



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Ms C Cameron

and

**Respondent**

Thames Valley Chamber of  
Commerce and Industry

**Held at Reading on** 3 & 4 October 2017

**Representation**

**Claimant:** Ms A Lane, solicitor  
**Respondent:** Mr P Wilson, counsel

**Employment Judge** Mr S G Vowles (sitting alone)

## RESERVED JUDGMENT

### Evidence

1 The Tribunal heard evidence on oath and read documents provided by the parties.

### Unfair Constructive Dismissal – Section 95(1)(c) and 98 Employment Rights Act 1996

2 The Claimant resigned from her employment as a Membership Sales Executive on 16 September 2016 and that was the effective date of termination. She was not constructively dismissed. The complaint of unfair dismissal fails and is dismissed.

### Wrongful Dismissal - article 3 Employment Tribunals Extension of Jurisdiction (E&W) Order 1994

3 The Claimant resigned without notice. There was no dismissal, constructive or otherwise. She was not entitled to notice or notice pay. This complaint fails and is dismissed.

### Reasons

4 This judgment was reserved and written reasons are attached.

## REASONS

### Submissions

#### Claimant

1. On 23 December 2016 the Claimant presented complaints of unfair constructive dismissal and wrongful dismissal to the Tribunal.

#### Respondent

2. On 30 January 2017 the Respondent presented a response in which both complaints were resisted.

### Evidence

3. For the Claimant the Tribunal heard evidence on oath from the Claimant Ms Cindy Cameron (Membership Sales Executive) and read a statement from Ms Tina Fahmy (Business Alliance Manager) who was unable to attend the hearing.
4. For the Respondent the Tribunal heard evidence on oath from Mr Simon Caffrey (Group Head of Sales & Marketing), Ms Anne White (Head of International Trade & Compliance), Mr Gareth Ralphs (Head of Policy & Inward Investment) and Ms Victoria Spracklen (Head of Finance & Operations).
5. The Tribunal also read documents provided by the parties.
6. From the evidence heard and read the Tribunal made the following findings of fact.

### Findings of Fact

7. The Respondent offers membership to businesses across Berkshire, Buckinghamshire, Swindon and Oxfordshire and provides a range of services including business advice, networking events and international trade support to promote best practice and to increase business potential.
8. The Claimant's role as a Membership Sales Executive in the Commercial Development Team was to sell membership packages to potential new members and to manage existing member relationships through events and enquiries. She had previously been employed by the Respondent from 2003 to 2008. Her current employment commenced on 23 July 2012 and continued until her resignation on 16 September 2016.
9. Mr Caffrey commenced employment with the Respondent on 9 March 2015 as the Group Head of Sales and Marketing. He became the Claimant's line manager in place of Ms Briggs. He said that he found the Claimant very challenging from the beginning. He held an induction meeting with her on the first day of his employment and he said that the Claimant told him *"I have already spoken to Ms Briggs and I have told her that I don't need a manager and I don't need managing, I am all right on my own"*. The Claimant denied that she had said this to Mr Caffrey. The

Tribunal found as a fact that she did so because it was consistent with her comments at the Claimant's investigation meeting on 29 July 2016 where she is recorded as saying *"CC stated she has a proven track record which shows she doesn't need a manager or micro-manager. CC stated that Christina Briggs has faith in her ability"*.

10. There was clear evidence in documents that their relationship was a strained one from the start. On 17 February 2016, the Claimant wrote to Mr Caffrey telling him that his conduct had left her *"demoralised and undervalued"*, that he was working in her area and not communicating this to her and accused him of wanting to demote her or even have another plan altogether.
11. On 9 June 2015 Mr Caffrey ended a telephone conversation with the Claimant and informed her that:

*"I decided to end the conversation with you because in my opinion you were being very aggressive and bullish which is not acceptable behaviour. I am your direct line manager and felt you were undermining my position and not expressing yourself in a professional manner. You need to express any work-related frustrations and concerns constructively."*

*This is not the first time I've felt you have undermined my position, which I'm more than happy to discuss with you and any other concerns that you may have as long as we do it constructively."*

12. On 15 April 2016 Mr Caffrey introduced new guidelines for selling membership within the Commercial Development Team. It involved new sales targets and also required the Claimant and other Membership Sales Executives to focus on essential and corporate membership only whereas Mr Caffrey would focus on larger corporate, business alliance and strategic partnerships. The guidelines, which were set out in detail, contained a table setting out how commission could be earned. The Claimant was the only member of the team who refused to accept the division of labour. On 19 May 2016 she sent the following email to Mr Caffrey:

*I have read through this plan several times this evening to reiterate to myself my initial thoughts, which are, that it's not viable for me to be successful with the plan you are proposing. With my skills I am more than capable to approach and close at all levels, which if you look at the historic figures I am more than capable of. I have voiced my concerns over this plan you have designed and it's not up for discussion.*

*I need to be stretched and given the opportunity to liaise with businesses across the board, which is something I have done historically, the results can be seen on the system from previous years. This plan does not suit my ability and if I'm totally honest, it's designed for your success and not the team.*

*For this reason, I just can't continue to earn a basic salary of £24k with no commission, and will be looking outside of the Chamber for something more suitable.*

*I therefore feel there is no point in taking up your time and mine to discuss a business plan. There is no flexibility or opportunity for me to be successful and use the extensive sales training I have gained over many years.*

*I hope you appreciate my honesty and bear with me to find myself something that fits my needs.*

13. Mr Caffrey discussed the email with the CEO, Mr Britton. It was agreed between them that Mr Caffrey would invite the Claimant to a formal meeting on 26 May 2016 as follows:

*Following on from your email to me of 19<sup>th</sup> May 2016, I request your attendance at a formal meeting on Thursday 26<sup>th</sup> May at 4:00pm.*

*The meeting will be conducted by myself. Paul Britton will be in attendance. Victoria Spracklen will minute the meeting.*

*The purpose of the meeting is to look for an understanding as to why you appear unwilling to endorse the new Commercial Department strategy – email 19.05.2016 refers – and afford you the opportunity to provide explanation thereof.*

*As this is a formal meeting, I would point you towards your Staff Handbook for guidance. You have the right to be accompanied by a fellow employee who can act as a witness or speak on your behalf.”*

14. On 23 May 2016 the Claimant went absent on sick leave and did not return to work thereafter.
15. On 28 June 2016 she presented a written grievance which was investigated by Ms White who summarised the complaints as follows:

*“The specific allegations/concerns investigated were:*

- Alleged changes to Cindy's terms and conditions of employment without consultation.*
- Simon Caffrey recruitment meant effectively demotion for Cindy.*
- Lead allocation process meant loss of leads which fell under Cindy remit and geographical region. Deliberate filtering of leads in the RG postcodes by Simon Caffrey.*
- Substantial reductions in salary due to lead allocation.*
- The most recent commission structure prohibits Cindy selling the larger more lucrative packages.*

- *Cindy’s concerns that she was being victimised when raising the issues that she was called to a meeting with the undertones of possible disciplinary action.”*

16. On 15 July 2016 the Claimant attended an occupational health consultation and the report included the following recommendations:

**RECOMMENDATIONS**

*The following recommendations are made:*

- *Ms Cameron is not fit to work due to work related stress.*
- *She is experiencing panic attacks, sleep disorder and a flare-up of her irritable bowel syndrome.*
- *Ms Cameron has raised a grievance against her immediate line manager and it is unlikely that she will return to work until the matter has been resolved.*
- *She is considering legal action and may instruct her solicitor soon.*

<b>REVIEW</b>	
<i>Advice regarding further occupational health review</i>	<i>No further occupational health review is suggested at present until the issues have been resolved and a return to work is being considered please re-refer at that time</i>

17. On 29 July 2016 the Claimant attended a grievance meeting with Ms White. Mr Caffrey was also interviewed by Ms White as part of the grievance investigation.

18. On 9 August 2016 Ms White wrote to the Claimant with the grievance outcome. It included the following:

**“Conclusions/ Recommendations**

- *Alleged Terms & Conditions Changes – Not Upheld  
There have been no changes to Cindy’s T & C since those stated April 2015.*
- *Simon Caffrey recruitment, effectively demotion for Cindy – Not Upheld  
Cindy was not demoted, her role with the same level of line management.*
- *Lead Allocation Process & Deliberate Filtering of RG Postcode leads by Simon – Not Upheld  
The process introduced is driven by the strategic change in focus in membership to an increase in member numbers as well as income targets, not Simons own agenda. Cindy geographical territory remain unchanged.*

- *Substantial Reduction in Salary Due to Lead Allocations – Not Upheld*  
*There is no evidence that Cindy salary had reduced significantly.*
- *The most recent commission structure prevents selling more lucrative packages – Not Upheld*  
*The strategic change in the focus of membership to include an increase in member numbers as well as income.*  
*The proposed new guidelines for selling membership are centred around this change in focus and provide an opportunity for the sales team to earn more income if targets are reached and include incentives at all membership tiers should procedure be followed.*
- *Victimisation claim from Cindy that when raising the issues, she was requested to attend meeting, with disciplinary undertones – Not Upheld*  
*A reasonable ask to invite Cindy in for a Formal meeting in the light of Cindy’s email response, dated 19<sup>th</sup> May 2016, to the Guidelines for Selling Membership in the Commercial Development Department document.”*

