



EMPLOYMENT TRIBUNALS

Claimant: Ms V Wilson

Respondent: South Tees NHS Foundation Trust

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: Teesside

On: 3,4,5,11,12,15 and 16 April 2019

Before: Employment Judge Shepherd

Appearances

For the claimant: In person

For the respondent: Mr Webster

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claim of unfair dismissal is not well founded and is dismissed.

REASONS

1. The claimant represented herself and the respondent was represented by Mr Webster.

2. I heard evidence from:

Vicky Wilson, the claimant;
Nicola Hand, Macmillan Lead Cancer Nurse;
Spencer Robinson, Macmillan Integrated Cancer Care Service
Improvement Lead;
Allison Davis, Head of ICT and Healthcare Records;
William Todd, Head of Procurement;

Eileen Aylott, Assistant Director of Nursing/Workforce.

3. I had sight of a bundle of documents which, together with documents added during the course of the hearing, was numbered up to page 923. I considered those documents to which I was referred by the parties.

4. By a claim form presented on 27 December 2017 the claimant brought a complaint of unfair dismissal. The claimant worked for the respondent from 1 November 2011. She was employed as a Cancer Care Coordinator from 6 June 2016.

5. The claimant brings a claim of constructive unfair dismissal pursuant to section 98 of the Employment Rights Act 1996.

5. The issues to be determined were discussed at the outset of this hearing, Mr Webster, on behalf of the respondent provided a draft list of issues. The claimant was given the opportunity to consider these overnight and they were agreed as follows:

Constructive dismissal

5.1. The claimant says that the last straw occurred on 15 September 2017.

5.2. Did the claimant affirm the contract after the last straw?

5.3. If not, was that act by itself a repudiatory breach of contract?

5.4. If not, did it contribute something to a breach of the implied term of trust and confidence (i.e. that the respondent without reasonable and proper cause conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between itself and the claimant – the alleged breaches being the 13 points particularised in the claimant's resignation letter dated 18 September 2017 up to and including the final straw?

5.5. If so, did the claimant resign (at least in part) because of that breach?

Unfair Dismissal

5.6. If the claimant was dismissed, was the dismissal for a prima facie fair reason (conduct – aggressive and inappropriate behaviour with colleagues – or some other substantial reason – breakdown in working relationships)?

5.7. If so, was the claimant's dismissal fair within the meaning of s.98(4) of the Employment Rights Act 1996?

Remedy

5.8. What level of basic award is the claimant entitled to?

5.9. What level of compensatory award does the Employment Tribunal consider just and equitable in all the circumstances having regard to the loss sustained by the claimant (to include mitigation and Polkey considerations)?

5.10. Was the dismissal to any extent caused or contributed to by any action on the part of the claimant such that the basic and/or compensatory award(s) should be reduced?

6. Having considered all the evidence, both oral and documentary, I make the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings that I made from which I drew my conclusions.

6.1. The claimant worked for the respondent from 1 November 2011. She was employed as a Macmillan Cancer Care Coordinator from 6 June 2016.

6.2. The role of a Macmillan Cancer Care Coordinator was a new post within the respondent trust. It was also a relatively new role nationally. The charity Macmillan Cancer Support provided funding to the respondent to help to provide support for the care and treatment of patients diagnosed with cancer, their carers and relatives. Cancer care at the respondent is delivered through a number of Multi-Disciplinary Teams, each dedicated to a particular form of the disease. The claimant was appointed to the Brain and Central Nervous System (CNS) team as a band 4 Cancer Care Coordinator. Prior to that appointment she had been employed by the respondent as a band 3 Radiotherapy Assistant.

6.3. The claimant became aware of the respondent advertising roles as Cancer Care Coordinators. These roles were specific to the site of tumours. There were 14 multidisciplinary teams, however, it was decided that eight Cancer Care Coordinators' posts would be created. It was anticipated that the role would evolve over time as it was evaluated how the role would develop. The claimant indicated interest in The Lung, Brain and CNS and Lymphoma teams. The claimant was attracted to the role because it was patient facing. The role was also an administrative and clerical position. The advertisement for the post of Macmillan Cancer Care Coordinators provided that it was an 18 month fixed term contract. It stated

“These exciting new roles have been developed to offer focused caring, compassionate and effective support for patients in acute cancer treatment pathways... The roles involve daily contact with patients, families and carers... Successful candidates will be expected to support signpost patients face-to-face in a clinical setting and over the telephone and liaise with other professionals clinical and nonclinical on a regular basis.”

6.4. The job description included as Main duties:

- In conjunction with the Cancer Nurse Specialists (CNS)/AHPs, provide coordination of high quality patient care through ongoing telephone/face to face contacts and proactive identification of

needs utilising good communication skills, approved tools and procedures.

- Collaborate and communicate with the wider Health Care Team to ensure the provision of appropriate services to maximise their health and quality of life of cancer patients, improving the quality and efficiency of healthcare delivery.
- To work as a member of the Cancer Nursing/Allied Professional (AHP) team providing coordination of care and support for cancer patients, their carers and families.
- To act as a point of contact for patients and their carers and the wider health care team, signposting enquiries to the appropriate department within hospital or community settings. Actively participate in the provision of routine information and advice, for patients and their carers by the telephone, liaising with the CNS/AHP team is appropriate.
- Document to monitor all aspects of patient care coordination and service delivery, supporting data collection for audit and Peer Review purposes.
- Work closely with NDT coordinators and cancer trackers to ensure timely and efficient progress of patient care to ensure no patients breach cancer targets. Working with the team to improve the current pathway and processes resulting in better quality care.
- You will abide by the NHS values and Constitution, be responsible for managing a defined workload and associated diary commitments whilst maintaining comprehensive records of time and expenses, for audit purposes.

Under key job responsibilities it was stated:

- You will have direct contact with patients, their carers and families and will be expected to assist, support or direct to the appropriate person/department, this may be in the form of face-to-face contact or via the telephone.

6.5. The claimant was appointed to the role with the Brain and CNS team. Each of the multi-disciplinary teams dealing with different types of cancer have different demands. The Brain and CNS team would tend to see a lower volume of patients but with a higher degree of complexity. Patients would be seen face-to-face on fewer occasions and much of the contact would be by telephone. The team consisted of two band 7 Cancer Nurse Specialists, one band 6 Clinical Support Sister, an Occupational Therapist, two Physiotherapists, one Psychologist and two Neurosurgeons, Allied Health Professionals, including Occupational Therapists, Physiotherapists and others. The two band 7 Cancer Nurse Specialists were Gill Hendry and Pauline Sturdy. The claimant was supervised on a day-to-day basis by Gill Hendry.

6.6. The claimant, together with other newly appointed Cancer Care coordinators, underwent a lengthy induction programme. She commenced work with the Brain and CNS team in July 2016.

6.7. The claimant said that she noticed that there was a lack of direction and interest from the team. She said that she had no independent face-to-face contact with cancer patients in seven months. When she attempted to introduce her role to patients she said she was obstructed by the Cancer Nurse Specialists. The claimant felt like an outsider and that the team did not want the Cancer Care Coordinator role.

6.8. The line manager for the eight Cancer Care Coordinators was Nicola Hand. The claimant said that she had a meeting with Nicola Hand on 18 October 2016. The claimant said that Nicola Hand told her that she should be seeing patients face-to-face and if that did not change she would move her to another team. During the Tribunal the claimant said that Nicola Hand had said that if it continued she was prepared to consider moving her

6.9. On 24 November 2016 the claimant met with Kay Dover, Service Improvement Lead, Macmillan Integration of Cancer Care Project, in order to discuss her concerns. Kay Dover sent an email to Nicola Hand stating that she had just met with the claimant who was feeling unhappy at work at that time. In the email Kay Dover stated:

“I’m worried that if things she said to me don’t change she will just get more and more unhappy: I know you as well as I certainly don’t want that to happen....”

6.10. On 28 November 2016 the claimant said that Gill Hendry prevented her attending an oncology clinic with Dr Wadd, consultant, and had told the claimant “There is no place for your role at clinic”.

6.11. Nicola Hand said that, at that clinical meeting, the consultant would outline to the patient their diagnosis, the treatment available to them and the pathway of care. It was indicated that this was frequently a “bad news” meeting. The meeting needed to be handled in a sensitive manner. The clinic rooms were small and the meeting would include Dr Wadd, a senior Nurse Specialist, the patient and their relatives or carers. Nicola Hand acknowledged that it would be of some value for the claimant to attend such meetings but it was not essential for patient care and, in view of the number of people attending the meeting, the purpose of the meeting and the venue, it was decided that it would not have been appropriate to involve the claimant in this clinic. This was not to mean that the claimant would not become more closely involved in other clinics in the future but simply not at that time.

