EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Mr K Farrell	**v**	**Docsinnovent Ltd**

Heard at: Reading **On:** 27, 28, 29, 30 and 31 March 2017

Before: Employment Judge Gumbiti-Zimuto

Appearances
For the Claimant: In person assisted by Mrs B Jassel (Claimant's wife)
For the Respondent: Ms S Berry (Counsel)

RESERVED JUDGMENT

The claimant's complaints are not well founded and are dismissed.

REASONS

1. In a claim form presented on 25 February 2016, the claimant made complaints of unfair dismissal, holiday pay and arrears of pay. The claimant's complaints were set out in a claim form accompanied by a statement of claim. The respondent denied the claimant's complaints.

2. The issues that I have had to consider are:-

   2.1 Whether the claimant was dismissed: the claimant relies on a breach of the implied term of trust and confidence.

   2.2 What was the reason for the claimant's resignation?

   2.3 If there was a breach of the implied term of trust and confidence, was there a delay in the claimant's resignation?

   2.4 If the claimant was dismissed, was the dismissal for a fair reason, namely conduct?

   2.5 If conduct was a reason for the dismissal, did the claimant contribute towards his dismissal?

2.6 If the claimant was unfairly dismissed, should there be a Polkey reduction to any award of compensation to the claimant?

3. The claimant made applications at the start of the proceedings for the respondent's response to be dismissed and/or the respondent to be prevented from being able to rely on witness statements. The claimant received the trial bundle late. The claimant contended that the respondent, who prepared the trial bundle, had in its preparation deliberately omitted documents; had not properly paginated the documents; included documents that were illegible; removed from the trial bundle documents without an explanation; documents vital to the claimant's case, which had been submitted for inclusion in the bundle, were not included; the bundle and witness statements had been delivered so late the claimant did not have time to read the witness statements.

4. It was clear that there had been delays in relation to the preparation for the hearing. An order was made for the hearing bundle to be prepared by 15 March 2017 and for the parties to exchange witness statements by 20 March 2017.

5. I am told that there were discussions between the parties with a view to a settlement. As a result the timetable for carrying out the employment tribunal's orders was varied by agreement. The parties agreed that the time for exchange of witness statements to be put back to 22 March 2017. The claimant unilaterally provided a copy of his witness statement at about 5.00 pm on 20 March 2017. The respondent did not provide its witness statements to the claimant until 23 March 2017. The respondent's solicitors took the opportunity to take instructions from witness before providing their statements to the claimant. In preparing their witness statements the respondent's witness could take into account matters which were contained in the claimant's witness statements.

6. I made no order on the claimant's applications. My reasons for not doing so were because the parties had agreed that the time for exchange of the witness statements should be varied while discussions took place. The final arrangements that the claimant and the respondent came to had two elements: the first was that the claimant was to reply to an offer of settlement by 10.00 am on Monday 20 March 2017 and the second element was to extend the time for the exchange of witness statements to take place by 22 March 2017 at 5.00 pm. There was no settlement. The claimant provided a witness statement at about 5.00 pm on 20 March 2017. This was earlier than agreed. The claimant thought he was working to a deadline of 4.00 pm on 20 March 2017. The claimant accepts that he may have misunderstood the effect of the previous arrangements which were made by email.

7. The respondent agreed that the claimant was not provided with the witness statements until 23 March 2017 which was later than the agreed date. The respondent did not comply with the varied agreed deadline. The

respondent took the opportunity to take instructions on the claimant's statement and provided its statements after answering the points in the claimant's witness statement. I am satisfied that there was some prejudice to the claimant arising from the advantage to the respondent. I am however satisfied that this was minimal and that a fair trial of this case is still possible.

8. I was also required to deal with an application for specific disclosure. I ordered the respondent to provide one document requested by the claimant, if it still existed, and to make enquiries in relation to other documents which the claimant was seeking. The case adjourned.

