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EMPLOYMENT TRIBUNALS

Claimant: Mr D Coelho
Respondent: Colchester Hospital University NHS Foundation Trust
Heard at: East London Hearing Centre
On: 18 & 19 January 2018
6 February 2018 (by telephone)
Before: Employment Judge Russell
Representation:
Claimant: Ms S Keogh (Counsel)
Respondent: Mr B Gardiner (Counsel)

RESERVED JUDGMENT

1. The Claimant was entitled to treat himself as dismissed by reason of the Respondent's conduct. His dismissal was unfair.
2. The claim for a redundancy payment fails and is dismissed.

REASONS

1 By a claim form presented on 4 August 2017, the Claimant brings complaints of unfair dismissal and failure to make a redundancy payment arising out of the termination of his employment with the Respondent. The Respondent resisted all claims.

2 The parties produced separate list of issues which broadly overlapped but addressed the claims in a different order. The Claimant dealt first with the statutory redundancy payment and then with unfair dismissal; the Respondent addressed them in the reverse order. I consider that it is necessary first to decide whether the Claimant was dismissed by the Respondent before considering the implications of that dismissal. The issues are therefore:

- 2.1 was the Claimant dismissed by the Respondent on 27 May 2017, either by the employer within s.95(1)(a) ERA 1996 or s.136(1)(a) ERA 1996 or by the employee within s.96(1)(c) or s.136(1)(c)?

- 2.1.1 For dismissal by the employer, did the Respondent unilaterally impose different terms of employment thereby effectively withdrawing the old contract?
- 2.1.2 For constructive dismissal, did Respondent's conduct below amount to a fundamental breach of the employment contract entitling the Claimant to treat himself as dismissed? The Claimant relies upon a breach of the implied term of trust and confidence and/or an anticipatory breach of the express or implied terms of the contract by:
- (i) Unilaterally changing the Claimant's role following a TUPE transfer, including a change to the service such that it was no longer specialist;
 - (ii) Failing to provide suitable alternative employment.
 - (iii) Failing to provide employment which would enable the Claimant to maintain his skills.
 - (iv) Failing to provide a clear remit enabling him to avoid areas of work where he did not have the required skill set.
 - (v) Failing to offer and/or provide adequate work facilities.
 - (vi) Failing to consult in relation to the proposed new role.
 - (vii) Failing to offer a trial period for the proposed new role; and
 - (viii) Failing to make a redundancy payment in circumstances where such a payment was due.
- 2.2 If there was a fundamental breach, did the Claimant resign in response to the same?
- 2.3 Did the Claimant affirm the contract or waive the breach?
- 2.4 What was the sole or principal reason for dismissal?
- 2.5 Was dismissal fair in all of the circumstances of the case?
- 2.6 If dismissed by reason of redundancy within s.139 ERA: (a) was the Claimant offered suitable alternative employment; if so (b) was it unreasonable of the Claimant to refuse to carry out such employment;
- 2.7 Is the Claimant entitled to a statutory redundancy payment in the agreed sum of £14,670?

3 I heard evidence from the Claimant on his own behalf. On behalf of the Respondent, I heard evidence from Dr Malaki Ramogi (Consultant in Genito-Urinary Medicine); Dr Barbara Buckley (Managing Director and Deputy Chief Executive Officer) and Ms Shume Begum (Head of Operations for Women Children and Clinical Support Services). I was provided with a bundle of documents and read those pages to which I was taken during the course of evidence.

Findings of Fact

4 The Claimant is a consultant specialising in Genito-Urinary medicine (GUM); he has over 27 years' experience. With effect from 1 April 1995 he was employed on a full-

time basis as a consultant by Mid Essex Hospital Services NHS Trust. The terms and conditions of employment included the following:

Clause 1 provided that the Claimant would initially be based at St John's Hospital, Chelmsford.

Clause 2 incorporated the standard terms and conditions for consultants as part of this contract. Schedule 3 to those standard terms deals with job planning. The job plan will set out all of the consultant's NHS duties and responsibilities and the service to be provided for which the consultant is accountable.

Clause 4 provided that the **"arrangement of your duties will be initially a matter for discussion between yourself and the medical director of the Trust acting on behalf of the Chairman of the Trust"**.

Clause 10 required that the Claimant live within 20 miles by road from St John's Hospital, Chelmsford.

5 Generally, a standard full-time job plan will contain ten programmed activities ("PAs") although Consultants may also be paid for additional PAs in respect of supplementary duties, such as management or research. These are four-hour blocks of time used to provide direct clinical care, support professional activities, undertake additional NHS responsibilities or external duties and can include travelling time if agreed. Generally, the NHS expects that 7.5 PAs will be clinical and 2.5 PAs will be for supporting activities. PAs normally take place at consultant's principal place of work but there is flexibility to agree off site working where appropriate. The job plan is produced by discussion and agreement between the consultant and the clinical manager and is intended to be reviewed annually. In practice, the Claimant's job plan changed little from year to year whilst he was at Mid Essex. The consultative process is important and there is a separate mediation process provided for cases where agreement cannot be reached.

6 The Claimant's most recent job plan with Mid Essex was for the year 2014/2015. There were weekly outpatient clinics at Fairfield Centre, Chelmsford (the Claimant's principal base) and at St Peters and South West Ferrers, both of which were approximately 12 miles journey by car from Chelmsford. The Claimant accepted that both were reasonable journeys within the scope of his employment terms and conditions. Occasionally, the Claimant would provide cover at Braintree. This was a longer journey from Chelmsford, taking about 25 minutes by car, but the Claimant did not object as the duties were neither frequent nor regular. The job plan also included blocks of time for patient administration, diagnostic codings, continuing professional development, audit and GUM network peer review meetings. By the date of this job plan, dated 14 December 2013, the Claimant had developed an HIV specialism within Mid Essex. The HIV element of the Claimant's work was not separately identified in the PAs in the 2013 job plan which simply uses a generic reference to "outpatient clinic".

7 The job plan was silent on secretarial support but I accept that during his employment with Mid Essex, the Claimant was provided with a Personal Assistant who typed his letters, managed his diary and assisted with other administrative tasks such as the collation of statistics for audit. Given the nature of the Claimant's work, this was an important part of his ability to discharge his duties effectively.

8 In October 2015, it was announced that Essex County Council had commissioned Provide CIC to provide integrated sexual health services across Essex through easily accessible “one-stop shops” with extended opening hours, where a majority of sexual health and contraceptive needs can be met at one site, usually by one health professional. Provide sub-contracted responsibility for management of medical staff and services in West Essex, Mid Essex and North East Essex to the Respondent. The sub-contract did not include HIV services which would be delivered by Provide. The Respondent produced an Introduction to the Essex Integrated Sexual Health Service which explained the way in which the service would now be delivered. In the employee information provided, the Respondent stated that it anticipated that staff currently based at Mid Essex GUM clinic would remain working in the Chelmsford area and would be advised of a new location in due course. Each quadrant would have its own sexual health consultant.

9 Where the GUM/HIV service had been consultant led at Mid Essex, the Respondent intended to operate a new model which was nurse led. The Introduction paper confirmed that the new model regarded nurses as key to the safe and efficient delivery of an integrated service, stating that: **“Alongside firm clinical pathways and senior clinical support the expected training and development will enable safe and effective nurse led and delivered intervention and management for the people of Essex.”** Under the Respondent’s new nurse-led model, and after appropriate training, the nurses would be responsible for assessing patients to decide the appropriate treating practitioner. It was intended that there would be more treatment provided by nurses and less by a specialist doctor or consultant. Consultants and speciality doctors would focus on complex (level 3) care for sexually transmitted infection management and contraception, case managing with input from the team where appropriate. Their focus would be supporting practical and theoretical training, assisting the development of clinical protocols and applying skills and knowledge to review and develop innovative protocols for practice. The Information paper confirms that the role of the band 7 nurse is characterised by clinical leadership, expert practice service coordination and management responsibility. The band 7 nurse would also play a key part in developing safe and effective integrated operation procedure and care pathways alongside other senior clinicians.

10 In evidence, the Claimant expressed concern about the move to a nurse-led service, which he considered removed responsibility for the strategic direction of the service from the consultant and gave it to the nurses. Moreover, he considered that it could not be properly termed a specialist GUM service because the Standards for the Management of STIs published by the British Association for Sexual Health and HIV (BASHH) provide that:

“Only a service led by a consultant ... and offering a comprehensive range of STI services spanning all three levels, can be defined as being a specialist GUM service (Level 3) for the management of STIs. Specialist GUM services should provide clinical leadership, including training, clinical expertise and clinical governance, for the management of STIs within local authority areas.”

11 The Respondent maintained that leadership remained with the consultant as lead clinician who was responsible for bringing the teams together in clinical governance meetings. Ms Begum’s evidence was that the commissioners required the same services to be delivered in a **“smaller financial envelope”**, in other words cheaper. Part of this was to make greater use of nurses and to reduce face to face consultations. Ms Begum nevertheless accepted in cross-examination that the nurse-led model “switched around the balance”. Ms Begum’s evidence about the extent and nature of the consultant’s

strategic and leadership role in the new model was neither clear not convincing, even when pressed to be more specific by the Tribunal. If, as Ms Begum suggested the leadership responsibility remained with the consultant, it is hard to see why the service would no longer be called consultant-led as opposed to nurse-led. The Introduction document at the time of the transfer and the consultation document clearly envisaged the nurse-led model as being both new and a significant change. Dr Ramogi's evidence was that "led" was capable of different interpretations. He believed that as a consultant, he continues to provide leadership and service complex cases but accepted that some of the consultant's previous management role and responsibility was devolved to the Band 7 nurses (as well as some of the clinical work).

