

EMPLOYMENT TRIBUNALS

Claimant: Alfred Lawson

Respondent: Cygnet Behavioural Health Limited (formerly CAS Behavioural Health Limited)

Heard at: London South

On: 8,9 and10 October 2018

Before: Employment Judge Siddall

Representation

Claimant: Mr W Panton, Counsel

Respondent: Mrs G Williams, Solicitor

JUDGMENT

1. The claim that the Claimant was unfairly dismissed is not well founded and it is dismissed.
2. The name of the Respondent company has changed from CAS Behavioural Health Limited to Cygnet Behavioural Health Limited with effect from 30 April 2018 and the tribunal file shall be amended accordingly.

REASONS

1. The Claimant claims constructive dismissal following his resignation with effect from 13 March 2017. The case was heard over three days during which time evidence was presented by the Claimant and his wife Dora Lawson; Alexander Igwilo who worked with the Claimant on the night shift; Barney Cunningham, Jenny Gibson, Farayi Nyakubaya, Jay Raval, Nick Ruffley, Donna Steadman and Kirsty Watters from the Respondent. A witness statement was presented for Gemma Body but she did not attend the hearing as she was living overseas. Mr Panton argued that the statement of Ms Body was not helpful in addressing the issues and contained a great deal of hearsay evidence. I have noted his concerns and as a result I have read Ms Body's statement but give little weight to it as she was not available to answer questions from the Claimant about it.

2. The facts that I have found and the conclusions that I have drawn from them are as follows.
3. The Respondent is a private provider of mental health care and it operates a number of hospitals including the Churchill hospital. The Claimant is a registered mental health nurse and he started working for the Respondent on 18 December 2014. In April 2015 he moved to the night shift and was promoted to become the senior staff nurse on that shift.
4. The Respondent states that prior to the Claimant's appointment it was aware of problems on the night shift such as staff arriving late and allegations that they had been sleeping instead of working. Two senior staff roles were created with the aim of tackling some of these problems, and the Claimant and Mr Igwilo took up these positions. However it seems that problems occurred when the Claimant started to address issues such as a lack of punctuality amongst staff on the shift.
5. By an email sent in the early hours of the morning on 5 June 2015, one member of staff who will be referred to as M alleged that the Claimant had been sexually harassing her for some time. That evening, she turned up very late for work. She became very aggressive when she was challenged about her late arrival and about a request that she should work on a different ward. She called her brother who attended the hospital and made threats to the Claimant. M then left the ward and the Claimant filed a report on 6 June detailing what had happened.
6. The Respondent's management commenced discussions about how to respond to M's behaviour. In the meantime, Donna Steadman who was the Claimant's line manager forwarded the sexual harassment complaint to HR.
7. On the advice of HR, the Claimant was suspended on 8 June 2015 to allow an investigation into the sexual harassment allegation to take place. I note from page 174 of the Bundle that Donna Steadman queried this and asked whether the Respondent was treating M's conduct as 'ok'. HR replied that it was not, but that they could not suspend M alone and refuse to suspend the Claimant.
8. There was no evidence that any investigation into M's conduct on the evening of 5 June had taken place. The Respondent's evidence was that the investigation into the sexual harassment allegation was given precedence, and that in any event M resigned fairly soon afterwards.
9. Donna Steadman conducted an investigation into the allegation and found no evidence to support it. The Claimant was reinstated on 26 June 2015.
10. It appears that M then lodged a complaint of sexual harassment with the police. They made contact with the Respondent and Donna Steadman disclosed to them details of the Claimant's address and of the results of her investigation into the allegations.
11. As a result the police attended the Claimant's home. He was not there, and they disclosed to Mrs Lawson that he was wanted in connection with an allegation of sexual harassment by a work colleague. The Claimant attended the police station the following day, he was arrested and spent a number of hours in a cell because he believed that the Respondent was going to supply him with a legal representative. However Ms Steadman was advised that this was not possible.
12. It was the evidence of Dora Lawson, which I accept, that at some point she received a call to her home from another member of staff who accused the Claimant of having a relationship with a number of women at work. Ms Lawson said she tried to contact Donna Steadman about this but Ms Steadman does not recall receiving any message to contact Mrs Lawson. The Claimant says

