



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102779/2023

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Held in Glasgow on 26, 27, 28 and 29 September 2023

Employment Judge S MacLean

10 Ms Rebecca Stewart

Claimant  
In Person

Argyll College UHI Ltd

Respondent  
Represented by:  
Mr J Mitchell -  
Solicitor

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claimant's unfair dismissal application is dismissed.

### REASONS

#### 20 Introduction

1. The claimant resigned on 7 December 2022, giving two months' notice of termination. She maintains that she resigned in response to the respondent's course of conduct, which taken together amounts to a breach of the implied term of mutual trust and confidence. The claimant asserts that the breach was sufficiently serious to constitute a repudiatory breach where, by her resignation she accepted the breach. She says that the termination of her employment amounted to a dismissal within the meaning of section 95(1)(c) of the Employment Rights Act 1996 (the ERA). The claimant seeks compensation.

2. The respondent denies that the claimant was constructively unfairly dismissed. The respondent denies that its actions constituted a breach of contract with the claimant. The respondent also denies that the claimant resigned in response to any breach or breaches of her contract of

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employment. Alternatively, the respondent asserts that any breach or series of breaches were not sufficiently serious as to constitute a repudiatory breach giving rise to an entitlement to treat the claimant's contract of employment as terminated. To the extent that they were, the respondent argues that the claimant accepted any breach or breaches and failed to resign or delayed in resigning in response to such breaches.

3. At the final hearing, the claimant represented herself and gave evidence on her own account. Her mother, Lorna Knox and Rhianna Duff, a former colleague, gave evidence on the claimant's behalf. For the respondent, the Tribunal heard evidence from Alana Mathers, modern apprentice support office, Karen Stoddard, accounts officer, Martin Jones, principal and chief executive, Alisa Close, financial director and Joe Wright, head of HR and organisational design. The Tribunal was also referred to a joint file of documents.

4. The Tribunal has set out facts as found that are essential to the Tribunal's reasons and to form an understanding of the important parts of the evidence. The Tribunal carefully considered the submissions during its deliberations and has dealt with the points made in submissions when setting out the facts, law and application of the law to those facts. It should not be taken that a point was overlooked, or facts ignored, because the facts or submissions is not part of the reasons in the way it was presented to the Tribunal by a party.

### **The issues**

5. This is a case in which it is alleged that the respondent breached the implied term of trust and confidence. During its deliberations, the Tribunal's approach was to consider the following issues:

- a. Do the incidents, so far as proved have occurred, amount to conduct that was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the claimant and the respondent. The claimant relied on the delay and discrepancy over her job title; the lack of support for qualification study; and alleged mistreatment by management, in particular Ms Close's conduct in

relation to her asking an inappropriate question of a colleague and her response to that; requiring the claimant to move to facilities; the failure to deal with a disrespectful email sent to the claimant by a colleague; and Ms Close's delay in dealing with the claimant's job title.

- 5           b. If so, was a reasonable and proper cause for that conduct?
- c. If not, and there was therefore a fundamental breach of contract, did that conduct cause the claimant's resignation? Was it so serious that the claimant was entitled to treat the contract as being at an end?
- d. Did the claimant resign in response to the breach?
- 10          e. Did the claimant affirm the contract before resigning?

### Findings in fact

6.       The respondent is a further education body operating in Argyll and Bute and Arran. It is part of the University of Highlands and Islands. The respondent teaches a range of academic, practical and agricultural courses. It also runs  
15       classes for school pupils. The respondent has around 140 members of staff of which approximately 88 are in full time employment.
7.       The respondent employed the claimant on 19 September 2017 as a centre administrator and procurement assistant based in Dunoon. The claimant was employed on a full time basis, splitting her time between centre administration  
20       (17.5 hours per week) and procurement assistant (17.5 hours per week). The claimant's line manager was Eileen Clark, head of property. Until late August 2022 the claimant was based at Westbay (Dunoon) which was a student/teaching building.
8.       Ms Clark reported to Ailsa Close, finance director. Ms Close's direct line  
25       management also included Karen Stoddard, accounts officer and the centre managers. Ms Close and Ms Stoddard were based at the office at Sandbank (Dunoon).
9.       The respondent is one of the few colleges that had a procurement assistant. The claimant was highly regarded by the respondent. Her role was

administrative. She ordered equipment and items of low value required by the respondent's staff. She had no budget. The claimant had no authority to make orders without authorisation. For larger, high value products and projects staff of Advanced Procurement for Universities and Colleges Limited (APUC) were asked to provide the necessary assistance. When the claimant was on leave her work would usually awaited her return.