9. When proceedings resumed on 28 March 2017, I had to deal with further matters relating to documents. I was required to rule on whether document 38 was covered by litigation privilege. I concluded that it was. I decided that the document should be omitted from the trial bundle. I came to that conclusion for two reasons. The document was non-attributable and irrelevant; further the document had been created purely for the purposes of litigation. I was required to consider document 12. It was agreed that the first two pages of document 12 would be included in the claimant's bundle but pages 3 onwards of the document were to be removed.

10. The claimant was assisted during the case by his wife, Mrs Jassel. At about 11.20 am the evidence began, the claimant was sworn and commenced giving his evidence in the case. The claimant's evidence continued until 3.30 pm on the 29 March 2017. The claimant was cross-examined until about 3.00 pm on 29 March 2017.

11. The respondent relied on the evidence of Mr Surendra Kumar Devshi Sumaria-Shah. He gave evidence from about 3.30 pm on 29 March 2017 until about 11.25 am on 31 March 2017. Dr Muhammed Aslam Nasir gave evidence from 11.25 am on 31 March 2017 until about 1.00 pm. From 2.30 pm until 4.10 pm, I heard submissions from the parties. I reserved judgment.

12. In addition to the evidence of the witnesses referred to above, I was also provided with a trial bundle prepared by the respondent. It is unpaginated and contains a large number of documents. I was provided with three further bundles of documents from the claimant. A significant number of the documents were duplicated. The way in which the bundles had been prepared meant that it was not possible for the duplication to be easily prevented. The bulk of the documents that I was required to consider as the evidence progressed were contained in the trial bundle prepared by the respondent.

13. I made the following findings of fact.

14. On 30 October 2015, the claimant resigned from his employment with the respondent. In a letter from solicitors acting on his behalf, it was stated:

> "It is very clear to our client that your clients deem it appropriate to proceed as they see fit regardless of, inter alia, the representations that our client advances, the treatment that our client is entitled to expect if he were subjected to good industrial relations and our client's ill health which continues to deteriorate as a result of your client's conduct.
>
> Our client therefore gives you notice that he terminates his employment with immediate effect having been dismissed in accordance with the definition contained in section 95(1)(c) of the Employment Rights Act 1996."

15. In the statement of claim, the claimant states that he was forced to resign. The statement of claim states:

> "…I was forced to resign due to a catalogue of reversals on promises made in various forms to me for joining the venture and for the continued construction of the terms of engagement as both an employee/director and shareholder that had the mechanism towards institutionalising greater inequitable and unfair relations towards me but systematically also kept on degrading the benefits I would receive from the venture for an increasing disproportionate level of risk to me, encompassing embodiment of newly proposed terms that overtly takes attack on my future liberty to continue to practice my specialist professional vocation, of many years standing prior to even joining Docsinnovent."

16. The respondent company was formed on 16 April 2009 to design and develop medical devices for human and veterinary use. The claimant, Dr Nasir and Mr Surendra Sumaria-Shah were the directors and initial shareholders. The claimant signed an employment contract with the respondent.

17. The claimant also entered into a shareholder's agreement with the other directors, the respondent and Talria Limited. Talria Limited is a company owned by Dr Nasir and his family. A company called Ashkal Limited was incorporated for the purpose of holding Docsinnovent intellectual property in a separate company.

18. The claimant said in evidence:

> "There was a verbal agreement and understanding that I was only joining long enough (5 to 6 years) to develop some different types of products to build the company up to a point which would get business moving or delivered to raise its valuation so it would be enough of a capital gain for an exit through the sale of my shares."

19. The respondent denies any such agreement and relies on clause 16 of the service agreement which provides that the agreement sets out "the entire agreement and understanding between the parties".

20. The claimant's role was to provide design and development knowhow in medical devices to create products for the respondent and bring them to commercial reality.

21. Dr Nasir was initially allocated 90% of the shares with the claimant and Mr Surendra Sumaria-Shah holding 5% each. This was subsequently changed so the claimant and Surendra Sumaria-Shah had 10 % each.

22. The claimant was employed full time with the respondent unlike Mr Surendra Sumaria-Shah who also carried out work in his accountancy practice. The claimant was employed on a salary of £80,000.00 per year.

