

JERSEY / JUDGMENT

Agnieszka Tarnawska v Smile 2012 Limited T/A Smile Dental Clinic

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IN THE JERSEY EMPLOYMENT AND DISCRIMINATION TRIBUNAL BETWEEN AGNIESZKA TARNAWSKA CLAIMANT AND SMILE 2012 LIMITED T/A SMILE DENTAL CLINIC RESPONDENT

JUDGMENT

Reference: [2025] TRE 158 Before: Advocate Dr E Moran, Chairman, Mr Michael De La Haye, OBE, Mr Robert Douglas For the Claimant: In person For the Respondent: Dr Gurdeep Pangali, Practice Director Decision The Claimant is awarded compensation of £2,574 for the Respondent's failure to provide her with a contract within 4 weeks of starting employment. The rest of her claims fail and are dismissed.

Reasons

1. Agnieszka Tarnawska worked as a Dental Nurse for Smile 2012 Limited which trades as Smile Dental Clinic (the "Clinic") between 14 January 2019 and 4 August 2025 when she resigned. Claims 2. On 15 August 2025 Miss Tarnawska submitted a Claim Form claiming disability discrimination, no terms of employment, unpaid wages, constructive unfair dismissal, notice pay and holiday pay. The claim for holiday pay has been resolved. The Clinic filed a counterclaim for failure to give notice which has been withdrawn. 3. The parties agreed at the first Case Management Meeting that Miss Tarnawska's gross weekly wage was £858. Witnesses 4. Miss Tarnawska gave evidence. The witnesses for the Respondent were Dr Gurdeep Pangali (Practice Director), Louise Ahmed (Receptionist/Trainee Dental Nurse), Sonia Vargem (Clinic Manager), Tatiana Pinto (Head Dental Nurse) and Dr Louise Double (Dentist). The Clinic also called Kuldeep Lalli (Air-Conditioning and Ventilation Engineer) who works for Cool Valley Limited. ("CVL") 5. There was little dispute about many of the facts which were evidenced by documents and WhatsApp messages. The main factual difference between the parties was how quickly the temperature in Miss Tarnawska clinic room changed when the new air conditioning system was installed. Miss Tarnawska said that the temperature fluctuated significantly, requiring the system to be constantly switched on and off to maintain a stable temperature. Mr Lalli said the system was designed to heat or cool the room to a specific temperature and that once it reached that temperature it automatically switched off. We prefer the evidence of Mr Lalli that once the initial teething problems had been overcome the system maintained a relatively constant temperature in the surgeries. Air conditioning system 6. A key dispute revolves around the

installation and functioning of a new air conditioning system installed by CVL in around April 2025. The CVL invoice shows that the installation involved 7 internal units including one in each of the 4 surgeries and one outdoor unit. 7. In his witness statement Mr Lalli explains that the system was designed and commissioned in accordance with standard UK HVAC practices including principles set out in CIBSE Guide A and accepted industry standards applicable to healthcare environments. The system was set to operate within a temperature range of 21°C and 23°C which falls within recognized comfort parameters for clinical and professional settings. He explained in his oral evidence that once the system meets the set temperature in a room it switches off. The fans operate automatically and speed up and slow down depending on the temperature. 8. Mr Lalli explains in paragraph 4 of his witness statement that upon commissioning the system was locked to prevent routine user adjustment. This was necessary to achieve consistent internal temperatures amongst other things. He says that this approach reflects standard practice in healthcare settings. He also says in paragraph 9 that unauthorized adjustments of the system disrupt system balance, reduce efficiency and negatively affect performance. He said in oral evidence that if someone was allowed to move the temperature up and down it would confuse the system and cause it to malfunction. 9. In his oral evidence Mr Lalli explained that the only permitted actions that can be taken by users are to switch the systems on or off. Dr Pangali had an application that allowed him to set the temperature in individual rooms. Other changes need to be implemented by CVL.

10. After the system was installed Dr Pangali instructed all staff not to adjust the system controls. Despite this, it appears that some staff were able to adjust the temperature in their rooms. It is not clear if this was because of a glitch in the system or the staff were able to unlock their controllers. Mr Lalli said the codes necessary to unlock the controls in individual rooms can be found online in easily accessible engineering forums. Miss Pinto said in evidence that she was able to change the temperature in her clinic, but she warned Miss Tarnawska not to tell Dr Pangali as he would lock the unit.
11. Post installation there were numerous teething problems with the system with staff asking Dr Pangali to increase or decrease the temperature in the clinic. According to Mr Lalli it is standard for systems to require fine-tuning and Dr Pangali contacted him on multiple occasions to request adjustments.
12. The evidence of Miss Ahmed is that there were initial issues with the new air conditioning which were quickly resolved once Dr Pangali became aware of them. Miss Pinto says the same. Dr Double says after installation of the system there were initial challenges in maintaining consistent temperatures across rooms. She says the system is now functioning effectively and temperature preferences vary between individuals.
13. Miss Tarnawska first raised a concern on 17 June 2025. She says that when it is on its too cold and when its off its too hot. She says the cold gives her a sore throat. She asks if they can adjust the strength of the fan in the air conditioning system. Dr Pangali responds to say that he has been away but will investigate. On 23 June 2025 Miss Tarnawska sends another

