



EMPLOYMENT TRIBUNALS

Claimant: Miss N Khatun
Respondent: East End Medical Centre
Heard at: East London Hearing Centre (remotely by CVP)
On: 11 – 13 January 2023
Before: Employment Judge S Wilkinson

Representation

Claimant: Jonathan Abrahams (counsel) on 11 January 2023
In person on 12 and 13 January 2023
Respondent: Matthew Sutton

JUDGMENT

1. **The claimant's claim for constructive unfair dismissal is not made out and shall be dismissed.**

REASONS

The claim and the parties

1. This is a claim brought by Nasima Khatun for constructive unfair dismissal. Earlier in the proceedings there was a claim for disability discrimination made under the Equality Act 2010. The tribunal has previously made a deposit order in respect of that head of claim. The claim for discrimination was withdrawn at the start of this hearing. I gave judgment dismissing that claim at the outset of this hearing and it has not featured in the evidence I have subsequently heard.
2. The claimant, as I have already said, is Nasima Khatun. I will refer to her as "the claimant". She was represented on day one of this hearing by Mr Abrahams of counsel. On subsequent days she has appeared as a litigant in person. I will give more details of this below.
3. The respondent is East End Medical Centre which I shall refer to as "the respondent". It has been represented by Mr Sutton. The respondent's name has erroneously been recorded as 'East End Medical Centre LLP'. It is not

an LLP and therefore at the start of the hearing I made an order, by consent, amending the name to 'East End Medical Centre'.

The hearing

4. This hearing has been listed for a full merits hearing with a time estimate of three days. It was initially listed before a full tribunal; however following the dismissal of the discrimination claim the hearing proceeded before me alone and no party objected to this approach.
5. I have considered the following evidence:
 - a. On behalf of the claimant I read her witness statement and heard her oral evidence.
 - b. On behalf of the respondent the following witnesses were called:
 - i. Heena Shaikh (practice manager) whose witness statement I read and who gave brief oral evidence;
 - ii. Dr Kenneth Anochie (general practitioner and partner at the respondent practice) whose witness statement I read and who gave brief oral evidence;
 - iii. Dr Uma Basu (general practitioner and partner at the respondent practice) whose witness statement I read and whose oral evidence was limited to confirming her statement; and
 - iv. Maryam Arshad (reception manager) whose witness statement I read and whose evidence was limited to confirming her statement.
6. Additionally I have considered a bundle of documents totalling 409 pages. I have not read all of this bundle in detail but I have considered those documents referred to in the evidence and submissions and revisited some of them again when preparing this judgment.
7. I heard submissions from both parties in the form of written and supplemental oral submissions from Mr Sutton and written submissions from the claimant.
8. The hearing had initially been listed as an in person hearing but has been converted to a remote hearing and has taken place by video by CVP. This was with the agreement of both parties. No technological issues arose during the course of the hearing and I ensured that the parties had sufficient breaks when requested. In all of the circumstances of the case I am satisfied that there has been a fair hearing.
9. During the course of the hearing a number of procedural issues and applications have arisen. I have given oral reasons for my decisions on

these applications as they have arisen and do not repeat those oral reasons in this judgment in any detail.

10. The issues can be summarised as follows:
 - a. Overnight between days one and two, Mr Abrahams indicated that he could not represent the claimant for the remainder of the hearing. Having not initially provided the tribunal with any further detail, the tribunal subsequently received communication from Mr Abrahams which suggested that this was due to personal reasons. The tribunal had stood the matter down for most of the second day to allow for clarity to be reached in respect of this. It was clear from subsequent correspondence that Mr Abrahams did not intend to represent the claimant either on day three of the hearing or at any future date.
 - b. Whilst being mindful not to invite the claimant to breach her legally privileged discussions with Mr Abrahams, the claimant confirmed to the tribunal that she had not instigated this parting of ways – i.e. she had not been the one to dispense with Mr Abrahams's services at the conclusion of the first day.
 - c. The claimant, acting as a litigant in person on day two of the hearing, sought permission to address the tribunal either in the absence of the respondent or with Mr Sutton alone present. She suggested that she wanted to provide further information about Mr Abrahams as she felt that her case had been undermined by his presentation of her case. The tribunal refused this application on the basis that it would not be in the interests of justice to proceed on this basis and that any dispute that the claimant had with her counsel was a matter for her and him, bearing in mind that they had a contractual relationship and that Mr Abrahams is a barrister regulated by the Bar Standards Board. The tribunal specifically made no observations as to the claimant's comments. The claimant had not raised any criticism of Mr Abrahams prior to this point nor had she been the one to instigate their parting of ways.
 - d. The claimant subsequently applied to cross examine the respondents' witnesses on day two of the hearing acting as a litigant in person. This was opposed. The tribunal refused to grant this application on the basis that the evidence had concluded, that at the time that the respondent's case was heard the claimant was represented by counsel and that the opportunity to cross-examine those witnesses was then. It was neither appropriate nor fair to the respondent to allow for a second bite at the cherry. Accordingly I determined that the hearing would proceed to the submissions stage.
 - e. The claimant applied to adjourn the remainder of the hearing in order to instruct alternative counsel to consider the case and to make submissions on her behalf. Applying the overriding objective I refused that application which was opposed by the respondent on the basis that it was difficult to see how alternative counsel could properly make submissions in circumstances where they had not

heard the evidence and in which the case was essentially part-heard. I indicated in refusing this application that I would make adjustments to ensure that the claimant was not disadvantaged when delivering any closing submissions.