23. The claimant agreed to a 50% reduction in his salary from April 2009. In the period from April 2009 to December 2009, Dr Nasir and Mr Surendra Sumaria-Shah both agreed 100% reductions in their salaries. From January 2010 Dr Nasir and Mr Surendra Sumaria Shah agreed, 50% and 70% reductions respectively.

24. On 30 August 2012, the claimant signed a further written agreement with the directors and Talria (the funding agreement). By this agreement, the respondent secured further funding from Talria. By this agreement, the claimant was to waive part of his salary for 2010, 2011, 2012 and 2013. Dr Nasir and Mr Surendra Sumaria-Shah were also to waive part of their salaries.

25. The claimant and his co-directors are in dispute about funding for the company. The claimant says that he was given a promise, or alternatively that there was an understanding that there would be unlimited funding provided to the respondent so that it could develop products and bring them to market. This is denied by the claimant's co-directors (and the respondent). The respondent's position is that the funding agreement made it plain that funding for the respondent was to be provided in tranches from Talria.

26. Drafts of amended shareholder agreements relating to the respondent and Ashkal limited were circulated during the course of 2015. The agreements were first circulated at a board meeting on 5 January and again produced at board meetings in April and June. The claimant was unwilling to agree the amended shareholder agreements.

27. A dispute arises between the parties about events that took place at a London restaurant called Zanzibar. The evidence of Mr Surendra Sumaria-Shah about the management meeting on 4 February 2015 at the Zanzibar restaurant was that the claimant was hostile and abusive towards Dr Nasir. The claimant is said to have accused Dr Nasir of changing the terms of the Ashkal agreements. The claimant's tone and behaviour at this meeting prompted Dr Nasir to send him a warning about his behaviour.

28. Dr Nasir describing the meeting at the Zanzibar restaurant on 4 February said that the meeting was so explosive that he spoke to Mr Surendra Sumaria-Shah and Mr Ray Lambert who advised him that he could write a letter of warning to the claimant.

29. On 8 February 2015, Dr Nasir wrote to the claimant and made reference to the management meeting on 4 February 2015. The email included the following:

> "I was not only disappointed but also very concerned from your continued abrasive, aggressive and disrespectful attitude towards fellow directors."

30. The claimant's account is that Mr Surendra Sumaria-Shah aggressively berated him about the inadequate review of the new contracts and harassed him. As a result of this bullying, he decided to raise a grievance letter.

31. The claimant refers there to the letter of 2 April 2015 from his solicitor. In this letter, there is no reference to the type of behaviour that the claimant complains of from Mr Surendra Sumaria-Shah.

32. When he was questioned about this, the claimant accepted that in a telephone conversation, he said that he would behave in a different way going forward. He denied that he was aggressive and shouted at Mr Surendra Sumaria-Shah.

33. The claimant's email sent on 16 February was put to him. It was pointed out that in that email, the claimant does not accuse Mr Surendra Sumaria-Shah of bullying. The claimant's response was to say that this is a "smoothing letter". He was not complaining. He put it down as a difference of opinion instead of saying bullying and harassment.

34. On 2 April 2015, the claimant instructed solicitors to write to the respondent. The claimant describes this letter as setting out his various grievances. The letter did not raise a formal workplace grievance. The letter set out the position as the claimant understood it relating to the formation of the respondent, his remuneration, service agreements, shares and further funding.

35. The letter set out potential claims that the claimant could bring in the Chancery Division of the High Court. The letter set out a way forward listing demands which included: the claimant to be paid his outstanding remuneration, revised shareholder agreements to be drawn up, service agreement to be reviewed, funding and/or licence agreements held by Talria to be reviewed, the claimant's position is Ashkal Ltd to commensurately reflect his input and work for the company. The letter contained a request for documentation and asked questions about the IP agreements; the letter made a request for the solicitor's costs he had incurred to be paid by the respondent.

