



EMPLOYMENT TRIBUNALS

Claimant: Ms C Moore

Respondent: Inspire Partnership Multi-Academy Trust

Heard at: Leeds (by video (CVP)) **On:** 14 & 15 September 2020
and 3 November 2020

Before: Employment Judge Bright (sitting alone)

Representation

Claimant: Ms Ayre (solicitor)

Respondent: Ms Mellor (counsel)

RESERVED JUDGMENT

The claimant's dismissal was fair. The claim of unfair dismissal is dismissed.

REASONS

Background

1. The claimant, Ms Moore, worked as Assistant Head Teacher at Half Acres Primary School ("Half Acres"). She had continuity of employment from 3 September 2001, but joined Half Acres in September 2012. At that time, Half Acres was in federation with another primary school, Ackton Pastures ("Ackton"). It joined the respondent's federation of schools ("the Trust") on 1 March 2017.
2. Ms Moore's employment with the Trust terminated on 8 December 2019 and she presented a claim to the Employment Tribunal for constructive unfair dismissal on 5 May 2020, following a period of ACAS early conciliation from 6 March 2020 to 6 April 2020.
3. The hearing was conducted remotely by Cloud Video Platform on 14 and 15 September 2020 but did not conclude within that time, in part because of technical issues. A further day was listed by video for 3 November 2020.

There was a delay in promulgation of the reserved judgment and reasons owing to the ill health of the employment judge.

The issues

4. The parties agreed at the outset of the hearing that the issues to be decided were:
 - 4.1. Did the Trust, without reasonable and proper cause, conduct itself in a manner that was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the Trust and Ms Moore? Specifically, between September 2019 and 22 November 2019, did the Trust:
 - 4.1.1. Undermine Ms Moore by excluding her from certain meetings and activities in which she had previously been involved/for which she had previously been responsible?
 - 4.1.2. Fail to provide balanced or constructive feedback by unfairly criticizing Ms Moore, her performance and her behaviour?
 - 4.1.3. Question Ms Moore's ability to carry out a role she had been performing for years, such that her confidence in her abilities was destroyed?
 - 4.1.4. Hold Ms Moore responsible for the failings of others?
 - 4.1.5. Humiliate Ms Moore by criticizing her work in front of others and in private and in the manner of those criticisms?
 - 4.1.6. Criticize Ms Moore for asking questions?
 - 4.1.7. Fail to provide Ms Moore with reasonable support?
 - 4.1.8. Force Ms Moore to resign?
 - 4.2. If the Trust took those actions, did they cumulatively or individually amount to a repudiatory breach?
 - 4.3. If there was a repudiatory breach of Ms Moore's contract of employment, was that breach a cause of Ms Moore's resignation or did she resign for another reason?
 - 4.4. If Ms Moore was constructively dismissed:
 - 4.4.1. What was the reason for the dismissal?
 - 4.4.2. Was it a potentially fair reason within section 98(1) or (2) of the Employment Rights Act 1996 ("ERA")?
 - 4.4.3. If so, did the Trust act reasonably or unreasonably in all the circumstances, including its size and administrative resources, in

treating that reason as sufficient to dismiss Ms Moore, in accordance with section 98(4) ERA?

- 4.5. If Ms Moore was unfairly dismissed, what sums should be awarded to her by way of basic and compensatory award?
- 4.6. Should there be any adjustment to the compensatory award pursuant to section 207A TULR(C)A as a result of Ms Moore's failure to raise a formal grievance?
5. It was agreed at the outset of the hearing that the evidence and submissions would initially deal with liability and that, once a decision on liability was reached, we would go on to deal with remedy, if appropriate. In the event, as judgment on liability was reserved, no evidence or submissions on remedy were heard.

Evidence

6. Ms Moore gave evidence on her own behalf and called no further witnesses.
7. The Trust called:
 - 7.1. Mrs Rachael Taylor, Head Teacher at Half Acres;
 - 7.2. Mrs Leah Charlesworth, now deputy Chief Executive of the Trust, but at the relevant time, consultant and School Improvement Partner;
 - 7.3. Mrs Sue Vickerman, Chief Executive of the Trust.
8. The parties provided an electronic bundle, to which some further documents were added during the course of the hearing.
9. For the video hearing, Ms Ayre and Ms Moore participated remotely from separate locations, while Ms Mellor, Mrs Taylor, Mrs Charlesworth and Mrs Vickerman participated remotely from a shared location.

Submissions

10. Ms Ayre made oral submissions for Ms Moore, which I have considered carefully, but do not rehearse here in full. In essence, it was submitted that:
 - 10.1. Ms Moore's evidence was more credible than that of the Trust's witnesses. Her account of the meetings in October and November was to be preferred.
 - 10.2. The critical attitude of the Trust's witnesses to Ms Moore was exhibited in their witness evidence, in which they did not have a good word to say about her. While the Trust had reasonable cause for interceding at the school, the manner in which it stepped in made Ms Moore feel that she could not continue in her job, damaged her confidence and caused her to resign to take up a classroom teacher role on 10% less pay. The breach of trust and confidence comprised:
 - 10.2.1. Undermining her by excluding her from responsibilities and activities, for example a phonics observation on 16 October 2019.
 - 10.2.2. Blaming her unreasonably for raising concerns on 18 October

