



EMPLOYMENT TRIBUNALS

Claimant: Mr Y Ali

Respondent: South Western Ambulance Service NHS Foundation Trust

Heard at: Exeter **On:** Tuesday 16 and Wednesday 17 December 2019

Before: Employment Judge Matthews

Representation:
Claimant: Mr D Gray-Jones of Counsel
Respondent: Mr W Young of Counsel

RESERVED JUDGMENT

Mr Ali's claim that he was unfairly constructively dismissed by the Respondent Trust is dismissed.

REASONS

INTRODUCTION

1. Mr Yasir Ali's claims and the issues involved were discussed at a Preliminary Hearing by telephone before Employment Judge Gray on 4 September 2019.
2. Mr Ali claims that he was unfairly constructively dismissed. Mr Ali says that conduct of the Trust amounted to a fundamental breach of the implied term of trust and confidence in the employment contract entitling him to resign and treat herself as unfairly constructively dismissed. The conduct relied on is that set out in paragraph 8 of the "Statement of Case" attached to Mr Ali's claim form ("Paragraph 8"), together with one other matter identified at the Preliminary Hearing.

The content of Paragraph 8 can be seen at pages 23-24 of the bundle (all references are to pages in the bundle unless otherwise stated). The Tribunal sought to clarify the content of Paragraph 8 with Mr Ali, explaining that the exercise was not intended to rule out of consideration other matters brought in evidence. That helped clarify matters to some extent, although a number of wide ranging and unparticularised allegations remained in play.

3. Set out below are the matters listed in Paragraph 8 together with the Tribunal's understanding of Mr Ali's clarification where the matter is not self-explanatory:

"i) The failure to reflect the Claimant's role within the organisation chart, implying a demotion to the Claimant's role;" Mr Ali explained this was a reference to a post being inserted between his line manager and himself.

"ii) The failure to consult and the imposition of a unilateral demotion on to the Claimant's seniority within the ARP Organisation;" This is the same as i) with the addition of the allegation of a failure to consult.

"iii) Ian Hough's failure to fulfil his line management responsibilities towards the Claimant e.g. failure to correct the organisation chart causing a lack of clarity and uncertainty for the Claimant and his colleagues;" This is a more general allegation including that organisation charts were not accurately maintained causing uncertainty.

iv) Ian Hough's failure to action line management responsibilities towards the Claimant e.g. regarding the Claimant's appraisals;" Whilst citing the appraisal issue in particular, Mr Ali explained that the thing that was of most concern was a lack of coaching.

"v) Ian Hough's failure to approve the Claimant's request for a desk and chair;"

vi) Ian Hough's failure to change the Claimant's job title to reflect his additional responsibilities, and his status within the senior team;" This is an allegation that Mr Hough did not update Mr Ali's job description as Mr Ali's job evolved and did not include something within Mr Ali's job title to reflect his seniority such as using the words "Head of".

"vii) Ian Hough's failure to enable the Claimant to be successful in securing the Head of Procurement and Commercial role;" This is an allegation that Mr Hough

organised the interview panel in such a way as to ensure that Mr Ali did not get the job.

“viii) The Claimant had a close working relationships with DHSC Colleagues, namely Sue Glazebrook and David Parker and Ian Hough undermining this;” This is an allegation that, by including Ms Glazebrook and Mr Parker on the interview panel, Mr Hough jeopardised Mr Ali’s future working relationship with them.

“ix) Ian Hough’s failure to amend the Claimant’s pay in order to align him to his current role;” The simple allegation is that Mr Hough ensured that Mr Ali was underpaid.

“x) Ian Hough’s failure to either update the Claimant’s job description or promote him to the role of “Head of Procurement and Commercial” despite the Claimant effectively carrying out this role in practice;” This includes an element of vi) and adds an allegation that the correct course of action would have been to slot Mr Ali into the new post without interview.

“xi) Ian Hough’s failure to support the Claimant with regards to his physical or mental wellbeing;” Whilst the general allegation is that Mr Hough never showed any interest in Mr Ali’s welfare, the focus is on the way Mr Hough behaved during Mr Ali’s absence on sick leave. This is where the additional matter identified in the Preliminary Hearing before Employment Judge Gray comes into the picture. The allegation is that Mr Hough laughed at Mr Ali when he explained he was depressed during a telephone conversation on 6 September 2018. That incident Mr Ali says was the “last straw”.

“xii) Ian Hough’s lack of clarity regarding the Claimant’s role following his demotion;” The allegation is that Mr Hough did not explain to Mr Ali what Mr Ali’s role would be following his failure to secure the job of Head of Procurement and Commercial Management.

“xiii) Ian Hough’s poor leadership and management style eg his failure to action the Claimant’s pay rise;” Again, this is a general allegation. In particular, Mr Ali singled out his allegation that Mr Hough had failed to deliver on promises of a pay rise.

“xiv) Ian Hough’s failure to support the Claimant, e.g. by delivering bad news by telephone to the Claimant about him being unsuccessful in his application for the Head of Procurement and Commercial position and his refusing to approve the Claimant’s annual leave, observed by the Claimant as an abuse of power.”

