



EMPLOYMENT TRIBUNALS

Claimant: Mr C Borresen

Respondent: Prospect Education (Technology) Trust Limited

Held at: London South Employment Tribunals

On: 18 and 19 September 2024

Before: Employment Judge Burge

Representation

Claimant: In person

Respondent: Mr S Bellm, Solicitor

RESERVED JUDGMENT

It is the Judgment of the Tribunal that the Claimant's claim of unfair dismissal is not well founded and is dismissed.

REASONS

The evidence

1. The Tribunal heard evidence from the Claimant, James Phillips, Peter Newman and Deborah Young on behalf of the Claimant. Lana Karim had produced a witness statement but did not attend the Tribunal when it was her turn to give evidence, nor did she attend at 10am on the second day when she could have given evidence. The Tribunal therefore placed little weight on her witness statement.
2. On behalf of the Respondent the Tribunal heard evidence from Douglas Mitchell (Principal at Ashcroft Technology Academy), Richard Perry and Mike Smith.

3. An electronic bundle of 406 pages was provided to the Tribunal, with one further page added on day two.
4. Both parties gave oral closing submissions.

Procedural history and preliminary matters

5. The Claimant had made an application for a postponement and for specific disclosure on 15 February 2024.
6. On 3 April 2024 EJ Fowell wrote to the Claimant:

“You have applied for a delay of three months in the tribunal directions (copy attached) pending the outcome of your Subject Access Request (SAR). Any such application needs to be copied to the respondent to give them an opportunity to respond, but in view of the approaching dates for compliance I will deal with it without any further delay.

The SAR process is quite separate to the Tribunal process. In these proceedings the respondent has been ordered to disclose to you copies of all relevant documents by 9 April 2024. There should therefore be no need to wait for a response to the SAR. If you believe that there are any documents or types of documents missing from the material provided by the respondent you can raise it with them and, if need be, make a separate application to the Tribunal for a further order for disclosure. For now, however, the application is refused.”

7. The Respondent made an application on 30 April 2024 for strike out/unless order of the Claimant’s complaints based on non-compliance with Tribunal Orders.
8. On 1 May 2024 Redmans Solicitors came on the record for the Claimant and made an application to vary the Orders as follows:
 - Schedule of loss to be prepared and submitted on 6 June 2024
 - List of documents and disclosure to be prepared and exchanged on 4 July 2024
 - The Respondent to complete the bundle on 1 August 2024
 - Witness statements to be exchanged on 21 August 2024
9. On 21 May 2024 EJ Hart refused the Respondent’s application and wrote

“The Judge wishes to emphasise that any further non-compliance with orders or failure to respond to letters is likely to result in a striking out or unless order.

The Judge has separately considered the claimant’s application dated 1 May 2024 to vary the current orders. Since the deadline for the orders has passed it is necessary to vary them, but not to the extent requested by the claimant. The claim is for unfair dismissal and now that the claimant has instructed solicitors it should be

possible to comply with the orders without further delay. As has already been explained by EJ Fowell in his letter dated 3 April 2024 there is no need to wait for a response to the SAR since disclosure is quite separate...

Further case management directions have been made to enable the parties to agree the issues in this case in advance of the hearing...

10. EJ Hart then gave new dates for the parties to comply with.
11. On 24 May 2024 the Claimant provided Further Particulars of his complaint of constructive unfair dismissal citing 23 breaches dating back to 2012 with the final straw taking place on 19/20 April 2023.
12. On 24 July 2024 the Respondent applied for leave to submit an Amended Response.
13. On 7 August 2024 the Claimant applied for an extension of time to exchange witness statements as he wished to call ex-colleagues and it was the summer holidays so it had proven difficult to obtain witness statements from them. The Respondent objected to the application on the same day.
14. On 28 August 2024 the Tribunal wrote:

*"The Respondent's application dated 24th July 2024, to submit an amended response is granted. The parties have leave to exchange witness statements by no later than **29th August 2024**. If the Claimant, by this date, cannot produce all the witness statements he wishes to adduce, he must exchange any witness statements which are ready to be exchanged. A witness will not be allowed to give oral evidence without a witness statement. **No further postponement in this regard will be granted.** The Respondent's application for an Unless Order is refused as it is not proportionate to issue one."*

15. On 6 September 2024 the Respondent wrote to the Tribunal confirming that witness statements had been exchanged and suggesting the following timetable for the final hearing:

*"Day 1
2 hours reading.
3 hours cross examination of Claimant and witnesses*

*Day 2
3 hours cross examination of Respondent's witnesses
2 hours deliberation, judgement and remedy (if relevant).
The parties be limited to the suggested time limit for cross examination, unless the Judge orders otherwise."*

16. On 6 September 2024 the Claimant sent a request for specific disclosure.
17. On 13 September 2024 the Claimant applied for specific disclosure and for a postponement of the final hearing.

18. On 16 September 2024 the Respondent wrote objecting to the Claimant's application saying that it had disclosed its documentation on 3 July 2024 and that additional meeting notes and the Respondent's CCTV policy were provided on 9 September 2024. The Respondent had submitted a supplementary witness statement of Mr Smith. The Respondent said that

"Subsequent to the exchange of Witness Statements, the Respondent identified one allegation that it had not addressed in its witness evidence, being that Mr Smith in 2017 had told the Claimant he was to be disregarded. On that basis the Respondent served a supplementary statement of five very brief paragraphs on behalf of Mr Smith. We anticipate that would add perhaps 5 minutes to the length of Mr Smith's evidence."

19. On 16 September 2024 Regional Judge Khalil wrote

"The claimant's application to postpone the Hearing is refused. It is noted that there are 8 or 9 witnesses giving evidence. The issue of timetabling will be robustly managed by the presiding Judge, with regards to proportionality. A postponement at this stage would cause a significant delay and a listing will not be possible until July 2025 at the earliest. That is not in the overriding objective to avoid delay. It is not clear why it has been left so late to apply for a postponement. The claimant's request for an Order for specific disclosure is also refused as the claimant's application does not identify why disclosure is relevant and necessary to the determination of an issue before the Tribunal and why the documents were not sought sooner even if they are relevant and necessary."

20. The Claimant made a second application to postpone on the morning of the final hearing. He said that while his solicitors were still on the record, he did not have an advocate, he wanted more time to prepare the case, he still wanted the further disclosure and he did not have the password for the hearing bundle. It transpired that his solicitors had received the bundle, had not said they could not access it after it had been explained to them how to download it. The Claimant already had the version of the bundle before it had been redacted to omit children's names so the Tribunal was satisfied that not having yet downloaded the final bundle would not disadvantage the Claimant. The Claimant did not know why the law firm representing him were not available to attend given that they had months of notice of the final hearing. The Respondent objected to the application.

21. The Tribunal decided that it was not in accordance with the overriding objective nor in the interests of justice to allow the postponement. REJ Khalil had already refused the previous application for specific disclosure and for postponement. The hearing had been listed for some months, there was no good reason put forward why the Claimant's representatives could not attend. Many people represent themselves in the Employment Tribunal, the Tribunal went through the procedure with the Claimant and made it clear that he could ask questions as we went along. 1 ½ hours break was given

to enable the Claimant to access the redacted bundle, take legal advice and prepare.

22. In relation to the Respondent's application to allow a supplemental witness statement for Mr Smith, Mr Bellm submitted that this had been a mistake. In Mr Mitchell's witness statement he referred to Mr Smith giving witness evidence on the point. Witness statements had been exchanged on 23 August and the supplemental statement had been sent to the Claimant two weeks later, on 6 September 2024. The Claimant objected and said that this was indicative of the Respondent not following the rules but he did not identify any prejudice. The Tribunal decided that the evidence was relevant to the Claimant's claims, if it was not allowed the Respondent would be prejudiced as it would not have evidence to defend the allegation and the Claimant did not identify any prejudice. It was therefore in the interests of justice to allow the supplemental statement into evidence.
23. On the morning of the second (the final) day of the hearing (after the Claimant's evidence had been completed) the Claimant sought to disclose 4 further documents:
 - a. A complaint from another member of staff
 - b. Emails between the Claimant and his TU rep talking about the investigation they would like the Respondent to complete
 - c. Employee's contract terms regards industrial action
 - d. The members list from time of strikers - teachers and support staff
24. The Tribunal refused to admit them. They were not relevant, should have been disclosed before and the Respondent would suffer prejudice from their late disclosure.
25. A further period of time was wasted on the second day when the Respondent thought that it had failed to disclose a number of emails between the Claimant and Dr Smith. It transpired that all but one were in fact in the bundle. The Claimant did not object to the additional document being added to the bundle and it was added.
26. The delay in dealing with the disclosure issues meant that it was no longer possible for Judgment to be delivered orally at the end of the hearing. Judgment was reserved.

The Issues

27. The Claimant's Further and Better Particulars detailed 23 allegations going back to 2012. While understanding that the Claimant was seeking to rely on a final straw, at the start of the hearing I asked the Claimant to identify which, if any, were background, and which were breaches in themselves/cumulatively amounted to the fundamental breach. After breaks to think about it, the Claimant confirmed that 4 of the earlier acts were background and that he was relying on 19 breaches. During cross examination he removed a further allegation so the total breaches he alleges is 18.