36. The solicitor's letter was discussed at the board meeting on 15 April 2015. There is a sharp disagreement between the claimant and his co-directors as to what took place at the meeting. The account given by the claimant does not get reflected on the board meeting minutes. However, board minutes are not able to convey aggression, tone or manner unless it is expressly recorded.

37. I am satisfied that the claimant may have perceived that Dr Nasir was aggressive with the use of language and his tone. However, I accept Dr Nasir's evidence that he did not behave in the way that is described by the claimant in his witness statement. In coming to this conclusion, I take into account the fact that the claimant agrees that he was provided with a copy of the minutes of the board meeting on 15 April, that he read them, and that he approved them at the next board meeting. The claimant has accepted that they are an accurate reflection of what was said about the claimant's letter of 2 April 2015.

38. The claimant says that he made it clear at the April board meeting that the 2 April 2015 letter was a grievance. The claimant was invited to attend a meeting with Dr Nasir to discuss his concerns. However, the claimant did not make time to meet with Dr Nasir until 8 June 2015.

39. The claimant and Dr Nasir met on 8 June 2015. In his witness statement describing this meeting, the claimant says Dr Nasir failed to engage in any productive and constructive meaningful discussions, or to arrive at solutions or plans for going forward and that the content of the 2 April 2015 letter was not reviewed. In answer to questions during his evidence, the claimant accepted that the meeting on 8 June 2015 did cover the topics that were raised in the claimant's letter of 2 April 2015.

40. On 19 June 2015, the claimant's solicitor wrote asking that the letter of 2 April be treated as a grievance. The solicitor's letter makes no mention of the meeting on 8 June 2015.

41. On 25 June 2015, Dr Nasir wrote to the claimant responding to the points that had been discussed at the meeting on 8 June 2015.

42. A board meeting of the respondent took place on 29 June 2015. On that occasion, when the issue of the shareholder agreements came to be discussed, the claimant left the meeting.

43. On 3 July 2015, the claimant and Dr Nasir attended a meeting with the respondent's patent attorney. Also present was Mr Krovatz who works as a consultant for the respondent. At the meeting, the claimant sat next to the patent attorney and began to stroke her upper arm/shoulder with a dog v-gel device. The patent attorney was wearing a sleeveless dress. The shape of the dog v-gel product is phallic. The patent attorney pulled her arm away from the claimant and told him to behave himself. The claimant responded by saying "Please don't sue me on this".

44. Dr Nasir considers the claimant's actions to have been inappropriate and he wrote to the claimant that day telling him that his behaviour had been unacceptable. In concluding his email on this topic, Dr Nasir stated as follows:

> "Can you accept that your behaviour and aptitude during times of duty to Docsinnovent's interests MUST improve immediately. I have no choice but to

> discipline you officially and therefore **this email should be considered as an immediate formal warning**, which I consider to be your second such warning. I request your response without delay given the seriousness of today's events and I will then consider the matter further with our director."

45. The claimant responded by email later that day. His response included the words:

> "I did not intimately touch [*the patent attorney*'s *name*] with the Dog v-gel. "Intimately" is a strong word and implies something which was not the case. It was an unconsidered poke to her arm in jest as we were talking and I have apologised to her then and by email."

46. In evidence during the case, the claimant was questioned about this incident. He said that he had in his hand the dog v-gel which has a phallic appearance. He accepted that he was sitting next to the patent attorney. He denied that he had stroked the patent attorney on a number of occasions with the dog v-gel. The claimant said:

> "She shrugged. She said "Don't touch me and don't do that or don't do that"".

47. The claimant denied that he had said "Don't sue me". He said that was fabricated by Dr Nasir. He went on to say that when he responded to Dr Nasir's email on 3 July 2015, he did not say everything he was feeling. He said that he was extremely distraught, very frantic, upset, in a panic. He said:

> "I realised this wasn't going anywhere. I pulled away. I was depressed."

48. The claimant was asked about why he said that he touched her deliberately and also said that it was done unconsciously. The claimant's response was:

> "I tapped her. It was non-considered. It was not accidental flapping around. I did try to get her attention."

