



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs Jacqueline Wilson

v

**The National Trust for Places of
Historic Interest or Natural Beauty**

Heard at: Watford

On: 13 & 14 July 2017

Before: Employment Judge Bedeau

Appearances

For the Claimant: Mr T Webb, Counsel

For the Respondent: Ms E Wilkins, Solicitor

JUDGMENT

1. The claimant's constructive unfair dismissal claim is not well-founded and is dismissed.
2. The claimant's wrongful dismissal claim has not been proved and it is dismissed.

REASONS

1. By a claim form presented to the tribunal on 8 December 2016, the claimant made claims of constructive unfair dismissal and wrongful dismissal arising from her employment with the respondent as a riding warden.
2. In the response presented to the tribunal on 4 January 2017, it is averred that the claimant was not constructively unfairly dismissed and that she had elected to work her notice. The respondent acknowledged that she had been in employment from 24 April 1990 to her resignation either on 19 July 2016 or 1 August 2016.

The issues

3. The issues for me to hear and determine are as follows:

Constructive unfair dismissal pursuant to s.95(1)(c) Employment Rights Act 1996

- 4.1 Did the respondent commit a breach of the claimant's contract of employment?
- 4.2 If so:
 - 4.2.1 What was the breach?
 - 4.2.2 Was that breach sufficiently serious to amount to a repudiatory breach of the claimant's contract of employment?
 - 4.2.3 Did the claimant accept the respondent's breach of contract by failing to resign promptly in response to any such breach?
 - 4.2.4 Did the claimant resign as a result of the respondent's breach or for some other reason?

Notice entitlement

- 4.3 What was the claimant's notice entitlement?
- 4.4 Did the claimant waive her notice entitlement by agreeing with the respondent that she would not work any outstanding period of notice?
- 4.5 Is the claimant entitled to receive a payment for any outstanding period of notice?

The evidence

4. I heard evidence from the claimant who invited me to read the witness statement of Mr Graeme Cannon, former property manager, and to give whatever weight I considered appropriate to it.
5. On behalf of the respondent evidence was given by Mr Lawrence Trowbridge, lead ranger; Ms Susan Mercer, general manager; Mr Graham Deans, assistant director of operations; and by Mr Richard Henderson, assistant director.
6. In addition to the oral evidence, the parties adduced a joint bundle of documents comprising of 157 pages. References will be made to the documents as numbered in the joint bundle.

Findings of fact

7. The respondent is the National Trust responsible for maintaining places of historic interest or of outstanding natural beauty. One of the areas it is responsible for is called the Ashridge Estate, Hertfordshire, England, which covers 5,000 acres of chalk downland, ancient woodland, commons and historic parkland. A place of interest on the estate is the Bridgewater Monument. The estate also has a thriving Visitor Centre that houses a

rolling exhibition space, children's craft activities, a shop and a café with outdoor seating.

8. A short distance away from the Visitor Centre is the Estate Centre where the estate is managed, by Ms Susan Mercer, general manager and Mr Lawrence Trowbridge, lead ranger. Overseeing its overall management is Mr Graham Deans, assistant director of operations, London and South East Region.
9. The claimant commenced employment with the respondent on 25 April 1990 as a riding warden and worked 24 hours a week, over three days, Wednesdays, Saturdays and Sundays. From December 2013, she reported to Mr Trowbridge, who in turn reported to Ms Mercer. The claimant was the only one patrolling the estate on horseback. The other wardens or rangers patrol the estate driving motorised vehicles. The main reason for the claimant's recruitment was to control those who were riding on the estate on horseback.

The claimant's contractual duties and responsibilities

10. Her original contractual duties included, amongst others, monitoring the riding which meant checking riding permits and the maintenance of bridleways; organising mounted volunteers to assist in her work; undertaking improvements to the bridleway system and waymarking; administering the annual issuing of riding permits; keeping an up to date register of riders who used the estate and dealing with correspondence. (pages 53-54 of the joint bundle)
11. On 22 April 2002, she carried out her own job evaluation and wrote on the form in section 7, under "Key Result Areas (Purpose of Your Job)", in order of priority, the following:
 - “1. To oversee and monitor horse riding at Ashridge includes:- administering permit scheme, handling of monies, patrolling bridleway network, producing newsletters, organising events for horse riders, recruiting and supervising volunteer riding wardens, and sitting on local riding committees.
 2. Care and maintenance of properties especially with regard to bridleway network.
 3. Protection of properties. Patrolling and bylaw enforcement.
 4. Maintaining external relations. Especially with local horse riders and riding establishments.
 5. Planning and record keeping.
 6. Health and safety compliance.”
12. In her evidence, in cross-examination, she acknowledged that the production of newsletters, the protection of property, planning and record keeping, and health and safety compliance, were essentially indoor activities. The other tasks were outdoor patrolling activities. (53-60)

The claimant's key responsibilities following a re-grading in 2002

13. Following her job evaluation, she was re-graded to grade 9 from grade 10 and was issued with a new job description which repeated her key responsibilities to oversee and monitor horse riding on the estate as well as the care and maintenance of properties. It then stated,

“3. Protection of properties

- (a) Enforce the National Trust Byelaws and work closely with the police and other relevant agencies;
- (b) Ensure supervision of the public as necessary, by means of regular patrols. Assist and provide information to the public, having regard to the quality of visit.
- (c) Be aware of standing instructions on security and fire precautions and to be responsible for security and fire safety with other staff.

4. Planning and budgeting

- (a) Maintain such records as may be required, eg daily work and property events, volunteers, use of chemicals, etc.

5. External relations

- (a) Develop and maintain good working relationships with the general public, local residents, neighbours and organisations, local and public authorities, property tenants, and licensees, schools and colleges, other related organisations, and generally establish confidence in the Trust ownership and management of the properties. In particular, maintain contact with local horse riding establishments.

6. Health and safety

- (a) Ensure practicable and reasonable compliance with all health and safety policies as set out by the Trust in accordance with its statutory obligations.

7. Other duties

- (a) The post holder has a duty of care to avail himself or herself of the technical and professional expertise which is offered by or available through the Trust's functional structure.
- (b) Undertake any other duties as maybe reasonably requested by the Area Warden or the Property Manager.” (61-63)

14. Mr Trowbridge commenced employment with the respondent in September 1989, the year before the claimant, as an apprentice at 16 years of age. Over the following years he and the claimant developed a close working relationship. He moved up the ranks through promotion finally ending up as lead ranger in December 2013. He is responsible for all aspects of

countryside management on the 5,000 acre estate including habitat management; estate maintenance; forestry; agriculture; archaeology, public access and monitors compliance in these areas. He is also responsible for overseeing the respondent's public facing activities, such as arranging walks, talks and public events.

15. The seven wardens/rangers, these titles are synonymous, are responsible for different aspects of countryside management. Their duties include: rights of way maintenance; habitat management; biological monitoring; managing volunteers; managing projects; forestry work; leading walks and giving talks and managing operational risks. They spend a significant amount of their time patrolling the estate as well as working in the Estate Office dealing with correspondence, telephone queries, making telephone calls and other tasks which cannot be done outdoors.
16. Mr Trowbridge told me and I do find as fact that when he commenced employment in 1989 no-one used emails, mobile phones or computers but over the years their use has become more commonplace. Since then the countryside wardens/rangers' involvement in the use of IT grew considerably. All the rangers are expected to use the respondent's computers, to be able to access the Trust's intranet and internet, and to use office software, such as Outlook for emails, Word for writing reports and Excel spreadsheets for finance. They have desk space and laptops in the Estate Office which was built in 1992.
17. I was satisfied having heard not only the claimant's evidence but the evidence from the respondent's witnesses, that the claimant would spend about 90% of her time out on patrol on horseback. There were, however, issues regarding her response to queries and her engagement in her administrative duties. To put matters in context, for the previous 25 years of her employment, would spend about two or three hours a week engaged in her administrative duties from her husband's office at their home. It follows from this that there was limited contact with workers in the Estate Office and with her line managers over that time.
18. As previously stated, in December 2013, Mr Trowbridge became her line manager. A year later, in November 2014, Ms Susie Mercer was appointed to the position of general manager. When Mr Trowbridge became the claimant's line manager, it was apparent to him that she was not fulfilling certain aspects of her role, including the administrative and marketing tasks. She was not using the tool, systems and processes available to all rangers. He was of the view that these matters ought to have been addressed by her previous line manager, possibly Mr Graeme Cannon, who left on 27 March 2013 after having worked for the respondent after 27 years' service.
19. This case, put succinctly, is about whether the claimant's duties and responsibilities required her to be primarily engaged in outdoor patrol or patrol and non-patrol work?