message saying it is very cold and asking why they can't adjust the fan. He responds that she just needs to turn the system off and that people change but the temperature in the clinic is consistent. She responds that it is getting really hot and she is turning the system on and off every few minutes. On 2 July 2025 she sends a message to say that it is freezing in the clinic and he tells her to turn it off.

14. On 4 July 2025 Miss Tarnawska sent a WhatsApp message to Dr Pangali asking to bring the temperature down. He responded ok but also saying that he would not be changing the temperature every day for people. He told her that if it got too cool to turn the system off. Miss Tarnawska responded as follows: - "It would be much easier if we could do it ourselves, as we aren't able to control the weather so is temperature in the rooms. On cooler days 22° is too cold, but switching it off completely making room hot within minutes. On hot days 23° it is too warm so it feels like we are not having any aircon at all. On addition, I am suffering from heart problems and high blood pressure which makes me really uncomfortable to work in set by you temperature Bob." 15. Dr Pangali responded that she should just switch if off if it gets too cool. She responds that during dental procedures she is unable to do this. He says, "just work it out". She sends him a photo of her controller which says 20° and saying it is freezing. He responds "Then you turn the thing off. I don't want any more conversations about this please Aggie it's a joke". She objects to him calling it a joke and he says he has addressed her concerns in that she can turn the system on and off.
16. On 8 July 2025 Miss Tarnawska sends a further message about the air conditioning in which she says that his solution of switching the system on and off is disrespectful. She says that every other surgery other than us "are able to set and change the temperature themselves it looks like we are not treated equally and fairly against other staff members." He responds, "no they cannot". He later asks her to send him videos of the staff changing the controls taken with her phone. He says "I don't think they can but I might be mistaken."
17. Miss Tarnawska follows up with a long message expressing concern about communication challenges. She says that a particular concern is that she is being unfairly treated in comparison to other staff who have control over their units. She also raises a concern about the frequent switching on and off of the air conditioning "approximately 30 times a day" which based on her research can damage the system. She attaches to her message videos of the settings in the other rooms being changed on the controllers. 18. Dr Pangali responds "I see your point. That should not be happening...". He says he will speak to CVL tomorrow and find out what has happened. He repeats his instruction to turn the system on and off.
19. There are further messages on 9 July 2025. Miss Tarnawska says that her room is 20° which is lower than yesterday, she can't control the fan strength and the room is freezing. She says that when she switches it off the room gets boiling again within 10 minutes especially as the room does not have a window. She asks for a logical explanation for her not to be able to control the temperature in her own room. Dr Pangali responds "What temperature do you want? It's gonna be fixed at one temperature. You're going to have to take your choice." She asks again for a reason why she can't change the temperature in her room. He explains that

people messing with the controllers broke the last system and that when the problem is fixed nobody will be able to change the temperatures. He says that he has increased the temperature to 21.5°. Miss Tarnawska responds with a long message in which she disputes why the old system broke and sends him her research on the pros and cons of switching the system on and off which shows that adjusting the temperature slightly is better for the system that switching it on and off. Dr Pangali responds “These are our management decisions. There’s no more discussion about this thank you.” Miss Tarnawska made no further complaints about the air conditioning prior to her resignation on 4 August 2025.

