EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Ms S Jewell	AND	Cornwall Council

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bodmin **ON** 23 January 2024

EMPLOYMENT JUDGE N J Roper

Representation
For the Claimant: In person
For the Respondent: Mr A Gloag of Counsel

JUDGMENT

The judgment of the tribunal is that the claimant's claim for unfair dismissal is not well-founded, and it is hereby dismissed.

RESERVED REASONS

1. In this case the claimant Ms Shirley Jewell claims that she has been unfairly constructively dismissed. The respondent contends that the claimant resigned, that there was no dismissal, and in any event that its actions were fair and reasonable.
2. Rule 50:
3. An application was made and granted to protect the identity of two employees of the respondent, and accordingly they are referred to in this Judgment as Female Colleague ("FC") and Male Colleague ("MC") respectively, and without identifying their departments at work. In all other respects this was a public hearing without restrictions.
4. The Evidence:
5. I have heard from the claimant. I have heard from Mr Nigel Nightingale, Miss Alison Empson, and Mr James Langley on behalf of the respondent. The claimant also accepted the evidence of Mrs Kathryn Billing and Mr Samuel Davey on behalf of the respondent without needing to ask them questions. The parties had also agreed a bundle of relevant documents to assist the Tribunal.
6. There was only a limited degree of conflict on the evidence, and the majority of the factual evidence was not in dispute. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and

after listening to the factual and legal submissions made by and on behalf of the respective parties.

7. The Facts:
8. The claimant is Ms Shirley Jewell. She commenced employment with the respondent Cornwall Council on 17 August 2007. Most latterly she was employed as a Technical Support Team Leader. She resigned her employment with immediate effect on 12 July 2022 in the following circumstances.
9. In 2018 the claimant made a disclosure to the respondent under its Whistleblowing Policy to the effect that two colleagues were having an extramarital affair and on occasions they were conducting this affair in work time and on Council property. These are referred to in this judgment as Female Colleague ("FC") and Male Colleague ("MC") respectively.
10. FC has a history of mental illness. She discovered that it was the claimant who had raised this complaint and she began to harass the claimant, in particular by means of inappropriate messages. The claimant perceived that she had thereby suffered detriment as a result of her whistleblowing.
11. In 2019 the claimant raised a formal grievance under the respondent's Grievance Policy. The claimant's grievance was upheld, and she was informed of this on 23 September 2019. In short it was admitted by the respondent that the claimant had suffered detriment following her disclosure and that the respondent had failed to protect the claimant's identity (which in turn resulted in FC's inappropriate behaviour towards the claimant).
12. It was agreed as part of the grievance outcome that FC would be made aware of the claimant's formal grievance and its findings, and that FC would be instructed only to make contact with the claimant in a work-related capacity. The claimant's understanding was that FC would also face disciplinary action, but in the event, she was certified as unfit to work for mental health reasons for an extended period of time, and no disciplinary action resulted.
13. These events also had an impact on the claimant's mental health, and she also took some certified sickness absence. She was referred to Occupational Health by the respondent who supported her through her absence.
14. The position as at 2019 was therefore this. The claimant had exercised a formal grievance and had been supported by the respondent during the process. The grievance was treated responsibly and seriously by the respondent, and it was resolved in the claimant's favour. It was agreed that the claimant and FC would only communicate on work-related matters. The respondent supported the claimant through her illness. A workable solution to a sensitive and difficult issue had been reached, and from 2019 onwards the claimant and FC were able to maintain a professional and civil relationship in the workplace to the extent that their duties required them to communicate with each other.
15. The claimant and FC worked in different wings of the same building and rarely saw each other personally. Their interactions were generally remote discussions by Teams meeting, particularly during and after the COVID pandemic when so many of the respondent's employees were working from home. These professional and civil interactions between the claimant and FC occurred once every two to three months for the next two and a half years between 2019 and the events of June and July 2022.
16. Meanwhile the claimant continued to suffer ill health which included a hip condition. She continued to be supported by the respondent and its Occupational Health Department, and after extended absence returned on an agreed phased return to work from April 2022. In addition, the claimant pursued a flexible working request, and wanted to reduce her working hours to 25 hours per week. The claimant's line manager Miss Alison Empson, from whom I have heard, investigated the claimant's request in detail between June and July 2022 and reported back as noted further below.
17. In June 2022 FC began to make contact with the claimant more regularly than the work-related Teams interactions every second or third month. FC made contact with the claimant on 14 occasions between 19 June 2022 and the claimant's resignation on 12 July 2022. Initially there were three messages through Facebook, and thereafter another 11 attempts remotely through Teams. It was also clear to the claimant and to the respondent at this

time that FC continued to suffer from mental illness, and that she had threatened to commit suicide.