10. The claimant's job was within the scope of a collective bargaining agreement, included in an ongoing national job evaluation scheme administered between College Employers Scotland and the Support Staff Trade Union. The collective bargaining agreement is binding on all of Scotland's colleges.

11. Around March 2019, it was agreed that the claimant should relinquish her centre administration duties. She became a full time procurement assistant. Around 1 September 2019, the claimant's salary was increased from £18,822 to £21,131. Her salary was further increased on 1 September 2022 to £23,181.18.

12. Mr Wright had been seconded to the respondent. In November 2021 he was appointed head of HR and organisational design. Mr Wright and Ms Close along with others were part of the senior management team (SMT).

13. The claimant knew that all roles required to be subject to evaluation based on the information provided within a role analysis questionnaire which she completed in September 2021. The questionnaire was signed as accurate by Ms Clark. The claimant knew that any outcomes (including increase of pay) would be backdated to 1 September 2018.

14. In January 2022, the claimant had a long term (lasting more than four calendar weeks) sick absence. Ms Clark spoke to Mr Wright about the absence. Mr Wright recommended that the claimant be referred to occupational health.

15. Around February 2022, Mr Wright and the claimant met to discuss the occupational health referral. The claimant expressed concerns about the reference to "some long-term underlying issues" as she had had no previous discussion with Mr Wright. He said that the comment was intended to be

supportive. The claimant thought that the comment was to be removed. Mr Wright understood that the claimant was comfortable about the process. The claimant raised the reference in the occupational health referral to the claimant's role as a procurement "officer" rather than a procurement "assistant". This was a mistake. The claimant said that it should be reviewed. Mr Wright said that the outcome of the job evaluation scheme should be awaited.

16. The claimant returned to work on a phased basis and resumed full-time hours in March 2022.
- 10 17. The claimant spoke to Ms Clark and advised that she was unhappy with her role being described as procurement "assistant". The claimant considered that she was working beyond the parameters of a procurement assistant. She wanted the role to be retitled. Ms Clark advised that she would raise this with Ms Close.
- 15 18. Ms Close understood from speaking with Ms Clark that the claimant was unhappy with her job title and was looking for a pay rise. The discussion did not have much import to Ms Close because Ms Clark was the claimant's line manager; the job evaluation study was in play; and all staff had been made aware of this.
- 20 19. The claimant asked Ms Clark for an update in May 2022. Ms Clark said that she had nothing to report. Around this time Ms Clark announced her intention to retire at the end of August 2022.
- 25 20. Around 30 May 2022, the claimant submitted a staff development request form. The course was a CIPS level 4 diploma in procurement and supply to be undertaken at the City of Glasgow College (the Course). The claimant proposed to pay for the membership fee of CIPS and the cost of books. She hoped to gain funding for the rest of the costs. She anticipated attending classes remotely from 9.30am to 5pm every Tuesday which equated to 37 Tuesdays over the Course and to attend eight examinations in Glasgow.

21. The claimant and Ms Close met on 10 June 2022 to discuss the proposed registration for the Course. The qualification was in excess of that required by the claimant for her role. Ms Close explained that the respondent used APUC and did not require a more senior role for procurement than the claimant's role. Ms Close asked the claimant if she was considering moving on. The claimant advised that she was not. It was for personal development. She wanted more knowledge about procurement. Ms Close said that the respondent may be willing to put some funding towards the application.
22. The claimant said to Ms Close that her job title did not reflect what she did. The claimant expressed a desire for her job title to be changed from procurement assistant to something else. They struggled to come up with alternative titles. The claimant did not mention pay. Ms Close said that she would speak to HR.
23. The staff development request was considered at a SMT meeting. Mr Wright was reluctant to approve the request. There was no point in the respondent having a contract with APUC for procurement and the claimant doing the work. He considered that the qualification was not required for the existing post and there was no senior procurement post for the claimant to move into. Mr Wright also considered that having 37 days absence was disproportionate. The claimant could undertake the course in her own time or use some of her annual leave entitlement.
24. On 28 June 2022, Ms Close spoke to the claimant advising that the respondent could not support the level of absence for the Course. They discussed the use of annual leave and unpaid leave for the training days. Later the claimant sent an email to Ms Close advising that she had cancelled her application for the Course. For personal reasons, which the claimant disclosed, the claimant did not consider it was the right time to begin studies. She thanked Ms Close for her consideration and help trying to make it happen. Ms Close was sympathetic and suggested possibly pursuing the studies next year.