12 On balance, I find that the description of the nurse-led model and the descriptions of the respective roles of the band 7 nurse and consultants/speciality doctors in the Respondent's Information paper is consistent with the Claimant's case that in a nurse-led model the role of the consultant was to deliver specialist services and support the nurses in managing and developing the service. In other words, that clinical leadership remained with the consultant but management and strategic leadership passed to the lead nurse.

13 On 27 January 2016, Mid Essex began a consultation exercise in connection with the potential TUPE transfer of the sexual health services. Its consultation document acknowledged that many of the posts affected included HIV work and that discussions to clarify the precise amount of time were ongoing. The Claimant fell within the scope of affected staff as did his colleague, Dr Huw Price. Dr Price had been recruited as a specialist consultant in GUM/HIV at Mid Essex from approximately 2012. Dr Price undertook a greater proportion of HIV work than did the Claimant. Due diligence for the transfer showed that the Claimant's clinical workload split was approximately 70% GUM, 30% HIV. He spent two of his clinical PAs in HIV work and, I accept his evidence, he spent a further PA on associated administrative work.

14 The Claimant and Dr Price attended a consultation meeting on 29 February 2016. The Claimant was aware that HIV work would not be undertaken by the Respondent. The Claimant stated that Dr Price did five HIV sessions per week as opposed to his three. This is consistent with the 70% figure on due diligence and the Claimant's evidence of two clinical PAs and one administrative PA for HIV work pre-transfer. The Claimant was concerned that the role at the Respondent would involve family planning work for which he was not trained but he considered that there would be enough level 3 GUM work to keep him busy. There was some discussion about alternative arrangements for the HIV work post-TUPE but no decision had been taken. On 3 March 2016, Dr Price emailed Dr Malaki at the Respondent to confirm that Mid Essex had agreed to keep the HIV contract for a further year. Dr Price suggested that he and the Claimant both TUPE transfer to the Respondent but continue with their HIV work funded by Mid Essex. The Respondent initially thought that there may be some cope for shared arrangements but no agreement was reached prior to transfer on 1 April 2016.

15 The Claimant did not object to transfer and his employment passed to the Respondent with effect from 1 April 2016. Dr Price remained employed by Mid Essex.

16 After transfer to the Respondent, the Claimant's principal place of work was Moulsham Lodge, Chelmsford. This was a community clinic providing a variety of local health services, including to children and the elderly. The Claimant and other transferred colleagues were concerned that the premises were unsuitable for GUM work as there was

no separate reception or waiting area, rooms were not sound proofed, there was only one male and one female toilet, there was no dirty utility room for urine testing, no storage for silver nitrogen which had to be brought in from GP premises, no microscopy room, no separate break out or counselling rooms outside of the clinical area, no proper facilities for the staff (with only one toilet for the entire team and no dedicated office space). It was common ground that after transfer, the Claimant was not provided with his own secretary (or indeed any secretarial support).

17 The Respondent and Provide considered the concerns but did not accept that these were significant difficulties. The problem of shared services would be reduced with the anticipated move of podiatry and children's services. Changes were made to the toilets and specimen collection facilities. The office had a long desk with three or four workspaces where a laptop could be plugged in and there was a shared computer available. Dr Ramogi accepted in evidence that there could be issues with people talking or eating in the room but that work could still be done there and a free clinical room could be used for confidential matters.

18 The Claimant's evidence about the inadequacy of Moulsham Lodge was consistent with the contemporaneous emails whereas Ms Begum's evidence appeared designed to meet the case now advanced by the Claimant. I find that the Claimant had no private office but was required to share a small area, where people left their personal belongings and took their lunch and breaks at the shared desks and worktop. The lack of an office, combined with the fact that after transfer he no longer had his own secretary (or indeed any secretarial support), made it much more difficult to produce letters and undertake confidential tasks.

19 The Claimant remained dissatisfied and believed that Moulsham Lodge failed to meet the requirement of Department of Health guidance on suitable premises for GUM clinics. He repeated his concerns and added that he had no office to make confidential calls and undertake routine administration activities and so was forced to do those in his car or at home. Ms Begum arranged a visit on 10 May 2016 to produce a risk assessment. Ms Begum's email did not assert, as she did in evidence in Tribunal, that there were no issues highlighted or that the Claimant had adequate office facilities. The Tribunal was not provided with a copy of the risk assessment or any further correspondence about Moulsham Lodge.

20 Following transfer, there was no specialist HIV work for the Claimant to undertake for the Respondent. On 19 April 2016, Ms Begum wrote to give the Claimant notice that the three additional PAs undertaken at Mid Essex would cease from 18 July 2016 and he would revert to a 10 PA job plan. Ms Begum stated:

"Now that you have transferred to Colchester Hospital we will arrange to discuss your job plan in more detail. We will be consulting with all medical staff as soon as possible about the proposed restructure of medical staffing in line with the new service model."

21 On 29 April 2016, the Claimant provided Ms Begum with a timetable of his current clinic commitments which essentially replicated those undertaken for Mid Essex with the exclusion of the two HIV clinics. The Claimant asked that he be permitted to use at least one special PA (SPA) to work at Fairfield Centre to keep up his HIV skills. Ms Begum did not reply to the email nor was there any meeting to discuss the Claimant's job plan as this was superseded by the consultation about the reorganisation of the service. In the

absence of an agreement, the Claimant did not undertake any HIV work in paid time although he did do some clinics on a voluntary basis pending any future agreement.

22 On 19 May 2016, the Respondent started a consultation exercise to consider the way in which the sexual health service would be delivered across the West, Mid and North East Quadrants for which it was responsible for medical staffing. A detailed consultation document was provided to staff. It made clear that:

“The new Integrated Sexual Health model is movement from Consultant/Doctor led provision to a Nursing led provision. However, the vital work and support that will be provided by the medical team, in ensuring the delivery of a successful service is recognised within the model.

...

The transition to a Nursing led service has necessitated a reduction in the number of PAs required to deliver the service from 68.56 to 45.3 across both Consultant and Speciality Doctor groups.”

23 The consultation document anticipated that there would be a consultant in each of the three quadrants, providing 3.5 direct clinical PAs and 1.5 special PAs. As a result job plans would need to be reviewed. The consultation document set out the level 3 services to be provided. The precise split between services already being carried out by the Claimant (STIs) and those outside of his current role (contraceptive and sexual dysfunction) was not clear, not least as the Respondent did not undertake any such analysis. On balance, I accept the Claimant’s evidence that only about half of the services identified were previously part of his role. The consultation document included a proposed job summary for the post of GUM consultant. The duties of the post included providing senior clinical and management leadership in the implementation of the Essex Sexual Health Services model of care, acting as a resource for advice to colleagues and other professionals and providing support to nurses working in nurse-led clinics. About 50% of the clinical duties related to contraception and it stated that:

“it is expected that consultants will have experience in provision of both contraception and GUM services. Those doctors who do not have dual skills will be encouraged and provided with the necessary support and training opportunities to enable them to acquire the relevant skills”.

24 The Claimant provided his comments on the consultation document on 3 June 2016. He was concerned that the proposed nurse-led model meant that it no longer met the BASHH standard for a specialist level 3 service, stating that services are consultant led with management support even if for the most part nurse delivered. The Claimant was also concerned that the proposed job description requirements went beyond a GUM consultant role as it included level 3 sexual and reproductive health work which were not expertise he possessed. On balance, I find that not only could the Claimant do only 50% of the clinical duties of the proposed role in the restructure but the management and strategic leadership elements of his job had also been substantially reduced by the move to a nurse-led model. The Claimant retained clinical leadership but his became more of a “visiting role” to deal with complex cases and provide clinical oversight.

25 The Claimant was warned that he was at risk of redundancy because of the proposed changes. He attended a one-to-one consultation meeting on 9 June 2016. No notes were disclosed however an email sent by the Claimant on the same day stated:

“My current full time consultant GUM post ceases to exist when the new service commences

on 1 July 2016. It was agreed at the meeting that the 0.5 WTE consultant posts to be established for the three quadrant are not regarded as suitable alternative posts. As such, I shall not be expressing an interest in any of these posts. There now seems to be no reasonable options remaining for me and I am therefore writing to you to express my wish to explore redundancy as an alternative.”

26 Ms Begum replied to the email some four days later, confirming that she would ask HR to start processing the relevant paperwork as discussed at the meeting. Ms Begum did not disagree with the Claimant’s assertion that it had been agreed that the new posts were not regarded as suitable alternatives nor did she refer to the possibility of combining the role in two quadrants to create a full time post. Dr Ramogi was not aware that the Claimant had expressed a wish to be made redundant.

27 The outcome of the consultation was published on 27 June 2016, to take effect from 1 August 2016. The final structure remained for three 0.5 FTE consultant posts, one for each of the quadrants. There was no reference to combining these posts to create one full time and one 0.5 FTE role or in any other way. Whereas before the restructure there had been four GUM consultants working approximately 2.79 FTE according to Ms Begum, after the restructure there was a requirement for 1.5 FTE GUM consultants. A further outcome of consultation was that administrative support would no longer be offered, clinicians would be responsible for writing their own letters with standard templates available. Although the service would be more nurse-led, level three services would still be available when a speciality doctor or consultant was on site. As for the combination of GUM and contraception work, consultants would be consulted in job planning to eliminate any areas of work they are not currently trained in.

