



# EMPLOYMENT TRIBUNALS

Claimant  
Mrs K Kuldo

v

Respondent  
Argos Limited

Heard at: Cambridge

On: 6 & 7 September 2018

Before: Employment Judge James

## Appearances:

For the Claimant: Mr L Kenealy, Solicitor

For the Respondent: Mr N Bidnell-Edwards

## JUDGMENT

The Claimant was unfairly dismissed by the Respondent.

## REASONS

1. This is a claim coming before the Employment Tribunal sitting at Cambridge. The Claimant brings claims of constructive unfair dismissal and wrongful dismissal arising out of an attempt by the Respondent to place her in a new role within the Respondent following a corporate takeover.
2. The Claimant resigned from her position with immediate effect on 9 November 2017. In her claim dated 6 January 2018, she asserts that following an amalgamation of the Respondent and Sainsburys Limited, there was an organisational restructuring during the course of which she was 'mapped' into a new position rather than being made redundant.
3. The Claimant challenges the basis upon which she was mapped into the new position and asserts that the Respondent's process for offering her that role breached the implied condition of trust and confidence entitling her to treat the contract of employment as being at an end when she resigned on 9 November 2017.
4. In its response dated 22 February 2018, the Respondent asserts that the process adopted by it to offer the Claimant a new role and function was

done to avoid her being made redundant and was conducted in a fair manner.

5. The relevant law is found at s.98 of the Employment Rights Act 1996.
6. The Tribunal was presented with an agreed list of issues which formed the basis of the matters presented to the Tribunal.
7. The Tribunal received evidence from: Mr Ryan Maynard, Mr Sam Daniels, Mr David Gray and Mrs Seanne Pedder on behalf of the Respondent and from the Claimant on behalf of herself. In addition, the Tribunal has had the benefit of an agreed bundle of documents comprising 452 pages. I have also had the benefit of written submissions from both parties. I have taken all the documents into account in this decision.

#### The Facts

8. The Tribunal finds the following relevant facts.
9. The Claimant commenced employment with the Respondent on 5 November 2007. At that time, she was employed as an Assistant Financial Analysts - a position in Band E of the Respondent's pay structure. She was promoted to Group Central Costs Manager, effective 1 May 2016, a role within Band D of the pay structure. There has been produced to me a job profile for Group Central Costs Manager, the main purpose of that job is stated to be,

“Provide analytical support to the Director of Group Finance, including financial information and analysis, to help make sound commercial business decisions. Lead the financial reporting and financial planning for the Group Central Costs and Central Activities and provide financial management and support to the Directors and Senior Managers of the Group's Central Functions in producing their budgets, forecasts and plans. Ensure that the Group Commercial Finance Controller has both a short and long term view of pertinent issues and any material risks and opportunities, and provide a consolidated view of the constituent parts of Central Activities.”
10. The document sets out a number of key result areas, the first three of which state:
  - 10.1 Evaluate, challenge and recommend improvements in Financial Control mechanisms in order to reduce financial risk – ensuring that standards are compliant with PLC reporting structures and requirements;
  - 10.2 Develop, maintain and communicate the Group recharge methodology ensuring recharges are reasonable, justifiable and transparent;

- 10.3 Ensure that recharges are accepted by the operating companies, through engagement with senior finance representatives providing explanations as appropriate.
11. There are six other key result areas. The job profile sets out the technical knowledge and experience requirements for the job and then goes on to state the dimensions (financial responsibility).
12. These are described as:
- a. Central Activities (externally reported through Group segment), c.£24 million;
  - b. Group Central Costs, c.£160 million;
  - c. Eight Directors, c.40 Cost Centre Managers, c.80 Cost Centres.
13. The remaining job profile is taken up with sections on problem solving (complexity and creativity) and judgments and decisions.
14. Also in the bundle of documents before me, are two profiles for a Central Costs Manager. The first which was dated 21 June 2017 is a two page document relating to Sainsburys Argos Finance. This is clearly a document prepared as part of the organisational restructuring.
15. There is a further job profile which is undated headed, Group Central Costs Manager, referring to the business as Home Retail Group. It is unclear why and when this job profile was created.
16. On 13 October 2016, the amalgamated Sainsburys Argos Group held a First Group consultation meeting to introduce an overview of the business case for the functional proposals for the reorganisation of the business. Following this on 22 June 2017, there was a finance organisation review briefing setting out the new structures for Financial Management. That review identified potential redundancies and indicated that there would be a consultation process. That process would be on a collective and individual basis. The collective consultation would be with the employee representatives and in relation to individual consultation it was stated that once collective consultation is finished, all impacted colleagues would be invited to attend individual (one to one) consultation meetings.
17. On 22 June 2017, Mr Ian MacMillan, the Chief Financial Officer of the Respondent made an email announcement about changes to the structure in Sainsburys Argos Finance. He identified the possibility of 55 roles being at risk of redundancy. He described the new Finance Operating Model in which the Claimant worked as part of the Financial Planning and Analysis

(FP and A) Group. That email identified Mr Steve Goodluck as the person to lead the team dealing with FP&A as he was the head of Financial Planning and Accounting.

