely from misunderstandings and unfamiliarity on Mr Mundy's part with the tribunal process.

5. Unravelling those issues, it now appears that the original particulars of claim were never sent to the respondent. They were simply provided with a copy of the claim form, which was blank. They were not aware therefore that Mr Mundy had simply attached a copy of his resignation letter to the claim form. So, they presented a very brief response. In keeping with the tribunal's usual practice, the case was listed at the outset for a two-day hearing and no preliminary hearing was arranged to consider the issues. At the same time, directions were given for disclosure of documents, preparation of a file or bundle for the hearing and exchange of witness statements, all within about three months. The respondent's solicitors wrote to the tribunal a number of times requesting a preliminary hearing to understand the issues but, unaware that they had not received the particulars of claim, these requests were rejected. In due course that misunderstanding was corrected and the respondent then applied for an extension of time in which to rely on a fully pleaded response to the claim. That application was allowed. However Employment Judge Burge wrote to the parties on 30 August, 2025 to say that the question of whether the respondent will be allowed to rely on witness statements, having missed the tribunal's original deadline by so long, would have to be decided at this hearing.

6. It is not clear whether Employment Judge Burge was aware of the original confusion around the particulars of claim, but witness statements were exchanged about two weeks ago. Mr Mundy has therefore had a reasonable amount of time to consider these statements, which consist of four brief accounts from those involved in the original disciplinary and grievance processes. In total, they amount to nineteen pages.

7. In the circumstances it did not seem to me to be proportionate to prevent the respondent from relying on them. That would essentially involve hearing from only one party to the dispute, and have much the same effect as a strike-out order. Such an order would normally only be made where a fair trial was no longer possible and there was no concern of that sort.

8. The main concern was that the respondent had an unfair advantage in that they had seen Mr Mundy's witness statement in advance, but even that concern seemed rather less than might have been the case. There were no surprises in Mr Mundy's witness statement. At five pages long it is hardly any more extensive than his resignation letter. The areas which have been expanded on emphasised how hard-working he had been, the effect on him of this process generally, and set out criticisms of the way the respondent had handled it. None of that would have come as a surprise to the respondent. The evidence for the respondent's witnesses was no more than a brief, factual overview of the involvement of each individual in the various processes, facts which are largely undisputed, and they did not seek to argue the respondent's cause. Hence, I found no actual unfairness and allowed them to be admitted in evidence.

9. There were other issues too. Mr Mundy was perhaps unclear about the difference between the list of documents provided by the respondent in January this year and the trial bundle. The intention is that both sides provide all relevant documents in their possession and that these are then used to provide a bundle for the hearing, removing any unnecessary items. One of the items which did not appear in the bundle put forward by the respondent was a 79 page chronology created by Mr Mundy at an earlier stage (largely a compendium of email communications over the period of his absence from work). That did not appear in the bundle, no doubt because relevant emails had been included separately, but I had a copy of the original disclosure bundle available to me, as did the witnesses.

10. There was a further email disclosed by the respondent in response to a subject access request which is also in that disclosure bundle, at page 114. Arguably it is legally privileged but as it has been disclosed, any such privilege has been waived. It did not in fact contain anything particularly controversial and I was not referred to it at all in evidence or submissions.

11. Putting to one side the issues about admissibility of documents, the last-minute nature of the production of witness statements and finalising the bundle has imposed additional pressure on Mr Mundy in the run-up to the hearing. He has found the process very stressful. For his own part he has complied diligently with all of the tribunal's directions and as a litigant in person he has found it difficult to understand how the respondent could be in default of those directions and not to suffer any sanctions. In part that has been because of the understandable

confusion over the claim being put forward. There have also been delays in responding to correspondence and ultimately a decision has to be made as to whether any default is so serious that the case should not be heard at all. At the start of the hearing there were outstanding applications for a strikeout order and an unless order which had earlier been made by Mr Mundy. For the reasons already given, those orders are not appropriate. The respondent has ultimately complied with the directions and a strike-out order would be disproportionate.

12. Mr Mundy has also been concerned about the number of changes of case handler the part of the respondent and the appointment of a barrister for the hearing. I have explained that such changes and arrangements are perfectly normal. However he remains of the view that this is questionable conduct on their part. He was particularly disturbed by the fact that a hard copy of the bundle, containing lots of sensitive personal information, was mis-addressed and was delivered to a local pub, something he happened to discover when he dropped in. I can understand that concern but it does not strike me that any of these points involve, as he clearly suspects, attempts to wrongfoot him or cause him undue stress.