28 On or about 30 June 2016, the Respondent obtained an estimate of the Claimant’s entitlement to redundancy payment. Based upon 24 years of service, he would have been entitled to occupational redundancy pay of £266,409.

29 On 18 July 2016, Ms Begum telephoned the Claimant and offered him the combined post of consultant for both Mid and West quadrants on 10 PAs. Ms Begum stated that this was following the consultation process and further meetings with the consortium. Ms Begum informed the Claimant that there would be a formal letter and a meeting to agree the job plan. The suggestion of a combined post came as a surprise to the Claimant.

30 In her evidence to this Tribunal, Ms Begum claimed that the Respondent was keen to keep the Claimant’s skills as an experienced consultant and had the idea of using him to cover two 0.5FTE roles. During the meeting on 9 June 2016 she had asked the Claimant how he would feel about a combined post. She stated that she had become aware that the consultant in the West quadrant did not intend to return after maternity leave and had suddenly thought that the two 0.5 FTE posts for Mid and West could be combined to retain the Claimant. She described this as “a light bulb moment” during her meeting with the Claimant. Ms Begum’s evidence was that the Claimant’s reaction on 9 June 2016 was not positive. She stated that during the consultation period she then discussed the possibility of one consultant covering two quadrants with the Respondent’s management team, contracts manager, finance, clinical lead and HR to determine how it may work. Ms Begum stated that this was not about “welding” two separate posts together, more a way of considering how the Respondent could provide a level 3 service with their existing resource. Ms Begum considered that the detail of the combined job could be agreed in job planning.

31 The Claimant denies that the possibility of the combined job was raised with him at any time before the telephone call on 18 July 2016.

32 Dr Ramogi recalled discussions to explore options for Harlow as the consultant would not return after maternity leave but he stated that he would “only be guessing” when asked whether this arose during the consultation period or afterwards and he was not present at the consortium meeting when the Claimant’s redundancy request was discussed. In the circumstances, Dr Ramogi’s evidence added little weight to the evidence of either the Claimant or Ms Begum.

33 On balance, I prefer the evidence of the Claimant to that of Ms Begum. There is no suggestion in contemporaneous emails from Ms Begum (either on 13 June 2016 or 19 July 2016) that this option had been discussed nor is it included in her witness statement. Paragraph 18 of Ms Begum’s witness statement deals with the reasons for combining the two quadrants; it does not mention the maternity leave of the existing consultant for the West and suggests that the decision arose from discussions after the meeting on 9 June 2016. There was no further consultation meeting with the Claimant after 9 June 2016 to explore the possibility nor was this option referred to in the consultation outcome. There was no evidence that the option of creating a full time post by covering two quadrants was discussed with any other consultant affected by the restructure. Ms Begum was not able to identify the individuals with whom she held internal discussions nor were there any contemporaneous documents (notes, minutes, emails or board minutes) to support her evidence. This is surprising in an NHS environment, particularly in the context of a formal consultation exercise.

34 From the facts, including the timing of the redundancy estimate, the failure to raise the possible combined role during consultation and the lack of contemporaneous evidence to support the Respondent’s case, I infer that it was the likely cost of the redundancy payment which led to the decision to avoid the Claimant’s redundancy by combining two 0.5FTE roles to make a single new post.

35 The offer of the alternative role was set out in writing by a letter dated 25 July 2016, it read as follows:

“We have looked at your position with the consortium and can offer you 10 PAs as a combination of Mid and West Essex. This will be termed as “Slotting in” as the post remains substantially the same with regard to job content, responsibility, grade, status and requirement for skills, knowledge and experience. We have taken on board your concerns of your lack of competent clinical skills around some aspects of the role you cannot safely deliver. To mitigate this we have applied exception to the aspects of the service you cannot safely supply with the assistance of Specialist Doctors.”

36 The letter proposed a meeting to discuss an outline job plan. Slotting is described in the Respondent’s Organisational Change policy as a process by which an employee is confirmed in post without competition where the post remains at least 50% the same. There is no evidence of any similar policy at Mid Essex prior to the TUPE transfer, the Claimant did not agree to the terms of the policy at or after transfer. It did not form part of his terms and conditions.

37 Ms Begum’s evidence was that she regarded the new role as an extension of the Claimant’s existing job but to be delivered in two quadrants rather than one. As I have

found, the Claimant could do only 50% of the clinical duties of the proposed role in the restructure with the removal of contraception work. The Respondent carried out no analysis of whether there was sufficient level 3 GUM work (even in two quadrants) to require a full time consultant. For Ms Begum, it was sufficient that the Claimant had been doing 10 GUM PAs and would continue to do so albeit in two quadrants. Nor did Ms Begum consider at the time what effect the move to a nurse-led model would have on the strategic and leadership elements of the Claimant's job. Her evidence at Tribunal was that the Claimant would have greater strategic weight in the new structure. This was unconvincing; when giving evidence, Ms Begum appeared ill at ease, looking to other witnesses at the back of the Tribunal room for assistance and was unable herself to identify the Claimant's strategic duties before transfer and restructure. For reasons set out above, I have found that the management and strategic leadership elements of his job had been substantially reduced by the move to a nurse-led model but that the Claimant retained clinical leadership.

38 The letter dated 25 July 2016 did not offer the Claimant a trial period in the new position. Ms Begum's evidence was that a trial period was something which would have been discussed and considered as part of job planning and that it was overtaken by the grievance process. The Claimant was not advised as to his right to appeal against the decision to "slot" him into the new role.

39 The Claimant's BMA representative was as surprised by the offer of the combined post as was the Claimant. She emailed Ms Begum on 29 July 2016, referring to the June meeting and setting out her understanding that no suitable alternative role was available in light of the restructure and that redundancy was looking like the preferred option. Ms Begum's response confirmed that redundancy had been the option discussed at the meeting, subject to approval. Ms Begum did not state in this email, as she did at Tribunal, that the possibility of a combined role had also been discussed in that meeting.

40 The Claimant was provided with a draft document setting out the Respondent's views of medical management in the new model. Clinicians would *inter alia* provide senior clinical and management leadership in the implementation of the model of care, give advice and *support* (emphasis added) the management of the service and nursing team.

41 On 1 August 2016, the Claimant asked for more time to consider the job offer. In response, Ms Begum confirmed that a meeting would be arranged and asked the Claimant whether he would be interested in the clinical lead role. The Claimant decided not to apply given the ongoing dispute about the proposed new role and the fact that he had skills for only the GUM part of the service.

42 By letter dated 11 August 2016, the Claimant was told that he had 21 days to appeal from the decision to slot him into the new role. The letter made no reference to a trial period.

43 On 25 August 2016 the Claimant met with Ms Begum and Dr Ramogi, he was accompanied by his BMA representative. The Claimant's position was that the offer of combined post was not reasonable. The meeting was intended to be an open discussion to understand the clinical and operational issues and, where possible, to provide answers and solutions. Ms Begum suggested that the proposed model of three 0.5 FTE roles had changed following further discussions and review of the medical cover required for level three services. No evidence was provided then, or indeed at Tribunal, as to the detail of

those discussions or the review. Ms Begum did not refer to this option being considered at the meeting on 9 June 2016. The Respondent acknowledged the Claimant's concern about contraceptive work and assured him that he be supported by specialist doctors doing this work and would not be required to retrain.

44 The Claimant expressed concern about the requirement to have two bases, Chelmsford for Mid Essex and Harlow for West Essex; not only in terms of travel time but also how he could cover queries from patients in one base when working at the other. Dr Ramogi stated that cover and advice would be expected but was not likely to happen on a regular basis. Ms Begum stated that it would not be a 'virtual clinic' but like on-call cover, acknowledging that it would be a new way of working to be built into job planning as more activity information was collected. The ten PAs in the combined role would include travel time and consultant clinics would be pre-booked, not drop in.

45 The Claimant explained the reasons why he felt the job was not reasonable on a personal level for him. The job duties were not those which he was doing before TUPE and he was being de-skilled from his specialist HIV role as the work was no longer available. He had concerns about Moulsham Lodge which had not been addressed, including lack of space for confidential work. In reality, the nurse-led service would not be level 3 with no consultant input or decision making. The Claimant stated that his main concern was about travel time to Harlow given the traffic on the A414. Having previously been clinical lead, his status was downgraded. Ms Begum replied that HIV work was not included as it was not part of the Respondent's service. Travel time would be included in the job plan and the distances were reasonable. The shared back office at Moulsham Lodge was appropriate for administrative work and she would check if the other issues were resolved. The Claimant had not expressed an interest in the clinical lead role.

46 The meeting did not address the detail of the clinical duties which the Claimant would undertake in each quadrant, on what days and where the clinics would take place, how travel time would be reflected or how SPAs may be used for HIV work. At the end of the meeting, it was agreed that the Claimant would remain at Moulsham Lodge pending the conclusion of a grievance procedure.

47 On 31 August 2016, the Claimant sent Ms Begum an interim job plan for 10PAs which included 8 PAs and 2 SPAs with a request that some of the SPA time be used for an attachment to do HIV work at Fairfield Centre on a Thursday. It was understood, and the Claimant made it explicit by his representative's email on 1 September 2016, that pending resolution of the grievance he was working under protest.