20. Mr Trowbridge told me in evidence and I do find as fact that the claimant dedicated a great amount of her time and effort to her patrolling duties as she loved the horse riding part of her job. She is a keen and skilled horse rider who used her own horse to patrol the estate. She also engaged in livery work, privately, for a few owners of horses.
21. As her line manager one of the concerns Mr Trowbridge had at the time was that the claimant was rarely in the office which meant that she was not able to take calls about the riding permit scheme. Her absence also meant that other members of the team, particularly Ms Diane Armson and Ms Katy Brown, administrative assistants, were left to handle those calls and take payments. Although the claimant had a work mobile phone, it was not always switched on. There were two or three occasions during his line management of her when her mobile phone was either lost or damaged and had to be replaced and that meant that there were extended periods during which she did not have a mobile phone, therefore, she could not be contacted while out on patrol.
22. There were also concerns expressed by the riders that the claimant would either not respond to their emails and/or there was a delay in responding to them. The administrative assistants also complained that it was difficult getting hold of her. Although she worked part-time there was expectation that she would be contactable during her working hours.
23. Although I was not referred to any documents evidencing these concerns, I accepted Mr Trowbridge's evidence who came across to me as a credible witness.
24. The claimant was also using her husband's business email account as he is a self-employed tree surgeon and forestry contractor, to send emails in her professional capacity as an employee of the respondent, to both her colleagues and to third parties. She had no remote access from home to the respondent's IT systems, therefore, she needed to be in the office to deal with correspondence and matters related to her work.
25. The claimant also lacked in IT proficiency which affected her work in other areas. This is something she acknowledged in evidence. It was Mr Trowbridge's evidence, which I accepted, that she struggled with such things like changing voicemail messages on her phone, opening and closing applications, sending documents to the printer and other basic tasks. He and those in the office offered their support as he wanted to build up her confidence in her use of emails and computers.
26. The claimant was not being proactive about marketing the riding permits scheme to the public, in building relationships with local horse riding establishments or in the marketing events. The respondent was not retaining existing riders and was having difficulty attracting new ones. The events the claimant organised were poorly attended due to a lack of marketing strategy. Mr Trowbridge also wanted the claimant to control more of the estate rather than the areas which she tended to focus on. He was

also concerned that she was not consistent in recruiting and organising volunteers to take on the management of bridleway clearance. Although a member of the ranger team, she did not always attend team meetings. The other team members including Ms Mercer and the administrative assistants, as well as Mr Trowbridge, had to step in and take over those aspects of the claimant's role she was neglecting, such as processing permit payments, creating a new riding map for the estate, writing the Riding Permit Scheme information sheet for 2016 and organising fun rides in June and September 2016.

27. The concern the respondent had was that when the claimant commenced employment administering the riding scheme would have involved posting letters and taking payment by cheque sent in the post. When her role was re-graded there was a shift towards electronic correspondence and payments online but the claimant was not up to speed with these changes.
28. As part of her Performance and Development Review, 'PDR', Mr Trowbridge, in May 2014, set out many objectives, such as the need for her to improve her attendance at meetings; to organise volunteers to assist with bridleway maintenance; to liaise with external riding groups; to improve the marketing materials for the riding offering; to liaise with the Visitor Centre regarding materials and to increase visitor interaction. In the personal objectives, he and the claimant agreed that there was the need for her to develop her IT skills by attending the office more regularly. Although she was graded "Good" by Mr Trowbridge it was his attempt at not being too negative and as he did not want to demoralise her. On a personal level, he had a good relationship with her and wanted to encourage and to build her confidence rather than to invoke the respondent's capability procedure. (64-71)
29. Mr Trowbridge also wanted the claimant to be in the office for some of her time to engage in the administrative duties which were and integral part of her role and to be accessible to the riders, work colleagues, her managers as well as to third parties. He met with her on 21 April 2015, to discuss the division of her time and suggested that she should spend eight hours on administrative tasks in the office in two, four hour blocks. It was important from the respondent's view that she should be in the office at regular times as the riders would know when she would be available to be contacted and it would enable her work colleagues to provide her with the necessary support and to train her
30. On 22 April 2015, the claimant emailed him about a risk assessment that had been carried out and his proposal that she should work eight hours in the office. She was clearly concerned about working in the office for eight hours and wrote the following:

"However regarding the eight hours admin to be carried out in the office, I still do feel that I am being bullied into something that is a fundamental change in my job role and I do not accept that this is a necessary change.

I would also like to add that you mentioned the Permit Scheme needs to be run more efficiently but every single PDR that I have had over the past 25 years (or however long we have been doing them), my marks for the scheme have always been very good.” (78)

31. Mr Trowbridge’s response was for them to discuss the matter further. (77)
32. At this point the claimant was becoming concerned about what she perceived to be a move away from her outdoor patrolling duties to more office based work.

The claimant’s informal grievance dated 29 April 2015

33. On 29 April 2015, she again emailed Mr Trowbridge setting out her concerns in relation to working eight hours in the office and asked that her email be treated as an informal grievance. She stated that the proposal to work eight hours in the office amounted to a fundamental change to her terms and conditions of employment. She denied that there was a clause in her contract of employment entitling the respondent to vary her terms and conditions. Although such a provision was in her job description, she stated that it was not a contractual term. She asserted that the main purpose of her role as set out in her job description, was to “oversee and monitor horse riding on the property” which could not be achieved by spending 33% of her time at a desk in the office. Her contract stated that she was required to work 24 hours a week on Wednesday, Saturday and Sunday and that she had some flexibility as to when she could do her administrative work which was from home. She would spend no more than two hours engaged in such tasks, namely administering the permit scheme, producing newsletters and organising social events. Eight hours in an office was not reasonable as it amounted to a fundamental change to the nature of her role. The number of hours was not sustainable on a regular basis as there was insufficient administrative work for her to do. She then wrote:

“4 You state that you would like me in the office in order to build team spirit. I do not accept that team spirit will be engendered simply by sitting in close proximity to another colleague. I do meet with my colleagues and I know who they are and their roles and they know me and mine. Team spirit comes from mutual respect for the roles we each undertake and from mutual support. This cannot be forced. The nature of the Riding Warden role is that my role is out and about on the estate and by definition I will not be co-located. I do not see this as a problem and no issues arising from this have ever been brought to my attention in the 25 years I have been doing the role with a wide variety of colleagues.

