



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms C Blakey  
**Respondent:** City of Bradford Metropolitan District Council  
**Heard at:** Leeds      **On:** 8, 9 August 2018  
**Before:** Employment Judge Davies

## Representation

**Claimant:** In person  
**Respondent:** Mr Sills (counsel)

# RESERVED JUDGMENT

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

# REASONS

## Introduction

1.1 This was a claim of unfair dismissal brought by Ms C Blakey against her former employer, City of Bradford Metropolitan District Council. The Claimant represented herself. The Respondent was represented by Mr Sills of counsel. I was provided with two files of documents, one from each party. I heard evidence from the Claimant. She had produced a statement from Ms Cooper. She did not attend to give evidence and only limited weight could be given to her statement. For the Respondent I heard evidence from Mr Lawrence (Targeted Early Help Team Manager), Ms Lovell (Targeted Early Help Team Leader) and Mr Anslow (Prevention and Early Help Programme Director).

## The issues

- 2.1 The issues to be determined were as follows:
- 2.1.1 Did the Respondent fundamentally breach the contract of employment by breaching the implied term of mutual trust and confidence, in particular in that:
    - 2.1.1.1 from July 2017 it failed to recruit to replace a member of staff, leaving the Claimant with an excessive workload and causing stress to her;
    - 2.1.1.2 the Claimant's line manager shouted at her during a phone call on 26 July 2017 and subsequently made a negative comment about her in her absence?
  - 2.1.2 Did the Respondent fundamentally breach the contract of employment by breaching the duty to take reasonable care for an employee's health and safety?

- 2.1.3 If so did the Claimant resign in response to a fundamental breach of contract and without affirming the contract?
- 2.1.3 If the Claimant's dismissal was unfair, what is the chance, if any, that she would have been fairly dismissed in any event?
- 2.1.4 If the Claimant was unfairly dismissed, did she cause or contribute to her dismissal by her own culpable and blameworthy conduct?

## The Facts

- 3.1 The Respondent is the City of Bradford Metropolitan District Council. The Claimant started work for the council as long ago as 1993. On all the evidence before me she was a long-standing, conscientious and well-regarded employee. By the time of the events with which I was concerned she was working as an administrative officer at the Owlet Children & Family Centre in Shipley. It was one of four Family Centres run by the council. Among the activities taking place there are groups run by Family Centre staff for parents and children, and families attending for supervised contact with children. The Claimant worked on the reception desk and also carried out a range of administrative duties.
- 3.2 By October 2016 a member of staff had left and not been replaced. That meant the only administrative officers were the Claimant and one part-time colleague. For part of the week the Claimant was the only administrative officer present and the work of the colleague who had left also had to be covered. On the days when the Claimant was the only person present on reception she had to ask the Community Resource Workers based at the Centre to cover to enable her to take a lunch break. As a result, by January 2017 she started to become affected by stress. She wrote an email to her then manager setting out the position. She said she was working on her own all day Monday and Tuesday and on Wednesday mornings. It had become really stressful for her. It was a busy Centre with visitors coming in all the time and the phone constantly ringing and with all the other work that had to be completed. She said that when she went home on the days she had worked on her own she felt mentally and physically drained. She did not know how much longer she would be able to manage the situation before it became completely intolerable and was concerned that there was no timescale for recruiting a replacement member of staff.
- 3.3 By May 2017 the vacant post at the start of the week had been filled by redeploying a member of staff from elsewhere in the Council, Ms Basford. The Claimant's evidence to me was that Ms Basford was not particularly suited to the role. As a result the Community Resource Workers would rather come to the Claimant with any work that needed doing. I accept this: see further below.
- 3.4 Not long afterwards Ms Lovell was appointed to replace the Claimant's Team Manager. Ms Lovell was not based at the Owlet Family Centre and was responsible for a number of different locations.
- 3.5 I found Ms Lovell's evidence entirely lacking in credibility. Throughout her cross-examination she repeatedly contradicted her own evidence. She made a variety of assertions that simply did not withstand scrutiny when detailed questions were asked. For example, it was put to Ms Lovell that Ms Basford had not received any additional training (see further below). Ms Lovell said that she had trained Ms Basford. She was asked when and she said, "Throughout the summer." When asked

to provide more detail she said that this was on more than one occasion after supervisions. This prompted the Claimant to ask whether Ms Basford had had more supervisions than she had, since she had only had one. Eventually, it transpired that on one occasion Ms Lovell had raised concerns with Ms Basford about her telephone manner and had indicated to her how to meet and greet clients and answer the telephone. That was rather different from her original assertion that she had provided training to Ms Basford throughout the summer. Furthermore, Ms Lovell's evidence came across as angry and defensive. It seemed to me that she displayed a level of personal animosity towards the Claimant.

