



EMPLOYMENT TRIBUNALS

Claimant: Miss M Atkinson

Respondent: The Soldiers' and Airmen's Scripture Reading Association

Heard at: Bristol

On: 14-15 November 2022

Before: Employment Judge Oliver

Representation

Claimant: Ms Hosking, counsel

Respondent: Mr Jones, solicitor

RESERVED JUDGMENT

The claims for unfair dismissal and wrongful dismissal fail and are dismissed.

The claim for failure to provide written particulars of employment is dismissed upon withdrawal.

REASONS

1. This is a claim for unfair constructive dismissal, wrongful dismissal, and failure to provide written particulars of employment.

2. The hearing was conducted by the parties attending by video conference (VHS). It was held in public with the Tribunal sitting in open court in accordance with the Employment Tribunal Rules. It was conducted in that manner because the parties had consented to such a hearing and it was in accordance with rule 46, the *Presidential Guidance on remote hearings and open justice* and the overriding objective to do so. Judgment was reserved as evidence and submissions were not completed until the end of day two of the hearing.

Issues

3. The Claimant's representative confirmed at the start of the hearing that the claim for failure to provide written particulars of employment is withdrawn, as the Claimant's has a contract which dates from 1974. The remaining issues were discussed with the parties at the start of the hearing and agreed as follows. It was agreed that liability only would be dealt with in the first part of the hearing, together with remedy issues relevant to any increases or decreases in compensation:

4. Constructive unfair dismissal

- 4.1 It is admitted that the Claimant resigned on 27 December 2021 to take effect on 31 December 2021.
- 4.2 The Claimant claims that the Respondent acted in fundamental breach of contract in respect of the implied term of the contract relating to mutual trust and confidence. The breaches were as follows:
 - 4.2.1 Mr Fawcett not permitting the Claimant to return to her place of work after furlough until October 2020 on the basis that he had not met with her, despite other Scripture Readers being permitted to return to their own places of work;
 - 4.2.2 Rev Hill's conduct towards the Claimant in the meeting of 2 December 2020 – (that he raised performance concerns without any prior notice and spoke to the Claimant in a humiliating and belittling way);
 - 4.2.3 The general approach taken by the Respondent regarding allegations of poor performance including not informing the Claimant of those concerns for over 13 months and not offering any support or guidance on them;
 - 4.2.4 The Respondent's failure to adequately implement any of the grievance recommendations made in June 2021 including mediation;
 - 4.2.5 Not supporting the Claimant in any meaningful way regarding IT skills or equipment – (the Respondent required and directed the claimant to use email, text messages, voicemail, WhatsApp, MS Teams and Zoom, but did not provide any training or support on the use of these communication methods. The claimant was provided with basic instructions on how to operate her work mobile telephone and laptop on collection of each, but this did not consist of any form of IT literacy training).
 - 4.2.6 Rev. Hill's instructions set out in his letter of 4 October 2021 (that the Claimant work closely with the chaplaincy team at RAF Brize Norton) in spite of the Claimant's excellent performance record and exemplary conduct.
 - 4.2.7 (There was an additional allegation that the Respondent refused to allow her to be accompanied by a friend to the grievance and grievance appeal meetings, but this allegation was withdrawn by the Claimant at the end of the hearing).

- 4.3 The Tribunal will need to decide:
 - 4.3.1 Whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and
 - 4.3.2 Whether it had reasonable and proper cause for doing so.
 - 4.4 Did the Claimant resign because of the breach?
 - 4.5 Did the Claimant delay before resigning and affirm the contract? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.
 - 4.6 In the event that there was a constructive dismissal, was it otherwise fair within the meaning of s. 98 (4) of the Act? The Respondent relies on some other substantial reason based on a breakdown in the working relationship.
- 5. Wrongful dismissal; notice pay**
- 5.1 What was the Claimant's notice period? The parties agree it was three months, and it was not paid.
 - 5.2 Was the Claimant dismissed by the Respondent in breach of contract?
- 6. Remedy.** We agreed that the following remedy issues should be dealt with in the first part of the hearing:
- 6.1 Is there a chance that the Claimant's employment would have ended in any event? If so, should her compensation be reduced as a result?
 - 6.2 Is the Claimant blameworthy to any extent for her dismissal? If so, should her compensation be reduced as a result?
 - 6.3 Did the Acas Code of Practice on Disciplinary and Grievance Procedures apply? If so, did either party unreasonably fail to comply with it? The Respondent says that only the issue about the meeting on 2 December 2020 was raised by the Claimant in her grievance. If so, is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion up to 25%?

Evidence

7. I had an agreed bundle of documents of 195 pages. I read these documents and took them into account to the extent referred to by the parties in their witness statements and during the hearing.
8. I had written witness statements which I read. I heard evidence from:
 - a. The Claimant.
 - b. Andrew Hill, Executive Director of the Respondent at the time of the events.
 - c. Steve Curley, Scripture Reader.

9. I had oral submissions from both parties.

Facts

10. I have considered all of the evidence and submissions, and find the facts necessary to decide the issues in the case.