- that he reported it to Donna Steadman and to Farayi Nyakubaya but neither recall this. I find that this incident was not reported. Mrs Lawson names the member of staff who called her in her witness statement and I find that if this incident had been brought to the attention of Ms Steadman or Mr Nyakubaya that they would have addressed it.
13. The allegations caused problems between the Claimant and his wife and she moved to Ghana for a period of time.
 14. Following his arrest, the Claimant was suspended for a second time on 6 July. There was a difference of opinion between Kirsty Watters of HR and Nick Ruffley, the Operations Director, as to whether the Claimant should be suspended. Mr Ruffley stated that he believed the first investigation to have been inadequate and in light of the police action, suspension was felt to be appropriate. A bail condition prevented the Claimant from having contact with M.
 15. On the 27 July the police confirmed that they would be taking no further action, and the Claimant returned to work on the 4 August 2015. The Respondent believed that the Claimant was going to return to work on 31 July. When he did not, they deducted two day's pay from his salary in respect of 31 July and 1 August.
 16. The Claimant says that he experienced problems from junior staff after returning to work and that he felt bullied and harassed. He says that he reported these issues. I note that he and Donna Steadman discussed the attitude of other staff at supervision meetings that they had in December 2015 and January 2016. On 22 January 2016 Ms Steadman notes that 'Alfred did not want to talk further about who he was implying was being unsupportive'. There is no other evidence of the Claimant raising his concerns about his treatment by junior staff until July 2016.
 17. The supervision notes referred to also record that Ms Steadman spent a long period of time talking to the Claimant about how he felt about the allegations of sexual harassment and his suspension.
 18. On the 8 August 2015 the Claimant came upon two members of staff (who were believed to be in a relationship) asleep at work and he raised this in his nightly report. He says that his colleague Alexander Igwilo witnessed the incident also. Mr Igwilo is not shown on his timesheet as working on the night of 8 and 9 August and is not named on the night report. The Respondent agreed that the Claimant raised the matter in his night report. Mr Igwilo has a clear recollection of the Claimant calling him to witness the two members of staff asleep. Ultimately I have concluded that I do not need to decide whether Mr Igwilo was present at the incident on 8 August or not. The Respondent accepts that the Claimant reported the matter, and there is no evidence that the Claimant told anyone that Mr Igwilo had been there too. It may be that Mr Igwilo is recalling a similar incident on a different night. The more important issue in terms of the claim is how the Respondent responded to the report.
 19. The Claimant was asked a number of times by email if he had challenged the staff when he found them but he did not reply. Donna Steadman carried out an investigation into the allegations and her evidence was that the staff provided a credible response, so that no sanction was applied. She confirmed that staff were permitted to sleep whilst on breaks, but that if they had been caught sleeping on duty it would have been a gross misconduct offence.
 20. On 14 August 2015 Donna Steadman received a letter from the Claimant thanking her for her support but explaining how the allegation of sexual harassment had caused him a great deal of distress. He said that he

