RESERVED JUDGMENT
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EMPLOYMENT TRIBUNALS

Claimant: **Ms S English**

Respondent: **Amshold Group Ltd**

Heard at: **East London Hearing Centre** **On: 5-8 & 12 March, & 13-14 March 2013 (in chambers)**

Before: **Employment Judge John Warren** **Members: Dr J Ukemenam, Mr B Watson**

Representation

Claimant: Ms P Jackson (Counsel)

Respondent: Mr S Sweeney (Counsel)

JUDGMENT

The unanimous Judgment of the Tribunal is that:-

(i) The complaint of automatically unfair constructive dismissal by reason of making a protected disclosure is dismissed on withdrawal.

(ii) There was no dismissal of the Claimant – the Claimant resigned. Therefore the complaint of unfair constructive dismissal contrary to section 95 Employment Rights Act 1996 fails and is dismissed.

REASONS

1 By an ET1 presented at the Employment Tribunal on 5 January 2012, the Claimant complained that she was unfairly constructively dismissed from her employment with the Respondent with effect 6 October 2011. The Respondent's response was filed at the Tribunal on 8 February 2012.

2 The Respondent's stance is that the Claimant resigned. The Respondent does not plead in the alternative that in the event the Tribunal find that the Claimant was dismissed that the reason for her dismissal was a potentially fair reason.

3 The Tribunal heard evidence from the Claimant on her own behalf and for the Respondent evidence was given by Lord Sugar; Mr M Ray, Finance Director of Viglen Ltd; Mr Burne, Technical Operations Manager at Viglen; Mr B Tkachuk, Managing Director of Viglen and from Mr D Dorans, Chief Financial Officer of YouView Television Ltd. The Tribunal read a statement of Ms Michele Kurland. Ms Kurland's evidence was accepted by the Claimant.

4 The Tribunal had before it a bundle of documents comprising in excess of 340 pages.

5 The Tribunal also viewed extracts from the penultimate programme of The Apprentice and a BBC interview on 20 December 2010, The Breakfast TV show.

Issues

6 The issues:-

6.1 Whether the Claimant had been unfairly constructively dismissed.

The Claimant alleges that the Respondent by its conduct breached the implied term of trust and confidence.

The Claimant's primary case is that:

Lord Sugar's conduct at the meeting with the Claimant on 28 September 2011, namely that in effect Lord Sugar told her he had only put the Claimant to work at YouView for the integrity of the show, the BBC, Lord Sugar and the Claimant. This the Claimant alleged showed the job was a "sham"; and

Lord Sugar informing the Claimant that her contract of employment would not continue after 31 December 2011 and Lord Sugar's use of the expression "*I don't give a shit*" during the 28 September 2011 meeting,

was such conduct.

7 In the alternative the Claimant argues that the conduct at the meeting on the 28 September 2011 was the last straw and the Claimant alleges that the conduct she relies on as amounting cumulatively to a breach of the implied term of trust and confidence is:-

(a) Mr Tkachuk's alleged comment on the 1 September 2010 that "there was no job" for her.

(b) Reprimanding the Claimant for her suggestion that she arrange a meeting with her uncle (a former teacher).

(c) Reprimanding the Claimant in a humiliating and degrading way for requesting a private meeting with Mr Tkachuk on 2 November 2010.

(d) Lord Sugar responding to the Claimant's request in November 2010 for feedback – with the comment to her "*Nice girl don't do a lot*".

(e) Mr Burne instructing the Claimant's team not to follow her instructions in February 2011.

(f) Mr Tkachuk – warning the Claimant "*not to make me embarrass you*" in advance of the meeting with Lord Sugar on the 24 February 2011.

(g) Dismissing the Claimant's concerns and using unacceptable language at the meeting on 16 May 2011 between Lord Sugar and the Claimant i.e. Lord Sugar saying that he "*did not give a shit about Viglen*".

(h) Failing to provide the Claimant with suitable work – thus leading to the Claimant leaving Viglen.

8 The facts found by the Tribunal are as follows.

9 On 9 July 2009, the Claimant, applied to take part as a candidate in "The Apprentice", a TV reality show. At the time of the Claimant's application she was working for Daiwa as Head of Business Management, Fixed Income Division. The Claimant resigned her post at Daiwa Securities after the series had been filmed but long before she knew she was the winner, the filming ended in November 2009.

10 The Claimant having been chosen as one of the successful 16 candidates signed a candidate's agreement for "The Apprentice Series 6" on 18 August 2009, copy is at page 1-28.

11 During the selection process the Executive Producer of The Apprentice, Michele Kurland, gives to the final 75 or so candidates short-listed, out of the approximate 10,000 who applied, the "Talk of Doom". This "Talk of Doom" is to make the candidates aware that they are at the stage of close to being picked to be part of the filmed Apprentice competition and that they need to think very carefully as to what may lie ahead and to reflect whether they wish still to take part.

12 In early September 2009, Ms Kurland gave the "Talk of Doom" to a group of 25 or so, of whom the Claimant was one, telling them that there was no guarantee that they would win, that they might have to resign their job to participate in the programme and cautioning them that this was an important decision for them to make. Any of them could be the first person to be "fired" so their involvement in the show to try to win the competition might be short lived. The candidates were reminded that they would have no input into the editing of the series. If they were successful and won the prize then it would be hard work as an employee of one of Lord Sugar's businesses. The winner would not necessarily work alongside Lord Sugar and may have to work under another line manager. The prize was a 12 month contract of employment. Winning the prize was not a commitment to extend the contract beyond 12 months. In the event of the winner staying employed beyond 12 months then any future salary would be agreed

between the parties at the time. Candidates were reminded that they could be away from their homes and families for up to nine weeks during the process, that they may find the competition and its filming extremely stressful and the media attention somewhat intrusive.

13 Ms Kurland also explained that the winner of the series would not be informed of their success until just prior to the airing of the final episode of the series. This would therefore mean there would be a gap of some six months at least between the cessation of filming and being informed of the decision as to who had won. Both the final two candidates would be offered a temporary contract of employment with one of Lord Sugar's companies during the period between the end of filming and the screening of the final episode, thus ensuring that the two finalists would not be out of work for the period of time between the end of filming and the end of screening.

14 In addition to the "Talk of Doom" given by Ms Kurland, the Executive Producer of The Apprentice, Lord Sugar gave his own "Talk of Gloom" to the two finalists. Lord Sugar gave his "Talk of Gloom" on 6 November 2009 informing the Claimant and the other finalist that there would be considerable media intrusion into their lives and possibly the lives of their respective families and partners once the programme was screened. Lord Sugar invited both of the finalists to let him know about anything in their respective pasts or lives that might attract media attention.

15 Lord Sugar has considerable experience in dealing with the media and he cautioned that such media attention might not be a positive thing for them.

16 The Claimant and the other finalist were informed by Lord Sugar that the winner could expect to work in any of the companies in Lord Sugar's Group of companies and that whilst Lord Sugar would receive reports and up dates on them and their performance he would not be their line manager and it may be that they would rarely see him. The winner would report to senior management of the company to which they were assigned.

17 Although the filming of "Series 6" concluded on 6 November 2009, the programme was not aired on TV until the autumn of 2010. A General Election was held in 2010 and the delay was caused because the BBC decided that the programme should not be screened on TV during the election period, because of Lord Sugar's involvement as an advisor to the Labour Government at that time.

18 On 4 August 2010, there was a meeting between the Claimant, Lord Sugar, and Messrs Tkachuk and Ray at the offices of Viglen. The Claimant was shown around Viglen which is an IT company. The Claimant was told that Viglen was the organisation where it was proposed that she would be working between September and December 2010 and that she should get involved with all areas of the business at Viglen.

19 The Claimant was told that Viglen had been making losses and that she should use her skills to institute a change in culture and change practices that would improve matters. Viglen had been specifically selected by Lord Sugar and Mr Tkachuk for the Claimant to work at because of her acknowledged strengths.