20. We find that by early July 2025 the air conditioning system in the Clinic was operating as described by Mr Lalli and was effective in maintaining a relatively constant temperature in each surgery. We make this finding because the other members of staff who gave evidence said that initial challenges in maintaining a consistent temperature had been overcome. We find that Miss Tarnawska exaggerated the extent of the fluctuations because she was upset that other staff were able to override their controllers and she was not. In summary, we find that Miss Tarnawska was working in an environment with relatively controlled temperatures and appropriate ventilation system. Disability Discrimination 21. Miss Tarnawska says that she has the protected characteristic of disability and that the Clinic discriminated against her by failing to make reasonable adjustments. She says that the Respondent was aware of her conditions since March 2020. 22. Miss Tarnawska says in her Claim Form that in April 2025 a new air conditioning system was installed. She says she found out later that only her surgery and reception had the air-conditioning controls locked preventing her from adjusting it to her needs and to a safe working temperature. On 4 July 2025, after repeated requests, she was told she could only turn the air conditioning on or off. 23. She says the locked controls made her working environment either too hot or too cold triggering dizziness, increased heart rate and general discomfort. The fluctuations in temperature placed unnecessary strain on her heart and blood pressure leaving her feeling unwell, fatigued and unable to focus fully on her work. 24. The Clinic says that at no stage during her employment did Miss Tarnawska formally notify them of any disability or provide any medical evidence that would have triggered a duty to make a reasonable adjustment. The Clinic also say medical evidence provided after her employment ended does not set out any clear clinical diagnosis, does not explain how temperature fluctuations would impact the Claimant’s health and does not identify any specific workplace adjustments that would have been required. 25. Further, the Clinic says Miss Tarnawska did not comply with Clause 13 of the Employment Contract which says: - “Should you have or develop a condition that could be described as a disability you have a duty to inform us so that we may undertake any reasonable adjustment necessary. Such information will be treated in strictest confidence and you will not be subject to any form of discrimination because of your disclosure.” Disability 26. The Clinic did not formally concede that Miss Tarnawska has the protected characteristic of disability. Based on the medical evidence provided for the hearing which was not available to the Clinic prior to resignation we are satisfied that the conditions set out in Article 8 of Schedule 1 of the Discrimination (Jersey) Law 2013 have been met. 27.

According to a letter from her GP dated 18 June 2026 Miss Tarnawska has a long-standing history of Mitral Valve Prolapse and hypertension which is treated with beta-blocker medication. The recognised side effects of the medication include fatigue, dizziness, reduced exercise tolerance, cold hands and feet, altered cardiovascular response to physical and emotional stress, and reduced tolerance to environmental temperature fluctuations. The GP states that the combination of the underlying cardiovascular conditions and the medication affect aspects of normal day-to-day activities and general wellbeing. 28. A translated letter from a Polish cardiologist dated 1 September 2025 confirms the diagnosis and says: - "Symptoms and health conditions: The patient experiences symptoms such as palpitations, dizziness, shortness of breath, fatigue, chest pain as well as tightness, and headaches. Symptoms may worsen in the following cases: Exposure to high or low temperatures or sudden temperature changes, lack of access to adequate ventilation and air conditioning, chronic stress, and fatigue. Affect on professional work: Working conditions in rooms without temperature control, with limited ventilation, or with large temperature fluctuations pose a health risk to patient, causing additional cardiovascular strain and increasing the risk of system exacerbation. Recommended adjustments From a medical point of view, it is recommending that the patient be provided with the possibility of working in a room with controlled temperature and ventilation, access to temperature regulation in accordance with individual health needs, the possibility of short breaks at work if symptoms occur, constant access to water, avoidance of excessively stressful or prolonged workloads without breaks. Summary In my professional opinion, the above conditions meet the criteria for a chronic condition that significantly affects daily functioning. Failure to adapt the working conditions to the patient's health needs may pose a serious risk of deterioration of her health and limit her inability to perform her professional duties safely. 29. Miss Tarnawska says in paragraph 10 of her witness statement that her health conditions had an adverse impact on her day-to-day activities "particularly in environments with unstable temperatures". 30. Based on this evidence we are satisfied that Miss Tarnawska has a long-term physical impairment which can adversely affect her day-to-day activities. 31. The Clinic argues that any symptoms Miss Tarnawska may have experienced during her employment were as a consequence of her excessive smoking rather than her underlying condition. We find that Miss Tarnawska smoked frequently during her working hours. However, we also find that the Respondent has not proven that this caused the physical symptoms Miss Tarnawska described to her GP on the day she resigned. Law on reasonable adjustments 32. Miss Tarnawska brings her claim under Article 7A(2) of the Discrimination (Jersey) Law 2013. The relevant parts of Article 7A state: - "(2) If a disabled person ('the subject') is put at a substantial disadvantage in comparison with persons who are not disabled by reason of a physical feature of premises, a person ('the person') discriminates against the subject if the person fails to take reasonable steps to avoid the substantial disadvantage.

- (3) If a disabled person (“the subject”) would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in comparison with persons who are not disabled, a person (“the person”) discriminates against the subject if the person fails to take such steps as it is reasonable to take to provide the auxiliary aid. (4) Paragraphs (1) to (3) apply only if the person knows or reasonably should have been expected to know –
- (a) that the subject has the disability; and
 - (b) of the substantial disadvantage that the provision, criterion, practice, physical feature of premises or lack of auxiliary aid would cause to the subject.
- (5) In taking reasonable steps to avoid the substantial disadvantage described in paragraph (1), (2) or (3), the person must not require the subject to pay any or all of the person’s costs in taking such steps.
- (6) For the purposes of paragraph (2) a physical feature includes –
- (a) a feature arising from the design or construction of a building;
 - (b) a feature of an approach to, exit from or access to a building;
 - (c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises;
 - (d) any other physical element or quality.
- (7) For the purposes of paragraph (2), avoiding the substantial disadvantage includes –
- (a) removing the physical feature in question;
 - (b) altering it; or (c) providing a reasonable means of avoiding it.
- (8) For the purposes of paragraph (3), the reference to an auxiliary aid includes a reference to an auxiliary service.
- (9) In determining whether the person has taken reasonable steps to avoid the substantial disadvantage referred to in paragraph (1), (2) or (3), matters to be taken into account may include –
- (a) the extent to which –
 - (i) the likelihood of the substantial disadvantage was reasonably foreseeable, and (ii) any steps which are, or would be if taken, proportionate to such degree of likelihood;
 - (b) the extent to which any steps are, or would be if taken, effective to prevent or remove the substantial disadvantage;
 - (c) the extent to which any steps are, or would be if taken, practical;
 - (d) the cost of any steps that have or might be taken;