13. Turning to the evidence presented at the hearing, I heard from Mr Mundy, and on behalf of the company from:

    (a) Mr Tro Manoukian, Chief Executive Officer, who held the disciplinary hearing and imposed the final written warning;

    (b) Mr Lee McLaren, Production, and Health and Safety Manager, who carried out the investigation into Mr Mundy's first grievance, which complained about the disciplinary investigation being commenced;

    (c) Mr Cameron Nixon, Finance Director, who heard the appeal against the final written warning; and

    (d) Mr Adrian Brewer, an independent trustee, who was also on that disciplinary appeal panel and heard the subsequent grievance about harassment by Mr Manoukian.

14. The agreed bundle was of 313 pages and I also had the other 80 pages referred to above. The events in question are therefore well documented and there was little dispute over the facts themselves. The differences were almost all matters of perspective; on the respondent's case that they acted reasonably throughout and on Mr Mundy's case that they behaved wholly unreasonably in important respects. Each witness however did their best to explain things from their point of view.

15. Having considered that evidence and the submissions on each side, I make the following findings of fact. In the time available it is not possible to deal with every aspect of the evidence presented and I have focussed on the main points in order to explain my overall conclusion. Every judgment of this sort involves a selection of points but that should not be taken to indicate that all points have not been considered. In a case of constructive dismissal it is also important to focus on the reasons given for resigning at the time, which I shall attempt to do.

Findings of Fact

16. Medaax Limited is based in Langley, Macclesfield. It runs two related businesses from its premises there. The main one is Adamley Textiles, or Adamley, and the other is Biddle Sawyer, which only has three or four employees and some staff working across both companies. Overall there are about 27 members of staff, mostly working for Adamley.

17. Mr Mundy worked from home, in St Leonard's on Sea. But for that fact, this case would no doubt have been heard in the North West region.

18. The company manufactures silk and some similar fabrics. They also import some, and provide high quality printed fabrics and also finished items for formal occasions such as ties, pocket squares, scarves, cummerbunds and 'twillies'. They supply retailers, wholesalers and design houses and have a huge archive of patterns, usually with tight intricate designs. These are luxury products, with retail clients in Saville Row, Jermyn Street and the Burlington Arcade, but they also have international clients, particularly in the United States and Italy.

19. Mr Manoukian has been running the business for many years. At one point he gave the vast majority of his shares to the staff to set up an employee ownership scheme so the company has a number of trustees to oversee that scheme.

20. Mr Mundy worked there from February 2021 as a Sales Executive. To begin with he was reporting directly to Mr Manoukian but soon afterwards a Sales Director, Ms Federica Eusebio, was appointed, so he reported to her. There was one other Sales Executive, Mr Justin Duddan, and he too worked remotely.

21. Given the geographical reach of the company, Mr Mundy's role involved a good deal of travel. He would meet potential clients, take orders and then agree terms for the design, cost and quality of the material, also when and where it was to be delivered. Those orders would naturally then be passed on to the business to make sure they were fulfilled.

22. Mr Mundy was highly regarded. Mr Manoukian said in evidence that he was exceptionally happy with his performance, something he repeated with emphasis.

He was recognised to be an extremely hard worker and generated sales of nearly £500,000 a year. (I did not hear how much his colleague Justin accounted for, but this was considered an impressive figure).

23. I also heard that Ms Eusebio, as Sales Director, oversaw sales income as a whole of about £6 million but that is not really comparing like with like. No doubt there are established clients and other income streams that do not need sales activity to generate and maintain them. One client, Marinella, is also a shareholder of Medaax Limited, so they would, one assumes, naturally place their business with the respondent. As an aside, this is a company of Italian origin and Mr Mundy said that he joined Adamley because of his (Italian) wife's connection with Marinella.

24. It is often observed with sales staff however that admin is not necessarily a strength. Meetings with clients were meant to be recorded on the company's systems so that his managers could see what he was up to. Orders should be logged immediately because there is often time pressure in fulfilling them. (This is a seasonal fashion industry.) But it came to light that quite a few orders had been taken but not recorded.

25. Sales staff are often rather protective of their client relationships too, and here again Mr Mundy was quite typical. The expectation was that each client would also see Mr Manoukian or another director at least once a year, but over the last two years that happened in less than 10% of cases. In some cases he would arrange for clients to come to Macclesfield to discuss orders or design and printing, and still not introduce them to Mr Manoukian or Ms Eusebio.