4. The Trust defends the claim. The Trust says that there was no fundamental breach of contract and if there was, it was not why Mr Ali resigned. If it was, Mr Ali delayed too long before resigning and thereby affirmed the contract. At the end of the Hearing Mr Williams clarified that the Trust did not rely on any argument that, if there was a dismissal, it was fair. At the start of the Hearing the Tribunal noted that Mr Ali’s updated schedule of loss included a claim in respect of injury to feelings and it also noted the way aspects of the case had been pleaded. As a result, the Tribunal confirmed with Mr Gray-Jones that there was no claim of discrimination by reference to the Equality Act 2010 to be decided.
5. The parties agreed that, should Mr Ali succeed in his claim, the remedy should be an award of compensation for unfair dismissal in the sum of £19,242.30.
6. Mr Ali gave evidence supported by a written statement. Mr Ian Hough (National Service Director for the Trust’s Ambulance Radio Programme (“ARP”) team) gave evidence on behalf of the Trust. Mr Hough also produced a written statement.
7. There were two agreed bundles of documentation, one in relation to remedy. By agreement, one document was added to the main bundle in the course of the Hearing. Mr Gray-Jones produced a chronology, which, as a matter of record, was not agreed. Both Mr Gray-Jones and Mr Williams produced written summaries of their arguments and spoke to them.
8. The Hearing was listed for four days. In the event, evidence and summaries took two days. Rather than using the time allowance to consider and give Judgment, the Tribunal reserved judgment to better consider, in particular, the evidence.
9. There is fundamental dispute concerning some of what happened. Some of this is about perceptions of agreed events. However, there are some factual disputes about whether or not an event occurred. In deciding this case it is not necessary for the Tribunal to make findings in relation to every disputed fact. Where it is necessary, the Tribunal’s findings are on the balance of probability taking account of the evidence as a whole. Whilst it is not the Tribunal’s function to stray

outside the series of specific allegations made by Mr Ali, it is necessary to consider context.

10. The protagonists in the dispute are Mr Ali and Mr Hough. In some instances, there is no way of reconciling their evidence. Where it is necessary to decide whose evidence to prefer, the Tribunal will explain why it has found as it has.

FACTS

11. The Trust's core operation is to provide emergency and urgent care and non-urgent care patient transport services (that is, ambulance services) in Cornwall, the Isles of Scilly, Devon, Dorset, Somerset, Gloucestershire, Wiltshire and Bristol. At the time it filed its response in these proceedings the Tribunal believes the Trust employed some 4,000 people.
12. Mr Ali was employed in the ARP function of the Trust, which is somewhat atypical. The ARP's role is to act as agent for the Department of Health and Social Care ("DHSC") in the DHSC's obligation to provide mobile communications services to all NHS Ambulance Trusts in England. The ARP function (that is, the Trust in terms of a legal entity) employs its own staff, but they are funded by the DHSC, which body is also the principal in contracting arrangements. It seems that this national role found a home with the Trust because the Trust volunteered to take it on. The ARP unit has grown in the years between Mr Ali's recruitment in 2010 from 15 to around 60 employees.
13. Mr Ali started working for the ARP (at the time, part of the NHS Business Services Authority, later the London Strategic Health Authority – there was a TUPE transfer to the Trust on 1 April 2013) on 12 April 2010, as Commercial Manager. Mr Ali remained in that post until he resigned by a letter dated 12 October 2018 (376). By agreement, Mr Ali's last day of employment with the Trust was 16 November 2018.
14. Mr Ali took a First in Economics in 2001. Prior to joining the ARP Mr Ali became a Member of the Chartered Institute of Procurement and Supply and worked, in turn, for Bombardier, EDF and Resonate (a consultancy business).
15. Throughout his employment with the Trust, Mr Ali reported to Mr Hough.
16. Mr Hough oversaw Mr Ali's recruitment to the ARP. Mr Ali says that the only job description he ever saw for his post was that provided to him when he was recruited (313-319). At the time, the service the

ARP oversight was essentially delivered through one contract with Airwave Solutions Limited ("Airwave"). Mr Ali's job was to manage the contractual relationship with Airwave and other suppliers and, facing the other way, liaise on this with the English Ambulance Trusts. The job description referred to the job as that of "Contract Manager" and provided for a salary at NHS grade "8C (TBC)".

17. Mr Ali was interviewed for the job on 16 March 2010 by Mr Hough, Ms Ann O'Rourke (Head of Service Delivery) and Mr Anthony Rybicki (Senior Contracts Manager). Mr Hough telephoned Mr Ali later in the day to say that Mr Ali had been successful at interview and to offer him the job at NHS grade 8B (that is, below 8C). Mr Ali says that he told Mr Hough that this was below his expectations and Mr Hough reassured him that he would move up a spine point every year until he reached the top of the band, after which he would move up to the next band. Mr Hough disputes that he, in effect, promised Mr Ali automatic promotion to the next band. That conversation was a long time ago and the Tribunal does not need to resolve the dispute about it. What is clear is that Mr Ali could have had no doubt that he was starting on grade 8B (see 101, for example).
18. At the start, Mr Ali's job was at the ARP's successive London bases in Southwark and Victoria. Mr Ali says that Mr Hough made life difficult for him to the point of bullying by not responding to communications and he was also bullied by Ms O'Rourke. Mr Hough sees it differently. Again, the Tribunal does not need to make a finding on this. Mr Ali says that the resultant stress and anxiety caused him to decide to move his home from the Royal Albert Docks area of London to Leicestershire in the Autumn of 2011. This enabled him to work from home, whilst attending the London office as needed. Mr Hough approved the change. Mr Ali made his move to Leicestershire on 30 April 2012. Thereafter, apart from meetings in the office and elsewhere, Mr Ali's regular verbal contact with Mr Hough was through telephone catch up calls, mostly on Mondays. Doubtless there were occasions on which these were not possible on one side or the other.
19. On or before 26 January 2012, Mr Ali raised the subject of the correct banding for his job with Mr Hough. On 26 January 2012 Mr Hough sent Mr Ali an e-mail on the subject together with a copy of the "NHS Job Evaluation Handbook" (107-175). Mr Hough explained the two ways jobs could be assessed. On 25 March 2012 Mr Ali sent Mr Hough a spreadsheet comparison of the old "8C" version of his job description and the role as he saw it in March 2012 (177). In essence Mr Ali was making the case that he now had additional responsibilities in "Planning and Organisational Skills" and "Responsibility for Research and Development."