20 The intention was that the Claimant, if she was successful in The Apprentice, would return to Viglen to "run with" projects and in particular tenders to academies for IT services and equipment. The Claimant was told on that occasion that if successful after January 2011 she would be working to Mr Tkachuk and Mr Ray.

21 The Claimant was one of the two finalists and so she was offered and entered into a contract to work at Viglen Ltd (Viglen), one of the companies in the Amshold Group. The offer letter from Viglen is dated 6 August 2010 offering the Claimant a contract to commence employment on 1 September 2010 at a salary of £65,000 per annum. The letter recorded that the contract would come to an end on 14 December 2010. The offer letter further provided:

> "*At that time, subject to performance, we will seek to re-employ you on a new employment contract.*"

22 The Claimant accepted the offer by signing that letter on 1 September 2010 (page 34) and also signed a statement of terms and conditions of employment on 1 September (page 35-43).

23 The Claimant's work performance at Viglen was taken into account by Lord Sugar in deciding who would win the Apprentice competition and was part of the assessment process. The other finalist's performance (he was working for a different company) was also considered by Lord Sugar prior to Lord Sugar arriving at his decision.

24 In an email dated 4 August 2010 (page 106) Lord Sugar emailed the Claimant pointing out that the role at Viglen was an important role where:

> *"… we are bleeding money. You should try to pick up every aspect of the business. It will take you time. Bordon is an autocrat who likes to know what is going on and tends to interfere so you need your facts right. He has been told by me to let you get on with it. Mike is a serious good guy he knows the plot. The other staff will initially assume you are a waste of space due to The Apprentice. Hence earn your wings, which means everyone can see you have got the plot and making decisions that are right.*"

(Note: Bordon is Mr Tkachuk, Mike is Mr Ray.) The Claimant acknowledged Lord Sugar's email in an email reply later the same day:

> "*I understand. If you are bleeding any money I will certainly do my utmost to find out where and why. I will take time to be thorough and learn as much as I can and make sure I've got my facts straight. I appreciate your wise advice. I can understand totally that people will want to quickly judge me but I've proved myself before and now I need to do it again. Eventually I will earn their respect by doing a great job but I realise that will take time. I'm the new kid on the block at Viglen but I've learnt a few important lessons along the way getting there. I will need to employ some patience in the beginning but I'm in it for the long haul so I'm not going to go in like a bull in a china shop.*"

25 On the 12 August 2010 (page 110) the Claimant emailed Lord Sugar stating that whilst sitting in traffic on her way home it had dawned on her that she had not done an exit "in the Phantom in the same way that two endings were shot for the final boardroom…" and because of this she was fairly sure that the series had been cut and therefore it seemed highly likely that she was the runner up.

26 Lord Sugar's response was that the "pictures" to which the Claimant had referred had not yet been filmed and he reminded the Claimant that he was not "in the business of lies and deception". The Claimant apologised if she had offended Lord Sugar.

27 The Claimant was assigned to manage a small team of three. The Claimant gave evidence that when she arrived at Viglen for her first day at work on 1 September 2010 her first port of call was the office of the CEO, Mr Tkachuk. She alleged that he said to her "*the cameras have stopped rolling now*" and "*looking at her in contempt he said welcome to the real world, there is no job*". The Claimant alleged that Mr Tkachuk continued that "*I was lucky as someone had left and that I could replace her*". At that point the Claimant did not know what Mr Tkachuk meant by this. The Claimant also alleged that no specific duties were allocated by Mr Tkachuk to her to assist in her advancement within her role. That evidence was contradicted by Mr Tkachuk who whilst accepting he may well have said that "*now the cameras had stopped rolling*" and "*that this was the real world*" far from saying there was no job he confirmed there was a job. We accept that Mr Tkachuk did not say there was no job because clearly there was a job.

28 During the evening of her first day at work the Claimant emailed Lord Sugar (page 114) she wrote:

> "*Had a good day today. Spent a lot of time with Mike and Alan and I feel that there are a number of things I can help with once I am settled in. I am spending time on projects tomorrow… Only first day but I've enjoyed it and glad to be back in the real world.*"

29 Having been notified on 1 September 2010 early in the morning by Mr Ray of the Claimant's email address and Blackberry number, Lord Sugar enquired of the Claimant's direct landline number to ensure that he had access to the Claimant likewise the Claimant had Lord Sugar's direct contact details.

30 The Claimant had weekly meetings with Mr Ray, someone she found sympathetic and who she got on well with. Mr Ray as well as being Finance Director also had responsibility for HR within Viglen, a company of some 200 employees.

31 Mr Burne was the Technical Operations Manager. Mr Burne ran the Technical Support Network Engineers and Project Managers and was responsible for some 50 employees within the company and was one of Viglen's senior managers. He had vast experience in the field, the Claimant had none. It had been explained to the Claimant by Mr Tkachuk that she should gain knowledge and experience from Mr Burne and this would assist her as her role grew and as she began to take on more responsibility.

32 In an email of 24 September 2010 from the Claimant to Messrs Tkachuk and Ray, copied to Lord Sugar, the Claimant commented that in the past the company had:

> *"… either underestimated the engineering work involved or came up against obstacles which have meant the job has taken longer*."

33 In a response from Lord Sugar of 28 September 2010, Lord Sugar addressed the Claimant's concerns about the cost of engineering. His email (copy at page 117) read:

> "*We are stuck between a rock and hard place. If you distrust the engineering quote of time and pad it out to allow for inefficiency as a contingency, then you make the bid too high overall and you wont get the deal. The facts are if you ask an engineer how long will this take you can be sure they will underestimate things. They are engineers they do not think profit they think technically they do not realise that time is of the essence. What we need to do is to instil a new culture in the engineers and give then a bit of a wake up call and tell them that their time is money and if someone asks then to do something for them that's not on the job sheet it is no different than being asked to supply a free HDD or a couple of banks of memory*."

34 So as early as 28 September 2010, Lord Sugar was emphasising to the Claimant right at the start when placing the Claimant at Viglen that Viglen was not operating as efficiently as it should do, that engineers labour was a commodity, it was being sold and that the company should make a profit on it, and that those issues needed to be addressed in the tendering process and in the management of the company. It was these problems that the Claimant was responsible for addressing and correcting.

35 The Claimant at that time had raised with Mr Tkachuk the fact that her uncle had been in teaching; she raised this in connection with the fact that the Respondent were in contact with schools and academies to win tenders to provide IT equipment. Mr Tkachuk explained to the Claimant that the fact that her uncle had been a teacher would be of little relevance and would be of no assistance to her or to Viglen and that he could see no point in her uncle being involved in connection with work that the Respondent were proposing to do. Mr Tkachuk could see no advantage to be gained and in his view it would be a waste of time but he left the matter with the Claimant. The Claimant alleged that in this exchange Mr Tkachuk "ripped into her" and alleged that she was reprimanded.

36 We accept Mr Tkachuk's recollection of this event. Mr Tkachuk did tell the Claimant that he saw no point in involving the Claimant's uncle but he did not do so in an aggressive or offensive way and in the end he left the decision up to the Claimant to decide whether the Claimant considered her uncle's involvement would be beneficial. In the event the Claimant did not involve her uncle. The Claimant was not reprimanded.

37 The Claimant moved home on or around 2 October 2010 to be located closer to her place of work at Viglen.

38 On 2 November 2010 the Claimant (who had by this time been at Viglen for some two months) wrote to Mr Tkachuk as follows (p. 127):

> "*There are some things that I need to discuss with you as soon as possible. I have booked some time in your diary. I'm concerned about the lack of processes down here. Something came to light this morning which I am working hard to sort out. I have briefly mentioned it to Gavin but I would rather talk to you if you don't mind. May I tell you that the long and the short of it is that there is £2.3m worth of projects down here which are still not signed off. That means that they are still OPEN rather than signed by customer and ready for payment. Luckily a lot of them have paid but we have left ourselves wide open. I am running all of the orders through avante to see how much money is outstanding and it is a fair chunk I'm at 600k outstanding yet only half way through checking. I will send you an update when finished. I hope you can appreciate that I want to talk to you direct not to anyone else. Not to stitch them up but it begs the question why no one knows something that it took me 1 hour to check.*"

39 Mr Tkachuk's response came within seven minutes and was copied to Messrs Ray, Burne and Wheeler. Mr Tkachuk's suggested to the Claimant that she "talked the matter through" with Mr Ray to resolve the position and Mr Tkachuk also commented:

> "…*I am not interested in stitching any one up its not the way we do things we need to be just getting on top of what needs to be done*"

40 The Claimant's response was to confirm that she had sat down with Mr Burne, and that she would speak to Messrs Ray and Wheeler.