11. The Claimant was employed by the Respondent between 1 September 1974 and 31 December 2021. She worked as a Scripture Reader.

12. The Respondent (“SASRA”) is a Christian charity. Its primary object is spreading the Christian faith among members of the British Army and Royal Air Force. Scripture Readers work alongside Army and RAF Chaplains. The Claimant describes her role as Scripture Reader as introducing soldiers and air force personal to a practical experience of the Christian faith. She was initially based at RAF Lyneham, and when that closed in 2011 she worked at RAF Brize Norton (“Brize”). She was awarded an MBE in 2009.

13. SASRA Scripture Readers for the RAF are appointed by the RAF Chaplaincy. The Chaplaincy is a department of the RAF. It has a central Senior Chaplaincy, which manages their work. Chaplains and Senior Chaplains also work at individual RAF bases. The Senior Chaplain on a base is the Superintending Chaplain for the Scripture Readers on that base. They provide regular reports to SASRA. I have seen examples of reports from the Claimant’s Superintending Chaplain at Brize from 2018, which give a very good account of her work and record no problems with cooperation or teamworking.

14. Mr Hill met the Chaplain-in-Chief and Archdeacon for the RAF on 9 October 2019, to discuss the future of SASRA within the RAF. I have seen his email report about this meeting to the Respondent’s Council. The note records that the Chaplain-in-Chief was initially very hesitant about SASRA and its future, and profoundly risk averse. In relation to Scripture Readers, the note records, *“Offered that if we delivered 10 Berenice Duckers to him he would employ them all, but if we delivered 10 Meg Atkinsons he would decline. His position was that Meg at BNZ is a unique ministry, to be valued, but not replicated elsewhere, and at one level not particularly helpful to the Department or us, being the only face of SASRA that RAF personnel currently see.”* Ms Ducker was another Scripture reader who he had previously worked with.

15. Mr Hill provided some further information about this meeting during the hearing. He explained that there is some controversy about the position of Chaplains in the RAF, and the work of SASRA could affect this if it is not done appropriately. The “risks” of overly independent working by Scripture Readers are to the individual themselves (as they would not be supported by the Chaplaincy if something went wrong), and to their reputation with the Chaplaincy as a whole. The RAF had agreed to have a Scripture Reader at Brize and he did not want to jeopardise this relationship. The Chaplain-in-Chief did not want more Scripture Readers who worked independently like the Claimant. Mr Hill was asked why he did not raise this with the Claimant at the time. He said he did not want to provoke an already difficult relationship, and he wanted to attempt light touch management to achieve more collegiate working rather than making it a large issue.

16. The Claimant had reported to the Respondent's Chief Executive, who for the six years until 2019 had been Mr Hill. On 16 September 2019, Mr Warren Fawcett was appointed as Ministry Director. He became the line manager for all Scripture Readers, including the Claimant.

17. Mr Fawcett wrote to the Claimant in October 2019 asking to visit her at Brize. The Claimant wrote back asking to arrange this in the new year and suggesting they meet in March at conference. Copies of these letters are no longer available. The Claimant says that she explained this was a busy time for her due to annual leave in November, carol services in December following which the troops were away, she then took holiday for some of January, and had annual leave in February.

18. Mr Fawcett emailed Mr Hill about this response. Mr Hill gave advice that their policy had been to accept that the Claimant is an "outlier" and not constrain her too much for fear of losing their only RAF connection. He refers to her being able to retire gracefully, and says "*If we wished Meg to retire then we would just need to start constraining her against her conscience – requiring her to attend SRs, insisting that she has and uses IT*". He urged Mr Fawcett to be compassionate, and said "*I think that there is no rush, and little is anything to be gained from attempting to drive Meg against her will, so my council [sic] would be to gracefully accede to her timetable*". Mr Hill's evidence was that he had worked with the Claimant for six years and had difficulties managing her, and he wanted to avoid spoiling her relationship with Mr Fawcett from the start.

19. Mr Fawcett did not contact the Claimant again before March. The Claimant and Mr Fawcett both attended the Respondent's workers conference in March, but were not introduced and did not meet one-to-one at the conference.

20. The Claimant was furloughed under the Coronavirus Job Retention Scheme from 1 April 2020. She returned to work in October 2020, and was placed on furlough again in November until 3 December 2020.

21. The Claimant complains about a telephone call with Mr Fawcett on 27 March 2020 after which she was placed on furlough. She says in her witness statement that he "*asked me whether I wanted to be furloughed or be made redundant. I was told I had to decide there and then and of course I chose to be furloughed as I did not want to lose my job.*" In oral evidence she said that she was asked if she wanted to be furloughed or resign. She then asked when she had to decide and was told "*now*". I have seen later correspondence from Mr Fawcett to the Claimant in which he explains that he used the same brief for all Scripture Readers, which gave three options of remaining employed, being furloughed or being made redundant. Based on the evidence, I find that the Claimant was given a choice between furlough or redundancy as said in her written statement, and she was asked to make an immediate decision, but this was the same conversation as for other Scripture Readers.