On a final point, the role you are proposing is so fundamentally different to the one I have been carrying out I would certainly never have applied for it at the time when I joined the Trust. I have never wanted or applied for an office based role throughout my working life and, in fact, I find the thought of being office bound to this extent extremely stressful and find I am becoming increasingly anxious about the prospect of this, which in turn is affecting me on a daily basis. I am willing to learn new skills such as Microsoft Office but would find it much less stressful to learn on the job with my husband’s office manager than on a formal training course. I would also prefer to retain my flexibility and update

systems mainly from home as now. I should be grateful if you could consider these points. I am copying this to my Regional People Specialist so that she is kept in the picture and she may have some suggestions for a positive way forward.” (79-81)

34. Before replying, Mr Trowbridge told me in evidence and I found as fact that he was not in principle against the claimant working for a limited time from her home carrying out some administrative work. Writing a draft of the newsletter at home, for example, did not cause him any problems. Working from home was not suitable for the majority of administrative or non-riding tasks which the respondent needed the claimant to undertake because she did not have remote access to its systems and needed the support of her colleagues to help with the IT aspects of her work. In his view, she needed her colleagues to be on hand to assist her in processing payments via the computer and he wanted her to work in an environment in which she could learn and develop in confidence. Working from home would also not have addressed the concerns regarding the riders and her work colleagues not having regular access to her. Further, communication with the team was central to some tasks, such as organising working parties for bridleway clearance and organising events and, if she was going to take charge of organising permits or finalising a newsletter, she needed the support of the team to do so.
35. When the claimant applied for the Riding Warden position in 1990 and when she applied to be re-graded in April 2002, she specifically highlighted her administrative and secretarial skills and referred to them in support of her re-grading. (55-60)

Mr Trowbridge's agreed objectives dated 29 April 2015

36. Mr Trowbridge responded to her email on the same day assuring her that the respondent was not intending to make any changes to either her job description or her contract. He referred to conversations she had with Ms Mercer on 14 April 2015 and her meeting with him on 21 April where they discussed setting and agreeing her objectives for the year ahead and the most efficient way they could be delivered in accordance with the respondent's organisational values and behaviours. He stated that the most efficient environment for carrying out the administrative tasks involved in her role, was in the Estate Office. This was to ensure that a better standard of service was provided to the riding community and that she fulfilled those parts of her role more effectively. He was prepared to be flexible about the days and hours when she would be able to perform her administrative duties and suggested Wednesday. He then stated wrote:

“The objectives that we have discussed and agreed are

1. Work to produce a high quality riding map that will enable a first time riding visitor to Ashridge to navigate effectively around the estate, that clearly differentiates between the definitive bridle way network and the permitted paths.

2. Produce a plan for your ridden inspections of the definitive and permitted paths so that we can ensure (and demonstrate if required to do so) that there is an organised, cyclical approach to this.
3. Produce a short written report about the routes you ride each week to highlight any defects requiring repair or maintenance.
4. Research and order a new, visible means of identifying annual riding permit holders. We discussed a hi-vis printed armband at our meeting.
5. Research and order a new, visible means of identifying day riding permit holders. We discussed possibly using a dated, paper wristband at our meeting.
6. Putting in place a very simple system so that any one can purchase a day permit from the Estate Office or Visitor Centre without any need for advance contact with us.
7. Organising, with other members of the team, a Fun Ride open to the general public to promote Ashridge as a fantastic destination for horse riders.
8. Dealing effectively with enquires from riders about annual and day permits.

All of these tasks are clearly within your existing job description/role profile.

We accept that delivering these objectives will involve a higher level of administrative and organisational work than you have been used to. These changes have had an effect on most National Trust staff who have traditionally worked in 'outdoor' roles like forestry, rangers and gardening for many years.

You will not be able to deliver your objectives and perform your role efficiently without spending a greater proportion of your time on administrative and organisational work. It is not fair for you or the Estate Business Support Team to continue with your current approach to administrative work in the evenings as many enquiries about permits are received at the Estate Office during the day and are failing to reach you.

We accept that this will require you to be present in the office more frequently and for longer than you have been used to. We anticipate that you will require additional support and training to enable you to perform these tasks well and we have offered in-house support and training to meet these needs. If you prefer to spend your own time upgrading your skills with others outside the Trust so that the level of training and support you need is reduced, we would not object to that in any way. Our requirement is that you are able to manage the work that relates to horse riding at Ashridge effectively and efficiently. This will mean that you will need to be able to use email, Word and Excel to a reasonable standard and that you will need to learn how to do simple tasks like placing orders using our in-house computer systems. You will also need to maintain financial records about the income and expenditure that relates to horse riding activities at Ashridge.

We are not proposing a different role at all. We are merely requiring you to deliver some new tasks that are well within the scope of the job description and the contract terms.

I hope this is now clear and that you can appreciate that this is about bringing the way you perform your role up-to-date so that it can deliver a level of service to the riding community that we can all be proud of.”

(82-84)

37. I was satisfied that the above objectives were discussed and agreed between the claimant, Mr Trowbridge and Ms Mercer as they were with reference to the claimant's role as Riding Warden/Ranger.
38. In May 2015, the claimant and Mr Trowbridge agreed that she should spend three hours a week in the office on administrative tasks non-patrol tasks and agreed that she could carry out that work on Wednesday morning from 10am. She stated that this would allow her to attend to her horse as well as looking after other people's horses.
39. Ms Mercer was cross-examined in relation to the claimant's three hours of administrative work. She explained that although they proposed that the work could be done on a Wednesday, the claimant said that she had other things to do on that day and suggested Tuesday. Neither Ms Mercer nor Mr Trowbridge had any objections to her carrying out her administrative tasks on a Tuesday.
40. In November 2015, Mr Trowbridge conducted a PDR with the claimant during which he acknowledged the efforts she made to increase her presence in the office. She was spoken to about not wearing the respondent's branded clothing as she attended work dressed in clothing advertising her husband's business. In relation to the objectives, Mr Trowbridge recorded that she met expectations but that she needed to improve her attendance at meetings. In his final comments, he wrote:

“Jacquie has made significant changes to the way she works. She now completes her administration duties on Tuesday mornings at the Estate Office. Jacquie felt upset when we discussed wearing her branded clothing. We agreed that she would wear her branded clothing when riding the horse on the estate.”
41. He gave her a “good performance” performance rating. The ratings on a PDR are: “exceptional”, “very good”, “good performance”, “generally acceptable” and “poor”. (72-76)
42. The claimant continued to work three hours a week on her administrative duties in the respondent's office, for twelve months. From his perspective as the claimant's line manager, Mr Trowbridge observed that her presence in the office increased her interaction with the team and meant that they could help her with the computer based work she found difficult. She was, however, still not able to complete all of her administrative work within the time. Often she would arrive for work late, giving over the course of the year, a variety of reasons. He formed the view based on her attitude, she did not want to be in the office. There were still problems, however, with the three hours a week as, on occasions, Ms Mercer had to step in to ensure various riding related marketing materials were completed and sent out. (86)

43. Ms Mercer was previously a property manager employed by the National Trust from 1999 to 2002 at Arlington Court, in Devon. She moved to a role at Tewkesbury Borough Council before moving to the Canal and River Trust where she worked for 11 years. She left that post to take up her current position with the respondent. She also worked for 16 years in television for the BBC on Channel 4 producing factual programmes. She spent 25 years in management. She is someone with considerable management knowledge, skills and experience. She emailed Mr Trowbridge on 6 November 2015, expressing concerns about certain aspects of the claimant's performance, such as, not wearing the respondent's branded clothing and not following her instructions in relation to the autumn newsletter. Ms Mercer also stated that she had no clear idea what the claimant was doing during her working hours. She wrote:

“...From now on she is to record her weekly hours fully including a detailed account of how she has used that time each week. We can create a simple table on which she can enter this information. We will review it weekly when she comes in to work on Tuesday mornings. She must arrive on Tuesday mornings promptly. She is coming in later and later and is not making the time up in other ways. I particularly asked her to come in at a different time and she has cancelled on me as she has a farrier coming. She left the team meeting early as she had stables to muck out. I am not getting any sense that she is giving her paid employment with us the attention it deserves. It is clearly not a priority. Everyone on the estate is required to help out at property events. So far this year I have not seen Jacquie at any of our property events. I require her to attend the Christmas Fair, dressed in branded clothing and help the team. This takes place on a Sunday which we understand is one of her standard working days. (This is a problem which is not particular to Jacquie and, as you know, I have insisted on it with others and they will be in attendance and pulling their weight).

It is my intention that the purpose of the meeting is to explain to her:

- a) The standard that we require
- b) What she needs to do to meet this standard
- c) That failure to meet the required standard will result in formal disciplinary action.

We will follow the meeting up in writing so that we have a record. We will use this email as the basis for the written record, to save retyping everything.