- (e) the extent of the financial, administrative and any other resources available to the person, including any provided by a third party, for the purpose of taking any steps; and (f) characteristics of the person such as the nature of the person's business, if any, and size.
- (10) In this Article "substantial" means more than minor or trivial." 33. Miss Tarnawska says that the locked air-conditioning system was a physical feature of premises that placed her at a substantial disadvantage compared to non-disabled colleagues. The reasonable step would have been to allow her to adjust the temperature in her room or to provide an alternative means of control. She says that no adjustment was offered or discussed, despite repeated requests and the Clinic's knowledge of her disability. Substantial disadvantage 34. The burden is on Miss Tarnawska to prove that the locked temperature controls in her room put her at a disadvantage that was more than minor or trivial compared to individuals who are not disabled. 35. In her witness statement she says that the constant fluctuations caused unnecessary strain on her heart and blood pressure causing ongoing discomfort, stress, difficulty concentrating and significantly affected her ability to carry out her duties safely and effectively. 36. We find Miss Tarnawska has not discharged the burden of proving a substantial disadvantage. We find that to the extent there were fluctuations of temperature in her surgery they made her feel uncomfortable. We find that uncomfortable means too hot or too cold, which is minor or trivial. The effects of any temperature fluctuations did not involve the other symptoms mentioned in her witness statement. 37. We make this finding because her message of 4 July 2006 says the temperature is making her feel really uncomfortable. She does not mention any other symptoms related to her disability. Having considered the totality of the correspondence between Miss Tarnawska and Dr Pangali we are satisfied that if she had the other symptoms mentioned in her witness statement she would have said so. For example, she said on 17 June 2025 that the cold gave her a sore throat. 38. Further, had she suffered any of these symptoms she would have taken additional breaks and mentioned her difficulties to other staff. She did not do this. Nor did she visit her doctor. She continued working in the clinic without complaint until her resignation on 4 August 2025. 39. As Miss Tarnawska has failed to prove that she suffered a substantial disadvantage, her claim of disability discrimination fails. In case our finding on this point is wrong, we consider the other aspects of the test. Knowledge 40. Dr Pangali argues that the Clinic did not know and reasonably could not have been expected to know that Miss Tarnawska had a disability or the substantial disadvantage that the locking of the air conditioning would have had on her. 41. There were three occasions on which Miss Tarnawska mentioned health issues: - a. On 15 March 2020 she sent a message to Dr Pangali in which she says "I am extremely worried about coronavirus now... you are probably not aware that I suffer from high blood pressure and a mild heart condition. I am on beta blockers daily...high blood pressure might be leading factor of coronavirus deaths...." She says she is going to see her GP tomorrow to see if she can get a sick note. b. Also on 15 March 2020 she sent a message to Mrs Vargem to say she was not coming into work the following day. She says, "Don't worry I don't have any symptoms or Coronavirus I am just worried about myself as I have some health issues that might have bad consequences for me if I get

it.”

