



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002752/2025 Hearing at Inverness on 26 February 2026

Employment Judge: M A Macleod

Mandy Truslove

**Claimant
In Person**

Simpson Plumbers Ltd

**Respondent
Represented by
Mr D Adams
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant's claim fails, and is dismissed.

REASONS

1. The claimant presented a claim to the Employment Tribunal on 10 November 2025, in which she complained that she had been unfairly constructively dismissed by the respondent.
2. The respondent submitted an ET3 response in which they resisted the claimant's claim.
3. A Hearing was listed to take place in Inverness on 26 and 27 February 2026. As it turned out, the Hearing concluded on 26 February, and the second day was vacated. The claimant appeared on her own behalf, and the respondent was represented by Mr Adams, solicitor.

4. A Joint Bundle of Documents was prepared and presented to the Tribunal. The claimant brought with her a USB stick which had on it the recording which she had taken on her phone within the office in May 2025, but given that the transcript was already in the bundle (35ff), and the recording had not been provided in advance, I confirmed that the Tribunal would not listen to it during the Hearing.
5. The claimant presented witness statements in respect of herself (28ff) and her partner, Robert Meek (32ff). I explained to the claimant that the Tribunal would accept the witness statement as her evidence in chief, but would also take account of the terms of the handwritten notes and the transcript of the recording, to the extent that they were relevant. I asked the claimant a number of additional questions and then both the claimant and Mr Meek were cross-examined by Mr Adams.
6. Mr Iain Simpson, director of the respondent, gave evidence for the respondent.
7. Based on the evidence led, and the information provided, the Tribunal was able to find the following facts admitted or proved.

Findings in Fact

8. The claimant, whose date of birth is 29 June 1974, commenced employment with the respondent on 11 July 2022. The respondent operates a business supplying plumbing services in Elgin and the wider area. The claimant was employed as an Accounts Administrator.
9. The claimant worked alongside Mr Simpson, the director, together with his father Mr Alec Simpson, another director. Both Mr Simpsons would be in the office from time to time. Mr Iain Simpson would be present in the office approximately 80% of the week, and Mr Alec Simpson for much less than that.
10. In addition, there were two other administrators in the office, by the names of Leona and Kay. The office tended to be very busy, with an average of 70 to 80 phone calls being received each day, as well as plumbers and customers coming into the office with queries.
11. Until approximately June 2023, the claimant felt that she had a good working relationship with Leona and Kay, but that thereafter she was excluded from work-related conversations in which she should have been involved, and as a result considered that it was difficult to carry out her role. When she raised questions with them, she found that they became impatient towards her.

12. On or around 27 May 2024, the claimant spoke to Mr Simpson about Kay. On that day (a Monday), the claimant asked Mr Simpson why Kay was not speaking to her during the day. Mr Simpson responded by saying that Kay was not speaking to him either, as she was feeling unwell. She went home early either on that day or the following day because she was unwell. The claimant may have made reference to feeling isolated within the office and excluded by Kay, but Mr Simpson took the view that she was referring only to the situation on that particular day, and was satisfied that he had given the claimant an explanation as to why Kay had not spoken to her.
13. Mr Simpson took no further action about this matter as he did not understand that he needed to do so.
14. Within a short period thereafter – the claimant said it was approximately 4 days later, within the same week, whereas Mr Simpson thought it was the following week – another issue arose. Mr Simpson had been out of the office seeing a customer, and returned to the office in the later afternoon, shortly before 4pm. It was clear to him when he arrived that something had taken place in his absence, and that both the claimant and Kay were upset and wished to speak to him.
15. In summary, there was a short discussion in the office involving the 3 of them together. Kay expressed the view that the claimant was “not pulling her weight”, and the claimant said that she was not receiving sufficient support or help from Kay and Leona. The discussion was relatively brief, and Mr Simpson sought to calm everything down, and to remind them that in a small office, which was extremely busy at times, it was likely that people would become stressed. However, he suggested to them that they needed to find a way to get on with each other.
16. At the end of the discussion, it was nearly 4pm, and since that was the time when Kay would finish each day, she left shortly afterwards to go home.
17. Again, Mr Simpson took no action as he did not understand that he needed to do so.
18. No further specific complaints were raised by the claimant with Mr Simpson. At no stage did she submit a written complaint or grievance to Mr Simpson about her ongoing treatment in the office by Kay and Leona. The respondent does not operate a written grievance procedure, and in any event, the claimant considered that it would be pointless to raise such a complaint as she felt that Mr Simpson had not handled the two incidents in May 2024 in such a way as to inspire confidence in her.
19. The claimant began to make notes of her interactions with her two colleagues, starting on 4 May 2024. She referred to these notes (51ff) in

evidence. When asked about these notes, Mr Simpson said that he had only seen them when they were sent through as part of the bundle for this Hearing, and that he was very surprised to read what the claimant had noted there. The claimant did not raise concerns about Kay and Leona to him other than on the two occasions in May 2024.

