EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4102292/2018

Held in Glasgow on 18, 20, 21, 25, 26 June 2018

Employment Judge: Mel Sangster (sitting alone)

Miss L Somerville	**Claimant** **Represented by:** **Mr B McQuillan**
NSPCC	**Respondent** **Represented by:** **Mr B Nichol** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claim of constructive unfair dismissal is not well founded and is dismissed.

REASONS

Introduction

1. The claimant presented a complaint of unfair constructive dismissal. The respondent denied that the claimant had been dismissed, asserting that the reason for the termination of the claimant's employment was resignation.

2. The claimant also raised a claim of disability discrimination, but that claim was withdrawn and dismissed prior to the hearing before this Tribunal.

3. The claimant gave evidence on her own behalf and also led evidence from Catherine McKay, Margaret Ann McKay and Kathleen Kerr, who are all employed by the respondent as Supervisors. The respondent led evidence from Jayne Laidlaw (**JL**) the Childline Service Manager for Glasgow, Sharon White (**SW**) Supervisor, Anne Greswell, HR Business Partner, Martin Whelan (**MW**) Supervisor and Peter Watt (**PW**) formerly the respondent's National Services Director.

4. A joint set of productions was lodged and some additional documents were added by the claimant at the outset of the Hearing.

Issues to be determined

5. The issues in this case were:

   a. Was there an actual or anticipatory breach of a contractual term by the respondent?
   b. Was this breach sufficiently serious to justify the claimant's resignation?
   c. Did the claimant resign in response to the breach?
   d. If so, what, if any, compensation is due to the claimant?

6. During a Preliminary Hearing on 19 April 2018, the claimant clarified that the contractual term relied on was the implied duty of trust and confidence. Her position was that this was breached by the respondent when they failed to implement the Occupational Health Policy, failed to implement the Sickness Absence Policy, failed to implement the Redeployment Policy and implemented significant changes to terms and conditions of employment 'by the back door' after such changes were withdrawn from the scope of consultation.

Findings in Fact

7. The Tribunal found the following facts, relevant to the issues to be determined, to be admitted or proven.

8. The respondent is a children's charity, specialising in child protection. They operate a service called Childline, which was established in 1986. Childline rely heavily on volunteers in the provision of the service. Childline currently employs over 200 staff and has approximately 1,400 volunteers.

9. The Childline service currently operates from 12 bases across the UK, the largest of which are Glasgow, Birmingham and London.

10. When the service was set up, contact to Childline was generally via telephone, but the service has developed with advances in technology. Now, whilst some contact comes via telephone and email, the majority of the contact from children to Childline is via a live online chat facility.

11. There is considerable demand for the Childline service: its website has, on average, 62,000 visits per week. There were over one million contacts from children and young people to the service in the year 2016/17, with counsellors providing 268,000 counselling sessions to children and young people during the course of that year. There were however also 216,000 unanswered contacts, due to lack of resource.

12. The claimant's employment with the respondent commenced on 2 November 2009. She had previously worked with Childline as a volunteer. She was initially employed as a Childline Administrator and was promoted to the role of Supervisor from 13 February 2012.

13. The claimant's role involved managing, supervising and supporting counsellors (predominantly volunteers) in their interactions with children and young people, as well as training and recruitment. During the course of supervision shifts in the counselling room she would regularly require to undertake risk assessments

in relation to breaching a child's confidentiality (for example by calling an ambulance and/or involving the police where a child is suicidal) and also required to decide on appropriate safeguarding action, including liaising with other safeguarding agencies, such as the police.

14. The claimant initially reported to MW and thereafter to SW, both of whom were Senior Supervisors at that point. They, in turn, reported to the Childline Service Manager (CSM), JL.

15. The claimant's hours of work were dictated by a 10-week rota and included a variety of day, evening and weekend shifts. She did not however require to work night shift as part of the rota, as there was a dedicated night shift in Glasgow.

