EMPLOYMENT TRIBUNALS

Claimant: Ms. M Tokarczyk

Respondent: Portico Property Limited

Heard at: London South by CVP On: 3-6 April 2023(in chambers 25 April 2023)

Before: Employment Judge Mclaren

Members Mr. A Fairbanks
Mr. R Singh

Representation
Claimant: Mr.T Gracka, Counsel
Respondent: Ms. N Gyane, Counsel

JUDGMENT

It is the unanimous decision of the employment tribunal as follows: -

1. **The claim for constructive unfair dismissal does not succeed. There were no breaches of the express contractual terms or of the implied duty of trust and confidence.**
2. **The claimant resigned and therefore the claim for wrongful dismissal does not succeed. There was no entitlement to pay in lieu of notice as the claimant did not work out a notice period.**
3. **The respondent did not contravene section 13 of the Equality Act. This means these claims do not succeed.**

REASONS

Background

1. The Respondent is an Estate Agent and employs 151 staff in various capacities across 15 locations. The Claimant was employed by the Respondent as a Senior Paralegal to work as part of a team of 4 working across the Portico front offices until 25 November 2020.

2. The claimant brings claims of constructive unfair dismissal, direct sex discrimination and breach of contract. The claim form was received on 12 March 2021 following an ACAS conciliation period from 11 to 29 December 2020.We agreed that , due to time constraints we would address liability only.

Evidence

3. We heard evidence from the claimant on her own behalf. An interpreter was provided for the claimant. The language was Polish. For the respondent we heard from Aleksandra Galla, Head of Paralegal, Louise Alexander, Wellbeing and Diversity Manager and Robert Nichols, former CEO. We were also provided with written submissions by both representatives.
4. The written and oral evidence of the three respondent witnesses was consistent throughout and was generally supported by contemporaneous documentation. The claimant's evidence was less consistent. Where documents were included in the bundle that related to events, she suggested that these were fabricated, but had no evidence to support that position.
5. Some of the matters on which the claimant relied were inconsistent. For example, 1 of the issues is that she had to do the work from four colleagues who were made redundant, yet in oral evidence she stated that there was only one colleague who was made redundant. She complained about being left in the office on her own during certain weeks, but the records show that was not the case. The claimant also gave evidence about her contract terms and the right to unpaid leave, but this was not a contractual term. For these reasons we generally prefer the evidence of the respondent's witnesses to that of the claimant.
6. We were provided with a bundle of 361 pages. We agreed to allow in some additional documents produced by the claimant. These were LinkedIn profiles for two former colleagues and an exchange of emails between the claimant and Ms. Galla of 11 May, written in Polish. These documents were not in fact referred to. We also allowed in a list of those the respondent said were part of the 2019 redundancy exercise which was added as page 362.
7. The findings of fact set out below were reached by the tribunal on a balance of probabilities, having considered all the evidence given by witnesses during the hearing, including the documents referred to by them, and taking into account the tribunal's assessment of the witness evidence.
8. Only findings of fact relevant to the issues, and those necessary for the tribunal to determine, have been referred to in this judgment. It is not necessary, and neither would it be proportionate, to determine each fact in dispute. The Tribunal has not referred to every document it has read and/or was taken to in the findings below, but that does not mean it was not considered if it was referred to in the witness statements/evidence.

The issues

9. These had previously been identified as follows.

DISCRIMINATION: JURISDICTION

1. In respect of the Claimant's allegations of discrimination pre-dating 25 November 2020 did these form part of a continuous course of conduct continuing

to that date and as such were the Claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 (EA 2010)?

2. If not, is it just and equitable that time should be extended on a "just and equitable" basis.

DIRECT SEX DISCRIMINATION (s11 and s13 EA 2010)

3.Does the tribunal have jurisdiction to hear the Claimant's claim of direct sex discrimination?

4. What act(s) or omission(s) does the Claimant say amounts to direct sex discrimination?

4.1. By reference to paragraphs 25 – 27 of the Claimant's Particulars of Claim, the Claimant was not asked to return from furlough and told there was no work for her in the paralegal department, and at the same time a male colleague was brought back to do her work.

4.2. By reference to paragraphs 25- 27 of the Claimant's Particulars of Claim, the Claimant's workload was taken from her and distributed amongst colleagues junior to her.

4.3. By reference to paragraphs 25 and 33 of the Claimant's Particulars of Claim, only the Claimant was put through a redundancy process and offered a demoted position

When did such act(s) and/or omission(s) take place?

5.1. The Claimant has not identified a date in relation to the act/omission in paragraph 4.1

5.2. The Claimant has not identified a date in relation to the act/omission in paragraph 4.2

5.3. By reference to paragraph 4.3, 13 October 2020 to 6 November 2020

6. Who does the Claimant say is/are the putative discriminator(s)? The Claimant has not identified any putative discriminator(s).
7. Is Saynthan Sivagnanaman appropriate comparator? There must be no material difference between their circumstances and the Claimant's other than sex.
If there was nobody in the same circumstances as the Claimant, the tribunal will decide whether she was treated less favourably than someone else would have been treated because of her sex.

8. In respect of each of the act(s) and/or omission(s) identified at question 3, did the Respondent treat the Claimant less favourably than it treated, or would treat, the real and / or hypothetical comparator upon whom the Claimant relies?

9. If the answer to 8 is yes:
9.1. Are there any relevant/material differences in circumstances between the Claimant and the comparator(s), other than that the comparator does not share the protected characteristic upon which the Claimant relies? and

9.2. Was sex the reason for the less favourable treatment?

CONSTRUCTIVE UNFAIR DISMISSAL

10. Did the Claimant terminate her employment in circumstances where she was entitled to do so because of the employer's conduct?

11. What was the fundamental breach or breaches of contract that caused the Claimant to resign? The Claimant relies upon the following breaches:

11.1. By reference to paragraphs 5 -7 of the Claimant's Particulars of Claim: The Claimant was subjected to bullying by her manager, Ms Galla, in the form of unreasonable workload and subjected to stress. The Claimant cannot confirm the dates of the alleged bullying but believes it was in summer 2019 following a redundancy exercise. In support of the allegation of bullying, the Claimant relies on the following matters:

> 11.1.1. Ms.Galla allocated the workloads of the four individuals who were made redundant to the Claimant without consultation or discussion.
> 11.1.2. Between 3 and 14 June 2019, Ms Giedyk and Ms.Galla went for holiday, which left the Claimant in charge of the entire legal work, assisting 15 different offices of the Respondent.
> 11.1.3. The Respondent closed its Acton and Bethnal Green offices resulting in the Claimant undertaking work that was previously associated with those two offices.
> 11.1.4. Between 23 August 2019 and September 2019, the Claimant was not allowed to take more than 5 consecutive days off based on company policy, whilst Ms.Galla went for a 2-week holiday, in breach of company policy, leaving the Claimant with her workload to look after.

11.2. By reference to paragraphs 6 – 10 of the Claimant's Particulars of Claim: The Claimant's written Complaint (Grievance) of 19 September 2019 against her manager, Ms Galla, was not properly dealt with.

11.3. By reference to paragraphs 11 – 13 of the Claimant's Particulars of Claim: The Claimant's request for leave was refused (made on 25th October 2019 for leave over Christmas period) and she was called into a meeting where her manager, Ms Galla, was present.

11.4. By reference to paragraphs 14 of the Claimant's Particulars of Claim: From December 2019 onwards - instigation of monitoring and scrutiny of Claimant's breaks and taking notes of her movements by her manager, Ms Galla.

11.5. By reference to paragraphs 15 – 16 of the Claimant's Particulars of Claim: On or before 16 December 2019 the Claimant complained to HR regarding the rationale for scrutiny and monitoring. [the Respondent considers this background rather than a breach on the part of the Respondent]

11.6. By reference to paragraphs 25 – 27 of the Claimant's Particulars of Claim: The Claimant was not asked to return from furlough and told there was no work for her in the paralegal department, and at the same time a male colleague was brought back to do her work in June 20211.7. By reference to paragraphs 25 and 28 of the Claimant's Particulars of Claim: In June 2020 the Claimant was consulted for redundancy and told she was the only person in the pool.

11.8. By reference to paragraphs 29 -33 of the Claimant's Particulars of Claim: Between 13th October 2020 and 6 November 2020 the Claimant goes through redundancy process; the Claimant raises concerns about the selection process; the Respondent refuses to amend the pool, the Respondent fails to consider extending furlough or other reasonable alternatives.

11.9. By reference to paragraphs 33 of the Claimant's Particulars of Claim: Around November 2020, the Claimant is offered a demotion, less favourable role with the Respondent, thus breach of contract.

11.10. By reference to paragraphs 34 of the Claimant's Particulars of Claim: On 16 November 2020 the Claimant raises a written complaint regarding the redundancy process. [the Respondent considers this background rather than a breach on the part of the Respondent]

11.11. By reference to paragraphs 35 of the Claimant's Particulars of Claim: On 25 November 2020 the Claimant advised the Respondent in writing of her intention to commence proceedings and terminate her employment contract, and confirmed termination on 14th December 2020.

12. Was any alleged breach sufficiently serious to constitute a repudiatory breach giving rise to an entitlement to treat the contract as terminated with immediate effect?

13. Did the Claimant, by their conduct, waive any breach?

14. If the Claimant was constructively dismissed, was that dismissal unfair?

WRONGFUL DISMISSAL /BREACH OF CONTRACT

15. Was the Claimant entitled to notice of dismissal? (i.e. was the Claimant entitled to treat her contract as at an immediate end, in light of the Respondent's conduct?)

