EMPLOYMENT TRIBUNALS

Claimant: Mrs K Willett

Respondent: Somerset Partnership NHS Foundation Trust

Heard at: **Bristol** **On:** **17-20 September 2019**

Before: **Employment Judge Midgley**

Representation
Claimant: In person
Respondent: Mr D Stewart, Counsel

JUDGMENT

1. The Claimant's claim of constructive unfair dismissal is not well founded and is dismissed.

2. The Respondent's application for costs is dismissed. The claim did not have no reasonable prospect of success.

REASONS

Introduction

1. By a claim form dated 9 November 2018, the claimant who was born on 14 February 1957, brought claims of constructive unfair dismissal and breach of contract arising from her employment by the respondent. The respondent defended the claims. A separate claim for accrued but unpaid holiday play was dismissed on its withdrawal by the claimant prior to the hearing.

2. The dates of the ACAS certificate were as follows: date A 17th of August 2018, date B 17th of September 2018.

The hearing

3. At the start of the hearing I was presented with and agreed bundle of approximately 150 pages and the following statements: for the claimant Ms C Baumann and the claimant, and for the respondent from Mrs S Bell, Mrs C Munt, Ms M Barter, Ms C Hunt and Ms K Tucker.

4. With the exception of Ms Bauman, all of the witnesses gave evidence. Although Ms Bauman endeavoured to attend the hearing, she was unable to do so due to ill-health. Consequently, the claimant asked me to read her statement knowing that it would be given limited weight as the evidence could not be tested in cross-examination. I duly read it.

5. On the morning of the final day of the hearing after evidence had concluded, I was provided with a copy of the respondent's Redundancy and Redeployment Policy dated August 2006. In the event, neither party made any reference to the document in their submissions or at all.

The Issues

6. The respondent had prepared a schedule of issues. At the start of the hearing, I reviewed it with the parties and the claimant accepted that it should be used during the hearing, although she had not been involved in producing it. (She told me that that was consequent to the advice of her legal adviser at the time, who did not appreciate the need for or use of Schedules of Issues in Tribunal proceedings).

7. The Claimant agreed that allegations 1.2.1 and 1.2.2 from the List of Issues in the bundle should be treated as background matters, rather than specific allegations which were relied upon to establish a breach of the implied term of mutual trust and confidence. I explained that evidence in relation to those matters would still be heard, and the claimant could cross-examine the respondent's witnesses in relation to them but I would not make any finding as to whether they amounted to a breach of the implied term of trust and confidence in themselves.

8. The Issues to be decided were therefore as follows:

1.1. Did the respondent acted in a manner calculated or likely to destroy or seriously damage the mutual relationship of trust and confidence between the claimant and the respondent? In particular, did the respondent act as follows;

1.1.1. On or around 4 November 2017, did Sarah Bell make slanderous comments about the claimant's competence in the team room? [This is disputed by the respondent]

1.1.2. On 9, 10 and 11 November 2017, did the claimant's admin colleague (Moira Barter) refuse to follow the agreed administrative procedure, which greatly affected the claimant's work? [The respondent avers that the procedure was changed in order to meet business needs in the absence of the claimant, and that course was a permissible one].

1.1.3. At the meeting on 19 January 2018, did Michelle Gough and Claire Munt fail to support the claimant regarding the alleged incidents referred to at 1.1.1 and 1.1.2 above? [This is disputed by the respondent]

1.1.4. On or around 4 February 2018, did Claire Munt fail to follow the appropriate procedure for a referral to Occupational Health in that she

recorded the following matters in the referral form:

1.1.4.1. She had given the claimant a copy of the referral form, when she had not [the respondent accepts that the referral gave that impression, and that the claimant had not been provided with a copy of the referral form];

1.1.4.2. The claimant's colleague had not substantiated the allegations, when the claimant asserts the contrary was true [the respondent disputes that the claimant's account was corroborated as suggested];

1.1.4.3. Refuted that any bullying had taken place, when the claimant asserts the contrary was true [the respondent avers that the form merely identified the allegation of bullying rather than suggesting that it had not occurred];

1.1.4.4. and made other factual errors in the referral form i.e. the claimant's mobile telephone number and the number of hours that the claimant worked were incorrect [the respondent accepts that the errors were made as described]

1.1.5. The occupational health assessment which was due to occur on 13 February did not take place until 9 April 2018 [this is accepted], the claimant asserts this was due to the matters at 1.1.4 above;

1.1.6. Did Mrs Munt's letter dated 2 March 2018, regarding the well-being review meeting on 21 February 2018, contain errors and portray the claimant as being unreasonable? The claimant wrote to Mrs Munt regarding the discrepancies, but her concerns were dismissed as irrelevant during a meeting on 28 March 2018. [The respondent avers that the letter did not contain errors or portray the claimant in the manner suggested and the claimant's concerns were not dismissed although they were not accepted as being accurate].

1.1.7. On 15 June 2018, Mrs Munt telephoned the claimant to explain the redeployment package. During that conversation did she inform the claimant that, on registering, the claimant would be given 12 months' notice and, due to the part-time nature of her role, it was unlikely that the claimant would find a suitable position? [This is disputed by the respondent]

1.1.8. Did the respondent instruct members of staff not to speak to the claimant after her sickness absence commenced? [This is disputed by the respondent]

1.1.9. At a well-being meeting on 18 July 2018, the respondent's explanation of the redeployment process was reiterated, despite the claimant stating that she did not believe it applied to her as her role was not redundant. It is accepted that during the conversation the claimant was offered the opportunity to remain in her current post, which was against the existing occupational advice. Did the content of either conversation amount to a breach of the implied term or contribute to a cumulative series of events which did?

1.2. Is the conduct identified at 1.1.9 above, conduct which of itself amounted to a breach of the implied term or was it conduct which was more than merely innocuous which could contribute to a cumulative series of events that amounted to a breach of the implied term?

1.3. If there was a breach of contract, did the claimant resign in response or partly in response to that breach?

1.4. Did the claimant affirm the contract and waive any breach?

1.5. If the claimant were constructively dismissed, has the respondent shown that the claimant was dismissed for a potentially fair reason, namely capability due to ill-health and was any dismissal fair (section 98(4) ERA 1996)?

Background Facts

9. I made the following findings of fact based on the balance of probabilities having heard the evidence of the witnesses, considered the documentary evidence in the bundle and carefully considered the parties' written submissions.

10. The claimant was employed by the respondent as a Team Secretary to the Community Mental Health Team (CMHT) from 6 March 2000 until her resignation without notice on 30 July 2018.

11. She worked initially from Park Gate House, Taunton, before moving to Foundation House in Taunton in 2008. She was contracted to work 26.5 hours a week, albeit this was reduced to 22.5 hours by agreement in or about January or February 2016. She worked part-time three days a week: between Tuesday and Friday.