- f. The claimant finally sought permission to rely on a letter from her general practitioner, dated 9 January 2022, in respect of her health and her health at the material time in dispute. I allowed this application on the basis that the evidence was limited in scope and that there was no undue prejudice the respondent.
 - g. Overnight between the second and third days of the case a further email was received from Mr Abrahams asking for permission to withdraw from the case on the basis that the claimant no longer wished to engage him. The claimant confirmed to me on the morning of the third day that this was her position. She felt that given the earlier emails sent by Mr Abrahams she had no choice.
11. In respect of the decision to refuse the claimant's application to adjourn the final hearing part-heard I made the following adjustments to ensure that any disadvantage to her as a result of Mr Abrahams' non-attendance was mitigated:
- a. I allowed her time – overnight between days two and three – to read and digest the written submissions (limited to five pages) prepared by Mr Sutton;
 - b. I heard Mr Sutton's supplemental oral submissions in the afternoon of day two, to allow the claimant chance to reflect on the respondent's case as a whole;
 - c. I explained clearly, and giving the claimant the opportunity to take a note, the legal test which I had to apply (which was also set out Mr Sutton's written document and in an agreed list of issues which the claimant had access to);
 - d. I explained the purpose and scope of submissions and what was expected. I also explained that in a short case such as this where I had heard the evidence recently and where I had her detailed written statement and claim form that the need for substantive submissions was limited;
 - e. I adjourned the case overnight to allow the claimant to put her thoughts into order and prepare written or oral submissions as she preferred; and
 - f. Having received written submissions from the claimant I gave her the opportunity to supplement these with an oral submissions that she had. She indicated that she felt that she had said all that she could in respect of her case.

12. Having taken all of the above into consideration I am wholly satisfied that the overriding objective in rule 2 of the Employment Tribunal Rules of Procedure 2017 has been complied with and that there has been a fair hearing to both parties, in particular I am satisfied that the claimant has not been materially disadvantaged, if at all, by the absence of her counsel after day one of the hearing.

The law

13. Whilst there is wealth of case law in respect of constructive unfair dismissal claims, some of which has been referred to by Mr Sutton in his submissions, this is a relatively straightforward area of law. The legal test is well established.
14. The right not to be unfairly dismissed is enshrined in section 94 of the Employment Rights Act 1996 ("the Act"). Section 95 of the Act gives rise to a complaint of constructive unfair dismissal.
15. The case law has provided the following legal test for the Employment Tribunals to consider. This was clearly established in Western Excavating (ECC) Ltd v Sharp [1978] ICR 221 in which the Court of Appeal held that, for an employer's conduct to give rise to a constructive dismissal, it must involve a repudiatory breach of contract. As Lord Denning MR stated:

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."

16. In summary the case law has set out that in to claim for constructive dismissal a claimant must establish that:
 - a. there was a fundamental breach of contract on the part of the employer;
 - b. the employer's breach caused the employee to resign; and
 - c. that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.
17. I remind myself that the burden of establishing any disputed factual matters falls upon the person seeking to assert that it happened (in this case that is the claimant) and that the standard of proof is the civil standard or the balance of probabilities. In other words the claimant must show that it is more likely than not that any particular fact is proved.

The issues in the case

18. I have considered with care the claimant's particulars of claim which accompanied her ET1 in this case. This is the document in which the claimant set out her case. In essence the issues in the case, by reference to legal test above, can be distilled as follows:
- a. Did the respondent do the following things:
 - i. Allow a situation to develop in which the claimant was bullied by another staff member (Heena Shaikh) between May and November 2021?
 - ii. Become aware of the bullying and fail to stop it happening or otherwise fail to respond to it?
 - iii. Fail to investigate the claimant's allegations of bullying, in particular her formal grievance dated 23 July 2021?
 - iv. Fail to properly make adjustments to the claimant's health issues – namely her asthma – upon her return to work?
 - b. Did any of the things which the respondent do amount to a breach of the implied term of trust and confidence in the employment contract?
 - c. If there was such a breach was it so fundamental as to allow the claimant to treat the contract as having been repudiated by the respondent?
 - d. Did the claimant resign in response to that breach?
 - e. Did the claimant affirm the contract and therefore lose the right to constructive dismissal?

19. The above list of issues has been formulated by me at the conclusion of the hearing. It is based upon what I am told is an agreed list of issues submitted in advance of this hearing. During the submissions of both parties I clarified with them that they agree that this accurately reflects the issues in this case and both confirmed that it does.

The parties' positions

20. The claimant says that the allegations that she makes (set out at paragraphs 18(a)(i)-(iv) can be found on the balance of probabilities. She says that she was subjected to a course of action which involved being undermined and bullied at work and that this bullying had an adverse effect upon her physical and mental health. She says that when she raised this Drs Anochie and Basu they did not properly address her concerns or properly investigate them when she made a formal grievance. She attributes a number of periods of sick leave between May and November 2021 to the adverse treatment that she says that she received.
21. The claimant says that as a result of the lack of concern for her grievance and the lack of a proper investigation, she lost confidence in her employer.