20. There was a further meeting on the subject on 10 April 2012 following which Mr Ali provided a mark-up of his job description (311). Mr Ali says that nothing happened subsequently. Mr Hough says that this was because Mr Ali had not made out his case. Mr Hough gives a detailed explanation of this in his witness statement (28-31).
21. Mr Hough and Mr Ali had a meeting in the Cross Hands Hotel in Old Sodbury, near Bath on 4 May 2012 (178a-b). In his statement Mr Ali says that this meeting was as a result of Mr Hough asking to meet him urgently (WS 30). The e-mail exchange does not, however, reflect any urgency and records that the meeting was at Mr Ali's request.
22. Mr Ali's recollection of the meeting is set out in his witness statement (WS 31-33). Mr Ali says he asked Mr Hough "*are you trying to get me out*" to which question he received no response. Mr Ali says that he received an assurance that Mr Hough would sort out a pay rise but nothing materialised. Mr Hough does not agree with Mr Ali's recollection of these particular matters. Again, these events took place a long time ago and the Tribunal does not need to resolve the dispute about them.
23. On 15 August 2012 Mr Ali sent an e-mail to Mr Hough (181). Mr Ali enquired if he could buy some office furniture under the Trust's home workers' policy. Mr Ali added that he would be prepared to offset the cost against some IT costs the Trust had queried. Mr Ali added that there was no need to reply to the e-mail if the costs could not be claimed back. There seems to have been no reply from Mr Hough. Given that Mr Ali had invited Mr Hough not to reply, it is strange that Mr Ali characterises Mr Hough's lack of reply in this way (WS39):

"Ian did not even acknowledge this proposal. I recall thinking that I genuinely do not know what I have done to warrant such treatment and victimisation. Everything I did seemed to be treated by Ian with silence."

24. Mr Ali says that from 2013-2018 (WS 49):

"the levels of professionalism, and capability that I demonstrated achieved significant commercial and financial results for the Respondent, and my areas of responsibility grew exponentially."

25. Mr Ali expands on this in paragraph 50 of his witness statement. Mr Ali says that, by 2018, his original job description bore "zero" resemblance to his actual role. The background to this was that the ARP was overseeing a change from the Airwave network to a

replacement Emergency Services Network. As has been recorded, Mr Ali's original role had focussed on the management of the relationship with Airwave. By 2018, Mr Ali says he had, in effect, become "*Head of Procurement*". He had recruited six people and was managing a team, was managing relationships with stakeholders and lawyers, was ensuring compliance with procurement processes and regulations, was overseeing strategy and other commercial policy objectives and was performance managing staff and suppliers. This had not, Mr Ali says, been reflected by Mr Hough revising Mr Ali's job description or remuneration package. Mr Ali says this was because Mr Hough was trying to force him to resign (WS 52). Mr Hough disagrees that Mr Ali's role had changed to the extent that it bore zero resemblance to Mr Ali's original job description and denies that he was trying to force Mr Ali to resign. Mr Hough sets out his reasons in his witness statement (WS 20).

26. It is not necessary for the Tribunal to decide who was right and who was wrong about the job description, save to note that it would be surprising if it was entirely up to date in the circumstances. As far as the allegation that Mr Hough was trying to force Mr Ali to resign is concerned, the Tribunal finds this to be implausible. Mr Ali's evidence on this is that he mentioned it to Mr Hough on 4 May 2012 at the meeting at Old Sodbury (see paragraph 22 above), although the Tribunal makes no finding on that. Mr Ali appears to have seen it as the motivation for many of Mr Hough's alleged behaviours towards him. The allegation, therefore, is that Mr Hough wanted to force Mr Ali to resign over a period of at least six years. It seems to the Tribunal that Mr Hough would have had ample opportunity to secure any such objective well before Mr Ali handed in his resignation. The Tribunal will come to the events leading up to that below. The Tribunal notes that Mr Hough supported Mr Ali's request for funding for an Open University MBA in 2016 (203-207). That is inconsistent with any desire on Mr Hough's part to force Mr Ali out.
27. As far as his job title was concerned, Mr Ali refers the Tribunal to the Organisation Chart dated October 2018 at 288. Mr Ali's title was "Commercial Manager". In contrast, Mr Ali says, other senior team members in the organisational structure included "Senior", "Head" or "Director" in their job titles. Mr Ali says that he was the "*notable exception*" in this respect (WS 55). Two points arise from this. First, the only person to include "Director" in his title, appears to have been Mr Hough. The Tribunal assumes Mr Ali had no objection to that as Mr Hough headed the ARP. Second, the chart shows the intermediate post of "Head of Procurement and Commercial Management" between Mr Ali and Mr Hough. Of that, more will be recorded below. Mr Ali's makes his view of his job title clear (WS 56, 57):

“This disparity in job title is another example where Ian had not supported my progression in terms of job title, and treated me unfairly and unequally.”

“This disparity left me feeling victimised.”...“The lack of clarity and uncertainty created by Ian Hough persisted for so long that it detrimentally affected my self-confidence, self-esteem, and mental health and wellbeing.”

28. Mr Ali makes other criticisms of the ARP’s organisation charts. Mr Hough, for his part, acknowledges that they were often inaccurate in some respects. The difference between Mr Ali and Mr Hough seems to be that Mr Ali saw himself as a target of the inaccuracies whereas Mr Hough says that he was not. On the paperwork it seems self-evident that Mr Ali was not targeted in this respect.
29. Mr Ali’s view that his job title did not reflect his job also, as far as he was concerned, had implications for his pay. Mr Ali says this (WS 60, 61, 67, 97):

“The change in the nature of my job as set out above was a transformation, and as a result should have resulted in a pay rise.

I was an outstanding performer and acted in the head of role for over 12 months”....

“This lack of commensurate pay left me feeling unsure about my role and position at the Respondent. Over time, this lack of support from Ian has resulted in me becoming stressed and depressed. I believe Ian Hough treated me in this way to force me into resigning.”

“Despite my outstanding performance I received no form of career progression or pay rise (other than the standard inflationary and spine point pay rises that applied across the board) whilst employed by the Respondent. I felt that my pay did not reflect what I did what I was responsible for or what I had achieved.”

