



EMPLOYMENT TRIBUNALS

Claimant: Mrs Christine Phillips

Respondent: Cognita Schools Limited

Heard at: Birmingham West

On: 20 & 21 September 2022

Before: Judge L Mensah

Representation

Claimant: In person

Respondent: Mrs Stroud (Counsel)

FINAL JUDGMENT

The Tribunal orders are;

- i. The claim for Constructive dismissal is not made out and is dismissed.

Background

1. The Claimant brings a claim for constructive dismissal against her former employer. The parties accept the Claimant resigned from her employment by letter dated 17 December 2021. The Claimant gave one month's notice and so her last day was the 16.01.2022. The parties accept the Claimant was an employee with long standing service.
2. I discussed the issues with the parties at the outset of the hearing and they are accurately repeated in the Respondent's written submissions,
 - i. Did Respondent commit a repudiatory breach of contract?
 - ii. If so, what were the breach/the breaches? (including the implied term of trust and confidence)
 - iii. Was there a 'last straw' event as claimed?
 - iv. Did the Claimant resign because of the breach (es)/last straw?
 - v. Has the Claimant waived the breach?

- vi. If there was a constructive dismissal, was it unfair or did the Respondent have some other substantial reason for repudiating the contract?
- vii. If the Claimant is entitled to compensation, does an uplift or reduction apply through failure to follow the ACAS code of practice on disciplinary and grievance procedures?
- viii. If the Claimant is entitled to a remedy, has she mitigated her loss?

The Law

- 3. Helpfully the law is straightforward and un-contentious. Ms Stroud has set it out in her written submission and it mirrors the issues discussed and agreed at the start of the hearing. I simply repeat the same here.

“The Malik test remains the measure of a repudiatory breach of contract, as confirmed Leeds Dental Team Ltd v Rose [2014] IRLR 8, namely was Respondent’s conduct likely to destroy or seriously damage the relationship of trust and confidence? It is not necessary to show subjective intention on the part of R. Unreasonable behaviour by the employer will not be enough, although “unreasonableness is one of the tools in the employment tribunal’s factual analysis kit for deciding whether there has been a fundamental breach”. Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445. Ultimately the test will always be a contractual one – was there a breach of a fundamental term of the contract of employment. Where an employee relies on a ‘last straw’ to assert a repudiatory breach of his contract by Respondent, that last straw must contribute, even if only slightly, to the breach of trust and confidence: Omilaju v Waltham Forest London Borough Council [2005] IRLR 35. Kaur v Leeds Teaching Hospitals NHS Trust [2018] IRLR 833, [2019] ICR 1 sets out the most recent test relating to the last straw doctrine, expounded by Underhill LJ:

- a. *What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?*
- b. *Has he or she affirmed the contract since that act?*
- c. *If not, was that act (or omission) by itself a repudiatory breach of contract?*
- d. *If not, was it nevertheless a partof a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term?”*

- 4. Ms Stroud and the Respondent did not seek to argue specifically that the Claimant has affirmed any breach by giving notice under her contract, and working to that contract. However, ultimately this made no difference given my overall conclusions. This is not a criticism, as I accept the Claimant’s case was not particularised due to being a lay person and no case management had taken place to narrow the issues.

5. For the Respondent, I heard evidence from Mr W Honey, the former Headmaster and Claimant's then line Manager, Mrs S Chambers, the Regional Marketing and Admissions Manager and Mrs E Lofting-Kisakye, Human Resources Director. The Claimant gave evidence on her own behalf. I had regard to a joint bundle of 279 electronic pages. The Claimant and Mrs Stroud both filed written submissions to complement their oral submissions and again I read both and considered what was said. I set out my findings below.

Findings of Fact

6. The Respondent is a private schools group that owns and operates a number of schools throughout the United Kingdom and abroad. The Claimant was employed as an Admissions Registrar from the 01.01.2006 until her resignation dated 17.12.2021, within which she gave one month's notice terminating her employment on the 16.01.2022.
7. The Claimant went through ACAS and the ACAS period began on the 17.01.2022 and ran to the 19.01.2022. The claim was lodged with the Tribunal on the 02.02.2022. The Claimant was based at Hydesville Tower School on what is described by the parties as, a "term time plus" contract. The Claimant has a contract of employment dated 01.09.2013, with continuous employment from the 2006 date. The parties do not dispute the contract filed in the Joint bundle is the Claimant's contract and the terms to which they were both working. The Claimant's hours of work are detailed in the contract as follows,

Your basic hours of work will be from 9.00am until 5.00pm, Monday through to Friday during term time, including a 1 hour unpaid break.

You will work 23 additional days that are in addition to your standard term time working pattern. These days will be flexible and will be mutually agreed as early as possible prior to the start of a new academic year.

Your basic hours of work during this time will be 9.00am to 2.00pm.

However, from time to time, the nature of your role will require you to work additional hours for which no further payment will be made.