- 3.6 Ms Lovell said in her witness statement that it was obvious to her that the Claimant "took a dislike to Ms Basford from the outset." I did not accept that evidence. First, as the Claimant pointed out, Ms Lovell was not present when Ms Basford started. Even when she did take on the role, Ms Lovell did not spend much time at the Owlet Centre. Ms Lovell was asked in cross-examination about the basis for her assertion that the Claimant had taken a dislike to Ms Basford. She said, "On several occasions you shouted at her." When questioned, she then said that the Claimant had used a raised voice rather than shouting. She was then asked whether as her manager she had spoken to the Claimant about talking to Ms Basford in a raised voice. She said that she had "told her on many occasions she shouldn't talk to people in that way." She was asked if she had kept any record of this and she said that she had not. Eventually, on further questioning, she said that there had only been one occasion when she had raised such a concern. Ms Lovell's evidence about this was, again, entirely lacking in credibility.
- 3.7 In cross-examination, it was suggested to the Claimant that she did not like Ms Basford. She disagreed. She said that when Ms Basford joined she gave her training and was supportive. Later she realised that she was not taking to the role. It was nothing personal. The Claimant's attention was drawn to an email she had sent some months later when Ms Lovell wanted to talk to her and Ms Basford about a particular issue. Rather than wait for the discussion, the Claimant sent an email setting out her position and indicating that the issue lay with Ms Basford. It was suggested to her in cross-examination that she was "blaming" Ms Basford. She explained that this had to be seen in context. At that time she felt upset. She was doing her best and Ms Basford really was not up to the role. She was not Ms Basford's manager and she did not see why she should be held responsible. She said that it was nothing personal it was just that Ms Basford was making her job more difficult and it was not just her who noticed that. The Claimant's evidence was supported by Ms Cooper's written statement. Ms Cooper said that it was clear to all staff at the Centre including managers that Ms Basford was not competent and was more of a hindrance to the Claimant and other workers. She was unable to grasp the easiest of tasks, which other staff had to sort out. Family Centre staff often complained to their managers about her capabilities.
- 3.8 During her oral evidence Ms Lovell was asked about Ms Cooper's written statement. For the first time, she acknowledged that there had been verbal complaints about Ms Basford from a Family Centre manager.
- 3.9 Looking at all the evidence, I have no hesitation in rejecting the suggestion that the Claimant disliked Ms Basford or was personally unpleasant towards her. She did not think that she was capable of doing the job and she was not alone in that view. She

provided instruction and support, although she was not Ms Basford's manager. No doubt she drew attention to issues with Ms Basford's work as they arose. It was Ms Lovell who framed this in terms of personal like or dislike, but that seemed to me to reflect her own approach to matters rather than the Claimant's.

- 3.10 In June 2017 the Claimant's other part-time colleague left. That left just her and Ms Basford covering the work. The Claimant was now the only administrative officer in reception on Wednesday afternoons and all day Thursday and Friday. She explained her duties in more detail in her oral evidence. She said that she was on reception and answering phones. She had to pay out monies and cash up. Parents who came to the Centre received expenses and she was responsible for that. There was also money that could be distributed to families in need. She had to order stationery. She was responsible for C87 payment sheets, which were a record of what had been paid to parents. She had to upload photographs from contact visits to children's files. She had to type up case notes and supervision notes, put new referrals onto the system from the Centre Managers, type letters from the Community Resource Workers and carry out a variety of other administrative tasks. When there were two people working, generally one person covered reception and the other carried out administrative duties. When she was working on her own she did the frontline reception work and such administrative work as she could. She could not always meet the deadlines.
- 3.11 I asked her whether there were any consequences if work was not completed. She said that referrals were piling up, photographs were not being uploaded from contact visits and room bookings were not being properly completed. However, she did not face complaints or criticism from her managers or co-workers.
- 3.12 Against that background, there was some discussion of an additional duty for the Claimant. This was to administer an area Panel, by undertaking the necessary administrative tasks in advance of the Panel meeting, taking minutes at the meeting and typing them up afterwards. In fact, this role had been introduced for a number of administrative officers some months earlier. The Claimant had been trained to carry out the role and had put in place all the arrangements to cover a particular Panel. However, that Panel was subsequently given to a different administrative officer (Denise) at another Centre to administer, because of the staffing issues at the Owlet Centre. I was shown no evidence that the Claimant had been unwilling or reluctant to do that work and I accepted her evidence that she had been looking forward to it.
- 3.13 The possibility of her administering a different Panel arose again in July. There was some discussion of this at a meeting between the Claimant, Ms Lovell and Mr Anslow on 19 July 2017. The Claimant's evidence was that although she understood that she would be taking on the Shipley Panel at some point, her understanding was that the process had changed and that she would receive refresher training before doing so. No date was set. I accept that evidence. It is consistent with what Mr Anslow said in his witness statement. He recalled that the Claimant was not happy about being asked to cover a Panel meeting and said that she would need more training and support. He said that they agreed that they would find time and put cover arrangements in place so that she could shadow and work with colleagues to bring herself up to speed.