20. Mr Simpson was in the office and therefore in the company of the three administrators on a regular basis, and did not consider that any action was necessary during the claimant's employment.
21. In approximately mid-May 2025, the claimant sought alternative employment, and was interviewed for a post based in Peterhead. She was successful in her application, and received a phone call from her prospective new employer to advise her of this. Shortly thereafter, she submitted her resignation to the respondent (27) on 22 May 2025.
22. The terms of her resignation letter were as follows:

"Dear Iain,

Please accept this as notice of my resignation from the position of Accounts Administrator at Simpson Plumbers Ltd.

Since my notice period is 4 weeks, I believe my last day will be Friday 20th June 2025.

Having a total of 13 days holiday up till 20th June 2025 I have only used up 9 days so will have 4 days remaining to take. I will use these remaining days on my final week and will cease my employment on 16th June 2025.

Thank you for the support you have given me during my time here at Simpsons Plumbers Ltd. Please let me know if there is anything you need from me before I leave.

Yours sincerely

Mandy Truslove"

23. The claimant brought the letter to the office and handed it to Mr Simpson in an envelope. She advised him that she had got a new job in Peterhead, and that she was handing in her notice. The conversation was pleasant and straightforward, and she gave no indication that she was unhappy at that time.
24. When the claimant left the respondent's employment, a small leaving gathering took place, and she was presented with flowers and thanked for her time with the company. In addition, she was advised that there would be no charge for the work which the company had carried out in her home. The

invoice for the work was cancelled. The claimant was not expecting this, and considered it to be a very kind gesture.

25. The respondent believed that the claimant had therefore left their employment on good terms.
26. After the claimant had handed in her notice, on 27 May 2025, she left the office for a time. Before doing so, she left her phone on or near her desk, with the recording button pressed. As a result, she obtained a recording of a conversation between Kay and Leona in her absence. A transcript of the conversation was produced (35ff) though the Tribunal did not listen to the recording itself.
27. The claimant considered that the transcript demonstrated and proved what she had always said about her colleagues, namely that they were speaking in a derogatory manner behind her back while she was not in the room. Mr Simpson expressed surprise about this partly because he was not aware of the recording while she was still employed, and partly because the claimant had never drawn this to his attention during her employment.
28. The recording was made after the claimant tendered her resignation. No opportunity was available to ask Kay and Leona whether the transcript was an accurate record of the conversation.
29. The claimant commenced her new employment in Peterhead on 23 June 2025. In her new employment, her earnings are slightly higher than those she received when working for the respondent.

Submissions

30. Parties made short oral submissions to the Tribunal in support of their respective cases.

The Relevant Law

31. Section 95 of the Employment Rights Act 1996 ("ERA") sets out the circumstances in which an employee is treated as dismissed. This provides, inter alia:

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

...

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he

is entitled to terminate it without notice by reason of the employer's conduct."

32. Where a claimant argues that there has been constructive dismissal a Tribunal requires to consider whether or not they had discharged the onus on them to show they fall within section 95(1)(c). The principal authority for claims of constructive dismissal is **Western Excavating -v- Sharp** [1978] ICR 221.

33. In considering the issues the Tribunal had regard to the guidance given in **Western Excavating** and in particular to the speech of Lord Denning which gives the "classic" definition:

"An employee is entitled to treat himself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him to leave at once. Moreover, the employee must make up his mind soon after the conduct of which he complains. If he continues for any length of time without leaving, he will be regarded as having elected to affirm the contract and will lose his right to treat himself as discharged."

34. The **Western Excavating** test was considered by the NICA in **Brown v Merchant Ferries Ltd** [1998] IRLR 682 where it was formulated as:

"...whether the employer's conduct so impacted on the employee that, viewed objectively, the employee could properly conclude that the employer was repudiating the contract. Although the correct approach to constructive dismissal is to ask whether the employer was in breach of contract and not did the employer act unreasonably, if the employer's conduct is seriously unreasonable that may provide sufficient evidence that there has been a breach of contract."

35. What the Tribunal required to consider was whether or not there was evidence that the actions of the respondents, viewed objectively, were such that they were calculated or likely to destroy or seriously damage the employment relationship.

