EMPLOYMENT TRIBUNALS

Claimant: **Miss Sophina Kang**

Respondent: **Dr Ranjna Sharma t/a Purity Dental**

FINAL HEARING

Heard at: Birmingham **On:** 2 to 6 July 2018 & (deliberations in private) 7 & 8 August 2018

Before: Employment Judge Camp Members: Mr RS Virdee, Mr GA Murray

Appearances
For the claimant: Miss S Aly, counsel
For the respondent: Mr D Bunting, counsel

RESERVED JUDGMENT

The claimant's entire claim fails and is dismissed.

REASONS

Introduction; complaints & issues

1. This is an unfair dismissal and whistleblowing case. The respondent is a dentist and owns and runs a dental business in Dudley with the trading name Purity Dental ("Practice"). The claimant was employed in the Practice as a Dental Therapist from September 2013 until her resignation without notice on 12 May 2017. Having gone through early conciliation from 1 July to 15 August 2017, she presented her claim form on 30 August 2017.

2. In summary, the claimant's claim is based on these allegations:

   2.1 following the seemingly acrimonious departure from the Practice of the previous Practice Manager, Miss Zahra Shah, in late Spring 2016, the respondent took against the claimant, particularly after she found out that the claimant had made one or more protected disclosures (i.e. 'blew the

whistle') to the Care Quality Commission ("CQC") and the General Dental Counsel ("GDC") in early 2017;

2.2 for example, the respondent allegedly took steps to isolate the claimant and overload her with work, as well as expecting her to work outside her scope, i.e. to carry out dental work she was not permitted by the GDC to do;

2.3 the thing the claimant blew the whistle about was the respondent allegedly leaving another dental therapist alone carrying out treatment on a sedated patient;

2.4 the CQC inspected the practice in February 2017. The GDC are investigating the respondent and in May 2018 imposed an interim conditions of practice order on her;

2.5 the claimant raised a grievance about her [the claimant's] treatment in March 2017;

2.6 following a grievance hearing in May 2017, the grievance was not kept confidential and other staff found out about it and discussed it;

2.7 there was no reasonable and proper cause for the respondent's conduct and cumulatively, it was calculated or likely to destroy or seriously to damage the relationship of trust and confidence between employer and employer, i.e. the respondent breached the so-called 'trust and confidence term';

2.8 the claimant resigned as a result, shortly before she learned that her grievance had not been upheld.

3. There was a preliminary hearing before Employment Judge Hindmarch on 12 December 2017. The complaints being pursued – so-called 'ordinary' unfair dismissal, whistleblowing unfair dismissal under section 103A of the Employment Rights Act 1996 ("ERA"), wrongful dismissal, and whistleblowing detriment under ERA sections 47B and 48 – and the issues potentially arising in relation to those complaints are listed in the written record of that preliminary hearing. At the start of the present final hearing, counsel for both parties agreed that Judge Hindmarch's list of issues was accurate and complete. It was also agreed that there are 11 complaints of whistleblowing detriment (each also alleged to be part of the breach of the trust and confidence term), set out in paragraphs 4 to 14 of the claimant's "*Further & Better Particulars of Claim*" dated 9 January 2018 ("Further Particulars").

4. In practice, the issues were not as numerous or as complicated as they appeared to be from the list of issues. In particular, it was realistically conceded by respondent's counsel that if the claimant made qualifying disclosures to the CQC and/or GDC under ERA section 43B, they would be protected disclosures under ERA section 43F.

5. The first of the detriment complaints, relating to a staff rota, was withdrawn part-way through the hearing. The factual allegation on which that complaint was based continued to be relied on in relation to constructive dismissal.

6. We decided fairly early on during the hearing that we would not deal with any remedy issues at this stage and that we would be reserving our decision and giving it in writing. Had the claimant won any of her complaints, there would have been a separate remedy hearing at a later date.

7. We have not, in relation to every complaint, dealt with every issue that potentially arose. In the main, we have only dealt with those it was reasonably necessary for us to deal with to decide this case. Similarly, in these Reasons we do not mention all facts or even deal with all factual disputes that have been raised before us, but only those we felt we needed to in order to explain and justify our decision. In particular, the claimant and her witnesses made a number of allegations in their evidence about the respondent and the Practice, to the effect that the Practice is badly run and/or that the respondent is a bad employer and/or a bad person, of little or no relevance to the issues we have had to decide. As we reminded the parties during the hearing, this case is about, and only about, the claim that is before this Tribunal.

The law

8. Legal issues were not the fore in this case and neither counsel made significant submissions on the law.

9. Our starting point is the relevant sections of the ERA: 43A, 43B, 43F, 48, 95 and 103A. The legislation is reflected in the wording of the list of issues.

10. Dismissal includes an employee terminating, "*the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct*": ERA section 95(1)(c). What this means was definitively decided by the Court of Appeal in Western Excavations v Sharp [1977] EWCA Civ 165, in the well-known passage beginning , "*If the employer is guilty of conduct which is a significant breach…*" and ending, "*He will be regarded as having elected to affirm the contract.*"

11. The claimant relies, as the "*significant* [a.k.a. fundamental or repudiatory] *breach*", on a breach of the 'trust and confidence term'; that is to say, the claimant alleges that the respondent, without reasonable and proper cause, conducted itself in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between employer and employee. Any breach of that term is repudiatory. This serves to highlight that it is a high-threshold test: "*destroy or seriously damage*" is the wording used. It is not enough, for example, that – without more – the employer acted unreasonably or unfairly.

12. As was explained by Lord Steyn in Malik & Mahmud v BCCI [1997] ICR 606 at 624, although it is possible for the trust and confidence term to be breached by conduct the employee is unaware of, such conduct cannot be the basis of a

constructive dismissal claim. This is because the employee must resign in response to the breach in order to have been constructively dismissed.

13. This is, or is alleged to be, a 'last straw' case. An essential ingredient of the final act or last straw in a constructive dismissal claim of this kind is that it is an act in a series the cumulative effect of which is to amount to the breach of the trust and confidence term. The final act need not necessarily be blameworthy or unreasonable, but it has to contribute something to the breach, even if relatively insignificant. See Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493 and Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978 at paragraphs 39 to 46.

14. In Wright v North Ayrshire Council [2014] IRLR 4, the EAT emphasised that in a constructive dismissal case, the repudiatory breach of contract in question need not be the only or even the main reason for the employee's resignation. It is sufficient that it "*played a part in the dismissal*"; that the resignation was, at least in part, "*in response to the repudiation*"; that "*the repudiatory breach is one of the factors relied upon*" by the employee in resigning. This is the one and only part of the test for whether someone is constructively dismissed in relation to which it is appropriate to look at matters subjectively, from the employee's point of view.

15. The whistleblowing claim was decided on the basis of a factual rather than a legal issue, namely whether the respondent knew or suspected that the claimant had blown the whistle.

16. The only legal issues relating to whistleblowing that in practice we had to think about to any significant extent were:

    16.1 whether the claimant made a "*disclosure of information*", in relation to which we briefly considered Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436;

    16.2 whether the claimant had a reasonable belief in any information she disclosed, and the fact that, in accordance with Darnton v University of Surrey [2003] ICR 615 and Soh v Imperial College of Science, Technology and Medicine [2015] UKEAT 0350_14_0309, the claimant normally cannot reasonably believe that her disclosure tends to show something if she doesn't believe the information she is disclosing is true.

The facts

17. We refer to the respondent's 'cast list' and "*Chronology and List of Screenshots*", which should be deemed to be incorporated into these Reasons. We heard witness evidence from, on the claimant's behalf: the claimant herself; Miss Charlotte Moseley, who was until February 2017 a dental nurse at the Practice; Miss Saniya Adris, also (in her case until March / April 2017) a dental nurse at the Practice. On the respondent's behalf, we heard from: the respondent herself; Ms Christine Stewart, the Practice Manager after Miss Shah left; Mrs Michelle Allsop, Head Nurse; Ms Emily Cairns, a dentist at the Practice.

18. We also read and took into account, to the extent they were relevant, statements from two further witnesses for the claimant: Miss Shah; Malina Rai, trainee dental nurse.

