



THE EMPLOYMENT TRIBUNALS

Between

Claimant: Mrs N Jenks

Respondent: Mole Valley District Council

**Hearing at London South before Employment Judge Baron on 2 & 3
February 2017**

Appearances

For Claimant: Moray Laing - Consultant

For Respondent: Tom Kirk - Counsel

JUDGMENT

It is the judgment of the Tribunal that the Claimant was not unfairly dismissed by the Respondent.

REASONS

Introduction

- 1 First of all I must apologise for the unusually long delay in providing the parties with this judgment and the reasons for it. This has been due to other substantial judicial commitments.
- 2 On 24 August 2016 the Claimant presented a claim to the Tribunal alleging that she had been constructively unfairly dismissed. The Claimant was employed by the Respondent at Dorking Halls from June 1997. The Claimant resigned by giving notice on 13 April 2016. Her effective date of termination was 11 May 2016.
- 3 The Claimant gave evidence and did not call any other witnesses. Evidence for the Respondent was given by the following:
 - Stuart Cole – Dorking Halls Operations Manager
 - Keith Garrow – Dorking Halls General Manager
 - Paul Hodges – HR Consultant.
- 4 I was provided with two lever arch files containing over 500 pages. I have only taken into account those documents, or parts of documents, to which I was referred.

The facts

- 5 I find the facts which are material to the issues to be decided as set out below. It is not necessary to recite all the evidence given to the Tribunal, nor to make findings on every disputed fact. In particular Mr Cole set out

in considerable detail in his witness statement his evidence about particular issues raised by the Claimant in the grievance referred to below. Those matters did not form part of the issues to be decided and consequently I am not recording the details.

- 6 Dorking Halls is a venue at which live events are held and films and live relays shown. Space is also available for exhibitions and private functions. The Claimant was first employed at Dorking Halls in 1997 as an Usher. She was promoted from time to time, and in 2003 became Front of House Manager, which role was varied in 2010 to be Front of House Coordinator. Mr Cole, Operations Manager, became her direct line manager at the beginning of 2011.
- 7 I heard differing accounts from the Claimant and Mr Cole as to their working relationship, and their perception of each other. The Claimant said that Mr Cole took opportunities to criticise her and did not provide her with guidance when requested. Mr Cole, on the other hand, described the Claimant as being difficult at times, ignoring him, and being resistant to change. However she was 'a great operator and very good at customer service and delivery'¹ events to our customers.' No doubt there is an element of truth in each description.
- 8 There was an incident in April 2015 which achieved significance in the light of later events. A member of staff had allowed children into the Duty Manager's office. The Claimant reported the matter to Mr Cole and disciplinary proceedings were instituted. The member of staff resigned. I accept that the Claimant may well not have known about the disciplinary proceedings as being a confidential matter between the Respondent and the employee, but the important element is that the Claimant informed Mr Cole about the matter.
- 9 In July 2015 Mr Cole found the Claimant's partner, Andy, with her in the Duty Manager's office. The Claimant had been in the habit of allowing him in there.² Later on that evening Mr Cole asked the Claimant not to put him in the position of considering having to discipline her. I accept the evidence of Mr Cole on this point in the light of the fact that Mr Cole had taken action when the Claimant had previously informed him of another member of staff allowing children into the private area.
- 10 There was no specific written policy on the matter covering management, but my attention was drawn to an Usher Manual dated April 2009 for which the Claimant had responsibility, which specifically forbade the bringing of a girlfriend / boyfriend or anyone else to work.
- 11 A fairly major change took place on Saturday 1 August 2015 which caused difficulties for some time. The responsibility for the bar and catering had been contracted out, and on that date the contractors closed the kitchen and removed all their items, apparently without warning. The Respondent therefore had to take over as a matter of urgency. Fortunately the Respondent was able to retain the services of some of

¹ Should it be 'delivering'?