8. The role of the Claimant was to deal with all aspects of admissions to the school. The Claimant was part of the Marketing and Admissions Team and this was generally overseen by the Regional Manager, Ms Samantha Chambers. The Claimant worked directly with the Marketing Manager, as there was an agreed overlap between the two roles. The Claimant and the Marketing Manager also worked with and took instructions from the head

of the school, Mr Warren Honey. Mr Honey took advice from Human Resources and had his own Personal Assistant Natalie Mills.

9. Mr Honey took over the role of head of the School in September 2017 and worked alongside the Claimant and the Marketing Manager. The Marketing Manager role was undertaken by Ms Sarah Archer. It appears both parties and all witnesses agree the work of admissions and marketing appeared to run smoothly until around February/March 2021.
10. The Claimant accepts that prior to this point, she had a good working relationship with Ms Archer and they even were able to go away for two days outside of work, on a short break with their partners. In around February 2021, I am told that Ms Archer complained to the Respondent. The Respondent has not filed any written record of that complaint and instead I have had an account of the complaint given through the evidence of Mr Honey who says,

holiday cover, specifically claiming that the Claimant was not performing her full contractual duties. SA was required to achieve her own marketing targets and found that she was spending lots of her time picking up Admissions based work which should have been done by the Claimant, particularly during holiday periods. Although SA was required to pick up Admissions work during the holiday periods as the Claimant worked primarily in term time, SA was increasingly finding that the volume of this cover work was too high and much of work that should have been carried out by the Claimant during term-time was being left to SA to complete in the holiday period.

11. At the hearing, Mr Honey told me that he had not investigated the complaint and he does not suggest anyone else investigated it either. He did not request any documentary evidence, or statistical information to gauge the extent of the problem. As I understand the position, the Claimant's role only required her to cover an additional 23 working days out of term time, but the School would still have admissions work ongoing outside of term time. To cover the periods the Claimant was not working, Mr Honey says he had worked with Ms Archer and the Claimant for a number of years to ensure Ms Archer was trained on admissions management in the Claimant's absence. He says in his witness statement that he could not therefore understand why "*a large volume of the Claimant's work was falling on SA during the holidays.*"
12. Both parties agree though that there is a grey area with an overlap between admission and marketing, particularly with regard to early contact with interested families early on in the pipeline. However, the Claimant and Mr Honey both appears to agree that Ms Archer's complaints appeared to focus on admission work out of term time. At the hearing Mr Honey admitted he did not investigate or seek to see any evidence of the

complaint and the Respondent has not disclosed any such evidence, he instead appears to have taken the complaint as read, and sought to try and resolve the problem by speaking with the Claimant in the first instance.

13. He says he met the Claimant on the 25 March 2021. The Claimant says Mr Honey asked to speak with her as Mrs Archer had complained that she was allegedly not working in accordance with her term time plus contract. At the hearing the Claimant and Mr Honey disputed the extent of the disclosure and source of the complaint. Mr Honey is adamant he did not mention Mrs Archer by name, or that there had been a complaint, but simply invited the Claimant to come to his office to discuss whether she was working to her contractual requirements. The Claimant, in my view appeared to recognised in her questions of Mr Honey, that he may not have specifically mentioned Mrs Archer by name, despite what her witness statement says, but it was apparent to herself and Mr Honey that the issue of working cover could only have arisen from Mrs Archer or to a lesser extent Ms Vas; as they were the only other staff members involved in covering admissions outside of term time.
14. I accept Mr Honey did not mention Mrs Archer specifically and I am of the view the Claimant has confused or conflated her understanding of the situation in hindsight, with what she was being actually told. There would be no reason for Mr Honey to deny mentioning Mrs Archer unless he did not because it was likely in my view to be clear that there was some question over the admissions work and the Claimant was likely to identify Mrs Archer anyway.
15. The Claimant says she told Mr Honey she had worked in the same way as she had since 2013, and felt he was visibly annoyed with her and questioned her honesty. Mr Honey says he was simply seeking to understand what was going wrong and was not annoyed. I accept the Claimant would have reasonably felt her honesty was in question and Mr Honey did at least suggest to her doubts as to whether she was working in accordance with her contract. The difficulty with the stance taken by Mr Honey is that he had not sought to gain any clear understanding of the extent or nature of the problem, because not only did he not seek evidence from Ms Archer, but he did not seek evidence from the Claimant either. I am satisfied the Claimant took this personally and so the lines were drawn between herself and Mrs Archer.
16. It appears to me that Mr Honey had decided the best way to resolve this was to look again at the Claimant's working arrangements. This suggests to me he accepted what Ms Archer had said and was looking to the Claimant for a remedy. I therefore accept the Claimant's was "surprised" by this stance and understandably confused as to what, if anything, she

had done wrong. The Claimant says Mr Honey was concerned because Ms Archer was about to go to Head office. Mr Honey does not say this actually happened and Mrs Chambers told me she was not aware of Ms Archer filing any formal complaint and would have been aware of it if it had been filed. It appears therefore, that neither, Ms Archer or the Claimant, felt this was a matter that requires formal intervention and both appeared content for the matter to be resolved through their line Manager, Mr Honey.