12. The claimant was part of a team of secretaries. Their responsibilities included fielding all telephone calls made to the Community Mental Health Team and responding to all correspondence, including email and letters. A primary function of the role was that they dealt with service users who were particularly vulnerable due to mental health difficulties and, in consequence, they were required to operate an efficient and effective system to ensure that enquiries were responded to promptly, particularly in relation to appointments with the clinical staff.

13. Both the claimant and Ms Hunt informed me that it was not unknown for service users to be prompted to suicide if appointments were cancelled or enquiries were left unanswered. In consequence all members of the team, quite properly, regarded this aspect of their job function as being an essential one that should be undertaken in the most effective and comprehensive manner possible.

14. Initially the claimant worked together with Miss C Bauman, who was a full-time employee. However, in June 2015 Miss Baumann retired, giving a month's notice. In consequence the claimant endeavoured to fulfil the responsibilities of her part-time role and those of Miss Baumann's full-time role in a very pressurised environment. All the witnesses agree that resulted in a highly pressured and stressful workload for the claimant.

15. The respondent tried to provide the maximum possible level of support that it could to alleviate the workload, but it was limited by an inability to recruit, given a pay freeze and a policy of not replacing employees upon retirement. Mrs Munt told me, and I accept, that the trust was putting together a business case to demonstrate the need for a new member of the administrative team, but until the business case was approved there was no possibility of recruiting a replacement for Miss Baumann. However, whenever possible, a bank secretary was used to reduce the workload. During that period, clinical staff were directed to write their own letters to patients wherever possible to relieve the workload of the administrative team to an extent.

16. The claimant was line managed by Mrs Bell between 2009 and approximately November 2016, albeit that she did not act as line manager for the 18 months commencing in September 2014 (when she was acting up to more senior role).

17. The claimant was a proactive, dedicated, knowledgeable and effective member of the team who always gave of her best, and sought to assist others to resolve problems wherever possible. She was conscientious and produced high-quality work and always strove to achieve the best outcome possible for staff and patients alike. That view is reflected in the claimant's supervision notes and appraisals (in particular the appraisal of the 29 September 2017 at 82 to 83).

18. Equally, despite her clear and obvious abilities, the claimant appears to have lacked some confidence in the way she was perceived by her colleagues. This is referred to in the appraisal of 29 September 2017 but is also reflected in the correspondence prepared by the claimant (in particular see 63).

19. In September 2015, the claimant requested to reduce her hours from 26.5 to 22.5 per week. That change was affected from 5 October 2015, but regrettably the manager responsible for implementing the change, Tom Clifford, did not notify payroll. In consequence on the system the claimant appeared to be contracted for hours that she had not worked, and this affected the TOIL hours that were owed to her.

20. Matters came to a head in this respect in or about October 2015 when Mrs Bell produced an analysis of the hours worked against the hours believed to be owed. The claimant was unhappy with the calculation and began a period of sickness absence with work-related stress from 27 October 2015 which continued until 17 November 2015 (9 days). Further sickness absence occurred between the 4th and 20th of December 2015 (16 days), again for work-related stress both due to the volume of work and the change of hours proposed.

21. At about the same time the claimant had acquired a puppy; she told the respondent that wished to spend more time with it. The respondent was extremely accommodating of that desire, in particular at a well-being support meeting held on 13 January 2016 attended by the claimant, Tom Clifford and Sarah Bell, several options were offered to the claimant as to how she could organise her working hours to give her more time off, and she was given time

to reflect upon them (see 59-60). There was a discussion as to whether wellness at work and/or an occupational health referral might assist the claimant, but she indicated that she did not think it was necessary at that time.

22. The claimant attended a back to work meeting on 27 January 2016 (61-62). The claimant alleges (issue 1.2.1 on the List of Issues in the Bundle at p26), that Mrs Bell threatened her with dismissal at that meeting. The claimant produced a note after the meeting (63) in which she records:

> *'Sarah advised that as I was now in stage II of the sickness policy and that two more episodes of sickness in the next 12 month period would result in my dismissal. I found that upsetting as I have a very good reason for sickness.'*

23. At this time the claimant formed the view that her relationship with Mrs Bell had broken down. Her note of 27 January 2016 records that she felt intimidated by Mrs Bell because she didn't feel listened to and she didn't feel that she could broach a subject with her, as she could not reason with her. It is noticeable that the claimant also makes complaints about other members of the team who have 'shouted at me to do corrections when it is not been my fault - used as a whipping boy because people are stressed throughout the team.' In my view the note demonstrates that sensitivities amongst the team, but particularly in the claimant, were high, no doubt due to the stress of the work and workload.

24. On 28 January 2016 the claimant emailed Mrs Bell and Mr Clifford expressing her concern that her relationship with Mrs Bell had possibly broken down stating 'I have concerns regarding a possible relationship breakdown or misunderstandings between ourselves and perhaps any other members within room F12.' She requested a meeting to address the matter.

25. On 19 February 2016 the claimant attended a meeting, at which she was represented by Patrick King from Unison, with Mrs Bell who was supported by Bethany Allen, a member of HR. The purpose of the meeting was to agree the hours that the claimant would work and to address her concerns about her management by Mrs Bell.

26. The claimant indicated that she was unwilling to agree to any of the options regarding the change in hours that had been offered to her, on the basis that her union representative felt the consultation process not been correctly undertaken. The respondent proposed extending the claimant's lunchbreak to 2 hours to enable her to see her puppy if the claimant would make up the additional hours at the end of each working day. Further proposals were made in relation to the option to work different hours on different teams, but the claimant was unwilling to accept those given the change that would be involved.

27. At the meeting the claimant raised her concerns regarding the 'threat' of dismissal under the sickness absence procedure. Mrs Bell explained the position as she had on the previous occasion. It is noticeable that her explanation appears to have been accepted by the claimant and/or did not result in challenge from the claimant's trade union representative. Given the claimant's belief that the working relationship had broken down, Mrs Bell

agreed to transfer responsibility for the claimant's line management to Mrs Munt.

28. At an appraisal meeting on 28 April 2016 the claimant had agreed hours of work from 8:30am until 1pm on Tuesday and Wednesday and 8:30am until 5pm on Thursday and Friday with one and a half hours for lunch. She stated that she had now 'come to some form of resolution' and 'felt more comfortable within the team.' It appears that the claimant thanked Mrs Munt for her support at that meeting. The claimant informed Mrs Munt that she felt that her relationship with Mrs Bell had broken down given the way the claimant perceived she was treated by Mrs Bell, but she did not provide any specifics. She did not ask for any action to be taken, nor did she pursue the matter through an informal or formal grievance.

29. On 28 July 2016 (71) the claimant emailed Mrs Munt reporting difficulties with her interactions with Mrs Bell. She complained that she found that Mrs Bell did not allow her to speak and was dismissive of her concerns relating to templates and systems that were adopted. Mrs Munt stated that she did not receive the email, but the claimant raised concerns about her treatment by Mrs Bell at the supervision meeting that occurred on 16 August 2016 (72).

