



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs A Fletcher

**Respondent:** Countrywide Estate Agents

**HEARD AT:** CAMBRIDGE ET      **ON:** 26<sup>th</sup>–28<sup>th</sup> July 2017

**BEFORE:** Employment Judge G P Sigsworth

## REPRESENTATION

**For the Claimant:** In person

**For the Respondent:** Mr A Hodge, Counsel.

## JUDGMENT

The Judgment of the Tribunal is that:-

1. The Claimant was constructively unfairly dismissed.
2. The claim for failure to inform or consult under the TUPE Regulations is dismissed.
3. A remedy hearing will be listed on application by the parties.

## REASONS

1. The claims are for constructive unfair dismissal and (possibly) failure to inform and consult under the TUPE Regulations (see below). The hearing was listed to determine liability only. The Tribunal heard oral evidence from the Claimant. Called on behalf of the Respondent were five witnesses. These were Mr Darren Wilson, former director; Mrs Helen Broomhead, people business partner; Mrs Betty Barnes, people business partner; Mr Erik Lenbergs, financial services director; and Mr

Michael Miller, retail director (at the material time). There was an agreed bundle of documents of some 460 pages, to which the Tribunal was referred as was appropriate. At the end of the evidence, the Claimant and the Respondent's representative made oral submissions. The Respondent's Counsel also provided written outline submissions and a chronology.

## **Findings of Fact**

2. The Tribunal made the following relevant findings of fact:-
  - (1) The Respondent is a large national company in the business of estate agents – sales, lettings and property management. They acquired the business of Ashby Lowery in December 2015, through (it is believed) a share purchase rather than a TUPE transfer. Ashby Lowery was a self contained, one branch (albeit large) estate agency – covering sales, lettings, property management and block management. It was owned by Mr Darren Wilson and his wife Wendy. The Claimant's employment with Ashby Lowery began (according to her contract of employment) on 17<sup>th</sup> November 2003, as office manager. At the date of the sale of the business to the Respondent, the Claimant was responsible for the management of the lettings and property management team, some 10 or 12 staff, and for the administration management of other staff, some 23 or 24 in the office in total. There was a sales manager and a manager for block management. As part of her role, the Claimant oversaw office systems, staff and their various tasks – ensuring compliance with the regulations governing Ashby Lowery's activities and the smooth running of the operation. The Claimant also dealt with tenants and landlords on a number of matters.
  - (2) Generally speaking, before the sale of Ashby Lowery to the Respondent, the Claimant and Mr Wilson had got on well. In his witness statement, Mr Wilson acknowledged the Claimant as his number two and someone who had considerable autonomy to conduct business in the manner she believed was best and in the best interests of clients and staff. She had been important in helping Mr and Mrs Wilson create Northampton's most successful letting and property management business, as Mr Wilson put it. Mr Wilson was content to leave the running of the office to the Claimant, and she did it well, using Ashby Lowery's office account and systems for the purposes of dealing with payroll, supply invoices, expenses, etc. I find that Mr Wilson was out of the office a lot of the time, whether conducting business or for other reasons, although he remained contactable on his mobile phone or by email. The Claimant was the 'go to' person for all staff on any office management issues that they had. No doubt Ashby Lowery was a profitable and well run business, with high levels of staff and

customer satisfaction. Staff turnover was low, and landlords stayed and were loyal to the business.

