



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms R Jackson

**Respondent:** NESCOL College

**Heard at:** London South by CVP

**On:** 11-14 January 2021  
22 January 2021 (In Chambers)  
4 February 2021

**Before:** Employment Judge Corrigan  
(Sitting Alone)

## Representation

Claimant: In person

Respondent: Ms K Anderson, Counsel

## JUDGMENT

*This was a remote hearing which was not objected to by the parties. The form of remote hearing was V – Video (CVP). A face to face hearing was not held because it was not practicable due to the Covid-19 lockdown. I had regard to the parties' witness statements, the agreed bundle, a supplementary bundle, further documents disclosed during the hearing and the parties' written submissions.*

1. The Claimant was constructively unfairly dismissed by the Respondent and was awarded compensation of £9,150.34 to be paid by the Respondent to the Claimant.
2. This award consists of
  - Basic award £1524
  - Compensatory award £7626.34

3. The compensatory award consists of:  
  
Loss of earnings £8,464.17  
Loss of statutory rights £508  
Minus 15% reduction £1,345.83
4. Recoupment does not apply to this award.
5. The Claimant was constructively wrongfully dismissed by the Respondent but no separate award was made.

## **REASONS**

1. The Claimant brought claims of constructive unfair and wrongful dismissal. It was confirmed at the Preliminary Hearing on 4 November 2019 that she did not pursue complaints of discrimination, harassment and victimization.
2. The issues were initially set out in the Case Management Order dated 4 November 2019 which states at paragraph 7 that the claim is essentially about the Claimant's treatment at the hands of two members of staff, and the way the Respondent dealt with her resultant grievance, which is what ultimately caused her resignation. At paragraph 9 it was recorded that the claim was unfair dismissal and the behaviour of the two work colleagues was background to the resignation. The Claimant was to provide further information as to the conduct relied on but at that stage the issues were as set out at paragraph 14 of the Order.
3. The conduct the Claimant relied on as breaching the term of trust and confidence was listed there in paragraph 14 (ii) as:
4. The grievance process, specifically the investigation, at first instance and on appeal was not conducted in a fair manner; the outcome of the grievance at first instance and on appeal; whilst the Respondent partially upheld the grievance on appeal, the Claimant still did not feel the matter had been dealt with correctly and that she was left in a vulnerable position and did not feel safe going into work; the way the Respondent dealt with the grievance almost condoned the behaviour complained about; there was a failure to provide her with support.
5. The list of issues was then amended during the hearing following further particulars provided by the Claimant and discussions with the parties aimed at narrowing down the issues at the hearing. The list of issues was then agreed to be:

6. Did the Respondent without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence with the Claimant?
7. The Claimant said she relied on the following conduct
  - 7.1 the grievance process at first instance and appeal was not conducted in a fair manner, in particular the list of grievances dated 22 June 2018 (pp86-87) were passed on to the Director of Strategic Partnership, Business Development, and Employer Engagement (hereafter to be referred to as the Director of Strategic Partnership) without the Claimant's knowledge or consent;
  - 7.2 the investigation at first instance and appeal was not conducted in a fair manner, in particular that the Respondent did not interview the Apprenticeships Administrator, the Information Administrator, the Work Experience Manager and another member of staff named by the Claimant. Nor did the Respondent consider Ann Clack's complaints to HR;
  - 7.3 the outcome of the grievance at first instance and on appeal, specifically, that the Respondent still required the Claimant as part of her assigned duties to attend tracking and monitoring meetings which would include the two individuals that were the subject of her grievance, and did not move her away from working with them completely;
  - 7.4 whilst the Respondent partially upheld the grievance on appeal the Claimant still did not feel the matter had been dealt with correctly and felt that she was left in a vulnerable position, not feeling safe going into work; specifically, that she was still required to attend tracking and monitoring meetings which would include the two individuals; and/or the treatment would have continued, as she alleged it had since she left the Respondent's employment.
  - 7.5 the way the Respondent dealt with the grievance almost condoned the behaviour complained about (again because she was still required to attend tracking and monitoring meetings with the two individuals concerned);
  - 7.6 there was a failure to provide the Claimant with support, specifically
    - 7.6.1 The Respondent did not check with the Claimant after the meeting regarding her informal grievance that she was okay with the outcome that she was moved directly under the line management of the subject of her grievance; and
    - 7.6.2 Gill Estall contacted the Claimant throughout the duration of her sick leave (November-December 2018).

8. Did the Claimant affirm the contract?
9. Did the Claimant resign in response to the conduct?
10. The Respondent accepts that if the Claimant was constructively dismissed it was both unfair and wrongful.
11. Is there a possibility that the Claimant's employment would have ended in the near future in any event?
12. Did the Claimant contribute to the dismissal?
13. Did either party unreasonably breach the ACAS Code and should any award be increased or reduced to reflect this?
14. I note that despite the above efforts to narrow down and focus on the issues and the Claimant readily agreeing this was the limit of her claims she then continued to raise matters that went beyond these in her questions and finally in her written submissions. This made it difficult to discern the extent of the Claimant's case. The impression given to me was that she overly narrowed down the issues in our oral discussions at the hearing from the issues as they had been set out in the Case Management Order (which were wider as set out above at paragraph 4).
15. In her submissions she expanded on the above issues (and the issues in the Case Management Order) as follows:

**“Specifically, the investigation at first instance and on appeal was not conducted in a fair manner; as investigating officers did not interview relevant staff that could support my claims, and those interviewed were only asked selective questions about events that took place during the meeting on the 7.11.2018, which formed only a part of my grievance. RG admitted, he only interviewed people present during the meeting 7.11.18. RG also admitted he did not interview [Director of Creative and Care Industries] or [the Claimant's Former Line Manager] regarding my previous concerns and complaints therefore has not gathered all the facts as the ACAS code of practice sets out in paragraph 4 bullet point 3 “Employers should carry out any necessary investigations, to establish the facts of the case”. By not challenging responses provided by management, that conflicted not only what I was saying, but what other colleagues could support shows that there was failure to establish “facts”.**

**The investigating officers also chose to ignore clear statements that could:**

- 1. Support that during the meeting 7.11.18 I was subject to discrimination on the ground of age and gender where [the Senior Apprenticeships Administrator] states “spoke to her a bit like a young naïve girl”.**
- 2. Support that this is a continuous misuse of power to bully and harass me and not a one-off incident. [The Senior Apprenticeships Administrator] said, “that’s the way they always treated her” and that “[the Claimant] was targeted”.**
- 3. Support that working relationship was seriously damaged if not destroyed. [The Senior Apprenticeships Administrator] confirms “developed into bad relationship with [the Head of Apprenticeships]”. [The Head of Apprenticeships said] “appreciate was daunting, her v us”.**

4. Support that [the Director of Strategic Partnership and Director of Creative and Care Industries] were being dishonest about the outcome of meeting 16.7.18. [The Work Experience Manager] “saw her by skills park very upset, she didn’t say why so I got [Ann Clack]”.

All staff involved in the grievances and appeal confirmed that they believed I was genuinely upset. I was also signed off by my GP due to the impact on my mental health and well-being. They failed to recognise the significance of other concerns raised of the same nature, and deny they were raised. The list of witnesses I had given were totally disregarded....

MV confirmed she did not interview anyone at all and only spoke with RG regarding his findings. MV confirmed she was provided with all the investigation documents but did not speak with any of the witnesses.

16. The Respondent’s Representative quite rightly pointed out that there were matters in the submissions that went beyond what the Claimant had narrowed her case to earlier in the hearing, as reflected in the agreed issues. However I did invite her to comment on them in her own submissions so that I could consider whether to take them into account and she did so.