6.12. The claimant said that she took herself away from the office environment and decided that she could no longer work in such a restrictive environment and that the team were putting up barriers every day she was came into work. The claimant sent an email to Nicola Hand on 28 November 2016 stating that she needed to speak to her urgently and that she had had to go home.

“I am coming up against barriers every day that I come into work. My team are causing me stress. I’m just so upset about this so I have taken the decision to go home.”

6.13. On 28 November 2016 Nicola Hand spoke with the claimant. It was agreed that she would attend an arranged visit at another trust on 29 November 2016. Following this the claimant was absent from work due to sickness.

6.14. On 30 November 2016 the claimant met with Nicola Hand. The claimant said that she was told that she might have to get used to the idea that she was not going to be doing the job she thought she would be doing and that she may have to apologise to the team. Nicola Hand said that the claimant complained that there had been a change in attitude and that she was being subjected to excessive supervision. Nicola Hand said that she tried to explain to the claimant that her role was valued and that it was evolving. She would not necessarily be involved in every clinic but that might change over time.

6.15 Nicola Hand called a meeting with other team members, Gill Hendry and Pauline Sturdy, Band 7 Cancer Nurse Specialists and Emily Davies, Band 6 Oncology Nurse Practitioner. In the note Nicola Hand later prepared in respect of this meeting it is stated that the members of the team who were present gave clear scenarios where they felt claimant had seen patients and/or carers and it is stated:

“They articulated that she had made a significant difference to patient and carer care and that they had seen exemplary communication. They did say that on occasions Vicky could become animated in her actions, and often raised her voice if she felt she was not getting her own way or perhaps was anxious, they had witnessed this on a couple of occasions but felt that they had managed these ‘outbursts’ within the team
I asked if the team would be willing to participate in a facilitated meeting to help to start to resolve some of the concerns that she had but also for an opportunity to talk to Vicky about her role and what a good job they felt she was doing. They agreed and I said I would arrange for this the following week.”

6.16. The claimant was signed off work with work related stress from 5 December 2016.

6.17. On 19 December 2016 the claimant met with Nicola Hand together with Sue Parvin, HR Officer and Kay Dover, Service Improvement Lead. It was agreed that a phased return to work would be appropriate. The claimant indicated that she wished to return to the Brain and CNS Team.

6.18. A meeting took place on 5 January 2017 between the claimant and Nicola Hand. Nicola Hand said that the claimant became quite aggressive and rude at that meeting and said that she wanted to have her trade union present at the next meeting.

6.19. A further meeting took place on 12 January 2017. The claimant was accompanied by Wendy Larry, trade union representative and Nicola Hand was supported by Sarah Binns, HR Manager. The notes of that meeting show that the claimant explained that qualified staff would not let her have face-to-face

contact and that she had been doing mainly admin which she did not find satisfying. It is indicated that it was explained that the setting up of the new project was in the early stages and the claimant was asked to be a little patient. It was indicated that answering the phone to patients and carers was a large part of the role. The notes indicate that "VW not happy with that answer, a little rude towards N.H. Her line manager I did have to ask Vicky to calm down.

6.20. A meeting was arranged and Nicky Hand sent an email which stated that the meeting was scheduled for two hours and it was an opportunity to get together as a group informally. In an email from Nicky Hand It was stated that the session would cover the following items:

- "- Coffee and icebreaker session
- Understanding the shared purpose
- Opportunity for discussion
- The role of the cancer care coordinator."

It was indicated that Spencer Robinson had agreed to come for coffee as the ICCP(Integrated Cancer Care Project) Lead.

6.21. On 23 January 2017 the meeting took place with the claimant and the Brain and CNS team. Present were Emily Davies, Gill Hendry, Caroline Barber-Miller, Occupational Therapist, Jenny Collins, Physiotherapist, Nicky Hand and Spencer Robinson.

6.22. This meeting had been arranged as an informal meeting. However, the claimant said that she felt that the meeting was formal and she felt uncomfortable, anxious and intimidated. She said that this was the first time she had seen the team since leaving work on 28 November 2016 and she felt isolated and ganged up on.

6.23. The notes prepared by Nicky Hand indicate that during this meeting the claimant suddenly became quite animated and very dismissive of the team and they were shocked at her outburst. The claimant requested that the meeting came to an end and that a separate meeting should take place with Nicky Hand and Spencer Robinson. This was initially refused but then a further meeting did take place with Nicky Hand and Spencer Robinson. Nicky Hand said that she was concerned because the claimant appeared to be unable to accept that her behaviour had been inappropriate and that she had shown little regard for the views of her colleagues even though they had praised her contribution to the team. She also said she was extremely concerned by the views the claimant had expressed about meningioma patients.

6.24. Following that meeting, Spencer Robinson discussed the situation with Carol Taylor, Programme Manager, and on 26 January 2017 Carol Taylor wrote to the claimant indicating that a formal investigation under the respondent's disciplinary policy would be carried out with regard to the following allegations:

“1. At the team meeting on Monday, 23 January 2017 and subsequently you have not displayed appropriate behaviour and attitude toward your colleagues and management team, by being aggressive and dismissive.

2. You have failed to display the expected consideration for your client group.

This is following the informal management of inappropriate behaviour and attitude since November 2016.”

6.25. Also on 26 January 2017 Carol Taylor wrote to the claimant indicating that during the investigation he would report to Niki Idle in the Transformation team.

6.26. On 30 January 2017 the claimant presented a grievance relating to:

“1. Misrepresentation of job description.

2. Dignity at work – August 2016 to January 2017.

3. Misleading and conflicting information given to me whilst attempting to resolve situation informally.”

6.27. On 31 January 2017 Spencer Robinson took over from Nicky Hand as line manager for the Cancer Care coordinators.

6.28. On 20 February 2017 the claimant attended an investigatory interview. Allison Davis, Head of Information Services and Healthcare Records, was the investigating manager. She was accompanied by Mary McIvor, HR Consultant and the claimant was accompanied by Glen Home, her trade union representative. It was agreed that the grievance and the disciplinary issues would be considered together.

6.29. Allison Davis carried out further investigations. She had meetings with Caroline Barber-Miller, Occupational Therapist, Nicky Hand, Lead Cancer Nurse, Dr Spencer Robinson, Emily Davies, Oncology Nurse Practitioner, Gill Hendry, Cancer Nurse Specialist, Pauline Sturdy, Neuro Oncology Specialist Nurse and Jen Collins, Physiotherapist. Allison Davis said that the descriptions of the meeting provided by the claimant’s colleagues were reasonably consistent describing the claimant as angry, hostile and dismissive.

6.30. On 23 February 2017 the claimant sent an email to Allison Davis with regard to her notes of the investigation meeting and also asking whether Allison Davis had had a discussion with management about her returning to her CCC role.

6.31. On 3 March 2017 Allison Davis responded to the claimant indicating she had discussed with Spencer Robinson the possibility of the claimant moving to support another Cancer Care Coordinator. It was stated that it was felt that, at that moment, this would not be achievable due to the amount of support needed from the respective teams and the claimant would, therefore, be required to continue in her role within the Transformation Team until the investigation process was concluded.

6.32. On 6 April 2017 the claimant attended the disciplinary and grievance feedback meeting. Once again, she was accompanied by Glen Home. Allison Davis told the claimant that it was her recommendation that it should not progress to a formal disciplinary process. Allison Davis said that, in her view, the claimant had displayed some inappropriate behaviours but that these had not been raised initially on an informal basis.

6.33. On 13 April 2017 Allison Davis wrote to the claimant confirming the outcome of the disciplinary investigation stating:

“We recommend that the trust does not proceed to formal disciplinary hearing for the following reasons:

- No informal process has been followed to bring the perceived behaviours to your attention. However as part of the investigation there was clear evidence of displays of inappropriate behaviour both at the meeting on 23rd January and on other occasions leading up to the meeting on 23rd January.
- Whilst there are examples of individuals experiencing/witnessing behaviours on a one-to-one basis they were not escalated for further action.
- There was confusion as to who was line managing you which may have resulted in the above.

However, whilst the recommendation is not to continue to formal disciplinary hearing, there was clear evidence of your behaviours ‘tipping’ which requires attention and support if you are to reintegrate into your role as Cancer Care Coordination and to remain a member of the team. For clarity the reference to your behaviours tipping, predominantly relates to your behaviours shifting from rational discussions to discussions which have an aggressive/dismissive edge to them and your body language becomes quite animated.

I would also recommend that you complete a characteristic/behavioural analytical type tool such as Myers Briggs, to help you to understand how your behaviours impact on others, together with a programme of coaching to provide you with mechanisms to recognise and manage your behaviours should they ‘tip’ again.

Following completion of the above programme of support; should further issues be raised in relation to your behaviours that may result in formal disciplinary action.

However, I would like to reiterate that all parties we spoke to during the investigation praised the work you had undertaken as a Cancer Care Coordinator and I would like to acknowledge the professionalism you displayed throughout the investigation; at what must have been a stressful time for you.”