18. The first Facebook message from FC on 19 June 2022 read as follows: “Love you Shirl X I’m not very well due to my liver. I just want to say and apologise for my awful behaviour towards you a number of years ago. You know how much I love you and respect you. Love you. [FC] X”. There were two other attempts at that time by FC to contact the claimant via Facebook. The claimant was able to “block” the claimant’s Facebook account from contacting the claimant and there were no other Facebook messages.
19. The claimant then sent an email on 20 June 2022 to Miss Empson and to Mr James Langley, her senior line manager. She copied this email to Mr Nigel Nightingale of the respondent’s HR department. These three managers all gave evidence today on behalf of the respondent. The claimant explained how FC had made contact with her and that this had upset the claimant and her family. Equally, to her credit, she expressed concern about FC’s well-being in the context of her mental health difficulties.
20. Both Mr Langley and Miss Empson were concerned about the claimant, and they were both able to discuss the matter in detail with the claimant that day. Miss Empson confirmed the position in an email to the claimant later that day to thank her for drawing the matter to their attention and agreeing that claimant had done all that she could at that stage by blocking the content on social media in the hope of avoiding it from recurring.
21. On 26 June 2022, which was a Sunday and not a normal working day, the claimant sent a Facebook message to Mr Langley to express concerns about other postings which FC had made suggesting that she was considering suicide. The claimant has confirmed that her motive for doing so was out of concern for the welfare of FC, and that FC had not been threatening her. Mr Langley responded to the effect that he would take action the following morning. At the start of the following working day on Monday, 26 June 2022 Mr Langley then telephoned the claimant to check that she was well, and to reassure her that he was reporting it to the appropriate channels in the respondent and that she would be fully supported.
22. The next event was on 4 July 2022 when the claimant reported to Mr Langley that FC had tried to contact her through Teams. She reported: “I just had a missed call from her and these two messages.” Mr Langley responded: “She’s on sick leave till the end of the month. I’m in a face-to-face meeting at the moment”. The claimant replied: “okay do you want me to escalate this in case she is talking suicide again?” The claimant recalled a conversation with Mr Langley which she thought was at this stage, although Mr Langley’s evidence is that it was on 11 July 2022. The claimant says that she asked Mr Langley to try and make the messaging to her stop and suggested that if FC was off sick than the respondent should take her laptop off her, which would stop the Teams messages. However, the claimant conceded during cross examination that it made sense for FC to retain her laptop so that the respondent could support her when she was in a vulnerable condition.
23. On 8 July 2022 the claimant then emailed Mr Langley and Miss Empson to this effect: “I understand [FC] is on sick leave at the moment until the end of July, but I have had several messages and calls from her on Teams over the last week which I’m ignoring; including two missed calls this lunchtime. Am I correct ignoring these calls as I’m guessing they are not work related as she off sick?” Miss Empson responded immediately by email to this effect: “I’m sorry to hear that [FC] is making numerous attempts to contact you through Cornwall Council channels. I’m sure James can confirm, but my assumption would also be that they would not be work-related if she is on sick leave. If she is requiring assistance or support with regard to her work duties she should be contacting her line manager.” Mr Langley then also sent an email on 8 July 2022 to the claimant to this effect: “I confirm [FC] is currently on sick leave and I would suggest that these calls are not likely to be work-related. You are under no obligation to answer these calls if you don’t feel comfortable speaking with [FC]. [FC] has been in regular contact with her line manager and myself during this period of sick leave.”
24. The next email from the claimant was on 11 July 2022 to Mr Langley and Miss Empson to this effect: “Thank you for your confirmation. I have just had another Teams call from FC followed by two Teams messages, all of which I have ignored.”