19. Miss Shah's witness statement was exchanged late and its contents did not seem to us to be relevant. We refused the claimant permission to call Miss Shah as a 'live' witness. We gave reasons orally at the time – on 2 July 2018 – and written reasons will not be provided unless asked for by a written request presented by any party within 14 days of the sending of this written record of the decision. We note that by the end of the case, the contents of Miss Shah's statement seemed no more relevant to us than they had seemed at the beginning. This is perhaps not surprising given that Miss Shah left the Practice before anything happened that this case is about.

20. Most of our findings on disputed questions of fact are not set out in this section of these Reasons; they are set out in the section headed "*Decision on the issues*".

21. The dental professionals who work at the Practice consist of dentists, dental therapists, and dental nurses. Some are employees, some are designated self-employed, and some are locums. Dental nurses work with dentists and dental therapists as a team. There are a number of things that dentists are permitted to do that dental therapists aren't, and there are some things a dental therapist can only do under the supervision of a dentist or that she can only do after the dentist has done something, such as examine the patient and/or write a prescription. Dentistry is, of course, heavily regulated. The Practice comes under the CQC and the respondent and all the other dental professionals working at the Practice, and the claimant too, come under the GDC.

22. The Practice is a relatively large and busy NHS dental practice. It has targets it is expected to meet. It has seven surgeries. Six of them are in the main building. The seventh, known as "*surgery 7*", is in an adjacent building. The adjacent building with surgery 7 in it does not have a decontamination room and the nurse working with a dental therapist in surgery 7 has to go into the main building to use one of the decontamination rooms in there.

23. The process of Miss Shah leaving the Practice seems to have been dragged out over several months, approximately between April and July 2016. Also around spring / summer 2016: other staff left and some new staff joined the respondent; NHS England set new targets, significantly increasing the number of patients the Practice was expected to see.

24. On 29 September 2016, a particular patient was treated by a dental therapist called Sophie Davies whilst under sedation. The patient was sedated by an injection administered by the respondent. Also present, or allegedly present, for at least part of the procedure were Michelle Allsop and/or a dental nurse called Denise Davies. This is what the claimant's alleged whistleblowing was about. She and her witnesses claim that one of the Miss Davies told them afterwards during a lunch break that the respondent had left Sophie Davies administering treatment with the patient still sedated. It is common ground between the parties

that a sedated patient must, in the interests of health and safety, be monitored by a dentist.

25. Sophie Davies left the respondent's employment shortly afterwards. There is no evidence telling us why.

26. So far as we are aware, the only person who reported this incident to the GDC and/or the CQC was the claimant. She did not do so until around January / February 2017, and did so partly because she was encouraged to by Miss Shah. (Coincidentally, Miss Shah brought a Tribunal claim against the respondent, which we understand was compromised on what was listed to be the first day of her final hearing, on 13 March 2017).

27. The first identifiable incidents relied on as part of the alleged breach of the trust and confidence term occurred in late November 2016. The last was on 10 May 2017, just before the claimant resigned. She detailed incidents up to 10 March 2017 in her letter of grievance, dated 12 March 2017. She provided significant quantities of additional information, including information about several incidents occurring after 12 March 2017, under cover of an email she sent Christine Stewart on 9 May 2017. Christine Stewart had chaired the grievance hearing with the claimant earlier in May 2017, and the information was sent at her request to help her make her decision.

28. The CQC inspection followed shortly after the claimant contacted them. It was an unannounced inspection on 8 February 2017. No significant problems were identified by the CQC. There was a staff meeting on 15 February 2017 at which the inspection was discussed.

29. On 12 March 2017, coinciding with her grievance letter, the claimant messaged Sophie Davies in relation to the alleged incident on 29 September 2016. She and the claimant then exchanged WhatsApp messages, culminating with Sophie Davies telling the claimant that she would call the respondent the following day and that the respondent definitely hadn't left the surgery on that day in September 2016.

30. Sophie Davies did indeed call the respondent on 13 March 2017. She left a voicemail message and at some stage they had a telephone conversation.

31. Sophie Davies was not called as a witness by either party. If appears she wants nothing to do with these proceedings, something that comes as no surprise to us. Such documentary evidence as we have suggests that, apart from anything she might have said on 29 September 2016 itself, she has consistently denied the allegation that she was left unattended with a sedated patient.

32. The claimant's grievance was handled by Christine Stewart. She tried to arrange a grievance hearing in late March and, when that was postponed, in April. The first mutually convenient date ended up being 4 May 2017. The claimant arranged to attend with a young dentist called Dr Rabia Dean as her companion. The note taker at the meeting was Michelle Allsop. The meeting itself, which lasted about 55 minutes, passed off without particular incident. We

refer to the transcript of it – it was recorded by the claimant and the transcript is, we understand, verbatim or almost so.

33. Shortly after the meeting, however, Dr Dean and the claimant were sitting in the staff room when Dr Dean texted the claimant, stating (referring to other members of staff, and the claimant's grievance, which was supposed to be confidential), "*They're talking about it …. 'She even recorded it HAHA' …*" The claimant came over to near where Dr Dean was sitting, but all she heard was laughter and someone say, "*I wish I was a fly on the wall*".

34. It appeared to the claimant that Michelle Allsop must have talked about her grievance and the grievance meeting, breaching confidence. She immediately complained to Ms Stewart. Ms Stewart investigated, but the result was inconclusive. This was partly because Dr Dean was unwilling to get involved. Ms Stewart reminded staff of the need to respect confidentiality.

35. Ms Stewart had been intending to give the claimant the outcome of her grievance face to face, but following the claimant's resignation, by a letter of 12 May 2017 that speaks for itself, she sent an outcome letter, on 18 May 2017. No part of the grievance was upheld. Because the grievance outcome was after the claimant's resignation, it is of limited relevance to the issues in this case. Its main significance is that it contains a rather strange section in which Ms Stewart lists things she has found out relating to the claimant "*that are of great concern*" and within that section, there is something about Sophie Davies's contact with the respondent on 13 March 2017.

36. The claimant appealed the grievance outcome during early conciliation, by a letter dated 20 July 2017. There was an appeal hearing, chaired by Emily Cairns, on 20 September 2017. The appeal outcome is contained in a letter dated 19 October 2017. The grievance appeal was upheld to a limited extent. Again, because this all happened after the claimant resigned, it is not particularly relevant to the issues in this case.

Decision on the issues

37. We propose to deal with matters approximately chronologically, rather than complaint by complaint.

38. The matters that seem to us to be potentially relevant are those that are said to make up the course of conduct that allegedly amounted to the breach of the trust and confidence term that the claimant accepted by resigning on 12 May 2017. All, or almost all – see below – of the matters relied as whistleblowing detriments are alleged to be included within that course of conduct.

39. So far as concerns what else that alleged course of conduct consists of:

    39.1 our working assumption has been that the matters directly and indirectly referred to in her resignation letter were the matters that led to the claimant's resignation. We assume the letter reflected her state of mind at the time she resigned and that the things mentioned in it were the things she was thinking about that caused her to resign;

39.2 in her resignation letter, she referred to "*bullying and harassment behaviour of Dr Ranjna Sharma and the events following my grievance hearing*". Immediately after this, there is a reference to the claimant's grievance letter;

39.3 in terms of the alleged "*bullying and* [harassing] *behaviour of* [the respondent]" that the claimant relies on, we see no good reason to look outside the claimant's grievance. The claimant would presumably have included within her original grievance letter everything that was of concern to her up to 12 March 2017. She submitted extensive additional information to the respondent on 9 May 2017 and would presumably have included in that information everything that was of concern to her up to *that* date;

39.4 accordingly, the matters we are looking at are, in addition to the alleged whistleblowing detriments, those directly and indirectly referred to in the claimant's grievance of 12 March 2017 and in the information provided on 9 May 2017, which we understand to be the documents running from page 392 of the trial bundle, together with one or two additional matters as will appear below.

