



EMPLOYMENT TRIBUNALS

Claimant: Mrs Jane Elizabeth Crawford

Respondent: Stedham with Iping Parish Council

Heard at: Havant **On:** 16,17 and 18 March 2020

Before: Employment Judge Rayner

Representation

Claimant: Mr J Duffy, Counsel

Respondent: Mr Jackson , Counsel

JUDGMENT

1. The Claimant was constructively and unfairly dismissed.
2. The Respondent will pay the Claimant the sum of **£7158.83** as set out below.

Basic award	£3633.05
Compensatory award	£3498.56
Loss of statutory rights	£ 300.00
Total award for dismissal	£7431.61
Less 10 % for Claimants failure to comply with ACAS grievance procedure	£ 743.16
Total adjusted amount	£6688.45
Unpaid leave	£ 248.72
Unpaid overtime	£ 196.66
Pay for home office (last quarter of year)	£ 25.00
Total award payable to the claimant	£7158.83

JUDGMENT having been sent to the parties on 24 March 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013 on 27 March 2020, the following reasons are provided:

REASONS

1. By a claim form dated 23 October 2018, the claimant, Mrs Crawford, made a

claim for constructive unfair and wrongful dismissal against the respondent.

2. The respondent is a parish council, with 9 elected members and Mrs Crawford was the only employee.
3. Mrs Crawford had a long association with the parish council having been employed by it as clerk and responsible financial officer from 12 July 1999 until her resignation which took effect on 31 May 2018.
4. Mrs Crawford herself had also at some time in the past been an elected member of the council and had also been the chairman of the council.
5. The events about which Mrs Crawford complained took place between August 2017 and 11 May 2018 which is the date that the claimant says the action comprising a final straw took place. She resigned in response and states that she gave notice because she did not wish to leave the council in the lurch regarding a council meeting due to take place on 16 May 2018, following which there would be a need to deal with minutes and an annual return.
6. The claimant's complaints and allegations which form the basis of her constructive unfair dismissal complaint focused on her treatment by Mrs Petrie.
7. Mrs Petrie was at the time of the events complained of the chairman of the council and one of the elected non-executive members.
8. In her ET1 Mrs Crawford set out 12 matters which she said were the principal issues she relied upon. These are summarised as follows.
 - 8.1. On or around 9 September 2017 Mrs Petrie told the claimant to introduce daily time recording for her work using 6 minutes slots. Mrs Petrie did not always accept the claimant's recorded times as being credible and asked for further details making the claimant justify or prove the time she had spent on work;
 - 8.2. Much of the overtime the claimant had to expend was caused by Mrs Petrie's behaviour in firstly expecting the claimant to contribute time to the neighbourhood plan as non-chargeable hours and secondly by her vexatious questioning of the claimant's work. Mrs. Petrie's behaviour gave rise to an unprecedented 1220 emails between the claimant and Mrs Petrie which the claimant found impossible to deal with in her contract of 435 annual hours, which included 19.5 holiday hours.
 - 8.3. On 17 September 2017 Mrs Petrie wrote to a contractor that the claimant had instructed in a belligerent tone. Over the succeeding months Mrs Petrie contradicted and argued with the claimant's work by emails including an upsetting email dated 7 February 2018 in which she said *look I don't want to be difficult but please remember that you are the clerk not an elected representative. Your job is to follow the dictates of the council not tell us what to do.*
 - 8.4. In the first quarter of 2018 Mrs Petrie sought to make the claimant sign a new contract with worse terms than her existing contract and without proper consultation;
 - 8.5. On 10 April 2018 Mrs Petrie wrote a letter to the former chairman of Sussex Wildlife Trust using the clerk's headed notepaper causing embarrassment to the claimant and undermining both the claimant's role and the council;

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- 8.6. By an email dated 11 April 2018 Mrs Petrie wrote to the claimant *you will need to fit into the 10.5 hours a week less holidays because any overtime is not something we as a parish council can afford this will involve prioritising and efficiency. If this is something you would rather not do then you need to consider if this is the right role for you..... I would not need to send you these repetitive emails if you took account of what has been requested the first time. It's neither constructive nor particularly pleasant for either of us. We should be able to do better.* The claimant found the email rude and belittling and was offended by it;
- 8.7. On 18 April 2018 Mrs Petrie disrupted a meeting by incorrectly questioning procedure and belittling the claimant in public
- 8.8. As responsible financial officer the claimant believed she was in charge of all the income and expenditure of the council and ensuring the assets of the council were properly managed. In about August 2017 Mrs Petrie began to circumvent the claimants RFO role by informing consultancy services they would be contracted in respect of work for the neighbourhood plan without obtaining other tenders and without prior agreement of the council
- 8.9. The neighbourhood plan budget was operated in an unmanaged and authoritarian manner by Mrs Petrie with no cash flow or contingency planning. Because of her [Mrs Petrie's] ad hoc use of the consultants and the use of the claimants time as clerk, by the end of the financial year there was a material and unreported over run of expenditure;
- 8.10. The refusal of Mrs Petrie to liaise with the claimant in her role as RFO or to reveal her expenditure or report back to the council created a significant hidden financial deficit which prevented the claimant from fulfilling her proper duties;
- 8.11. Mrs Petrie did not suggest a contingency amount for neighbourhood planning spending for inclusion in the budget for the year 2019 instead leaving it to the RFO and chair of finance to make an estimate.
9. By an ET3 dated 20 December 2018 the respondent defends the constructive dismissal and other claims, both disputing that the alleged matters necessarily took place as the claimant alleges; disputing that the matters set out breach any express term of the claimant's contract; disputing whether or not the matters set out are capable of amounting either individually or cumulatively to a breach of the implied term of mutual trust and confidence and lastly disputing that the matters relied on as a final straw were capable in law of amounting to a final straw.
10. The case had originally been listed for hearing for 2 day standard unfair dismissal hearing but was adjourned on application by the parties.
11. Following a case management hearing before Employment Judge Harris on 5 April 2019 the matter was set down for a relisted hearing for 4 days on the 16-19 March 2020.
12. The hearing was listed for 4 days because at the time it was expected that there

would be a number of witnesses both for the claimant and the respondent.