- felt that he had been unfairly treated, and that he had been underpaid during his suspension. He sought guidance on how to deal with future situations if for example a staff member left their shift. Ms Steadman responded expressing regret at what the Claimant said and suggesting that they meet to discuss.
21. On 18 September 2015 M brought a tribunal claim against the Respondent for sexual harassment naming the Claimant as a party.
 22. On the 8 December 2015 there was a most unfortunate incident when a patient died on the Claimant's shift. The Claimant was involved in efforts to resuscitate him. Because of the circumstances of the death, an inquest was convened.
 23. The Respondent appointed a former director of the hospital, Patrick Gillespie, to carry out an investigation into the patient's death, and he interviewed the Claimant on 6 and 10 January 2016. During those interviews the Claimant is not recorded as alleging that Ms Body was drunk when she arrived at the hospital. That is an allegation he made much later in an email.
 24. Preparations for the tribunal hearing of M's claim continued. The Claimant alleges that he was harassed by the solicitor acting for the Respondent who made a number of calls to his house requesting him to provide information and to complete his witness statement. The hearing was due to take place on 6 June 2016. The Respondent's position is that the solicitor was chasing the Claimant who had failed to respond to calls about his witness statement. There was no evidence from either the Claimant or Mrs Lawson to suggest that the solicitor had disclosed information inappropriately to his wife and children. I have noted that as the Claimant was a party to the proceedings, the solicitor was acting on his behalf and not as an agent of the Respondent in making contact with him. I have noted emails in the bundle from Mr Creamore to the Claimant dated 11, 13 15 and 16 of May chasing the Claimant for his witness statement. It was clearly in the Claimant's best interests for his witness statement to be completed and necessary in order to comply with tribunal directions. I note that later the Claimant stated that 'MC (Michael Creamore) is my saviour'. I do not find that the solicitor's efforts to chase the Claimant for his statement amounted to harassment.
 25. The Respondent made a decision to settle the proceedings. The Claimant was clearly not happy about this as he wanted an opportunity to give evidence and clear his name. Ultimately he did not consent to a settlement of the claims. The Respondent entered into an agreement with M as part of which she withdrew her claim against the Claimant.
 26. On 18 May 2016 the Claimant went off sick.
 27. In an email dated 1 July Ms Watters of HR invited the Claimant to attend a meeting to 'discuss your health and anything else you want to talk to us about'. The meeting took place on 5 July and lasted around three hours. The Claimant raised a large number of issues. He expressed his distress about the harassment allegations and his suspension and he made allegations against Ms Steadman and Ms Body.
 28. The Respondent appointed Barney Cunningham, a Regional Operations Director, to carry out an investigation into the Claimant's concerns under the grievance procedure. On the 11 August, HR wrote to the Claimant to invite him to meet Mr Cunningham but he replied that he was very unwell and that he did not think that his voice had been heard.
 29. Mr Cunningham carried out an investigation into the concerns expressed by the Claimant. These included his suspension, the alleged underpayments, allegations of relationships between management and some of the care staff, exclusion from training, failing to provide legal support, disclosure

- of his details to the police and the decision to settle the tribunal proceedings out of court. He interviewed Gemma Body and spoke to Payroll and examined staffing records.
30. On 25 August an occupational assessment advised that the Claimant was suffering from anxiety and depression and was unfit for work. It noted that the Claimant continued to be troubled by issues that had occurred at work and which had led to his grievance.
 31. On 31 August 2016 Mr Cunningham and Ms Watters met with the Claimant. Mr Cunningham presented his findings to the Claimant. He rejected many of the Claimant's allegations, for example about collusion between Ms Body and staff members, and inappropriate payments to staff. He considered that the Respondent's actions in relation to the sexual harassment allegations, the suspensions and the settlement of the tribunal claim had been appropriate. He found that the Claimant should be paid for 49.25 hours in relation to the deductions from salary made in July 2015 but rejected a claim that the Claimant had worked a number of 24 hour shifts and had been underpaid for these. Ms Watters thought he had been paid for the 49.25 hours; the Claimant confirmed that he had not. Ms Watters investigated and discovered the payments had not been made and they were authorised immediately.
 32. Mr Cunningham did not accept that the Claimant had been denied training.
 33. At the end of the meeting, Ms Watters started to discuss the Claimant's health and his return to work. The Claimant stated that he was returning on 14 September. Ms Watters queried this and asked whether he was fit to return, and mentioned returning to work with managers he had complained about such as Ms Body, Ms Steadman and Mr Nyakubaya. At that point the Claimant became very distressed. He took pills out and started removing them from their foil packs. Mr Cunningham asked Ms Watters to leave. He spent some time talking with the Claimant to calm him down, and escorted him out when he was able to do so. After this incident Ms Watters contacted the Claimant's GP and the police.
 34. Mr Cunningham prepared a detailed letter responding to each of the points raised by the Claimant which was sent to him on 8 September 2016.
 35. On 2 September 2016 the Claimant sent emails alleging that Kirsty Watters had been racist towards him. He also emailed the Respondent's chief executive officer. The case was taken up by Jenny Gibson, HR Director. She contacted the Claimant who said he 'felt like murder' and threatened the CEO. After this call, Ms Gibson contacted the police again because of concern about the Claimant's statements. The Claimant was invited to meet with Ms Gibson and Mike McQuaid, managing director of adult services. The meeting was treated as an appeal against the grievance outcome.
 36. The meeting took place on 17 November. Following that meeting Mr McQuaid wrote to the Claimant to express their regret about what had happened in relation to the allegations of sexual harassment and to acknowledge the distress caused to the Claimant. Mr McQuaid also agreed that the Claimant should be paid two extra days pay in respect of his claim that he had worked for two 24-hour shifts.
 37. On 3 December the Claimant sent Ms Gibson a long email in which he made it very clear that he was not happy with the outcome of his grievance. Towards the end he sought 'compensation for damages, victimisation, discrimination, injury to feelings for both me and my family, aggravated damages, unfairly treatment and my loss of earnings and future loss of earnings...'