40. Before we get on to the detail of the events alleged to make up a breach of the trust and confidence term, we note that many of those events pre-date the respondent allegedly becoming aware of the claimant having made protected disclosures. We shall deal with this in more detail below, but we note that the claimant's case, as set out in her Further, appears to be that the respondent could not have known about her alleged whistleblowing before 13 March 2017. What this means is that, even on the claimant's own case, much – possibly most – of the alleged mistreatment occurred before the respondent had any obvious motive to want to mistreat her. We also note that there is no substantial evidence that the alleged mistreatment to which the claimant was subjected got worse after the respondent allegedly knew that she had blown the whistle.

41. The first relevant allegation is, as set out in the grievance letter, "*Dr Sharma has not greeted or acknowledged me in the way she has done over the past three years.*" According to the claimant's witness evidence, this was the case from around August 2016 onwards. The only clear specific example given of this kind of treatment is the subject matter of detriment allegation 6, relating to alleged events of 23 March 2017.

42. This is one of a number of allegations the claimant makes in relation to which establishing what happened objectively with any confidence is very difficult indeed. It is largely a case of one person's word against another's, but that is not the main problem.

43. If it were just a case of who was the better witness as between the claimant and the respondent, the claimant would win hands down; the respondent was, unfortunately, a very poor witness, being very vague and apparently unable to remember almost any details of anything at all that would have been of use to us. Giving evidence is not, of course, a memory test and nobody can be expected to remember the minute detail of things that happened months or

years ago, but we would have expected the respondent to be able to remember *something*, and to have taken the time between the claim being issued and the final hearing to refresh her memory about important matters, something she seemingly did not do at all.

44. We accept that the claimant in her evidence told us the truth that she now genuinely believes it to be. That doesn't, though, mean that what she told us is necessarily accurate. In relation to something like whether one is being ignored or 'blanked', there can be a very great divergence between, on the one hand, one's subjective perceptions and what one recalls in the context of tribunal litigation about one's perceptions and, on the other, what actually happened.

45. The claimant's recollection in this respect is, though, supported by her witnesses. We are afraid that we could not place very much reliance on the evidence of Saniya Adris as she was someone with a very obvious 'axe to grind' against the respondent. However, the claimant's other witness, Charlotte Moseley, was, of the people who gave evidence before us, the closest we got to an impartial witness. She was measured in her criticisms of the respondent, she did not appear to have left the respondent 'under a cloud', and under cross-examination she made a number of concessions readily, including one to the effect that she had never personally been on the wrong end of mistreatment by the respondent.

46. In her evidence, Miss Moseley told us that she had not noticed the claimant being blanked until the claimant herself pointed it out. From this, we infer that any blanking or ignoring of the claimant by the respondent was at a relatively low level.

47. Christine Stewart gave evidence supporting the respondent in relation to this allegation but we are afraid that – and this is not meant as any criticism of her – the fact that she is very far from neutral in relation to these proceedings, means we attach less weight to her evidence than to that of Miss Moseley.

48. Emily Cairns told us that members of staff felt that the respondent had become more stressed over the summer of 2016, but that her behaviour was not bullying. However, it appears that staff were not asked specifically to comment on this particular allegation (about the claimant being ignored by the respondent); or if they were asked specifically about this, we were not told in the evidence what they said in response.

49. Based largely on Miss Moseley's evidence, we accept that there was some behaviour by the respondent towards the claimant which could be characterised as ignoring or blanking her. We have already noted that Miss Moseley did not notice the behaviour until it was pointed out to her by the claimant and we also note that if you expect to see something, human psychology often works to make you see it, even though it is not necessarily there. We think, then, that the respondent was doing this to some extent, although not just to the claimant. For example, she was apparently doing it to Miss Adris too.

50. We think that the respondent was probably not consciously doing this. She was undoubtedly more stressed and had, perhaps, become more wary following Ms

Shah's departure; particularly so in relation to staff, such as the claimant, who she thought of as close to Ms Shah. We think this wariness manifested itself in her being less friendly and open with staff like that.

51. We find that this behaviour was at a low level and had been going on since around August 2016 (on the claimant's own case). As such, we don't think it contributed anything to any significant damage to the relationship of trust and confidence as at May 2017, when the claimant resigned.

52. Chronologically, the next issue is the events of 29 September 2016 that formed the subject matter of the claimant's alleged protected disclosures.

53. The only people who were witnesses before us who were in a position potentially to give direct evidence about what occurred were the respondent and Michelle Allsop. The claimant and her two witnesses could not tell us what actually happened because they were not present during the incident itself. They merely spoke afterwards to someone who was potentially involved.

54. Charlotte Moseley, in many ways the best witness of all that we heard from in general terms, gave a materially different account from that of the claimant and Ms Adris, an account that didn't fit with other documentary evidence we have. We think that in this respect, Miss Moseley gave wholly honest but mistaken evidence.

55. The respondent and Michelle Allsop were very clear and firm and consistent in their denials that anything untoward had happened and, as best we can tell from her emails and messages, Sophie Davies, the person at the centre of this allegation, denies it happened too.

56. We don't think we could or should decide what happened as between Sophie Davies and the respondent. That is the subject matter of an investigation by the GDC and, as we have already noted, there is no direct evidence whatsoever before us of any substance that the respondent did anything wrong. Moreover, it is not necessary for us to make a decision either way about what actually happened between the respondent and Ms Davies in order for us to decide this case, because we are concerned not with what happened, but what the claimant (reasonably or otherwise) believed had happened.

57. We are entirely satisfied that there was an incident of some kind; that the claimant and her witnesses were not simply making something up. In her message to Ms Davies of 12 March 2017, the claimant referred to, "*the incident where you were left alone to carry out treatment on a sedated patient last summer*". It is extraordinarily unlikely that the claimant would invent this completely, and then contact Ms Davies to warn her using this invested information, when she would know that Ms Davis would simply deny it completely. The obvious reason why the claimant would contact Ms Davies in this way is that she thought Ms Davies would provide corroboration. Further, Ms Davies's reaction when contacted was not, "what are you talking about?" or anything of that kind. Instead it was, "*How has that been bought up now?*" and, then, a little later, "*I felt uncomfortable but after reassurance from my indemnity, I felt okay.*"

58. Something did, then, happen that made Ms Davies feel uncomfortable and that concerned her sufficiently for her to contact her professional indemnity insurers/advisors.

59. From the fact that the claimant and both her witnesses evidently understood that Ms Davies had been left alone with a sedated patient, whatever actually happened and whatever Ms Davies actually said at the time, on balance we accept that what she said was reasonably understood by the claimant to mean that the respondent had indeed left Ms Davies with a sedated patient.

60. Everyone agrees that if the respondent had left Ms Davies with a sedated patient, this would be a very serious matter. From the action the GDC is taking, it's clear that they think so too.

61. Logically, the next issue to deal with is whether the claimant made a protected disclosure, even though this issue is not the next one in chronological terms. In light of the findings we have already made and from the respondent's concession that if there was a qualifying disclosure it was a protected one, the respondent's only remaining point of any substance is that: what the claimant says about the contents of her alleged protected disclosures is very vague; we can't, the respondent submits, be satisfied that she actually disclosed any relevant "*information*" (as opposed to, for example, making mere allegations without any facts behind them).

62. We reject that point. The gist of the claimant's evidence was very clear that she told both the GDC and the CQC that a dental therapist had been left alone with a sedated patient. She must have communicated that to the GDC because of the action they took; we infer that it was her communicating that information to the CQC that led to the CQC inspection on 9 February 2017. On the balance of probabilities, the claimant did raise two protected disclosures.

63. We return to the allegations of conduct said to form part of the alleged breach of the trust and confidence term.

64. The next allegation is that the claimant was deliberately targeted and isolated in that she was always ("*whenever*" is used) selected to work in surgery 7.

65. The specific example of this treatment provided by the claimant is a message sent to her on 11 January 2017 telling her that she would have to work in surgery 7 because the respondent was running seven surgeries that afternoon.

66. We have partial concessions from the respondent in relation to this allegation. Ms Stewart agreed that the claimant was sent to work in surgery 7 far more frequently than others, although she told us that this was because the claimant was the most experienced of the dental therapists who might have been sent to work there. In the document she produced dealing with the claimant's grievance appeal, Emily Cairns explained that between the 1 November 2016 and the 19 April 2017, the claimant had worked in surgery 7 for a total of 15½ days and the other therapists just 2½ days.