49. He was asked about the use of the words "in jest" in his email and it was put to him that that was not true. The claimant's answer was:

> "I am trying to understand why I wrote it was in jest. It wasn't funny what happened. I apologised. I mean nothing by it to upset her. It has been blown up out of proportion. I said I am so sorry I upset you. I was emotionally disturbed. I was hyper-defensive."

50. In respect of the description of this incident, the claimant's accounts have been contradictory. At one stage during the course of his evidence, he said that it was an accident which occurred because he was holding the v-gel item casually. That was not the account he gave when he was questioned and it differs from the account that he gave in his 3 July 2015 email.

51. In the circumstances, I prefer the account which was given by Dr Nasir whose email was sent on the day that the incident happened and is clear in its terms.

52. On 28 July 2015, solicitors acting for the respondent wrote a detailed response to the claimant's solicitor's letter of 2 April 2015.

53. On 12 October 2015, the claimant notified the respondent that he was unwell and unable to attend a board meeting.

54. On 14 October 2015, the claimant was informed that the respondent had changed his email password and had therefore locked him out of his email account. The reason that this had occurred is because the respondent wished to be able to react to emails sent to the respondent. In order to access those emails, it was necessary to change the claimant's password on the email via the administrator. The claimant was told what his new email password was on 15 October and therefore had access to his emails once more.

55. On 16 October 2015, it was noticed that the claimant was deleting large numbers of emails. The claimant was informed that the respondent wished to have access to his laptop and his work history. The claimant was suspended from work on 16 October at 18.00 hours. The claimant was suspended on allegations of gross misconduct.

56. Having considered the emails that were on the claimant's computer and also having considered some of the emails that were deleted on 16 October, the respondent was of the opinion that the claimant had been taking steps to establish a competing business. The respondent was able to get access to emails that were backed up on 26 June 2015 and these showed that the claimant had been actively pursuing investment opportunities for other ventures and that these were in competition with the respondent. These were some of the emails that the claimant had deleted on 16 October 2015.

57. The claimant resigned his employment with the respondent on 30 October 2015.

The law

58. Section 95 (1) of the Employment Rights Act 1996 provides that an employee is dismissed by his 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.

59. In Western Excavating (ECC) v Sharp [1978] 1QB 761 it was stated that: "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, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains; for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract." In Waltham Forest v Omilaju [2005] IRLR 35 the following propositions were set out

> **"1.** The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: *Western Excavating (ECC) Ltd v Sharp*.
>
> **2.** It is an implied term of any contract of employment 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...
>
> **3.** Any breach of the implied term of trust and confidence will amount to a repudiation of the contract ... The very essence of the breach of the implied term is that it is calculated or likely to *destroy or seriously damage* the relationship.
>
> **4.** The test of whether there has been a breach of the implied term of trust and confidence is objective. … the conduct relied on as constituting the breach must "impinge on the relationship in the sense that, looked at *objectively*, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer".
>
> **5.** A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents… " Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the 'last straw' which causes the employee to terminate a deteriorating relationship."…".

60. An employee has the right not to be unfairly dismissed. Section 98 of the Employment Rights Act 1996 provides that in determining whether the dismissal of an employee was fair or unfair, it shall be for the employer to show the reason (or, if there was more than one, the principal reason) for the dismissal, and that it is a reason falling within subsection (2). The conduct of an employee is a reason falling within the subsection.

The claimant's submissions

61. The claimant stated that there was an agreement at the outset of his employment that he was to bring his experience and expertise and that Dr Nasir was to provide the finance for the venture. The claimant provided intellectual capital; Dr Nasir provided financial. The claimant states that Dr Nasir broke the bargain. The claimant says that he generously assisted the respondent by not taking all his salary and he did this as an act of entrepreneurship and he distinguished himself from a straightforward employee who would not take such an action. The claimant said that his interests were therefore perfectly aligned with those of the respondent. The claimant complained that he could not deliver what was required to deliver without the required finance.