22. A furlough letter to the Claimant of 31 March 2020 states that furlough is effect from 1st April and "*will last until further written notice*", with the maximum period being as long as the scheme lasts. The Claimant says that her Chaplain at Brize told her they would allow her back on base from 1 July 2020, and other

Scripture Readers were allowed back but she was not. I have seen a letter from Mr Fawcett to the Claimant dated 10 July 2020 which says, "*The reason you are currently furloughed to this point in time is simply that, as an employer, SASRA are following the Government's advice to look after workers in particular categories, and in your case, that is because at your age you fall into the 'those aged 70 and over' category. This section of the population are classed as being 'Clinically Vulnerable'.*" The letter goes on to quote the relevant government guidance. Mr Hill's evidence is that there was a cost to bringing people off furlough and a health risk to staff, in particular any who were clinically vulnerable. This meant October was the appropriate date for the Claimant's furlough to end, as it was for a number of other Scripture Readers.

23. In a letter of 21 July 2020 from Mr Fawcett to the Claimant, he says "*Before there's to be any return to work we need to meet.*" The Claimant says this shows the meeting was a precondition to being permitted to return from furlough. I can see that the sentence can be read like this. However, I am satisfied from the other evidence from the Respondent (including letters sent at the time) that the Claimant was not permitted to return from furlough earlier because she was over 70 and so classed as clinically vulnerable. She was treated the same as other Scripture Readers in these circumstances, and the Respondent was following government guidance about who should be permitted to return to work.

24. I have seen lengthy correspondence between Mr Fawcett and the Claimant attempting to arrange a meeting, which starts with a letter on 24 June 2020 in which Mr Fawcett suggests meeting when he is in Brize for another meeting. By this point they were not communicating by telephone because conversations had gone badly. The meeting eventually took place on 9 September. At the end of the meeting Mr Fawcett told the Claimant that all personnel needed to be skilled to work online, as COVID had prevented work except for an online presence. The Claimant asked some questions about training and then said, "book me in".

25. Mr Hill send the Claimant a "letter of concern" on 11 November 2020. This followed the Claimant having contacted the SASRA Chairman about various operational matters, in breach of Mr Hill's guidance on staff interaction. The letter set out the following expected standards:

- *You will raise concerns over operational matters in the first instance with your line manager Warran Fawcett;*
- *If you require technical assistance with financial matters you will contact the Finance Director, Phil Rush.*
- *If you are unsatisfied with the responses you receive from Warran or Phil you will then engage with me.*
- *You will not engage with Council members other than as laid down in my guidance."*

26. The Claimant says that she found this letter upsetting and threatening. After further correspondence, there was a meeting between the Claimant and Mr Hill on 2 December 2020. This was attended by the Claimant's local minister (Steve Robinson) who acted as a mediator, and her friend/housemate Lyn Deacon.

27. The Claimant says that Mr Hill lost his temper with her and started waving his

arms around. She also says that he said in an aggressive way, *“Your boys might like what you do but the Chaplaincy aren’t happy with you, and they have requested another reader, in 2016 we were nearly closed down because of a reader’s way of working.”* The Claimant took this as meaning she was going to be replaced by another Scripture Reader. Her oral evidence was that Mr Hill lost his temper and it was not his normal demeanour. The Claimant says she felt devastated. She felt embarrassed and humiliated that this comment was made in front of her friend and local minister. She was also upset at being compared to another reader whose behaviour had jeopardised SASRA’s work.

28. Mr Hill confirmed this was the first time he raised concerns about the Claimant’s style of working. He could not remember all the details of the meeting. He intended to refer to the central Senior Chaplaincy but accepted that the Claimant may have misunderstood this as referring to the Senior Chaplain at Brize. He did not tell the Claimant the concerns were from the Chaplain-in-Chief because he thought it unwise to give her details of who had criticised her. He referred to the other reader because they also worked very independently, and this caused a serious incident. He described this reference as a “burning deck” to motivate change. Mr Hill accepted that he was frustrated with the Claimant at the meeting. He described how the Claimant spent considerable time going over old grievances from many years ago. He accepted he may well have said something close to the quote from the Claimant, and he may have been assertive. He does not think he particularly raised his voice and does not recall waving his arms.

29. I have seen a note of the meeting taken by Mr Robinson. This records the following: *“AH said that some Chaplains had noted that MA was not a team player – although admired and loved by her troops, relationships with base Chaplains could be strained. AH indicated that the base commander had asked for an additional reader”*. The note also records the Claimant saying she found these comments very upsetting, particularly to hear concerns expressed about her work when no mention had been made in her regular reviews over the last three years.

30. Mr Hill sent the Claimant a long letter on 9 December 2020. The Claimant wrote to Mr Hill on 18 January 2021, saying she was concerned by the statement that the Chaplaincy was not happy with her and had requested another reader, she was unaware that there were issues around her performance, she was perplexed why her line manager had not ever had a private discussion with her about this, it was disconcerting to be told in such a manner, and he appeared to align her with whatever went on with the other Scripture Reader.