30. The Tribunal has recorded that the ARP’s organisation chart dated October 2018 showed Mr Ali reporting to Mr Hough through the intermediate post of Head of Procurement and Commercial Management.
31. The issue can, in fact, be traced much further back than that. What happened was this. Mr Hough explains that during 2016 it was decided to *“grow the scope and competency of the procurement and*

commercial function” (WS 5). This was to reflect the move from Airwave, the single service provider, to a number of smaller contracts. From February 2016 to March 2017 there had been a post of “Commercial Lead” filled on an interim basis by Ms Christine Sharpe (see 208). Apparently, Mr Ali had reported to Ms Sharpe. Mr Ali says there had been no consultation about that. Equally, however, there is no contemporaneous evidence that Mr Ali took any exception to it. From Ms Sharpe’s post, the Head of Procurement and Commercial Management role evolved.

32. Referring to the Head of Procurement and Commercial Management post, Mr Ali says this *“change was not formally consulted with me.”* (WS 70). Mr Ali continues, however, that Mr Hough had mentioned it in February 2018 when he had asked Mr Ali if he *“would be happy to move to London for a head of role if it came up”*. It is clear that both men anticipated that Mr Ali would apply for the post and Mr Hough’s evidence was that he had expected Mr Ali’s application to be successful.
33. Mr Ali says that, on Ms Sharpe’s leaving in early 2017, he acted up in the role she had and thus in the Head of Procurement and Commercial Management role (see Mr Ali’s 2018 appraisal at 223). Mr Hough does not agree. Mr Hough’s evidence is that, on Ms Sharpe’s departure, her job was split across a number of individuals (WS 5). To the extent that Mr Ali took them on, Mr Hough says they were within Mr Ali’s job description. Mr Ali comments (WS 77):

“It suited Ian, to continue to allow me to complete the role successfully, whilst making significant savings against the team budget by not formally appointing me.”

34. It is not in dispute that Mr Hough neither carried out enough nor satisfactory performance appraisals for Mr Ali. Apparently, this was a feature of Mr Hough’s management across all his reports. Mr Ali had three appraisals during his employment with the Trust. Mr Ali’s appraisal for 2010/11 (102-106) was apparently left unsigned as was that in 2014 (186-202). On 21 July 2018 Mr Ali sent his 2018 appraisal to Mr Hough (214a-q). This was discussed on 24 July 2018 and on 27 July 2018 Mr Ali sent Mr Hough an updated version (216-232). It remained uncompleted and unsigned because, Mr Hough says, it was overtaken by the events that followed (WS 10) and which are recorded below. A comparison of Mr Ali’s original draft appraisal and the updated version hints at different perceptions Mr Ali and Mr Hough may have held about Mr Ali’s job. For example, a comparison of pages 214d and 219 shows Mr Ali adding *“(to the extent that it is possible in my role).”* To qualify his example *“demonstrating my commitment to the quality of care and improving lives”*. This is a

simplistic example but a consideration of the changes in the “Objectives” section appears to bear the point out. In short and unsurprisingly, Mr Ali was talking his job up and Mr Hough was pulling him back. This, of course, is a typical manager/report negotiation but, nevertheless, reflects a tension.

35. In the 2018 appraisal, Mr Ali commented on his relationship with Mr Hough (230, 232):

[Heading] *“What kind of help would you like in your career?”*

I appreciate the ongoing guidance and coaching offered to me by my Line Manager (Ian Hough). I find the breadth and depth of the experience, knowledge and advice from my Line Manager invaluable in carefully managing and navigating critical stakeholder relationships, the performance of the wider Commercial Team as well as my own performance. I truly believe that the ARP Programme and Commercial Team owes its success to my Line Manager’s leadership abilities, and the only help I would like is for my Line Manager’s leadership and guidance to continue.”....

“Above all, I look forward to continuing to work with my Line Manager who over is an invaluable and indispensable source of guidance, wisdom and experience.”

36. Mr Ali’s comments are at odds with the claims before the Tribunal. They appear to have been gratuitous in that Mr Ali was being asked to set out what help he would like in his career, not what he thought about Mr Hough. Mr Ali’s explanation is that he was being professional and loyal. Mr Hough, reading the comments, can only have regarded his relationship with Mr Ali as excellent.
37. Mr Ali says he saw Mr Hough’s approach to his appraisals as targeted. Mr Ali draws this conclusion from the fact that only he, amongst his colleagues, sent appraisals to Mr Hough. Mr Hough failed to complete them. That was, therefore, targeted behaviour by Mr Hough towards Mr Ali. Mr Ali is almost certainly wrong. Not only is the logic of Mr Ali’s viewpoint questionable but a more obvious scenario is that Mr Hough would have left uncompleted any appraisal that was sent to him.
38. The Tribunal now turns to the events more immediately preceding Mr Ali’s resignation. These start with the recruitment exercise for the post of Head of Procurement and Commercial Management.
39. Mr Ali recalls that he applied for the job in early July 2018. Mr Ali was shortlisted and attended for interview on 2 August 2018. The

interview panel consisted of Mr Hough, Ms O'Rourke and Ms Glazebrook. Mr Ali makes many criticisms of the process. Mr Ali contrasts it with the way in which other senior appointments were made, some involving appointment without interview and some, alleged cronyism. As recorded above, Mr Ali's view was that he should have been appointed without interview. Mr Ali criticises the inclusion of Ms Glazebrook on the interview panel. Ms Glazebrook was a government outsider, albeit one who worked closely with Mr Ali. Mr Ali made similar criticisms of the original intention to include Mr David Parker on the panel, although, in the event, he was not so included. Mr Hough's evidence is that it was usual practice to include external members on interview panels for senior specialist roles and Ms Glazebrook and Mr Parker brought procurement and commercial experience to the interview panel that he lacked (WS 36, 37).