18. On 11 July 2017, there was a Collective Consultation Meeting 2. At this meeting they reviewed the minutes from the Group Consultation Meeting 1 and any feedback received from it (these documents were not within the bundles). The meeting also considered the principles for Role Mapping. Mapping is the process adopted by the Respondent to determine whether an existing employees' role was redundant or whether there was a new role in the new structure into which they could be transferred.
19. The determination for this process was the so called 30:70 split. It is agreed that if the new role identified for any particular employee is less than 30% different from his or her existing role, the person could be transferred directly (mapped) into that role. In the event that two or more persons were identified as being suitable to be mapped into any particular role, a selection process would have been undertaken to determine who out of those two or more people were best suited to that role and function. Seven mapping principles were identified and were laid out at page 10 of the review documentation, (page 155 of the bundle of documents).
20. In June 2017, the Claimant received an announcement about the restructuring of the finance function of the Respondent. She was advised that her role was at risk of redundancy and that she was pooled together with Miss Hannah Cropp, the Argos Central Costs and Establishment Manager. They were both to be considered for a newly created position of Central Costs Manager. During the meeting of which she was so advised about being at risk of redundancy, she was told that the process would start with a group consultation in June or July 2017 followed up by individual consultations at the beginning of August 2017. The Claimant was told that she would have to apply for the role if she wanted it and that there would be a selection process in place. The Claimant was advised that the process would be fully explained to her at the first consultation meeting and that the interview for the new role would take place after the first consultation meeting with the outcome to be presented at a second consultation meeting. As she had no great detail about the process at that time she raised no concerns. The Claimant was provided with the job description for the new role a couple of days before she left on planned holidays at the end of July and as a result she did not have sufficient time to critically analyse the position. However, the group consultation documentation indicated that if she had had any concerns about it she was to raise them during her individual consultation. In the event there was no consultation.
21. On 20 July, while the Claimant was on holiday abroad, she received a text manager message from her line manager, Sam Daniels, informing her that Hannah Cropp had resigned and that as a result she was mapped into the new Central Costs Manager position. On receipt of this information, the

Claimant considered the job description that she had been provided and the nature of the new position. She concluded that in light of her career aspirations it was not a suitable role. She considered that it was a role of lower status with fewer senior responsibilities, a change of job content and as a result would be a downward step for her. She did not believe that the job was 70% similar to her existing job and that as a result she should not have been mapped directly into it.

22. Following her return from holiday, the Claimant requested a catch up meeting with Sam Daniels and she met with him on 1 August 2017. During the meeting she explained that she did not agree with the mapping into the new role and she handed in a counter proposal to the changes to the mapping process. This document is dated 31 July 2017 and is found at pages 173 and 174 of the bundle of documents; it sets out details of the reasons why she considered the new role to be unsuitable. She asked for this counter proposal to be considered as a formal grievance. The Claimant prepared a more detailed version of her counter proposal dated 6 August 2017 which she forwarded by email on 7 August 2017. A summary of her concerns is found in her 6 August 2017 document as follows,

“It looks like the rules for mapping were very general and I do not believe that my role would change by less than 30%.

I believe there are elements in my current role that would not be replaced by similar elements in the new role, therefore changing the role status and responsibilities.

Old roles responsibilities breakdown:

1. Central Functions profit and loss, budgeting / forecasting and business partnering 35%;
2. Developing common managing and agreeing recharges methodology with finance stake holders 30%;
3. Consolidation of other finance functions into Central Activities 15%;
4. Management accounts reporting, head count reporting and board reporting 20%;

Elements 2 and 3 will not exist in the new role. Element 4 is going to be immaterial as there is only a one page report going to be produced by the team for the period end.

Therefore, the responsibilities of the role change by a bigger percentage. Although the role's nature might be similar, proportion of responsibilities change by more than 30% and the main focus is going to be on business

partnering in order to deliver end to end period end and budgeting processes.”