25. The claimant and Ms Close met again on 12 July 2022. Ms Close acknowledged the claimant's disappointment about the Course, expressed good wishes in relation to the personal issue, and how much the respondent valued the work that the claimant did.
- 5 26. Following Ms Clark's retirement, Ms Close was to directly line manage the claimant who was to be taken under the umbrella of the accounts team at Sandbank. The claimant was content at Westbay and for personal reasons was reluctant to move. She accepted that it made sense for her to move to be physically part of the accounts team and to free up need space for students at Westbay.
- 10 27. August and September are busy months for the respondent and especially Ms Close.
28. By August 2022 the claimant was concerned about the lack of progress with her job title. She considered that Ms Close had had ample time to discuss her job title with Mr Wright. The claimant was not convinced that Ms Close had done so. The claimant asked for a confidential meeting with Mr Wright. It was not unusual for employees to request confidential discussions with Mr Wright.
- 15 29. The claimant and Mr Wright met by Teams. The claimant asked if Ms Close had discussed her job with him. Mr Wright said that she had not. While the claimant referred to her job title, Mr Wright understood that the claimant was unhappy about her pay. He referred to the ongoing job evaluation study. He advised the claimant of the right to ask for a review. He explained that duties would need to be identified to support the case and this should be discussed with her line manager.
- 20 30. The claimant considered that Ms Close had lied to her about speaking to Mr Wright. She was angry. On 23 August 2022, the claimant sent an email to Ms Close, copied to Mr Wright, reiterating that she was unhappy about her job title and due to the lack of progress she was raising the issue formally (the August Email). The claimant accepted that she did not need a CIPS Diploma to be able to do her job. She said that she kept up to date with training
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because she had responsibility for procurement. The claimant considered that her experience and the scope of her position meant that she could apply for a position as “procurement manager”. The claimant wanted the respondent to consider her full scope of her job and award her with a job title and pay grade that reflected what she was doing.

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31. Ms Close replied to the August Email on 29 August 2022, confirming that from their chats there were things that could be done with procurement and linking the claimant with the accounts team. Ms Close said that she would be happy to have discussions about the August Email. She proposed that a meeting be set up the following week after the start of the new term.

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32. On 29 August 2022, a retirement lunch was held for Ms Clark at Westbay. The claimant found a colleague in tears as she was upset by a comment made by Ms Close about a Facebook post. The claimant regretted not intervening on the day as she considered that Ms Close was a bully.

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33. The claimant was not expected to move to Sandbank until mid/late September 2022. She arrived unexpectedly at the end of August 2022. Ms Close and the accounts team saw this as a positive development. Ms Close wanted the claimant to become more involved in major projects.

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34. Ms Close became the claimant’s direct line manager in early September 2022. They met on 5 September 2022 to discuss the areas of responsibility and roles (the September Meeting). Ms Close wanted a better understanding of the claimant’s day to day duties and asked the claimant to produce a list. The claimant was surprised given their discussion in June 2022 about her job title and her understanding that Ms Clark had raised the issue with Ms Close around March 2022. The claimant sent Ms Close an email on 8 September 25  
2022 attaching a list of duties that she performed on a day to day basis.

35. The claimant contacted Mr Jones on 5 September 2022 to request a confidential meeting.



36. Over the following days there was an amicable exchange of emails between the claimant and Ms Close regarding time off for various medical and dental appointments.
37. Following an exchange of emails, the claimant and Mr Jones arranged a confidential meeting on 8 September 2022. The meat of the discussion was the claimant's move to Sandbank which from her perspective had been done abruptly. Mr Jones explained that since the COVID-19 restrictions there was the need to reimagine office space and encourage students back to the campus. Mr Jones counselled the claimant suggesting that the move may not be as bad as she expected it to be. The claimant raised Ms Close's communication style and referred to the incident at retirement lunch. The claimant did not complain to Mr Jones about any mistreatment by Ms Close to her. Mr Jones did not give any further undertaking.
38. The claimant was on annual leave for two weeks during October 2022.
39. Around 25 October 2022, there was an email exchange between the claimant and a centre manager about chaperone issues (the October Email Exchange). The claimant was upset by the email sent by a centre manager and sent a robust response. The claimant felt unsupported. Ms Close was on annual leave during the October Email Exchange. On her return the following week Ms Close did not feel that there was an need to intervene given the claimant's response.
40. On 3 November 2022, the claimant met with Ms Close (the 3 November Meeting). The claimant did not raise the October Email exchange with Ms Close. A draft job description had been prepared for discussion. The meeting was positive. There was agreement about the claimant losing some duties (including dealing with the chaperone system) and there was to be further discussion around other duties. The claimant was advised that a process required to be gone through with HR and the SMT. Ms Close indicated that a pay rise would be looked at. The meeting between Ms Close and Mr Wright was arranged for 8 December 2022.

