EMPLOYMENT TRIBUNALS

Claimant:	**Mrs B James**		
Respondent:	**The University of Leeds**		
Heard at:	**Leeds**	**On:**	**10-12 September 2019 and 18 and 30 October 2019**
Before:	**Employment Judge Rostant**		
Members:	**Mrs L J Anderson-Coe**		
	Mr K Smith		

Representation

Claimant:	In person
Respondent:	Ms M Stead, solicitor

RESERVED JUDGMENT

The claims fail and are dismissed.

REASONS

1. The claimant presented her claim to the Tribunal on 25 January 2019. At that stage she was pursuing four claims.
2. The matter came before Employment Judge Little on 18 March 2019 for the purposes of case management. As a result of Judge Little's hearing, the claimant withdrew two of her claims; those direct of sex discrimination and detriment under Regulation 7 of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (The 2000 Regulations). She continued with her claims of constructive unfair dismissal and less favourable treatment because of her status of part-time worker, pursuant to Regulation 5 of the 2000 Regulations.
3. Also as a result of Judge Little's hearing, the claimant presented two schedules, one of 15 separate alleged instances of less favourable treatment

because of her part-time status, and the other of 31 separate incidents upon which the claimant relied when asserting that her contract of employment had been fundamentally breached permitting her to resign and bring a claim of constructive unfair dismissal.

4. The hearing was original set down for a hearing over three days the 10 to 12 September inclusive but it could not be completed in that time and the matter was adjourned for two further days with more evidence and submissions being dealt with on 18 October and Reserved Judgment being dealt with on 30 October, with a prospective remedy day identified for 7 January 2020.

5. During the course of the hearing, the Tribunal heard evidence from the claimant herself and, for the respondent from Mr G Saul, faculty finance manager responsible for both the Faculties of Environment and Engineering; Ms J Martindale, deputy faculty finance manager, Faculty of Environment; Ms C Palmer, faculty accountant in the Faculty of Environment at Grade 7 and Ms G Givens, Grade 7 faculty accountant, Faculty of Environment. The Tribunal had the benefit of witness statements from all of the relevant witnesses and a file of documents which was added to, with the Tribunal's permission and on the application of the parties, by a variety of other documents during the course of the hearing. In each case where documents needed to be added and particularly where there was an objection the Tribunal heard the parties' submissions and gave a decision with reasons at the time.

The law

6. An employee is entitled to pursue a complaint of unfair dismissal under section 94 of the Employment Rights Act 1996 provided they have the two years' service required by section 108 of the Act. Section 95 deals with dismissal and provides that dismissal takes place if an employee terminates the contract under which they are employed in circumstances in which they are entitled to terminate it without notice by a reason of the employer's conduct (section 95(1)(c)). That is a concept commonly known as constructive dismissal.

7. Regulation 5 of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 provides that a part-time worker has the right not to be treated by her employer less favourably than the employer treats a comparable full-time worker as regards the terms of their contract or being subject to any other detriment or act or deliberate failure to act of her employer provided that the grounds for that treatment is that the worker is a part-time worker and that there is no justification. In this case, the respondent does not seek to advance justification but asserts that the claimant was not less favourably treated than her comparator and that any less favourable treatment is not explained by the fact that her comparator is a full-time worker and the claimant is a part-time worker.

8. In this case, it is not disputed that the claimant met the definition of a part-time worker contained in Regulation 2 of the Regulations or that her comparator, Ms E Aulton, finance officer Grade 5 meets the definition of a full-time worker.

The issues for the Tribunal to decide:

The part-time worker complaint

9. During the course of the hearing the claimant confirmed that she was limiting this claim to complaints related to workload, numbered 1, 2, 5 and 11 in her grid and complaints related to access to training. The respondent contended that the access to training complaints, numbered 4 and 6 and relating to incidents on 12 March and 16 April 2018,respectively were time barred and were not part of any continuing act. In any event, the respondent contended that all the complaints were time barred on the basis that the claimant was last in active work on 24 August 2019, which was more than three months before the start of the early conciliation period on 3 December and therefore even the complaints in relation to workload, the last of which is dated 23 July 2018, were out of time. The respondent submitted that the Tribunal should not exercise its discretion to extend time.

10. It is uncontroversial that the authorities require that the claimant in a part-time worker's discrimination complaint identify an appropriate full-time comparator and that a failure so to do will defeat the claim at the outset. The university contended that the claimant's selected comparator, Ms Aulton, is not an appropriate comparator. It was for the Tribunal to decide whether the claimant could establish the fact that Ms Aulton was an appropriate comparator. Finally, the university's submission wa that the claimant had not suffered less favourable treatment or that any less favourable treatment was not in any way caused by the claimant's part-time status. The university sought, in the alternative to advance justification centred on the evidence of Mr Saul explaining his reasoning behind taking various steps that the claimant objected to.

Constructive dismissal

11. It was the university's case that the claimant could not show that individually or collectively any of the acts that she relied on could amount to a fundamental breach of her contract either as to an expressed or an implied term. Furthermore, the university's case was that the claimant could not show that she resigned in response to those acts but rather that she in responded to having sought an alternative job and that the claimant had delayed in resigning even if the last straw was a meeting on 20 August, the resignation not coming till 21 September. In the alternative, the university sought to argue that the dismissal was fair for some other substantial reason.

The uncontroversial facts

12. The claimant began her work in the Faculty of Environment finance office on 13 December 2004 at Grade 4.

13. By the time that she resigned her employment on 21 September, she was working at Grade 6.

14. The claimant moved to working on a 0.6 contract in 2010.

15. The claimant's line management changed over the years. As far is relevant in these proceedings she was managed by Mr Hunt until the summer of 2017.

16. There was then a period when the claimant was managed by Ms Martindale and then Ms Palmer and finally, between June 2018 and the date of the claimant's resignation, the claimant was managed by Ms Givens. Ms Givens

and Ms Palmer were Grade 7 staff. They were managed by Ms Martindale, deputy faculty finance manager, who ran the Faculty of Environment finance team on a day to day basis and she in turn was managed by Mr Saul who had oversight of two faculties.