23. A grievance hearing was arranged for Friday 18 August 2017. It was to be Chaired by the Shrinkage and Compliance Controller Mr David Gray. Lesa Elliott an ER adviser also attended the meeting as a note taker and I have seen her notes of that meeting. Following that meeting Mr Gray interviewed Mr Sam Daniels in order to obtain evidence in relation to the Claimant's grievance. Lesa Elliott also attended to take notes and I have seen her notes of that meeting which took place on 30 August 2017. Mr Gray also contacted an employer representative Mr Craig Barson to confirm that he had received no complaints about the mapping process from the Claimant.
24. Mr Gray invited the Claimant to a meeting with him on 4 September 2017 at 3:30pm during which time he would give her the results of her grievance. He had prepared a letter dated 4 September 2017 which is eight pages long and provides an extensive response to her grievance. A copy of that letter was emailed to the Claimant on 4 September.
25. Following the meeting on that day, the Claimant emailed Lesa Elliott stating,

“As discussed at the meeting earlier, can you please confirm on the email that my employment will finish as a result of redundancy with the date to be confirmed.”

Lesa Elliott replied as follows,

“Yes, I raised this point with the ‘Change Team’ who are awaiting response from the Business Area.”

In response the Claimant asked,

“Has the date been confirmed yet?”

To which Lesa Elliott responded,

“I have not had a response yet. I will, of course, let you know once the date is confirmed.”

On 5 September David Gray emailed Lesa Elliott to ask if the Claimant was leaving through redundancy or resigning? To which Miss Elliott responded,

“I think she has made it very clear she is not resigning; therefore, this will be a redundancy. We will not be compensating her for ‘lack of office’, but I think we need to think long and hard about the PILON as all other colleagues being made redundant are being paid in lieu...”

26. It appears that following the Claimant's indication that she would not accept the job, they were going to be treating her departure as a redundancy without payment of a redundancy payment. The Claimant chased the matter on Friday 8 September and was told that her letter would be issued within the next couple of working days. However, on 8 September Sam Daniels the Finance Controller, issued a letter to her headed 'Sainsburys Argos Finance Restructure', confirming that effective from 9 November 2017 she would carry out the same duties as previously but her job title would be Central Costs Manager.
27. In response to this letter on 10 September 2017, the Claimant wrote a grievance appeal seeking to appeal the decision in relation to her grievance. She set out her detailed reasons over three typed pages, she emailed it to the Respondent on 10 September. On 11 September, Lesa Elliott wrote to the Claimant confirming receipt of her grievance appeal. On 11 September 2017, the Claimant was signed off as unfit for work due to anxiety for a period of one month. On 15 August 2017, Mrs Seanne Pedder wrote to the Claimant confirming that her grievance appeal would be heard on 18 September 2017.
28. I have seen a copy of the notes of that meeting. Following that meeting, Mrs Pedder asked to see the Claimant's existing role profile and her new profile as Central Costs Manager. She also contacted Mr Maynard, Mr Daniels and Mr Goodluck as follows,

“As you may be aware I Chaired a grievance appeal meeting today with Kasheer Culdow. To support my investigation, I need to review the mapping and pooling considerations and decisions that were made with regards a number of specific colleagues that Kasheer has identified as part of her appeal. Can you suggest a suitable time for us to get together to discuss? Ideally if we could meet as a collective that would be great.”
29. On 18 September 2017, Mr Daniels provided Mrs Pedder with a copy of the job specification for the new role which is a four page document containing two further pages beyond that apparently provided to the Claimant originally. Mrs Pedder was also eventually provided with a copy of her existing job profile. On 18 September the Claimant attended a meeting with Mrs Pedder and I have seen a copy of the notes of that meeting.
30. Mr Daniels was asked to undertake a comparison of the old roles and the new role and was provided with a matrix upon which to undertake that analysis. I have seen a copy of the completed matrix which was forwarded to Mrs Pedder on 29 September 2017. The outcome indicated that the old role and the new role were very similar. On 2 October 2017 Mrs Pedder wrote to the Claimant with the outcome of her grievance appeal. In a letter covering over three pages she analyses what she understood the

circumstances to be and rejected the appeal. The letter did not include a copy of the completed matrix from Mr Daniells.

31. On 12 October 2017, the Claimant's legal representatives wrote to the Respondents with what was effectively a letter before action.
32. On 9 November 2017, the Claimant resigned her position with immediate effect.