16. And/or was the failure to pay for the Claimant's notice period a breach of contract arising or outstanding on termination of employment falling under the Employment Tribunals extension of Jurisdiction Order 1994?

REMEDY

17. If the Claimant succeeds in respect of any of the claims above what remedy should be awarded, including compensation for financial loss and in addition injury to feelings and, if so, regarding the latter, what is the applicable Vento band?

18. Is there a chance that the Claimant' employment would have ended in any event? Should her compensation be reduced as a result?

19. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did the Respondent or the Claimant unreasonably fail to comply with it? If so, it is just and equitable to increase or decrease any award payable to the Claimant? If so, by how much?

20. If any of the Claimant's claims are upheld, has the Claimant taken all reasonable steps to mitigate her losses?

Findings of Fact

10. It was agreed that the claimant was employed as a paralegal when she first joined the respondent on 17 October 2017. Throughout her employment Ms.Galla was the claimant's line manager.

The paralegal/ senior paralegal role

11. The role of paralegal was set out in the bundle at page 215. This described the role as to assist with all the legal aspects surrounding the lettings process for new and existing tenants as well as landlords. This will include all the administrative work that coincides with the process.
12. The bundle also contained, at page 217 – 218, a description of the senior paralegal role. These were identical save that the senior role included "as a senior paralegal you will also be responsible for supporting the head of paralegal and deputising in their absence."
13. The main tasks and activities of the paralegal role were set out in 13 bullet points, while those of the senior paralegal were set out in 21 bullet points. The two overlapped to the extent that all 13 of the matters set out in the paralegal role are also contained in the senior paralegal role which included additional tasks.
14. These additional tasks were help with leading the team and contributing to decisions, training/helping/explaining the process to junior team members, guiding and looking after the team when the head paralegal is absent, and checking tenancy agreements/notices/legal paperwork for less experienced paralegals. It also specified the role was to help with training staff, monitoring their progress and supporting the head paralegal when needed. A senior role had to be able to make its own decisions and work under minimal supervision and was to monitor all legislative changes.
15. The claimant was asked about the job description. While she accepted that the paralegal job description did not expressly state that it included training junior team members or stepping up and covering for the head paralegal, she believed that this expectation was included in the last bullet point. It was her evidence that the obligation to carry out other duties and responsibilities fell within the last bullet point- "the employee skills and abilities wherever reasonably instructed".
16. The claimant also stated that when she was promoted to senior paralegal in a conversation with her line manager, she was told that her job was not changing. She referred to the letter confirming her promotion which is at page 113 which stated that all other terms and conditions of the contract remained the same. She accepted that there was no express reference to her job description in this letter but told us that as a job description was part of the terms and conditions this phrase meant there was no change to it. We find that is not the case. The letter confirming the promotion does not mean that there was no change to the job description.
17. Ms Galla was asked about the job descriptions. It was her recollection that they were probably originally written by one of her predecessors with the assistance of HR, but they were something that she kept up to date. She did this particularly when recruiting for a role and it was this description that was used to recruit Mr Sivagnanam. She also told us that the job description for the role of paralegal was part of the advertisement when the claimant applied for her role and she recalled that this had been discussed with the claimant at the time. She also gave evidence that as part of the 2019 redundancy programme, this job description was printed out and given to all those impacted by the

redundancy at that time which included the claimant. We note at page 293 in a letter sent by the claimant on 23 October 2020 she makes reference to the job description she is then sent not been the original copy from 2019. On the balance of probabilities, we accept that the claimant was therefore given a copy of the paralegal job description at least in 2019.

18. Ms Galla was taken to the appraisal documents at page 343. This includes at page 347 information about the promotion to senior paralegal with a pay increase. She explained that in this appraisal meeting she went through the bullet points under each heading and as the meeting ended with a discussion of long and short-term objectives, she confirmed to the claimant that she had been promoted. Ms Galla told us that the claimant had already said in that meeting that she wanted to be promoted, she felt she deserved it and wanted to develop within the respondent's business.
19. Ms Galla told us that as part of this conversation she went through the difference between the junior and senior paralegal role. One difference between the two job descriptions on paper was said to be training. Ms Galla accepted that the claimant had already carried out training before promotion while she was a paralegal. She explained that this was not part of the standard paralegal duties, but was the claimant demonstrating her ability to step up into the senior role and was something that she took on to earn the promotion. While she did these tasks as a paralegal, Ms Galla maintained that they were properly the province of the senior paralegal role.
20. Ms Galla also told us that the role of senior paralegal was not created for the claimant. There had been a previous senior paralegal Jo, who left the business following the 2019 redundancy. She accepted that when Jo had been senior paralegal there had been a considerably larger team of up to 10 people. On the date the claimant was appointed to this role in May 2020 there were no more junior staff until Mr Sivagnanam was appointed, probably around June 2020. The team consisted of four people at that point including Ms Galla. Of these only one was junior to the claimant.
21. Ms Galla agreed that when Mr Sivagnanam started she carried out the initial basic training but told us that it was the claimant who oversaw his work and helped him with new processes. It was also the claimant who was responsible for checking tenancy agreements notices and legal paperwork for her new colleague. This was part of her senior paralegal responsibilities.
22. It was accepted by the respondent's witnesses that the claimant was not given a copy of the senior paralegal job description until the 2020 redundancy exercise. While the claimant is adamant that she did the same things both before and after promotion, we find that this was not her line manager's expectation.
23. While it is agreed that the claimant was already stepping up to the senior role before her promotion, on the balance of probabilities, we accept the line manager's evidence that the greater expectations were outlined to the claimant, and we find it more likely than not that the respondent's expectations of what the claimant would do increased with the change in title and the increase in pay.
24. We accept that in practice the change may not have felt significant to the claimant and there is a significant overlap between the duties of paralegal and senior paralegal, nonetheless we find that the latter role was also responsible for additional tasks and responsibilities. We therefore find that senior paralegal is, therefore, a different and enhanced role from that of paralegal and management properly and reasonably considered this to be the case.

<u>2019 redundancies</u>

25. Mr. Nicholls and Ms. Alexander gave evidence that in January 2019 it was necessary to consider reducing the paralegal headcount because the respondent was proposing to outsource its tenant referencing, a task previously undertaken by the paralegal team. Outsourcing this work would mean a significant reduction in tasks undertaken in-house, and therefore it was proposed that the headcount be reduced from 7 to 3, not including the head paralegal role. The respondent stated that the team included four women and three men. After the redundancies three women were left.
26. Ms. Alexander prepared letters, the proposed structure and a proposed selection matrix. The meetings were chaired by Ms. Galla, supported by Ms. Alexander. Both told us that the claimant was placed in a pool with six other paralegals, and it was proposed to select from this for redundancy, three were to be retained as paralegals. The claimant was successful and was offered the opportunity to try the new paralegal role for a four-week trial period. The claimant completed a trial period and was confirmed as successful on 2 April 2019.
27. There is a dispute between the parties about the numbers in the team before this exercise. At the time the exercise was carried out, it is the respondent's evidence that there were seven paralegals, four were female and three were male. One, Mr. Molony, gave in his notice before the completion of the redundancy process. We were provided with a document which showed seven staff the respondent said were employed and considered as part of the 2019 redundancy exercise. It was the respondent's evidence that of those who were selected as redundant three were male, Joel, Moslim and Thomas, and one was female, Rosemarie.
28. The claimant said that when the redundancies took effect there were only four people in the department, and only one was selected for redundancy. The claimant did not include Mr. Molony because he had resigned prior to this. She also did not include Joel because she believed he was an intern who had already left. She had no recollection of ever working with Moslim and disputed that he was employed at the time of the redundancies. The claimant's evidence was that there were four women in the team when it was restructured and this was reduced by one, Rosemarie so there were three women in the team. At some point in the summer, one individual from this team of four women resigned, Jo, and she was replaced by a man, Mr. Sivagnanam.
29. We were referred to page 362 which was said by Ms. Alexander to have been prepared by her at the time of the 2019 redundancies. She explained that it represented all those who were potentially in the pool for selection and that she did this in order to calculate the redundancy pay. It was for that reason that the document contained an effective date. She confirmed that it represented all those who were impacted by redundancy at that time although she accepted that Mr. Molony resigned before the redundancy took effect. She confirmed that Moslim was originally an intern but had become a permanent employee prior to the redundancy exercise.
30. On the balance of probabilities, we prefer the respondent's evidence as to who was in the team at the time and the status of their employment. Ms. Alexander is in a much better position to know whether an individual is an employee or an intern than the claimant and we accept the respondents' evidence as to the numbers reduced and find that three men left the department. We do not accept the claimant's assertion that the list of staff in the Department who were impacted by redundancy was fabricated. We find that Ms. Alexander was an honest witness who gave evidence to the best of her recollection. There is no

reason to doubt that she prepared this document or that it did what she said. There is no evidence that it was fabricated.

31. It was submitted on behalf of the claimant that the 2019 process did not include any man. We have found that that was not the case and it was in fact largely men who left and women who were retained.