30. In my view either Mrs Munt did not receive the email of 28 July or she did not have an opportunity to look at it and process it. Had she done so, given the supportive and open manner in which she had previously dealt with the claimant, it is highly likely that she would have sought to engage with the concerns as she did at a later point. In that regard it is noticeable that there is no reference to the concerns in the supervision meeting of 16 August 2016.

31. On 21 September 2016 the claimant had a further supervision meeting with Mrs Munt. The minute of that meeting records that the claimant 'didn't feel Mrs Bell would listen, feels slaps down.' This remark was made in relation to a discussion concerning the appropriate practice for urgent referrals. It is clear that the claimant's concerns related not only to Mrs Bell but also to other members team and, vitally, that those concerns related to the appropriate practice to be adopted and the different views as to what that practice should be. Mrs Munt proposed that there should be a team meeting to resolve the practice issue, and one was scheduled for October 2016. Mrs Munt also suggested that the claimant should consider a referral to wellness at work; the claimant did not take up that option at that time but indicated that she would consider it. In my view Mrs Munt was supportive at the meeting and the course of action she proposed was reasonable.

32. In the period September 2016 until November 2017 the pressure of the workload continued to increase. The claimant had concerns about the competence of the bank secretary assigned to assist with the workload.

33. The claimant had further period of sickness absence between 31st May and 8th June and the 7th and 19th June, both for work related stress.

34. In or about June 2017 the respondent had obtained authority to recruit an additional team secretary. Miss Barter, who had previously worked on the bank, was appointed on a temporary basis to the role. The claimant was advised of this by Ms Hunt following her return to work on 27 June 2017. The

claimant was instructed that she should assist Ms Barter to perfect her typing skills and should introduce her to the templates and procedures that were used by the secretarial team. Ms Hunt was Ms Barter's supervisor.

35. The Claimant continued to be concerned by Ms Barter's work. At about this time the secretarial team moved to a new system of group email. This meant that any email referred to the team would be sent to a single inbox to which each member of the secretarial team had access. The team had to decide upon a system by which members of the team could indicate that they had either actioned an email and resolved it or were in the process of actioning it. It was agreed that the process would be for each team member to drag the email they were working on into their inbox so as to remove it from the group email inbox.

36. In September 2017 the claimant had her annual appraisal (see 82 to 83). The appraisal notes that the claimant was 'susceptible to worrying about being seen negatively by colleagues, sometimes holds back on sharing own opinion due to this.' It appears this arose from the claimant's ongoing concerns regarding the appropriate process that was to be used to deal with urgent referrals, certainly this concern was raised again at the supervision on 29 September 2017 (84 to 85).

37. In October 2017 the claimant was absent from work on annual leave. During her absence Ms Barter and Ms Hunt considered how best they could adapt the team email system to ensure that no referrals were missed. They adopted a new process by which they would not drag emails to their own email box but would rather red flag and/or highlight any email that they were not actively working on. The concern that they had was that when they dragged emails into their own inbox it was immediately stored in date sequence, meaning that older emails might disappear from the inbox window, resulting in the need to scroll down to locate the email, if the email was not to be missed.

38. The claimant returned to work in November 2017.

39. On 4 November 2017 the claimant alleges that she was told by Ms Hunt that Mrs Bell had made a derogatory comment about her in the presence of the team. She stated that Mrs Bell had said that Ms Bauman had 'carried the claimant'. The claimant was greatly upset by this report. At or about that time, Mrs Bell left the team to work in a different post as a Serious Incident Coordinator.

40. Ms Hunt stated in cross-examination that she had no recollection of such a conversation with Mrs Bell, but in her statement indicates that she did tell the claimant of a remark that had been made at a team meeting when it was said that the team held Ms Bauman in high regard as she worked full-time hours and had in fact 'carried the team.' Ms Hunt's recollection is that the claimant immediately became defensive and said that it must have been Mrs Bell that must have made the comment.

41. On 7 November the claimant returned to work following the weekend break. During her absence in October 2017, as indicated above, the process for dealing with urgent referrals by email had been altered. Ms Hunt accepts

that she did not inform the claimant of the change in the process because of the significant workload.

42. Over the course of the 7th, 8th and 9th of November the claimant became increasingly concerned and to an extent aggravated with Ms Barter's practice with the urgent emails. This culminated in the claimant suggesting to Ms Barter that she should look at the claimant's computer screen, and when she refused to do so, the claimant stated in a loud voice that it was 'like talking to a brick wall.' Ms Barter was deeply upset by the remark and walked away, but the claimant sought to call her back to look at the screen.

43. The incident was reported to Gail Baldwin and, subsequently, by Ms Hunt to Mrs Bell. Ms Hunt was greatly upset and concerned that the new recruit (Ms Barter) who was supporting them in dealing with the workload might, at the very point of concluding her application for the permanent post, be put off by the manner in which she had been treated by the claimant. She sent an email to Mrs Bell to vent her frustrations (88). It is noticeable that Mrs Bell's reaction was merely to suggest that the email should be shared with Gail Baldwin, who was the line manager for Ms Barter, and that her concern was that Ms Barter would begin to question her ability to work within the team. There is no evidence of any particular ill-will on the part of Mrs Bell towards the claimant in her response. She did not delete Ms Hunt's email as Ms Hunt requested.

44. On 9 November Ms Baldwin conducted a supervision with the claimant during which they discussed the incident that occurred that day. The claimant accepted responsibility for her actions and Miss Baldwin decided that as the claimant accepted that she had let her emotions get the better of her it was not necessary to take any disciplinary action.

45. On 12 November the claimant produced a record of her concerns. It is the only record in which the alleged comment by Mrs Bell is recorded (92 to 95). The claimant met with Mrs Munt. There is no record of that meeting. In Mrs Munt's statement at paragraph 8 she states that she received a report from the claimant and refers to page 92 to 95. In her evidence she stated that she had not received the document at 92 to 95 but only a verbal account from the claimant, that she had not seen the document until disclosure in these proceedings, and she explained the content of the statement by saying that she had not had the bundle at the time she prepared statement and therefore assumed that the solicitors had added the reference to the document following disclosure. The claimant avers that she handed the document to Mrs Munt because she was so distressed at the meeting that she found it difficult to speak.

46. The parties agree that at the meeting the claimant told Mrs Munt of the comment that she believed Mrs Bell had made at a team meeting. Mrs Munt was adamant she was not told precisely what the comment was but agreed to speak to Ms Hunt about it and requested the claimant to set out details of the concerns in writing so that she could provide them to Mr Clifford. As a result of the concerns Mr Clifford spoke to Mrs Bell to advise her not to hot desk in the office close to the claimant until the matter was resolved. That is indicative of the seriousness with which the respondent regarded the issue.

47. On the balance of probabilities I conclude that although Mrs Willett had prepared the document at 92 to 95 as an aide memoir for the purposes of the meeting on 13th of November she did not hand it to Mrs Munt, but rather may well have refined it following the suggestion that she would need to set out her concerns about the comment in writing. I have had regard to the claimant's letter at 119 which states of the meeting "This in response to the statement I *reported* to you on 12 November" (emphasis mine). Nowhere in that letter or in any other document does the claimant say that she handed a written document containing the allegation to Mrs Munt.