41. On 11 November 2022, the claimant met with Ms Close and Ms Stoddard to discuss what processes could be introduced, improved and integrated between the finance and procurement processes (the 11 November Meeting). They discussed how the accounts team would operate over the next six to  
5 twelve months with the claimant being part of it. The meeting was positive.
42. On 2 December 2022, as the claimant was leaving the office for the weekend, she asked Ms Close for an update. Ms Close indicated that she did not anticipate any further progress before Christmas. Ms Stoddard was in the vicinity when the discussion took place.
- 10 43. On 6 December 2022, the claimant sent a text to Ms Stoddard advising that she would not be returning to work. The claimant stated that she was heartbroken after speaking to Ms Close on 2 December 2022 and that she would be tending her resignation the following day. The claimant felt that Ms Close had “no intention of fixing things” or was going to keep the claimant  
15 “hanging only to insult me with whatever pay she comes up with”. Ms Stoddard, who had witnessed the conversation on 2 December 2022, was surprised at the claimant’s decision.
44. On 7 December 2022, the claimant sent an email to Ms Close giving notice of her resignation with her final day being 7 February 2023 (the Resignation  
20 Letter). The claimant stated that she had been working well beyond the parameters of her job description, title and paygrade for three years. Despite certain discussions in March 2022, she was no closer to gaining the appropriate title and associated pay. The claimant said that Ms Close had confirmed that matters had not progressed since the 11 November Meeting.  
25 The claimant considered the situation was worsened due to behaviours making her feel that if she pushed the matter any harder, working life would be made uncomfortable. The claimant referred her staff development request being refused and her anxiety moving to Sandgate. The claimant indicted that she did not feel supported. Her position was no longer tenable and that  
30 she was resigning.

45. The claimant submitted a fit note covering the period 6 December 2022 until 8 February 2023 which stated that she was not fit to work due to work related low mood and anxiety.
46. On 8 December 2022 Ms Close met Mr Wright to review the updated job description and consider whether any changes to the weighting of the job (as originally contracted) had been substantively impacted upon to the degree that it would be demonstratively unfair not to implement a temporary resolution pending the outcomes of the job evaluation scheme. They concluded that there was no evidence to support the claimant's assertion about the weighting of the job.
47. On 15 December 2022, Ms Close wrote to the claimant advising that she was legally required under the National Agreement for Support Staff to give four weeks' notice. Unless the claimant wished to reduce her notice, it was presumed that eight weeks' notice would remain in place.
48. Ms Close also reiterated that the claimant's salary for the period from 1 September 2018 up until the date of her resignation would be subject to the agreed outcomes of the National Scheme of Job Evaluation. It was anticipated that this would be implemented around 1 September 2023. Ms Close acknowledged that it was disappointing for the claimant and other support staff that there had been delays but this was due to matters out with the respondent's control given that it was remitted to a national bargaining agreement.
49. Ms Close said that at the claimant's request, an informal review of her job role had taken place. It was agreed that the duties in the original job description required to be updated. Having considered, with Mr Wright, further weighting of the role with the revised duties, the conclusion was that the weighting of other duties was not substantively higher than those in the pre-existing job description. Accordingly, it was not agreed that the claimant had worked way beyond the parameters of her pay grade. There would be no interim changes to the paygrade before the formal job evaluation exercise was complete.

50. On 18 January 2023, the solicitors instructed by the claimant wrote to the respondent reiterating the basis of the claimant's resignation and indicated that the claimant believed that her salary should have been approximately £34,000 as a procurement officer. The belief about an entitlement to £34,000 was not previously expressed to the respondent. It was formed by discussing salaries of other postholders doing entirely different jobs.

51. The claimant was paid up to 7 February 2023. At the date of termination, the claimant was 41 years of age. She had been continuously employed for five years. The claimant's gross weekly wage was £445.79. Her monthly net pay was £1,650.92. The claimant was in receipt of Employment Support Allowance (ESA) of £367.47 per month.