Additionally she says that the respondent failed to make any adjustments (by way of a referral to Occupational Health) despite being aware of her health concerns and that the effect of all of the matters created a serious and fundamental breach to the implied term of trust and confidence. She finally reached this decision following an email conversation with Dr Anochie culminating on 26 October 2021 when her request for a meeting (at which she intended to discuss her return to work) was refused. This coincided with an offer of alternative employment and a consultation with her general practitioner on 29 October 2021 which was when she says she resigned, in response to the behaviour of, and breach of contract by, the respondent.

22. The respondent denies the claim in its entirety. Its position can be summarised thus:
- a. That there was no bullying as alleged by the claimant or at all. To the contrary the respondent asserts that it was supportive and considerate of the stress and ill health that the claimant was suffering during this period.
 - b. That it attempted to mediate and support a reconciliation between the claimant and Mrs Shaikh when it was clear that this relationship was fractured.
 - c. That when the claimant made her grievance a full, comprehensive and ACAS compliant investigation was undertaken which found no evidence to substantiate the vast majority of the claimant's assertions.
 - d. That although it was aware of the claimant's health issues it was not given the opportunity to address them and that the claimant never requested any adjustments.
 - e. In any event the allegations either taken separately or together do not amount to either a breach of the contract or breach which was so fundamental as to allow the claimant to treat the contract as being repudiated.
 - f. That the claimant did not resign as a result of any of the alleged breaches, even if found to be true.

The evidence and my findings

Initial observations

23. As with any case such as this there are a vast number of factual disputes. Some of those, whilst important to the parties, are not probative to the issues that I have to decide. I have limited my findings of fact to those matters which are probative to the issues in the case as identified above.
24. Likewise some of the facts in the case are agreed. I have attempted to set the evidence and factual matters out below in a chronological order. Where there is an agreed fact which I material I have attempted to identify it as

such. There are other agreed facts which I have set out within my summary below without explicitly referring to it as such. Where there is a matter in dispute I have set out my reasons for finding in favour of one or other party. Whilst I have considered all of the evidence in this case and the relevant documents relied upon by the parties I have not referred to each of the pieces of evidence specifically. This is not because I have not borne it in mind but rather that I have focussed on the evidence and parts of the evidence relevant to my findings and my decision.

25. As I have set out above whilst I heard significant oral evidence from the claimant who was challenged at some length by Mr Sutton, none of the respondent's witnesses were challenged in any detail by Mr Abrahams. The claimant's case was not properly put to any of the respondent's witnesses. This was a deficiency in the cross examination which I have borne in mind but do not find fatal to the claimant's case.
26. However on key factual disputes this meant that the evidence given by the respondent's witnesses was not challenged. Their evidence was set out in their statements and the claimant, through her counsel, could have explored any disputed matters with them. None of the crucial disputed matters were explored. This inevitably means that in respect of this evidence I attach some considerable weight to it, as sworn and unchallenged evidence. That is not to say that I prefer it without question. It is clear from the documentation relied upon and the evidence given by the claimant what her case is and I will analyse that and set it against the evidence given by the respondent's witnesses.
27. In a case such as this, where the pressures on the Employment Tribunals listing means that cases are heard at a significant time after the events in question have happened, it is inevitable that memories fade. I have borne this in mind. I do not find that any of the witnesses were being dishonest with the tribunal. Recollections of events differ and I am satisfied that the claimant genuinely perceived some of the behaviours as she described them to have been deliberately negative towards her; however I have to set this against the evidence before me including the unchallenged evidence of the respondent's witnesses and the contemporaneous documentary evidence which is contained in the court bundle and look at the wide canvas of the evidence.

Background facts

28. The claimant commenced her employment with the respondent on 29 March 2010 and her resignation was made by email dated 29 October 2021. Her last day at work was 5 November 2021. Therefore the claimant had worked for the respondent for 11 ½ years at the time of her resignation. She was employed as a medical secretary.
29. I am told that for the vast majority of her employment there were no serious matters which are relevant to this claim in respect of disciplinary or sick absence and that in essence the claimant had a good record as an employee. I have no reason to find otherwise and I am satisfied that this

was the case. I am told that prior to around May 2021 there was a positive and collegiate atmosphere in the medical practice.

30. The claimant has asthma. Although I have not seen any medical evidence from before May 2021 the claimant tells me that prior to that time this had caused her little by way inconvenience. It is clear that from May 2021 onwards the claimant was regularly seeing her general practitioner in respect of her asthma flaring up. This was attributed to stress. There is some reference from the medical notes at the time and within the letter dated 9 January 2023 that the claimant was raising the issue of stress with her employers; however the medical records are silent as to the precise causes of the stresses. The letter from 9 January 2023 describes the claimant as self-reporting that the asthma was impacted by 'harassment and bullying which caused a lot of stress' albeit (a) this is self-reporting from the claimant; (b) it is unclear *when* this was reported – i.e. at the time or after the event; and (c) there is no medical analysis as to this suggestion. The tribunal has no expert evidence before it as to any causal reason for the claimant's asthma.

