



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant:**

Mrs C Gibbs

and

**Respondent:**

Waverley Borough Council

**Heard at:**

Reading

**On:** 21 and 22 November 2017

**Before:**

Employment Judge Vowles (sitting alone)

**Appearances**

**For the Claimant:** Mr B Gray, counsel

**For the Respondent:** Mr D Roath, solicitor

**JUDGMENT** having been sent to the parties on **7 December 2017** and reasons having been requested by the Respondent in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Submissions

1. On 9 December 2016 the Claimant presented a complaint of unfair constructive dismissal to the Tribunal. On 19 January 2017 the Respondent presented a response in which the complaint was resisted.

### Evidence

2. For the Claimant, the Tribunal heard evidence on oath from Mrs Claire Gibbs (Senior Accountant). For the Respondent, the Tribunal heard evidence on oath from Mr Peter Vickers (Head of Finance) and Ms Victoria Basley (Senior Accountant). The Tribunal also read documents provided by the parties. From the evidence heard and read, the Tribunal made the following findings.

### Findings of Fact

#### Background

3. The Respondent is a local authority which has a population of approximately 122,000 people and is responsible for a wide variety of matters including planning, refuse collection and recycling, licensing,

parking, environmental health, sports and leisure, housing, parks and countryside. It employs approximately 450 employees, most of whom are employed at the main office in Godalming and that is where the finance team is situated.

4. The Claimant was employed from 13 December 1995 until her resignation on 4 August 2016 and the effective date of termination was 4 September 2016.
5. The Claimant's role as a Senior Accountant was part of the finance team headed by Mr Vickers (Head of Finance). Under Mr Vickers was the Financial Services Manager and under that role were six Senior Accountants, one of whom was the Claimant. Under the Senior Accountants were three Accountant Assistants and a Trainee Accountant.
6. All of the Senior Accountants were qualified accountants. There are a number of routes to qualification. The Claimant was qualified under the Chartered Institute of Public Finance and Accountancy.
7. Each Senior Accountant had a specialism, some more than one, on which they take the lead. For example, corporate financing, treasury management, housing finance, capital spending, planning and so on. The day to day service accounting was normally done by the Accountant Assistants.

#### Agresso

8. The Claimant's specialisms since 2004, along with Ms Basley, included the Agresso Financial Management Information System. It was described by Mr Vickers as being at the heart of the Respondent's financial administration and management and all aspects of finance are dealt with via the Agresso system.
9. The Claimant's 2014 annual performance and development review (APDR) showed that in 2013/14 she had the lead on developing Agresso and improving its use within accountancy and training generally. Her targets for 2014/2015 stated the following:  
  
*"To take on the leading role on developing and maintaining Waverley's financial systems including Agresso, take the lead in expanding the use of Agresso within accountancy and training generally, and assisting in developing a project plan to update Agresso to current supported version."*
10. The Claimant had previously reduced her hours of work due to illness and had given up responsibility for planning which was taken on by the Financial Services Manager.
11. In 2015/16 the Agresso system required a major upgrade and that was at the Claimant's suggestion. She agreed to take on the lead responsibility for the upgrade. The Claimant's 2015 APDR in October 2015 included the

following:

*“Going forward, you have expressed a desire to continue your professional development and pick up more hours. Over the next year, you would like to lead on the development of Agresso and undertake Agresso and management training.*

*Targets and Goals - Lead on the Agresso upgrade project”.*

12. The upgrade was due to be completed by the end of March 2016 but this slipped to 6 July 2016 when the Agresso upgrade went live.

### 1<sup>st</sup> Grievance

13. On 8 June 2016, at the Claimant’s request, she met with Mr Vickers and Ms Basley. She complained about her work on the Agresso system. On 9 June 2016 Mr Vickers sent a detailed account of the meeting in an email to the Claimant and to Ms Basley including the following:

*“You shared with us that you felt isolated leading on Agresso and did not like working on the system. It is not what you want to do because you are a professional accountant. We discussed the importance of Agresso as the key business tool for the Council. It is a high profile role and requires an experienced professional accountant to lead on the development of Agresso. The Agresso lead role is not a technical and administrative role. A lot more interaction is to be done within the finance time and across the services. The role requires you to work with the accountants and the services. It is very much a leadership role and requires proactive working using your higher level people skills. ...*

*I explained that you were identified as the lead role on Agresso based upon the last two years’ appraisal. You disputed this saying you did not want to be the lead person responsible but still wanted to be involved in Agresso. I pointed out that the appraisal documentation was very clear and I had supported you by acting upon the agreement including diverting work away from you to ensure you had capacity to lead on Agresso. I asked you what lead role you would like to take in the team if it is not Agresso and you were not able to give me any suggestions. I explained that because we are so far into delivering the service plan, I was not able to re-delegate the Agresso lead role and that there was no-one else in the team with the system’s knowledge to take over. However, we could possibly compromise and work towards a change in the next two years by skilling someone else up. ...*

*You reiterated your desire to be an accountant and to do accountancy work and we ended the meeting agreeing to re-convene in the near future to give me time to consider and consult. Also, the Financial Services Manager post is being interviewed on 21<sup>st</sup>. There may be changes in the team and opportunity. However, I need you to continue on the Agresso remit.”*

14. The Claimant claimed that the meeting on 8 June 2016 contained her first grievance regarding her work and responsibilities.