26. All this was perhaps compounded by Mr Mundy's remote location on the south coast. He seems to have been given an entirely free rein. He filled his calendar with client visits, often in London, attended shows and events in the fashion world, some in Italy and some in the US, either in New York or Chicago, and orders flowed in.

27. There had however been some concern about the amount of hours he was working. He was known for sending emails at all hours. Mr Manoukian also became concerned that his efforts were not well thought out and that the travel was often to little effect. It is clear that there was a buildup of work and pressure in early 2024. This became particularly acute in February during which he worked 13 days without a break, including a trip to Chicago for a fashion show.

28. He did ask for some time off after that trip but on this occasion Mr Manoukian, usually very supportive, questioned the need for it. According to Mr Mundy's diary, he only had two appointments in Chicago, one for a small client and the other who

was based in New York and who could have been seen there instead. There was no formal process for requesting TOIL and no record of their discussion on this occasion, but faced with this quizzical response Mr Mundy kept on working.

29. Then on Sunday, 25 February, he was taken ill. The following day he emailed Mr Manoukian, to say that he was unwell, vomiting and needed the day off. He said it must be something he had eaten. That evening however he emailed again to say that he had been in bed most of the day and felt exhausted. Although he did not say so, the real problem was with his mental health. He was still preoccupied with work matters though and added that he had logged in because he did not want to fall behind and was concerned about an order from a client for pocket squares.

30. Mr Manoukian responded the following morning, clearly concerned about his situation. His reply indicates that he was aware of the likely cause of the problem:

> "I always worry about you and we need to look at your workload properly again. In your role there are periods throughout the year [when] capacity is at a maximum. We've gone through a number of ways you can balance your work life balance. One point I have raised several times before with you which I feel I now have to insist on is that you do not work weekends and when you are not well you should not be logging on to raise further orders, customers can wait a day or two. …
>
> I do not want you to travel this week. I cannot see who you are seeing in London on Thursday as it doesn't seem to be noted on the shared calendar. I insist that I see all of them. I also think it is important you do not travel to Adamley this week you should rest.
>
> Taking everything into consideration it may be a good idea to review your travel, particularly to NY and London. We may need to give that an overhaul to help you."

31. In the context of their previous discussions, this was all entirely appropriate and well-intentioned. It is also hard to see how he could have been firmer in asking him not to travel to Macclesfield that week without giving offence.

32. But he did come. Mr Mundy had arranged to meet clients there on Friday. They were coming over from the US for that purpose. He felt it was important for him to be there. Mr Manoukian agreed, reluctantly, that he could come up for that meeting. Nevertheless, he insisted that Mr Mundy come up by train on the Thursday, stay over the night before in Macclesfield, and do no other work in the meantime.

33. At that stage Mr Mundy had not been signed off sick, and did not declare himself off sick, but he had made clear by email that he felt exhausted and burnt out.

34. From Mr Manoukian's point of view, at least his arrival in the office allowed for the chance to have a face to face meeting, to see how he was, and perhaps discuss ways of reducing his workload. So, when Mr Mundy arrived at about 9 am on the Friday morning, Mr Manoukian invited him to come in to the boardroom to have a meeting. That was the only room available for meetings. Ms Eusebio, his line manager was there too, and Mr Cameron Nixon, the Finance Director, who also had responsibility for HR.

35. Mr Mundy was understandably apprehensive about being ushered into the presence of three senior figures, and had had no notice of the meeting. He described it in his evidence as an ambush. Perhaps more could have been done to reassure him in advance, but there was no ill will on the part of the managers. They were concerned for him and the main item of business, from Mr Manoukian's point of view, was to discuss which clients Mr Mundy might want to hand over the Ms Eusebio to lighten the load. The message was repeated that he should not be working weekends and after hours and there was a discussion about passing over clients. This is always a sensitive subject as client relationships are the foundation on which sales are built.

36. However, Mr Manoukian had clearly looked into it in some detail and had identified that of the total number of over 150 clients on Mr Mundy's list, only 30 produced orders of over £5000 a year and he wanted Mr Mundy to concentrate on them. He also wanted Mr Mundy generally to address his working pattern and to weigh up the value of the travel he undertook. In his evidence he pointed out, for example, that it was not a good use of his time to travel to London to collect a sample of material from a client, which could simply have been put in the post. (The original intention had been for him to pop in and see this client in London on the way up to Macclesfield that week.) Mr Mundy saw things differently. London was on his way and this was an opportunity for some contact with the client, but Mr Manoukian's broader point was that such visits were non-essential and something drastic needed to be done to reduce the number of hours Mr Mundy was working.

