

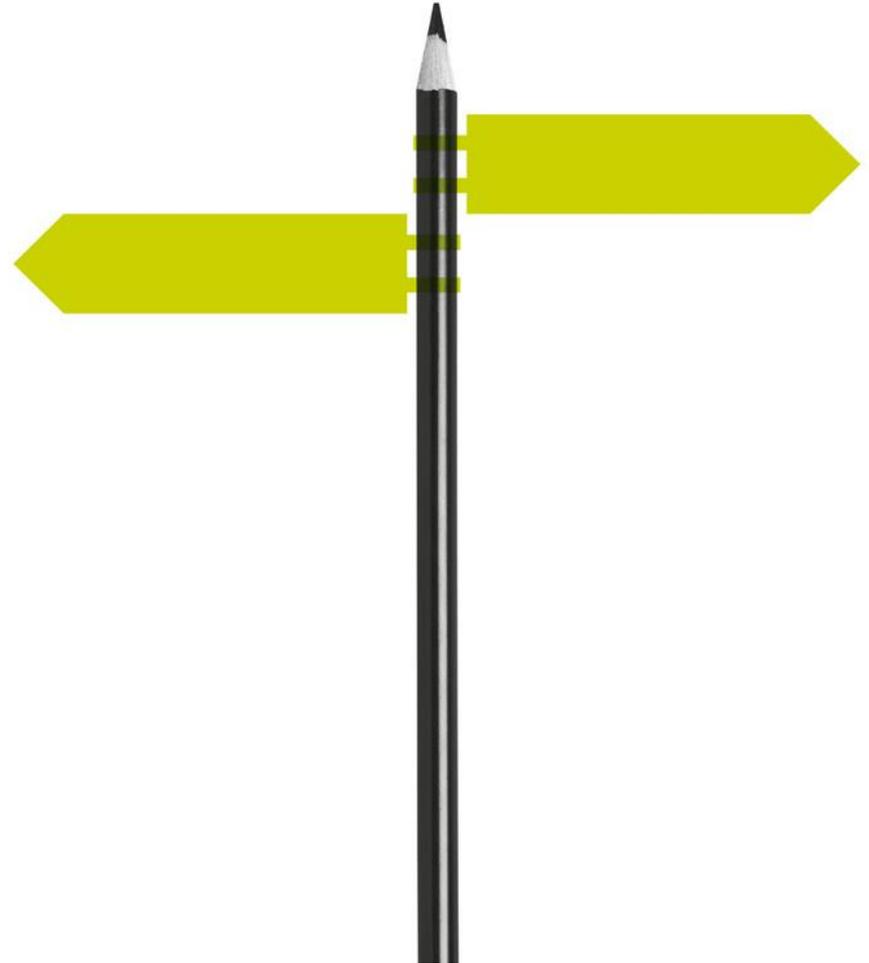
Trust and Confidence :
Not just a one-way street

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Trust and Confidence

Employment: a simple concept gets more complicated

Back in the day ...

- simplistic concept of master v servant
 - employer pays wages for work undertaken: the employee performs the work;
 - within reason, employers could do no wrong.....

Then came...

- emerging concept of constructive dismissal
 - ***Western Excavating (ECC) v Sharp*** 1978
 - “a significant breach going to the root of the contract, or which shows that the employer no longer intends to be bound by one or more of the essential terms”

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Employment: a simple concept gets more complicated

An issue of trust

What if the employer insisted upon:

- longer working hours or reduced pay?
- a title change: “Chief Secretary and Accounts Clerk”? and
- increased workload?

—Would these steps amount to constructive dismissal?

Woods v WM Car Services (Peterborough) Limited 1982
spawned new thinking...

“There is implied in a contract of employment, a term that the employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence or trust between employer and employee”

—NB demonstrating loss of t&c is not enough -the employer must have no reasonable and proper cause for its actions.

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Employment: a simple concept gets more complicated

T & c increasingly raised in employment context

- The Last Straw !
- BUT vital Q remains: viewed objectively, has the contract been fundamentally breached?
- Fertile ground = disciplinary/ grievance procedures:
 - Not Applying
 - Applying
 - Mis-applying
- What if there is more than one reason for resignation?

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Employment: a simple concept gets more complicated

T & c increasingly raised in employment contexts.

Case law examples:

T & c issue	Breach?	No breach?
Relocation at short-notice based on a mobility clause?		
Receipt of erroneous information during collective consultation?		
A lower than average discretionary bonus?		
Refused own choice of companion at disciplinary hearing?		
Contacted during sick leave?		

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Employees are subject to a duty of t & c too

- Addition to employer's armoury but with caution
- Less straight-forward option for dismissal unless "SOSR"
- Even then, the courts adopt a cautious approach:
" 'Breakdown of trust' is not a mantra that can be mouthed whenever an employer is faced with difficulties in establishing a more conventional conduct reason for dismissal"

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The courts have found many cases to be mis-labelled

– ***McFarlane v Relate Avon Ltd*** 2010:

In almost all cases where an employee is dismissed for their actions, the employer will have lost t&c in them

– ***Leach v OFCOM*** 2012:

The real reason for dismissal was the employer's legitimate concern over its reputation

– ***Tubbenden Primary School v Sylvester*** 2011:

Surrounding events may undermine the reasonableness of the employer even where a breakdown of t&c is established

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*Breach of t & c by employee as **additional** ground for dismissal*

Case law examples:

Reason for dismissal	Breach?	No breach?
Prolonged refusal to agree terms of employment?		
Discovery of pornographic e-mails 7 years after the event?		
Pulling "a sickie"?		
Inconsistent or suspicious responses to disciplinary investigation?		
Arriving late to several business meetings		

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