Constructive unfair dismissal

Allocating workloads of the four individuals made redundant to the claimant without consultation or discussion (issue 11.1.1)

32. This relates to the January 2019 redundancy exercise referred to above. Ms. Galla confirmed that the intention within the redundancy exercise was that the retained paralegals would be required to cover additional offices. In effect, the offices covered by redundant colleagues would be serviced by those who remained. However, she did not believe that the workload of any paralegal who remained increased, but it changed from being heavily weighted towards in-house referencing tasks to other tasks across the offices which each paralegal was assigned.
33. Ms Galla estimated that checking references took about 60% of staff time. It was her evidence that the outsourcing of the referencing tasks removed a lot of activity from each, so that taking on extra offices did not therefore mean there was an increase in overall workload. It was put to Ms Galla that this was not the case and that referencing work had not made up such a large percentage as she claimed and that this was not credible. She explained in some detail the nature of the tasks involved and we accept her evidence that it was a substantial part of the paralegals' time and that they had been carrying out a largely administrative function.
34. In cross-examination the claimant was very unclear as to the nature of the complaints she was making. She said that she had made a mistake and it was not four individuals who were made redundant but only one. As she does not accept that the team was as large as the respondent says, it must be her case that it was at best the workload of two people, the one she says was made redundant and Mr Molony who resigned, which was redistributed. She accepted that following that redundancy all members of the team were assigned four offices to look after. She accepted that the work of those who were made redundant was distributed amongst the whole of the team and not given to her in particular. The claimant also believed, however, that the four offices that she was given were the busiest and therefore her workload was proportionately higher than others in the team.
35. Ms Galla was asked about this and told us that she had distributed the offices in such a way that the portfolios and the amount of work were equal. In each group of four some offices were busier than others, but this was balanced out and she did not accept the claimant's contention. Again, we accept Ms Galla's evidence on this point. The line manager is in a better position to understand how work is distributed than one individual within the team. On the claimant's own account, at the time the four offices were given to each member of the team her relationship with Ms Galla was a good one and there is no reason, even the claimant's own account, why she would have been picked on and given a heavier workload.
36. The claimant also took issue with the fact that nobody asked her about what she said was an increase in her workload and this should have been discussed beforehand. It was a breach not to ask her if she could cope with the extra work.

37. We find that there was a redundancy consultation and that as part of this she was shown job duties and was given a four-week trial period. This is confirmed within the documentation. A trial period is an opportunity to consider the new role and we conclude therefore that she was aware of how the arrangement was going to work and she had an opportunity to decide whether she wished to accept it or not. It was agreed that one employee did not continue after the trial period and this supports our finding that this was a genuine opportunity to become comfortable with a revised role.
38. We accept Ms. Galla's evidence, that the removal of the referencing work meant that distributing one additional office to each of the remaining paralegals, taking responsibility from 3 offices to 4 offices each, did not result in a significant increase in overall work. We also accept that the claimant was treated in the same way as all the other remaining staff and that she had an opportunity to refuse the role having undertaken a trial period. She did not do so.
39. We find that treating the claimant in the same way as other staff does not amount to a breach of the implied term of trust and confidence between the claimant and her employer. In any event the claimant did not raise any complaint at the time but continued working in this role.

<u>Between 3 and 14 June 2019, Ms Giedyk and Ms.Galla went for holiday, which left the Claimant in charge of the entire legal work, assisting 15 different offices of the Respondent (issue 11.1.2).</u>

40. We were taken to page 114, which sets out all the leave taken by both Ms. Galla and Ms. Giedyk which show that the holidays did not overlap. Ms. Galla was on holiday from the 3rd to 7 June and Ms. Giedyk had one day's leave on 20 June.
41. The claimant suggests that this document is produced by the respondent and questions its validity. We have no reason to doubt that it is anything other than an accurate record which corresponds with the recollection of the respondent's witnesses. We accept, therefore, that Ms Giedyk and Ms.Galla were not on holiday at the same time between the 3 and 14th of June.
42. We find that the claimant's recollection is wrong and that this did not happen as a matter of fact. It cannot therefore amount to bullying or a breach of trust and confidence.

<u>Closure of the Acton and Bethnal Green offices resulting in the claimant undertaking work that was previously associated with these two offices (issue 11.1.3)</u>

43. The claimant specifies that this closure resulted in her undertaking work which was previously associated with these two offices and that this is part of the bullying to which she was subject and contributed to her constructive unfair dismissal.
44. Ms Galla said that this closure was not connected with the paralegal redundancies and was a commercial decision of the business owners at the time. Ms Galla told us that the work from these two closed offices was moved to nearby offices and therefore this decision made no difference to the overall workload.
45. We find that even if the claimant did take on the work from these offices, this was not an unreasonable action by her line manager. Ms Galla had already taken steps to balance the appropriate workload and we have accepted that is what she did. We find therefore that assigning the claimant work from these

offices, if that did happen, did not subject the claimant to an unreasonable workload and subject her to stress.

46. Again the claimant continued to work for the respondent and accepted a promotion subsequently.

<u>Between 23 August 2019 and September 2019, the Claimant was not allowed to take more than 5 consecutive days off based on company policy, whilst Ms.Galla went for a 2-week holiday, in breach of company policy, leaving the Claimant with her workload to look after (issue 11.1.4)</u>

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47. The claimant's contract of employment, which was on page 64, specified that no more than five days of annual leave could be taken consecutively in the months of July, August and September. Ms. Galla had, however, transferred from another organisation and she was employed on different contractual terms. We were referred to pages 57G/57H of the bundle. It is clear that Ms.Galla 's contractual terms do not place any such restriction on the number of days that can be taken within these months. Her contract specifies only that no more than two weeks can be taken at any one time. The claimant accepted that there was a different contractual position between the two and that her line manager was in fact entitled to take up to 10 days consecutively. We accept that Ms. Galla was not acting in breach of any company policy in taking holiday between 23 August and September 2019.
48. We were again referred to the holiday records on page 114. These coincide with Ms. Galla's evidence that she took two periods of leave in August, being five days between the 5- 9 August, the second between the 27- 30 August. Ms Giedyk was not on leave at the same time. Ms. Galla did not believe that her August holiday resulted in an unreasonable workload for the claimant.
49. The claimant was unclear as to whether she had been left with Ms Galla's workload to deal with but did accept that Ms Giedyk also assisted. However, because she was physically based in Poland the claimant said there were some tasks, for example posting letters, that she could not undertake and therefore this fell to her.The claimant maintained that her line manager's absences put her under pressure and that it was her line manager's responsibility to consider the impact of her leave on her staff.
50. As we have found that Ms Galla was not away for the period that the claimant describes, we do not accept the claimant's evidence as to the impact on her because as a matter of fact there was no two-week holiday. We find therefore that this action did not create an unreasonable workload or subject the claimant to stress.

<u>The Claimant's written Complaint (Grievance) of 19 September 2019 against her manager, Ms Galla, was not properly dealt with. (Issue 11.2)</u>

<u>Dress code</u>

51. Ms.Galla said that in the summer 2019 she noticed on several occasions the claimant was not dressing in accordance with the respondent's smart dress code. She had a few informal conversations with her and asked that she dress in line with the company's requirements. However, on 19 September she came into work again wearing brightly patterned trainers, she asked her to change her shoes, but was told that the claimant did not have any other pair to change into. Ms.Galla explained the dress code again, that it was company policy and told her that if she was not happy about it she should speak to HR which

resulted in the reply *"you can be sure I will*". It was shortly after that exchange that the claimant left the office and did not come back that day.

52. Ms.Galla explained that because HR were not in the office that day she had a chat with the Regional Director and followed this up with an email to HR which is on page 124. This asked Ms. Alexander to have a chat with the claimant the next day as "*this is now getting ridiculous, she is definitely angry with me, but I do not care about that, but the atmosphere is very unhealthy!!"*
53. The claimant disagreed that she was inappropriately dressed. Her evidence was that she typically wore smart casual clothing at work which was comparable to others in the workplace who were employed in similar positions. Ms Galla however adopted a sarcastic tone with her about it and, when they had a conversation about her dress on the morning of 19th September as the claimant was leaving the office Ms Galla rolled her eyes and turned her back on her.
54. The claimant was taken to the relevant section of the staff handbook and accepted that there was a dress code for business attire in the office. She accepted that this was in place but said that it was not enforced across the office and that others wore trainers. She disputed whether she had ever done so beyond the one occasion on 19 September when she had forgotten to bring other shoes. The claimant therefore accepted that on the day in question she had been wearing trainers.
55. Both Ms. Galla and Ms. Alexander confirmed that the dress code was enforced within the office. Ms. Alexander gave evidence that being well turned out was part of the professional ethos of the office and that if she had seen individuals or members of a team who did not observe the standard she would have spoken appropriately. She had no cause to do this.
56. We can see no reason for Ms. Galla to be picking on the claimant and on the balance of probabilities accept that there was an issue with the claimant's shoes on that morning. The claimant accepts she was wearing trainers. . We also find that there was a dress code and it is a reasonable management action to request the staff comply with this. This is not relied on as an issue of constructive dismissal but in any event, we find that addressing a dress code issue does not amount to bullying or any breach of the implied term of trust and confidence.

<u>Other complaints against the line manager</u>

57. The claimant referred to a previous complaint that she believed was submitted by a former senior legal paralegal shortly after Ms.Galla took over as head of the paralegal department. The claimant stated that she witnessed grievance meetings first hand between the senior paralegal and Ms.Galla and that she subsequently heard Ms.Galla calling the senior paralegal "bitch" and she revealed the contents of the grievance meetings and telephone calls to Ms Giedryk.
58. Ms.Galla's evidence was that no official complaint had been made about her. She recollects that the matter the claimant is referring to was the conversation she had with the then senior paralegal in around April 2018 about frequently being late to work. The individual had frustrations at not progressing as quickly as she wanted within the company and raised that she was feeling stressed in a meeting she had with the respondent's HR manager. As a result, Ms. Alexander arranged for Ms.Galla and the senior paralegal to have a meeting to discuss matters. She recollects that they discussed workload, timekeeping and the ways in which she could be supported to progress within the respondent. Ms.Galla believed that the matter was resolved after that meeting.