67. We accept that the claimant genuinely did not like being in surgery 7 and believes that it is not suitable for use by a dental therapist. We note that to a significant extent, it seems Miss Moseley agrees with the claimant about this. However, we do not accept that it is objectively so. Both the CQC and the GDC have been looking into the respondent. The claimant, seemingly amongst others, has complained about the respondent and its practice to both. If the claimant had thought surgery 7 was dangerously unsuitable and/or did not comply with relevant regulations, she would undoubtedly have reported this to the CQC (and/or possibly, the GDC) as a specific issue and they would then specifically have inspected it. From the fact that no regulator has taken any steps to shut surgery 7 down, we can assume either that the claimant at the time did not think it was a serious issue from a regulatory point of view, or that she reported it as a serious issue but that the relevant regulators looked into it and did not agree.

68. We accept that surgery 7 was not an ideal place to do dental therapy in, in particular because of the lack of decontamination facilities within the building that surgery 7 was part of. However, we reject the notion that being required to work there caused any significant damage to the trust and confidence term. Being asked to work somewhere that is sub-optimal on 15½ days over a 5½ month period is not the stuff of which breaches of the trust and confidence term are made.

69. We also accept Christine Stewart's evidence that after the claimant raised her grievance, steps were taken to minimise the number of occasions when the claimant was allocated to surgery 7. That evidence fits with the fact that the claimant's pleaded allegations do not include anything about surgery 7 dating from after she raised her grievance, e.g. there is nothing about this in her list of alleged detriments.

70. Moreover, we reject as an inherently highly implausible the notion that the respondent would deliberately try to use allocating the claimant to surgery 7 as a means of getting at her; it would be a strange and convoluted way of persecuting somebody. We note that on the claimant's own case, the surgery 7 issue arose before she blew the whistle and that the respondent had no real reason at all, good or bad, to want to get at the claimant prior to the claimant blowing the whistle.

71. The next issue is the allegation of a reduction in appointment times from 15 to 10 minutes.

72. We note, first, that this must have arisen before 23 November 2016 because the issue was, apparently, discussed at a meeting on that date.

73. The respondent agrees that particular appointments for children were indeed reduced to 10 minutes, but disagrees that appointments of others were reduced in this way, at least not routinely.

74. We have found the claimant's case in relation to this a little bit confusing. The claimant makes similar allegations about appointment times being reduced in relation to a number of different dates and with different details being provided.

For example, she alleges that appointments were reduced to 10 minutes from the afternoon of the 10 May 2017 as part of detriment allegation 12. Also, in her witness statement, she suggests that the reduction was from 20 and not 15 minutes to 10 minutes. Also, in a message of 14 December 2016, she complains about appointment times being booked in for 15 or 20 minutes instead of 30 minutes. Also, in relation to a complaint she makes about 19 April 2017 which we shall deal with later, we can see that before the changes to her appointment list on that day that she complains about were made, she did not have nothing but 10 minute appointments, meaning it can't have been the case that her appointments were routinely reduced to 10 minutes from November 2016. Moreover, her complaint about 19 April 2017 is about her diary being adjusted so that she had almost nothing but 10 minute appointments, which appears to have been an exceptional thing to happen around about that date, hence her complaining about it. If 10 minute appointments were exceptional, or at least unusual, in April 2017, they can't have been the norm from November 2016.

75. The limited evidence that we have about the claimant's appointments diary on particular days does not suggest that 10 minute appointments were routine for her at any time. It is true that the respondent has not done what we would have expected it to, in terms of producing evidence in the form of, perhaps, a sample of the claimant's appointment diaries to show that the claimant was not routinely doing 10 minute appointments. But that would only matter if we thought the claimant had done enough evidentially to call for an answer from the respondent. We don't think she has.

76. The respondent effectively concedes that because of pressure to meet targets and because of the number of staff leaving, the claimant, along with other clinical staff, was expected from summer/autumn 2016 onwards to see more patients than had formerly been the case. However, the evidence that appointment times were routinely reduced to 10 minutes is sketchy. We again note the lack of consistency in terms of what the claimant's precise allegation is. We also note that during her employment, the claimant clearly took it upon herself to gather ammunition to support her grievance allegations. Bearing this in mind, that we only have a handful of examples of occasions when the claimant had lots of 10 minute appointments to contend with, and that those occasions appear to be out of the ordinary, is quite strong evidence against this part of her claim.

77. We are not satisfied that the claimant was routinely given 10 minute appointment slots except for particular appointments with children (which the respondent agrees were supposed to be 10 minutes only), still less that she was specifically targeted in this way. This allegation, then, fails on the facts.

78. The next allegation relates mainly to a message that was sent by the respondent to the claimant on 21 November 2016.

79. The respondent asked the claimant to see one of her patients. The claimant was willing only to take the patient's history. The respondent then sent a

message to the claimant: "*Please see and treat otherwise I won't get your wages to you in time.*"

80. The claimant states in her witness statement, "*I felt extremely threatened and intimidated by this message*".

81. The claimant appeared honestly to believe in front of us that this was a wholly unreasonable and genuine threat to her wages. Objectively, it was no such thing. All the respondent was really saying was that she was busy; and that if she had to take time out of sorting payroll to go and see this particular patient, staff, including the claimant, might not be paid on time. It can reasonably be implied from the respondent's message that she was irritated when she sent it. But this incident had no impact at all on the trust and confidence term at the time of resignation.

82. The claimant's next allegation relates to patients being transferred, particularly from the respondent's own diary but from others' as well, disproportionately into the claimant's diary.

83. It is very difficult for us to engage with this as a general allegation so we propose to focus the specific allegations that we know about. The only comment we would make about it as a general allegation is that for the respondent to have deliberately overloaded the claimant in order to get at her, for no discernible reason other than baseless malice (which is essentially what the claimant is alleging), is inherently almost preposterous.

84. A particular incident relied on by the claimant in relation to this general allegation is one on 23 November 2016. In her witness statement, the claimant alleges that the respondent, "*instructed me to see an additional patient on top of another patient who was already double-booked. Dr Sharma was expecting me to see three patients within the allocated timeframe of one patient.*" On our assessment of the evidence, all that happened was that The respondent decided she wouldn't do one of her booked appointments – and she is the boss and that is her prerogative. It isn't at all clear from the evidence who decided that this appointment should be moved into the claimant's diary rather than someone else's. The claimant has assumed it was the respondent, but the documentary evidence doesn't tell us who it was and The respondent could not comment one way or the other when she was asked about it when giving oral evidence.

85. Putting that to one side, it would not surprise us in the slightest if there were occasions in this busy dental practice – and we are prepared to accept there were – when the respondent's appointments were moved into the claimant's diary in circumstances where the claimant did not have capacity, or at least reasonably felt she did not have capacity. That is simply the sort of thing that happens from time to time, in workplaces of many different kinds, up and down the country. It should not happen and no doubt on occasions it happened when it could have been avoided with a bit more thought and consideration, but that does not make it something threatening the relationship of trust and confidence.

86. We note that part of the claimant's allegation is that things were moved *disproportionately* into her diary. That part of the claimant's evidence was not substantially challenged and in particular, the respondent put forward no evidence to rebut it. It would have been an easy thing for the respondent to do. In these circumstances, on balance, we accept that the claimant received a disproportionate share of the respondent's appointments that she wanted moved out of her diary. We have no evidence as to why this might have happened.

87. Again, however, we note that the claimant has sought out evidence to support her grievance and has found the evidence, and the incidences, that best support the case she is trying to advance in these proceedings. If there were lots more examples of this happening, or examples where, objectively, the respondent's conduct was worse, we are sure the claimant would have produced them for us.

88. On the evidence, then, this was not something that happened a lot and was something that had happening from at least November 2016. Objectively, it was an irritation, and not more than that, and a very longstanding one by the time of the claimant's resignation.

89. Moreover, the respondent's failure to explain why the claimant was disproportionately burdened with work does not make the notion that it was done as a deliberate ploy by the respondent to punish the claimant for non-existent crimes any more likely. A much more likely explanation is pure chance – it just happened that way.