38. Ms Gibson called the Claimant on 7 December and followed this up with an email requesting a 'without prejudice' meeting to resolve the grievance. They met at an outside venue on 19 December and explored whether the Claimant was interested in a settlement agreement. Later that day Ms Gibson emailed the Claimant with an offer based on the Claimant leaving his employment in return for a financial settlement.
39. At the outset I queried whether I could consider the documentation relating to these discussions as they appeared to be 'without prejudice' and to amount to pre-termination discussions falling within section 111A of the Employment Rights Act 1996. Both parties submitted that I should consider them. Mr Panton argued that the offer constituted 'unambiguous impropriety' so that the 'without prejudice' cloak was lost. He also submitted that the offer amounted to improper conduct under section 111A(4). Ms Williams did not apply for the documentation to be excluded and agreed that I should consider evidence of these discussions in order to consider the reasonableness of the Respondent's actions. In light of the submissions made, and in light of the fact that this is a claim for constructive dismissal where both sides view evidence of the without prejudice discussions as relevant to the claim, I have decided that it is appropriate for me to take the circumstances and the content of the offer into account. This is necessary in order to determine whether the Respondent was responsible for improper conduct.
40. The Claimant reacted adversely to the written offer by email on 28 December 2016. He queried why there was a reference to a sum 'equivalent to redundancy'. He suggested he was being sacked. In evidence he stated that he did not understand that a settlement agreement would mean leaving his employment.
41. Ms Gibson replied in writing on 26 January. She provided clarification of the offer but noted that the Claimant did not wish to accept it. She stated 'for the avoidance of any doubt, your employment continues and you are not at risk of redundancy'.
42. An occupational health report was prepared on 17 February stating that the Claimant was still unfit for work and had suffered the death of his mother. It noted that work issues were driving his continued absence, but expressed the hope that the Claimant would be ready for a phased return to work in due course.
43. The Claimant asserts that he was not offered support in relation to the inquest into the death of a patient in December 2015. I note however that he was invited to a number of meetings to discuss this and including a meeting organised on 28 July 2016 to be led by the Respondent's legal representative with the aim of preparing staff for what to expect at the inquest. Unfortunately the Claimant did not feel able to attend.
44. On 28 February the Claimant attended and gave evidence at the inquest into the death of the patient in December 2015. Mr Ruffley was present and noted that the Claimant seemed anxious and agitated.
45. During a break Mr Ruffley approached the Claimant. He discussed getting the Claimant back to work. The Claimant asserts that Mr Ruffley stated that 'he would never work with the Respondent again'. Mr Ruffley denies this. He states that he was supportive and said to the Claimant that if he felt that he could not return to work at the Churchill hospital, they could discuss a relocation to a different hospital. Following the meeting, Mr Ruffley sent the Claimant a letter dated 9 March 2017 requesting a meeting so that they could discuss what could be done to assist his return to work.
46. Having listened to the evidence of Mr Ruffley and the Claimant on what

happened during the conversation on 28 February, I prefer the evidence of Mr Ruffley. He was obviously sympathetic to the Claimant's situation and concerned about his demeanour. He stated that he felt his approach had been positively received, and this is reflected in the letter he wrote afterwards inviting the Claimant to come and see him as he felt he had established a good connection with him. I fear that the Claimant may have misinterpreted Mr Ruffley's suggestion that he did not need to return to the Churchill hospital.