48. The claimant was told that she should take the rest of the week off as she was visibly distressed at the meeting on 13 November. It is noticeable that in an email sent to her union representative, Michelle Gough, two days after the meeting, the claimant states that both Mrs Munt and Miss Baldwin were supportive during the meeting. In that email the claimant also records that she was told that they would speak with Mr Clifford about the incident. There is no reference to her having handed over the document at 92 to 95, nor, if she had prepared that document prior to the meeting on 13 November, did she send it to Ms Gough on the 15th. This matter further informs my view that it was either prepared for the meeting but not handed to Mrs Munt or was prepared after it and refined later.

49. The claimant did not return to work after this incident, her sickness absence continued until her resignation on 20 July 2018.

50. Mrs Munt spoke to Ms Hunt who advised her that she did not recall telling the claimant of a direct quote from Mrs Bell, but 'substantiated some of what [the claimant had)] said'. Mrs Munt confirmed the discussion in an email (100). The claimant therefore believed that her complaints of bullying had been substantiated by Ms Hunt.

51. In December 2018 the claimant completed a Case Form for Unison, sending it by an email in which she stated "I am currently on sick leave and feel my position within the team has become untenable.' (101)

52. On 19 January 2019 the claimant met with Mrs Munt and Michelle Gough, who was acting as the claimant's union representative. There was discussion about the claimant's health and the workplace issues that related to it. Mrs Munt explained to the claimant that she had discussed the matter of the urgent referral procedure with Ms Hunt and Ms Barter and both had suggested that they had changed the process because it provided a more straightforward way for them to allocate the work when the team was short staffed; they accepted that they had failed to inform the claimant of the change and Ms Barter had apologised for that. Mrs Munt accepted that explanation and that any impact of their decision had been unintentional.

53. There was some discussion of the way the claimant perceived that Miss Bell had bullied her, during which the claimant said she felt let down by Ms Hunt's failure to corroborate her allegation and stated that she would be unable to return to work if Mrs Bell was present. The claimant was reminded that the option of a formal grievance was open to her if she had significant concerns regarding Mrs Bell, but in the absence of such process it would not be possible to ensure that the claimant did not encounter her.

54. At the meeting the claimant insisted that she wanted an apology from Ms Hunt and Ms Barter and that she could not return to work without it. Mrs Munt suggested that mediation might be an appropriate course and the claimant agreed to consider that. The claimant was told of the options of counselling and/or therapy which could be accessed via the Employee Assistance Program, but the claimant believed that suggestion indicated that she was being punished by being referred for counselling or therapy because it had been suggested she was at fault for the incident on 9 November. The claimant accused Mrs Munt of failing to support her. It was agreed that the claimant would be referred to occupational health and would consider mediation and/or counselling or therapy options.

55. On 23 January 2018 Mrs Munt sent the claimant a proposed script for the narrative that would be included within the occupational health referral and invited comments upon it (see 104A).

56. On 26 January 2018 in an email sent to the claimant, Michelle Gough suggested that Unison had advised that as there was no evidence of bullying by Mrs Bell in the six months prior to the case form being completed it would be difficult to bring a case of bullying. However, she advised that the claimant could use the dignity at work policy, adopting either the informal or formal procedure, to address the alleged bullying by Mrs Bell.

57. The email records that the claimant felt humiliated by issues that had occurred within the admin team relating to discrepancies about the structure and processes that was adopted. Miss Gough advised that the claimant should use the trust's mediation process to support her and to find resolution. It appears that the claimant regarded that suggestion as a failure to support her. In answer to my question, the claimant stated that the support she wanted was for Ms Gough to represent her at a grievance hearing, whereas Ms Gough was advocating mediation as the union's proposed solution.

58. On 4 February 2018 the claimant returned the narrative for the OH referral. The referral was sent with both the original narrative and the claimant's amended narrative attached. The referral contained certain errors, in particular: the claimant's home and mobile number were inaccurately recorded, the claimant's hours of work were inaccurate and the referral suggested that a copy of the document had been sent to the claimant when, in fact, Mrs Munt did not send the referral on the grounds that she believed that having discussed the content of the referral with the claimant and having gained her consent for the referral, it was not necessary to do so.

59. In consequence the claimant was unable to attend the occupational health assessment, because she states the occupational health physician informed her that it was not possible to conduct an assessment in circumstances where there was not informed consent for the referral. The Respondent asserts that it was the claimant's choice not to proceed. Given the only evidence on the point was from the claimant, on the balance of probabilities I accept her account that it was the consultant who decided that an in-person consultation was necessary, once the full referral form had been seen and consented to by the claimant, and that was scheduled for April 2018.

60. On 21st of February 2018 the claimant attended a well-being meeting at

which she was supported by a friend, rather than her union representative Michelle Gough. Mrs Munt attended and was supported by Katie Tucker, an HR adviser. During the meeting the claimant reiterated her concerns about bullying by Mrs Bell and indicated that she would be unable to return to work until those issues and the outstanding breakdown of the relationship with Ms Hunt and Ms Barter had been resolved.

61. During that discussion the claimant insisted that Ms Hunt and Ms Barter deliberately changed the administrative process and consciously decided not to inform the claimant of the change. The claimant stated that she was aggrieved that she had been called to a meeting with Ms Baldwin regarding the incident on 9 November 2017 and stated she did not feel she done anything wrong. In consequence the claimant again insisted that for the matter to be resolved, she required an apology from Ms Hunt and Ms Barter.

62. Mrs Munt agreed to speak to Ms Hunt to determine whether there was further information relating to the alleged comments made by Mrs Bell but proposed that in order to resolve the breakdown of relationships with Ms Hunt and Ms Barter the claimant should consider mediation. Once again, the claimant was advised that the option of counselling was open to her.

63. The content of the meeting was recorded in a letter dated 2 March 2018 (see 115 to 117). On its receipt, the claimant took umbrage with some of the wording of the letter believing that it was not accurate and presented her in an unreasonable fashion. The nature of her concerns is set out in a letter dated 22 March (pages 118-120).

64. On 28 March 2018 the claimant met with Mrs Munt and Miss Tucker, she was accompanied by a friend. Mrs Munt advised the claimant that Ms Barter and Ms Hunt had declined mediation on the basis that it was unnecessary; neither had concerns about working with the claimant. The claimant agreed that mediation was 'out of proportion' to the issue and hoped that the November incident could be put behind them. The agreed course was that Mrs Munt would chair a meeting of the admin team, which all would attend, at which the issue of processes could be discussed and resolved. A phased return was also discussed. The claimant referred to "the overriding issue" being her treated by Sarah Bell. Miss Tucker explained the grievance process to the claimant and suggested that the claimant wrote to Mrs Munt setting out the incidents in question. It was proposed that mediation with Mrs Bell might then enable the problem to be resolved.