28. The issues to be decided were:

1. Unfair dismissal

1.1 Was the Claimant dismissed?

1.1.1 Did the respondent do the following things:

1 On or around 17 June 2015, the Claimant was wearing a hat as work experience/ PSHE lead he was organising year 10 reflection day following work experience. As usual as he had over several years, he would liaise with Ms Zaadane who would organise rooming for year 10 students in their reflection day after coming back to school. DM walked past and saw the Claimant. Within minutes Ms Zaadane who he was sitting next to had received an email from DM telling her "To send him to me if he [the Claimant] is difficult" etc or words to those effect. The Claimant and Ms Zaadane looked at each other embarrassed and awkward.

2 On or around 10 November 2015, a teacher in the Claimant's department had failed to send work to a student internally excluded. DM took it upon himself to copy him in and refer the Claimant to his line manager Ms Calvert.

3 In 2021-2022, a new teacher arrived in the Claimant's department managed by Ms Sargeant called Mr Percy. Ms Sargeant was managed officially by Ms Calvert but became obvious to everyone that she was being line managed/groomed [for management] by DM who once a week would have long meetings with her in the department. The Claimant became friends with Mr Percy. Unfortunately for Mr Percy this was a bad look to be friends with the Claimant and as a result, DM for absolutely no justified reason refused Mr Percy to go up the pay scale after his first year of teaching. At this point the Claimant was a Joint rep for the NEU and Mr Percy confided with the Claimant. Mr Percy after appealing via Richard Perry was finally granted his pay rise but not before being told by DM "Watch who you are allied to". Mr Percy said to the Claimant in no uncertain terms that that in his opinion that was undoubtedly a reference to the Claimant.

4 On or around 7 September 2016, the Claimant's attempts to maintain the integrity of the Controlled assessments despite having little in the way of support and being given teachers with no experience of the subject, specifically Mr Sachdev. In addition, around this time the Claimant took on an unofficial extra class after school for a period of time to support a French and Spanish Specialist named Anna who had incredulously been given citizenship in her TT and had understandably struggled the previous year. Had the Claimant not put that extra work in that cohort of students would have failed their controlled assessments hugely impacting results. Again, Ms Calvert via DM provided nothing by way of support despite the obvious extra pressures placed upon the Claimant.

5 In or around 10 February 2016, DM announced in a morning staff meeting that he would be holding a special meeting at break about a student in the auditorium, a meeting the Claimant couldn't make as he had duty. Because the Claimant had duty, he emailed DM afterwards to let him know how the meeting went with the named student so he was in the know. Soon after DM admonished the Claimant by email in an angry aggressive tone because he had mentioned the student's name in the email. Presumably he was concerned that referring to the student by his/her name in an email would result in a successful FOI request from parents exposing it.

6 On 9th and 10 May 2017 DM sent a long email to undermine the Claimant. This was concerning a student who was ill who neither the receptionist, Avril, nor the Claimant were aware about. Again, DM failed to understand a situation and instead seeking to single out the Claimant's performance without any attempt whatsoever to communicate.

7 In mid May 2017 the Claimant's LG line manager Ms Bailey shared with him an email that she received from DM. She said it was only fair that he saw it. The email called the Claimant 'poor' at his job amongst other 'observations'. In response to the 'poor' jibe the Claimant sent email examples to Ms Bailey demonstrating the job he was practically managing to do single handed and successfully frankly against the odds. At one point the Claimant was managing after school catch up controlled assessment classes across three classrooms on his own because Ms Calvert refused to provide him support from his co Citizenship teacher in his department Mr McGuinness. The Claimant could have drawn a line and given the students high grades as per DMs wish but this was wholly unprofessional and the Claimant wanted the students, many of whom were frequently absent, to work right up to the end to demonstrate to him that they deserved their grade.

8 DM has a fearsome and explosive temper. The Claimant has been on the receiving end of this temper by email and at times he has illustrated elements of his temper verbally to the Claimant. One example on or around verbally was when Vi Bailey was the Claimant SLT line manager. DM charged into the department office when the Claimant was sat alone and accused him aggressively and pointedly, eyes full of extreme anger, facial expression contorted, that he had asked year 10s to go out and fundraise in their own time for a charity project he was co-ordinating. On several other occasions his behaviour towards the Claimant when huddled up with other members of SLT has been blatantly isolationist. On another occasion in the corridor, the Claimant referred to an issue with a student and the Claimant assured him that 'I' was all over it'. He responded "I hope not that would be a safeguarding issue" or words to those effect.

9 Within months of DM's appointment to the role of Principal, Mike Smith, the Claimant's line manager informed the Claimant that using words similar to "I don't know whether to tell you this as your line manager or as a friend but the word on the LG grapevine... is that you are to be effectively blanked out/disregarded".

10 Shortly after Summer 2017, the Claimant's job title was unilateral changed by DM to 'Director of Citizenship and Politics' and his line manager would change to Mr Hetherington. The Claimant was informed by DM that he had no choice but to accept this change as it was being imposed at executive level. During the meeting to discuss the change, DM admitted that the Claimant had been 'side-lined' but proceeded to blame his predecessor, Mr Barker. The Claimant later discovered via published executive meeting minutes that this was not decided at executive level and the position was a 'phantom' position with no responsibilities or decision-making authority.

11 The Claimant was frequently denied opportunities to tutor sixth form classes, this was blatant and was managed by Ms John. An example was 3 July 2018.

12 Meetings sometimes known as little chats or quick chats under DM tend to become full on meetings with consequences and zero accountability in the way of minutes. Normally he will get one of his subordinates to lead the meetings. Mr Hetherington was one example when he line managed the Claimant as director of politics and citizenship. In one particular quick chat that was held on or around the 18 October 2019, Mr Hetherington beckoned the Claimant into his room. the Claimant then found himself in a full-on meeting in which was Mr Hetherington totally out of character. He went on to string out a series of accusations about the Claimant's performance which were ridiculous. It was obvious the Claimant had been put up to this. The meeting/quick chat was about an incident in which the Claimant had been off sick yet was being given work instructions by Mr Hetherington while sick which the Claimant was expected to complete.

13 In early 2020 (prior to covid lockdown), a meeting was held DM in his office, with Ms Calvert (the Claimant's senior line manager) and Mr Perry (Vice Principal). The Claimant was not informed of the purpose of the meeting. The instant the 'meeting' started proper Ms Calvert and Mr Perry immediately fell into what can only be described as something like two rag dolls with contorted drooping faces, arms flopped out. As a piece of undoubted choreography, it was something to behold. During the meeting the Claimant was shown a piece of paper by DM which he had never seen before apparently showing where he lies in the hierarchy. By the end of that 'meeting', the Claimant had effectively been told he was no longer a 'manager' and was put under pressure to sign a new contract, the Claimant refused to sign it and said he needed to read it through. Days later he was emailed/written to by Mr Perry the day after Covid had been

announced that if he did not take it, they would make him redundant. In the end the Claimant had no choice but to sign it.

14 When the Claimant became joint union rep during covid the Claimant had several incidences of emails of aggressive nature in tone for entirely courteous requests. Specifically, the Claimant made some health and safety recommendations/requests during covid to Mr Perry in his human resources role. He forwarded them onto DM and the response the Claimant received back from DM was incredibly defensive and unprofessional almost as if he had been on the receiving end of a personal attack.

15 During the first year the Claimant joined the new Rs and Social Sciences department (2021/22) the Claimant was taken to the side by Ms Sargeant following a department meeting and told that the Claimant must change the seat that he sat in at meetings and that he was a bad presence and that the others had complained about the Claimant. It was made clear to the Claimant that no such complaints had been made, these were lies. The way Ms Sargeant came across was so out of character for her and suggested clearly to the Claimant that she had been put up to this by DM.

16 On 30 June 2022, DM's temper had upset students and other departmental staff with the way he went into an intense uncontrollable rage at another student in the Claimant's classroom.

17 In January 2022 a 'car crash' department meeting took place led by Ms Sargeant. She proclaimed that someone in the department was creating rumours etc about people losing jobs the following year etc. It was farcical to say the least but once again it was obvious that the Claimant was the target and it was clear to everyone. The Claimant was extremely upset and lodged a complaint. In the investigatory 'meeting' another choreographed charade led by Mr Perry and Ms Calvert (pulling faces) they decided that the blame for the rumours would lie with another member of staff presumably in a desperate attempt to protect Ms Sargeant. Ms Calvert then attempted to make the Claimant apologise for what happened while Richard told the Claimant to have a cup of tea. On this occasion the Claimant brought along a trusted colleague and fellow joint union rep Mr Philips to bear witness. As usual despite it being called a 'meeting' no meeting minutes to the Claimant's recollection were ever produced. In addition, at the start of the meeting Ms Calvert proclaimed that the Claimant shouted at Ms Sargeant and that Students outside the classroom heard the Claimant and presumably therefore told Ms Calvert. There were not any students in sight and certainly there was no shouting. Raised voices for sure. Just to be sure the Claimant checked with the caretaker the following day and he confirmed having checked the cameras that absolutely no students were in the vicinity whatsoever. In addition, it was the end of the school day.