37. None of this was welcome from his point of view. And his point of view was heavily affected by the mental strain he was under. It is commonly observed that a response to stress includes anxiety and hypervigilance, and that would certainly explain the defensive approach he took to any attempt to reduce his client base and restrict his travel. In fact from that meeting onwards he interpreted these moves on the part of the company and from Mr Manoukian in particular as hostile and to be thwarted if possible. There was therefore never any meeting of minds or any acceptance on his part that things needed to change.

38. The following week, on 4 March 2024, Mr Mundy was signed off with work-related stress for two weeks. It was not clear at that point that this was the start of a long period of sickness absence and in fact he never returned to work. Ms Eusebio had to pick up his work, which she did for the next 12 months, although no doubt on a very much reduced basis without any of the travelling to see clients. In the meantime Mr Manoukian made arrangements for a return to work meeting. He was also of the view by that time that steps needed to be taken to address his performance, "or the lack of it" as he put it in an email on 12 March to Ms Eusebio [122]. That view is difficult to reconcile with his statements in evidence to the effect that he was extremely happy with Mr Mundy's performance. I conclude that the true position is more complicated and lies somewhere between these two extremes, i.e. he recognised that Mr Mundy was very hard-working and was producing plenty of orders but he was not following company procedures in various respects and leaving a good deal of outstanding work in his wake.

39. It had been necessary to go through Mr Mundy's emails to see what urgent work was outstanding and that email notes that a number of things had come to light. Orders had been taken without any handover being given. There were 15 orders which had been identified which had not yet been processed, i.e. properly recorded, some going back to February and with key clients. A significant amount of design work had not been processed. Some changes had been made to an order for design reasons and that information had not been passed onto the customer, who was unhappy. And the tone of some of his emails was concerning, for example telling customers that he was no longer permitted to work past 5 pm and that he was exhausted. He had forwarded at least one email to his private email account including a customer email address. He had an Instagram profile with a small following of customers, which he might be able to use if he went elsewhere. Finally there was a complaint from one particular client who was very unhappy with him. Mr Manoukian stated:

> "Her assessment of Christopher was damning to the point where she said they were considering leaving us. She has asked that he is removed as the Adamley contact permanently. I have agreed to that."

40. These were serious concerns which, he felt, needed to be raised with Mr Mundy. He had no great concern about doing so at that stage. He assumed that it would be a short absence and they could discuss these points in a straightforward way on his return. Indeed that email opens with the words

> "I'm hoping Christopher will be back at work on Tuesday next week."

41. The fact was that he had just met Mr Mundy, discussed business and workload, and there was nothing to suggest that there had been any deterioration in his

condition since then. However, he said nothing about these points for the time being.

42. Mr Mundy did not of course come back to work the following Tuesday so the situation was not so clear cut. Mr Manoukian then had something of a dilemma. He could leave everything until Mr Mundy was back or he could let him know that these things were being looked into. As Mr Wood submitted, he was in something of a no win situation. If he left things until Mr Mundy was back and then surprised him with these allegations, he would be criticised. It would be seen as unfair. On the other hand, if he raised them now it might appear that he was trying to get rid of Mr Mundy and there was also clearly a risk that it would cause him additional stress while he was off sick.

43. I am satisfied that there was no intention on his part to dismiss Mr Mundy, as he later emphasised at various points during the disciplinary process. His main priority was for Mr Mundy to change the way he was working, which was clearly not sustainable. Some of these performance concerns, about his record keeping and handing over information, were part of that broader concern about how he was using his time, which he felt would be beneficial for Mr Mundy to address. Others were about his professionalism in dealing with clients and also his efforts to keep them to himself.

44. That is the background to the telephone call he made to Mr Mundy on 20 March. Ostensibly, it was a welfare check, and in fact Mr Mundy's recollection was that there was no specific mention of an investigation but that Mr Manoukian said they needed to see if there was something in the way he was working that had caused the situation. Mr Mundy added that despite there being no mention of a disciplinary process "it did spook me". Mr Manoukian also told him that he would send out a letter to record that the conversation had taken place.