65. On 9 April 2018 the claimant was assessed by an OH physician and an OH report was prepared the same day (123-5). The report indicates that the primary reason for the claimant's work-related stress was 'staff changes … which have been associated with increased workload implications.' Reference is also made to the historic difficulties with Mrs Bell. The report identifies the claimant's view that her line manager, Mrs Munt, was unsupportive, and Michelle Gough was subject to a conflict of interest. The OH report diagnosed reactive anxiety related to the claimant's work situation and perception of the way in which she had been treated. It counselled against mediation which could exacerbate that condition and advised that given the claimant's loss of trust and confidence in her management arrangements an alternative working environment should be identified if

possible, as a return to her existing role would likely worsen her reactive anxiety.

66. On 27 April 2018, the claimant wrote to Mrs Munt, copying it to Miss Tucker, referring to the OH report, and stated "I have suffered work-related stress and 2 1/2 years of bullying by Mrs Bell, from 2015 to November 2017. It was the last straw to hear from a colleague in November 2017 that Mrs Bell was again making derogatory remarks about me, causing me humiliation and further detriment to my standing in the CMHT."

67. On 14 May 2018, the claimant attended a supervision meeting with Mrs Munt. She confirmed that she was content to continue to liaise with Mrs Munt, despite the content of the OH report. In addition, it is clear from the supervision notes that the claimant was deeply unhappy with what she perceived to be Michelle Gough's conflict of interest in her TU role when dealing with a complaint against one of those she worked with, and the claimant had declined her representation, the effect of which was the TU withdrew support. The claimant appealed that decision.

68. The issue with the union was an ongoing concern for the claimant; she referred to it again during a telephone call on 30 May 2018 with Mrs Munt. The Claimant was adamant that she could not return to work but could not articulate any solution to the problem. Mrs Munt therefore proposed redeployment, a course which Miss Tucker had suggested. The claimant thanked Mrs Munt for being so understanding. This quote is directly recorded in the note of the call (132). The claimant stated that she wanted the Union to advise her of her options.

69. On 15 June Mrs Munt telephoned the claimant to discuss redeployment further. The content of the discussion was recorded in note form on a supervision proforma (135). During that discussion the claimant maintains that Mrs Munt told her that in order to be placed on the redeployment register she would need to give notice and effectively resign from her post and that she would be unlikely to find another post. The note records "Redep Register = resign from post" but there is no reference to the restrictions caused by the claimant's part-time contract and limited hours. There was further discussion about the 12-week period during which alternative roles would be searched for and the applicable notice period if they were not found. The claimant was told of how redeployment operated, but she was not told that she must adopt that option. The claimant was also told that she would need to complete the grievance from to pursue her complaints regarding Mrs Bell.

70. Later the same day, the claimant emailed Mrs Munt asking for details of the redeployment process before attending a further meeting to discuss it. The claimant was sent the redeployment policy from August 2006, sections of which were in the bundle, on 29 June 2018.

71. A OH review report was provided on 28 June 2018 (137-8). The report refers to the claimant's distress at the injustice of her situation, the fact that she was 'ridiculed' in front of colleagues and that the respondent had sent her a letter containing factual inaccuracies. The report recommended a resolution of the issues at work, correction of the perceived inaccuracies, redeployment on the grounds of ill health and a staged return to work.

72. On 10 July 2018 the claimant maintains that when speaking to a work colleague on the telephone, the colleague told her that staff had been instructed not to speak to the claimant. There is no record of this discussion and the claimant declined to identify who the employee in question was.

73. On 18 July 2018 the claimant attended a meeting with Miss Tucker and Mrs Munt; again she was accompanied by Pam Scott, a friend. Mrs Munt produced notes during the meeting (140). A letter was sent on 20 July (141) reflecting the content of the meeting (141-3). At the meeting Mrs Munt and Miss Tucker enquired as to the claimant's current state of health; the claimant indicated that she would be seeking a fit note for a further month's absence.

74. The discussion turned to the issue of redeployment. The claimant stated that she was not going to return to her previous role in light of the OH advice. Miss Tucker therefore explained that the claimant would be placed on the redeployment register. Again, a full explanation of that process was provided by Miss Tucker, during which Miss Tucker stated that the claimant would need to be flexible in terms of the posts that she might be prepared to consider which might differ in terms of hours or location as there was no guarantee that these could be matched, and advised that the pairing would be conducted on the basis of skill set. Miss Tucker further explained that if a role could not be found the claimant would be given 12 weeks' notice of termination and that her employment would be terminated on the grounds of ill health.

75. The claimant maintained that the redeployment policy should not apply to her as her ill-health was caused by bullying, but Miss Tucker advised the claimant that the policy applied in that situation and that only other options were to consider a career break or an application for flexible working.

76. Given that the sickness absence policy provided for a final formal review meeting after 6 months' of absence and the claimant had been absent for 7 months, Miss Tucker explained that a final formal review meeting would need to be conducted under the policy if alternative employment were not found or if the claimant did not return to work, but all the options could be discussed at that meeting.

77. The letter makes clear that if the claimant were to elect to be placed on the redeployment register then she would be placed temporarily into another team. Neither Miss Tucker nor the letter make any reference to the need to resign from the claimant's existing post to be placed on the redeployment register.

78. On 30 July 2018, the claimant resigned by a letter of the same date. The claimant made the following points in the letter:

(a) The redeployment policy did not apply to her as her ill-health was caused by bullying and harassment. In the event, I find that this allegation was misplaced, the policy did apply irrespective of how the ill-health was caused.

(b) The claimant therefore objected to being placed on the redeployment register and was unhappy that the letter merely referred to those matters as "expressing concern"

(c) She alleged that the respondent had misrepresented the position by suggesting that the claimant had decided not to return to her current post, rather the OH report recommended that she should not. Again, I find that that criticism was misplaced, the claimant had clearly communicated her decision not to return to her existing role, which necessarily meant she would need to be redeployed; she made that decision on the basis of the OH advice;

(d) She objected to the suggestion that returning to her current role remained an option. Here she misunderstood the respondent's position. It was not advocating the course as a realistic or appropriate one, rather it was saying that it remained an option that the claimant could consider if she wished, and, if so, the support mechanisms identified could be offered.

(e) The claimant complained that the respondent was not therefore heeding OH advice and "there appears to be little willingness on the part of the service to acknowledge the real reason for my prolonged period of ill-health" and the "lack of support and approach, shows me beyond doubt that the working relationship has broken down irretrievably."

The Relevant Law

79. Having established the above facts, I now apply the law.

80. Under section 95(1)(c) of the Employment Rights Act 1996 ("the Act"), an employee is dismissed if s/he terminates the contract under which s/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.

81. If the claimant's resignation can be construed to be a dismissal, then the issue of the fairness or otherwise of that dismissal is governed by section 98 (4) of the Act which provides :

> "…. the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and –
>
> (b) shall be determined in accordance with equity and the substantial merits of the case".