17. As a result of the informal approach taken by the parties, many of the said meeting and discussions have not been documented. These were treated as the day to day management decisions and work discussion that often are not documented when no formal process has been initiated. The Claimant is critical of this, but she also never took the step for make a formal complaint before her resignation and so I accept it was not unreasonable for the Respondent to have treated matters in this way.
18. What I have seen are emails exchanged between the Claimant and Mr Honey during the summer of 2021 where the Claimant and Mr Honey discuss her working during the summer holidays. There is nothing in those emails regarding the behaviour of Ms Archer and the Claimant does not suggest emails exist in which she has documented any concerns regarding Ms Archer's behaviour. The emails appear polite and professional and with the tone ending in thanks from Mr Honey with regard to the Claimant's work [page 58]. The result of the discussion show Mr Honey politely asking the Claimant to spread her holiday working across all the holidays so there is admission cover and I accept this was his way of looking for a resolution to the complaint by Ms Archer and the problem as he saw it. This is the first attempt by Mr Honey to resolve this informal complaint.
19. The Claimant says,
 15. On or around 30 June 2021, following a meeting, WH emailed me a breakdown of how he wanted the 2021/2022 holiday working days distributed. I wasn't entirely happy with the proposal as the dates were thinly spread across every holiday period and I felt this wouldn't provide the best customer experience or be particularly helpful in terms of consistency for customers or SATVs working practices, nevertheless, I agreed to give it a go.
 20. It is therefore clear to me the Claimant did not at this stage feel Mr Honey's resolution of the complaint or problem was anything other than within the realms of a reasonable management response. If the Claimant had felt this was a calculated to damage their working relationship, she does not evidence that and I find it does not even begin to fall within that category of behaviour.

21. The Claimant says,

10. After the Easter holidays, SA continued to complain about work to me. She made the following comments: "I am not going to be taken for a mug", "I will cause a shit-storm by going above Warren's head to raise working issues with Head Office, he's letting people get away with murder and I'm not having it". I believed these comments were aimed at me. SA asked me on more than one occasion what was going on with my contract, the detail of my future holiday working arrangements and whether WH was going to look at my contract and make me change it. I felt intimidated by SA's angry outburst.

22. The Claimant is critical of the lack of documented meetings, but her own evidence suffers the same difficulty as her statements makes references to the behaviour of Mrs Archer without details. For example, the Claimant says in paragraph 10 of her witness statement that Mrs Archer was making comments in her presence which she says were intended and aimed at her. However, but no specific dates are given, no details of the circumstances in which the comments were made and no references to witnesses of what are described as "SA's angry outbursts." The Claimant says Ms Mills saw the effect it was having on her mental health but does not call Ms Mills and does not say she witnessed the behaviour.

23. The Claimant says these events occurred after the Easter holidays of 2021, and throughout the spring into early summer. Part of the Respondent's reasoning for not taking the grievance to Stage 2 is because delay in reporting matters formally beyond three months tends to hinder any investigation. This is one of those examples of the difficulty in being able to investigate comments made by an individual some six- nine months after the event, when the details have been lost in time and the opportunity to question witnesses has been undermined.

24. The Claimant says the behaviour of Mrs Archer was affecting her mental health but again this did not trigger her to raise any formal grievance, take time off or raise any health concerns. There is an absence of clear evidence from the Claimant showing she specifically complained about this behaviour and gave the particulars she now gives in her witness statement. The Claimant is in my view a diligent person and in fact she told me she felt she must document praise to the staffing team when she felt it was due. This was her explanation for why, if Mrs Archer was behaving so badly, she had sent a glowing email to the staff and included Mrs Archer. I find it incomprehensible the Claimant would be willing to document praise and not willing to document what she says is bullying behaviour affecting her mental health.

25. The Claimant told me she did not look at her Employer's grievance procedure, despite these alleged angry outbursts, and told me when questioned by the Respondent's Counsel, that Mrs Archer was making such comments and behaving in such a way on almost a daily basis. The Claimant says she didn't pursue any formal complaint or take matters above the head because she "*continued to have complete trust and they would help the behaviour stop by simply sorting out the split of work Sarah and I did...*" In referring to '*they*,' I take it she meant Mr Honey and Ms Chambers, as the only two individuals she says she sought resolution of matters from.
26. By virtue of having complete trust, it is clear to me that at this stage it cannot be said that the Respondent had behaved in a way that has breached the trust and confidence between the Claimant and the Employer. That is the Claimant's own evidence. The fact Mrs Archer had allegedly been involved in daily outbursts was not viewed by the Claimant as a fundamental breach by her employer, and her view was the relationship could and should continue and matters could be resolved. I have to consider then, what, if anything changed and when?
27. I have been referred to the Claimant's job description and that of Ms Archers. What is clear to me is that the Claimant has focused throughout the hearing on what her job description says or doesn't say. So for example it does not say the Claimant is to conduct tours of the school, but it does mention pre-visit briefings. The Respondent witnesses, Mr Honey and Mrs Chambers, both say the Claimant was a highly professional and competent Admissions Registrar and her Let's talk Plans covering December 2017 through to August 2020 reflect this view.
28. However, what is clear to me from the evidence is that the informal complaint by Mrs Archer triggered a breakdown in the professional relationship between herself and the Claimant. Both appear to have raised issues with regard to what aspects of their jobs fell into Admissions and what fell into marketing. The Claimant saying she fulfilled her role as required under the wording of her job description and as agreed with Mr Honey, and apparently Ms Archer complained she was being shouldered with more admissions work than she should have to deal with and this was impacting on her ability to complete her marketing function. As I have already said, neither appears to have felt the matter so serious as to warrant any formal written complaint of the other. So I agree with Ms Stroud, Counsel for the Respondent, at this stage there were two matters running at the same time. The first being how the division of labour is resolved between the Claimant and Ms Archer and the second the alleged conduct of Ms Archer towards the Claimant and deterioration in their relationship.