13. In fact, before me the number of witnesses has been considerably reduced because of a combination of the ill health of some potential witnesses and the fact that this hearing coincided with the very early days of the Covid 19 pandemic. A number of witnesses were in a high-risk group because of their age and because of their health and were strongly advised not to attend to give evidence, or chose not to do so.
14. I did however have witness statements from everybody who had originally been timetabled to give evidence and I read all of the statements as well as hearing live evidence from the individuals who did attend as set out below.
15. I heard evidence on behalf of the claimant from Mrs Crawford herself and from her witness Mr Hearle. Mrs Griffiths who was due to give evidence on behalf the claimant did not attend because her health placed her in a vulnerable category.
16. In addition, Mr Roland Page, Mr Martin Dury and Ms D Charlton were unable to attend
17. I heard evidence on behalf of the respondents from Mrs Petrie and Mrs Mitskevich.
18. Mrs Crawford gave her evidence on day one of the hearing.
19. On day two of the hearing Mrs Crawford did not attend and Mr Duffy on her behalf made an application to adjourn the hearing.
20. The respondents resisted that application

The Application to Adjourn

21. Mrs Crawford is in a high-risk group account of her age, and in a developing situation, government advice on 17 March 2020 was for the over 70s to avoid non-essential travel.
22. The only government advice in respect of court hearings and attending at court hearings available on 17 March 2020 suggested that individuals and parties should continue to attend at court unless they were displaying symptoms.
23. I had no medical evidence before me that Mrs Crawford was displaying any symptoms of Covid 19 but I did take into account that this is a developing situation and that individuals must and should make their own decisions about their own health and their own safety.
24. Mr Duffy applied for an adjournment on the basis that Mrs Crawford felt that she would not be able to have a fair hearing were she not able to attend in person. She sought to adjourn the case and have it relisted at some point in the future.

25. I discussed with Mr Duffy the possibility of setting up a telephone link so that Mrs Crawford could hear the proceedings and take part and also discussed with Mr Duffy the possibility of the court adjourning as and when necessary so that he could take any instructions necessary over the phone from Mrs Crawford.
26. Mr Duffy discussed these matters with Mrs Crawford but was instructed to continue to press for an adjournment.
27. Mr Jackson, counsel for the respondent resisted the adjournment. He pointed out that the claimant had finished giving her evidence and that her witness Mr Hearle had also given his evidence.
28. He also pointed out that Mrs Crawford has professional representation and that there is the possibility of a telephone link. He urged me to use my powers under rule 46 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 which states a hearing may be conducted in whole or in part by use of electronic communication including by telephone provided that the tribunal considered it would be just and equitable to do so and provided that the parties and members of the public attending the hearing are able to hear what the tribunal hears and hear any witness as seen by the tribunal. In this case because the claimant had a professional representative in the employment tribunal it was submitted that rule 46 could be satisfied.
29. Mr Jackson also informed me that Mrs Petrie, who is now resident in Australia, had travelled from Australia in order to attend at this hearing and to give her evidence. She was in attendance as she had been the day before and available to give her evidence.
30. In addition the respondents witnesses Mr Wheelhouse and Mrs Mitskevic were for both available as had been previous day to give their evidence.
31. Any delay in this matter would be highly prejudicial to the respondents.
32. I refused the adjournment. In deciding to refuse the adjournment and to proceed in Mrs Crawford's absence but with the provision that she would be linked by telephone to the hearing, I took the following matters into account .
33. Firstly Mrs Crawford had given her evidence very fully the previous day and has been cross examined .
34. One of her witnesses had also been able to give evidence the previous day.
35. The claimant was represented by competent Counsel who was able to take instructions from her either over the phone during an adjournment or during breaks.
36. I reminded myself that in an application for an adjournment the Judge has a broad discretion which must be exercised judicially. In exercising that discretion I must balance the interests of both parties and to ensure that I do justice to both parties.

37. In this case one of the factors affecting the justice to both parties is the likelihood of an adjournment leading to a very long period of postponement with potential difficulty having the matter re listed in the foreseeable future. In this case I noted that there had already been significant delay in bringing the case to a hearing and that the evidence that I will have to determine and that the parties have to give is in respect of matters that occurred in 2017 and 2018.
38. I also noted that given the developing crisis with Covid 19, there are no guarantees that if we adjourn we will be able to secure a hearing when people will be able to attend at any time in the foreseeable future. I have taken into account case law from the Court of Appeal in the case of O’Cathail v Transport for London, which I flagged up to both Counsel, which sets out very clearly the need to do justice to both parties.
39. Taking all these matters into account, and considering the overriding objective I determined that it would be possible to proceed to hear evidence from the respondent witnesses with Mrs Crawford listening in over the phone and with the caveat that should Mr Duffy feel it was necessary, that he may request a short adjournment so that he might take instructions in private over the phone from Mrs Crawford in respect of any matter that he has concerns about or where he considers there is a need to check whether or not Mrs Crawford may have a comment to make.
40. It was possible to arrange for Mrs Crawford to listen to the proceedings from her home by her own telephone and I determined that whilst this was not the ideal situation, in the circumstances of this case it was nonetheless in the interests of justice and in line with the overriding objective of ensuring that cases are dealt with justly and proportionately.