#### Decision

33. At the heart of this claim is the process used by the Respondent to reorganise its workforce following Sainsbury's takeover of Argos. Three matters cause me significant concern. First the lack of any proper consultation with the Claimant. Second the use of the so called 70:30 comparison of the old role and new role for an employee and the apparent lack of understanding of how to apply this metric which is claimed to be an industry standard. Third the lack of any evidence to show that any person undertook and full and proper assessment of the 70:30 metric even when it was clear that it was at the heart of the Claimant's complaint. I shall deal with these three matters below.
34. I have noted the documentation provided for the First Consultation Meeting held on 13 October 2016 in relation to the Group Finance restructure. Within that document the Respondent sets out what it means by consultation. It states that 'Consultation is about seeking the opinion of others, to help make a decision that concerns them before the decision is made, but retaining the right to make the final decision. It allows colleagues to influence decisions.' The documentation sets out the redundancy terms which are much enhanced over the statutory redundancy compensation. Having set out the possibility of redundancies the documentation provides for a further meeting on 19 October 2016. The Claimants role was unaffected by this restructure.
35. On 22 June 2017 the Respondent issued a Finance Organisation Review following the Sainsbury's takeover of Argos. The document is 49 pages long. There is a good deal of 'management speak' within the document. The proposed new operating model is described including new reporting lines. I have noted that new structure for Financial Planning and Analysis. At section 3.6 of the Review is a section called 'Proposals - impact'. It states that 'We have mapped colleagues to roles within the new structure which are either the same or similar to the roles they do today. If no roles are the same or similar to your role and/or if your role is moving to a new location, unfortunately you will be 'at risk' of redundancy as a result of these proposals. In some cases, there may be a new role available which you could consider as an alternative to redundancy. In some cases, there are fewer roles available than colleagues pooled for them. If this applies to your role, you will be at risk of redundancy. A selection process will take place and colleagues with the highest score will be confirmed into the



available roles. Your line manager will discuss the impact of these proposals on your role with you personally as part of the communications supporting the announcement.'

36. Section 4 of the Review refers to Consultation. It confirms that the consultation process will involve both collective and individual consultation. It states that 'During consultation, we will share details of the proposals with you and provide an opportunity for you to share and explore alternative proposals if you wish. We will also consider ways to minimise the impact of the proposals on colleagues, for example by redeployment to other roles. We will also discuss the process we aim to follow to implement the proposals.' Details of proposed collective consultation are set out. Details of individual consultation are also set out. The Respondent confirmed that there would usually be three individual consultation meetings the time line for which would be adjusted to accommodate for example holidays. It was stated that 'Colleagues will be reminded of the proposed changes at their 1st consultation meeting and will have the opportunity to discuss how the changes impact them personally. If applicable, the outcome of the assessment processes for colleagues pooled against the same or similar roles, will be confirmed at the 2nd individual consultation meeting.'
37. The above consultation processes should be compared to the process undertaken by the Respondent. The Claimant's line manager was Mr Daniells. He confirms that he spoke to the Claimant and another employee, Hannah Cropp, on the 22nd June 2017 about how the restructure would affect them. He told them they had been 'mapped' together for the role of Central Costs Manager and thus they were pooled together for that role. The Claimant has told me that she raised no significant questions on 22 June 2017 as she expected to discuss the proposals during individual consultation and I find this to be an entirely reasonable and proper expectation. Mr Daniells has explained that he was not involved in this process and was only involved in implementing the proposed restructure. Mr Daniells has told me that it was clear that the Claimant would be on leave at the time it was proposed individual consultation would commence and that it was recognised that there was a need to work around this. However while the Claimant was on leave Ms Cropp resigned. I have noted what Mr Daniells says in his written statement:
- 'This closed down the need for a pool and (the Claimant) would be mapped into the new role. I wanted to update (the Claimant) immediately so that she knew she would not be moving straight into consultation on return from holiday. For this reason I texted her that she was no longer at risk.'
38. The Claimant has told me that on receiving the text from Mr Daniells she thought about the proposed move into the CCM role and thought that it was unsuitable for reasons discussed below. She considered that she should not have been mapped into the CCM role. On her return from leave the Claimant sought a meeting with Mr Daniels which eventually took place

on 1 August 2017. At that meeting she handed in a detailed counter proposal for changes to the mapping the Group Central Costs Manager role into Central Costs Manager role'. This document made it clear that the Claimant did not think that the new role met the mapping requirement of being 70% the same as her existing role. Mr Daniells said that he would familiarise himself with the document and respond to her. Within a few days Mr Daniells told the Claimant that the Respondent thought the two roles were similar in nature and it had been right to map them together. He stated that following Ms Cropp's resignation it was right to map the Claimant directly into the CCM role and that as a result there would be no individual consultation.

39. It is clear that Mr Daniells treated the resignation of Ms Cropp as an end to the process. It is clear that he considered that as the Claimant had been mapped into the CCM role for which there was no longer a pool there was no need to consider any consultation. I find that this is wrong and contrary to the Respondent's consultation proposals at Section 4 of the Review documentation noted above. I find that there is nothing within the documentation to indicate that the mapping process fell outside the consultation process. I am satisfied that the Respondent failed to undertake any consultation with the Claimant and that this represents a breach of the implied condition of trust and confidence as well as the stated policy of the Respondent.

40. I have considered the mapping process undertaken by the Respondent. There are a number of concerns. The Respondent has described that process in a number of ways. My Ryan Mynard describes the mapping process and principles at paragraphs 11 to 16 of his statement. He makes some important comments as follows:

'In those cases where there was a continuing need for the same, or an extremely similar role, the colleague was 'mapped' into the comparable position in the new structure. In such cases we had determined that their role was not redundant, but would continue unchanged, or with minimal changes that did not impact on the essential substance of the role.'

'In terms of the substance of the role, as is clear from the mapping principles, we would consider the proportion of the same or broadly similar activities between a colleagues current and new role. Essentially we would ask ourselves 'what was the nature of the work the colleague was doing on a day to day basis, and would the nature of the work essentially be the same in the new role?' We would also consider wider factors such as line management experience, experience level and qualification requirements. Also a role would only be mapped if the location of the role would remain the same.'

41. I have also noted the Role Mapping Principles outlined in the second Collective Consultation Meeting in relation to the Proposed Finance Restructure dated 11 July 2017. The principles state that 'The proportion

of broad 'as is' activity in a colleagues current role versus the proportion of the same or similar activities in a colleagues new role is a factor that is taken into consideration. For example, providing insight to influence decision, or analysis to understand performance.' This clearly anticipates an analysis of day to day activities.

42. A group of five managers, including Mr Mynard and Mr Andrew Goodluck undertook the mapping process but I have only received evidence from Mr Mynard.
43. I have noted that subsequently Mr Mynard referred to the 'fundamental point' of the mapping process was that 'the essence of the role remained unchanged.' There is contradiction in that statement as the term 'essence' is a far broader concept than the analysis of day to day activities. There was further contradiction from Mr Ryan when he was cross examined. He told me that when applying the mapping principles there was no consideration of tasks and duties. He said that he and those working with him to map roles had a clear understanding of the roles but that consideration of what time they spent on the roles and tasks was a key issue. Mr Mynard also made it clear that they did not refer to role profiles as he told me that they were only used in cases where they did not have a clear understanding of the roles but that in the Claimant's case they had a clear understanding. I have also noted that at the time of mapping the profile for the Claimant had not been completed and that this was accomplished by Mr Daniells after the decision to map the Claimant. Mr Mynard confirmed that he had only looked at the role profiles as part of his preparation for the hearing and had not used them previously. I noted that Mr Mynard's knowledge of the Claimant's work was from 2012 and that the most recent knowledge of her work came from Mr Goodluck from 2015/6. Mr Mynard told me that the rationale for the decision to map the Claimant into the CCM role was not put in writing for any purpose.
44. I find that Mr Mynard was accurate when he stated that the analysis should have been in relation to day to day activities. I am satisfied that undertaking an analysis on any other basis would be inappropriate. It is common for roles to have similar titles and broad duties and responsibilities. That itself does not make the two roles similar. It cannot be said that where two roles contain the same five broad duties and responsibilities but where one role involves working the first two duties 80% of the time and the other works the remaining three duties 80% of the time, those roles are the same or similar. To do so would be to assert that all cost manager positions are similar which is clearly an unsustainable assertion.
45. I have noted that there was no analysis of the Claimant's day to day functions in her existing role and the CCM role. In any event it is difficult to see how there could have been any such analysis because there was no reference to the job profiles. There was no reference to the Claimant's line manager to obtain a full understanding of what she did on a day to day

basis. In the absence of such information it is difficult to accept that the Respondent's mapping team had a clear understanding of the Claimant's existing and new role. I have also noted that the Respondent never bothered to render their mapping decision in relation to the Claimant in writing let alone provide a rationale for that decision prior to notifying the Claimant.

46. I am satisfied that the Respondent did not adopt a proper analysis for the mapping of roles. In the Claimant's case at best it can be said that their decision was reached informally. Mr Mynard tells me that they had a clear understanding but it is equally clear that having identified the need to consider day to day activities there was a singular failure to take them into account. In addition there was no reference to job profiles which would be necessary even if the appropriate approach was simply to look at the 'essence' of the roles. Prior to notifying the Claimant of the decision to map her into the CCM role there was no attempt to provide a rationale for the decision and no analysis of whether the 70:30 metric had been met beyond saying there had been a clear understanding. I am aware that this could have been accomplished because the Respondent attempted to do this during the appeal process as discussed below. I consider that the Respondent's actions are a breach of the implied condition of trust and confidence as well as being a breach of their own policy.
47. Next I have considered whether a proper analysis of the old and new role has ever been undertaken at any time and if so, what that analysis shows. The Respondent improperly terminated the consultation process leaving the Claimant to use the grievance procedure. She commenced this via an e-mail dated 7 August 2017 to which she attached her original counter proposal provided to Mr Daniells and also a rather more details counter proposal. She requested that the counter proposal be considered as a grievance. This request was after she had received a response from Mr Daniells to her original counter proposal on return from leave. The Counter proposal is very detailed and in essence complains that her exiting role is not 70% the same as the new role into which she had been mapped. She provides a detailed explanation for his assertion and an analysis of her day to day work activities. Mr David Gray was asked to investigate the grievance and a meeting was fixed for 18 August 2017. I have seen the notes of that meeting in which it was again made clear that the Claimant did not accept the mapping process. She asserted that the new role was not 70% the same as her existing role. She thought that she was redundant.
48. Mr Gray interviewed Mr Daniells on 30 August 2017 and I have seen the notes of that meeting. Mr Daniells stated that he had taken the Claimant through the mapping principles. He also stated that the Claimant had been relying on a comparison of her role as it was 9 to 12 months prior to the mapping whereas it had changed in that time. Mr Gray also discussed the grievance with Craig Barson who had been a Finance Colleague Representative during the collective consultation process. There are no notes of that discussion but there is an e-mail to Mr Barson dated 31

August 2017. Mr Barson stated that the Claimant had not raised with him any concerns but Mr Gray also noted that colleagues 'may have considered the individual Consultation meetings to be the best forum to raise their individual concerns.' In that regard Mr Gray is entirely correct. It does not appear to have been a concern for Mr Gray that there was no individual consultation with the Claimant. It is also clear from Mr Gray's response to the grievance that he met with Mr Mynard, Stephen Goodluck and James Jones, three of the managers involved in the mapping process, to review and discuss the mapping process. Mr Gray has told me he took notes at that meeting but he has been unable to produce them even though he claims they were returned to the HR department.

49. Mr Gray identified three issues to be determined. First whether the Claimant's existing role differed from her new role by more than 30% for the reasons she had set out in her grievance. Second whether the new role would in any event be suitable alternative employment for the purposes of redundancy. Third was whether her existing role had ceased to exist and she should be considered redundant.
50. Mr Gray invited the Claimant to a meeting at 1530 on 4 September 2017 to discuss her grievance. In the invitation Mr Gray states that the Claimant would have an opportunity to ask further questions. The Claimant accepted the invitation. While a note taker was present at that meeting I have seen no notes. Mr Gray presented the Claimant with an 8 page letter in response to her grievance. Mr Gray has told me in his statement that he wanted to fully understand the mapping principles and to work through them in considering the Claimant's existing and new roles. Mr Gray noted that the first principle was to maintain continuous employment where possible and that this was significant. He also asserted that the mapping principles did not refer to specific tasks 'but used a higher level language'. He claimed that the mapping process required a 'high level, functional review of roles before and after restructure'. He was asked if this was the test as had been outlined by Mr Mynard and he responded that the approach had been the same but he used different language. Mr Gray told me that he had some job profiles before him although it is not clear which versions he reviewed. He accepted that he had not used the 70:30 metric himself but that he was aware of it. He accepts that the Claimant had provided a breakdown of her existing role by reference to percentages but that he had not considered undertaking a similar analysis of her new role because it was not important to him. This is a strange decision bearing in mind the Mr Gray had identified in determining the issues the subject of the grievance that a difference of more than 30% would mean that the Claimant could not be mapped into the new role.
51. I am satisfied that Mr Gray adopted the broad approach to mapping as adopted by Mr Mynard and which I have already found to be incorrect. In the absence of his notes it is not possible to know what advice had been given to Mr Gray by Mr Mynard. Mr Gray did not find the decision to be difficult. He told me that he thought the job profiles are an indication of the principles and conduct expected of an incumbent. In his statement Mr

Gray stated that he could not agree that the roles were more than 30% different but in cross examination he confirmed that he had not put a figure on this. He said that the roles were broadly similar and there was no need to calculate a percentage because the roles were fundamentally similar and not borderline. By following the same approach to the mapping process as Mr Mynard, Mr Gray has also failed to act properly in his assessment of the Claimant's existing and new roles.

52. The Claimant made it clear that she would not accept the new role and there was an e-mail discussion about whether she was resigning or redundant. What is clear is that as of 5 September 2017 Mr Gray knew she would not accept the new role. It is therefore remarkable that Mr Daniells sent the Claimant a letter dated 8 September 2017 stating that effective 9 November 2017 she would carry out her same duties but that her job title would be Central Costs Manager. Apart from being erroneous as regards accepting the new position, the description that she would be undertaking the same duties is wrong as it has been accepted that there were changes and that this gave rise to the mapping process.
53. On 10 September 2017 the Claimant lodged a Grievance Appeal. The basis of that appeal is similar to the basis of the grievance. This was acknowledged on 11 September 2017. Ms Seanne Peddar, the Respondent's Returns Controller, was appointed to hear the appeal and she invited the Claimant to a meeting on 18 September 2017. I have seen the notes of that meeting during which the Claimant repeated her assertion that the new role was more than 30% different from her existing role. She asserted that she should have been made redundant. The Claimant specifically asked for a breakdown of the 70:30 assessment and specified work areas that should have been considered.
54. Ms Peddar asked for and received copies of the relevant job profiles. She asked to speak with Mr Mynard, Mr Daniels and Mr Goodluck. Mr Goodluck sent Ms Peddar a 'framework' that could be used to assess the existing role and the new role. There is no indication as to whether this was an existing document or one created for the purposes of the appeal. The document is quite detailed but makes no provision for assessing the day to day activities and the proportions each element of work bears to the others. Rather it lists functions and asks whether they exist in the old role, the new role or in both.
55. Mr Daniells was asked to undertake a comparison of the old and new roles. He was asked about this in cross examination. He told me that he could not explain why he had been asked to do this when he had played no part in the mapping process. He told me that he had not validated the 70:30 metric. He was asked if he had the 70:30 metric in mind when he undertook the comparison and replied that he was looking at key requirements for the roles and not looking at time spent on activities. He confirmed that he had played no role in 'shaping' the new role but had written the job profile. When asked if he had undertaken an analysis of the Claimant's tasks as percentages he stated that he had not undertaken any time and motion study

and had based his assessment purely on experience. As a result the comparison undertaken by Mr Daniells did not validate the 70:30 metric.

56. It is clear that Ms Peddar thought that the purpose of the comparison was to validate the metric and she emailed Mr Jones on 26 September 2017 thanking him for sending through the job profiles and stating 'Apologies I was under the impression following the discussion, you and Sam (presumably Mr Daniells) were going to review the two profiles again considering the task and activity type with a view to validating the <30%. I recall Ryan clarifying that this was something you guys would work through.' Ms Peddar received no clear response to this inquiry beyond being provided by Mr Daniells with a completed framework without any percentages on 29 September 2017. Ms Peddar does not appear to have pursued the matter further.
57. On 2 October 2017 Ms Peddar wrote to the Claimant with the outcome of the appeal. It is sufficient to find that she dismissed the appeal on the same basis that the grievance had been dismissed. She did not have any assessment of the 70:30 metric before her notwithstanding that this was referred to as an issue. Further she did not provide the Claimant with a copy of the comparison created by Ms Daniells despite it being an integral part in Ms Peddar's decision making process.
58. I am satisfied that the Respondent has at no time done an assessment based on percentages in relation to the Claimant's existing and new roles. The closest they got was the request by Ms Peddar on 26 September 2017 but for some reason this was not pursued. There are a number of reasons why this is unsatisfactory. First, having created or adopted the 70:30 metric for the purposes of mapping and relied upon it to map the Claimant into a new role, it is entirely unsatisfactory for the Respondent to fail to justify their determination in that regard. This is even in the face of a grievance and an appeal which specifically relate to that metric. It appears that the Respondent was determined not to undertake a justification of the metric. It is not possible to understand why this is the case.
59. The failure to undertake any justification leaves the Claimant without any proper understanding of the basis on which she was mapped. She was effectively told by management that we know best and you need not be told the reasons why. Coupled with the failure to consult and the fact that the Respondent did not in any event approach its mapping assessment on an assessment of day to day activities it is unsurprising that the Claimant had to pursue her grievance.
60. There have been two flaws in the grievance procedure. First, Mr. Mynard and his colleagues having adopted a broad approach to mapping role instead of looking at day to day activities and their proportions, the failure to identify that this was an incorrect approach meant that all subsequent consideration of the mapping process was going to be wrong and unfair. Second, despite the 70:30 metric having been adopted at the request of

the Respondent, there has been no attempt to provide a justification for mapping the Claimant based on percentages.

61. I have next considered whether there is any justification for the Claimant's assertion that her role would change by more than 30%. The Claimant is ambitious and, using the vernacular, upwardly mobile. She has been a good employee and there has been no complaint about any aspect of her work. The Respondent has raised an issue about at what point in time her existing role should be assessed. The Claimant has always adopted her role as it stood prior to the Sainsbury's takeover. There is no doubt that her role changed following the takeover and as a direct result of it. However I find that these were temporary changes pending the full restructuring of the financial department. Accordingly in conducting the mapping process the Respondent should have considered her role as it stood immediately prior to the Sainsbury's takeover.
62. I am satisfied that the Claimant's position was much diminished in status and responsibilities in the new role. In her existing role she reported at Director level. She had significant input in providing financial information on which Director level decisions were made in relation to profit and loss, budgeting/forecasting and business partnership. The Claimant assessed that this comprised 35% of her role and function. In the new role she reported to sub-board level and her financial information input was reduced to a single page which would be amalgamated into a larger report compiled by other employees.
63. In her existing role the Claimant was responsible for what were known as recharges. This involved allocating centrally paid costs to stakeholders within the Respondent's structure. She assessed this to be 30% of her role and function. According to her job profile as Group Central Costs manager she had financial responsibility for central costs of £160 million split between 5 main operating areas. Argos alone accounted for £70 million in recharges. In the new role recharges were reduced to £5 million. The Claimant has referred to numerous other changes which are best outlined in her solicitors four page letter dated 12 October 2017. I have noted that the Respondent provided a four line response to this letter which did not comment on any details or issues.
64. During the course of the proceedings the Respondent has asserted that the Claimant is wrong in her assessment of the amount of change between her existing role and the new role but they have failed to undertake any analysis on which to base their assertions. I find that the Claimant has established that there were significant changes between the old and new roles and in the absence of any significant evidence from the Respondent those changes represent more than 30%.
65. It is important to note that there is no suggestion that the changes were unmerited. They were a direct result of the Sainsbury's takeover and I do not find that they represent anything other than necessary changes.



However I am satisfied that the differences between the two roles exceeded 30% and as a result the Claimant should not have been mapped into the new role. Doing so represents a breach of the implied condition of trust and confidence.

66. According to the Respondent's own policy as set out in the review and consultation documentation the consequence for the Claimant should have been that she was made redundant which was her desired alternative to taking the new role which she found unsuitable. I have noted that during the first consultation which did not directly affect the Claimant's position provision was made for an enhanced redundancy payment. This was not referred to in the Finance Organisation Review and in the absence of agreement further evidence may be required to establish whether the enhanced redundancy provision would have applied to the Claimant had she been made redundant.
67. I have noted that during the course of the above conduct at various times the Claimant was signed off sick. I do not find that her absence on sick leave has any significant impact upon my findings.
68. I have considered whether the Claimant was directly dismissed by the Respondent and I am satisfied that she was not. However I am satisfied that the failure to undertake consultation; the failure to properly assess the existing role against the new role for the purposes of mapping and the failure to conduct a proper assessment for the purposes of the Claimant's appeal (even though this was clearly recognised as appropriate by Ms Peddar) are all breaches of the implied condition of trust and confidence. Further I am satisfied that they are each individually sufficiently serious to be repudiatory. I am satisfied that the Claimant resigned in response to those breaches. It is clear that she did not affirm the breaches as she made it abundantly clear that she would not accept the new role. This was despite the Respondent appearing to ignore her and writing to her to confirm her start date in the new role.
69. I have also noted that the Respondent asserts that in the event that the Claimant was redundant the new role was suitable alternative employment. I do not agree. If, as I have found, the Claimant should not have been mapped into the new role it was because that role was more than 30% different from her existing role. That is a sufficient difference for me to conclude that the new role could not be suitable alternative employment.
70. The Respondent has asserted that if there have been procedural errors the circumstances are that the Claimant would have been dismissed in any event. That argument is not sustainable as the Respondent's main argument has been that she would have been retained through the mapping process.

71. The Respondent has argued that the Claimant did not resign in response to any breaches of contract by the Respondent. The basis of this assertion is that the Claimant applied for other jobs while employed by the Respondent and only resigned as a result of being selected for one of those jobs. The Claimant has told me that that she made contact with agencies as soon as she realised that she might be redundant either by reason of not being selected from the pool with Ms Cropp or as a result of the mapping process. That appears to be a good precautionary step. I have noted that from the outset she has asserted that she should have been made redundant if the only job available to her was the new role. She has not sought to conceal her attempts to find alternative work. I have noted that she arranged for two prospective employers to contact the Respondent for references. The Respondent has described the Claimant's absence on sick leave as being used 'opportunistically' to further her job search. I do not accept that characterisation. The Claimant has been fortunate to obtain a new job that will provide her with significant income which will have a marked effect on her compensation claim.
72. I find that the Claimant was constructively unfairly dismissed. This claim will be listed for a compensation hearing in due course.

6 March 2019

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Employment Judge James

Date: .....

Judgment sent to the parties on

8 March 2019

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For the Tribunal office