41 The Claimant contacted Lord Sugar towards the end of November 2010 to arrange a meeting. Lord Sugar agreed and informed her that he had already scheduled a visit to the offices. The Claimant had a meeting at Viglen with Lord Sugar, Mr Tkachuk and Mr Ray. The Claimant's version of what occurred at the meeting differs from the recollection of the others. What is agreed is that there was also a meeting between the Claimant and Lord Sugar alone. The Claimant alleges that there was a discussion about £1.4m as having being either outstanding or recovered as a result of the Claimant's discovery.

42 The Tribunal found that there was a discussion at the meeting about monies that may be outstanding on projects that were ongoing and/or completed and the balance of monies due which were or were not outstanding and had or had not been collected. The Tribunal accepted the Respondent's evidence that the matters the Claimant had raised were precisely the sort of matters she was employed to deal with.

43 The Tribunal found that the Directors explained to the Claimant that ensuring monies due to Viglen on contracts were collected was an ongoing matter for the company and because of the nature of Viglen's business that would always be the position. The position as to work done on the contracts would always need to be monitored to ensure that stage payments were paid and kept up to date. So in that sense there was nothing amiss or new. The mere fact that in some instances the contract had not been formally recorded as having been "signed off" on the company's system did not necessarily mean that the contract had not actually been signed off by the customer. It merely meant the engineer had not recorded it. It also did not

automatically mean that there were outstanding monies due to Viglen outstanding on the contract.

44 The Directors acknowledged that it was right to monitor the position and that that was one of the responsibilities of the role for which the Claimant had been employed. For example the preparation of the spreadsheet we see at 127e was just the sort of document that would be kept by a prudent project manager to monitor the contracts and to ensure the timely collection of monies due on them. The Tribunal accepted the Respondent's evidence that there was no reference to £1.4 million during the meeting. We have no doubt that potential outstanding monies due to Viglen were discussed as showed up on the spreadsheet prepared by the Claimant.

45 The Claimant had misunderstood the process and had been mistakenly concerned that what she had uncovered was some failing on the part of staff at Viglen.

46 The Claimant is informed on 16 December 2010, that she is the "winner" of The Apprentice and the airing of the final is to be on 19 December 2010.

47 On 19 December 2010 the Claimant took part in the TV programme "The Apprentice – You're Hired" and she appeared on the Breakfast TV programme the day after.

48 The Claimant during her interview on Breakfast TV show when asked what it was she would be doing having won The Apprentice confirmed that she would be working at Viglen, a company which sold PCs into schools, that she was excited about the opportunity, that she would not be selling, that there were good people there and that she would be implementing the projects and making good margins.

49 This was all after being told that she had won the final and after she had worked the trial period at Viglen and before she took up "prize" in January 2011. There is no doubt the Claimant knew what she had won and what she would be doing during her 12 month contract.

50 The Claimant's formal letter of offer following her success in The Apprentice was dated 20 December 2010 (page 44). The Claimant was offered the position of:

> "*Projects Manager at Viglen Limited for twelve months from 1st January 2011 to 31st December 2011 terminable by either party on giving one months notice.*"

51 The offer letter confirmed that the Claimant's salary would be £100,000 per annum, her working hours were 9 to 5:30 Monday to Thursday and 9-5 on Friday, with 45 minutes for lunch. The offer letter went on to record entitlements to life insurance, private medical insurance and paid holiday. Attached to the offer letter were the terms and conditions of employment. The Claimant countersigned the offer letter and the detailed terms and conditions (page 45 to 53) on 7 January 2011. In the terms and conditions of employment at 3.1 it records that the Claimant's normal duties would be "as detailed in the Job Description attached" – it is common ground that there was no job description.

52 Paragraphs 3.2-3.4 of the Claimant's contract with Viglen were set out in general terms whereby the Claimant contracted to undertake any duties as may be necessary to meet the needs of the business; to co-operate with other members of staff to ensure that the Company (Viglen) provided the service required by its customers and that the Claimant would obey all reasonable and lawful directions.

53 The Claimant took up her prize which was the offer of the 12 month contract of employment with Viglen and commenced work on 4 January 2011. On 6 January 2011 (page 136) the Claimant in an email to Lord Sugar confirmed:

> "*All going well first week back. Got a lot on already and getting stuck into some projects. I have a small team now who have responded well to the change and all looking positive.*"

54 On 19 January 2011, just over two weeks after the Claimant started in her substantive role, Lord Sugar emailed the Claimant to enquire "how she was doing" and "what was going on" and asked her to let him know "what she was up to at the moment" (page 141). The Claimant's response sent the same day, is at page 140, she responded:

> "*I'm good thank you. All going well here. Have been getting my team (of 3) organised. We have got all the outstanding payments down from around £1m to £100k now and actively work with accounts to ensure we stay on top of things.*
>
> *I'm busy working on a pricing for an Academy which we have already won but there have been some changes. It's good for me to get to the nuts and bolts of the costings and profits.*"

55 Her email then went on to explain that a major thing she was dealing with was "getting the timesheets underway". She went on to explain that she would be providing a weekly update status report of all projects to Mr Tkachuk and Mr Ray concerning man days used and would be especially focussing on the cost of supplying engineers to projects. She emphasised that the company (Viglen) needed tighter control on those costs. She then went on to explain that another focus was to ensure that all project costs were fed through the accounts. She informed Lord Sugar that she was closing a deal with a legacy company which would help reduce costs and that:

> "*There are a few other projects I am working on which we have already won but I'm finding ways to reduce the costs*".

In the pre-penultimate paragraph at 141 the Claimant wrote:

> "*My main focus now is to assess the total revenue that is coming through my area and maximise the profit by having a good look at our suppliers, how we are organising jobs and mainly getting the engineers on track. It is clear that either we underestimate or spend too long on the jobs but now we have the data to back it up we can start to make some informed decisions about what we need to change.*
>
> *The important thing to me is that I am getting the full support of my team and they are working well. I just need to get them out of some bad habits.*"

56 Lord Sugar forwarded the Claimant's response on to Mr Ray to enquire if the Claimant's summation of what she was doing was fair. Mr Ray confirmed that the Claimant was working well. Mr Ray confirmed that he had sat down with the Claimant on the first day and gone through the structure, confirmed that the Claimant had her own department with three direct reports who had all taken to the Claimant without any adverse issues/difficulties as far as he was aware. Mr Ray confirmed the Claimant was keen and wanted to help improve the way the company worked. Mr Ray concluded in his email to Lord Sugar:

> "*As you said I am keeping involved in what she is doing and I get the impression she is happy with how things are going.*"

57 As winner of The Apprentice this had generated considerable media interest in the Claimant concerning not only her private life but had also resulted in requests for her, for example, to present awards and the like. Lord Sugar, through Lord Sugar's PR Company, assisted the Claimant with dealing with the media intrusion into the Claimant's private life and supported her through that period. His support included accepting or rejecting requests for the Claimant to attend functions and present awards and the like, Lord Sugar's approach was confirmed in an email he sent on 24 February 2011 to Mr Fraser of the PR company in which he wrote: "*I spoke to Stella today and told her I have been turning down all requests…*" but that he would consider any requests if they presented good opportunities which did not waste work time and were credible and where Viglen could benefit from the publicity.

58 The Claimant's evidence was that she was "shocked" that she would be working for Mr Gavin Burne as she considered him "junior to (her)" and in her opinion reporting to Mr Burne was neither logical or necessary as she required no technical experience to undertake the role of project manager. Her evidence to the Tribunal was that Mr Burne showed no interest in working with her and he marginalised her and instructed her team not to deal with the Claimant. The Claimant also in her evidence alleged that she had been given:

> "*…tasks below my grade which was demeaning and also detrimental to my reputation and credibility within the organisation*".