6.34. On 13 April 2017 Allison Davis wrote to the claimant providing the grievance outcome. With regard to the complaint regarding misrepresentation of the claimant's role, it was stated:

“Job Description – Misrepresentation of Role

In relation to your concerns regarding the above

- The job description is a generic job description across all areas, and was agreed as part of the pilot work being undertaken/funded by Macmillan support. As the roles are still in pilot stage, the job description will evolve and Cancer Care Coordinator roles across different areas will differ with some areas seeing high volumes of lower complexity patients and overseeing small volumes of highly complex patients....
- There was evidence that face-to-face patient contact was happening, examples including the work undertaken in the meningioma clinic, and plans were underway few to complete holistic care assessments and radiotherapy work. Although you stated that the patients in the meningioma clinic do not have cancer, Macmillan classify those patients in the same way as those who do have cancer.
- In terms of concern about patient contact – the Cancer Nurse Specialists only have approximately 30 – 35% face-to-face patient care with lots of work being undertaken over the phone.
- In relation to concerns about ‘admin being admin’ several examples were provided that differentiated between admin that was key in delivering the clinical pathway and other types of work that would be generic admin tasks.
- In relation to the request to attend the Dr W clinic, having listened to the clinical team I do not think it appropriate for the CCC to be present at this clinic for a number of reasons including:
 - Type of news/clinical information being shared the clinic
 - The number of staff already present at that clinic
 - Size of clinical accommodation
- However there would be value in this ECC role being introduced after that clinic to provide the necessary support/point of contact.

Dignity at Work

In relation to your concerns regarding Dignity at Work:

The investigation focused on two specific issues as outlined below:

- Meeting on 23rd January
- Concerns about how you were being treat as part of the wider team/management of workload etc.

Key findings included:

- There was some reticence to the role from the wider team when it was first suggested, but attitudes were changing and it is now seen as an invaluable role.

- Initially it was difficult for the team to relinquish some of the duties/tasks they had previously undertaken as the Cancer Care Coordinator role was still evolving in the Department.
- All of those interviewed stated that your work has been outstanding and they fully value the role of the Cancer Care Coordinator
- . Supervision meetings/action plans were positively received by ALL parties
- As per previous comments I do believe the meeting on 23rd January would have been intimidating for you.

Misleading Information leading up to going on sick leave

- There is evidence that you were given misleading advice in relation to your concerns about the job description – being advised on at least 2 separate occasions that there was the opportunity for you to move to another area where you to receive more patient contact.
- I believe that Nicky Hand was trying to support you through a period of stress and this resulted in not being as direct with her responses to you as she might have been under other circumstances. A more direct approach would have brought information discussions to a close much sooner.”

6.35. On 18 May 2017 the claimant raised a further grievance setting out 10 points and indicating that the desired outcome she would like was an immediate return to her role without further delay and a written apology from her senior management team for the way she had been treated since October 2016. The 10 points were:

- “1. It was unfair to exclude me from all CCC activities throughout the investigation process effectively suspending me from my role.
2. It is unfair I have been excluded from all information and updates about this CCC role since January 2017.
3. It was unfair not to allow me to return to my CCC role in February/March as requested by Alison Davis Investigation Officer.
4. It is unacceptable that I have had no contact from my senior management team between 30.1. 17 and 15.5.17.
5. It is unacceptable I have had no contact from my senior management team since the feedback meeting on 6th of April, up to and including 15. 5.17 with regard to returning to my CCC role.
6. It is unacceptable I have had to request on two separate occasions copies of my employment contract amendments and a copy of the feedback meeting minutes. I have still not received either.
7. I find the timescale I have been absent from my CCC role unacceptable.
8. I find it unacceptable I have not been provided with clear, direct information with regards to returning to my role. It is now six weeks since the feedback meeting was held.

9. I feel I have been given conflicting information yet again despite this aspect of my first grievance being fully upheld.
10. I find the delay returning to my CCC role unacceptable.”

6.36. On 19 May 2017 Spencer Robinson sent an email to Carol Taylor and HR officers with regard to the claimant’s integration back into the Brain and CNS team. This involved a phased return commencing on 12 June 2017.

6.37. On 24 May 2017 Spencer Robinson sent an email to Mary Mclvor and Mark Hudson in HR referring to a conversation that morning with regard to bringing the claimant back into the team on the week commencing 5 June 2017. He referred to being uncomfortable with this change due to his annual leave and stating that he would be available as her line manager to be visible and accessible to the claimant on 12 June 2017.

6.38. On 31 May 2017 Spencer Robinson met with the claimant together with representatives from HR and Glynis Dobson, the claimant’s trade union representative. It was proposed that the claimant returned to work in the week commencing 12 June 2017.

6.39. On 1 June 2017 Spencer Robinson sent a letter to the claimant confirming that he would be the claimant’s line manager and they would commence reintegration during week commencing 12 June 2017. It was stated that he would meet the claimant for a coffee prior to walking with her to the Brain CNS team.

6.40. On 8 June 2017 Bill Todd, Head of Procurement, wrote to the claimant indicating that he had been asked to investigate the claimant’s grievance and inviting her to a meeting on 15 June 2017.

6.41. The claimant returned to work in her role on 14 June 2017.

6.42. On 15 June 2017 the claimant attended a grievance investigatory interview with Bill Todd. The claimant was accompanied by Glenn Home, union representative and Bill Todd was supported by Angela Cooling, HR representative. Bill Todd considered that the claimant’s grievance had three main points, the time taken for her to return to the Brain and CNS Team as a Cancer Care Coordinator, the reason why a phased return to work was required and the lack of communication with her during this period. He said there was also a query regarding her working hours but he did not believe this was an appropriate subject for grievance as it was an administrative matter for her line manager. Bill Todd suggested that he would deal with each of the points by considering three overarching complaints. He said that the claimant agreed. The claimant denied making such an agreement.

6.43. Bill Todd carried out investigations. He interviewed Spencer Robinson and Carol Taylor. He also had a brief conversation with Mark Hudson, HR Business Partner. However, Bill Todd did not consider that he was directly involved in any of the issues and made no note of the conversation.

6.44. The claimant attended the stage 2 grievance outcome on 19 July 2017. Bill Todd was accompanied by Angela Cooling and the claimant was accompanied by Glen Home. Bill Todd informed the claimant that her grievance would not be upheld. He said that he had considered the three points but the claimant said that there should have been ten. Bill Todd said that the claimant began to behave in an aggressive fashion. He ended the meeting and indicated that he would provide his decision in writing. Bill Todd conceded that he had made a mistake in informing the claimant that her grievance had not been upheld as one of the points had been upheld.

6.45. On 20 July 2017 Bill Todd wrote to the claimant confirming the grievance outcome. He referred to the three points and provided a summary of the investigation findings as follows:

“1. The time taken from 6th April; feedback session, to your rejoining the Brain and CNS team as a Cancer Care Coordinator.

During this time there appears to have been a great deal of work undertaken by the management team and HR to develop the required reintegration plan to support your return to the team. This included a detailed role/work plan which aimed to remove any previously perceived ambiguities within the job description. This was shared with yourself, Human Resources and Glen Home Unison representative, two weeks prior to your return to work. Along with this the Management Team also developed a full training and development system which has been designed to not just support you, but the whole team. It was felt the implementation of this needed to be delayed until you were back in your Cancer Care Coordinator role.

You were made aware during this time period that both members of the Senior Management team had scheduled annual leave. It was felt that it would be prudent for you to return to work when there were senior managers on site to assist in your return. This was viewed as a necessary delay not just to assist you but to ensure the team as a whole could be supported through your reintroduction. Therefore we do not uphold this point.

2. The reason why your reintroduction to the role necessitates a phased return to work:

There are several reasons why a phased return to the Department was viewed as necessary. It was felt that during your absence the other Cancer Care Coordinators had moved on and therefore a period of catch-up would be required. This was also seen as required to re-establish trust and relationships between yourself and the team. The phased return was established to support not just yourself but the team as a whole. It was viewed that this approach was a ‘must do’ as to bring you back into the team full-time from day one would not work and would result in further breakdown of relationships.

The Management Team were looking at this as a way to ensure that a positive reintegration was achieved for yourself and the whole team. Therefore we do not uphold this point.

3. The lack of communication from the trust to yourself during this period:

During the time period in question there was a significant amount of work going on within the departmental management team and the HR department to agree how the trust could work towards bringing you back into the Department. It appears a level of trust was lost and therefore the department needed time to assess the position and agree a way forward.

It had previously been agreed that the best communication route would be through HR or Nicky Idle from the transformation department. As per your request, the investigation team have not had discussions with Nicky Idle relating to this grievance.