The evidence and the Substantive Hearing

41. On the first day of hearing I heard evidence from Mrs Crawford on her own behalf and from her witness Mr Hearle.
42. On the second day of the hearing I heard evidence from Mrs Mitskevich and Mrs Petrie on behalf of the respondent.
43. I also read tendered witness statements from the claimant witnesses who were unable to attend.
44. I make the following findings of fact.

Findings of Fact

45. The claimant was the only employee of Stedham with Iping Parish Council during the time she worked for them from July 1999 until her resignation at the end of May 2018.
46. During much of that time the claimant worked for less than 10 hours a week, although she was allowed to claim for small amounts of overtime, which was approved retrospectively.

47. By the time the claimant resigned she was employed to work 10 ½ hours a week and her contract had been varied to require her to gain advance approval of any overtime worked.
48. In practice the requirement of prior authorisation of overtime was not enforced and the claimant continued to claim retrospectively in respect of the occasional hours of overtime which she worked.
49. The claimant worked from home, unless she was attending at meetings, using her home facilities and her own personal computer. She was paid office expenses of £100 per calendar month in this respect.
50. All parties agreed that the claimant's contract of employment was, by 2018, very outdated. The respondents were not able to locate a copy of the original contract of employment and some discussions took place about a more up to date draft contract.
51. The claimant's job title was Clerk and Responsible Financial Officer to the council. She had done the job for many years and had a broad and clear understanding of what she considered the job entailed. She had apparently had no difficulties with her role until Mrs Petrie became chairman of the council.
52. Mrs Crawford placed before me a number of guidance documents from the advisory body for parish council employees which describe the role of the parish council and its employees. None of these documents formed any part of her formal contract of employment although they undoubtedly set out common sense and useful advice on the role, and the difference between the roles of the executive officer, Mrs Crawford, and the elected officers, such as Mrs Petrie.
53. The contractual terms for the claimant's work derived therefore from her actual contract of employment and from the standing orders and financial standing orders of the council.
54. Mrs Crawford, as clerk to the parish council and responsible financial officer, was the only proper officer with the executive responsibility to carry out the administrative and legal wishes of the council.

The Claimant's contract; job description and relevant Standing orders

55. The starting point is the claimant's contract of employment; her job description and the council's standing orders.
56. Clause 7b of the Claimant's contract ("1999 contract") states the following (page 39).

The Clerk shall faithfully carry out at all times all lawful orders and instructions of the Council and shall perform the duties of and attached to the office of Clerk as set out in the appended Job Specification and shall take all reasonable steps to protect or promote the interests of the Council

57. I find as fact that, the Council's Standing Orders apply to the Clerk.

58. Provision 18.1 the May 2015 Standing Order states the following:

If at a meeting there arises any question relating to the...salary or conditions of service, of any person employed by the Council, it shall not be considered until the Council or committee (as the case may be) has decided whether or not the public shall be excluded.

59. Clause 1c of the appended job specification states the following:

The post holder will be totally responsible for ensuring that the instructions of the Council are carried out...

60. I have also been referred to the various documents governing financial procedures.

Line Management of the claimant

61. Mrs Petrie was an elected non-executive member of the council, and although she had been elected chairman, there was no particular role or responsibility delegated to the chairman in terms of line management of the claimant. Mrs Petrie was one of 9 councillors and the claimant was answerable in her role as an employee to all of them.

62. Whilst I accept that it may have been appropriate for Mrs Petrie as chairman to act as the voice of the council group as a whole when speaking with Mrs Crawford, she was not her line manager and Mrs Crawford was not in any contractual sense answerable to her alone and did not in her words, take orders from Mrs Petrie, but only from the council as a whole.

63. There were certain functions which required the cooperation and agreement between the clerk to the council and the chairman of the council and these are set out in various standing orders to which I was referred. One such area was over the preparation and content of agendas for meetings. These documents were to be *agreed*. It was not Mrs Petrie's job to direct Mrs Crawford over what would go into an agenda, but rather for the two of them to agree on the final document. It was part of Mrs Crawford's role to send out the agenda.

The Relevant Legal Provisions

64. A resignation may amount to a constructive dismissal if it is in response to a fundamental breach of contract by the employer

65. Sections 95(1)(c) and 136(1)(c) ERA state that there is a dismissal when the employee terminates the contract, with or without notice, in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct. This form of dismissal referred to as 'constructive dismissal' is, in contractual terms, a discharge by breach.

66. To amount to a constructive dismissal, there must be a causal link between the employer's breach and the employee's resignation. This means that the employee must resign because of the employer's breach and not for some other reason. It is a question of fact for the employment tribunal to determine what the real reason for the resignation was.