29. Turning to the division of labour, I accept the evidence of Mrs Chambers that the job descriptions are overall guides to the roles and not fixed in stone. This is apparent by the very wording used in the Claimant's job description which states,

Key Deliverables:

To maximise pupil numbers at the school through the pro-active use of strategies for recruitment and retention. This will encompass:

30. The use of the word "maximise" in my view demonstrates the need to be flexible and the lack of definition of "strategies" indicates they have to be adaptable and fluctuate with business need. The use of the word "encompass" indicates the list that follows is not exhaustive. Therefore, I accept the absence of reference to a particular function or action, is not fatal to it forming part of the Claimant's role.

31. I accept in the Lets Talk Plans for 2019, Mr Honey and the Claimant discussed and agreed the Claimant would benefit at that time from the assistance of Mrs Vas, who I understand was the Senior Receptionist and Marketing and Admissions Assistant. I accept the wording used by Mr Honey does say that Mrs Vas would take on the role of dealing with all courtesy response, recording on SIMS, postings and email responses to routine questions. "*Thus, Christine is only having to focus on the key people where a discussion moves them directly along the process.*" It therefore appears to me reasonable for the Claimant to have passed the responsibility to deal with those very initial enquiries to Mrs Vas, albeit I also find the overall responsibility for converting those enquiries into admissions fell ultimately on the Claimant, as the Admissions Registrar.

32. Mr Honey effectively told me that whilst this was the agreement for that period pre-Covid, it was not intended to change or alter the Claimant's responsibilities. I accept this must be the case, as it is a business decision about staff resource taken to manage the business need at any one time. It did not alter the Claimant's conditions of employment, nor her overall role and responsibilities. Further, the Claimant has not pointed to anything to suggest the task taken on by Ms Vas could not have been returned to her at any time by another business decision. Whilst in the evidence there is some suggestion Mrs Vas was at some stage also unhappy with the volume of admissions work, there is little by way of complaint about her behaviour or complaint by the Claimant. The focus is on Mrs Archer.

33. On the evidence before me I find that by the end of June 2021, Mr Honey had agreed the spread of admissions cover out of term time with the Claimant, and had before him no specific allegations of bullying by the Claimant. I accept he believed he had resolved the split of work over the

summer and had no reason to believe there was anything left to resolve. The Claimant confirmed she was content to work to this arrangement, and so to continue in her contractual agreement with the Respondent.

34. Whilst the Claimant says she worked over her contracted hours she brings no complaint about that and accepted at the hearing she would work extra hours and this formed part of her professional duty. In her witness statement she says she informed Mr Honey she 'had' worked those hours as she felt unable to hand over any ongoing applications to Mrs Archer or Mrs Vas, as the working environment was *intolerable*. I note the Claimant does not particularise when this discussion is supposed to have taken place other than it must have been after the event because she places it in the past tense. The Claimant didn't ask Mr Honey about this albeit he agreed they had many meetings on a regular basis. Mr Honey says in his witness statement,

18. *The Claimant did not inform me that "the working environment was intolerable and consequently that [her] workload had increased substantially." It struck me that the Claimant's workload may have increased slightly since SA was no longer able to cover as much of the Claimant's role as she had done previously. However, everything that was asked of the Claimant was as per her job description and her job role and absolutely achievable within her contracted working hours. There was nothing out of the ordinary. Within equivalent larger schools, there is often only one person to manage both Marketing and Admissions function, so it should have been very achievable for the Claimant to manage the Admissions function, especially given the support offered by SA and TV.*

35. When the Claimant questioned Mr Honey about the behaviour of Ms Archer she focused very much on the conversation in March 2021 and then jumped to 17 September 2021. I also note that in the Claimant's witness statement at paragraph 17 she describes how she tried to be friendly with Mrs Archer and Mrs Vas, on return in September 2021, but "*they continued to act as they had done since March, speaking to me curtly.*" This is inconsistent with the claim Mrs Archer was involved in an almost daily verbal attack on the Claimant and if it had gone on since the Spring it is difficult to reconcile the Claimant's willingness to be friendly in September.