² See paragraph 32 of the Claimant's statement.

the contractor's staff, and an existing member of the Respondent's staff, Gosia, had catering and bar experience.

- 12 The Claimant had a holiday arranged about this time. Mr Cole held a staff meeting about working arrangements in the Claimant's absence on 1 September 2015, and summarised the outcome in a lengthy email of the following day. It is not necessary to set it out in detail. He set out the plans for the bar and catering. He said that the Claimant would be slightly readjusting her role to be more operational than previously.
- 13 The Claimant had a further holiday in October 2015 and returned to work on 23 October. In an email of 1 November 2015 Mr Cole asked the Claimant to spend time with Gosia to be trained up. The Claimant and Mr Cole met during the week commencing 2 November 2015, and Mr Cole summarised the meeting in an email of 7 November 2015. He referred to the necessary changes of roles and commented on at least some of the changes which had affected the Claimant. Mr Cole said that the Claimant's absences on leave had not helped with the changes and he again said that Gosia would train the Claimant. The Claimant was to make time for this to take place. Mr Cole said that he was the licensee and could advise on procedures and staffing relating to the bars and alcohol.
- 14 I was shown some emails concerning the Claimant being trained on till and petty cash procedures, but am unable to draw any conclusions from them.
- 15 There was an incident on 17 January 2016 and a further one on the following day. Mr Cole was informed of what had occurred by an unnamed member of staff. He was told that the Claimant's partner, Andy, had been in staff areas on 17 January, and that the Claimant had allowed staff aged under 18 to serve alcohol on 18 January 2016. Mr Cole agreed to keep the identity of the staff member anonymous, and he used the CCTV facility to investigate.
- 16 Mr Cole met the Claimant on 2 February 2016 to discuss the incidents. This meeting was an ordinary scheduled one-to-one meeting, and the Claimant thought that it would also be a return to work meeting following her having been away ill for a week or so. Mr Cole made notes of the meeting, but did not send them to the Claimant for approval. At this hearing the Claimant did not accept the accuracy of them. The notes are not verbatim. There are two points in dispute. The first is whether the Claimant accepted that it was inappropriate to have her partner in the premises while she was on duty. The notes record that she had accepted that that was the case. The second was what was the outcome of the meeting. The notes record that there would be a short disciplinary hearing. I have no reason to doubt the overall accuracy of the notes.
- 17 Mr Cole decided that this matter should be dealt with under the Respondent's 'Short Disciplinary Procedure', which only involved a written warning being placed on the employee's file by the manager. It did not involve a full investigation and a hearing with an independent chair. Such warning would normally expire after six months. Mr Cole referred to it at the time as a 'slap on the wrist'.