45. That letter arrived the next day and did make clear that it was a disciplinary investigation. It referred to three particular issues: processing orders in a timely manner, processing design work in a timely manner and unsuitable emails being sent to customers. Perhaps optimistically, it proposed an investigation meeting on Wednesday 27 March 2024 via Teams, but that day, 21 March, Mr Mundy was signed off again for a further two weeks.

The first grievance

46. On 27 March Mr Mundy submitted a grievance about this course of action, addressing it by letter to Mr Nixon, in his capacity as HR manager. He explained how anxious this letter about an investigation had made him, causing chest pains,

diarrhoea and breathlessness, resulting in him being signed off again. He said that this letter had severely impacted his recovery.

47. This should have given the company pause and perhaps to put matters on hold for the time being. It would also have been sensible to reassure him that there was no threat to his position. Whether that would have been enough is unclear. Quite possibly, the damage was done. Even if the disciplinary process was halted, he would have these allegations hanging over him for the remainder of his time off sick. Mr Nixon took some advice about how best to proceed. That advice may not have taken into account all of the circumstances, and I do not of course know what it was, but the upshot was that Mr Mundy's letter was dealt with in accordance with the company's grievance procedure and that the disciplinary investigation was put on hold in the meantime. The difficulty with that course of action is that formal processes were engaged while Mr Mundy was off sick and positions became entrenched.

48. This decision will become unnecessarily long if each step in those proceedings is described in any detail. Suffice to say that the grievance investigation was assigned to Mr Lee McLaren, whose role at that time was Production and Health and Safety manager. It was not a comfortable position to be in since it involved hearing a grievance about something which the Chief Executive had done, but the company was doing its best to follow the appropriate procedure in difficult circumstances.

49. The specific issue he was asked to look into was the decision by Mr Manoukian to open an investigation into these matters. He held a meeting with Mr Mundy and also with Mr Manoukian and Ms Eusebio so it was a conscientious exercise to examine the reasons behind that decision. Mr Mundy raised his concerns about the amount of hours he was working and the lack of any stress risk assessment. He also argued that this was a breach of the company's policy on stress in the workplace which provides:

> The Company will immediately investigate any stress related incidents reported to them, via the Health & Safety officer by:
>
> Assessing the risk
>
> Taking action to minimize the risk
>
> Monitoring the risk"

50. On that basis, he said that the allegations should be halted, and preferably dropped, to minimise the risk. He also referred Mr McLaren to the ACAS guidance on Disciplinary or Grievance procedures which states:

> "A disciplinary or grievance procedure can be very stressful. An employer should carefully balance the employee's well being and the need not to delay a procedure unnecessarily."

51. After speaking to the others, Mr McLaren arranged a further meeting with Mr Mundy on 15 April to give him the grievance outcome. Mr Mundy was expecting that he would have an opportunity to present further evidence at that meeting, so he was taken aback to be told at the outset that his grievance was not being upheld.

52. The outcome was confirmed in writing on 15 April 2024. He concluded:

> " Although the timing of the notification to yourself that an investigation into your actions is being raised… is not ideal while you are currently on sickness leave… I believe that the business has a right to inform any employee as soon as possible that they are to be under investigation. Delaying to inform you would not be the correct action to take.

53. In reality there was little alternative and a grievance process was ill suited to a question of this sort. As the ACAS guidance makes clear, there is a balance to be struck and Mr Manoukian had made a decision that seemed most appropriate to him in the circumstances. An employer is expected to inform an employee about performance concerns and although they might reasonably delay that while the employee is off sick, there is no hard and fast rule that that must be the case.

54. Mr Mundy appealed that decision and that led in due course to an appeal hearing with Mr Nixon on 25 April. He took the same view as Mr McLaren and so the grievance process concluded that day.

55. The following day the disciplinary process resumed and Mr Mundy was invited to an investigation meeting. The invitation letter came from Mr Manoukian. This time the list of concerns had expanded somewhat, with two additional points – undermining management and refusing to take direct instruction from management. No details were given of those allegations, or indeed of any of them, which would have added to Mr Mundy's uncertainty and confusion.

56. The letter explained that an investigation would be carried out by Ms Eusebio and proposed an investigation meeting on 2 May, again by Teams. In the event it took place on 13 May. Her investigation report followed the next day. She concluded that there was evidence of inappropriate emails being sent to customers, of management instructions being ignored, of a delay in processing orders and breach of GDPR and also of the policy on anti bribery and corruption.