36. I have seen the emails from April through to August 2021 and can detect no hint of the alleged serious deterioration or of the Claimant reporting matters to Mr Honey or Ms Chambers. The Claimant suggests Mrs Mill's felt Ms Archer and Mrs Vas had a negative attitude, but even on the Claimant's own account that is far from witnessing verbal attacks on the Claimant.

37. It seems highly unlikely Ms Archer was as verbally aggressive as the Claimant describes if she was willing to be friendly in the September of 2021 and with no apparent witness to this. I am of the view Mrs Archer had allowed her emotions to run away on occasion, raising her voice, but the evidence does not satisfy me she was aggressive as described by the Claimant.
38. That is not to say I consider the Claimant has intentionally sought to mislead, but I consider her account is somewhat embellished, conflated and tainted by the fact she felt her professionalism was being called into question. I note throughout the hearing the Claimant has sought, on a number of occasions, to enlist the views of the Respondent witnesses as to her character and professional ability in her role and all have given her the same reassurance.
39. I take this as a support for my view the Claimant had drawn the line between herself and Mrs Archer and felt she had undermined her unblemished record with her employer and put her professionalism in doubt. Through that prism, the Claimant viewed all that was done as against her, and this has tainted her ability to provide a balanced account.
40. Mr Honey says it was Ms Archer who raised further concerns regarding the distribution of work on the 14th September 2021 and this prompted him to discuss the matter again with the Claimant. This then takes me to the first occasion when the Claimant says there is a witness to Mrs Archer's aggressive behaviour.
41. Mr Honey's evidence is that he disagreed with the way the Claimant described Ms Archer's behaviour as aggressive, he says she did raise her voice in the meeting of the 17 September. He says,
21. In a further attempt to support both the Claimant and SA, I arranged a meeting with them to discuss issues surrounding professionalism, workload and distribution. This meeting took place on 17 September 2021. I discussed and confirmed how tasks related to key school events coming up would be distributed between the Claimant and SA. I agreed to speak to SC about revolving issues of overlap between the Claimant and SA's job roles. I also set expectations of professionalism for the Claimant and SA. SA was not aggressive, confrontational or unprofessional in the meeting. There were two occasions where SA allowed emotion to creep into what she was saying but I addressed these with SA at the time and the meeting continued in a professional manner. I did not say that someone had once advised me to never work with women and can confirm that I took the issues raised by both SA and the Claimant extremely seriously.

42. The Claimant says this meeting did not bear the fruit claimed by Mr Honey and alleges,

19. On or around 17 September 2021, WH headed a meeting with me and SA about work distribution going forward. SA was aggressive, confrontational, and unprofessional throughout. I was none of these things; I calmly gave my input when required but didn't once engage in any negative interaction with SA, even when she goaded me to do so. WH told SA that if she wanted to hand over any work to me that wasn't clearly Admissions, that she would receive no further support from TV and that support would transfer over to me instead. The meeting was then ended by WH, he said we would try again next week (there was never a subsequent meeting, despite me asking WH numerous times when we going to meet again to discuss work distribution). If WH took any notes of the meeting, they weren't shared with me as an attendee afterwards. As far as I am aware no actions were documented or carried out. When I went to see WH later that day, he said that I had nothing to apologise for, he said I had acted entirely correctly and said he was amazed that I had maintained my composure and kept my cool. He stated that "someone had once advised him to never work with women". I feared that this comment meant that WH was not going to take this matter seriously.

43. Mr Honey's view of the behaviour of Ms Archer in this meeting is at odds with the description given by the Claimant. The Claimant views the emotional outburst as aggressive and confrontational and therefore a continuation of the behaviour that had gone before. Mr Honey says he witnessed Ms Archer allowing her emotion to creep in, but at the hearing he made it clear when asked, that he did not witness aggression or goading. I am of the view the reason for this difference of opinion is a further reflection of the Claimant's perception of the motives of Ms Archer, rather than the actual presentation.

44. Mr Honey denied having made any reference to never working with woman and says it is not within his character to make such as comment and certainly not as a joke. The Claimant insists he did make this comment. It is not a central issue in the case as there is no allegation of discrimination or any other relevant claim. I have decided to assess the reliability of this claimed account in the round of all the evidence.

45. The Claimant does not give any reason why Mr Honey would, at this stage of the timeline, have failed to react and support the Claimant, if he had for the first time been personally witness to aggressive behaviour towards the Claimant. It is her case after all, that she trusted Mr Honey to sort matters out.