40. The interview record forms themselves are at 250-259 (Mr Hough), 260-269 (Ms Glazebrook) and 270-279 (Ms O'Rourke). Mr Ali makes no detailed analysis of these (presumably because Mr Ali did not see them before his resignation and the detail cannot be causative of his decision to resign) but there are some informative pointers to the differences between Mr Ali's view of his suitability for the role and that of the interviewers. For example, all the interviewers scored Mr Ali with "meets some of the requirements" (a score of 1 on an increasing scale of 1-4) (251, 261, 271) in response to the criteria of experience relevant to the role. This is surprising if it was the case, as Mr Ali says, that he had effectively been doing the job for 18 months. Overall, Mr Ali scored poorly. Mr Hough's "Overall Comment" was (259) *"Too task & process focussed. Not enough evidence of leadership and strategic process."* Ms O'Rourke recorded (279) *"Too task focused, he is not strategic"*. Ms Glazebrook did not record an overall comment. Mr Hough explains his reasoning in scoring Mr Ali as he did in his witness statement (WS 40).
41. The Tribunal notes that no appointment was made at that time (there having been only one other candidate). The substantive post was only filled on an interim basis in early 2019 pending a permanent appointment.
42. On 3 August 2018 Mr Ali asked Ms Mairead O'Rourke (HR - related to Ms Ann O'Rourke) what the upshot of his interview was. Ms Mairead O'Rourke confirmed that her recommendation report was with Mr Hough.
43. On 7 August 2018 Mr Ali and Mr Hough were both at the London office. There is a dispute about whether or not Mr Hough had time to discuss the result of Mr Ali's interview with him. It suffices to note that it was obviously Mr Hough's decision not to tell Mr Ali about the

outcome of the interview on that occasion. Whether it was a matter of timing or choice does not matter.

44. Mr Hough was scheduled to go on leave from 9 to 27 August 2018. Mr Hough says he did not want to go on leave without telling Mr Ali he had not succeeded at interview, although it was not his preference to use the telephone (WS 43). Six days after Mr Ali's job interview, around 1230 on 8 August 2018, Mr Hough telephoned Mr Ali to tell him he had been unsuccessful in applying for the Head of Procurement and Commercial Manager post. Mr Ali comments (WS 110):

"During this telephone call, Ian told me that the interview panel had taken notes of my responses, and that I should think about whether I wanted feedback and if so, to let him know upon his return from holiday (which was to be almost 2-3 weeks later). Ian offered me no positivity on this call. No prospect of any future where I could continue in my current role effectively acting as the head of procurement, and develop my career further. It was clear that Ian had no proposals or plans for my future in the organisation."

45. Mr Ali says he was (WS 111):

"completely devastated by the shocking and unexpected news."

46. Mr Hough's evidence is of a conversation covering more or less the same ground but adding that Mr Ali said that he was still committed to the ARP (WS 43). Mr Hough, of course did not put the same complexion on the conversation as Mr Ali says he, Mr Ali, did.

47. Needing space to cope with his emotional reaction to what had happened, Mr Ali sent Mr Hough a request for annual leave to start immediately. Mr Hough says he did not approve the request because he did not see it before he went on leave. Mr Ali saw it this way (WS 120):

"Ian effectively forced me to continue to work that afternoon in a highly stressed and anxious mental state. I felt that the combination of delivering bad news by telephone, and then refusing to approve my annual leave was an abuse of power and a deliberate act by Ian Hough to apply pressure and force me into leaving."

48. On 9 August Mr Ali sent a chasing e-mail to Ms O'Rourke (deputising in Mr Hough's absence) concerning his application for leave. Mr Ali acknowledged that Mr Hough may not have had time to respond. Ms

O'Rourke responded promptly, approving the request and, in a supportive way, offering Mr Ali an opportunity to discuss the interview (281-282). Thereafter Mr Ali was either on leave or signed off sick until his employment with the Trust came to an end on 16 November 2018.

49. On or around 17 August 2018 Mr Ali was signed off work with depression (348). It seems that the symptoms had been there for some time but had been brought to a head (see 299 in particular).
50. On 15 August 2018 Mr Ali instructed estate agents to place his house on the market. This they did on 17 August, subsequently selling it on 18 August at an undervalue of £150,000. Mr Ali comments (WS137):

"I took the desperate step of selling my home at a fraction of its value to achieve a rapid sale. My thinking was that it would quickly allow me to be in a financial position where I was no longer reliant on my SWAST salary to pay the mortgage. Or to provide for my two young children (aged three and four at the time), should I leave, be dismissed or forced to resign."

51. On or before, but no later than, 29 August 2019 Mr Ali applied for a job with Metropolitan Housing Trust Limited ("Metropolitan") (283).
52. Mr Hough's return from holiday was delayed by his own illness. On 31 August 2018 Mr Hough picked up e-mails from Mr Ali regarding Mr Ali's sickness absence and replied by e-mail. Explaining that he was, himself, away sick, Mr Hough suggested a telephone call. The two agreed it would be made on 6 September 2018 (284).
53. On 6 September 2018 Mr Hough and Mr Ali spoke by telephone to discuss Mr Ali's illness and sick leave. Mr Ali says that he told Mr Hough that he was depressed and his doctor attributed this to his work situation. Mr Ali says that Mr Hough (WS 124) *"laughed"* and *"this subsequently caused me to suffer a breakdown."* Mr Hough strenuously denies laughing at Mr Ali in the circumstances described (WS 46, 53). Again, in the event, the Tribunal does not need to make a finding on this.
54. On 5 October 2018, as Mr Ali says (WS 131), he *"raised a detailed grievance"*. This can be seen at 290-371. The grievance took the form of a short two pages letter accompanied by eight annexes of supporting narrative and copy material. It concerned Mr Ali's alleged treatment at the hands of Mr Hough. Broadly speaking it covered the grounds of Mr Ali's claim to the Employment Tribunals. That it was a precursor to that claim is clear. As Mr Ali puts it (290) *"These*

examples taken together effectively amount to my constructive dismissal.”

55. The grievance does provide some insight into what Mr Ali might really have thought of his relationship with Mr Hough, in stark contrast to the flattering remarks he had made only ten weeks previously in his 2018 appraisal. It also gives a hint about what he thought of his own competence (297):

“I believe Ian is threatened by my: Breadth and Depth of Commercial skills; my ability for empathy and to Lead Procurement and Contract Management staff; my Strategic Thinking; and my Tenacity and Drive to deliver Outstanding Commercial Results.