It was not until the reintegration plan had been developed and agreed that this could be shared with you. We understand that this period of time where no information was forthcoming was adding to your feelings of abandonment, and perhaps instead of no information being relayed to you it may have been beneficial if you were informed of the progress of the development of the plan. Obviously the content could not have been shared until agreed but to be told the work was ongoing may have been a help to you . Therefore we partially uphold this point.”

6.46. In the conclusion of the letter it was indicated that it was believed that the best chance of a successful reintegration to support the claimant back into the team and for the rest of the team to establish a sound professional relationship was by way of a phased return to work and the claimant’s request for an immediate return to her role was not supported.

6.47. The claimant attended a meeting with Gill Hendry and Spencer Robinson on 7 August 2017. This was a meeting to discuss how things were going since the claimant’s return to the team. Notes were prepared by Spencer Robinson and Gill Hendry. It is indicated that it was thought that things were going OK. There was discussion with regard to answering telephone calls in the Neuro Oncology nurses’ office for which a Standard Operating Procedure had been drawn up. The claimant also raised a query with regard to patients’ records as she had found that it had been recorded that the claimant had been asked to send out some information when she had not been asked to do this.

6.48. On 8 August 2017 the claimant had a further meeting with Gill Hendry. The notes of that meeting indicate that the claimant was concerned that action in respect of two patients had been missed.

6.49. On 9 August 2017 the claimant submitted an appeal against the outcome of her second grievance. She set out grounds of appeal as follows:

- “1. I submitted a detailed grievance with 10 grievances and these were not addressed individually. I feel each grievance should have been addressed and fed back individually.
2. My grievance was reduced to 3 main points by the investigating officer and as mentioned at the outcome hearing I did not agree to this. As a result of this I do not feel my grievance was taken seriously and sufficient feedback was not provided for the individual grievances I raised. I do not feel the three points accurately reflect my grievance as a whole.
3. I feel three grievances have not even been looked and as a result I feel that my grievance was not taken seriously.
4. I do not agree with the reasons provided regarding my colleagues that they had moved on in their roles and this was the reason for a phased return so that I could ‘catch up’.
5. It was not agreed that communication from my management team would take place through Nicki Idle. I have evidence to prove this.
6. I have still not received a copy of my employment B form.
7. I raised concerns regarding my working hours that have been changed without due notice. The investigating officer asked if I would like this addressing is part of the grievance process. I agree to this. I do not think it is fair to then inform me one month later at the outcome meeting that I need to address this as part of a normal department administration process when I could have dealt with this at the time.
8. I feel from comments made in the outcome letter that I have been singled out and I do not believe this to be fair.”

6.50. On 11 August 2017 a meeting took place between the claimant and Spencer Robinson together with Gill Hendry. The claimant indicated that she felt she was being micromanaged and that she had expected more autonomy in the role and that she felt like an assistant. The preparation for the claimant’s SDR (Staff Development Review) that was planned to take place in September 2017 was mentioned. The claimant had a further one-to-one meeting with Spencer Robinson in which he said that she referred to frustration with her role and that she felt she had not had any senior management support in the previous six months.

6.51. I had sight of a statement of main terms and conditions employment from Cleveland Police for the claimant dated 6 September 2017 in which it referred to a start date of 9 October 2017. During the claimant’s evidence to the Tribunal she indicated that she had applied for this job in around January 2017. She had been interviewed on or around May 2017 and had been successful. She had been fitted for her uniform in June 2017. The claimant was unable to provide any documentary evidence with regard to her application and the job offer. The statement of main terms of employment from Cleveland Police was in respect of a permanent full-time role as a Police Community Support Officer. The claimant said that she no longer works for Cleveland Police. She is presently undertaking a Master’s degree. She had not intended to leave the role with the respondent. When the job was advertised with the police she was going through the disciplinary process and had been removed from her role. This was around January 2017. At that time she said that she thought she had a potential constructive dismissal.

6.52. On 7 September 2017 the claimant was given notice of a grievance appeal hearing that had been arranged to be heard on 25 September 2017.

6.53. On 12 September 2017 the claimant was involved in an incident with Emily Davies, a band 6 nurse specialist. There was a disagreement with regard to answering the telephone. The claimant said that Emily Davies had accused her of being challenging and aggressive. The claimant reported this incident to Spencer Robinson. The claimant said that Spencer Robinson suggested meeting with Gill Hendry the following day. It was nearly 5:pm and everyone had gone home. The claimant indicated that she could no longer work in these conditions. She said that Spencer Robinson seemed unaffected by this admission and shrugged his shoulders. Spencer Robinson said that the claimant was obviously distressed. The claimant was on annual leave on the following two days and Spencer Robinson was due to be on leave on 15 September 2017, the day on which the claimant would return.

6.54. On 13 September 2017 the claimant sent an email to Spencer Robinson indicating that she wished to raise an informal grievance. Spencer Robinson replied indicating that he had sent a meeting request for 18 September 2017 to start the informal stage I grievance.

6.55 On 14 September 2017 Spencer Robinson sent an email to the claimant in which he stated:

“Further to our recent discussion with regards to issues you have raised I am keen to create some space between yourself and Emily to help diffuse the situation. As I am on annual leave tomorrow and not around to chat I suggest for tomorrow only that you focus on updating the neuro – rehab directory and obtaining information and insight for the base of skull work as part of your agreed work with Gill. I have arranged for you to work upstairs on floor 2 Murray building in the Cancer Services team where there is a hot desk with phone and computer. Carol Taylor will point you in the direction of the hot desk as she will be working in Nicky Hand’s office from 8:30 am.”

The claimant did not have sight of this email until after she had met with Pauline Sturdy and Debbie Appleton on 15 September 2017.

6.56 On 15 September 2017 when she arrived at work the claimant was met by Pauline Sturdy and Debbie Appleton, HR consultant. They informed the claimant that she was not working with the team that day and that she had to report to Carol Taylor in Cancer services on the second floor. The claimant was informed by Pauline Sturdy that Spencer Robinson had sent an email on 14 September 2017 which the claimant had not had the opportunity to read. The claimant left the office and said that she was going to speak to her Trade Union Representative. She was unable to contact Glen Home. The claimant returned to the office and asked Pauline Sturdy and Debbie Appleton why she was being moved and not Emily Davies. The claimant said that Debbie Appleton asked the claimant “are you the perceived aggressor?” The claimant

said that she was not and that Emily was aggressive and not her. The claimant said that she knew she could not take any more and left the office taking as many of her personal belongings that she could. She reported to Carol Taylor and said that she was not feeling well and was going home.

6.57. The claimant went to the library and read the email that Spencer Robinson had sent on 14 September 2017 with regard to the arrangements for the claimant's return to work.

6.58. On 15 September 2017 the claimant submitted her third grievance complaining of:

- “1. Covert bullying and dignity at work.
2. Inappropriate and unacceptable conduct by senior management.
3. Inappropriate and acceptable conduct by my team.
4. The team 'blocking' me from doing aspects of my role as a Cancer Care Coordinator.”

The claimant submitted this grievance, which she had prepared the previous day, before she left

6.59. On 18 September 2017 the claimant sent a notice of resignation with immediate effect. In that letter she said that her position had become untenable and that the situation over time had become extremely distressing. The letter stated:

“I resign with immediate effect due to the following cumulative events.

- In October 2016 I approached my line manager Nicola Hand for support with issues and problems evolving within my team. I was provided with conflicting and misleading information regarding my job description which at that time, I was unaware of.
- In December 2016 my line manager failed to follow a HR instruction. This instruction was for my line manager, myself and two band seven nurse colleagues to meet to discuss and agree on my role and responsibilities as a Macmillan Cancer Care Coordinator. I firmly believe this would have been an opportunity to meet and resolve issues and problems I had previously raised. Instead this situation quickly escalated and when I asked my line manager why this instruction had not been followed, I was met with 'things change'.
- In January 2017 upon my return to work following a sickness absence I was not provided with a place of work.
- On 23 January 2017 I was bullied at a team meeting when senior managers were present and my dignity at work was breached.