*Observation on witnesses and evidence*

52. The Tribunal considered that the claimant gave her evidence honestly based on her recollection and perception of events. The Tribunal did not doubt how the claimant felt while working for the respondent in 2022 as this was confirmed in contemporaneous texts with her mother who also confirmed that view in her evidence. The Tribunal was however less convinced, despite the claimant's strength of feeling about working with Ms Close, that her feelings were conveyed to the respondent's witnesses at the time. The Tribunal's reasoning was that the claimant's evidence of her interaction with Ms Close was incongruent the contemporaneous correspondence with Ms Close and the evidence of other witnesses for the respondent.

53. The Tribunal considered the respondent's witnesses gave their evidence in a straightforward manner. The Tribunal was mindful that Ms Stoddard and Ms Mather are employed by the respondent. Their perception of Ms Close's management style differed to that of Ms Duff who had left the respondent's employment and gave evidence for the claimant. The Tribunal could understand Ms Duff's disappointment in the delay in the outcome of the job evaluation scheme over which the respondent had no control. The Tribunal also appreciated that Ms Duff was disappointed in being unsuccessful applying for another position. However, that was an open interview process

and the Tribunal considered that Mr Wright indicated the successful candidate interviewed exceptionally well.

54. The Tribunal considered that Ms Close gave her evidence honestly and candidly. The Tribunal's impression was that Ms Close had numerous line management responsibilities in addition to other responsibilities which were part of her role. It was also a challenging time: employees were frustrated at the delay in implementation of the job evaluation scheme and Ms Close assumed direct line management for the claimant which involved her being relocated and integrated into the accounts team.
55. The Tribunal considered that Mr Jones and Mr Wright were credible and reliable witnesses. They both readily agreed to meet with the claimant and endeavoured to understand the concerns she was raising with them. The Tribunal considered that some of the decisions about which the claimant complained were made by Ms Close were in fact influenced by Mr Wright, for example the decision in relation to time off for the Course and the need for an evidence based approach considering interim changes to the paygrade before completion of the formal job evaluation exercise.
56. There was disputed evidence about the discussion between the claimant and Mr Wright about the reference in the occupational health report to "officer" rather than "assistant". The claimant said that Mr Wright commented that the claimant did procurement for the respondent so in his view she was a procurement officer. Mr Wright said that the claimant raised her job title but he repeated that he would be bound by the job evaluation scheme. The Tribunal noted that Mr Wright had only recently been appointed to his new role. Given his involvement in the job evaluation scheme during his secondment, and the purpose of the discussion, the Tribunal considered it highly likely that Mr Wright would have focused on the content of the referral and repeated that the respondent would be bound by the job evaluation scheme.
57. In relation to the staff development request, the claimant's evidence was that in the meetings Ms Close's tone was unpleasant and she seemed angry. The

claimant said that as the respondent would not allow her time off during the working week, her only was evening classes and this was not viable given the personal issues that had arisen. The claimant felt that other colleagues were given the opportunity for personal development. Ms Close's recollection was that the meetings were open and friendly. Ms Close accepted that others were allowed to study. However this was on the respondent's courses on subject matters relevant to their existing position. Ms Close also referred to employees who were engaged in study that they undertook in their personal time. The Tribunal had no doubt the claimant was disappointed that she was unable to pursue the Course. However from the contemporaneous correspondence the Tribunal was not persuaded that Ms Close was not open to the claimant's further development or refused funding. The issue was more about the claimant undertaking the studies in her own time.

58. There was dispute evidence about the tone of the September Meeting. The claimant said that Ms Close was visibly angry and aggressive. She acted as if Ms Clark had not spoken to her and as if nothing had been discussed about the claimant role in June 2022. The claimant said that she felt bamboozled and explained about her job title and an increase in pay. The claimant considered that Ms Close had lied. Ms Close's evidence was that until September 2022, Ms Clark was the claimant's line manager. Ms Close had several line management responsibilities. August September were busy months for her and the accounts team. While Ms Clark had spoken to Ms Clark it was on an informal basis which Ms Close did not understand to be high in the priority list. Many employees were waiting for the outcome of the job evaluation scheme. The claimant's role was being discussed in the context of her now being part of the account's team. The Tribunal did not doubt the claimant's frustration and disappointment. Nor did the Tribunal doubt that the claimant did not like Ms Close and did not want to work at Sandbank. The Tribunal was not convinced that Ms Close was angry and aggressive at the September Meeting. The Tribunal felt that it was likely that Ms Close's meeting with the claimant was one of a number of matters that she had to deal with that day. There was every reason for Ms Close to be want an correct understanding of the claimant's day to day duties to ensure

an effective transition to the accounts team. The contemporaneous emails between Ms Close and the claimant were in the Tribunal's view inconsistent with the claimant's version of events.