16. As the service was principally provided by volunteers, this could, at times, present administrative difficulties, for example if more/less volunteers turned up for a shift than anticipated. The respondent's preferred practice is that there should be a ratio of 1 supervisor for up to 5 counsellors and 2 supervisors for more than 5 counsellors. These ratios apply for live shifts – i.e. those where counsellors were dealing with live interactions via calls and live chat. For non-live shifts (i.e. emails), the ratio is 1:10.

17. There were however situations when either

    a. only one supervisor was scheduled to work, but more than 5 counsellors turned up for a shift; or
    b. more commonly, two supervisors were scheduled to work but one was unable to attend, for example due to illness.

In these circumstances, one supervisor required to run the shift on their own. Where the normal/preferred ratios were exceeded, the supervisors were given guidance on how to 'slow the room down' in order to mitigate the risk. This included taking counsellors off live interactions and moving them onto, for example, responding to emails only or ceasing all live interactions for that location, in which case all calls would be diverted to another location.

Supervisors have complete autonomy to manage the counselling room as they see fit.

18. During the course of any day or evening shift, cover for lunches and breaks would be provided by the supervisor assigned to office duties. That supervisor could also be called upon to assist if referrals required to be made. In addition, at any time, supervisors could call on support from their Senior Supervisor or the dedicated On-Call Manager (**OCM**).

19. The respondent recognises a trade union, Community. The claimant was a member of that trade union.

20. In January 2017, the respondent proposed changes to the shift patterns within Childline nationally and commenced a consultation process in relation those changes. Staff were aware, prior to then, that changes were being considered, as they had been asked, during the course of 2016, to complete an online questionnaire and to attend meetings with the senior management team in relation to shifts. The claimant, and many of her colleagues, had been anticipating that the shift review would result only in changes to start and finish times. The proposals announced in January 2017 were more extensive that that however: the way the respondent operated the Childline service nationally had been reviewed, to ensure a fairer distribution of work and that work was being carried out in the appropriate place at the appropriate time. This had potential consequences beyond the start and finish times of each shift, as changing shifts in any one location would have a knock-on impact in other locations.

21. The respondent wrote to the claimant on 16 January 2017 to advise her of the proposals and the consultation period. She was informed that, if the proposals were implemented in their current form, her role would be at risk of redundancy. An Employee Briefing Pack, which provided further detail of how the proposals may specifically impact Childline Glasgow, was enclosed with that letter. That document explained the business case for the proposals, the potential impact on Childline Glasgow if the proposals were implemented, the consultation

process and proposed timescales. The Employee Briefing Pack extended to 32 pages.

22. Throughout the consultation period, regular meetings took place with the trade union recognised by the respondent, Community. Detailed 'frequently asked questions and answers' in relation to the proposals were made available to all staff on a regular basis.

23. Staff were informed that they could apply for voluntary redundancy. Enhanced redundancy packages were to be made available to all staff, which would be in the region of three times greater than individuals' entitlement to statutory redundancy payments.

24. The claimant was unhappy about the potential impact on her role, should the proposals be implemented. She felt that the changes proposed, particularly proposals to increase ratios on live shifts from 1:5 to 1:7 and to increase the amount of time Supervisors spent in the counselling room, would create a health and safety risk. As a result of this, and the fact that she found shift work challenging, she intended to take the voluntary redundancy package and leave the organisation.

25. On 27 February 2017, via an email from PW and Peter Wanless, the respondent's Chief Executive, all Childline staff were informed that, as a result of the feedback received during the consultation process, the proposals were withdrawn and the changes to shifts and bases would not be implemented. The letter clarified however that some other, unrelated, changes would be proceeding. Those changes were detailed in the email.

26. Whilst the majority of staff were happy that their views had been listened to during the course of the consultation, and the proposals were withdrawn as a result, some staff were disappointed that the prospect of an enhanced voluntary redundancy package was no longer available. This included the claimant.