46. The Claimant says she has a meeting with Mrs Chambers on the 21 September 2021 and in that meeting told Mrs Chambers she felt “*bullied*” by Mrs Archer. The Claimant says she got upset and told Mrs Chambers the behaviour of Mrs Archer had made her feel “*absolute rubbish*.” The Claimant’s perspective of the meeting was that Mrs Chambers had effectively acknowledged her upset and become upset for her. Further, that Mrs Chambers was concerned Mrs Archer may have misunderstood an earlier discussion she had had regarding the split of responsibilities. However, the Claimant does not suggest Mrs Chambers agreed to take any action and is critical of Mrs Chamber’s failure to record the meeting. This is the first point in the account the Claimant say she specifically used the word “bullied” to a senior member of staff. Mrs Chambers responds as follows,

I note, however, that the Claimant claims (again at paragraph 18) that she also stated that she felt bullied. I have worked in schools for 25 years. Bullying is a very serious word in a school environment – whether raised by pupils or members of staff. If the Claimant had mentioned bullying, I would have remembered and escalated that as soon as possible. In all of my conversations with the Claimant, at no point did she claim that she was being bullied by SA, or even hint at this. I do recall the Claimant mentioning that she did not enjoy coming to work and that she was not getting on with SA, but not that SA was bullying her. As the Claimant says, I stressed to her that we did not want to lose her and I would work with WH to address concerns regarding workload and support. I wanted to resolve the issues for the benefit for all concerned.

47. I note when the Claimant cross-examined Mrs Chambers, she did not waiver from her account and was very clear she would have taken the word ‘*bullied*’ very seriously, and it was not said by the Claimant. The Claimant then put to Mrs Chambers “I believe I cried out for help but you didn’t see that in the meeting?” to which Mrs Chambers replied, “No.” The Claimant again gives no reason why Mrs Chambers, whom until this point she had full trust in, would miss something as significant as a claim to have been bullied.

48. Instead, Mrs Chambers says she recalls the Claimant getting upset and was upset to see this and wanted to resolve matters as the Claimant was saying she was not enjoying coming into work and was not getting on with Mrs Archer. Mrs Chambers says she then spoke to Mr Honey and explained the Claimant was upset and concerned and left it for Mr Honey, as the Claimant’s line Manager, to resolve. If the Claimant had used the type of language claimed, I question why she did not query what steps Mrs Chambers proposed to take or ask for advice about what steps the Claimant should take.

49. The Claimant told me Mr Honey had suggested the Claimant and Mrs Archer meet again but no meeting took place. Mr Honey says he saw the Claimant and Mrs Archer apparently working together and believed matters were resolving. Again I reiterate no formal grievance was filed.
50. It was perhaps unfortunate Mr Honey did not have another meeting specifically checking how the Claimant and Mrs Archer were getting on, but I have seen an email exchange dated 23 September 2021 at page 215 of the bundle, between the Claimant and Ms Archer and then the Claimant and Mr Honey. The emails carry no indication of a previously aggressive confrontation or inability to work together as envisaged.
51. Ms Archer appears to be seeking the Claimant's professional opinion on a matter, and the Claimant provides an equally professional response. Even if this is no more than professionalism, it appears to match Mr Honey's view of the working relationship being effective and the Claimant and Mrs Archer cooperating. I note the Claimant is at pains to suggest in her email at page 215, that any problems between the admissions and marketing department should be dealt with "discretely" and didn't want wider staff to know about any problems. The tone and content is suggestive of an employee who was at least content with the way Mr Honey was seeking to address matters. Further, the Claimant sends an email to Mr Honey and Ms Mills on the 08.10.2021, which in my view is in direct contrast to the claim her employer's behaviour has destroyed trust and confidence.

Just to let you know that I have stuff under control. It's not ideal Terri not being in especially when yesterday was going to the first day that Admissions had her dedicated support but I'm adept at reprioritising which is what I began yesterday and will continue until such time that she's back in. We have a couple of events coming up (S&P next Friday and EYOE on 20th Oct) but I think I'll be ok to manage the lead up to those with pre-registrations etc.

There will possibly be slight delays in response times over the coming weeks but if I think our quality of service is going to suffer I'll shout (though I know that doesn't mean that we'll be able to find an immediate solution).

Also in terms of what Terri has felt overwhelmed with recently, I was pretty sure I'd protected her as much as I could have done in terms of Admissions support. Besides the safeguarding requirements associated with new pupils, I haven't asked her to get involved as much as she would have done previously. For example we had 59 online enquiries in September and so far in October and Terri dealt with 14 of them – most of Terri's were last week in the lead up to open morning when we were getting lots of pre-registrations. I've done all the email and phone enquiries. Terri sent the open morning invitations to the pipelines and

also prepared the visitors labels, which was helpful but other than that I've left her alone to do the other work she said she was buried in.

Of course if I've misjudged things in working with Terri I'll be happy to talk about it with her and Natalie but as we know, if anything I'll be looking for more support from her than previously.

52. The tone and content speak for themselves and any reader would reasonably assume the Claimant was busy, but handling her workload and able to work towards the employment goals. Further, there is not a hint of any problems with Mrs Archer. In fact, the emails also suggest the Claimant felt able to speak about any grey areas, as and when they arise. In an email dated 18 October 2021 from the Claimant to Mr Honey, responding to an email from Mrs Archer she says,

As we've just discussed...it might be that you think this is enough guidance from a Marketing point and Admissions should pick up the comms but if the invitation letter should pick out messages from various sources (prospective letter, an additional sheet as well as new newsletter & video) I would be comfortable that I'd captured all the messages and positioned them in the correct way.