31. Mr Hill replied on 5 January 2021. The letter says, *“I think that there have been some misunderstandings. The request from chaplaincy is for an additional scripture reader, not a replacement...A second ASR at BZN would involve allocating areas of responsibility between yourself and your prospective colleague. I believe that Chaplaincy is giving this thought, so that different skills and abilities can be used to best effect....Concern expressed to me by Chaplaincy has focussed on your independent style of working. I believe that it is fair to say that you set your own patterns and hours of working, largely without reference to Chaplaincy, and in this regard you operate in the same way as did [BE], which was the parallel I was attempting to draw. This practice may give*

greater freedom of action, but it also leaves you more exposed should there be any sort of complaint. It also does not encourage the collegiate ways of working which we are seeking to foster within the Association and with our external partners.”

32. There was further correspondence between the Claimant and Mr Hill, in which the Claimant asked for more details about who had said what about her, and Mr Hill said Chaplaincy are looking for Scripture Readers who will be part of a team rather than independent and unaccountable actors.

33. The Claimant’s solicitors submitted a formal grievance on her behalf on 7 April 2021. This complained about: lack of support during the first furlough period; Mr Hill refusing to accept the Claimant’s explanation for why she could not meet Mr Fawcett sooner; the raising of “baseless performance concerns” by Mr Hill at the meeting on 2 December 2020; and the Claimant having been told repeatedly that the Chaplaincy has requested an additional Scripture Reader when this is untrue. The overall issue is that *“baseless allegations about her performance are being used as a means to justify the introduction of a new Scripture Reader, which in turn will be used to force her out of a role.”*

34. The grievance hearing took place on 20 May 2021. The deciding officer Mark Bunting asked the Claimant some additional questions in writing. He provided an outcome report on 24 June 2021. The grievances were not upheld, but he found there was no working relationship between the parties. Mr Bunting made five major recommendations, which *“could be used as a base agreement by a professional mediator to move the situation forward if all parties agree.”*

- Where possible, each side must be willing to draw a line under all previous misdemeanours – real or perceived - by the other party.
- To assist with this, each side must agree to professional mediation.
- The Claimant must change her way of working – *“For all the success of her unique ministry, MA must realise that, as SASRA uses more modern ways-of-working, with a different relationship with onsite Chaplaincy personnel, that she will be required to adjust her own current way of working and it is reasonable to expect her to do this on an ongoing basis. This will necessarily include learning how to use modern communication equipment and social media to an acceptable standard and demonstrably using email, text, voicemail, WhatsApp / etc as part of her daily ministry. This new way of working will also include working with onsite Chaplaincy personnel and her colleague ASR at RAF Brize Norton in a fully integrated manner.”*
- Mr Hill and Mr Fawcett must realise the Claimant is understandably nervous about having to change her working model, and sensitively ensure she completes a path into the world of integrated working.
- In order to protect the Claimant, Mr Fawcett and Mr Hill, line management should be left to Mr Fawcett but they should be supported by two Independent Monitors. They will provide oversight of matters, have sight of

any written communication, and provide a third party view.

35. Steven Curley started work as a second Scripture Reader at Brize in July 2021. Mr Fawcett confirmed this to the Claimant in a letter on 26 May, and apologised for any delay in formally advising her of this. It appears the Claimant was aware of his posting from March.

36. The Claimant's solicitors sent an appeal against the grievance outcome on 30 June 2021. The grievance appeal hearing took place on 20 August 2021. The appeal officer was Col John Lewis, the SASRA Chairman. The written appeal focused on three areas, but the Claimant said in the hearing that she did not accept any of the findings. The hearing lasted for 3.5 hours and the Claimant was permitted to re-present her case.

37. I have seen two sets of brief notes of the meeting (it appears both are taken by the Respondent). One records the Claimant being asked if she would be open to a mediated meeting with Mr Hill and Mr Fawcett, and she replies *"No, I don't trust them and their words mean nothing to me. But I'd be happy for you to meet with them and convey my feelings to them on my behalf"*. The other set of notes records, *"JPL asked MA whether she would be willing to attend a mediated meeting with WF and AH. MA said that a meeting to further express her concerns might be useful, but she would want JPL to represent her concerns in any such meeting."* The Claimant's evidence is that she said she wanted Col Lewis, Mr Hill and Mr Fawcett to sit in a room with her so she could get questions answered that had not yet been clarified. The evidence on exactly what was said is unclear, but there was definitely discussion about Col Lewis being involved in a further discussion or meeting. The Claimant did not say she wanted to pursue the option recommended in the grievance outcome of a professional mediator.

38. Col Lewis sent an undated appeal outcome letter which made findings on the specific issues raised in the written grievance. He records the Claimant's answer to what outcomes would satisfy her grievances as she *"wanted everything to go back to how it was and to be left alone to complete her ministry at Brize Norton and Hullavington without interference"*.

39. His concluding recommendations were – *"It is recommended that the advice given on the way ahead in the Deciding Officer's report be carefully examined and the proposal for professional mediation and independent monitoring be adopted forthwith. Obviously, MA's work is not exclusively "her ministry" and this needs to be recognised. I am unable to commend MA's expressed desire to work alone without interference as being the appropriate way forward...For MA's ministry to be optimised at Brize Norton and Hullavington, there will need to be openness to change and there will have to be an agreement to work together in love, despite any differences, and with patience and mutual respect, putting the need for Gospel partnership ahead of any and all other personal priorities as we conduct SASRA's ministry in the name of the Lord Jesus Christ."*

40. The Claimant confirmed in her oral evidence that she did not accept the findings of either the grievance or the appeal, and she said they had not answered her basic questions.