- 18 Mr Cole prepared a summary which was sent to the Claimant with the letter mentioned in the next paragraph. He set out the background and the allegation that the Claimant had allowed her partner to walk in and out of an area where confidential and financial documents were stored. He recorded that the Claimant had agreed that this was not appropriate behaviour. The Claimant did not challenge that point at the time.
- 19 The Claimant was notified that there would be a hearing on 17 February 2016 and that she could be represented. That hearing was held and the Claimant was accompanied by Mr Whiting. The allegation was that the Claimant 'had failed to set standards through the inappropriate use of key areas of Dorking Halls by members of the public, namely your partner moving freely in staff areas on his own and in the Dorking Halls office area.' Mr Cole concluded that the allegations were substantiated, and that a written warning be placed on the Claimant's file to be valid for six months.
- 20 The issue relating to the serving of alcohol was taken more seriously. Mr Cole wrote to the Claimant on 9 February 2016 saying that he was investigating the matter. He invited her to a meeting for that purpose on 12 February 2016. Before that meeting was held Mr Cole interviewed three other members of staff who were on duty on the evening in question: Rosie Walters, Charlie Mangan and Millie White. Mr Mangan and Ms White were the individuals who were under 18 at the time. Each of those members of staff signed a short statement. After meeting the Claimant Mr Cole also interviewed Carol Budd. Notes of the meeting with the Claimant were sent to her by Mr Cole on 18 February 2016.
- 21 Mr Cole decided that because of differences in the information provided he would investigate further by watching the CCTV footage of the bar and front of house areas. Mr Cole then prepared a report which he sent to Mr Garrow on 17 March 2016. The report is of eight pages and the notes of the interviews and other documents were appended to it. Mr Cole concluded that the Claimant had not fulfilled her remit as Duty Manager in failing to act as the 'responsible person' for licensing purposes and that that was gross misconduct. He recommended that the matter proceed to a full disciplinary hearing.
- 22 The Claimant appealed against the written warning mentioned above on 1 March 2016 and raised a grievance in the same letter. In summary, the appeal was on the basis that it had been a common occurrence for non-members of staff to be in non-public areas for years, and that nothing had been done about it. The Claimant also referred to the question about the use of under-age staff and continued by saying that she had not been supported by Mr Cole, that she had not been provided with training, and policies had not been prepared. The Claimant gave two specific examples of when she said that she had been undermined by Mr Cole. She also made a variety of other specific complaints ranging from her shift being changed at short notice to having to test the fire alarm. They had no relevance to the appeal against the written warning.
- 23 Mr Garrow acknowledged receipt of the letter on 8 March 2016 and invited the Claimant to a meeting to consider the appeal on 16 March

2016. He said that he would write separately concerning the grievance. The Claimant replied on 10 March asking why the two matters were to be separated, and Mr Garrow responded on 14 March 2016 saying that any aspects of the grievance relevant to the appeal could be raised in that context, but other matters would be the subject of a separate grievance hearing.

- 24 The appeal was heard on 16 March 2016 by Mr Garrow with Mr Hodges present. The Claimant was again accompanied by Mr Whiting. At the outset Mr Hodges said that the Respondent did not support electronic recording and that any covert recording could be considered as an act of gross misconduct. Nevertheless the Claimant did covertly record the meeting. Mr Garrow made it clear that the hearing was an appeal against the written warning, and was not a grievance hearing. He also said that it was an appeal, and not a rehearing. At the conclusion Mr Garrow said that he wished to consider the matter, and that he would contact the Claimant in writing. Mr Garrow was then due to go on leave for a week.
- 25 Although not listed in the notes of the hearing as being present, Mr Cole was there and the notes show that at the request of Mr Garrow he responded to the points made by the Claimant. The Claimant's own transcript shows that his contributions were minimal.
- 26 The Claimant and Mr Cole had a routine meeting on the following day as a preliminary to the Claimant going on leave on the following day. There is nothing of real significance in that meeting save that the Claimant again covertly recorded it.
- 27 Mr Garrow wrote to the Claimant on 29 March 2016 dismissing the appeal. He said that he had satisfied himself that other members of staff who had allowed members of the public into restricted areas had been managed appropriately. He said that it may have been the practice for some time to allow non-staff into private areas but that management action was being taken to address it. Further, in response to the point that there was no written policy in place Mr Garrow said that it was impossible to have such a policy for every eventuality.
- 28 In the letter Mr Garrow reiterated that he had not been considering the Claimant's grievance but that he had taken into account any elements of the grievance which were directly relevant to the grounds of appeal.
- 29 There were two other incidents around this time involving staff bringing children in. One member of staff was given a verbal warning on the basis that the child had been coming in since she was a baby and had only been there for a few minutes. A casual member of staff was also spoken to.
- 30 A letter dated 31 March 2016 was sent to the Claimant relating to the incident on 18 January 2016. The Claimant was required to attend a disciplinary hearing on 15 April 2016. The allegation was as follows:

That on 18th January between 19:00 and 22:30 at Dorking Halls Café you did not correctly or adequately arrange cover whilst supervising the evening, leading to two members of staff under the age of 18 serving alcohol in Dorking Halls premises without adequate signoff of sales being put in place.