67. The leading authority is **Western Excavating (ECC) Ltd v Sharp** 1978 ICR 221, CA, in which the Court of Appeal ruled that the employer's conduct which gives rise to a constructive dismissal must involve a repudiatory breach of contract. As Lord Denning MR put it: 'If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed.'
68. In order to claim constructive dismissal, the employee must establish that:
- 68.1. there was a fundamental breach of contract on the part of the employer
 - 68.2. the employer's breach caused the employee to resign; and
 - 68.3. the employee did not delay too long before resigning, thus affirming the contract and
 - 68.4. losing the right to claim constructive dismissal.
69. In *Malik v Bank of Credit and Commerce International SA* (in compulsory liquidation) 1997 ICR 606, HL Lord Steyn emphasised that there is a breach of the term only where there is "no reasonable and proper cause" for the employer's conduct, and then only if the conduct is calculated and likely to destroy or seriously damage the relationship of trust and confidence'.
70. Subsequently, it has been recognised that the conduct complained of may form a fundamental breach, if it is calculated **or** likely to destroy or seriously damage the relationship. This means that the Employer does not have to intend to destroy or seriously damage the relationship with the employee.
71. In relation to the final straw relied on in a constructive dismissal case, the claimant's counsel referred me to paragraph 55 of ***Kaur v Leeds Teaching Hospital NHS Trust*** [2018] EWCA Civ 978 [2019] ICR 1 which sets out the following questions
- 71.1. what was the most recent act or omission on the part of the employer which the employee says caused or triggered his or her resignation?
 - 71.2. has he or she affirmed the contract since that act?
 - 71.3. if not, was that act or omission by itself repudiatory breach of contract?
 - 71.4. if not, was it nevertheless a part of a breach, applying the approach explained in ***London Borough of Waltham Forest v Omilaju*** [2004] EWCA Civ 1493, of a course of conduct comprising several acts and omissions which viewed cumulatively amounted to a repudiatory breach of the ***Malik*** term?
 - 71.5. did the employee resign in response or partly in response to that breach?
72. in respect of affirmation, Mr Duffy referred me to the guidance from the EAT in ***WE Cox Turner International Ltd V Crook*** 1981 IRLR 443.

73. In the case the court observed that

*an employee faced with repudiation by his employer is in a very difficult position. If he goes to work the next day he will himself be doing an act which in one sense is only consistent with the continued existence of the contract he might be said to be affirming the contract certainly when he accepts his next pay packet i.e. further performance of the contract by the guilty party the risk of being held to affirm the contract is very great..... Therefore if the ordinary principles of contract law would apply to a contract of employment delay might be very serious not in its own right but because any delay normally involves further performance of the contract by both parties it is not the delay which may be fatal but what happens during the period of delay..
Provided the employee makes clear his objection to what is being done he is not be taken to have confirmed the contract by continuing to work and draw pay for a limited period of time*

74. Mr Jackson for the Respondent also referred me to the case of Omilaju above, per Dyson LJ relying on paragraph 22.

75. The respondent submits the last straw relied on by Mrs Crawford was an entirely innocuous act, incapable of forming part of any fundamental breach. He referred to the dicta, that it will be an unusual case where conduct which is perfectly reasonable and justifiable satisfies the final straw test.

76. The claimant relies upon her job description as setting out her contractual duties and points to what she alleges are the respondents actions in preventing her from carrying out the contractual duties

77. The respondent argues that the duties in the job description and elsewhere were not reciprocal duties placed on the council to allow her to do any of them and therefore the breaches relied upon could not be breaches of an express term of the contract.

Findings of Fact

The Neighbourhood Plan

78. In August 2017, the parish council decided to become involved in work on the neighbourhood plan, which included a potential development for local housing. A working group was established and Mrs Petrie was appointed as its chair. She therefore had two roles at the time, firstly as chairman of the parish council but secondly as chair of the working or steering group for the neighbourhood plan.

79. I accept that Mrs Crawford felt strongly that in this process it should have been her job to carry out the liaison with the various planners; to get quotes for the work, and to make recommendations to council.

80. In practical terms however, this was a new area of work and the claimant's employment was relatively restricted in the number of hours she was available.

She was employed at that time for 7½ hours a week, and was already fully committed. There was never any consideration given to extending her hours, and instead, Mrs Petrie took a lead on those areas of work.

81. I find that it was appropriate for the respondent through Mrs Petrie to take on that responsibility and to take the lead not only for considering which consultant should be approached but also for liaising with them and for making recommendations to full council as to an appointment to do the work. A recommendation was made to full council, and I find that the decision as to as to the appointment of planning consultants was one taken quite properly by the Parish Council.
82. What was not appropriate was the way in which Mrs Petrie handled the question of the quotes for the planning consultants and the way she communicated and liaised with the claimant over this issue.
83. The claimant was very concerned that in respect of the neighbourhood plan work Mrs Petrie had not obtained 3 quotes for work when carrying out the tendering exercise for planning consultancy work.
84. The claimant raised a concern at an early stage that the council must seek 3 quotes and she did so because she genuinely and reasonably believed that this was a requirement, and that it was in line with good financial principles when spending public money.
85. Mrs Crawford maintained at the time and before me that her understanding of the rules was that it was a requirement that for any new significant expenditure the council was obliged to obtain at least 3 quotes in order to ensure that it was getting value for money.
86. From the documents I have been referred to at this hearing I conclude that it was not, in fact, always necessary for the council to obtain 3 quotes in respect of certain types of work. However, I also conclude that until this hearing, Mrs Crawford genuinely believed that it was necessary, that she made this clear to the council and to Mrs Petrie at the time and that no one and particularly not Mrs Petrie, had suggested to her that she was wrong, or if they thought she was wrong at the time, or that anyone discussed it with her or explained why they thought it was not necessary to get three quotes.
87. The question of whether or not three quotes were required, is relevant to a question of whether or not the council were in breach of the rules, but that is not the question I have to decide. It does not make any difference to the principal complaints being made by Mrs Crawford, which is that when she expressed a genuine and legitimate concern that the council was not abiding by the rules, she was side-lined and effectively ignored by Mrs Petrie.
88. All the contemporary correspondence demonstrates that Mrs Crawford was of the view that there was a requirement for three quotes to be obtained and that she saw this as being a matter of significant importance to both to the Council and to herself in her role as the Responsible Financial Officer. She clearly considered at the time that the failure to do so was placing the Council and possibly herself at risk of criticism