2019;

- 10.2.3. Asking her to do 'holiday homework', setting out her role;
 - 10.2.4. Criticising her performance;
 - 10.2.5. Criticising her for making comments to staff about a 'cosy and comfy area'.
- 10.3. The final straw was the feedback meeting from the review of EYFS/KS1 on 22 November 2019, at which there were a large number of people present and the external reviewer said she was 'shocked' by what she'd seen and used the word 'ineffective' in relation to the teaching methods. When Ms Moore questioned the feedback she was taken to task the following day, in a character assassination which left her in tears, put her under incredible pressure, and in which she was told that other teachers did not like working with her. Later the same day staff were told that Ofsted were likely to grade the school 'requires improvement' for KS1 and EYFS if they were lucky. However, just two working weeks later Ofsted inspected and found that reading and phonics were taught well.
- 10.4. The comments at the meeting on 22 November, taken in conjunction with the Trust's earlier criticism and undermining of Ms Moore and other actions, amounted to a breach of the implied term of trust and confidence. She resigned in response to that breach. Her application for a role in Singapore was a one off, and did not mean she wanted to leave the Trust. Her application to Waterton Academy was in anticipation of the external review, having seen what had happened to other teachers in the Trust after such reviews. The breach only has to be a cause, not the effective cause of the resignation.
- 10.5. She should not be criticized for not raising a grievance. She queried the matter with her union and got no response and there is evidence that she sent an email to the Trust after her resignation, raising concerns, but the Trust did not respond to it.
11. Ms Mellor made written and oral submissions for the Trust, which I have considered with equal care, but do not rehearse here in full. In essence, it was submitted that:
- 11.1. There was little factual dispute between the parties. Any differences arose from how the parties interpreted events. Ms Moore's subjective responses to what happened are relevant, but it must be judged whether they were reasonable. Her feelings do not make out a constructive unfair dismissal claim. She was upset by the Trust acting a reasonable and proper cause. That does not amount to a breach of trust and confidence.
 - 11.2. The evidence does not show the Trust undermining Ms Moore by excluding her from meetings and activities that she had previously been involved in and responsible for. The Trust did not fail to provide balanced or constructive feedback or unfairly criticize Ms Moore, her performance or her behaviour. The evidence does not support Ms Moore's version or recollections of the criticism she says she received. At no time was she performance managed and at no time were any issues escalated beyond an informal chat. Ms Moore accepted that it is right and proper than an employer raise issues about behaviour with an employee when they occur. This is what the Trust tried to do in relation to the 'comfy, cosy' comment

and on 22 November 2019.

11.3. The Trust did not question Ms Moore's ability to carry out a role she had been performing for years such that her confidence in her abilities was likely to be destroyed. The request to write a role description, comments around data being late, were fair and reasonable in the context. Ms Moore considered her practice to be outstanding and was not prepared therefore to reflect on that in 2019. This coloured her perspective of the way she was being managed by the Trust. She was not undermined or criticized at the Wrap meeting, nor did the Trust hold her responsible for the failings of others, nor humiliate her by criticizing her work nor in the manner of those criticisms nor in criticizing her for asking questions. There can be no criticism of the external reviewer. Ms Moore's comments about the history of people leaving after such reviews is unfounded. The reviewer's comment that she was shocked was not directed at Ms Moore, nor was Ms Moore's teaching described as 'shocking or ineffective'. In any event, if there were issues with the teaching, it was vital that it was identified. Ms Moore's case is not that the reviewer's assessment that there were organization weaknesses was wrong; it was that she did not like being told that.

11.4. The issues with Ms Moore's behaviour were genuine and the Trust was entitled to address them. The evidence does not support Ms Moore's description of the meeting on 22 November 2019 as 'an hour of character assassination'. The Trust's actions were reasonable and proper.

11.5. The Trust did not force Ms Moore to resign. Failure to persuade her to stay cannot be a reason she resigned had decided to go before the meetings on 21 and 22 November 2019. If she truly considered the conduct to be a repudiatory breach she would have raised a grievance or said mentioned it in her letter of resignation. Even if one or some of the events described amounted to a breach of contract, or they are not what might reasonably be expected of an employer, they did not amount to a repudiatory breach of contract entitling Ms Moore to consider herself constructively dismissed.

11.6. The Trust's case was that there was no dismissal. Ms Mellor not put forward a reason for dismissal nor that it was a fair dismissal within section 98(4) ERA.

Findings of fact

12. I make the following findings of fact. Where there was a conflict of evidence I have resolved it, on the balance of probabilities, on the evidence before me.

13. Ms Moore was an experienced teacher in early years foundation stage ("EYFS") and key stage 1 ("KS1"). The Trust did not dispute any of Ms Moore's considerable achievements set out in paragraphs 1 – 21 of her witness statement and the Trust's witnesses accepted that she was a good teacher.

14. Ms Moore worked at Half Acres, as assistant head. Not long after Half Acres joined the Trust, the school's summer 2019 SATS results were unexpectedly

poor. I accepted the evidence of Mrs Charlesworth and Mrs Vickerman that it became apparent that there were failings at the school. I accepted Mrs Vickerman's account of the Trust's findings that the Head had not been delegating sufficiently to her leadership team nor keeping on top of developments in teaching/Ofsted expectations and had been masking those deficiencies. The Head subsequently went off sick and ultimately left the Trust.