I know you find this very difficult but we cannot permit a grade 9 Ranger to come and go as they please, to contribute so little to general estate issues and to under-perform to this level. It isn't fair to the rest of the team and isn't providing value or benefit for the Trust. We need to have at the meeting her job description and a Grade 9 Ranger profile.

If you'd be kind enough to fix up a date and time that would be good.” (87-88)

44. According to Ms Mercer she had not seen any marked improvement in the claimant's level of engagement and in practice much of her role was still

falling to other members of the team to pick up. By the spring of 2016, it was clear to her that the new booking arrangements needed more structure and that the claimant needed to be committed to doing more than three hours a week on her non-riding duties. She had not fully met the objectives Mr Trowbridge had set in his letter of 29 April 2015 notwithstanding the fact that it was accepted that she would need assistance in relation to her use of IT.

45. Ms Mercer said in evidence and I find as fact that in April 2015 and subsequently, she was doing some of the claimant's work. She contacted a supplier of coloured wristbands for day permit holders to wear and placed an order. She put in place a system to be used to record their sale and details of those purchasing them. Around that time, she had researched and obtained samples for a new coloured riding map and contacted the shop manager to get the map made available for sale at the shop.
46. On 5 January 2016, she issued an updated information sheet about riding permits to all estate staff; gave details of where the day and annual permits could be purchased; the cost to those up to the age of 16 years and those over that age. (90)
47. In early spring 2016, she was organising a Fun Ride to take place in June of that year. She was expecting the claimant to take the organisation lead but this did not happen. Ms Mercer produced the posters, publicity materials and press release as well as a detailed events plan and risk assessment. The claimant provided one volunteer for the Fun Ride and gave out posters and organised rosettes.
48. On 3 May 2016, Ms Mercer spoke to the claimant about the need for her to commit more time to her administrative duties. The claimant responded the following day by sending an email to Mr Trowbridge and attaching a more detailed letter to him. In her email to him she wrote:

“After my incident in the office yesterday with Susie where the issue of me working more regular hours was unexpectedly raised, I had to leave suddenly in an emotional state as I felt humiliated and embarrassed by what was said. So it is with deep regret that I am now having to send the attached letter to you.”

(91)

49. She stated in her attached letter to Mr Trowbridge the following:

“Having thought about your proposals I do not wish to accept the proposed variation to my terms and conditions to work further regular hours in the office. This is not a minor but a fundamental change which you are not entitled to make unilaterally. I have already shown that I am prepared to make changes and I reluctantly accepted a variation to work three hours per week in the office as a compromise. I am happy to undertake additional tasks provided I can retain my current flexibility and I do not have to complete them at a fixed time in the office. However, I am employed as a Riding Warden and my contractual location is the Ashbridge Estate. My role is, and always has been, to be out on the estate in

order to enforce the Trust's byelaws, to undertake administrative work from home connected with riding and attend occasional relevant meetings.

I was concerned that my name and contact details had not appeared on the latest riding permit information sheet and I wondered if I was to be made redundant as redundancies had been mentioned in a meeting but in the event this did not transpire. I made it clear at the time of the change to three hours in the office that I did not want an office based role. I find office work very stressful and I do not believe that I would be able to manage this. I feel that this persistent chipping away at my role is designed to encourage me to resign, to avoid a redundancy payment. This would be a constructive unfair dismissal.

I have been advised that under section 139(1) of the Employment Rights Act, if the requirements of the Trust for employees to carry out work of a particular kind, (that is, a riding warden to patrol the estate) has ceased or diminished, or are expected to cease or diminish this is the legal definition of redundancy. If this is the case then I should be dismissed on grounds of redundancy with the commensurate redundancy payment.

I am also concerned that the motivation behind this approach is age discrimination as I am now approaching what would have been the normal retirement age before this was rescinded in law.

I am copying this to the HR department in order to give them sight of the tactics being used and my concerns.

I hope that I will be allowed to continue in my role as it stands with minor changes." (92)

50. At the time of her correspondence Mr Trowbridge was on leave. Her letter was responded to by Ms Mercer on 5 May 2016, who stated that there was no question of the claimant's role being made redundant. She referred to having spoken to the claimant about working in the office for 16 hours out of the 24 each week, the remaining eight hours being on patrol as her role had evolved over time. There were aspects of it which the claimant was unable to fulfil under the current informal arrangements. She stated that the riding permit information pinned on the board in the office contained the claimant's details. She understood that the claimant found the work challenging as it involved using several computer packages and online National Trust systems which was unfamiliar to her. She also stated that she was prepared to discuss the matter of the claimant finding office work stressful to provide her with the necessary support. Ms Mercer further stated that all staff members spent part of their time working outdoors and part indoors. The division of the split would vary from role to role. The claimant's role was no different. She understood that the claimant had enjoyed a great deal of flexibility in the past but the current arrangement could not continue as it was actively preventing the claimant from delivering the quality and quantity of work required of her role. She denied that this was a case on constructive dismissal. She continued:

"When we were speaking on Tuesday you kept referring to doing the work 'in your own time'. In order to ensure that there has been no misunderstanding, I must underline that you are not being asked to do any work 'in your own time' or

to work at home. You are being paid to work 24 hours a week and we are asking you to continue to work 24 hours per week. The adjustment we are requesting is that 16 of those hours are performed at times and places where you can work productively and safely with the relevant equipment and computer access, together with your colleagues and we can support your development.

I have been really clear that we can be flexible in how this is delivered. For example, you may elect to be in the office for eight hours on two days a week or to work four hours on four days (or any other reasonable combination). However, I must also be clear that your current informal pattern is not enabling you to meet the requirements of your role. Therefore it is not possible for this to continue and moving forward we must establish a clear pattern of work that can be communicated to the riding customer base and the rest of the Ashridge Team.

The next step is for you to provide me with a proposal for how you wish to deliver the 16 hours. You may continue to use the hours per week that are taken up with riding around the estate inspecting bridleways and speaking with visitors at times that suit you, provided that you continue to have a strong presence at weekends.

I expect you to provide a sensible plan for meeting this requirement by this coming Tuesday 10 May. As this is clearly causing you great concern, you may want to propose increasing the office hours on a gradual basis over perhaps three or four weeks or to propose a start date for the new working pattern that gives you two or three weeks to reorganise your other weekday commitments to accommodate the new pattern. As always, I am prepared to be flexible and listen to any sensible suggestions that move towards an effective resolution.

I am, of course, available to discuss these issues before Tuesday if you would like to resolve the matter more quickly.” (93-95)

The claimant's grievance

51. On 9 May 2016, the claimant submitted a grievance to Mr Graham Deans, Assistant Director of Operations, London and South East Region and who is Ms Mercer's line manager. In it the claimant repeated her concerns expressed in her earlier correspondence to Mr Trowbridge, alleging a unilateral variation amounting to a fundamental change to her contract of employment. She dealt with the history of her employment and how she carried out her work on the estate and from home and the compromise of three hours administrative work in the office a week. She repeated that she had been advised that the changes amounted to a redundancy. She found office work stressful and not challenging. She would not have applied for the role if it had involved her working 16 hours in an office. The requirement that she should spend 16 hours in the office amounted to 67% of her time each week, changing the emphasis from patrolling to office based work. She asked the question why the work had to be done in the office as she could be contacted via her mobile phone. (96-98)

Grievance meeting on 20 May 2016

52. Mr Deans met with her on 20 May 2016, to discuss her grievance. She went through the history of her employment, the three hours compromise

arrangement and Ms Mercer's proposal. She discussed the detailed nature of her tasks and why there was little reason for her to spend 16 hours in an office. (107-110)

53. Mr Deans spoke to Ms Mercer on 23 May regarding her decision to increase the claimant's non-riding hours. Her concern was that there was an apparent disconnect between the claimant's view of what was required in getting the tasks done and getting them done to a satisfactory standard. She was of the opinion the claimant was not achieving the level of performance required for her role. The offering of permits had fallen behind. The level of volunteers, event attendees and information regarding the estate riding offering, were low. The claimant did not have access to the respondent's IT systems from her home and the respondent could not comply with its duty of care and its health and safety obligations towards her if she worked from home for part of her time. She would neither be visible nor accessible to other members of the team or to the public. She said that the claimant needed a lot of support in IT. A lot of administrative work needed to be done to address volunteers, events and marketing which had been neglected for a long time.