41. The Respondent did not contact the Claimant to try and arrange a

professional mediation or discuss the recommendation about two independent monitors, either after the grievance outcome or the appeal outcome. Mr Hill said that this is because the Claimant had rejected the findings of the grievance and appeal. He described the Claimant as being on the “warpath” and that it would be crass to do it. He said that the Claimant had called the Chairman after receiving the appeal outcome to “berate” him. He felt the Claimant had made it crystal clear that she was not at all content with the outcome and would be taking further action, and so she did not want to pursue the recommendations.

42. Mr Hill wrote to the Claimant on 4 October 2021. This letter starts with, *“I understand that the formal grievance procedure you instigated has now been concluded, and we need to provide you with the written standards of conduct and behaviour to which you are required to adhere.”* It provides information about use of IT, and says he has asked Warren Berdo to ensure she has the equipment, training and infrastructure required to fully embrace these ways of working. The letter says, *“I require you to monitor and engage with the various channels - email, text, teams, WhatsApp and so on regularly, which should be no less than once each per working period of the day - these periods being morning, afternoon or evening, depending on your working pattern. I also require that you participate in scheduled staff meetings online as detailed by your line manager, unless you have agreed your absence from such meetings with him in advance.”* Mr Hill explained in evidence that “SASRA connect” had leapt forward in 2020. The COVID pandemic had meant they needed to change their way of working to use online methods, and even the elderly had been using iPads to join church meetings. Social media is also how younger people communicate. He regarded it as a reasonable management direction to be competent at using IT.

43. The letter also covers issues about public criticism of SASRA, teamworking and the Code of Conduct. In relation the teamworking, the letter says, *“I require you to work constructively with staff, supporters, churches, chaplaincy and military authorities in the course of your duties. This is in part because we can achieve much more as a well-integrated team than we can as a disparate set of individuals. I am also alive to the fact that the work of a Scripture Reader can be lonely, discouraging and stressful. If staff feel isolated and unsupported this is likely to lead to distress and may affect mental and physical health...To this end I require you to foster a good working relationship with ASR Curley, and to work closely with your supervising Chaplain and the Chaplaincy Team at RAF Brize Norton and Buckley Barracks. This mean that you will liaise closely with them regarding your working patterns, and be guided by them in your priorities and activities.”*

44. The Respondent did not take any steps to implement the recommendations of Mr Bunting relating to an independent mediator or two independent monitors, either after the grievance outcome or the appeal outcome.

45. The Claimant complains about the IT equipment and training provided to her. She says that she is not IT literate, she did not have a laptop and she only had an old mobile phone which she rarely used.

46. On 19 November 2020, Mr Fawcett wrote the Claimant confirming that they were expecting some IT kit and mobile phones at HQ in 10 days, and once that was set up they would invite her to HQ for some initial training. The Claimant

collected an iPhone from HQ on 16 December 2020 and had some training on how to use it from her HQ colleague Sophie. The Claimant could have used this phone to join some online meetings by video or telephone, but it appears she did not do so. She collected a laptop in July 2021, and was again given some initial training by Sophie. The laptop also had various training videos tailored to the Claimant put onto it by Sophie. The Claimant's evidence is that she was shown some basic things she could follow, and Sophie then said, "you've got it". The Respondent's position is that it was made clear to the Claimant that she could contact Sophie if she needed any more help. The Claimant described herself as a "dinosaur" who would need more training, but she did not ask Sophie or anyone else at the Respondent for further help at that time. She said it was too complicated to go to HQ or get help by phone.

47. The Claimant wrote to Mr Berdo on 28 October 2021 asking about the plan to help her with IT, as he had not yet contacted her after Mr Hill's letter of 4 October. The Claimant did not have her own internet access in her home. Mr Berdo arranged for equipment to be delivered to her and for local IT support to set up her laptop. There was some confusion when the delivery company claimed it had been delivered on 6 November, but it turned out that the delivery person had lied about this. Another delivery was booked but the Claimant was on holiday then.

48. I heard evidence from Mr Curley about his attempts to help the Claimant with IT. He says that he offered to help her with IT and to join him on the same Zoom link for Monday morning devotions, but she did not take up his offer. He says that he repeated offers to help with IT. This included showing her how he used his mobile phone as a Wi-Fi hotspot, as she was waiting for her internet connection at home. She said she didn't want him to show her how to do it, as her friend would show her. He also offered to help with email, but she said her friend would help her with that too. The Claimant agrees that he showed her how to use the phone to provide internet access, and she said her friend would show her. She said it wouldn't be the best use of time to sit in an office to learn when Mr Curley was only in three days a week. She also said he only offered to help one or two times. Having heard Mr Curley's evidence, I accept that he offered to help the Claimant a number of times.