15. Ms Moore clarified at the hearing that events prior to September 2019 did not form part of her case regarding a breach of trust and confidence. I have not therefore considered the inference she appeared to suggest could be drawn from the senior staff movements and turnover at Ackton Pastures prior to the events at Half Acres (paragraph 49 of her witness statement). In any event, I would accept the clear account of those staff movements and turnover given by Mrs Vickerman in evidence at the hearing. If Ms Moore's interpretation of events at Half Acres was coloured by her assumptions about what had occurred at Ackton Pastures, it seems those assumptions may have been wrong.
16. Although Ms Ayre referred in her submissions to conflicting evidence as to the facts of what happened, it seemed to me that there was little disagreement as to what actually occurred between the start of the school year 2019/2020 and Ms Moore's resignation. The difference between the parties lay in their interpretation of those events. Ms Ayre invited me to generally find Ms Moore's evidence the more credible. On the evidence I read and heard, I did not have cause to doubt the honesty of any of the witnesses before me. I have no doubt they all gave a frank account of the circumstances, as they perceived or remembered them to have been.
17. I accepted Ms Moore's evidence that she felt undermined, criticized and undervalued. However, while I had no doubt about the genuineness of her distress, I found her evidence less reliable in places. I agreed with Ms Mellor's submissions that there were various lines of her argument which were logically uncomfortable with each other. For example: she complains both of a lack of support but also that Mrs Vickerman told her she had rearranged another meeting to meet with her; she complains about working too hard, but also about being excluded/having responsibilities removed; she complains about not being interrupted to do observations, but also about Mrs Taylor interrupting to ask for missing data; she requested to be released from her contractual notice early but complains that the Trust released her early.
18. Much of Ms Moore's evidence was prefaced by "I felt..." or "it felt as if..." (see paragraph 20 below) but there was little concrete evidence of events, acts or omissions which might reasonably have caused those feelings. She appeared to have drawn inferences and reached conclusions which were not obvious from the objective evidence. I tended to find the evidence of the three witnesses for the Trust more reliable. They corroborated each other, their evidence was further corroborated by the documents and Ms Moore's own account, and their evidence was more logically coherent, fitting with the context and other events.

19. Moving on to the specific allegations, the context was evidently important. Following the previous Head's departure, and a brief period when Ms Moore and the other assistant head were acting up, Mrs Taylor was appointed as interim Head and subsequently permanent Head Teacher. With Mrs Charlesworth, the School Improvement Partner, she sought to implement a number of changes at the school. I accepted Mrs Taylor's evidence that changes were required because of the previous Head's failure to keep on top of requirements, because of the poor SATS results and because the school was in an 'Ofsted window' (expecting to be inspected imminently). Ms Moore agreed that, while KS1 and EYFS were not specifically implicated in changes required because of the SATS results, there was a change in focus at those stages to greater emphasis on phonics teaching. It was not disputed that the staff at Half Acres found the departure of the long-standing previous Head and the speed with which they were expected to implement these changes unsettling. It was also not disputed that Ms Moore, as Assistant Head, was working hard and under pressure to contribute to improving the school. I accepted Mrs Vickerman's evidence that we "needed to do something and we needed to do it quickly" because the school was not properly prepared for the imminent Ofsted inspection. I find that the Trust and its senior staff were genuinely motivated to improve standards at the school following the poor SATS results.
20. Ms Mellor submitted that Ms Moore's belief that her practice was outstanding coloured her perspective of the way she was managed by the Trust. However, the evidence did not suggest that Ms Moore had an over-inflated idea of her own abilities. Rather the reverse, that she was somewhat insecure and therefore interpreted the changes and management by the Trust as personal criticism. I find that she showed some understandable confusion that practice which had been applauded as recently as February 2019 might be found wanting so soon afterwards, although it was clear from the evidence that this was due to the change in Ofsted focus.
21. Ms Moore's witness statement refers repeatedly to the impact of the Trust's actions on her feelings: "it felt as though the Trust was going through everything that we did with a fine toothed comb", "it felt like we were under scrutiny" (paragraph 53), "It felt as though when the SATs results came in and they were below predictions, that everything changed" (paragraph 56), "It felt as though the Trust was looking for any opportunity to find things wrong with the school and I started to doubt myself and my abilities" (Paragraph 112). Perhaps there was a degree of poor communication by the Trust or a lack of sensitivity to Ms Moore's emotional needs. Whatever the reason, the evidence pointed to Ms Moore having interpreted many aspects of the critique of the school's practices and Trust's requirements for change as personal criticism of her and her work. I accepted the evidence of all three witnesses for the Trust that there was no criticism of Ms Moore's teaching, although there were latterly some concerns around her attitude and behavior in meetings.
22. In her submissions, Ms Ayre invited me to draw an inference that the lack of any praise for Ms Moore by the Trust's witnesses in their witness statements was indicative of their critical attitude towards her work during her employment. I was not prepared to draw that inference, in the absence of more, from statements prepared for the sole purpose of responding to

criticism of the witnesses' own actions in the context of litigation against the Trust. The only concrete example in the evidence of any hostility or negativity towards Ms Moore was contained in Mrs Charlesworth's email dated 16 November 2019 (p118), which I consider below. That email was critical of Ms Moore's behavior and attitude to change, not her ability to teach.