17. The claimant was appointed to Grade 6 and worked at that level with a colleague Ms Armstrong until Ms Armstrong's departure in 2017.

18. Mr Saul managed both departments from May 2015 and originally there were three Grade 7 staff.

19. Mr Saul decided to reconfigure the department structure and one of the Grade 7s was replaced by Ms Martindale at Grade 8, Ms Martindale taking up her post in January 2018. There was a vacancy for one Grade 7 member of staff until Ms Givens was appointed in June 2018.

20. Upon the resignation of Ms Armstrong in 2017 a decision was taken to replace her not with another Grade 6 but to appoint a full-time post at Grade 5 and in December 2017 Ms Aulton was appointed.

21. Up to December 2017 the team was located at level 9 of a building known as the Priestley Building.

22. For operational reasons, the team was relocated to another part of the university campus in Hyde Terrace. The space at Hyde Terrace was however over two floors as opposed to the one floor location available in the Priestley Building. This required decision making as to which grades should occupy which offices.

23. A return to the Priestley Building was scheduled for August 2018 entailing another possible reshuffle of location.

24. The claimant began to apply for alternative work in June or July 2018.

25. The claimant attended an interview for the post which she now holds in mid-August of 2018.

26. The claimant was offered alternative employment and accepted it some time between 20 August and her resignation on 21 September.

27. The claimant made up her mind that she would resign if offered that post.

28. The claimant resigned by letter of 21 September having been off sick from 24 August.

29. The last matter of any relevance is therefore complaint 29 in the claimant's grid relating to a meeting between the claimant, Ms Aulton and Ms Givens on 21 August 2018.

The Tribunal's conclusions on the claim of constructive dismissal

30. It is the Tribunal's intention to address all of those incidents save for the last three 29, 30 and 31.

31. The claimant resigned on 21 September. Incidents 30 and 31 are complaints about the handling of her grievance and post-date the letter of resignation. Since the complaint of constructive dismissal depends on the claimant showing that she has resigned in response to conduct which amounts to a fundamental breach of her contract of employment, it must be the case that matters of complaint arising on facts which post-date the letter of resignation

cannot be relevant to the Tribunal's considerations. For that reason, the Tribunal makes no findings about incidents 30 and 31.

32. The claimant's own evidence was that she had, by 21 August, already decided to resign if successful in a job application. Before the meeting of 21 August, which is the focus of complaint 29, the claimant had been interviewed for a job and had decided that should she be offered that job she would resign. In the days immediately following the meeting the claimant was duly offered the job and accepted it (see our uncontroversial findings of fact above). On the claimant's own evidence therefore, the meeting of 21 August and what happened in that meeting, could not have contributed to the claimant's decision to resign since that had already been made and was simply triggered by the receipt of the offer letter in the days immediately following a meeting of 21 August. It therefore follows that we need not decide whether anything that happened in the meeting between the claimant, Ms Aulton and Ms Givens on 21st contributed to the claimant's dismissal.

33. It is the respondent's case that the claimant cannot show that she resigned in response to fundamental breach of her contract of employment if in fact her real reason for resignation is to take up another post. The Tribunal does not accept that argument. It is the unchallenged evidence of the claimant that she began to look for other work in the summer of 2018 because of her unhappiness at work. The evidence shows that the claimant would not have been looking for alternative work had she not been unhappy working for the respondent. The real cause of the claimant's resignation is not, therefore, the offer of an alternative job but the fact that the claimant was so unhappy that she felt that she had to leave but could not afford to leave work without securing alternative employment because of her family responsibilities. In the view of the Tribunal therefore, the cause of the claimant's resignation is her fundamental unhappiness at work. The question for the Tribunal is whether that was caused by the respondent's conduct and whether any conduct proved by the claimant amounts to a breach of the claimant's contract either of an express or an implied clause. The rest of this part of the decision will focus on that question. The claimant's case for constructive dismissal therefore rests on the 28 allegations of conduct commencing between some time in 2015/2016 and culminating in an allegation about a failure to follow the organisational change policy in handling a change to the claimant's working environment on 14 August 2018.

34. The Tribunal identifies three broad themes in the claimant's complaints although they are to some extent interdependent. They can be conveniently grouped under the headings of "lack of support in the face of excessive work", "change to the claimant's terms and conditions or work without consultation" and "undermining the claimant or preventing the claimant from carrying out her supervisory responsibilities". For convenience, the Tribunal will deal with the complaints under those broad headings and we will commence with the question of the undermining of the claimant's supervisory role.

35. The Tribunal identifies complaints 11, 12, 13, 18 and 23 to 26 as falling in this category. Complaint 11 relates to an incident on 19 June 2018 when the claimant complains that Ms Givens, her then line manager, spoke to the claimant unprofessionally in a meeting with Ms Aulton and Mr Thorpe, two members of the finance team whom, it is the claimant's case, the claimant had supervisory responsibilities for. Complaint 12 relates to an incident on 27

June when again the claimant complains that Ms Givens displayed inappropriate behaviour by speaking to her in an unprofessional manner during a team meeting and in the presence of Ms Givens' peer, Mrs Palmer. Complaint 13 relates to an incident on 2 July when the claimant complains that Ms Palmer displayed inappropriate behaviour by speaking to her in an unprofessional manner in the presence of an external colleague, Ms Henshall. Complaint 18 relates to the behaviour of Ms Palmer and Ms Givens in a staff development meeting when the claimant complains that her work was unfairly criticised. Complaints 23 and 24 both relate to a conversation between the claimant and Ms Givens when the claimant complains separately that Ms Givens ridiculed her by questioning the work that she was doing in front of a "junior member of staff" and in the same incident discussed the claimant's proposed change of work location in front of junior members of staff before having consulted the claimant. Complaint 25 relates to the claimant's allegation that on 31 July 2018 Ms Givens spoke to her unprofessionally whilst the claimant was trying to seek clarification on a particular job task and complaint 26 relates to an incident on 6 August 2018 when it is alleged that Ms Givens removed a task which had been allocated to the claimant thus preventing her from undertaking her role.