May to June 2021

31. On 24 May 2021 there was an incident in which Mrs Shaikh the practice manager, had to intervene in a disagreement between the claimant and another member of staff. The claimant told me in her evidence that it was after this incident that she first felt that the bullying which she alleges happened started. She said that she was accused of being aggressive and that at the time she 'couldn't understand why someone would accuse [her] of something that [she is] not'. Looking back she said she now believed that this was a malicious allegation.
32. In her evidence Mrs Shaikh described the claimant raising her voice and being rude towards her colleague and that she intervened to calm the situation down. She told me that she did ask the claimant to stop behaving in an aggressive way but that she later apologised for using the term "aggressive" as on reflection it did not seem appropriate. Mrs Shaikh's evidence on this point was not significantly challenged in evidence.
33. On the balance of probabilities I prefer Mrs Shaikh's account of this incident. Whilst I make no specific findings as to the altercation between the claimant and her colleague I accept and find that there was an incident in which the claimant acted in manner which caused Mrs Shaikh (as practice manager) to have to intervene. The claimant did not at the time think that this was a malicious allegation and gave no reason as to why, out of the blue, such a malicious allegation would be made against her. I do not accept that analysis of this incident.
34. Later that day there was a welfare meeting between the claimant and Mrs Shaikh in which various issues relating to the claimant's employment were discussed. It is not necessary for me to consider these in detail in this judgment. I have considered the minutes of that meeting. Mrs Shaikh describes the claimant as having been combative during the meeting. This is denied by the claimant. Mrs Shaikh was not challenged in evidence about

her description of the claimant. The claimant further suggests that the minutes of that meeting were deliberately falsified by Mrs Shaikh; however this was not something that was put at all to Mrs Shaikh in cross examination. The claimant has given no direct evidence either in her witness statement or orally to the tribunal as to which aspects of the minutes were deliberately fabricated. She seems to accept that some of the points discussed (for example the apology for the use of the word “aggressive”) were accurate. I remind myself that it is for the claimant to prove her allegation that the minutes were falsified on the balance of probabilities. I am not satisfied that she has done this. I do not make that finding, and I accept Mrs Shaikh’s unchallenged evidence.

35. Following this meeting the claimant was signed off sick from work due to a serious flare up of her asthma (commencing on 28 May 2021). She was off work until 28 June 2021. The claimant asserts that during this period of sick absence Mrs Shaikh repeatedly asked after her wealth. The claimant told me in her evidence that she found these messages to be passive bullying due to their frequency. She criticises Mrs Shaikh for sending these messages however was vague in her reasons why. I gained an impression that she genuinely believed that there was some ill-intention behind the messages. One such email was sent on 1 June 2021, in reply to the claimant’s sick note it reads as follows:

“He Nasima,

Take care of yourself and get better soon.

Kind regards,

Heena Shaikh”

36. Under cross-examination the claimant agreed that this was a friendly email. Mrs Shaikh’s unchallenged evidence, which I accept, was that she sent weekly messages to the claimant asking how she was as she wanted to do her best to support her.

37. Similar exchanges took place via the social media platform Whatsapp at around the same time (attached to an email from 28 June 2021 but undated). These messages were referred to in the claimant’s evidence. In one, Mrs Shaikh says the following:

“Hi Nasima, hope you are well. I just wanted to check your well-being and ask if you would be retuning to work on Monday or would it benefit you to work from home for sometime. Please let me know and we can together come to a decision what works best for you and the practice.”

38. The claimant replied:

“Hi Heena,

Further to your last 3 weekly messages, as you are aware I am fine now, can I ask the reason to you asking me I want to work from home. How will that benefit me or the surgery? I am perfectly fine now, my asthma attack

was because of you but that in whole is a different story which I will go in to further later. Please do not mock me by asking me if I would like to work from home, proving my lateral flow results come back negative on Sunday, I will see you on Monday.

Thanks”

39. A number of matters flow from this:
- a. It is clear from the claimant’s reply that Mrs Shaikh was only sending these messages weekly – this supports Mrs Shaikh’s evidence, which I accept, that she was sending weekly update messages to ask after the claimant’s health.
 - b. The claimant criticises Mrs Shaikh for asking whether she wanted to work from home. This appears to be a product of the claimant’s belief that Mrs Shaikh was being malicious in these messages. I do not accept that analysis. There is no evidence that I have seen that suggests that Mrs Shaikh was being malicious in these communications either directly or passively. Whilst I do not doubt that the claimant may have held a genuine belief that she was being treated this way, she has not satisfied me on the balance of probabilities that this was Mrs Shaikh’s intention.
 - c. In this message, seemingly for the first time and out of the blue, the claimant accuses Mrs Shaikh’s directly of having been responsible for her health difficulties. This is a subject which the claimant raises repeatedly and which I will deal with fully later; however I can full accept Mrs Shaikh’s response as she described to me in her evidence that this accusation was found to be ‘highly offensive’.
40. It was therefore following this message exchange that Mrs Shaikh, on 30 June 2021, raised a formal complaint against the claimant.

Grievance against the claimant

41. As a result of the complaint being raised a chain of events, which are mostly agreed between the parties, happened. None of these particular events have any probative value in determining this claim and therefore I refer to them briefly, pausing where necessary to give any pertinent findings of fact or determinations of factual disputes:
- a. On 30 June 2021, following Mrs Shaikh’s complaint, there was a meeting held by Drs Anochie and Basu (“the partners”) with the claimant to discuss those matters. The meeting was recorded and a transcript provided to the tribunal. During that meeting the claimant raised a number of criticisms in respect of Mrs Shaikh’s treatment of her, alleging that she has been the subject of bullying by Mrs Shaikh.
 - b. On 1 July 2021, the partners held a meeting with Mrs Shaikh which was recorded and the minutes of which I have seen. During this

meeting the complaints by the two ladies against each other were discussed with Mrs Shaikh.