23. Ms Moore says she was criticized by Mrs Vickerman at a governors' meeting on 3 October 2019 for not having certain documents in place. The notes of the meeting record that certain documents which were necessary (the 'SEF' and 'SDP') were not yet completed (page 197) and that the pupil premium and strategy and funding plans were currently being updated (page 198). There is no indication of criticism of Ms Moore. The parties agreed in evidence that the documents existed but were with staff members for updating, rather than available in their final form, and that the senior leadership team of the school were collectively responsible for documentation. The notes accord with Mrs Vickerman's evidence that she did not single out Ms Moore for criticism for failing to have the documents in place. Ms Moore was unable to point to anything in Mrs Vickerman's manner at the meeting which was unpleasant or undermining. There was insufficient evidence to find that Mrs Vickerman criticised Ms Moore.
24. Ms Moore says she was also criticized by Mrs Vickerman prior to the meeting on 3 October 2019 because she and Adele Brown had not contributed to Head Teacher's reports for governors' meetings in the past. Mrs Vickerman reportedly said "well you should be [contributing to reports], as assistant heads". It was submitted that this was criticism of Ms Moore because, if that were not the case, Mrs Vickerman would or should have used the words "the Head should have been getting you to do those". I find that the words Mrs Vickerman is reported to have used could be interpreted either way, as criticism of Ms Moore or, equally, as an observation that the previous Head was not delegating to the right people. There was insufficient evidence that this undermined or criticized Ms Moore and, even if it did, it was justified and reasonable for Mrs Vickerman to express an expectation that the Assistant Head was expected to contribute to the reports.
25. Ms Moore says that she was excluded from meetings, observations, decisions and part of her role as Assistant Head. In particular, Ms Moore says the Trust excluded her from phonics observations on 16 October 2019. It is agreed that Mrs Taylor and Mrs Charlesworth carried out the observations of phonics teaching in two Year 1 classes. It was not disputed that this was an unplanned drop-in on phonics lessons which were taking place and that, at the time the decision was taken to drop in on the lessons, Ms Moore was already teaching another class. The Trust did not dispute Ms Moore's evidence that the two teachers who were observed went to Ms Moore afterwards upset at the observations. It was not disputed that Ms Moore was upset that the observations were conducted without her and without her knowledge. I accepted Mrs Charlesworth's evidence that the reason Ms Moore was not notified, was that she did not want to disrupt Ms Moore's class. Had Ms Moore not already been teaching, as Key Stage 1 Reading Lead, she would have been invited to attend the drop in. I accepted Mrs Charlesworth and Mrs Taylor's evidence that Ms Moore was included in the feedback meeting at lunchtime.

26. Ms Moore says they could have pulled her out of her class to do the observation, referencing an interruption of her lesson by Mrs Taylor on 17 October 2019. However, I accepted the evidence of Mrs Taylor and Mrs Charlesworth that interrupting a lesson by popping in to obtain a quick factual detail is qualitatively different to extracting a teacher from the classroom mid-lesson to carry out a completely different task. I accepted that the reason Ms Moore was not included in the observation was because she was otherwise occupied, not deliberate exclusion.
27. Ms Moore accepted that Mrs Taylor, as Head, was entitled to carry out whatever observations she thought would be useful. Ms Moore's evidence was that the Trust had not acted wrongly in observing the lessons, but that she felt excluded because she could have been invited to observe them but was not. Ms Moore appeared to object to the Trust's decision to review phonics and KS1 and to observe the phonics teaching, yet accepted that the lessons observed were poor and that she had not yet observed the teachers that term. It seemed to me that Mrs Vickerman and Mrs Charlesworth's decision to observe the phonics classes without notifying Ms Moore was, at worst, insensitive. It was certainly not intended to exclude her or undermine her.
28. In her witness statement (paragraph 85) Ms Moore relates that on 17 October 2019 Mrs Taylor came into her class while she was teaching and told her, in front of some children, that part of the data predictions information was missing, making her feel "very worried...as though I had made a big mistake and there was a lot of information missing". Mrs Taylor's evidence was that, on 17 October 2019, she dropped into Ms Moore's class for a few moments to ask her to fill in a particular figure in some data. It was not clear from Ms Moore's evidence what it was about Mrs Taylor's actions that she took issue with or that made her so worried. She accepted that Mrs Taylor was entitled to interrupt her class in this way and for this purpose and that it related to one very small error in the data.
29. It was agreed that a meeting was held between Ms Moore, Mrs Vickerman and Mrs Taylor on 18 October 2019 to address some of the concerns Ms Moore had raised with Mrs Taylor about feeling excluded. It was accepted that Mrs Vickerman made a comment about having moved another meeting so as to meet with Ms Moore. However, the parties' recollections of the tone and inferences of that comment were different. Ms Moore said she felt that Mrs Vickerman was cross about having to move the other meeting and implied she (Ms Moore) was an inconvenience. Mrs Vickerman said she merely mentioned having rearranged the other meeting to show that sorting out issues at Half Acres was her priority. Whichever interpretation was correct, this was an innocuous. Ms Moore accepted that there were no raised voices, no aggression and that she was able to express to Mrs Vickerman that she was feeling excluded and Mrs Vickerman responded to her concerns by putting in place a daily meeting. There was insufficient evidence to support Ms Moore's allegation that she was criticised for having raised concerns about the way staff were feeling. Nor was there evidence that Mrs Vickerman or Mrs Charlesworth were unsupportive or in any way hostile to Ms Moore.
30. Ms Moore says that Mrs Vickerman lied to her in the meeting on 18 October 2019 about dates for training having been shared. There was insufficient

evidence for me to find that Mrs Vickerman lied. It seems more likely, on the evidence I heard and saw (pages 204 – 206) that the parties were talking at cross purposes or that there was some confusion or misunderstanding regarding the sharing of that information.