90. We are not satisfied that what happened here in terms of the allocation of work to the claimant was anything more than an example of something going wrong in an everyday kind of way; something annoying and unreasonable, but far from something that might have been causing significant damage to the relationship of trust and confidence at the point of resignation.

91. The next relevant allegation relates to what happened at a meeting on 23 November 2016 following the incident we have just been discussing.

92. We don't think there are any material differences between the claimant's version of the meeting and that of the respondent. The respondent was cross with the claimant for, without first discussing it, moving back into the respondent's diary something that had just been moved out of it and into the claimant's diary. The respondent took the claimant to task for this, amongst other things accusing her of not being a team player and saying that if the claimant had a problem with the length of appointments, the claimant could raise it with NHS England, which the claimant at the time did not do.

93. We aren't at all surprised that the respondent got cross with the claimant about this. The respondent is, as we have mentioned, the claimant's boss. The claimant should not be putting things into her boss's diary that have deliberately been moved out of it. What she should have done, if she simply did not have time to see the patient, was to have a discussion with the respondent. Equally,

the respondent probably went rather over-the-top in the language she used at the meeting.

94. This was an incident that occurred nearly six months before the claimant resigned and nearly four months before she raised her grievance. It had no impact on the relationship of trust and confidence by the time of resignation.

95. The next specific incident chronologically is the allegation that, "*on the 20 December* [2016]*, Dr Sharma was instructing other members of staff to move patients on to my list… when other members of staff are also free to see these additional patients and have the additional time.*" (quotation taken from the claimant's evidence supplied on 9 May 2017).

96. In relation to this, we repeat what we have just written about the transferring of work from the respondent's diary to the claimant's on 23 November 2016.

97. The next incident is an allegation that on 15 February 2017, following the surprise CQC Inspection on the 9th, Ms Stewart stared at the claimant in an intimidating way.

98. This is, perhaps surprisingly, not raised as an allegation of whistleblowing detriment. If it's relevant at all, it is as part of the alleged breach of the trust and confidence term.

99. In our view, even if we accept entirely that what the claimant perceived as having happened did in fact happen, and that, "*Ms Stewart stated that the visit was due to a complaint made by an employee and at that moment, Ms Stewart stared directly at me. I felt extremely uncomfortable and intimidated by Ms Stewart's attitude and demeanour throughout the meeting*" (from the witness statement), it would be almost completely irrelevant to whether, some three months later, there was, objectively speaking, a breach of the trust and confidence term.

100. We are not, in any event, satisfied that the claimant's perception was accurate. We note the inconsistencies in the accounts of what happened. The allegation in the witness statement is of her being stared at once and of her being made to feel uncomfortable and intimidated by something unspecified about Ms Stewart's attitude and demeanour. In the grievance, the allegation seems to be that she was stared at and had been specifically addressed throughout the meeting. Ms Adris's evidence was about unspecified "*strange behaviour*" and, again, about focussing on the claimant, rather than about Ms Stewart looking at the claimant pointedly at a particular moment during the meeting. We also think it likely that the claimant was worried that someone would find out it was she who had contacted the CQC and that this caused her to be hypersensitive about Ms Stewart looking in her direction and to read into Ms Stewart's demeanour indications that she did in fact know that the claimant was the whistleblower.

101. Finally, we note the claimant's case in relation to protected disclosures was that the respondent did not find out about the whistleblowing until March 2017, and she has not suggested any means by which the respondent might have found

out that she was whistleblowing before that month in the Further Particulars. In cross-examination, it was not put to Ms Stewart that she suspected the claimant was the whistleblower because of anything in particular. In the absence of any apparent reason for Ms Stewart to suspect the claimant as being the whistleblower, we are not satisfied that she did suspect the claimant in February 2016.

102. The next allegation, or set of allegations, relates to 21 February 2017. This is another alleged threat to wages, very similar to the incident in November 2016. We repeat in relation to this incident on the 21 February what we wrote above in relation to the November incident. Objectively assessed, this was not remotely close to being a threat not to pay the claimant, or even to delay paying the claimant. It was merely the respondent expressing irritation at being interrupted when all she was trying to do was to make sure that staff, including the claimant, got paid on time.

103. The next allegation is about the introduction of a new rota at the beginning of March 2017. This is the allegation that was originally made as an allegation of protected disclosure detriment but which was withdrawn as such part of the way through this hearing.

104. The respondent had, we find, nothing to do with the production of this rota. It was produced by Ms Stewart. We can see why the claimant didn't like the rota. The problem with it was with one day out of four, where the arrangements made in relation to the claimant, in terms of where she would be working and what nurses she would be working with, was not ideal. The claimant complained about it and it was immediately or very quickly changed. It forms no significant part of any breach of the trust and confidence term.

105. The next allegation is that, on 3 March 2017, the respondent made the claimant's diary as busy as it could possibly be. In relation to this allegation, we repeat what we have already written in relation to the similar allegations relating to 20 December and 23 November 2016.

106. The next allegation is about the denial of a holiday request, in particular, it seems, about the respondent's denial of the claimant's appeal against not allowing her holiday on 23 and 24 March 2017. The appeal was denied on or about 7 March 2017.

107. From the claimant's appeal letter, it is clear the respondent was planning to run six surgeries on 23 and 24 March 2017, meaning that the only way the claimant could take those days as annual leave would be if the respondent employed a locum. Employing a locum would obviously cost the respondent money the business would not otherwise have had to spend. In our view, it was within the respondent's managerial prerogative not to employ a locum. There is no evidence of malice or bad faith. We note this is the only occasion we have been made aware of where there was any issue with the claimant's annual leave. Again, we assess this as insignificant in terms of whether the trust and confidence term had been breached at the time of resignation.

108. The next allegation is of the respondent allegedly expecting the claimant to carry out duties outside the scope of her practice and then, in retaliation for the claimant's refusal to do so, of the respondent moving patients from other therapists' lists and her own list to the claimant's diary.

109. This is one allegation in relation to which the paucity of the respondent's evidence is unhelpful. The claimant has consistently been making this allegation, which is about 10 March 2017, since May 2017. Yet it is not specifically addressed in the respondent's witness statement. And in her oral evidence, the respondent gave very general answers. (The respondent's oral evidence, generally, was vague and for us, took the matter no further).

110. The respondent's evidence consists of a general denial and, in relation to the grievance outcome of Ms Stewart, statements that almost entirely miss the point in relation to this allegation. For example, in Ms Stewart's grievance outcome letter of 18 May 2017, it is said that the claimant's diary was not overloaded compared with others and that, "*no patients were treated by you without a valid prescription of a dentist*". This misses the point: the claimant's allegation is that she was asked to treat a patient without a valid prescription from a dentist and that she refused to do so and that in retaliation, however her list had appeared before compared with others, patients were moved into her list so as to make her busier than she would otherwise be.

111. Substantially, the claimant's case on this point has not been challenged. Weighing up, on the one hand, the claimant's very specific allegation and, on the other, the respondent's very general denial, we uphold the claimant's allegation.

112. This is a relatively serious matter, and undoubtedly would have some significant impact on a relationship of trust and confidence. However, it occurred on 10 March 2017, some two months before the claimant resigned. Moreover, it was part of the claimant's grievance. She elected not to resign in response to it but instead to go through the grievance process. Given in particular that she did not wait for the grievance outcome before resigning, we do not think it had any great significance in relation to the trust and confidence term at the point of resignation.

113. We now move on in the narrative to matters that the claimant relies on as detriments to which she alleges she was subjected because she made protected disclosures. The next issue that we have to deal with is therefore: did the respondent know or suspect the claimant of having made protected disclosures? If the respondent did not know or suspect this, then that can't have been the reason for any detriments to which the claimant was subjected and the entire whistleblowing claim therefore necessarily fails.

114. The claimant does not, of course, know what the respondent knew or suspected. The respondent and her witnesses categorically denied that they knew or suspected that the claimant was a whistleblower prior to her resignation. So, in order to find in the claimant's favour on this point, we would have to infer from the evidence that the respondent probably did know or suspect, and that she is lying about this.