- 31 On the same date the Claimant was provided by her GP with a form Med3 advising that she was not fit for work due to stress and anxiety. It covered a period of two weeks. On 11 April 2016 the Claimant was provided with a further form Med3 covering the period to 16 May 2016. The condition was stated to be 'work related stress'.
- 32 The Claimant resigned by a letter dated 13 April 2016 giving four weeks' notice. The reasons given were as follows:
- (i) Imposing a disciplinary punishment which I believe is unfair and disproportionate to the offence, especially as there is no formal directive or policy in place relating to this particular issue.
 - (ii) You allowed Stuart Cole to attend for the duration of the disciplinary appeal hearing knowing that I had lodged a formal grievance against him. I found this intimidating.
 - (iii) You have made no attempt to deal with my grievance dated 1 March 2016 even though I requested on two separate occasions that the matter should be heard jointly with the appeal.
 - (iv) I have not been provided with the necessary support to take on the additional responsibilities of managing the bar and coffee shop despite asking for proper training. Instructions and responses from Stuart Cole in this respect have been unclear and, on occasions, confusing.
 - (v) Despite not having provided formal training, you are now subjecting me to a further disciplinary hearing on 15 April relating to the serving of alcohol by underage staff whilst I was duty managing which I believe is unjust and I feel I am being victimised.
- 33 Mr Garrow acknowledged the resignation on 14 April 2016 and wrote to the Claimant again on 21 April 2016. He reaffirmed his intention to consider the outstanding elements of the Claimant's grievance. It is not necessary to go into detail about what later occurred as I am concerned with matters leading up to the resignation. There was a grievance hearing on 13 May 2016 and Mr Garrow sent a long letter to the Claimant on 26 May 2016 stating the outcome. His conclusion was that there was no evidence that the Claimant had been victimised, bullied or harassed.
- 34 This point was mentioned by Mr Kirk and I record a section of the Respondent's Disciplinary Policy relating to grievances:³
- Where an employee raises a grievance during a disciplinary process which is related to the issues raised in disciplinary then the employee may either raise their concerns and mitigation in their defence or the concerns may be considered concurrently as part of a multi-purpose hearing.
- Where the concerns raised in the grievance are completely separate then depending on the seriousness of the grievance raised, the disciplinary proceedings may be suspended while the grievance is dealt with. In other cases the disciplinary may proceed as planned.
- 35 The Respondent also had a grievance policy. It referred to seeking to resolve the grievance quickly and mentioned an initial meeting within ten working days of the grievance and the employee being notified of the outcome within five days thereafter.
- 36 Finally I turn to the evidence about training, which is far from clear. The fourth reason given by the Claimant for resigning related to training for

³ [50]

running the bar and coffee shop. On 1 November 2015 Mr Cole asked her to spend time with Gosia so that the Claimant could be trained up and share her knowledge.

- 37 On 18 December 2015 Mr Cole sent an email to the Claimant saying the government funding was available for various courses, including one for an Advanced Diploma in Restaurant / Bar Management. He suggested that there were courses suitable for the Claimant and others in the team. The Claimant did not reply and Mr Cole sent a reminder to her on 7 January 2016 with a copy of the original letter containing the list of courses available. The Claimant replied to that saying that only Gosia was interested.
- 38 The Claimant said at this hearing that she could not recall the email of 18 December 2015 and had received another email which referred only to hospitality courses. She did however accept receiving the email of 7 January 2016 (to which she did of course reply) but again commented that the courses all related to hospitality. The evidence of the Claimant was unconvincing on this matter.
- 39 Mr Cole booked the Claimant, himself and another member of staff in for Barista training in late October 2015.