27. The February 2017 email also stated that the respondent recognised that the need for change remained, to meet the challenge of unanswered contacts from

children. To enable the respondent to identify how best to achieve that change, it was announced that the respondent's vice chair, Sir David Normington, would lead a group to consider how best to address this in detail. Their review would take until at least the end of 2017.

28. The claimant had monthly supervision meetings with her line manager, SW. The claimant got on well with SW, having worked with her for a number of years. She considered her a friend, as well as a colleague, and spoke to her about work and personal issues. At a supervision meeting on 6 March 2017, under the heading 'Health', the following was stated. *'You seem to have a lot of things coming at you at one time just now Leanne (challenging shifts/ and amount of high risk at one time/ ongoing difficult relationship with CCS/ emotional rollercoaster caused by the way the consultation period and results were delivered) and you are very aware of your stress levels rising in leaving you feeling more and more exhausted. You continue to do all you can to reduce stress but find at times that can be a struggle. If you continue to feel you cannot reduce stress levels Leanne you may consider contacting employee assistance program for support for, or your own GP. You will continue to keep me informed Leanne'*

29. In March 2017 it was identified that three particular shifts in Glasgow were regularly over-resourced: 2 supervisors were allocated, with the expectation of 10 volunteers attending as counsellors, but generally only 3 or 4 volunteers attended. It was accordingly intimated, at a meeting on 22 March 2017, that these shifts would run with one supervisor going forward. This was not a change of policy, it was ensuring that these shifts ran in accordance with the respondent's existing policy/practice, to ensure appropriate allocation of resources. The claimant was not present at this meeting, but was informed of what was discussed.

30. On 27 April 2017, Community raised with PW a number of concerns, including that *'some supervisors were being asked to cover shifts alone and the ratio of supervisor to CCS was being stretched.'* The matter was then discussed at a meeting on 17 May 2017. Later that day, PW sent an email to the individuals

who had been present at that meeting. He confirmed, in relation to supervisor ratios, that *'it's still 1:5 and then 2 supervisors for anything above 5 (and good practice that 3 for anything 15 plus). Nothing has changed on this front and they still have flexibility to mould this dependent on the demand in room – i.e. with a shift of 5, 7 people may turn up, but can choose to put 2 of these people on non-live counselling interactions (PIBs/SB/Shift Support) – judgement of supervisor and can call OCM for support if needed to slow down their room (and so perhaps another base can pick up slack if capacity).'*

31. The claimant commenced a period of sickness absence on 31 March 2017, as a result of work related stress. She initially self-certified and then produced medical certificates from 4 April 2017 onwards. She did not return to work prior to her resignation.

32. The respondent operates a Sickness Absence Policy (**SAP**), which details the procedure to be followed if an employee is absent due to illness and the payments they are entitled to receive. This policy states *'For employees on long-term sickness, i.e. greater than one-month, regular contact will be established by the line manager with an employee to check on their health and progress. The contact will typically be every two weeks and it is likely to be by telephone, although discretion will be exercised by the line manager, after consultation with the employee on this matter.'*

33. The SAP details trigger points, which, when exceeded, may require management action. These trigger points are as follows:

    a. More than seven days self-certified within a three-month period; or
    b. More than fifteen days sickness absence within a year (with or without a doctor's certificate).

These trigger points relate to short term, rather than long term, absence.

34. The SAP also addresses the possibility of face to face meetings with employees. It states that *'the line manager will decide whether a face to face meeting with the employee needs to take place. These meetings will always be necessary if*

    a. *the trigger points have been met,*
    b. *a pattern of frequent short absences is apparent,*
    c. *work related issues may have contributed to the sickness absence or*
    d. *there are other issues or concern to discuss.'*

35. There are a number of guidelines which support the SAP, in particular:

    a. Sickness Management in the Team Guidelines;
    b. Long-Term Sickness Absence Guidelines; and
    c. Occupational Health Referrals Guidelines (together **the Guidelines**).