17. I have decided to consider the material raised in the Claimant’s submissions. The Claimant’s dissatisfaction with the way the Respondent approached her grievance (in so far as she was aware of the detail at the time) is the principal reason she left her employment. It is fundamental to the Respondent’s case that they took a reasonable approach to the Claimant’s grievance and addressed it fairly, such that there was no fundamental breach of contract. The Claimant was not provided with the interview notes at the time (though she requested them on appeal), only the outcome and the fact that her suggested witnesses had not been interviewed, and that the Respondent had focused the investigation on those at the meeting on 7 November 2018. See my conclusions below. I consider it would be artificial and a gross unfairness to limit the Claimant to an over narrowing of the issues since those identified in the Case Management Order, when she is a litigant in person and in my view clearly struggled to understand what was required when the issues were being discussed in the hearing (despite our efforts to clarify). In my view the Respondent’s approach to the grievance was very fully aired with the witnesses and has been covered by the Respondent’s submissions. I did invite the Respondent’s representative to address the material in the Claimant’s submissions so that I could consider whether to take account of the Claimant’s expanded issues. So whilst I acknowledge that it is frustrating for the Respondent the balance of injustice would fall against the Claimant if I insisted on the narrowing of her case to the list of issues finalized during the hearing, when the conduct she complains of was covered by the list of issues from the Preliminary Hearing, and all relates to the way the Respondent handled her grievance.

## **Hearing**

18. The Tribunal heard evidence from the Claimant on her own behalf. She also called Ms Ann Clack (formerly Ann Cagigao) as a witness on her behalf .
19. The Tribunal heard evidence on the Respondents' behalf from Mr Rob Greening (Director of Personal Development), Ms Gill Estall (Head of HR), Ms Maria Vetrone (Deputy Principal), and Ms Donna Patterson, (HR Director).
20. There was a 367 page bundle and a 45 page supplementary bundle. The Respondent also disclosed handwritten notes of the grievance investigation, documentation relating to HR records and an EQA report completed after the Claimant left her employment.
21. The parties provided written submissions and made oral submissions.
22. Based on the evidence heard and the documents before me I found the following facts. Note that where the page number referred to is followed by lower case "e" that is the electronic page number not the hard copy page number of the bundle.

## **Facts**

23. The Claimant started working for the Respondent on 7 April 2015 as an Assessor and in March 2018 was promoted to be Delivery Coordinator. She worked in the Hairdressing department in Apprenticeships. The Respondent is a general further education college which offers full and part-time vocational courses and apprenticeships to learners and employers.
24. When she was promoted she was told she started a new probation period. In evidence the Respondent said otherwise but it is supported by the documentation at the time. Nevertheless this was not part of the issues set out by the Claimant as being a reason she resigned.
25. The Respondent has a Bullying and Harassment Policy and Guidelines (p342e). It acknowledges there are many definitions of bullying and harassment. It sets out its definitions of bullying and harassment but also makes clear that these are not exclusive or exhaustive and other similar incidents of a similar nature may also be unacceptable. It defines harassment as unwanted, unwelcome, and uninvited behaviour or conduct, which creates an intimidating, hostile, humiliating, degrading or offensive environment, or which violates the dignity of any individual or group of individuals. It makes clear that harassment for any reason is prohibited at the college. It defines bullying as the persistent demeaning of an individual through malicious or insulting behaviour. It may be characterized as offensive, intimidating, malicious or insulting behaviour or an abuse or misuse of power through means intended to humiliate, denigrate, or injure the recipient. It says it is to be distinguished from the reasonable actions of a line manager in their day to day management of their staff.

26. On 12 June 2018 the Claimant raised with her then Line Manager that she needed to discuss an email from the Head of Apprenticeships and wanted to know how to raise a formal complaint (p 84).
27. Ms Estell initially handled the complaint. She asked the Claimant to put her concerns in writing, which she did (pp 86-88). She provided an email chain between herself and the Head of Apprenticeships.
28. She had sent him a matter of fact email responding to an email he had sent to her students. She said that she had asked him to confirm exam times for a different group of students and that he had not bcc'd the students thereby revealing their personal email addresses to each other. She said that a parent had asked about this and why her email address had been shared. Whilst it is right it could have contained more platitudes and was matter of fact in tone, this email simply stated the errors that had been made.
29. His response to her went further and did cross the line as to what is an acceptable way to speak to a colleague

**"I did my best with what I got. You sent me in that classroom with no brief on what it was for and just told the group to talk at me. Which was un called for and unprofessional. If you have an issue with functional skills like that. You as an experienced assessor and coordinator should own that issue and get it sorted. Asking me to jump in like that was not the way to deal with it....In future give me more context before telling me to be somewhere and deal with these issues yourself, it wasn't an issue that me at management level needed to step into at that point.**

**If your apprentices or parent have an issue with my email I suggest you apologise on mine and your behalf and if they need or want to complain send me [their details]."**

This reads as unnecessarily defensive, confrontational and critical, and does not really address why for example he did not bcc student addresses. It is not justified by the Claimant's own email or the account he gave as to what had happened, especially as he was the manager in the situation and could have responded to the Claimant's initial request accordingly, including presumably asking for any further information he needed.

27. The Claimant in her informal grievance said this was a very rude, abrupt, unprofessional response which made her very upset and anxious. This was just one example of what she said was a lack of support and being spoken to in a derogatory tone, being made to feel inadequate, incompetent, and to blame when things go wrong. Similar issues had been raised about the Apprenticeships Manager by the Claimant some 7 months before, by email to her Line Manager on 10 November 2017. This was attached with the grievance (pp88-89).
28. Ms Estell passed the Claimant's grievance to the Director of Creative and Care Industries and the Director of Strategic Partnership to be considered informally. Her evidence which I accept was that it was implicit in their communication that the Claimant's complaint would need to be shown to them for them to address it.

29. The informal grievance meeting took place on 16 July 2018. I accept that the Claimant did not consider it went well. I accept that she walked out of the meeting upset, as she informed her Line Manager in her WhatsApp messages the same day (p99). I accept that this is consistent with the Director of Creative and Care Industries' message to the Claimant at 10.45 on 16 July 2018 with the subject header: Are you OK and the message: **"Tried to find you but no luck – are you OK? Please come up and have a chat with me."**
30. The outcome of the grievance was that the Claimant was transferred to the Head of Apprenticeship's line management, as communicated in the email the next day from Director of Strategic Partnership, dated 17 July 2018. No explanation was provided in that communication as to why this was considered a suitable solution to the issues raised by the Claimant. Neither Ms Patterson nor Ms Estell enquired further.
31. The Claimant says, and I accept, that this was not discussed with her. She did not take any further issue with it until she lodged a formal grievance on 12 November 2018 about both the Head of Apprenticeships and the Director of Strategic Partnership (see below).
32. On 7 November 2018 there was a meeting attended by the Claimant, the Head of Apprenticeships and a number of other managers, led by the Director of Strategic Partnership. It was about Hairdressing Apprenticeships and their need to go into "intensive care" due to low achievement for 2017/18. It was intended to be an initial meeting to establish an action plan but the meeting did not go well and it became one subject of the Claimant's grievance.
33. On 12 November 2018 the Claimant said she wished to make a formal grievance due to continued bullying and harassment by Head of Apprenticeships and Director of Strategic Partnership. She said that following her previous grievance there had been no change in how they spoke to her (p148). She said that following the meeting on 7 November 2018 she was left in tears after the way in which she was treated, spoken to and spoken about in front of other staff members. She said the Director of Strategic Partnership had flung a proforma at her in the meeting. She said she felt belittled and made to feel inadequate in front of other staff members which was highly uncomfortable and embarrassing. She said he had also said "she is not to take on any more students" about the Claimant.
34. The Claimant had checked about an enrolment that was in progress with the Head of Apprenticeships and was advised she could not enrol the student so she informed the employer who then complained. As a result of the complaint the decision was reversed which the Claimant was informed of by the employer. The Claimant said in her grievance that no matter what she did it was manipulated and aimed back at her.
35. She gave another example of requesting some flexibility in the attendance days of a particular student from the Director of Strategic Partnership. She said he told her she needed to be flexible and accommodating to employers. She said he had then asked her who had authorized this in the meeting on 7 November



2018 and when she said it was him he had said she was “trying to pull a fast one”.