18 On 19 to 20 April 2023: Under the direction of the principal, Douglas Mitchell, the Senior Manager (member of SLT), Mike Smith who was in charge of the department the Claimant was in, used CCTV to monitor the Claimant. The Claimant became aware of this when DM erroneously copied the Claimant into an email sent to MS. The matter was later 'investigated' by MS with a follow up 'choreographed' meeting with Mr Perry also in attendance. This was the final straw for the Claimant

1.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

1.1.2.1 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

1.1.2.2 whether it had reasonable and proper cause for doing so.

1.1.3 Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.

1.1.4 Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.

1.2 If the Claimant was dismissed, what was the reason or principal reason for dismissal i.e. what was the reason for the breach of contract?

1.3 Was it a potentially fair reason?

1.4 Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?

29. If the Claimant was successful, Remedy would be decided at a later hearing.

Findings of Fact

30. The Respondent is a Trust running the Ashcroft Technology Academy ("The Academy"). The Academy is a secondary school based in southwest London, formerly known as the ADT City Technology College. The Claimant started work with the Respondent as a Secondary Teacher on 30 August 2005 until 28 August 2023. During 2009 he was promoted to Key Stage 4 Personalised Programs and PSHCE Manager. When the role became part of the Humanities Department his job title was amended to Director of Politics and Citizenship (CPSE).

31. The Claimant's primary responsibilities in his role as teacher as set out in the Teacher Standards were to plan, teach, set homework, mark assessments, provide feedback and report on student performance. His assigned classes comprised, CPSE, Citizenship, Sociology and Government and Politics.

32. The management structure of the Academy (from 2017) is the Leadership Group, which comprises the Principal (Douglas Mitchell), Vice-Principal (Richard Perry), four Deputy Principals (Mike Smith, Mr Gallagher, Ms Calvert and Mr Hall) and two Assistant Principals (Ms Peterson and Mr Hetherington).
33. Mr Mitchell joined the Academy in June 2011 as Deputy Principal and was promoted to Principal in April 2017.
34. The Claimant raised two complaints during his time at the Respondent. The first was in January 2022 and the second was on 20 April 2023.

Allegation 1 On or around 17 June 2015, the Claimant was wearing a hat as work experience/ PSHE lead he was organising year 10 reflection day following work experience. As usual as he had over several years, he would liaise with Ms Zaadane who would organise rooming for year 10 students in their reflection day after coming back to school. DM walked past and saw the Claimant. Within minutes Ms Zaadane who he was sitting next to had received an email from DM telling her "To send him to me if he [the Claimant] is difficult" etc or words to those effect. The Claimant and Ms Zaadane looked at each other embarrassed and awkward.

35. An email exchange from the same day was before the Tribunal. The Claimant characterised the exchange as "The emails demonstrate an aggressive tone by Douglas towards me over an entirely rudimentary matter". The emails can be summarised as follows:
36. On 17 June 2015 Mr Mitchell asked the Claimant "...Could I ask you to please set up a grid for each period over the fortnight and email all staff and ask them to volunteer to staff the room when they would normally be teaching year 10?...". The Claimant replied "I will liaise with [Ms Zaadane] to look at teachers who would normally be teaching yr 10 and then email them today. If there are hard to cover times would you like me to ask [Ms Zaadane] to suggest teachers who could cover who are under allocation?". Mr Griffiths replied "...I didn't ask you to involve [Ms Zaadane]. Please do what I have asked in my email and email staff. Any issues, please see me and we can discuss...". The Claimant responded "Of course . By liaising with [Ms Zaadane] I meant just to find out which teachers teach yr 10 and then to email them directly with your instructions. I will send out the email ." Mr Griffiths replied "Thank you- no need to find that out from because by emailing all staff you are preventing unnecessary extra work from having to be done by [Ms Zaadane]. You can use my wording in my original email to you and staff should respond very quickly. It shouldn't be an onerous task for you to then collate the info."
37. The Tribunal finds that on a fair reading of the emails, Mr Mitchell asked the Claimant to do a task, the Claimant said he would do it in a different way and Mr Mitchell came back and asked him to do it in the way he had asked. Mr Mitchell was direct, possibly annoyed that the Claimant was not doing as he was asked, but he was not aggressive.

38. The Claimant says he remembers the incident. In evidence Mr Mitchell said he did not recall sending the email. The Tribunal finds that, on the balance of probabilities Mr Mitchell did find the Claimant's approach to challenging decisions irritating and he probably did email Ms Zaadane saying to send the Claimant to him if he was difficult.

Allegation 2 On or around 10 November 2015, a teacher in the Claimant's department had failed to send work to a student internally excluded. DM took it upon himself to copy him in and refer the Claimant to his line manager Ms Calvert.

39. Mr Mitchell sent an email dated 10 November 2015 to the Claimant and Ms Calvert (the Claimant's line manager) about a teacher, Jonathan. Mr Mitchell said:

*"Christian – this request relates to Citizenship. Can I therefore ask you to please explain to Jonathan that it is crucial he checks the ICAS list in the morning and sends the appropriate work if he needs to."
[Ms Calvert] – this is for your info as Christian's reviewer."*

40. Mr Mitchell's evidence to the Tribunal is that

"My reference to "Christian" is incorrect in this email - it should read "Jonathan's reviewer" instead.. Jonathan taught in both the Humanities department and the Citizenship department. Ms Calvert was Jonathan's line-manager for Humanities-based subjects and the Claimant was his line-manager for Citizenship. The Claimant needed to be aware of the issue so that he could support and monitor, and Ms Calvert needed to be aware of the issue because she was his reviewer.

41. In response to the email the Claimant wrote that he would speak to Jonathan and explain about the importance of the ICAS and Mr Mitchell replied "thank you".

42. The Tribunal accepts the evidence of Mr Mitchell that he had meant to type "Jonathan", not "Christian" and his intention was to ask Ms Calvert to review Jonathan. However, even if the Claimant is right that Mr Mitchell did intend it to be him that should be included in his review by his line manager then the Tribunal finds that this would have been a reasonable management instruction.

Allegation 3 In 2021-2022, a new teacher arrived in the Claimant's department managed by Ms Sargeant called Mr Percy. Ms Sargeant was managed officially by Ms Calvert but became obvious to everyone that she was being line managed/groomed [for management] by DM who once a week would have long meetings with her in the department. The Claimant became friends with Mr Percy. Unfortunately for Mr Percy this was a bad look to be friends with the Claimant and as a result, DM for absolutely no justified reason refused Mr Percy to go up the pay scale after his first year of teaching. At this point the Claimant was a Joint rep for the NEU and Mr Percy confided with the Claimant. Mr Percy after appealing via Richard Perry was finally

granted his pay rise but not before being told by DM “Watch who you are allied to”. Mr Percy said to the Claimant in no uncertain terms that that in his opinion that was undoubtedly a reference to the Claimant.

43. Mr Percy and Ms Sargeant did not give evidence to the Tribunal. The Claimant was not there when Mr Percy was allegedly told that he should watch who he was allied to. Mr Mitchell’s evidence that this did not happen is accepted by the Tribunal.

Allegation 4 On or around 7 September 2016, the Claimant’s attempts to maintain the integrity of the Controlled assessments despite having little in the way of support and being given teachers with no experience of the subject, specifically Mr Sachdev. In addition, around this time the Claimant took on an unofficial extra class after school for a period of time to support a French and Spanish Specialist named Anna who had incredulously been given citizenship in her TT and had understandably struggled the previous year. Had the Claimant not put that extra work in that cohort of students would have failed their controlled assessments hugely impacting results. Again, Ms Calvert via DM provided nothing by way of support despite the obvious extra pressures placed upon the Claimant.

44. The Claimant gave evidence to the Tribunal that the 3 classes were “totally under control” and that it was a pressurised environment where he had to go between 3 classes to make sure pupils were doing the right thing, “which they were”. No formal complaint was raised by the Claimant at the time. The Tribunal finds that this was a challenging period for the Claimant but as he did not raise a formal complaint at the time, it was within his duties as a teacher.

Allegation 5 In or around 10 February 2016, DM announced in a morning staff meeting that he would be holding a special meeting at break about a student in the auditorium, a meeting the Claimant couldn’t make as he had duty. Because the Claimant had duty, he emailed DM afterwards to let him know how the meeting went with the named student so he was in the know. Soon after DM admonished the Claimant by email in an angry aggressive tone because he had mentioned the students name in the email. Presumably he was concerned that referring to the student by his/her name in an email would result in a successful FOI request from parents exposing it.

45. The Tribunal finds that on 10 February 2016 Mr Mitchell wrote to the Claimant: “Please don’t mention the boy’s name in an email. I purposefully responded to you without his name...”. While the Claimant described this email as angry and aggressive, in cross examination he described it as unacceptable. The Tribunal finds that the email was to the point but was not angry nor aggressive.

6 On 9th and 10 May 2017 DM sent a long email to undermine the Claimant. This was concerning a student who was ill who neither the receptionist, Avril, nor the Claimant were aware about. Again, DM failed to understand a situation and instead seeking to single out the Claimant’s performance without any attempt whatsoever to communicate.