115. The claimant made two protected disclosures: one to the CQC and one to the GDC. The focus of the claimant's whistleblowing claim has, however, been almost entirely on the protected disclosure to the GDC. We shall start with that.

116. The claimant's case as set out in her Further Particulars of Claim is that the respondent became aware of the claimant's disclosure to the GDC on or around 13 March 2017. The basis of this contention is that it was on 13 March 2017 that there was contact between Ms Davies and the respondent.

117. Other than oral witness evidence from the respondent herself, and to a limited extent from Ms Stewart, we have no direct evidence as to what Ms Davies said to the respondent on and around the 13 March 2017. What we do have direct evidence of, however, is what passed between the claimant and Ms Davies that prompted Ms Davies to contact the respondent. Amongst other things, Ms Davies was told by the claimant that someone, unspecified, had contacted the GDC and that the claimant had the name and telephone of a particular person at the GDC who was dealing with the matter. We think if all of that information had been passed on to the respondent by Ms Davies, it is probable that the respondent would at least have strongly suspected that it was the claimant who had contacted the GDC. In fact, even if all that had been passed on to the respondent by Ms Davies was that the claimant had told her that someone had contacted the GDC, we think it is probable the respondent would have suspected the claimant.

118. We know that Ms Davies left a voicemail message for the respondent and subsequently spoke to the respondent on or around 13 March 2017. It also appears that at some point the voicemail message was played to Ms Stewart and/or that the respondent discussed the contents of Ms Davies's communications with Ms Stewart. The voicemail was not in evidence before us. Apparently, and unsurprisingly, it was deleted some time ago. The only near-contemporaneous evidence as to what Ms Davies said to the respondent is a paragraph in Ms Stewart's letter addressing the claimant's grievance of 18 May 2017. The relevant part of that paragraph is as follows: "*You had contacted her and told her to whistleblow to the GDC about something that she knew nothing about and that had not occurred. She was distressed and worried about the false allegations that were being made.*" In witness evidence before the tribunal, neither Ms Stewart nor the respondent said anything relevant that added to or was inconsistent with what Ms Stewart had written in that letter.

119. If all the respondent was told was that the claimant had contacted Ms Davies and told her to blow the whistle to the GDC, then we don't think the respondent would have suspected that the claimant had herself reported to the GDC. We bear in mind: that, from the respondent's point of view, even on the claimant's case, nothing had happened with or in relation to the alleged incident since September 2016; that the claimant was not herself involved in the incident; that the respondent would not have known about the conversation that had taken place between Ms Davies and colleagues afterwards. Indeed, there wasn't an incident at all, so far as the respondent was concerned: even if we accept the claimant's case that there was wrongdoing, the respondent would have thought it had 'got away with it' prior to 13 March 2017. We don't see why the

respondent – particularly when she was distracted on the day by being in the employment tribunals on another case – would have made the logical leap from:

119.1 the claimant encouraging someone to report to the GDC an incident that the claimant was not involved in herself; to

119.2 the claimant might well herself have already reported it to the GDC.

120. The question therefore becomes: are we satisfied that Ms Davies told the respondent more than is recorded in Ms Stewart's grievance outcome letter and more than is detailed in paragraph 14 of the respondent's witness statement? We are not. We have carefully been through our notes of cross-examination of the respondent when deliberating. A little to our surprise, we discovered that the suggestion that Ms Davies had told the respondent more than is recorded in the grievance outcome letter and in the respondent's witness statement was never put to the respondent. An unspoken assumption – not based in the evidence – seems to have been made that what Ms Davies told the respondent was what the claimant had told Ms Davies. In any event, in the absence of any evidence from Ms Davies on the point, and in circumstances where the claimant herself can have no idea of what was said by Ms Davies to the respondent and of any hint in any of the other evidence that this information was passed on to the respondent by Ms Davies, we would have considerable difficulties in making a finding that it was passed on even if the allegation had been put.

121. It follows that we do not think the respondent knew or suspected the claimant of having gone to the GDC at any relevant time and that all whistleblowing complaints relying on the protected disclosure to the GDC fail.

122. We turn, briefly, to the question of when, if at all, the respondent had knowledge of the claimant's whistleblowing to the CQC.

123. The claimant has no pleaded case in the Further Particulars relating to knowledge of the protected disclosure to the CQC. We have already decided we are not satisfied that the claimant was suspected of being a whistleblower to the CQC prior to or at the meeting on 15 February 2017. If the respondent didn't get that knowledge or suspicion from the inspection of the CQC on the 7 February 2017, and we have found that if she didn't, where else could she have got it from? From the evidence before us, the CQC inspection was the only potential source of knowledge prior to the claimant's resignation. It follows we are not satisfied that the respondent knew or suspected the claimant of being a whistleblower to the CQC and that all of the whistleblowing complaints therefore fail.

124. The whistleblowing complaints do, however, remain potentially relevant in relation to the constructive unfair dismissal complaint.

125. The next allegation relates to the 23 March 2017. A number of allegations are made about that date. The first set of allegations, which form whistleblowing detriment complaint 5, relates to a nurse being told to keep an eye on the claimant and being instructed to inform the respondent via instant messaging

whenever the claimant had finished with a patient. It is stated in the Further Particulars, "*Later that day, a general message was sent to all members of the clinical staff, however, the claimant had been singled out in the first place.*"

126. The message to all staff referred to was sent out at 10.36 am. If The respondent did indeed instruct the nurse as alleged, it would not have been a long time before then. The respondent could not really remember what happened on that day at all, but why should we assume – as the claimant is effectively alleging us to – that the respondent did not give a similar instruction to other nurses? Although the claimant evidently felt she was being picked on, we are not satisfied that that was actually so. In any event, the claimant admitted in her evidence that (possibly because she felt she was being unfairly burdened with work) she tended not to tell the respondent as soon as she had discharged a patient or as soon as she was free. So, in relation to her, at least, there was reasonable and proper cause for the respondent to give such an instruction.

127. The other allegation made about 23 March 2017, which formed the subject matter of detriment complaint 6, is put in the Further Particulars as follows: "*The claimant saw one of Dr Sharma's patients. When Dr Sharma came to complete the assessment, she ignored the claimant, giving instructions for her through her nurse Teri Zerzeko, despite the claimant being present, leaving the claimant feeling humiliated.*"

128. This is the kind of incident that is almost impossible for us as a tribunal to get right to the bottom of. Whether someone is ignoring you and/or being rude towards you in the circumstances described by the claimant is very subjective. We entirely accept that what the claimant told us of the incident is what she remembers as having happened. But that does not necessarily make her evidence 100 percent accurate. Our conclusions in relation to this incident are: we are not satisfied that the respondent was intentionally rude; the respondent may well have come across as off-hand or rude, but we are not satisfied that anything that happened on the day is of any significance in relation to whether the trust and confidence term was breached nearly two months later when the claimant resigned. Again, we note, amongst other things, that this formed part of the claimant's grievance, in that it was raised as part of the information provided to Ms Stewart by the claimant on 9 May 2017, and that the claimant did not wait for the grievance outcome before resigning.

129. We should say that we are not suggesting the claimant resigning before the grievance outcome is determinative of this or any other issue, merely that her case might be a little stronger and more internally consistent had she waited for the outcome before resigning. Our main point is that bearing in mind when she resigned, when this incident occurred, and the seriousness of this incident it does not contribute significantly to any breach of the trust and confidence term at the point of resignation.

130. The next allegation relates to late March or early April 2017 and appears in the Further Particulars as detriment allegation 7: "*In April 2017, Dr Sharma instructed her dental nurse Mrs Shannon Tarr to "keep a closer eye on the claimant".*"

131. We had no evidence from Shannon Tarr before us. We didn't even have as a live witness Malina Rai, who allegedly overheard Shannon Tarr and the respondent talking. The claimant does not know what was said. The evidence we have is her version of what Malina Rai told her that the respondent had been overheard telling Shannon Tarr. We also have a signed statement from Malina Rai. The scope for mishearing and misunderstanding is considerable and the reliability of the evidence we have is small. We are not satisfied that anything untoward was said or done.