36. To some extent the incidents of alleged undermining are dependent upon the claimant's case as to her job role. It is the claimant's case that she had a supervisory responsibility for a team which included Ms Aulton and a colleague Mr Thorpe. The claimant is happy to accept that that responsibility did not extend to line management and she draws a distinction between supervision, which entails the tasks of delegating work to members of the team, checking their work and answering questions about technical matters, and line management in its true sense which would entail, for example a responsibility for carrying out appraisals and managing sickness and holiday. It is the respondent's case that the claimant had neither line management nor supervisory responsibilities. The claimant's case is that she had a contractual responsibility extending to supervision.

37. If the claimant is correct then obviously any conduct which on the part of the respondent which prevented her from carrying out that role or which undermined her in that role might amount to conduct which fundamentally breached that term of her contract of employment.

38. However, it should be observed that the nature of the alleged incidents is such that even if the claimant did not have supervisory responsibility the alleged conduct might be sufficiently undermining of her dignity just as an ordinary member of staff as to amount to a fundamental breach of the term trust and confidence.

39. The Tribunal has regarded it as necessary in the first instance to establish whether or not the claimant had a contractual role involving supervisory responsibilities.

40. We are however not in a position to understand the contractual situation at the outset of the claimant's employment but we do know that once she became a Grade 6 her job description included the following clause:

"*supervise the work of FRO colleagues in finance related issues providing coaching and training as required"*.

The Tribunal finds therefore at the point of which the claimant was promoted to Grade 6 she did have some supervisory responsibilities. However it is the respondent's uncontroversial evidence that the members of staff for whom she did have that supervisory responsibility working in FRO ceased to be part of the Faculty of Environment finance office at some point before the matters with which this Tribunal is concerned with took place. It therefore follows that the claimant's supervisory responsibilities, as identified in that job description, ceased.

On the balance of probabilities, the Tribunal finds however that certainly by 2016 there had been a further variation to the claimant's contract and that by that stage she was understood by herself and her line manager to have supervisory responsibilities for a small team. The principle evidence for this is to be found at pages 117 to 121 of the file. That is the claimant's staff review and development scheme (SRDS) form for July 2016. That review was carried out by Mr Hunt with Ms Palmer and Mr Clarke. The form is not entirely unambiguous but at section 3 on page 119 the question of leadership and management standard training for those with staff leadership and management responsibilities was discussed and at section 4 in outcomes and objectives the following paragraph appears:

> *"Taking the lead with the main finance team, delegating work, ensuring tasks are being completed and resolving queries are a key part of Blessing's role. It is pleasing that Blessing has been able to do this, particularly given the changes within the larger finance team over the last year. This is something we need to see continue and shared with Naomi (*Ms Armstrong*) as the other senior member of a finance office. This is also important for the roll out of SAP budget as the team will need support and guidance particularly in the early stages".*

41. Although the Tribunal accepts the evidence of Ms Martindale and Ms Givens that they did not understand the claimant to have supervisory responsibilities and that they considered that for example there was no real job to be done in the allocation of works and staff simply allocating work to themselves, the Tribunal considers that the documentary evidence shows that the claimant was entitled to understand herself as having a formal role involving the tasks of delegating, progress chasing and checking in relation to members of the finance team working at grades below her and that therefore by the performance of the parties a term had been implied into the claimant's contract establishing that as part of her job description.

42. The Tribunal will now move on to consider the individual incidents where the claimant contends that she was undermined in that role or in general.

43. All of the incidents that the claimant relies on date from 19 June 2018 onwards and most if not all concern her line manager from that point, Ms Givens.

44. Ms Givens was appointed to manage the claimant in early or mid-June of 2018 because she was new to the university and therefore unfamiliar with its SRDS policies and not having had the training. She did not oversee the claimant's SRDS in the summer of 2018. That was carried out by Ms Palmer with Ms Givens observing.

45. The first incident that the claimant complains of took place on 19 June 2018 (complaint 11). The claimant's complaint here is that towards the end of the

working day on 19 June, she was sitting with Ms Aulton discussing a query. Also present was Ms Givens. Ms Aulton and another colleague Mr Thorpe were due to leave at 5 o'clock and the claimant was hoping to respond to their query before they left. The claimant was not scheduled to be in for the rest of that week. The claimant saw Ms Givens hovering and asked her whether she, Ms Givens, wanted her, to which Ms Givens replied in the affirmative. The claimant asked whether it could wait as she wanted to deal with the query with Ms Aulton and Mr Thorpe to which she alleges Ms Givens replied: "*I also need to speak to you before I leave at 5pm as you are not in for the rest of the week so no, I can't wait*". The claimant's description of how she felt afterwards was that she regarded that as unprofessional and that she felt demeaned and humiliated.

46. During cross-examination the claimant conceded that Ms Givens had the right to ask her, as a line manager, to interrupt her meeting with Mr Thorpe and Ms Aulton to respond to her queries but that her complaint centred on what she regarded as an abrupt manner. Ms Givens does not deal with that incident in her witness statement and the claimant did not cross-examine her on it.

47. On balance the Tribunal find that Ms Givens did respond in the way that the claimant says she did but that it was not an interruption of the meeting since the claimant had addressed her and whilst the Tribunal might have taken a different view had the evidence been that Ms Givens had rudely interrupted the claimant's discussions with her colleague, the Tribunal takes the view that the exchange as described by the claimant was a fairly normal and unexceptional exchange which in the view of the Tribunal certainly cannot have contributed even in small measure to a breach of the claimant's contract and certainly could not have amounted to Ms Givens undermining the claimant's position in the eyes of her colleagues. There was no doubt that Ms Givens was the claimant's line manager and was, strictly speaking, entitled to insist on her priority for the claimant's time.