Grievance outcome 3 June 2016

54. Mr Deans was of the opinion that there were legitimate reasons why the claimant was required to carry out her administrative duties in the office and why Ms Mercer thought that 16 hours was a reasonable amount of time to allocate to such tasks. He, however, considered the claimant's concerns about spending more time indoor than outdoor and concluded that there should be an even split of 12 hours in the office and 12 hours on patrol. On 3 June 2016, he sent his outcome letter to her setting out his decision and reasons. He wrote, amongst other things:

“...Therefore I propose the following working pattern and associated requirements as a result of my conversation with the General Manager:

- 12 hours as opposed to the proposed 8 hours of your contracted 24 hours per week to be spent patrolling the estate on horseback, to be split evenly over 3 days; Wednesday, Saturday and Sunday. That said these days could be flexible in discussion with your line manager.
- 12 hours as opposed to the proposed 16 hours of your contracted 24 hours per week to be split evenly over 3 days Wednesday, Saturday and Sunday spent at either the Visitor's Centre of the Estate Office to carry out administration in respect of riding permits, volunteer management and recruitment, event organisation, production of written material for example newsletters, liaising with colleagues, and providing a regular and accessible point of contact for the general public regarding the promotion of horse riding on the Ashridge estate.
- In respect to patrolling the estate; agree with your Line Manger the areas of the estate to be patrolled on a frequency basis to ensure that the whole estate is covered regularly and to make sure that rides and bridleways are safe and waymarked for other users. The inspections would be formally recorded to

ensure that a duty of care is maintained towards those members of the public who use the bridleways and rides.

- You would on occasion be expected to supervise volunteer groups who were carrying out maintenance work on the bridleways/rides on the estate. At present this pattern is around three to four times per annum and usually on a Sunday.
- You will be required to refrain from home working and to work from the Estate Office or the Visitor Centre during agreed office hours. This is to ensure that the National Trust maintains its duty of care towards you as an individual. The Trust will provide you with all the support and training required in order that you are able and feel comfortable to use the current systems and processes. The Trust would also undertake to provide you with adequate mobile communications in order that you could send and receive communication while on the estate and of course for your own safety.
- Having now taken into account all the facts I feel that it would be unreasonable to ask you to spend two thirds of your 24 hours in an office based environment which was the latest proposal that was put to you by the General Manager and which you raised with me in your letter of 9 May 2016.

I do however feel that it is not unreasonable for the National Trust to ask you to split your hours between patrolling the estate and completing tasks detailed above, that are within your role profile. I realise that this is a change in the manner to which you currently operate but I feel that it is not unreasonable to ask you to complete some of those tasks detailed above from an office based environment which also allows the Trust to maintain its duty of care towards you as an employee.

In terms of your place of work I do not accept that this is altered and that it is listed as the Ashridge Estate. This in my view is a term given to the place of employment and does not dictate whether the role is indoors or outdoors.

I realise that you have reservations about increasing the amount of time spent in the office environment having worked outside for many years but the Trust will support you in order to make the transition easier.

In my view the proposed changes do not constitute a redundancy situation and that the tasks that the Trust is asking you to complete fall within your current job description.

Therefore I propose to move forward with the altered arrangement of 24 hours per week essentially split equally between patrolling the estate and other tasks detailed above.

If you wish to appeal my decision you should contact Nicola Briggs the Regional Director for London and South East within seven days of receiving this letter....”
(112-114)

The claimant's grievance appeal

55. Within the seven days stipulated, the claimant appealed to Ms Briggs setting out the reasons why she disagreed with Mr Deans' decision. In it she

repeated the concerns she had earlier expressed to Mr Trowbridge, Ms Mercer and to Mr Deans. (115-117)

56. An appeal hearing was held on 22 June 2016, with the claimant in attendance and was conducted by Mr Richard Henderson, Assistant Director Operations, London and South East Region. The claimant expressed the view that there was not enough work for her to do in the 12 hours administration time. She did not want to spend such an amount of time in the office and that the changes amounted to a fundamental change to her terms and conditions of employment and a breach of contract. She also made reference to provisions in her job description.
57. From the notes taken by Ms Natalie Woods, People Business Partner, the hearing was a detailed discussion between the claimant and Mr Henderson during which she repeated the points she had raised before Mr Deans. He adjourned the hearing to speak to Ms Mercer and Mr Trowbridge as well as to human resources.
58. He considered the points raised by the claimant but was of the view that it was neither necessary nor appropriate for the role for the claimant to be working from home. She lived close to the estate and accessing the office was, therefore, not difficult from a travel perspective. Further, being in the office environment would ensure that she was available and accessible to both colleagues and to the public and, critically, that she had the support and training she needed to perform those parts of her job description she found challenging. These considerations led him to conclude that a requirement to spend time in the office rather than at home was reasonable in the circumstances. He also felt that if the claimant had clear objectives, she could work on organising her time appropriately, achieving a balance between administration carried out in and outside of the office environment. He spoke to Ms Mercer who agreed with his thinking on flexibility and was receptive to his proposals for a clear plan for the claimant moving forward. He was unable to speak to Mr Trowbridge who was unavailable.
59. Mr Henderson's view was that the claimant was not being asked to perform any duties which were not already listed in her job description and, in light of the wider concerns regarding her performance, considered it reasonable that she should spend more time in the office. Flexibility did not require her to be in the office 12 hours every week. Being asked to increase her time in the office was a reasonable requirement. Having taken these factors into account and having spoken to human resources, he did not believe that the respondent was acting in breach of contract by requiring her to spend more time in the office.
60. After adjourning the meeting to speak to Ms Mercer and to human resources, it was reconvened after twenty five minutes when he explained to the claimant that, in principle, he was upholding the original grievance outcome. He said that she needed to commit more time to her administrative duties but it did not mean becoming office based or being in the office for 12 hours every single week. The nature of her duties would

mean that from week-to-week while she would need to spend more time in the office, her duties would vary and some would necessarily mean she needed to be out of the office. He also explained that he wanted her to work with Mr Trowbridge and Ms Mercer to put a plan in place for her work going forward. (124-131)

61. On 26 June 2016, he wrote to the claimant setting out his appeal outcome confirming what he said at the conclusion of the hearing. (132-133)

Riding Ranger Tasks

62. Following on from the appeal hearing, Mr Trowbridge and Ms Mercer put together a document entitled 'Riding Ranger Tasks' and sent it to the claimant for discussion with the view to devising an agreed work plan for her. Many of the tasks listed required her to be either out of office on patrol or in the office. The final part of the document sub-headed "Delivery" states the following:

"The work is split into 12 hours of inspection and permanent monitoring time and 12 hours of office space administration and riding development work. Some flexibility around this split may be possible once the work is being delivered effectively, but it must be remembered that having a clear understanding of when the Riding Ranger will be on the property picking up and responding to riding matters is essential for the delivery of good customer service and the prevention of riding work falling to other members of the team. It must also be remembered that flexibility works in both directions and so can mean that the requirement for office space work may be greater than 12 hours at times.

The 12 hours of office work can be delivered in any number of ways, provided that it is communicable, consistent and adhered to.

The contracted working days are Saturdays, Sundays and Wednesdays.

So, the most obvious pattern is either 9am to 1pm, or 1pm to 5pm on Saturday, Sunday and Wednesday.

