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EMPLOYMENT TRIBUNALS

Claimant: Mr M H Ahmad

Respondent: East London Mosque Trust

Heard at: East London Hearing Centre

On: 8-9 February 2017

Before: Employment Judge M Warren (sitting alone)

Representation

Claimant: Mr R Bhatt (Counsel)

Respondent: Mrs L Banerjee (Counsel)

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is that the Claimant's claims for breach of contract and unfair dismissal fail and are dismissed.

REASONS

Background

1. Mr Ahmad brings claims of wrongful and constructive unfair dismissal following his resignation from the Respondent's employment on 16 September 2016.

The Issues

2. I was handed at the outset of the case, a list of issues which had been agreed between the parties which reads as follows:-

"1. *The claims before the Tribunal are:*

2.1. *Wrongful dismissal, for which the Tribunal has jurisdiction under Art 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994; and*

- 2.2. *Unfair constructive dismissal, as defined by s98 Employment Rights Act 1996 ("ERA 1996").*

Constructive dismissal

1. *Did the following alleged conduct (all of which is factually and legally denied by the Respondent), whether individually or collectively, amount to a fundamental breach of contract on the part of the Respondent:*
 - a. *negative comments made to the Claimant by staff members such as Ustadh Amjad and Ustadh Muhid;*
 - b. *Ustadh Muhid's hostile treatment of the Claimant;*
 - c. *The Headteacher's threats of disciplinary action when the Claimant refused to give preferential treatment to a student in relation to the student graduating from Hafiz;*
 - d. *Allowing said student to graduate and thereby undermining the Claimant;*
 - e. *In March/April 2016 the Headteacher implying that the Claimant would be dismissed when the Claimant refused to undertake the role of English teacher without the appropriate qualifications;*
 - f. *The Headteacher putting pressure on the Claimant to accept the role of English teacher, notwithstanding the fact that the Claimant did not have formal teaching qualifications;*
 - g. *On 19 July 2016, the Headteacher informing the Claimant that he could no longer continue his role as Tahfiz teacher, that he was to undertake the role of English teacher and that if he refused he would be required to tender his resignation;*
 - h. *The Respondent's decision to exclude the Claimant from the timetable for the academic year 2016-2017, and its failure to inform the Claimant of the same prior to the start of the academic year;*
 - i. *The Respondent's decision to unilaterally change the Claimant's role from Tahfiz teacher to teaching assistant in English and Tahfiz;*
 - j. *The Respondent requiring the Claimant to fit himself into the timetable in order that the Claimant could teach lessons for the academic year 2016-2017;*
 - k. *On or around 5 September 2016 the Respondent's decision to allow Ustadh Qamr to takeover a class which the Claimant taught during the previous academic year, thereby rendering the Claimant*

former colleagues Mr Muhammad Hamid Farooq and Mr Kade Dustin Smith.

4. For the Respondent, I had witness statements from Mr Ahmad's line manager Mr Muhidul Zaman, from the Head Teacher Mr Askor Ali and from the Chair of Governors, Mr Abdul-Hayee Murshad.

5. I had before me a properly indexed and paginated bundle of documents running to page number 187. With the agreement of the parties, one document was added to the bundle during the course of the hearing, page 38AA.

6. I should be grateful if the Respondent's solicitors would take note for future reference, that Employment Tribunals generally find it helpful if documents are assembled in a chronological order throughout, save for policies and the like. This makes it easier to quickly grasp the structure of the case.

7. During a break at the outset of the case, I read the witness statements and read or looked at in my discretion, the documents referred to in the witness statements. I warned the representatives that of course I have not read all of the documents and if there were important passages, they must make sure that they take me to them during the course of their cross-examination.

8. The case has been allocated two days for hearing; I restricted each representative to three hours in total for cross-examination of the other side's witnesses. There was no objection and the timetabling did not appear to present anybody with any difficulty.

Preliminary Application for Disclosure

9. At the outset of the case, Mr Bhatt made an application for disclosure, namely the content of text messages passing between the mother of a pupil and the Respondent. The significance of the pupil who I will refer to below as Y, is that Mr Ahmad did not wish to pass him for graduation from Hafiz, the Respondent ignored his recommendation and did pass him. Mr Ahmad relies upon this as one of the factors that placed the Respondent in breach of the implied obligation to maintain trust and confidence. He says that text messages between the mother of the pupil and the Respondent are relevant because she was a governor of the school and was exerting undue influence.

10. I refused the application. I could not see that these text messages went to the issues as identified in the list of issues and therefore appeared to be irrelevant. In a case of constructive dismissal, what is important is what is in the mind of the Claimant at the time he resigns; there was no suggestion that he had any knowledge of what might be passing between the mother and the Respondent and that can therefore have no bearing on his decision to resign and whether trust and confidence was undermined.

11. It was not therefore in my view proportionate or any way in accordance with the overriding objective to order disclosure of those documents which would in any event been likely to have caused delay and expense.

The Law

12. The right not to be unfairly dismissed is provided for at section 94 of the Employment Rights Act 1996, (ERA).

13. Section 95 defines the circumstances in which a person is dismissed as including where:

“(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.”

That is what we call constructive dismissal. The seminal explanation of when those circumstances arise was given by Lord Denning in Western Excavating(ECC) Ltd v Sharpe 1978 ICR 221:

“ If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employers conduct. He is constructively dismissed.”

14. The Tribunals function in looking for a breach of contract is to look at the employer's conduct as a whole and determine whether it is such that the employee cannot be expected to put up with it, (see Browne – Wilkinson J in Woods v W M Car Services (Peterborough) ltd [1981] IRLR 347).