25. The respondent makes the point that no one knew at that time whether the messages which FC was sending to the claimant were work-related or not. Even the claimant said that she was "guessing" that they were not work-related because FC was on sick leave. There was an assumption that they were not work-related, but no one actually knew this. The claimant also confirmed that she had not received any messages of a threatening or violent nature, indeed the first Facebook message from FC was apologetic. Her concern was just that FC had tried to make contact with her. In any event the claimant conceded that the respondent then given her a clear instruction to the effect that there was no obligation on her to answer FC's messages, and indeed the claimant understood this because she confirmed she had ignored them.
26. In any event Mr Langley remained concerned about the claimant and he telephoned her early in the afternoon on 11 July 2022. The claimant confirmed that she was upset by the continued contact from FC and wanted the respondent to make FC cease doing so, and said that she felt that the respondent seemed more concerned with FC's mental well-being than her own. Mr Langley explained to the claimant that he felt uncomfortable challenging FC about the attempted Teams calls at this time because of her very fragile mental health. Nonetheless he agreed that he would speak with Mr Nightingale ahead of a meeting which was already planned to be held the following morning so that he could obtain HR advice from Mr Nightingale about how best to approach the matter going forward. I accept Mr Langley's evidence that this was the first occasion upon which the claimant had asked him to intervene in relation to the unwanted contact. The earlier discussions between them had been more focused on protecting FC's well-being.
27. Meanwhile Miss Empson had been investigating the claimant's flexible working request and the two of them had a meeting to discuss this on 30 June 2022. By email dated 11 July 2022 the claimant confirmed to Miss Empson that her intentions were these: "I would like please to begin the following arrangement as soon as possible, and in any event no later than 1 September 2022: - two-year temporary reduction in my hours to 18.5 hours a week (job share) until 31 August 2024 to be worked on Wednesday afternoon, all day Thursday and all day Friday (ensuring flexibility both ways when necessary)." Miss Empson replied later on 11 July 2022 to this effect: "As previously mentioned and I know you have taken on board, I do not feel that there is the capacity within the team to permanently reduce a Team Leader position below 1FTE, thus offered up the suggestion that a job share of 18.5 hours is considered and recruited into as a permanent solution. It is not felt that I can go out externally for 14.8 hours per week … As you know I am really keen to support you, hence suggested my willingness to accommodate your initial request on a temporary basis whilst we recruit to the vacant hours … I have today received your revised request … I am keen to support you and feel that we have reached a point between us that can possibly be accommodated. However, I would appreciate a further conversation with you please just to establish a reason for a temporary two-year arrangement … And also to relay that the 1 September date would need to be an aim rather than a deadline …"
28. On the following morning (12 July 2022) FC attempted again to make contact with the claimant remotely via Teams. She ignored these attempts as earlier discussed and agreed. The claimant then messaged Mr Langley and asked him whether or not FC had resigned her employment. The claimant says that Mr Langley confirmed that FC had not resigned her employment, and he did not expect her to do so. The claimant then resigned her employment by email with immediate effect. She stated: "I'm writing to inform you that I'm resigning from my position of Technical Support Team Leader with immediate effect. Please accept this as my formal letter of resignation and a termination of my contract with Cornwall Council. I feel that I am left with no choice but to resign in light of my recent historic experiences regarding [FC] and her systematic bullying and harassment towards me … I confirm that … I am speaking with the Union and a Solicitor … I consider this to be a fundamental and unreasonable breach of contract on the part of Cornwall Council and believe this to be constructive dismissal because Cornwall Council has not considered the sustained impact on me despite promises to do so but has instead protected [FC] allowing this behaviour to continue since July 2019. I further believe this to be a breach of trust and

confidence and the further call yesterday afternoon from FC and again this morning via Teams is the last straw ..."