132. The next allegation relates to the 3 April 2017. It appears, amongst other places, as detriment allegation 8. It is another allegation of the claimant being overloaded with work. In relation to this allegation, we simply repeat what we said about the previous similar allegations: see what is stated above in relation to 23 November 2016.

133. The next allegation relates to the 3 April 2017. It is in the list of alleged whistleblowing detriments as number 9. It is an allegation that the respondent messaged the claimant requesting that the claimant let everyone know when she did not have a patient and that no other members of staff received this message. This allegation was omitted from the claimant's witness evidence. It is not proven to our satisfaction that the claimant was sent a message in circumstances where other people were not sent similar messages. In any event, as we stated above in relation to the instruction given and message sent on 23 March 2017, there was reasonable and proper cause for singling out the claimant in this respect.

134. There seem to be two allegations made about, or relating to, 4 April 2017. The first concerns the respondent transferring a fitting of a soft occlusal guard on to the claimant's list. It is not an allegation which is on the list of whistleblowing detriments, nor does it appear in the claimant's witness evidence. It features only in the information provided by the claimant to Ms Stewart on 9 May 2017. In the circumstances, we find that this is not proven and in any event, it seems to be a further example of things being moved into the claimant's diary that she would rather were not moved there and in relation to it we repeat exactly what we said about a previous incidents of a similar nature, e.g. about 23 November 2016.

135. The other incident on 4 April 2017 is in the list of detriments as detriment 9: "*Dr Sharma messaged the claimant requesting that she let everyone know when she did not have a patient. No other members of staff received this message.*" As already noted, possibly because she felt she was being unfairly burdened with work, the claimant tended not to tell the respondent or anyone else as soon as she had discharged a patient, or when she otherwise had gaps. There was reasonable and proper cause for the respondent to target the claimant in particular with messages about letting others know when she was free.

136. The next allegation, although a general allegation is made, is, on the evidence, about something that happened on 10 April 2017. In the information that the claimant provided to Ms Stewart on 9 May 2017, it is put on as follows, "*Ms Sharma recently on numerous occasions expects me to stay behind my working*

hours to see patients originally on her list. Again, expecting me to carry out duties that I have not trained in adequately." That is the general allegation. The specific allegation, as set out in the Further Particulars, is, "*Dr Sharma instructed the claimant to stay behind after work and take photographs for Dr Sharma's orthodontic patient. The claimant discussed the matter with Ms Stewart and informed her that she needed to leave by 7pm due to a prior arrangement and that normally it would not be an issue, but she had to leave at 7pm that day. The claimant was being asked to do this at 6.41pm with only four minutes left of available surgery time. Ms Stewart told the claimant to follow Dr Sharma's request to avoid getting in trouble. As a result, the claimant agreed and did not leave work premises until after 7.20pm.*"

137. We are afraid with think this is another incident that has been blown out of proportion. At most, it is an instance of the respondent being a little bit inconsiderate. We are not satisfied that the respondent herself was aware that the claimant had to leave by 7pm on that particular day. It is most unlikely that, even assuming the respondent wanted to get at the claimant for some unknown reason, she would choose to do so by taking time to give the claimant clinically useful experience of taking dental photographs.

138. The next allegation relates to the 19 April 2017. In the list of detriments, it is number 11 and is put in the following way: "*Miss Falconer, a dental therapist, called in sick. On the instruction of Dr Sharma, all of Miss Falconer's patients were transferred into the claimant's list despite the claimant's diary being full. This was done by reducing the time allocated for each of the claimant's existing appointments, putting her under extreme pressure and concerned about the level of care, service and treatment she would be providing.*"

139. Miss Falconer called in sick. No one was expecting her to. She had a full list of patients. The claimant was the only other therapist working that day who was available. The respondent had a dilemma: should an attempt be made to fit these patients in somehow, or should their appointments be cancelled? The respondent chose the first option. We would say that was a permissible option; or, to put in another way, was something the respondent had reasonable and proper cause to do. The situation was very far from ideal and we are sure the claimant had a very bad day and felt she did not have enough time to do her job properly. But it was a one-off incident, brought about by circumstances outside of the respondent's control. Objectively, it contributed nothing in terms of damage to the trust and confidence term at the point of resignation.

140. The next allegation is whistleblowing detriment number 12: "*On 27 April 2017 the claimant became aware that the respondent was advertising for a full-time dental therapist. The claimant believes that this was her job that was being advertised*".

141. We note that this was not an allegation that was made as part of the grievance. Having rejected all of the whistleblowing claims as whistleblowing claims, we have to think about the extent to which the allegations forming part of the whistleblowing claim are relevant to constructive dismissal. Almost all of them clearly are, in that they formed part of the claimant's grievance, including the

information and evidence supplied by the claimant in relation to the grievance in May 2017, before the grievance was decided. We think the claimant, when pursuing her grievance and putting in further information on 9 May 2017, would have mentioned everything that was praying on her mind at the time. Similarly, if something was not included in the grievance or that information, we don't think it was part of her reasons for resigning and is therefore irrelevant to constructive dismissal. The allegation forming whistleblowing detriment complaint 12 is accordingly irrelevant.

142. In case we are wrong about this, we shall consider this allegation as if it did form part of the claimant's reasons for resigning.

143. We, frankly, struggled to understand the claimant's point was in relation to this. All that was put in cross-examination to the respondent and her witnesses was that this was an advertisement for the claimant's position. It was not, for example, put that the respondent was planning on dismissing the claimant; and we don't think that that was the claimant's case anyway.

144. It follows that the claimant's case had to be one of two things. The first is that this advertisement was put out as a weird kind of taunt, in the expectation that the claimant would see it. That allegation was not put; and it would be rather a strange thing for the respondent to have done. The second is that the respondent anticipated the claimant was going to resign. Putting to one side the fact that that was not put in cross-examination either, how would the respondent know this? The claimant herself, on her own case, did not make up her mind to resign until after the grievance hearing.

145. We have no good reason to think that this advertisement was anything other than what is appears to be: an advertisement for a post that, at the time the respondent put it out, the respondent anticipated needing, in circumstances where everyone, the claimant included, agrees that the practice was extremely busy and possibly understaffed.

146. We shall take the next allegations slightly out of order and deal with something about 5 May 2017 before dealing with events of 4 May 2017. This is because the events of 4 May 2017 (and what stemmed from them) seem potentially to be amongst the most significant matters in relation to the constructive unfair dismissal claim.

147. In the information provided on the 9 May 2017, an incident on 4 April 2017 was put together with an incident on 5 May 2017 under the heading, "*Evidence of overbearing supervision*". What happened on 5 May 2017 is that the respondent messaged a number of members of staff stating that the claimant "*has gaps, please refer things across.*"

148. The claimant refers to being "*humiliated and victimised*" by that message. We are afraid with cannot see what was remotely humiliating about telling other people that the claimant had gaps in her diary. The message was sent in the afternoon – presumably because things were busy and there was a particular potential need at that particular time to move patients across. Even if it's right,

as the claimant alleges, that a colleague had had gaps in the morning on that day, we can't see the relevance of this.

149. We refer to what we wrote earlier about our assumption that the claimant had taken the time available to her to find the very best and strongest examples to illustrate her complaints. If these are the best and strongest examples of overbearing supervision, there was no overbearing supervision.

150. We turn, then, to 4 May 2017, the date of the claimants grievance meeting. We had originally understood that this was the 'final straw' for the purposes of the constructive dismissal claim. It formed whistleblowing detriment allegation 13 where it was put in the following way: "*The claimant attended her grievance meeting. Following the meeting, Head Nurse Michelle Allsop who was the notetaker in the grievance meeting was overhead discussing details of the claimant's grievance with other staff members, resulting in the claimant being questioned about her grievance by colleagues.*" It is put rather differently in the claimant's witness statement: "*I was sitting in the staff room for lunch, received a text message from Dr Rabia Dean who was seated next to the window to outside. Dr Dean's message said, "They're talking about it outside" … I was humiliated and shocked to hear that my personal matter was being discussed in such a way…. I immediately approached Ms Stewart in her office… Ms Stewart then investigated the matter, however ended up questioning the majority of the team, which in turn led to them finding out about my grievance also… In the days after the breach by Mrs Allsop, I began to notice that staff members were distancing themselves from me. I would enter a room and people would stop talking. I felt that I was being talked about and mocked*".