- c. At the meeting with Mrs Shaikh it was agreed that a “remediation meeting” would be held between the claimant and Mrs Shaikh, facilitated by the partners. That meeting took place later that day, was recorded and a transcript provided to the tribunal.
42. I pause at this stage to observe that the meeting on 30 June 2021 is, on the claimant’s own case, the first time that the partners were made aware of any complaints by her of bullying in the workplace.
43. Turning to the remediation meeting, I have read the transcript in full. There was a dispute in the oral evidence as to whether the claimant was, at times, confrontational during this meeting. To make any finding on this issue is unnecessary as in any event the claimant accepted that at the end of the meeting it was the opinion of all parties (including her) that whilst there was still disagreement as to the contents of the minutes of the welfare meeting on 24 May 2021 any issues had been put to bed. I accept this and make this finding.
44. During the course of the meeting the transcript is clear (and the claimant accepted) that both of the partners at different points reiterated to the claimant that if her asthma were to return then she ought to speak up and raise this with her employer. In my judgment I find that this is an example of the partners themselves showing an active concern for the claimant’s health issues. They were clearly aware of it and were offering support to her.

Payslips June/July 2021

45. At around this time an issue arose regarding the claimant’s payslips. There was an error in respect of the calculations of her pay. The claimant says that she first raised this by email on 28 June 2021. I have not been provided with that email. The claimant’s position when challenged on this was that she was acting without solicitors and she had thought that the email had been submitted. When Mrs Shaikh was asked about this point she said she could not remember if she had seen an email in June 2021. The email in the bundle that I have seen is dated 27 July 2021. Whilst I have not seen the email I accept the claimant’s evidence on this point. I am satisfied that she raised the issue of the error on her payslip in June 2021. Whilst this was not accepted by the respondent, given Mrs Shaikh’s evidence that she couldn’t remember I do not find that either she or the respondent were being deliberately deceptive in their recollection of when they were first told about it.
46. Whilst this issue was subsequently raised in the claimant’s grievance against Mrs Shaikh and subsequently upheld both on investigation by the partners and on appeal, I am not satisfied that the claimant has proved that this was a deliberate action by Mrs Shaikh during a course of conduct amounting to bullying. This is not how the claimant frames her case either in her particulars of claim, her witness statement or her final closing submissions. Mrs Shaikh was not challenged that this was a deliberate act

of bullying when she gave evidence. I am satisfied that the error that it is accepted did occur in the claimant's payslips was a genuine and unintentional error and that is my finding.

New member of staff

47. During this same period and in the course of the July 2021 email exchange regarding the payslips a conversation took place between the claimant and Mrs Shaikh regarding the claimant returning some of her work. The claimant handed back to Mrs Shaikh a recall list for smear tests. When asked about this the claimant replied (by email at 08:08 on 27 July 2021) that she 'cannot do the list right now, the reason being is I need to put my health first'. The claimant was therefore clearly telling Mrs Shaikh that she required adjustments and support due to the ongoing effects of her asthma.
48. Mrs Shaikh's evidence to the tribunal was that she accepted this explanation (and I have seen no evidence to the contrary and therefore accept her account) and that the respondent therefore hired a new member of staff to help with the claimant's workload. This account is supported by the evidence. A letter is contained in the bundle dated 5 August 2021 which states that 'After your role as a locum receptionist, the practice would like to offer you the role of Administrator/ Reception staff at our practice'. The claimant disputed that the member of staff was hired at this time. She stated in evidence that this person had been working at the practice in advance of this date. She therefore disputed that they had been hired to help with her workload.
49. The respondent's witnesses were not cross-examined by Mr Abrahams on this point and therefore I do not have their evidence on the point; however looking at the wording of the letter it appears that the person had been working at the practice as a 'locum receptionist' already by 5 August 2021. It is not clear for how long. Therefore I accept the claimant's evidence that this person had already worked at the practice; however the letter and the unchallenged evidence of Mrs Shaikh and Dr Basu is that they were then hired more permanently and this was to support the claimant in her work. I accept their evidence because (a) it is unchallenged; (b) it is given by people who were actively involved in the recruitment – the practice manager and one of the partners; and (c) it is supported by the letter dated 5 August 2021. I therefore find that the respondent took active steps, once it became aware of the claimant's issues regarding her health, to find support for her workload. No detrimental action was taken against the claimant.

Claimant's grievance

50. On 5 August 2021 the claimant sent an email to the partners (drafted by her on 3 August 2021) in which she raised a formal grievance against Mrs Shaikh. I have seen that document. Within the grievance she raises the following allegations:
 - a. She felt that she was being treated unfairly;

- b. She felt that Mrs Shaikh is a racist (albeit no particulars in respect of this allegation are made);
- c. Since her return from sick leave she asserted that Mrs Shaikh has been hostile and treated her differently to other staff members (again with no particulars of the allegations);
- d. That Mrs Shaikh has shared medical information about the claimant with other staff members; and
- e. That two errors were made on her wage slips in consecutive months by Mrs Shaikh which has caused her stress.

In this letter the claimant asserts that these matters have caused her stress which have resulted in a flare up with her asthma and resulted in treatment with steroids.