62. The claimant contends that he was hit with a bombshell in 2011 which resulted in him entering into a new agreement. The claimant agreed to this in order to eliminate the huge debt on the balance sheet to allow the respondent to secure further funding. The claimant contends that the further funding was not forthcoming from Talria to the extent that it should have. The claimant accepts that payments were made. However, the claimant states that his trust and generosity had been abused.

63. The claimant compared his position to that of Dr Nasir and Mr Surendra Sumaria-Shah, they continued to enjoy good incomes from other sources whilst he was taking a pay cut. The claimant says that he was merely arguing to be paid his money back. Money which he had generously given in order to help the company. The claimant says that when he asked for his money back, he was treated badly.

64. The claimant says that there was a mismanagement of the finances which meant that he was not able to carry on with his duties. He states that his Capital Gains suffered because he could not sell his interest in the respondent. The claimant complains about having lost the ability to make a good salary as a result of waiving his right to pay.

65. He contends that mismanagement of the finances was a breach of the terms and conditions on which he had invested in Docsinnovent. The claimant complains that only £2.6 million had been put into research and development of v-gel by Dr Nasir and this was insufficient to enable development of other products. The claimant complains that over time, his interest was diluted and that he was treated like an employee as opposed to the entrepreneur that he was. The claimant says that by 2015, there was no money to do research, development and marketing; there was no continuity with projects; his job had changed; and the respondent was not in a position to afford to employ a marketing person. The claimant said as a result of the mismanagement of finances, he was not able to do what he was trained to do which was research and development.

66. The claimant complained that he was required to sign new service agreements. He stated that there was a multitude of contracts and inter-relationships and it was only fair that he be professionally able to consult a

lawyer in order to decipher what they all mean. The claimant complained that there were onerous restrictive covenants which were placed in the shareholder agreement. He also complains that the financing of the company was constrained in a very narrow field, some sources of funding being out of bounds because they did not comply with Islamic finance.

67. He complained that board minutes were not circulated and once signed, there was no access to the board minutes. The claimant also complained that there was a failure on the part of the respondent to implement a share option scheme which had been promised when he entered into his employment with the respondent. The claimant complained that he had been systematically marginalised and that he was unable to gain job satisfaction. The claimant complained that he was abused by Dr Nasir who had abused his position by taking disciplinary action against him and behaving erratically. The claimant complained that his grievances were not dealt with. Finally, the claimant complained that he was bullied and harassed into signing a new service agreement in 2015 and that as a result of the harassment, he suffered mental illness that led to him having to take antidepressants, medication which he remains on today.

The respondent's submissions

68. The respondent's answer to the claimant's complaints is that the complaints, as he has set them out, upon considering the evidence, cannot be supported. The evidence does not establish that there was any breach of the implied term of trust and confidence. It is said on behalf of the respondent that the real reason that the claimant resigned his employment was because he had planned to set up a rival business. In any event, even if the claimant had not resigned his employment the claimant would have been dismissed for gross misconduct because of his efforts to set up a rival competitor business to the respondent.

Conclusions

69. Parts of the claimant's case were difficult to follow. There were occasions when it was necessary to have brief adjournments to allow the claimant and his wife to consider the points they wanted to put to Mr Surendra Sumaria-Shah. The claimant makes a number of points and I deal with them in turn.

70. The claimant complains that he was forced to leave his employment because the respondent mismanaged the finances.

71. The respondent contends that there was no aspect of its behaviour that amounted to a breach of trust and confidence. The respondent contends that the financing for the respondent company was clearly set out at the start. A further financing agreement set out clearly the basis on which the respondent was to be financed and the claimant's contentions that there was financial mismanagement have simply not been established.

72. My conclusion is that this complaint is not made out by the claimant. The claimant entered into the arrangements in this matter with a view to being able to achieve financial and commercial success. He brought into the equation his know how; Dr Nasir brought into the equation the financial resources. Dr Nasir invested £2.6 million. There is no basis from the information which has been put before me by the claimant on which it is possible for me to conclude that there was any mismanagement of finances so as to allow me to come to the conclusion that there was a breach of an implied term of the agreement that had been entered into between the claimant and the respondent.