82. The best known summary of the applicable test for a claim of constructive unfair dismissal was provided by Lord Denning MR in Western Excavating (ECC) Limited v Sharp [1978] IRLR 27:

> "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 his employer's conduct. He is constructively dismissed. The employee is entitled in these 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 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."

83. The nature of the assessment is an objective one (see Malik and Omilaju), namely "… whether, looking at all the circumstances objectively, that is from the perspective of a reasonable person in the position of the innocent party, the contract breaker has clearly shown an intention to abandon and altogether refuse to perform the contract." (see Tullett Prebon PLC and Ors v BGC Brokers LP and Ors Maurice Kay LJ at paragraph 20).

84. Reasonable behaviour on the part of the employer can point evidentially to an absence of significant breach of a fundamental term of the contract (Courtaulds Northern Spinning Ltd v Sibson). However, if there is such a breach, it is clear from Meikle, Abbey Cars and Wright, that the crucial question is whether the repudiatory breach "played a part in the dismissal" and was "an" effective cause of resignation, rather than being "the" effective cause. It need not be the predominant, principal, major or main cause for the resignation.

85. With regard to trust and confidence cases, Dyson LJ summarised the position thus in Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA:

> "The following basic propositions of law can be derived from the authorities:
>
> 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) Limited v Sharp [1978] 1 QB 761.
>
> 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: see, for example Malik v Bank of Credit and Commerce International SA [1998] AC 20, 34H – 35D (Lord Nicholls) and 45C – 46E (Lord Steyn). I shall refer to this as "the implied term of trust and confidence".
>
> (a) Any breach of the implied term of trust and confidence will amount to a repudiation of the contract, see, for example, per Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA, at 672A; the very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship.
>
> (b) The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik at page 35C,

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".

86. This has been reaffirmed in Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA, in which the applicable test was explained as:

    (a) in determining whether or not the employer is in fundamental breach of the implied term of trust and confidence the unvarnished Malik test should be applied;

    (b) If, applying Sharp principles, acceptance of that breach entitled the employee to leave, he has been constructively dismissed;

    (c) It is open to the employer to show that such dismissal was for a potentially fair reason;

    (d) If he does so, it will be for the employment tribunal to decide whether the dismissal for that reason, both substantively and procedurally (see Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA) fell within the range of reasonable responses and was fair."

87. The same authorities also repeat that unreasonable conduct alone is not enough to amount to a constructive dismissal (Claridge v Daler Rowney [2008] IRLR 672); and that if an employee is relying on a series of acts then the tribunal must be satisfied that the series of acts taken together cumulatively amount to a breach of the implied term (Lewis v Motorworld Garages Ltd [1985] IRLR 465).

88. In addition, if relying on a series of acts the claimant must point to the final act which must be shown to have contributed or added something to the earlier series of acts which is said, taken as a whole, to have broken the contract of employment (Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA). The final act must be more than merely innocuous.

89. The judgment of Dyson LJ in Omilaju has recently been endorsed by Underhill LJ in Kaur v Leeds Teaching Hospital NHS Trust. Having reviewed the case law on the "last straw" doctrine, the court concluded that an employee who is the victim of a continuing cumulative breach of contract is entitled to rely on the totality of the employer's acts notwithstanding a prior affirmation by the employee. The Court of Appeal identified five questions which a tribunal should consider in order to determine whether an employee was constructively dismissed:

    (a) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

    (b) Has the employee affirmed the contract since that act?

    (c) If not, was that act (or omission) by itself a repudiatory breach of the contract?

(d) If not, was it nevertheless a part of a course of conduct comprising several acts or omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence?

(e) Did the employee resign in response (or partly in response) to that breach?

Decision

Background Issue 1.2.1 (of List of Issues p26)

90. Clause 6 of the respondent's managing sickness policy (August 2015) provides that the triggers for the management of Short Term Sickness (STS) are two occasions of absence in three months (see clause 6.1). Clause 11.1 of the Managing Long Term Sickness Absence provides that a member of staff will hit the long-term absence trigger if they have had 28 calendar days of sickness absence.

91. Whilst the return to work form of 27 January 2016 records that the claimant had 56 days absence, I find that that was a total period of absence over the course of the year and that the relevant period of absence for the purposes of the sickness absence policy was the two occasions of absence in a three-month period. Mrs Bell was correct to adopt the short term absence policy in consequence.

92. Mrs Bell argued that during the meeting on the 27th January she merely explained the manner in which the sickness absence policy operated, given that it was a new policy that had been implemented in August 2015. In so doing she explained that a possible outcome of the process, if further period of sickness absence occurred, could be dismissal, but there was never any suggestion that the claimant was at any actual risk of dismissal at that stage.

93. The claimant further alleges that Mrs Bell verbally attacked her during that meeting. During her evidence she suggested that Mrs Bell had told her, when the issue of supervisions was raised by the claimant's trade union representative, that 'we all know that you don't like supervision'. There is no reference to that comment in the letter or any reference to an objection being raised by the claimant's trade union representative or the claimant concerning it. The claimant's representative sent an email to Mr Clifford and Miss Allan following that meeting. There is no reference to any concern about such a comment that email (see page 68). I conclude that either the comment was not made, or if any comment were made referring to the supervisions, it was not directed at the claimant but was a more general comment made of employees; on either basis that what was said did not cause Mr King or Ms Allen any concern, and I therefore find that it was not a 'verbal attack' upon the claimant as she suggests.

Background Issue 1.2.2 (List of Issues p27)

94. In general, Mrs Bell and the claimant had a good working relationship, although Mrs Bell indicated that the claimant was someone who liked routine and therefore she found managing her at times of change or pressure to be challenging on occasion. That view was shared by Ms Hunt, who also had a good relationship with the claimant having worked with her for 10 years, but

who also reported that the claimant could find change challenging as she preferred to work with the practices she knew and understood.

95. The claimant also states (see paragraph 2 of her statement) that she had a good working relationship with her colleagues and managers. I find that in general Mrs Bell and Ms Hunt had a positive and mutually agreeable working relationship with the claimant, but on occasion, where the claimant or her practice was challenged, there might be moments where the relationship became more difficult for short periods. When the claimant's workload was particularly acute, in the period June 2015 to April 2016, the claimant's concerns about the safe operation of the secretarial processes, including emails and letter templates, escalated, possibly due to the stress and anxiety occasioned by the workload. Mrs Bell did not always understand or appreciate the extent of the claimant's concerns and frustrations and so, on occasion, did not engage in the discursive form of problem solving which claimant wanted. The claimant found this very difficult and formed the view that Mrs Bell would not listen to her and would 'slap her down.'