- c. The message sent on 4 July 2025 in which she says that she has “heart problems and high blood pressure”. 42. We find that these communications were such that the Clinic knew or should have known that Miss Tarnawska had a disability. Dr Pangali argued that Miss Tarnawska was in breach of Clause 13 of her contract which requires her to disclose if she has a condition that could be described as a disability so the Clinic can undertake any reasonable adjustment necessary. We find she satisfied clause 13 in that she disclosed the condition: it was not necessary for her to describe it as a disability. 43. Miss Tarnawska says that her disclosure in 2020 should have triggered investigations. We disagree. There was nothing in her disclosure which should have led the Clinic to consider that she required reasonable adjustments at that time. 44. We next consider whether Dr Pangali knew or should have known that the locking of the system could have a substantial disadvantage on Miss Tarnawska. We find that Dr Pangali did not know and could not have been expected to know. The reason is the very limited information given by Miss Tarnawska in her message of 4 July 2025. She says she has heart problems and high blood pressure and that the temperature fluctuations make her really uncomfortable. She does not say that she is suffering from palpitations, dizziness or any other symptoms. Had she mentioned any of these symptoms maybe Dr Pangali would have behaved differently. She did not and therefore he cannot have known that she was suffering from a substantial disadvantage. 45. Finally, we consider whether the refusal to permit her to adjust the temperature and fan herself was reasonable even if it had led to a substantial disadvantage. We find it was for the following reasons: - a. We have found that the system operates to maintain a relatively constant temperature. b. Dr Pangali offered to set the temperature in her clinic to a temperature of her choice. c. She was permitted to switch the system on and off, which would give her an additional degree of control over the temperature in the room. d. The system was a locked system that was not designed for individual control. Had Miss Tarnawska been given access to her control unit it would have disrupted the whole system. e. She was working in a clinical setting which required a temperature range of 21° to 23°C. f. There were other people in the clinic room, namely the dentist and the patient, whose comfort was also a consideration. g. To the extent that other staff were able to control their temperatures, this was an error that was rectified when Dr Pangali found out about it. h. The medical evidence is that she needed to work in a room with temperature control and ventilation and avoid large temperature fluctuations. This is exactly what the air conditioning system provided. Conclusion on disability claim 46. The claim fails because Miss Tarnawska has not proven that the locked air control system caused her a substantial disadvantage related to her disability. Even if we are wrong on that and she did suffer a substantial disadvantage, the Clinic did not have the requisite knowledge that locking the system would result in substantial disadvantage. The claim also fails because unlocking the controller was not a reasonable adjustment. No terms of employment

47. Article 3(1) of the Employment (Jersey) Law 2003 says that an employer must give an employee a written statement of the terms of his or her employment within 4 weeks of beginning employment. 48. Miss Tarnawska started work on 14 January 2019. The contract was provided in May 2020 and then only because the Clinic needed a contract to access Covid furlough funding. She says that the breach caused hurt and distress and uncertainty about her rights, including in relation to the lay-off clause in her contract. She seeks 8 weeks' pay as compensation. 49. The Clinic accepts that the written contract was provided more than 4 weeks' after the start of employment. It is said Miss Tarnawska was employed under a valid oral contract and paid in full. The point is also made that having signed the contract in May 2020 Miss Tarnawska worked for 5 years without any complaint about the timing of the written statement. 50. We can award compensation of up to 8 weeks' pay. We consider the appropriate award to be 3 weeks' pay in the sum of £2,574. In reaching this figure we have taken account of the long delay in providing the contract, the uncertainty it caused to Miss Tarnawska, the Clinic is a relatively small employer employing 20 people but there was no reasonable excuse for the delay. Unpaid wages 51. Ms Tarnawska claims unpaid wages under clause 9 of her contract which says: - "Lay Off If there is no work available for you at the Practice during normal working hours the Provider reserves the right to lay you off without pay. In this situation you will be eligible for guarantee payments at a statutory rate for up to 5 days in any period of three months. A shortage of work could occur for the following reasons: the absence of a dentist, a shortage of patients or a problem with the premises such as fire." 52. There is no dispute that Miss Tarnawska was laid off for 11 days in 2019, 9 days in 2020, 10 days in 2021, 20 days in 2022, 9 days in 2023 and 2 days in 2024. Of the days she was laid off in 2022, only 17 fall within 5 days of any period of 3 months. 53. Miss Tarnawska claims that clause 9 entitles her to be paid her normal daily rate for each day she was laid off, which she calculates as a total of £6,790.27. She has calculated her normal daily rate based on between 5.5 and 7.5 hours per day albeit her contract stipulates basic contracted hours of 22 hours per week between 7.30 am and 1 pm. 54. The Clinic says that the wording in the contract allows lay off without pay subject only to statutory guarantee pay which is capped at 5 days in any three-month period. It is also argued that by continuing to work without complaint Miss Tarnawska affirmed the contract as written. 55. In his witness statement Dr Pangali says that the contract was prepared using a UK HR template without adjustment for Jersey law. He says that the statutory guarantee pay scheme for lay off that exists in the UK does not exist in Jersey. 56. The rules for construing a contract including an employment contract are set out in the decision of the Court of Appeal in the case of *The Parish of St Helier v The Minister for Infrastructure* [2017] JCA 027. In summary the aim is to establish the presumed intention of the parties from the words used and the words must be construed against the factual matrix existing at the time of execution of the document. Words must be read in the context of the document as a whole and the words should be given their ordinary meaning. If the language is unambiguous, it must be applied unless the result is commercially absurd.