36. She also explained how she had resolved an issue regarding a student on the Monday but then the Director of Strategic Partnership raised the incident as a complaint against the Claimant in front of other staff at the meeting on 7 November 2018.
37. She raised the fact that following her previous grievance she was moved under the line management of the Head of Apprenticeships. She said she continued to receive no support or guidance from the Head of Apprenticeships.
38. She also explained how she had been blamed for the fact students had not achieved the relevant functional skills to achieve full framework accreditation. She believed it was the admin team’s responsibility to pick this up on audit and felt that there was a lack of clarity in respect of who was responsible for what. She believed it was this that had had a negative impact on her achievement rates.
39. She said that the ongoing treatment and behaviour was intolerable and she felt she was being discriminated against on grounds of age and gender.
40. She then had a meeting with Gill Estall to discuss her grievance on 13 November 2018. The Claimant was absent from 13 November 2018 and supplied a fit note saying she was suffering from stress at work (p121).
41. On 14 November 2018 Ms Estall asked the Claimant if she was happy to continue with the investigation meeting or preferred to wait until she was better. The Claimant said she would participate in the grievance investigation upon her return to work (p124b). She was informed by another email that she had been assigned someone else as her temporary line manager (124c). She was told that Head of Apprenticeships and the Director of Strategic Partnership had been told about her grievance and that Rob Greening, who would be dealing with it, would speak to them after he spoke to the Claimant.
42. On 14 November 2018 Ms Estall replied again acknowledging that the Claimant planned to wait until she was better, saying “**of course that is fine. I only suggested that you may still wish to meet ....despite being signed off sick as it may help your recovery if we try and resolve these issues for you speedily**”.
43. There was also communication with HR on 19 November 2018 about meeting with her Line Manager and with Mr Greening about the investigation.
44. The Claimant was signed off for a further 2 weeks on 20 November 2018. The Respondent continued to offer the Claimant the opportunity to meet with Mr Greening whilst she was off in order to assist her return. A meeting off site was offered if that would assist (21 November 2018). A further email was also sent around the same time (p133). On 23 November 2018 the Respondent invited the

Claimant to a meeting on 28 November 2018, as well as to Occupational Health on 3 December 2018 (p134).

45. The Claimant was advised by her union only to agree to the OH meeting at this stage (p133). On 26<sup>th</sup> November 2018 the Claimant confirmed attendance at OH but said she did not feel well enough to attend the grievance meeting at this stage. The Claimant was then advised that Mr Greening would commence his investigation from what he had been provided (p137) and he did so. The approach Mr Greening took to the grievance is set out in his investigation report at pp 172 a-d. Due to the Claimant's sickness absence he met with the Head of Apprenticeships and the Director of Strategic Partnership first. He then met with the Director of Creative & Care Industries, the Senior Apprenticeships Administrator and the Apprenticeships Quality and Compliance Manager in early December 2018.
46. On 27 November 2018 the Claimant wrote to her union representative saying that students had told her that the Head of Apprenticeships had said to them that "[the Claimant] isn't here any more". She also made reference to her new Line Manager contacting her employers and making comments about the Claimant insinuating she was to blame for problems arising. She said that the thought of going into the College and bumping into the Head of Apprenticeships or the Director of Strategic Partnership filled her with fear and anxiety. She said the continued correspondence from the College had not allowed her to rest or recover at all and in fact had increased her anxiety and stress.
47. There was also some further interaction with the Claimant dated 27 November 2018 about contacting employers and learners and who was now dealing with this (p138).
48. In the event the Claimant did not feel well enough to attend occupational health and the appointment was conducted by phone. The OH report was received on 3 December 2018 and recommended a phased return with support. He suggested she start by visiting workplaces until after Christmas. He said it was important for the grievance to be heard to allow the Claimant to deliver her complaint in a meeting where she was supported by a union representative. He said she was fit for such a meeting.
49. On 5 December 2018 Ms Estall emailed the Claimant about the meeting and about a key to a cupboard that required access (p147). On 14 December 2018 the Claimant said she had been back to her own GP and had been signed off until 14 January 2019.
50. In the event she returned on 3 January 2019. On 3 January 2019 Ms Estall wrote to the Claimant welcoming her back and chasing up a date for the investigation meeting, asking the Claimant to confirm that she was still proceeding with this.
51. On 3 January 2019 the Claimant said she was touching base with her Acting Line Manager and that she had emailed her Trade Union representative to confirm dates. This elicited the email on p154 from Ms Estall. She said **"As I am sure you will appreciate we have been waiting for almost two months now to**

**meet with you and discuss your grievance. Other individuals have already been spoken to and it is unfair to continue delaying the process for all parties concerned**". She gave an ultimatum of the next Wednesday for the Claimant to provide a date, otherwise the College would consider she did not wish to proceed (p154). This was only her second day back into work.

52. The Claimant replied the next day and in the event they were able to set up a meeting for the grievance on 23 January 2021.
53. The Claimant supplied a character reference from a friend which mentioned how her mental health had deteriorated over the last year because of how she has been made to feel punished or to blame for seeking advice. She said the two names that always came up were that of the Head of Apprenticeships and the Director of Strategic Partnership. She said there had been a deterioration since the Claimant's meeting about her concerns in the summer.
54. At the grievance meeting (pp 164-167) the Claimant discussed the Head of Apprenticeships treatment of her over the last 1-2 years. She said he undermined her, would say he supported her if she sought advice then blamed the Claimant if it went wrong. She said she had raised his treatment of her to the Director of Creative and Care Industries and to her former Line Manager on numerous occasions and referred back to her informal grievance. She said he sighed when she talked to him and pulled a face. She provided emails for Mr Greening to read.
55. With respect to the Director of Strategic Partnership she said he talked over her in general and sometimes in meetings. She said he referred to her as "she" in the meeting on 7 November 2018. She said he would say something was her responsibility but then not her authority. She said she felt intimidated. She did not have emails from him as she said he did not respond to her emails. She said he flung proformas across at her in the meeting on 7 November 2018 and had also said that she was "trying to pull a fast one". She said that at tracking and monitoring meetings in 2018 he was rude to her.
56. She said she had been upset at the informal grievance meeting. She said she had then received an email to say she was reporting to the Head of Apprenticeships. She did agree he had apologized after her informal grievance and that she did not raise with HR at the time that she was unhappy with the solution.
57. The Claimant said that Ann Clack (then Cagigao) had raised concerns about the Director of Strategic Partnership with HR. She mentioned another colleague who she said was leaving because she had had enough of the Director of Strategic Partnership. She said he was rude to a third colleague in the tracking meetings. She said that the Senior Apprenticeships Administrator had said if the Head of Apprenticeships did not leave he would.
58. She was clear she felt the issue was gender and age and that the Director of Strategic Partnership did not take her seriously.

59. She said she felt pushed out of the job because of being on probation and the recruitment of students being put down to her performance. She raised an issue about not getting proper feedback from the Head of Apprenticeships.
60. She said that there were no issues so far reporting to her new acting Line Manager (Apprenticeships Quality and Compliance Manager) and wanted this to continue. She did not repeat the concerns raised with her union representative about her new acting Line Manager making negative comments about her to students. She said she wanted not to be subject to unfair treatment and to be treated equally and respectfully by the Director of Strategic Partnership and the Head of Apprenticeships. She wanted to do her job with support and guidance. She also wanted an apology.
61. She was then asked questions about the meeting on 7 November 2018. She said it was not relaxed. She said she felt really uncomfortable as it was the first time she had met the Apprenticeships Quality and Compliance Manager. She repeated the example that the Director of Strategic Partnership had authorized a decision but then in this meeting said the Claimant “had pulled a fast one” by referring to this.
62. On 24 January 2019 the Claimant received notification that the Director of Strategic Partnership was no longer to be overseeing the Apprenticeship department, which had been moved under the Deputy Principal (168). It said there would nevertheless still be a link between the department and the Director of Strategic Partnership.
63. On 31 January 2019 the Claimant was updated that the investigation was continuing and a clarifying question was asked of her (p168a). She responded to that on 5 February 2019 to explain her account of being upset after the informal grievance (p170).
64. After meeting with the Claimant Mr Greening met again with the Head of Apprenticeships, the Director of Strategic Partnership and the Director of Creative & Care Industries, He also interviewed the Work Experience Manager.
65. He did not interview those others mentioned by the Claimant for the reasons set out at 172d.
66. He found having reviewed the emails between the Claimant and the Head of Apprenticeships that they did not indicate that bullying or harassment had occurred. He considered there had been incidents of miscommunication and misunderstanding. He summarized their exchanges as functional and cordial but no more.
67. He considered there was one example of an email exchange between the Claimant and the Director of Strategic Partnership, dated 13 June 2018 (84a-b), from which he concluded there was a blame culture within the department. He considered that the Claimant’s communication was not appropriate to the Director of