- In January 2017 I was removed from my role as a Cancer Care Coordinator and from cancer services. At this point South Tees NHS Foundation Trust were in breach of my employment contract.
- Between January and March 2017 I was subjected to a formal disciplinary investigation despite no informal stage of the disciplinary policy having been followed. The investigation ultimately found there was no disciplinary case to answer. It was clear that the allegations were malicious and without merit.
- In February 2017 I was denied the opportunity to return to cancer services and my role as a Macmillan Cancer Care Coordinator by you, as my line manager, despite a request by investigating officer Allison Davis. This further prevented me from carrying out the role I had been recruited to perform for the Trust.
- Between January and June 2017, I was ostracised and excluded from all activities, communication and information associated with cancer services and my role as a Macmillan Cancer Care Coordinator. This was humiliating, deeply upsetting and I believe a form of bullying.
- At the beginning of April 2017 I should have returned to my role as a Cancer Care Coordinator. The disciplinary investigation concluded in March 2017 and I did not return to my role until 14 June 2017. This period of time was distressing.
- The conduct of my senior management team has been in breach of trust policy.
- My team have bullied me covertly. Behaviours within my team have continued despite being addressed at grievance stage two.
- My job description has been misrepresented. I am treated differently to my Macmillan Cancer Care Coordinator colleagues despite having the same job title and job description.
- The final straw came, when on Friday 15th of September upon arrival at work, I was met by a band seven nurse colleague and a HR consultant. I was told that I needed to report to Carol Taylor as you have sent an email informing me I was not working with my team. I was not given the opportunity to read the email. I had previously reported a Band 6 nurse's behaviour to you stemming from their actions on 12 September. You advised me this would be investigated. However, when I asked what the reason was for my removal from the team and my role, the HR Consultant replied by saying 'Are you the perceived aggressor? I don't know why I am here' I was informed by the band seven nurse that 'things will be reviewed next week'. This was the second occasion within the year that I have been removed from and prevented from performing my role. I feel the trust continues to support the

bullying behaviours of my team and has failed in its duty towards me. Again I have been made to feel humiliated and unsupported. This has ultimately led to a breach of my trust and confidence in South Tees NHS Foundation Trust.

- On Friday 15th of September I submitted a third formal grievance. I feel my two previous grievances were not taken seriously. Upon return to my team I have raised concerns with you regarding the repeat behaviours of my team and I was informed that you were not aware of my previous grievance and its outcome. I feel deeply upset and hurt that following the recommendations made within my grievance outcome that they have not been followed and you have stated you know nothing of the grievance, its findings or recommendations which could have assisted me in working within the team. I feel it is now impossible for me to work with this team due to the cumulative events leading up to and including Friday 15th of September. I can no longer tolerate the working conditions afforded to me.
- Although I have resigned due to the series and accumulation of breaches I have been subject to, I will attend my appeal meeting on Monday 25th September to ensure the process is concluded appropriately and that my grievance appeal is properly addressed. I hope that others are not subject to treatment which I have been subject to, since my commencement in role.”

6.60. Spencer Robinson wrote to the claimant acknowledging her letter of resignation. That letter is not dated. He offered the claimant the opportunity to discuss concerns she had raised.

6.61. On 25 September 2017 the claimant attended the grievance appeal hearing which was conducted by Eileen Aylott, Assistant Director of Nursing/Workforce, Liz Denning, Head of Podiatry and Orthotics Services and Liz Redman HR Business Partner. The claimant was accompanied by Glenn Home. The claimant read out a written statement of case and the grievance appeal hearing was adjourned as it was concluded that they could not proceed with the grievance appeal until they had received further documentation from the claimant.

6.62. On 9 October 2017 Sarah Binns, Employee Relations Team Manager, wrote to the claimant offering the opportunity to discuss concerns raised in her grievances of 15 September 2017 and 17 May 2017 and her resignation letter.

6.63. Following the ACAS early conciliation process, the claimant presented a claim to the Tribunal on 27 December 2017. She brought a claim of constructive unfair dismissal.

The Law

Constructive dismissal

7. Section 95(1)(c) of the Employment Rights Act defines constructive dismissal as arising when “the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate without notice by reason of the employer’s conduct”. The conduct must amount to a breach of an express or implied term of the contract of employment which is of sufficient gravity to entitle the employee to terminate the contract in response to the breach. In this case, the breach of contract relied upon by the claimant is a breach or breaches of the implied term of trust and confidence. That is expanded upon in a well-known passage from the judgment of the EAT in **Woods v WM Car Services (Peterborough) Limited [1981] IRLR page 347**: -

“It is clearly established that there is implied in the contract of employment a term that the employers will not, without reasonable and 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 of the contract since it necessarily goes to the root of the contract. To constitute a breach of this implied term, it is not necessary to show that the employer intended any repudiation of the contract. The employment tribunal’s function is to look at the employer’s conduct as a whole and determine whether it is such that its cumulative effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it”.

8. Next, there is the significance of what is colloquially called a final straw. This was considered in the Court of Appeal judgment in **London Borough of Waltham Forest v Omilaju [2005] IRLR page 35**:-

“In order to result in a breach of the implied term of trust and confidence, a final straw, not itself a breach of contract but must be an act in a series of earlier acts which cumulatively amount to a breach of the implied term. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant so long as it is not utterly trivial. The final straw, viewed in isolation, need not be unreasonable or blameworthy conduct. However, an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in the employer. The test of whether the employee’s trust and confidence has been undermined is objective”.

9. Further clarification of the objective nature of the test is provided in the Court of Appeal judgment in **Bournemouth University Higher Education Corporation v Buckland [2010] IRLR page 45**: -

“The conduct of an employer who is said to have committed a repudiatory breach of the contract of employment is to be judged by an objective test rather than a range of reasonable responses test. Reasonableness may be one of the tools in the employment tribunal’s factual analysis in deciding whether there has been a fundamental breach but it cannot be a legal requirement”.

10. There is also an issue surrounding the circumstances of the treatment of the claimant’s grievance by the respondent. As the EAT put it in **WA Goold (Pearmak) Limited v McConnell & Another [1995] IRLR page 516**: -

“There is a fundamental implied term in a contract of employment that an employer will reasonably and promptly afford a reasonable opportunity to its employees to obtain redress of any grievance they may have”.

11. A further helpful passage concerning treatment of grievances to be found in the judgment of Judge Richardson in the EAT in **Blackburn v LD Stores Limited [2013] IRLR page 846 paragraph 25**: -

“In our judgment failure to adhere to a grievance procedure is capable of amounting to or contributing to such a breach. Whether in any particular case it does so is a matter for the tribunal to assess. Breaches of grievance procedures come in all shapes and sizes. On the one hand, it is not uncommon for grievance procedures to lay down quite short timetables. The fact that such a timetable is not met will not necessarily contribute to, still less amount to a breach of the term of trust and confidence. On the other hand, there may be a wholesale failure to respond to a grievance. It is not difficult to see that such a breach may amount to a contributory breach of the implied term of trust and confidence. Where such an allegation is made, the tribunal’s task is to assess what occurred against the **Malik test**”.

12. In **Meikle v Nottinghamshire County Council [2005] ICR page 1**, Keane LJ said: -

“The Appeal Tribunal there pointed out that there may well be concurrent causes operating on the mind of an employee whose employer has committed fundamental breaches of contract and that the employee may leave because of both those breaches and another factor, such as the availability of another job. It is suggested that the test to be applied was whether the breach or breaches were the ‘effective cause’ of the resignation. I see the attractions of that approach but there are dangers in getting drawn too far in questions about the employee’s motives. It must be remembered that we are dealing here with a contractual relationship, and constructive dismissal is a form of termination of contract by repudiation by one party which is accepted by the other ... The proper approach therefore, once a repudiation of the contract by the employer has been established, 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 also objected to the other actions or inactions of the employer, not amounting to a breach of contract, would not vitiate the circumstances of the repudiation. It follows that, in the present, it was enough that the employee resigned in response at least in part, to fundamental breaches of contract by the employer”.

13. The test was put in slightly different terms in a more recent EAT case, **Wright v North Ayrshire Council UKEATS 0017/13 (27 June 2013)**, in which Langstaff P endorsed a test first propounded by Elias P in **Abbey Cars West Horndon Limited v Ford UKEAT 0472/07**: -

“The crucial question is whether the repudiatory breach played a part in the dismissal ... it follows that once a repudiatory breach is established, if the employee leaves and even if he may have done so for a whole host of reasons, he can claim that he has been constructively dismissed if the repudiatory breach is one of the factors relied upon”.

14. It is to be noted that the proper conduct of a grievance process is not capable of curing an earlier breach of the term of trust and confidence (if it has occurred), even if it upholds the grievance in the claimant’s favour. Still less does the fact that the claimant has chosen to go down the grievance route before resigning, of itself amount to an affirmation of the contract. This is confirmed by a passage in the judgment in the Court of Appeal in the **Buckland** case, see in particular at paragraph 44 in the judgment of Lord Justice Sedley: -

“Albeit with some reluctance, I accept that if we were to introduce into employment law the doctrine that a fundamental breach, if curable and if cured, takes away the innocent party’s option of acceptance, it could only be on grounds that were capable of extension to other contracts, and for reasons I have given I do not consider that we would be justified in doing this. This does not mean however that tribunals in fact cannot take a reasonably robust approach to affirmation:-

‘A wronged party, particularly if it fails to make its position entirely clear at the outset, cannot ordinarily expect to continue with the contract for very long without losing the option of termination, at least where the other party has offered to make suitable amendments”.