31. Ms Moore says she was criticised by Mrs Charlesworth on 23 October 2019 for a comment she had made the previous day in front of staff regarding ‘comfy, cosy’ reading areas. I find that the Trust raised this with Ms Moore because it had been reported to them as having been said in a manner intended to mock or undermine Mrs Charlesworth. However, the Trust accepted Ms Moore’s explanation that she had not been undermining Mrs Charlesworth and the matter was dropped. Ms Moore accepted in cross examination that she had not realised how she came across. She also accepted that it was appropriate for the Trust to raise its concern with her in these circumstances, even if it was mistaken about the nature of her comment.
32. Ms Moore says she was undermined by Mrs Charlesworth asking her and the other Assistant Head to do ‘holiday homework’, writing down what their role involved. Ms Moore says, “I felt like it was a test. It felt to me as though Sue Vickerman thought we weren’t doing our jobs properly. The implication was that if we had done more [the previous Head] would not have been off sick. I felt that I was being blamed for [the previous Head] going off sick and for the poor SATs results” (para 98). Mrs Charlesworth’s evidence was that they were asked to undertake this task in response to the other Assistant Head’s lack of clarity around her role. The Trust did not question Ms Moore’s ability to carry out her role and there was insufficient evidence to support the inferences she appears to have drawn. I find that, in the context of a change of head teacher, the previous Head’s failure to delegate, the school having recently joined the Trust, the other Assistant Head’s lack of clarity, the workload reviews and changes afoot, there was nothing surprising in the request from Mrs Charlesworth. I do not find that Mrs Charlesworth undermined Ms Moore by asking her to undertake this task.
33. Ms Moore says she was excluded from decision making over the timing of assemblies. However, in evidence, she accepted that this was a decision which was made at a higher level, that the Trust had consulted about it and that it was entitled to make the changes it did. There was insufficient evidence of any undermining or exclusion of Ms Moore in the decision making or consultation.
34. Ms Moore says she was unfairly criticised for producing documents late. The evidence in relation to this was confused, but it is clear from Ms Moore’s own email of 11 November 2019 and the apology for lateness included therein (page 201) that she provided some data late. There was insufficient evidence for me to find that she was criticised in relation to this data or, if she was, that it was unfair.
35. Following an initial wrap around the school meeting (“Wrap Meeting”) on 8 October 2019, which Ms Moore attended, she was invited to a second Wrap Meeting on 11 November 2019. She says that she was publicly undermined at that meeting when questions were asked of her regarding KS2, which she was unable to answer: “I felt intimidated and humiliated during the wrap around the school meeting because I was put on the spot and asked

questions by people who I worked with about areas which were outside my responsibility". However, she agreed that she was the only long-standing member of the school's senior leadership team present at the meeting. I was persuaded that it would not therefore be unusual for outsiders or newcomers to look to her for answers to questions about all areas of the school. Although she clearly found the meeting awkward, there was insufficient evidence of anything which might be interpreted as undermining, blaming or criticizing her in the minutes of the meeting or in her own evidence. She was not singled out and, in fact, improvements in phonics were identified (p114). It seemed there was no intention on the part of the Trust's managers to put her in a difficult position and any difficulty was no more than might be expected for a member of the senior leadership team in a time of transition.

36. It is clear from the email chain initiated by one of the governors (page 118 – 121) that Ms Moore was defensive and uncooperative at the Wrap meeting on 11 November 2019. I accepted the evidence of Mrs Charlesworth, Mrs Taylor and Mrs Vickerman that Ms Moore's body language, behaviour and attitude in the Wrap meeting and later meetings was negative. Mrs Charlesworth's response to the governor's email, in which she refers to Ms Moore as a "total blocker and negative influence", is evidence that Mrs Charlesworth was concerned about Ms Moore's behaviour. However, I accepted Mrs Charlesworth's evidence, supported by that of Mrs Taylor, Mrs Vickerman and the minutes of the meetings in the bundle, that Mrs Charlesworth continued to be professional, cooperative and supportive towards Ms Moore, in the interests of improving the school. Other than the private email on 16 November (p118 – 121) there is no indication of Mrs Charlesworth's treatment of Ms Moore being anything other than courteous and professional.
37. On 19 November 2019 Ms Moore applied for a post as a classroom teacher at Waterton Academy Trust ("Waterton"). She says at paragraph 152 of her witness statement that she was "feeling more and more devalued at Half Acres, and that I was being pushed out. I was being excluded from meetings and events that I would normally have been involved in, and it felt that nothing I said was being taken on board or listened to. I felt that the Trust had no confidence in my abilities and that they wanted me to leave." She says at paragraph 156, "I only applied for a job on 19 November because I was scared of what would happen following [the upcoming] review of the school on 22 November". However, there had been a similar review in February which had not caused such trepidation in advance, nor did Ms Moore have any reason to expect that the forthcoming review would make her position untenable. I find that her application to Waterton was more likely prompted by her sense of being undervalued, her dislike of the manner in which changes were being implemented at the school and/or the way the school was being run.
38. An external consultant was employed to carry out a review of Half Acres on 21 November 2019. It was agreed that the consultant reviewer was a highly respected and experienced Ofsted inspector who had previously carried out similar reviews at the school. Ms Moore says "I felt physically sick in the days running up to 21 November. I knew that [the reviewer] would be coming in to do a review of the school and I also knew that there was a history of people leaving after reviews by [the reviewer]". Ms Moore referred to her