- 51. In response to the grievance the partners sent a response to the claimant on 12 August 2021. A copy of the grievance procedure was sent to the claimant and she was invited to a grievance meeting. That meeting took place on 18 August 2021. Present were the partners (Dr Anochie conducting the meeting and Dr Basu taking minutes) and the claimant. The meeting, as with previous meetings, was recorded. Unfortunately the evidence of the partners was that there was a malfunctioning of the recording equipment and so only the first 10 minutes of the meeting were recorded. The claimant was informed of this by the partners and sent a copy of Dr Basu's typed minutes in place of it. Whilst the claimant suggested in her oral evidence (for the first time) that there was some ill-intent behind this, she accepted the explanation at the time. She did not take any factual dispute either then or now with the contents of Dr Basu's typed minutes. The partners were not questioned on this point. In those circumstances it is difficult to see why the partners would deliberately cause an issue with the recording equipment, particularly against a background where every other meeting of importance – including crucially the remediation meeting – were properly recorded and when the partners would have had no idea that these tribunal proceedings would ultimately be issued. I do not find that there was any deliberate malicious intent behind the faulty recording system.
- 52. Following the meeting, on 18 August 2021, the claimant raised further grievances by email to the partners. Dr Basu replied confirming that those matters would be taken into consideration. The claimant accepted when cross-examined by Mr Sutton that she was given full opportunity during the grievance process to explain her grievance, expand on her points and put forward her concerns. In light of her evidence on this point and all of the evidence before me I am wholly satisfied that she was able to properly do these things.
- 53. As part of the grievance investigation Mrs Shaikh was asked to write a statement. I have seen and read that document. Additional statements were taken from Maryam Arshad and from another colleague, Ms Rahman. A statement had been requested from a fourth employee, Ms Arif, who refused to provide one.

54. The claimant was kept informed of the process as it was proceeding and accepted this during her evidence. I accept this assertion by the respondent and find it as a fact.
55. In her case before the tribunal the claimant asserts that there was a failure to properly investigate her grievance. The following matters are pertinent to this issue:
- a. The claimant agreed after some lengthy questioning and reluctantly during her cross-examination that the statements obtained by the partners did not substantiate her case. I have read the statements and agree with this. Therefore the partners were left in a position where they had no substantiating evidence.
 - b. The claimant says that the witnesses were lying. This was not put in cross-examination to any of the witnesses. Essentially the claimant's case appears to be that because she is telling the truth and because the witnesses did not agree with her account then they must be lying. I do not need to engage in a forensic investigation as to whether those witnesses were telling the truth in those statements. I am satisfied that the respondent was faced with corroborative statements from three other members of staff, none of whom supported the claimant's version of events.
 - c. In respect of Miss Arshad in particular the claimant was particularly affronted by the statement which she perceived as a lie from someone who she thought to be a friend. She confronted Miss Arshad about this and recorded the conversation with her on an unspecified date. Pausing there, this recording took place surreptitiously and without Miss Arshad's consent. It is deeply unfortunate that the claimant chose to act in such a manner. In any event the claimant says that that conversation proves her assertion that the witnesses were lying and that there was in fact bullying of her. Miss Arshad was not asked any questions at all by Mr Abrahams. Her evidence that she did not lie was not challenged. I have read the transcript of the recording. The transcript is unclear with the two voices simply labelled as F1 and F2. I heard no evidence in respect of these. I am not satisfied that there is any probative value in what I read which assists me.
 - d. The claimant further states that the partners ought to have delved deeper and explored what she says are the un-truths in the statements. However I do not accept her case on this. Drs Anochie and Basu were not cross-examined at all in respect of how the grievance investigation was conducted and therefore their evidence is unchallenged. The partners were faced with the claimant's version of events and the different version of events provided by the other witnesses. It was not for the partners, in my judgment, to cross-examine those witnesses on the claimant's behalf. Their obligation, bearing in mind the size of the practice and given the other self-evident pressures upon National Health Service doctors during the

Covid-19 pandemic, was to investigate both sides of the story, look at the evidence presented to them and critically analyse the grievance. I am satisfied that they have done this.

- e. The claimant alleges that an allegation that Mrs Shaikh accessed her medical records and shared confidential medical information about her was not properly investigate by Dr Anochie as part of the grievance investigation. In respect of whether Mrs Shaikh did share such information I am not invited to make any finding of fact nor do I need to. The issue for me to consider is whether the respondent investigated this matter properly. In her witness evidence the claimant asserts that there was not a fair investigation in respect of this. Dr Anochie was not challenged about this in his evidence. I accept his evidence and the evidence on behalf of the respondent generally that the claimant was allowed to properly put forward all of her complaints. For the reasons that I have already given I am satisfied that the partners' investigation of the complaints was reasonable and I am not satisfied that the claimant's assertion that a more sceptical approach ought to have been taken is borne out on the evidence before me.
56. The outcome of the grievance was communicated to the claimant by letter dated 6 September 2021. In short aside from the issue regarding her payslip none of the other grievances, and in particular her allegations of bullying against Mrs Shaikh, were upheld. The claimant was given the right to appeal the grievance which she informed that she would take up on 10 September 2021. On 14 September 2021 Dr Anochie emailed the claimant confirming that the appeal would be heard by an independent third party. All of these matters are agreed facts.