59. Ms. Alexander gave similar evidence. We prefer the evidence of those who were involved directly in the issue to the evidence of the claimant which was only indirect. We find that there were no complaints made by this colleague or any other complaints made about Ms.Galla.

The September complaint

60. The claimant raised her complaint on 19 September 2019 after she had seen her GP. She sent an email to Ms. Alexander in which she identified that she had suffered constant unfair treatment, discrimination and recent social bullying incidents in the workplace and paralegal department leaving her feeling completely degraded and anxious.
61. This email, which is at page 126 – 127, recorded that she felt she had been completely ignored in a professional context in the last few months and felt excluded from work-related discussions. This stress, anxiety and difficult relationship with a colleague had a negative impact on her mental well-being; she was crying before going to work. She specified that she had been working very hard under great pressure but was distracted by whispers and talk behind her back and that the environment was toxic due to micromanagement and mistreatment from her line manager and others.
62. In her letter she specified that she did not wish to take any further action against her manager or other colleagues "– at least not at this moment". She said that she wanted to speak with the HR department to see if there was any friendly way to resolve the issue.

The mediation process.

63. Between 19 September and 17 October 2019, the claimant was signed off sick from work stress related illness/problems. On her return to work the respondent initiated a mediation process which was a meeting between the claimant, Ms. Galla and Ms. Alexander.
64. No notes were taken of the meeting. It was Ms. Galla's evidence that it was very tense, a lot of accusations of discrimination were repeated by the claimant. It was Ms.Galla's recollection that the meeting centered on the fact the claimant believed she was not treated fairly, which related to the dress code. She recalls the claimant also made assumptions that she was being talked about behind her back, general unfair treatment and she talked about the daily toxic work environment.
65. From Ms Galla's perspective, the meeting ended with both wanting to move forward with their relationship. They agreed to communicate with each other and have regular meetings to make sure that there was no miscommunication between them. Ms. Galla's evidence was that she believed the claimant's concerns and the accusations had been clarified during and after the mediation and she believed the matter had been fully dealt with. She was not aware the claimant had stated she wanted to take the matter further, or that she considered the process unresolved.
66. She did not treat the claimant differently either during or after the mediation process. However, Ms. Galla believed the claimant did not keep up with her agreed actions. She came to the first 1 to 1 on 4 December 2019 and had not prepared, despite it being opportunity to discuss things and the meeting had to be rearranged. Ms. Galla fed back to Ms. Alexander that she was disappointed at the agreed outcomes of the mediation (page 146.)
67. There was an email 28 October page 142 in the bundle which set out the outcomes. The claimant describes these as vague and subjective. She

complains that there was no concrete objective proposal and action points put in place for dealing with workplace conflict. She had expected her complaint to lead to an investigation into her line manager's conduct in order to determine if it warranted disciplinary action, training or performance management.

68. In oral evidence the claimant reiterated that she had expected to be informed of what disciplinary or other steps have been taken against her manager and she did not feel that this had been a proper process. The claimant also disputed in her answers that this was a mediation process. However, she accepted that it has been described like this, as a mediation in the follow-up email and that is how she had described it in her written witness statement. We find that at the time the claimant understood that this was mediation.
69. The claimant was asked whether what she had raised was a formal grievance. She was taken to the grievance procedure on page 67 which identified informal and formal grievances as two separate things. This policy set out that most grievances could be resolved informally through discussion with the manager. If that informal discussion did not resolve the issue then the formal procedure was for that grievance to be put in writing and sent to the manager.
70. The claimant said she had never seen this policy and did not understand how to raise a grievance. She accepted that when she made a complaint on the 19 September she did specify that she did not want any action taken against her manager, was looking for a friendly like way to resolve things and she confirmed that she had wanted to give her manager a chance to amend her behaviour. The claimant confirmed that after the mediation process she did not raise any further written complaints about her manager to HR. She did not indicate that she now wanted to take action, or the matters had not been resolved.
71. It was suggested by the claimant's representative that she had said to Ms. Alexander, at least on the date on which she questioned why she was being monitored, that she did now wish to take this formal. Ms. Alexander did not recollect that, nor was this in the claimant's witness statement.
72. Ms. Alexander told us that she was very clear with the claimant throughout the whole mediation process that this was an informal process, but that if she changed her mind and wanted to make it formal, she simply had to say that. The claimant never did.
73. We find that at the time, the respondent reasonably believed that the claimant was seeking informal resolution of issues with her line manager. The friendly like process which the claimant had requested, that is the mediation meeting was set up. As the claimant did not raise any further complaints about her manager thereafter, it was reasonable for the respondent to believe that the matter had been resolved. We find that the complaint was not a grievance but a request for an informal resolution and that this request was properly dealt with. If the claimant had wanted to raise a formal grievance after the informal step she needed to do that. She did not.
74. We also find that it had been agreed that no formal minutes or other documents would be created around this informal process.
75. In submissions on behalf the claimant it was put that there was a collusion, some form of mutual informal understanding between Ms Galla and Ms Alexander which resulted in biased treatment and less favourable treatment than her male colleague. A number of examples of this collusion were given in submissions. This was not part of the issues list. We also find that the "ranting" referred to did not occur. The line manager properly took advice when appropriate from the head of HR. We find that both individuals acted professionally and appropriately in addressing matters of genuine concern.

<u>The Claimant's request for leave was refused (made on 25th October 2019 for leave over Christmas period) and she was called into a meeting where her manager, Ms Galla, was present. (Issue 11.3)</u>

76. It was agreed that the claimant's holiday entitlement was 20 days a year plus bank holidays. The respondent's holiday year runs from 1 January to 31st of December.
77. On 23 October 2019 the claimant emailed Ms Alexander and her line manager and asked to take holiday over Christmas that year (page 135/136.) This request asked if she could take the last two days for annual leave, two unpaid days, the 24th and 31st of December, and one day as part of the three for two offers. Ms. Galla wanted to discuss the unpaid leave with Ms Alexander and let the claimant know that she was going to do that.
78. Ms Alexander responded to Ms Galla's request for a chat on the issue (page 137). The response noted that according to the system the claimant had no leave left and the company policy was no unpaid leave. From the respondent's perspective, the claimant was therefore asking for five days' additional holiday. We were referred to page 57Q, which is the holiday booking policy which specified that unpaid leave was not permitted and there was no rollover of holiday to the following year.
79. Having received this information from HR on 25 October, Ms. Alexander and Ms. Galla met with the claimant to discuss the request. The claimant complains that her line manager was present at this meeting. We find that a request for holiday had been addressed both to her line manager and to HR and therefore it was reasonable for the line manager to be present at that meeting. This does not amount to bullying or breach of trust and confidence.
80. As the respondent considered that the claimant had no annual leave entitlement left and it was company policy not to grant unpaid leave, she was told that her request was refused on that basis. The claimant recollects that her line manager was visibly very angry about this. In her particulars of claim the claimant stated that she was being punished in not being granted leave because of complaints made against her line manager in September 2019. She also complained that when she said she would be willing to work remotely, she was told it was not company policy although dozens of employees were allowed to work remotely and Christmas was a very quiet time.
81. The claimant said she had never been made aware of the handbook specifying that unpaid leave is not permitted, and she was aware that it had been granted to another colleague. However, in cross examination she then suggested that what had been granted to others was time off in lieu which was something that management have the discretion to grant where pre authorized over time has been worked. She had worked significant amounts of overtime and in her view was entitled to have her request for two days' leave considered. This was not what she requested at the time.
82. As the claimant was upset, Ms. Alexander stated that the request could be escalated to Mr. Nicholls because it was outside normal process. Ms. Galla recollects that she and Ms. Alexander discussed the request with Mr. Nicholls who agreed to let the claimant take two days holiday from her 2020 entitlement. That was put forward as an alternative proposal in an email on page 140. Ms. Alexander's evidence was that this was a generous offer, and she did not believe that Ms. Galla had in any way tried to punish the claimant for having made a complaint.
83. We find that the claimant had been refused leave initially because she was asking for five days, which exceeded her annual entitlement. The treatment was not in any way related to the complaint she had raised about her line

manager. The respondent believed that she had no holiday left for 2019 and could not therefore use two days of annual leave. The policy was no unpaid leave. However, we also find that the claimant was in fact granted the unpaid days that she requested and was given five days' leave, albeit by taking two days from the 2020 holiday.

84. In oral evidence the claimant said that she thought it was unreasonable that a request was passed to Mr. Nicholls. It was also suggested that the claimant was entitled to these two days off because she had worked unpaid overtime or alternatively that she had asked to be allowed to work from home. Both Ms. Alexander and Mr. Nicholls were clear that there was no overtime. It had to be requested in advance and time off in lieu was not given. Mr. Nicholls did not recall any request to work from home. We find that this was not the basis on which the claimant asked for time off. While she raises this in her particulars of complaint, it was not what she was asking for at the relevant time.
85. We find that a line manager and HR applying the company policy does not amount to bullying or breach of trust and confidence. We find it was perfectly appropriate for the request to be passed to a more senior manager and the owner of the business who was able to exercise discretion. The claimant was asking for something outside company policy and there is nothing unreasonable in asking senior management to grant a policy extension rather than this being dealt with by a line manager. We find that the initial refusal of the request was not related to the complaint having been made, but was because it fell outside policy.
86. We find that the initial refusal of leave and the attendance of the line manager at this meeting were within company policy and does not therefore amount to a breach of the implied term of trust and confidence.