29. The claimant's resignation surprised and disappointed the respondent. The claimant had not raised a formal grievance before resigning. The claimant asserted at this hearing that she was precluded from exercising a grievance because the procedure did not allow a grievance on any matter for a second occasion. The claimant suggested that this is because of the provisions of the respondent's Grievance Procedure in paragraph 4.4 headed Grievance Appeal. This makes it clear that where a decision has been given on appeal "There is no further right of appeal. You will not be permitted to raise the same matters again in future grievance submissions."
30. Miss Empson responded immediately by letter dated 13 July 2022 to the effect that she was "shocked and saddened" to hear of the claimant's resignation. She was prepared to accept the claimant's resignation but denied the fact that there had been a constructive dismissal. She noted that the claimant had not put in a formal grievance and had not utilised the respondent's internal processes in connection with these concerns. She invited the claimant to raise a grievance and for the respondent to investigate this even though the claimant's employment had come to an end. Miss Empson concluded by confirming that she remained concerned about the claimant's wellbeing, and she offered the claimant further Occupational Health support and confidential counselling if she wished to take advantage of these benefits.
31. The claimant did pursue a grievance, which was determined by Mrs Ward, the respondent Head of Waste, from whom I have heard. She determined that there "was a delay in taking the appropriate steps, but those steps were taken in a timely manner once the impact on your well-being was raised" for that reason she concluded the grievance was only partially upheld.
32. The claimant appealed against that finding. The appeal was heard by Mrs Billing, the respondent's Chief Fire Officer, whose evidence was accepted by the claimant. By letter dated 13 December 2022 Mrs Billing partially upheld the claimant's appeal for other reasons, to the effect that the respondent should have recognised that the claimant appeared to suffer a detriment because of her earlier disclosure relating to [FC].
33. Meanwhile the claimant had commenced the Early Conciliation process with ACAS on 5 September 2022. ACAS issued the Early Conciliation certificate on 17 October 2022. The claimant presented these proceedings on 13 November 2022.
34. Having established the above facts, I now apply the law.
35. The Law:
36. Under section 95(1)(c) of the Employment Rights 1996 ("the Act"), an employee is dismissed if she terminates the contract under which she 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.
37. If the claimant's resignation can be construed to be a dismissal, then the issue of the fairness or otherwise of that dismissal is governed by section 98 (4) of the Act which provides "…. the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and – (b) shall be determined in accordance with equity and the substantial merits of the case".
38. I have considered the cases of Western Excavating (ECC) Limited v Sharp [1978] IRLR 27 CA; Malik v Bank of Credit and Commerce International SA [1997] IRLR 462 HL; Courtaulds Northern Spinning Ltd v Sibson [1987] ICR 329; Kaur v Leeds Teaching Hospital NHS Trust [2018] EWCA; Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA; Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA; Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA; Tullett Prebon PLC and Ors v BGC Brokers LP and Ors [2011] EWCA Civ 131; Claridge v Daler Rowney [2008] IRLR 672; Sainsbury's Supermarkets Limited v Hitt [2003] IRLR 23 CA; Lewis v Motorworld Garages Ltd [1985] IRLR 465; Nottingham County Council v

Meikle [2005] ICR 1 CA; Abbey Cars (West Horndon) Ltd v Ford EAT 0472/07; and Wright v North Ayrshire Council [2014] IRLR 4 EAT; Leeds Dental Team v Rose [2014] IRLR 8 EAT; and Hilton v Shiner Ltd - Builders Merchants [2001] IRLR 727 EAT.

39. I have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2009 ("the ACAS Code").
40. The best known summary of the applicable test for a claim of constructive unfair dismissal was provided by Lord Denning MR in Western Excavating (ECC) Limited v Sharp [1978] IRLR 27: "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of his employer's conduct. He is constructively dismissed. The employee is entitled in these circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."
41. In Tullett Prebon PLC and Ors v BGC Brokers LP and Ors Maurice Kay LJ endorsed the following legal test at paragraph 20: "… whether, looking at all the circumstances objectively, that is from the perspective of a reasonable person in the position of the innocent party, the contract breaker has clearly shown an intention to abandon and altogether refuse to perform the contract."
42. In Courtaulds Northern Spinning Ltd v Sibson it was held that reasonable behaviour on the part of the employer can point evidentially to an absence of significant breach of a fundamental term of the contract. However, if there is such a breach, it is clear from Meikle, Abbey Cars and Wright, that the crucial question is whether the repudiatory breach "played a part in the dismissal" and was "an" effective cause of resignation, rather than being "the" effective cause. It need not be the predominant, principal, major or main cause for the resignation.
43. With regard to trust and confidence cases, Dyson LJ summarised the position thus in Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA: The following basic propositions of law can be derived from the authorities: 1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Limited v Sharp [1978] 1 QB 761. 2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example Malik v Bank of Credit and Commerce International SA [1998] AC 20, 34H – 35D (Lord Nicholls) and 45C – 46E (Lord Steyn). I shall refer to this as "the implied term of trust and confidence". 3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract, see, for example, per Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA, at 672A; the very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship. 4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik at page 35C, the conduct relied on as constituting the breach must: "impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer".
44. This has been reaffirmed in Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA, in which the applicable test was explained as: (i) in determining whether or not the employer is in fundamental breach of the implied term of trust and confidence the unvarnished Malik test should be applied; (ii) If, applying Sharp principles, acceptance of that breach entitled the employee to leave, he has been