- (3) Mr Wilson told his managers (including the Claimant) about the likely sale of to the Respondent in about August 2015. However, there were no meetings with staff to discuss the implications of such a sale. Thus, it came as something of a shock to the staff to receive the letter of 10<sup>th</sup> December 2015, from the Respondent's human resources department welcoming the staff individually to the Countrywide Group. There was a meeting with Mr Miller, at the time the Respondent's retail director, and with two other directors of Countrywide, at which staff could and did ask questions, on 16<sup>th</sup> December 2015. Thereafter and for the next few months, there was no or only minimal contact with the Claimant and Ashby Lowery staff by anyone from Countrywide – in terms of meetings, induction, training, explanation of Countrywide office systems and so on. This was certainly the case for staff involved in sales, lettings and property management. For block management there was a separate line management structure – with a regional or area manager supporting the Ashby Lowery block management manager. Mr Wilson became an employee of the Respondent and reported to Mr Miller. Mr Miller expected Mr Wilson to carry on as before, running the business as he always had, albeit with Countrywide office processes introduced, but not the Countrywide systems for sales and lettings. Because of Countrywide's experience of a number of acquisitions at this time, they appointed a welcome director to support staff from the acquired businesses. However, this only happened later on and not at the time of the acquisition of Ashby Lowery, so staff there did not benefit from this support.
- (4) Following the acquisition by the Respondent, there were a number of problems for the office in applying the Countrywide office processes to Ashby Lowery. This led to serious and persistent issues over the payment of salary to staff (which was missed, or late, or the wrong amount), over pensions and enrolment into the Countrywide pension scheme, over expenses and concerning the payment of supply invoices. Invoices ended up not being paid on occasion, resulting in suppliers putting a stop on their dealings with Ashby Lowery, which led to the Claimant and her staff being unable to obtain credit references for tenants, register deposits (contrary to regulation) or advertise for new staff (for example, for a new lettings clerk). The Claimant could not run the office properly and spent extra time trying to sort out problems with relevant people at Countrywide, and with staff and suppliers. Mr Miller conceded that this should not have happened and that it was an extra burden for the Claimant. I find that problems of this nature persisted into April and May 2016 – although there may have been some reduction in the volume of them. In late April 2016, Ashby Lowery staff were erroneously given a 2% pay rise – which then

had to be removed. It is easy to see how difficult and embarrassing that was. Several staff still had pay issues in late April, and staff expenses were still causing issues in mid April. The pension scheme enrolment problems continued well into mid April.

- (5) All these issues impacted on the Claimant, even if not directly on her personally. She was the receptacle for staff complaints and the point of contact with relevant people at Countrywide. The Claimant spent substantial extra time on dealing with these difficulties, as is clear from the volume of emails – some 700 in 4 months. I accept the Claimant's evidence that Mr Wilson did not wish to become involved in sorting out these problems. When she asked for his help and support she was told, in effect, to deal with it. For a period of about three weeks she had some extra administrative help from Louisa. It is not clear whether Louisa stayed on. Mr Wilson accepted in his evidence that he had down-played what he termed "mistakes" made by Countrywide in the months to May 2016. His evidence was that disruptions and delays continued in respect of the payment of suppliers, which was an embarrassment. I also accept the evidence of Mrs Barnes about the difficulties staff were having, when she met with them on 4<sup>th</sup> May 2016. She noted two recent resignations of staff, one of whom resigned because of issues over expenses. There were other resignations in a business which hitherto had had low staff turnover. Staff on the upper floor visited by Mrs Barnes were vociferous and negative about their Countrywide experience – late notification of ownership change, pay anomalies, difficulties with pensions, etc. Mrs Barnes noted that the staff were not comfortable in approaching Mr Wilson with their concerns. Mr Wilson said in evidence to this Tribunal that he was "livid" with Mrs Barnes for coming into the office and speaking to the staff. Although Mrs Barnes was more diplomatic in how she described Mr Wilson's reaction to her visit, she accepted that the Respondent's failure to put in Countrywide line management and HR support at the outset for the Claimant and her team may have lead to problems. I find that it did.
- (6) The Claimant personally did not suffer any salary or pension difficulties. She first made contact with Mrs Broomhead on 4<sup>th</sup> April 2016 about the issues that she was nevertheless having, and they spoke on the telephone on 5<sup>th</sup> April 2016. Mrs Broomhead's notes of the conversation indicate that the Claimant was unhappy, that she felt her role had changed but she had not had support from Countrywide, that Mr Wilson was not always at work and she was not sure that Countrywide were aware of this. According to Mrs Broomhead's note, the Claimant felt that Mr Wilson had been rewarded for selling the business and she was doing all the work. She did not want Mr Wilson to know that she had spoken to Mrs Broomhead. Mrs Broomhead said that she would speak to Mr Miller. Mrs Broomhead then had a meeting with the Claimant off site on 15<sup>th</sup> April 2016. The Claimant's concerns