perception that the previous Head had left after such a review and that members of the senior leadership team at Ackton Pastures had also left after one. However, it was not disputed that there had been a review by the same reviewer in February 2019, which praised the school's early years provision and both key stages, including the teaching of phonics for reading and writing, areas for which Ms Moore was responsible. It is not therefore clear to me why Ms Moore was so apprehensive. Her expectations for the review appear to have coloured her perception and behaviour on 21 November 2019.

39. I preferred the Trust's evidence regarding the feedback meeting with the reviewer on 21 November 2019. There is no evidence that the reviewer gave anything other than professional and objective feedback within the remit of her review. Ms Moore herself accepted there were areas of her teaching practice that she could improve upon (paragraph 116). In any event, it was not Ms Moore's teaching practice itself which attracted the reviewer's criticism, but rather the organization of the teaching. When the reviewer said she was "shocked" by what she had seen and used the word "ineffective", it was not directed at Ms Moore. Even if it had been, the reviewer would have been right to raise her concerns in the forum of the review feedback meeting. She was hired to review the provision of education and it was therefore her role to raise any concerns. Ms Moore found the number of people in the meeting intimidating. The Trust accepted that there were a lot of people in the room on 21 November 2019, but I accepted Mrs Taylor's evidence that they were there because it was common practice in the new framework to attend this type of meeting together and it was an alternative to time-consuming individual feedback. Ms Moore was aware in advance of the people who would be in the meeting and she was allowed to turn her chair around when she wished to. The feedback was not public and the senior leadership team needed the information in the review in order to work to avoid the very real possibility of the school being graded poorly at the imminent Ofsted inspection.
40. Ms Moore clearly felt under attack, although I find that was not the purpose, intention or reality of the reviewer's feedback meeting. I accepted Mrs Taylor's account of Ms Moore's body language and behaviour at the meeting (paragraphs 9 and 10 of her witness statement). Ms Moore accepted that she challenged the reviewer (para 133) and may have been direct (para 134). However, I accepted the Trust's evidence that the format of the review feedback meeting was such that staff were not expected to challenge the reviewer, it was merely an opportunity for them to receive feedback. I accepted the evidence of Mrs Vickerman and Mrs Charlesworth that Ms Moore's behaviour in the review meeting gave them cause for concern.
41. Later on 21 November 2019 there was a further meeting at which Mrs Vickerman confirmed that a new phonics package, which Ms Moore did not like, would be introduced at the school. It was not entirely clear to me from her evidence how Ms Moore says this contributed to her sense of being undermined. I accepted Mrs Vickerman's evidence that it was in the best interests of the school at the time.
42. Mrs Vickerman and Mrs Charlesworth held a meeting with Ms Moore on 22 November 2019 to address her behaviour at the meeting the day before. Ms Moore describes the meeting as feeling like "a character assassination" and

identifies it as the 'final straw' for her. However, in her witness statement, Ms Moore does not recount any criticism of her character, other than a comment that other early years leaders did not like working with her. Ms Moore's diary entry (page 82) does not detail a character assassination and Ms Moore's witness statement makes very little reference to what Mrs Vickerman and Mrs Charlesworth said to her, but mainly relates what she said to them. I accepted Mrs Vickerman's account of the meeting and that she did not tell Ms Moore that other early years leaders did not like working with her, but rather that they found her "challenging and argumentative". At no time was Ms Moore performance managed, nor was performance management suggested, there was no suggestion of any raised voices or inappropriate language. Nothing was escalated beyond an informal chat. It was accepted that she was told how her behaviour came across to others and that she could 'make or break' the school. It was agreed that Ms Moore became upset and the meeting was difficult, but there was insufficient evidence that Mrs Vickerman or Mrs Charlesworth were overly critical or hostile. I find that any criticism of Ms Moore was a reasonable attempt to address her behaviour at the meeting the day before, by way of an informal chat, not a 'character assassination'.

