



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Clarke

**Respondent:** Marks and Spencer PLC

**Heard at:** Birmingham by CVP on 23 and 24 February 2023  
Reserved decision 22 March 2023

**Before:** Employment Judge Hindmarch

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr Dharajiwala – Counsel

## JUDGMENT

The complaint of constructive dismissal is not well founded and is not upheld.

## REASONS

1. This complaint of constructive unfair dismissal came before me for hearing by Cloud Video Platform on 23 January 2023. The Claimant was a litigant in person and the Respondent retailer was represented by Counsel, Mr Dharajiwala. On 23 January 2023, I heard all of the witness evidence but there was insufficient time to hear submissions. I ordered the parties to exchange written submissions and to exchange written submissions in relay if they wished. The Case was then listed before me on 22 March 2023 to reach a Reserved Judgment.
2. At the hearing on 23 and 24 January 2023, I had a bundle running to 344 pages and I heard evidence from the Claimant and then from the Respondent's witnesses. The Respondent's witnesses were Catherine Peat, Store Manager, Rob Whitehouse, Deputy Store Manager, and Richard Palethorpe, Section Manager.
3. By an ET1 filed on 16 May 2022, following a period of ACAS Early Conciliation from 28 March 2022 to 3 May 2022, the Claimant brought a complaint of constructive unfair dismissal. He commenced employment with the Respondent on 4 October 2009 in the role of Customer Assistant. He then resigned by letter

dated 21 March 2022, sending that letter by recorded delivery to arrive with the Respondent on 23 March 2022. The Respondent said the date of termination was 27 March 2022.

4. At the outset of the hearing we identified the issues I would have to decide. The Claimant said the Respondent had breached the implied term of trust and confidence in a number of ways. I would need to determine: -
  - a. Did the Respondent act in the way the Claimant alleged?
  - b. Did that action breach the implied term of trust and confidence?
  - c. Did the Respondent act in a way that was calculated or likely to destroy or seriously damage trust and confidence?
  - d. Did the Respondent have reasonable and proper cause for acting as it did?
  - e. Was any breach fundamental i.e. was it so serious that the Claimant was entitled to treat the contract of employment as being at an end?
  - f. Did the Claimant resign in response to the breach?
  - g. Did the Claimant affirm the contract before resigning?
5. The Respondent has a Bullying and Harassment Policy, a copy of which was at pages 42-43 of the bundle. It confirms that where an employee is experiencing harassment they may raise a formal grievance. The Respondent has a Grievance Policy, a copy of which was at pages 44-46 (said to be effective from July 2019) and a newer version, pages 48-50. The Respondent also had a Grievance Line Manager Guide, pages 51-56.
6. The Grievance Policy at 48 provides 'If you submit a formal grievance, a Grievance Manager will be appointed to look into it. They'll normally arrange a grievance meeting with you, within five calendar days of receiving your grievance.'
7. There were other policies in the bundle regarding Absence Management, pages 57-80, Fire Policy, pages 81-93, and Manual Handling, pages 94-97. There was a Manual Handling Risk Assessment for the Respondent's Sears Solihull store, pages 98-105, and a Workplace Transport Risk Assessment for the Loading Bay, at the same store dated 26 May 2021, pages 117-136.
8. The statement of Terms and Conditions of Employment issued by the Respondent to the Claimant and signed by him on 28 September 2009 was at pages 137-141.
9. In May 2021 the Solihull store, where the Claimant had worked since the commencement of his employment, was closed. The Claimant and other colleagues were relocated to a newly furnished store known as Sears. The new location was a much busier store which had undergone a major refurbishment.
10. The Claimant arrived at the Sears store on 23 May 2021. The Section Manager for the Claimant was Mr Palethorpe.
11. The Claimant says he received no induction on his first day, that he received no fire safety training and that he was directed to use an electronic scissor lift for

which he had received no training. The Claimant says that whilst he had training on a scissor lift at the previous store, this was a different model. He says he did not specifically ask for training on the scissor lift, and that he was able to operate it with assistance from a helpful driver.