73. The claimant complains that he left his employment because new employment contracts were being imposed and that this was done without conducting a proper procedure. This complaint is not made out by the claimant. The evidence that was adduced showed that the claimant was never required to sign a new service agreement or employment contract. The claimant was only ever required to consider revised shareholder agreements in relation to Ashkal Ltd and the respondent.

74. The claimant complains that he had to leave his employment because the new draft service agreement contained within it unduly onerous, inappropriate, restrictive covenant descriptions and clauses which were not congruent to the agreed exit strategy and revised nature of the business. Again, this complaint was not made out by the claimant.

75. There was no draft service agreement. The claimant was not being asked to sign restrictive covenants that were new. What the claimant was being asked to consider was shareholder agreements which contained restrictive covenants. The restrictive covenants contained in the shareholder agreements were in the same terms as the restrictive covenants which the claimant had signed on his service agreement. The restrictive covenants had not been expanded or increased in a way which was in any sense intended to be not congruent to the agreed exit strategy.

76. The claimant complaints that: "I suffered a material benefit because in June 2015 I was denied the implementation of an outstanding contractual benefit of having a share option scheme." There was no share option scheme. What had been agreed by the parties was that 10% of the share allocation would be set aside in order to incentivise new staff and also to incentivise directors and existing staff. The parties had never got to the point where they agreed a share option scheme. The claimant's own evidence in relation to this issue contradicts the contention that he suffered a material reduction in benefit in June 2015. Dealing with his complaints about the share option scheme, the claimant said as follows:

> "There was a commitment for me to join by giving me a 10% share option. …….. understanding is you will get an increase in shares if you perform well. I did not know what the incentive was in number of shares or what good performance was so that I could understand what was crystallised, After six years of performing not reasonable not to give me an idea of package. If they said to me I am not

> getting it then I am not getting it. OK. Just tell me I'm going to get it or not get it."

77. It seems to me that even on the claimant's own evidence, he was agreeing that there was never any crystallisation of the share option scheme so as to give rise to a loss by June 2015. There was no reduction in benefit.

78. The claimant says that he was unfairly disciplined in July 2015 for an event involving the patent attorney. He states that he protested about the matter but was not given the proper right of appeal.

79. The claimant accepted that he touched the patent attorney with a phallic object on her bare shoulder and that the patent attorney became upset. I am satisfied it was reasonable to send him an email saying that his behaviour was not acceptable. I am satisfied that this was not a trumped-up charge as the claimant suggests. I am satisfied that on balance of probabilities, the claimant did say "don't sue me" to the patent attorney. I am satisfied that it was quite appropriate to describe his action as "intimately touching". I am satisfied that what the claimant admitted doing on its own justified a warning.

80. The claimant was told that he was given a final warning. The claimant did not indicate a wish to appeal the incident. I also note that he was not told he had a right of appeal against the decision. There was an indication that the matter would be discussed further with other directors but the matter was not taken any further at that time. I am not satisfied that the claimant has shown that there was a breach of contract in respect of this incident that was serious enough to allow the claimant to terminate his contract because of his employer's conduct. Even if there was the claimant did not resign because of it and waited too long before he did resign.

81. The claimant states that: "I resigned from my employment because my official grievance letter from my lawyer's was not properly dealt with in accordance with to a fair policy and procedures and without bias."

82. I am not satisfied that the claimant was the subject of bias. It is clear that the claimant and his business partners ended up having difficult relationships. The claimant's solicitor's letter of 2 April 2015 was discussed at the April 2015 board meeting. It was discussed again at a meeting which took place on 8 June 2015. The claimant's solicitor's letter received a full response from solicitors acting on behalf of the respondent in a letter dated 28 July 2015.

83. In the course of his evidence, the claimant accepted that the 2 April 2015 letter was discussed on all these occasions and he also accepted that he was invited to provide details of any outstanding grievances in a letter dated 9 October 2015. The claimant resigned his employment with the respondent on 30 October.

84. The claimant has not been able to establish so that I can be satisfied on balance of probability that his grievance was not dealt with adequately. He

has simply shown that his grievance was not upheld that is not a breach of contract.