59. Much of the disputed evidence related to the claimant's view of Ms Close's management style and that of all of the respondent's witnesses. The Tribunal's impression was that the claimant had a good relationship with Ms Clark and Ms Duff with whom she socialised outside of work. The claimant also appeared to have a reasonable working relationship with Ms Stoddard in that Ms Stoddard was messaged about the claimant's impending resignation and the reasons for it. The Tribunal felt that the claimant disliked and had no respect for Ms Close. As a result, everything that Ms Close did or said was viewed through this prism. The claimant appeared to assume that others shared that view. However, on the evidence available to the Tribunal, this was not necessarily the case. The Tribunal formed this view on the basis that no grievances had been raised against Ms Close and that those that worked directly with her did not share the claimant's perspective. That said, the Tribunal did not doubt that not all colleagues would necessarily like her management style but from the information available, she endeavoured to manage fairly and provided reasons for her decisions.

60. The Tribunal heard evidence about the claimant's job description and role and why she considered that she was working beyond parameters. The respondent gave evidence about the claimant's position and how it was covered during and after her resignation. The function had been absorbed into the accounts team. The post of procurement assistant had not been filled since the claimant's resignation. The Tribunal did not see it as its function to carry out a job evaluation. The Tribunal considered that the claimant wished to expand her role and was no doubt capable of taking on additional duties. However, given the respondent's contract with APUC, this was unlikely to happen. The Tribunal felt that there was possibly room for the claimant's development within the accounts team but that had not been fully explored at the time of her resignation, then it became academic. The Tribunal had

difficulty understanding the basis upon which the claimant believed that her job role and salary equated to a salary of £34,000.

61. The Tribunal also heard evidence about an anonymous survey undertaken by some of the professional staff. The Tribunal understood that the pool was relatively small and was taken at a time when the respondent was aware of the frustrations felt by those employees due to the delay in the job evaluation study. Given that the claimant was a member of the support administration, the Tribunal did not place reliance on this survey.

### Deliberations

62. The Tribunal started its deliberations by referring to the statutory provisions in section 95(1)(c) of the ERA which provides that there shall be a dismissal if the employee terminates the contract under which she is employed (with or without notice) in circumstances where she is entitled to terminate it without notice by reason of the employer's conduct. For an employee to succeed with the claim of constructive unfair dismissal, there must be:

- a. a breach of contract by the employer; either an actual breach or an anticipatory breach;
- b. that breach must be sufficiently important to justify the employee resigning or else it must be the last in a series of incidents which justify her leaving;
- c. the employee must have resigned in response to the breach and not for some other unconnected reason;
- d. the employee must not delay too long in terminating the contract in response to the employer's breach otherwise she may be deemed to have waived the breach and agreed to vary the contract.

63. There must be a fundamental breach of an express or implied term of the contract of employment before an employee can resign and claim constructive dismissal (see *Western Excavating Limited v Sharpe* [1978] IRLR 27). It is



not enough for there to have been unreasonable conduct on the employer's part.

64. In this case the claimant relies upon an alleged breach of the implied term of trust and confidence. The scope of the implied term was considered in *Mahmood v Bank of Credit and Commerce SA* [1997] ICR 606 which imposed an obligation that an employer shall not "without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee."
65. The Tribunal noted that the test of whether an employer had breached the implied term of trust and confidence was whether objectively speaking the employer has conducted itself in a manner likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee. If the conduct has that effect then the question of whether there has been reasonable and proper cause for the behaviour must be considered (see *BG plc v P O'Brien* [2001] IRLR 497).
66. The Tribunal's understanding of the claimant's position was that she resigned following a "last straw": her conversation with Ms Close on 2 December 2022. The claimant relied upon a series of acts by the respondent which individually and taken together she says amounts to a fundamental breach of contract. The Tribunal considered that a course of conduct could cumulatively amount to a fundamental breach of contract entitling the employee to resign and claim constructive dismissal following a last straw incident even though the last straw by itself did not amount to a breach of contract.
67. The claimant relied on three allegations:
- a. the delay and discrepancy over her job title;
  - b. the lack of support for qualification study; and
  - c. the mistreatment by management.