Conclusions

15. I had the benefit of oral submissions from the respondent and written and oral submissions from the claimant together with further oral submissions provided by each of the parties. These submissions were helpful. They are not set out in detail but both parties can be assured that I have considered all the points made even where no specific reference is made to them.

16. I have considered initial submissions with regard to two issues. The first of these was the reason for the claimant’s resignation and the second was in respect of the alleged last straw.

17. The first submission made by Mr Webster, on behalf of the respondent, was that the claimant's contract of employment with Cleveland Police was dated 6 September 2017 and included a start date of 9 October 2017. The claimant had applied for this job in early 2017, she was interviewed in May 2017. Her application was successful and she was fitted for a uniform in June or July 2017. There had been a vast amount of documents disclosed by the claimant but it was striking that there was an absence of documents with regard to the claimant's new job, there was no documentary evidence of the claimant's application and the job offer provided.
18. The claimant indicated that she had been open and honest. She had resigned from the respondent and later decided to take up the job with Cleveland Police. She had applied for the role at Cleveland Police in January 2017. At that stage she had been removed from her role as a Cancer Care Coordinator. She was worried about the investigation. Her role with the respondent was a fixed term. The role with Cleveland Police was one for which recruitment took place a long way in advance and the claimant thought it would be good timing should her fixed term contract come to an end in June 2018 and she was not offered a permanent role in Oncology. She completed the recruitment process in August 2017 and was offered the role on 6 September 2017. She did not remember how or when she accepted the role or whether this was online via email or a verbal acceptance. She had made enquiries of Cleveland Police asking whether they had copies of any documents and they responded by saying no.
19. I am satisfied that the claimant resigned in part because of the issues she alleged amounted to a breach of the implied term of trust and confidence. Part of the reason for her resignation was also that she had been offered alternative employment with Cleveland Police. I shall return to the question of whether there had actually been a repudiatory breach of contract by the respondent later in these reasons.
20. The next submission by Mr Webster was with regard to the 'last straw'. This was the first issue within the agreed list of issues and it is appropriate to deal with it at this stage. The last straw was identified by the claimant as the events that occurred on 15 September 2017. In the claim to the Tribunal it was stated:
- "The final straw came when on Friday 15th September upon arrival at work I was met by a band seven nurse and HR. I was told I needed to report to Carol Taylor as my line manager had sent me an email informing me I was not working with my team. I had previously reported a band six nurse."
21. This was also set out in similar terms in the claimant's letter of resignation dated 18 September 2017 as:
- "The final straw came, when on Friday 15th of September upon arrival at work, I was met by a band seven nurse colleague and a HR consultant. I was told that I needed to report to Carol Taylor as you have sent an email informing me I was not working with my team. I was not given the opportunity to read the email. I had previously reported a Band 6 nurse's behaviour to you stemming from their actions on 12 September. You advised me this would be investigated. However,

when I asked what the reason was for my removal from the team and my role, the HR Consultant replied by saying 'Are you the perceived aggressor? I don't know why I am here'. I was informed by the band seven nurse that 'things will be reviewed next week'. This was the second occasion within the year that I have been removed from and prevented from performing my role. I feel the trust continues to support the bullying behaviours of my team and has failed in its duty towards me. Again I have been made to feel humiliated and unsupported. This has ultimately led to a breach of my trust and confidence in South Tees NHS Foundation Trust."

22. Mr Webster submitted that, in accordance with the case of **London Borough of Waltham Forest v Omilaju**, an entirely innocuous act on the part of the employer cannot be a final straw. The claimant raised an informal grievance following the incident on 12 September 2017 after having spoken to Spencer Robinson. The claimant was off work on Thursday, 14 September 2017 and Spencer Robinson was off work on Friday, 15 September 2017. The claimant made no criticism of Spencer Robinson in relation to his email referring to the requirement to create some space between the claimant and Emily Davies. The claimant knew that a meeting had been arranged for Monday, 18 September 2017. The claimant had not read the email from Spencer Robinson at the time she was met on 15 September 2017. The claimant accepted in cross examination that she was not concerned about the action of the HR Officer, Debbie Appleton. The claimant said that Pauline Sturdy had given the impression that the move away from the team was long term. However, when cross-examined, the claimant said that Pauline Sturdy had said that they would see what happened the next week. This could not, on any view, be anything other than an entirely innocuous conversation. The remark that they would have to see what was to happen the next week was submitted to be a statement of the obvious. In the circumstances it could not be the final straw and, and, in accordance with the case of **London Borough of Waltham Forest v Omilaju**, there was no need for the Tribunal to conduct further enquiries into the alleged cumulative breach.

23. The claimant agreed that she had no criticism of the contents of the email Spencer Robinson sent to her on 14 September 2017 but, prior to that point she had no trust and confidence in Spencer Robinson. A number of events led up to the last straw on 15 September 2017. The claimant said that it may not have been substantial but the events prior to that week had been substantial. The claimant submitted that she had been told that she was not working with the team or from her usual place of work and that this was the second occasion within the year that she had been removed from and prevented from performing her role.

24. I am satisfied that the last straw relied on by the claimant was not a breach of contract and it was not unreasonable or blameworthy conduct. However, it did contribute to the claimant's reason for resignation. The claimant was removed from her place of work. She had raised a grievance in respect of the events of 12 September 2017 and it was entirely appropriate that Spencer Robinson wished to create some space between the claimant and Emily Davies. Indeed, the claimant agreed that she understood that it would not be feasible to move a member of the specialist nursing team away from the unit and it was appropriate and reasonable that the claimant should be temporarily moved. It was clear that Pauline Sturdy had said that they would see what happened the following week and that the claimant's working arrangements

to be away from Emily Davies were not permanent.

25. The claimant, in her closing submissions referred to the events of 15 September 2017. She stated:

“The final straw came when on Friday 15th September upon arrival at work I was met by a band seven nurse and an HR consultant. I was told I was not working with the team and from my usual place of work. This was the second occasion within the year that I have been removed from and prevented from performing my role. I had reported a band six nurse’s actions to Spencer Robinson on Tuesday 12th of September. Emily’s actions had left me feeling vulnerable. She had denied knowing I was not to answer the telephone when a nurse was present in the office. Spencer Robinson was asked at the Employment Tribunal whether Emily knew I was not to answer the telephone and he said yes. Emily Davies was not being truthful. I informed Spencer Robinson the next day I felt I was being bullied by the team and he shrugged his shoulders and said ‘OK’ I felt he was supporting the team’s bullying behaviour. Again, I was made to feel humiliated and unsupported. This ultimately led to a breach of my trust and confidence in South Tees Hospitals NHS Foundation Trust. Spencer Robinson was aware of this and I believe it was another example of attempting to bully me out of my role. The team had not wanted me back.”

26. It is apparent to me from this passage and the similar recounting of the last straw in the claimant’s letter of resignation and claim to the Tribunal, that the claimant is conflating the events of 12 to 15 September 2017 even though she refers the final straw as what had occurred on 15 September 2017. If the events of 15 September 2017 are considered in isolation then the last straw is an innocuous event. However, if the claimant’s allegation is considered in context it appears to me that the claimant is really saying that the final straw was the events of 12 to 15 September 2017. In those circumstances, it is appropriate for me to go on to consider whether all the events alleged in the claimant’s letter of resignation together or individually amount to a repudiatory breach of contract and, if so, whether the claimant resigned (at least in part) because of that breach. This entails considering the 13 bullet points contained within the letter of resignation as follows:

1. “In October 2016 I approached my line manager Nicola Hand for support with issues and problems evolving within my team. I was provided with conflicting and misleading information regarding my job description which at that time, I was unaware of.”

27. The claimant applied for the post of Macmillan Cancer Care Coordinator. The posts were new to the respondent and relatively new nationally. The advertisement for the job and the job description clearly indicated that the roles involved daily contact with patients, families and carers and that the successful candidates would be expected to support and “signpost” patients face-to-face in a clinical setting and over the telephone. There were differences between the amount of patient contact in the various MDTs. An example of this having been given that Nicky Hand indicated that there were only an average of 90 new patients per year within the Brain CNS team compared with 600 for the lung team. The work in the Brain and CNS team could be quite demanding and the team would see a lower volume of patients but with a higher

degree of complexity. Patients were seen on a face-to-face basis on fewer occasions and much of the contact would be by telephone. The function of the role was to support, 'signpost' and guide patients, carers and family through the pathway of care and to assist the clinical team with coordination and administration.

28. The claimant did have a supervision meeting with Gill Hendry, who supervised her on a day-to-day basis, and Serena Hartley, Specialist Physiotherapist. The claimant drew up an action plan which included references to attending clinics and meeting patients. The claimant accepted that she did attend some clinics and meet patients although these were meningioma clinics. Meningioma patients are treated as if they are cancer patients by the respondent and Macmillan Cancer Support. I heard a lot of evidence with regard to whether the claimant had been fixated on the difference between contact with meningioma patients and those with actual cancer. The claimant said that she did not differentiate between these patients and yet there are a number of occasions on which the claimant had indicated that attending the meningioma clinic was not independent face-to-face contact with cancer patients.