48 Also on 31 August 2016, the Claimant submitted a formal grievance stating that the job offered following the consultation exercise was not a suitable alternative, repeating and giving more detail about his earlier concerns and stating that he was seeking redundancy. The Claimant was concerned that the new role was not suited to his skill level, aptitude, job content and experience: he could not do half of the role, training was unrealistic and he would be required to deliver a narrow speciality GUM clinic with referral of level 3 contraceptive work having implications upon his status and expertise. The Claimant referred to the **"late cobbling together of a whole time post to cover two quadrants"** whose job requirements he did not meet. The Claimant contrasted his previous journey to work (10 to 12 minutes by bicycle with two outlying clinics within an easy 15 to 20 minute car journey) with the journey to Harlow (up to three days travel each week, a journey which could last about 45 minutes without traffic but up to an hour and a half each

way at busy times of the day and with parking issues); at the age of 63, he did not relish driving the route regularly particularly in winter. I accepted the Claimant's evidence that travel by car in peak time in the bottlenecks of Harlow is not comparable to travel by car in rural Essex.

49 The Claimant explained in his grievance his concern about loss of status from lead clinician responsible for designing and delivering a level 3 specialist GUM/HIV service with significant input in the overall strategic direction of the department. The new nurse-led model would mean that his role was essentially a visiting specialist with no management responsibility. Finally, the facilities at Moulsham Lodge were not fit for purpose, not least as he lacked an office and his 20 hours' secretarial support had been removed.

50 Ms Begum was appointed to hear the stage 1 grievance and a meeting arranged for 22 September 2016. In advance of the meeting, on 2 September 2016, Ms Begum drafted a response to the Claimant's grievance considering each head of his complaint. As the grievance largely repeated the discussion on 25 August 2016, so did Ms Begum's draft response. The Respondent did not expect the Claimant to train to be an expert in contraception and psycho-sexual medicine, but only to be aware of referral pathways to speciality doctors with those skills. HIV work could not be included as it was not part of the Respondent's service, but **"as part of job planning we have taken into account your revalidation requirements and have accommodated you to have a day off outside of your contractual hours to fulfil this in your own time"**. Contrary to Ms Begum's evidence at the Tribunal, she did not agree that SPAs could be used for HIV work which the Claimant had been undertaking from earlier that month.

51 Ms Begum considered it reasonable for one consultant to cover two quadrants as clinics would be pre-dominantly pre-booked and the volume of patients kept under ongoing review. Travel time and workloads would be addressed in job planning which could consider start times and frequencies of clinics. Ms Begum did not disagree with the Claimant's estimate of the journey time to Harlow although she referred to as his perception that it was stressful. In re-examination at this Tribunal hearing, Ms Begum suggested that travel time would have been included as part of the four hour PA session and that the Claimant would only be required to attend Harlow one day a week. I did not find this evidence credible and reject it. This was not offered to the Claimant or referred to in the grievance decision. Even on the Respondent's case, the journey to Harlow was estimated at between 30 to 45 minutes (depending on traffic). This would have reduced the clinical time at Harlow to no more than six and a half hours (two PAs on a single day with 45 minutes each way for travel) before allowing for time spent dealing with administrative matters. On balance, I find this to be a further decision of Ms Begum seeking to justify and render reasonable the offer of the combined role by relying on matters not considered at the time.

52 In her grievance conclusion, Ms Begum did not accept that Moulsham Lodge was inadequate and whilst there was no secretarial support, the Claimant could use a technician and standard templates. As for status, her response stated that:

"The consultant role within the model is to provide level 3 clinical support for the complex cohort of patients. The Consultant job description specifies: involvement with clinical governance, audits and medical leadership, to actively participate in Divisional/directorate management processes. This does not indicate that the consultant will be responsible to the lead nurse.

There are a number of Services that are moving to nurse led models, with consultant support unfortunately this is the future of commissioning.”

53 The meeting took place on 22 September 2016 chaired by Ms Begum. Both parties maintained their position and the grievance was not upheld. Ms Begum’s note of the key areas of the grievance and response, is almost identical to her pre-prepared response, with inclusion of a reference to pre-transfer discussions, reference to the Claimant’s decision not to apply to be clinical lead and a new section on clinical leadership which refers to what should be provided by a consultant-led level 3 specialist GUM service and states the need for a clinical governance framework, use of IT, and the need to support clinical training and audit outcomes before quoting the BASHH standards. Given that this refers to a service which is consultant led it does not assist with the role of the consultant in a nurse-led model. Neither the pre-prepared response nor the key areas document refer to any discussion on 9 June 2016 about the possibility or reasons for combining two quadrants.

54 The Claimant was informed on 15 November 2016 that his grievance had not been upheld; he subsequently appealed.

55 Before the grievance decision was provided to the Claimant, his case was discussed at the Women and Children’s Divisional performance meeting. On 1 November 2016, Ms Webb (Director of Strategy and Transformation) informed Mr Nick Hulme that pre-transfer the Claimant was predominantly providing sexual health services with a small number (two) HIV sessions and post-transfer remained at 10 PAs sexual health but without HIV as this was retained by MEHT. She stated: **“The issue Dr C has is that the post covers both MEHT and Harlow (5 PAs each) as the model has converted some of the previous doctor led activities to nurse led warranting less consultant input and oversight.”** Ms Webb stated that the Respondent believed that it was acting in good faith but was concerned that if a precedent was set for the Claimant, future plans may become a little trickier as consultants needed to be flexible and provide services cross geographic sites.

56 A stage 2 grievance hearing took place on 23 December 2016, chaired by Dr Buckley. The Claimant repeated his concerns about the loss of HIV work, facilities at Moulsham Lodge, working over two sites, the difference in role, his lack of experience in contraception and the loss of status due to *inter alia* the move to a nurse-led service. The Claimant told Dr Buckley that he was working on HIV at Fairfield Centre on Thursdays. This was his day off as he worked for the Respondent on a Saturday instead; he stated that this would no longer be possible in the new combined role.

57 In her letter dated 13 January 2017, Dr Buckley concluded that the Claimant’s original post was as a consultant within the speciality of sexual health/GUM and that this remained his post with the Respondent. She found that the Claimant was aware at the time of the TUPE transfer that the 30% of his role which was HIV work was not passing to the Respondent, yet he did not object to the transfer. Whilst the new integrated sexual health model was a change to the way the service was provided, the medical team remained responsible for providing a level 3 service. She concluded that the proposed new role was suitable alternative employment. Dr Buckley did not accept that there were problems with service provision in the new model. As a gesture of goodwill, Dr Buckley said that the Claimant’s job plan would be reviewed to facilitate use of *some* (emphasis added) of his paid SPA time to cover his current voluntary services at Fairfield Centre. I do not accept Dr Buckley’s oral evidence at the hearing that she was content for the

Claimant to use *all* of his SPA time for HIV work.

58 There was a dispute of evidence about the amount of SPA time which the Claimant could use to cover the HIV work. The Claimant's evidence was that he was told by Ms Begum and Dr Ramogi in a job planning meeting in or around August 2016 that he would be entitled to only one and a half SPAs. As such, he believed that he would not be able to do all of his HIV work in SPA time as other activities such as GUM continuing professional development would also need to be undertaken. The Respondent's case was that the Claimant would have three SPAs (1.5 for each 0.5FTE role) and could use two SPA sessions for his HIV work; although Ms Begum's evidence suggested that there would be at least one and a half but up to two and a half if agreed in job planning. Dr Ramogi's evidence confirmed that use of SPAs for HIV work would have to be considered at the job planning stage. I accept the evidence of the Claimant whom I found to be a credible and reliable witness. The Respondent's note of the meeting on 25 August 2016 makes no reference to three SPAs. The job plan which the Claimant sent on 31 August 2016 proposes the use of two SPA sessions at Fairfield Centre. The length of the Fairfield clinics is not stated but other clinics on the job plan last for three hour. I find this job plan to be more consistent with the Claimant's evidence that he would only be entitled to one and a half SPAs (6 hours) in the new role, not three SPAs (12 hours).

59 As for the Claimant's concerns about travel in the combined role, in the outcome letter, Dr Buckley stated that she had asked that the job plan consider timing clinics to minimise travel. As with Ms Begum's grievance decision, there was no firm commitment to have later start times for clinics in order to avoid travel or to hold all of the clinics at Harlow on a single day. Dr Buckley agreed with Ms Begum's view that the facilities were appropriate and there was shared office space available to him. Dr Buckley's belief was that the Claimant was finding change to the service model challenging but nevertheless this was not a redundancy situation; even if it were, the new role was suitable alternative employment. Dr Buckley expressed a desire to resolve the Claimant's concerns through the job planning process. In evidence, Dr Buckley accepted that she was aware that by the time of her decision, there was no agreed job plan and that the interim role undertaken by the Claimant did not involve work at Harlow.

60 The Claimant exercised his right to a third and final stage of appeal by letter dated 19 January 2017. The appeal was considered by Mr Hulme. Again both the Claimant and Respondent maintained their previously expressed positions. By letter dated 20 March 2017, the Claimant was informed that the appeal was not successful. Mr Hulme stated that redundancy was a last resort for the Respondent and as there was a role which enabled the Claimant to use the significant majority of his skills, it was deemed that suitable alternative employment was available. He considered that the requirement to work across a wider geographical area was an increasing feature of specialist services provided on a network basis and that the distances proposed were not unreasonable.

61 Upon receiving this final decision, the Claimant took advice and some time to consider his options.

62 On 11 May 2017 Ms Begum asked the Claimant for dates for a job planning meeting. The Claimant said he would get back to her shortly with some dates. Ms Begum chased on 16 May 2017 asking for dates that week. The Claimant replied the same day with two possible dates.

