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# Constructive Dismissal: Engaging in a grievance procedure does not undermine a constructive dismissal claim

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**An ex-employee who had engaged in his employer's grievance procedure before claiming constructive dismissal had not affirmed his employment contract**

## THE FACTS:

Mr Gordon, who had been employed by J & D Pierce (Contracts) Ltd, resigned and claimed that he had been constructively dismissed. The employment tribunal rejected his claim, holding that the implied term of trust and confidence had not been breached as, while J & D Pierce had behaved badly in some respects, Mr Gordon was a contributor to the breakdown in the relationship.

The tribunal also held that, even if there had been a fundamental breach of contract that had entitled Mr Gordon to resign, Mr Gordon's claim could not succeed because he had affirmed the contract of employment by engaging in the grievance procedure.

Mr Gordon appealed to the EAT. The EAT rejected his appeal in relation to the breach of trust and confidence. However, the EAT disagreed with the tribunal's decision in relation to the grievance procedure. The judge commented that exercising a right to, or persisting in, a grievance or an appeal from a disciplinary decision should not be regarded as an affirmation of the contract as a whole. Grievance or appeal provisions can be regarded as being severable from the rest of the contract and capable of surviving even if the rest of the contract is properly regarded as terminated through breach. If the employee succeeds in having a dismissal overturned or the grievance or appeal outcome in some other way enables the employee to resume employment, the employee can then affirm the other terms of the contract and to remain in employment. If the employee does so, the right to claim unfair dismissal will disappear.

## WHAT DOES THIS MEAN FOR EMPLOYERS?

This case shows that an employee will not undermine a constructive dismissal claim by engaging in a grievance or appealing a disciplinary decision.

[Gordon v J & D Pierce \(Contracts\) Ltd 2021 WL 00229241](#)

## Authors



**Hilary Larter**

*Leeds*

+44 (0)113 251 4710

[hlarter@dacbeachcroft.com](mailto:hlarter@dacbeachcroft.com)



**Zoë Wigan**

*London - Walbrook*

+44 (0)20 7894 6564

[zwigan@dacbeachcroft.com](mailto:zwigan@dacbeachcroft.com)



**Ceri Fuller**

*London - Walbrook*

+44 (0)20 7894 6583

[cfuller@dacbeachcroft.com](mailto:cfuller@dacbeachcroft.com)