constructively dismissed; (iii) It is open to the employer to show that such dismissal was for a potentially fair reason; (iv) If he does so, it will then be for the employment tribunal to decide whether the dismissal for that reason, both substantively and procedurally (see Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA) fell within the range of reasonable responses and was fair."

45. The same authorities also repeat that unreasonable conduct alone is not enough to amount to a constructive dismissal (Claridge v Daler Rowney [2008] IRLR 672); and that if an employee is relying on a series of acts then the tribunal must be satisfied that the series of acts taken together cumulatively amount to a breach of the implied term (Lewis v Motorworld Garages Ltd [1985] IRLR 465). In addition, if relying on a series of acts the claimant must point to the final act which must be shown to have contributed or added something to the earlier series of acts which is said, taken as a whole, to have broken the contract of employment (Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA).
46. The judgment of Dyson LJ in Omilaju has recently been endorsed by Underhill LJ in Kaur v Leeds Teaching Hospital NHS Trust. Having reviewed the case law on the "last straw" doctrine, the Court concluded that an employee who is the victim of a continuing cumulative breach of contract is entitled to rely on the totality of the employer's acts notwithstanding a prior affirmation by the employee.
47. In addition, it is clear from Leeds Dental Team v Rose that whether or not behaviour is said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties is to be objectively assessed, and does not turn on the subjective view of the employee. In addition, it is also clear from Hilton v Shiner Ltd - Builders Merchants that even where there is conduct which objectively could be said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties, if there is reasonable and proper cause for the same then there is no fundamental breach of contract.
48. The Issues:
49. The issues to be decided at this hearing were agreed and set out in the Case Management Order of Employment Judge Cadney dated 6 July 2023 ("the Order"). It was confirmed at paragraphs 54 and 55 that the claimant pursues one claim, namely that the unfair constructive dismissal. The claimant relies upon a breach of the implied term relating to trust and confidence between the parties. The specific breaches set out at paragraph 54 (i) to (iii) as follows: (i) the continued communications from [the female employee] were detriments which she suffered because of the earlier whistleblowing; and/or (ii) the respondent had a continuing duty to prevent her from suffering whistleblowing detriment and/or to enforce the earlier agreement by which [the female employee] only contacted her on work-related matters; and/or (iii) despite having reported this, the respondent had not taken any steps to prevent any further occurrences or indicated that they intended to do so. In particular the failure to take any steps to prevent further occurrences after the initial report on 20 June 2022 constitutes a breach of the implied duty.
50. It was particularly noted in paragraph 55 that although the claimant contends that the continued contact from [the female employee] amounts to further detriments arising from an earlier public interest disclosure, the claimant does not bring any separate claim under this heading or jurisdiction.
51. Decision:
52. I deal with the specific alleged breaches of contract in more detail below, but before doing so I think it is important to set out the context and background of the events in place at the time of the claimant's resignation.
53. There had been a difficult and challenging set of circumstances in 2019 in which the claimant had quite properly raised concerns about the conduct of FC and MC. The claimant's formal grievance to the effect that the respondent should not have disclosed her identity to FC, and that as a result she had suffered harassment from FC, had been upheld. The matter was resolved in that it was agreed that FC would only make contact with the claimant for work related reasons. The claimant may have understood that FC was to be disciplined, and that apparently did not happen, but there was no further complaint from the claimant in this regard. For the following period of some two and a half years the matter

had effectively been resolved. FC made contact with the claimant in a work-related capacity once every two to three months throughout this period. The claimant raised no objection to this, because it was with her knowledge and her agreement. The claimant and FC maintained a professional and courteous working relationship. These interactions were made remotely via Teams, and unsurprisingly so because so many employees were working from home. The claimant had been unwell following the events of 2019, and subsequently with regard to a hip injury, and throughout this time the respondent had supported the claimant with Occupational Health advice and support, and counselling, and a phased return to work. The claimant had also made an application to reduce her hours by way of a flexible working request, which the respondent did not find easy to accommodate, but was genuinely trying to do so.