89. No one engaged with the claimant at all over this particular concern, and she was effectively ignored.
90. Mrs Petrie did in fact write out to a number of consultants and from the evidence I have heard I find that at the time, she also considered that she should be obtaining three quotes .
91. However, Mrs Petrie did not obtain three quotes, although she wrote out to three organisations asking for quotes. She got one quote back from one set of consultants. She confirmed this in her evidence before me, but I find that at no time prior to giving her evidence, did Mrs Petrie tell Mrs Crawford that she had not in fact obtained 3 quotes.
92. I find on the evidence I have seen and have heard both from Mrs Crawford and from Mrs Petrie that Mrs Petrie, by not engaging, led Mrs Crawford to believe that three quotes had or would be obtained. The reason I find this as fact is because much of Mrs Crawford's energies at this time was spent asking for copies of the quotes obtained and at no time was she told that they would not be provided and nor was she told that the reason three quotes would not be provided, was because three had not been obtained. Mrs Crawford explained before me and I accept that it was not until much later that she was aware that they never had in fact been 3 quotes obtained. She had suspected but has not had it confirmed until this hearing.
93. What Mrs Petrie had not done was discuss this process with Mrs Crawford in order to ensure the Mrs Crawford was in the loop and satisfied that the matter was being dealt with in a financially appropriate manner. Nor had she discussed her actions or shared her correspondence with Mrs Crawford so that Mrs Crawford could have an input or provide any advice or guidance on process.
94. As set out above Mrs Crawford was the responsible financial officer and although there was a separate steering group dealing with the matter, this was ultimately work being done and taken on under the umbrella of the parish council. It is wholly understandable that Mrs Crawford at this point would have been concerned about financial probity and did feel undermined and side line. This indicated a failure to trust Mrs Crawford, and a refusal to include her in what was a legitimate area of her interest.
95. Whilst the steps taken by Mrs Petrie and the subcommittee and subsequently the Council in respect of the one quote where appropriate there was a failure to treat Mrs Crawford and the concerns that she was raising with the proper respect and professional trust that they deserved at the time. I find that there was no reasonable excuse for this.
96. Mrs Crawford should have been kept in the loop even if she was not being asked to do the work of liaison and the behaviour of Mrs Petrie over this issue suggests that she knew that she ought to include Mrs Petrie but that she chose not to do so. I find from all the evidence that this was because she was impatient with Mrs Petrie. I conclude that this was a of the implied term of mutual trust and confidence.

97. I find that Mrs Crawford raised a legitimate concern, which was within the ambit of her responsibilities, and she was ignored and side-lined as a result

The Metcalfe letter

98. As a result of the appointment, and her role as chair of the steering group, in October 2017 Mrs Petrie was in correspondence with the planning consultant, a Mr A Metcalfe.

99. On one occasion in October 2017, in writing to Mr Metcalfe about the need for some further information, being requested by others, Mrs Petrie made the comment that *it is all rather tiresome*. This referred to the request for information made by other people.

100. The letter was not sent or copied to Mrs Crawford and Mrs Petrie did not expect Mrs Crawford to see it. Her evidence before me was that she would not have included this comment if she had thought that Mrs Crawford would see it. Mrs Petrie knew that it was a comment which would upset Mrs Crawford.

101. I find as fact that this comment was about the claimant. Mrs Petrie was stating to an external consultant that concerns raised by Mrs Crawford were all *rather tiresome*.

102. I accept the evidence that Mrs Petrie has given that there may well have been other matters in her mind when she wrote this, but it is telling of her attitude to and her thinking about the claimant at the time.

103. Mrs Petrie wanted to push ahead with the project and had in mind ways that she wanted to do that. In this letter she was expressing frustration partly with matters which were causing delays but she was also expressing annoyance or frustration with some of the views being expressed by Mrs Crawford.

104. Mrs Petrie told me and I accept, that she did not intend to cause any upset to Mrs Crawford. However, I also find that the terms of the letter clearly did intend to convey to a third party a disrespect for Mrs Crawford, and that Mrs Petrie was aware of this. Further, since this was a letter written on behalf of the council it was highly likely that the claimant would see it at some point and Mrs Petrie failed to consider this at all. Mrs Crawford did see it, she was very upset by it and I find that it was entirely reasonable for her to be so. The letter indicated a lack of respect or trust in Mrs Crawford's concerns and questions and demonstrate a willingness to convey this to those outside the organisation.

105. I find that Mrs Petrie gave no thought to the effect her letter, written on behalf of the council, to a third party might have on the claimant, and on her reputation more widely, and in particular the relationship between the claimant and Mrs Petrie.

The claimants work pattern and 6-minute slots time recording.

106. The claimant complains about being instructed by Mrs Petrie to carry out time recording in 6-minute slots.

107. On 8 September 2017 the claimant was asked by Mrs Petrie to try time recording. This was in response to the claimant claiming overtime.
108. I find as fact that Mrs Petrie did not *instruct* the claimant to carry out time recording in 6-minute slots but that she did *strongly suggest* this to the claimant. I find that the claimant did in fact attempt to do this and I accept the claimants evidence that when she did, Mrs Petrie disputed with her over the work she was doing and the time taken.
109. At the point when Mrs Crawford was asked about time recording , the email exchange is a perfectly civil one specifically stating that this is not intended by Mrs Petrie as a complaint about the claimant, but is an attempt to get a sense of what the claimant was doing and for how long she was doing it on each occasion.
110. I find that it was entirely appropriate for Mrs Petrie to have this conversation with Mrs Crawford; to take the initiative and to make suggestions to her about these matters. There is no reason why an employer should not seek to ascertain how an employee is spending their time and to manage time accordingly.
111. Whilst I find that as the chairman of the Council it was reasonable for Mrs Petrie to take a lead in respect of the claimants of employment I find that the claimant felt that she was obliged to record her time in this way and that she found it demeaning to be told what to do by Mrs Petrie.