68. The Tribunal first considered its findings in relation to each allegation and whether it amounted to conduct that was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the claimant and the respondent.
- 5 69. Simply acting in an unreasonable manner is not sufficient. The qualifying word, “damage”, is “seriously”. It covers a diversity of situations in which a balance has to be struck between an employer’s interests in managing his business as he sees fit and the employee’s interest in not being unfairly or improperly exploited. The test is stringent. The conduct must be such that  
10 an employee cannot be expected to put up with it. The employer demonstrates by its behaviour that it is abandoning altogether to perform the contract. These words indicate the strength of the term. It is not a test that the employer has to behave reasonably towards his employees. It should be borne in mind that conduct however reprehensible, may not necessarily result  
15 in a breach of fundamental contract.
70. Dealing first with the delay and discrepancy over her job title. It was not disputed that in February 2022 and March 2022 the claimant raised concerns about her job title with Mr Wright and Ms Clark respectively. Ms Clark made Ms Close aware of the claimant’s concerns. Ms Close and the claimant  
20 discussed the claimant’s job title in June 2022. Ms Close was open to considering a new job title but clarified the need for Mr Wright’s involvement. The Tribunal considered given the ongoing job evaluation study, Mr Wright’s involvement was understandable. While the Tribunal appreciated the claimant’s frustration at the lack of progress, the delay was not unreasonable  
25 given Ms Clark’s imminent retirement and the integration of the claimant’s role into the accounts team and her move to Sandbank.
71. The claimant did not raise matters formally until the August Email. While Mr Wright assumed, from his discussion with the claimant in February 2022, that she was seeking a pay rise in addition to a change of job title, it was only at  
30 this stage that it became clear to Ms Close. Ms Close acknowledged the claimant’s concerns.

72. The claimant's opinion was that Ms Close had lied to her about what Ms Close had been told by Ms Clark and Ms Close's intention to speak to Mr Wright. While the Tribunal did not doubt that was the claimant's view the Tribunal felt that viewed objectively it was unreasonable. The Tribunal considered that it was highly likely that Ms Close would have had discussions with Ms Clark regarding all her direct line reports, including the claimant, particularly given Ms Clark's upcoming retirement and the delayed outcome of the job evaluation scheme. Some of these discussions would have been informal conversations. Ms Close was amenable to considering the claimant's job title and was to assume line management responsibilities for her. The Tribunal therefore considered that while Ms Close may have misunderstood the detailed nature of the claimant's concerns about her job or the urgency in which the claimant wanted the matter addressed, there was no reason for her to lie. As regards speaking to Mr Wright, in the Tribunal's view that was reasonable in the circumstances given his strategic view as head of HR. If anything, there was misunderstanding about the timescale in which that would be done.
73. The Tribunal's view was that it was reasonable that any discussions would take place when Ms Close was directly line managing the claimant and understood not only what the claimant's role had been but what was most likely to be involved once the claimant was integrated into the accounts team.
74. From the 3 November and 11 November Meetings, the Tribunal could understand why Ms Close could not make any changes to the claimant's job description without discussing matters with Mr Wright. The claimant was aware of that. They had scheduled a meeting on 8 December 2022. While it would have been preferable for that meeting to have taken place sooner given their respective remits the Tribunal did not consider that the timeframe was unreasonable. The claimant unexpectedly sent the Resignation Letter on 7 December 2022.
75. Turning to the issue of the claimant's pay, the first time that Ms Close was aware formally about pay being an issue was in the August Email. The claimant knew that her salary and those of other employees were subject to

a collective bargaining agreement to be determined by the ongoing job evaluation scheme. The claimant had received salary award pay rises. Notwithstanding this, Ms Close and Mr Wright agreed to consider her specific post and look at the factors that she considered demonstrated the incorrect grading of her role.

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76. At the time of her resignation, the claimant felt that she was underpaid and she considered that the process was taking longer than it should. While the Tribunal did not doubt that was the claimant's view, at the time of her resignation the respondent was reviewing the claimant's post. The Tribunal considered that the respondent did not ignore nor fail to address the claimant's concerns. The respondent took on board what the claimant was proposing but was seeking evidence about the basis on which the claimant considered that she deserved more pay for the work that she did. Ms Close and Mr Wright were treating matters seriously and were attempting to resolve matters as expeditiously as possible.

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77. The Tribunal was not satisfied that the respondent's conduct in relation to job title and pay was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the claimant and the respondent. The Tribunal did not consider that this was a breach of an implied term of contract.