63 On 24 May 2017, the Claimant wrote to Mr Hulme giving notice that he was resigning with immediate effect. The Claimant stated that throughout the grievance process he had been working under protest. He maintained that the proposed post was not a suitable alternative and that his previous role was redundant. The Claimant wrote that the Respondent had failed to engage in an appropriate redundancy process and he had been asked to take on a post which represented a fundamental breach of his current terms and conditions. The outcome of the grievance process had left him with no alternative but to resign. I accept that the Claimant's belief that there were inadequate facilities at Moulsham Lodge which, despite promises to make changes, had not been addressed were a material part of the Claimant's decision to resign.

64 Following the resignation of the Claimant, Dr Ramogi has been the only GUM consultant and has been undertaking additional duties as clinical lead and in clinical strategy. The Respondent is about to advertise for a new GUM consultant.

65 From 6 September 2017, the Claimant has been working as a locum bank consultant for Cambridgeshire Community Services NHS Trust doing GUM and HIV work. This requires him to travel from his home in Chelmsford to Huntingdon either on a Sunday night or a Monday morning, staying in rented accommodation during the week and returning home on a Friday. A substantive appointment has now been made to the post and the Claimant's work for Cambridgeshire will end in April 2018 when the new consultant starts.

Law

66 The contract of employment is terminated by the employer for the purposes of s.95(1)(a) ERA where the employer unilaterally imposes different terms of employment, thereby effectively withdrawing the old contract, see **Hogg v Dover College** [1990] ICR 39, EAT. Whether the old contract has been withdrawn is a matter of fact and degree to be tested objectively. In **Hogg**, the employee was informed that he would no longer be head of history, would not be employed full-time but for eight periods per week with some general studies and religious education and that the salary he would receive would be exactly half. The EAT held that as a matter of law and common sense, the employee was being told that his former contract was from that moment gone; nor was it a variation of the contract as one cannot "hold a pistol to somebody's head" and tell them that they would be employed on wholly different terms.

67 Section 95(1)(c) ERA provides that a dismissal occurs if the employee terminates the contract under which they are employed (with or without notice) in circumstances in which they are entitled to do so by reason of the employer's conduct. Whether the employee was entitled to resign by reason of the employer's conduct must be determined in accordance with the law of contract. In essence, whether the conduct of the employer amounts to a fundamental breach going to the root of the contract or which shows that the employer no longer intended to be bound by one or more of the essential terms of the contract, **Western Excavating Ltd v Sharp** [1978] IRLR 27 CA.

68 The term of the contract which is breached may be an express term or it may be an implied one. The Claimant relies upon alleged breaches of express and implied terms, including that of trust and confidence. This requires that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and

employee. The employee bears the burden of identifying the term and satisfying the tribunal that it has been breached to the extent identified above. The employee may rely upon a single sufficiently serious breach or upon a series of actions which, even if not fundamental in their own right, when taken cumulatively evidence an intention not to be bound by the relevant term and therefore the contract. This is sometimes referred to as the “last straw” situation. This last straw need not itself be repudiatory, or even a breach of contract at all, but it must add something to the overall conduct, **Waltham Forest London Borough Council –v- Omilaju** [2005] IRLR 35.

69 Where a contract has been reduced into writing, implication of additional terms is only possible to give business efficacy to the contract, or where necessary to give effect to an obvious combined intention of the parties or where it is a necessary implication to complete the contractual arrangements, **United Bank Limited v Akhtar** [1989] IRLR 507 per Knox J at paragraph 48.

70 The question of fundamental breach is not to be judged by reference to a range of reasonable responses, **Buckland v Bournemouth University Higher Education Corp** [2010] IRLR 445, CA. The tribunal must consider both the conduct of the employer and its effect upon the contract, rather than what the employer intended. In so doing, we must look at the circumstances objectively, that is from the perspective of a reasonable person in the claimant’s position. The question of fundamental breach is not to be judged by a range of reasonable responses test.

71 In **Tullett Prebon Plc v BGC Brokers LLP** [2010] EWHC 484 QB, Jack J stated at paragraph 81 that the conduct must be so damaging that the employee should not be expected to continue to work for the employer and that:

“Conduct, which is mildly or moderately objectionable, will not do. The conduct must go to the heart of the relationship. To show some damage to the relationship is not enough.”

72 Establishing breach alone is not sufficient: the employee must also resign in response to it and do so without affirming the contract. Once an employee has affirmed the contract, the right to repudiate is at an end. As summarised in **Chindove v William Morisons Supermarket plc** UKEAT/0201/13/BA, the issue is whether the employee has demonstrated by conduct or delay that he has chosen to hold the employer to the contract. This is more an issue of conduct than time, with the latter relevant where the employee continues to work for longer than the within he might reasonably be expected to exercise his right. There is no automatic time, it all depends upon context. Part of the context is the employee’s position, such as the effects upon his finances, domestic arrangements and the ease with which employment may be found elsewhere. Another part of the context is whether the employee was actually at work or was off sick.

73 The employee must satisfy the tribunal that he left in consequence of the employer’s breach of duty. There may be more than one reason why an employee leaves a job; it is enough that the repudiatory breach was an effective cause with no requirement that it be the most important cause, **Wright v North Ayrshire Council** [2014] IRLR 4.

74 For the purposes of the redundancy claim, the definition of dismissal contained in section 136 is the same as that contained within section 95 of the Employment Rights Act.

75 Section 139 Employment Rights Act 1996 provides that:

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.

76 An employee will not be entitled to a redundancy payment where they unreasonably refuse an offer of a new contract which is considered suitable employment in relation to that employee having regard to the (i) the capacity and place in which the employee would be employed and (ii) the other terms and conditions of his employment, section 141 ERA. The employee has a right to a four-week statutory trial period when the terms of the new contract differ wholly or in part from the previous contract as to capacity and place of employment or the other terms and conditions of employment, s.138(2) ERA. All differences count unless they are trivial or insignificant. The comparison is between individual terms and conditions, not of the overall contract as a package. Overall, if the offer was of unsuitable employment or if the employee reasonably refuses suitable employment, they will continue to be entitled to a redundancy payment.

77 In a claim for a statutory redundancy payment, there is a presumption that the dismissal is by reason of redundancy unless the contrary is proved, s.163(2) ERA.

Conclusions

Termination of the contract of employment on 27 May 2017

78 The Claimant's contract of employment terminated on 24 May 2017 when the Claimant tendered his resignation to Mr Hulme. The issue is whether the termination was a dismissal by the Respondent within s.95(1)(a) because it had unilaterally imposed different terms of employment, thereby withdrawing the old contract (the **Hogg v Dover College** point) or by the Claimant's resignation. If the latter, the next step is to consider whether it was nevertheless a constructive dismissal because of the employer's conduct.

79 In determining the **Hogg** point, it is necessary to compare the "old" job terms and the "new" job terms as the question of withdrawal is a matter of fact and degree to be tested objectively.

Old Job Terms

80 The Claimant relies upon the terms of his contract and nature of his job as undertaken prior to the TUPE transfer and seeks to contrast the same with the terms of the new job offered by letter dated 25 July 2016. In particular, the Claimant submits that the following were express or implied terms of his contract prior to transfer: (i) his role as a consultant specialising in GUM/HIV health services; (ii) clinical lead of a consultant led

service; (iii) managerial duties; (iv) entitlement to DPA and SPA time for both GUM and HIV work; (v) work from a single base in the Chelmsford area with short travel (distance and duration); (vi) entitlement to work from premises suitable for the service and (vii) entitlement to a personal assistant. Ms Keogh submits that these were contractual terms of the Claimant's contract of employment either expressly or by implied term. Mr Gardiner disagrees, submitting that none were express and none met the **Akhtar** test for implication.

81 The Claimant transferred to the Respondent as a specialist consultant who was undertaking before the TUPE transfer approximately 70% GUM and 30% HIV work. The express term of the contract of employment does not mention HIV work but gives his job title as a Consultant in Genito-Urinary medicine. In other words, that he would undertake level 3 work in GUM generally. Despite the recruitment of Dr Price, whose contractual job title did include HIV work, there was no express variation of the Claimant's job title to reflect this development. Moreover, clause 2 incorporated the standard terms and conditions which included job planning and clause 4 provided for the arrangement of duties to be agreed in discussion with the medical director.

82 As for whether the HIV work was an implied term of the contract, I prefer the submission of Mr Gardiner. It is inherent in the nature of medical specialisms that the precise nature of the work will develop over time as medical practice changes, new treatments are discovered and developed and where sub-specialisms emerge. In 1989 when the Claimant commenced his employment at Mid Essex, HIV treatments were in their infancy and the HIV service was not as well-advanced as it had become by the date of the TUPE transfer. There can have been no obvious intention of the parties at the date they entered into the contract that there be an implied term to include HIV work specifically. Business efficacy does not require implication of the term, as the flexibility afforded by express clauses 2 and 4 and the job planning process was sufficient to enable the parties to arrange their affairs efficiently in the years prior to transfer. For the same reasons, a term implying that the Claimant's work was GUM and HIV is also not necessary to complete the contractual arrangements nor so obvious that the parties must be taken to have intended to include it. The HIV work fell comfortably within the contractual job Consultant in Genito-Urinary medicine and the flexibility afforded by the express terms at clauses 2 and 4.