The contract and overtime and holiday pay.

112. In January 2018 the council made a resolution to seek to update claimant's contract; to change the claimant's hours of work and to attempt to control overtime.
113. Prior to this Mrs Crawford had often needed to work additional hours on top of the contracted hours. She had kept a record of them had reported them to full Council. Whilst she was not entitled as of contract to be paid for over time, and whilst it was always at the discretion of the council, there had never been any question that the claimant had needed to do the additional work and would be paid for it and it had always been approved retrospectively.
114. It was suggested that there was an implied term in the claimant's contract that she was therefore entitled to paid overtime. I find that this is not the case. There was no precision in any alleged term and this was not really pursued before me. I find that there was no implied right to overtime, only the right to request retrospective payment for it, at the discretion of the council.
115. What is pursued is an allegation that the attempted variation of the claimant's contract and the attempted imposition of a requirement to obtain advance consent to work overtime was part and parcel of a breach of an implied term of mutual trust and confidence.
116. It is alleged that the subsequent variation to the claimant's contract was part of that breach.

117. There were two variations to the claimant's contract of employment in January 2018. The first variation was to increase Mrs Crawford's hours of work from 7.5 to 10.5 a week, to include paid holidays.
118. The second variation was a requirement that Mrs Crawford should seek authorisation in advance of incurring overtime. She would only be paid in respect of the pre-authorised overtime.
119. It is not suggested by the respondent that the claimant was or ever had claimed for hours that she hadn't worked or that there was anything improper about the claims which the claimant had made. The new provision was put in place because the respondent felt that the cost of the overtime being claimed was very high. The respondent wanted to consider other ways of managing the workload.
120. I find that it was reasonable for the respondent to look at controlling costs and reasonable that concerns about increased levels of overtime should be dealt with by change in the way that overtime was incurred and paid for. This is a proper action of any employer seeking to controlling costs and was proper in this case.
121. Part of the claimant's concern is that Mrs Petrie did not have the authority or the power to make decisions about the claimant's contract. Part of her concern is that she felt it a new contract was being foisted upon her.
122. I find that whilst it is right that Mrs Petrie did not have the power to make the decisions about the claimants contract unilaterally, there was nothing wrong in principle in her taking the initiative or the lead in making enquiries of the claimant about her overtime and about the way the claimant worked.
123. The final decisions over any changes were taken by the council and not Mrs Petrie. The changes were accepted by the claimant.
124. The claimant has stated that much of her additional work was generated because she was trying to communicate with Mrs Petrie. She suggests in her claim to the employment tribunal that Mrs Petrie's behaviour and questioning of her work gave rise to an unprecedented 1220 emails between them during the year of Mrs Petrie's chairmanship. Mrs Petrie in contrast considered at the time that the increase in emails was the result of Mrs Crawford not working efficiently.
125. This is evident from an email sent on 11 April 2018 in which Mrs Petrie wrote to the claimant in which she said

you will need to fit into the 10.5 hours a week less holidays because any overtime is not something we as a parish council can afford this will involve prioritising and efficiency. If this is something you would rather not do, then you need to consider if this is the right role for you... I would not need to send these repetitive emails if you took account of what has been requested the first time it's neither constructive nor particularly pleasant for either of us. We should be able to do better.

126. The claimant states in her ET1 that she was extremely offended by the email which she considered to be rude and belittling. She states in her ET1 that having worked for 19 years without issue until Mrs Petrie became chairman she felt as though she were trying to push her out of her job.
127. I find that this email is indicative of the attitude and approach of Mrs Petrie to the claimant. I agree with the claimant that it was rude, disrespectful and belittling. It contained an implicit suggestion that the claimant was disorganised and unsuited for a role which she had been doing for 19 years without any difficulties. This was wholly unwarranted. There is no evidence before me that Mrs Crawford was anything other than committed and efficient. The worst that can be said is that she did things differently from Mrs Petrie, and that she followed rules. That was her job.
128. This is an email which was capable of, and did seriously damage the relationship of trust between the respondent and Mrs Crawford. There is an implied threat, and it must have been intended to make the claimant think about her position.
129. I find that whilst Mrs Petrie was not wrong to take the initiative of liaising with the claimant over her working style, her hours and her contract, her manner of engaging with the claimant was wholly inappropriate in the circumstances.
130. In fact, the discussion did lead to a proper decision of the Council being made in January 2018 to increase the claimants hours of work, to insert a requirement that the claimant gain approval in advance for any overtime she needed to work, and which included holidays to be taken as part of the contracted hours rather than as additional to them.
131. What happened subsequently was that the claimant accepted the additional hours of work and worked them and was paid for them albeit that she continued to claim overtime without getting it authorised in advance. In fact, she was paid for it. There is nothing in that series of factual matters which amounts to any breach of any express term or an implied term. There was a change to the contract of employment, which was properly implemented and accepted by the claimant. In any event the variation in the manner of claiming overtime was not in fact enforced.
132. Was a new contract foisted on the claimant? No, there were negotiations about a new contract and I accept Mrs Petrie's evidence that she thought the negotiations were reasonably good natured. I accept that Mrs Crawford did not produce her existing contract which she certainly had. She said she wasn't asked for it but it would have been reasonable for her to produce it even if not asked for it. She must have been aware that the respondent did not have one.
133. Other than the variation set out above, the claimant did not agree to the terms of the proposed new contract and the respondent did not impose it upon her. In fact, by the time the claimant resigned, no action had been taken further in respect of the contract, and it remained a matter of negotiation.
134. The respondent was entitled to try to negotiate a new contract with an employee and the claimant accepted that in questioning before me. The claimant was suspicious of the motivation of the respondent but I find that

nonetheless that this was a reasonable and proper action for the employer to take.