12. The Claimant says he did receive fire safety training on 5 July 2021 but that that was 6 weeks after he had started at the store and 3 weeks after he had raised the lack of training with Mr Palethorpe. The Respondent says that due to the volume of staff moving to the store and new starters it had prepared a fire safety video which could be accessed by staff however the Claimant says he was not directed to this and did not view it. The Respondent's Fire Policy at page 88 does refer to 'fire-safety e-learning modules' taking place during induction. The Claimant in evidence suggested there was no video and/or that the witnesses Ms Peat spoke to in investigating his grievance should have given evidence about this. I do not feel this was necessary. I had Ms Peat's notes of her interviews and, as I have said, the Respondent's policy references 'e-learning.'
13. The Claimant would communicate with Mr Palethorpe by text message. On 24 August 2021, page 292, the Claimant sent a text to Mr Palethorpe asking for extra training on 'daily checks.' Mr Palethorpe responded to say, 'I'm sure anyone on the team will be happy to help and support including myself' and mentioning a colleague by name as the best person. Mr Palethorpe says he spoke with that person and asked her to assist the Claimant.
14. On 2 October 2021, the Claimant was at work. He says there was an incident between himself, and a Support Food Manager called Chloe, where the Claimant was upset at how he had been spoken to. After leaving work he sent a text message to Mr Palethorpe, page 294. He asked if Mr Palethorpe could 'arrange a meeting' between the Claimant, Mr Palethorpe and Chloe as he had 'left the store very annoyed today and I think a meeting would help going forward.' Mr Palethorpe replied asking 'what's up' and the Claimant replied 'it's nothing major, just a little bit of respect.'
15. On the next working day, 4 October 2021, Mr Palethorpe met with the Claimant and Chloe. The Claimant's concern is that this was not done in a private, confidential area. Mr Palethorpe said there were no offices available but the backstage stairwell where the meeting took place did offer privacy. The Claimant accepts Chloe apologised to him, and thereafter was always polite to him.
16. Later in October 2021, the Claimant says a lorry driver refused to take away empty trays and the Claimant told him he would need to call Head Office, to which the driver replied 'do what you want.' Mr Palethorpe was not at work and so the Claimant reported this to another manager, Joanne, who he says said 'don't worry about it, I can be like that.' The Claimant felt her response was inappropriate.
17. The Claimant says that by November 2021, Christmas stock was piling up and the store was understaffed. The Respondent's position was that the store was adequately staffed. The Claimant accepts he did not raise any concern about staffing levels with Mr Palethorpe at the time.

18. The Claimant says produce was being stacked too high and that he did raise that with Mr Palethorpe. Mr Palethorpe accepts this and says he told the Claimant not to lift anything he was not able to manage which is agreed.
19. On 17 November 2021, a family member of the Claimant suffered a serious medical incident. The Claimant sent a text message to Mr Palethorpe to inform him and to say, 'I'm sorry but I will not be in the rest of the week.' Mr Palethorpe replied expressing sympathy and asking the Claimant if he wanted to take the leave as holiday so that he would get paid. The Claimant replied agreeing to this, page 296.
20. On 21 November 2021, Mr Palethorpe sent a text message to the Claimant 'just checking to see how things are going; the Claimant responded on 22 November 'I will be absence (sic) from work due stress this is work related and personal home life. I will again today try to have a medical consultation with my doctor.. at a later date I would like the opportunity to discuss in full why I believe the company have failed my duty of care...and contributed to my mental health position.' Mr Palethorpe replied he would let the duty manager know and pointing the Claimant to some company resources including a helpline, page 297. The Claimant agreed in evidence that this was a reasonable and fair approach.
21. On 26 November 2021, Mr Palethorpe sent a text message to the Claimant asking for a sick note. The Claimant replied that he did not yet have the sick note from his doctor but confirmed it would be issued covering a period of one month. Mr Palethorpe replied asking the Claimant to 'keep updating me on a weekly basis and at some point I will invite you to absence meeting as per the absence policy, takecare (sic) and hope you feel better soon.'
22. The Respondent's Absence Policy requires any employee 'off for longer than a day' to 'please keep in regular contact with your line manager', page 57.
23. Later on 26 November 2021, the Claimant replied to Mr Palethorpe by text message, page 299. This was a lengthy message in which the Claimant expressed concern that he was being asked for sick notes 5 days into his absence, that he should be asked for weekly updates and referring to a grievance he had raised in which he had to wait 7 weeks for a response', page 299.
24. On 30 November 2021, the Claimant sent a screen shot of his fit note to Mr Palethorpe by text message. On 1 December 2021, Mr Palethorpe replied by text message asking for an update by the end of next week, pages 300-301.
25. On 10 December 2021, the Claimant sent another text message to Mr Palethorpe explaining he had made contact with the Respondent's employee assistance helpline, page 301. Mr Palethorpe replied 'Thanks for the update how are you feeling in yourself at the mo? Are you taking any medication etc.' The Claimant did not reply. In evidence, he accepted that due to his family circumstances at that time they were 'all over the place' and 'angry with the world.'