29. In the Brain and CNS team that contact would include contact with meningioma patients. There were sensitive issues with regard to the oncology clinic at which Dr Wadd would outline to patients their diagnosis and treatment available. It would frequently be what was referred to as a 'bad news' meeting. There was limited space and in view of the number of people in the meeting, it was decided that it would not be appropriate to involve the claimant in that clinic, but there was an intention to involve the claimant with patients at other clinics.

30. I am not satisfied that Nicola Hand provided the claimant with conflicting and misleading information regarding her job description in October 2016. There was an intention to involve the claimant with face-to-face contact with patients. There was some initial resistance to this by the nursing staff but this was a developing role and it was the aim of both the respondent and the claimant that she should be involved in face-to-face contact with patients.

2. "In December 2016 my line manager failed to follow a HR instruction. This instruction was for my line manager, myself and two band seven nurse colleagues to meet to discuss and agree on my role and responsibilities as a Macmillan Cancer Care Coordinator. I firmly believe this would have been an opportunity to meet and resolve issues and problems I had previously raised. Instead this situation quickly escalated and when I asked my line manager why this instruction had not been followed, I was met with 'things change'."

31. The action points had been drawn up by the HR Officer. The claimant was off work sick at that time. The first point of the action plan was that the claimant was going to speak to her GP in order to let Nicky Hand know when she might be able to return to work. The next part of the action plan was for Nicky Hand to meet with Gill Hendry followed by a meeting with the claimant and members of the team. A meeting did take place with the claimant on 13 January 2017 with regard to the plan to reintegrate the claimant into the team.

32. I am not satisfied that there was any failure to follow a firm instruction. The meeting on 23 January 2017 was discussed in some depth and agreed with the

claimant as a way forward.

3. "In January 2017 upon my return to work following a sickness absence I was not provided with a place of work."

33. There was a return to work meeting with Nicky Hand on 3 January 2017 in the notes of that meeting it is stated:

"Currently cancer services are working with Vicky and HR to resolve Vicky's concerns over her role within the brain and CNS team to allow her to return. At present Vicky will not return to the brain and CNS team but will work within the integration of cancer care programme to develop her skills further and allow her to bring consolidated skills back to the cancer care coordinator role."

34. The claimant was given somewhere to work and this was within the job description for her role. Working in the Macmillan Information Centre was part of the Macmillan programme and it had been decided that all the Cancer Care coordinators should spend some time in the centre. There were a number of follow-up meetings and there was an aim to facilitate the claimant's return to the team. I am not satisfied that there was any breach of contract or any unreasonable treatment of the claimant in this regard.

4. "On 23 January 2017 I was bullied at a team meeting when senior managers were present and my dignity at work was breached."

35. This was clearly a difficult meeting which did not proceed as intended. The perceptions of those attending with regard to the claimant's behaviour led to a disciplinary investigation. The outcome of the disciplinary investigation was that the respondent did not proceed to a formal disciplinary hearing as no informal process had been followed. However, it was indicated that there was clear evidence of the claimant's behaviour 'tipping' which required attention and support if the claimant was to reintegrate and remain a member of the team. It was also indicated that, following completion of a programme of support, should any further issues be raised in relation to the claimant's behaviour then it might result in formal disciplinary action. It is significant that there was praise for the work the claimant had undertaken and Allison Davis acknowledged the professionalism she displayed throughout the investigation. I am not satisfied that there was a breach of contract and this meeting. It was an attempt to reintegrate the claimant into her role with the Brain and CNS team. It was an unsuccessful meeting due to the perception of the claimant's behaviour. There was a breakdown in the relationship between the claimant and the team but I am not satisfied that this was as a result of anything other than the perception of the claimant's behaviour.

5. "In January 2017 I was removed from my role as a Cancer Care Coordinator and from cancer services. At this point South Tees NHS Foundation Trust were in breach of my employment contract."

36. The letter from Carol Taylor dated 26 January 2017 referred to the claimant's working arrangements during a formal disciplinary investigation. It was clear that this was not a permanent arrangement but something had to be done following the

breakdown of the relationship between the claimant and the Brain and CNS team at the meeting on 23 January 2017.

37. Mr Webster submitted that there were three options open to the respondent. The first of which would be, to suspend the claimant altogether, the second being to move the nurses in the team or, thirdly, to move the claimant.

38. It was submitted that suspension of the claimant could be seen as unfair treatment. The claimant accepted that, with regard to the events on 12 September 2017, moving a specialist cancer nurse in order to create some space between the claimant and that nurse would be more difficult for the respondent to achieve than moving the claimant. It would be inappropriate to move others from the team in these circumstances. The respondent was left with no real option other than to move the claimant to another department whilst the investigation was undertaken.

39. I accept this was the case, the respondent was left with little opportunity other than to move the claimant on a temporary basis. This was not a repudiatory breach of the claimant's contract of employment.

6. "Between January and March 2017 I was subjected to a formal disciplinary investigation despite no informal stage of the disciplinary policy having been followed. The investigation ultimately found there was no disciplinary case to answer. It was clear that the allegations were malicious and without merit."

40. There were concerns about the claimant's behaviour at the meeting on 23 January 2017. It was entirely appropriate that an investigation should be carried out. The investigation conclusion was not that there was no disciplinary case to answer it was that the respondent should not move to a formal disciplinary proceeding on the basis that no informal process had been followed to bring the perceived behaviours to the claimant's attention. However, there were concerns expressed with regard to the claimant's behaviour having an aggressive or dismissive edge.

41. I am not satisfied that there was any breach of contract or behaviour constituting a breach of the implied term of mutual trust and confidence.

7. "In February 2017 I was denied the opportunity to return to cancer services and my role as a Macmillan Cancer Care Coordinator by you, as my line manager, despite a request by investigating officer Allison Davis. This further prevented me from carrying out the role I had been recruited to perform for the Trust."

42. In the notes of the investigatory interview held with the claimant on 20 February 2017 the claimant's union representative, Glen Home is shown as asking whether they could get the claimant back into the lung role.

43. On 3 March 2017 Alison Davis provided a response stating that she had discussed the possibility of moving the claimant to support another Cancer Care Coordinator with Spencer Robinson. It was indicated that, whilst the claimant had transferable skills, Spencer Robinson felt at that moment it would not be achievable due to the amount of support needed from the respective teams to provide a robust induction process and continued day-to-day support in the roles/tasks that differed from the

claimant's current role and she would therefore continue within the Transformation team.

44. The claimant said that there had been conversations with regard to the lung team and she had been given the impression that she was going to move to that team.

45. Spencer Robinson said that it had been put to him whether the claimant could be put into the lung team but that was not appropriate. He said there was a lot going on in that team there was some senior management sickness and he referred to it is not being fit for purpose.

46. I am not satisfied that there was a breach of contract in respect of the claimant being placed in the Transformation team during the period of the investigation. There were clear reasons why it was decided that it would not be appropriate for the claimant to be placed in another team at that time.

8. "Between January and June 2017, I was ostracised and excluded from all activities, communication and information associated with cancer services and my role as a Macmillan Cancer Care Coordinator. This was humiliating, deeply upsetting and I believe a form of bullying."

47. The claimant had been informed that she would be working in the Transformation team during the course of the investigation process.

48. The claimant submitted that she could understand why she had been excluded if she had been suspended. However, she was not suspended and there was no reason to exclude her from activities during the investigation.

49. I am satisfied that, in view of the nature of the investigation, the disciplinary allegations and the grievances raised by the claimant, it was reasonable to remove the claimant from the team. She was informed that, during the formal process, she would not attend 'Clinical Supervision and Action Learning Sets'. The claimant was not working in her Cancer Care Coordinator role during the investigation and, in the circumstances, it was appropriate that she should not take part in these activities until she returned to her substantive role.

9. "At the beginning of April 2017 I should have returned to my role as a Cancer Care Coordinator. The disciplinary investigation concluded in March 2017 and I did not return to my role until 14 June 2017. This period of time was distressing."

50. The claimant attended a feedback meeting on 6 April 2017 in respect of the investigations by Allison Davis in respect of the disciplinary and grievance issues. The outcome of both the disciplinary investigation and the grievance investigation was confirmed in letters dated 13 April 2017. The claimant was given the right of appeal of three weeks from these letters. On 27 April 2017 the claimant sent an email indicating that she knew she had three weeks to decide whether to appeal and requesting a copy of the notes from 6 April 2017. On 28 April 2017 Mary McIvor indicated that she was getting in touch with Alison Davis and Spencer Robinson with regard to the integration of the claimant back into her role. An email from Carol Taylor dated 5 May 2017 set out that there was a plan being developed for the claimant to return to the team

and that, due to annual leave commitments, it was agreed that reintroduction to the team was planned for 12 June 2017. The claimant's trade union representative was informed of this on 9 May 2017. He was of the view that this was an unacceptable delay and he also referred to comments made by colleagues relating to the behaviour of the claimant as conjecture and could be the suggested perception of others.