57. This last item related to email correspondence which had been located from 2023 between Mr Mundy and the Duke of Richmond, who is the owner of the Goodwood Estate. The Goodwood Estate is a client or customer of the company. To briefly relate matters, Mr Mundy explained at this hearing that he had a personal connection with the Duke, that he had met him in a previous role, as had his father, and that the Duke had kindly offered Mr Mundy and his father a day out at the Goodwood Festival of Speed shortly before his father passed away. That had been an important memory for Mr Mundy and he happened to see the Duke of Richmond again, by chance, in Sackville Street, in the course of visits to clients. He had approached him, thanked him for the previous tickets and told him how much it had meant to his father. The Duke then made him an offer of another pair of tickets on another occasion and so they parted. Afterwards, he received an email in somewhat standard form from the Goodwood Estate inviting him to the Festival of Speed. Mr Mundy could not however attend that day and had written back to see whether it would not be possible to have tickets to another event, such as the Goodwood Revival in the autumn, and that prompted a personal email from the Duke assuring him that he could.

58. Mr Mundy's position therefore was that this was an entirely personal connection and not an attempt by the Duke to bribe him in any way. Mr Manoukian saw it in a different light. The original email had not been a personal one from the Duke but had come from a Goodwood Estate email account, in standard form for corporate hospitality, and there was a risk that it might be considered an inducement to provide goods on more favourable terms. In any event, the policy provided that if in doubt he should consult his line manager about it, which he had not done.

59. Following that investigation report Mr Mundy was invited to a disciplinary hearing to take place on 30 May 2024. This time, the invitation letter was far more detailed. Evidence was listed and enclosed including the various emails in question and a list of orders which had not been written up before his absence. There were 16 of these in total going back to 13 February. It added that there had been a verbal conversation with Mr Manukian and a particular client regarding "the catastrophic handling of the account that has led to zero developments as a consequence of your involvement of the customers Christmas 2023 orders."

60. All this was now considerably firmer in tone and the net had been cast much more widely than the initial performance concerns. It is hard to avoid the impression that the grievance process had led to a hardening of attitudes on the company's part. That is understandable however. Mr Mundy's grievance inevitably personalised matters between him and Mr Manoukian and made it clear that he

did not accept any of the criticisms or the need to make changes, so firmer measures were going to be needed to bring those changes about.

The disciplinary hearing

61. The disciplinary hearing itself appears to have taken place without any undue difficulty. Mr Manoukian went through the various concerns in turn. One of the emails to a client from Mr Munby referred to him overriding the decision of the CEO and Sales Director, which was clearly unprofessional. The allegation about it ignoring an instruction from a director was about accessing his emails outside normal working hours, which he had not stuck to. There were several such concerns. The GDPR breach was about emailing the invitation to the Goodwood event to his home email account.

62. The main concern about the outstanding orders was that he had never said anything about it, never told his managers that they were outstanding or asked for any help with them, the facts had had to be ascertained by going through his emails.

63. There was then a broader discussion about the way he worked, compared for example with the approach taken by Ms Eusebio, and why for example he had put himself forward for a long trip to Chicago when he was overwhelmed with work and had outstanding orders. He questioned why he was so reluctant for directors to meet any of his clients. In that context Mr Manoukian raised an incident from 2022 involving a visit to the Marinella store in London. There had been a disagreement with the client so Mr Manoukian and Ms Eusebio had gone to visit them to smooth things over. While they were in the course of that meeting Mr Mundy was shown in. He said that he had just been passing and had wanted to drop in a thank you letter of some sort. Mr Manoukian plainly considered that he had some ulterior purpose and was concerned about a client speaking directly to the directors. That incident did not however form part of the specific disciplinary allegations and was not referred to in the outcome.

64. That outcome, given on 31 May 2024 was for a final written warning. That reflected Mr Manoukian's view that these were serious issues, taken in the round, and that there needed to be a distinct change in Mr Mundy's approach and his way of working from then on. The outcome letter stated that an improvement was expected within six weeks and that the likely consequence of insufficient improvement is a further disciplinary procedure which might result in dismissal.

65. Some of the terminology used is appropriate for a disciplinary procedure and some for a capability procedure, which reflects the fact that there was no separate capability procedure. (The ACAS Code of Practice says it is appropriate for small

companies to deal with both types of concern under a disciplinary procedure). It may well however have heightened concern on Mr Mundy's part.