46. The emails from 10 May 2017 show a brief email exchange where Mr Mitchell says a pupil M was in reception and asking that the Claimant email the switchboard which what he needed to do. The Claimant replied that he had sent him to Lewis and that after that he would do the work with him. Mr Mitchell replied “Christian – you haven’t because he has not left the reception on area. Can you email what he needs to do – if this has to be done by Lewis, please tell Lewis to do this. It must be done asap. He is ill and not in school uniform so he cannot be let in to the Academy.”
47. The Claimant replied “Lewis is contacting him and M will email the work before the end of the day...” and Mr Mitchell replies “thank you”.
48. The Tribunal finds that the email exchanges are a normal workplace exchange. There was no “singl[ing] out the Claimant’s performance without any attempt whatsoever to communicate”.

Allegation 7 In mid May 2017 the Claimant’s LG line manager Ms Bailey shared with him an email that she received from DM. She said it was only fair that he saw it. The email called the Claimant ‘poor’ at his job amongst other ‘observations’. In response to the ‘poor’ jibe the Claimant sent email examples to Ms Bailey demonstrating the job he was practically managing to do single handed and successfully frankly against the odds. At one point the Claimant was managing after school catch up controlled assessment classes across three classrooms on his own because Ms Calvert refused to provide him support from his co Citizenship teacher in his department Mr McGuinness. The Claimant could have drawn a line and given the students high grades as per DMs wish but this was wholly unprofessional and the Claimant wanted the students, many of whom were frequently absent, to work right up to the end to demonstrate to him that they deserved their grade.

49. Mr Mitchell wrote:

“The situation with Christian is poor – students have not completed assessment and are required to spend me out of lessons to do so this week. While I accept that there are always last minute changes staff like to encourage so that the very best grade can be achieved, students on Christian’s list are significantly behind. Christian has deferred to me, which as Principal, I cannot be expected to coordinate. I had to direct him to speak to students yesterday – so that he could tell them what they must do. He did so relatively unwillingly, and it was reported to me by two members of staff that he was complaining about having to do this. It was a reasonable request of a CM in the Academy.”

50. Ms Bailey replied

“... I find it concerning that he has been reported as unwilling – he has been very proactive and keen to make sure the students do well and it is he who has organised this programme and supporting Lewis through this...”

51. The Tribunal finds that Mr Mitchell wrote to Ms Bailey with his perception that the Claimant's situation was poor with regards to pupils not having completed assessments. Ms Bailey supported the Claimant and put him right.

Allegation 8 DM has a fearsome and explosive temper. The Claimant has been on the receiving end of this temper by email and at times he has illustrated elements of his temper verbally to the Claimant. One example on or around verbally was when Ms Bailey was the Claimant SLT line manager. DM charged into the department office when the Claimant was sat alone and accused him aggressively and pointedly, eyes full of extreme anger, facial expression contorted, that he had asked year 10s to go out and fundraise in their own time for a charity project he was co-ordinating. On several other occasions his behaviour towards the Claimant when huddled up with other members of SLT has been blatantly isolationist. On another occasion in the corridor, the Claimant referred to an issue with a student and the Claimant assured him that I ' was all over it'. He responded "I hope not that would be a safeguarding issue" or words to those effect.

52. The Tribunal does not agree that there is evidence of Mr Mitchell's temper in emails, but accepts that from time to time Mr Mitchell shouted at some staff and pupils as this is corroborated by Ms Young (and Ms Karim).

53. On balance the Tribunal finds that the Claimant has not shown that the following took place: ***"DM charged into the department office when the Claimant was sat alone and accused him aggressively and pointedly, eyes full of extreme anger, facial expression contorted, that he had asked year 10s to go out and fundraise in their own time for a charity project he was co-ordinating"***,

54. On balance the Tribunal also finds the Claimant has not shown that Mr Mitchell said **"I hope not that would be a safeguarding issue"**.

Allegation 9 Within months of DM's appointment to the role of Principal, Mr Smith, the Claimant's line manager informed the Claimant that using words similar to "I don't know whether to tell you this as your line manager or as a friend but the word on the LG grapevine... is that you are to be effectively blanked out/disregarded".

55. The Claimant claims his manager, Mike Smith told him that the Claimant was to be "effectively blanked". Dr Smith gave evidence that:

"I had a good relationship with the Claimant. He had a tendency to be unhappy at work and negative about the school. By way of support, I did speak to him and encouraged him to be positive. At no stage, however, did I ever say to him that he was to be effectively blanked out or disregarded."

56. The Tribunal accepts this evidence. Dr Smith was a credible witness, he answered questions honestly, even admitting that with the benefit of hindsight he would have done things differently (see allegation 18 below).

Allegation 10 Shortly after Summer 2017, the Claimant's job title was unilateral changed by DM to 'Director of Citizenship and Politics' and his line manager would change to Mr Hetherington. The Claimant was informed by DM that he had no choice but to accept this change as it was being imposed at executive level. During the meeting to discuss the change, DM admitted that the Claimant had been 'side-lined' but proceeded to blame his predecessor, Mr Barker. The Claimant later discovered via published executive meeting minutes that this was not decided at executive level and the position was a 'phantom' position with no responsibilities or decision-making authority.

57. The Respondent decided to make structural changes in 2017, the Claimant's evidence is accepted that his role changed, he had fewer responsibilities but continued to lead on Citizenship and PHSE. His pay remained the same and he chose his job title "Director of Citizenship and PSHE".

58. Mr Mitchell gave evidence that

"The Claimant's role was changed in 2017... He was a Curriculum Manager paid as a second in charge but with no department of his own. Staff were made available from Humanities to teach CPSE and Citizenship. It made sense, therefore, to place the Claimant in Humanities with an experienced Curriculum Manager and where the other Citizenship teachers taught. Despite this change, the Claimant was paid the same amount of money and he continued to lead Citizenship and CPSE.

48. I was sympathetic to the perceived loss of status and so the Claimant was encouraged to choose the new title so that he could select something that allowed him to maintain his status.

59. The Tribunal accepts Mr Mitchell's evidence that the position was not a "phantom" without responsibilities or decision-making authority, the Claimant had responsibility for Citizenship, CPSE and G&P within the Humanities department and he continued to be paid the same salary.

60. Mr Mitchell's evidence is also accepted that the Claimant sent him a card after the discussions had concluded in which he said he was "looking forward to the new challenge and that he would work hard to make it a success."

Allegation 11 The Claimant was frequently denied opportunities to tutor sixth form classes, this was blatant and was managed by Ms John. An example was 3 July 2018.

61. The Tribunal finds that the Claimant would have liked to have tutored sixth form classes, however this was not an entitlement. When asked in cross examination whether this was one of the reasons that he left his employment, the Claimant said "no" and described this as a "minor infraction". In a contemporaneous email about this the Claimant said "I'm not desperately unhappy but I would have liked a sixth form after having

taken my year 11s all the way through from yr 7 for the second time since ive been here!”.

Allegation 12 Meetings sometimes known as little chats or quick chats under DM tend to be become full on meetings with consequences and zero accountability in the way of minutes. Normally he will get one of his subordinates to lead the meetings. Mr Hetherington was one example when he line managed the Claimant as director of politics and citizenship. In one particular quick chat that was held on or around the 18 October 2019, Mr Hetherington beckoned the Claimant into his room. the Claimant then found himself in a full-on meeting in which was Mr Hetherington totally out of character. He went on to string out a series of accusations about the Claimant’s performance which were ridiculous. It was obvious the Claimant had been put up to this. The meeting/quick chat was about an incident in which the Claimant had been off sick yet was being given work instructions by Mr Hetherington while sick which the Claimant was expected to complete.

62. In 2019, as Curriculum Manager for the department, Mr Hetherington line managed the Claimant. The witness evidence of Mr Mitchell is accepted that a conversation took place where Mr Hetherington was to address the missing Question Level Analysis spreadsheets that the Claimant was meant to have completed in term one. On 23 September in the Humanities meeting, all staff were asked to enter the UCAS predictions (which they had been speaking to students about over the previous week) into the shared spreadsheet by 25 September. The Claimant did not enter the predictions and then had a period of sick leave. On the UCAS application deadline day, as the Claimant's predictions were not saved, the students' UCAS applications could not be sent off.

63. Knowing that the Claimant had already had the conversations to decide these but not knowing what he decided, Mr Hetherington sent him a message to ask if he could share the predictions with him. When staff are off sick and so not at the Academy, they set work for the classes they teach, and send this via email.

64. An argument took place during the conversation between the Claimant and Mr Hetherington. Mr Hetherington made typed notes about the Claimant’s “Non-completion of subject overviews and repeated failure to meet deadlines”.

65. In his email on 18 October 2019 the Claimant said things like “I am **sorry if you inferred** that I made personal comments about you” (Tribunal emphasis) “As I said in the meeting I thought things had improved since the incident in June when your comments to me were rude, unacceptable and upsetting”.

66. In relation to the Claimant’s sickness absence the Claimant says

“The logical action in my opinion would be for you to check on me after returning to work , ask if there was anything you could do and potentially show some flexibility with QLA dates etc. You didn’t do

that. I do not agree that you were supportive in this instance, I hope you are in the future.”

“You instructed Milly to email me while I was unwell asking me to make some amendments to an exam paper because a few questions were not double line spaced. I regret that you instructed Milly to do that.”

“I don’t recall calling you pathetic but I do recall using that term regarding your approach to how you handled my illness.”