Strategic Partnership and another member of staff, who had not been interviewed. Reading that email exchange the Claimant's initial email is very brief but in the context that she was out assessing and had informed the Head of Apprenticeships of this. The Director of Strategic Partnership's email in reply was chastising and copied into the member of staff concerned, which was inappropriate given the content. It also would be better to understand from the Claimant her point of view before writing an email like that. The Claimant replied explaining her point of view, namely that she had already been booked out to attend employers and assessments and that she had made the Head of Apprenticeships aware. He had not come back to her about the diary clash. It is not clear why that email exchange was copied into the other member of staff (inappropriately in my view) and why only the Claimant's communication was considered inappropriate.

68. Mr Greening concluded that the meeting on 7 November 2018 was poorly planned, introduced and managed. Improvement in the apprenticeship provision was needed and was not the Claimant's sole responsibility. The four other attendees agreed that most of the discussion was between the Claimant and the Director of Strategic Partnership which Mr Greening described as robust and that at times both were battling each other.
69. It was confirmed that paperwork had been thrown at the Claimant by the Director of Strategic Partnership, but no one had thought it an aggressive or dismissive gesture. The Director of Strategic Partnership himself accepted they were 2m apart and he had "skidded [it] along to her at the far end" in order to pass it to her. The Head of Apprenticeships said "...I didn't interpret it as a dismissive gesture. Others could/may well have."(p172K).
70. He found the three other witnesses had not witnessed bullying or harassment towards the Claimant but they did support the conclusion there was a culture of blame which included the Claimant.
71. The notes from the interviews with the attendees at the meeting were in the bundle, but the Claimant did not have them at the time. The hand written notes were also provided at the hearing.
72. In the hand written notes of his interview the Senior Apprenticeships Administrator said that there was "not great achievement [in hair]". He considered it a management issue and that both the Head of Apprenticeships and the Claimant had responsibility to know what each learner needed.
73. The Head of Apprenticeships said achievement had dropped drastically and the Claimant was the sole hair assessor(172h).
74. There was some agreement that the Claimant had not been well briefed in advance or at the start as to what the meeting was about. The Head of Apprenticeships acknowledged it was daunting for the Claimant and the Claimant may have felt that it was her against the rest of the attendees, who were management or more "senior", as she was the sole assessor. He said it did get heated, and that the Claimant was heated in response to the Director of Strategic Partnership

(172j). He said that maybe she did not understand it was a supportive meeting. He said that perhaps they could have better set the scene that it was intended to be supportive.

75. The Director of Creative and Care Industries said that it was not a great meeting with a lot of shifting of blame between the Claimant and the Director of Strategic Partnership. They were described as direct and battling each other. She said that the others, including Head of Apprenticeships, had little involvement (172k). She said there had been too many people at the meeting (172l). She said there were many issues, some of which the Claimant should take responsibility for, others the management should take responsibility for (172l). She said that for the most part the Claimant was taking a combative style defending her corner but she was upset towards the end (172o). She said it was everyone's responsibility that students complete all elements of the framework and the issue was that they were not a team (172s).
76. The Apprenticeships Quality and Compliance Manager said the Claimant was defensive and the two (the Claimant and the Director of Strategic Partnership) were pushing the blame from one to another. She said that the Director of Strategic Partnership was confrontational and that at points the meeting was going down a capability route ( the implication is inappropriately). She said the Director of Strategic Partnership was not deliberate as it is "his way" to be "blunt/ forth-right", but also the Claimant was not accepting her responsibility (172j-l).
77. The Senior Apprenticeships Administrator said the Claimant was at one end, the others at the other end. He said the Director of Strategic Partnership never addressed any issues to the Head of Apprenticeships, only to the Claimant. He said the Claimant started out "alright", understanding what they were talking about, but that there are gaps in her knowledge. He said no one was aggressive but the Director of Strategic Partnership was straight talking and targeted the Claimant, whereas sometimes it should also be directed at management (i.e. The Head of Apprenticeships) (172l).
78. The Apprenticeships Quality and Compliance Manager confirmed the Claimant had ended the meeting in tears. She had not met her before but said she came across as confrontational and controlling (172i).
79. The Senior Apprenticeships Administrator said the meeting was poorly managed. He said "they needed to have gathered all facts before accusing people of making mistakes". He said the Director of Strategic Partnership had incorrect data, and he had said the students were not managed well, really targeted at the Claimant. He also confirmed that at the end she was really upset. He said neither manager understood the data. He said the Claimant was a good assessor but difficult to work with, and he thought could be difficult to manage. He said she can be very vocal when something is wrong, which he referred to as passion. He said the Head of Apprenticeships gets defensive very quickly. He said he thought there was a bad relationship between the two, with fault on both sides. He said she needed a mentor which was not the Head of Apprenticeships' skills set (172m). He also said the Director of Strategic Partnership could be aggressive at times and had been so to other assessors. He also said that data was

not explained or shown to the Claimant (172n). He said the Head of Apprenticeships was really quiet (172k), not supportive or engaged, which (in his view) was his default setting when the Director of Strategic Partnership was around. He also said that when challenged on certain things he was not sure about he showed borderline aggression (hand written notes of his interview).

80. The Apprenticeships Quality and Complaints Manager (who had not met the Claimant before) said she was defensive throughout and that she started crying so the meeting stopped (which is inconsistent with others who said others had already left when she became upset). She said the Claimant started crying when she realised she was not getting her own way. She acknowledged that the managers should take responsibility(172o).
81. The Senior Apprenticeships Administrator said the Claimant was “flipping between defensive, argumentative, claiming [things were] not her job, not understanding”. He said that right at the end after the others left she looked defeated and was claiming everything was her fault (172o).
82. There was some support for the Director of Strategic Partnerships having said that “the Claimant was pulling a fast one”. The Head of Apprenticeships said this “Maybe true, something along those lines”. The Apprenticeships Quality and Compliance Manager said “he did say that”. The Senior Apprenticeships Administrator said “at this point, [the Claimant] became withdrawn in a defeated way”.(172p).
83. The Director of Strategic Partnership described himself as livid with the Head of Apprenticeships about the issue of monitoring functional skills which he considered was both his and the Claimant’s fault (172r). He also said that he could not remember talking to the Claimant that year, yet he had dealt with her informal grievance (which he said he could not really remember)(172v).
84. In fact everyone had a different view of whose responsibility functional skills monitoring was and the Senior Apprenticeships Administrator supported the Claimant’s view saying that “assessors monitor main qualification only. Administration team worry about the rest.” In his questions and the answers noted he said assessor reviews do not talk about functional skills and that it was a management decision.
85. The hand written notes also record the Senior Apprenticeships Administrator saying that with respect to the decision that there would be no new starts that the Director of Strategic Partnership had made this up there and then in the meeting. He said this had shocked the Claimant. He believed it was a sensible decision but it was not communicated as best it could be by the Director of Strategic Partnership. He also confirmed that he had said that “either the Head of Apprenticeships goes or he will”. He said that he did not like being managed by someone that he has more knowledge than, and that he felt he would become a scapegoat and that one day the Head of Apprenticeships would blame him, “because he does”. He gave one or more examples.