66. Mr Mundy appealed that decision on 6 June. There was then an appeal hearing on 12 June with Mr Nixon and Mr Adrian Brewer, another of the witnesses, who is also one of the trustees. They decided to reduce the sanction to a written warning. There was little explanation for that decision in their statements and so I asked them to expand. Each simply felt that a final written warning was too harsh, particularly as Mr Mundy was a hard worker who was (generally) performing well.

67. Mr Nixon went to see Mr Manoukian before giving that decision and told him their view and Mr Manoukian raised no objection. Unfortunately that still did not resolve matters even though it made it much less likely that the process would or might result in dismissal. By this stage Mr Mundy had been off work for several months. There was no immediate prospect of any return. He felt too bruised by these criticisms to consider doing so.

68. Mr Manoukian made other efforts to reassure him that his job was not at risk and there were attempts to get a mediator to help in the return to work process. That began with the suggestion of an internal manager, Jan Hancock, but that did not find favour, and then there were efforts in late June to appoint an external mediator. That arrangement broke down because Mr Manoukian felt that it would be better to conclude the disciplinary process, to draw a line under those issues, before going on to mediation, rather than having the two processes running in parallel. That too makes clear that dismissal was never on the cards. Mr Mundy did not agree to that proposal, but apart from any issue over the timing, the likelihood is that he was not then ready or willing to contemplate a return to work and so resisted attempts at mediation.

69. That fact is demonstrated by his decision on 10 July 24 to raise a further grievance against Mr Manoukian, this time presented as an allegation of harassment. This was essentially a re-statement of the earlier grievance. He alleged that Mr Manoukian was using the disciplinary process as a means of harassing him. The company could have declined to consider the same point again, but they did consider it as a further grievance, and this time it led to a grievance hearing with Mr Brewer, who had been part of the panel at the disciplinary appeal stage. On this occasion however he could see no harassment or inappropriate conduct on the part of Mr Manoukian in trying to address that decision.

70. That led to a further appeal, by which time the company was running out of managers. The appeal meeting took place on 15 August and was held by Ms Gemma Mortimer, who worked in the Biddle Sawyer part of the business. Again, she came to the same conclusion and rejected the appeal, stating briefly that she

could see no evidence to support it. He resigned shortly afterwards, with immediate effect, on 19 August 2024.

71. The resignation letter was a fairly long one. It states that the final straw was the failure to uphold his appeal in respect of his grievance. He insisted that the whole disciplinary process was an act of harassment by Mr Manoukian, citing the original email of 12 March 2024 referring to his performance "or the lack of it" – a document which he presumably obtained via a subject access request. The letter went on to say that there should have been an independent person to deal with the disciplinary hearing, that insufficient consideration had been given to the workload and pressure he was under, and that a fair and reasonable employer would never have made such serious allegations against him, such as breach of data protection and in relation to bribery. He singled out the Marinella incident as criticising his behaviour at a time when he was on compassionate leave because of his father's funeral and also raised a more recent concern which had arisen in relation to RPR payments.

72. That issue related to the company's employee ownership reward scheme. There is a periodic bonus which is awarded to staff. Over the summer Mr Nixon, as Finance Director, had noted that Mr Mundy had been overpaid under this scheme. The criteria included attendance, and the amount paid was reduced in proportion to the number of days off sick. However, it was also decided not to recover any money from him.

73. A little later there was a more general change to the policy. Mr Manoukian announced that it would not be paid at all to staff who were off for 12 weeks or more in any 6 month period. Mr Munday felt that that change was aimed at him, although no deductions were ever made on that basis. He noted that this was a contractual entitlement. Clause 4.2 of his contract of employment, however, merely notes that the company operates such a scheme.

Applicable Law and Conclusions

74. Turning to the applicable law, constructive dismissal is not in fact a term used in the Employment Rights Act 1996, but section 95(1) gives the legal definition of a dismissal, and it includes where:

> (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.

75. So there have to be circumstances justifying the employee in downing tools and walking out. In legal terms, there has to be a fundamental breach of contract by the employer. In cases of constructive dismissal that usually means a breach of

what is known as the implied duty of trust and confidence. According to the House of Lords in the case of **Malik v BCCI** [1997] UKHL 23 that happens where an employer conducts itself:

> "… without reasonable and proper cause, in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence".

76. Or as Wilkinson J. put it in **Woods v WM Cars (Peterborough) Ltd** [1981] ICR 666, whether:

> "the employer's conduct as a whole … is such that its effect, judged reasonable and sensibly, is such that the employee cannot be expected to put up with it."