59 No evidence of such jobs allegedly given was put before the Tribunal. Notwithstanding the weekly meeting with Mr Ray, none of the allegations the Claimant makes about being given demeaning work were raised with him.

60 Mr Burne's evidence, which the Tribunal prefers, is that he supported the Claimant and that he valued the work that the Claimant was providing to the department and that he did not undermine the Claimant in relation to the staff reporting to her. Furthermore as stated in paragraph 31 Mr Burne was very experienced and from whom the Claimant could learn. The Tribunal rejects the Claimant's argument that she was given demeaning work.

61 On or around 24 February 2011, Lord Sugar visited Viglen. The Claimant's evidence on this is that Mr Tkachuk told her before the meeting with Lord Sugar: "*don't make me embarrass you*". Mr Tkachuk denies making such a remark. We prefer

Mr Tkachuk's evidence. The Claimant also gave evidence that Mr Tkachuk told Lord Sugar that she had been put in charge of potential new clients for academy schools, that that was untrue and that Mr Tkachuk had made "a series of false statements about my work and the viability of the projects". No specific details as to precisely what was alleged to have been said was given in evidence at the Tribunal. This evidence is in paragraph 40 of the Claimant's witness statement and is put forward as one aspect of conduct on the part of the Respondent which breached the implied term of trust and confidence.

62 The Claimant has throughout her employment period shown that she will raise matters of concern to her directly with Lord Sugar. We have no doubt that if Mr Tkachuk had spoken in the terms alleged she would have raised it with Lord Sugar at the time or certainly with Mr Ray at her regular weekly meetings with him, she did not do so.

63 In her witness statement at paragraph 41, the Claimant stated that she:

> "…*continued to be marginalised, undermined and treated in a demeaning way, not consistent with the role I had been employed to undertake. It became increasingly untenable for me to continue in the face of what amounted to repeated breaches of the implied term of mutual trust and confidence.*"

No evidence whatsoever was before the Tribunal as to the conduct which the Claimant alleges marginalised, undermined, demeaned her and again this was never raised with Lord Sugar or especially Mr Ray at their regular weekly meetings.

64 The Claimant had a meeting with Lord Sugar in mid February 2011. The Tribunal are satisfied that after the meeting in February 2011 with Messrs Tkachuk, Ray, Lord Sugar and the Claimant that Lord Sugar was satisfied that the Claimant was doing well. He confirmed that the Claimant seemed to be integrating well. Lord Sugar's recollection was that it was in a telephone call later in February 2011 that he told the Claimant that the feedback he had received was that the Claimant was "*a nice girl but had got a lot to learn*", a comment with which she agreed was accurate – Lord Sugar denied ever giving feedback in the terms: "*nice girl doesn't do much*". The parties' recollection as to when this feedback took place differed. The Claimant recalls that it was feedback following the meeting in November 2010. Lord Sugar's recollection is that it occurred after the February 2011 meeting and over the phone. We prefer Lord Sugar's evidence as to the timing, the manner of communication and the words used. If the feedback was that the Claimant "did not do much" she would have contested such a view as her evidence was that she was fully engaged.

65 There was a further meeting, on this occasion at the Claimant's request on 16 May 2011, between the Claimant and Lord Sugar. The Claimant had asked to see Lord Sugar in his office and travelled from the office of Viglen to Lord Sugar's office in Loughton to meet with him. The Claimant at the meeting on 16 May 2011 informed Lord Sugar that the role that she was performing at Viglen was not challenging enough for her. Although never specific the Claimant throughout her hearing was claiming that she had been placed in an "administrative" position.

66 At the meeting Lord Sugar reminded the Claimant that now with the BECTA accreditation Viglen would grow and that it was important for Viglen to go out and sell to Academies. Lord Sugar told the Claimant to go and speak with Mr Tkachuk and Mr Ray.

67 The Claimant informed Lord Sugar that she felt that she was not "going to go anywhere" within Viglen and that all she wanted to do was leave. We do not accept that at that meeting Lord Sugar commented that:

> "*he did not give a shit about Viglen and that Bordon (Mr Tkachuk) was a conniving little shit*".

68 Viglen was a company employing some 200 people and at the time was making £800,000 profit, had just received BECTA accreditation and was about to grow (which it has done currently making £2m a year profit) and that Lord Sugar and Mr Tkachuk had worked together for some and Mr Tkachuk had been MD of Viglen since 1995. With that background it is highly unlikely that Lord Sugar would have made such a remark. Even if the remark had been made it is not understood how that could amount to a breach of the implied term of trust and confidence between the Respondent and the Claimant.

69 On 23 May 2011 the Claimant resigned. Her written resignation is at page 151A which reads:

> "*This is my formal notification that I am resigning from Viglen Limited as Project Manager. Monday 23rd May 2011 will be my last day of employment.*
>
> *I appreciate the opportunities I have been given here, and wish you much success in the future.*"

The letter of resignation is addressed to Mr Tkachuk. The Claimant had not contacted Lord Sugar to inform him of either her intention to resign or the fact of her resignation. Her communication was with Mr Tkachuk and it was he who conveyed the Claimant's decision to Lord Sugar.

70 The Claimant when asked by Lord Sugar and by his PR Company as to why she had resigned the Claimant informed them that Viglen was not for her and gave no other reason.

71 The Claimant's early resignation (only five months into her 12 month contract) prompted Lord Sugar, the PR Company and the production company to have concerns as to the effect that her early resignation might have on the credibility of "The Apprentice".

72 The Claimant met up with Mr Tkachuk and with Mr Ray. Mr Ray's email on 25 May 2011 to Lord Sugar we believe best sums up the situation. He writes:

> "*For what it is worth I also sat down with her (Stella) yesterday and had a long talk. I actually believe that she does not have any firm plans. She does not want a '9-5' office job and to that extent she does not want to work at Viglen. She said she would like to*

work for herself doing something. She also said that she has been involved with the Apprentice process now for nearly 2 years, she is getting older, and she feels that she needs to do something about it now. She says she is not the sort of person to carry on while unhappy just drawing a salary. She claims the money is not that important to her, and is not a reason to stay for another 6 months before agreeing to leave.

She says she wants to leave amicably, so I guess that when she does sort out what she is going to do she will tell you in advance.

The strange thing is that I had a weekly meeting with her and she never once mentioned that she was unhappy."

73 Mr Tkachuk's experience of getting a reason from the Claimant as to why she had chosen to resign was the same having taken the Claimant for lunch (162). Mr Fraser from Lord Sugar's PR Company also confirmed in an email to Lord Sugar that he had spoken to the Claimant and that she had told him that she would: "*never, ever, ever be anything less than complimentary in public about Lord Sugar or any of his companies*".

74 Lord Sugar contacted the Claimant to enquire why it was she was leaving and she confirmed that "Viglen was not for her", that she had no other plans in place.

75 The Claimant acknowledged that she had personal money problems at this time. The Claimant accepts that in a conversation with Lord Sugar and especially bearing in mind that she was in the need of money, Lord Sugar suggested that it would not be sensible for her to walk away from her contract of employment where she was guaranteed the balance of the £100,000 per annum salary for the rest of the year.

76 The Claimant was adamant that she did not wish to return to Viglen.

77 Lord Sugar had recently become non Executive Chairman of YouView Television Ltd and Lord Sugar had through his connections with that company arranged that the Claimant could be seconded there whilst being employed by the Respondent. YouView was not a part of the Amshold Group. Lord Sugar had no beneficial interest in YouView.

78 There was some urgency in the Claimant indicating whether or not she was prepared to go down that path because the press had indicated that they wished to run a story about the Claimant's early resignation from Viglen.

79 The Respondent was anxious if at all possible if it were the Claimant's wish to continue and work on secondment at YouView that the press should have the complete picture i.e. that although the Claimant was leaving work at Viglen she was transferring to YouView.