The law

- 40 It is not necessary to cite authorities nor the legislation as both parties are represented. In summary the position is as follows. To found a claim of unfair dismissal in these circumstances, the Claimant must prove that the Respondent has acted in such a way as to entitle the Claimant to terminate the employment contract without notice. The Claimant must show that the Respondent was in fundamental breach of an express or implied term of the contract of employment. Here, as is usually the case, the Claimant relies upon the term implied into all contracts of employment that neither party must without reasonable and proper cause conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties. The function of the Tribunal is to look objectively at the employer's conduct as a whole, and decide whether its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it. Any breach of such term is of necessity a fundamental breach. The conduct amounting to a breach of that term may be a series of actions which cumulatively amount to a repudiation of the contract by the employer. The final straw may be relatively insignificant, but must not be utterly trivial. Further, the Claimant must have resigned at least partly in response to the breach, and must not have affirmed the contract.

Submissions

- 41 Mr Kirk made submissions for the Respondent to which Mr Laing replied. Mr Kirk made adverse comments on the credibility of the Claimant, and I have taken those into account when considering my finding of facts above. He commented particularly on the fact that the Claimant had misled the Respondent about the covert recording of meetings, which itself could be gross misconduct.

- 42 Mr Kirk addressed each of the five points made in the Claimant's resignation letter in turn. As to the first one, he said that whatever evidence I accepted about the incident in July 2015 (as to which I have made a finding above) the Claimant must have known that it was inappropriate for her partner to be in areas where there was confidential information. She had after all reported the other member of staff. Mr Kirk pointed out the contents of the Usher Manual. He also pointed out that Mr Cole had stated in his brief findings that the Claimant had agreed that it was not appropriate behaviour, and that she had not disputed that fact after receipt of Mr Cole's summary. Further, a written warning was an appropriate sanction, and not oppressive in the circumstances. It was also consistent with the treatment of other staff.
- 43 On the second point relating to Mr Cole being present at the appeal, Mr Kirk submitted that he had every reason to be there to provide the management case. There was no evidence of any intimidation of the Claimant by him. Mr Kirk referred to his presence being in accordance with procedure. I add at this stage that appeals are dealt with under the Staff Appeal Process⁴ which refers to both sides being entitled to call witnesses. The Claimant agreed in cross-examination that therefore Mr Cole was entitled to be present, although she said that his presence was intimidating to her. Mr Kirk also pointed out that there was no mention of this point in the Claimant's witness statement.
- 44 The third point was that the Respondent had not dealt with her grievance and had refused her request for the grievance and appeal to be heard together. Mr Kirk referred to the section of the policy set out above, and reminded me that the Claimant had accepted in cross-examination that Mr Garrow had a discretion as to how to proceed. He submitted that there had not been any unreasonable delay in considering the grievance. Mr Garrow had gone on leave after the appeal hearing, and the Claimant had then been signed off work before resigning.
- 45 Mr Kirk also referred to paragraph 46 of the ACAS Code of Practice 1 noting that it gave the employer a discretion. The paragraph is as follows:
- Where an employee raises a grievance during a disciplinary process the process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary case are related it may be appropriate to deal with both cases concurrently.
- 46 Mr Kirk also submitted that many areas of the grievance were in fact considered, and also questioned whether at least some of the elements of the grievance were raised in bad faith effectively in retaliation for the disciplinary process having been commenced. He said that the Claimant had not provided any evidence to support the grievance allegations in her witness statement, and questioned the significance of them. He compared the Claimant's treatment of them with the considerable detail provided by Mr Cole which was not challenged on the Claimant's behalf in cross-examination.
- 47 The fourth element relates to training, or the lack of it. He said that the evidence was confusing. He submitted that the Claimant's evidence was

⁴ [102A-B]

not credible, and pointed out that she had been offered specialist training, which she had wrongly categorised as 'hospitality' and therefore not suitable. He said that the Claimant had been asked to shadow Gosia who had the relevant experience.