96. However, whilst the claimant found it a source of anxiety, she did not in my view regard it initially as 'bullying' and certainly did not regard it as being so serious as to require a formal grievance. That changed in September 2016 when the claimant raised concerns about her treatment by Mrs Bell at the supervision meeting that occurred on 21 September 2016. Thereafter the claimant was encouraged to utilize the support services through Wellness at Work and was told that she could raise a grievance. She did not do so. When the claimant raised a specific concern relating to Mrs Bell's alleged comments which were reported on 4 November, they were not corroborated by Ms Hunt. There was therefore no corroborating evidence to support the claimant's allegation and, crucially, the evidence suggested that the claimant had misunderstood what she was told and it was that misunderstanding upon which the allegation of bullying was founded. As Ms Gough noted in providing TU advice, the complaints the claimant made against Mrs Bell in November 2017 were largely historic, particularly given that she had ceased to work with the claimant in November 2016.

97. I conclude therefore that Mrs Munt did not fail to support the claimant in relation to those matters. She was supportive; she listened to the claimant's concerns, investigated them and referred the claimant to the appropriate and available sources of support and assistance, but could not sensibly pursue formal action against Mrs Bell in light of the outcome of her brief investigation.

Issues 1.1.1 and 1.1.2:- Did Sarah Bell make slanderous comments about the claimant's competence in the team room? On 9,10,11 November 2017 did Ms Barter refuse to follow the agreed administrative procedure?

98. It is clear that the incidents on the 7th, 8 and particular the 9th of November led to a significant dip in the working relationship between Ms Hunt and the claimant. The claimant stated in evidence that she believed that Ms Barter and Ms Hunt had conspired together to undermine her work by changing the process and then not informing her of the change. It is also clear that she believed that the change was fundamentally unsafe and therefore was unwilling to accept it, even if it was the majority view. In support of the allegation that the Ms Barter and Miss Hunt had colluded, the claimant

suggested that Ms Barter and Ms Hunt become firm friends in her absence, that Ms Hunt had a long standing working relationship with Mrs Bell and that those friendships and/or relationships lay the behind the decision to undermine the claimant.

99. In my view there was no such collusion between Ms Hunt and Ms Barter and certainly no intention to undermine the claimant's work, rather they had identified issues with the system that had been operated and sought to identify a new practice that worked for them. However, Ms Hunt (primarily, as the senior employee) and Ms Barter both failed to inform the claimant of the change, and that failure of communication led to the incident on 9 November. A failure of communication is not a deliberate and conscious decision to undermine an individual, nor is it evidence of collusion.

100. However, in my view, the effect of the incident of 9th November did sour the relationship between Ms Hunt and the claimant so badly, that when Ms Hunt was subsequently approached regarding the alleged comments of Mrs Bell on 4 November 2017, she sought to protect Mrs Bell by suggesting that it was the team's view, rather than Mrs Bell's view that Ms Bauman had carried the team. It is difficult to understand which other team member would have expressed the view; Ms Barter was not present during Ms Bauman's employment, Ms Hunt had a good relationship with the claimant prior to the 7 November, and there were not many other members of the team who could have made the comment, and certainly none who were identified in evidence. In my view Mrs Bell made a comment that Ms Bauman had carried the team, but this was focused upon Ms Bauman's contribution, given that she was full time and Mrs Willett was part-time. It may have been made from pique given the claimant's habit of raising concerns with the practices adopted in the team and of challenging the decisions of her managers where she perceived that it placed service users at risk.

101. I cannot say however that the comment was slanderous in those terms or that it went beyond them. Certainly, it did not affect the respondent's managers' view of the claimant; this is apparent from the positive supervisions and high praise in her appraisals; the claimant's work and work ethic was and remained of the highest standard and the respondent acknowledged and recorded this. Similarly, I do not find that the comments lowered the claimant's standing in the eyes of her colleagues. She had a very positive relationship with Ms Hunt and Mrs Bell and Ms Barter until the incidents on 7 – 9 November. It was that, and not any comment made by Mrs Bell, which soured relationships temporarily.

102. Judged objectively, whilst subjectively the claimant regarded the comment as so serious as to amount to a breach of the implied term, objectively, looking at all the evidence, it did not and it was not reasonable for the claimant therefore to form the view of it that she did. It was an ill-judged comment but it did not effect the claimant's standing and did not demonstrate, in the context of the ongoing support for and value placed in the claimant's work by the respondent, any intention on the part of the respondent to treat the ongoing relationship of trust and confidence as being at an end. It was not a fundamental breach going to the root of that relationship.

Issue 1.1.3 At a meeting of 19 January 2018 did Ms Gough and Mrs Munt fail

to support the claimant regarding the alleged incidents referred to at 1.1.1 and 1.1.2 above?

103. Mrs Munt conducted a reasonable investigation into the incident of 9 November and the 4 November comments. In relation to the former, she proposed mediation if the claimant wished it and explained how the difference of views had come about. The claimant was adamant that she should receive an apology and that Ms Hunt and Ms Barter had conspired against her. That was not, I have found, the case, but in any event, Mrs Munt could not demand such an apology from them in the circumstances. Counselling was also offered. That was a reasonable and supportive course.

104. In relation to the later, Mrs Munt was hamstrung by the account provided to her by Ms Hunt. She could not reasonably find on that basis that Mrs Bell had made a slanderous remark, but in any event, the claimant was told that the matter would be further investigated and if she wished to, she could pursue the matter as a formal grievance. Guidance was provided as to how to do so. No more could reasonably have been done in the circumstances.

Issue 1.1.4 Did Mrs Munt fail to follow the appropriate procedure for referral to occupational health (as set out)?

105. The respondent accepts that the referral contained errors and was not sent to the claimant in its entirety. However, the referral accurately reported that the claimant perceived she had been bullied but there was (at that stage) insufficient evidence for management to pursue the matter further – there was no grievance and there was insufficient evidence for a disciplinary. In my view however, those minor technical errors were not so serious as to amount of themselves to a fundamental breach of the implied term of trust and confidence.

Issue 1.1.5 The occupational health assessment which was due to occur on 13 February could not take place until 9 April 2018.

106. Mrs Munt's failure to send the entire referral to the claimant before the occupational health appointment did, as I have found, lead to the occupation health assessment being delayed. However, in my view, neither the failure nor the resulting delay constituted a fundamental breach of contract in the circumstances where Mrs Munt had sent the narrative to the referral to the claimant and had discussed the content of the form with her and it was the occupational health's physician's decision not to proceed with the appointment in February 2018. Mrs Munt's error was a failing of form not of substance, and I note that no reference was made to the delay in the appointment which resulted in the claimant's resignation letter.

Issue 1.1.6 Did Mrs Munt's letter dated 2 March 2018, regarding the well-being review meeting on 21 February 2018, contain errors and portray the claimant as unreasonable? Did Mrs Munt dismiss the claimant's concerns about the 2 March letter as irrelevant during a meeting with the claimant on 28 March 2018?