83 Further or in the alternative, the facts as I have found above are that the Respondent was unable to offer the Claimant specialist HIV work as it did not hold the contract to provide such a service. The Claimant was aware of this and whilst he hoped that some arrangement may be found, there was no certainty and yet he transferred without objecting. TUPE has the effect of transferring a contract of employment and rendering void any purported variation where the sole or principal reason for variation was the transfer itself. It does not prevent a variation for an economic, technical or organisational variation entailing changes in the workforce (including a change of place of work or work of a particular kind). It follows that even if I am wrong and the precise workload were a term of the contract prior to transfer, this was effectively varied upon transfer.

84 The Claimant held the role of clinical lead prior to transfer. He ceased to hold this position on transfer. The contract of employment at Mid Essex did not include an express term appointing him as clinical lead. For the reasons set out above, I do not accept Ms Keogh's submission that it was an implied term of the contract that the Claimant would be

clinical lead of the service. The Claimant had not been clinical lead at the time that the contract was entered into. It appears to be a position ancillary to the main contract and no implied term is necessary on the facts of the case.

85 As for the nature of the leadership of the service and the Claimant's management duties, I have accepted that prior to the Respondent's reorganisation the service was consultant led and that the Claimant had management and strategic leadership duties within that service. This was, however, the way in which the service was managed and organised rather than an express term of the Claimant's contract. As with the nature of the duties performed, I consider that the leadership and management element fell within the Claimant's job without needing to imply any additional term. The term as posited by Ms Keogh is too vague to warrant implication and is not something which I find was contemplated by the parties at the time the contract was formed. As Ms Keogh rightly submits, a contract of employment is not a static document, it can and will often be varied by the parties over time either by separate agreement or even by conduct. However, not every change will amount to a term of the contract. I conclude that the allocation of management duties and the work undertaken in a consultant-led service could and were properly addressed as part of the flexibility envisaged by clause 4 and the job planning process provided for in the contract. This is consistent with the reference to managerial responsibilities in Schedule 3 (job planning) to the consultant standard terms and conditions. I conclude that the precise management or leadership duties themselves did not form part of the terms of that contract.

86 The express term of the contract of employment prior to transfer and reorganisation was that the Claimant would initially be based at St John's Hospital, Chelmsford. I accept that this is a term which was varied by agreement insofar as Mid Essex required the Claimant to work from Fairfield Centre, Chelmsford as his base and live not more than 20 miles from Chelmsford. After the TUPE transfer it was not possible for the Claimant to work at Fairfield and instead the location term was varied to Moulsham Lodge, which was also in Chelmsford. There was no express term of the contract requiring the Claimant to travel from his base or limiting the time or distance of such travel. Over the period of his employment at Mid Essex, the Claimant had agreed in job planning to travel to two non-base clinics South Woodham Ferrers and St Peters. It is an implied term of a contract of employment that an employee may be required to work "within reasonable daily travelling distance", **Courtaulds Northern Spinning Ltd v Sibson** [1988] ICR 451. I have accepted the Respondent's case that duties agreed in job planning do not then become terms of the contract (express or implied), similarly the Claimant's agreement in job planning to travel to these two clinics was in performance of the **Sibson** implied term and the precise non-base clinic locations did not become an express term of the contract.

87 There was no express term of the contract of employment requiring the place of work to be suitable for the services being provided. Such a term, I conclude, would meet the requirements for implication into the contract as necessary to give it business efficacy. In the alternative, such a term is so obvious that an officious bystander would conclude that the parties must have intended it.

88 There is no express term that the Claimant was entitled to a personal assistant. Over the entire period of his employment as a consultant prior to transfer, the Claimant had benefited from secretarial support. Schedule 3 of the consultants' standard terms and conditions makes clear that supporting resources are a matter to be agreed in the job

planning discussion and recorded in the job plan. The Claimant's most recent job plan at Mid Essex was silent on secretarial support. I have found as a fact that the Claimant had a personal assistant throughout his employment at Mid Essex to type his letters, manage his diary and assist with other administrative jobs necessary to discharge his professional duties effectively. Ms Keogh expressed the proposed term as specifically for a personal assistant; Mr Gardiner's submissions addressed the point in the broader terms of "secretarial support". I prefer the term used in the Schedule 3, namely supporting resources. On balance, I accept that it is necessary to imply a term into the contract as either necessary to give it business efficacy or as so obvious that the parties must have intended it, that the Respondent would provide the Claimant with suitable supporting resources for the proper discharge of his duties.

89 Having addressed each of the terms contended for by Ms Keogh and disputed by Mr Gardiner, I reminded myself that every contract of employment will include the implied term of trust and confidence. Even if there is no implied term specifically as to the HIV work, a consultant led service or management duties, the allocation and withdrawal of duties and the manner in which these are done are matters which I consider capable of falling within the scope of that implied term.

New Job Terms

90 The offer of the alternative role as set out in the letter dated 25 July 2016 specified 10 PAs in Mid and West Essex. The Claimant's job would continue to be Consultant in Genito-Urinary Medicine. As before, this was an express term that he would undertake level 3 work in GUM generally. The offer letter gave an assurance that the Claimant would not be required to do those parts of the new role which he could not safely supply. As I have found, this amounted to about 50% of the job description used in the consultation. The details of the work were to be agreed in job planning.

91 As the job covered two quadrants, the Claimant would be required to work from two bases: Chelmsford and Harlow. This was a change to the express term as to place of work. As before, the contract would contain the **Sibson** implied term that an employee may be required to work "within reasonable daily travelling distance".

92 As with the old job, a term requiring the place of work to be suitable for the services being provided would meet the requirements for implication into the contract as necessary to give it business efficacy. In the alternative, such a term is so obvious that an officious bystander would conclude that the parties must have intended it. This is demonstrated by the fact that the dispute between the parties in evidence was about whether Moulsham Lodge was suitable, not about whether or not it needed to be suitable.

93 In the new job, the Claimant was not entitled to have his own secretary as he had before. He would be responsible for writing his own letters using standard templates and with some assistance from Band 3 technicians. Having regard to the standard terms and conditions for consultants and schedule 3 (job planning), I consider that it is necessary to imply a term into the new contract either to give business efficacy or because it is so obvious that the parties must have intended it, that the Respondent would provide the Claimant with suitable supporting resources for the proper discharge of his duties. As with the place of work, the real dispute was about whether the resources offered by the Respondent were in fact suitable support.

94 The implied term of trust and confidence continued to apply to the employment.

Hogg v Dover College conclusion

95 Having compared the terms of the contract for the old job with those of the new job, I am not satisfied that they are objectively so different as to amount to an effective withdrawal of the original contract and therefore a dismissal by the employer. In **Hogg** the employer changed the hours of work, the job title and salary. Here, the Claimant was employed as a Consultant in GUM in both the old and the new job. The precise work to be undertaken and how it was to be delivered was not an express or implied term but a matter for agreement as part of the flexibility of the job planning process both in the old and the new job. He would not be required to undertake duties for which he was not professionally qualified or sufficiently experienced. The implied terms about suitable place of work and suitable supporting resources applied in both jobs. The only term of the contract which effectively changed was the location of work as the new job introduced a requirement to work at a second base, namely Harlow. This was a material change and one which caused the Claimant great concern. Nevertheless, as a matter of law and common sense I do not accept that the proposed requirement was of such magnitude that the Claimant was being told that his former contract had been withdrawn or that he was henceforth employed on wholly different terms.

96 There were undoubtedly changes in the way in which some of the terms would be performed in practice, particularly with regard to the nature of the work, the move to a nurse-led model and the withdrawal of a personal secretary. These are matters more properly considered when deciding whether the Claimant was constructively dismissed.

Constructive Dismissal

97 The Claimant's case is that the Respondent's conduct amounted to a breach of the implied term of trust and confidence and/or an anticipatory breach of contract by unilateral variation. The Claimant relies upon what he terms unilateral changes to his job after his TUPE transfer to the Respondent, a change to the service which was no longer specialist in the BASHH definition, failing to provide suitable alternative employment, failure to provide employment enabling him to retain his skills or a clear remit to avoid work where he did not have the required skills, failing to provide adequate work facilities, failure to consult on the proposed new role, failure to offer a trial period and failure to make a redundancy payment where one was due.

98 The parties disagree as to the extent to which the employer can vary the nature and extent of a consultant's clinical duties in the job planning process. The Respondent's case is that job planning gives significant flexibility, sufficient even to remove aspects of the consultant's specialism. The Claimant disagreed, stating that the discussion would be about how many clinics, when and where they would be delivered; never the type of work to be covered in the clinic. On balance, I conclude that whilst the job planning did permit a considerable degree of flexibility, it did not extend so far as to give the employer the right unilaterally to remove areas of specialist clinical work. If the nature of the clinical work did require variation, the job planning process would be the time in which it could be discussed with a view to agreement being reached. If no agreement were reached, then the matter could be considered by way of appeal. If a variation were to be imposed, then it is subject to the implied term of trust and confidence. Even if the change when considered objectively does not amount to a withdrawal of the original contract, it may

nevertheless contribute towards a breach of the implied term of trust and confidence.

99 As I have found above, the principal change to the Claimant's duties after the TUPE transfer was the loss of HIV work. This was because the Respondent did not hold the contract to provide such services. Whilst the Claimant hoped that some alternative arrangement might be negotiated after transfer, there was no certainty or agreement that this would be possible. This was the basis upon which the Claimant transferred. I have concluded above that there was a variation of the contract to remove HIV work after the TUPE transfer to which the Claimant consented.