57. We find that the wording of clause 9 is clear. Miss Tarnawska can be laid off without pay except that she is entitled to a statutory guarantee payment if such a scheme exists in Jersey, which it does not. The result is not absurd but fits with the broader flexibility of the contract which only provides for a guarantee of 22 hours per week.
58. The wording of the contract is sloppy, but Miss Tarnawska is not contractually entitled to be paid for the days on which she was laid off so her claim for unpaid wages fails. Constructive unfair dismissal 59. The law on constructive unfair dismissal is set out in the judgment of *Rasdall v TP Global Finance*

[2024] TRE 238 at paragraphs 4 to 9: -

4. The law on constructive unfair dismissal is summarised in paragraphs 19 to 26 of *Dunham v Lightning Hotels Limited*

[2021] TRE 55.

19. Article 62 EJJ sets out the circumstances in which an employee is dismissed including the following, which is commonly known as constructive dismissal: “62 Circumstances in which an employee is dismissed
- (1) For the purposes of this Part an employee is dismissed by his or her employer if ...
- (c) the employee terminates the contract under which he or she is employed (with or without notice) in circumstances in which the employee is entitled to terminate it without notice by reason of the employer's conduct.”
20. It is well established under case law that the conditions which must be met to prove constructive dismissal are:
- (a) the employer must be in breach of either an express or an implied contractual term;
- (b) the breach must be fundamental, amounting to a repudiatory breach;
- (c) the employee must resign, at least in part, in response to the breach; and
- (d) the employee must not have waived the breach and affirmed the contract.
21. In order for the breach to be sufficient for the employee to treat the contract as being discharged the employer's conduct must amount to a significant breach going to the heart of the contract or show that the employer no longer intends to be bound by one or more of the essential terms of the contract. (*Gibb v JAAR*)

[2018] TRE 135 and *Western Excavating (ECC) v Sharpe* [1978] ICR 221).

22. It is also well established that a term of ‘mutual trust and confidence’ is to be implied into all contracts of employment and there is a two-stage test for determining whether there has been a breach of this implied term (*MacLagan v States Employment Board* JET 79/15 and *Malik v BCCI* [1997] UKHL 23). The Tribunal must be satisfied that:

- (a) there was conduct which destroyed or seriously damaged the trust between employer and employee; and
 - (b) the employer's conduct was done without reasonable and proper cause.
23. If the employer acts in an unreasonable way there may be a breach of mutual trust and confidence if the test in *Western Excavating* is satisfied, but mere unreasonable behaviour is not enough. The behaviour must be 'seriously unreasonable' or 'sufficiently serious' so as to amount to a breach that enables the employee to treat the contract as being discharged.
24. Any breach of this implied term is a fundamental breach amounting to a repudiation, which necessarily goes to the root of the contract and allows the employee to resign and claim constructive dismissal (*Maclagan and Morrow v Safeway Stores Ltd* [2002] IRLR 9, EAT). However, if the employer's conduct is not sufficiently serious then there is no breach of the implied term.
25. In order to establish constructive dismissal, the 'range of reasonable responses test', which is the test usually used to establish unfair dismissal, is not appropriate (*Luce v Newtel Limited* [2018] TRE 147 and *Buckland v Bournemouth University Higher Education Corporation* [2010] IRLR 445). The test to be applied is an objective one; whether or not the employer intended to breach the contract is irrelevant (*Lewis v Motorworld Garages Ltd* [1986] ICR 157). It is well established that the conduct of the employer must be looked at objectively in all the circumstances and from the perspective of a reasonable person in the position of the innocent party (*Maclagan and Malik*).
26. The breach of the implied obligation of trust and confidence may consist of a series of actions by the employer which, taken cumulatively, amount to a breach of the term, although each particular incident may not do so in isolation. The Tribunal in *Maclagan*, having determined whether or not each individual alleged act and omission was a breach, then summarised that the test for assessing the whole course of conduct is as follows: "The Tribunal noted that the test in such situations is whether, viewed objectively, (i.e. from the perspective of a reasonable person in the position of the innocent party) there was some act or omission (or series of acts or omissions) which was "likely to destroy or seriously damage the relationship of confidence and trust between employer and employee... so that the relationship is fundamentally damaged and not able to continue as before." "
5. The parties brought to my attention some additional authorities. Mr Flynn referred me to the English case of *Quilter Private Client Advisers Ltd v Falconer and another* [2022] IRLR 227 at 115. The judgment highlights that in assessing whether there has been a breach, what is significant is the impact of the employer's behaviour on the employee rather than what the employer intended. The impact is assessed objectively. Mr Flynn also referred me to the English Court of Appeal case of *Wandsworth London Borough Council v D'Silva* [1998] IRLR 193 CA. The case says a provision in a contract that permits unilateral variation by an employer needs to be exercised reasonably.