26. On 3 January 2022, Mr Palethorpe sent a text message to the Claimant. At this stage the Claimant had been on sick leave 6 weeks and his fit note expired on 2 January 2022. Mr Palethorpe asked whether the Claimant was returning to work or going back to his doctor. The Claimant replied the same day to say he would be speaking to his doctor, that he was still sick with stress and that 'a grievance letter has been sent to head office.' Mr Palethorpe replied that 'due to the absence length, I will probably still have to invite you in for an absence review meeting.' The Claimant replied 'okay', page 302.
27. On 7 January 2022, Mr Palethorpe informed the Claimant by text message that Jacqui Humphries would now be the Claimant's line manager for the absence, and that she would be in contact with the Claimant shortly to invite him to an absence meeting.
28. On 3 January 2022, the Claimant sent a grievance letter to the Respondent's Head Office by recorded delivery. A copy of the letter is at pages 147-148 and the Royal Mail record of delivery on 5 January 2022 is at page 149. The grievance letter raised the issues set out above that had occurred since the Claimant moved to the Sears store in May 2021, and the management of the Claimant's recent sickness absence. The Claimant requested that the grievance be heard by a senior employee from another store and a member of the human resources team.
29. On 3 January 2022, the Claimant obtained a further fit note for a period of one month for 'work-related stress', page 151.
30. On 6 January 2022, the Respondent's Line Management Advisory Service (LMAS) having received the grievance set about finding a manager to hear it and there are emails in the bundle evidencing this, pages 152-153.
31. On 18 January 2022, having heard nothing in response to his grievance letter, the Claimant sent a further letter to the Respondent's Head Office, chasing matters, page 158. The Royal Mail proof of delivery is at page 159 and shows this letter was delivered on 19 January 2022.
32. On 21 January 2022, LMAS wrote to the Claimant acknowledging the grievance letter and explaining an 'appropriate manager will be in contact soon to arrange a meeting.' The Claimant says he never received that letter.
33. On 24 January 2022, the Respondent appointed Catherine Peat to hear the grievance. On the same day the Claimant telephoned the LMAS team chasing the progress of the grievance. On 25 January 2022, Catherine Peat called the Claimant to introduce herself and to explain that she had been asked to hear the grievance and she invited him to a grievance meeting on 2 February 2022.
34. On 28 January 2022, Jacqui Humphries, Foods Team Manager, sent a letter to the Claimant inviting him to a 'ill health meeting' on 10 February 2022, pages 163-164. She had previously sent a letter to the Claimant on 11 January 2022, inviting him to a meeting, but the Claimant says he did not receive it and did not attend. This time she sent the letter by special delivery, page 162, but the Claimant did not receive it until 30 January 2022. The Claimant attended that

meeting and the notes are at pages 169-173. The Claimant explained he had not received Jacqui Humphries letter inviting him to the meeting, but he had received a message about it and had therefore attended. The Claimant explained he had not been able to meet with his GP but had spoken with him on the telephone. He had hoped his grievance would have been dealt with by now and he expected to feel better after it had been heard. He would not be back at work for 'at least a few more weeks.' It was agreed the Respondent would make a referral to occupational health. After the meeting, Jacqui Humphries wrote to the Claimant confirming what had been discussed, pages 201-202.

35. Catherine Peat met with the Claimant on 2 February 2022, she was accompanied by a note-taker. The Claimant was accompanied by a colleague from the Business Improvement Group. At the start of the meeting the Claimant produced a 10 page document giving more detail about his grievances, page 184-193. The notes of the meeting are at pages 174-183. At the end of meeting Catherine Peat explained that she would need to carry out investigations. Catherine Peat also asked the Claimant to think about some of the language he had used at the meeting when discussing colleagues for example he used the word 'kids' to describe younger managers and colleagues. She described the Claimant as being extremely agitated.
36. On 3 February 2022, Jacqui Humphries confirmed to the Claimant in a text message that the occupational health referral had been made, page 207.
37. On 4 February 2022, the Claimant obtained another fit note for a period of one month for 'stress at work.'
38. On 7 February 2022, the Respondent informed the Claimant that his occupational health assessment would take place on 11 February 2022, page 209. Catherine Peat set about investigating the grievance and on 9 February she met with Simon Street, the Respondent's Divisional Fire, Health and Safety Officer.
39. On 10 February 2022, the Claimant sent a further grievance letter to the Respondent's Head Office, pages 212-215. In short, he complained about Jacqui Humphries and miscommunication around the ill-health meetings. The Royal Mail delivery confirmation for 11 February 2022 is at page 216-217.
40. On 11 February 2022, the Respondents LMAS team received this and suggested Catherine Peat deal with it alongside the first grievance, page 232-233. The Claimant said he received a voicemail message from Ms Peat on this day to explain she was going on holiday.
41. On 11 February 2022, the Respondent wrote to the Claimant acknowledging this grievance. The Claimant again says he did not receive this letter. The occupational health report dated 18 February 2022 is at pages 222 – 223. It explained that the Claimant was 'very focused on the grievance' and that the delay was causing him to be stressed and angry.
42. On either 22 or 23 February 2022, the Claimant says he received a phone call from Ms Peat who told him she would pass on his second grievance to another person.

43. On 27 February 2022, Catherine Peat emailed LMAS to say she did not have capacity to take on the second grievance, page 246.
44. On 3 March 2022, the Claimant wrote again to the Respondent's Head Office saying that he had not received any response to his second grievance, part 228. The Royal Mail proof of delivery showing delivery on 4 March 2022 is at pages 229-230.
45. On 9 March 2022, Catherine Peat interviewed Mr Palethorpe, on 12 March she interviewed Toni Masterton, a Foods Section Manager and on 17 March she interviewed Joanne Welsh, Deputy Store Manager.
46. Catherine Peat accepts her investigation took a number of weeks. There were 6 weeks between her meeting the Claimant and her final interview with Joanne Welsh. She explained it was a busy time for the Respondent with colleagues taking leave post COVID-19 lockdowns coupled with the number of matters the Claimant had raised and the need for a thorough investigation of these.
47. On 18 March 2022, she prepared her outcome letter to the Claimant, pages 258-266 and said in evidence she made amendments to it on 21 March having taken advice from LMAS.
48. In the grievance outcome letter, Catherine Peat explained that she had 'partially upheld' the grievance. She went through each matter complained of (12 in total) and made the following findings:
  - a) Failure to give an induction – a video tour had been prepared by the Respondent and approved by its Health and Safety team. The Claimant was given a group tour on 5 July 2022. He made no complaint at the time. This was not upheld.
  - b) The height of food stacks. The Claimant had raised these with Mr Palethorpe on 11 October 2022 and it was agreed he should not lift anything he felt to be unsuitable. This was not upheld.
  - c) The Claimant not being treated similarly to other staff. Catherine Peat found evidence of the Claimant being excluded, albeit Richard Palethorpe acknowledged the Claimant was struggling with the move to a new store and could have engaged more with him.
  - d) Request for training on daily checks. This was upheld as Catherine Peat could not find that training, once requested, had been delivered.
  - e) Bullying and Harassment – incidents with Chloe. The behavior of Chloe was inappropriate, but this was resolved when the Claimant asked Richard Palethorpe to arrange a meeting in which Chloe apologised. This was not upheld.

- f) Bullying and Harassment – incident with Joanne Welsh. Catherine Peat found that the incident was as the Claimant had described but it was down to misinterpretation. This was not upheld.
  - g) Unwanted behavior of another individual, Mr Caines. These 2 incidents had not been reported by the Claimant to management at the time. This was not upheld.
  - h) Work overload. Catherine Peat found that staffing levels were appropriate.
  - i) Use of Teams app – the Claimant had complained about getting messages outside of working hours. Catherine Peat found that it was the Claimant's choice when to access the app, but that the message sent by Richard Palethorpe at 21:56 on 26 November should have been better thought out.
  - j) Request of a sick note, for weekly updates and details of medication. Catherine Peat found the actions of Richard Palethorpe, once the Claimant went on sick leave, were largely in accordance with the Respondent's policies.
  - k) Delay in hearing grievance. Catherine Peat explained the delay in locating a manager off – region to hear matters.
49. On 22 March 2022, Rob Whitehouse was asked by the Respondent to hear the Claimant's second grievance, page 212-215.
50. On 22 March 2022, the Claimant wrote his letter of resignation. He complained of delay in the first and second grievance process and described the 'last straw' as being the failure by the Respondent to acknowledge the letter dated 3 March 2022 chasing the progress of the second grievance. In the letter the Claimant said he had not yet received Catherine Peat's grievance outcome letter. This is likely to have been the case given Ms Peat's evidence it was still being worked on, on 21 March 2022 and likely put in the Respondent's postal system (though not necessarily actually posted that day).
51. On 23 March 2022, Mr Whitehouse telephoned the Claimant on his mobile number but it did not ring. He then telephoned the Claimant's home telephone number but no one answered and there was no facility to leave a message.
52. On 25 March 2022, Mr Whitehouse decided to write to the Claimant and prepared and sent a letter, page 275. On the same day, Mr Whitehouse again tried the Claimant's home telephone number and, on this occasion, was able to speak to him. The Claimant told Mr Whitehouse matters were now in the hands of his solicitor and hung up.
53. On 25 March 2022, the Respondent wrote to the Claimant by letter acknowledging his resignation, page 276.

54. On 28 March 2022, having taken advice from LMAS, Mr Whitehouse decided that he would still investigate the Claimant's second grievance. He interviewed Jacqui Humphries on 1 April 2022 and the notes are at pages 279-281.
55. On 5 April 2022, Rob Whitehouse sent the second grievance outcome letter to the Claimant, page 282-283. He did not find that Jacqui Humphries had acted inappropriately but did find some documents had been incorrectly dated.
56. I received written submissions from both parties, and written submissions in reply from Mr Dharajiwala. I will not be setting out the arguments in full but I have considered them carefully.

### The Law

57. s95 Employment Rights Act 1996 provides

“(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2)... only if –  
(c) the employee terminates the contract (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.”

58. The concept of constructive dismissal is both a common law and statutory one. Lord Denning in Western Excavating (ECC) Ltd v Sharp (1978) ICR 221 confirmed that where there is a fundamental breach of contract by the employer and the employee accepts the breach and the breach causes the employee to resign, that is a constructive dismissal. Thus, there needs to be a repudiatory breach on the part of the employer which can arise from a series of acts rather than a single act, but which must be sufficiently serious to justify the employee resigning. There must then be an election by the employee to accept the breach and treat the employment contract as at an end, and the employee must resign. The employee must not delay too long in accepting the breach; he must not affirm the contract.
59. The test of whether the employer is in breach of the implied term of trust and confidence, as argued in this case, and as agreed in the issues at the outset is that the employer would not 'without reasonable and proper cause, conduct itself in a manner, likely to destroy or seriously damage the relationship of trust and confidence Malik v Bank of Credit and Commerce International SA (In Liquidation) (1998) AC 20 (HL) 34.
60. When dealing with a 'last straw' case the Court of Appeal gave guidance in the case of Kaur v Leeds Teaching Hospitals NHS Trust (2018) EWCA Civ 975 and said Tribunals should have regard to five questions in order to decide whether an employee was constructively dismissed: -
- a. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, their resignation?
  - b. Has the employee affirmed the contract since that act?

- c. If not, was that act (or omission) by itself a repudiatory breach of contract?
- d. If not, was it nevertheless a part (applying the approach explained in Waltham Forest v Omilaju (2004) EWCA Civ 1493) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence? If it was, there is no need for any separate consideration of a possible previous affirmation, because the effect of the final act is the remain the right to resign? Did the employee resign in response (or partly in response) to that breach?

61. Mr Dharajiwala, Counsel for the Respondent, referred me in his Skeleton Argument to the Court of Appeal decision in Bournemouth University Higher Education Corporation v Buckland (2010) EWCA Civ 21 where it was held that it is not a legal requirement for fundamental breaches to be assessed by a test of reasonableness, as opposed to one of objectivity. The same applies for allegations regarding a failure to address an employee's grievance.
62. If the Tribunal determines that a constructive dismissal has occurred, it will have to consider unfairness in term of s98 Employment Rights Act 1996.
63. It is an implied term that the employer will give an employee a reasonable opportunity to obtain redress in respect of a grievance and breach of this term will constitute a repudiatory breach – WA Gould (Pearmak) Ltd v McConnell (1995) IRLR S16. However, a Tribunal is entitled to conclude that poor handling by an employer of a grievance including failure to give an explanation for rejecting an appeal and disclosing the existence and gist of a grievance to colleagues, did not constitute a repudiatory breach, Sewar v SKF (UK) Ltd UKEAT/0355/09. Whether an employer's poor handling of a grievance will constitute a repudiatory breach may depend on the seriousness of the allegations.

### Conclusions

64. The Claimant was clearly aggrieved at the Respondent's delay in nominating someone to hear his grievance and in reaching a decision. He said the 'last straw' was the Respondent's failure to acknowledge his letter of 3 March 2022 in which he chased for a response to his second grievance letter dated 10 February 2022.
65. I accept the Claimant's evidence that he did not receive either of the Respondent's letters acknowledging his grievances, if he had he would not have been chasing further. I do not dispute the Respondent sent these letters. I accept that on receipt of the grievances the Respondent was actively searching internally for someone to hear them. Noting the Claimant's own request that a manager outside of the Sears store and a human resources manager be involved this may have taken some time. I note that having heard nothing from the Respondent, the Claimant chased by telephone on 24 January 2022. I also accept that as soon as Ms Peat was appointed on 24 January 2022, 3 weeks after the first grievance letter was sent to the Respondent, she swiftly contacted

the Claimant on 25 January 2022 and arranged to meet with him on 2 February 2022, just under a month after the grievance was sent.

66. The Respondent's Grievance Policy does say a meeting will 'normally' be arranged within 5 calendar days of receipt of the grievance. I accept it took nearly a month. I do however accept the Respondent's position that it was a busy time for trading, that they needed to find a manager to hear matters and these were reasonable matters that caused the delay.
67. The lack of communication with the Claimant as to the steps that were being taken internally is unfortunate. The Respondent is a larger employer with good HR resources and better contact could have been made. I do not, however, find that to be a breach of the implied term of trust and confidence, viewed objectively.
68. It is the case that Ms Peat took several weeks to reach her decision on the first grievance. She did speak with the Claimant on 2 occasions during this period. This was a grievance concerning a number of allegations over a number of months involving the need to speak to several witnesses and consider a number of documents. Further, at the grievance hearing, the Claimant added to his grievance by presenting a document consisting of 10 pages of factual information. The investigation was thorough, reasonable and partly upheld the grievance. Again, perhaps Ms Peat should have kept the Claimant better updated as to her progress, and any delay, but he was aware she was dealing with matters.
69. On the issue of delay in the grievance, I do not conclude the 'last straw' (the failure to reply to the chasing letter of 3 March 2022) was by itself a repudiatory breach of contract. The Claimant did not on this occasion telephone the Respondent to see what was going on. He had done this in January and there was no good reason why he did not do this again, before considering resigning. I also do not find that the delays in the grievance process, viewed cumulatively, amounted to a repudiatory breach. It was not behavior on the part of the Respondent calculated to destroy or seriously damage the relationship of trust and confidence. The Respondent was dealing with matters 'behind the scenes' and Ms Peat did give the Claimant some updates.
70. The Claimant has raised a number of other allegations. To the extent they are also said to amount to breaches of trust and confidence, I am required to deal with them. It can be challenging when one moves to a new location in a busy and unfamiliar setting. I accept that the Claimant may have expected more induction and training on arrival at the Sears store. I do however find that he was able to operate the scissor lift with assistance and that training was offered by video and later in person. It appears there was no complaint made by the Claimant at the time.
71. The Claimant did ask Mr Palethorpe by text message for training on 'daily checks.' Mr Palethorpe said he arranged for a colleague to do this. Ms Peat partly upheld this matter in the Claimant's first grievance outcome, as she was unable to find any direct evidence of the training having taken place.

72. The Claimant made 2 allegations of bullying said to have occurred in October 2021. The first he raised with Mr Palethorpe by text, describing it as 'nothing major' and Mr Palethorpe was able to bring the Claimant and his colleague (Chloe) together quickly. His colleague apologised and the Claimant said he was satisfied and that the colleague thereafter was always polite to him. As regards the other incident concerning Joanne, the Claimant later described this as a grievance although there is no record of it being recorded formally as such and it is clear that the Claimant knew how to raise a formal grievance. Ms Peat subsequently investigated this and spoke with Joanne and reached the (reasonable) conclusion that the incident was a matter of misinterpretation.
73. The Claimant also raised concerns about insufficient staffing and stacking of goods. The Claimant did not raise staffing issues at the time and the Respondent's statistics show the store was not understaffed. As to the stacking of goods, the Claimant did mention this to Mr Palethorpe who advised him not to lift anything if it gave cause for concern.
74. The Claimant had complained of a lack of being included. Ms Peat concluded there was no malice on the part of Mr Palethorpe but felt more could have been done by management to make the Claimant feel more included when he moved to the new store.
75. The Claimant felt that Mr Palethorpe's treatment of him once his sick leave commenced was inappropriate. I have already set out the exchanges above. They show genuine concern on Mr Palethorpe's part to enquire as to the Claimant's health and to ensure the Claimant complied with the Respondent's sickness absence reporting and procedures. I accept at the time the Claimant and his family had received devastating news, and they have my deepest sympathies, but I do not accept Mr Palethorpe acted in any way inappropriately.
76. The Claimant also complained about ill-health meetings. Again, I agree that there was some issue with correspondence from the Respondent being delivered, and with the delay of such correspondence, but it seems Mrs Humphries was keen to engage with the Claimant and that she made an early referral to occupational health. I accept the occupational health report stated that the delay in addressing the grievance (at the stage only the first grievance) was causing the Claimant to be stressed and angry. He had not met with Ms Peat only a little over 2 weeks earlier and provided her with more material. He accepted matters would need a thorough and detailed investigation, which is what she did. In his written submissions, the Claimant suggested the Respondent had falsified some documents. I do not find this to be the case.
77. Looking at all of these matters I agree with Mr Dharajiwala that they are not, taken individually, matters that could constitute a fundamental breach of contract. Taken collectively, as a 'course of conduct' they do not amount to a fundamental breach for these reasons the claim must fail.

**Case Number : 1302484/2022**

Employment Judge Hindmarch

Date: 25 April 2023