36. The Sickness Management in the Team Guidelines state that *'for employees on long-term sickness i.e. greater than one-month, regular contact will be established by the line manager with an employee to check on their health and progress. The contact will typically be every two weeks and is likely to be by telephone, although discretion will be exercised by the line manager, after consultation with the employee, on this matter.'* These guidelines reiterate the position stated in the Sickness Absence Policy in relation to structured face to face meetings.

37. The Long-Term Sickness Absence Guidelines specify that four weeks' continuous absence constitutes long term sickness. Trigger points are not mentioned in these guidelines. The guidelines state that the employee and the line manager should maintain contact during the absence, that there may be a referral to occupational health (but no timescales are specified for this) and, thereafter, attendance review meetings may take place.

38. The Occupational Health Referrals Guidelines set out the circumstances in which a referral may be made and the process for doing so. No timescales or

definitive criteria are set for when a referral should be made, although it is stated that *'Your manager might refer you to occupational health if you have a health problem, including mental ill health problems that is affecting your work or causing you to take time off sick, particularly if your absence lasts for more than four weeks or there are concerns that the reason for your absence could be classed as a disability.'*

39. The respondent also operates Redeployment Guidelines, which state at the outset that they apply to *'colleagues who have been issued with a notice of redundancy and for managers who have team members under the notice of redundancy or who have vacancies during periods of redeployment.'*

40. The SAP, the Guidelines and Redeployment Guidelines all formed part of the respondent's Employee Handbook. The claimant's contract of employment with the respondent, dated 14 October 2015, stated that the '*Employee Handbook does not form part of this agreement and the Charity may change it from time to time.'*

41. At the commencement of her absence, the claimant telephoned her line manager, SW, to inform her of her absence. The claimant was very emotional during the call and explained that she didn't know how long she would be absent for. SW was aware that the claimant had been unhappy at work for a long time and the claimant had informed her that she was looking for alternative positions. SW understood that the claimant had intended to take the redundancy package proposed and was very disappointed when that possibility was withdrawn. SW was also aware, through discussions with the claimant, that the claimant was dealing with a number of personal issues around that time, which were causing her additional stress. SW could hear how upset the claimant was during the call and felt that she needed a complete break from work. SW assured the claimant that she should not worry about her absence and should focus on her recovery. SW indicated to the claimant that she didn't want to put pressure on her to return to work, so wouldn't contact her, but asked the claimant to contact her every

few weeks, at a time when she felt up to it, just to inform her how she was feeling. The claimant thanked her and indicated that she would do so.

42. As a result, the claimant telephoned SW every few weeks to update SW on her medical condition. She did not raise any concerns in relation to this arrangement and felt supported by SW during her absence. SW's objective, during this period, was to ensure no further pressure or stressors were placed onto the claimant, to give her an opportunity to recover.

43. During the telephone discussions with SW, the claimant remained very angry about the consultation process and the withdrawal of the option of redundancy. She was tearful when discussing this. She indicated throughout that she was unfit to return to work for the foreseeable future.

44. The claimant was aware of the respondent's employee assistance program, a counselling service where employees could access advice, information and support on any issues. She made use of this during her absence.

45. On 1 July 2017, during a call between the claimant and SW, SW mentioned the possibility of the claimant being referred for a consultation with the respondent's occupational health provider at some stage in the future. She did so to ensure the claimant was not taken by surprise if she received correspondence in relation to this from People Services.

46. On 11 July 2017, the respondent's People Services team sent the appropriate forms for an occupational health referral to SW, together with details of the process which required to be followed and the costs. SW indicated that her understanding was that it was JL who would decide if and when an occupational health referral was needed. She copied JL into that email and JL indicated that she did not wish to proceed with a referral at that point.