15. A fundamental breach of any contractual term might give rise to a claim of constructive dismissal, but a contractual term frequently relied upon in cases such as this is that which is usually described as the implied term of mutual trust and confidence.

16. The leading authority on this implied term is the House of Lords decision in Mahmud & Malik v BCCI [1997] IRLR 462 where Lord Steyn adopted the definition which originated in Woods v W M Car Services (Peterborough) Ltd namely, that an employer shall not, without reasonable or 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.

17. The test is objective, from Lord Steyn in the same case:

“The motives of the employer cannot be determinative or even relevant....If conduct objectively considered is likely to destroy or serious damage the relationship between employer and employee, a breach of the implied obligation may arise.”

18. Individual actions taken by an employer which do not in themselves constitute fundamental breaches of any contractual term may have the cumulative effect of undermining trust & confidence, thereby entitling the employee to resign and claim

Constructive Dismissal. That is usually referred to as, “the last straw”, (Lewis v Motorworld Garages Ltd [1985] IRLR 465).

19. The last straw itself need not be unreasonable or blameworthy conduct, all it must do is contribute, however slightly, to the breach of the implied term of mutual trust and confidence, see London Borough of Waltham Forrest v Omilaju [2005] IRLR 35. However, an entirely innocuous act can not be a final straw, even if the employee genuinely but mistakenly interprets the act as hurtful and destructive of mutual trust and confidence.

20. A fundamental breach by an employer has to be, “accepted” by the employee, to quote Lord Browne-Wilkinson in the EAT in W.E. Cox Toner (International) Ltd v Crook 1981 IRLR 443 :-

“If one party (the guilty party) commits a repudiatory breach of the contract, the other party (the innocent party) can chose one of two courses: he can affirm the contract and insist on its further performance, or he can accept the repudiation, in which case the contract is at an end...”

But he is not bound to elect within a reasonable or any other time. Mere delay by itself (unaccompanied by an express or implied affirmation of the contract) does not constitute affirmation of the contract; but if it is prolonged it may be evidence of an implied affirmation...

Affirmation of the contract can be implied. Thus, if the innocent party calls on the guilty party for further performance of the contract, he will normally be taken to have affirmed the contract since his conduct is only consistent with the continued existence of the contractual obligation. Moreover, if the innocent party himself does acts which are only consistent with the continued existence of the contractual obligation, such acts will normally show affirmation of the contract. However, if the innocent party further performs the contract to a limited extent but at the same time makes it clear that he is only continuing so as to allow the guilty party to remedy the breach, such further performance does not prejudice his right subsequently to accept the repudiation...”

21. Another way of putting it is, that affirmation is essentially the legal embodiment of the everyday concept of letting bygones be bygones, see Cantor Fitzgerald v Bird 2002 IRLR 267. In that case, waiting 2 months did not amount to affirmation because Mr Bird had made his discontent known and was giving clear signs that he intended to leave.

22. In a recent review of the law of affirmation in the employment contract context, HHJ Burke QC in Hadji v St Luke’s Plymouth UKEAT 0857/2012 summarised the law as follows:

(i) The employee must make up his [her] mind whether or not to resign soon after the conduct of which he complains. If he does not do so he may be regarded as having elected to affirm the contract or as having lost his right to treat himself as dismissed. Western Excavating v Sharp [1978] QB 761, [1978]

1 All ER 713, [1978] ICR 221 as modified by *W E Cox Toner (International) Ltd v Crook* [1981] IRLR 443, [1981] ICR 823 and *Cantor Fitzgerald International v Bird* [2002] EWHC 2736 (QB) 29 July 2002.

(ii) Mere delay of itself, unaccompanied by express or implied affirmation of the contract, is not enough to constitute affirmation; but it is open to the Employment Tribunal to infer implied affirmation from prolonged delay – see *Cox Toner* para 13 p 446.

(iii) If the employee calls on the employer to perform its obligations under the contract or otherwise indicates an intention to continue the contract, the Employment Tribunal may conclude that there has been affirmation: *Fereday v S Staffs NHS Primary Care Trust (UKEAT/0513/ZT judgment 12 July 2011)* paras 45/46.

(iv) There is no fixed time limit in which the employee must make up his mind; the issue of affirmation is one which, subject to these principles, the Employment Tribunal must decide on the facts; affirmation cases are fact sensitive: *Fereday*, para 44.

23. The employee must prove that an effective cause of his resignation was the employers' fundamental breach. However, the breach does not have to be the sole cause, there can be a combination of causes provided an effective cause for the resignation is the breach, the breach must have played a part (see *Nottingham County Council v Miekell* [2005] ICR 1 and *Wright v North Ayrshire Council* UKEAT/0017/13)

24. In *Bournemouth University Higher Education Corporation v Buckland* 2010 ICR 908 the Court of Appeal held that a repudiatory breach cannot be unilaterally cured by the party in default. However, Lord Justice Sedley warned:

“A wronged party, particularly if it fails to make its position entirely clear at the outset, cannot ordinarily expect to continue with the contract for very long without losing the option of termination, at least where the other party has offered to make suitable amends”

The Facts

25. The Respondent is an Education Trust providing primary and secondary education.

26. Mr Ahmad has a Degree in English language, graduating in 2011. Prior to that and after his A' levels, he had studied Islamic theology at the Institute of Higher Islamic Education for six years between 2002 and 2008. He has no formal teaching qualifications.