43. Later that same day, Ms Moore attended an interview at Waterton, which was successful. She accepted the new job on 28 November 2019 and presented a letter of resignation to the Trust (page 130). That letter made no mention of her reason for leaving but asked that she be released early from her contract to take up her new post. Ordinarily, a teacher would be required to work their notice until the end of term. However, I accepted Mrs Vickerman's evidence that, as she knew the Head of Waterton, they were able to arrange an exchange of teaching staff to enable Ms Moore to leave the school earlier than would otherwise be required. She was able to leave Half Acres at the end of the week and commenced her new position at Waterton before Christmas, rather than having to work her full notice. I do not accept Ms Ayre's submission that the arrangement for such a short notice period was evidence of the Trust's wish to get rid of Ms Moore. It was clearly in response to Ms Moore's own request to be released early.
44. There was no evidence that Ms Moore was ever encouraged to resign, nor that any of the Trust's managers or staff expressed a wish for her to do so. Ms Ayre appeared to suggest that, because no one tried to talk Ms Moore out of resigning, the Trust must have wanted her to leave, but I accepted Mrs Charlesworth's evidence that, as Ms Moore had already said yes to a post at another school, she didn't feel it was appropriate to try to dissuade her. I do not find that Ms Moore was forced to resign.
45. I accepted Ms Moore's evidence that her application for a post in Singapore earlier in the term was not relevant to the issues I have to decide. Moving to Singapore was a long-term ambition and she applied for posts there as and when they came up, with little expectation of securing one given how competitive the market was.
46. It is agreed that Ms Moore never raised a grievance about her treatment during her employment. She appeared to blame that on her trade union. However, I agreed with Ms Mellor's submission that, if Ms Moore had believed that the Trust was actively behaving in a way which would force her

to resign she would have had no qualms about raising it with them at the time.

The Law

47. Section 95(1)(c) of the Employment Rights Act 1996 (“ERA”) provides that there is a dismissal when the employee terminates the contract with or without notice, in circumstances such that they are entitled to terminate it without notice by reason of the employer’s conduct. The burden is on the employee to prove that:
- 47.1. There was a fundamental breach of contract by the employer;
 - 47.2. The employer’s breach was an effective cause of the employee’s resignation (it need not be the sole cause);
 - 47.3. The employee did not affirm the contract and lose the right to claim constructive dismissal on resignation.
48. Caselaw establishes that, for a resignation to be constructive dismissal, the employer’s actions or conduct must amount to a repudiatory breach of the contract of employment (**Western Excavating (ECC) Ltd v Sharp [1978] ICR 221**). There is a term implied into contracts of employment 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 trust and confidence between employer and employee (**Malik v Bank of Credit and Commerce International [1998] AC20, Mahmud v Bank of Credit and Commerce International SA [1997] ICR 606, [1997] IRLR 462**). Any breach of the implied term of trust and confidence will amount to a repudiation of the contract (**Woods v Wm Car Services (Peterborough) Ltd [1981] ICR 666, Morrow v Safeway Stores [2002] IRLR 9**). There is no breach simply because the employee subjectively feels that a breach has occurred, no matter how genuinely the employee holds that view. The test is objective (**Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493, [2005] IRLR 35**). Reasonableness is one of the tools in the Employment Tribunal’s tool kit for deciding on the facts whether there has been a fundamental breach, but it is not a legal requirement (**Bournemouth University v Buckland [2010] ICR 908**).
49. Repudiatory conduct by an employer may consist of a series of acts or incidents, some of them quite trivial, which cumulatively amount to a breach of the implied term of trust and confidence (**Kaur v Leeds Teaching Hospitals NHS Trust [2018] IRLR approving Waltham Forest LBC v Omilaju**). The employer’s final action which causes the employee to resign (the ‘last straw’) need not itself be a breach of contract. The question is, does the cumulative series of acts taken together amount to a breach of the implied term? (**Lewis v Motorworld Garages Ltd [1986] ICR 157**). Although the final straw may be relatively insignificant, it must not be utterly trivial or innocuous. It does not have to be of the same character as the earlier acts, but it must contribute something to that breach. It need not be characterised as unreasonable or blameworthy conduct, but it must be related to the obligation of trust and confidence.

Determination of the issues

50. I conclude that the Trust did not conduct itself in a manner that was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the Trust and Ms Moore.

51. The evidence before me simply did not support Ms Moore's allegations that she was undermined, unfairly criticised, held responsible for the failings of others, humiliated in front of others, criticised for asking questions, had her abilities questioned, or was forced to resign. Instead, the evidence pointed to a period of uneasy transition and change in the workplace which caused Ms Moore to feel alienated. The evidence suggested that she interpreted reasonable management requests, changes and challenges as personal attacks, but that her perception was not objectively correct. I found that the Trust valued her abilities as a teacher and member of the leadership team, albeit that her defensive behaviour and negativity towards the changes being introduced was privately viewed as obstructive by Mrs Charlesworth and others. At no stage was Ms Moore subject to performance management, nor disciplinary action. The closest it came to that was an informal meeting on 22 November 2019 to discuss her inappropriate behaviour the day before.

52. I did not doubt the honesty of Ms Moore's evidence as to how she felt and interpreted the Trust's actions, but it was clear that was her subjective view of what occurred. There was insufficient evidence of any actions or omissions by the Trust, taken individually or in combination, which might objectively have been sufficient to have caused those feelings. I find that the Trust was entitled to take the actions it did, in the interests of the children at the school, and I find it had reasonable and proper cause for its conduct.