48. The next incident is dated in the schedule 27 June but it became clear during the course of evidence that the claimant really meant 27 July. It is dealt with in paragraph 10 of the claimant's witness statement. The claimant's allegation here is, to put it mildly, vague. The claimant contends that during a team meeting on 27 July, which was attended by Ms Givens and Ms Palmer but not by Mr Thorpe, Ms Givens instructed the claimant to meet Mr Thorpe on the next Monday to undertake a particular body of work in relation to some emails from the purchasing department. The claimant contends that Ms Palmer asked her a technical question and whilst she was answering that question Ms Givens rudely interrupted her and was dismissive of what she was saying. Ms Palmer does not deal with the matter in her witness statement at all. Ms Givens does deal with that meeting but to refute another part of the claimant's evidence and does not respond to any suggestion that she was rude and dismissive. Ms Givens was cross-examined by the claimant on the subject of that meeting but it was not put to her that anything that she did or said in that meeting was rude or dismissive. Rather the topic of conversation was the precise nature of the instruction as to who was to work with Mr Thorpe over the emails a matter of relevance for the next complaint.

49. The Tribunal's conclusion is that the burden rests on the claimant to establish conduct on the part of the respondent that could contribute to the breach of

the contract. There is insufficient evidence before the Tribunal to conclude that any such conduct took place at that meeting and this complaint is therefore not one which the Tribunal would regard as being upheld.

50. Logically the next complaint to be dealt with are 23 and 24 since they relate to the Monday following the team meeting on 27 July. The background to this incident was that the claimant was sitting with Mr Thorpe going through a number of emails with him, as set out above, when Ms Givens attended work. The claimant's complaint is that having, as she understood it, been instructed by Ms Palmer and Ms Given to undertake a particular task with Mr Thorpe in relation to those emails, that instruction was countermanded by Ms Givens on the Monday morning before the claimant had begun on the task with Mr Thorpe but after the claimant had carried out some preparatory work. The countermanding had been done in the presence of the claimant's team in an upstairs office and as part of that Ms Givens had said that she would require the desk currently occupied by the claimant upstairs so that she could work alongside Mr Thorpe and asked the claimant to go back to work at her normal desk in the downstairs office. The subject of the desks will be returned to later in the Judgment but those two matters together that is to say the countermanding of the offer and the requirement for the claimant to shift location comprised complaints 23 and 24.

51. There is disagreement between the parties as to what instructions were given to the claimant in the team meeting, if any, about working with Mr Thorpe. The Tribunal is prepared to accept that the claimant genuinely understood that she was to work with Mr Thorpe on this task. Whether that was a misunderstanding or an accurate understanding of Ms Givens' intentions does not seem to the Tribunal to matter a great deal in the circumstances. The claimant's case, put at its highest, is that a method of working on this particular topic which had been given to her in the team meeting was countermanded by her own line manager on that Monday morning. The claimant does not allege that the countermanding was done in an abrupt, rude, dismissive or demeaning manner. She simply says that her line manager made it clear that she had decided that she would do the task with Mr Thorpe herself and indeed went so far as to give an explanation as to why she thought it would be better if she did the task herself. Once that decision had been made the request that the claimant vacate the desk next to Mr Thorpe so that Ms Givens could occupy it to work with Mr Thorpe was a logical next step and since the claimant's normal desk was downstairs it was obvious that was where the claimant would have to work since the spare desk next to Mr Thorpe was going to be occupied by Ms Givens for the length of that task. Although the claimant says that she felt undermined and demeaned and was unclear as to why the discussion should be had in front of her team, the Tribunal's observation is that what the claimant was describing was a perfectly normal interaction between a manager and a subordinate with nothing in its content that could possibly undermine the claimant's position vis-a-vis her team and therefore the fact that the conversation was held in front of members of the team could not contribute to any sense of undermining or hurt. The claimant's evidence in her witness statement is that the conversation was then carried on away from team members and indeed Ms Givens' evidence, which was effectively unchallenged by the claimant in cross-examination, was that the claimant had sought to argue against her decision but that Ms Givens had repeated the reasons for her decision but

remained firm. Whatever might be the case, the Tribunal is at a loss to see how what the claimant describes could undermine her position in the eyes of her team.

52. The Tribunal will now deal with complaint 13 which precedes in time the events set out in complaints 12, 23 and 24. This is an allegation about the conduct of Ms Palmer on 2 July 2018. Ms Palmer and the claimant both had desks in the same room. It is the agreed evidence that the claimant was having a meeting with a member of staff from an outside department, a Ms Henshall. Ms Palmer was attempting to conduct a work telephone call. It is the agreed evidence of the parties that Ms Palmer asked the claimant to reduce the volume of her conversation with Ms Henshall to facilitate her phone call. The claimant's complaint is not that the request was done rudely or in an abrupt, aggressive or demeaning manner, but the fact that the request was made to the claimant with Ms Henshall present. Ms Palmer's evidence is that all that she was wanting to do was to ask the claimant to reduce the volume of her conversation with Ms Henshall to the extent that it would permit her to hear the person on the other end of the phone more clearly and that it would have been "overkill" to stop her phone call, ask the claimant to go outside, make that request and then bring everybody back in. To the extent that the claimant is suggesting that this interaction effectively meant that she was not allowed to conduct meetings at her desk at all the Tribunal does not find that complaint is made out. All that Ms Palmer was doing was asking for the claimant to keep her conversation down to a level that would allow her to speak on the telephone. Once again, the Tribunal cannot see why it would be reasonable for the claimant to treat that interaction as demeaning of her dignity or undermining her in any way.

53. Complaint 18. This complaint relates to the SRDS which the Tribunal has mentioned already. The SRDS took place on 23 July 2018 with Ms Palmer conducting it and Ms Givens sitting in. The documents in relation to it are to be found at page 185 to 192. The claimant's allegation here is that she was ridiculed and undermined by Ms Givens criticising her work and falsely accusing her of being incapable of carrying out her job.