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78. The Tribunal moved onto consider its findings about the Course. The respondent did not refuse to allow the claimant to continue with her application. The Tribunal's impression was that Ms Close was supportive of the claimant's proposed registration for the Course albeit the claimant did not need the qualification to be able to carry out her role. The discussion focussed on the attendance required for Course. In the Tribunal's view given the requirement for the attendance of around 37 days per year, it was not unreasonable for the respondent to suggest to the claimant that, like Ms Stoddard, she use her own time to study the Course. It was the claimant who decided not to pursue the registration in June 2022. The claimant did not raise the issue again until her resignation. Again, the Tribunal did not consider that this constituted a breach of contract.

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79. The third allegation was the mistreatment by management. This allegation was directed towards the claimant's treatment by Ms Close. The Tribunal did not doubt the claimant felt the way that she did, but from the evidence before the Tribunal and for the reasons stated, it did not make findings of fact of any mistreatment by Ms Close (or others in the management team) against the claimant or anyone else.
80. As indicated above, the Tribunal considered that Ms Close was supportive of the claimant's staff development request even though it was not required for the claimant's role. It was the claimant who decided not to pursue the registration for the Course.
81. While the claimant criticised Ms Close's conversation with a colleague at the retirement lunch, she did not raise this with Ms Close at the time and the colleague did not take the matter further. Ms Stoddard and Ms Mather who were present when the conversation took place had a different perception of events to that of the claimant.
82. The Tribunal accepted that the claimant was upset by the email sent on 25 October 2022 and sent a firm reply. The claimant knew that Ms Close was on annual leave. The October Email Exchange did not in the Tribunal's view reflect well on the centre manager or the claimant. The Tribunal could understand that by the time Ms Close returned from annual leave she considered that there was little benefit in discussing the October Email Exchange particularly as the chaperone system was not well regarded by the staff and the following the 3 November Meeting the claimant was to have no further involvement in this. The claimant did not raise the issue of the October Email Exchange during the 3 November Meeting.
83. The Tribunal appreciated that the claimant preferred working in Westbay and was anxious about moving to Sandgate. However the move was part of a respondent wide attempt to encourage students and staff into the work place. Given Ms Clark's retirement, the Tribunal understood the claimant to accept that it was reasonable and proper for her to move to Sandgate. While there was an expectation that this would happen by mid-September 2022, the

Tribunal did not find that there was evidence of the claimant being required to move sooner. It was the claimant who decided to move when she did.

84. While the claimant was disappointed and frustrated about the lack of progress for her request for a change of job title and salary increase, the Tribunal did not consider that Ms Close was being obstructive or unwilling to support and advance the claimant's case. If anything, the Tribunal considered Ms Close was supportive and it was Mr Wright who had a strategic overview and was insisting on supporting evidence and the review being undertaken on a formal structured basis.
85. At the time the claimant resigned, the respondent was still considering the review of her role. The claimant may well have felt that this was not being done fast enough but there was no basis upon which it could be suggested that the respondent did not intend to do so or be bound by any decision of the job evaluation. The Tribunal did not consider that there was mistreatment by Ms Close or anybody else in relation to the job title and pay issues.
86. During its deliberations, the Tribunal considered that the respondent demonstrated its commitment to the claimant's continued contract of employment and considering ways of rewarding her commitment. While matters were not progressed quickly enough for the claimant, the Tribunal was satisfied that there was reasonable and proper cause for the time that it took particularly given the lack of clarity in the way which the claimant expressed her concerns to Ms Close, Mr Wright and Mr Jones.
87. The Tribunal looked at the respondent's conduct as a whole in order to determine whether it was such that its effects, judged reasonably and sensibly, were such that the claimant could not be reasonably be expected to put up with it.
88. In the Tribunal's view, the claimant was a conscientious employee whose contribution was valued in management, including Ms Close. The claimant and Ms Close did not have a close personal relationship but there was no evidence that Ms Close acted unprofessionally or mistreated the claimant. To the contrary, Ms Close endeavoured to deal with the issues raised by the

claimant and involve the claimant in the accounts team and build a good working relationship.

5 89. The Tribunal was satisfied that the respondent’s conduct as a whole was not in breach of the implied term of trust and confidence entitling the claimant to resign.

90. Being satisfied that there was no fundamental breach, the Tribunal did not require to consider whether the claimant resigned in response to that breach or any issue in relation to delay or waiver. The Tribunal also did not need to consider the issue of remedy.

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S MacLean  
**Employment Judge**

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1 December 2023  
**Date**

**Date sent to parties**

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