80 The work that the Claimant was seconded to do at YouView was to work on security matters to set up system security (to protect IT security at YouView) and to work with stakeholders to manage tenders to secure third party security services to test the security of the system. The Claimant was also to set up the Trust Authority to consider measures to protect IT security for YouView.

81 YouView was a start up company. The Claimant in her evidence alleged that her time at YouView was a negative experience as there was not really a job for her. Yet under cross-examination she accepted that she felt that it had been a worthwhile time there and that she enjoyed the experience and in fact she had been in talks with YouView in an attempt to find a permanent position with them as she would have liked to be able to work for them full time. It is clear the Claimant enjoyed working at YouView and gained valuable experience and skills from doing so.

82 The Claimant was provided with a new contract of employment (copy at page 45-61) to commence on 1 June 2011. Her employer would be the Respondent, Amshold Group Ltd and the contract provided that she would be employed until 31 December 2011, and would work at YouView.

83 The Claimant signed the contract on 8 June 2011 (page 61). The Tribunal does not accept the Claimant's evidence that Lord Sugar commented to the Claimant that:

> "*It was not fair what happened to her at Viglen*".

The Claimant's evidence is rejected because she has produced no evidence to support an allegation of being treated unfairly at Viglen.

84 On 8 June (page 199) the Claimant confirmed to Lord Sugar:

> "*Good to see you earlier. I should have mentioned that everyone has been so welcoming. You were right it's a good place to work and they're my kind of people. So far so good.*"

85 The Claimant during her latter time at YouView was working with the Chief Financial Officer of YouView and the lawyers involving preparation of legal documentation for shareholders.

86 Lord Sugar was non executive Chairman and during the Claimant's time at YouView she would see Lord Sugar on the occasions of his visits to YouView.

87 The Claimant confirmed that she had been happy at YouView, that they were nice people to work with and that she was given meaningful work to do. The Claimant had been in discussions with Mr Dorans the Chief Financial Officer at YouView to see if she could secure a permanent position with YouView when her contract with the Respondent ended. YouView's Commercial Business Manager had moved to a different position creating an apparent vacancy. The Claimant had expressed an interest in such a position. In the initial discussions between Mr Dorans and the Claimant he had made it clear that YouView would not be able to offer the Claimant remuneration at the rate of £100,000 a year, it would be less and that any position that would be available in YouView would be as a contractor and not as an employee. YouView was a start up company and its budget was strictly monitored.

88 Lord Sugar visited the YouView premises on 28 September 2011. The Claimant was sitting in a different area than she normally sat at within the YouView office (in an area with the CFO and the lawyers) and after Lord Sugar's meeting dealing with

YouView business, he had a meeting with the Claimant. At this meeting Lord Sugar told the Claimant that her contract with the Respondent would expire at the end of December 2011.

89 The Claimant had of course in May 2011 indicated that she did not want to return to work at Viglen. The work that the Claimant was doing at YouView was not for the benefit of any of Lord Sugar's group of companies but was for the benefit of YouView. The Claimant's salary was paid by the Respondent so it was obvious that the Claimant's relationship with Amshold would most likely cease on 31 December 2011. There was a discussion between the Claimant and Lord Sugar. The Claimant told Lord Sugar that she was quite happy to stay at YouView, that there were lots of things she could be doing and that she really enjoyed it there. The Claimant was told by Lord Sugar that she should discuss any future plans with Mr Dorans the CFO of YouView. There was a meeting between Mr Dorans and the Claimant. Mr Dorans asked the Claimant to put forward her proposals for work that she could do for YouView but the Claimant did not respond to his request.

90 Mr Dorans confirmed to the Tribunal and to the Claimant that there was no budget for staff to be employed at the Claimant's level and any new arrangement would be as a contractor and at a rate less than £100,000 per annum.

91 The Tribunal considered the contemporaneous notes the Claimant made of her meeting with Lord Sugar which are at 334 of the bundle. Compared to her witness statement (paragraphs 60 and 61), it is clear that the meeting on 28 September 2011 was more comprehensive and involved more of a discussion than the Claimant suggests in her witness statement. In her witness statement at paragraph 60 she refers to Lord Sugar using the words:

> "*You said that you couldn't work at Viglen anymore so I flipped you over here. I did it for the BBC and I did it for the integrity of the show, well and a bit of my own PR well and yours too, but the fact is that I don't give a shit…*
>
> *I don't give a shit. You were happy enough to walk out on me in June, weren't you? Well, now we are done.*"

92 The Claimant's contemporaneous record at page 334 is in slightly different terms. There she also records Lord Sugar as saying:

> "*Look, if you're thinking Lord Sugar is shitting himself and that's why you're here then you're mistaken cos I don't give a shit, alright, I don't give a shit.*"

The Claimant relies on these allegations as a breach of the implied terms of trust and confidence.

93 The question here from the Tribunal is the context in which those words or similar words were used and if they amounted to a breach of the implied term. Lord Sugar accepts that he may have used words similar but in her account the Claimant does not put forward the context in which the words are used, she merely says: "Lord Sugar also said the following". Lord Sugar's explanation is that these comments, if they were made and it is likely that they were, were made in response to a comment by

the Claimant questioning what the press were likely to think in the event that her contract was not renewed in December 2011.

94 That does give context and a plausible explanation as to why those words or similar words were used. Lord Sugar was "not giving a shit" about the press – that context was not challenged. Lord Sugar was certainly not in using those words referring to the Claimant.

95 In evidence to the Tribunal the Claimant stated that "she felt devastated" following her meeting with Lord Sugar yet in her diary at page 333 comments made shortly after the event she records:

> "*I was quite upbeat last night although I didn't make a note in the diary of yesterdays run in with Lord Sugar.*"

Had the Claimant felt devastated and understood the words she now alleges were used to have been conduct which amounted to a breach of the implied term of trust and confidence the Claimant would have hardly felt "upbeat".

96 The day following her meeting with Lord Sugar the Claimant spoke with the CFO of YouView. Mr Dorans confirmed that there was no budget for employing members of staff (something the Claimant had already been told by him) but he expressed that there may be opportunities for contracting work from the Claimant, that it was up to the Claimant to prepare and put to him a job specification proposal and description of the type of work that she could usefully do for YouView. The Claimant did not follow up Mr Dorans' suggestion.

97 During early October 2011 the Claimant stopped attending work at YouView without any prior warning or explanation either to her colleagues at YouView or to Lord Sugar. The Claimant went absent without explanation.

98 The Claimant resigned her employment with the Respondent by a letter dated 6 October 2011. Her letter of resignation, copy at page 223 was addressed to Lord Sugar. It reads:

> "*Please accept this as notice of my resignation with immediate effect.*"

No reasons were given by the Claimant for terminating her employment. Lord Sugar did not see it immediately.

99 On 7 October 2011 Lord Sugar wrote to the Claimant in the following terms:

> "*I understand you walked out of YouView with no explanation on Monday. In a similar way as you did at Viglen. Perhaps you would like to explain to me why and what your intentions are.*"

100 The Daily Mail then contacted Lord Sugar through his PR Company at noon on 7 October 2011 indicating that they proposed publishing an interview with the Claimant in their Sunday edition of the newspaper, on 9 October 2011. A story to the effect that the Claimant had resigned from her job with the Respondent.

101 At document 283 is an interview by a journalist with the Claimant, reported in the Sunday Mirror and in that report the Claimant is recorded as having stated that Lord Sugar had said that people liked having her around but the fact was that after December they could not pay her. She then claimed that Lord Sugar had said that he had met her obligations to her and had commented that she had been happy to walk out on him and the Claimant goes on to claim that Lord Sugar had said:

> "*If you think Lord Sugar was s…ing himself when you left the Viglen job you're wrong because I don't give a s…*".

The Claimant said in her interview with the journalist that she therefore felt that the only reason she was there i.e. at YouView was to protect the BBC, the Apprentice show, Lord Sugar and then finally her.