10 September 2021 to 20 October 2021

57. After having replied confirming that she would be appealing the decision of the grievance the claimant went home from work due to ill health and was subsequently signed off sick again. She therefore requested additional time to prepare her appeal. Dr Anochie replied confirming that the appeal would be put on hold until the claimant felt well enough to participate in the hearing and prepare her points of appeal. This is agreed and I have seen emails confirming this.
58. There were subsequent emails between the claimant and Dr Anochie during the period when the claimant was on her sick leave. I have seen emails and the claimant accepted that Dr Anochie asked after the claimant's health in emails dated 30 September 2021, 6 October 2021, 17 October 2021 and 22 October 2021. After each of these emails the claimant replied thanking the doctor for his enquiries. Whilst the claimant suggested that these were in the context of work emails she did not criticise the doctor for asking after her health or suggest that the messages had any ill intent behind them. I am satisfied and find that in the period between 10 September 2021 and the end of the claimant's employment Dr Anochie regularly checked in with the claimant and enquire after her health and this was done in a supportive manner.

20 October 2021 onwards

59. The claimant's sick note was coming to an end at the end of October 2021. The claimant accepted in her evidence, and I find as a fact, that up to very latter part of October 2021 she was planning on returning to work. This is clear in any event from the facts which I shall go on to set out in which (a) the claimant wanted to arrange a meeting in advance of her return to work; and (b) that the claimant alleges that she was expecting the respondent to make adjustments upon her return to work.
60. On 20 October 2021 the claimant sent Dr Anochie an email which requested an informal meeting with him and Dr Basu on 26 October 2021 at 14:00. The email:
 - a. Did not give any details whatsoever about what the claimant expected from it;
 - b. Was prescriptive in when it was to take place; and
 - c. Offered no alternative dates and times.
61. Dr Anochie's reply on 22 October 2021 was in my judgment not unreasonable. Dr Anochie asks the claimant what the purpose of the meeting was. He also sets out that due to a combination of professional commitments, annual leave and his and Dr Basu's working patterns that the date and time suggested by the claimant was not suitable. He suggests trying to identify a mutually convenient alternative date, suggesting that Wednesdays would be preferable to the partners.
62. In her evidence to the tribunal the claimant set out that she had suggested this date and time due to her own medical appointments. At one stage in her evidence she appeared to criticise the doctor for not having agreed to the meeting which she suggested. When I asked her to clarify this she rode back somewhat and accepted that the response received was reasonable. For the avoidance of doubt I do not find anything unreasonable about the reply sent on 22 October 2021. The partners did not know what the claimant wanted to discuss at the informal meeting that she suggested and could not make the time and date that she suggested and therefore their response was wholly to be expected and cannot be criticised.
63. The claimant did not reply to Dr Anochie's e-mail.
64. On 27 October 2021 Dr Basu emailed the claimant in an email entitled 'Wellbeing check'. Dr Basu asked the claimant how her health was and whether the claimant was intending to return to work on 1 November 2021 (the Monday following the expiration of her sick note) or whether she would be seeking an extension. The claimant replied that evening setting out that her health was 'still not 100%' but that she had a meeting with her general practitioner at the end of the week and would update thereafter.

65. The claimant had a meeting with her doctor on 29 October 2021. I have seen the medical record of that meeting. That note says that the claimant reported that she had ‘found a new job in a new surgery, SE London’ and says the following under the heading ‘History’: ‘Sick note extension for 15 days until her contract ends.’ The claimant was not specifically asked by Mr Sutton about this entry in her evidence, however it would suggest that the claimant was actively discussing with her doctor that she intended for her contract to end at that point.
66. It was later on that date – 29 October 2021 – that the claimant sent an email with her resignation. It is agreed between the parties that this was the date of her resignation. She returned to work the following week and her final day at work was 5 November 2021.
67. In response to the resignation letter the partners expressed surprise and gave the claimant the opportunity to reconsider her decision, asking for any reconsideration by 8 November 2021. The claimant replied confirming her intention to resign.
68. In respect of her outstanding grievance the claimant confirmed that she wanted this to proceed. The grievance did proceed thereafter and I have seen the report from the third party person who carried out that appeal. The appeal broadly upheld the original decision. There is not real dispute of fact in respect of the appeal and in any event both parties accept that the appeal process took place and concluded after the end of the claimant’s employment. In my judgment it is therefore of little to no probative value when determining this claim.

Bullying allegations generally

69. In considering my decision I have paid close attention to how the claimant frames her case. I have read in detail her particulars of claim, witness statement and written submissions. In respect of the first two of those documents the claimant had some limited assistance in producing them. She also had the benefit of counsel in the lead up to and for the first day of the final hearing. Her written submissions were of good quality. In each of the documents the claimant gives little by way of factual assertions or evidence as to what precisely the bullying that she received was.
70. Based on my findings already made I am wholly satisfied that in her interactions with the claimant Mrs Shaikh was reasonable, that she properly enquired after the claimant’s health and that she provided additional support for the claimant at work when she felt that it was needed. I find that the claimant’s assertions of bullying generally are lacking any specifics or detail. Mrs Shaikh was not challenged at all on the allegations of bullying.
71. The claimant’s witness statement – her evidence to this tribunal – gives no further detail. Whilst the claimant describes ‘passive bullying’ she does not elaborate on this. Much of the claimant’s evidence relates to what she perceived to be the adverse effect upon her health of the alleged bullying. I will deal with that below. Whilst the claimant may genuinely have held the belief that she was being bullied, a genuine belief is not, in my judgment,

sufficient for me to make a finding on the balance of probabilities without a proper evidential basis.