85. The claimant complains that:"I was bullied and harassed by the respondent to sign new service agreements in March 2015 at a restaurant in Edgware. This led me to sending a grievance letter in April and this annoyed the respondent who then escalated its bullying and harassing behaviour towards me all the way and inclusive of being forced to sign new undesirable contracts in October 2015. Dr Nasir did nothing to stop it and instead encouraged it. In the end, this had a huge negative impact on my mental health and I had no choice but to resign."

86. I have been unable to accept the claimant's characterisation of events that occurred during the incident at the restaurant Zanzibar. I am satisfied that in respect of the conduct at the Zanzibar restaurant, it was the claimant's behaviour that was unacceptable rather than that of Mr Surendra Sumaria-Shah or Dr Nasir.

87. The claimant complains that he was caused stress, depression and anxiety by the respondent at work over a long period, leading up to the time of his eventual resignation date, forcing him to sign new contracts in a board meeting in October 2015. This became too stressful for him. It was the last straw which led to a major health breakdown.

88. Whatever the cause of the claimant's ill health, which appears to have occurred in about October 2015, I am not satisfied that it was caused by any act by the respondent which could amount to a breach of contract. The claimant's allegations of harassment, of bullying, of being forced to sign contracts, are not made out by the evidence which has been heard.

89. The claimant says that the respondent failed to deal with his grievance. He says that the respondent failed to follow any sort of ACAS Code.

90. There is a grievance procedure in the claimant's service agreement. Dr Nasir tried to meet up with the claimant but the claimant did not want to meet. At the 15 April 2015 board meeting, an attempt was made to try to resolve the issues. At the 8 June 2015 meeting, Dr Nasir and the claimant went through the issues. The outcome of those discussions was set out in an email of 25 June 2015.

91. In his letter, Dr Nasir offers the claimant the opportunity to come back on any issues. In his letter of 25 June, Dr Nasir says:

> "Further to our meeting on 8 June 2015 the following aspects of your complaints/issues/wants/needs were discussed. As promised, I have now looked into each one of these in extensive detail with as much neutrality and sympathy as possible. I am sure you would remember that I said to you that my response to each of those would be the one which would be in the best interests of Docsinnovent in particular and all shareholders at large and is as below."

92. The respondent in my view addressed the claimant's complaints as set out in his grievance. That they did not follow a process easily recognised as being compatible with ACAS guidance in my view does not alter the fact that the issues that the claimant raised were addressed.

93. The claimant stated that he left his job because the job "continued to lack satisfaction, diversity, volume and prestige". Part of what the claimant complained about in respect of this matter involved Dr Nasir providing a lecture in Japan in which Dr Nasir was referred to as being the inventor of v-gel. The claimant says that he was not entitled to do this.

94. The reality of the claimant's complaint in my view is that the venture he entered into did not meet his expectations either in financial rewards or in the ability to develop a number of different projects and increase his prestige and professional standing. The claimant puts this down to the failure to invest sufficient funds into the company and the venture.

95. I am not satisfied in respect of this the part of the claimant's complaint he has identified any matter which amounts to a breach of contract.

96. The claimant's complaints for unfair dismissal fail because the claimant has failed to show that the respondent was in breach of contract so as to entitle him to bring the contract of employment to an end. The claimant resigned his employment; he was not dismissed.

97. In any event, even if the claimant had been dismissed, I am satisfied that the evidence which has been produced by the respondent shows that he was in serious breach of his obligations to the respondent. Had the claimant not resigned, there is a real possibility that the claimant would have been subjected to disciplinary action.

98. The claimant's complaint in relation to unfair dismissal in my view is not well founded and is dismissed.

99. The claimant in his evidence has failed to explain how any sums in relation to unpaid wages or holiday pay are said to arise. In the circumstances, those complaints are also dismissed on the grounds, the complaints are not well founded.

_____
Employment Judge Gumbiti-Zimuto

Date: ……24 July 2017……..

Sent to the parties on: .....

.....
For the Tribunals Office