54. For the record, in my judgment the help and support which the claimant had received from the respondent following her grievance in 2019 and before the events of June 2022 had been exemplary, particularly from Miss Empson who had helped and supported the claimant throughout.
55. The circumstances then changed following FC's Facebook message to the claimant on 19 June 2022. There were 14 messages or attempts to make contact with the claimant by FC from this date until the claimant's resignation. There were three Facebook messages which were then successfully blocked by the claimant. There were then another 11 attempts via Teams. However, in my judgment they must be seen in this context. The first Facebook message from FC was conciliatory and apologetic. None of the messages was threatening, intimidating or violent. The claimant's concern was that FC had contacted her outside of the work-related environment for the first time in two and a half years, when it had earlier been agreed that she would not do so. The claimant reported these messages, and the attempts to contact her via Teams in the context of her being genuinely concerned about FC's mental well-being, particularly as FC had apparently threatened suicide. No one knew whether FC's attempts to contact the claimant via Teams were work related or not. It was assumed not to be the case because FC was on sick leave. Seen from the respondent's position it rightly had significant concerns about FC's well-being given her extended sick leave and the information as to her attempted suicide which had come to light. This was the context in which the claimant agreed with her managers simply to ignore FC's attempts via Teams to contact her. Although the claimant has complained that the respondent should have taken FC's laptop away from her, she agreed at this hearing that it was a sensible and logical step for FC to retain her office laptop so that the respondent could continue to support her.
56. Mr Langley's evidence is clear to the effect that it was only on 11 July 2022 that the claimant stated that she was upset by the continued contact from FC and said that she felt that the respondent seemed more concerned with FC's mental well-being than her own. Mr Langley explained to the claimant that he felt uncomfortable challenging FC about the attempted Teams calls at this time because of her very fragile mental health. Nonetheless he agreed that he would speak with Mr Nightingale ahead of a meeting which was already planned to be held the following morning so that he could obtain HR advice from Mr Nightingale about how best to approach the claimant's concerns going forward.
57. Despite the fact that the claimant knew that the respondent had agreed to discuss the issue further in this context, she resigned her employment the following morning. She had two other pieces of information to hand. The first was that FC had not expressed an intention to resign. The second was that the respondent had not yet agreed her request for a reduction in her hours and had not agreed the claimant's self-imposed deadline of 1 September 2022. In addition, the claimant had access to advice and support from her trade union and a solicitor and she chose not to exercise a formal grievance. With the benefit of her access to this advice, in my judgment the claimant's reasons for not raising her concerns more formally before resigning, and/or from exercising a grievance, namely that she was not invited to and/or was precluded from doing so because of the provisions of the Grievance Procedure, are not persuasive to say the least.
58. The claimant was repeatedly asked at this hearing what more the respondent could or should have done before she chose to resign. The claimant's answer was to the effect that

she felt that the respondent should have ensured that the agreement reached some two and a half years ago was enforced. However, at the time of her resignation the private Facebook messages from FC had been blocked and stopped some three weeks earlier, the work-related Teams messages from FC had been the norm for over two years and the claimant agreed simply to ignore them, and when asked Mr Langley had agreed immediately to take advice on how to raise the matter with FC in the context of her fragile mental health which (to her credit) the claimant had earlier rightly been concerned about. There seems to be little more if anything that the respondent could or should have done at that stage. The