67. The Claimant agreed that he had asked Mr Hetherington to learn and adapt and used himself as an example, he said *“In my opinion that is not a personal criticism. It is advice.”* Your response was that *‘you will never change.’* I am sorry if **you felt** personally criticised in that instance.” (Tribunal emphasis).

68. The Claimant ended the email *“To summarise I look forward to us rebuilding a healthy working relationship and I am sure with a bit more effort from both sides this will happen earlier rather than later”.*

69. The Tribunal concludes that it is well within Mr Hetherington’s remit to raise issues with the Claimant’s performance. An argument took place between them. The Claimant’s email takes little responsibility for the tasks that had not been done, makes disingenuous apologies for his own behaviour in the meeting *“I’m sorry if **you felt**”, “I am **sorry if you inferred** that”* and gives unsolicited advice to Mr Hetherington, his line manager, on how he can do better in the future.

70. The Claimant’s version of events contained in allegation 12 are not made out.

Allegation 13 In early 2020 (prior to covid lockdown), a meeting was held DM in his office, Ms Calvert (the Claimant’s senior line manager) and Mr Perry (Vice Principal). The Claimant was not informed of the purpose of the meeting. The instant the 'meeting' started proper Ms Calvert and Mr Perry immediately fell into what can only be described as something like two rag dolls with contorted drooping faces, arms flopped out. As a piece of undoubted choreography, it was something to behold. During the meeting the Claimant was shown a piece of paper by DM which he had never seen before apparently showing where he lies in the hierarchy. By the end of that 'meeting', the Claimant had effectively been told he was no longer a 'manager' and was put under pressure to sign a new contract, the Claimant refused to sign it and said he needed to read it through. Days later he was emailed/written to by Mr Perry the day after Covid had been announced that if he did not take it, they would make him redundant. In the end the Claimant had no choice but to sign it.

71. Mr Perry’s evidence to the Tribunal is accepted that there was no “choreography” depicting rag dolls and that he and Ms Calvert tried to constructively consult the Claimant.

72. An email from Mr Perry on 13 March 2020 summarises the restructuring meeting that took place with all Teaching and Learning Responsibility holders.

“This meeting was to provide the opportunity to meet with all [Teaching and Learning Responsibility] holders individually to talk through the planned changes within the management of the Humanities and RS & Social Sciences departments before the plans are shared with both departments.

As [Mr Mitchell] outlined, following the promotion of [Mr] Hetherington, this presented (and perhaps necessitated) an opportunity to review the spread of subjects and the existing remits within the Humanities department and that of the RS and Social Sciences department, that had not been deemed possible until this point and for this to be outlined prior to advertising for a new Curriculum Manager for Humanities with a view to rationalising the changes both for a new appointee and existing staff.”

73. A letter dated 12 June 2020 said that as part of the review, for staff who no longer undertook a role that attracts a management responsibility payment, that payment was no longer appropriate where that person does not undertake management. A 3 year salary protection was to be applied to the salary. The Claimant was told his role as Director of Politics and Citizenship would no longer exist. With effect from September 2020 “technically” his employment as Director of Politics and Citizenship was to be redundant. The role as full time Teacher of Politics and Citizenship was offered as an alternative role which was available to the Claimant and the Academy “very much hope [he would] take up”. The letter continued

“I should explain that, should you not wish to take up the new role with effect from September 2020, your employment as Director of Politics and Citizenship would come to an end and your employment with the Academy would terminate. You would be entitled to a redundancy payment...”

“I should add that, other than the changes in respect of your salary and responsibility, all of the other terms of your employment will remain unchanged”.

74. The Claimant returned a signed copy of acceptance on 28 June 2020 and then worked in the new role. The Claimant did not raise a complaint.

Allegation 14 When the Claimant became joint union rep during covid the Claimant had several incidences of emails of aggressive nature in tone for entirely courteous requests. Specifically, the Claimant made some health and safety recommendations/requests during covid to Richard Perry in his human resources role. He forwarded them onto DM and the response the Claimant received back from DM was incredibly defensive and unprofessional almost as if he had been on the receiving end of a personal attack.

75. The evidence before the Tribunal does not corroborate this version of events and the Tribunal finds that this did not happen.

Allegation 15 During the first year the Claimant joined the new Rs and Social Sciences department (2021/22) the Claimant was taken to the side by Ms Sargeant following a department meeting and told that the Claimant must change the seat that he sat in at meetings and that he was a bad presence and that the others had complained about the Claimant. It was made clear to the Claimant that no such complaints had been made, these were lies. The way Ms Sargeant came across was so out of character for her and suggested clearly to the Claimant that she had been put up to this by DM.

76. The Claimant himself says that he was respected in the department because he spoke out. He also gave evidence that “It became something of a running joke because we were all grownups and [Ms Sargeant] was treating us like naughty children.” This indicates that it was Ms Sargeant’s view that the Claimant should change seats.

77. Mr Mitchell’s evidence is accepted that Ms Sargeant (Curriculum Manager), raised concern to her line-manager, Ms Calvert, that both herself and others in the department felt that the Claimant’s behaviour in department meetings was negative, undermining and rude. “He would lean or slump in his chair, would roll his eyes and puff out his cheeks in exasperation, fold his arms and sigh. This would be in response to nearly any request to do with the performance of our roles as teachers.”

78. The Tribunal accepts Mr Mitchell’s evidence that

“The Claimant, like many teachers, was willing to challenge management decisions and from time to time his approach as to how he went about challenging decisions was robust, bordering on aggressive or rude. However, by and large, the Claimant behaved reasonably and there was nothing which prompted any form of disciplinary or capability process.”

79. The Tribunal finds that the Claimant did speak up in meetings, and that was valued and liked – both Mr Perry and Mr Smith had positive relationships with him, but he also treated certain aspects of the meeting as a “joke” which was likely to have been undermining and disruptive for Ms Sargent who was likely to have raised it on her own behalf to the Claimant.

Allegation 16 On 30 June 2022, DM’s temper had upset students and other departmental staff with the way he went into an intense uncontrollable rage at another student in the Claimant’s classroom.

80. The Tribunal has already found that from time to time Mr Mitchell shouted at some staff and pupils as this is corroborated by Ms Young (and Ms Karim). However, there is insufficient evidence to determine one way or another whether Mr Mitchell “went into an intense uncontrollable rage at another student” in June 2022. No complaint was made by the Claimant at the time.

Allegation 17 In January 2022 a 'car crash' department meeting took place led by Ms Sargeant. She proclaimed that someone in the department was creating rumours etc about people losing jobs the following year etc. It was farcical to say the least but once again it was obvious that the Claimant was the target and it was clear to everyone. The Claimant was extremely upset and lodged a complaint. In the investigatory 'meeting' another choreographed charade led by Mr Perry and Ms Calvert (pulling faces) they decided that the blame for the rumours would lie with another member of staff presumably in a desperate attempt to protect Ms Sargeant. Ms Calvert then attempted to make the Claimant apologise for what happened while Richard told the Claimant to have a cup of tea. On this occasion the Claimant brought along a trusted colleague and fellow joint union rep Mr Philips to bear witness. As usual despite it being called a 'meeting' no meeting minutes to the Claimant's recollection were ever produced. In addition, at the start of the meeting Ms Calvert proclaimed that the Claimant shouted at Ms Sargeant and that Students outside the classroom heard the Claimant and presumably therefore told Ms Calvert. There were not any students in sight and certainly there was no shouting. Raised voices for sure. Just to be sure the Claimant checked with the caretaker the following day and he confirmed having checked the cameras that absolutely no students were in the vicinity whatsoever. In addition, it was the end of the school day.

81. On 26 January 2022 Mr Percy wrote to Ms Sargeant saying that he was concerned as he had had a few people approach him to say that his job was not secure after next year and asking what the Academy's intentions were and Ms Sargeant reassured him.
82. Mr Perry gave evidence, that is accepted, that a decision had been made to recruit to various roles and external advertisements had been published. Ms Sargeant had spoken about the roles at a departmental meeting and said that it had been unhelpful that a staff member had been gossiping.
83. The Claimant thought that he was believed to be the staff member who had been gossiping and stayed behind after the meeting. The Claimant and Ms Sargent had an argument about it.
84. Contemporaneous emails from Ms Sargeant show that her account of the meeting was that she had said that if staff were concerned about their performance and you think their job was at risk, she was the person they needed to speak to, no one else in the team. Ms Sargeant said that the Claimant had then said "Sometimes members of staff need to speak to a more experienced teacher or someone who knows about contractual matters" and she told the Claimant that they should be directed to her. Her account was that the Claimant had stayed behind after the meeting, had been agitated and that he had said that he had done nothing wrong because a member of staff had come to him for advice about employment law. She said the Claimant was agitated, spoke over her and told her as he left that he expected an apology in the morning. She went on that two named sixth formers had overheard.
85. The Claimant asked to speak to Mr Perry about a departmental matter after work. Mr Perry offered the next day and the Claimant reverted that he

wanted to meet the week after as he wished to reflect. The meeting took place at the beginning of February 2022. Mr Perry's evidence is accepted that during the meeting Ms Calvert reassured the Claimant that Ms Sargeant had not directed her comments at the Claimant during the departmental meeting. At the end of the meeting the Claimant accepted there had been a misunderstanding. Mr Perry and Ms Calvert suggested that it would be appropriate for the Claimant to apologise to Ms Sargeant as he had been angry at her. The Claimant subsequently bought Ms Calvert a bottle of wine.