86. It is right that no one considered they had witnessed bullying or harassment. In terms of whether they had witnessed discrimination based on age/gender the Apprenticeships Quality and Compliance Manager said: "No. However, I do wonder about her industry experience, this could be [the Claimant's] problem. [She] qualified then joined us straight away and lacks any commercial salon experience." This comment is factually untrue. The Claimant had 7 years' salon experience. The Senior Apprenticeships Administrator said "Not sexism, [the Director of Strategic Partnership] possibly spoke to her a bit like a young naïve girl". He said "[the Claimant] can be sensitive and because [the Director of Strategic Partnership] had to step in, she might have got upset. Really some of the issues should have been addressed by the Head of Apprenticeships as well...[she does] need monitoring but the same could be said of all assessors. Meeting could have dealt with the issues differently" (172t).
87. Mr Greening did interview the Work Experience Manager. She said she had seen the Claimant upset twice but could not say why. She said she did get Ann Clack to support the Claimant on one of them (hand written note of interview).
88. He also interviewed the Director of Creative & Care industries about the informal grievance and the meeting on 7 November 2018. She was not asked about the Claimant leaving upset and coming to her room afterwards, nor about whether the Claimant had been asked about having the Head of Apprenticeships as her Line Manager. She wasn't asked about whether the Claimant had spoken to her on other occasions.
89. The grievance outcome letter (pp174-176) was sent to the Claimant on 7 February 2019. The conclusion was as follows:

**"I have not found evidence to uphold your allegation that you are being continually bullied and harassed by [the Head of Apprenticeships and Director of Strategic Partnership]....I have concluded there exists a culture of shifting blame onto others. ..My overall conclusion is that there is an unhealthy working atmosphere in the department, which in my recommendations I seek to address.**

**You alleged that you are being discriminated against on the grounds of age and gender. I have not found evidence...to uphold your allegation. Those present in the meeting on 7 November 2018 have all said that the discussion was free from discrimination. None of those present can recall [the Director of Strategic Partnership] referring to you as she. Most people did not see, as you allege, [the Director of Strategic Partnership] throwing the form at you. Those that did see this state that as you were at the end of the table it was to pass the form to you. They did not construe this as an aggressive or dismissive gesture. However, as the recipient, I am aware that you interpreted this differently and this will form part of my recommendations.**

**You alleged that you are being forced out of your role, because of inadequate performance for job roles that are not in your job description, or your responsibilities.**



**I have not found any evidence to uphold your allegation in relation to this. ..The Hair Apprenticeship programme has fallen below the Minimal Levels of Performance...mainly due to low achievement. This is a department wide issue, spanning across the whole provision and includes other apprenticeship programmes and not solely your area of responsibility. Therefore I cannot find evidence that you are being targeted for this. As I have previously stated, there is a culture of blame within the department which does need to stop.”**

He made the following recommendations:

“

- **You remain under line management of [Apprenticeships Quality and Compliance manager] who will provide you with mentoring support to bridge some aspects of knowledge with regards to policy and procedure, which you have not yet been given to date.**
- **[she] will clarify the various components of your job description with you.**
- **[she] will prepare and support you in the tracking and monitoring meetings, which will include [Head of Apprenticeships and Director of Strategic Partnership] as part of your assigned duties.**
- **[she] will make clear to you, your targets and milestones that you are expected to achieve....and work with you to monitor how you are progressing towards them.**
- **You, [Director of Strategic Partnership] and [Head of Apprenticeships] all agree to undertake mediation arranged and facilitated by HR so that you can all move forward and work in a constructive environment.**
- **...meetings are organized ...with a clearly communicated agenda. Information required before the meeting is requested and responded to by the required date and that the meeting is conducted in a professional manner, showing regard and consideration for all involved.”**

He said he accepted how the Claimant felt and perceived that she had been treated but that he must also take account of how other people interpreted the meeting on 7 November and the informal grievance and the emails.

90. The Claimant then appealed this outcome on 12 February 2019. She quoted the ACAS definition of workplace bullying and harassment as “any unwanted behaviour that makes someone feel intimidated, degraded, humiliated or offended” and “it is not necessarily always obvious or apparent to others”. She said she had felt all of the above at the meeting on 7 November 2018. She said

what to others might have come across as robust was to her unfair treatment, deliberate undermining, criticism and victimization.

91. She said both of those who heard her informal grievance saw her upset. She referred back to the email from the Directive of Creative and Care Industries and said that she had gone to her office where she was still overcome with emotion. She said she had given Mr Greening a list of names during the meeting on 23 January 2019 and Gill Estall names back in 13 November 2018 none of whom have been spoken to. She said she felt this was biased and the investigation had not been fair or thorough. She suggested the Respondent had been selective of who was interviewed to the benefit of the Head of Apprenticeships and the Director of Strategic Partnership.
92. She referred back to the impact on her saying “this ongoing mistreatment has caused me to get signed off work with work related stress, anxiety, and depression”. She had been referred for counselling and prescribed diazepam (pp178-179).
93. The Claimant was invited to attend a meeting on 5 March 2019 with Maria Vetrone, Deputy Principal.
94. A colleague who had recently left provided a statement in support of the Claimant. She herself also complained of the management style of the two managers concerned. She said they would threaten capability rather than work with a staff member to find a solution. She said she had witnessed the Claimant a number of times in a distressed state after meeting with one or other manager concerned (pp284-285). She also said she had witnessed other colleagues be mistreated by the Director of Strategic Partnership, saying that the Head of Apprenticeships will not intervene.
95. Ann Clack also provided a statement. She said that on at least 3 occasions she witnessed the Claimant upset following review meetings with the managers concerned or the Director of Creative and Care Industries (possibly a reference to the informal grievance). She said that the Claimant would explain what had happened, why she was so upset, how she was spoken to and made to feel. She herself also felt that both managers were patronizing and derogatory towards her both verbally and in writing. She said that there was blame culture instead of support. She said she had filed complaints with HR more than once. She said it played a big part in her own departure from the Respondent.
96. The grievance appeal meeting went ahead on 5 March 2019. The Claimant’s union representative said the grievance had not been taken seriously. A list of staff who the Claimant had said she wanted interviewed was given at paragraph 4, page 288. Her representative also raised an issue that the interviews that were conducted had not been shared with the Claimant. Ms Vetrone said it was not appropriate to interview witnesses on the basis they had experienced similar treatment. The Claimant said she had been expected to attend tracking meetings with the two managers and that on 19 February the Director of Strategic

Partnership had passed her and given her a look that made her feel uncomfortable. She named two witnesses to that. She said she was not willing to work with the two managers and not willing to have mediation.

97. There is reference to there being two versions of the grievance meeting minutes as the Claimant provided amendments which were not agreed. Only one has been provided at this hearing.
98. The appeal outcome was sent on 12 March 2019 (pp215-216). Ms Vetrone found that there were people who were impartial and did not agree with the Claimant's view or perception of events. She decided there was no malicious intent by the two managers and that there would have been no impact on the original decision and outcome from interviewing more people and sharing the interview notes with the Claimant. She nevertheless decided to partially uphold the grievance. She said she had taken account of the Claimant's perception and whether what had taken place could be reasonably considered to have caused the Claimant offence. She felt that the two managers had sufficiently contributed for appropriate action to be taken by the College. They both received verbal warnings (although this information was not shared with the Claimant).
99. She acknowledged the Claimant still felt she was in a difficult position and that although her Line Manager had changed she was still within the same department as the Head of Apprenticeships, although he was no longer line managed by the Director of Strategic Partnership. She recommended that the Claimant speak to her current Line Manager and a member of HR to discuss the key operational difficulties so that these could be managed and the Claimant supported.
100. There was an offer that she and HR could meet with the Claimant again to go through the outcome in more detail if this would assist. That offer was reiterated in the cover email.
101. On 14 March at 9.23am the Claimant's union wrote with respect to the appeal outcome. He said he was disappointed to see that it was felt that interviewing other people would not have changed the outcome. He said these were the staff that would have verified the Claimant's version of events and were witnesses to what really happened. He said the statement of a colleague provided by the Claimant also appeared to have been ignored. He said proper investigations had not been carried out.
102. Later that day at 4.23pm the Claimant wrote to Donna Patterson in HR to resign from her post with immediate effect. The reasons given were:

**"This is due to the ongoing mistreatment I have been subjected to by [the Director of Strategic Partnership and the Head of Apprenticeships].**

**The college have not taken my grievance seriously, and after three separate occasions after giving names of other staff members that could support my claims of bullying and harassment on the grounds of discrimination against my gender, the college have continued to fail to interview the**

**relevant staff to support my claims. I feel extremely let down by the college on so many levels.**

**Your negligence to these concerns have caused substantial impact on my health and well-being, causing me to be signed off sick in November 2018, with work related stress, anxiety and depression; ... which I am still struggling with now.**

**...I cannot and will not be associated with an organization that does not take complaints of bullying, harassment or discrimination seriously, and that deem such behaviour as acceptable.”**

103. Ms Patterson responded to both the Claimant's trade union representative and the Claimant, but after the Claimant's resignation. She said the appeal outcome letter explains clearly and in detail why Ms Vetrone partially overturned the original decision and why she could not tell the Claimant more other than that actions were being taken. She said it was regretful that the Claimant had taken this approach without taking up the opportunity to go through the outcome in more detail. She said that was still open to the Claimant if she wished.

104. There was then further correspondence between Ms Patterson and the Claimant after the resignation, in which the Claimant made clear she believed she had been constructively dismissed and Ms Patterson contested this.

105. The Claimant obtained temporary employment via her contact at Queen Hair Academy (a subcontractor of the Respondent) from 18 March 2019.

106. On 27 March 2019 there was an EQA visit there involving both the Respondent and Queen Hair Academy (p308e). The person writing the report stated in the report that “during discussions with both the Centre's Internal IQA and the [Director of Strategic Partnership] he had been advised that [the Claimant] had left employment due to areas of concern relating to previous assessment decisions.” He records that he advised that the Centre's IQA sampled all assessment decisions carried out by the Claimant. He went on to say that he advised that staff changes must be recorded and the relevant online form completed to submit to advise on the changes of staffing matrix. On the following page it is recorded that “during the EQA visit concerns with a learners portfolio entries of assessment made by [the Claimant] were identified and discussed with the Centre IQA and [the Director of Strategic Partnership] who were present...at this point the [Director of Strategic Partnership] made the EQA aware that the centre had placed supportive measure but had recently left employment.” There was a further entry on p311e about a student whose paper had failed but had been passed by the Claimant as assessor and then the IQA had not picked this up. It is recorded “the centre appoint lead for this EQA visit informed the EQA that the named assessor had recently been requested to leave her post of employment due to issues relating to her assessment practices which had been identified by the assessor”. It is not in dispute that the information recorded about the Claimant was incorrect.

107. The College realised one inaccuracy and took steps to have it amended.

108. The information came to the Claimant's attention through the Queen Hair Academy Managing Director. Her position had been brought to an end on 1 May 2019 (p39 supp bundle). The Queen Hair Academy Managing Director is a friend of the Claimant's and messaged her on 1 May 2019 to say: "Not been the best day obviously. I know it's crap with the late wage due to not getting things done in time. That will be sorted. I have to make a hard decision. And it's probably best you don't continue with us as clearly today wasn't working and I feel it has a conflict of interest with my contract with [the Respondent], as I'm receiving issues from that..."
109. The Claimant then contacted the Respondent to make a follow up grievance about inaccurate information that the Director of Strategic Partnership had provided to the EQA with regards to her performance. She said he had been dishonest both in respect to her performance as an assessor and the reasons behind her departure from the College. She suggested this was a further example of the blame culture identified in her grievance. She said this had led to her loss of her new employment.
110. On 14 May 2019 the College wrote to City & Guilds to request the incorrect information be removed. The report was then changed by City & Guilds on 20 May 2019 (p328e). Ms Patterson wrote to the Claimant on 17 May 2019 stating that an amendment had been requested. She said that she was sorry this had caused the Claimant distress and that it was not anyone's intention. She hoped that it would be alleviated through their ensuring the report provided an accurate representation of the visit (p329).
111. On 5 June the Claimant took further issue with this saying the Director of Strategic Partnership had deliberately persecuted her character. She believed he knew this would cause her upset distress and potential damage to her future career. She suggested staff had known about the errors and no action had been taken until the Claimant made contact.
112. Ms Patterson replied to this explaining that the College had already taken some action prior to the Claimant's contact. She said the report had restricted access and was not in the public domain. She asked how the Claimant had come to be aware of the report and also said that various recommendations and suggestions for improvement had been put forward and were being actioned (331).
113. The Respondent has for these proceedings obtained a letter from City & Guilds confirming the amendment of section 2, para 6, section 3.2 and section 3.3. It also confirms that the inclusion of such wording in a Centre Activity report was not in line with City & Guilds standard Quality Assurance Practices.
114. The Claimant then began working part -time for Dunelm from 11 June 2019 until January 2020 and from September 2019 she also began working on a self employed basis with Cheynes Training. By the date of the hearing the Claimant was Head of Centre with Cheynes Training. She only claimed loss of earnings up to 6 September 2019.

**Relevant law**

**Constructive dismissal**

115. Section 95 of the Employment Rights Act 1996 states:

**(1) For the purposes of this Part an employee is dismissed by his employer if**

...–

...

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

116. The leading authority is *Western Excavating (ECC) Ltd v Sharp* 1978 ICR 221. For section 95 (c) to apply the following must be shown:

116.1 a repudiatory breach of contract by the employer (i.e. a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract and which entitles the employee to leave without notice);

116.2 the breach caused the resignation; and

116.3 the employee did not delay so long before resigning that she is regarded as having affirmed the contract and lost the right to treat herself as discharged.

117. There was an implied term in the Claimant's contract of employment as described in *Malik v Bank of Credit & Commerce International* [1997] IRLR 462 that the employer shall not, without reasonable and proper cause, conduct itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.

118. A breach of the implied term involves conduct which seriously damages or destroys the trust and confidence between the employer and employee. Both sides are expected to absorb lesser blows (*Croft v Consignia Plc* [2002] UKEAT 1160\_00\_3009).

119. A series of actions culminating in a "last straw" can cumulatively amount to a breach of the implied trust and confidence, but the "last straw" must contribute something to the breach, it cannot be entirely innocuous (*Omilaju v Waltham Forest LBC* 2005 ICR 35).

## Conclusions

*Did the Respondent without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence with the Claimant?*

120. Turning to the conduct relied on by the Claimant as set out at paragraph 7 above.

*(7.1) the grievance process at first instance and appeal was not conducted in a fair manner, in particular the list of grievances dated 22 June 2018 (pp86-87) were passed on to the Director of Strategic Partnership without the Claimant's knowledge or consent.*

121. The Claimant's express consent was not obtained to pass her grievances to the Director of Strategic Partnership but she was asked to put her complaints in writing and then emailed about meeting up with him and the Director of Creative and Care Industries to discuss her grievance. I agree that it is implicit in that that they would both be included in what her grievances involved. The Claimant had not asked that the document be kept confidential between herself and Ms Estall. This was not an issue that the Claimant raised at the time, or in her formal grievance and appeal. Indeed it was added late in the proceedings.

*(7.6) there was a failure to provide the Claimant with support, specifically:*

*The Respondent did not check with the Claimant after the meeting regarding her informal grievance that she was okay with the outcome that she was moved directly under the line management of the subject of her grievance.*

122. I accept the Claimant's evidence that she was not consulted about the move to being managed by the Head of Apprenticeships either in the meeting or afterwards. I accept it is a somewhat unusual outcome to a grievance about feeling bullied and harassed, especially given the tone of the Head of Apprenticeships email (pp90-94), and that it did warrant a discussion with her first. I also accept that she did not feel that the meeting went well and had left it early, very upset.