From December 2019 onwards - instigation of monitoring and scrutiny of Claimant's breaks and taking notes of her movements by her manager, Ms Galla (issue 11.4).

87. Ms. Galla accepted that she did become concerned about the claimant's late arrival and long lunch breaks after she returned from a sickness absence. It coincided with a period when the claimant was studying for exams.
88. We were referred to 9 emails which the claimant sent regarding running late or taking a longer break from 13 November 2019 to the 4 March 2020. Ms. Galla believed that it was her responsibility as line manager to ensure she was working effectively within her contracted hours.
89. Ms Galla said she discussed the claimant's lateness with Ms Alexander and then did keep an eye on the claimant's lateness which was because of its frequency. She explained that she did not initiate any formal process because she hoped the claimant would get her timekeeping back on track without the need for formal intervention. Ms. Alexander confirmed that she was made aware of potential concerns about the claimant's timekeeping about start times and lunches. She suggested that specific details should be monitored for a short period to identify whether any expectations conversation was necessary. She was not able to say whether any such notes were taken and.
90. The claimant complains that the length of the lunch breaks was monitored. Ms Galla agreed that she did have one conversation with the claimant that her lunch break must not exceed one hour. She denied making notes every time the claimant left her desk and was unaware the claimant was making such notes. These are not included in the bundle.
91. The claimant was particularly incensed about this because she believed that she had no issue with timekeeping. While she accepted that she had been late

on nine occasions, this was for legitimate reasons and therefore she did not think a manager had any reason to keep an eye on her timekeeping. Her late arrival was always justified.

92. It was agreed that Mr. Sivagnanam had some lateness, but this was in part because of a medical condition which he had disclosed. Ms. Galla also spoke to Ms. Alexander about his lateness when it was for unrelated issues and kept that under review. Ms. Alexander told us that it had reached the stage with this colleague that one more occasion would result in a formal process.
93. We find that whether the lateness was justified or not, it was reasonable and within a manager's duties to consider timekeeping given the number of occasions on which the claimant was late. We find that the manager treated both her reports in the same way.
94. The claimant also complains of increased monitoring and her manager writing notes about when she arrived and left her desk. In her written witness statement, she said this was evident in the way her line manager's body language would acknowledge she was noticing every time the claimant left and arrived at a desk. She recalled one situation when her line manager moved her chair towards the claimant's desk and looked at her unlocked computer screen for around two minutes.
95. Ms Galla had no recollection of any such incident and said that she would not have needed to look at the claimant's computer screen. As head paralegal she had access to all the teams in boxes. We also find that the line manager did not take notes of the claimant's movements or scrutinise her in the way the claimant sets out.
96. We find that the line manager was legitimately concerned about the claimant's timekeeping and was keeping an informal eye on that. We also find, however that the claimant was not subject to monitoring and scrutiny of her breaks, nor were notes taken of her movements as she sets out in her grounds of complaint. This did not occur and therefore cannot amount to a breach of trust and confidence.

<u>On or before 16 December 2019 the Claimant complained to HR regarding the rationale for scrutiny and monitoring. (11.5)</u>

97. It is agreed that on the 16 December there was a meeting between the claimant and Ms. Alexander. In that meeting the claimant stated that she demanded an explanation as to the rationale for increased scrutiny and monitoring of her. It is her complaint that Ms. Alexander failed to provide a satisfactory response and said she did not know why her breaks were being monitored. A meeting was to be arranged to take place after Christmas but that did not happen.
98. Ms. Alexander in written evidence set out that while she explained to the claimant that she could not comment specifically, it was within the realm of responsibility of the manager to manage timekeeping and to address concerns as they identify them. In oral evidence Ms. Alexander explained that she did not intend to deliberately mislead the claimant but, because she was unaware of the details of any monitoring that Ms Galla was carrying out and she would not have been able to answer any questions, she did not tell the claimant that there had been a conversation about it and that she was possibly being monitored. We accept her explanation and do not find there is any collusion between the line manager and HR.
99. The particulars of claim suggests that it is Ms Alexander's failure to schedule a meeting with the claimant to discuss her concerns about being monitored that amounts to the breach. The claimant, in answer to a cross examination question relied on a different point and stated that it was a breach of the implied

duty of trust and confidence to be told that it is within a manager's remit to monitor lateness and this was the complaint as set out in the issues list.

100. We find that not only is it a reasonable management action to scrutinise lateness, but it is also entirely reasonable for HR to remind an employee of a manager's obligations. Such a comment does not amount to a breach of the implied term of trust and confidence. We also find that any failure to schedule a meeting which was not further pursued by the claimant is not sufficient to be a fundamental breach of trust and confidence.

The Claimant was not asked to return from furlough and told there was no work for her in the paralegal department, and at the same time a male colleague was brought back to do her work in June 2020. / the Claimant's workload was taken from her and distributed amongst colleagues junior to her. (Issue 11.6 and 4.1)

101. In common with many businesses the respondent decided to put some staff on furlough during the global pandemic in 2020. The claimant was informed of this in writing on 24 March 2020. The claimant accepted that the respondent had taken the decision that the work of the paralegal department could be undertaken by her line manager and by the most experienced paralegal who was based in Poland, Ms Giedyk. This meant that both she and Mr Sivagnanam were on furlough and their work was dealt with by the two who remained working. Mr. Nicholls confirmed that he took the decision as to who to put on furlough. He was not able to put Ms Giedyk on furlough as she worked in Poland and was paid through a Polish company. He therefore retained her and the head paralegal.

102. The claimant said she was told that those who were working were not taking on specific workloads but that all the tasks were being done between the two individuals. In other words the tasks of the two who were on furlough were being done in common by those who were not.

103. On 7 April Mr. Nicholls sent an email to all staff confirming they were working hard to try to ensure the business would be in a good financial position once things started to return to normal. He sent a further update on 17 April stating that they would be in touch with all furloughed employees in about two weeks about the process of taking staff off furlough. There was a further email from him on 7 May updating the position which confirmed that indicators were being given the lockdown could ease from 11 May and they would be in touch with each individual department.

104. Mr. Nicholls then contacted Ms Galla and Ms Giedyk on 13 May (page 173C) to ask them how their workload was, when they thought would need extra help and whether they would want to bring the claimant and Mr Sivagnanam back one at a time in order to match demand, and whether either of the returning staff would wish to work from home.

105. Ms. Galla responded that having discussed the matter, they did not think they would need both the claimant and Mr Sivagnanam back at the same time but one at a time, but they should see for the rest of the month how the situation was evolving. Her response talks about them both having laptops and having been working from home and specified that would have to be confirmed with each of them when it comes to bringing them back to work.

106. Mr Sivagnanam returned from furlough on 16 July 2020 while the claimant was not recalled. She complains about this difference in treatment. In submissions it was put that as she was effectively second in command, and was therefore indispensable to the respondent, she would need to return from furlough at the earliest possible opportunity. We find the decision was not taken on the basis of seniority, but on work tasks and costs.

107. Ms Galla's evidence was that this decision to bring one back and not the other was driven by workload, and to some extent by cost, as Mr Sivagnanam was on a lower salary. It was her evidence that during the furlough period she did the work from the offices that Mr Sivagnanam usually supported. Contrary to the claimant's belief, she and Ms Giedyk had taken on specific responsibility so that she had taken over the senior paralegal responsibilities from the claimant together with Mr Sivagnanam's work, and her colleague had taken on the work of the claimant.

108. Ms Galla's evidence stated that the work of Mr Sivagnanam's offices picked up more quickly. She could give no explanation as to why the easing of restrictions on estate agents would mean that some officers were busier than others. She also explained, however, that she was also getting busier with her managerial duties and implementing a change of tenant referencing process from one provider to another. She therefore decided to bring Mr Sivagnanam back from furlough because she needed to free up her time and therefore handed back the tasks that belonged to Mr Sivagnanam to him. She did not consult with the claimant about this as it was a business decision.

109. Mr. Nicholls confirmed that ultimately, while Ms Galla discussed the position with him, it was his decision to bring back the colleague and not the claimant. We accept his evidence that he is the ultimate decision maker. In submissions the claimant suggested that Ms Alexander and Ms Galla were the decision-makers and this was part of their collusion. It was also submitted that the difference in salary cost would not be material. We find that that was not the case. We are satisfied that Mr Nicholls was the decision-maker.

110. He confirmed that he also understood this was because Ms Galla was covering the colleagues' offices and she needed more time to concentrate on other tasks. He was also influenced by cost and brought back the lower paid salaried employee as he explained that at that point every penny mattered. We accept that a £2000 salary differential was a material difference at that time.

111. Ms Galla was asked why, when she was the claimant's line manager, she did not take the time to contact the claimant and explain this to her. Her response was she did not consider this to be her obligation. Ms. Alexander confirmed that it was not the process at the time to tell furloughed staff about those who were returning. Not letting the claimant know about this was not therefore out of the ordinary.

112. The reasons for this decision were explained to the claimant in response to her questions during the redundancy consultation process and we were referred to the explanations given at that time. On page 284 Ms Galla explains that she needed to free her workload by giving the offices that were originally covered by Mr Sivagnanam back to him because she was getting busier with other management duties. Again, this is set out at page 317 in an email sent by Ms Alexander to the claimant which specified that the head paralegal needed to be able to hand back that employee's offices to be able to manage operationally critical tasks.