47. 27 July 2017 the claimant was issued with a further medical certificate confirming that she would remain unfit for work until at least 28 August 2017. She informed the respondent of this.

48. On 31 July 2017 People Services sent a further email to SW and JL, stating that they felt the possibility of a referral to occupational health should be reconsidered, in light of the fact that the claimant had been signed off again for a further month.

49. SW & JL discussed matters on 2 August 2017 and JL agreed to proceed with the referral to occupational health. People Services were informed of this. SW and JL also agreed that SW would ask to meet the claimant, informally, for a coffee to see how she was getting on, now she had been absent for 4 months.

50. Later that day, SW was informed by the claimant that she had been offered another job, subject to satisfactory references being received, and that a reference would accordingly be requested from the company. The claimant had applied for this position in July 2017 and attended the interview for the position on 31 July 2017. JL informed People Services that the claimant intended to resign and the health management referral was put on hold as a result.

51. The reference request was received on 7 August 2017.

52. A meeting took place between the claimant and the respondent on 11 August 2017. The claimant's trade union representative was also present. At the meeting the claimant's 8 week notice period was discussed. JL indicated that the respondent would agree to a shorter notice period, if the claimant wished, but that the claimant would only be paid until her last day of employment. The terms of the reference for the claimant were also discussed. Whilst the trade union representative proposed a termination package for the claimant, this was not entertained by the respondent.

53. The claimant formally resigned on 1 September 2017. She stated in her letter of resignation *'as you are aware, I have had a lengthy period of absence due to work-related stress. Even though Community Union advised Senior Management that the mismanaged consultation process and continued uncertainty could impact on the well-being of staff, people services offered no support. The organisation is also fully aware of the potential for vicarious trauma*

and burn out for practitioners working in this field, yet my only contact with People Services related to a payroll error. I feel that the organisation has breached my trust and confidence since the start of 2017 which has impacted on my health, general well-being and career prospects. Taking everything into consideration I feel I have no choice but to resign from my role as Childline Supervisor. Therefore, I request that my employment with the NSPCC be terminated with one week's notice on 8 September 2017.' In her cover email she stated *'I would like to emphasise to People Services that I am resigning because I feel the NSPCC is unable to fulfil its duties as my employer, not because of another job. I was seeking advice from the Union on how to exit the organisation as a result of work related ill-health prior to being invited to interview for the part time admin role.'*

54. The claimant's employment terminated on Friday 8 September 2017. She started her new role on Monday 11 September 2017, earning £12,000 per annum. She earned £32,616 in her role with the respondent.

Relevant Law

55. As an employee with more than two years' continuous employment, the claimant had the right not to be unfairly dismissed by the respondent, by virtue of section 94 of the Employment Rights Act 1996 (**'ERA 1996'**). 'Dismissal' is defined in s95(1) ERA 1996 to include what is generally referred to as constructive dismissal, which occurs where the employee terminates the contract under which he/she is employed (with or without notice) in circumstances in which he/she is entitled to terminate it without notice by reason of the employer's conduct (s95(1)(c)).

56. The test for whether an employee is entitled to terminate his contract of employment is a contractual one. The Tribunal requires to determine whether the employer has acted in a way amounting to a repudiatory breach of the contract, or shown an intention not to be bound by an essential term of the contract: ***Western Excavating (ECC) Ltd v Sharp [1978] ICR 221***. For this purpose, the essential terms of any contract of employment include the implied

term that the employer will not, without reasonable and proper cause, act in such a way as is calculated or likely to destroy or seriously damage the mutual trust and confidence between the parties: ***Malik v Bank of Credit and Commerce International Ltd [1998] AC 20***.