6. Mr Child referred me to the House of Lords judgment in *Malik v BCCI* [1998] AC 20 which says at page 45D that the implied term of trust and confidence can be excluded or modified by the parties. This means that the express terms of a contract take precedence over the implied term. The same point is made in *Reda v Flag Limited* a decision of the Privy Council dated 11 July 2002. In paragraph 45 their Lordships confirmed that the implied term of trust and confidence must yield to the express provisions of the contract.
7. In *London Borough of Waltham Forest v Omilaju* [2004] EWCA Civ 1493 paragraphs 16 to 22 the Court of Appeal provided helpful guidance on the last straw doctrine. Although the final straw may be relatively insignificant, it must not be utterly trivial (paragraph 16). It must contribute something to the breach although what it adds may be relatively insignificant (paragraph 19). An entirely innocuous act on the part of the employer cannot be a final straw even if the employee genuinely interprets it as hurtful and destructive (paragraph 22). If the final straw is entirely innocuous, the claim fails and there is no need to consider the impact of the earlier acts. This is because the employee, by failing to resign in relation to the earlier acts, has affirmed the contract (paragraph 21).
8. In *Kaur v Leeds Teaching Hospital NHS Trust* [2018] EWCA Civ 978 at paragraph 43 the Court of Appeal confirmed that if there is a course of conduct that amounts to a breach of the implied term and the employee continues to work they will not be held to have affirmed the contract. This means that if there are further acts the employee can rely on the totality of the conduct to establish a breach of the implied term.
9. Finally, Mr Child referred to the Court of Appeal decision in *Abraham v Nottingham City Council* [2018] EWCA Civ 796 paragraphs 83 to 85 which is authority for the point that a unilateral variation to a contract of employment by an employer can be accepted by the employee's conduct including continuing to work without objection. Whether the employee's conduct amounts to acceptance will depend on the circumstances of each case.
60. Also relevant is paragraph 24 of the judgment which says: - "24. In relation to each allegation I consider whether it amounts by itself to a fundamental breach of contract. If not, I also consider whether it is sufficiently serious to form part of a course of conduct. In assessing whether something is sufficiently serious to form part of a course of conduct I adopt the same test as exists for a Final Straw event. The incident may be relatively insignificant but must not be utterly trivial. The conduct of the employer must be looked at objectively and what is important is the impact on Ms Rasdall and not the intention of the employer." 61. Miss Tarnawska relies on the following matters as entitling her to resign and claim she has been dismissed: - a. A delay in providing her employment contract. b. Unpaid wages arising from 56 unpaid lay off days between 2019 and 2024. c. The Respondent's failure to make reasonable adjustments for her disability including locking air conditioning controls in her surgery. d. Persistent foul smell in the workplace for over 3 years which was only resolved in July 2025. e. A failure to provide proper PPE during COVID-19. f. Being required to use her own funds for work-related purchases due to lack of petty cash or access to a payment card. g. Poor communication, including last-minute changes to working

arrangements causing stress and anxiety. The Claimant clarified at the hearing that the only incident of poor communication relied upon are connected to one dentist leaving in late July 2025 and a new dentist starting on 4 August 2025. This is the final straw that led her to resign. 62. If the reason or primary reason for the resignation is an act of unlawful discrimination, the dismissal is automatically unfair under Article 70A of the Employment Law. Delayed contract 63. We have dealt with the delayed contract above. We find that this was a breach of the implied term of trust and confidence, but it was not by itself a fundamental breach. It can form part of a course of conduct. Unpaid wages 64. We have found that the wages claim fails so it cannot amount to a breach of the employment contract. Reasonable adjustments 65. We have found above that there was no failure on the part of the Clinic to make reasonable adjustments, so it does not amount to a breach of the employment contract. 66. We have also considered the tone and substance of Dr Pangali's communications with Miss Tarnawska around the air conditioning issue. Looking objectively, we find they do not amount to a breach of the implied term of trust and confidence. Foul smells 67. There was an intermittent foul smell in the Clinic over the course of several years. Miss Tarnawska says in her witness statement that the Clinic failed to adequately address the issue of the drain smell. 68. Dr Pangali called upon several experts to try and resolve the problem as evidenced by the documents in the bundle. As he said in his evidence, he was running a dental practice and the last thing he wanted was an unpleasant smell in the Clinic. The situation was complicated by the fact that the Clinic is on the ground floor with its own drainage system which connects to the building drain and the public sewers. 69. Having reviewed the documents in the bundle, we find that Dr Pangali took reasonable steps to deal with the smell situation. We also find that he responded appropriately to Miss Tarnawska's emails and complaints. There was no breach of contract. PPE 70. One of the most serious allegations made by Miss Tarnawska is that during the Covid period there were repeated issues regarding the type of mask that she was fit tested for, i.e. the FFP3 mask. She alleges that masks were delayed or unavailable, requests were not always dealt with properly, and Dr Pangali instructed her to extend the use of face masks beyond recommended safe periods. 71. Dr Pangali filed extensive evidence about the steps he took to keep his staff safe during Covid and to acquire the necessary PPE. We are satisfied that he made great efforts to obtain PPE including sourcing FFP3 masks from China. 72. Dr Pangali explained in his evidence that while he had many masks, he did not know how long the pandemic would last or if he would be able to get more masks. He rationed the masks and distributed them as needed. 73. The WhatsApp messages show that there were 2 or 3 occasions when Ms Tarnawska had to re-use a mask or wear it for longer than recommended because delivery to the Clinic was delayed. 74. We accept that Miss Tarnawska found the situation upsetting, but from an objective standpoint we do not consider that these minor delays in provision amount to a fundamental breach of contract. They can, however, form part of a course of conduct. Use of own funds 75. In paragraph 34 of her witness statement Miss Tarnawska says that there were periods when no petty cash was available, and staff were expected to use their own money for practice expenses and seek reimbursement later. 76. WhatsApp messages with Dr Pangali show that on 21 February