However, provided that the pattern is clear, communicable and consistent, any other reasonable arrangement of the hours is acceptable to the property. The post holder may prefer to do two hours on six days of the week or three hours on four days of the week. Office hours performed on Saturdays and Sundays will have to be performed at the Visitors' Centre so that other staff are on hand to offer advice and support where required. The Visitors' Centre office hours fluctuate with the seasons and so the hours would be required to fit in with that pattern." (136)

63. In the claimant's email to Mr Trowbridge sent on 18 July 2016, she acknowledged that she received a copy of the document. In cross-examination, she agreed that the tasks came within her job description and comprised of a mixture of office based and out of office based duties. (135-136)
64. Ms Mercer was cross-examined on the document and stressed that in the office meant any other work other than patrolling but contrary to what the

claimant was trying to convey, she was not required to be physically in the office for the 12 hours. If she wanted to carry out computer based tasks, she was required to be in the office. It was not her intention to keep an eye on her but to develop her skills. A lot of the tasks discussed were non-office work.

65. Mr Trowbridge was anxious to stress that the document was not a job description but a list of tasks and formed the basis of what they could agree as part of her PDR objectives. The claimant, in her email, asked:

“... Will you still be requiring me to work in the office a minimum of 12 hours per week. Is this correct?”

66. Mr Trowbridge responded later on 18 July, stating:

“We are saying that we want you to work 12 hours a week in the office at present.

We will obviously need to monitor the rate at which the work is being delivered and the level of service we are managing to provide to permit holders and other riders. As Richard indicated in his conversation with you, if it becomes apparent that a different split can deliver the work effectively, then we can look at introducing some flexibility in to the role. However, in order to be able to make a sensible judgment about the split, we need to run it for a reasonable amount of time, so we wouldn't be looking to vary this split for some 12 to 18 months. Look forward to seeing you tomorrow”. (137-138)

Meeting on 19 July 2016

67. Following Mr Henderson's appeal outcome decision, a meeting was arranged on 19 July 2016 between the claimant, Mr Trowbridge and Ms Mercer to discuss the claimant's role moving forward. The claimant said in evidence that she was informed during the meeting that she would be required to work in the office for 12 hours a week performing administrative tasks for between 12 to 18 months and asked Ms Mercer whether practical work with the rest of the Ranger Team and/or volunteer groups, maintaining bridleways and waymarking and visiting the local riding establishments, would form part of the 12 hours non-patrol work. The claimant said in evidence that she was told that those hours had to be undertaken at a fixed time in the office. She told Ms Mercer that she would not be working 12 hours in the office each week as she found it to be unfair.

68. In paragraph 40 of the claimant's witness statement, she stated the following:

“The respondent was very clear that I had to attend 12 hours per week in the office as a minimum. At no point was I ever told that any outdoor work would count towards my administrative work. This did not make sense to me. If some of the 12 hours administrative time did not have to be completely office based, I may have been agreeable to this. At the end of the meeting, Ms Mercer asked me whether I was resigning to which I said “I suppose I will have to if you are not prepared to compromise”. Ms Mercer then said “I assume that it is without notice”.”

69. It is clear, having regard to the Riding Ranger Tasks document that some of the tasks were office-based, non-patrol duties whereas others required the claimant to be on patrol. It was also clear from Mr Deans' grievance outcome, endorsed by Mr Henderson, that the claimant was required spend 12 hours engaged in patrol duties each week. Her office based, non-patrol duties would require her, on occasions, to work outside of the office to achieve or perform those tasks and did not require her to be at her desk in the office 12 hours each week, every week.
70. The claimant said that her managers would not change their minds. She, therefore, felt that she had no option but to resign. She left the meeting, went to her car and returned with a copy of her prepared resignation letter which she handed to Mr Trowbridge and Ms Mercer. She was of the view that the proposed changes amounted to a fundamental breach of her contract of employment.
71. I further find that during the meeting the claimant said to both Mr Trowbridge and Ms Mercer that she could not do the work in the office for 12 hours a week and gave no reason. Ms Mercer could not understand and asked her why she was unable to work in the office. The claimant replied by saying that she did not want to do it. She then left the room to return with her resignation letter. Ms Mercer read it. The claimant then became upset and was asked by Ms Mercer whether, under the circumstances, she would prefer not to work her notice, to which the claimant replied "Yes".
72. In her resignation letter, dated 19 July 2016, addressed to Ms Mercer, the claimant wrote:
- "Thank you for clarifying what was meant by the 12 hours office work referred to by the grievance appeal manager. I have considered your requirements and I am not prepared to accept your revised job description as I consider the changes to be a fundamental breach to my contract of employment and that they indicate that you no longer intend to be bound by those contract terms.
- Furthermore, I did reluctantly accept a new requirement to work in the office 3 hours per week on a Tuesday morning in May 2015. However, you sought to change this agreement less than a year later by further extending the hours I am required to work in the office on a regular basis. You originally required me to spend 67% of my time in the office, and whilst this has now been reduced to 50% on appeal, this is still unacceptable to me. In addition, I have no reason to believe that you intend to be bound by this proposal in future and I therefore I have no trust and confidence in the employment relationship.
- I am therefore resigning in response to your fundamental breach by the requirement that I should work 50% of my time on office administrative work, in an office location and at a fixed time." (139)
73. I do not accept, as the claimant had stated in paragraph 40 of her witness statement, that at the end of the meeting Ms Mercer asked her whether she was resigning, to which she replied by saying she would have to if they were not prepared to compromise. It is clear to me that the claimant came to that

meeting prepared to hand in her resignation. It was also apparent to me that she did not want to work the 12 hours as stipulated by both Mr Deans and Mr Henderson, engaged in administrative/non-patrol duties. I do accept both Mr Trowbridge's and Ms Mercer's accounts of the meeting on 19 July. They both tried to convince the claimant that she did not need to resign and that she should try the new work pattern but the claimant was adamant that she did not want to work in an office-based environment, which had been her attitude during her employment with the respondent and certainly did not want to work for what she perceived to be 12 hours entirely in the office.

74. She returned to the office on 22 July 2016, to hand in her mobile phone. She also had a discussion with Ms Mercer during which she began to cry. Ms Mercer repeated that she need not resign as she was clearly unhappy and suggested that she should take more time to consider her decision and to let her know by the end of the week.
75. On 25 July 2016, the claimant called Ms Mercer and requested a further extension of time to consider whether to retract her resignation as she had recently suffered a family bereavement. Ms Mercer readily agreed to the request.
76. I find that at that point in time the respondent did not accept the claimant's resignation terminating her employment.
77. I do not accept the claimant's evidence that if some of the 12 hours administrative time did not require her to be office based, she may have been agreeable to the change. She knew or ought to have known, that some of the tasks did not require her to be based in the office, for example the organising of fun rides and volunteers as well as visiting the Visitor Centre to make sure that information in relation to riding permits and a map for riders were available. These inevitably required her to work outside of the office.

The claimant's resignation on 1 August 2016

78. On 1 August 2016, the claimant attended a meeting with Ms Mercer. The purpose of which was to consider whether to retract or confirm her resignation. I accept that there was a further discussion about the 12 hours administrative work in the office to which Ms Mercer again repeated that she would be required to be office based to engage in office work and her non-patrol duties. The claimant then confirmed her decision to resign.
79. In paragraph 26 of Ms Mercer's witness statement she stated the following:

“Jacquie told me that she did not want to work her notice period and I explained that we could agree that she did not need to work her notice. I think that there was a clear understanding that she was waiving her notice period.”
80. From the above account in Ms Mercer's witness statement, it does not appear that it was either explained to the claimant or that she understood

that in not working her notice she was waiving her right to pay in lieu of notice.

81. On 3 August 2016, Ms Mercer sent a letter to the claimant in which she wrote:

“Thank you for your letter of 19 July. Thank you also for coming in to see us on Monday 1 August.

We are truly sorry that you have decided to resign. It has been a great pleasure working with you and we are grateful for all that you have done during your 26 years with the Trust.