- 48 The final matter is the disciplinary process concerning the use of under-age staff. Mr Kirk made submissions on the basis that this was the 'last straw' as contended for by the Claimant and submitted that as a matter of law it could not be such. He submitted that the instigation of the disciplinary process was entirely justified. The Claimant knew the law, and she could not possibly have been surprised when she was informed that disciplinary proceedings were to be taken. He also (correctly) pointed out that the Claimant had said in cross-examination that she was not shocked when she was informed of the fact of disciplinary proceedings being instituted.
- 49 Mr Kirk then addressed the issues of causation and affirmation. He suggested that the reason that the Claimant resigned was to test if the Respondent thought her to be valued. He referred to paragraphs 67 and 68 in the Claimant's witness statement in which the Claimant said that Mr Garrow did not attempt to persuade her not to resign, and also that she was right to have resigned as the Respondent did not hold her in high enough regard to persuade her to change her mind. She further said that Mr Cole was trying to get her out of Dorking Halls.
- 50 As far as delay and affirmation was concerned, Mr Kirk noted that after the warning was issued on 23 February 2016 the Claimant had gone back to work, and had utilised the appeals process. Her complaints about a lack of support went back to September or October 2015.
- 51 Mr Laing replied for the Claimant. He asked the Tribunal to look at the cumulative effect of the various matters, and how the Claimant had started to form a view of Mr Cole from October 2015. He then addressed each of the points in turn.
- 52 As far as the first point was concerned Mr Laing referred to the lack of any policy. He said that the Claimant was not to know that it was proposed to discipline the staff member in May 2015 as such matters were kept confidential. Mr Laing added that the Claimant was in fact intimidated at the appeal hearing, although perhaps she had not made that clear at the time. There had not been any realistic attempt to deal with the Claimant's grievances although she had asked for them to be dealt with at the same time as her appeal. It was reasonable for her to conclude that somebody was trying to get her out.
- 53 Mr Laing referred to the training issue. He said that as the Claimant had been away in the autumn of 2015 she had missed out on training which took place when the bar and catering functions were taken back in-house. She felt awkward and inadequate in asking for training from Mr Cole.
- 54 Finally Mr Laing referred to the disciplinary proceedings. Mr Laing addressed the merits of the allegations and submitted that there was contradictory evidence. He said that on the evidence given to Mr Cole it

was reasonable for the Claimant to have assumed that no alcohol was being served.

Discussion and conclusion

- 55 I have set out a summary of the law above. I do not accept for one moment that anything which Mr Cole or Mr Garrow did was designed to damage or destroy the employment relationship. It appears that the Claimant is of the view that Mr Cole, at least, was seeking to get rid of her. I cannot accept that proposition.
- 56 The Claimant must prove that the conduct of the Respondent has been such as being likely seriously to damage or to destroy the employment relationship, when viewed objectively. There was some uncertainty during the evidence and submissions as to whether the Claimant was relying on the last straw doctrine, or more broadly upon the cumulative effect of the five matters listed in her resignation letter. I am working on the basis that it is the latter. The conduct must be sufficiently serious to amount to a repudiation of the employment contract. It is a rare employment relationship that runs smoothly and without any difficulty from beginning to end. Not every incident between an employee and her line manager, or collection of incidents, will amount to a fundamental breach of contract. Many employees are unhappy with their lot, but that is not sufficient.
- 57 I have come to the firm conclusion that what occurred here does not come anywhere near to approaching the threshold as to entitle the Claimant to resign without notice.⁵ I will deal with each of the individual heads in turn.
- 58 The first is the written warning. The first point to make is that the warning is the lowest possible sanction in the disciplinary armoury of the employer. Mr Cole referred to it as a 'slap on the wrist' although that is perhaps somewhat misleading. The procedure is described as the 'Short Disciplinary Procedure' and is distinct from the full length disciplinary procedure referred to later in the policy.
- 59 Secondly, the Claimant was in fact aware that allowing individuals who were not members of staff into private areas was inappropriate. She had informed Mr Cole of a similar incident earlier. In any event, it must be obvious that it was inappropriate to allow access to areas where confidential information was available. It is quite wrong for an employee to disclose confidential information about a business to others. It must be equally wrong to allow an individual into areas where such information could be read. Although not explored before me, there may well be further aspects arising, such as insurance and evacuation procedures. To my mind the fact that there was no written policy making the point is neither here nor there.
- 60 The second matter is the presence of Mr Cole at the appeal hearing. There is nothing in this. Mr Cole, as the line manager, had issued the written warning after speaking to the Claimant about the matter. The Claimant accepted in cross-examination that Mr Cole was entitled to be