113. In oral evidence it appeared to be the claimant's case that she was told that there was no work in the Department and that her work was given to a more junior colleague. Within the agreed issues list the complaint is that she was told there was no work in the Department for her. The issues list also states that work was distributed among colleague's junior to her. We clarified with the claimant that she meant that it was given to Mr.Sivagnanam and this complaint relates to him returning from furlough. It also appears that her allegation is not about being told there was no work for her, but about being told there was no work in the department.

114. There is nothing in the exchange of emails which discusses the fuller situation or specifies there is no work in the department. There clearly was work in the department as two individuals stayed on to do it and her male colleague was then brought back. There is also nothing in the emails that says there was no work for the claimant, although we find that because of the way work was reallocated during furlough, her work was being covered by somebody else.

115. While we question why the line manager did not think it appropriate to advise the claimant of what was happening, we accept the respondent's evidence as to the reasons why the claimant was not brought back from furlough but her male colleague was. We accept the respondent's evidence for a number of reasons. Nr Nicholl's was the ultimate decision maker and we accept he was partly driven by cost. Ms Galla is in a position to understand how the work was divided and the claimant was not as she was not in the office. We therefore accept that the work of the furloughed colleagues was not pooled between the two who remained, but instead the two remaining staff each took responsibility for one furloughed colleagues' workload. This explanation was consistently given throughout the redundancy consultation and therefore on the balance of probabilities we accept that this is indeed what happened.

116. We therefore accept Ms Galla's explanation that as her role got busier she could no longer carry on dealing with the offices assigned to Mr Sivagnanam and it was for this reason, together with some consideration of cost, that he was brought back. We find it had nothing whatsoever to do with his gender. We also find it had nothing whatsoever to do with the claimant's complaints, it was not an act of bullying and this difference in treatment does not amount to a breach of trust and confidence. We also find that the claimant's work was not distributed to Mr Sivagnanam. During furlough the claimant's work was undertaken by Ms Giedyk and that continued even once Mr. Sivagnanam returned.

<u>In June 2020 the Claimant was consulted for redundancy and told she was the only person in the pool. (Issue 11.7)</u>

117. On 9 October 2020 the claimant was sent a letter letting her know that redundancy was being considered. It set out the current proposal was the role of senior paralegal was no longer operationally required and that the reduced workload could be appropriately absorbed by having two paralegal roles and head of paralegal role. As such her position had been identified as being at risk of redundancy. A consultation period then began.

118. The claimant was told that she was the only person in the pool. The business rationale for this decision was set out in the initial letter. It was expanded upon in answer to the claimant's questions in the various consultation meetings. In the first consultation meeting Ms. Alexander explained that they considered the roles of paralegal and senior paralegal to be work of a different kind. There was a diminution of the work to be done within the paralegal role and secondly there was a cessation in the additional work that the senior paralegal role did, namely training, support for new and existing team members work and legal changes in supporting the head of paralegal.

119. We were referred to page 299A which was an analysis of the training sessions that have been carried out which showed very significant drops between March to October 2019 and March to October 2020. In the consultation meeting Ms. Galla also explained that training for negotiators was now in the hands of office managers and regional directors and therefore

was not something that the senior member of the team would be required to do

120. The claimant challenged the difference in the role and Ms. Galla confirmed that it was correct that the claimant had been training people when she was a paralegal but, the notes of the consultation meeting reiterate what Ms. Galla has said to us in evidence. That is that the claimant was asked do the training as a paralegal to prove that she was capable of doing additional tasks and as a reward she got promoted. Ms Galla also confirmed in her evidence that she was able to take on any support for team members. The training aspect was no longer needed as training for those outside the paralegal team had moved to the business. The claimant maintained that the pool was incorrect.
121. Given the reduced size of the team, we accept that Ms Galla could undertake the supervision aspects of the senior paralegal's role. We also accept the unchallenged evidence that training of those outside the paralegal team was going to be done by the business itself. We find therefore that there was a cessation of the senior paralegal tasks. As the team was reducing in size, we find there was also a diminution of the paralegal tasks
122. As we have found that the role of paralegal and senior paralegal were separate, it is within a reasonable respondent's choices to determine that the role that was most impacted was that of senior paralegal and therefore to create a pool of one. We also find that the question of how the pool to be formed was carefully and properly considered by Ms. Alexander on behalf the respondent.

<u>Between 13th October 2020 and 6 November 2020 the Claimant goes through redundancy process; the Claimant raises concerns about the selection process; the Respondent refuses to amend the pool, the Respondent fails to consider extending furlough or other reasonable alternatives. (Issue 11.8)</u>

123. As far as alternatives go, the claimant agreed that she proposed three alternatives. These were to give her a role as a paralegal, use the job protection scheme or allow her to work part-time.
124. These are raised in the first consultation meeting and the note to the second consultation meeting at page 269 shows a response to these suggestions. Ms. Alexander explained that they could not expand the team by adding another paralegal role. There was no vacancy and no capacity to create one. There was not enough work to fit the number of work roles they had in place at that time. The job protection scheme was discussed, and it was explained that 40% of her current workload would have to be available for that be an option, that had been considered but they did not have 40% of the role available to her. Part-time work was considered but also rejected as not a viable option at that point.
125. In the second consultation meeting the claimant also suggested redundancy bumping. Ms. Alexandra's initial response was that there is no legal obligation to use bumping, but she had noted the request and would take it back to the Board.
126. Following the second consultation meeting the claimant wrote to Ms. Alexander at page 292 – 293 again raising her complaints and reiterating that they should consider bumping as a suitable alternative.
127. At the third consultation meeting (page 307 – 308) Ms. Alexander suggests that they use a different approach. She states that the proposal is still the senior paralegal role is at risk of redundancy with was not operationally

required, but that given the body of the work the claimant did with the paralegal role they were offering her the opportunity to slot into a paralegal role.

128. In the claimant's written submissions we were referred to page 307 and page 308, being notes of this meeting. It was submitted that the claimant asked a direct question about the paralegal who joined the company later, had less experience and that by this she meant her male colleague was asking a direct question was that if redundancy bumping occurred would he be dismissed instead of her. It was submitted that no answer was given to this and that is evidence of the fact that respondent was misleading her name and would in fact be made redundant.

129. Ms Alexander does, however answer and she states that will necessitate another process running side-by-side. However, the claimant did not need to worry about that. What the company needed to know was whether she would consider taking a paralegal role. She confirmed again that she would like to offer the claimant an opportunity to slot into a paralegal role on the terms and conditions that apply to that role. The claimant asked to be sent a document explaining the terms and conditions of the new paralegal role and Ms Alexander agreed.

130. The evidence from Ms Galla and Ms Alexander is that the respondent did consider the alternatives the claimant suggested, and this is supported by the contemporaneous documentation. We find that they did consider all of the alternatives that the claimant suggested. The respondent did consider extending furlough and other reasonable alternatives.

131. The respondent undertook meaningful consultation and its adoption of the claimant's request for bumping, shows in fact, a desire to retain the claimant and that her redundancy was not pre determined in order for her male colleague to be retained. We find that the respondent was contemplating the possible dismissal of the male colleague and had explained this to the claimant. There is no basis for the claimant to reach the view that a colleague would never be dismissed or that he be treated more favourably because of his sex.

<u>Around November 2020, the Claimant is offered a demotion, less favourable role with the Respondent, thus breach of contract./ the Claimant was put through a redundancy process and offered a demoted position (issue 11.9 and 4.3)</u>

132. As a follow-up to this meeting on 6 November Ms. Alexander wrote to the claimant confirming that they were proposing to offer the claimant a paralegal role on the appropriate terms and conditions, and she attached the paralegal job description. The claimant was asked to inform them of her decision by 16 November.

133. In evidence before this tribunal, it appeared to be the claimant's case that she had not been offered bumping but demotion. On 20 November Ms. Alexander sent the claimant an email which set out more details of the position. That clearly stated that if the claimant accepted the paralegal role by virtue of bumping another paralegal role would be made redundant. We find that the respondent had adopted the claimant's proposal. She was being asked to take a paralegal role and had she done so, then one of the other colleagues would have been made redundant following a redundancy process.

134. While the claimant's representative questioned both Ms Alexander and Mr Nicholls as to whether any redundancies would actually have taken place, we find that at the date the offer was made to the claimant, if she had accepted it, it was the respondent's intention to begin a redundancy selection exercise between both Ms Giedyk and Mr. Sivagnanam to consider which should be redundant using appropriate selection criteria.

135. We find that the claimant was not therefore offered a demotion or less favourable role with the respondent. We've accepted that her home role was redundant and as an alternative she was being offered the position of paralegal. This does not amount to a breach of trust and confidence. To the contrary, it demonstrates the respondent's desire to keep the claimant employed.

<u>On 16 November 2020 the Claimant raises a written complaint regarding the redundancy process. (Issue 11.10)</u>

136. The claimant made a complaint on 16 November. She sets out that she believes that she is not properly being offered bumping but that they would not fire anybody else. It is because of this confusion that the position was clarified in the email of 20 November. This clarifies the position and as referred to above we have found that the respondent did intend to proceed with redundancy.

137. We are also referred to a letter of 16 November 2020 when the claimant is asking about job description. It was submitted that the claimant knew that the job description provided were fabricated and therefore the evidence the sham. We have found that the written job descriptions had not been provided to the claimant prior to this redundancy exercise, but we have also found that the duties they set out were those that the claimant was undertaking.