54. It is the respondent's evidence that there was a level of implied criticism during the meeting. That amounted to Ms Palmer, and to some extent Ms Givens, feeling that on the subject of a particular task (the studentship log) which the claimant had been asked to take the lead on, the claimant was showing a lack of initiative and rather than taking ownership of the task she was expecting to be given detailed instructions as to how it should be carried out. The claimant agreed in cross-examination that the conversation was not aggressive and that she was hoping for some guidance. When asked why she described the meeting as tense and unproductive the claimant's answer was that an SRDS is a tense process in any case. In cross-examination of both Ms Palmer and Ms Given the claimant did not expressly put to them what criticism was being aimed at other than to suggest that what they perceived as spoon feeding was simply her asking for legitimate guidance. The Tribunal can see no grounds for criticism here. The claimant's line managers were entitled to take a view of the claimant's performance and the SRDS was the appropriate place to raise it and to give the claimant an opportunity to deal with that. There seems to be no evidence that the claimant was subjected to excessive unfair or unreasonable criticism but rather that a genuine concern about what was

perceived by management as a lack of initiative that was inappropriate for somebody at the claimant's grade. In the circumstances, the Tribunal can see no evidence of this undermining or demeaning the claimant or contributing to a fundamental breach of the claimant's contract.

55. We turn now to the complaint 25 an incident on 31 July 2018. The claimant's complaint about this relates to a conversation on 31 July between her and Ms Givens following on from the email work with Mr Thorpe dealt with in detail above. In the claimant's witness statement, she relates being asked by Ms Givens to check with Mr Thorpe whether he had completed work that she Ms Givens had given him. The claimant says when she enquired of Ms Givens what exactly she was supposed to check, Ms Givens told her that she Ms Givens had emailed her that morning and that the claimant should read that email then make the appropriate enquiries of Mr Thorpe and report back. The claimant then says, without further explanation, that she found that way of dealing with the matter rude.

56. This is one of a relatively few examples of a complaint where the respondent's case is that the incident did not happen in any form whatsoever. Ms Givens' evidence is that there was no conversation with the claimant about the claimant reporting back on Mr Thorpe's work and there was no need for such a conversation because she, Ms Givens, had been in touch throughout the course of the Monday with Mr Thorpe to track his progress. On balance the Tribunal prefers Ms Givens' evidence on this. Ms Givens had worked closely with Mr Thorpe. Indeed, on the claimant's own evidence, had taken over the task that the claimant was supposed to do and sat with Mr Thorpe to explain how it was to be done. That on its own makes it inherently unlikely that Ms Givens would then ask the claimant to chase progress with Mr Thorpe. However, Ms Givens' evidence was supported to some extent by screenshots of her email inbox which showed frequent emails throughout the course of the Monday from Mr Thorpe to her and no evidence of any email from her to the claimant on the subject. For that reason, the Tribunal finds that this complaint is not made out either.

57. This brings us to the last in this group of complaints, complaint number 26 about an incident on 6 August 2018. The Tribunal finds this a difficult complaint to understand. It again refers to the work in relation to the purchasing emails dealt with at length above. The claimant contends that having removed the task from her in the first place, Ms Givens then did the task all wrong and handed the task back to her to sort out on 6 August. That again is refuted by Ms Givens but even it were the case that Ms Givens had made a mess of the task which she had taken off the claimant, it is difficult to see how asking the claimant to repair the damage could possibly amount to a fundamental breach of the claimant's contract of employment. The Tribunal can readily see why if that happened the claimant would find it irritating but being irritated is not the same as having your contract fundamentally breached or the relationship of trust and confidence between yourself and your employer broken. If anything, this was an opportunity for the claimant to exercise schadenfreude.

58. That completes the Tribunal's survey of the allegations in relation to undermining conduct on the part of the respondent. The Tribunal's view is that although the claimant is right that she had a supervisory role and that that was a contractual role the claimant has not established conduct on the part of

the respondent that undermined her in that role or demeaned or undermined her in her role as an employee generally. None of the complaints under this heading are made out and there is no evidence of a fundamental breach of a term of the claimant's contract in any of the matters detailed so far. In each case the complaint is that the claimant's place of work was changed without her being consulted. Nor does the Tribunal find, in the alternative that the claimant's dignity as an ordinary employee was undermined.

59. The uncontroversial evidence about the changes of workspace has already been set out above. The effect for the claimant of those changes of workspace, that is to say the move from Priestley to Hyde Terrace and then the proposed move back was as follows. At Priestley, the respondent had a single large workspace and two smaller offices off to one side of that same space. At Hyde Terrace the respondent had a larger room upstairs and a smaller room downstairs. Before the move, the respondent had located the higher grade staff, that is to say Grade 7 and above, in the two small side offices and the claimant had worked alongside the other Grade 6's (until Ms Armstrong's departure) and the rest of the team in the main office.

60. The claimant complains that after the move to Hyde Terrace she was moved to a desk in the downstairs room. It is the claimant's own evidence that this was in response to the fact that the respondent was in the process of recruiting two new junior members of staff. The respondent agrees that that is the case and simply explains the matter as one of pragmatism. There was not space in the upstairs room for the claimant and the two new members of staff and it made complete sense to move the highest ranking member of staff currently located in that large office to a downstairs room to work alongside the then occupants of that room, Ms Palmer.

61. The claimant complains that this move was carried out without consulting her and Mr Saul's evidence does not contradict that. The question the Tribunal must ask itself in these circumstances is on the assumption as we have found that the claimant did have supervisory duties whether the move to the office downstairs was such a fundamental challenge to her ability to carry out those duties that the claimant was:

    a. Entitled to be consulted on it and;

    b. That moving her in those circumstances might, consultation or no consultation, amount to a fundamental breach of the term in her contract that included those supervisory duties as part of her general job functions.

    The Tribunal's answer to those questions is in the negative. Management is entitled to take management decisions. They must not be arbitrary or capricious but nevertheless, outside those parameters, management has the right to manage. That must in the Tribunal's view include a proper management of the space available to work in. The claimant does not dispute the fact that there was a problem with space. The respondent has advanced a perfectly sensible rationale for moving the claimant, and not anybody else, to work downstairs. The Tribunal accepts that that would have made the claimant's task of the day to day supervision of her team less straightforward. It would obviously be easier for the claimant to be in the same office, easily consulted and proximate to those staff whose work she was overseeing. However, the respondent makes what seems to the Tribunal to be a perfectly

valid point. The staff upstairs were all line managed by the staff downstairs and in the circumstances, if it was possible for line management functions to be carried out with that geographical difference, then the supervisory responsibilities of the claimant were not being fatally undermined by the fact that she was not always present in the upstairs office. We add to that the unchallenged evidence to the fact that there were often spare desks upstairs and the claimant often chose to locate herself there where there was a spare desk and was never required to work downstairs unless the spare desk was required for some other purpose, as for example in the circumstance where Ms Givens wanted to work alongside Mr Thorpe over the purchasing emails. The Tribunal's view therefore is that although it might perhaps have been best practice for the respondent to discuss the matter with the claimant beforehand, the respondent's decision to move the claimant to downstairs at the Priestley building does not amount to conduct which fundamentally breaches the claimant's contractual term in relation to her job duties or contributes to a breach of the mutual term of trust and confidence.

62. In the context of the foregoing, the Tribunal's decision in relation to complaint 20 is straightforward. That complaint relates to the incidents of Ms Givens asking the claimant to work downstairs so that she could work alongside Mr Thorpe at the vacant desk and we have dealt with it extensively in our findings already. This was in all the circumstances an entirely legitimate instruction by Ms Givens given for good reason and one which the claimant is not entitled to rely on as reaching any term of her contract contributing to the breach of any term of her contract. Complaint 22 amounts to a repetition of the complaint but this time cast as a failure by the respondent to follow the Organisational Change Policy.

63. Under cross-examination the claimant was obliged to accept what seemed to the Tribunal to be obvious from the terms of that policy, that the Organisational Change Policy did not apply in the particular circumstances of this case and therefore there can be no particular breach of contract in failing to follow the Policy. The introduction to the Policy makes it plain that it only applies to circumstances where redundancies are contemplated.

64. Complaint 27 refers to the respondent's decision, never implemented whilst the claimant was in employment, but announced, that on the return of the finance department to the Priestley building, the claimant would occupy one of the side offices rather than return to the main open plan office. Once again, the claimant complains that she was not consulted over this and that the move was announced in the presence of her colleagues. Once again, the respondent advanced a perfectly straightforward explanation and it is identical to that given for the move to the downstairs office at Hyde Terrace. The open plan office now had to accommodate more people than it had prior to the move to Hyde Terrace. There was insufficient space for all of the members of staff to fit into that open plan office and for similar reasons the claimant was asked to sit in a side office. The Tribunal's view in relation to this complaint is identical to its view in relation to the complaint about the move to the downstairs office in Hyde Terrace. It was the unchallenged evidence of the respondent that the side offices gave off the main office and that the doors were generally open. If anything, contact between the claimant and her team would have been easier than it had been at Hyde Terrace.

65. Finally in this section, complaint 28 is a complaint about the same matter but cast as a failure to follow the Organisational Change Policy and the Tribunal makes the same observation as it has above.

66. We now move to the set of complaints about change without a consultation relating to the claimant's job function. Complaints 7, 15, 21 are all complaints about a failure to consult the claimant in accordance with the Change Policy over changes to her terms and conditions namely her supervisory duties. Those complaints must fail because of the inapplicability of the change procedure.

67. However complaints 5, 14 and 19 all allege a unilateral change to the claimant's terms and conditions namely an alleged removal of her supervisory duties.

68. It must first be recalled that the Tribunal has found, contrary to the respondent's case, that the claimant did have contractual supervisory duties. The issue for the Tribunal first is as a matter of fact whether there is evidence of the respondent seeking to remove those duties.

69. The first time that is said to have happened is in May of 2018. This is a complaint that during a team meeting in May of 2018, the claimant was advised that the new members of the team recruited at Grade 3 would be trained by Ms Aulton, recently promoted to Grade 5, rather than by her. It is the claimant's case that her supervisory duties included the training of new staff and that taking that duty from her was a breach of her contractual term. None of the respondent's witnesses appear to deal with this matter at all. Nor was the claimant cross-examined on the point. The Tribunal finds that the claimant makes out her case that a decision was taken and communicated in that team meeting that Ms Aulton would have responsibility to manage the training needs of the new starters and the Tribunal agrees with the claimant's assertion that it was inappropriate for the respondent to make that decision and communicate it in that way without having first discussed it with the claimant. The claimant was entitled to the legitimate expectation that in her supervisory position she would be the person tasked with training new members of staff and to have that task taken from her and given to somebody who she was supervising was undoubtedly calculated to contribute to an undermining of the relationship of trust and confidence. This is the first incident where we find that the claimant has made out a case that treatment of her might have contributed to a breakdown of the relationship of trust and confidence. The claimant does not say and in any case the Tribunal would not have agreed that the incident by itself was sufficient to fundamentally breach the contract. The respondent was not proposing to take away the claimant's supervisory duties in their totality but was simply delegating a task which she would normally have expected to do to a member of her team.

70. The next incident is complaint 14 dated 3 July 2018. The claimant alleges that her role was changed without consultation by way of the removal of her supervisory duties. Although the claimant has given a lot of evidence about the incident of 2 July, the incident in which she was asked to keep the noise levels of her meeting down by Ms Palmer, there is nothing in her witness statement after that until she turns to events at the SRDS meeting on 23 July. Nor does she appear to have cross-examined Ms Givens, Ms Palmer or Ms Martindale about that matter either. Nor was cross-examined on it herself

by Ms Stead. In the absence of any evidence at all on this matter, the Tribunal must find that this complaint is not made out.