86. The Claimant's evidence is accepted that he checked with the caretaker the following day and the caretaker saw no students nearby on the CCTV. The Claimant gave evidence to the Tribunal that he did give Ms Sargeant a bottle of wine but that he recalled that Ms Calvert had been tired that week and had or was to be attending a funeral so from a compassionate point of view he gave her a bottle of wine to cheer her up. He blamed Mr Mitchell who he thought wanted to make him feel isolated and not liked and he thought giving Ms Calvert a bottle of wine would send a message to Mr Mitchell. However, this does not accord with the contemporaneous documents of the event. In cross examination Mr Mitchell said that he was only aware of it afterwards. He said that there are 200 members of staff, he had 7 direct reports, each of them have 3, 4 or 5 direct reports to them. The Tribunal accepts his evidence that things will happen that are dealt with that he would not know about, as there was a lot going on.

87. The Tribunal finds that at a meeting Ms Calvert had been critical of a member of staff who had been gossiping. The Claimant assumed that was him, stayed behind and had an argument with Ms Calvert where both had raised voices and the Claimant left the meeting agitated and demanding an apology in the morning. To clear the air, and because he knew Mr Calvert has a funeral around that time, the Claimant bought her a bottle of wine.

Allegation 18 On 19 to 20 April 2023: Under the direction of the principal, Douglas Mitchell ("DM"), the Senior Manager (member of SLT), Mike Smith ("MS") who was in charge of the department the Claimant was in, used CCTV to monitor the Claimant. The Claimant became aware of this when DM erroneously copied the Claimant into an email sent to MS. The matter was later 'investigated' by MS with a follow up 'choreographed' meeting with Richard Perry also in attendance. This was the final straw for the Claimant.

88. The evidence of Mr Mitchell is accepted that in exchange for one less development day at the end of term, teachers had voted in favour of attending short professional development sessions from 8am prior to school where breakfast was provided. Teachers were expected to attend 10 of these sessions per year.

89. On 19 April 2023 the Claimant was reminded by Mr Hall that he still had four professional development sessions to attend and there was only four, possibly five, after the session on the 20th. On 20 April 2023 the professional development session took place from 8 – 8.25. At 8.28 the Claimant wrote "Can you please put me down for attending this session Phil. I would expect

this session to be counted as a session attended. Please confirm thank you.” Mr Hall responded “But you haven’t attended? I’m a bit confused? Happy to discuss in person.”

90. Later that day, on 20 April 2023 the Claimant sent an email to Dr Smith saying that he had attended a “Citizenship carousel” (where year 11 pupils present to year 9 pupils) to support another teacher, he had been expecting to see the two teachers in the department preparing but they had gone to the breakfast professional development training, which he would have liked to have done, if he had not thought he was supporting the carousel session. He said

“So I was somewhat surprised to find this morning unsupervised year 11s hanging around on the C block corridor this morning without access to laptops and materials so they could get set up immediately. Had I gone to breakfast PD they would have continued to be left unsupervised and without access to C109. Just to clarify again I am not organising these sessions, only supporting.”

91. The Claimant went on

“Evidently this should not have happened and through no fault of my own I have been told by PHA that I have now missed a BPD session. Furthermore, this is the second time this has happened. Previously I was pulled out of a BPD session to attend a trip. The same outcome ensued, the BPD didn’t count.

This is frustrating and frankly unfair.

Can you please deal with this matter Mike. I would expect an apology from LSA and PHA and the BPD count to be amended given the apparent importance PHA is placing on the required ten sessions despite all the extra hours after school/ lunch time and so on that I put in.”

92. Mr Mitchell asked Dr Smith to investigate the complaint. Dr Smith gave evidence to the Tribunal, that is accepted, that he interpreted the Claimant’s email to be saying that he wanted to attend the session but could not given that he had seen pupils unattended in the corridor. The Tribunal accepts this as a fair reading of the Claimant’s words “*Had I gone to breakfast PD they would have continued to be left unsupervised and without access to C109.*”

93. The evidence of Dr Smith is accepted that he thought that the Claimant had raised three important matters - the supervision of pupils, the Claimant’s request to be credited with attendance at the professional development session and his requests for an apology from two colleagues. The evidence of Dr Smith is accepted that during the course of that evening, he recalled that he thought he had seen the Claimant arrive at the Academy while he was doing his morning playground duty some time later than 8 am. He was unsure so sent an email to ask Mr Mitchell if the school entry system had logged the Claimant’s arrival.

94. Dr Smith decided, and told Mr Mitchell that he would need to look at the CCTV to ascertain the exact events of the previous morning in regard to the unsupervised year 11s that the Claimant had mentioned and their behaviour - and that this would also give him information on the actions and arrival times of the two teachers and the Claimant.

95. The parties agree that it is common for the school to look at CCTV routinely as part of enquiries into day to day issues that arise within the school. Mr Newland, the Building Services Manager, confirmed that he was often asked to look at CCTV and the sorts of reasons included "Anything from vandalism on the walls or car park issues or kids messing about in corridors". His evidence is accepted. The school has 89 CCTV cameras across its estate and it is a frequently used source of information when they needed to establish what had happened. When questioned in the Tribunal, Dr Smith said that with the benefit of hindsight he should have asked the Claimant directly what time he came in. However, because Mr Smith thought he had seen the Claimant coming in too late to attend the personal development session, he thought the Claimant was claiming something he was not entitled to.

96. The Academy's CCTV Policy provides a "purpose"

"6.1 PURPOSE OF THE POLICY

The purpose of this policy is to regulate the use of the closed circuit television (CCTV) system used to monitor and record areas of the ATA site and buildings for the purposes of safety and security."

97. Purposes of the cameras are:

"6.5 PURPOSES OF THE CAMERAS

1. The purpose of the cameras is to deter, detect and prevent:

- Unacceptable behaviour such as the malicious activation of the fire alarm system.*
- the bullying and intimidation of students by other students in areas away from regular staff supervision*
- threats to the health, safety and welfare of staff, students and other Academy users*
- criminal acts such as vandalism or theft of Academy assets, property and resources.*
- unauthorised entry to the site and buildings*

2. The cameras are also used to provide the necessary evidence to identify the perpetrator of any wrong doing and to enable the appropriate sanctions to be taken."

98. The CCTV records confirmed the Claimant's arrival time of 8:22am, well after the start of the PD breakfast session. Dr Smith wrote an email to Mr Mitchell describing the Claimant's movements from the CCTV but without

using his name. This email was accidentally forwarded to the Claimant by Mr Mitchell who had intended to forward it to Mr Perry.

99. The Claimant responded "I would like a meeting with you on this matter next week. I will bring a representative with me...". Mr Mitchell replied saying a meeting with him would not be necessary it was Dr Smith who was investigating. The Claimant replied that he would not "be organizing a meeting with [Dr Smith] until I am made to understand why you have, it would seem asked [Dr Smith] to check the cameras on this matter, something I deem heavy handed and unnecessary. After that I will consult with representation if I feel I have to."
100. Mr Mitchell wrote "One part of [Dr Smith]'s investigation was to get clarity about what happened on the morning in question and who was where, including you. It was his recommendation that you had arrived later than indicated and, for that reason, he reviewed the CCTV to obtain clarity".
101. The Claimant's response said "I refer you to my email at 10:40" which was the email in which he said that he would reengage when he had taken advice.
102. On 28 April 2023 the Vice-Principal, Richard Perry, sent an email to the Claimant seeking to intervene and deescalate the situation. Dr Smith had tried to encourage the Claimant more informally - and to no avail - to meet before Mr Perry's invitation. Mr Perry told the Claimant that he thought the situation could be resolved and that he wanted to meet with the Claimant and Dr Smith on 3 May 2023. He told the Claimant that he was free to bring someone with him should he wish to do so. The Claimant's reply was again curt, he simply referred Mr Perry to his email of 21 April and said that he would be in touch "early next week".
103. On 3 May 2023, rather than attend the meeting suggested by Mr Perry, the Claimant emailed Dr Smith and Mr Perry saying he would like to organise a meeting regarding his concerns on 4 May after lunch. The Claimant says he made it clear he would only discuss the issues he had raised in his original email.
104. The Claimant's evidence is accepted that he said he would not discuss the CCTV and that when they tried to discuss it three times he got upset and left. The evidence of Mr Perry and Dr Smith is also accepted that during the meeting the Claimant behaved angrily and ended up walking out of the meeting.
105. The outcome of the Investigation was sent out on 18 May 2023. Dr Smith concluded that:
- a. The Claimant's colleagues had behaved appropriately in relation to the Citizenship Carousel
 - b. the Claimant had not been denied the opportunity to attend the professional development session
 - c. students had not been left unsupervised by the Claimant's colleagues and that although students did subsequently arrive in the

corridor their presence had minimal impact on the Claimant and did not prevent him from attending the professional development session.

- d. there was one other unrelated occasion where the Claimant had been asked to come out of a professional development session in order to support a trip and that that session should be counted as an attendance at a PD session for the year.