As you know, we do not accept that we have changed your job description or breached your contract of employment. All we have asked is that you deliver all parts of your job description and that you do this by spending part of your working time in the office. This is, as we have explained, so that you can use the proper NT systems to do your work and so we can support you properly in the areas that you are not confident in. I think the fact that you have taken this issue through the formal grievance procedure and then through an appeal is helpful in establishing that the requests that we have made of you are reasonable.

You have expressed to me that you would prefer not to work your 12 week notice period. This is acceptable to us and we will terminate your employment with effect from 1 August.

Thank you for all that you have contributed to Ashridge over the years. We wish you the very best for the future.” (141)

82. On 15 August 2016, the respondent’s human resources department wrote to the claimant confirming her leaving arrangements and gave details of her final salary. (142-143)

83. I do make the following findings of fact having regard to the evidence.

84. In paragraph 16 of Mr Henderson’s witness statement, he wrote the following:

“When I recommenced the meeting, I explained that in principle I was upholding the original grievance outcome, but also explained that while Jacqueline needed to commit more time to her administrative duties, this did not mean becoming office based or being in the office for 12 hours every single week. The nature of her duties would mean that from week to week, she would need to spend more time in the office, her duties would vary and some would necessarily mean she needed to be out of the office. I explained that I wanted her to work with Lawrence and Susie to put a plan in place for her work going forwards.”

85. I am satisfied and do find as fact that the claimant knew that 12 hours did not require her to be based at a desk in the office for the entirety of that time.

86. In paragraph 10 of Ms Mercer’s witness statement she acknowledged that Mr Trowbridge and the claimant had been friends since 1990 and when he

became her line manager their relationship made “robust conversations regarding performance difficult”. She was of the view that the claimant had been allowed to neglect her duties for a long time. She was originally appointed to the Riding Warden position by her father-in-law, Mr John Wilson, who spent many years as Head Warden of the estate, which, at that time, was the most senior staff position. When her father-in-law retired, the estate was managed by Mr Graeme Cannon, who had also been appointed by the claimant’s father-in-law. When Mr Cannon left, two years prior to Ms Mercer’s arrival, the estate was managed “via a series of interim solutions” as Ms Mercer described. Ms Mercer then stated:

“It is unclear for how long Jacquie had not been completing areas of her role, but as a newcomer to the estate I got the impression that people felt that Jacquie was somewhat untouchable when it came to the way that she approached her work.”

87. Ms Mercer then wrote in paragraph 11:

“Another factor which made performance management difficult was Jacquie’s own attitude, which was extremely closed to the idea of doing anything differently.”

88. In the claimant’s witness statement, she stated in paragraph 5 that she submitted her job application on 24 February 1990 and wrote that she had two years’ experience working as a receptionist/veterinary nurse and had acquired some secretarial skills through working at her husband’s business. Her secretarial skills were minimal and were pre-computers. She had some typing skills but generally she only answered the telephone and booked appointments. She had no intention of securing a secretarial role and wanted a position that was predominantly based outside and allow her time to work with her horses. She also stated in paragraph 15 of her witness statement that she did not like doing administrative tasks and working a significant amount of time in an office as she found working in an office stressful as well as physically and mentally draining.
89. She told me in answer to a question I put to her that what caused her to resign was Mr Trowbridge’s email dated 18 July 2016, as she understood from it that she was required to work in the office 12 hours each week.
90. I am further satisfied that the second bullet point in Mr Dean’s grievance outcome letter summarised the claimant’s tasks which did not all require her to spend the entirety of the 12 hours behind a desk in the office. (112)
91. The Estate Office is not open on Saturday and Sunday which were two of the claimant’s normal working days. In my view, this demonstrated that the respondent did not intend that on those days the claimant would be working in the office.
92. The claimant in her evidence was inconsistent in the amount of time she spent on non-patrol/administrative tasks. At one point she said that it was 2 to 3 hours a week. The she said that it was more.

Submissions

93. I have taken into account the very detailed and carefully argued submissions in writing and orally by Mr Webb, counsel on behalf of the claimant and by Ms Wilkins, solicitor on behalf of the respondent. I do not propose to repeat their submissions herein having regard to Rule 62(5) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, as amended. I have also considered the authorities that they have referred me to.

The law

93. Section 95(1)c Employment Rights Act 1996, provides,

“(1) For the purposes of this Part an employee is dismissed by his employer if

(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.”

94. It was held by the Court of Appeal in the case of Western Excavating (ECC) Ltd-v-Sharp [1978] IRLR 27, that whether an employee is entitled to terminate his or her contract of employment without notice by reason of the employer’s conduct and claim constructive dismissal, must be determined in accordance with the law of contract. Lord Denning MR said that an employee is entitled to treat himself or herself as constructively dismissed 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. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him to leave at once.
95. Contractual terms may be either express or implied. Express terms are agreed between the parties either in writing or orally. Terms, however, can be implied into the contract in limited circumstances, such as if either it is necessary to give the contract ‘business efficacy’; it represents the custom and practice in that employment and is ‘reasonable, certain and notorious’, Devonald v Rosser & Sons [1906] 2KB 728, a judgment of the Court of Appeal; a term can also be implied by law, such as to provide a safe place of work or the duty not to undermine trust and confidence; or be implied from the conduct of the parties or because the term is so obvious that the parties must have intended it to be included.
96. I have taken into account the cases of D A Coleman v S & W Baldwin [1977] IRLR 342; Land Securities Trillium Ltd v Thornley [2005] IRLR 765, both judgments of the Employment Appeal Tribunal; and the case Cresswell &

Others v Board of Inland Revenue [1984] ICR 508, a judgment of the Chancery Division.

Conclusion

Constructive unfair dismissal

96. This is not a case in which the claimant has been arguing that the respondent breached the implied term of mutual trust and confidence. Mr Webb invited me to consider her role and what duties it entailed? Also, what were the changes imposed on her in 2016? He put the question in this way, "Was this a case of evolution or revolution?" I have sought to answer that question in this judgment.
97. The claimant alleged that there was a fundamental breach of contract when she received Mr Trowbridge's email dated 18 July 2016. Upon reading it she understood that she was required her to work 12 hours in the office but her principal responsibilities were her patrolling of the estate.
98. With regard to her contract of employment, she was required to engage in administrative tasks such as those stated in paragraph 3(d), "to administer the issuing of riding permits annually and to keep an up to date register of riders using the estate, and to deal with correspondence." The claimant accepted that her job description in 2002 following her re-grading to grade 9, applied to her role and included both patrol and non-patrol tasks. Clause 7(b), under the sub-heading "Other Duties" states:

"Undertake any other duties as may be reasonably requested by the area warden or the property manager."
99. The job description clarified, in my view, how the claimant would carry out her general contractual duties and responsibilities which included both patrol and non-patrol work.
100. I accept that nowhere in the documents, prior to April 2015, does it state how the claimant should apportion her time, in particular, how many hours to patrol duties and to non-patrol/administrative duties. For nearly 25 years she had apportioned her time herself, spending around 90% patrolling on horseback with the remaining 10-11% on administrative tasks given her predisposition towards patrolling work. She did it in such a way that was more convenient for her than to the respondent as she had other commitments, such as, tending to her horse, her other livery duties as well as helping in her husband's business. She used her husband's email account as a way of communicating with her work colleagues as well as with third parties. She was based at home notwithstanding the fact that she did not live far away from the Estate Office.
101. The wardens/rangers used the Estate Office as a hub. From there they would go about their non-patrol and patrolling duties. They made use of the respondent's IT processes as part of their duties and interacted with the

team. As the claimant did not like working in an office, she was some distance removed from those in the office who in turn had problems in trying to contract her. Likewise, the riders and third parties. I accept that there was no documentary evidence of complaints being made about the claimant but Mr Trowbridge, who had a good relationship with her, gave evidence to that effect and I accepted his account.