57. Conduct calculated or likely to destroy mutual trust and confidence may be a single act. Alternatively, there may be a series of acts or omissions culminating in a 'last straw': ***Lewis v Motorworld Garages Ltd [1986] ICR 157***. As to what can constitute the last straw, the Court of Appeal in ***Omilaju v Waltham Forest London Borough Council [2005] IRLR 35*** confirmed that the act or omission relied on need not be unreasonable or blameworthy, but it must in some way contribute to the breach of the implied obligation of trust and confidence. Necessarily, for there to be a last straw, there must have been earlier acts or omissions of sufficient significance that the addition of a last straw takes the employer's overall conduct across the threshold. An entirely innocuous act on the part of the employer cannot however be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of their trust and confidence in the employer.

58. In order for there to be a constructive dismissal, not only must there be a breach by the employer of an essential term such as the trust and confidence obligation; it is also necessary that the employee resigns in response to the employer's conduct (although that need not be the sole reason - see ***Nottinghamshire County Council v Meikle [2004] IRLR 703***). The right to treat the contract as repudiated must also not have been lost by the employee affirming the contract prior to resigning. The passage of time alone does not constitute affirmation (and to that extent Lord Denning MR's comment in ***Western Excavating*** to the effect that the employee must act quickly requires qualification in some cases, such as when the employee is ill).

59. If an employee establishes that he has been constructively dismissed, the Tribunal must determine whether the dismissal was fair or unfair, applying the provisions of s98 ERA 1996. It is for the employer to show the reason or

principal reason for the dismissal, and that the reason shown is a potentially fair one within s98. If that is shown, it is then for the Tribunal to determine, the burden of proof at this point being neutral, whether in all the circumstances, having regard to the size and administrative resources of the employer, and in accordance with equity and the substantial merits of the case, the employer acted reasonably or unreasonably in treating the reason as a sufficient reason to dismiss the employee (s98(4)). In applying s98(4) the Tribunal must not substitute its own view for the matter for that of the employer, but must apply an objective test of whether dismissal was in the circumstances within the range of reasonable responses open to a reasonable employer.

60. If the Tribunal determines that the employee was unfairly dismissed, and in a case (as this case is) where the employee does not seek re-employment, the Tribunal must determine what, if any, compensation to award.

Submissions

61. For the claimant, Mr McQuillan stated that the claimant had endured a long period of uncertainty prior to her absence. That uncertainty was caused by the shift review and the withdrawal of the proposals. Despite the fact that proposals were withdrawn, changes to supervisor ratios were implemented. The respondent then failed to support the claimant during her long-term sickness absence. In particular they had failed to hold a structured face to face meeting with the claimant during her absence and failed to refer her to occupational health. This was the last straw which led her to resign. The terms of the respondent's sickness absence policy were apt for incorporation into the claimant's contract of employment and were breached. The only support provided to the claimant during her absence was via the Employee Assistance Programme, which was a telephone helpline. This was not a panacea in the circumstances.

62. For the respondent, Mr Nichol referred the Tribunal to s95(1)(c) of the ERA 1996 and the case of ***Western Excavating Limited v Sharp [1978] ICR 221.*** He indicated that the respondent had conducted a genuine consultation process,

during which the respondent listened to the concerns expressed by employees and then withdrew the proposal. There was no change to supervisor ratios – these remained consistent throughout. Supervisor ratios were not raised by the claimant as an issue at any stage prior to the termination of her employment. Her concerns had centred on the consultation process and the withdrawal of the possibility of an enhanced redundancy payment. The respondent's sickness absence policy was non-contractual and had not been breached. The respondent provided appropriate support to the claimant throughout her absence from work due to ill health and were, at all times, acting with her best interests in mind. The claimant resigned as a result of being offered another job, not as a result of being constructively dismissed.

Discussion & Decision

63. The Tribunal considered each of the matters relied upon by the claimant in maintaining that the respondent was in material breach of her contract of employment: namely that the respondent implemented significant changes to terms and conditions of employment 'by the back door' after such changes were withdrawn from the scope of consultation and then failed support the claimant during her sickness absence by failing to implement the Sickness Absence Policy, the Occupational Health Policy & the Redeployment Policy.