100 From September 2016, the Claimant was able to arrange to provide HIV services at Fairfield but this was something which was external to his contract of employment. I have found that the offer to use one and a half of the Claimant's SPA time for this work was only made by Dr Buckley at the second stage of the grievance process. It was made as a gesture of goodwill. As the Claimant was not providing HIV services to the Respondent, the Respondent was not obliged to pay him for his time at Fairfield even though it chose to do so. Whilst I understand the Claimant's desire to retain his HIV skills and to be paid for his work, there was reasonable and proper cause for the work to be removed and the eventual offer of SPA time was not conduct which was calculated or likely to destroy or seriously damage, or even to contribute to such effect, the relationship of trust and confidence.

101 The Claimant relies upon the removal of managerial duties after transfer. Insofar as this refers to the role of clinical lead, I have found that this part of his work did not form part of the contract of employment. Moreover, the Claimant had the opportunity to apply for the role of clinical lead by the Respondent and chose not to do so. Whilst he may have had valid reasons not to apply, I am not satisfied that the removal of clinical lead managerial duties is conduct of the Respondent which is capable of amounting to a breach of the implied term of trust and confidence.

102 The other aspect of the change in job duties after transfer which the Claimant relies upon is the move to a nurse-led service, such that it was no longer a specialist service and a consequent loss in status. This overlaps with the removal of managerial duties. For reasons set out above, I have accepted the Claimant's case that the role of the consultant in a nurse-led model was to deliver specialist services and support the nurses in managing and developing the service. It was not to actually manage and develop the service as would be the case in a consultant-led model. In other words, the management and strategic leadership elements of the Claimant's job would be substantially reduced in the new model rendering his role more that of a visiting expert used to deal with complex cases. As Ms Webb recognised in her email to Mr Hulme, there would be less consultant input and oversight in the new model. Nevertheless, and as the new job description made clear, clinical leadership remained with the consultant (even as a "visiting expert") and therefore the service continued to meet the BASHH criteria for a specialist service.

103 The Claimant expressed his concern repeatedly about the effect upon his role of a move to a nurse-led model and of the work which would be available for him to do. The Claimant could not safely deliver about 50% of the full consultant role but nor was he going to be required to do so. Initially, it was thought that only 0.5FTE consultant time was required in each quadrant to deliver the level 3 work in both sexual health and contraceptive services. The Respondent removed 50% of this work when agreeing that

the Claimant would not be required to do contraceptive work. It carried out no analysis of whether that left sufficient level 3 GUM work (even in two quadrants) or what other duties may be required of the Claimant. There was no clarity about the precise remit of his duties. The Claimant was concerned about the effect upon his status of removing his leadership duties and being required to refer level 3 contraceptive work to specialist but junior doctors. The meeting with Ms Begum on 25 August 2016 did not address the clinical duties which the Claimant would in fact undertake but provided only general assurances that the work would be suitable.

104 The same is true of the requirement to have a second base at Harlow as part of the new job. This was an anticipated breach of the express term of the contract that he would have one base, Chelmsford. The Claimant raised his concerns in writing and again at the meeting on 25 August 2016. This was a material change to the way in which the Claimant worked, especially if he was still required to hold clinics in areas outlying his base location.

105 Much of the evidence at Tribunal was concerned with whether or not travel to Harlow was a reasonable requirement. I had regard to the Claimant's contract of employment as transferred from Mid Essex which required him to live within 20 miles of Chelmsford. This was the distance understood by his former employer to be an acceptable radius for travel to work. The distance between the Chelmsford and Harlow is approximately 20 miles. With only one main base, the Claimant could bicycle to Chelmsford in about 10 minutes and his two outlying clinics were easy car journeys of about 15 to 20 minutes in rural Essex. The journey to Harlow would take about 45 minutes if he was lucky with traffic and, if unlucky, could be longer on a road known for its bottlenecks at peak time. I also had regard to the fact that since termination, the Claimant has taken employment which requires him to drive Chelmsford to Huntingdon twice a week. This is a significantly longer journey of about 1 hour and 30 minutes each way and has been for a period of approximately seven months. Objectively considered, I prefer the Respondent's submission and conclude that the journey from Chelmsford to Harlow reasonable daily travel even taking into account the possibility of occasional delays from traffic jams, the Claimant's age and the road conditions in winter months.

106 Even if the employer has a discretion to require an employee to work within reasonable daily travel distance, the exercise of that discretion must be done in a manner which does not breach the implied term of trust and confidence. Here, the Claimant was told on 18 July 2016, without warning or consultation, that he was required to take a permanent post which meant at least twice the daily travel time of his current arrangements and quite possibly more if traffic were bad. The distance was at the limit of the contractual requirement to live within 20 miles of his base. Half of the 10PAs were allocated to Harlow and the Claimant might be expected to attend Harlow for two days a week depending on the arrangement of his clinics. I have not accepted Ms Begum's evidence that the Claimant would only be required to attend Harlow one day a week and that travel time would be included as part of the four hour PA session. In any event, no such commitment was given to the Claimant at any time prior to his resignation.

107 The meeting on 25 August 2016 was not a grievance meeting; its express purpose was to discuss the new job and to provide answers where possible. Whilst the Claimant was specific in his concerns, the Respondent did not provide answers but again gave only general assurances that he would be given support for his skills gaps and that travel time would be included. The Respondent did not provide the Claimant with a draft job plan to

suggest how the clinics at Harlow could be allocated to minimise travel problems or the nature of the clinical work to be provided. Instead, the parties agreed that the Claimant would provide a timetable for the work that he would do at Moulsham Lodge pending the resolution of his grievance.

108 The Claimant exhausted all three stages of the grievance procedure, each time repeating his concerns about the nature of the work, the effect of a nurse-led model and the requirement to travel to Harlow. In her submissions, Ms Keogh sought to rely upon the fact that Ms Begum heard the stage 1 grievance when she had also dealt with the informal stage by way of the meeting on 25 August 2016. This was not a matter identified by the Claimant in cross-examination as part of the conduct which had destroyed trust and confidence and, as such, it does not form part of the reason why he resigned.

109 At none of the grievance stages did the Respondent provide clarity but repeated its position that these were matters to be agreed in the job planning process. This effectively required the Claimant to accept the new job and then rely upon the job plan discussions to agree the detail afterwards. At stage 2, Dr Buckley held that it was not unreasonable to have a job plan requiring travel on a number of days at different locations. Whilst she asked that consideration be given to timings of clinics and locations to minimise travel, Dr Buckley went on to state that the changes to the model of healthcare delivery meant that travel between sites was common practice and there may be future changes to locations of work. At stage 3, Mr Hulme only recommended that the Claimant meet with Ms Begum to agree a job plan to work most practically for all concerned. There was no assurance that the Claimant would be required to undertake the journey to Harlow only once a week.

110 When looking objectively at the effect of the Respondent's conduct surrounding the offer of the job on 25 July 2016, I consider it necessary to take into account the way in which the offer arose. As I have found, on 9 June 2016 the Respondent agreed with the Claimant that the 0.5FTE jobs in the new structure were not suitable alternative employment for him. There was no discussion with the Claimant about the possibility of combining two of the jobs to create a single post. The Claimant and Respondent envisaged his redundancy. A combined post was not addressed in the outcome paper. The suggestion of a combined role to avoid redundancy came out of the blue in the telephone call on 18 July 2016. The Claimant was not offered any further consultation period to explore the work which would be done and he was not offered a trial period for the new job. Mr Gardiner submitted that a trial period was premature as the job planning process had not yet concluded. The Respondent did not, however, tell the Claimant that they would agree the details of the job in planning and then he would have the opportunity of a trial period. Instead the Claimant was told that he was being slotted into the job under the provisions of a policy which did not even form part of his contractual terms and conditions.

111 Ms Keogh submitted that the Respondent appeared to be motivated by the financial cost of the Claimant's redundancy payment. In my findings of fact above, I have accepted her submission. The reason for the decision to offer the combined role was the likely cost of the redundancy payment to the Claimant. The Respondent has not sought to rely upon the cost of the redundancy payment as a reason for its decision to combine the posts for Mid and West Essex. Instead, its case was that the decision was for operational reasons as explained by Ms Begum. I have not accepted Ms Begum's evidence. The lack of analysis of the amount of level 3 sexual health work in the two quadrants leads me

to conclude that there was no genuine operational reason for the decision to combine the posts. This is consistent with the failure to recruit another GUM consultant to replace the Claimant after 27 May 2017 and the ability to rely on Dr Ramogi alone to deliver all of the level 3 complex work.

112 In effect, and in order to avoid a large redundancy payment to the Claimant, two discrete part-time jobs were welded together to create a single full-time job without any discussion with the Claimant, without proper consideration of the way in which this would work in practice or the impact upon the Claimant and without any proper consideration of whether there was sufficient work to justify it. The Respondent failed to pay the redundancy payment because of its size not because of any proper consideration of whether or not the Claimant was in fact redundant or whether the new job properly considered was suitable alternative employment. I am satisfied that it is conduct which was sufficiently serious to be a breach of the implied term of trust and confidence.

113 Mr Gardiner on behalf of the Respondent submits that the Respondent acted reasonably in responding to the Claimant's concerns during the grievance process, for example the HIV work and including travel time in the job plan. He relies for both on the evidence of Ms Begum and the notes of the meeting on 25 August 2016. I have found that the meeting did not address the detail of the clinical duties which the Claimant would undertake in each quadrant, on what days and where the clinics would take place, how travel time would be reflected or how SPAs may be used for HIV work. I have not accepted Ms Begum's evidence that she offered the Claimant the use of SPA time for HIV work. Whilst the Respondent listened to the Claimant's concerns, it did not address them by providing the clarity required particularly about travel time to Harlow which was the Claimant's main concern.