were that Mr Wilson was not in the office (apparently often on holiday or playing golf), that the Claimant was doing everything in the office, that Mr Wilson was much less interested than before and she could not go and speak to him about the problems with Countrywide, that she had not met the area manager, that Mr Wilson was telling Mr Miller that everything was fine, and that the Claimant needed support in the office but Mr Wilson did not want anybody coming in. Mrs Broomhead told the Claimant that they wanted to support her and that Mrs Barnes would come in and look at what could be done. Mrs Broomhead also advised the Claimant to talk to Mr Wilson about the matters she raised. I accept that the Claimant did not believe that she was entitled to a monetary payment on the sale of Ashby Lowery to the Respondent, as Mr Miller accepted this at the grievance appeal. However, she was upset that at this time she was doing all the work, Mr Wilson was absent, and yet he would receive another payout in two years time under the terms of the share purchase agreement – in other words, on the back of the work that she was doing between now and then.

- (7) Mrs Broomhead briefed Mr Miller on her conversation with the Claimant, and on 19<sup>th</sup> April 2016 contacted the Claimant again by email to see how she was doing. Mrs Broomhead said in the email that the Respondent was keen to work with the Claimant to put a support plan in place. Then, in a telephone conversation later that day, the Claimant told Mrs Broomhead that she wanted to stay and give it a go with the Respondent's support. At this time her attitude was somewhat ambivalent – sometimes she wanted to stay, on a good day, but sometimes she wanted to go.
- (8) Mrs Barnes then took up the baton, as Mrs Broomhead went on holiday. She met with Mr Miller and discussed the issues raised by the Claimant. The plan was to allocate the branch to Mr George Burden, regional manager, and he and Mrs Barnes would visit the branch and speak to the Claimant and Mr Wilson, in order to assess what support, additional training etc was required. In the event, Mrs Barnes visited the branch alone on 4<sup>th</sup> May 2016. She met with Mr Wilson. Initially, he was hostile to her and her visit and when she spoke to the staff. Mrs Barnes' take on it was that Mr Wilson had prior knowledge of her visit, he was resistant at first but when she explained the purpose of it he came round to some extent. Mr Wilson asked the Claimant to take Mrs Barnes round to meet the staff. After that, Mrs Barnes and the Claimant had a conversation out of the office. The Claimant repeated the concerns that she had relayed to Mrs Broomhead. The Claimant's concerns are recorded as including the fact that Mr Wilson was never in the office, issues regarding processes since joining Countrywide had impacted mostly on the Claimant and resulted in a lot of extra work, there were many people who were unhappy but they could not go to Mr Wilson as he rebuked them if they attempted to do so, the issues with incorrect pay/pension had been the Claimant's

responsibility to rectify and it had been time consuming and a drain on her. Mrs Barnes advised the Claimant to speak to Mr Wilson personally. She told the Claimant that she was committed to staying close to Ashby Lowery and there would be support with a newly allocated regional manager who would take over from Mr Miller. Mrs Barnes also reported back to Mr Miller by email.

- (9) After Mrs Barnes' visit to the office on 4<sup>th</sup> May 2016, Mr Wilson did not return to the office until Tuesday 10<sup>th</sup> May 2016 – the day before the Claimant was due to go on holiday. He was rude and dismissive to the Claimant when she tried to explain what had been happening in the office, and showed a lack of concern about a staff member who was leaving. I accept the Claimant's evidence about that. On the same day, Mrs Barnes emailed the Claimant, stating that she wanted to help improve the situation but needed to involve Mr Wilson. She said she would chase the log ins for the Claimant (so an advertisement could be put in for a new member of staff before the Claimant went on holiday). In the event, this did not happen.
- (10) The Claimant went on holiday on Wednesday 11<sup>th</sup> May 2016. She accepted that when she went, she had the offer of support from Mrs Barnes even if it was not yet in place. Mrs Barnes said in cross examination that she made it clear to the Claimant that she would be meeting with Mr Wilson about the issues. Indeed, in the meantime, Mrs Barnes did meet with Mr Wilson on 11<sup>th</sup> May 2016. Mr Wilson's view was that some elements of the Claimant's job had increased but others had decreased. Further, he criticised the Claimant for not delegating more and said that she should learn the art of delegation. Mrs Barnes' note records that Mr Wilson was not happy that she had visited the branch and given colleagues the opportunity to raise problems. Mr Wilson admitted that he did not tolerate negativity and moaning. On Tuesday 17<sup>th</sup> May 2016, the Claimant emailed Mrs Barnes from home (she was on holiday), asking to speak to her. She was not aware that Mrs Barnes herself was on holiday. Therefore, she received no response to that email.
- (11) The Claimant resigned her employment with the Respondent on 19<sup>th</sup> May 2016 while still on holiday. She sent the resignation letter to Mrs Barnes. She cited lack of support from the Respondent or Mr Wilson, that this would not change, the derogatory and hostile conduct of Mr Wilson, and that two staff had left recently, one with no job to go to, reflecting difficulties since the acquisition. Mrs Broomhead responded on the same day, telling the Claimant that Mrs Barnes was on holiday and saying that she was disappointed that the Claimant did not telephone to talk things through, and offering to discuss the matter. The Claimant in response said that her mind was made up. The Claimant then had a telephone conversation with Mrs Broomhead on 20<sup>th</sup> May 2016, and Mrs Broomhead took a note of that. The Claimant said that

Mr Wilson was not going to change and he was very angry about Mrs Barnes coming in. A longstanding member of staff had given in her notice and Mr Wilson had not even tried to persuade her to stay. She did not see why she should sit there when Mr Wilson was not at work, getting his turnover up, as he was going to get the money at the end. She was leaving with immediate effect and did not want to talk to Mr Wilson. There then followed a grievance process, with which I am not concerned.

### The Law

3. By section 94(1) of Employment Rights Act 1996, an employee has the right not to be unfairly dismissed by his employer. By section 95(1)(c), for the purposes of the Act, 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 without notice by reason of the employer's conduct – so called constructive dismissal. An employee has the right to treat himself as discharged of his contractual obligations only where the employer is guilty of conduct which goes to the root of the contract or which shows the employer no longer intends to bound by one or more of the essential terms of the contract – see *Western Excavating (ECC) Ltd v Sharp* [1978] IRLR 27, CA. Thus, the employer's conduct must constitute a repudiatory breach of the contract. There is implied in a contract of employment a term that the employer will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Any breach of this implied term is a fundamental breach amounting to a repudiation which necessarily goes to the root of the contract – see *Woods v WM Car Services (Peterborough) Ltd* [1982] IRLR 413, CA; and *Malik v BCCI SA* [1997] IRLR 462, HL. Conduct which breaches the term of trust and respect is automatically serious enough to be repudiatory, permitting the employee to leave and claim constructive dismissal – see *Morrow v Safeway Stores Ltd* [2002] IRLR 9, EAT. In *Buckland v Bournemouth University Higher Education Corporation* [2010] IRLR 445, CA, it was held that the range of reasonable responses test is not appropriate to establishing whether an employer had committed a repudiatory breach of contract entitling the employee to resign and claim constructive dismissal. The *Malik* test is the correct test.
4. The employee must leave in response to the breach of contract. In *Nottinghamshire County Council v Meikle* [2004] IRLR 703, CA, it was held that once a repudiation of a contract has been established, the proper approach is to ask whether the employee has accepted that repudiation by treating the contract of employment as at an end. It must be in response to the repudiation, but the fact that the employee has also objected to other actions or inactions of the employer, not amounting to a breach of contract, would not vitiate the acceptance of the repudiation. It is enough that the employee resigned in response, at

least in part, to the fundamental breaches by the employer. The innocent party must at some stage elect between whether to affirm the contract or accept the repudiation which later course brings the contract to an end. Delay in deciding what to do in itself does not constitute affirmation of the contract, but if it is for a long period it may be evidence of an implied affirmation – see *WE Cox Toner International Ltd v Crook* [1981] IRLR 443, EAT. In *Chindove v William Morrisons Supermarkets Ltd*, unreported EAT, 26<sup>th</sup> June 2014, it was held that a reasonable period is allowed before an employee is taken to have affirmed any breach of contract. It depends on all the circumstances, including the employee's length of service, the nature of the breach and whether the employee has protested at the change. EAT recognise that deciding to resign for most employees is a serious matter. It may well require them to give up a job which provides them with their income, their family with support, and be a source of status to the employee in his/her community. It all depends on the context and not upon any strict time test.

5. The particular incident which causes the employee to leave may in itself be insufficient to justify his/her resignation, but may amount to constructive dismissal if it is the “last straw” in a deteriorating relationship. This means that the final episode does not in itself need to be a repudiatory breach of contract, although there remains the requirement that the alleged last straw must itself contribute to the previous continuing breaches by the employer – see *Waltham Forrest London Borough Council v Omilaju* [2005] IRLR 35, CA. In *Lewis v Motorworld Garages Ltd* [1986] ICR 157, CA, it was said that the breach of the implied obligation of trust and confidence may consist in a series of actions on the part of the employer which cumulatively amount to a breach of the term, although each particular incident may not do so. In particular, in such a case the last act of the employer which leads to the employee leaving need not itself be a breach of contract. The question is, does the cumulative series of acts taken together amount to a breach of the implied term? This is the “last straw” situation. The Tribunal should consider whether the last incident is a sufficient trigger to revive the earlier ones. In doing so, they must take account of the nature of the incidents, the overall time spent, and the length of time between the incidents, and any other factors that may have amounted to a waiver of any earlier breaches. I was referred to authorities by the Respondent's Counsel. The conduct of the employer must be judged reasonably and sensibly on an objective basis – see *Post Office v Roberts* [1980] IRLR 347. The question is not whether the employee has actually lost confidence in the employer but whether the actions of the employer are such as to make it likely that confidence will be undermined – see *Pressurefast Ltd v Turner*, EAT 175/93. An act that is inconsistent with bringing the contract to an end will mean that the breach has not been accepted – see *Hunt v British Railways Board* [1979] IRLR 379.
6. As submitted by Respondent's Counsel, I must look to see whether there is a fundamental breach of contract judged objectively. Unreasonable conduct is not sufficient. Here the breach of contract relied upon is the



breach of the implied term of mutual trust and confidence. That breach of contract must be the cause of the Claimant's resignation, although it may not be the only cause. Here, the Claimant relies upon a series of incidents cumulatively, and possibly the last straw. The Respondent relies on affirmation or waiver of the breach, by reference to the Claimant's decision made in the telephone conversation with Mrs Broomhead on the 19<sup>th</sup> April 2016. The Claimant said then that she would stay and give it a go with the Respondent's support. Thus, say the Respondent, are there any later incidents that the Claimant can rely on as further breaches of the implied term or, at least, a last straw situation which "revives" earlier breaches? The Claimant cannot wait too long before resigning, but there is no stopwatch. What is too long (and amounting to affirmation) depends on the circumstances. I do not understand that the Respondent is arguing that, if there was a constructive dismissal, it was not unfair.

## Conclusions

7. Having regard to the findings of relevant fact, applying the appropriate law, and taking into account the submissions of the parties, I have reached the following conclusions:-

- (1) At and immediately after the sale of Ashby Lowery to the Respondent there were virtually no meetings with Ashby Lowery staff by relevant personnel from Countrywide, and no explanation of new office systems, no training, no induction and no written instructions or guidance. The Claimant was reliant in her work on process and system, and she was not told what to do, rather learning on the hoof and picking it up as she went along. This led to serious problems – with salary, expenses, pension, invoices etc – as accepted by the Respondent. These problems persisted, and were not put right entirely before the Claimant left. Further, Mr Wilson acknowledged that he played down the issues to Mr Miller. It is obvious that the Respondent was or should have been aware of the difficulties. They were raised by the Claimant on many occasions. In other acquisition situations an area or regional manager from Countrywide was brought in to give support to the staff. Even in Ashby Lowery, the block management manager was given such support and training, but the Claimant was not. There was also the appointment of a welcome director, but too late for the Claimant and Ashby Lowery staff. Too much faith in and reliance on Mr Wilson was made by Mr Miller and no doubt other senior directors. Perhaps they felt bound by the terms of the share purchase agreement, which allowed Mr Wilson to continue to run his former business. No doubt, so far as accounts and other reports were concerned, all was well and the Ashby Lowery business maintained its profitability. However, Mr Wilson was not required to adopt new, Countrywide systems for sales and lettings, and was permitted to continue as before. On the other hand, the Claimant was required to adopt new processes, which significantly

impacted on her ability to do her job as they were wholly different from the Ashby Lowery processes. This led to major problems as have been identified in the findings of fact. This situation caused severe stress to the Claimant. She could not pay suppliers because of failings in the invoicing system, and so was unable to advertise, take deposits or reference new tenants. It may be that there were insufficient staff numbers, because of the inability to advertise, and potential breach of regulation concerning the deposits and complaints from landlords re tenants' references. In addition, the Claimant had to manage her team through all of this with no support from Mr Wilson or anyone else, and they had personal issues with their salaries, expenses and pensions etc. This led to a massive drop in morale, which Mrs Barnes found when she visited in May 2016. Mr Wilson was not willing to help. He left the Claimant to deal with the staff even when she asked for his support. He was absent from the office for a lot of the time. Mr Miller failed to manage Mr Wilson or the situation properly, for whatever reasons. I quite accept the Claimant's account of the impact that all of this had on her. I conclude that it was reasonable for her to feel this, given that the actions or inaction of the Respondent were such as to make it likely that trust and confidence would be undermined. The Claimant had loved her job for over 12 years. It was her life. Then it all went wrong for her. Her loyalty to Mr Wilson (possibly misplaced) meant she was reluctant to seek proper help sooner, and not until she approached Mrs Broomhead in April 2016. I conclude that the Respondent's behaviour in the way outlined, and detailed in the findings of fact, amounted to a very substantial erosion of trust and confidence and the employment relationship. It was a fundamental breach of contract.

- (2) The Respondent relies on affirmation, by reference to the meeting with Mrs Broomhead on 19<sup>th</sup> April 2016 (telephone call) and the Claimant's agreement to stay on and give it a go with the Respondent's support. Therefore, I look at what happened thereafter. Although it was planned that a regional manager should provide support, this was clearly something that should have been in place from the start and it did not happen before the Claimant's resignation. Mrs Barnes visited the office alone on 4<sup>th</sup> May. I entirely accept that she and Mrs Broomhead did their best to offer support to the Claimant. But, they were up against Mr Wilson, who resented any interference with what he regarded as his fiefdom, his domain. He was hostile and angry towards Mrs Barnes, on his own admission, and "livid" about her speaking to staff. In fact, as a responsible manager, he should have welcomed her human resources input, and tried to engage with the staff himself, in order to raise their morale and sort out their issues. Mr Wilson may not have directed his anger at the Claimant personally, but he was indifferent to her concerns and did not recognise or understand them, and so he was not willing to help her. Further, his hostility