36. The Tribunal also took account of the well-known decision in **Malik v Bank of Credit & Commerce International SA** [1997] IRLR 462, in which Lord

Steyn stated that *“The employer shall not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.”*

37. It is also helpful to consider the judgment of the High Court in **BCCI v Ali (No 3)** [1999] IRLR 508 HC, in which it is stressed that the test (of whether a breach of contract amounts to a breach of the implied term of trust and confidence) is *“whether that conduct is such that the employee cannot reasonably be expected to tolerate it a moment longer after discovering it and can walk out of his job without prior notice.”*
38. In **Jones v Collegiate Academy Trust** UKEAT/0011/10/SM, the EAT stated: *“It is important to note that an objective test is to require whether the conduct complained of is calculated or likely to destroy or seriously damage the relationship; the subconscious intent of the respondent is irrelevant as the Employment Tribunal correctly held... The subjective perception of the employee is also not relevant. The respondents’ conduct must be repudiatory in order to establish a breach of the implied term; it must be conduct by the respondent which objectively considered it likely to undermine the necessary trust and confidence in the employment relationship.”*
39. **Omilaju v Waltham Forest London Borough Council** [2005] 1 All ER 75 is helpful in considering whether or not the resignation of an employee is a response to a last straw in a series of acts by the employer which amount, together, to a fundamental breach of contract. It is noted in that judgment: *“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.”* This endorses the view of the court in **Lewis v Motorworld Garages Ltd** [1985] IRLR 465: *“The breach of this implied term of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In particular in such a case the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term?... This is the ‘last straw’ situation.”*
40. The Tribunal also took into account the Employment Appeal Tribunal decision in **Wright v North Ayrshire Council** UKEATS/0017/13/BS from June 2013. In that case, having examined the line of authorities relating to

claimants who resign for more than one reason, Langstaff J cautioned against seeking to find the “*effective cause*” of the claimant’s resignation, but found that Tribunals should ask whether the repudiatory breach played a part in the dismissal.

Discussion and Decision

41. In this case, the claimant complains that the respondent acted in such a way as to undermine the fundamental terms and conditions of the contract of employment, and maintains that she resigned in response to what thereby amounted to a repudiatory breach of contract.
42. It is important, firstly, to identify the alleged breach or breaches of contract relied upon by the claimant in this case.
43. The claimant’s case was essentially that over a period of time between approximately June 2023 and May 2025 she was treated with disrespect and on occasions bullied by her work colleagues in the office, namely Kay and Leona, and that the respondent failed to deal properly with the complaints she raised when she brought these matters to their attention. As a result, she maintains that she had no option but to resign from her employment with them.
44. The two particular issues raised by the claimant took place within a short space of time in May 2024, probably on 27 and 31 May or thereabouts.
45. On the first occasion, the claimant’s position is that she said to Mr Simpson that she felt isolated and excluded within the office environment by Kay. Having heard the evidence of both the claimant and Mr Simpson, I have concluded that she did not clearly make a broad-ranging complaint that she had been treated in this adverse and unhappy manner over a period of time, but that on that day, Kay had not spoken to her and made her feel excluded. She may have intended it to be a wider complaint, but in my view she did not make that at all apparent to Mr Simpson.
46. Mr Simpson, who gave evidence in a straightforward and honest manner, explained that Kay had not spoken to him that day either, but that was because she was unwell. He felt satisfied that he had explained to the claimant why Kay had behaved the way she did on that occasion.
47. In my judgment, there is nothing in this complaint. The claimant was not clearly complaining about a long-term issue, but about what had happened on the day in question. She left the matter after that and did not make any further complaint about what had happened to that point.
48. The second occasion does not rise to the level of a specific complaint to Mr Simpson, but an argument between the claimant and Kay which they continued when he returned to the office. Both made criticisms of the other.

Mr Simpson chose to discuss the matter with both of them at the same time and considered that no further action was required at that stage. He concluded that at the end of a stressful and busy day the two individuals had had an argument, and he hoped that that would be an end of it.

49. Again, in my judgment, the claimant did not submit a complaint to the respondent, nor did she clearly ask or require him to do anything in response.
50. Before the Tribunal, the claimant sought to demonstrate that there had been a long-standing and consistent course of conduct by the claimant's two colleagues against her up to the point where she resigned. She pled her diary notes in support of that assertion. However, the issue for the Tribunal to determine was whether the respondent acted in such a way as to undermine the fundamental terms and conditions of the contract, and it is quite clear from the evidence that apart from these two occasions in May 2024, the claimant never raised this issue again. In such circumstances, the respondent cannot be fairly criticised for not taking action to support the claimant as they were unaware that she remained so dissatisfied that she would be likely to resign.
51. A number of points require then to be made;
 - The claimant complained that she felt there was no point in raising the matter with Mr Simpson again because he had taken no action in May 2024. In my view, this is not a justifiable view on the part of the claimant. She did not clearly raise any complaint or grievance about the manner in which she was being treated by her colleagues, but raised two points in relation to Kay, but without any indication that further action would be required.
 - She said nothing, notably, about Leona to the respondent, according to her own evidence, which was primarily focused upon Kay.
 - The claimant also complained that there was no formal grievance procedure operated by the respondent, which is correct. However, the claimant is plainly an intelligent and experienced individual, and the fact that she chose not to raise any further complaints with her employer, nor did she put any complaint in writing to him, suggests not that she did not know she could do so, but that she chose not to do so.
 - The fact that she did not raise any issues between May 2024 and her resignation in May 2025 made clear to the respondent that she did not have any complaints to make. In my view, this was a reasonable conclusion for them to reach. What is puzzling is that the claimant was making regular handwritten notes on her diary in which she was noting behaviour which she regarded as very troubling and

distressing, yet never brought this behaviour to the attention of the respondent. What she expected her employer to do when he was unaware that she was feeling like that is entirely unclear.