Ian Hough is a Micro-Manager, seeks to Control all Activities, to closely retain all Decision-Making Powers, including all Procurement and Commercial Activities and Decision-Making.”

56. That same day, 5 October 2018, Metropolitan made Mr Ali an offer of employment (372). In accepting the offer Mr Ali took a loss of around £9,000 a year in salary (based on a salary with the Trust of £4,916 a month (£58,992 a year) and the salary offered by Metropolitan of £50,000 a year (see 6 in the main bundle and 73 in the supplementary bundle).
57. Having secured employment with Metropolitan, Mr Ali says he drafted his letter of resignation, which he sent to Mr Hough on 12 October 2018 (376). Mr Ali gave the reasons as those set out in his grievance. Mr Ali asked that his last day of employment be 16 November 2018 (which coincided with the start of his job with Metropolitan). In his witness statement Mr Ali explains that he had wanted to resign earlier but felt that he could not because he was unwell and had family responsibilities (WS 144). Mr Ali does not, however, say when he decided to resign although he refers to the allegation that Mr Hough laughed at him on 6 September 2018 as the last straw.
58. Mr Ali's grievance hearing was held on 11 December 2018 by telephone. It was conducted by Mr Chris Turner (County Commander (North & East Devon) with Ms Michelle Stevens (Senior HR Business Partner) in attendance. The notes are at 394-400.
59. On 31 January 2019 Mr Turner sent Mr Ali the outcome of Mr Ali's grievance (406-413). It was dismissed, apart from partially upholding the grievance about Mr Hough's failure to perform proper appraisals.

APPLICABLE LAW

60. Section 94 of the Employment Rights Act 1996 (the “ERA”) provides an employee with a right not to be unfairly dismissed by his employer. For this right to arise there must be a dismissal.

61. Section 95(1) of the ERA, so far as it is relevant, provides:

“95 Circumstances in which an employee is dismissed

(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 (whether with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.”

62. The general principles relating to unfair constructive dismissal are well understood. An employee is entitled to treat himself or herself 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 breach may be actual or anticipatory. The employee in these circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him or her to leave at once. The employee must act promptly in response to the employer’s actions (and not for some other reason, although the employer’s actions need not be the sole cause) or he risks waiving the breach and affirming the contract.

63. It is clearly established that there is implied in contracts of employment a term that employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. Any breach of this implied term is a fundamental breach amounting to repudiation since it necessarily goes to the root of the contract. Where a claim is founded on a breach of this implied term, the tribunal’s function is to look at the employer’s conduct as a whole and determine, objectively, if it is such that the employee cannot be expected to put up with it.

64. The burden of proving a breach of contract sufficient to support a finding of unfair constructive dismissal is on the claimant.

65. The Bournemouth case referred to below made it clear that constructive dismissal is established when an employee resigns following a fundamental or repudiatory breach of contract by an employer, judged objectively and not by reference to the reasonable

band of responses test familiar in “ordinary” unfair dismissal cases. While reasonableness on the part of the employer is a measure which could be used in determining whether there had been a fundamental breach of contract, it was not a legal requirement.

66. The Tribunal was referred to Western Excavating (ECC) Ltd v Sharp [1978] ICR 221, Millbrook Furnishing Industries Ltd v McIntosh & Ors [1981] IRLR 309, W.E. Cox Toner (International) Ltd v Crook [1981] ICR 823, Malik v BCCI [1997] IRLR 462 and [1998] AC 20, Morrow v Safeway Stores plc [2002] IRLR 9, Meikle v Nottinghamshire County Council [2004] EWCA Civ 859, Omilaju v Waltham Forest London Borough Council [2005] ICR 481, Baldwin v Brighton and Hove City Council [2007] ICR 680, Bournemouth University Higher Education Corporation v Buckland [2010] ICR 908 and [2010] EWCA Civ 121, The Leeds Dental Team v Rose [2014] ICR 94, Chindove v Morrisons Supermarkets Plc UAEAT/0076/17 and Kaur v Leeds Teaching Hospitals NHS Trust [2019] ICR 1.

CONCLUSIONS

67. Why did Mr Ali resign?

68. Mr Ali’s letter of resignation gave his reasons for leaving as all those set out in his letter of grievance. On the facts that was a construct and was not the case. Mr Ali resigned because he was unsuccessful in his application for the post of Head of Procurement and Commercial Management. That is evidenced by his reaction to that news, taken together with the absence of any convincing evidence that there had been any real issue between Mr Ali and Mr Hough prior to receiving the news. Moreover, Mr Ali made the decision to resign immediately hearing that news. That decision was probably made as early as 8 August 2018. The evidence for this is that, on 9 August in Mr Hough’s absence on leave, Ms O’Rourke made a supportive offer to Mr Ali of feedback on the interview. Mr Ali did not follow that up. Feedback was probably unimportant because Mr Ali had already decided to resign. If the Tribunal is wrong about that, Mr Ali certainly made the decision to resign no later than 29 August 2018. By that time Mr Ali had, on 15 August, decided to market his house and was going forward with an offer at a significant undervalue. There is no explanation for that somewhat drastic action other than that Mr Ali had decided to leave and was preparing the ground to do so by securing his financial independence at some cost to himself. Further, on 29 August 2018 Mr Ali applied for the job with Metropolitan, which involved a significant salary drop of around £9,000 per annum.
69. It follows that nothing that occurred after 29 August 2018 was causative of Mr Ali’s decision to resign and cannot be relied upon as

an alleged fundamental breach of contract causing or contributing to that decision. This removes from further substantive consideration whatever may have taken place during the telephone conversation between Mr Hough and Mr Ali on 6 September 2018, when Mr Hough is alleged to have laughed in response to Mr Ali telling him that Mr Ali was depressed.