53. In particular:

53.1. The Trust did not undermine Ms Moore by excluding her from certain meetings and activities in which she had previously been involved/for which she had previously been responsible. She was not deliberately excluded from the phonics observation, her complaints about feeling excluded were taken into account and a daily meeting arranged to keep her up to date. There was inevitably a shift in responsibilities, with the move to the Trust and the appointment of a new Head.

53.2. The Trust did not fail to provide balanced or constructive feedback nor unfairly criticized Ms Moore or her performance. I find it did not question her ability to carry out the role she had been performing for years such that her confidence in her abilities was destroyed. Mrs Vickerman's comments about documents not being in place at the governors' meeting was accurate, was not directed at Ms Moore as personal criticism, and was justified. The Trust's management were entitled to expect that Ms Moore would have a better overview of the school (even KS2) at the Wrap meeting than themselves, given the length of her experience there. She was not criticized for being unable to respond to their questions. Any criticism of Ms Moore regarding data being late was minor and was in any event, justified. Ms Moore was not unfairly criticized for raising issues with Mrs Vickerman at the meeting on 18 October 2019, rather support was put in place for her. At no point was there any suggestion of performance management for Ms Moore and the Trust accepted throughout that she

was a good teacher. At no stage did the Trust express any concern about Ms Moore's ability to carry out her role. At most, it suggested that aspects of EYFS and KS1 needed to be improved more generally and that there should be an increased focus on phonics. The only real suggestion of criticism came from the reviewer, an external consultant, and even that was not directed at Ms Moore's teaching ability or her personally, but rather at the way the classes were organised. I find that any criticism was constructive and intended to assist in the improvement of teaching at the school. While it may have made uncomfortable listening, there was nothing in the Trust's actions which should have caused Ms Moore's confidence in her abilities to be destroyed. There was simply insufficient evidence to support any finding that Ms Moore was singled out or blamed or held responsible for others' failings.

53.3. I find that the Trust did not unfairly criticize Ms Moore's behaviour. I find that Mrs Vickerman and Mrs Charlesworth had reasonable and proper cause for raising her behaviour and attitude at the review feedback meeting, and in relation to the 'comfy, cosy' comment. They accepted Ms Moore's explanation in relation to the latter and did not pursue their concerns on the former any further than the informal chat.

53.4. The Trust did not humiliate Ms Moore by criticizing her work in front of others and in private and in the manner of those criticisms. While there were a lot of people in the feedback meeting on 21 November 2019, this was not unusual and there was nothing in the Trust's conduct which could be said to have been humiliating. The purpose of the review was to identify areas which Ofsted would be likely to criticize and identify improvements. The Ofsted framework had changed and if the school did not address issues they faced potentially being assessed as 'special measures' (as other schools had) in the next review. In that context, the reviewer's feedback was inevitably constructive criticism and I find that there was nothing in the manner in which that review was conducted or the criticism provided which ought to have been humiliating for Ms Moore. In any event, if there had been issues with Ms Moore's teaching, it was reasonable and proper that they be identified.

53.5. I do not accept that the meeting on 22 November 2019 (the 'final straw') was 'an hour of character assassination', as described by Ms Moore. There were no raised voices, no inappropriate language, but Ms Moore was told some hard truths, in that Mrs Charlesworth and Mrs Vickerman pointed out to her how her behaviour the previous day had come across to the reviewer and the others present. I find that the Trust had reasonable and proper cause for raising Ms Moore's attitude and behaviour with her in this way and that it was done in a professional manner.

53.6. I find that the Trust provided Ms Moore with reasonable support. It was not clear to me what support Ms Moore says was lacking. Meetings were arranged to keep her informed and additional time was provided for leadership duties.

53.7. I do not find that the Trust forced Ms Moore to resign. Whatever Ms Moore's perception, I find there was nothing in the Trust's conduct up to and including 22 November 2019 could be said to have intended or even

been likely to have encouraged her to resign or search for work elsewhere.

54. I find that, objectively, there was nothing in the Trust's conduct up to and including 22 November 2019 which was calculated or likely to destroy or seriously damage the relationship of trust and confidence between it and Ms Moore. I have no doubt that Ms Moore genuinely perceived the relationship to have been damaged or destroyed, but that subjective feeling is not sufficient to establish a breach of contract. Further, and separately, the Trust had reasonable and proper cause for each and every one of the actions it took in relation to Ms Moore. Those actions, taken either individually or cumulatively, did not amount to a breach of the implied term of trust and confidence. Further, and separately, the 'final straw' was innocuous and came after Ms Moore had already applied for the post at Waterton. I accept that she may not have accepted the post at Waterton had the meeting on 22 November 2019 not occurred, but the fact that she applied for that post ahead of the review, and therefore ahead of the 'final straw' and much of the substance of her complaint, suggests that those final events were not key to her decision making.

55. Throughout her evidence, Ms Moore gave the impression of wanting to defend her performance and conduct, rather as if she had been expressly dismissed by the Trust for those reasons. But that was not the case she brought to the Tribunal. Rather, she was seeking to blame her resignation on a fundamental breach of contract by the Trust. She has failed to show that the Trust did anything which breached the implied term of trust and confidence. There was no fundamental breach of her contract of employment and, therefore, no dismissal.

56. The claim of unfair dismissal fails and is dismissed.

Employment Judge Bright

5 February 2021