123. However, I note the Respondent's point that this complaint was not framed to be about that decision, but about HR's failure to follow it up with the Claimant. I accept it is good practice to proactively follow up with someone who has brought a grievance of this nature to ensure matters have resolved after the outcome, but also that HR here believed the Claimant had been consulted and the meeting had gone well. The Claimant did not take issue until her formal grievance.

124. In any event she did raise it in her formal grievance and this matter had been addressed by the time the Claimant resigned. By that time she was under the line management of the Apprenticeships Quality and Complaints Manager, and had indicated she was happy with this arrangement, even going so far as to contact her after she resigned to say it was nothing to do with her line management.

*Gill Estall contacted the Claimant throughout the duration of her sick leave (November-December 2018).*

125. I agree there were a number of emails from Ms Estall to the Claimant (at least 10 over 6 weeks). Some of these were in response to communication from the Claimant herself but there was also some pressure from the Respondent to get on with the grievance meeting. It is clear from the Claimant's correspondence with her union that she found the amount of contact unhelpful and did not feel ready for the grievance meeting. I recognise it can be difficult for employers to get the balance right on the issue of contact during sick leave as too much contact is perceived as harassment whereas too little can be perceived as neglect.

126. As Mr Greening still considered the Claimant to be very fragile by 23 January 2019 I find it was not unreasonable for the Claimant to wish to delay the grievance meeting until her return to work and that the Respondent could have been quicker to accept that rather than seek to have it heard before her return or put ultimatums on the Claimant early into her return.

127. However, reading the resignation letter I find this was not part of the reason the Claimant resigned.

*(7.2) the investigation at first instance and appeal was not conducted in a fair manner, in particular that the Respondent did not interview the Apprenticeships Administrator, the Information Administrator, the Work Experience Manager and another member of staff named by the Claimant. Nor did the Respondent consider Ann Clack's complaints to HR*

128. Following on from the comments at paragraphs 14-17 I do consider that this issue of whether the investigation was conducted in a fair manner goes wider than simply the question of whether there should have been interviews with the Claimant's witnesses listed here. As she said in her submissions those who were interviewed were only asked selective questions about events that took place during the meeting on the 7 November 2018, which formed only a part of her grievance. She also raised the fact that only those present during the meeting of 7 November 2018 were interviewed. The Director of Creative and Care Industries and the Claimant's former line manager (before the Head of Apprenticeships) were not interviewed regarding the Claimant's previous concerns and complaints. These are valid points.

133. In my view the Respondent did overfocus on the meeting of 7 November 2018 as a meeting in isolation, rather than address the Claimant's case which was that it was the latest example of something she felt had been going on some time (1-2 years) and that she had raised repeatedly with the Director of Creative and Care Industries and her former Line Manager. She did list others who had experienced similar treatment or who had witnessed when she was upset. She was not the only one to do so – the Senior Apprenticeships Administrator also did so in his interviews. Some investigation into that background was needed



and not undertaken (if the Respondent did not consider there was enough evidence from the interviews undertaken that 7 November 2018 was not a one off occurrence but representative of how the Claimant was managed on an ongoing basis). The Director of Creative and Care Industries was interviewed but only asked about the informal grievance and the one meeting on 7 November 2018. The Claimant's former Line Manager could have been interviewed having experienced the Claimant upset and been the person the Claimant originally confided in. She would also have been able to comment on how the Claimant had been and performed under her line management.

134. In fact in my view the witnesses at the meeting on 7 November 2018 went quite some way to supporting the Claimant's case and it is not therefore clear why the Respondent formed the conclusions that they did, albeit this was partially rectified on appeal. Reading the witness comments makes for uncomfortable reading as to how that meeting would have been for the Claimant, as the only assessor and therefore most "junior" person there (in terms of management level). The Respondent accepts that there was an unhealthy work culture and blame culture though found the Claimant responsible too. In my view that conclusion is not supported by the email evidence or the evidence of those in the meeting, when proper account is taken of the respective management level of those involved. The Claimant may have raised issues, and her emails may be matter of fact, she may also have sought to defend herself, but did so in the context of a department where she did not get support and was blamed inappropriately when others more "senior" were in fact responsible.
135. From the witnesses it is clear that the Claimant had not been properly briefed about the meeting either beforehand or at the outset. There is also a strong suggestion that she had not been properly informed about her role, or the managers involved did not understand that some duties had to date not been considered the assessor's role (as the Senior Apprenticeships Administrator confirmed with respect to monitoring functional skills). There is support that her managers were not taking appropriate responsibility and instead were putting all the blame on her, and the Senior Apprenticeships Administrator confirms she may have been struggling to understand everything being said due to her having not been properly informed of her role. She was the most "junior" person there and it is agreed by all (except him) that the Director of Strategic Partnership focused on blaming her, and even the way the seating was arranged (as was agreed by some) would have suggested that all the more "senior" managers were on one side and the Claimant on the other.
136. It was confirmed by others that the Director of Strategic Partnership threw the proforma or skidded it down the table to the Claimant. The Head of Apprenticeships confirmed that this may well have been interpreted as dismissive by others though he did not interpret it that way.
137. The comment about "pulling a fast one", when she said the Director of Strategic Partnership himself had authorized something she did, was confirmed by three others.

138. The Senior Apprenticeships Administrator said the Director of Strategic Partnership did possibly talk to the Claimant like a “naïve young girl”. Her new Line Manager, the Apprenticeships Quality and Complaints Manager, who had never met the Claimant before the meeting said she used crying manipulatively (which was not supported by anyone else or by the Claimant’s own statement that she only cried after others had left) and queried whether the problem was she had come to the college newly qualified with no salon experience, whereas the Claimant actually had 7 years’ experience. She talked about that being “her problem”. This language stands out from someone who had never met the Claimant. There was no exploration of how she had formed these views (or from whom), given they are so inaccurate with respect to the Claimant’s actual experience and were said in the section when she was asked about age discrimination.
139. There was widespread agreement that the behaviour of the Director of Strategic Partnership and Head of Apprenticeships in that meeting was consistent with their normal behaviour. The Senior Apprenticeships Administrator confirmed that in his view the Head of Apprenticeships uses scapegoats and gave a number of examples of his passing blame inappropriately to more “junior” colleagues. He described him as being at times very defensive and borderline aggressive. He also described the Director of Strategic Partnership as aggressive and said that he had been so to other assessors.
140. All the witnesses thought it was a badly handled meeting led by the Director of Strategic Partnership targeting blame towards a more “junior” member of staff but no one intervened to stop it. Although they said the Claimant was robust it is clear that there was agreement that she was being targeted and defending herself in circumstances where she needed much more support or mentoring than she had been given. There is agreement that there were too many people at the meeting. The Apprenticeships Quality and Compliance Manager confirmed that it was being conducted like a capability meeting against the Claimant (which supported the Claimant’s grievance that she was being performance managed for matters that were not clearly her responsibility) – and in a public way.
141. The witnesses all corroborate that by the end of the meeting the Claimant was really upset and looked defeated. This experience is what led her to take 6 weeks’ sick leave for stress at work.
142. Whether or not the Respondent was comfortable assigning the behaviour the label bullying or harassment, there was much in the Claimant’s grievance that could have been upheld on the basis of the corroborative evidence. Indeed this is supported by Mr Greening’s recommendations which sought to address the situation, but did not put any responsibility on either the Director of Strategic Partnership or Head of Apprenticeships, as far as the Claimant was informed. There was to be a discussion with the Director of Strategic Partnership only, but the Claimant was not informed of this. It is not clear how this was going to address the wider “blame culture” he identified, although I accept this was partially overturned on appeal, when the two were to be given verbal warnings. Again though, the Claimant was not informed of this.