47. On 13 March the Claimant sent an email in which he appeared to resign. On 14 March Ms Gibson wrote to him inviting him to reconsider but no reply was received. On 23 March the Respondent wrote to him accepting his resignation.

Decision

48. In order to show that he has been constructively dismissed, the Claimant must show that the Respondent has committed a fundamental breach of his contract of employment; that he resigned in response to that breach; and that he did not affirm the contract or delay for too long in so resigning.
49. The Claimant asserts that the breaches committed were:
- a. A breach of the mutual duty of trust and confidence
 - b. A breach of the duty to undertake a reasonable investigation into any complaint
 - c. A breach of the implied duty to provide him with a safe place of work.
50. A breach of trust and confidence is defined as conduct calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.
51. Ms Williams refers me to the case of *Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978* which sets out the steps to be followed in determining whether an employee was constructively dismissed.
52. The latest act complained of by the Claimant as amounting to a breach of contract is the conversation he had with Nick Ruffley at the inquest on 28 February 2017. The Claimant resigned soon afterwards. In accordance with my findings above, I find that on that day Mr Ruffley was acting reasonably, and with the intention of supporting the Claimant and getting him back to work. His actions did not amount to a repudiatory breach.
53. I go on to consider whether the conversation was part of a course of conduct comprising several acts or omissions which viewed cumulatively amount to a repudiatory breach of the implied term of trust and confidence, or of any other term.
54. The key events begin on 5 June when an allegation of sexual harassment is made against the Claimant. It might be argued that the Respondent acted hastily in suspending the Claimant immediately. It seems clear that M's conduct on the night of 5 June had been appalling. She had been insubordinate and had called her brother to the hospital to threaten the Claimant. Nevertheless, sexual harassment is a serious allegation. As Mr Ruffley put it, it was an allegation by a junior female member of staff against a senior male member of staff. With the benefit of hindsight, I note that Ms Steadman's investigation resulted in the complaint being treated as unfounded. An employer in this situation has a discretion as to whether or not to suspend. Suspension is a neutral act, not a disciplinary sanction. The Respondent investigated quickly, and the Claimant was reinstated less than three weeks later when the Respondent found no evidence to support the allegations. In all the circumstances, the Respondent's decision to suspend was not unreasonable.

55. I can understand the Claimant's frustration that no action was taken against M. I accept the Respondent's evidence that the investigation into her behaviour was overtaken by events. The Respondent gave priority to investigating the sexual harassment allegation. Soon after the Claimant was reinstated, M made a complaint to the police and I am told that she then resigned. An employer will always be cautious in disciplining an employee who has made a complaint falling under the Equality Act 2010 because of the risk of a victimisation claim. In all the circumstances I do not find that the failure to sanction M constituted unfair treatment in relation to the Claimant.
56. It is clear that the decision to suspend the Claimant a second time was a difficult one and that Ms Watters and Mr Ruffley disagreed about it. I note from the email trail that the Claimant was not suspended until the police imposed upon him a bail condition that he have no contact with M. I note also Mr Ruffley's conclusion that the earlier investigation had not been comprehensive enough. Again the Respondent had a discretion as to whether to suspend. In light of the police action I do not find the suspension to be unreasonable. Once again the Claimant was reinstated as soon as the police advised that no further action would be taken.
57. I note that the Respondent decided to deduct two day's pay from the Claimant when he failed to return to work immediately upon the lifting of his suspension. Given what the Claimant had been through this was perhaps not the most sensitive of decisions but I note from the correspondence that the deduction was made because he had failed to turn up for work when expected. In the circumstances the deduction was not a breach of contract and the sums were eventually repaid in July 2016.
58. It is clear that the allegations, suspensions and arrest had a very significant impact upon the Claimant's life and his health. He suffered problems in his marriage and it is clear from his email sent on 14 August 2015 that he was still suffering from the after-effects several months later. This was compounded by the tribunal proceedings.
59. The Claimant criticises the Respondent for settling those proceedings. The Respondent made it clear to him that this was a commercial decision. I note that he was adamant that he did not wish to settle the claim but wanted it to be heard. I find that his views were taken into account, as the claim against him was not settled as such, but was withdrawn. Again whilst appreciating the Claimant's frustration, I do not find that the Respondent acted unreasonably.
60. It is deeply unfortunate that following the allegations and his arrest and suspension, the Claimant suffered a further traumatic event when a patient died on a night he was in charge. This clearly had a further negative effect on his mental health. He commenced a prolonged period of absence due to anxiety and depression in May 2016 shortly before the employment tribunal hearing was due to take place.
61. The Claimant was clearly very unhappy with how he had been treated by the Respondent. Apart from sending his email to Ms Steadman and others, he did not raise a formal grievance during 2015, but matters came to a head in July 2016. By this point the Claimant had been off sick for a number of weeks. At his meeting with Ms Watters and Ms McQuaid on 5 July he raised a number of matters. In addition to his concerns about the allegations against him, the suspensions and the settlement of the claim, he raised a large number of complaints some of which he had not raised previously.
62. The Respondent acted appropriately by appointing an investigator to look at all his concerns. I am a little surprised by how the investigation proceeded. Mr Cunningham had no terms of reference and was simply going