102 The Claimant then recorded that:

> "*What I took offence at was feeling my new job was just PR for the show. That was the nail in the coffin… every last bit of loyalty just went.*"

103 The Claimant's interpretation of events as portrayed in the interview confirms Lord Sugar's evidence to the Tribunal that his reference to "*I don't give a shit*" was reference to what the media thought when the Claimant left Viglen in May 2011. Yet the Claimant is alleging at the Tribunal that the conduct which she now says amounts to a breach of the fundamental term of the employment contract was that Lord Sugar found the position for her at YouView to protect the image of the Apprentice show, the BBC, Lord Sugar and herself and further that the job at YouView was a sham.

104 It is unclear whether or not the Claimant is suggesting that Lord Sugar instructed Mr Dorans not to make a position available to the Claimant after December 2011. There is no evidence at all to suggest that Lord Sugar behaved in such a way. Lord Sugar denies such conduct. Mr Dorans denies that Lord Sugar ever influenced him nor did Lord Sugar suggest that the Claimant be not given a position with YouView at the end of her contract with the Respondent.

The law

105 (a) The question for the Tribunal is was the Claimant unfairly dismissed contrary to section 95 of the Employment Rights Act?

(b) *Malik v BCCI* [1997] UK HL 23 the implied term of trust and confidence is defined as "the employer will not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."

(c) The conduct complained of must be objectively judged as being sufficiently serious to destroy or to seriously damage trust and confidence.

(d) Any breach of the implied term is repudiatory.

106 The conduct which the Claimant alleges amounted to a breach of the implied term of trust and confidence entitling the Claimant to resign is Lord Sugar's conduct on 28 September 2011 at the meeting with the Claimant as set out in paragraph 60 of the Claimant's statement where it was alleged that Lord Sugar had told the Claimant that her contract would not be renewed at the end of December 2011 and when Lord Sugar is alleged to have said:

> "*You said that you couldn't work at Viglen anymore so I flipped you over here. I did it for the BBC and I did it for the integrity of the show, well and a bit of my own PR well and yours too, but the fact is that I don't give a shit.*"

And Lord Sugar allegedly saying:

> "*I don't give a shit. You were happy enough to walk out on me in June, weren't you? Well, now we are done.*"

107 In the alternative the Claimant alleges that Lord Sugar's conduct on 28 September 2011 amounted to "the last straw" and that the other conduct complained of was that conduct referred to in the Claimant's witness statement at paragraphs 17, 19, 30, 37, 40 and 48. Namely para 17 that Mr Tkachuk commented on her first day at work in the trial period on 1 September 2010: "*the cameras have stopped rolling now*" – "*welcome to the real world, there is no job*";

108 Para 19(a) that colleagues shunned her; (b) that she was reprimanded for trying to carve out her own role by finding £1.4 million to be invoiced for Viglen; (c) that she would be warned off from telling Lord Sugar what was really going on and (d) only seeing Lord Sugar on five brief occasions, following the show, despite the mentoring role 'The Apprentice' appeared to offer.

109 Paragraph 30 the comment in November 2010 alleged by Lord Sugar to be in a feed back session: "*nice girl, don't do a lot*".

110 Paragraph 37 that during her employment on the second occasion at Viglen her team had been told to merely pay her lip service and that the Claimant was marginalised by Mr Burne who allegedly showed no interest in working with her and who obstructed other employees from working with her, directing them not to listen to her.

111 Paragraph 40 Mr Tkachuk commenting "*don't make me embarrass you*" prior to a proposed meeting with Lord Sugar in February 2011 and the 17 May 2011 meeting and Lord Sugar's comments: "*that he didn't give a shit about Viglen*" and telling the Claimant to raise any concerns with Mr Tkachuk.

112 Both parties provided extremely extensive written submissions to the Tribunal. The Claimant's submissions ran to some 48 pages and are deemed to be incorporated into the decision in their entirety.

113 The Claimant's submissions are briefly that the term of the contract breached is the implied term of trust and confidence. The Claimant argues that the Respondent broke that term in that the work that was provided to the Claimant under the employment contract was not meaningful and that the Claimant was entitled to expect mentoring by Lord Sugar and exposure to work which would have developed her entrepreneurial skills and suggests that this was suggested by the term: "The Apprentice". The Claimant argues that the work she was given at Viglen was not a "proper job" and was "just a sham". She argues that Lord Sugar's conduct during the meeting of 28 September 2011 was, objectively considered, calculated to destroy or seriously damage the trust and confidence between them. She further argues that the meeting on 28 September 2011 and the conduct there displayed was the last straw and that that combined with the other incidents, namely Mr Tkachuk saying right at the commencement of the trial period that there: "*was no job*". Mr Tkachuk reprimanding the Claimant in September 2010 and suggesting that contact with her uncle was: "*a waste of time*". Lord Sugar allegedly giving feedback in November 2010 saying of the Claimant: "*nice girl don't do a lot*". The alleged reprimanding of the Claimant in November 2010 when Mr Tkachuk copied the Claimant's email of 2 November 2010 (127A) to Messrs Ray, Burne and Wheeler. Mr Burne's instruction to the Claimant's team not to follow her orders, Mr Tkachuk in February 11 telling the Claimant: "*don't make me embarrass you*". The meeting on 16 May by telling the Claimant to take matters or her concerns about her work up with Mr Tkachuk and commenting that he: "*didn't give a shit about Viglen*" and failing to provide the Claimant with suitable work.

114 The Claimant's Counsel acknowledged during the course of the Tribunal proceedings that had the events at the meeting of the 28 September 2011 not have occurred then there would have been no basis for a claim before the Tribunal.

115 For the Respondent they remind the Tribunal of the legal principles, as set out in *Western Excavating v Sharp* [1978] IRLR 27.

116 The Respondent argues that Viglen Ltd and Amshold Group Ltd are associated employers, that whilst that may be significant for the purposes of determining the Claimant's length of service, the Claimant cannot rely on matters which happened whilst employed under a contract of employment with Viglen Ltd in support of a claim of constructive dismissal against Amshold Group Ltd.

117 The Respondent remind us of the last straw doctrine and the lead case of *Omilaju v Waltham Forest LBC* [2005] ICR 481:

> "*The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term*".

118 The Respondent further argues that it is suggested that the comments to which the Claimant refers to as having been made by Lord Sugar at the meeting on 28 September 2011 showed that her relationship with the Respondent was "a sham". It is clear on the Claimant's own evidence that she was employed latterly by the Respondent and seconded to work at YouView undertaking a job which she liked and enjoyed which paid a substantial remuneration. The Respondent argues that even if the Claimant's version of the words used by Lord Sugar at that meeting is accepted then it is a far cry from conduct which could be said to be so serious as to entitle the

Claimant to terminate her employment. The Respondent reminded the Tribunal that the Claimant's Counsel confirmed to the Tribunal that but for the meeting on 28 September 2011 the parties would not be before the Tribunal.

119 The last straw, as pleaded in the claim form, is: "the CFO (Mr Dorans) informed the Claimant that there was no budget to keep her and that there was no job for her at YouView". Taken together with what Lord Sugar had said to her the previous day this was the final straw for the Claimant who felt she had no choice to resign in response. The Claimant's case was not put in that way by the Claimant at the Tribunal. The Claimant only referred to the conversation with Lord Sugar on 28 September 2011 and did not allege in evidence that part of the conduct complained of was Lord Sugar influencing Mr Dorans not to give a position to the Claimant after December 2011.

120 The Respondent questions the credibility of the Claimant and they point to a number of incidents in her evidence which was not entirely accurate. In particular they point to the fact of the Claimant's regular attempts to suggest that there was no real job and that it was all "a sham" both at Viglen and YouView. Yet at the Tribunal the Claimant accepted that the work she was doing was meaningful and valuable and that the work she did, having won the prize, was the work that she had expected to be doing and was as she had outlined on Breakfast TV on the morning of 20 December 2011 when asked what she would be doing and that she had said she was very excited about it.

121 The Respondent denies any conduct on its part which amounted to a breach of the implied term of trust and confidence entitling the Claimant to terminate her employment and successfully claim that she was unfairly constructively dismissed.