GDPR Issues

135. I next consider the issues that arose in connection with the GDPR and the comment made in an email that the claimant *could not tell the Council what to do*.

136. The claimant's legitimate role was to advise the Council on their legal duties and their responsibilities. In doing this, the claimant also advised on proposed ways to fulfil those duties. One example was a recommendation by the claimant that the council should buy its own computer for her to use. She was at that time using her own home computer.

137. I find that it was reasonable for the Council and for Mrs Petrie to query whether a computer was necessary and was the only way of complying with the GDPR obligations as was being suggested by Mrs Crawford. Councillors are entitled to ask questions about expenditure and to ask about how they should fulfil the duties that they have.

138. This matter went to a council meeting and a vote was taken by the Council, after hearing what the claimant had to say. The vote was not to purchase, but the claimant was listened to and, following a conversation with Mr Wheelhouse, the claimant was given permission to apply for the available grant for the purchase of a computer in any event.

139. Whilst it was quite acceptable for Mrs Petrie to raise the issue and a concern about spending public money, the exchange from Mrs Petrie was not particularly civil. The claimant was raising an issue about a grant that could be applied for in order to obtain a Council computer; At this point that the claimant was in fact using her own computer to carry out the Council work. That Council would therefore have obtained an asset. The comment that *it's her job to follow dictates not to tell Councillors what to do* is a rude and unnecessary comment. There is the implicit suggestion, if not an express suggestion that Mrs Crawford is in the wrong, or is not competent and should be criticised. I find that there was no basis at all for such criticism. Mrs Crawford was raising a wholly legitimate and appropriate matter in line with her responsibilities. The letter from Mrs Petrie again shows a lack of trust in Mrs Crawford, and a lack of confidence in her abilities, which has no reasonable basis or cause.

140. That email was sent on 11 February 2018.

141. By 11 February 2018, then, there had been an issue with Mr Metcalfe, and there has then been a further issue over the exchange of GDPR, as well as issues about time recording.

The Sussex Wildlife letter

142. On 3 March 2018 Mrs Petrie sent a first letter to Sussex Wildlife Trust about a fire on Iping common. The letter was sent on the council headed paper, and was fairly strongly worded. Mrs Crawford was very angry that such a letter was written at all by Mrs Petrie, because sending out correspondence was part of

Mrs Crawford's role, but was particularly upset that it was written on the council paper, giving the appearance of having come from the council, when it was in reality a letter expressing Mrs Petrie's own feelings about the fire.

143. It was wrong for Mrs Petrie to send the letter and Mrs Petrie has accepted that she should not have sent it on the Council's email or on the headed paper. I accept that an apology was made to Mrs Crawford but I also accept that it was not made at full Council. It is quite clear, perhaps with some justification, why Mrs Petrie felt so strongly about the matter of the fire but nonetheless it was wrong to send the letter and the sending of it had an impact on the claimant. Mrs Petrie should have realised that by writing the letter she was stepping on the toes of Mrs Crawford's role and that this would have a negative impact on their relationship. She did not give any thought to how it may impact, and showed disrespect and disregard for Mrs Crawford's role. On its own it would not be sufficient to fundamentally breach the contract by reason of the breach of mutual trust and confidence but in context and within the chronology I find that it is part of a cumulative breach.
144. On 6 March the claimant received a draft contract and I have said nothing arises in terms of breach from that.
145. On 14 March, there was a meeting of the council, at which there was a discussion of the claimant's pay.
146. The discussion took place without there having been any consideration given to whether or not the discussion should be held in private, as required by the contract, as set out above. The discussion was described by the respondents as a discussion about administration costs, but I find that the respondents knew that in reality they were discussing Mrs Crawford's pay.
147. It is disingenuous to suggest that there could have been a separation out of Administration costs and the cost of the claimant because her pay formed the major part of the costs of administration.
148. In any event, there was no pre meeting discussion about whether or not the costs of Mrs Crawford, which were her pay, could or should be discussed separately from any other costs. It was not unreasonable for the claimant to find this extremely upsetting and inappropriate.
149. The discussion of her pay and conditions in a public forum without having first considered and discussed whether or not the session should be private breached her rights as an employee. There were specific contractual provisions which were not followed in this instance.
150. Having considered the minutes, which Mrs Crawford was taking, I find that there was no discussion at any time that set out the parameters of that discussion or gave any explanation about what was really being discussed. I accept that this was wholly different to previous discussions about the claimant's pay which had taken place and that in this case there hadn't been a particular recommendation from the finance and general purposes committee. It was hurtful to the claimant and it was ill considered given that she was herself minuting the meeting.