### 2<sup>nd</sup> Grievance

15. On 23 June 2016 the Claimant met with Ms Basley for her 2016/17 APDR. The Claimant set out her targets and goals as follows:

*“1. Deliver the Agresso upgrade  
2. Deliver the three key elements of the Agresso upgrade. ...*

#### *Training*

*Roll out a training programme to services incorporating financial regulations and Agresso as a final management tool to accountancy team and service managers.”*

16. She also added at the end of the APDR the following in the section entitled “Employee Summary and Comments on performance over the last 12 months”:

*“The majority of the last twelve months have been spent on upgrading Agresso and has taught me that I enjoy being part of the accountancy team and the variety of work that I have always had at Waverley. The upgrade project has been exceptionally stressful and I have felt isolated from the rest of the accountancy team in terms of not being part of the budget monitoring process and closing the accounts. Although I agreed to take the lead in the upgrade project, I did not agree to give up all my accounting responsibilities and feel that I have been pushed into this situation against my wishes. When I agreed to be the lead for the upgrade project, I didn’t anticipate being solely responsible for everything from project management, communications, drawing up the invitation to tender and building the system. ...*

*It seems a mistake to force someone into a role that they are obviously not happy in and whilst not seeming to entertain changing the new role to be more sympathetic to the postholder’s wishes. Although there was a suggestion that I could go back to accounting duties in two years’ time, two years is a long time doing a role that you do not want or enjoy.”*

17. The Claimant said that this was her second grievance regarding her work and responsibilities.

### Resignation

18. On 26 July 2016 the Claimant was offered and accepted a new job as a School Business Manager and submitted her resignation to the Respondent on 4 August 2016. The resignation letter did not contain any complaints.

3<sup>rd</sup> Grievance

19. The following day, 5 August 2016, she presented a formal written grievance. It was heard and determined by Mr Graeme Clark (Director of Finance and Resources). He summarised the grievance as follows:

*“1. No support over your period of sickness in 2014.  
2. Lack of support with Agresso and the fact that your role was changed completely last year.  
3. Your final day in the office.”*

20. The effective date of termination of employment was 4 September 2016.
21. On 22 September 2016 Mr Clark provided the Claimant with the outcome of his grievance investigation. The grievance was not upheld apart from an apology regarding the Claimant’s treatment on her final day.
22. The Claimant appealed against that decision and the appeal was heard and determined by Mr Damian Roberts (Head of Operations) on 15 November 2016. The appeal was not upheld.

**Relevant law**

23. Section 95 of the Employment Rights Act 1996 sets out the circumstances in which an employee is dismissed. Constructive dismissal is defined as follows:

*“(1) For the purposes of this part, an employee is dismissed if his employer if ...*

*(c) The employee terminates the contract under which he is employed with or without notice in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.”*

24. I took account of several case authorities. In Western Excavating Ltd v Sharp [1978] the Court said:

*“An employee is entitled to treat himself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The employee in those circumstances is entitled to leave without notice or to give notice but the conduct in either case must be sufficiently serious to entitle him to leave at once.”*

25. In the case of Hilton v Shiner Ltd [2001] the Court said:

*“The implied term of trust and confidence is qualified by the requirement that the conduct of the employer about which complaint is made must be*

*engaged in without reasonable and proper cause. Thus, in order to determine whether there has been a breach of the implied term, two matters have to be determined. The first is whether ignoring their cause, there have been acts which are likely on their face to seriously damage or destroy the relationship of trust and confidence between employer and employee. The second is whether there is no reasonable and proper cause for those acts.”*

26. In the case of Croft v Consignia PLC [2002] the court said:

*“The implied term of trust and confidence is only breached by acts or omissions which seriously damage or destroy the necessary trust and confidence. Both sides are expected to absorb lesser blows. The gravity of a suggested breach of the implied term is very much left to the assessment of the tribunal as the industrial jury.”*

27. In the case of London Borough of Waltham Forest v Omilaju [2005] the court said:

*“The test of whether the employee’s trust and confidence has been undermined is objective.”*

28. Finally, the Claimant referred me to two cases. The case of Buckland v Bournemouth University Higher Education Corporation [2010] which confirmed that a breach of contract could not be cured, and the case of Wright v North Ayrshire Council [2014] which confirmed that the issue is whether a breach played a part in the resignation not whether it was the effective cause.