122 As to the Claimant's argument that she was not given the job that she anticipated she would get and was entitled to expect having won the Apprentice. The Claimant is not clear how she argues this, merely saying that she understood that she would obtain a job which added to her entrepreneurial skills and that she would be mentored by Lord Sugar.

123 We are satisfied that it was made abundantly clear to the Claimant and indeed the other finalist that the Claimant would be working in one of Lord Sugar's organisations and that the winner would not be working to Lord Sugar and may only meet him on a few occasions. There was no assurance or suggestion that the winner would receive direct mentoring from Lord Sugar. The Claimant was clear herself about this – she knew full well the job she do at Viglen when she accepted the prize. She told the nation on the BBC Breakfast TV show! What was clear and what did happen was that the Claimant was both during the trial period and having won the prize, given "a real job". Having won the prize she was allocated to the position of a Project Manager, a position which she could "grow in to" and could expand as Viglen's business was set to expand, they having, in late 2010, obtained BECTA accreditation. That that expansion of the business would result in increased opportunities to quote for projects with Academies, which would result in an increase in work within Viglen and that the Claimant would be directly responsible for these new projects. It was a real job with enormous scope for advancement and learning for the Claimant who up until then had no experience at all of project management. The Viglen role was specifically selected for the Claimant to expand and build on her already acknowledged experience and ability.

124 The Claimant acknowledged that her time on secondment at YouView was beneficial and there she certainly learnt skills which she had not previously gained. The Tribunal believes that the reality was that the Claimant had in her mind that having won the Apprentice the role would be much more glamorous and that she would be working alongside Lord Sugar as his assistant. In evidence the Claimant said she knew that previous winners had accompanied Lord Sugar in his private jet!!

125 We deal with the specific allegations of alleged unacceptable conduct.

126 First of all, the comment allegedly made on 1 September 2010, the first day of the trial period by Mr Tkachuk, that "welcome to the real world" and that "there was no job for the Claimant". The welcome to the real world comment was made – the Tribunal does not find that the comment was made that there was no job. Clearly there was a job. Mr Tkachuk had in fact interviewed the Claimant as part of the Apprentice programme, had discussed her attributes with Lord Sugar and Mr Ray before the Claimant came to work at Viglen. During the Claimant's trial period at Viglen they and Lord Sugar had decided what role it was that the Claimant would take on when she joined them. There clearly was a role – there was a need for a Project Manager. So it is not credible that Mr Tkachuk would have made such a remark.

127 The Claimant did work at Viglen as a Project Manager and on her own evidence confirms that she identified a considerable sum of money as being outstanding to Viglen and that she was integral in putting in a process which played a significant part in collecting in those monies.

128 The next act of conduct about which the Claimant complains of are set out in her witness statement at paragraph 19 first that her colleagues shunned her, that is a plain assertion. There was no evidence before the Tribunal that this was the case. The Claimant provides no evidence of how it was that she was "shunned" and the Claimant was in fact warned by Lord Sugar that it was highly likely that when the Claimant joined Viglen she would have to "earn her wings" and that people were likely to resent her because she was there because of The Apprentice – such conduct if it did happen, occurred during the trial period. Yet the Claimant's emails to Lord Sugar to confirm her team were working well. The Tribunal are not satisfied such conduct occurred.

129 The next matter referred to at paragraph 19 of the Claimant's statement is that the Claimant was "reprimanded" for "carving out her role of finding £1.4m". The "reprimand" refers to Mr Tkachuk's response to the email sent by the Claimant on 2 November (page 127A). The Claimant was not reprimanded. She suggests that the fact that she had asked Mr Tkachuk to have a confidential meeting and that Mr Tkachuk forwarded a copy of email on to Messrs Burne, Ray and Wheeler was reprimanding her. It was not. The response cannot be criticised – in a business such as that operated by Viglen where goods are supplied and work is done for clients it is normal that payments will be made over a period. The Claimant had quite properly identified a problem that needed to be resolved – she should have raised it with Mr Ray the Finance Director in the first instance. Mr Tkachuk response was not a reprimand merely directing the problem to be dealt with under the control of the correct people.

130 The Claimant's email (127A) to Mr Tkachuk is couched in rather strange terms with the Claimant in the last sentence saying: "*Not to stitch them up but it begs the question why no one knows something that it took me 1 hour to check*". The email in response from Mr Tkachuk indicated that he was not interested in stitching any one up and that it was not the way they did things and suggested that: "*we just needed to get on and do what was necessary*". That was not a reprimand and it was the Claimant who first used the expression "stitch them up". We do consider it is significant that although the Claimant indicated that she did not want to stitch anyone up she went on then to make the comment that she could not understand why no-one else had noticed this when it only took her an hour to spot it. She was clearly being critical of others who she was suggesting had not done their work properly. The Claimant was not reprimanded and there was no conduct on the part of Mr Tkachuk which was a breach of the implied term.

131 The next complaint is that prior to a meeting in February 2011, Mr Tkachuk warned the Claimant: "*don't make me embarrass you*". We do not find that that expression was said and even if it was, we cannot see how that could objectively considered amount to conduct which would destroy or seriously damage trust and confidence.

132 Finally, the conduct referred to at paragraph 19 is that Lord Sugar only saw the Claimant five times during her time with Viglen and/or the Respondent. This again is not conduct which destroys or seriously damages trust and confidence. The Claimant was working at Viglen – one of the companies in Lord Sugar's organisation. He monitored her progress. The Claimant had access to Messrs Burne, Ray and Tkachuk. Lord Sugar was always available for her should she wish to contact him direct as she sometimes did. It was never part of the contract that the Claimant would meet with and/or be mentored by Lord Sugar. That conduct could not objectively be considered to destroy or seriously damage trust and confidence in the employment relationship.

133 The next allegation the Claimant says occurred following the November 2010 meeting when Lord Sugar was alleged to have given feedback to the Claimant by saying that she was a: "*nice girl don't do a lot*". Lord Sugar recalls that he did give feedback he recalls it was in February 2011 over the telephone and his recollection is that it was along the lines that the Claimant was "a nice girl but that she had a lot to learn". He denied making the remark alleged by the Claimant at any time. Although Mr Tkachuk did say that Lord Sugar could well have gained the inference from conversations they had and from the feedback they gave to Lord Sugar which was to the extent that the Claimant was a nice girl but had a lot to learn. The Claimant agreed in evidence that it would have been fair to conclude that either during the trial period or at the beginning of her "one year prize contract" that "she had a lot to learn". We prefer Lord Sugar's recollection of events. We do not find the Claimant's version of the feedback is correct as opposed to that of Lord Sugar or that such words given in feedback objectively viewed would be considered as sufficiently serious to destroy or seriously damage trust and confidence.

134 When the Claimant's trial period at Viglen came to an end on 14 December 2010 the Claimant having been declared the winner agreed to and did enter into a fresh contract of employment with Viglen Ltd. So far from merely affirming her contract

of employment by continuing to work the Claimant reaffirmed her employment relationship with Viglen by entering into a fresh contract to replace the one that expired on or around 14 December 2010. On the Claimant's evidence the remark complained of happened during the trial period. Had it have destroyed or seriously damaged the Claimant's trust and confidence it is highly unlikely she would have subsequently signed a new 12 month contract.

135 The Tribunal struggles to see how it can be that the Claimant can rely on any of the conduct which occurred during the trial period to be part of a series of conduct culminating in a last straw, she having entered into a fresh employment contract with Viglen to take effect as of 1 January 2011.

136 The next conduct the Claimant complains about is at paragraph 37 of her witness statement, namely that Mr Burne marginalised her and that Mr Burne showed no interest in working with the Claimant and instructed the small team of three working for her not to listen to her and only to pay her lip service. The Claimant has not established that that conduct actually occurred. We heard from Mr Burne who denied such conduct and we prefer his evidence. It would have been completely counter productive to suggest to the Claimant's reportees to ignore her. The work of Project Manager with the support of the three reportees was beneficial to the company, and to M Burne. The conduct complained of did not happen.