19. Accordingly, the Claimant’s grievance was not upheld.
20. The Claimant appealed against the grievance outcome and an appeal meeting was held on 24 August 2016 chaired by Mr Ralphs. On 25 August 2016 he produced a written outcome in which the appeal was not upheld.
21. On 12 September 2016 Ms Spracklen wrote to the Claimant to ask if she would consider allowing the Respondent to contact her GP for guidance regarding proactively managing a return to work.
22. The Claimant resigned in a letter dated 16 September 2016. It stated that the reasons for her resignation were as follows:

*“Your request on Monday for a report from my doctor feels like a threat. You already have an occupational health reports which sets out the issues causing my absence and the solutions for facilitating my return.*

*This follows a range of treatment as previously set out in my grievance and subsequent appeal ....*

*...when I tried to raise my concerns as to the change to my terms and conditions I was threatened with a formal disciplinary meeting.*

*In my appeal I raised further issues that the process did not feel fair... There was delay in organising the grievance hearing. Meetings were proposed with unreasonable notice. My companion was interfered with such that she declined to act as my companion.*

*... This gave me the impression that the decision to the appeal was made before the meeting was held. ...*

*... At no time had anyone from the Chamber of Commerce contacted me to check that I was ok or to organise a wellbeing meeting. ...*

*At no point since the report outcome; or as any part of my grievance and subsequent appeal has the Chamber taken any steps to facilitate my return by addressing the issue with Mr Caffrey. ...*

*Your occupational health doctor found that the situation needs to be resolved before I can return to work. At no stage has the company endeavoured to resolve any of the issues...*

*... I feel gravely let down by the Chamber and I do not trust that you are concerned about my welfare or wellbeing or will act appropriately towards me should I return to work....”*

23. On 23 December 2016 the Claimant presented her claim to the Tribunal.
24. On 30 January 2017 the Respondent presented a response to the claim.

#### **Relevant Law**

25. Section 95 Employment Rights Act 1996 sets out the circumstances in which an employee is dismissed. Constructive dismissal is defined as follows:
  - (1) *For the purposes of this part an employee is dismissed by his employer if –*
    - (c) *The employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.*
26. Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27 - An employee is entitled to treat himself as constructively dismissed 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. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him to leave at once.
27. Hilton v Shiner Limited [2001] IRLR 727 - The implied term of trust and confidence is qualified by the requirement that the conduct of the employer about which complaint is made must be engaged in without reasonable and proper cause. Thus in order to determine whether there has been a breach of the implied term two matters have to be determined. The first is whether ignoring their cause there have been acts which are likely on their face to seriously damage or destroy the relationship of trust and confidence between employer and employee. The second is whether there is no reasonable and proper cause for those acts. For example, any employer who proposes to suspend or discipline an employee for lack of capability or misconduct is doing an act which is capable of seriously

damaging or destroying the relationship of trust and confidence, yet it could never be argued that the employer was in breach of the term of trust and confidence if he had reasonable and proper cause for taking the disciplinary action.

28. Croft v Consigna PLC [2002] IRLR 851 - The implied term of trust and confidence is only breached by acts or omissions which seriously damage or destroy the necessary trust and confidence. Both sides are expected to absorb lesser blows. The gravity of a suggested breach of the implied term is very much left to the assessment of the Tribunal as the industrial jury.
29. London Borough of Waltham Forest v Omilaju [2005] IRLR 35 The test of whether the employee's trust and confidence has been undermined is objective.
30. In WA Goold (Pearmak) Ltd v McConnell [1995] IRLR It was said that there is a fundamental implied term in a contract of employment that an employer will reasonably and promptly afford a reasonable opportunity to its employees to obtain redress of any grievance they may have.

## Decision

### Unfair Constructive Dismissal – sections 95(1)(c) and 98 Employment Rights Act 1996

31. The matters which the Claimant alleged amounted cumulatively to a breach of trust and confidence and constituting a fundamental breach of contract in response to which she resigned were those matters listed above taken from her resignation letter.

***1. Your request on Monday for a report from my doctor feels like a threat. You already have an occupational health reports which sets out the issues causing my absence and the solutions for facilitating my return.***

32. Viewed objectively, this could not be seen as a threat. By this time (12 September 2016), the Claimant had been absent on sick leave for three and a half months and it was understandable that, notwithstanding the occupational health report of 15 July 2016, the Respondent would wish to obtain further information regarding the Claimant's medical condition from her own GP.

***2. This follows a range of treatment as previously set out in my grievance and subsequent appeal ....***

33. The matters raised in the Claimant's grievance and appeal are set out above. Viewed objectively, the reasons given for not upholding each head of the grievance were justified and supported by the evidence examined by Ms White and Mr Ralphs.
34. In particular, it was clear that the Claimant resented Mr Caffrey's management of her and did not engage with the new guidelines which he



introduced. There was no opportunity for the guidelines to be put to the test in her case because she went absent on sick leave shortly after they were introduced. There was consultation with the Claimant and other members of the team before the guidelines were introduced. A change in emphasis and the manner in which sales were to be conducted was a management decision which Mr Caffery was entitled to take and did not amount to a change or breach of contract.

35. The Respondent produced evidence to show that the new guidelines had been effective in increasing efficiency and commission. There was also evidence that the Claimant's earnings was largely unchanged during the years 2014, 2015 and 2016. In other words, there was no significant drop in her income.

***3. When I tried to raise my concerns as to the change to my terms and conditions I was threatened with a formal disciplinary meeting.***

36. As set out in the grievance outcome, it was a reasonable request for the Claimant to attend a formal meeting following the Claimant's email of 19 May 2016.

***4. In my appeal I raised further issues that the process did not feel fair.***

37. The Respondent followed its own grievance procedure and that procedure complied with the ACAS Code of Practice on Grievance Procedures and the Accompanying Guide (2015). The process was fair.

***5. There was delay in organising the grievance hearing. Meetings were proposed with unreasonable notice.***

38. The reason for delays and the amount of notice given for meetings was explained by Ms Spracklen. Viewed objectively, these were not excessive and were justified. There was a delay of one month between the grievance and the grievance meeting and a delay of less than two weeks between the grievance meeting and the grievance outcome. There was a delay of one week between the appeal and the appeal meeting and a delay of only one day between the appeal meeting and the appeal outcome.

***6. My companion was interfered with such that she declined to act as my companion.***

39. This matter was explained by Ms Spracklen who said that the Claimant's chosen companion, Ms Fahmy, was unable to attend the grievance meeting because of objections by her line manager. When Ms Spracklen explained to Ms Fahmy what was required of her in accompanying the Claimant to the grievance, Ms Fahmy said that she had mixed feelings about it and together with her line manager's objections, she withdrew her support from the Claimant. Ms Fahmy did not attend the hearing to give evidence and her witness statement was challenged by the Respondent. Ms Spracklen gave a plausible and reasoned explanation for Ms Fahmy

not attending as the Claimant's companion. There was no reliable evidence that she was interfered with such that she declined to act as a companion.

**7. This gave me the impression that the decision to the appeal was made before the meeting was held.**

40. There was no reliable evidence to support the Claimant's allegation that the decision on the appeal was made before the meeting was held. This was based upon the Claimant's "impression" and had no evidential foundation. The Claimant attended an appeal meeting with Mr Ralphs and he provided a detailed outcome covering the matters which had been raised by the Claimant.

**8. At no time had anyone from the Chamber of Commerce contacted me to check that I was ok or to organise a wellbeing meeting.**

41. The Respondent was in regular contact with the Claimant throughout her sickness absence in connection with her grievance. During that period, she was referred for an occupational health consultation and also permission was sought to approach her GP to ascertain her medical condition.

**9. At no point since the report outcome; or as any part of my grievance and subsequent appeal has the Chamber taken any steps to facilitate my return by addressing the issue with Mr Caffrey.**

**10. Your occupational health doctor found that the situation needs to be resolved before I can return to work. At no stage has the company endeavoured to resolve any of the issues.**

42. The Respondent took reasonable and proper steps to deal with the Claimant's grievance and her appeal. The process was prompt and meaningful. Unsurprisingly, the Claimant was dissatisfied that neither her grievance nor her appeal was upheld but that does not change the fact that they were dealt with properly.

**11. I feel gravely let down by the Chamber and I do not trust that you are concerned about my welfare or wellbeing or will act appropriately towards me should I return to work...."**

43. There was no reliable evidence that the Respondent had acted in any way inappropriately towards the Claimant and no evidence that it would act inappropriately towards her if she should return to work. There was clear evidence that substantial efforts were made to address her grievance and appeal, to establish the reason for absence, and to take steps to enable her to return to work.

44. Overall, viewed objectively, there was nothing in the Respondent's conduct which did not have reasonable and proper cause or which amounted to a breach of trust and confidence.

45. The Claimant was not constructively dismissed and the claim of unfair constructive dismissal therefore fails.

Wrongful Dismissal - article 3 Employment Tribunals Extension of Jurisdiction (E&W) Order 1994

46. The Claimant resigned without notice. There was no dismissal, constructive or otherwise. She was not entitled to notice or notice pay. This complaint fails and is dismissed.

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Employment Judge Vowles

Date: .....16 November 2017.....

Sent to the parties on:

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For the Tribunal Office