I'm happy to discuss this particular element and I've started filling in that other sheet but I'll carry on fitting it this week.

Sorry to bother you with this.

53. So on the evidence, I am satisfied the Claimant is working to what Mr Honey felt was the agreed way forward and felt comfortable enough to highlight even the smallest of grey areas between her role and that of Marketing. There is again no hint of any further negative behaviour by Mrs Archer, or any suggestion this matter has escalated or become untenable.

54. I note on the 26 October 2021 the Claimant is in further discussion with Mr Honey in what I again view as reflecting a good working relationship, telling him to enjoy his time on what I presume is a holiday abroad. What follows through November is a series of email communications between the Claimant, Mr Honey, Mrs Archer and other staff members seeking to manage the workload, at what appeared a busy time.

55. Once again on the evidence, I cannot identify any behaviour on the part of the Respondent calculated or likely to destroy or seriously damage the trust and confidence with the Claimant. In fact Mr Honey's view that he thought matters has been resolved to the extent that both women were now apparently working together to achieve the same goal is a reasonable view on the evidence. They may not have restored their former friendship,

but they appeared able to work through tasks together and with others, to get the jobs done.

56. I understand on the 08.11.2021 Mrs Vas resigned. The Claimant had hoped to get a replacement and Mr Honey had sought guidance from the company about whether a replacement would be offered.

57. The next milestone event appears to be the meeting between the Claimant and Mrs Chambers on the 15 December 2021. At this meeting the Claimant and Mrs Chambers both say they discussed the Claimant's working pattern over the holidays. It appeared the Claimant may have been working beyond the scheduled 9.00am to 14.00pm and instead working full days and counting them as two half days. The purpose of the 23 scheduled days was to spread the Claimant's attendance at work during the holidays and Mrs Chambers says she made no comment about this at the time, but felt the Claimant's behaviour was not in accordance with the terms of her contract.

58. At the hearing, the Claimant appeared to question the motive or reason Mrs Chambers has given for not being able to meet the Claimant in a full face to face. I gained the impression the Claimant almost doubted the account, but didn't go so far as to directly allege otherwise. Importantly, Mrs Chambers says she had been impressed with the Claimant's work and had no concerns regarding her performance. The aim of the visit was to see if she could make any suggestions to assist the Claimant in working more efficiently. At the hearing, Mrs Chambers explained that at this point she had herself, been covering for an absent member of staff in another location when the instruction came to avoid any movements beyond your normal working bubble; due to a spike in Covid cases and a fear it would spread through the schools. Therefore, she had no choice but to convert the meeting into a team's discussion. I can see no basis to reject this explanation as entirely reasonable and a credible adjustment to the meeting.

59. The difference from all previous meeting is in this meeting Mrs Chambers says she had a more detailed discussion with the Claimant regarding her work and,

Bundle). We met every month to discuss pupil numbers and she knew her numbers very well indeed; one of the smoothest numbers calls I had each month. On the surface, it appeared that the Claimant must have been carrying out all her duties well and I had complete faith in the Claimant. It had not, until the meeting on 10 December 2021, been clear to me the extent to which the Claimant was, in fact, relying on others to undertake many of her duties and then simply reporting on their progress. She was dealing mostly with the final stages of an Admissions, so of course knew those families well. During our meeting, I ran

through the Claimant's job description and responsibilities with her and I could see it dawning on her just how little of the activities required as part of her job role the Claimant was actually performing herself. I was surprised by this because, as I said, that was not the purpose of the meeting. The purpose of the meeting was to understand what support the Claimant required.

The Claimant mentioned that she only dealt with telephone enquiries or when someone approached the School in person, which only accounted for a small minority of all enquires as the vast majority are received online (which the Claimant was not handling). The Claimant also mentioned that she was not carrying out School tours. It seemed as though the Claimant was only processing some Admissions. It became clear that the end to end process Admissions process was being dealt with more by others than the Claimant, and yet all Admissions duties were within the Claimant's job description and were her responsibility.

60. The Claimant account is somewhat different, the Claimant says, required elsewhere. It wasn't a productive meeting. SC was clearly distracted as she was in a busy school office providing absence cover for a Marketing Manager. Approximately the first 10 minutes of the call was spent with SC telling me how busy she was. This left little time for the rest of the call. In summary, SC stated that she would look at my workload. She recognised that Marketing and Admissions should work closely together as a team. We agreed that "all hands on deck is how it should work". I became upset and explained that things hadn't improved; that SA's bullying behaviour had continued and she was still refusing to display any sort of teamworking with me which meant that I couldn't cope with the extra workload. SC was dismissive of this and moved on to state that my job description wasn't detailed enough and that she would address this. **(Please see bundle – section 10, pages 51 & 52 and section 55, page 271)**. She stated that once this was sorted, I would know what is expected of me. I was shocked by the lack of support, especially considering what SC had promised me in our meeting of 21 September 2021 regarding her and WH taking responsibility to sort matters concerning work distribution and bullying behaviour. If SC took any notes of the meeting, they weren't shared with me as an attendee afterwards. As far as I am aware no actions were documented or carried out.