Implementing Changes to Terms & Conditions of Employment

64. The assertion that changes to terms and conditions of employment were implemented 'by the back door', after they were withdrawn from the scope of consultation, relates to the alleged changes to supervisor/counsellor ratios. The claimant's position was that the ratios were changed as a result of the meeting on 22 March 2017, when it was identified that three particular shifts in Glasgow were regularly over-resourced.

65. The Tribunal has found that the respondent's preferred practice was to have 1 supervisor for up to 5 counsellors and 2 supervisors for more than 5 counsellors. These ratios applied for live shifts – i.e. those where counsellors were dealing

with live interactions in the form of telephone calls and live online chat. For non-live shifts (i.e. emails), the ratio was 1:10.

66. The consultation, which commenced in January 2017, included a proposal to stretch the ratios for live shifts to 1:7. That proposal was however withdrawn on 27 February 2017 and was not implemented.

67. It was discussed, at a meeting on 22 March 2017, that it had been identified that certain shifts in Glasgow were over-resourced. Accordingly, it was proposed that the number of supervisors allocated on the rota for each shift would be dropped from 2 to 1, as routinely only 3 or 4 counsellors were present. There was accordingly no requirement for 2 supervisors on these shifts. The claimant was not present at that meeting, but the Tribunal accept that the terms of the discussion were relayed to her.

68. That discussion did not however represent any change to the claimant's terms and conditions of employment. There was no term in the claimant's contract which indicated that she would not undertake solo supervisor shifts and the respondent had no policy or procedure which stated there should always be two supervisors on shift. Their preferred practice/policy was for a ratio of 1 supervisor for up to 5 counsellors and 2 supervisors for more than 5 counsellors.

69. Similarly, the Tribunal do not accept that this decision amounted to a breach of the implied duty of trust and confidence. The respondent had reasonable and proper cause for their actions. They are a charity with responsibility to manage their resources appropriately. In light of the significant number of unanswered contacts from children and young people, the respondent had reasonable and proper cause to try to eliminate over-resourcing on any particular shifts, in line with their existing ratios, and to try to ensure better and more appropriate allocation of staff. During any solo supervisor shift the claimant would still have access to appropriate support - from her Senior Supervisor and the OCM, as well as the supervisor on office duty.

Failure to support the claimant during her absence

70. The Tribunal notes that the Redeployment Guidelines apply only in a redundancy situation. At the time that the claimant was absent due to ill health, she was no longer at risk of redundancy. There was no assertion during the evidence that the claimant should have been redeployed, or the respondent should have taken any other action by reference to those guidelines, while the claimant was at risk of redundancy. The Tribunal accordingly discounted those guidelines on the basis that they were not applicable to the claimant's circumstances.

71. The principal arguments asserted by the claimant during the Hearing were that the respondent had failed to support her during her sickness absence by failing to hold a face to face meeting with her, in accordance with the SAP, and failing to refer her to occupational health, in accordance with the Occupational Health Referral Guidelines.

72. The Tribunal notes that, at the outset of her absence due to ill health, she discussed with SW the arrangements for contact during her absence, namely that the claimant would call SW every few weeks, when she felt up to doing so, with an update on her condition. The claimant agreed with that arrangement and thanked SW for her understanding. That arrangement was in accordance with the respondent's SAP and the Long-Term Sickness Absence Guideline.