102. I further accept that in re-grading her and from her performance development reviews, on balance, she was performing to an acceptable standard. However, the wearing of clothing advertising her husband's company and the use his business email account, showed a lack of management oversight over her work and demonstrated that to some extent she determined how she carried out her duties. She was also reluctant to work in the respondent's office, yet her role was changing because of the advent of new technology.
103. Mr Webb, in his submissions, accepted that the administrative requirements of the role had increased since 2002 following the re-grading but maintained that most of her work for the following 13 years, still involved riding and outdoor duties, riding the estate, checking permits and monitoring the bridleways. I find that that was because of the claimant's own choosing as she had shown an antipathy towards working in an office environment. Her 2002 job description gave a long list of riding and non-riding tasks to clarify the terms in her contract and her role.
104. I do not accept that her principal contractual duty was patrol work because I find that she chose to put that emphasis on her work throughout her employment.
105. To imply a term into the claimant's contract of employment that most of her time, up to 90%, she was required to engage in her patrolling duties with the remainder on other aspects of her work, must be reasonable, certain and notorious. I agree with Ms Wilkins' submissions that it was neither reasonable nor was it certain nor notorious that the claimant was only required to spend up to 90% of her contracted hours on patrol duty with the remainder on non-patrol/administrative tasks. The apportionment of her time in that way was not consistent with the work patterns of the other rangers/wardens. It did not take into account the respondent's use of new technology in reaching out to new and potential riders and in its marketing strategies. The respondent did not have a clear idea how the claimant apportioned her time and wanted her to spend more time engaged in non-patrol/administrative tasks. The claimant during her evidence suggested at one point that she would more time than her original estimated 10% on non-patrol and administrative duties. Even her evidence in this respect lacked consistency. I accept that one of her main responsibilities was riding permits but each ranger/warden had their own areas of responsibility yet attended the office and engaged in the use of new technology as part of the work. Unlike the claimant they did not display an antipathy towards office work.

106. I, therefore, do not imply a term based on either custom and practice or on the conduct of the parties, for the reasons given above.
107. By April/May 2015, the respondent had to ensure that the claimant complied with her duties set out in her job description and in the objectives set out in 2014. Her job description which she accepted comprised of her duties as a Grade 9 Riding Warden, allowed the respondent to make changes to her duties, paragraph 7(b). Mr Trowbridge became her line manager in December 2013 with Ms Mercer being his line manager from November 2014. They had to monitor the performance of those who reported to them, including the claimant. Her role had changed and was changing. Her under performance in relation to the non-patrol and administrative tasks, was addressed by Mr Trowbridge. It was a difficult situation for him as he had known the claimant for many years and was aware of her likes as well as her dislikes. He trod carefully giving her good performance ratings, trying not to discourage her and to boost her confidence. He was, however, acutely aware that she had been under-performing in relation to her non-patrol and administrative responsibilities. He and Ms Mercer set objectives for her in May 2014 which were reviewed and discussed at her PDR in early 2015.
108. On 29 April 2015, they set out a list of objectives which had previously been discussed with the claimant. These clarified the general contractual terms in her contract of employment. She was asked to increase her presence in the office as she was not spending sufficient time on non-riding/administrative tasks. They were reviewed in November 2015. Further discussions took place in May 2016 to address the same areas of her work with a view to seeking a greater increase in the three hours office based work which was inadequate. The non-patrolling and administrative tasks were not one-offs but ongoing. She lacked visibility to others in the team; she failed to take initiative for her own work; there were issues about contacting her although she had a company mobile phone; she demonstrated a lack of confidence in IT skills and required support; she could not access the respondent's IT systems from home; there were problems organising volunteers, bridleway maintenance, and riding events fell to other members of staff.
109. Taking those matters into consideration Mr Deans and Mr Henderson, after discussing them at length with the claimant and with her managers as part of the grievance process, made a management decision based on the respondent's business needs that the claimant should commit 12 hours a week to her non-riding/administrative tasks as well as 12 hours patrolling on horseback. As I have found, the respondent was not insistent that all the 12 hours be based in the office at a desk. I was satisfied that that was explained to the claimant during the grievance process and in the document discussed entitled "Ranger Riding Tasks". Like with the other rangers she was required to be in the office from where she could engage in her non-patrolling/administrative tasks, when and where appropriate. Working from home was untenable as the respondent had to have regard for her health and safety and there was the absence of remote access to its computers and IT systems.

110. The claimant was still able to spend a significant proportion of her time patrolling on horseback, 50%, with the position being reviewed after 12 months.
111. I have come to the conclusion that the respondent acted reasonably in getting the claimant to focus on her non-patrol and administrative tasks, considering the changed nature of her job since 1990, particularly the use of IT processes as that aspect of her role had evolved over the years but the claimant was reluctant to engage in this change. Her personal preference was not to work in an office environment.
112. Her case can be distinguished from the case of Coleman. In Coleman, the employee was left with “residual duties which were of a very humdrum character”. The EAT overturned the employment tribunal’s judgment and held that the employer had changed, unilaterally, the whole nature of Mr Coleman’s job by removing his duties as a buyer, which he found interesting and most enjoyable. In doing so, it had repudiated his contract of employment entitling him to resign and claim constructive unfair dismissal.
113. In the claimant’s case, her patrolling duties were not removed as she was allowed to spend 50% engaged in that work and I would not describe that percentage of her time in such work as, “very humdrum in character”.
114. In addition, her case can be distinguished from the case of Trillium. In that case the removal of the employee’s architectural duties in monitoring the work of external consultants, changed her duties from a hands-on role to a mainly managerial one and had the effect of de-skilling her as an architect. It was held by the EAT that in so doing it amounted to a fundamental breach of her contract of employment. The employment tribunal had not erred in finding that she had been constructively unfairly dismissed. The EAT went on to state that job descriptions were not prescriptive documents and frequently failed to represent either accurately or fully, the actual duties in fact undertaken by an employee in their post.
115. In the claimant’s case, her role still involved patrol and non-patrol/administrative duties and responsibilities. She was not going to be de-skilled but upskilled in IT.
94. In the Creswell case, the Inland Revenue instructed its clerks to start using a computer system to do their work. The High Court held that although the content of some of the jobs in question had been considerably altered by computerisation, the degree of alteration was not enough to make the jobs fall outside the original description of the proper function of the clerical grade concerned. It further held that employees do not have the right to preserve their working obligations unchanged during their employment as they can reasonably be expected, after proper training, to adapt to new techniques.
95. I would make this observation, the world of work has changed and is changing. Employment Tribunals have witnessed those changes in

regularly dealing with employment cases. Whereas 25 to 35 years ago letters would be typed on a typewriter and posted by the employer to their business customers, now communication is, principally, via email. Information in the past used be stored on cassette reels, now the employer uses computers, notebooks, iPads and laptops as well as portable memory sticks. The need to visit personally customers can now be done from an office by use of Skype, WhatsApp, by live television link or by conference calls. A lot of banking and payment transactions are done on-line. The occasions when it is necessary to call into a bank are becoming fewer and fewer as a result of new technology. Employers, in order to adapt to the changes and be competitive, must train their staff and update their skills. The respondent in this case did not conduct itself any differently as it was prepared to train the claimant and to provide her with the resources and the necessary support to meet the changes in working patterns.

- 96. In answer to Mr Webb's question, the claimant's role had evolved, in that on 18 July 2016, the respondent wanted her to acknowledge the use of new technology in her role and the fact that her non-patrol/administrative tasks were not being fulfilled. As a result of the grievance process, the respondent decided that the needs of the business required the claimant to engage in those tasks by working from the office for 12 hours a week and not to spend all that time at an office desk.

- 116. Viewed objectively, the respondent had not breached any of the terms in the claimant's contract of employment entitling her to resign and to claim constructive unfair dismissal. This claim is, therefore, not well-founded and is dismissed.

Wrongful dismissal

- 117. It follows from my judgment that the claimant having resigned voluntarily, agreed not to work her notice. She was taking legal advice at the time and had waived her entitlement to payment in lieu of notice. Her wrongful dismissal claim has not been proved and is dismissed.

Employment Judge Bedeau

Date: ...31 October 2017.....

Sent to the parties on:

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For the Tribunal Office