- by the minutes of the meeting on 5 July. There was no effort to agree with the Claimant which specific matters he wanted to be investigated. However, I accept that Mr Cunningham made an honest and diligent effort to address the very large number of matters that had been raised. I note also that an invitation was issued to the Claimant to meet with Mr Cunningham but he declined. That meeting would have given the Claimant the chance to clarify what he wanted Mr Cunningham to look at.
63. Mr Cunningham met with the Claimant on 31 August to feed back his findings and to give the Claimant a further opportunity to comment. It seems clear that the Claimant was not at all well at that meeting and it ended with him threatening to take an overdose. I find that the Claimant misinterpreted Ms Watters intentions when she queried whether he was well enough to return to work. When she mentioned him having to work alongside people he complained about the Claimant interpreted this as a suggestion that he could not return to work. Mr Cunningham spent some time calming him down.
64. Mr Cunningham's written response dated 8 September represents a careful and comprehensive response to the Claimant's concerns.
65. The Claimant wrote after the meeting accusing Ms Watters of racism and making it clear that he was still not happy. The Respondent treated this as an appeal. They asked the Claimant to attend a meeting with Ms Gibson and Mr McQuaid. The letter written after this meeting makes it clear that Ms Gibson and Mr McQuaid approached the Claimant's concerns with a real intention of reassuring him and putting things right. Their letter contains an acknowledgment of regret for everything that has happened and a commitment to pay the Claimant the two days extra pay he was seeking, even though no evidence has been presented to suggest that this was due to him.
66. Despite these efforts the Claimant wrote in again making it clear the issues were not resolved and he sought compensation. Ms Gibson initiated a conversation around a settlement proposal. I find that this did not come 'out of the blue' as alleged. The correspondence makes it clear that Ms Gibson had carefully prepared the ground by speaking to the Claimant and inviting him to what was described as a 'without prejudice' discussion.
67. It may be that the Claimant had simply not understood that the offer would include a proposal that his employment would be terminated, and that this came as a shock to him. Nevertheless I do not find that the written proposal dated 17 December amounts to either improper conduct or 'unambiguous impropriety'. First the Respondent was responding to the Claimant's request for compensation. Second they took care to discuss with him what they were going to propose. Third they confirmed their discussions in writing, with the addition of details of the financial offer. This is in accordance with the good practice suggested by ACAS in its guidance on settlement agreements. After the Claimant reacted adversely to the offer, it was made clear to him that the offer was withdrawn and his employment continued.
68. In light of my conclusions that the Respondent did not behave improperly in making an offer to the Claimant, section 111A applies and the discussions around settlement should not be taken into account. In overall terms I do not find that the Respondent's actions over the period leading up to the Claimant's resignation amounted to an effort to force him out of his employment.
69. The final act relied upon by the Claimant is his conversation with Mr Ruffley on the 28 February 2017. As stated, I prefer the evidence of Mr Ruffley that he took the opportunity to engage with the Claimant, to express support and to invite him to discuss a return to work.