2025 she objected to using her own money and waiting to be reimbursed. Dr Pangali told her she shouldn't be waiting to be reimbursed, Mrs Vargem works every day and she should be reimbursed immediately. On 25 February 2025 she needed new batteries for a piece of equipment. She objected to using her own money and was told if she didn't have money to get the batteries from Mrs Vargem. 77. On 14 May 2025 she took the practice card to pay for posting lab work. She did not have the pin. She messaged Dr Pangali who asked her to provide her account details so he could send her some money. 78. In her witness statement Mrs Vargem explains that there was a system of petty cash so staff could buy small items such as milk and batteries. This was discontinued because not all staff provided receipts which made bookkeeping difficult. A decision was made to obtain credit cards for staff to use. While waiting for the cards to arrive staff were asked to use their own money and send a photograph of the receipt. They were reimbursed on the same day or the following day. She did not receive any complaints from the staff. 79. Miss Ahmed confirms that monies were reimbursed usually the same day or within a couple of days and that most staff did not have an issue with this temporary measure. 80. We find Miss Tarnawska's complaints about using her own funds are trivial and cannot form part of a course of conduct. Poor communication 81. The final straw was the communication failures over the change of dentist. Miss Tarnawska says that on 25 July 2025 she was told that a new dentist would be taking over patients after the previous dentist left. Then on Saturday 2 August 2025 she was informed by a group WhatsApp message that a different dentist would instead start on Monday morning. She says this was very short notice; it created confusion regarding staffing, preparation, patient arrangements and responsibilities. 82. The message from Dr Pangali sent at 3.23 pm on Saturday 2 August 2025 reads: - "Just to update everybody that we have a few dentists that are looking after [] and [] patients. The names are [] and []. They start on Monday. Please expect a few changes here and there until things become a little bit smoother over the next few weeks. It's a work in progress." 83. Three people responded to the message with thumbs up emojis. 84. At 07:33 am on 4 August 2025 Miss Tarnawska sent a long message to Dr Pangali complaining about the change in dentist, the late notice on a Saturday which was a day-off, and the impact on staff and patients of the changes. She says she finds the situation extremely stressful and unprofessional. She says the current level of communication, lack of explanation and last-minute changes are deeply concerning and are significantly impacting staff morale and patient care and that it is affecting her well-being. 85. Miss Tarnawska worked her shift. She was working with Dr Double. We accept Dr Double's evidence that she said a few times that she was "done". Miss Tarnawska obtained an emergency appointment with the GP later that day. She was signed off work with stress. A letter from the GP dated 18 June 2026 says that at the time of the consultation Miss Tarnawska reported significant stress and distress, as well as a worsening of her cardiovascular symptoms, including chest discomfort and elevated blood pressure relating to her work situation. 86. Dr Pangali did not respond to Miss Tarnawska's WhatsApp message. She resigned that evening by email sent at 18:52. 87. We find that the final straw of being told on Saturday that a different new dentist would be starting on Monday to be an objectively trivial event. Miss Tarnawska was a qualified dental nurse who could work with any dentist. There was no change in her hours

or working conditions. We cannot see that it made much difference to her whether one dentist or another started work on Monday. In any event, she was working with Dr Double on that day. 88. As we have found the final straw event that led to the resignation to be objectively trivial, the claim fails. 89. In case we are wrong, we consider whether the final straw event together with the PPE complaint and the late contract taken together amount to a fundamental breach of contract that is sufficiently serious to go to the root of the contract. We find that even taken collectively, they are not sufficiently serious. The claim therefore fails on two grounds. Notice pay 90. Miss Tarnawska resigned and was not dismissed so her claim for notice pay fails.

Conclusion

91. All the claims fail other than the late provision of the employment contract in relation to which we award compensation of £2,574. Advocate Dr E Moran, Chairman Dated: 29 June 2026

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