59. Against this background my findings in relation to each of the alleged breaches of contract are as follows.
60. The first breach of contract relied upon is at paragraph 54 (i) of the Order, namely the continued communications from [FC] were detriments which the claimant suffered because of the earlier whistleblowing.
61. I find that in this case the claimant is not pursuing a separate claim for detriment said to have been caused by a protected public interest disclosure. It is certainly the case that in 2019 the claimant's grievance was upheld to the effect that she had suffered harassment as a result of her disclosure about FC's conduct. There was then an agreed resolution between the claimant and FC which worked professionally for over two and a half years, namely that there could be work interactions, but no personal messages. The question to be answered therefore is whether the three Facebook messages made by FC before the claimant blocked her in June 2022 amounted to a fundamental breach of the implied term of trust and confidence which the respondent owes to the claimant. I do not accept that this is the case. After two and a half years of a satisfactory and working solution, the respondent was not to know that FC would suddenly start to send these messages, which were not violent or intimidating, and the claimant was able to block them immediately. They then stopped. In my judgment the respondent cannot be said to be in fundamental breach of contract in this respect. What happens thereafter is now discussed.
62. The second breach of contract relied upon is at paragraph 54 (ii) of the Order, namely the respondent had a continuing duty to prevent the claimant from suffering whistleblowing detriment and/or to enforce the earlier agreement by which [FC] only contacted her on work-related matters.
63. This is not a case in which we are examining whether the claimant did or did not make a protected public interest disclosure, and whether the claimant initially suffered detriment arising from it (although this appears in principle at least to be the basis on which the initial grievance was upheld). Similarly, this is not a case in which this Tribunal has had to examine whether the three Facebook messages and subsequent Teams attempts from June 2022 amount to a detriment having been caused by the disclosure some two and a half years earlier. In my judgment the question is the extent to which the contact actually made by FC, and what steps if any the respondent took to stop them, amounts to a breach of the implied term of trust and confidence.
64. Once the claimant had informed the respondent that FC had made personal contact which she had blocked, and then made attempted Teams calls (which had of course been the agreed norm for communication between the claimant and FC for the last two and a half years) in the context of genuine concerns about FC's health, the claimant and the respondent agreed that the claimant should just ignore her calls. The claimant did not at that stage request any further action "to enforce the earlier agreement". When she did subsequently ask Mr Langley on 11 July 2022 to challenge FC about this, he agreed immediately to investigate the extent to which he could do so against the context of balancing the claimant's concerns against the genuine concerns which all held for FC's mental well-being. In these circumstances I cannot find that the respondent acted in breach of the implied term of trust and confidence.
65. The third and final breach of contract relied upon is at paragraph 54 (iii) of the Order, namely despite having reported this, the respondent had not taken any steps to prevent any further occurrences or indicated that they intended to do so, and in particular the failure to take any steps to prevent further occurrences after the initial report on 20 June 2022.

66. In my judgment this assertion is factually incorrect. Until 11 July 2022 the claimant's reports to the respondent about FC were to the effect that she was attempting to make contact again, and that the claimant had concerns about her mental well-being. The respondent knew that the claimant had no difficulty with work-related contact from FC. No one knew whether the messages were work-related, but all assumed not because FC was on sick leave, and it was then agreed that the claimant should ignore them. It was only on 11 July 2022 that the claimant made it clear that she wished the respondent to take steps to stop FC from making contact through the office laptop. It is not the case that the respondent then took no steps to prevent further occurrences. On the contrary Mr Langley agreed to discuss the matter with Mr Nightingale of HR and to seek advice about what to do the very next day, and to report back to the claimant thereafter. The claimant resigned her employment before he could do so.
67. This is an unfortunate case in which in my judgment the respondent's support and assistance for the claimant has been exemplary, and more latterly against the background in which all parties were genuinely concerned to act in a way which supported FC in the context of her mental health difficulties. I cannot find that the respondent without reasonable and proper cause, conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. I find that there was no fundamental breach of contract, and the claimant's resignation cannot therefore be construed to be her dismissal.
68. In circumstances where the claimant was not dismissed, her claim for unfair dismissal is not well founded, and it is hereby dismissed.
69. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraphs 1, 49 and 50; the findings of fact made in relation to those issues are at paragraphs 7 to 33; a concise identification of the relevant law is at paragraphs 36 to 47; how that law has been applied to those findings in order to decide the issues is at paragraphs 52 to 67.

Employment Judge N J Roper
Date: 23 January 2024

Judgment sent to Parties: 5 February 2024

For the Tribunal Office