The Claimant's Resignation

106. The Claimant submitted a letter of resignation dated 31 May 2023

"I wish to confirm that I am resigning my post of teacher at Ashcroft technology academy with immediate effect as of 31st May 2023. I will be moving onto pastures new. My last date of contracted employment will thus be 28th August 2023, and my last date of attendance will be 20th July 2023.

I would like to thank you and the rest of the teachers at Ashcroft technology academy for the support that you have given me throughout my time here. I have enjoyed working as a part of this team and appreciate the opportunities that I have had for personal and professional development."

107. The Claimant gave evidence to the Tribunal that:

"It is common courtesy to be polite when resigning even if my sentiments inwardly were quite the opposite. In addition, after handing my notice in on 31 May 2023 I still had two more months to endure at the Academy and I needed to get a reference which I quietly secured off a willing member of SLT who was leaving that summer."

108. In cross examination the Claimant said that the resignation letter was true up to a point.

109. The Claimant says in his claim form he started his new job on 4 September 2023.

Relevant law

110. As the Claimant resigned his employment and relies upon a constructive dismissal, he must establish that he terminated the contract under which he was employed (with or without notice) in circumstances in which he was entitled to terminate it without notice by reason of the Respondent employer's conduct (s.95(1)(c) Employment Rights Act 1996).

111. A constructive dismissal is not necessarily unfair and a tribunal that makes a finding of constructive dismissal will err in law if it assumes that the dismissal is unfair without making explicit findings on the reason for the dismissal and whether the employer has acted reasonably in all the circumstances.

112. The test of a constructive dismissal is a three-stage one: (1) was there a fundamental breach of the employment contract by the employer? (2) did the employer's breach cause the employee to resign? and (3) did the employee resign without delaying too long and thereby affirming the contract and losing the right to claim constructive dismissal? (*Western Excavating (EEC) Ltd v Sharp* [1978] ICR 221).

113. The House of Lords in *Malik and Mahmud v BCCI* [1997] ICR 606 describe the implied term of trust and confidence as being an obligation that the employer shall not:

"Without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."

114. In *Woods v W M Car Services (Peterborough) Ltd* [1981] IRLR 347 the EAT held that it is implied in a contract of employment a term that the employer will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. Any breach of this implied term is a fundamental breach amounting to a repudiation since it necessarily goes to the root of the contract. The Employment Tribunal's function is to look at the employer's conduct as a whole and determine whether its cumulative effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.

115. Simply acting in an unreasonable manner is not sufficient, it has to be calculated/likely to "seriously damage" the relationship of trust and confidence where the balance has to be struck between an employer's interest and the employee's interest in not being unfairly and improperly exploited, as per Langstaff J in *Frenkel Topping v King* EAT/01606/15:

We would emphasise that this is a demanding test. It has been held (see, for instance, the case of BG plc v O'Brien [2001] IRLR 496 at paragraph 27) that simply acting in an unreasonable manner is not sufficient. The word qualifying "damage" is "seriously". This is a word of significant emphasis. The purpose of such a term was identified by Lord Steyn in Malik v BCCI [1997] UKHL 23 as being:

"... apt to cover the great diversity of situations in which a balance has to be struck between an employer's interest in managing his business as he sees fit and the employee's interest in not being unfairly and improperly exploited."

13. Those last four words are again strong words. Too often we see in this Tribunal a failure to recognise the stringency of the test. The finding of such a breach is inevitably a finding of a breach which is repudiatory: see the analysis of the Appeal Tribunal, presided over by Cox J in Morrow v Safeway Stores [2002] IRLR 9.

116. The employee must leave in response to the breach, it must be an effective cause. The employee should leave because of the breach and this should demonstrably be the case, it is not sufficient if he merely leaves; and it is not sufficient if he leaves in circumstances which indicate some ground for his leaving other than the breach of the employer's obligation to him: see *Walker v Josiah Wedgwood & Sons Ltd* [1978] IRLR 105). In the words of Lord Denning MR in *Western Excavating* the employee 'must make up his mind soon after the conduct of which he complains: for, if he continues for

any length of time without leaving, he will lose his right to treat himself as discharged’.

117. In *Leaney v Loughborough University* 2023 EAT 155 the Employment Appeal Tribunal considered the case law on affirmation. Tribunal should focus on what conduct there had been during the relevant period that might or might not have amounted to an express or implied communication of affirmation, rather than mere passage of time. An employee with long service might reasonably need longer to make up his mind, but it is fact sensitive. Factors to consider include the sort of work carried out, in *Leaney* the summer period of an academic would be different, sickness absence and whether any negotiations are taking place that might address the concerns.

Conclusions

1.1 Was the claimant dismissed?

1.1.2.1 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

1.1.2.2 whether it had reasonable and proper cause for doing so.

118. The Claimant had long service with the Respondent, he had been teaching at the Academy since 2005. The Claimant’s allegations date back to 2015. The majority of them do not qualify as “unreasonable conduct” let alone demonstrate the Respondent behaving in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent. The Claimant only raised two complaints during his time at the Respondent, the first in January 2022 in relation to the departmental meeting where he believed he was the member of staff who had been referred to as gossiping about job losses. The second was when he had complained about two teachers, students being left unattended and saying that he was unable to attend the professional development training session. This was the background to Dr Smith checking CCTV to see if the Claimant had arrived in time for the professional development session.

119. The Tribunal has found that Mr Mitchell did find the Claimant’s approach to challenging decisions irritating and in 2015 he probably did email Ms Zaadane saying to send the Claimant to him if he was difficult (allegation 1). While this is bordering on unreasonable, it is not behaviour that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent. The emailed interactions in November 2015 about a teacher called Jonathan (allegation 2) is likely to be a typo, but even if Mr Mitchell did intend it to say that the Claimant should be included in his review by his line manager then the Tribunal finds that this would have been a reasonable management instruction. In relation to “watch who you are aligned to” (allegation 3), the Tribunal has found that this did not happen.

120. In 2016 when the Claimant worked hard to maintain the integrity of the controlled assessments, he now says that he did not have adequate support (allegation 4). However, the Tribunal has found it was part of the Claimant's role and he did not complain about it at the time. Mr Mitchell's email in February 2016 (allegation 5) was to the point but it was not angry or aggressive as depicted by the Claimant. It cannot be characterised as unreasonable conduct. Nor can Mr Mitchell's exchanges with the Claimant about pupil M (allegation 6). In May 2017 Mr Mitchell described the "situation with Christian" as "poor" (allegation 7). While Mr Mitchell's initial email is unreasonable, Ms Bailey supported the Claimant and put him right.
121. The Tribunal does not agree that there is evidence of Mr Mitchell's temper in emails, but accepted that from time to time Mr Mitchell shouted at some staff and pupils as this was corroborated by Ms Young (and Ms Karim) (allegation 8). This is unreasonable behaviour. However, it does not amount to the Respondent behaving in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent. There were also times when the Claimant shouted at colleagues, although he describes this as "raised voices". The Tribunal has found that the Claimant's allegation that Dr Smith told him that he was to be sidelined (allegation 9) did not happen.
122. In relation to the structural changes in 2017 (allegation 10), the Tribunal has accepted Mr Mitchell's evidence that the position was not without responsibilities or decision-making authority, the Claimant had responsibility for Citizenship, CPSE and G&P within the Humanities department and he continued to be paid the same salary. There was a perceived lack of status and the Claimant started being managed by Mr Hetherington, an experienced curriculum lead. It would have been a difficult change for the Claimant, Mr Mitchell recognized this and let him choose his own job title. Afterwards, the Claimant sent Mr Mitchell a card saying that he looked forward to the challenge and would make it a success. The Claimant raised no complaint at the time and continued working indicating that he himself did not consider this to be a fundamental breach of his contract.
123. Not being given the responsibility of mentoring a sixth form class (allegation 11) was not an entitlement and is not unreasonable behaviour from the Respondent. The Claimant's assertions that Mr Hetherington was "put up to" raising issues with him (allegation 12) is not borne out by the contemporaneous documents, nor was what happened unreasonable behaviour on Mr Hetherington's part.
124. A consultation meeting (allegation 13) took place in early 2020 where the Claimant ultimately accepted a role with pay protection. If there was a fundamental breach of contract the Claimant affirmed the breach by signing the new contract, continuing to work in that role without raising a complaint about it. The Tribunal has found that allegation 14 did not happen.
125. The Tribunal has found that the Claimant did speak up in meetings, and that he was valued and liked – both Mr Perry and Mr Smith had positive

relationships with him, but he also treated certain aspects of the meeting as a “joke” which was likely to have been undermining and disruptive for Ms Sergent who was likely to have raised it on her own behalf to the Claimant (allegation 15).

126. The Tribunal has already found that from time to time Mr Mitchell shouted at some staff and pupils as this is corroborated by Ms Young (and Ms Karim) and that this was unreasonable behaviour. However, there is insufficient evidence to determine one way or another whether Mr Mitchell “went into an intense uncontrollable rage at another student” in June 2022. No complaint or reports were made of it at the time by the Claimant (allegation 16).