⁵ The fact she gave notice is not relevant.

there under the Respondent's appeals policy as it was against his decision that the appeal was made. The Claimant did not object at the time, and Mr Cole's involvement was extremely limited.

- 61 The third element relates to the grievance. Again I find there is no substance in this point. I was referred to the decision of the Employment Appeal Tribunal in *Blackburn v. Aldi Stores Ltd* [2013] IRLR 846. The following is the relevant extract from the headnote:

Failure to adhere to a grievance procedure is capable of amounting to or contributing to such a breach.⁶ 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 or contribute to a 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.

- 62 The Claimant complained in her resignation letter that no attempt had been made to deal with the grievance. The attitude of Mr Garrow was consistent. He agreed to consider those elements of the Claimant's grievance as were relevant to the appeal during the appeal, and consider the remaining elements later. What occurred was that the Claimant's appeal was dismissed on 29 March 2016, and two days later the Claimant went off sick, and did not return to work. She resigned on 13 April 2016. I cannot accept that the criticism that there was no attempt to deal with the grievance is justified in the circumstances. This does not fall into the *Blackburn* category of a wholesale failure to respond to the grievance.
- 63 The Claimant also complains that her grievances should have been dealt with at the same time as the appeal. She may have wanted that to have been the process but I do not consider that the Respondent can be criticised for taking the line it did. The Respondent had a disciplinary policy and an appeals process. The grievance policy was a different policy altogether. It was in my judgment entirely appropriate to separate the two procedures except where there was an overlap.
- 64 The fourth matter relied upon by the Claimant is the alleged lack of support and lack of training. I agree with Mr Kirk that the evidence concerning this matter was far from clear. I accept that it may be difficult for an employee to demonstrate a lack of support on a day-to-day basis, but I am not satisfied from what I have read and heard that there was any material lack of support in the circumstances. From the evidence, and particularly the witness statement of Mr Cole, it is apparent that the changes which occurred in the autumn of 2015 cause various difficulties for members of staff at Dorking Halls. It is also apparent that the timing of the periods of leave which the Claimant took in 2015 was unfortunate in the light of the withdrawal of the catering contractors at the beginning of August. That was recognised by Mr Cole when he had a meeting with the Claimant in November 2015. It is clear that the Claimant had to take on

⁶ That is a breach of the *Malik* test.

different responsibilities as did others, and to use Mr Cole's phrase, they all had to adapt as they went along. I am not persuaded on the evidence that the Claimant was in fact denied training. She was asked to shadow Gosia and was offered an external course. That course appears from its title to have been ideal for the Claimant's new responsibilities.

- 65 The final point raised is that the Claimant was to be subjected to a further disciplinary hearing concerning the serving of alcohol by under-age staff. The submissions made by Mr Laing were on the merits of the allegation itself, rather than the fact that disciplinary proceedings had been instituted. The facts are straightforward. Alcohol had been served by two individuals who were under 18 without the appropriate consent or supervision. That is a criminal offence. There could have been a prosecution and the Dorking Halls could have lost the liquor licence. The institution of disciplinary proceedings against the person in charge at the time must in my judgment have been almost inevitable. What the outcome of those proceedings would have been is a different matter entirely. The Claimant did not wait to find out.
- 66 For those reasons I find that the Claimant was not entitled to resign without notice, and her claim of constructive unfair dismissal fails.

Employment Judge Baron

Dated 04 July 2017