51. A detailed structure for the reintegration of the claimant into the Brain CNS team was drawn up. In view of the severe difficulties which had arisen on the earlier return to work and the meeting with the team on 23 January 2017 the cautious planning with regard to the claimant's return to work was entirely reasonable. I do not find that it was established that the respondent was in breach of the claimant's contract in this regard.

10. "The conduct of my senior management team has been in breach of trust policy. "

52. The claimant submitted that this issue refers the conduct of Spencer Robinson, Bill Todd and Carol Taylor. She referred to behaviour when they came face-to-face. The claimant referred to the Dignity at Work policy. She referred to being ostracised by the management team, being "blanked" by Spencer Robinson and Carol Taylor. Her hours of work were changed without agreement.

53. Mr Webster, on behalf of the respondent, submitted that there was no actual breach identified.

54. Spencer Robinson made it clear that the change of hours was because the claimant had accrued a lot of hours owing and he did not want this to be ongoing. This issue was raised during the investigation of the claimant's second grievance raised on 17 May 2017. The conclusion indicated that it was believed this issue together with requests for contract information should be resolved part of the normal administration of the department. This was a small change and said to be for the claimant's benefit. The claimant did not ask to vary these hours.

55. In her witness statement the claimant referred to Spencer Robinson asking her inappropriate questions which made her feel uncomfortable. She said that, on one occasion, he had asked her what she was doing at the weekend. The claimant had volunteered that she was attending a wedding reception but said she was being polite but really thinking to herself "you are a creep and it's not your business." Spencer Robinson had asked whether she would be wearing a sparkly dress. Spencer Robinson indicated that he may have asked such a question as he had referred to going to a wedding with his wife and she had worn a sparkly dress.

56. The initial question from Spencer Robinson appeared to be that of a line manager asking a totally innocuous question and the claimant then volunteered the information. The claimant was unable to explain why this was an inappropriate question and then said that it was his body language although she did not explain this further. This was not in the claimant's witness statement also, it was not in her letter of resignation.

57. I do not accept that it was established that Spencer Robinson made any inappropriate comments in this regard. The claimant was unable to explain why it was

inappropriate for him to ask her what she was doing at the weekend.

58. It was not established that the conduct of the management was in breach of the Respondent's policy.

11. "My team have bullied me covertly. Behaviours within my team have continued despite being addressed at grievance stage two."

59. The claimant referred to it being unfortunate that the respondent did not call any witnesses in this regard, no nurses were called or allied healthcare professionals. The issues had been raised and no action had been taken.

60. It was submitted by Mr Webster that there had been a detailed reintegration plan that had been put in place. The allegations were with regard to transparent bullying rather than covert. The allegations of bullying had been dealt with in the grievance and the appeal.

61. I am satisfied that the complaints raised by the claimant had been investigated and conclusions had been reached there had been reasonable efforts made to reintegrate the claimant and to provide for the working relationships between the claimant and other members of the team. It appeared that this was going relatively well, although there were some continuing concerns on the part of the claimant, until the incident on 12 September 2017. I am not satisfied that there was any repudiatory breach of contract by the respondent.

12. "My job description has been misrepresented. I am treated differently to my Macmillan Cancer Care Coordinator colleagues despite having the same job title and job description."

Mr Webster submitted that this point had already been covered in his submissions.

62. The claimant referred to her expectation that she would be working clinically with cancer patients and that the cancer nurse specialists had informed her that there was no place for the role in the Brain and CNS clinics. She was informed that she would not be attending clinics or answering telephone calls. Her Cancer Care Coordinator colleagues did not have the restrictions imposed on them despite having the same job description and job title.

63. This is the issue that was the initial concern of the claimant and the issue that underpinned the grievance and disciplinary procedures. This was a new role to the trust and there were differences between the eight new Cancer Care Coordinators. The Brain and CNS team was a particularly complex area and there was less opportunity for face-to-face contact with patients and carers. There had been some resistance to the role by the healthcare professionals although I heard evidence that the team had begun to appreciate what the claimant could do for the team and valued her work which was said to be referred to as exemplary.

64. The claimant's role was evolving. The claimant indicated that another one of the Cancer Care Coordinators had experienced problems with regard to the amount of contact with patients but that position had improved to some extent with time.

65. I accept that the claimant's frustration with the amount of administration work and lack of face-to-face contact with patients had caused a substantial amount of frustration which led to difficulties in the working relationship between the claimant and the team in which she was working.

13. "The final straw came, when on Friday 15th of September upon arrival at work, I was met by a band seven nurse colleague and a HR consultant. I was told that I needed to report to Carol Taylor as you have sent an email informing me I was not working with my team. I was not given the opportunity to read the email. I had previously reported a Band 6 nurse's behaviour to you stemming from their actions on 12 September. You advised me this would be investigated. However, when I asked what the reason was for my removal from the team and my role, the HR Consultant replied by saying 'Are you the perceived aggressor? I don't know why I am here' I was informed by the band seven nurse that 'things will be reviewed next week'. This was the second occasion within the year that I have been removed from and prevented from performing my role. I feel the trust continues to support the bullying behaviours of my team and has failed in its duty towards me. Again I have been made to feel humiliated and unsupported. This has ultimately led to a breach of my trust and confidence in South Tees NHS Foundation Trust."

66. This issue has already been covered within these reasons. As set out above, I am not satisfied that there was a breach of contract on 15 September 2017. However, the actual 'final straw' relied on by the claimant is the events of 12 to 15 September 2017. This was an incident involving a cancer specialist nurse and the claimant with regard to the answering of a telephone. The claimant reported this and raised a grievance on 15 September 2017. She then resigned from her role. I have considered the events up to the claimant's resignation. Clearly, anything after that cannot be part of the reason for the claimant's resignation.

67. The claimant applied for and was appointed to the role of Cancer Care Coordinator. This was the role new to the respondent Trust and relatively new on a national level. The respondent appointed eight Cancer Care Coordinators who were assigned to Multi-Disciplinary Teams in respect of tumours categorised by site. The claimant was appointed to the Brain and Central Nervous System team. The Cancer Specialist Nurses in that team had some resistance to the appointment of a Cancer Care Coordinator. It appears that they did not see the need for the role and they wanted more administrative help. However, they became reconciled to the idea of the Cancer Care Coordinator when they saw how useful the role was and, in particular, it was said that they recognised that the claimant did an excellent job.

68. The claimant had applied for the post because she was particularly interested in a patient facing role and expected more face-to-face contact with patients and their carers and families. She did not want to perform a purely administrative role although she accepted that administrative functions were part of the role. She raised objections and there were clashes with members of the team. There was a meeting in order to reintegrate the claimant with the team on 23 January 2017. A number of members of the team were of the view that the claimant's behaviour at that meeting was inappropriate and it was referred to as aggressive and dismissive. Considering the

matter on an objective basis, it was reasonable for the respondent to investigate the claimant's behaviour. The claimant was investigated and invited to a disciplinary hearing. It was decided that no disciplinary action was appropriate as it was something that should be dealt with informally. The claimant continued to raise grievances about her treatment and her post. These appear to have been repetitive and the claimant was not satisfied with the outcome. She eventually resigned and claimed constructive dismissal after she had obtained another job with Cleveland Police.

69. I have some sympathy with the claimant. It is clear that the claimant felt that the job was not as she had anticipated and she was unhappy about that. She made the point forcibly on numerous occasions. However, I am satisfied that the respondent acted with reasonable and proper cause. The investigation of the disciplinary and grievance issues was handled appropriately and I do not find that there was a breach of the implied term of mutual trust and confidence.

70. The claimant genuinely felt that the team were obstructing her and not allowing her to perform the post according to the job description. However, I am satisfied that her performance was valued and the nursing staff came to value her role as a result of her performance.

71. The claimant obtained another job prior to her resignation. I am satisfied that this was one of two reasons that contributed to the claimant's decision to resign. The claimant's perception of her treatment together with the obtaining of new employment were causative of the claimant's decision to resign.

72. I am not satisfied that the claimant resigned by reason that the respondent, without reasonable and proper cause, conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence. I have considered all the points particularised by the claimant in the claimant's resignation letter and her claim to the Tribunal and I am not satisfied that the actions of the respondent cumulatively or separately amounted to a repudiatory breach of contract by the respondent.

73. In those circumstances, I am not satisfied that there was a constructive dismissal and the claim for unfair dismissal is not well founded and is dismissed.

Employment Judge Shepherd

3 May 2019