70. I do not find that the actions of the Respondent amounted to conduct that was calculated or likely to destroy the working relationship with the Claimant.
71. The Respondent did not fail to carry out a proper investigation into the Claimant's grievances. The method they adopted was unconventional to a degree, but I find that they adapted their usual grievance procedures in light of the fact that the Claimant was off sick and did not want to meet with the investigating officer. The appeal was conducted in an informal manner by Ms Gibson and Mr McQuaid, but I find that both of them acted with the intention of causing the Claimant the least distress possible and finding a resolution. Unfortunately this did not prove possible. Whilst I might criticise the Respondent for not making greater efforts to clarify the terms of reference and not keeping detailed records, I am not able to accept the Claimant's argument that the grievance process was wholly unreasonable and amounted to a breach of contract.
72. The third alleged breach is that the Respondent failed to provide the Claimant with a safe place of work.
73. The Claimant's health suffered to a considerable degree as a result of the events that took place in 2015. Sadly, I am sure that the death of a patient is an occupational hazard that all nurses have to cope with on a regular basis.
74. The Claimant felt unsupported by the Respondent. He felt that it was unfair to suspend him. As stated, I do not believe that the Respondent acted unreasonably. They had grounds for the suspension and kept this to the shortest period possible on both occasions.
75. It is not unreasonable for an employer to decline to provide legal assistance to a member of staff who is arrested in connection with a possible criminal offence. I note that the Respondent did provide the Claimant with legal representation in relation to the employment tribunal proceedings. The recent case of *James-Bowen and others v Commissioner of Police of the Metropolis [2018] ICR 1353* is Supreme Court authority for the principle that employers owe no duty of care to employees in the conduct of civil litigation. I find therefore that the Respondent's decision to settle the claims of M did not result in a breach of implied duty towards the Claimant.
76. The Claimant asserts that the Respondent failed to support him in relation to a wide number of work issues. Following his promotion, he was concerned about the attitudes and behaviours of the staff that he had to manage. I note from the supervision records that he discussed his concerns with Donna Steadman and I accept that she sought to support him and spoke to him about how staffing issues could be addressed. An example is his report of staff members caught sleeping on 8 August 2015. The Claimant appears to feel that the Respondent should have done more and that his position was undermined. However the Respondent clearly felt that this was a matter within the Claimant's remit as a manager and that he should have addressed it on shift. It is not correct to say that they took no action following his report. The matter was investigated by Donna Steadman who concluded after speaking to the staff involved that misconduct was not proven.
77. The Claimant also made a number of allegations that other staff had been treated more favourably in relation to training opportunities and overtime, and that some staff had been abusing the use of taxis and company vehicles. A specific example was the allegation that some staff who were related to the hospital director had been paid an enhanced rate to do some archiving work. These are points that Mr Cunningham looked into with some care and found no evidence to support misconduct. In relation to the archiving his conclusions

- were confirmed by Ms Raval who managed the payroll and who had not been asked to make any enhanced payments, and by Mr Ruffley who would have had to authorise them. None of the other allegations were substantiated.
78. In terms of support while he struggled to cope with the aftermath of the allegations and the death of a patient, I find that Donna Steadman made considerable efforts to listen to the Claimant's concerns and provide support. Ms Gibson and Mr McQuaid sought to handle his concerns following the grievance process in a sensitive manner, with a view to resolving things and allowing the Claimant to move forward. There was no effort to dismiss the Claimant when he rejected the settlement offer. A final effort to get the Claimant back to work was made by Mr Ruffley but was not successful.
79. In conclusion I find that the Respondent did not breach an implied duty to provide the Claimant with a safe place of work.
80. In all the circumstances I do not find that the Respondent committed any single repudiatory breach of contract; and nor do I find that their actions amounted to a course of conduct that amounted to a repudiatory breach entitling the Claimant to resign. The Claimant found himself involved with two very significant events at work, namely an allegation of sexual harassment and the death of a patient. It is not surprising that these events had a great impact upon him from which he is still struggling to recover. However I cannot find that the Respondent's conduct towards him in dealing with these matters has been unreasonable or unsympathetic. I find that the Respondent made quite considerable efforts to address the Claimant's concerns and bring him back to work but this proved impossible.
81. The Claimant was therefore not dismissed. His employment ended on his resignation, and his claim for unfair dismissal fails.

Employment Judge Siddall

Date 11 October 2018.