137 Moving now to the conduct of Lord Sugar complained about by the Claimant as having occurred at the meeting of 16 May 2011. The comments which the Claimant complains of is that Lord Sugar tells the Claimant that he does not "*give a shit about Viglen*." As we have found in our findings of fact this remark was not made. It is highly unlikely that Lord Sugar would make such a remark bearing in mind the number of employees at Viglen and the contribution that Viglen made to the group. At that meeting too Lord Sugar pointed out to the Claimant that if she had concerns about her work at Viglen she should discuss them with Mr Tkachuk. That was the appropriate advice, bearing in mind the Claimant was working at Viglen and clearly Mr Tkachuk and Mr Ray were the people in Viglen who were overseeing the Claimant's work and were responsible for her progression. They were the appropriate people with whom the Claimant should liaise should she have had problems. Even if the words were used, objectively viewed they did not destroy or seriously damage trust and confidence because Lord Sugar was encouraging the Claimant to meet with Messrs Tkachuk and Ray to discuss any problems for her to progress within Viglen – not conduct to evince that the employer no longer intended to be bound by the contract of employment. In the event on 1 June 2011 the Claimant entered into a fresh contract of employment with the Respondent.

138 We now turn to the meeting on 28 September 2011 between the Claimant and Lord Sugar which took place at the premises of YouView where the Claimant was working.

139 The events that occurred at this meeting resulted in this case coming to the Employment Tribunal.

140 Lord Sugar told the Claimant that he would not be renewing the Claimant's contract which was due to expire on 31 December 2011. As the Respondent was unable to continue the Claimant's employment then it was good industrial practice for Lord Sugar to tell the Claimant at the earliest opportunity. At the time the Claimant was working at YouView she had said that she enjoyed working at YouView and would like to find a job there. Lord Sugar suggested that she liaise with Mr Dorans of YouView to see what could be arranged with YouView post December 2011.

141 During the meeting there was discussion between the Lord Sugar and the Claimant about the past and we have found as a fact as indeed was agreed by Lord Sugar that he did make a remark to the effect that:

> "*If you think Lord Sugar was shitting himself when you left the Viglen job you're wrong because I don't give a shit*".

142 We accepted that the context in which that remark was made by Lord Sugar was that the Claimant had suggested to Lord Sugar that the non renewal or non extension of her contract of employment after the 31 December 2011 with the Respondent might lead to adverse press publicity. It was in response to that remark that Lord Sugar's comments were made and that "*he didn't give a shit*" referred to Lord Sugar's lack of concern about the media.

143 The Claimant in her evidence gave no context to the words used by Lord Sugar. Her evidence was that she was called to a meeting and informed that her contract would not be renewed at the end of December. The Claimant then say that Lord Sugar also said the following:

> "*You said that you couldn't work at Viglen anymore so I flipped you over here. I did it for the BBC and I did it for the integrity of the show, well and a bit of my own PR well and yours too, but the fact is that I don't give a shit.*"

The Claimant alleges he went on to say:

> "*I don't give a shit. You were happy enough to walk out on me in June, weren't you? Well, now we are done.*"

144 What concerned the Claimant was not the language used but that the Claimant understood from those words of Lord Sugar that he had only placed the Claimant at YouView for the sake of the show and PR. In the Claimant's submission the Claimant attempted to argue that the language itself was sufficiently unacceptable in itself as to destroy or seriously damage trust and confidence – that was never part of the Claimant's case and had it have been it would not have succeeded.

145 Even if that were the case it is objectively viewed conduct which would destroy or seriously damage trust and confidence. The Respondent had gone out of their way to ensure the Claimant was placed in a role at YouView from which she could learn new skills, a job which she agreed to and which she enjoyed doing and she acknowledged she liked the work at YouView. The Respondent continued with its obligation to pay the Claimant a salary at the agreed rate of £100,000 per annum notwithstanding that none of the companies within the Respondent group benefited from the Claimant's efforts.

146 In her Press interview the Claimant was quoted as having said that what she took offence at was feeling that her new job i.e. her job with YouView, was just PR for the show. No doubt that was a consideration but Lord Sugar found a placement for the Claimant at YouView where the Claimant could earn at the rate of £100,000 per annum, she had money problems at the time and YouView was in the media field where the Claimant wished to work and YouView was where she could learn new skills. Viglen/Lord Sugar could have let the Claimant walk away – Lord Sugar did all he could to support the Claimant in May 2011. The Claimant knew that being able to inform the Press of the secondment to YouView was an opportunity to put a "positive slant" on the Claimant's early resignation from Viglen. The Claimant well knew that. We accept too that Lord Sugar had the Claimant's interest in mind at the time in May 2011 the Claimant was "in need of money" and the reality was, regardless of the motive, even if the Claimant is correct, the Claimant was seconded into a job which she enjoyed and but for that alleged conversation on 28 September 2011, she would have continued in until the expiry of her contract with the Respondent on 31 December 2011 and that she was doing a job at YouView which she wished to continue with if at all possible after 31 December 2011 by working either as an employee or contractor for YouView.

147 Whether or not conduct by Viglen Ltd can form a basis and be taken into account together with the conduct by Amshold Group Ltd, an associated company, by an employee bringing a constructive unfair dismissal claim is a question we do not in fact have to decide in this particular case as we have found that the conduct complained of either did not occur or that the Claimant had affirmed her contract post any alleged breach.

148 From a legal point of view we find that the answer to the question posed by the Respondent would depend on the particular facts of the case. For example in this case where conduct which it was alleged amounted to a breach of the implied term of trust and confidence was carried out by the same individual whilst the Claimant worked in both companies. Then we would have thought that unacceptable conduct by the same person towards the Claimant whilst employed in Viglen and Amshold would entitle the Tribunal to look at the conduct throughout the whole period of the Claimant's employment with the group. In the event we do not have to make that decision as we have found that the conduct either did not occur or if it did occur did not amount to conduct which destroyed or seriously damaged trust and confidence.

149 So for all of those reasons we do not find that any of the conduct about which the Claimant complains either on its own or cumulatively objectively viewed was conduct which destroyed or seriously damaged trust and confidence entitling the Claimant to terminate her employment and to claim unfair constructive dismissal. In all of those circumstances this claim must fail and is dismissed.

150 In an unfair constructive dismissal case the burden lies with the Claimant to establish conduct on the part of the employer that is so serious that it destroys or seriously damages trust and confidence.

151 Although the Respondent and Claimant had prior to the hearing agreed the legal issues they had not addressed in any depth the alleged factual issues, namely the conduct that was alleged to have been carried out by the Respondent which destroyed or seriously damaged trust and confidence.

152 The parties had not clarified this prior to the hearing. The consequence of this failure was that it was only once the Tribunal had identified what the conduct was that the issues were narrowed considerably and became clear. Had that have been done sooner it would have informed the Respondent better and would certainly have reduced the length of time in cross-examination of the Claimant.

153 The Claimant had initially attempted to argue that this was an unfair constructive dismissal claim on the basis that she had made a protected disclosure. That allegation was only withdrawn at the end of proceedings.

154 This was a claim which should never have been brought.

155 The Tribunal considers that the Claimant who had sought legal advice prior to putting in her ET1 was ill advised to bring a claim and/or to continue it.

156 We remind ourselves that certain of the conduct complained of occurred in the initial trial period. Notwithstanding the Claimant now alleging that that was so serious it entitled her to terminate the contract of employment. She nevertheless entered into a fresh contract with Viglen Ltd beginning on 1 January 2011. She then resigned from that contract in May 2011 yet entered into a fresh contract with Amshold Group Ltd at the suggestion of Lord Sugar as of 1 June 2011. Again reaffirming her commitment to the Respondent group.

157 The Tribunal also found it difficult to understand why it was that when the Claimant first resigned from Viglen Ltd in May 2011 she did not inform Lord Sugar direct and on her second resignation she first went absent without any notification to YouView or Lord Sugar and then at the same time as notifying Lord Sugar in a brief note went to the press via Max Clifford.

RESERVED JUDGMENT

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Employment Judge J Warren

JUDGMENT, REASONS & BOOKLET SENT TO THE PARTIES ON

10 April 2013 .....

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS