



EMPLOYMENT TRIBUNALS

Claimant: Mrs Denise Carryl
Respondent: The Governing Body of Manford Primary School
Heard at: East London Hearing Centre (by Cloud Video Platform)
On: 3 – 5 March 2021
Before: Employment Judge Barrowclough

Representation

Claimant: Mr R Clement (Counsel)
Respondent: Mr T Wilding (Counsel)

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was V by Cloud Video Platform. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

RESERVED JUDGMENT

The Claimant's complaints of (a) unfair constructive dismissal, and (b) less favourable treatment as a part-time worker, in breach of regulations 5 & 7 of the Protection of Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 both fail and are themselves dismissed.

REASONS

1. By her claim, presented to the Tribunal on 19 May 2020, the Claimant Mrs Denise Carryl brought a single complaint of unfair constructive dismissal from her job as a teacher and subject leader. Subsequently, and as a result of preliminary hearings on 9 and 23 October 2020, the identity of the appropriate respondent to her claim was confirmed as being the Governing Body of Manford Primary School, the Claimant's former employer, and an additional complaint of less favourable treatment as a part-time worker, in breach of regulations 5 and 7 of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, was included in her claim. The

Respondent resisted both complaints, denying that the Claimant had been subjected to any less favourable treatment as a part-time worker, and also that it had fundamentally breached the terms of her contract of employment, thereby entitling her to resign.

2. I heard this case remotely by Cloud Video Platform over the course of a three day hearing, at the conclusion of which and due to the lack of available time I reserved my judgment. The Claimant was represented by Mr Clement of counsel and gave evidence in support of her claim. In addition, Mr Clement called Ms Venda Premkumar, the Claimant's union representative who accompanied her to a grievance meeting on 24 February 2020, shortly before the Claimant resigned. The Respondent was represented by Mr Wilding of counsel, who called as witnesses (a) Ms Julie Donnelly, the head teacher at Manford Primary School ('the school') at the material time, (b) Ms Miriam Gould, who was interim deputy head teacher at the school between 2 November 2019 and 31 August 2020, and (c) Ms Avril Carnelley, the chair of the school's governing body, who heard and dismissed the Claimant's grievance following the meeting on 24 February. In addition to statements from all those witnesses, I was provided with a substantial trial bundle, including (at pages 70-72) an agreed list of issues to be determined.

3. The Claimant is now 44 years old, and is an experienced teacher. Whilst I was not provided with full details of her professional career, it emerged during the evidence that she was teaching Year 5 classes at a primary school in 2009. More recently, the Claimant was a deputy manager in a private nursery school, before joining the Respondent as a teacher on 1 September 2016 on a four days per week or 0.8 fractional basis. The Claimant initially joined the school to provide full-time maternity cover, but was then offered and accepted a permanent part-time role as a teacher at the school. The only contract of employment/statement of particulars of which I was made aware is that at pages 166-172 of the bundle, which was provided in October 2016, a month after the Claimant commenced employment with the Respondent. The Claimant says that from September 2016 until September 2019, she taught children in either the reception or nursery class at the school.

4. The school is a maintained primary school, funded and controlled by the London Borough of Redbridge. It is a two form entry primary school, with a staff of approximately 80 people, including 24 teachers, and currently has 439 enrolled pupils. Ms Donnelly qualified as a teacher in 1998, became a head teacher in 2014, and joined the school in that capacity on 26 April 2019 at the start of the summer term, her predecessor Miss Jacobs having retired after 27 years at the school. It was Miss Jacobs who had supported the Claimant's successful application to move onto the upper pay scale ('UPS1') in November 2018, as well as approving the grant of a teaching and learning responsibility ('TLR') allowance to the Claimant more or less simultaneously. As Ms Donnelly explained in unchallenged evidence, those in receipt of UPS1 have to be senior and experienced teachers, who have demonstrated consistently good teaching over time, and use that skill and experience to help their colleagues improve their own teaching practice, whilst TLR is available to those who take on additional responsibilities to those of a standard classroom teacher, specifically tied into a subject or area of school improvement (in the Claimant's case, that being leadership responsibility in French). Whilst a head teacher can remove TLR responsibilities and allowances from a teacher, he or she cannot alter or vary UPS1 status on their own.

5. It was common ground that the Claimant gave Ms Donnelly a warm welcome on her arrival at the school, and also that the school was facing a number of problems or issues at that time. Academically, the school had recently achieved the worst SAT results in the borough, particularly for maths in Key Stages 1 and 2, and was well below the national standard. Additionally, performance and HR recording was haphazard, there were no personnel files and no agreed child protection policy, and such records as existed were paper based rather than on the local authority's management information systems. Ms Donnelly's perception, which seems to me to be fair, was that the problems were not limited to particular teachers or the older children at Key Stages 1 or 2, but that causes for concern existed more generally throughout the school. That was certainly the approach she adopted, seeking to make changes across the board, for example by calling an early meeting of all UPS teachers at the school to set out the improvements she wanted to see.

6. The Claimant was somewhat unusual in that her contract actually specified her part time hours and status. During May 2019, Ms Donnelly discovered that many of the teachers at the school were formally on full time contracts, but had informally agreed with Miss Jacobs on an annual basis the part time hours that they wished to work in the coming year; and that no record had been kept of those arrangements. Ms Donnelly took steps to ensure that the working hours requested by such teachers became contractual, in order to provide greater transparency and clarity as well as security for those affected. Her unchallenged evidence was that no teacher's hours were changed or reduced as a result of this process, and that individual teachers were given the hours for which they applied. The Claimant asserts that this episode convinced a number of her colleagues that part time teachers would no longer be welcome at the school; however, there is no documentary evidence, and she called no witnesses, to support that allegation, which seems to me to be unlikely and far-fetched.

7. At about the same time, Ms Donnelly discussed with individual staff members (including the Claimant) arrangements and their wishes for the forthcoming academic year, which would commence in September. At her meeting with Ms Donnelly, the Claimant stated that she wished to move out of the nursery, where she was teaching 3 and 4 year olds, and to teach older children; although there is little if any evidence to support the Claimant's suggestion that she said she wished to teach Year 1 classes instead. In any event, Ms Donnelly was aware that the Claimant was an experienced teacher with UPS status who had in fact been trained as a secondary school teacher, and believed that she had the presence and confidence required of a Key Stage teacher, and accordingly arranged for her to teach 9 and 10 year old children in Year 5, commencing the following term in September. The Claimant did not query or resist that decision, and was careful to ensure that her reaction was apparently positive, as she says in her statement. The Claimant's move out of the nursery was confirmed by Ms Donnelly in her email of 29 May (page 76[1]), which is headed '*full time – Denise Carryl*' and which refers to the Claimant's career ambitions, and that she was considering working full time hours.

8. That is consistent with a conversation between them, once again at some unspecified time in May or June 2019, when the Claimant had expressed an interest in the role of assistant head teacher, which was then being advertised. The Claimant accepted that in their discussions about the role Ms Donnelly had told her that she considered that a full-time member of staff was required for the role, which could not (in her opinion) be undertaken on a part time basis. The Claimant did however apply for the role thereafter since, as she says in her witness statement, she '*wanted to leave*

classroom teaching and move into management', but was not shortlisted for or appointed to the role because (as was accepted by Ms Donnelly) she decided to maintain her part time status and hours. Whilst it is agreed that the Claimant had raised the possibility of potentially being able to help out on some Fridays (which she did not work), that was as far as that went. Ms Donnelly, who compiled the shortlist, agreed that had the Claimant agreed to work full-time, she would have been shortlisted for the role as an internal candidate.

9. There was a further undocumented and informal conversation between the Claimant and Ms Donnelly in the early summer of 2019. Ms Donnelly states that the Claimant approached her and said that she was thinking of moving on, and was looking at a potential role in social care or the NHS; and that Ms Donnelly, whilst not encouraging her to leave the school, said that she would support her in whatever decision she made, particularly since in her view changing roles every four or five years is a good idea which she herself has followed. The Claimant's account is rather different: that she was called into Ms Donnelly's office more or less out of the blue, given advice about career development, and told that it would be a good idea to apply now for any job which she thought she would like; and that the Claimant was subsequently advised by her career mentor that Ms Donnelly wished to get rid of her, albeit the Claimant apparently didn't then think so. I have no hesitation in preferring Ms Donnelly's account to that of the Claimant, since it seems inherently unlikely that Ms Donnelly would wish to lose and/or encourage an experienced teacher to leave, about whom she then had few if any concerns, and who had recently approached her in order to further her teaching experience and career within the school, and indeed applied for the role of assistant head teacher.

10. The new term duly commenced in September 2019, when the local authority had formally classed the school as being a '*cause for concern*'. Ms Gemma Andersen (assistant head teacher and English lead) acted as the Claimant's job share partner and took her class on Fridays. Ms Donnelly states that Ms Andersen then told her that she had concerns about the Claimant's teaching, including a lack of planning, poor handovers, and a lack of progress evident in the children's workbooks. The Claimant herself speaks of finding her feet in the first weeks of September, teaching children at Key Stage 2 for the first time in some years after a prolonged period with 3 or 4 year olds. In any event, the Claimant was observed by Ms Donnelly and another senior colleague whilst teaching a maths lesson on 16 September during one of their regular 'learning walks', which involved senior staff visiting and observing classes conducted by all the teachers working at the school. Ms Donnelly said that she was not impressed by what she had seen of the Claimant's teaching, and had spoken to her afterwards, whilst acknowledging that she had been forewarned that maths was not the Claimant's strongest subject. Ms Donnelly disputes the suggestion that she raised putting the Claimant on a support plan during that feedback session, and it seems to me to be unlikely that she would have done so, since this was the first time that Ms Donnelly had witnessed the Claimant's teaching, at what was a different level to that she had been used to, and in a subject which she knew that the Claimant found difficult.

11. Another learning walk took place on 3 October, when it was Ms Andersen who was an observer at another maths lesson conducted by the Claimant, and she subsequently reported back concerns to Ms Donnelly about the level and accuracy of some of the Claimant's teaching of the class. That led to a meeting on 8 October between the Claimant, Ms Donnelly and Ms Andersen, at which Ms Donnelly referred back to their earlier conversation on 16 September, and to the subsequent concerns

about the Claimant's teaching following a number of observations. These had been summarised in a '*teaching over time*' document which Ms Donnelly had introduced that term to enable observations of all the teachers at the school to be recorded: the relevant form for the Claimant is at page 215 and records Ms Donnelly's notes of her observations on both 13 and 16 September. Ms Donnelly told the Claimant that she was being placed in a four week informal monitoring process, during which she would be provided with support to focus on and improve her performance, in accordance with paragraph 6 of the school's Teacher Appraisal and Capability Procedure, which is at page 155. Ms Donnelly continued by saying that if at the end of that period there had been insufficient improvement then the appraisal process would be ended, and the Claimant would move onto a formal capability procedure. The assistant headteacher Lucy James would be the Claimant's first point of contact during the monitoring period, and the Claimant would be provided with help in the form of a visit to another local school, spending time with an experienced Year 5 teacher, and verbal feedback following further observations during the period. There would be a further meeting in a week's time to focus on self-review, further support that the Claimant might want, and the identification of targets and progress goals.

12. It seems clear to me that, perhaps inevitably, the meeting on 8 October was a difficult one for all those present. The Claimant and Ms Donnelly have differing recollections of what was then said (or not said), albeit Ms Donnelly prepared summary notes later that day (page 180) and the Claimant wrote to Ms Donnelly two days later – pages 77/78. Doing the best I can, I find that the Claimant disputed that her being placed on a monitoring process was justified or appropriate, that Ms Donnelly made clear her view that it was, and also her expectations of experienced teachers such as the Claimant. Ms Donnelly did not say that she would remove the Claimant's UPS status – I accept that she had no power to do so, and also that she did then tell the Claimant that the process was informal, and that it was intended (and hoped) to improve her teaching performance. Either during that meeting or at about that time, Ms Donnelly told the Claimant (as well as the other qualified teachers) that they would continue to receive their TLR uplift without having to undertake the duties and obligations usually involved (for example preparing resources and monitoring projects), since Ms Donnelly was very keen that they focussed all their energies on improving the standard of teaching at the school.

13. Ms Donnelly subsequently sent the Claimant copies of the observation notes, her teaching over time document and the appraisal and capability procedure, as requested, and replied to the Claimant's letter at pages 76/77 on October 14. To some extent, that repeated what she had said at the meeting with Ms Andersen on the 8th. There would be clear targets and additional support for the Claimant during the monitoring period, and the aim was for her to return to the usual appraisal process at its conclusion. There would be a review meeting at the end of the period, when either that would happen, or the period would be extended, or a formal capability procedure would commence, depending on the Claimant's progress during the four week period. Ms Donnelly confirmed the position in relation to TLR, summarised above, and accepted that the original four week monitoring period would be insufficient, particularly since the Claimant was then moving house, and it was extended until 22 November.

14. Thereafter, there were further meetings and contact between the Claimant and Ms Donnelly, although the actual dates of those encounters are not particularly clear due to a lack of contemporaneous documentation. The Claimant says that they met on 17 October, and she wrote to Ms Donnelly on 1 November (page 81), thanking her for

'listening to her thoughts' on the previous Monday, stating that she had decided not to resign, even though she was planning to leave classroom teaching in the near future, and saying that she had looked at the targets Ms Donnelly had provided for her, and would come to discuss them with her shortly. The school's half term break would also have taken place at the end of October. There is also some uncertainty about when the Claimant's monitoring period actually started, particularly since it is clear that it came to an end on 29 November, rather than 22 November as previously stated. I think it is most likely that Ms Donnelly provided the Claimant with the targets to be achieved by her during the monitoring period (which are set out in the informal support plan for the Claimant at page 215(4)) shortly before the half term break in late October, with the monitoring period effectively commencing on the school's return in early November. Page 215(4) also sets out the support particularly requested by the Claimant, and details that provided by the school in October and November, as well as going on to record Miriam Gould's comments on the perceived impact of that support and on the Claimant's teaching in a number of observations during November and December 2019, after the monitoring period had been extended.

15. Their next meeting was on 4 November, when Ms Donnelly told the Claimant that the monitoring period had been extended once again, this time to 29 November, and that in future Miriam Gould, a deputy head teacher, would be overseeing her support plan in place of Adam Hall, another deputy head who had been supposed to be involved in supporting her, but who had been and still was absent from the school. There was a discussion about what additional support the Claimant might need, and the Claimant said that she believed that she was already doing everything that was reasonably required of her; and Ms Donnelly said that she would arrange for there to be weekly meetings between the Claimant and Ms Gould during the extended monitoring period.

16. Ms Gould worked at the school as an interim deputy head teacher from 2 November 2019 until 31 August 2020, since when she has been head teacher at Buttsbury Infant School. On arrival in November, she was aware that the school had been designated as a 'cause for concern' and that significant improvements were required, and she was asked by Ms Donnelly to provide support for the Claimant during her informal support plan in the absence of Mr Hall. Ms Gould kept a record of the Claimant's progress and the support provided throughout the monitoring period, which is at pages 215(4) to 215(7). Ms Gould and the Claimant first met on 5 November, when Ms Donnelly was also present, and the matters discussed are summarised at 215(4). The Claimant once again made clear her view that she did not require a support plan, and that she wanted to concentrate on her maths teaching. It was agreed that Ms Gould would observe the Claimant teaching a maths lesson on 14 November, and that she would provide feedback following a learning walk. The Claimant was advised to concentrate on pitching her lessons at the appropriate level, adapting her teaching to meet the needs of all the children in the class, and ensuring that they felt challenged.

17. On 13 November, the Claimant and Ms Gould met up to discuss the maths lesson on the following day. Ms Gould expressed reservations about the general teaching level that the Claimant proposed to adopt, and followed up their meeting with an email, in which she outlined the support she would provide in the lesson, and that they would meet up again immediately before it. The observation went ahead, and following the lesson Ms Gould provided the Claimant with feedback. In broad terms Ms Gould thought that there were positive aspects, including that the lesson had started on

time and the children having been provided with resources on their tables, but that the Claimant needed to focus more on challenging the children's learning and addressing gaps in their knowledge.

18. The Claimant and Ms Gould next met on 18 November. As set out at page 215(6), Ms Gould felt that the Claimant was not willing to accept the feedback offered in a constructive way, disagreed about items that had apparently not been taught, and had a settled view of how she should teach and how the support plan should work. The next observation took place at an English lesson on 20 November, and once again Ms Gould was critical of the Claimant's teaching, in particular the pace of the lesson, and the lack of clarity and progress. It is clear that the Claimant was upset by the feedback then provided by Ms Gould, since she emailed Ms Donnelly that day seeking a meeting. Ms Donnelly responded sympathetically later that evening, suggesting that there should be a meeting the following week with HR and the Claimant's union representative, if she wished; and the Claimant replied early the following morning, thanking Ms Donnelly for her kind words and reassurance, stating that she would revert in relation to the proposed meeting, and that she wished to speak to the chair of the school's governors about the process. It is not clear whether any such meeting took place, or whether the Claimant in fact then spoke to a governor.

19. Ms Gould then wrote to the Claimant on Friday 22 November, clarifying that her support period would be coming to an end in a week's time and suggesting that they meet at the end of lessons on the following Monday to talk through further support for that week. The Claimant agreed, although it seems that they did not meet until the Tuesday (26 November), when Ms Andersen was also present, and a discussion ensued about observing the Claimant's science lesson on the next day. That duly took place, although Ms Gould was only able to stay for twenty minutes, returning briefly thereafter when she noted that one of Ms Andersen's suggestions for the lesson had been adopted by the Claimant, which she thought a positive sign.

20. The next meeting between Ms Gould and the Claimant took place in the latter's room at school on 5 December. It was not a formal meeting, but Ms Gould provided general feedback in relation to the Claimant's teaching that she had witnessed. In her view, the Claimant's subject knowledge was lacking, appropriate standards for the children to aspire to were not being set, and she had not adapted her teaching to meet the needs of all the children in the class. Ms Gould does not recall saying words to the effect that she believed things were going in the right direction and that the Claimant had turned the corner, as the Claimant suggests, and on balance I think it unlikely that such words were said, since they would be inconsistent with Ms Gould's overall recorded assessment. Whilst her observation of the science lesson taught by the Claimant on 27 November had been more positive, that was an isolated instance in Ms Gould's opinion.

21. However, in view of that example of feedback and support being adopted by the Claimant, and in order (it is said) to give her as much opportunity to improve as was possible, Ms Donnelly decided, having spoken to Ms Gould, to extend the Claimant's monitoring and support period by a further two weeks, concluding on 20 December, which I think was probably the last day of term. That decision was communicated to the Claimant in Ms Donnelly's letter of 9 December (page 87) which was handed to her on that day. That letter reiterates the areas of concern about the Claimant's teaching, the goals that needed to be attained, and the support, monitoring and observation that would continue to be provided by Ms Gould.

22. The next observation was of a class conducted by the Claimant on 11 December, which focussed on the subject of money, involving adding, calculating and subtraction. The Claimant and Ms Gould met before the lesson, when Ms Gould provided advice about how it should proceed. At the conclusion of the lesson, Ms Gould provided the Claimant with feedback, as set out at page 215(7), including that the teaching should be pitched at a Year 5 level and that there should be clear teaching points modelled by the Claimant. The Claimant responded on 12 December to Ms Donnelly (pages 88-90). In that letter, the Claimant takes issue with matters raised by Ms Donnelly in her letter of 9 December extending the monitoring period, and also with what she described as discrepancies or lack of protocol during the support period, characterising the support plan that had been put in place as *'incoherent and inconsistent'*. The Claimant did however conclude her letter by stating that she had found working with Ms Gould and Ms Andersen to be *'hugely beneficial and productive'*, helping her to transition to Year 5 and giving her many new teaching ideas.

23. Ms Donnelly sent a copy of the Claimant's letter to Ms Gould, who subsequently wrote back to Ms Donnelly on the evening of 16 December. In that email (page 91), Ms Gould suggests that the Claimant was taking at least some earlier comments out of context, or twisting them to suit her agenda; that in future it would be wise for some other member of the leadership team to be present at meetings with the Claimant to minute them; that a further observation should take place next term; and that, whilst the Claimant was right in saying that there were other teachers at the school who needed to be put on a support plan, the fact was that the Claimant couldn't teach.

24. The Claimant's support plan concluded on 20 December. At that time, there was an exchange of correspondence between her and Ms Gould, who informed the Claimant that there would be a meeting in January to consider her support plan and the next steps.

25. On 6 January 2020 Ms Gould and Ms Donnelly met at the school to discuss what progress the Claimant had made over the monitoring period, and Ms Donnelly was provided with a copy of the informal support plan (pages 215(4) to (7)) which Ms Gould had completed. Ms Gould said that she remained concerned about the Claimant's teaching, and that despite accepting some recommendations the Claimant had been resistant to the process, and had made insufficient progress towards the set targets. On the following day, Ms Gould and Ms Donnelly together undertook a routine moderation of the school's pupils' workbooks, including of those in the Claimant's class, dating from the autumn term, and their comments are set out at pages 240/241. Ms Donnelly concluded that a number of pupils in the Claimant's class were not working at the level expected of their year, and that the Claimant's assessment of their understanding was not accurate.

26. Later that same day (7 January), the Claimant was called to and attended a meeting with Ms Donnelly and Ms Gould, when Ms Donnelly told her that she was not satisfied that the Claimant had made sufficient progress during the extended monitoring period, and that henceforward her performance would be monitored under the school's formal capability procedure. The Claimant was handed a letter (pages 93/94) confirming the position and invited to attend a capability meeting on 16 January to consider her failure to meet the standards set.

27. Ms Donnelly's letter enclosed copies of the school's evidence relating to the Claimant's alleged underperformance, and requested her to provide any statement or

evidence on which she wished to rely two days before the meeting on 16 January. The Claimant was also informed of her right to be accompanied at that meeting by a trade union representative or colleague. The Claimant replied on the following day (8 January) asking whether a school governor could be present at the meeting, and also whether that could be moved to January 14 to suit her trade union representative.

28. On 9 January, the Claimant responded substantively to the school's allegations concerning her performance. The first page only of that letter is at page 95(1), albeit that appears to contain the main thrust of the Claimant's contentions, which included that the school had failed to follow the correct protocol during her informal monitoring period, that she had not been provided with 'SMART' targets, and that she was not provided with either success criteria or significant advice and support.

29. On 10 January Ms Donnelly wrote to the Claimant (pages 96/97), responding to the criticisms and comments which had been made in the Claimant's letter to her of 12 December 2019. For the reasons therein set out, Ms Donnelly did not agree with or accept the Claimant's objections to the support plan that had been in place; but she expressed sympathy with the Claimant's view that she had been treated unfairly, and said that if she felt that way she could activate the Respondent's grievance policy.

30. Then on 13 January the Claimant wrote by email to Ms Donnelly, asking that the capability meeting be postponed since she was awaiting legal advice. Ms Donnelly replied stating that the next available date for such a meeting would be in the week commencing 27 January, and proposing as an alternative reverting to the original date of 16 January. But on the afternoon of 14 January Ms Donnelly was contacted by Ms Premkumar, the Claimant's trade union representative, who asked whether the meeting could be held on January 27, when both she and the Claimant would be available; and that was agreed by Ms Donnelly. However before that could take place, the Claimant wrote once again to Ms Donnelly in a detailed letter dated 19 January (pages 101 to 104), amplifying and expanding on the criticisms of the support plan which she had raised on 9 January at page 95(1). The Claimant concluded her letter by saying that she had decided to submit a grievance concerning Ms Donnelly's treatment of her. Accordingly, the capability procedure was suspended, the planned meeting on 27 January did not go ahead, pending the resolution of the Claimant's grievance, and the Claimant continued to teach at the school without monitoring or supervision.

31. The Claimant's lengthy grievance letter (pages 105 to 113), addressed to Ms Avril Carnelley, the chair of the school's governors, is also dated 19 January and sets out her detailed criticisms and concerns about the informal monitoring or support plan that he been put in place, as well as making plain her belief that she had been unfairly and unfavourably treated because she was a part time worker. The Claimant was invited to attend a grievance meeting, chaired by Ms Carnelley, on 24 February, and duly confirmed that she would do so, accompanied by Ms Premkumar, her union representative. Also present at the meeting were Ms Wendy Leech, an independent HR consultant who supported Ms Carnelley, and Ms Amanda Lawman, the school's business manager, who acted as a notetaker. Notes of the meeting, which lasted from 10.00am until 11.45am, are at pages 203 to 213; at its conclusion, Ms Carnelley adjourned matters in order to consider what she had heard and read. In addition to the Claimant's grievance letter and the school's grievance procedure, Ms Carnelley was provided with the Claimant's initial completed grievance form, a summary of main points and a chronology which the Claimant had also prepared, and a short statement from Ms Rita O'Farrell, a teacher at the school who had left at the end of the previous

autumn term because her part time role had been changed to a job share with a colleague, which did not suit her (page 197).

32. At the outset of the grievance meeting, the Claimant had made clear that she felt that the school's capability procedure was being used as a means of removing her from the school; and that the grievance outcome she was seeking was the removal of those proceedings from her file, an agreed reference, and Ms Donnelly being held to account for her treatment of the Claimant; although Ms Carnelley told her that she was unable to consider or adjudicate on any issues relating to the Claimant's ongoing capability process, which had been adjourned. Ms Premkumar summarised the Claimant's grievance as being (a) that part time teaching staff such as the Claimant were being systematically removed from the school by means of support plans; (b) that part time staff were being placed in unsuitable roles within the school, that the Claimant had not been shortlisted for the assistant headteacher role because she worked part time, and that she had been allocated to teach Year 5 when she had asked to be placed in Year 1; (c) that the Claimant had been targeted as an expensive member of staff; and (d) that the Claimant's grievance had been raised as a last resort and because all efforts with Ms Donnelly had been exhausted.

33. Ms Carnelley wrote to the Claimant to confirm the outcome of her grievance on 3 March. As she set out in her letter (pages 115/116), Ms Carnelley did not uphold the grievance. Her stated reasons for coming to that decision were (a) the school had a responsibility to meet the needs of the children it serves, in terms of allocating workload, and it might not be possible to meet individual teachers' wishes; (b) teachers are subject to the provisions of their pay and conditions document, and it was reasonable to expect them to teach a class at the school, whether they be part time or full time; and (c) the fact that a senior leader at the school works part-time was indicative that part-time staff are valued by the school.

34. In her evidence to the Tribunal, Ms Carnelley expanded on those conclusions. She said that she did not find any evidence to support the suggestion that part-time staff at the school, including the Claimant, were being targeted or removed. She was aware of the steps that had been taken in the previous May to formalise part-time teachers' hours, and that no staff members' hours were changed as a result. In relation to Ms O'Farrell's letter and the Claimant's complaint of being placed in Year 5, Ms Carnelley considered that it was for the school to allocate its workforce as deemed necessary and appropriate, and that the Claimant was an experienced UPS teacher. Finally, the fact that the assistant head teacher (Ms Lucy James) worked in a part-time role was evidence that part-time staff were valued and accepted, rather than viewed as problems to be resolved. Ms Carnelley confirmed that she had taken and acted on HR advice as to how to proceed with the Claimant's grievance hearing, that only the Claimant had given evidence at that hearing, and that she had not spoken to Ms Donnelly (who had not been provided with a copy of the grievance against her) during the Claimant's grievance process, once again on HR advice.

35. The Claimant was informed of her right to appeal Ms Carnelley's decision, which she exercised in her letter dated 19 March. However matters were subsequently delayed as a result of the Covid-19 pandemic, and Ms Carnelley wrote to the Claimant on 24 July acknowledging her appeal and stating that once the school fully reopened, the vice chair of governors (Mr Damon Last) would organise and chair a new committee to consider the appeal.

36. By her email to Ms Donnelly (pages 117/118), sent in the early hours of 6 March, the Claimant tendered her resignation from employment with the school with essentially immediate effect. The Claimant said that she was leaving the school prematurely because of the way that she had been treated, and that following the grievance outcome her position at the school had become untenable. Ms Donnelly acknowledged and accepted the Claimant's resignation, and there was subsequent interaction between them concerning the finalisation of the Year 5 children's reports by the Claimant, where Ms Donnelly accepts that the Claimant was particularly helpful. There was no evidence of any discussion of the terms of any reference to be provided for the Claimant, either before or after she had resigned, although Ms Carnelley had confirmed in her grievance outcome letter that the Claimant would see the terms of any reference from the school before it was given. Finally, the Claimant commenced these proceedings on 19 May 2020.

37. Counsel agreed that the applicable law in relation to the Claimant's claim is settled and uncontentious. The Claimant alleges a breach of the implied term of trust and confidence which, if established, amounts to a fundamental or repudiatory breach of contract, going to the root of the agreement between the parties, thereby entitling an employee to resign as a result and to claim unfair constructive dismissal. The implied term provides that neither party shall without reasonable cause conduct itself in such a manner as is calculated or likely to destroy or seriously damage the relationship of trust and confidence that must exist between employer and employee. The Claimant asserts that through a series of acts and omissions, culminating in the rejection of her grievance, the Respondent breached that term, and that she resigned as a result. The Respondent disputes that it was in breach as alleged or at all, and contends that the real reason that the Claimant resigned was to avoid the formal capability process which had been commenced. Notwithstanding what is stated in the list of issues (pages 70/72), there is no issue in relation to waiver or affirmation since on any view the Claimant acted promptly in tendering her resignation. Finally, and as Mr Clement helpfully confirmed both at the commencement of the hearing and in his closing submissions, the Claimant's complaint of less favourable treatment as a part-time worker stands or falls with her unfair dismissal complaint.

38. It is not my role and I am certainly not qualified or competent to adjudicate on whether the Claimant's teaching practice was poor and inadequate, and whether or not the criticisms raised by Ms Donnelly, Ms Gould and Ms Andersen were justified. But the thrust of the Claimant's case, as was made very clear at her grievance meeting, was that part-time teachers such as herself were being intentionally targeted by Ms Donnelly and thereby the school, being placed in unsuitable roles and/or on unnecessary support plans, in order to remove them. Ms Premkumar's evidence was that the Claimant had told her in November 2019 that she was being bullied by the headteacher as part of a plan to get rid of part-time teachers at the school. Ms Premkumar said that eight part-time teachers had left the school between April and the end of 2019; and that the school's use of informal monitoring and support plans represented a slippery slope, virtually always leading to formal capability procedures against part-time teachers, which more or less inevitably resulted in their removal, or at least in them leaving the school.

39. If that is right, and the introduction of an informal monitoring period or support plan was a sham, where as Mr Clement submits the Claimant was bound to fail, then both Ms Andersen and Ms Gould must, at least to some extent, have intentionally and unfairly marked the Claimant down, presumably on the instructions of Ms Donnelly, in

order to progress the Claimant to the formal capability procedure. That must be the case, since the Claimant repeatedly asserted that a support plan was not justified or required in her case, and that she was doing everything required of her as a teacher: for example at the meetings on 8 October, 4 and 5 November 2019, and in the feedback session on 18 November.

40. There are a number of difficulties with the Claimant's thesis. Whilst I did not hear from Ms Andersen, Ms Gould did give evidence, and it was not suggested to her that the comments and concerns which she raised about both the Claimant's teaching and her reaction to the feedback offered were not genuine, or that she had been told by Ms Donnelly that the intention was to progress the Claimant to the formal capability stage and ultimately that she should leave the school. That in my view is particularly significant, since the decision to terminate the support plan and to commence the formal capability process was largely based on her observations and reported views. The only challenge to Ms Gould's bona fides related to the observation of the Claimant on 20 November, when she denied that she had '*come on a mission to give (the Claimant) negative feedback*'. Nor was any form of conspiracy with or plan involving other teachers put to Ms Donnelly. Secondly, and as already noted, the Claimant in fact expressed her gratitude for the guidance and help provided by both Ms Gould and Ms Andersen during the informal monitoring period, which would be surprising if their intention had been for the Claimant to fail to make the necessary improvements. Thirdly, and as Mr Wilding pointed out in his submissions, there was no supporting evidence from any of the other teachers who had apparently expressed their concerns to the Claimant and who had allegedly been forced out of the school by Ms Donnelly as part of her campaign against part-timers; and the suggestion that such individuals were unwilling to help because they still feared being 'got at' by the school and/or Ms Donnelly seems to me to be far-fetched, since self-evidently they had all left the Respondent's employment, and was in any event unsupported by any evidence. Fourthly, if Ms Donnelly's real intention was that the Claimant should leave the school because she was a part-time teacher, it is difficult to see why she extended the Claimant's monitoring period twice, initially from 22 November to 29 November and then until 20 December 2019, rather than engage the formal capability procedure at the earliest possible moment. Fifthly, the fact of Ms James being a deputy head teacher at the school would suggest that at least some part-time teachers were acceptable.

41. Of the eight part-time teachers who left the school between April and December 2019, the evidence was that three had left during or before the end of the summer term, when Miss Jacobs was still headteacher. Of the remaining five, Ms Donnelly's evidence was that one retired from teaching following maternity leave, one left the area as a result of a broken relationship, one moved to South London to live with and look after her father, one moved to a different school, and one left at the end of a fixed term contract, and that neither they nor any other part-time teachers had raised grievances; and no evidence was produced to gainsay or call into question that account.

42. Weighing all these matters together, I find that there is no credible evidence to support the Claimant's assertion that Ms Donnelly or the school was pursuing a policy of treating part-time teachers such as herself less favourably, or of trying to remove them from the school, and I would dismiss any such claim.

43. Focusing on the specific allegations enumerated in the agreed list of issues at pages 70/71, I reach the following conclusions. In relation to 1(a), there is simply no dispute. Ms Donnelly agrees that she told the Claimant in June 2019 that the vacant

role of assistant head teacher was in her opinion a full time one. That was at a time when the Claimant was considering and had raised with Ms Donnelly the possibility of working full time. In the event, she decided not to do so, but nevertheless applied for that role. She was not shortlisted for the vacancy by Ms Donnelly, who said that the Claimant would have been, had she been working full time. In relation to the vacancy, Ms Donnelly was transparent and clear, the Claimant knew where she stood, and no issue of less favourable treatment arises.

44. With respect to the allegation at 1(b) (that Ms Donnelly told the Claimant during a conversation in the early summer of 2019 that if she had identified a role that she wanted elsewhere, that she should apply for it then), I have already set out my finding at paragraph 9 above: that Ms Donnelly was not encouraging the Claimant to leave the school, rather than simply stating that she would support her in whatever she decided to do, the Claimant having said that she was then thinking of moving on into a role in social care or the NHS. That was straightforward advice, plainly intended to be helpful, and cannot be said to have damaged or undermined the working relationship.

45. With respect to issue 1(c), there was in my judgment nothing objectionable about how Ms Donnelly or the school approached the apparent problem of the Claimant's teaching of her Year 5 class. As Mr Clement accepted on the Claimant's behalf, there were genuine concerns about the school's performance at the time Ms Donnelly took over as head teacher at the start of the summer term – in fact, he described it as a '*failing school*'. The Claimant, although an experienced UPS teacher, was teaching Year 5 children for the first time in a long while, and was, as she accepted, relatively unprepared at the start of the autumn term. Her job share partner, who taught her class on Fridays, was Ms Andersen, a senior teacher who was an assistant head and the lead teacher of English at the school. Ms Andersen reported concerns about the progress of the children in the Claimant's class to Ms Donnelly. Ms Donnelly and other senior teachers undertook observations of the Claimant during September 2019 and recorded them in a 'teaching over time' document or diary. There was nothing particularly unusual or exceptional in that, since other teachers at the school were observed during 'learning walks', and similar records kept in relation to those observations; and I was told of at least two other teachers at the school who were placed on support plans. In the Claimant's case, that led to her meeting on 8 October with Ms Donnelly and Ms Andersen, when their concerns about her performance and her subject knowledge were raised again and the informal monitoring process was started. That seems to me to have been a straightforward and transparent process, and in accordance with the Respondent's published procedure; and there is nothing to suggest that it was in any way linked to the fact that the Claimant worked part-time.

46. The Claimant suggests that at the meeting on 8 October, Ms Donnelly said that she would '*find evidence*' against her, as I understand it the allegation being to justify a decision already taken to commence a support plan (issue 1(d)). Ms Donnelly's account (summarised in her note at page 180) was that their meeting followed on relatively swiftly from Ms Andersen's observation of the Claimant's maths lesson on 3 October, and her later reporting back of what she had seen to Ms Donnelly; that she (Ms Donnelly) was relatively unprepared and had not expected to have to commence a support plan for the Claimant at that stage, hoping that it would not be necessary. At their meeting, Ms Andersen had provided the Claimant with feedback from her two observations, and Ms Donnelly had agreed to and had in fact forwarded the evidence (in the form of the teaching over time document/observations and the appraisal and capability procedure) on the next day. I accept that account. I found Ms Donnelly to be

a careful and straightforward witness, whose oral account was generally consistent with and supported by the contemporaneous documentation, and on whose evidence I can rely. In my judgment, whilst the same can be said concerning Ms Gould, it cannot be said of the Claimant, who was occasionally evasive in her evidence, who had to be repeatedly brought back to address and answer specific questions, and whose approach was in my view coloured by her apparent belief that any criticism of herself was manifestly unfounded and simply the product of Ms Donnelly's vendetta against part-time workers such as herself. Accordingly, where their respective accounts differ, I prefer that of Ms Donnelly and/or Ms Gould to the Claimant's.

47. Issues 1(e) and 1(f) are in my view misunderstandings, or alternatively examples of statements or other matters being taken out of context by the Claimant. It was not seriously contended that Ms Donnelly as head teacher at the school had the power or ability to remove the Claimant or any other teacher's UPS status, certainly whilst acting on her own, and I do not accept that Ms Donnelly asked any teacher to give up that status. What I find she did do was to remove the additional responsibilities that normally come with UPS status from all qualified teachers, including the Claimant, in September 2019 because she wanted them to concentrate on the quality and content of their teaching in a school which the local authority had designated as being a 'cause for concern'. Essentially the same approach was applied in relation to those like the Claimant who were in receipt of the TLR allowance: the associated duties were at least temporarily abandoned or withdrawn, whilst the allowance continued to be paid. To that extent, as Ms Donnelly accepted, she may well have said to those being paid either or both benefits that they were '*being paid for doing nothing*'. But I find that that was not a criticism, rather than a means of emphasising her central message, namely that all efforts should be concentrated on teaching the children at the school.

48. Issues 1(g) to 1(i) can most conveniently be taken and considered together. The Claimant asserts that Ms Donnelly used the mechanism of a support plan to remove her through the capability procedure, and that that plan was deliberately unfit for purpose, whereby the Claimant would inevitably fail and be invited to a capability meeting. In support, the Claimant alleges that Ms Donnelly consistently communicated to her that she was a poor teacher; cherry-picked the evidence against her, some of which arose outside the monitoring period; and ignored positive evidence which tended to support the Claimant.

49. In my judgment, there is no merit in any of those allegations. For the reasons given at paragraph 45 above, the introduction of an informal monitoring period in respect of the Claimant's teaching was an appropriate step, since at least two senior teachers at the school, Ms Donnelly and Ms Andersen, had concerns that the children in her class were not progressing as they should. There is nothing and no reason to suggest any animus on the part of Ms Andersen towards the Claimant, nor on the part of Ms Gould, whose role was to provide the Claimant with support during the monitoring period and as already noted, the Claimant expressed her appreciation to both, working with whom she had found to be '*hugely beneficial and productive*' (page 90). In relation to Ms Donnelly and the suggestion that the Claimant's failure was inevitable, the Claimant faces the more or less insuperable problem that Ms Donnelly chose to extend the monitoring period on two separate occasions, one of them following an indication that the Claimant was finally accepting and adopting the advice and support that she was being given. There can realistically be no other reason for her repeatedly so doing, other than that Ms Donnelly wished to give the Claimant every chance of demonstrating the desired improvement in her performance, since she would

have been entitled to terminate the informal support plan and move to a formal capability procedure considerably earlier, had she wished to do so and with a view to forcing the Claimant out. Whilst Ms Gould expressed the view that the Claimant couldn't teach, that was in her email to Ms Donnelly of 16 December, three days before the end of the monitoring period, and after the Claimant had been receiving support since early October 2019, as the informal support plan record at page 215(4) establishes, and having been monitored by Ms Gould since early November; and in my judgment was her genuine opinion based on what she had seen, rather than an intentionally prejudicial remark to help justify formal capability proceedings.

50. The informal monitoring period or support plan adopted by the school in the Claimant's case followed that set out in the Respondent's teacher appraisal and capability procedure (page 148), and that was clearly and consistently explained to the Claimant, for example in Ms Donnelly's letter to her of 14 October (page 79/80). The only question marks concerning that process in my judgment are the uncertainty about when the monitoring period actually began, and whether the meeting with the Claimant on 7 January 2020 constituted a review meeting at its conclusion, as to which it seems Ms Donnelly's and Ms Gould's opinions differed slightly. However neither of those matters made any material or prejudicial difference to the overall process, or constituted a serious breach of contract, in my view, and neither were indicative of any malign or prejudicial approach towards the Claimant.

51. The Claimant complains that she was not given SMART targets, that she should have been provided with more support, and that her success or failure should have been assessed against different criteria; but it was for the school to set targets and standards to be reached, and to assess what progress the Claimant made towards them; and that in my judgment they clearly did, as well as providing her with considerable and more than adequate support, as Ms Gould's evidence and the support plan report at page 215(4) and thereafter clearly indicate. I accept that the targets set by the school were inevitably somewhat generalised, since the goals set for the Claimant were more in relation to her general approach and teaching practice, for example teaching at an appropriate level for the age group and challenging her pupils, rather than subject specific.

52. The allegation that Ms Donnelly consistently and repeatedly characterised the Claimant as being a poor teacher is both misguided and incorrect, in my view. As already noted, had Ms Donnelly been convinced or determined from the outset that the Claimant would fail the support test and should leave the school, then repeatedly extending her informal monitoring period makes no sense. Secondly, it was largely as a result of Ms Gould's observations of the Claimant's teaching during November and December 2019, rather than any action on Ms Donnelly's part, that it was decided that the Claimant had not progressed sufficiently. Thirdly, the moderation of pupils' workbooks undertaken by Ms Donnelly and Ms Gould on 7 January 2020 related to schoolwork that had been done during the autumn term, which was therefore within the informal support plan period; and there was no credible evidence to suggest that the moderation was anything other than routine, or that other classes' work had not been similarly reviewed, as Ms Donnelly affirmed. Fourthly, positive feedback concerning the Claimant during her monitoring period was not ignored – in fact, it was one such instance which led to that period being further extended until 20 December. Finally, there was simply no evidence before the Tribunal to substantiate the suggestion that

comments or feedback relating to the Claimant had been intentionally and dishonestly attributed to another teacher, as set out at issue 1(i) b.

53. The final breach or example of less favourable treatment relied upon by the Claimant is the fact that her grievance was not upheld by Ms Carnelley. Ms Carnelley's evidence that, on HR advice, she did not speak to or involve Ms Donnelly at any stage in the grievance process which she conducted, and that she made it plain at the outset of the grievance hearing that she would not adjudicate on or get involved in the pending capability procedure, was not challenged by Mr Clement on the Claimant's behalf, and I accept it. It must therefore follow that Ms Carnelley was not involved in any conspiracy or concerted attempt orchestrated by Ms Donnelly to remove part-time teachers from the school. Ms Carnelley concluded that there was no evidence to suggest that part-time staff at the school were being targeted and removed. The contractual rationalisation process in May 2019 had not resulted in any teacher's hours being reduced or altered against their wishes, and did not affect the Claimant in any event. An assistant headteacher (Lucy James) was a part-time worker, which indicated that part-time staff were valued by the school. The Claimant was an experienced UPS teacher, who had previous experience of teaching Year 5 children, it was for the school to determine how best to allocate its teaching resources, and sometimes individual teacher's preferences could not be accommodated.

54. Those seem to me to be eminently sensible conclusions, which it was open to Ms Carnelley to reach. In addition, I bear in mind that the Claimant had requested a move away from teaching the nursery or reception class, that she had not objected and in fact reacted positively to being allocated to Year 5 by Ms Donnelly during the 2019 summer term, which, given her experience and UPS status, can hardly be described as an unsuitable role, and that no other grievances were put forward by part-time staff about their treatment. Whilst Mr Clement criticizes the fact that Ms Donnelly was not called and examined at the Claimant's grievance meeting, that was not in my judgment a required or necessary step, Ms Carnelley was entitled to rely on the professional advice she received, and there was ample material before her on which she could reach her decision. I find that the fact that the Claimant's grievance was not upheld by Ms Carnelley does not amount to less favourable treatment of her as a part-time worker, nor a breach of contract, whether of the 'last straw' variety or otherwise.

55. It follows that the Claimant has failed to establish any serious breach of contract by the Respondent, whether the identified issues are considered individually or collectively taken together, that would seriously threaten or undermine the relationship of trust and confidence that must exist between employer and employee. Additionally, she has failed to prove any less favourable treatment of her by the Respondent which is attributable, whether in whole or in part, to her being a part-time worker. Finally, I am satisfied that the real reason why the Claimant resigned was because she was not prepared to face the capability procedure which the Respondent had commenced on 7 January 2020, when Ms Donnelly and Ms Gould decided that she had not achieved sufficient progress or improvement in her teaching over the course of the extended support plan or monitoring period. Much of the evidence I heard and read suggested that unfortunately there were serious shortcomings in the Claimant's teaching, which had been highlighted and brought to the Claimant's attention during that monitoring period, and I find that she feared, perhaps not unreasonably, that the formal capability process might result in her dismissal; and accordingly resigned.

56. For these reasons, both the Claimant's complaints fail and must be dismissed.

**Employment Judge Barrowclough
Date: 6 April 2021**