151. I find that this was a fundamental breach of an express term of her contract.
152. It is right to say that Mrs Crawford did explain in cross examination why she had found this humiliating and she did place emphasis on what was said and the tone of what was said but I find that her response makes no difference to the fact that this was a breach of an express term.
153. I find that Mrs Crawford has not narrowed her pleaded case by explaining to the Tribunal why she was upset.
154. However, if I am wrong on that and if Mr Jackson's submissions that by focusing on the reason for her upset as she has done, that she has narrowed her pleaded case are correct in law, I would nonetheless find that this discussion was in breach of the implied term of mutual trust and confidence, and that there was no reasonable and proper cause for having the discussion at the meeting in public.
155. In considering this I have taken into account that Mrs Crawford was the only employee of the respondents and that it is a small parish Council where the claimant was well known and long serving. The meeting took place against a background of increasingly difficult emails as well as difficult exchanges in meetings and it was, in that context, likely to seriously damage the relationship and was conducted without reasonable cause.
156. This was followed by a telephone meeting of 16 March 2018 between Mrs Petrie and Mrs Crawford.
157. There is a note of this meeting in the bundle at page 223. Various comments were made in that meeting and are noted by Mrs Crawford. I accept the note as an honest and accurate note. Mrs Petrie says she doesn't particularly recall what was said and she hadn't seen the note of the meeting but she doesn't specifically challenge what was said.
158. In this meeting both Mrs Petrie and Mrs Crawford were expressing their views fairly forcefully and there was certainly some irritation from each of them. Both of them are obviously capable, conscientious women and both were seeking to make a contribution to public life through the service but they had very different approaches and different views on the roles that each of them had.
159. However, at the end of the day, the claimant, Mrs Crawford was an employee and as such, she had particular rights under her contract of employment, including the implied term of mutual trust and confidence. I find, that by the time of the meeting on 16 March there had been a number of breaches of her contract, of the express term but also of the implied term of mutual trust and confidence.
160. I have then looked at the issue of the alleged final straw. I have taken into account the capable and eloquent submissions of Mr Jackson and I find that on 11 May following a discussion of the agenda the claimant was sent amendments by Mrs Petrie and the claimant did make some of those

amendments but not all of the amendments. Mrs Petrie maintained that the agenda that was sent out was not the one which included all of her amendments and that the claimant had not consulted her. The claimant was asked to use the amended agenda and did not do so.

161. I have looked again at the email of 11 May 2018 at page 273. It starts “Jane these are not the emails I have sent you to go out. Kindly retract and set out the ones I requested”. There is also a comment about who the email is sent to. I find that this is not a polite email. This is an email that directs the claimant to act by doing what Mrs Petrie had told her to do, not to do something which had a been agreed between them, as required. It does not *ask* her to act. It does not recognise the express and stated need for the Clerk and Chair to agree the agenda and nor is there any implicit recognition of the Clerk’s role. There is no record that some of the amendments have been made and no query as to why the Clerk has used this version and not another version nor did there appear to be any other approach or any other discussion.

162. I disagree with Mr Jackson. His submission is that in this case the final straw relied upon was perfectly reasonable request, in the light of the discussions that had taken place about the agenda.

163. Whilst I agree the legal proposition, the act relied upon as a final straw must be looked at in context. In this case, the act is described by the respondent as a request to send out an Agenda. I find as fact that it was not a simple request to send out an agenda, but was an instruction, sent in less than polite terms, telling the claimant to do what she had been told to do by Mrs Petrie. The claimant was particularly upset at the failure of Mrs Petrie to agree the agenda with her, and had not accepted some changes made. She was upset by being told to retract the agenda she had sent out.

164. I find this is capable of being a final straw. I find that the instruction was made in an almost abrupt manner and is not conciliatory and certainly not friendly. Also, and perhaps of more importance, it is not an email that is sent in a vacuum. It follows on from a previous series of events made up of the acts and omissions which the claimant has complained of some, of which I have found to amount to breaches of her contract by themselves.

165. It was not reasonable for Mrs Petrie to instruct the claimant to retract the agenda, and the manner of her doing it was not innocuous. Whilst this was a minor matter, it was in the context of this case, a final straw in the true sense, for Mrs Crawford.

166. Conclusions

167. Whilst not all of the actions of which the claimant complains amount to breaches by themselves of the express terms or the implied term of her contract, as set out above, some do, and I conclude that the combined effect of the acts and omissions which I have found seriously damaged the relationship of mutual trust and confidence without reasonable cause were sufficiently serious to amount to a cumulative breach of the implied term of the mutual trust and confidence.

168. I conclude that the email sent by Mrs Petrie about the agendas, was a straw that broke the camel's back in this case.
169. The claimant did not affirm her contract and resigned in response to those breaches. She was therefore constructively and unfairly dismissed.
170. The claimant did not pursue or attend at a grievance hearing although she did draft a grievance. She must have realised that this had not been received and she took no steps whatsoever to pursue it. The respondents did attempt to organise a grievance meeting and the claimant did not choose to attend it. Whilst in this case it would not, on balance of probabilities, have made any difference to the outcome, I do find that there has been a failure by the claimant to comply with the ACAS provisions.

Remedy

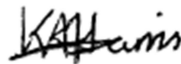
171. In this case I find that the claimant has made some attempts to mitigate her loss but her attempts have been very limited and I accept the respondent's submission that the maximum award in this case with regards to compensation should be a period of six months from 14 May 2018.
172. In respect of the other matters, the figures on the period of notice is agreed and the basic award is agreed. There is also agreement that the claimant is entitled to claim the figure of £25 for the final quarter that she worked in respect of costs for her home office.
173. I also award a figure of £248.72 in respect of unpaid leave and a figure in respect of unpaid overtime of £196.66.



Employment Judge Rayner

Date 1 June 2020

Reasons sent to parties 10 June 2020



FOR THE TRIBUNAL OFFICE