## **Issues**

29. The Claimant confirmed at the start of the hearing that her case involved the following issues:-

29.1 Did the Respondent breach the Claimant’s contract of employment, specifically:-

- (a) Unilaterally changing her role;
- (b) Changing the Claimant’s role in a manner that without reasonable and proper cause was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee.

29.2 If so, was any such breach repudiatory?

29.3 Did the Claimant affirm any such breaches?

29.4 Did she resign in response to any such breaches?

**Decision**

30. I find that there was no breach of contract, express or implied, by the Respondent in this case and no constructive dismissal.
31. The Claimant's work on the Agresso system was part of her proper duties as a Senior Accountant. Work on such a system is expressly confirmed as a proper accountancy role on the website of the Claimant's professional body The Chartered Institute of Public Finance and Accountancy. That is, developing and managing organisation-wide financial management systems.
32. I do not accept the submission that the Claimant's role was changed to that of Agresso Systems Administrator. Agresso was her specialism as other Senior Accountants had specialisms. She had led on the Agresso system with Ms Bagley since its introduction in 2004 but it was not disputed that between the two of them, the Claimant had the superior expertise and knowledge of the system.
33. When the time came for an upgrade suggested by the Claimant in 2015/16, the Claimant agreed to take the lead. There was no evidence of any coercion. In that respect, she was a volunteer and naturally so, given her previous extensive experience and expertise in the system.
34. At no time was there any suggestion of a change to her status or to her title or to her rate of pay. It was obvious that there would be intense focus on the upgrade in 2015/16 and other parts of her role were reallocated to allow her to carry out the work. She was given additional hours and the support of an Accountancy Assistant to assist her in December 2015. The intensity and focus continued from October 2015 through to July 2016 when the upgrade went live but throughout that period. The work remained proper accountancy work either alone or in conjunction with other accountancy duties. Her role remained throughout as a Senior Accountant.
35. There was no evidence of any contractual entitlement to any particular role or variety of roles. Up until June 2016 all the evidence supported the contention that the Claimant was a wholly willing volunteer to lead both the Agresso system generally and the Agresso upgrade in particular.
36. It was only when the Claimant made her first complaint to Mr Vickers and Ms Bagley at the meeting on 8 June 2016 that her dissatisfaction with the Agresso lead role became clear and that was later repeated in the Claimant's section of her APDR in 2016.
37. That dissatisfaction was taken seriously as evidenced by the lengthy and detailed response from Mr Vickers dated 9 June 2016 from which I have quoted. He explained the rationale behind the strategy of the finance team in the service plan. In particular, structuring the team to ensure everyone's workload was manageable, providing development opportunities for all of

the team by people taking lead roles and responsibilities in line with their pay grade and seniority and making the best use of skilled resources to cover the whole remit of the service.

38. He recognised and recorded the Claimant's dissatisfaction but realistically pointed out that there was no immediate possibility of re-delegating the Agresso lead role because there was simply no-one else currently in the team with the necessary knowledge to take over. He ended with an agreement to take the matter forward and for him to consider and consult. However, the Claimant resigned before that could be done.
39. Mr Vickers' decision to retain the Claimant's position as Agresso lead and his response when she complained about it were proper management decisions for a head of department to make. I had no reason to doubt that section of his witness statement which read as follows:
- "I would never have forced Mrs Gibbs to stay in the lead role for Agresso if this was something that she did not want to do in the longer term. However, no employee at Waverley can simply pick and choose what aspects of the job they will or will not do. When changing the contents of a role, there has to be some give and take and some transition period."*
40. I find that there was no change to, or breach of, the Claimant's contract of employment, fundamental or otherwise. It was a legitimate organisation of suitable work among members of the team in response to the prevailing and changing needs of the team, the department and the Council as a whole. The team was informed of it and given the chance to comment.
41. It was conduct by the employer which had a reasonable and proper cause. Although the Claimant saw it differently, viewed objectively it did not undermine the implied term of trust and confidence and there was no evidence of the breach of any express term of the contract of employment.
42. In summary, I find there was nothing in the Respondent's conduct which did not have reasonable and proper cause or which amounted to a breach of trust and confidence. The Claimant was not constructively dismissed and the claim of unfair constructive dismissal therefore fails.

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Employment Judge Vowles

Date: 25 January 2018

Reasons sent to the parties on

13 February 2018

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For the Tribunal office