- 3.14 The next the Claimant heard about it was when she was copied in on an email on 25 July 2017. A different manager had emailed Ms Lovell to ask who would be covering her Panel. Ms Lovell replied to say that the Claimant would be doing it and asked the manager to liaise with the Claimant. The manager emailed the Claimant copying her in on the email chain. She told her that the Panel would be on 4 August 2017.
- 3.15 The Claimant opened the email when she started work on 26 July 2017. Given how matters had been left on 19 July 2017, she was surprised and concerned that she was expected to cover a Panel in a few days' time. She telephoned Ms Lovell to speak about the Panel and to ask for an update on when the vacancy at the Owlet Centre was to be filled. There is a dispute about the telephone call. The Claimant says that she was stressed and upset before she spoke to Ms Lovell. She said that she was not rude but was upset and that Ms Lovell screamed her answers down the phone to her. Part way through the call she heard someone else in the room, who asked Ms Lovell who she was speaking to. Ms Lovell said the Claimant's name. Then she heard that individual say "Put the phone down on her." With that the conversation ended. She came off the phone feeling "worthless and upset." Ms Lovell said in her witness statement that the Claimant spoke to her in a tone that was "really inappropriate and rude." She used a "raised voice" which was overheard by Mr Lawrence. Mr Lawrence suggested that she should "put the phone down." She did not do so initially. The Claimant overheard Mr Lawrence and asked what he said. The conversation became more heated from the Claimant's side. In the end she did tell her that she was going to end the conversation and she put the phone down. She said that the aggressive tone and raised voice came from the Claimant. In cross-examination Ms Lovell said that she did not raise her voice with the Claimant. She said that Mr Lawrence, "Asked me to terminate the call". When asked precisely what words Mr Lawrence had used she said, "He told me to terminate the call. To end the call." When pressed again she said the words used were "to end the call."
- 3.16 Mr Lawrence said in his witness statement that he walked into the office part way through the conversation. He noticed that Ms Lovell was having difficulty with the caller. He could not hear every word but the other person's voice was "loud and aggressive in tone." Ms Lovell was having difficulty making herself heard. The other person was clearly having an impact on Ms Lovell who appeared "upset and emotional." The volume seemed to increase and the tone remained hostile and there seemed no sign of things calming down so he spoke to Ms Lovell and told her that she should end the call and "put the phone down." At first Ms Lovell continued the discussion. After a second intervention from Mr Lawrence she told the individual that she was going to end the conversation and would be putting the phone down, which she did. Mr Lawrence said that Ms Lovell was not shouting or screaming but that seemed to be happening at the other end of the phone. Ms Lovell did have to raise her voice once or twice to try and get her voice heard but it was nothing out of the ordinary. In cross-examination Mr Lawrence said something different about the words he used. He said that he told Ms Lovell to "end the conversation" not to "put the phone down."
- 3.17 Very shortly after their conversation Ms Lovell emailed the Claimant copying in Mr Anslow and two others. She said that she was doing her best to get staff to cover at the Owlet Centre but had to follow protocol. She said that she did not appreciate the tone of the Claimant's conversation with regards to the work and Panel situation. If

she had any concerns with regard to work-related issues she asked the Claimant to email her to arrange a meeting in future. She said that minute taking was within the Claimant's job description adding, "If you have a problem with this I will shadow you for support but you should have raised this at the meeting with Mark Anslow on Wednesday 19 July." She asked the Claimant to book a room for Tuesday to discuss any further issues she may have and to make sure that the Panel was already.

- 3.18 The Claimant replied shortly afterwards. She asked for some timescale as to when cover would be in place at the Owlet Centre. She said that she was doing her best to cover all the work with minimum help and supervision. She mentioned her experience at the end of the previous year, which had taken its toll on her, and said that she did not want to be back in that position again. She referred to the discussion on 19 July about Panel work. She set out her understanding that she would be taking on the Shipley panel at some point but that this would not happen until a new member of staff was in place at the Owlet Centre. She was concerned about how she would be able to get all the Panel paperwork ready and type the minutes when she was in the office on her own quite a lot. She said that since their phone call that morning she had left a message with Mr Anslow to arrange a meeting to discuss her concerns with him. She had booked a room for Tuesday as requested by Ms Lovell. She concluded, "With regards to the tone of conversation I was just reciprocating the tone I received from you."
- 3.19 There was undoubtedly a difficult and heated phone call. The Claimant was upset and stressed when she called Ms Lovell. She was pressing her for answers about when a replacement member of staff would be in place and expressing her concerns about doing the Panel work. Plainly Ms Lovell also became upset. Mr Lawrence confirmed that she too raised her voice. He did not know the context or to whom Ms Lovell was speaking and he was not part of the call. Distinguishing between upset and aggression in those circumstances would not be easy. I find that this was a difficult and heated conversation on both sides. The Claimant was anxious and upset and this was reflected in her tone, volume and the content of what she said. Ms Lovell too was upset. I found her to be angry and defensive in her evidence to me and I have no doubt this was also her reaction when she perceived the Claimant to be criticising her for not having replacement cover in post. Both spoke inappropriately, but I do not find that either was shouting or screaming. The Claimant was clear throughout that she heard Mr Lawrence tell Ms Lovell to "put the phone down." Both Ms Lovell and Mr Lawrence used those words at some point but their evidence about this changed. I find that Mr Lawrence did tell Ms Lovell to "put the phone down" as the Claimant described and Ms Lovell did so.
- 3.20 The Claimant sent Ms Lovell another email later in the day on 26 July 2017. She said that she felt very upset and did not think a meeting could wait until the following Tuesday. She asked to meet her before the end of the week to discuss the training she felt she needed so that she would feel confident doing a Panel. She explained that she last had training for Panels in early January when she shadowed Denise but her training had been cut short because of staffing issues and it was then decided that because of lack of staff at the Owlet Centre Denise would do the Shipley Panel when it started in late January. The Claimant explained that she had booked the rooms and set up an email distribution list for Shipley before Denise took over. She said that she understood that since then the whole procedure had changed and she

did not know the new procedure. Therefore, she needed to discuss training issues with Ms Lovell as soon as possible before she could consider doing a Panel.

- 3.21 On 26 July 2017 Denise had sent the minutes from the previous Panel to Ms Lovell and explained that there were 11 cases to go onto the agenda for the next meeting with a cut-off date of 31 July 2017. On Friday, 28 July 2017, Ms Lovell replied, copying the Claimant, Mr Anslow and others. She asked Denise to organise the Panel for 4 August adding “then we can plan to give some refresher training to enable Cath to take over.” Mr Anslow stepped in by replying to this email on 31 July 2017. He asked that the Claimant work alongside Denise on the preparation for the 4 August meeting so that she could take over from the following meeting.
- 3.22 The Claimant’s evidence was that she did go to Lowfold Family Centre on 1 August 2017 to shadow Denise. However, they did not get to do the Panel work because there was too much work. They were the only two present and they had to cover reception and answer the phones, i.e. deal with the frontline issues. She told Ms Lovell so when she got back to the Owlet Centre.
- 3.23 Both Ms Lovell and Mr Anslow characterised the Claimant as being particularly reluctant to do the Panel work. Ms Lovell said that in the end the Claimant did not have to take the meeting on 4 August 2017 but that they made sure she was involved by way of refresher. They also offered her additional training and opportunities to shadow and she “always seemed to find excuses.” Mr Anslow also referred to a reluctance on the Claimant’s part to get involved in the work. He felt that there was an aspect of “avoiding the task”. In the end they decided that she could be “excused duties” at the Panel on 4 August 2017 but would work with a colleague on the preparation with a view to taking over the next meeting. He referred to an email he sent on 31 July 2017 spelling out how cover would be provided to facilitate release for the Claimant. That email said that once the Claimant had opened up at Owlet on 1 August, she would go for the rest of the morning to support Denise as Denise prepared Friday’s panel. He noted that when the Claimant took on the work support was to be in place for preparation and completion of minutes. He asked Ms Lovell to base herself at Owlet that morning in case the Claimant needed support.
- 3.24 At the start of her oral evidence, Ms Lovell was asked who was present at Lowfold Centre on 1 August 2017 (in addition to the Claimant and Denise). She said that Alison was there that day. She was asked if she had checked and she said, “I can do.” She was then asked whether she had personal knowledge that Alison was present on that day. She said that she did not. She was asked what the basis was for her evidence that Alison was there. She said that she would need to check the rota and her diary. She was asked again why she had assumed Alison was there and she said that Tuesday was one of Alison’s work days. Ms Lovell was asked in cross-examination about her evidence that the Claimant was always finding excuses to avoid doing the Panel work. She said that the Claimant was “not going.” She was asked again what excuses the Claimant was making and she said that whenever there was any training organised the Claimant had a doctor’s appointment or had to go early. She said that whenever she organised for a member of staff to come to Owlet to train the Claimant, the Claimant made an excuse. The Claimant suggested that no training was ever arranged until 1 August 2017. She said that she had never made an excuse. Then Ms Lovell said that when she had offered to shadow the Claimant it did not happen. When pressed about that, she accepted that it did not

happen because the plan was changed so that the Claimant would shadow Denise (as set out above). Ms Lovell then went on to suggest that the Claimant had made excuses subsequently in September or October. She had made an excuse about an appointment. The Claimant put to her that training with Denise had been arranged on one occasion. The Claimant had a pre-booked doctor's appointment but she did the training first with Denise. That was on 4 October. Ms Lovell accepted that. She was asked whether there was another occasion and she said, "I should have been made aware made aware of these appointments." She was asked again whether there was another occasion on which training had been arranged and the Claimant had made an excuse. She said that there was none. Her evidence that the Claimant was always finding excuses did not withstand scrutiny.

- 3.25 Mr Anslow was asked for the basis of his opinion that the Claimant was reluctant to get involved. He said that on the couple of occasions they had attempted to provide the space for her to pick up what the tasks were, there seemed to be a reason that it would not happen. When they agreed for Denise and the Claimant to spend time together it was a "lack of focus" on getting ready. It was a "choice to get pulled into other work". Mr Anslow was asked whether he was aware if anybody else was present at Lowfold that day to cover the front line duties. He said, "As far as I'm aware." He was asked if he knew and he said that he did not. He had not taken any steps at the time to ensure that a third person would be there.
- 3.26 In view of all the evidence, I do not accept the suggestion that the Claimant was reluctant to do the Panel work or always making excuses to avoid it. She was all ready to start with the Shipley Panel in January, but a decision was taken to give it to Denise because of staff shortages at the Owlet Centre. By July the Respondent needed her to start covering the Panel again. At this time, another colleague had left and she was expressing concerns about the understaffing at Owlet. The Respondent did not dispute her evidence that the protocols had also changed and that she needed refresher training before taking on Panel work. That was eventually arranged for 1 August 2017. The Claimant attended. I accept her evidence that only she and Denise were at Lowfold that morning and therefore they had to cover the front line duties. Ms Lovell and Mr Anslow did not know if Alison was there and neither had checked. In those circumstances it was not a question of choosing not to do the Panel work: there was no one else to do the front line duties. On the only other time Panel training was arranged, 4 October 2017, the Claimant did it before going to the doctor.
- 3.27 Not long after the events of 26 July 2017, the Claimant heard from a colleague that while she was away from work Ms Lovell had been looking for something in reception and said, "That Cath Blakey she's left nothing out for me." The Claimant was very upset when her colleague reported this to her because she had taken care to show Ms Lovell where everything was the week before. Everything was locked away and Ms Lovell would need to get it out when she unlocked. Ms Lovell's evidence was that she had been looking for some papers and could not find what she was looking for. She was very busy and flustered and she said, "Where has Catherine Blakey put the stuff?" She said that this was "something and nothing" and had been taken out of context. In cross-examination she was asked what papers she was looking for. She could not remember. She agreed with the Claimant that everything had been locked away. The Claimant suggested that whatever she was looking for would have been locked away for her to get out the following morning. She said that she could not



recall what she was looking for. I asked Ms Lovell why she had referred to the Claimant, who was off, rather than Ms Basford. She said that Ms Basford was off as well. I asked her what made her think that it was the Claimant who had put something in the wrong place rather than someone else. She said that she was just very busy and looking for something she could not find. She was unable to explain why she had singled out the Claimant.

- 3.28 Plainly the Claimant was not present and only heard about this from someone else. Having said that, I have already explained that I did not find Ms Lovell's evidence credible. In the circumstances I am unable to make a finding about what precisely was said. However, it is clear that Ms Lovell was busy and flustered and unable to find something and audibly indicated that this was the Claimant's fault. There does not appear to have been any basis for singling out the Claimant.
- 3.29 Ms Lovell's evidence was that she subsequently apologised in a meeting with Mr Anslow. I return to that below.
- 3.30 Meanwhile there was still no replacement for the part time administrative officer who had left in June. Ms Lovell's evidence did not contain a full or detailed account of the steps taken to try and fill the vacancy and the documents were also incomplete. All I was shown was an exchange of emails between 7 August and 14 August 2017. On 7 August 2017 Ms Lovell had completed an agency recruitment form and forwarded it to Mr Anslow. Evidently it then became necessary to consider whether the role could be filled by redeployment. By 14 August 2017 redeployment options had been exhausted and a manager asked that the agency worker form be actioned. Later that day someone else stepped in to say that it was policy not to have administrative staff on the agency contract. The next reference in the documentation was a note on 30 October 2017 that the vacancy had now been advertised (see further below). I was given no evidence about what was done prior to 7 August or between 14 August and 30 October to try to fill the vacancy. There was certainly no evidence that Ms Lovell kept the Claimant informed about her efforts to fill the post, although the Claimant said that she requested updates.
- 3.31 Ms Lovell's evidence about this in cross-examination was also vague and unconvincing. She was asked how many people she had interviewed for the post in the five months it was vacant. She began by saying that it was a long process. The question was repeated. Then she said she could not recall she had seen so many. She was asked to do the best she could to estimate how many people she had interviewed in five months. She said it was probably about 10, maybe more. She was asked why it did not say in her witness statement that she had interviewed 10 people. She said that she had not been asked. It was pointed out to her that much of her witness statement was dealing with the difficulties in recruiting. She simply said that it was not in her witness statement. She was asked where she was saying in the sequence of events these interviews took place. She said that she kept interviewing people to see if they were suitable. She could not explain why no documents relating to interviewing 10 people had been disclosed. The Claimant asked her why if she had interviewed 10 people none of them was suitable for a level I administrative post. She said that she wanted somebody with experience and that just anybody would apply for such a role. The Claimant suggested that she must have had some criteria before she went ahead with an interview and she said that she had been through the applications with a finetooth comb. She had interviewed after that and had got the

two people who were ultimately appointed towards the end of 2017 (see further below). She was asked if she was therefore saying that all 10 people were interviewed in late November and she said that it was between October and November. By the end, it seemed to me that Ms Lovell was really saying that she had carried out a small number of interviews at the end of the period only.

- 3.32 Meanwhile, the Claimant had raised a concern with Mr Anslow about the telephone call on 26 July 2017. He arranged a meeting with her and Ms Lovell to address that. It took place on 25 August 2017 and Mr Anslow followed it with an email dated 31 August 2017 summarising the key points. They discussed the Claimant's concern about the telephone call and also the comment that had been reported to her. Among the agreed outcomes, Ms St-Romaine was to be asked to support the Claimant and Ms Lovell with a view to putting a stress risk assessment in place for the Claimant. In addition, dates and times were to be agreed to support the Claimant with a view to her taking up full responsibility for administering the Airedale Panel from 15 September onwards. Further, Mr Anslow would speak to Ms Crandon and Ms Armitage about the comment that had been overheard and to Mr Lawrence about the phone call. He would then feedback his findings as part of the informal process. The Claimant could then choose to make a formal grievance.
- 3.33 Ms Lovell's oral evidence was that during their discussion she apologised to the Claimant if she had been upset about the comment. The Claimant disagreed. There is no record of any apology in Mr Anslow's email, indeed the agreed outcome was that he was to investigate what had actually been said. Given Ms Lovell's lack of credibility more generally, I prefer the Claimant evidence that Ms Lovell did not apologise.
- 3.34 In his witness statement Mr Anslow said that he had spoken to people about the phone call and comment and provided feedback to the Claimant. He said that he was not contacted further about it and was a little surprised because he had a strong sense that the Claimant was generally very unhappy working with Ms Basford and with Ms Lovell's appointment and approach to the role. In cross-examination he said that he believed he had provided feedback to the Claimant but when he trawled his emails he had not been able to find evidence that he did so. He accepted that he may not have provided feedback to the Claimant. She was quite clear that she had never received feedback, and in those circumstances I find that no feedback was provided to her. In those circumstances, Mr Anslow's evidence that he was surprised not to be contacted further has the appearance of being reconstructed after the event, rather than reflecting what he actually thought at the time. Mr Anslow also confirmed that he only spoke to Ms Crandon and Mr Lawrence. Ms Crandon confirmed that a comment had been made about the Claimant so he did not need to speak to Ms Armitage. It was clear that he did not realise that there was a dispute about precisely what had been said.
- 3.35 The evidence about arrangements for the Claimant to be trained and take over responsibility for administering the Panel was somewhat unclear. As indicated above, some training with Denise was evidently arranged for 4 October 2017 and that took place. The Claimant then immediately attended a doctor's appointment and was signed off work with work related stress. She had been working on her own all week because of Ms Basford's annual leave. She had the training with Denise on Wednesday, 4 October 2017 then she went to the doctor who signed her off for two

weeks. Even so, she went back into work to sort out the petty cash and other matters before going home. The content of the Respondent's HR case history log was striking. Ms Lovell was evidently taking advice from an advisor and it was the advisor who wrote the notes. Nonetheless, they no doubt reflected what Ms Lovell was reporting. The advisor may have misunderstood but what was written certainly indicated a fundamental misunderstanding on someone's part of the Claimant's concerns and a failure to grasp the level of her stress and difficulty. The notes say that Ms Lovell is aware that the Claimant's work-related stress, "relates to a dislike of the reception duties she is sometimes required to carry out and that this means working alone in the reception area." Ms Lovell is also aware that the Claimant "doesn't like one of her colleagues." I noted that this too was framed in terms of the Claimant disliking somebody, rather than in terms of her identifying work-related difficulties.

- 3.36 Ms St-Romaine had contacted Ms Lovell with a view to developing a stress plan for the Claimant on 18 September 2017. Ms Lovell and the Claimant had individual meetings with Ms St-Romaine and there was then a joint meeting on 30 October 2017. The Stress Management Action Plan produced by Ms St-Romaine said that the Claimant had identified two work stressors: (1) being on her own at the end of the week because of the staff vacancy and finding the demands of the role difficult to cope with on her own; and (2) her co-worker who worked at the beginning of the week struggling, which meant that tasks were left incomplete for the Claimant and that others tended to ask the Claimant for assistance rather than her co-worker. The actions the Claimant would like to see were for the vacancy to be filled, her co-worker to get up to speed with the tasks, the Claimant to move to another role outside of the Family Centres and/or to be considered for voluntary redundancy. During the meeting Ms Lovell updated the Claimant that she had advertised the vacancy with a closing date of 6 November 2017 but that very substantial budget cuts had been announced that morning and Ms Lovell did not know if they would affect the vacancy. Ms Lovell said that she was supporting Ms Basford to ensure she could do the administrative tasks. She would consider moving the Claimant to another quieter Family Centre and would make enquiries to see if there were vacancies in Children's Services. The Claimant agreed to let Ms Lovell know if she wanted to move to another Family Centre and to contact the MyWellBeing college and let Ms Lovell know the outcome.
- 3.37 The Claimant did not contact the MyWellBeing college. She told me that this was a counselling service. She had tried counselling in the past and found that it was not for her.
- 3.38 The Claimant remained on sick leave, although she took a period of pre-booked annual leave to travel to Australia between 4 and 18 November 2017.
- 3.39 Ms Lovell appears to have misunderstood the purpose of the meeting with Ms St-Romaine. She was insistent in cross-examination that this was a mediation meeting and that Ms St-Romaine had carried out mediation. It clearly was not a mediation meeting; it was a stress risk assessment. That was what Mr Anslow had advised and was what Ms St-Romaine had said she was arranging. The notes of the meeting are headed Individual Stress Management Action Plan.

- 3.40 Ms Lovell accepted that she had not carried out any contact with the Claimant during her sickness absence in her role as line manager. Her only contact was at the meetings with Ms St-Romaine. Nor did she update the Claimant about her steps to recruit someone to fill the vacancy, apart from during the meetings with Ms St-Romaine.
- 3.41 A follow-up meeting with Ms St-Romaine took place on 21 November 2017. She recorded that the Claimant had returned from holiday and was feeling well. Her fit note expired on 27 November and she had an appointment with her GP on 29 November. She had not made contact with MyWellBeing college. Ms Lovell reported that she did not get any suitable candidates for the temporary job and had now advertised it as a casual and was interviewing someone that week. She reported that Ms Basford was settling into her role, had had additional support and training and was doing well at work. Ms Lovell said that there were no vacancies at one particular alternative location. She was to ask staff at the other Family Centres if anyone wanted to work at Owlet to enable the Claimant to move centres. The Claimant was again to contact MyWellBeing college and was to let Ms Lovell know the outcome of her GP appointment.
- 3.42 On 23 November 2017 the Claimant accepted a new job and resigned her employment with the Respondent. She told me that she had started looking for a different job at the start of November because she could not face the thought of going back to her job. She spoke to Ms Lovell on the telephone and told her she was resigning. Ms Lovell said that she then told the Claimant that she had finally recruited someone to cover the vacancy. The Claimant's evidence was that she was unaware of this until after she returned to work during her notice period. I prefer the Claimant's evidence.
- 3.43 There was subsequently a difficulty with the Claimant's recruitment to her new role. That is because the Respondent had provided inaccurate information about the length of the Claimant's sickness absence, suggesting that it was far longer than it was. Fearing that she would lose the alternative employment the Claimant asked if she could retract her resignation. Ms Lovell refused. In the event, the mistake about her sick leave was corrected and her job offer was reinstated.

## Legal Principles

- 4.1 The right not to be unfairly dismissed is set out in s 94 Employment Rights Act 1996. Section 95 of that Act defines what is meant by dismissal. This includes what is usually called constructive dismissal, i.e. where the employee terminates the employment contract, with or without notice, in circumstances where she is entitled to so without notice by reason of the employer's conduct.
- 4.2 It is well-established (see *Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221) that in considering whether an employee has been constructively dismissed, the issues for a Tribunal are:
- 4.2.1 Was there a breach of the contract of employment?
  - 4.2.2 Was it a fundamental breach going to the root of the contract, i.e. such as to entitle the employee to terminate the contract without notice?
  - 4.2.3 Did the employee resign in response and without affirming the contract?

- 4.3 It is an implied term of the contract of employment that the employer will not, without reasonable cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee: *Malik v BCCI* [1997] IRLR 462. This is a demanding test. The employer must demonstrate objectively by its behaviour that it is abandoning and altogether refusing to perform the contract: see *Frenkel Topping Ltd v King* UKEAT/0106/15/LA at paragraphs 12-15.
- 4.4 Individual actions taken by an employer that do not by themselves constitute fundamental breaches of any contractual term may have the cumulative effect of undermining trust and confidence, thereby entitling the employee to resign and claim unfair dismissal.
- 4.5 Employers are also under a duty to provide a safe system of work and it is an implied term of the contract of employment that they will do so. The Tribunal must ask whether a particular kind of injury to a particular employee is reasonably foreseeable. If so, the employer must take such steps as are reasonable in the circumstances to avoid the risk. The applicable principles and relevant factors are set out in *Sutherland v Hatton and others* [2002] ICR 613 CA.
- 4.6 There is likely to be some overlap between the implied term of trust and confidence and the implied term that a safe system of work will be provided, since part of the implied term of trust and confidence involves providing reasonable support to the employee to enable her to do her work. However, the question in this respect will remain whether the employer acted, without reasonable cause, in such a way as to undermine mutual trust and confidence.
- 4.7 Once a fundamental breach of the contract by the employer has been established, the Tribunal asks whether the employee has accepted the employer's repudiation of the contract by treating it as being at an end. The employee's resignation must be in response (at least in part) to the repudiation, which must be the effective cause of it: see *Nottinghamshire County Council v Meikle* [2005] ICR 1, CA.
- 4.8 Once dismissal is established, s 98 Employment Rights Act 1996 requires the employer to show the reason for the dismissal and that it was a potentially fair one. In a case of constructive dismissal, that is the reason for which the employer breached the contract of employment: see *Berriman v Delabole Slate Ltd* [1985] ICR 526 CA. If it does so, the Tribunal must then consider whether the employer acted reasonably in all the circumstances in treating that as a sufficient reason for dismissing the employee.