70. The Tribunal is clear that Mr Ali resigned for the reason explained in paragraph 68 above. However, further clarification of the Tribunal's finding about what caused Mr Ali to resign is provided below by reference to each of Mr Ali's Paragraph 8 issues.
71. "i) The failure to reflect the Claimant's role within the organisation chart, implying a demotion to the Claimant's role;" Mr Ali explained this was a reference to a post being inserted between his line manager and himself.
72. This cannot have contributed to Mr Ali's decision to resign because there is no convincing evidence that it had ever been an issue for him. From February 2016 until March 2017 Mr Ali had reported to Ms Sharpe. There is no evidence of Mr Ali making any issue about that. After March 2017 the intermediate post remained in the structure, albeit unfilled. Mr Ali thought he should have been appointed to that post, but that is a different issue.
73. "ii) The failure to consult and the imposition of a unilateral demotion on to the Claimant's seniority within the ARP Organisation;" This is the same as i) with the addition of the allegation of a failure to consult.
74. Again, there is no convincing evidence that this was an issue for Mr Ali and cannot, therefore, have contributed to his decision to resign. See paragraph 72 above. Although there is no evidence of formal consultation, it is clear that Mr Ali knew about Ms Sharpe's appointment and the post of Head of Procurement and Commercial Management. Indeed, it appears that both he and Mr Hough expected him to secure that post.
75. "iii) Ian Hough's failure to fulfil his line management responsibilities towards the Claimant e.g. failure to correct the organisation chart causing a lack of clarity and uncertainty for the Claimant and his colleagues;" This is a more general allegation including that organisation charts were not accurately maintained causing uncertainty.
76. It is not in dispute that the organisation charts were not always accurate. There is, however, no convincing evidence that this caused Mr Ali any meaningful concern, far less that this was causative of his

decision to resign. More generally the Tribunal has seen no convincing evidence to support the allegation that Mr Hough failed to fulfil his line management responsibilities to Mr Ali. Some specific allegations are dealt with elsewhere.

77. iv) Ian Hough's failure to action line management responsibilities towards the Claimant e.g. regarding the Claimant's appraisals; Whilst citing the appraisal issue in particular, Mr Ali explained that the thing that was of most concern was a lack of coaching.

78. Mr Hough did not do his job as far as appraisals were concerned for, it seems, any of his reports. However, Mr Ali never raised this as an issue and there is no convincing evidence that it figured in his decision to resign. More generally the Tribunal has seen nothing to support the allegation that Mr Hough failed to action line management responsibilities towards Mr Ali or to coach him. Some specific allegations are dealt with elsewhere.

79. v) Ian Hough's failure to approve the Claimant's request for a desk and chair;

80. The evidence is that this is not a fair characterisation of what happened. Apart from that, the Tribunal sees no convincing evidence that this event in 2012 had any bearing on Mr Ali's decision to resign.

81. vi) Ian Hough's failure to change the Claimant's job title to reflect his additional responsibilities, and his status within the senior team; This is an allegation that Mr Hough did not update Mr Ali's job description as Mr Ali's job evolved and did not include something within Mr Ali's job title to reflect his seniority such as using the words "Head of".

82. It would be surprising if Mr Ali's job description had remained accurate for eight and a half years given the change in the ARP's direction from a single service provider to a number of service providers and the quadrupling of its staff. Equally, the Tribunal accepts that job titles matter to some employees. None of this, however, assists Mr Ali's case because there is no convincing evidence that it played any part in Mr Ali's decision to resign. There is no convincing evidence that Mr Ali raised his job description with Mr Hough after 2012. In 2012 it had been in the context of pay, which is dealt with elsewhere in this Judgment. There is no evidence that the subject of job titles was ever raised.

83. vii) Ian Hough's failure to enable the Claimant to be successful in securing the Head of Procurement and Commercial role; This is an allegation that Mr Hough organised the interview panel in such a way as to ensure that Mr Ali did not get the job.

84. This was causative of Mr Ali's decision to resign and is dealt with further below.
85. "viii) The Claimant had a close working relationships with DHSC Colleagues, namely Sue Glazebrook and David Parker and Ian Hough undermining this." This is an allegation that, by including Ms Glazebrook and Mr Parker on the interview panel, Mr Hough jeopardised Mr Ali's future working relationship with them.
86. This was ostensibly connected with the reason Mr Ali resigned and is dealt with below.
87. "ix) Ian Hough's failure to amend the Claimant's pay in order to align him to his current role;" The simple allegation is that Mr Hough ensured that Mr Ali was underpaid.
88. Mr Gray-Jones explored this with Mr Hough in questioning, with particular reference to Mr Hough's decision in 2012 not to progress Mr Ali's request to be regraded by, for example, referring it to those charged with evaluations under the NHS Job Evaluation Booklet. Mr Gray-Jones made some progress with this. The legal argument that accompanies the factual examination is that a failure to pay the rate for the job is a continuing breach of contract. The Tribunal has not made a finding of fact on whether or not Mr Hough did fail in this respect. The reason that it has not done so is that is satisfied that this played no part in Mr Ali's decision to resign. There is no convincing evidence that Mr Ali raised the subject again after 2012 and it is reasonable to draw the conclusion that it played no part in his decision to resign.
89. "x) Ian Hough's failure to either update the Claimant's job description or promote him to the role of "Head of Procurement and Commercial" despite the Claimant effectively carrying out this role in practice;" This includes an element of vi) and adds an allegation that the correct course of action would have been to slot Mr Ali into the new post without interview.
90. As far as the element of vi) is concerned, see paragraph 82 above. The failure to slot Mr Ali into the Head of Procurement and Commercial Management post did cause Mr Ali to resign and is dealt with below.
91. "xi) Ian Hough's failure to support the Claimant with regards to his physical or mental wellbeing;" Whilst the general allegation is that Mr Hough never showed any interest in Mr Ali's welfare, the focus is on the way Mr Hough behaved during Mr Ali's absence on sick leave. This is where the additional matter identified in the Preliminary

Hearing before Employment Judge Gray comes into the picture. The allegation is that Mr Hough laughed at Mr Ali when he explained that he was depressed during a telephone conversation on 6 September 2018. That incident Mr Ali says was the “last straw”.