- The claimant never showed her notes to her employer until they were presented to the Tribunal as part of these proceedings.
- The claimant covertly recorded her colleagues speaking about her in the office in her absence, on 27 May 2025. She appeared, before this Tribunal, to be mildly embarrassed about having done so, and she suggested that this amounted to evidence proving what she had suspected for some time about her colleagues speaking behind her back. In fact, the only conclusion which can safely be drawn from this recording is that, if it is accurate (and neither the respondent nor the Tribunal can properly conclude that it is accurate without listening to the recording), it was only evidence of what was said about her by her colleagues on that day. It does not prove that they spoke about her in the same way on any other occasion: the claimant may suspect that they did, and that the transcript confirms that suspicion, but the Tribunal must only reach conclusions which are justified by the specific evidence before it.
- In any event, what the claimant discovered on the recording cannot have played any part in her resignation, since she had already handed in her notice.

52. In my judgment, the claimant has failed entirely to prove that the respondent's actions – and the Tribunal must look to those as an important part of its deliberations – were such as to undermine the fundamental terms and conditions of the claimant's contract of employment. The actions of Mr Simpson in response to the two occasions when the claimant raised, verbally and in my view informally, issues with Kay with him, were reasonable and rational. He was surprised when he saw the handwritten notes compiled by the claimant, as he had never been made aware by her that she considered that the behaviour of her colleagues was as recorded there. He was even more surprised when he received a call from ACAS during the early conciliation process following the claimant's resignation.
53. Accordingly, the actions complained of by the claimant on the part of the respondent cannot approach the high standard required to demonstrate that the respondent was guilty of repudiatory conduct in relation to the contractual relationship between them.
54. In my view, Mr Simpson was entitled to regard what he was being told as no more than the ordinary discourse and disagreement of colleagues working together in a pressurised and confined place of work. His actions thereafter

did not fail to meet any contractual term, express or implied, and the claimant has failed to prove that they did.

55. It is also important to observe that the claimant did not resign immediately in response to what she regarded as repudiatory conduct by the respondent, but waited a full 12 months before doing so. It cannot be said that the claimant resigned because of what Mr Simpson did in May 2024: she simply did not resign at that time. She waited another 12 months, and in doing so may be taken to have affirmed any breach of contract committed by the respondent in May 2024 (though the Tribunal makes clear again that no such breach of contract occurred).
56. I remind myself of the case of **BCCI v Ali (No 3)** [1999] IRLR 508 HC, in which it is stressed that the test (of whether a breach of contract amounts to a breach of the implied term of trust and confidence) is “*whether that conduct is such that the employee cannot reasonably be expected to tolerate it a moment longer after discovering it and can walk out of his job without prior notice.*”
57. Under no circumstances could it be found that the claimant felt that she could not be expected to tolerate the respondent’s conduct a moment longer after May 2024.
58. The Tribunal must also give consideration to the effective cause of the claimant’s resignation. Given the length of time which passed before her resignation, the timing (in the context of a claim for constructive dismissal) is very curious. However, as the claimant confirmed in her oral evidence before this Tribunal, she secured alternative employment prior to resigning; said nothing to the respondent when handing in her notice about any dissatisfaction with the respondent’s treatment of her being the reason for resigning, but told them that she had secured alternative employment and was therefore handing in her notice.
59. Further, in her letter of resignation she said nothing about any sense of dissatisfaction with the treatment she had received at the hands of the respondent. Indeed, she thanked them for their support to her. This is not only different to the reason which she now submits was the reason for her resignation, but contradicts her assertion that she resigned because the respondent had breached the implied term of trust and confidence inherent in the contract.
60. In these circumstances, it is my conclusion that the effective cause of the claimant’s resignation was that she had found another job, in Peterhead where her partner has lived for some time; and that she did not resign in response to the actions of the respondent taken approximately a year before.

61. As I have indicated, the claimant only came into the possession of the recording of her colleagues after she resigned and therefore this could not play any part in her decision to resign since she was unaware of it at the time.
62. In all of these circumstances, therefore, it is my judgment that the claimant was not constructively dismissed, nor unfairly dismissed in any way, by the respondent, and the reason for the termination of her contract was that she resigned unilaterally. Her claim therefore fails, and is dismissed.

**Entered in register: 2 March 2026
and copied to parties**