71. This leaves us, under this section heading, with a complaint at complaint 19 about the events of 30 July 2018.

72. The Tribunal has already dealt with this at some length above and as best the Tribunal can determine this appears to be a complaint that having instructed the claimant to undertake a particular task of working alongside Mr Thorpe over the purchasing emails, Ms Givens changed her mind and took the task from her. By no stretch of the imagination can this amount to a breach of the contractual term that the claimant had a responsibility to carry out supervisory duties. As we have already pointed out, Ms Givens, even if she did give the initial order (which is disputed), was entitled to change her mind and, within her management prerogative, to undertake a task which she had originally delegated to the claimant, herself. To do so could not amount to a general removal of the claimant's day to day supervisory responsibilities. In the circumstances this cannot have contributed to a breach of the term of trust and confidence or amounts to a breach of the term containing the claimant's contractual duties.

73. The claimant asserts in her witness statement that she believed that the relocation of her was deliberately done in an attempt to prevent her from carrying out her supervisory duties. The Tribunal considers that there is no evidence to establish that. The respondent has advanced a perfectly cogent reason for the moves and it must be recalled that it was the view of Ms Martindale and others that they did not believe that the claimant had any supervisory duties which they could prevent her from exercising.

74. It should be said that to the extent on which the respondent did not understand that the claimant did have supervisory duties, their failure to breach her contract of employment in this regard is one of accident rather than intent and they might easily have conducted themselves in such a way, in ignorance of that term of her contract, that fundamentally undermined the relationship of trust and confidence. The Tribunal find that it has not for all the reasons set out above.

75. We move on finally to the claimant's complaints about lack of support in the face of overwork. The failure by the respondent to acknowledge the effect on the claimant's health of her overwork. These complaints are encompassed by complaints 1 to 4, 9, 10, 16 and 17.

76. Although most of those complaints are set out in identical terms, the Tribunal can conveniently separate out complaint 3 which is an allegation that the respondent failed to undertake her 2016/2017 staff development review meeting. As a matter of fact, the claimant did not have such a meeting. The Tribunal agrees that the purpose of the SRDS system is to ensure that the claimant's line manager has an understanding of the situation from the claimant's point of view, is able to review the challenges and opportunities of the past year and the forthcoming year and put in place any objectives or support that the employee needs for future progress. The Tribunal can also imagine why a deliberate failure on the part of the respondent to carry that out might contribute to a feeling of being unsupported for an employee who was overworked.

77. This complaint, however, must fail in the face of the fact that the claimant has never challenged the respondent's evidence that it was her choice not to have an SRDS meeting for 2016/2017. Whilst it was really management's responsibility to ensure that such a meeting happened, the claimant's contribution to the fact of it not happening removes any force from the suggestion that this is evidence of the respondent failing to offer the claimant support. In fact, the claimant could have legitimately complained of being forced into having an SRDS meeting against her will had the opposite happened.

78. Complaints 1, 2 and 4 are, apart from their timing, identical. In each case the claimant is complaining of the consequences on her of an understaffing and the failure of the respondent to respond to those problems. The complaints fall into two parts. The first is the respondent's failure to address understaffing by recruiting and the second is the respondent's failure to "address any impact that the claimant's increased workload may have had on her as a result of her being part-time".

79. We will of course encounter this complaint later when we deal with the part-time worker's discrimination complaint.

80. The evidence given for the respondent, in particular by Mr Saul but also by Ms Martindale, was that there was indeed a chronic and historic problem of understaffing. In the time that we are concerned with, two Grade 7s left the respondent's employment and the department was, to put it mildly, in a state of flux until approximately the summer of 2018 by which time staff had been recruited and were in the process of being trained

81. It was the unchallenged evidence of the respondent's witnesses that the understaffing was responded to in a number of ways. In the first place it was recognised by managers that not all tasks could possibly be done and staff were instructed to leave certain tasks, regarded as non-essential, and were given clear instructions as to which tasks should be carried out. Secondly the respondent tried to deal with the recruitment problem by setting in train the process of bringing in staff and restructuring the department. The restructuring of the department in particular was something which was carried out in a consultative manner, with the staff being invited to complete a detailed matrix of job roles and responsibilities to assist in the respondent's identification of where the staffing needs were. The final version of this not being arrived at until the summer of 2018 (see page 236).

82. Complaints 16 and 17 amount to an almost identical complaint to those encompassed at 1, 3 and 4 except that they focus on the SRDS meeting on 23 July 2019.

83. In the course of her evidence the claimant made the point that in May 2018 she had a period off ill with work place stress which she related to her overwork.

84. The agreed evidence about that period of sickness was that it followed immediately upon a particularly unpleasant incident which is not part of the claimant's complaint and which entails the very rude behaviour of an academic member of staff towards the claimant.

85. It is the claimant's case that from that moment onwards however the respondent must have been aware of the fact that her overwork was causing

her to be unwell and that a failure to respond to that overwork and in particular (see complaint 17) to accept suggestions made by the claimant as to support that would help her amounted to a breach of the term of mutual trust and confidence. The claimant's return to work meeting was handled by Mrs Palmer and it resulted in an email from Ms Palmer to Ms Martindale on 11 June 2018. Although we do not have the paperwork from the return to work meeting itself, the Tribunal accepts that this email contains a fair summary of what was covered in that meeting. It is worth quoting the email in full

> "Blessing has indicated there are a number of things going on that led her to her meltdown. Personal health issues (being referred to Immunologist for an auto immune disease/family stress (mother-in-law's illness) and work stress (short staffed with the incident on the Friday being the last straw) (*a reference to the instant with the academic*). Blessing was very tearful during the meeting and I told her she didn't need to say anything to me but we just wanted to know if we could assist in any way. Blessing appreciated the opportunity to talk despite being tearful and felt she was fine to be at work today but couldn't have come in before now. I let Blessing know what sort of things were available within staff well-being service and she wanted to pursue the counselling as per email below. I also indicated to Blessing that you would be arranging a meeting with her to discuss return to work and she was expecting this".