27. Mr Ahmad's employment with the Respondent commenced on 1 September 2013. He was engaged to teach Tahfiz, which in very simplistic terms, is teaching pupils to memorise the Koran. A person who has graduated from Tahfiz is known as a Hafiz and is held in high regard in the Islamic community.

28. Mr Ahmad's role was teaching in the Respondent's primary school. Tahfiz is

also taught in the Respondent's secondary school.

29. Mr Ahmad was provided with a contract of employment dated 25 July 2013, in which his job title is given as "Teacher of Tahfiz and Islamic Sciences". He was issued with a replacement contract dated 6 June 2016, in which his job title is given as "Qur'an Teacher".

30. Originally the Tahfiz team leader and Mr Ahmad's line manager was Ustadh Amjad, (as he was referred to before me). Ustadh is a respectful mode of address to a learned teacher.

31. Ustadh Amjad was replaced as team leader by Mr Muhidul Zaman in September 2014. Mr Ahmad and Mr Muhidul Zaman had known each other for a long time; they had been near neighbours since 1996. They were not friends and there was, as Mr Muhidul Zaman acknowledged, a tension between them.

32. Mr Ahmad complains that Mr Muhidul Zaman would take any opportunity to criticise him, citing the following examples:-

- 32.1. He says that colleagues told him that Mr Muhidul Zaman was angry with him when he had a day off to take his motorcycle test. This was in March or April 2014, before Mr Zaman had been appointed Mr Ahmad's line manager. It is alleged that Mr Zaman had said that Mr Ahmad should not be doing his motorcycle test during school time. Mr Ahmad had permission from the Headmaster. Mr Farooq, whose evidence I accepted, corroborated that Mr Zaman was unhappy about this, which he considered to be unprofessional and impolite on the part of Mr Zaman. Mr Zaman says that he has no recollection of this.
- 32.2. It is alleged that in 2015, Mr Ustadh Amjad told Mr Ahmad that when in 2013, he, (that is Ustadh Amjad) had queried why Mr Ahmad had left promptly at the end of the day, (to which Mr Ahmad had responded that he did so because he was in early every day). Ustadh Amjad said that he had done so because Muhidul Zaman had complained to him about it. At this point, I note that Mr Ahmad's witness statement at paragraph 8 seems to suggest that this is an assumption which he has made, *"It was clear during this conversation that someone had obviously complained to him about this, and I believe it would have been Ustadh Muhid"*. In oral evidence under cross-examination, Mr Ahmad expressly stated and insisted that Ustadh Amjad had specifically said to him that it was because of something Muhidul Zaman had said. If that was so, I am sure that is what he would have said in his witness statement and I had the impression that he was seeking to embellish and strengthen his case in cross-examination.
- 32.3. On a date which is uncertain, it is alleged that Mr Muhidul Zaman had taught Mr Ahmad's class and had caught two pupils cheating. It is alleged that the next day, Mr Zaman said in a meeting of the Tahfiz team, to Mr Ahmad, *"This only happens in your class, not in anyone else's class"*. This is not an allegation that was contained in the ET1

where one might have expected to have seen it expressly made. When this allegation was put to Mr Zaman in cross-examination, he said that he had no recollection.

- 32.4. On a date which Mr Ahmad cannot provide, he says that Mr Muhidul Zaman called him a kamchoor. In Bengali, this means, “*a work thief*”. The background was, as Mr Ahmad describes it, that every Wednesday after school there would be a staff meeting between 5 o’clock and 5:30. Because of family commitments, Mr Ahmad would have to leave promptly as soon as the meeting ended. He said that this was something of which the Head Teacher knew and approved. He sets out in his witness statement that on one occasion, when he was leaving, Mr Zaman, “*attacked him*” in front of another member of staff and called him a kamchoor. In oral evidence, Mr Ahmad’s version differed, saying that Mr Zaman had used this insult during a discussion about why he was late, that Mr Zaman said that he was cutting corners with the Head, going home early and Mr Ahmad then said that he had gone back to his class afterwards. His account therefore in cross-examination was completely different from his witness statement account of how he said he came to be insulted. Mr Muhidul Zaman acknowledges that he called Mr Ahmad a kamchoor, he said that this was in amiable banter type conversation and that he had immediately seen that Mr Ahmad was offended, had immediately apologised and said that he had not meant to offend him. He said the conversation had taken place on an inset day.
- 32.5. Mr Ahmad said that Mr Muhidul Zaman would send him rude messages by text. However, his evidence was that he did not keep copies of the text messages. His evidence as to why this was varied between, that he had a new phone and had not kept the old one, to a claim that his old phone did not in fact store text messages. He seemed to agree when I suggested that I thought all mobile phones stored text messages and then he appeared to suggest that his excuse was both of those set out above. His explanation varied and was entirely unconvincing. He was taken through a sequence of text messages provided by Mr Muhidul Zaman in the bundle and I have to say, they are all very polite and appear to belie entirely the picture portrayed by Mr Ahmad.
- 32.6. Mr Ahmad says that on 5 November 2015, he had been late during the lunch break and had not made the congregational prayer with the children taken at that time of day. He said that two teachers would be on duty to attend prayer with the children, but that all other teachers are in fact expected to attend as well. He said he was not on duty and he says that all other teachers were present. He says that Mr Zaman sent him a rude text, which he copied to all the other teachers, suggesting that he had left the children unsupervised. I have already expressed my disquiet that Mr Ahmad was unable to produce this text himself. This is the text I referred to above as being introduced in the bundle at 38AA. Mr Ahmad agreed this was the text, it reads as

follows:

“Salam

Can all co tutors help bring up their year group from Salah to their classes for guided reading, if this is not possible, please arrange with the main tutor to do so, as there are year groups unattended.”