138.

139. The making of a complaint, an act carried out by the claimant, cannot amount to a breach of trust and confidence by the respondent.

<u>On 25 November 2020 the Claimant advised the Respondent in writing of her intention to commence proceedings and terminate her employment contract, and confirmed termination on 14th December 2020.(Issue 11.11)</u>

140. Around the time the claimant's letter of 16 November Mr. Nicholls advised Ms. Alexander that the economic situation was not as bad as he had feared. Other redundancies to be made in July 2020 meant the business had in fact been saving a reasonable amount of money and it was therefore a viable option to continue with the paralegal department as structured. He still believed that the role of senior paralegal was no longer required but asked Ms. Alexander to set up a meeting with the claimant and to prepare a draft outcome letter for him.

141. An invitation to this meeting was sent to the claimant on 11 December and was to take place on 15 December. Mr. Nicholls said that while he could not say for certain where he would have ended up because the meeting did not go ahead and he did not have the chance to speak to the claimant, he would have discussed with her ending the redundancy process. As the draft letter suggested she could have been told her role was no longer at risk of redundancy and therefore should remain in post. He confirmed this would have been as a senior paralegal on her then salary.

142. The meeting did not go ahead because the claimant resigned serving notices with immediate effect and he believes that he had been told about this by Ms. Alexander. As the letter said that the claimant did not wish to entertain any further contact with the respondent the proposal was never made.

143. It was suggested by the claimant's representative that the proposal to end the redundancy was being considered by Mr. Nicholls in order to save Mr. Sivagnanam. He identified that nobody needed saving in this scenario as there would have been no redundancies. He also explained that things were moving at a very fast pace and at the time the redundancy was proposed ,not

only had the needs of the business for the claimant's role ceased and diminished but also the size of the paralegal department was not economically viable. That latter factor potentially changed although the need for the role and the reduced work did not. Nonetheless he might have been prepared to continue with the department at its pre-covid size, but in the end this did not happen because the claimant resigned.

144. The resignation letter is relied upon as a repudiatory a breach of contract. It is, of course, a factual event. The claimant sending the letter, as an act in itself, does not amount to breach of trust and confidence by the respondent.

The claimant's submissions on the last straw.

145. In written submissions the claimant's representative set out why the claimant believed in late November 2020 that the whole process redundancy was a sham. We were asked to look closely at four documents. The first was one we have referred to above. Namely when in the redundancy consultation meeting the claimant asks a question which is said to have really meant would her male colleague made redundant and she is not expressly answered. It was submitted that the answers given by Ms Alexander and Mr Nicholls that one of the other paralegals will be made redundant and not to identify that it would be the male colleague evidences that they were misleading the claimant. In the claimant submissions it clearly would have been the male colleague and not to say so supported her view that there was never any intention to do so. We have made a finding of fact that is not the case.

146. The third document it was submitted was relevant to the last straw with respondent response to complaints. We referred to an email 24 November at 317- 318 and two the last line which stated they had attached the 2019 job description. It was submitted that this was a deliberate lie informing the claimant that the job description existed in 2019. We find that a straightforward reading of that letter does not suggest any such deliberate lie. We find that the respondent has attached the document that it believed reflected the job description and the one they had on their records.

147. It was the claimant's submissions that once she received this letter as in which the respondent made a false deliberate representation about the date on which the job description was created with the aim to cover the real reason for selecting the claimant, that this amounted to a fundamental repudiated breach of trust and confidence.

148. However, in the claimant submissions there was fourth document which was the claimant's letter of resignation. At this point she knew there would be redundancy bumping and the was no difference between her role and that of the others. It was submitted that the difference in salary was not material.

149. We have made findings of fact that there was a difference between the two roles. That it was appropriate for the respondent to place the claimant in a pool of her own and that there was a general intention to implement bumping which could have impacted either one of the two other paralegals. This could include the male colleague.

Relevant Law

Limitation period

150. S123 Equality Act provides that

> "….a complaint within section 120 may not be brought after the end of—
>
> (a) the period of 3 months starting with the date of the act to which the complaint relates, or
>
> (b) such other period as the employment tribunal thinks just and equitable.
>
> ………..
>
> (3)For the purposes of this section –
>
> (a) Conduct extending over a period to be treated as done at the end of the period

151. Where there is a series of distinct acts, the time limit begins to run when each act is completed, whereas if there is continuing discrimination, time only begins to run when the last act is completed. There is a distinction between a continuing act act that has continuing consequences. Where an employer operates a discriminatory regime, rule, practice or principle them such a practice will amount to an act extending over a period. Where however there is no such regime, rule, practice or principle in operation, an act that affects an employee will not be treated as continuing even though the act has ramifications that extend over a period of time. For example a specific failure to promote your shortlist is a single act despite continuing consequences.

152. In considering the just and equitable extension, the Court of Appeal made it clear in Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA, that the onus is on the claimant to convince the tribunal that it is just and equitable to extend the time limit. The exercise of the discretion is an exception.

153. Previously, the EAT (British Coal v Keeble) suggested that in determining whether to exercise their discretion to allow the late submission of a discrimination claim, tribunals would be assisted by considering the factors listed in S.33(3) of the Limitation Act 1980. That section deals with the exercise of discretion in civil courts in personal injury cases and requires the court to consider the prejudice which each party would suffer as a result of the decision reached, and to have regard to all the circumstances of the case, in particular: the length of, and reasons for, the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with any requests for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

154. The Court of Appeal in Southwark London Borough Council v Afolabi 2003 ICR 800, CA, confirmed that, the checklist should be used as a guide. However, the Court went on to suggest that there are two factors which are almost always relevant when considering the exercise of any discretion whether to extend time: the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh). In Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA, the Court of Appeal pointed to the fact that it was plain from the language

used in S.123 Equality Act that it would be wrong to interpret it as if it contains such a list.

Direct Discrimination

155. The claim includes direct discrimination. S13 of the Equality Act (“EqA”) provides “A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”.

156. S.13 EqA focuses on whether an individual has been treated ‘less favourably’ because of a protected characteristic, the question that follows is, treated less favourably than whom? The words ‘would treat others’ makes it clear that it is possible to construct a purely hypothetical comparison.

157. Whether the comparator is actual or hypothetical, the comparison must help to shed light on the reason for the treatment. We were referred to Shamoon V the Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11. The comparator required for the purposes of the statutory definition of discrimination must be a comparator in the same position in all material respects of the victim so that he, or she, is not a member of the protected class. There must be ‘no material difference between the circumstances relating to each case’ when determining whether the claimant has been treated less favourably than a comparator.

158. The unfavourable treatment must be “because of” the protected characteristic. The protected characteristic needs to be a cause of the less favourable treatment but does not need to be the only or even the main cause. Whether an act or omission amounts to less favourable treatment is an objective question for the tribunal to decide. While the claimant’s perception of such treatment is relevant, it is not determinative. Further it is not enough the claimant to show that he was treated differently; you must demonstrate that such differential treatment was unfavourable. We were referred to Chief Constable of West Yorkshire Police v Khan [2001] ICR 1065.

Burden of proof.

159. Igen v Wong ltd [2005] EWCA Civ 142, [2005] ICR 931, CA. remains the leading case in this area. There, the Court of Appeal established that the correct approach for an employment tribunal to take to the burden of proof entails a two-stage analysis. At the first stage the claimant has to prove facts from which the tribunal could infer that discrimination has taken place. Only if such facts have been made out to the tribunal’s satisfaction (i.e., on the balance of probabilities) is the second stage engaged, whereby the burden then ‘shifts’ to the respondent to prove — again on the balance of probabilities — that the treatment in question was ‘in no sense whatsoever’ on the protected ground.

160. The Court of Appeal explicitly endorsed guidelines previously set down by the EAT in Barton v Investec Henderson Crosthwaite Securities Ltd 2003 ICR 1205, EAT, albeit with some adjustments, and confirmed that they apply across all strands of discrimination.

161. We were directed to Royal Mail Group Limited v Efobi (2019) EWCA Civ 18 and it was submitted that this confirmed that the burden does not shift to the employer to explain the reasons for its treatment of the claimant unless the claimant is able to prove on the balance of probabilities those matters which she wishes the tribunal to find as facts from which in the absence of any other explanation an unlawful act of discrimination can be inferred.

162. We were also directed to Nagarajan v London Regional Transport [1999] IRLR 572, and it was submitted that in this cae it was held that the protected characteristic does not have to be the only, nor even the main, reason for the treatment complained of, it must be an effective cause. If race or sex had a significant influence on the outcome, discrimination is made out.

163. The bare facts of a difference in treatment and a difference in status only indicate a possibility of discrimination, they are not 'without more' sufficient material from which a Tribunal can conclude that there has been discrimination, Madarassy v Nomura International [2007] IRLR246 CA para 54-57. Likewise, that the employer's behaviour calls for an explanation is insufficient to get to the second stage: there still has to be reason to believe that the explanation could be that the behaviour was "attributable (at least to a significant extent)" to the prohibited ground. Therefore 'something more' than a difference of treatment is required.

Wrongful Dismissal

164. An action for wrongful dismissal is a common law action based on breach of contract. The reasonableness or otherwise of an employer's actions is irrelevant, all the court has to consider is whether the employment contract has been breached. The tribunal is concerned with the factual question: Was the employee guilty of conduct so serious as to amount to a repudiatory breach of the contract of employment entitling the employer to summarily terminate the contract?

