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## **Fundamental breaches of contract cannot be cured**

An employer who has committed a fundamental breach of contract cannot "cure" it whilst the employee is considering whether to treat it as a dismissal.

The recent Court of Appeal case of *Buckland -v- Bournemouth University* is authority for this proposition.

The Claimant, a Professor in archaeology at Bournemouth University, resigned claiming constructive unfair dismissal after exam papers he had marked were subject to re-marking by the chairman of the board of examiners. After the re-mark and before the resignation, an Inquiry set up by the Defendant University vindicated the Claimant and criticised the marking procedures in place. The Claimant subsequently resigned and claimed constructive dismissal in accordance with S.95(1)(c) of the Employment Rights Act 1996.

The ET held that the re-mark amounted to a fundamental breach of contract and that the Inquiry did not "cure" the breach. However, the EAT found that the breach had been "cured" by the Inquiry. The Court of Appeal allowed the appeal against the EAT's decision that the breach had been cured: once a breach has been done, it cannot be undone.