I am afraid I simply cannot see why that is a rude text message. It is not a criticism that children had been left unsupervised at prayer. It is a request that tutors take the children from prayer to their subsequent guided reading. I am acutely aware that when Mr Ahmad wrote his witness statement, he thought that this text message was unavailable. Even without this text message, which undermines the credibility of Mr Ahmad’s evidence, I already had Mr Zaman’s subsequent text of 5 November sent directly to Mr Ahmad which reads:

“Salam

I apologise if my message from before caused any offence, it was not my intention, I think we as a whole school team need to discuss the morning situation, as it isn’t fair on the staff who are regularly there, up until last year we worked from a rota and it worked fine we should maybe look into that.”

Even that text message undermines the credibility of Mr Ahmad’s assertion that Mr Zaman was rude to him by text on 5 November. He suggested that Mr Zaman’s account to me in evidence, of having last Tuesday gone to the Apple Store to ask the technicians there to try and retrieve the text message is not credible. I am afraid that I found Mr Zaman’s account entirely credible. Indeed, given the benign nature of the text message, he would have no reason to hide it and every reason to produce it if he could, which is no doubt why he went to the trouble of going to the Apple store to ask the technicians to retrieve it for him. The difficulty incidentally, was not that he had deleted the text message but that the way it was stored, being a group message, had eluded him.

- 32.7. That incident of 5 November, led Mr Ahmad to confront Mr Zaman in a meeting the next day. During this meeting, he says that Mr Zaman told him that he was taking everything too personally. Mr Ahmad has referred me to a note which he made in preparation for that meeting as an aide memoire of matters to raise, which includes a reference to the motorcycle test, to being called a kamchoor and he has made a note to make it clear that he will deploy every option available to him if there was any further mistreatment of him, which he will not tolerate. This note certainly corroborates that the motorcycle incident occurred and that he was called a kamchoor, (the latter of course Mr Zaman does not deny).

- 32.8. From January 2016, Mr Ahmad had permission from the Head Teacher to arrive late on Wednesdays, so that he could take his son to nursery. Mr Ahmad says that a series of emails to staff from Mr Zaman, which mention the need to arrive at work on time, were targeted at him. During cross-examination, Mr Ahmad acknowledged that other colleagues were often late into work, without permission. I have been taken to those emails and refer to them as follows:
- 32.8.1. At page 48 is one dated 4 January 2016, which expressly states that it is a polite reminder of a number of points, one of which is that Ustadhs with non-contact still need to be in at work, there are no late starts.
- 32.8.2. That at page 49 is dated 12 January 2016 and begins: "*Salam I hope everyone is well*" and continues to ask Ustadhs to be present on site during non-contact periods and reminds them that there are no late starts, so would they please not treat non-contact in the first period as a late start and to let certain stipulated people know if one is running late.
- 32.8.3. The third is at page 54 and is from a Mr Koyesmiah, with seven bullet points that he raises, very politely. On the subject of morning duty/punctuality it simply says, "*All colleagues should be at school for 7.45 and be at the hall at 7.55 to take children up*". The author stated that this was not the first time this has been mentioned and that if the situation continued, the Head Teacher would have to be involved. Thus one can see that somebody else other than Mr Zaman thought it necessary to write to the Ustadhs on the question of punctuality.
- 32.8.4. Lastly at page 60 on 11 May, the Head Teacher wrote to the teachers to say that he had noticed staff arriving late at school regularly and warning them that disciplinary procedures would be implemented if this continued.

It is clear that the Respondent had an issue with staff arriving at school late and that issue was not with Mr Ahmad, who had permission from the head to arrive late on Wednesdays, (and on other days arrived at school early). This is a sequence of correspondence in which the Respondent is seeking to address a problem which is nothing to do with Mr Ahmad. To suggest that these emails are targeted at Mr Ahmad is I am afraid, just not credible.

33. Having analysed the foregoing allegations as I have, I am afraid that I came to the conclusion that Mr Ahmad was not a credible witness, that he was inclined to exaggerate or embellish, or see offence when there is none.

34. To recap for the sake of clarity:

- 34.1. I find as a fact that Mr Zaman was annoyed when Mr Ahmad took time off to do his motorcycle test, at that time he was not Mr Ahmad's manager. That was in March or April 2014.
- 34.2. I do not accept that Mr Zaman had complained to Ustadh Amjad about Mr Ahmad leaving work early in 2013.
- 34.3. I accept that Mr Zaman did call Mr Ahmad a kamchoor, he did cause offence, although he did not intend to do so.
- 34.4. Mr Zaman did not send rude text messages to Mr Ahmad.
- 34.5. Mr Ahmad was not targeted with criticism and rude text messages on 5 November 2015.
- 34.6. Mr Ahmad was not targeted with emails about people arriving late to work, that was nothing to do with Mr Ahmad.

35. Mr Ahmad complains about the way that he was treated in a disagreement he had with the Respondent regarding a child I will refer to as Y. The goal of a pupil in Tahfiz is to graduate and become Hafiz. The decision on when a pupil graduates is normally that of the teacher. Graduations are once a year. Mr Ahmad was not proposing to graduate pupil Y.

36. Although he did not know it at the time, the father of Y was raising a series of complaints about Mr Ahmad. I was referred to a letter dated 14 December 2015, addressed to the Board of Governors at page 73. It is referred to as a Stage 3 Complaint; the parent had already been through two stages of complaint prior to this. The detail of the complaint does not matter and it would not be fair if I were to set that detail out in these reasons, which might become a public document. The point is that there is detailed, sometimes quite vitriolic, criticism of Mr Ahmad by the parent. I am not concerned with the rights and the wrongs of the parent's complaint and it would not be fair for me to pass comment. The important point is that the Head Teacher and the governors were dealing with a strongly articulated, lengthy and detailed complaint about Mr Ahmad, which included complaint that he was proposing not to graduate Y. This was something the Respondent had to deal with.

37. The complaints led to a series of meetings with the Head Teacher, the governors, the parent, Mr Zaman and the Claimant. The outcome of those meetings, (not all of those parties necessarily in all of the meetings) was that Mr Ahmad was instructed to give extra attention to pupil Y, to provide him with extra lessons, to ensure that he could graduate. With this, Mr Ahmad strongly disagrees, for he considers it to be unethical to show favouritism to one child over another.

38. I accepted the evidence of Mr Zaman that this is something that had happened in the past and has happened since.

39. Mr Ahmad says that he was threatened with disciplinary action if he did not comply. I was not taken to documentary evidence of any such threat. However, I

would not have regarded it as an unreasonable step for the Respondent to have taken, had Mr Ahmad refused to comply with what seems to me to have been a reasonable instruction.

40. Mr Ahmad claims that Mr Zaman wanted Y to graduate so as simply to go against Mr Ahmad's decision and he claims that Mr Zaman had told him that he was doing this just because he had previously challenged him. I am afraid I do not believe that. It is inherently unlikely, in light of the letter of complaint from the parent of Y, which is the most likely explanation. Leaving aside the fact that overall, I found Mr Zaman to be a credible witness, this is one further instance where the evidence points towards Mr Ahmad embellishing, exaggerating and seeing offence where there is none. Mr Ahmad himself acknowledged that the Head Teacher had told him that the issue had arisen because the parents were complaining, albeit that he had not shared with Mr Ahmad the nature of those complaints.

41. That there was a genuine issue arising out of the parent's complaint is corroborated by the email that I was referred to at page 45A dated 30 November 2015, where the Head of Islamic Studies, (Mr Badr) not otherwise implicated in this case as a person accused of targeting or victimising Mr Ahmad, wrote an outline of what had occurred on 30 November 2015. This email sets out that:

- 41.1. The Respondent was dealing with complaints from Y's parents.
- 41.2. That Mr Ahmad had not recommended his graduation and that Mr Ahmad's decision had initially been accepted.
- 41.3. Upon the parents becoming extremely upset and pressing formal complaints, there was further investigation.
- 41.4. When investigating the documentary evidence about Y's progress, a decision had been made that he ought to be able to graduate, if provided with further assistance.
- 41.5. A decision had therefore been made that he would be provided with that further assistance so as to enable him to graduate.

42. The penultimate paragraph of that email reads:

"For future references, Recommendations or refusal of recommendation by Tahfiz teachers to graduate a student will have to be evidence based and agreed by the Tahfiz leader and approve by the overall Islamic Sciences leader".

That seems to me a very sensible and appropriate recommendation for the future and yet Mr Ahmad would not accept that in any way.

43. It was interesting that it was put to Mr Zaman in cross-examination, unexpectedly I think, that he too had previously recommended that a child should not graduate and that he too had been overruled. It was suggested to him that he had been angry about that at the time and the question was put as a means of

demonstrating the unreasonableness of this course of action. Mr Zaman, entirely credibly in my view, replied frankly that this had indeed happened to him, he had been overruled, he was not angry, because as he sees it, he works in a hierarchy and he has to accept it when he is overruled by his line manager.

44. In March or April 2016, Mr Ahmad approached the Head Teacher Mr Askor Ali. Mr Ali was relatively new to the school, having joined in January 2016. He therefore had no involvement in anything which had gone before and was not tainted by the history which I have set out above. Mr Ahmad said to Mr Ali that he would like to qualify as a teacher, enrolling on a PGCE course with a view to becoming a teacher. Mr Ali explained to him that he may have left it rather late in the academic year to enrol upon a course commencing in September 2016. He explained to Mr Ahmad that there are other routes by which he could qualify as a teacher, whilst remaining in employment, such as the graduate teacher programme and another programme the name of which he was not sure of at the time, (he was referring to what is known as the School's Direct Programme, (SDP)).

45. Mr Ali went on to explain to Mr Ahmad that this was a win win situation both to the school and for Mr Ahmad, as the senior school's one and only English teacher had resigned and was scheduled to leave at the end of the academic year. They agreed between them that they would work towards Mr Ahmad replacing that individual. The Respondent would support Mr Ahmad in his applications for training and in his training, if successful. On that basis, Mr Ali would not have to recruit a replacement for the departing English teacher. No pressure was placed on Mr Ahmad to accept this arrangement and it was not implied that he would be dismissed if he did not accept it.

46. I should perhaps at this point explain where there are some conflicts of evidence in this chain of events; I have not accepted the evidence of Mr Ahmad, for reasons which I have explained above. This is not to ignore certain aspects of the evidence, particularly of Mr Ali, where his credibility was also shaken. The fact of the matter is I am afraid, that Mr Ahmad's evidence was the least credible of all, the evidence of Mr Zaman and Mr Murshad was credible, Mr Murshad most of all.

47. Mr Ahmad found that the University College London, (UCL) had places available on the SDP and he applied. His application was supported by Mr Ali who provided a supporting statement. The parties appear to have assumed moving forward, that Mr Ahmad would be successful, that he would be on the SDP course for the academic year beginning September 2016.

48. I observe in passing that in his witness statement, Mr Ali expressed shock to discover that Mr Ahmad had applied to another school, the Beal School. In cross-examination, it was pointed out to him that actually, he had given a reference in support of that application, a copy of it was in the bundle. This obviously caught Mr Ali by surprise and he said that he had forgotten about it. These are matters that reveals a willingness to embellish on the part of Mr Ali and as I have observed, certainly undermined his credibility.

49. Mr Ali arranged for Mr Ahmad to observe English lessons over a two week period in the senior school, which Mr Ahmad did. This was in pursuit of Mr Ahmad's enthusiasm to qualify as an English teacher.

50. The timetable for the Respondent's academic year is prepared by the Head Teacher and the Senior Leadership in consultation with the teachers themselves wherever possible, to try and accommodate specific needs and requests. The timetable was arranged on the basis that Mr Ahmad was no longer to teach Tahfiz in junior school, but would be teaching English in the senior school and that he would have Fridays off so as to be able to attend university. Mr Ahmad understood that if his application to UCL fell through, he was expected to continue to teach English at the school.

51. Unfortunately, in July 2016 everything came crashing down. UCL informed Mr Ahmad and the Respondent that they could not offer Mr Ahmad a place because the Respondent's school was in "special measures" following an OFSTED inspection in 2014.

52. Mr Ahmad then told Mr Ali that he did not want to teach English the next year, if he could not do so whilst on the SDP programme with the UCL. This left the Respondent in a difficult position, with no English teacher for the next academic year. The Respondent was also in difficulty because its junior school had fewer pupils for Tahfiz for the academic year commencing September 2016 and so they had timetabled a reduction in Tahfiz teachers from four to three.

53. In light of this, on 19 July 2016, Mr Ali sent a letter to Mr Ahmad a copy of which is at page 64. Excerpts from that letter read as follows:

"Due to the financial difficulties our schools are going through, GB and myself have decided to reduce the number of teachers in Al Mizan [the junior school] as we will only be having three classes next year..."

*Unfortunately this has affected you in terms of your position as Tahfiz teacher but the **good news** is, as you have qualifications in English [a reference to his English Degree] and also experience in schools, I would like to offer you an English teaching position at the London East Academy. Taking up the position as an English teacher in LEA [the senior school] will enhance your career and further develop you professionally. The following will be offered to you as an English teacher at LEA:*

1. *Increased of salary*
2. *Time given for training (Fridays)*
3. *Quality training through Tower Hamlets or a reputable training provider*
4. *20% reduction in your teaching load*
5. *Support you and help you to complete the PGCE course for English (Secondary)...*

Please note if the offer is rejected we will not be able to provide you with any

other position at both Al Mizan and LEA. You will be required to submit your resignation for your employment to end on 31 August 2016”.

54. Mr Ahmad’s response to this was on 20 July to write to request a meeting with the governors.

55. Such a meeting was arranged and took place on 23 July. The governors met with Mr Ahmad and Mr Ali. Mr Ali explained that he had prepared the timetable for the next year with Mr Ahmad as an English teacher and he had offered to put support in place from other local schools and trainers and to give Mr Ahmad additional time to prepare lessons. However Mr Ahmad was clear, he did not wish to go ahead with the plan, unless he had training from UCL.

56. The decision of the governors was that the Head Teacher would have to, “*go back to the drawing board*” and recruit a new English teacher. Mr Ahmad was to resume in the next academic year as a Tahfiz teacher as he had been before and the Head was to redraw the timetable accordingly. Mr Ali said he would redraw all the timetable at the end of the summer holidays, with the support of the Senior Leadership Team. Mr Ahmad was a party to this conversation; he knew at the time that this was the outcome of the meeting with the governors.

57. The 2nd September was an inset day, prior to term commencing. For this day, Mr Ali and the Senior Leadership Team had prepared a new timetable, copied at page 137a, which showed Mr Ahmad doing both Tahfiz and supporting an English teacher for some lessons. The idea was, to propose to Mr Ahmad that he might like to do that, as there were reduced numbers for Tahfiz. After training, during the morning of 2 September, Mr Zaman asked Mr Ahmad if he would be prepared to do this and Mr Ahmad said no he would not, as far as he was concerned he was to teach Tahfiz only. Mr Zaman accepted that immediately and without demur.

58. Mr Ahmad was then invited to indicate on a copy of the timetable, which Tahfiz lessons he would take and he did so, annotating with pencil ticks on the copy, (p.138). A new timetable was redrawn accordingly.

59. During the course of 2 September, Mr Ali saw Mr Ahmad and invited him to go and see him to talk. Mr Ahmad said that he would only do so if accompanied by somebody else. Mr Ali agreed to that and invited Mr Ahmad to do so, though he never did.

60. Monday 5 September was the first day’s teaching. Early that morning, Mr Ahmad wrote an email to Mr Ali, at 7:11 complaining that he had not been timetabled to teach Tahfiz this year and suggesting that he had not received a formal response following his meeting with the governors, asking for an explanation as to why he had not been timetabled to teach Tahfiz and why it was necessary for him to be invited to amend the timetable himself.