49. The Claimant sent a resignation letter on 27 December 2021. The letter complains about the way performance issues were handled by Mr Hill, the grievance outcome, the failure to act on any of the recommendations, and failures to support her with Wi-Fi and IT. The Claimant says she feels she was pushed out.

Applicable law

50. **Unfair dismissal.** The definition of a dismissal includes circumstances where an employee is entitled to terminate their employment contract without notice by reason of the employer's conduct (Section 95(1)(c) of the Employment Rights Act 1996, known as constructive dismissal). This requires a significant breach going to the root of the contract, or something that shows the employer no longer intends to be bound by one or more essential terms of the contract (*Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221, CA). This is an objective test. It is not a range of reasonable responses test, and the employer

cannot “cure” a breach with later conduct (*Buckland v Bournemouth University Higher Education Corporation* [2011] EWCA Civ 131, CA).

51. In *Kaur v Leeds Teaching Hospitals NHS Trust* [2018] EWCA Civ 978, the Court of Appeal listed five questions to be asked in order to determine whether an employee was constructively dismissed:

- What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, their resignation?
- Has the employee affirmed the contract since that act?
- If not, was that act (or omission) by itself a repudiatory breach of contract?
- If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence?
- Did the employee resign in response (or partly in response) to that breach?

52. This fundamental breach can be a breach of the mutual duty of trust and confidence, which is an implied term of all employment contracts. The test is whether the employer acted without reasonable or proper cause in a way that was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties (*Mahmud and Malik v BCCI* [1997] ICR 606, HL).

53. A course of conduct by an employer which amounts to a breach can include a “last straw”, which must contribute to the breach in some way but need not necessarily be a fundamental breach in itself.

54. In *Waltham Forest v Omilaju* [2004] EWCA Civ 1493, the Court of Appeal provided guidance on final straw cases. The court confirmed that the final straw must contribute something to the breach, although what it adds might be relatively insignificant. The final straw must not be utterly trivial. The act does not have to be of the same character as earlier acts complained of. It is not necessary to characterise the final straw as “unreasonable” or “blameworthy” conduct in isolation, though in most cases it is likely to be so. The Court also confirmed that an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of their trust and confidence in the employer - the test of whether the employee's trust and confidence has been undermined is objective.

55. This approach was refined by the Employment Appeal Tribunal in *Williams v Governing Body of Alderman Davies Church in Wales Primary School* UKEAT/0108/19, which held that the event that contributes towards an employee’s decision to resign need not necessarily in itself contribute anything to a breach of trust and confidence. It can revive an earlier fundamental breach of trust and confidence, so long as that earlier breach has not already been affirmed and was part of the reason for resignation.

56. **Wrongful dismissal.** Wrongful dismissal occurs where an employee has not been given some or all of the notice they are contractually entitled to on termination of employment. This includes where an employee has been

constructively dismissed and resigns without giving notice to the employer.

Conclusions

57. My conclusions are as follows, taking the issues in turn.

58. I have considered **each of the alleged breaches and whether they occurred.**

59. ***Mr Fawcett not permitting the Claimant to return to her place of work after furlough until October 2020 on the basis that he had not met with her, despite other Scripture Readers being permitted to return to their own places of work.*** I find that this did not happen. I have considered the sentence in the letter of 21 July 2020 that says they need to meet before there's any return to work. However, I have found on the evidence that the reason the Claimant was not able to return to work until October 2020 was because she was over 70 and so clinically vulnerable, the Respondent was following government guidance on this point, and other Scripture Readers in a similar position were treated in the same way.

60. ***Rev Hill's conduct towards the Claimant in the meeting of 2 December 2020; the Claimant alleges that he raised performance concerns without any prior notice and spoke to her in a humiliating and belittling way.***

- a. Mr Hill did raise concerns about the Claimant's independent way of working with her for the first time at this meeting and she did not have prior notice of this. He did not call these "performance" concerns or intend this to be part of any formal performance process. However, I accept that the Claimant took this as a criticism of her performance.
- b. There is a dispute about whether Mr Hill spoke aggressively or waved his arms around while speaking about this issue. This was not raised by the Claimant in her grievance or noted by the mediator Mr Robinson. Mr Hill accepts he was frustrated and may have behaved assertively, but cannot recall waving his arms. On balance of probabilities, I find that Mr Hill may have raised his voice to some extent because of his frustration, and he may have waved his arms. However, I also find that the Claimant's version of events has grown somewhat in the telling and he did not lose his temper or behave aggressively to the extent now described by her. If he had, this is likely to have been raised by the Claimant at an earlier stage and also raised or noted by the mediator Mr Robinson.
- c. I accept that the Claimant felt humiliated by this meeting and was upset afterwards. There was obviously some misunderstanding, as the Claimant thought her Senior Chaplain on base had raised performance issues, she was to be replaced with another Senior Reader, and she was being compared with another reader who had caused a serious incident. However, on the evidence I have seen and heard I do not find that Mr Hill spoke to the Claimant in a humiliating and belittling way. He raised a genuine issue with her about concerns raised by the Senior Chaplaincy, in the context of a difficult mediation meeting where the

parties were intended to be open with each other. The misunderstanding was corrected in later correspondence from Mr Hill.