107. The claimant suggests that there are 7 incidents where Mrs Munt's letter was inaccurate. Mrs Munt and Ms Tucker aver that the letter was intended to be a summary of the key points raised and not a verbatim minute. I consider

each allegation in turn:

(a) Bullet 1 – In her letter the claimant provided a basis for her view that the failure to inform her of the change in process was deliberate; in my view there is nothing inaccurate about the summary in the Respondent's letter;

(b) Bullet 2 – In her letter the claimant explained why she had not discussed the matters with her managers. The fact remains that she had not, which was what the letter recorded. That was not inaccurate;

(c) Bullet 3 – The Respondent's letter recorded that the claimant did not feel that she spoke to Moira Barter inappropriately. The claimant's letter provided more detail confirming that stance. The respondent's letter was not inaccurate;

(d) Bullet 4 - Mrs Munt set out her understanding of the manner in which Ms Baldwin became involved in the incident. The claimant's letter referred to her explanation for how the incident developed. The two are distinct and separate issues. The respondent's letter was not inaccurate in its record;

(e) Bullet 5 – The respondent's letter suggested that the claimant was unhappy that Ms Baldwin had spoken to the other witnesses before speaking to her. In fact, the claimant had explained that her concern was that she believed the matter should have been resolved by gathering the affected parties at the time for a meeting, which would have resolved the matter, but this did not occur as Ms Barter left and in consequence Ms Baldwin spoke to Sarah Bell and Laura Bradbeer, which led to an escalation of the issue. To that extent the letter did not fully record the nature of the claimant's concern;

(f) Bullet 6 – the respondent's letter recorded that the claimant was aggrieved at the manner in which Ms Baldwin had handled the matter. The claimant's letter provides further detail of the reason for that sense of grievance; it is not inaccurate;

(g) Bullet 7 – the respondent's letter refers to 'some confusion' relating to Mrs Munt's email to the claimant on 27 November 2018. The claimant's letter argues for a different interpretation of the email. That is in my view evidence of confusion as to the correct interpretation of the content of the email. The respondent's letter was not therefore inaccurate in recording matters in this way.

108. I do not find that the letter presented the claimant in an unreasonable light through the alleged inaccuracies or more generally. I note that in the claimant's closing submission very little is said on this point and in answer to my question the claimant struggled to identify how the letter portrayed her as being unreasonable, save for saying it omitted to include the reason why she had not raised her concern with managers.

109. For the reasons given above, I reject the suggestion that Mrs Munt's letter contained inaccuracies and/or portrayed the claimant as being unreasonable. The letter did not constitute a fundamental breach of the implied term, and the single inaccuracy within it was not capable of contributing to a cumulative series of events which did.

Issue 1.1.7 On 15 June 2018, did Mrs Munt inform the claimant that, on registering for redeployment, the claimant would be given 12 months' notice and, due to the part-time nature of her role, it was unlikely that the claimant would find a suitable position?

110. The note of the telephone call records "Redep Register = resign from post" but there is no reference to the restrictions caused by the claimant's part-time contract and limited hours. As I have found, there was further discussion between Mrs Munt and the claimant about the 12-week period during which alternative roles would be searched for and the applicable notice period if they were not found. The claimant was told of how redeployment operated, but she was not told that she must adopt that option. She was sent a copy of the Redundancy and Redeployment policy which set out those matters and did not contain any reference to the need to resign. Mrs Munt's evidence, which I accept, was that she explained that if a role were found through the redeployment search then the claimant would need to resign form her current post to take it up.

111. I reject the claimant's evidence that she was told that due to the part-time nature of her role, it was unlikely she would find alternative employment and/or that on registering she would be given 12 weeks' notice of termination. She was told that there would a twelve-week period to find alternative employment and that if she had not found another role at the end of that period she would be given 12 weeks- notice of termination. I prefer the evidence of Mrs Munt on this point.

Issue 1.1.8 Did the respondent instruct members of staff not to speak to the claimant after her sickness absence commenced?

112. I have not been persuaded on the balance of probabilities that the conversation occurred as alleged. The claimant could provide no evidence that it occurred beyond what she says was reported to her by a colleague and the respondent denies it. There was no contemporary evidence relating to the conversation and no documentary evidence of it or which made reference to it. In any event, even if I were wrong about that, I am not persuaded that it played any part in the claimant's decision to resign, it is not referred to in the resignation letter.

Issue 1.1.9 Did the content of a conversation at a well-being meeting on 18 July 2018, which included an offer for the claimant to remain in her current post, or its later repetition either amount to a breach of the implied term or contribute to a cumulative series of events which did?

113. The claimant had indicated the she could not return to her role and on occupational health advice she would need to be redeployed. Mrs Munt and Miss Tucker therefore explained the redeployment process to her. The policy applied in circumstances where an employee was unfit due to ill health, irrespective of the cause of the ill-health. It was not objectively a fundamental breach to refer to or explain the policy in those circumstances, nor was this last straw capable of contributing to a series of event which did.

114. However, The redeployment process was not instigated on 18 July 2018 because the claimant was adamant that the process did not apply to her. The

options were explained to her and she was given time to reflect and consider which she wanted to pursue. She was told that one option was to return to her existing role, but that was only mentioned as an option in the circumstances where the claimant did not want to seek redeployment. It does not objectively amount to a fundamental breach of contract to remind an employee of all the options open to them, even in circumstances where one of the options has identified as unviable by occupational health.

115. The respondent's conduct on the 18 July 2018 is properly and accurately described as innocuous. It was neither a breach of the implied term of itself nor was it capable of contributing to a series of events that cumulatively amounted to such a breach.

Conclusion

116. For the reasons set out above, the claimant's claim of constructive unfair dismissal is not well founded and is dismissed.

The respondent's costs application.

117. At the conclusion of the judgment the respondent applied for the costs of counsel's attendance at the hearing on the grounds that the claim had no reasonable prospect of success, that the respondent had warned the claimant of this prior to the hearing and that in those circumstances, having had its view vindicated, the respondent should be entitled to recover the costs above.

118. I was not provided with the letters in questions, but in any event concluded that it would not be appropriate to make a costs Order in the circumstances as:

(a) The respondent's application was not pursued on the grounds that the claimant had acted unreasonably or vexatiousy in continuing her claim despite the costs warnings, but only on the basis that the claim had no reasonable prospect of success and the claimant should have recognized this following identification of the respondent's views on the matter in its letters and withdrawn her claim;

(b) In that regard, I reminded myself that the claimant was a litigant in person, that she had received some legal advice on a pro-bono basis and that that advice (as she told me in response to the costs application) had been that she had a genuine and arguable claim. Further, the respondent had not applied for or obtained a deposit Order and the claim was fact sensitive, turning upon disputed matters of fact.

(c) I had preferred the claimant's account on several factual issues, and the respondent had conceded it on others (such as the errors in the OH referral and the delay in securing the OH appointment) although not on all, but the claimant's claim had failed because the facts as found did not amount to a breach of the implied term. That decision is ultimately an individual one made by a judge albeit on an objective basis.

(d) It could not be said at the time the hearing commenced that the claimant's claim had no reasonable prospect of success.

Employment Judge Midgley

Date 21 October 2019