61. Mr Ahmad attended to teach the first class of Hafiz in accordance with the new timetable. The Respondent has produced no evidence about what happened next, but on the other hand, Mr Ahmad’s evidence is confusing and contradictory. In the ET1 paragraph 21, he referred to Ustadh Shakil, the secondary school Tahfiz leader,

walking into the classroom saying that there would not be anything different from last year, there would still be two classes, one would be Ustadh Shafiul's class as he had last year, the other would be Ustadh Qamr's class who would take over the class, "*I used to teach last year*". He said that Ustadh Shakil had said that he, Mr Ahmad, would be additional and would give some students support. He alleged that he had spoken up and said that this was wrong, that he was supposed to have a class and be responsible for students like every other teacher, to which he said that Ustadh Shakil had replied very harshly, "*that's what I said*".

62. In his witness statement, he gave similar evidence, he said, "*he said Ustadh Shafiul would continue to teach the class he had last year, but that my class from last year would now be taught by Ustadh Qamr. He said I would be additional and would be given some students to support*".

63. A slight difference there is between "*my class*" and the reference to the class, "*I used to teach last year*".

64. Questioned about this in cross-examination, he said that when he used the word "my" he did not mean his as in Mr Ahmad's, he meant Ustadt Shadil's class. His account therefore varied.

65. Mr Ahmad made no protest about this incident in his resignation letter. If it had occurred in the way that he describes and it had caused him to resign, one would have expected him to have done so.

66. It is fair to say that he refers to a document he says is a note he made that night of what had happened, (which is copied at p.146) in which he says that he was told that he will be additional, will be given some students to work with and he records that he was spoken to harshly and in a rude manner by Ustadh Shakil, which was in front of students.

67. The difficulty which I have is that I found Mr Ahmad's evidence so unreliable that even though there is no contradictory evidence from the Respondent, I find myself unable to accept the incident occurred as Mr Ahmad describes. No doubt there was some explanation to the pupils about what was to happen and no doubt Mr Ahmad took offence, but I very much doubt that he was spoken to, "*very harshly*".

68. On 6 September 2016, Mr Ahmad went to his doctor and was certified unfit to work by reason of stress at work.

69. I accept the evidence of Mr Ali, that he felt he could not approach Mr Ahmad during his absence through illness, for fear of being accused of harassing him.

70. Mr Ahmad then tendered his resignation by an email dated 16 September 2016, addressed to Mr Ali, excerpts of which are as follows:

"During the last academic year I felt I was unfairly treated on a number of occasions, culminating in being instructed that I would have to teach English to the secondary school this academic year. As you know, after looking into the possibility of undertaking a teaching qualification to enable me to consider this, I

informed you that I could not agree to your demands. After an initial letter informing me that I would be dismissed if I did not agree, the governors agreed to reconsider, although I received no contact over the summer holidays.

However, when I returned to school on Friday 2 September, I discovered that I had been completely removed from the timetable. On Monday 5 September it became clear that this was not an oversight, and only when I insisted on being able to teach Tahfiz in same way as my colleagues, did you reluctantly tell me to add myself in. Throughout the rest of that day it became clear that I was not going to be allowed to teach, and I was undermined and humiliated in front of colleagues and pupils.”

71. It is not of course true that Mr Ahmad was completely removed from the timetable, he was on the timetable, although not initially teaching Tahfiz exclusively.

72. Mr Ali replied on 16 September, saying that he was sorry to hear that Mr Ahmad was ill through stress and he went on to explain the process of Mr Ahmad's application, supported by the Respondent, the fact that it had unfortunately been rejected, at which time the timetable had already been completed. He went on to explain that they had timetabled him to teach Tahfiz straightaway during the inset day, that there was a request that he supports an English lesson which he refused and they had accepted his decision. He offered to speak with Mr Ahmad, an offer that was never taken up.

Conclusions

73. Most of us have to accept that events in our place of work will not always go smoothly. Relationships will not always be entirely as we would wish them, there are bound to be difficulties and obstacles in the work that we do. Matters with regard to Mr Zaman about which Mr Ahmad complains are examples of that.

74. I have found that Mr Ahmad has I am afraid, greatly exaggerated his dealings with Mr Zaman, for whatever reason. There was tension between them, as Mr Zaman was honest enough to acknowledge. The motorcycle and the kamchoor incidents did occur. These are not however, matters which breach the implied term to maintain mutual trust and confidence; they are not matters that destroy the employment relationship.

75. With regard to the incident concerning pupil Y and his graduation, I find that the Respondent had reasonable and proper cause to take the steps which it did. That cannot amount to a breach of the implied term of mutual trust and confidence.

76. On my findings of fact with regard to events in July and September 2016, what seems to have occurred is a very unfortunate turn of events, outside of the control of both the Claimant and the Respondent. Matters were working out very amicably for Mr Ahmad; he was effectively to receive a promotion, he was to receive more money, he was to have the opportunity to fulfil his ambition to qualify as a teacher, supported by the Respondent. The turn of events were disappointing both for Mr Ahmad and Mr Ali.

77. Mr Ali's letter of 19 July at page 65 is most unfortunate, as he himself and the Respondent acknowledged almost immediately. That said, it seems to me the letter

accurately describes the situation that the Respondent found itself in and certainly presented to the Claimant what an onlooker might regard as a reasonable and attractive proposal. Unfortunately, it also amounted to a threat to terminate his employment if he did not accept the proposal, something which the Respondent was not entitled to do, without more.