61. *The general approach taken by the Respondent regarding allegations of poor performance including not informing the Claimant of those concerns for over 13 months and not offering any support or guidance on them.* It is correct that Mr Hill did not tell the Claimant about the concerns discussed with the Chaplain-in-Chief until the meeting on 2 December 2020. His explanation is that he did not want to provoke an already difficult relationship, and he wanted to attempt light touch management to achieve more collegiate working rather than making it a large issue. Mr Hill did not categorise this as a poor performance issue. He did want the Claimant to work less independently because this was not how other Scripture Readers worked and the Senior Chaplaincy were concerned about the risks of this. Mr Hill did not specifically inform the Claimant that the concerns had come from the Chaplain-in-Chief. However, I do not agree that he did not offer any support or guidance. He provided information in various correspondence about how he wanted her to work more collegiately as part of a team, both with the Chaplains and with the SASRA team. This was not a performance management process where sanctions were going to be imposed on the Claimant.

62. *The Respondent's failure to adequately implement any of the grievance recommendations made in June 2021 including mediation.* It is correct that the Respondent did not implement the grievance recommendations made in June 2021 about use of a professional mediator and appointment of two independent monitors. I did not understand the Claimant to be complaining about any of the other recommendations.

63. *Not supporting the Claimant in any meaningful way regarding IT skills or equipment – having instructed her to use one of email, text message, voicemail and WhatsApp at least once per working period of the day.*

- a. There were some issues with the Claimant's IT equipment and training. She is clearly not familiar with this type of technology, and potentially needed a lot of help. She was provided with an iPhone and some training in December 2020, and a laptop with some training in July 2021. I accept that this was not sufficient training for her to be competent with using the equipment. However, I also accept the Respondent's evidence that it was open to her to ask for more help from Sophie at any time, and she did not do this. She was also offered help by Mr Curley, which she refused. Support was available to the Claimant, but she did not use it.
- b. The instruction she complains about was in Mr Hill's letter of 4 October 2021. She had to chase Mr Burdo for the plan to help her, and I accept that she had not been provided with her own internet access by this time. However, she had an iPhone which was capable of doing all of these things. She was aware that help could be provided by Sophie at HQ or remotely, and Mr Curley had offered to show her how to use her phone as a Wi-Fi hotspot.
- c. I do not find that the Respondent failed support the Claimant in any

meaningful way regarding IT skills or equipment. Although there were some delays, she was provided with both equipment and training, and it was made very clear to her how she could obtain further help if needed.

64. *Rev. Hill's instructions set out in his letter of 4 October 2021 (that the Claimant work closely with the chaplaincy team at RAF Brize Norton) in spite of the Claimant's excellent performance record and exemplary conduct.* Mr Hill did give instructions in this letter. He set out requirements to work constructively with staff, supporters, churches, chaplaincy and military authorities in the course of her duties. She was asked to work closely with her supervising Chaplain and the Chaplaincy Team, meaning to liaise closely with them regarding her working patterns and be guided by them in her priorities and activities. From the limited documents I have seen the Claimant did have excellent reports from her Supervising Chaplain in 2018, and I have seen nothing to suggest any misconduct.

65. *Whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent, and whether it had reasonable and proper cause for doing so.* I have considered this for each of the alleged breaches that I have found did happen.

66. *Mr Hill's conduct towards the Claimant in the meeting of 2 December 2020; raising performance concerns without any prior notice.* I do not find that this was calculated or likely to destroy or seriously damage trust and confidence. Concerns were raised with the Claimant for the first time at this meeting, the Claimant was clearly upset by this, and there was a misunderstanding about where these concerns came from and whether the Claimant was to be replaced by another Scripture Reader. This misunderstanding was unfortunate, and seems to have caused the subsequent serious breakdown in the working relationship. It may well have been better for Mr Hill to raise the issue in a different way, rather than while he was frustrated during a mediation meeting.

67. However, this falls short of a breach of trust and confidence. I have found Mr Hill may have raised his voice and waved his arms as he was speaking assertively, but he did not act aggressively and did not speak in a humiliating or belittling way. Mr Hill was not instigating a performance process or intending to impose any sanction on the Claimant. He was simply explaining an issue with the Claimant's independent way of working and that this had been raised by Senior Chaplaincy. He also had reasonable and proper cause for raising this issue with the Claimant. It was a genuine concern about potential risk to SASRA's work with the RAF. As one of the Claimant's managers, he was asking her to adapt her working style.

68. *The general approach taken by the Respondent regarding allegations of poor performance including not informing the Claimant of those concerns for over 13 months and not offering any support or guidance on them.* I do not find that this was calculated or likely to destroy or seriously damage trust and confidence. This was not a performance management process. There were no allegations of poor performance. Mr Hill was issuing a reasonable management instruction to the Claimant to adapt her working style in light of feedback from the

Chaplaincy. Mr Hill did not explain the issues fully at the meeting on 2 December 2020, but he did provide further information in later correspondence. I appreciate that the Claimant wanted to know exactly who had said what about her. This would be important if this was a formal performance management process with sanctions for failure to comply. But the situation fell far short of this. The Claimant was simply being asked to comply with SASRA's preferred ways of working.