143. In my view though the sharing of the interview notes could have made a difference, given that I have understood the witness's evidence differently to the Respondent and the Claimant makes some of those points in her submissions (and therefore could have done at the time if she had been shown the notes). I have also considered that a wider investigation speaking to those named by the Claimant could have assisted, if the Respondent did not consider that the comments of the witnesses were enough to uphold the grievance. In my view the Respondent, in not upholding the grievance, over focused on whether there was malicious intent by the two managers, though I appreciate that that is how the College distinguishes bullying from normal management in the example in their procedure. The Claimant was not told about what action was to be taken and so it was not clear how the conduct of the two managers was to be addressed to stop it happening.

*(7.3) the outcome of the grievance at first instance and on appeal, specifically, that the Respondent still required the Claimant as part of her assigned duties to attend tracking and monitoring meetings which would include the two individuals that were the subject of her grievance, and did not move her away from working with them completely;*

*(7.4) Whilst the Respondent partially upheld the grievance on appeal the Claimant still did not feel the matter had been dealt with correctly and that she was left in a vulnerable position, not feeling safe going into work; specifically, that she was still required to attend tracking and monitoring meetings which would include the two individuals; and/or the treatment would have continued, as it has since she left.*

*(7.5) the way the Respondent dealt with the grievance almost condoned the behaviour complained about (again because she was still required to attend tracking and monitoring meetings with the two individuals concerned);*

145. In addition to the conclusions above, is right that after the grievance outcome the Claimant was still expected to attend meetings with both the Director of Strategic Partnerships and the Head of Apprenticeships, with the support of her Line Manager. The appeal was less specific and said the Claimant was to meet with her Line Manager and HR to discuss ongoing operational difficulties. However the Respondent's evidence and submissions confirm that attending those meetings was an essential part of both the Claimant and the Head of Apprenticeships role.

*Did the Respondent without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence with the Claimant?*

146. Turning back to the above question, with respect to the matters at paragraphs 132-145 only (the other matters at paragraphs 125- 131 not being the reason why the Claimant resigned).

147. In all the circumstances I find the conduct at paragraphs 132-145 amounted to conduct which was likely to at least seriously damage trust and confidence.

148. I accept the Claimant did not know all the detail given in the witness interviews but she knew that her grievance was not upheld and understood initially that no action would be taken by the Respondent with respect to the behaviour of the individuals concerned, and then that on appeal it was partially upheld and some unspecified action would be taken. She knew her witnesses had not been interviewed and that there had been overfocus on the one meeting on 7 November 2018, rather than look at the period of time she complained of in her grievance. She knew her account had not been taken seriously and she had not been given assurances as to how her managers' conduct towards her would be addressed. I consider that this is conduct likely to seriously damage trust and confidence. For the avoidance of doubt the actions identified in the outcome were more directed at managing the Claimant's performance than the behaviour of her managers, or were generic such as the advice in respect of how everyone handled meetings going forwards. They did not include actions the Respondent was going to take to ensure the behaviour of her line managers towards the Claimant was not repeated.

149. Of course, sometimes an employer has reasonable and proper cause for not upholding a grievance. I do not agree the Respondent had reasonable and proper cause here. Here, the Respondent had enough evidence based on those they interviewed to uphold a lot of the grievance and to take action to address the behaviour of the Claimants' managers, but if the Respondent did not consider the evidence sufficient, then there was further investigation beyond the meeting of the 7 November 2018 and the email chains that was warranted, at least by interviewing the Director of Creative and Care Industries and the Claimant's former line manager, and other witnesses requested by the Claimant or the Senior Apprenticeships Administrator, or otherwise.

*Did the Claimant affirm the contract?*

150. The Claimant left promptly when she received the outcome of the appeal. She did not affirm the contract.

*Did the Claimant resign in response to the conduct?*

151. Yes, the Claimant resigned in response to the way the Respondent handled her grievance. This included the fact she would have to continue to work with the two managers concerned, without the Respondent sufficiently addressing their behaviour; and the failure either to uphold her grievance based on the evidence that had been found or to look into her grievance further.

152. The Respondent has suggested that she resigned to work at Queen Hair Academy but I accept the Claimant's account that the work at Queen Hair Academy was only a stop gap until she found something else.

153. The Respondent accepts that if the Claimant was constructively dismissed it was both unfair and wrongful.

154. Having made the above decisions we moved on to remedy hearing, and I gave a further opportunity to the parties to make submissions in respect to the remaining issues set out at paragraphs 8-10 above. The Respondent did not pursue a reduction for contribution. In terms of compensation the Claimant claimed loss of earnings up to 6 September 2019. The Respondent did not dispute the basic award claimed of £1524. It was agreed that there should be a sum for loss of statutory rights of £508.

152. The remaining issues for me to consider at remedy stage were as follows:

154. What sum would be just and equitable for loss of earnings?

153. Is there a possibility that the Claimant's employment would have ended in the near future in any event?

156. Did either party unreasonably breach the ACAS Code and should any award be increased or reduced to reflect this?

### **Remedy conclusions**

*What sum would be just and equitable for loss of earnings?*

157. I was satisfied the Claimant reasonably mitigated her loss. She took up the offer of work via her friend at Queen Hair Academy straight away. When that did not work out she promptly obtained part-time work at Dunelm before obtaining her work with Cheynes Training. She fully mitigated her loss by 6 September 2019.

158. There was a suggestion from the Claimant that some of her payslips from Dunelm were incorrect but she did not have documentation such as bank statements to substantiate this so the calculations were based on those payslips. The Respondent argued that the work for Queen Hair Academy and the subsequent loss of that work was an intervening act and the Respondent was not responsible for the losses after that date. I accept the Claimant's account that it was only a short term arrangement. In any event the Claimant never received wages for that position so it was unlikely to carry on much longer. I do not accept that a short term position with no actual wages received to date is an intervening act. Rather it was an attempt to mitigate loss that was unsuccessful. I accept that the pay slips and P45 from Queen Hair Academy are incorrect as she has not in fact been paid. I accepted her evidence that she worked 4 days a week at the rate of £112 per day giving £448 per week. She said there was a slight increase in rate after three weeks. I accept her evidence that she did not actually have a pension with Queen Hair Academy. That position ended almost 2 years ago and the Claimant still has not received payment so it is to

her credit that she is not claiming those losses against this Respondent but is still pursuing them against the Queen Hair Academy or its Managing Director.

159. The Claimant's figures for her earnings with the Queen Hair Academy were gross so I had to estimate net figures using an online tax calculator. These were estimated to be £370 per week for the first three weeks followed by £373 per week. This gave a figure of £2602. The net earnings of £2114.85 from Dunelm up to 6 September 2019 were added to this giving a total of £4716.85. This was deducted from the earnings the Claimant would have received with the Respondent, which were agreed to be £13181.02. This gave the figure for loss of earnings of £8464.17.

*Is there a possibility that the Claimant's employment would have ended in the near future in any event?*

160. The Respondent argued that the Claimant had indicated that she would not work with the two managers concerned and had formed that view by the time of the appeal hearing. The Respondent's evidence was that this could not have been accommodated as they needed to attend some meetings together. The Respondent's case is that the Claimant would have therefore resigned regardless of the appeal outcome. The Claimant did not agree. She said it had not been her intention to leave her employment with the Respondent, but she had felt she had no choice. She said she had loved her job and working with her students and that leaving had been the hardest decision she had ever made. She did accept that if the grievance had been resolved more favorably but the conduct had still continued then she would have left.

161. I decided that there was a chance that the employment would have ended at the same time anyway with a favourable grievance decision but the final outcome being the Claimant being required to work with the two managers but not happy that she would be sufficiently protected going forwards. However I do not consider this to be the certain outcome. A better approach to the appeal and outcome might well have assisted the Claimant to work with the two managers going forwards. I considered a small deduction to be appropriate, of 15%.

*Did either party unreasonably breach the ACAS Code and should any award be increased or reduced to reflect this?*

162. I did not consider there had been an unreasonable breach of the ACAS Code. I considered the issues with the Respondent's approach to the grievance were more substantive than procedural. I did not consider it appropriate to adjust the award in this regard.

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Employment Judge Corrigan  
12 January 2022

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