151. So far as concerns whether this allegation was the final straw, it was clearly being relied on as such by the claimant, at least initially. In her claim form, she stated, "*After the first meeting, Ms Michelle Allsop, Head Nurse, who was in the meeting as notetaker discussed details of the meeting with other members of staff, breaking confidentiality and also breaching trust with the company. After other members of staff found out about the situation, I felt that my position within the company was then untenable. I decided to resign.*" Similarly, the list of issues prepared by Employment Judge Hindmarch following the preliminary hearing on the 12 December 2017 indicates that at that stage, the claimant was relying on this as the final straw: "*one of the respondent's employees, Michelle Allsop, discussing her grievance with other members of staff and thus breaching her confidence*".

152. It is not practicable for us to reach a conclusion about whether staff were discussing the grievance, at least not with any confidence at all that we are right, in the absence of any evidence from Dr Rabia Dean. She was the only person who allegedly overheard people discussing things they shouldn't have been. The claimant heard nothing that was clearly and unambiguously about her grievance. If we had to make a decision on the allegation of breach of confidence either way, we would find it unproven.

153. But even if we were to assume in the claimant's favour that Michelle Allsop did tell other staff members about the claimant's grievance and/or was joking about

it with them on the 4 May 2017, we don't think this would be significant in terms of the relationship of trust and confidence. Within the Practice hierarchy, Michelle Allsop was not senior to the claimant, nor was she in a managerial or quasi-managerial position in relation to the claimant. If we were to accept the claimant's case, what would have happened would be that Michelle Allsopp was guilty of misconduct. The situation would be no different in kind from any situation where one member of staff commits an act of misconduct which adversely affects another member of staff. To have an effect on the trust and confidence term of any magnitude, the employer would have to have done something wrong and we don't think the respondent as an employer, did do anything wrong in relation to this incident. It was investigated promptly and reasonably thoroughly. The conclusion that no misconduct was proven was an understandable one on the evidence, given that Dr Rabia Dean evidently was a reluctant witness who wanted nothing to do with it. Staff were subsequently warned appropriately about the importance of confidentiality.

154. As already mentioned, the claimant complains in her witness statement that Ms Stewart, "*ended up questioning the majority of the team, which in turn led to them finding out about my grievance also*". The claimant did not elaborate on this in her evidence; she did not explain how she supposedly knew that staff found out about her grievance from negligent or improper questioning by Ms Stewart. No specific allegations were put to Ms Stewart in this respect, e.g. it was not suggested to her that she had asked questions improperly or negligently. Given the size of the respondent, it is almost inconceivable that staff generally would not have found out about the claimant's grievance sooner or later, whatever precautions the respondent sought to take in terms of confidentiality. The respondent had reasonable and proper cause for everything the respondent did as an employer in relation to this incident.

155. We quite understand the claimant's hurt and upset in relation to this incident. But it was not conduct by the respondent, or a significant part of conduct, without reasonable and proper cause calculated or likely to destroy or seriously to damage the relationship of trust and confidence.

156. The final relevant allegation relates to 10 May 2017. It formed the subject matter of whistleblowing detriment allegation 14: "*Dr Sharma specifically instructed the administration team that all appointments which routinely required 30 minutes were to be booked with the claimant for 10 minutes instead.*" It appeared in the claimant's witness statement as an allegation that the respondent had asked the claimant to carry out some treatment which the claimant believed she could not carry out until the patient had been examined by the respondent, that the respondent became cross about this, and that as a result, the respondent gave the instruction about reducing the time of appointments. In her statement, the claimant alleges she found out about the respondent being cross and the instructions about the timing of the claimant's appointments from a dental nurse.

157. At the point in the hearing when parties were about to start closing submissions, the Employment Judge raised openly a concern about what the Tribunal perceived as the lack of evidence from the claimant's side about precisely why she resigned. At the claimant's request, and with the respondent's consent, the

claimant was recalled to give evidence on that issue. Essentially, her evidence was that her reasons for resigning were a combination of other staff finding out about her grievance through Ms Steward's investigation and mocking and ignoring her and, allegedly, The respondent's bullying and harassment of her continuing. That evidence fitted with what was in her witness statement.

158. The problem we had in terms of a gap in the evidence was that the claimant, in her witness statement, had mentioned various things and had mentioned resigning but had not said, "*Those things were why I resigned*". One difference between what was in the witness statement, which the claimant had previously sworn was true to the best of her knowledge and belief, and what she told us was that in the statement – as set out above – she described that she "*felt like*" she was being talked about and mocked, rather than that this was definitely happening.

159. The respondent as an employer can do nothing about how an employee feels, nor can it do anything about alleged behaviour by staff, that it is not told about. The claimant made no specific allegations about particular members of staff behaving in ways she complains about. It is not alleged that senior members of staff such as Ms Stewart were involved. Nor has she given evidence that she complained about to the respondent or Ms Stewart and that nothing was done about it.

160. The only evidence we have about bullying and harassment by The respondent continuing after the grievance relates to the incident on 10 May 2017.

161. It seems to us in the circumstances that if there was a breach of the trust and confidence term at this time, it has to consist of what happened on 10 May 2018. Given the findings we have already made and applying the objective test that we have to apply, the relationship of trust and confidence was almost entirely intact immediately before 10 May 2017. This is not a case where there was already significant damage, just waiting for a final straw before the relationship was destroyed or seriously damaged.

162. Pausing there, even if we accepted entirely the claimant's case about what happened on 10 May 2017, there would not, in our view, be a breach of the trust and confidence term at the time of resignation, because that incident would not by itself, or virtually by itself, be enough to breach that term.

163. Moreover, we do not entirely accept the claimant's case about what happened. It looks to us as if, on 10 May 2017, a particular patient was given two ten-minute appointments back-to-back with the claimant. It also appears that this patient was already coming in at 12.45pm to see the respondent. So, on balance, we accept the respondent created these appointments for this patient to see the claimant on this day.

164. The claimant's broader allegation, however, seems to be that the respondent had issued instructions that from that point onwards, indefinitely into the future, the claimant would be expected to complete all appointments for the particular procedure referred to as Perio 1 within 10 minutes. That is inherently unlikely to actually have been the case. The respondent would have known the claimant

would not stand for it and she was aware that the claimant was well able to stick up for herself and did stick up for herself. Other staff would have felt The respondent was behaving unreasonably. It would only backfire on The respondent. In order for us to be satisfied that such an unlikely direction was given, we would need considerably more evidence than we have. The evidence we have consists of the claimant's evidence about what a nurse told her on the 10 May. The nurse could easily have understood what The respondent said and the claimant could easily have misunderstood what the nurse was telling her.

165. The only other evidence is to support the allegation that the respondent had given a general direction about the length of appointments that was intended to apply indefinitely into the future is an extract from the diary for a two-hour period on one day showing that on that day and over that period there was indeed a succession of ten-minute appointments booked in. We are not on that evidence satisfied that the respondent did indeed give what would be a bizarre instruction to the effect that come what may, every appointment of that type with the claimant would be ten minutes from then onwards.

166. In summary, although what happened on 10 May 2017 was probably capable of being a final straw as a matter of law in accordance with the case of Omilaju, it was not, even when taken in combination with everything else for which the respondent could legitimately have been criticised[1], the final act in a series that cumulatively amounted to conduct without reasonable and proper course calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. It follows that the claimant was not dismissed, and accordingly her unfair and wrongful dismissal complaints fail and are dismissed.

Employment Judge Camp

19/09/2018

[1] We recognise there are undoubtedly a number of matters that have been raised in evidence that we have not expressly addressed. We have focused on the allegations of substance that in our view potentially had some prospect of being part of a breach of the trust and confidence term. For the avoidance of doubt, in reaching our overall conclusion that the claimant was not constructively dismissed, we have considered and taken into account all of the evidence that was presented to us.