made her frightened and fearful for her own position. It was she, after all, who had invited Mrs Barnes into the premises. That made her unwilling to allow Mrs Broomhead and Mrs Barnes to speak to Mr Wilson about her problems. This was perfectly understandable in the circumstances. She was, she says, caught between Mr Wilson's way of doing things and the new broom which was the Respondent. Yet she had no proper support from either side. After Mrs Barnes visited the office, Mr Wilson's attitude did not change. He was absent until the day before the Claimant went on holiday and when he came in he was rude and dismissive. Of particular concern to the Claimant – and a potential last straw - was his attitude to a staff member who was leaving with no job to go to, because of what had happened to her with her expenses (it may have been the loss of a fuel card). There was a lack of concern about this on the part of Mr Wilson. Further, issues over process did not end. Even as the Claimant was going on holiday, she had been promised a log in so that she could place an advertisement for a viewing clerk or other member of staff. She did not receive this in time. Thus, all the Claimant had when she went on holiday was an offer of support from Mrs Barnes. However, no actual support had materialised, staff were still leaving, the processes were still in a mess, and Mr Wilson was not helping her.

- (3) I accept that there was some resentment on the part of the Claimant that she was doing all the work and that on the basis of that Mr Wilson would receive a payout in two years time. I conclude that this was understandable and no doubt an accurate assessment by her of the situation. However, it was only a small part of the picture. The real reason for the Claimant's resignation was the intolerable situation she found herself in, as identified above. She was best placed, with her long service, knowledge and experience, to know that things were wrong with the running of the office. Promises of help had been made but who knows when or whether they would materialise, or whether Mr Wilson would allow Countrywide managers or staff to help out. Despite the, no doubt, best intentions of Mrs Broomhead and Mrs Barnes, there were further incidents (see sub-paragraph (2) above) which I conclude the Claimant can rely upon as further breaches of contract or at least amounting to a last straw. The Claimant did not waive the breaches of contract or affirm the contract. Nor did she wait too long. She raised her complaints with Mrs Broomhead in early April and gave it six weeks or so before she resigned in mid May. She was entitled to take time to consider her position, after over 12 years in the job and with no job to go to. I conclude that there was a constructive dismissal and that it was unfair.
- (4) I make these points about the possible TUPE failure to inform and consult claim. It is doubtful whether it is pleaded in the claim form fully enough to go forward. Even if it is, it is brought out of time. The Claimant has not sought to persuade me to extend time.

Indeed, she has indicated that the complaint is background only, not a freestanding issue. The Claimant has brought no evidence, anyway, to establish that there was a TUPE transfer, rather than a share purchase agreement. Finally, the determination of such a complaint requires a full tribunal and I am sitting alone to hear this case. In all the circumstances, I dismiss that claim, in so far as it is necessary to do so. I understand that the Claimant has no objection to this.

## ORDERS

It was not possible to determine remedy at this hearing, as there is incomplete evidence in the bundle on the issue, the Claimant has not prepared a witness statement on remedy issues, and her schedule of loss is not up-to-date. Accordingly, the parties indicated that they will make attempts to settle remedy without the need for a further hearing. In so far as they are able to do this, I make the following orders:-

1. On or before **4<sup>th</sup> August 2017**, the Claimant is ordered to make any further remedy disclosure to the Respondent.
2. On or before **11<sup>th</sup> August 2017**, the Claimant is ordered to send to the Respondent a witness statement setting out her evidence on remedy issues.
3. On or before **11<sup>th</sup> August 2017**, the Claimant is ordered to send to the Respondent an updated schedule of loss.
4. On or before **1<sup>st</sup> September 2017**, the parties are ordered to notify the Tribunal whether they require a remedy hearing.

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Employment Judge G P Sigsworth, Cambridge.  
18 August 2017  
JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS

## **FAILURE TO COMPLY**

**NOTES: (1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.**

**(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

**(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.**