92. There is no convincing evidence to support any general neglect of Mr Ali’s physical or mental wellbeing by Mr Hough. Mr Hough’s involvement with Mr Ali’s sick leave occurred after Mr Ali had decided to resign and did not contribute to that decision.
93. “xii) Ian Hough’s lack of clarity regarding the Claimant’s role following his demotion;” The allegation is that Mr Hough did not explain to Mr Ali what Mr Ali’s role would be following his failure to secure the job of Head of Procurement and Commercial Management.
94. Again, this is bound up in Mr Ali’s reason for resigning and is dealt with below.
95. “xiii) Ian Hough’s poor leadership and management style eg his failure to action the Claimant’s pay rise;” This is a general allegation. In particular, Mr Ali singled out his allegation that Mr Hough had failed to deliver on promises of a pay rise.
96. See paragraphs 76, 78 and 88 above.
97. “xiv) Ian Hough’s failure to support the Claimant, e.g. by delivering bad news by telephone to the Claimant about him being unsuccessful in his application for the Head of Procurement and Commercial position and his refusing to approve the Claimant’s annual leave, observed by the Claimant as an abuse of power.”
98. This is linked to Mr Ali’s reason for resigning and is dealt with below.
99. **Did the acts and omissions complained of in sub-paragraphs vii), viii), xii) and/or xiv) of Paragraph 8 individually or cumulatively, amount to a breach or breaches of the contract of employment by the Trust going to the root of the contract of employment? In other words, was there a fundamental breach of contract entitling Mr Ali to resign and treat himself as constructively dismissed?**
100. These are the acts and omissions that the Tribunal has found were either the reason or connected with the reason that Mr Ali resigned. They must, therefore, be looked at to see if, singly or cumulatively, they amounted to a fundamental breach of contract.
101. “vii) Ian Hough’s failure to enable the Claimant to be successful in securing the Head of Procurement and Commercial role;” This is an

allegation that Mr Hough organised the interview panel in such a way as to ensure that Mr Ali did not get the job.

102. The Tribunal has made findings of fact on how the interview panel was formed and the inclusion of Ms Glazebrook on it. On those facts, viewed objectively, the formation of the interview panel was reasonable and there is nothing to support Mr Ali's contention that Mr Hough organised it so as to ensure that Mr Ali would not succeed. However, looking beyond the issue of the panel, this alleged failure by Mr Hough is the crux of the matter. Mr Ali's allegation is that he had been doing the job since Ms Sharpe left in March 2017 and he should have been slotted into the post by Mr Hough without interview. Mr Ali says he sees only one explanation for why he was not so slotted in and, furthermore, failed to secure the post at interview. That explanation is that Mr Hough wanted to force him out. The facts do not support that conclusion and that is the heart of the matter. There was no fundamental breach of contract here nor anything that could have contributed to such a cumulative breach.

103. "viii) The Claimant had a close working relationships with DHSC Colleagues, namely Sue Glazebrook and David Parker and Ian Hough undermining this;" This is an allegation that, by including Ms Glazebrook and Mr Parker on the interview panel, Mr Hough jeopardised Mr Ali's future working relationship with them.

104. In the event, Mr Parker was not a member of the panel that interviewed Mr Ali. Viewed objectively, there was nothing about appointing Ms Glazebrook to the interview panel that amounted to a fundamental breach of contract either as a standalone act or cumulatively. Ms Glazebrook had experience that was valuable to the panel and there is no fundamental objection to including a work colleague on an interview panel where the circumstances justify it, as, in Mr Hough's objectively reasonable view, they did in this case.

105. "xii) Ian Hough's lack of clarity regarding the Claimant's role following his demotion;" The allegation is that Mr Hough did not explain to Mr Ali what Mr Ali's role would be following his failure to secure the job of Head of Procurement and Commercial Management.

106. It is probable that emotion and timing played a part in this. Mr Hough, who was proceeding on the basis that Mr Ali would simply continue in post, does not appear to have anticipated the severity of the impact the news of Mr Ali's failure to secure the post would have on Mr Ali. Mr Hough's holiday then compounded the communication issue. Equally, Mr Ali's apparent conclusion that it followed from his not securing the post that he was out of a job and/or had been

demoted was without objective foundation. Nothing the Trust did threatened Mr Ali's existing post. There was no fundamental breach of contract here nor anything that could have contributed to such a cumulative breach.

107. "xiv) Ian Hough's failure to support the Claimant, e.g. by delivering bad news by telephone to the Claimant about him being unsuccessful in his application for the Head of Procurement and Commercial position and his refusing to approve the Claimant's annual leave, observed by the Claimant as an abuse of power."

108. Again, emotion and timing probably played a part. As observed above, Mr Hough appears to have wrongly gauged Mr Ali's reaction to the news that Mr Ali had failed to secure the post. The evidence is that Mr Hough did think delivering the news by telephone was not the best way of doing it. Nevertheless, opportunity and Mr Hough's holiday meant that was what happened. In making this allegation, Mr Ali's focus on Mr Hough overlooks the supportive offer of feedback he received from Ms O'Rourke on the day following Mr Hough breaking the news to him. Whilst it is possible to criticise the way Mr Hough handled the news with the benefit of hindsight on Mr Ali's reaction to it, the reality is that, viewed objectively, the way Mr Hough and Ms O'Rourke handled the news was not unreasonable. It certainly was not a fundamental breach of contract nor anything that could have contributed to such a cumulative breach. Mr Ali's allegation that Mr Hough deliberately withheld approval of Mr Ali's application for holiday leave is not supported by the facts.

109. On the evidence there is no identifiable single act or accumulation of acts that amounts to a fundamental breach of the implied term of trust and confidence in Mr Ali's contract of employment with the Trust.

110. It follows that Mr Ali's claim of unfair constructive dismissal fails and must be dismissed.

Employment Judge Matthews

Date: 31 December 2019

Judgment sent to parties: 7 January 2020

FOR THE TRIBUNAL OFFICE