86. There was then the formal return to work meeting carried out by Ms Martindale on 12 June during which Ms Martindale reassured the claimant that the staffing issues which were causing her concern were being addressed and that new staff would be in post that month and Ms Martindale gave the claimant details of the new staffing structure as well as reiterating the availability of counselling and noting the arrival of Ms Givens as the claimant's new line manager.

87. In all of that the Tribunal cannot discern evidence of significant lack of support for the claimant in the face of what was undoubtedly a problem affecting every single member of the department. The respondent was doing its best to address the problems and putting in place temporary fixes on a structural basis, that is to say prioritising work and offering technical support where needed, and individual help for the claimant once it became apparent that workplace stress caused by overwork was having some impact on her health. The claimant's characterisation of the respondent as not offering support is not made out on the evidence. For all of those reasons, the Tribunal finds that the claimant cannot establish sufficient conduct on the part of the respondent to amount to a fundamental breach of her contract of employment either on any particular incident or on a variety of incidents taken together and the claimant's claim for constructive dismissal must fail.

88. The one incident where there is cause for concern was not itself sufficient to amount to a fundamental breach of contract and in any case took place in May 2018 some four months before the claimant's resignation and at least three months before a firm decision to resign. The length of time following that incident and the lack of any complaint about it during that time would, even if it were sufficiently grave as to fundamentally breach the contract on its own, would have led to a conclusion that the breach had been waived.

The part-time worker complaint

89. We turn now to the complaints of less favourable treatment on the grounds of being part-time worker. The view of the Tribunal is that this complaint must fail at the outset because we find that the claimant's supervisory duties are sufficient to make it impossible for her to treat Ms Aulton as a suitable comparator. In considering this issue the Tribunal has addressed itself to the decision of the House of Lords in **Matthews and Kent and Medway Towns Fire Service** [2006] ICR 356. The Tribunal must consider whether Ms Aulton and the claimant were carrying out work which was the same or broadly similar and in so doing must decide whether there were any differences of "practical importance" between the two terms and condition. The claimant has, as part of her claim of constructive dismissal, sought to make it clear that she regarded her supervisory duties as creating a practically important difference between her and her colleagues entitling her to expect to be treated in a particular way and to expect to carry out important duties of work distribution, oversight, training and chasing which were not carried out by the team under her. It is the view of the Tribunal that since we find that the claimant has made out her case on that point and since the claimant regarded those differences of practical importance it must be the case that they remove Ms Aulton as an appropriate comparator.

90. However, even if we are wrong about that matter, we find that these complaints fail. We will address each in turn. Complaint 1 relates to 2015 and 2016 when the claimant complains that she was not offered support when expressing her concerns regarding an increase in workload. Here she compares her treatment to that of Ms Aulton and asserts that Ms Aulton was treated differently to her by Ms Aulton being permitted, when she was appointed, only to undertake parts of Ms Armstrong's former role.

91. This is a complaint which must fail. Ms Aulton was not appointed at Grade 6. She was appointed at Grade 5. That was done, in the unchallenged evidence of Mr Saul, because it was understood that the claimant and Ms Armstrong were each of them carrying out some tasks which were below their grade and that the department could therefore get by by not replacing Ms Armstrong at Grade 6 but replacing her with a Grade 5 and some newer members of staff at a Grade 3. It followed that Ms Aulton was employed to undertake those parts of Ms Armstrong's former tasks that were not Grade appropriate. Any difference of treatment is therefore nothing to do with whether the claimant was part-time and Ms Aulton was full-time but had everything to do with the unchallenged explanation for the revision in staff grading provided by Mr Saul.

92. The Tribunal finds it difficult to understand the difference between the complaint at 1 and the complaint at 2, which appear to us to be identical save for the years involved. The only practical difference is that by 2017 Ms Aulton had actually been appointed whereas the first complaint relates to a period of time before Ms Aulton's appointment. The Tribunal reaches the same finding as it has above. The same comments can be made about complaints 5 and 11.

93. We turn then to the remaining two complaints at 4 and 6. They both appear to relate to the same incident. They amount to a complaint taken together that the complainant was denied the opportunity to attend some training on

pivot tables (an aspect of Excel spreadsheet) and that Ms Aulton was put on to that training instead. In fact, the evidence shows that the claimant booked herself on to two courses, one on 12 March, to do with Excel spreadsheet in a more general sense, and the second on 16 April 2018 to do with pivot tables. It is that second course over which Ms Martindale intervened to ask the claimant not to go on and for Ms Aulton to go on instead. Ms Martindale's explanation was that when she discovered that the claimant had booked herself on to two courses, and that Ms Aulton also wanted to attend the pivot table course, and that that was relevant to Ms Aulton's work, she thought it more appropriate for Ms Aulton to have the opportunity of attending some training thus ensure that the limited training opportunities were spread around the department in an even-handed manner. The expectation was that members of staff attending training would give the benefit of that training to their colleagues and so it was not the case that the claimant would be denied the opportunity of receiving training, simply that she would not be getting it first-hand.

94. The claimant really has no cogent evidence to suggest that that explanation is false and indeed barely challenged it in cross-examination and did not challenge it at the time the explanation was given. She accepted the rationale for it and she agreed that that is how she approached it when she was being cross-examined on the point. If that explanation is the true one, then of course that is nothing to do with the claimant's part-time status and Ms Aulton's status as a full-time worker. There being no evidence to suggest that it is not true, and the claimant not seeking to produce any such evidence or to challenge Ms Martindale's evidence in cross-examination, the Tribunal reaches a conclusion that although the claimant has shown less favourable treatment by not being permitted to attend training that she wanted to, the claimant cannot show that that less favourable treatment was for the impermissible reason of her status as a part-time worker.

95. For all of the reasons outlined above the complaint of breach of Regulation 5 of the 2000 Regulations fails and the complaint fails in its entirety and is dismissed.

Employment Judge Rostant

Date 17 November 2019