72. I remind myself again that the claimant bears the burden of proving any disputed facts. Based on the lack of any detail in the evidence before the tribunal, the lack of any challenge to Mrs Shaikh's evidence and my findings generally as set out above in respect of Mrs Shaikh I am not satisfied that the claimant was subject to any bullying.
73. The claimant asserts that the respondents also acted unreasonably by allowing her to remain in an office close to Mrs Shaikh's room. The claimant says that she could hear Mrs Shaikh and others discussing her and that this made her feel uncomfortable. I do not accept this criticism. I am satisfied for the reasons already given that upon being made aware of the claimant's grievance on 5 August 2021 that the partners acted appropriately in fully investigating the grievance and that their ultimate conclusions were reasonable.

The claimant's ill health and adjustments

74. The claimant has asthma. She asserts that the flare ups of her asthma from May 2021 were as a direct result of the bullying. I have no medical evidence to support this assertion. Whilst I do not doubt that the claimant suffered with ill health, as evidenced from the medical evidence, I am not satisfied that that ill health is probative in determining the disputed allegations. Whilst the claimant very strongly asserts that her ill health was caused by the bullying and stress at work, this cannot be a piece of evidence that is given any magnetic weight when looking at the entirety of the evidence before the tribunal without any further supporting evidence.
75. Whilst the issues surrounding the claimant's health may have been relevant to a discrimination claim or to remedy, they do not in my judgment assist me in determining the disputed facts before me. I specifically do not make any findings in respect of the causes of the claimant's ill health.
76. The claimant criticises the respondent for failing to make any adjustments to assist her health. She raises two matters:
- a. The failure to move her to a different office
I have already addressed this matter. I do not find that the respondent acted in any way unreasonably.
 - b. For failing to make a referral to Occupational Health in advance of her planned return to work on 1 November 2021
The claimant's evidence to the tribunal was that this was what she intended to raise in the informal meeting requested with the partners on 26 October 2021. She accepted and I find however that she never explicitly told them about it. Her evidence on this point was extremely unclear. She seemed to be suggesting that this was something that she wanted and that she expected the partners to be aware of this and to take active steps without her having requested it.

In his evidence to the tribunal Dr Anochie was not actively challenged about this (nor was Dr Basu); however Dr Anochie did give oral evidence that this was something that both he and Dr Basu were considering insofar as they were aware of the claimant's health issues and as medical doctors were considering ways in which they could support her. Unfortunately said Dr Anochie, the claimant's resignation precluded this from happening.

I accept Dr Anochie's evidence on this point. Against a background in which both him and Dr Basu were actively showing concern for the claimant's health I am satisfied that they were doing as much as they ought to be expected to ensure that the claimant was not disadvantaged. In circumstances where the claimant did not request a referral to Occupational Health I do not criticise the respondent for not offering this.

Discussion

77. Having made those findings of fact I turn to my discussion. From the findings that I have made the following matters can be concluded:
- a. I am not satisfied on the balance of probabilities that the claimant has proved that she was subjected to bullying in when employed by the respondent.
 - b. I am satisfied that the respondent acted reasonably in supporting the claimant:
 - i. By enquiring after her health; and
 - ii. By providing additional support when she informed them that she was having difficulties at work due to her health.
 - c. I am satisfied that the grievance investigation undertaken by the respondent was reasonable and as full as ought to have been undertaken having regard to the size of the organisation and its resources.
 - d. I am satisfied that the procedure was fair to the claimant.
 - e. I am not satisfied that the claimant has shown on the balance of probabilities that the cause of any ill health was due to any fault of the respondent.
 - f. I accept that there was an error in the claimant's payslips in the spring/summer of 2021.
78. Turning then to the list of issues in light of the above and in light of my findings of fact:
- a. Did the respondent do the following things:

- i. Allow a situation to develop in which the claimant was bullied by another staff member (Heena Shaikh) between May and November 2021?
- ii. Become aware of the bullying and fail to stop it happening or otherwise fail to respond to it?
- iii. Fail to investigate the claimant's allegations of bullying, in particular her formal grievance dated 23 July 2021?
- iv. Fail to properly make adjustments to the claimant's health issues – namely her asthma – upon her return to work?

I am not satisfied that the claimant has established any of the above allegations on the balance of probabilities.

- b. Did any of the things which the respondent do amount to a breach of the implied term of trust and confidence in the employment contract?

Given that I have not found any of the allegations proved then it follows that there was no breach of the implied term of trust and confidence. For the avoidance of doubt I do not accept that the error in respect of the payslip, which was upheld by the grievance process and accepted by the respondent, did amount to a breach of the implied term on the basis that in my judgment this was an innocent error without malice and was subsequently resolved.

- c. If there was such a breach was it so fundamental as to allow the claimant to treat the contract as having been repudiated by the respondent?

It follows from my findings above that there was no breach and so this issue falls away.

- d. Did the claimant resign in response to that breach?

It follows from my findings above that there was no breach and so this issue falls away. Whilst the claimant may have resigned in respect of her perceived treatment, based on my findings of fact there was no breach by the respondent.

- e. Did the claimant affirm the contract and therefore lose the right to constructive dismissal?

Given my decision above this issue falls away and I do not need to consider the submissions in respect of the timing of the decision or the 'last straw' submissions made by Mr Sutton in any detail.

Decision

79. Accordingly I am not satisfied that the claim has been made out by the claimant.

80. As such the claim shall be dismissed.

81. That is my decision.

**Employment Judge Wilkinson
Dated: 16 January 2023**