Constructive unfair dismissal

165. Section 95(1)(c) of ERA 1996 states that there is a dismissal when the employee terminates the contract, with or without notice, in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct. To do so there must be a breach of a fundamental term of the contract, which can include the implied term of trust and confidence. We were reminded, however, that in Croft v Consignia plc [2002] IRLR 851, the Employment Appeal Tribunal held that the implied term of trust and confidence is only breached by acts and omissions which seriously damage or destroy the necessary trust and confidence. Both sides are expected to absorb lesser blows.

166. Western Excavating (ECC) Ltd v Sharp 1978 ICR 221, CA set out that in order to claim constructive dismissal, the employee must establish that:

- there was a fundamental breach of contract on the part of the employer
- the employer's breach caused the employee to resign
- the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

167. Counsel for the respondent reminded us that in Nottinghamshire CC v Meikle [2005] ICR, it was held that whether there is a breach of contract must be viewed objectively. There will be no breach of contract simply because the employee subjectively feels that such a breach has occurred regardless of whether such a belief is genuinely held. If, on an objective view there has been no breach of contract, then the employee's claim must fail (Omilaju v Waltham Forest LBC [2005]

168. Individual actions by an employer that do not in themselves constitute fundamental breaches of any contractual term may have the cumulative effect of breaching the implied term of trust and confidence The Court of Appeal in

Lewis v Motorworld Garages Ltd 1986 ICR 157, CA, held that a course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a 'last straw' incident even though that incident by itself does not amount to a breach of contract.

169. In *Omilaju v Waltham Forest London Borough Council 2005 ICR 481, CA*, Lord Justice Dyson considered that the last straw does not have to be of the same character as the earlier acts in the series, but it must contribute something to the breach of trust and confidence.

170. If the employee is constructively dismissed then the employer must show that the dismissal was for a fair reason (Savoia v Chiltern Herb Farms Limited [1982] IRLR 166). In this case the reason relied on is redundancy namely the requirements of the business for employees to carry out work of a particular kind had ceased or diminished (Section 139(1)(b) ERA 1996).

171. Pursuant to Section 98(4) ERA 1996, if the employer has shown a potentially fair reason for dismissal, the Tribunal must consider whether dismissal is a fair sanction in the circumstances and in accordance with equity and the substantial merits of the case. When considering Section 98(4), and the reasonableness of the employer's conduct, the Tribunal should not substitute its decision as to what was the right course to adopt. The function of the Tribunal is to determine whether, in the particular circumstances of the case, the Respondent's decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If a Respondent so demonstrates this, the dismissal is fair (Iceland Frozen Foods v Jones [1982] IRLR 439, paragraph 24).

The pool for selection

172. We were referred to the following by the respondent's Counsel which we accept

"In Capita Hartshead Ltd v Byard [2012] IRLR 814 (paragraphs 31) the EAT set out the applicable principles when considering whether an employer has selected the correct pool of candidates:
(a) It is not the function of the [Employment] Tribunal to decide whether they would have thought it fairer to act in some other way: the question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted" (per Browne-Wilkinson J in Williams v Compair Maxam Limited [1982] IRLR 83);
(b) The reasonable response test was applicable to the selection of the pool from which the redundancies were to be drawn" (per Judge Reid QC in Hendy Banks City Print Limited v Fairbrother and Others [2005] All ER (D) 142 (May);
(c) There is no legal requirement that a pool should be limited to employees doing the same or similar work. The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind [to] the problem' (per Mummery J in Taymech Ltd v Ryan [1994] EAT/663/94, 15 November 1994, unreported)
(d) The Employment Tribunal is obliged to scrutinise carefully the reasoning of the employer to determine if he has 'genuinely applied' his mind to the issue of who should be in the pool for consideration for redundancy; and that 6 (5) If the employer has genuinely applied his mind to the issue of who should be in the pool for consideration for redundancy, then it will be difficult, but not impossible, for an employee to challenge it.

In Wrexham Golf Club v Ingham UKEAT/0190/12 the Employment Tribunal had found dismissal to be unfair as it considered it reasonable for the pool to be wider. The EAT overturned the decision and stressed that the pool is primarily for the employer to determine, with intervention by a Tribunal to be exceptional. It held it was possible that a selection pool may be a "pool of one"."

Conclusion

173. Applying the relevant law as we set out above to the facts as we have found them, we conclude as follows: –

Jurisdiction

174. No evidence was provided on this, nor were submissions made on this. point. We have not therefore considered it and make no decisions on this point We have therefore gone on to consider the substantive issues on the basis that jurisdiction is not disputed.

Direct Discrimination

175. (4.1). In our findings of fact, we identified that a male colleague was brought back from furlough, but it was not to do the claimant's work The claimant's work continued to be done by her female colleague based in Poland. We conclude that the respondent's decision was not connected with sex, it was for legitimate reasons connected with workload and the need to the team. This complaint does not succeed.

176. At 4.2. we also found that the claimant's workload was not taken from her and distributed a junior male colleague. Instead, the male colleague was brought back to do his own work and the claimant's work continued to be done by her female colleague. We conclude that the respondent's decision was not connected with sex, it was for legitimate reasons connected with workload and the need to the team. This complaint does not succeed.

177. We have considered issue 4.3. We have found that the claimant was the job holder of a unique role and that the respondent carefully considered the construction of the pool for selection for redundancy. She was within the pool because her senior duties justified the case.

178. Mr Sivagnanam is not an appropriate comparator. She is work as a paralegal was not affected to the same significant degree. We conclude that the respondent's process was a rational one and was not influenced by sex. In fact, the respondent try to attain the claimant by adopting her suggestion of bumping which would potentially have meant her male colleague being made redundant.

179. We have found that the claimant was not offered a demotion, but have found that there was a genuine redundancy situation and, the claimant's explicit request for bumping to be considered was adopted. It was therefore at her request that she was offered the role of paralegal, the role of senior paralegal being redundant, which would then have meant that her male colleague was placed at risk. We conclude that this does not amount to less favourable treatment in relation to her sex. There was no demotion. What occurred was an offer by the respondent to retain the claimant over and above a male employee.

180. The claims for direct discrimination do not succeed.

Constructive unfair dismissal

181. We have found that the breaches relied on at 11.1.1- 11.1.4 did not occur as a matter of fact In any event we also conclude that had any one or more of these amounted to a breach, the claimant had affirmed the contract. She made no complaint at the time, continued working and subsequently accepted a promotion.

182. We have found that the written complaint raised as issue 11.2 was properly dealt with as we found the claimant did not raise any request to take

it further. The complaints made at 11.1 and 11.2 cannot amount to a breach of trust and confidence as we have found that they did not occur.

183. As for the complaint that a request for leave was refused (11.3) and she was called into a meeting where her manager was present, we have found that the refusal and the manager's presence were in line with company policy and therefore conclude this cannot amount to a breach of trust and confidence.

184. As to the monitoring complained about in issue 11.4 we have found that the manager's actions were reasonable and within her proper sphere of authority. They were based on a period of late attendances. We find this does not amount to a breach of trust and confidence.

185. Similarly, complaint 11.5 appears to be that it was inappropriate for HR to tell the claimant that a manager was able to monitor staff. This is clearly within a managers' authority and being told this cannot amount to a breach of trust and confidence. We also conclude that the claimant affirmed the contract and did not react in a timely manner to what she now seeks to rely on as an apparent breach under both 11.4 and 11.5.

186. A complaint that she was not asked return from furlough and a male colleague was brought back to do her work is repeated as an issue of constructive unfair dismissal(11.6). As set out above, we have found that this was not the case. We have found that Mr Sivagnanam was unfurloughed first because Ms Galla was covering his workload and there was a need to free up her time especially as his Offices picked up There was also a commercial reason due to Mr Sivagnanam being a cheaper employee to un-furlough. It was therefore logical to return his Offices back to him whereas the Claimant's Offices were not as busy and could still be covered by Ms Giedyk. The fact the claimant was not asked to return from furlough was a fair and reasonable response open to the employer and does not amount to a breach of trust and confidence.

187. (11.7). We have accepted that the role of paralegal and senior paralegal were different and therefore it was appropriate for the employer to identify the job holder of a unique role where the requirements of that role ceased altogether and the majority of the rest the role was diminishing as in a pool of one. The respondent had properly and fairly turned its mind to the appropriate pool and we accept that its explanation was found. This does not amount to a breach of trust and confidence.

188. As to issue 11.8, we have found that while the respondent refused to amend the pool, it did come up with an alternative which is what the claimant requested that it had also considered extended furlough and other recent alternatives. This allegation therefore fails on its facts.

189. Similarly, we have found that issue 11.9 fails on its facts. The claimant was not offered a demotion. Bumping was put in place as she had requested. This indicates a willingness to retain the claimant which is contrary to the claimant's position.

190. 11.10 11.11 relates to a complaint resignation letter produced by the claimant. While these set out the claimant's objections to the situation, the sending of such correspondence by the claimant cannot amount to a breach of trust and confidence by the respondent.

191. We conclude that none of the matters complained of constitute repudiatory breach giving rise to an entitlement to treat the contract as terminated with immediate effect. We find the claimant was not constructively dismissed. As we have reached this conclusion, we have not therefore gone on to consider whether dismissal was fair because we have found the claimant in effect resigned. She was not dismissed.

192. As a result, we find that her claim for wrongful dismissal also does not succeed. The claimant was not entitled to treat the contract at an immediate end and therefore the respondent has no obligation to pay her notice pay.

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Employment Judge McLaren
Date: 25 April 2023