61. Mrs Chambers again is adamant the Claimant did not mention bullying and believes the Claimant did not find the meeting productive because she had hoped to be told Mrs Vas was going to be replaced. Following the meeting, Mrs Chambers spoke with Mr Honey and did a detailed comparison of the roles and duties of Admission Registrars across the companies' cohort of schools. Whilst the snapshot showed some variations, she told me in oral evidence the level of pipeline work for admissions over the course of a year, was comparable across some of the other schools and their Registrars were undertaking the full scope of their duties without assistance. The conclusion was the company decided not to replace Mrs Vas and that the Claimant should be able to deal with all the duties during term time, without additional help.

62. Mr Honey confirmed he told the Claimant by telephone on the 15 December 2021 that Mrs Vas was not being replaced. The Claimant says this event, and the lack of any acknowledgment from Mr Honey or Mrs Chambers about the "*ongoing team issues and it was clear to me that things were not going to change*" was her last straw. In her witness statement the Claimant says,

33. On 17 December 2021, the day the school was breaking up for the Christmas

Holidays, I tendered my resignation to WH. **(Please see bundle – section 42, pages 241 & 242)**. I advised him that I am leaving as I feel I have no other option, that because of the excessive workload and the lack of support from them in addressing my issues, it is an intolerable environment to work in and that it is affecting my mental health. I have advised him that I've hardly slept for months and I have lost 12lbs. WH says

63. I find the resignation letter is the first reliable time the Claimant makes it clear she feels she has been bullied by Mrs Archer. I have to ask myself why she did not raise these matters in a written form, with her employer before her resignation, and I have considered her perception of events in the round of all the evidence.
64. I have no doubt the Claimant and Mrs Archer were friends whose relationship ended over a dispute as to work responsibilities and it became personal. I found the accounts given by Mr Honey and Mrs Chambers less emotively charged than the Claimant. Whilst I do not consider the Claimant has sought to openly lie about past discussions, I am of the view her recollection is tainted by hindsight and her own perspective on the motives and behaviours of others. Overall, I prefer the interpretation and versions given by the Respondent witnesses.
65. I find the Claimant did not at any stage before her resignation, tell her employer she felt bullied and in fact worked contrary to that proposition right until the decision to resign. Whilst it may have been helpful if the Respondent had escalated matters to a formal process of their own initiative, I do not consider their handling of the issues, *out with* the realms of trust and confidence.
66. Mr Honey was dealing with what he was being told, and it was not his responsibility to resolve the breakdown in friendship between the Claimant and Mrs Archer; so long as they were able to work together. The Claimant has not established the support he and Mrs Chambers offered was a breach of any duty owed to the Claimant. I do not accept the Claimant had made it clear to her employers that her mental health was affected until her resignation, and even as before me, there is a paucity of evidence and no medical evidence regarding mental health diagnosis or concerns. Had the Claimant had genuine mental health concerns, she had the option of bringing them to her employer's attention and I do not believe she did that. The Claimant has not shown she was being made to work excessively, and the evidence in fact suggests she was busy, but able to perform the role well. I do not accept she resigned as a result of an excessive workload.
67. The grievance was lodged after the Claimant had already resigned. I am satisfied she had made it clear in the way she resigned before lodging the

grievance, that she had not intended to give her employer an opportunity to seek to further resolve the working relationship she had with Mrs Archer. This is in my view because she had decided the personal relationship was irreconcilable and she knew, as far as her actual work was concerned she was going to have to work alongside Mrs Archer.

68. Instead, she appears to have intended the grievance to be a way of forcing the Respondent to take some belated action against Mrs Archer, without the Claimant's need to face the potential outcome of having to work with Mrs Archer again. The fact the Claimant was able to lodge a grievance and prepare a detailed written complaint, demonstrates to me how she had chosen not to do the same whilst employed, and this in my view supported and strengthened the Respondent's evidence.

Applying the facts

69. On the basis of the findings, the Claimant has failed to show on the balance of probabilities that the Respondent breached the implied term of trust and confidence or, acted in a way likely to destroy or seriously damage the relationship of trust and confidence. I cannot identify and the Claimant does not identify any other breaches, and so the claim fails at the first hurdle.

70. As a result of the above, I do not accept the Claimant resigned as a result of a last straw event or in response to a repudiatory breach. I find the Claimant resigned because of the breakdown in the personal relationship she had previously enjoyed with Mrs Archer, and the realisation she would be working even more closely together because Mrs Vas was not going to be replaced.

71. I do not accept the behaviour of Mrs Archer could reasonably have been perceived as reaching the level of bullying, but I find the Claimant's perception was tainted by her own hurt pride over what she perceived was an attack on her professionalism. For these reasons I dismiss the constructive dismissal claim and all other issues fall away.

Employment Judge **Mensah**

Date 27.09.2022