### **Application of the law to the facts**

- 5.1 Against the detailed findings of fact set out above, I turn to the issues in this case. The first question is whether the Respondent fundamentally breached the Claimant's contract of employment, either by breaching the implied term of mutual trust and confidence or by breaching the duty to provide a safe system of work.
- 5.2 I have considerable sympathy for the Claimant. She was dealing with the impact of understaffing for many months and there were plainly shortcomings in the way she was managed by Ms Lovell. However, I do not find that the Respondent's

conduct, either separately or cumulatively, met the high threshold required to amount to a fundamental breach of contract.

5.3 The Claimant had worked without one of her part-time colleagues at the end of the previous year, and she had told the Respondent that this caused her stress. She found herself in the same position from June 2017, made worse by the fact that her other part-time colleague was underperforming in the role. The Claimant had the difficult job of juggling the work and priorities alone for half the week, and also perhaps doing the lion's share of the work at other times because the Family Centre workers preferred to ask her. She found that difficult and stressful. However, she did not face any criticisms or concerns from her colleagues or managers. Nobody was raising with her any issue about work not being done. She was working her contracted hours, she was not being required to work overtime. The Respondent is a public-sector employer operating in times of austerity. It is not always easy to replace employees who leave and such evidence as there was suggested that to some extent it was not straightforward in this case. I do not know what steps were taken in the period before 7 August or between mid-August and late October. However, even assuming that Ms Lovell or others were slow in taking steps to fill the vacancy, I do not consider that this amounts to a fundamental breach of the Claimant's contract of employment. It was a delay in replacing a colleague, but in circumstances where nobody was criticising the Claimant's approach to the work or expecting her to do more hours to cover it. Her working conditions were not ideal, but it was not a fundamental breach of contract to expect her to work in that way.

5.4 There were other shortcomings on the Respondent's part:

5.4.1 The handling of the Panel work was far from ideal. On 19 July 2017 the Claimant was led to understand that she would cover the Shipley Panel at some unspecified date in the future, and then Ms Lovell put her forward without mentioning it to her. The first she knew was an email a few days before the next Panel meeting. However, when she raised a concern she did not have to cover that meeting and ultimately she was told she did not have to do so until she had received training. Mr Anslow put some training in place and made clear the Claimant should have cover for when she was preparing and typing up minutes.

5.4.2 Ms Lovell behaved unprofessionally on the phone on 26 July 2017, but so too did the Claimant. This was a heated discussion on both sides. It was appropriate for Ms Lovell to end the call in those circumstances. Ms Lovell's conduct during the call is certainly capable of undermining mutual trust and confidence, but was not sufficient by itself to amount to a breach of that term.

5.4.3 Ms Lovell's comment, overheard by the Claimant's colleague, was also unprofessional and seemingly unwarranted. She did not apologise for it. Again, that is capable of undermining mutual trust and confidence but is not by itself sufficient to amount to a breach of that term.

5.4.4 Mr Anslow's failure to report back to the Claimant about his investigations into these two issues was unacceptable. However, the Claimant did not chase for a response. She knew that she could put in a formal grievance.

5.4.5 Ms Lovell failed to keep in touch with the Claimant when she was absent from work from 4 October 2017 onwards. Attendance at the meetings with

Ms St-Romaine did not seem to me to be adequate keeping in touch by a line manager. Nor did she keep the Claimant properly updated about what she was doing to try and fill the part-time vacancy. She only appears to have updated her at the two meetings with Ms St-Romaine.

- 5.5 I have considered these matters carefully, both individually and taken together. While they are capable of undermining mutual trust and confidence, I do not find that they amount to conduct, without reasonable cause, that is likely to destroy or seriously damage mutual trust and confidence. They do not reach that high threshold. They are shortcomings in the conduct of the employment relationship, but they do not suggest that the Respondent is disregarding its contractual obligations or intends no longer to be bound by them.
- 5.6 Nor do I consider that the failure to fill the part-time vacancy amounted to a breach of the obligation to provide a safe system of work. The information available, including information from the Claimant, did not make it reasonably foreseeable that her working conditions would give rise to an injury to her health over and above an increase in stress. That was what her letter the previous January had referred to and there was nothing to suggest a more serious impact on her mental health. Furthermore, the duty on the Respondent would be a duty to take reasonable care to avoid such harm. The Claimant was working her contractual hours, albeit facing an additional workload. She was not being asked to do extra hours, and she was not being criticised or disciplined for failure to complete the work. The Respondent had indicated that it would fill the vacancy and was taking some steps to do so. In the event it was filled by early December 2017. I would not have found that the Respondent was in breach of the duty to provide a safe system of work in those circumstances.
- 5.7 If there was no fundamental breach of contract, the Claimant cannot have been constructively dismissed and her unfair dismissal claim cannot succeed. For completeness, if I had found that there was a fundamental breach of contract, I would have found that the Claimant resigned in response to it and without affirming the contract. The fact that she subsequently sought to retract her resignation does not affect that. The question is not whether mutual trust and confidence was destroyed or seriously damaged in fact, it is whether a repudiatory breach of contract was accepted by the Claimant. However, because there was no fundamental breach of contract, the unfair dismissal claim fails.

**Employment Judge Davies**

**Date: 20 September 2018**

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