69. *The Respondent's failure to adequately implement any of the grievance recommendations made in June 2021 including mediation.* I do not find that this was calculated or likely to destroy or seriously damage trust and confidence. I have looked at this carefully, as some clear recommendations were made which the Respondent never attempted to implement. However, I accept Mr Hill's explanation that the Claimant had been clear she did not accept the findings of the grievance or appeal. Mr Bunting's recommendations specifically say, "if all parties agree". I accept that the Claimant was clear at this point that she did not accept any of the grievance findings. Similarly, Col Lewis's appeal decision recommended returning to these recommendations. I accept Mr Hill's evidence that the Claimant had telephoned Col Lewis to complain about the appeal outcome.

70. The Claimant submits that the Respondent was too passive and had given up on investing in the relationship. There is some force in this argument. The Respondent did not at any point propose a further mediation to the Claimant, or take any steps to appoint two independent monitors. However, at no point did the Claimant indicate that she would be open to an independent mediation, her proposal at the appeal being limited to a meeting involving Col Lewis. It would certainly have been good practice for the Respondent to follow up on the grievance recommendations with the Claimant. I do accept, however, that this was unlikely to make any difference to the relationship as the Claimant had rejected all the outcomes of the process. This failure by the Respondent does not amount in the circumstances to a breach of trust and confidence.

71. *Rev. Hill's instructions set out in his letter of 4 October 2021 (that the Claimant work closely with the chaplaincy team at RAF Brize Norton) in spite of the Claimant's excellent performance record and exemplary conduct.* I do not find that these instructions were calculated or likely to destroy or seriously damage trust and confidence. Mr Hill was issuing reasonable management instructions in this letter about collegiate working. The Claimant did have a good performance and conduct record, but this does not prevent her employer from asking her to work in a different way due to feedback from the Senior Chaplaincy.

72. The Claimant's representative submitted that there was no evidence of concerns from Brize, and it was patronising and insulting to instruct the Claimant to do what she was already doing. I accept the Claimant's evidence that she had spoken to the Chaplain at Brize and been told she did not need to change anything, and her 2018 reports raised no issues about collegiate working. However, the Chaplain-in-Chief was concerned about her independent style of working. This is why Mr Hill asked her to work more closely with the chaplaincy team at Brize. I can understand why the Claimant felt she was doing what was required by the Brize chaplaincy team, as this is what she had been told by them.

But the chaplaincy team at Brize was not her employer. Mr Hill was issuing a reasonable management instruction. He had reasonable and proper cause for doing this, and there was no breach of trust and confidence.

73. I have also considered whether these individual alleged breaches amount to a breach of trust and confidence when considered cumulatively. I find that they do not.

74. The Respondent did make some mistakes. The Claimant was reluctant to meet or cooperate with her new line manager, and this was left rather than being addressed early on in their relationship. The mediation meeting on 2 December 2020 was not the best way to raise the concerns about the Claimant's style of working. The Claimant misunderstood what was being said to her about an additional Scripture Reader at Brize and a comparison with an employee who had caused a serious incident, and this was not clarified until later. It would have been good practice to communicate with the Claimant about the grievance outcome recommendations, despite the fact the Claimant had rejected the outcome.

75. Nevertheless, these incidents taken together are not sufficient to breach the implied term of trust and confidence. The test is whether, viewed objectively, the course of conduct showed that Respondent, over time, had demonstrated an intention to no longer be bound by the contract of employment. I accept that the Claimant was genuinely upset by what she considered to be unfair treatment by the Respondent. However, the test is an objective one. The Respondent's conduct did not reach that threshold. The Claimant submitted that the Respondent was deliberately attempting to force her out. She points to the advice from Mr Hill to Mr Fawcett that if they wished her to retire they could start constraining her against her conscience. I do not agree that this is what happened. The evidence shows that the Respondent was attempting to manage the Claimant's style of working, but this is something they were entitled to do as her employer. Although they wanted the Claimant to change the way she worked, they did want to continue the relationship if possible until the Claimant chose to retire.

76. Put simply, the Claimant wished to continue doing her job in the way she had always done it, and the Respondent wanted her to change her way of working. That caused a serious breakdown in the relationship between the parties, but it was not a breach of trust and confidence by the Respondent. It is sad for both parties that these difficulties could not be resolved and the Claimant was not able to complete 50 years' service as she had wished.

77. I therefore find that the Claimant was not entitled to terminate her employment contract without notice by reason of the Respondent's conduct. This means she was not constructively dismissed by the Respondent. Her claim for unfair dismissal does not succeed.

78. As the Claimant was not constructively dismissed by the Respondent, her claim for wrongful dismissal also does not succeed.

Case number: 1401509/2022

Employment Judge Oliver
Date 24 November 2022

RESERVED JUDGMENT AND REASONS SENT TO THE PARTIES ON
01 December 2022 By Mr J McCormick

FOR THE TRIBUNAL OFFICE