77. Mutual trust and confidence can be undermined by the way in which an employer carries out a disciplinary procedure, although such situations are rare. In **Stevens v University of Birmingham** 2017 ICR 96, QBD, the High Court held that the University had committed such a breach by refusing to allow the claimant to be accompanied by the person of his choice at an investigatory meeting into his alleged misconduct. Although there is a right to be accompanied by a work colleague or trade union representative, the University refused to allow him to be accompanied by a representative from the Medical Protection Society (MPS) who serve a similar function to a trade union. The court regarded this as "patently unfair" which indicates the sort of situation required for the conduct of a disciplinary process to amount to a breach of the implied term.

78. Clearly employees are not entitled to resign whenever they are invited to a disciplinary hearing. That would defeat the purpose of the process, which is designed to deal with cases consistently and fairly. Even if the employee knows that the accusation is groundless, he or she should go along and explain why. It would be different if both employer and employee knew that the accusation was groundless. In that situation the disciplinary process would be a charade and would be calculated to destroy the relationship. But the conduct does not necessarily have to be so stark.

79. This is not a case where the allegations were without foundation. Overall, it is clear that there were real concerns about unprocessed orders, communications with clients and other activities. Mr Munday may have felt that they were unjustified, but viewed objectively – judged reasonably and sensibly to quote again the test in **Wood**, these are things that the company was perfectly entitled to treat seriously. Perhaps the most serious concern in practice was the build-up of orders, and the fact that Mr Munday did not make anyone aware of the extent of the problem or ask for help.

80. They were not raised with hostile intent, with a view to dismissing him, and reassurances were given at various stages to the effect that that was not the outcome anyone wanted. The tone of some of the letters may not have been quite in keeping with that message but it was clear from the evidence of the respondents witnesses generally that he was highly regarded and that was a large reason why the sanction of final written warning was downgraded. That decision alone ought to have sent a clear message that there was no reason why Mr Mundy could not return to work with the company. There is some logic in jumping before you are pushed, but it is less easy to understand a decision to leave when there is no such risk.

81. Of course there is an issue over whether it would not have been better to have left things until he returned to work. It is impossible to know whether that would have made any difference in practise or whether Mr Mundy would have reacted in a very similar way if presented with these allegations on his return or within a reasonable period of time after his return. Regardless of which approach was the best one, there were pros and cons to each course of action and a decision had to be made. That is the fundamental feature here. The approach taken on this occasion was not extreme or unusual in any way. It is not necessary for me to decide the point but my inclination would have been to wait until he returned. Nevertheless I can see arguments to the contrary, and the concerns were raised at a time when it was not obvious that he would be off so long or might react so badly.

82. This is not a case in which the company was trying to apply pressure on Mr Munday to go. They wanted him to stay, so their actions were certainly not *calculated* to destroy the relationship. The next possibility is that these actions were *likely* to bring that about. That of course depended on the reaction from Mr Mundy, which they were not in a position to control, but again the lack of any real threat of dismissal indicates that most people, even those off sick with stress, would not have had that reaction; would not, in short, have resigned over it.

83. It that is wrong for any reason, the other part of the test in **Malik** requires that the actions of the company were "without reasonable and proper cause". At the risk of labouring the point, there was a reasonable and proper cause for each of the allegations made. That applies equally to the decisions in each of the grievance processes, which concluded that it was legitimate to inform Mr Munday about these issues even though he was off sick and to carry out an investigation.

84. For completeness, the stress at work policy did not provide any sort of trump card, so as to prevent Mr Manoukian starting a disciplinary investigation while he was off sick. Again, it was a question of balance. Similarly, there was no express breach of contract in relation to the PRP scheme, which I do not accept was aimed

at Mr Munday personally. In any event, it is clear that he did not resign over this, even though it was mentioned in the resignation letter. The real cause of the resignation was that this disciplinary action was taken against him, and he did not accept – does not accept – that it was valid.

85. Finally, complexities can arise in cases where there is said to be a build up of things and then a final straw that causes the employee to resign. Sometimes people take too long before doing so and it is said that they have accepted the decisions in question and decided to put up with things – known as 'affirming the breach'. That was not suggested here.

86. In such cases, there is still a requirement to show that there was a course of conduct which, viewed as a whole, amounted to a repudiatory breach of the implied term of trust and confidence, and for the reasons already given, things never reached that stage.

87. Accordingly, the claim must be dismissed.

Employment Judge Fowell

Date 26 September 2025

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