127. The Tribunal has found that at a meeting Ms Calvert had been critical of a member of staff who had been gossiping (allegation 17). Even if he had been the member of staff that was referred to, it would not have been unreasonable behaviour for Ms Calvert to ask for concerned staff members to come to her and to ask for the person speaking to staff members to stop. The Claimant assumed that was him, stayed behind and had an argument with Ms Calvert where both had raised voices and the Claimant left the meeting agitated and demanding an apology in the morning. To clear the air, and because he knew Ms Calvert has a funeral around that time, the Claimant bought her a bottle of wine. This was not unreasonable conduct on the part of the Respondent.

128. The Claimant says the “final straw” (allegation 18) is when:

“under the direction of [Mr Mitchell], [Dr] Smith who was in charge of the department the Claimant was in, used CCTV to monitor the Claimant. The Claimant became aware of this when [Mr Mitchell] erroneously copied the Claimant into an email sent to MS. The matter was later 'investigated' by MS with a follow up 'choreographed' meeting with Richard Perry also in attendance.”

129. CCTV was used regularly at the Respondent. Mr Newland, the Building Services Manager confirmed that he was often asked to look at CCTV and the sorts of reasons included “Anything from vandalism on the walls or car park issues or kids messing about in corridors”. The Respondent says that where there is a particular reason that arises it uses CCTV to establish what has happened. The Respondent says the CCTV policy is relevant as it related to unauthorised access and the health and safety of pupils and staff. The Tribunal disagrees that the CCTV policy envisages that CCTV could be used to monitor staff or to check staff movements. It does not say that staff could be monitored and so CCTV is used inappropriately at the Academy.

130. The Information Commissioner’s Office guidance on Data Protection and Monitoring Workers provides guidance that “Just because a form of monitoring is available, does not mean it is the best way to achieve your aims. You must be clear about your purpose and select the least intrusive means to achieve it.”

131. The Claimant's allegation is that Mr Mitchell directed that Dr Smith monitor him by CCTV. The Tribunal has found that this is not what happened. What happened was Dr Smith interpreted the Claimant's email to be saying that he wanted to attend the professional development session but could not given that he had seen pupils unattended in the corridor. Dr Smith thought that he had seen the Claimant arrive later than the personal development training start time. Instead of going back to the Claimant to ask him, he decided to check the CCTV, in breach of the policy which does not envisage that CCTV will be used in this way. The Claimant thought that this was "heavy handed and unnecessary". However, Dr Smith did have a reason to review it, he did not think that the Claimant had arrived at the time he was saying he had arrived. He also wanted to check about unsupervised pupils. The Tribunal concludes that he checked it for a specified purpose to understand what had happened in relation to a particular incident.

Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

- **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**

132. Using the CCTV in this way was a breach of the CCTV policy. However, the question is whether the Respondent's actions were calculated or likely to destroy or seriously damage the implied term of trust and confidence? Dr Smith said that with the benefit of hindsight he would have done things differently. The Tribunal concludes he acted unreasonably in checking CCTV when he could simply have asked the Claimant what time he arrived. However, did Dr Smith behave in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent? This is a high hurdle. Balance has to be struck between an employer's interest and the employee's interest in not being unfairly and improperly exploited. In this case the Claimant indicated he had arrived in time for the personal development training and had been unable to attend due to students being in the corridor, he wanted to be credited for the personal development session and he wanted an apology from two colleagues. Dr Smith recalled that he thought that, contrary to what the Claimant was saying, the Claimant had not been at school in time for the session. Dr Smith went in and checked CCTV for that specified purpose. While unreasonable and a breach of the CCTV policy, it does not reach the threshold of being calculated or likely to seriously damage the trust and confidence between the Claimant and the Respondent. Even if the Tribunal is wrong about that, there was reasonable and proper cause for doing it. The Claimant was claiming to be entitled to something that he was not.

133. Standing back and looking at the whole picture, the series of acts that the Claimant says amounts to a fundamental breach of the implied term of trust and confidence, the Tribunal concludes that there was no fundamental breach. The Claimant got on well with people at work, he had a reputation for speaking up. The Claimant feels very strongly that Mr Mitchell has caused him suffering. He says that others could not have taken

the action themselves, it was all at Mr Mitchell's instruction. However, the evidence has not shown that. In respect of the checking the CCTV to see if the Claimant had been in school in time to attend the personal development session the Claimant says "It is inconceivable that such an action would have been taken by Mike unilaterally". Yet in evidence to the Tribunal Dr Smith confirmed that it was him (Dr Smith) who decided to check the CCTV. You can also see in the email exchanges how Mr Hetherington was unhappy with the interaction with the Claimant, yet the Claimant still seeks to blame this encounter on Mr Mitchell.

134. Mr Mitchell describes the Claimant as someone who was

"willing to challenge management decisions and from time to time his approach as to how he went about challenging decisions was robust, bordering on aggressive or rude. However, by and large, the Claimant behaved reasonably and there was nothing which prompted any form of disciplinary or capability process."

135. The Claimant himself described how it "became a running joke" that he and a colleague were treated as naughty school children. The Tribunal has found that back in 2015 Mr Mitchell did find the Claimant's approach to challenging decisions irritating and he probably did email Ms Zaadane saying to send the Claimant to him if he was difficult. In May 2017 Mr Mitchell described the "situation with Christian" as "poor", but Mr Mitchell was put right by Ms Bailey. The Claimant was not given the responsibility of mentoring a sixth form class, which perhaps shows that he was developing as he would have liked. The two changes in the Claimant's role (changes that the Claimant acquiesced to) did not lead to career progression either.

136. From time to time Mr Mitchell shouted at some staff and pupils. When the Claimant raised a complaint about two staff members and him not being able to attend a personal development session, Dr Smith did look at CCTV because he thought that what the Claimant was claiming was not correct, and in the event Dr Smith was right about that. The Tribunal concludes that, standing back and looking at what had happened from 2015 – 2023, the Claimant was not happy with some events that took place, there were some isolated instances of unreasonable behaviour and the relationship with Mr Mitchell was not a positive one. However, the cumulative events do not amount to a fundamental breach of the implied term of trust and confidence.

137. The Claimant's claim of constructive unfair dismissal therefore fails and is dismissed.

What was the reason for the Claimant's resignation?

138. The Claimant was clearly unhappy about the use of CCTV to check his arrival time. The Claimant refused to discuss the CCTV at the investigation meeting and walked out when it was raised. He wanted it to be investigated as a separate issue.

139. The outcome of the investigation is dated 18 May 2023 and the Claimant submits his letter of resignation soon afterwards, on 31 May 2023. It is only two weeks between the outcome and resignation, it is proximate. The Claimant is clearly incensed about the use of CCTV but does not enter a grievance about it. Nor does he appeal the investigation to say that CCTV should not have been used.

140. No evidence was presented to the Tribunal to say when the Claimant obtained his new job which he started in on 4 September 2023 but he does give the reason for leaving in his letter of resignation as *"I will be moving onto pastures new."* He also says

"I would like to thank you and the rest of the teachers at Ashcroft technology academy for the support that you have given me throughout my time here. I have enjoyed working as a part of this team and appreciate the opportunities that I have had for personal and professional development."

141. There is no mention of discontent, quite the opposite. In evidence to the Tribunal the Claimant explains this as:

"It is common courtesy to be polite when resigning even if my sentiments inwardly were quite the opposite. In addition, after handing my notice in on 31 May 2023 I still had two more months to endure at the Academy and I needed to get a reference which I quietly secured off a willing member of SLT who was leaving that summer."

142. In cross examination the Claimant said that the resignation letter was true up to a point.

143. The Claimant did have two more months to work at the Respondent and he did not want that period to be difficult. However, if the Claimant felt that strongly about it he could have walked out and made it clear the reason he was walking out. Needing a reference is a valid concern. The Claimant did obtain a reference from a "willing member of SLT" so presumably he would have been able to get a reference from that member of SLT if he had written in his resignation letter that the reason he was leaving was a fundamental breach of the Respondent. However, there are many ways of raising a fundamental breach of mutual trust and confidence. The Claimant could have put in a grievance, he could have appealed the investigation, he could have raised it as a reason for leaving, but he did not do these things.

144. The Tribunal concludes that the reason why the Claimant left employment was that he was *"moving onto pastures new"*. The Claimant got on well with other staff (with the exception of Mr Mitchell) but he had a tendency to be unhappy at work and negative about the school. The relationship with Mr Mitchell was not a positive one. The Tribunal concludes that it is likely that the Claimant therefore looked around for another job and left to have a more positive working experience elsewhere. He did not leave because there had been a fundamental breach of the implied term of mutual trust and confidence.

Did the Claimant affirm the contract before resigning?

145. In the Claimant's letter of resignation he gives notice, with his last day of employment being 28 August 2023 and his last day of attendance at the school as 20 July 2023. The Claimant is a long standing employee. He is also a teacher and so would not have actually worked over the summer. While it will be of little comfort to the Claimant, given the Tribunal's conclusions above, the Tribunal also concludes that if there had been a fundamental breach of the implied term of trust and confidence, and that had been a reason for the Claimant leaving, the Claimant did not affirm the contract by working out his notice during June and July, and claiming pay until 28 August 2023.

146. For all the above reasons the Claimant's claims of unfair dismissal fail and are dismissed.

Employment Judge Burge

Date: 23 October 2024

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>
s) in a case.