73. The claimant was herself a line manager and was accordingly aware of the terms of the SAP and the Guidelines.

74. The Tribunal noted that the claimant and SW were friends as well as colleagues. The Tribunal accepted SW's evidence that she was very fond of the claimant and was at all times seeking to support the claimant. The claimant agreed with the arrangements proposed by SW, adhered to these during her absence and did not, at any stage, suggest that alternative arrangements be put in place. During the course of SW's evidence, Mr McQuillan stressed to the Tribunal that the claimant did not seek to allege that SW had failed to support her during her

absence. The Tribunal find that the arrangements implemented by SW were reasonable and note that the claimant agreed to these. The claimant was aware of the respondent's procedure, being a line manager herself. In light of her good relationship with SW, the claimant would have felt able to indicate that she wished alternative arrangements to be implemented, if that was the case. The Tribunal find that, had the claimant indicated, at any stage, that she wished to meet with SW, or felt that any other arrangement would have been more beneficial in managing her absence, such as an occupational health referral, these would have been implemented by SW without hesitation. The claimant did not however do so.

75. The Tribunal do not accept the claimant's assertion that, under the SAP, a face to face meeting should have taken place with her after 15 days' continuous absence. The claimant asserted that it was always necessary to hold a meeting in those circumstances, given the triggers detailed in the SAP. The Tribunal find that the triggers referred to in the SAP refer to short term absences only. Once those triggers are met, a face to face meeting is required to identify any underlying issues. They are expressly stated to apply to a certain number of absences over the course of a either a three month period, or a year. They do not refer to long term sickness absence, which takes place over a continuous period. Within the same policy, long-term sickness is defined as being a period of greater than one month. Under the heading *'Staying in touch during sickness absence',* it is stated that regular contact will be established when an individual is on long-term sickness absence and that that contact *'will typically be every two weeks and is likely to be by telephone.'* This is entirely contrary to the assertion by the claimant that a face to face meeting was required after 15 days' absence. Similarly, the Long-Term Sickness Absence Guidelines make no reference whatsoever to trigger points. If the trigger points did apply to long-term absences, they would be mentioned in these guidelines.

76. The Tribunal do however accept that a structured face to face meeting, under the SAP, would have been appropriate as a result of the fact that the claimant was suffering from work related stress. The SAP does not however set down

any particular timescales for when that structured face to face meeting requires to take place in those circumstances. The Tribunal notes that SW had, by the start of August 2017, discussed and agreed with her manager that it would be appropriate to meet with the claimant in person. This was however superseded by the indication from the claimant that she intended to resign.

77. Similarly, in relation to the occupational health referral, the Occupational Health Referral Guidelines do not specify any timescales for a referral. By the start of August 2017, it had been agreed that this should be instructed. This was a reasonable timescale, given that the claimant had been off work for 4 months at this point and there was no indication of when she may return. The referral to occupational health would have proceeded, if the claimant had not indicated that she intended to resign. It was reasonable for the respondent to then put that referral on hold, pending clarification of whether the claimant would indeed be leaving the organisation.

78. The Tribunal also notes that the claimant was a member of the trade union, Community, and that trade union was recognised by the respondent. If the claimant had indeed been unhappy at the support provided by the respondent during her sickness absence, and felt that she should have been offered a face to face meeting and/or an occupational health referral, she could have discussed this with her trade union and asked them to raise this with her employer, or support her in doing so. She did not do so, despite the fact that she was in contact with Community in July 2017. Rather than ask them to raise these issues, she merely asked them to try to negotiate a package to terminate her employment on the grounds of ill health.

79. The Tribunal accordingly find that the respondent complied with the SAP and the Guidelines. They provided, principally through SW, appropriate support to the claimant during her absence.

Conclusions

80. In these circumstances the Tribunal find that the respondent did not, either by individual actions or cumulatively, breach any express term of the claimant's contract of employment with them, or the implied duty of trust and confidence. At all times, the respondent had reasonable and proper cause for its actions.

81. The Tribunal find that the claimant had been unhappy in her role for some time and became further disenchanted when the possibility of a significantly enhanced redundancy payment was proposed but did not materialise. After a period of sickness absence, she resigned as a result of that disenchantment, rather than any breach of contract on the part of the respondent. She was not constructively dismissed.

Employment Judge: Mel Sangster
Date of Judgment: 18 July 2018
Entered in register: 25 July 2018
and copied to parties