78. Mr Ahmad then met with the governors. They took a very fair view of the situation. They told Mr Ahmad that of course, he can return in the new academic year and resume his duties as an Tahfiz teacher. Mr Ali was told that he would have to get on and recruit an English teacher. It was immediately acknowledged that Mr Ali's letter had been inappropriate and apology was made. Mr Ahmad accepted that resolution to the issue. He went away from the meeting understanding that he would return to the school in September and resume teaching Hafiz. If the letter of 19 July amounted to a fundamental breach of contract undermining mutual trust and confidence in the threat to dismiss, such breach was affirmed by Mr Ahmad accepting the Board of Governors resolution.

79. When Mr Ahmad turned up on 2 September, a perfectly reasonable proposal was put to him to teach Tahfiz and to provide teaching assistance to an English teacher. He rejected that proposal and the Respondent immediately accepted his decision. I do not accept that could be described as a breach of the implied term of trust and confidence in itself and in any event, the Respondent had reasonable and proper cause to at least put the proposal to him, simply because there was a reduced need for Tahfiz teachers and they wanted to make good use of his time. It seemed to them, perfectly reasonably, that it was something he might find attractive because of his expressed desire to teach English.

80. He was then able to select the Tahfiz lessons which he wished to take and the timetable was revised accordingly.

81. Any offence which Mr Ahmad has taken up until this point, as expressed in his resignation letter, is in my view further manifestation of his inclination to take offence where there is none.

82. As for the events on 5 January, I do not accept that they took place as Mr Ahmad describes. I do not accept that they were a motivating factor behind his resignation, for had they been, it would have appeared in his letter of resignation.

83. For the sake of completeness, I set out below the alleged conduct Mr Ahmad relies on as amounting to a breach of the implied term of mutual trust and confidence, as set out in the list of issues and deal with each in turn:

- a. *Negative comments made to the Claimant by staff members such as Ustadh Amjad and Ustadh Muhid:*

Ustadh Muhid is Mr Zaman. I have explained above that I do not find that any comments by Mr Zaman amounted to a breach of mutual trust and confidence.

Ustadh Muhid ceased to be Mr Ahmad's line manager in September 2014. Mr Ahmad has affirmed the contract in respect of any comments that might have amounted to such a breach. The only comment mentioned in evidence was that in 2013 relating to his leaving promptly every day and I did not accept what Mr Ahmad said about that nor that in 2015, Mr Ustadh Amjad had suggested that he only made the remark because Mr Zamad had complained.

b. Ustadh Muhid's hostile treatment of the Claimant:

I have set out above why I do not accept that any treatment of Mr Ahmad by Mr Zaman amounted to a breach of the implied term of mutual trust and confidence.

c. The Headteacher's threats of disciplinary action when the Claimant refused to give preferential treatment to a student in relation to the student graduating from Hafiz:

I have explained that the Respondent had reasonable cause for the steps it took with regard to pupil Y.

d. Allowing said student to graduate and thereby undermining the Claimant:

As above.

e. In March/April 2016 the Headteacher implying that the Claimant would be dismissed when the Claimant refused to undertake the role of English teacher without the appropriate qualifications:

I did not uphold this allegation in my finding of fact.

f. The Headteacher putting pressure on the Claimant to accept the role of English teacher, notwithstanding the fact that the Claimant did not have formal teaching qualifications:

I did not uphold this allegation in my finding of fact.

g. On 19 July 2016, the Headteacher informing the Claimant that he could no longer continue his role as Tahfiz teacher, that he was to undertake the role of English teacher and that if he refused he would be required to tender his resignation:

The content of this letter was unacceptable. However, apologies were offered, the Respondent relented entirely to Mr Ahmad's complaint and he affirmed the contract by remaining in employment, receiving his salary and turning up for the beginning of term in September.

h. The Respondent's decision to exclude the Claimant from the

timetable for the academic year 2016-2017, and its failure to inform the Claimant of the same prior to the start of the academic year:

This misrepresents what took place. I have explained above that what happened with regard to the timetable and at the start of term, could not be described as a breach trust and confidence.

- i. The Respondent's decision to unilaterally change the Claimant's role from Tahfiz teacher to teaching assistant in English and Tahfiz:*

There was no such unilateral decision. In the first instance, the plan was mutually agreed. The proposal at the start of term was just that, a proposal. Mr Ahmad did not accept it and the Respondent accepted his decision.

- j. The Respondent requiring the Claimant to fit himself into the timetable in order that the Claimant could teach lessons for the academic year 2016-2017:*

Suggesting that Mr Ahmad indicate on a timetable which classes he would like to teach is not conduct calculate or likely to destroy trust and confidence but more likely to enhance it.

- k. On or around 5 September 2016 the Respondent's decision to allow Ustadh Qamr to takeover a class which the Claimant taught during the previous academic year, thereby rendering the Claimant as an 'additional/support' staff:*

In my finding of fact I do not accept that this is what happened.

- l. On 5 September 2016, Ustadh Shakil humiliating the Claimant in front of students and other staff members:*

In my finding of fact I do not accept that this is what happened.

- m. The Respondent treating the Claimant differently from other members of staff:*

In so far as it did so on the facts, it had reasonable and proper cause.

- n. The Respondent's decision to take away the Claimant's role of Hafiz teacher:*

On my finding of fact, this is not what happened. In so far as the actions of the Respondent could in any way be so described, their actions could not be said to be calculated or likely to destroy trust and confidence.

- o. The school Governors' failure to respond to the Claimant following his grievance meeting on 22 July 2016:*

They did respond, very fairly and properly.

84. For these reasons, Mr Ahmad's complaint of constructive unfair dismissal and wrongful dismissal fail and are dismissed.

Employment Judge Warren

23 March 2017