114 The Claimant also relies upon inadequate work facilities at Moulsham Lodge and the lack of secretarial support. I have found that the Claimant had no private office but was required to share a small area, where people left their personal belongings and took their lunch and breaks at the shared desks and worktop. The Claimant was forced to deal with confidential matters in his car or at home as there was no adequate facility to deal with such matters at Moulsham Lodge. Mr Gardiner submits that the Respondent was limited in what it could do with a building owned by Provide. To some extent this is true, for example with regard to the provision of toilet facilities, but here what was required was more straightforward, namely the allocation of a room to be used as a private office. There is no evidence that the Respondent asked Provide to do this or attempted to arrange it itself. The lack of an office, combined with the fact that after transfer, he no longer had his own secretary (or indeed any secretarial support), made it much more difficult to produce letters and undertake confidential tasks. The Respondent has not provided the risk assessment undertaken in May 2016. Whilst not a repudiatory breach in their own right, I find that the inadequacy of Moulsham Lodge and the lack of secretarial support were in breach of the implied terms of the contract to be considered as part of the cumulative effect of the Respondent's conduct.

115 I accept that the effect of the Respondent's conduct cumulatively as described above was likely to destroy or damage the relationship of trust and confidence. The Respondent was also in breach of the implied terms about work facilities and support resources. Looking at the totality of the Respondent's contract it amounted to a repudiatory breach of contract. The Claimant sought to persuade the Respondent to rectify the breach by use of the grievance process. Ultimately he was unsuccessful and it

was the final refusal of his grievance on 20 March 2017 which confirmed that the Respondent intended to press ahead with the variation to his contract and require him to accept the new job which was caused the Claimant to resign. In other words, each of the terms breached and their combined effect was an effective cause of his dismissal.

116 During the course of the grievance process the Claimant worked under protest and on an interim job plan based at Moulsham Lodge only. His conduct during this period was not such as to affirm the contract and/or waive the breach. The Respondent submits that he did affirm the contract due to his conduct between 20 March 2017 and 27 May 2017 by either delaying too long or by providing Ms Begum with possible dates for a job planning meeting. I disagree. The Claimant was a long serving, well paid consultant discharging an important role in sexual health services. The decision about whether or not to give up such a job requires a reasonable period of thought and the circumstances of the dispute required a reasonable opportunity for the Claimant to take professional advice. The grievance process itself had taken six months to conclude. A delay of two months for the Claimant to decide his response is not unduly long. During that time the Claimant was not working to the disputed terms and when pressed for a date for a job planning meeting, the Claimant sent two emails before then resigning: one which was essentially non-committal and a second which proposed two dates. I do not accept that such conduct is sufficient to amount to an affirmation of the contract or a waiver of the breach.

117 By way of remedy, it is agreed that the Claimant is entitled to a basic award of £14,670. There is a dispute about the amount of a compensatory award: the Claimant seeks only his 12 weeks' notice plus £950 for loss of statutory rights. The Respondent raises possible arguments about causation, mitigation in the notice period and avers that statutory rights should be valued at £450. It may be that the parties can resolve this dispute without the need for a further hearing given that both are professionally represented. If not a remedy hearing will be required. The parties should send in dates to avoid for the period 1 July to 30 September 2018 within 14 days of this Judgment.

The Reason for Dismissal

118 The Claimant contends that the reason for dismissal was redundancy. The Respondent asserts that it cannot have been redundancy as there was no redundancy situation in circumstances where the Claimant continued to be expected to perform 10 PAs per week as a GUM consultant. The presumption of redundancy in s.163(2) does not apply to Part X Unfair Dismissal.

119 At the commencement of the consultation period, the Respondent anticipated a reduction in the need for consultants and speciality doctors in the new structure. As the outcome report confirmed, the requirement for consultants and speciality doctors had decreased from 68.56 PAs to 45.3 PAs. As Ms Begum confirmed in evidence, before the restructure the Respondent employed 2.79FTE consultants but after the restructure it required only 1.5FTE across all three quadrants. Another way of looking at it, prior to restructure Mid Essex had required one FTE consultant, after restructure it required only 0.5FTE. I am satisfied that there was a redundancy situation. This is not necessarily the same as saying that it was the reason for dismissal.

120 For the reasons set out above, I have concluded that there was a repudiatory breach of the implied term of trust and confidence in the way in which the Respondent dealt with the reorganisation process. It is a necessary part of finding a breach of that

term that the Respondent acted without reasonable and proper cause. The restructure gave rise to a redundancy situation but the way in which the Respondent conducted itself towards the Claimant in that situation was without reasonable and proper cause as it was motivated by a desire to avoid a large redundancy payment which would otherwise be due. I have not accepted that the reason was genuine operational need but was entirely financial. The Respondent has not proved a potentially fair reason for this conduct.

121 In addition to a breach of the implied term of trust and confidence, I have also found breaches of the express term about place of work and the implied terms about suitable facilities and support. These were also part of the conduct which caused the Claimant to resign. The change in the Claimant's contractual place of work arose from the redundancy situation but the principal reason for making the change was the desire to avoid the redundancy payment. The reason for requiring the Claimant to work from Moulsham Lodge and the absence of secretarial support was not because of the redundancy situation. The Claimant had worked at Moulsham Lodge and without a secretary since transfer. The reason he did so was because the Respondent did not operate its services out of Fairfield any longer and did not operate a model which provided dedicated secretarial support. It was not by reason of a cessation or diminution in the requirement for GUM consultants either generally or in Chelmsford but for some other substantial reason. The requirement to travel to and from Harlow was not a breach of the implied term for reasonable daily travel.

122 Section.98 requires the Respondent to show that the sole or principal reason for dismissal was potentially fair. In a constructive dismissal case, the reason for dismissal must be the conduct of the employer which amounts to dismissal. Part of the employer's conduct was for some other substantial reason, part of it was without reasonable and proper cause. The conduct without a potentially fair reason was the principal cause for the Claimant's resignation. Although he was unhappy about it, the Claimant had not resigned after transfer when required to work at Moulsham Lodge and without a secretary. It was the conduct of the employer in "cobbling together" (as the Claimant terms it) a combined new post to cover two quadrants and the requirement to accept the job and only determine the precise arrangements for travel and clinic times afterwards which was the principal reason for the dismissal. The Respondent has failed to establish a potentially fair reason for dismissal and the claim of unfair dismissal succeeds.

123 As a fair reason has not been established, it is not necessary to consider s.98(4) and fairness overall. If it had been, I would found the dismissal to be procedurally unfair. There was no proper consultation with the Claimant. He attended one consultation meeting at which it was agreed that he would be put forward for redundancy. There was no consultation about alternative employment in the form a combined post at this meeting or before the end of the consultation period. The consultation outcome report did not consider this. The Respondent sought to impose the new post on the Claimant out of the blue on 18 July 2016 and without adequate consultation about the way in which it would work in practice. The specific duties of the new role and the way in which they would be discharged were never set out in clear detail for the Claimant.

Redundancy payment

124 For the reasons set out above, I have concluded that there was a redundancy situation and that the Claimant's job as full time GUM Consultant in Mid Essex was redundant. He was dismissed (having resigned in response to the Respondent's

repudiatory breach of contract) within s.136 ERA 1996. For the purposes of this claim, there is a statutory presumption of redundancy in s.163(2) ERA 1996. However, an employee will not be entitled to a redundancy payment where they unreasonably refuse an offer of a new contract which is considered suitable alternative employment. The Respondent submits that the combined post was suitable alternative employment; the Claimant disagrees.

125 In deciding this issue, I reminded myself that it is the provisions of the contracts which must be compared individually (not as a package) and not the way in which the work would be delivered as discussed in job planning. Little weight can be added to the view on 9 June 2016 that a role in the new structure was not suitable as at this time it was considering a 0.5FTE equivalent and not the combined role which arose only in July 2016.

126 I refer back to my conclusions on the **Hogg v Dover College** issue above. The Claimant was employed as a Consultant in GUM in both the old and the new job. The precise work to be undertaken and how it was to be delivered was not an express or implied term but a matter for agreement as part of the flexibility of the job planning process both in the old and the new job. He would not be required to undertake duties for which he was not professionally qualified or sufficiently experienced. The implied terms about suitable place of work and suitable supporting resources applied in both jobs.

127 The only term of the contract which effectively changed was the location of work as the new job introduced a requirement to work at a second base, namely Harlow. This required the Claimant to travel a further distance for part of his working week. Objectively considered, I have concluded that this was reasonable daily travel such that whilst the terms of the contract differ, the new job would nevertheless have been an offer of suitable alternative employment. The Claimant was not offered a trial period and refused the offer without requesting one, electing instead to remain at Moulsham Lodge on his old contract. This is unfortunate as it deprived both parties of the ability to draft a job plan which could have included sufficient detail to allay the Claimant's concerns about the journey. I took into account the Claimant's concerns about possible long journeys due to traffic jams, his age and the road conditions in winter months and also that since his employment ended, he has worked for seven months in a job which requires him to drive an hour and a half twice a week even in the winter months. Whilst this is not determinative, it tends to suggest that a 40 minute journey is not so long as to be unreasonable in the Claimant's personal circumstances.

128 I accept the Respondent's submission that the new job was suitable alternative employment and that the Claimant was not entitled to a statutory redundancy payment.

Employment Judge Russell

25 May 2018