EMPLOYMENT TRIBUNALS

Claimants	**Respondents**
(1) Miss T Newton	(1) Moortown CStore Ltd
(2) Miss C Peel	(2) Valli Forecourts Ltd

Heard at: **Leeds by CVP** **On: 24 July 2023**
Before: **Employment Judge P Morgan**

Appearances
For the Claimants: **Mr M Todd (Counsel)**
For the Respondent: **Ms D Ajibade (Representative)**

RESERVED JUDGMENT

1. The First Claimant's claims against the Second Respondent are dismissed on withdrawal by the First Claimant.

2. The Second Claimant's claims against the Second Respondent are dismissed on withdrawal by the Second Claimant.

3. The First Claimant's complaint for breach of contract against the First Respondent for failure to pay notice pay is well-founded. The First Respondent is ordered to pay to the First Claimant the gross sum of **£186.60**. The Tribunal has calculated this figure using gross pay to reflect the likelihood that the First Claimant will be taxed upon it as Post Employment Notice Pay.

4. The Second Claimant's complaint for breach of contract against the First Respondent for failure to pay notice pay is well-founded. The First Respondent is ordered to pay to the Second Claimant the gross sum of **£338.30**. The Tribunal has calculated this figure using gross pay to reflect the likelihood that the Second Claimant will be taxed upon it as Post Employment Notice Pay.

5. The First Claimant's complaint for non-payment of statutory redundancy pay by the First Respondent is well-founded and succeeds. The First Respondent is ordered to pay to the First Claimant the sum of **£5894.30**.

6. The Second Claimant's complaint for non-payment of statutory redundancy pay by the First Respondent is well-founded and succeeds. The First Respondent is ordered to pay to the Second Claimant the sum of **£4674**.

7. The First Respondent failed to provide the First Claimant with a written statement of employment particulars as required by Section 1 of the Employment Rights Act 1996. The First Respondent is ordered to pay to the First Claimant the sum of **£655.30** (two weeks' pay).

8. The First Respondent failed to provide the Second Claimant with a written statement of employment particulars as required by Section 1 of the Employment Rights Act 1996. The First Respondent is ordered to pay to the Second Claimant the sum of **£473.08** (two weeks' pay).

9. The First Respondent is therefore ordered to pay to the First Claimant a **grand total of £6736.20**.

10. The First Respondent is therefore ordered to pay to the Second Claimant a **grand total of £5485.38.**

REASONS

Technology

1. This hearing was conducted by CVP (V - video). The parties did not object. A face to face hearing was not held because it was not practicable and all the issues could be dealt with by CVP.

Introduction

2. These were complaints of wrongful dismissal, and for non-payment of statutory redundancy pay, brought by the Claimants, Miss T Newton (the First Claimant) and Miss C Peel (the Second Claimant), against their former employer, either Moortown CStore Ltd (the First Respondent) or Valli Forecourts Ltd (the Second Respondent). The Claimants were represented by Mr Todd of Counsel, and the Respondents were represented by Ms Ajibade, Representative, (Peninsula). This hearing dealt with both liability and remedy.

3. The effective date of termination of the Claimants' employment is disputed. The First Claimant's employment with the First Respondent ended on 9 September 2022 or 14 September 2022, the Second Claimant's employment with the First Respondent ended on 9 September 2022 or 14 September 2022. In final submissions Mr Todd for the Claimants also states that the Claimants were both dismissed by letter on 4 October 2022. For the First Claimant early conciliation commended on 12 September 2022, and ended on 24 October 2022. For the Second Claimant, early conciliation commenced on 14 November 2022, and ended on 16 November 2022.

4. On 23 November 2022, Miss Newton brought proceedings against Moortown CStore Ltd, the First Respondent, for wrongful dismissal (notice pay), and for

non-payment of statutory redundancy pay (Case No: 1806623/22). On 23 November 2022, Miss Peel also brought proceedings against Moortown CStore Ltd for wrongful dismissal (notice pay), and for non-payment of statutory redundancy pay (Case No: 1806622/22).

5. Following disclosure, since the Claimants alleged that the documents provided by the Respondents appeared to purport to have a different, later, dismissal date (2 December 2022) both Claimants brought further claims against the First and Second Respondents dated 17 February 2023 (Case Nos: 1800990/2023 and 1800991/2023). These claims included claims for unfair dismissal, redundancy payment, and notice pay.

6. The four cases were listed for a preliminary hearing on 9 May 2023. The hearing was to consider the duplication of claims, and whether the Tribunal had jurisdiction to hear the unfair dismissal claims. At the hearing before Employment Judge D Jones on 9 May 2023 the claims dated 17 February 2023 (Claim Nos: 1800990/2023, and 180091/2023) were withdrawn by the Claimants. These claims were not dismissed on withdrawal because of the duplication of the statutory redundancy pay and notice pay claims. The Second Respondent was added to the claims.

7. There was an agreed file of documents (152 pages) and everybody had a copy. A second version of the bundle, containing different pagination and further documents, was submitted directly to the Tribunal by the Respondents. This second version of the bundle had not been agreed between the parties. No application was made to adduce this additional material, and the Tribunal used the bundle which was agreed between the parties, and which contained the pagination corresponding to the witness statements. Since the Tribunal did not initially have access to the agreed bundle this delayed the start of the hearing by 25 minutes whilst the Respondents sent the agreed bundle to the Tribunal. The Respondents confirmed that they were happy to use the agreed bundle. This delay, combined with the nature of the issues disputed, meant that judgment needed to be reserved. The Tribunal heard evidence from both Claimants and from Mr H Valli (Director of Valli Forecourts Ltd and Operations Manager for Moortown CStore Ltd) and Mrs S Valli (Company Secretary for Valli Forecourts Ltd, and payroll co-ordinator for Moortown CStore Ltd) for the Respondents.

The Claims and Issues

8. The issues for the Tribunal to determine, as set out in the Case Management Order of Employment Judge D N Jones dated 9 May 2023 were:

The Employer

8.1 Who was the employer of the Claimants, the First or Second Respondent?

Wrongful dismissal / Notice pay

8.2 Did the Claimants resign or were they dismissed?
8.3 If they resigned, was it in response to a fundamental breach of contract of their employer?
8.4 If the Claimants were dismissed, was it without notice?

[If so, it is agreed that the notice period, for both Claimants, was 12 weeks].

Redundancy

8.5 Did the Claimants resign or were they dismissed?
8.6 If they resigned, was it in response to a fundamental breach of contract of their employer?
8.7 If the Claimants were dismissed or constructively dismissed, did they unreasonably reject offers of suitable alternative employment?
8.8 What was the continuous period of employment for calculating the Claimants' redundancy payment?

Agreed Issues

9. Although there was initial confusion as to the identity of the employer, during the hearing both Claimants and Respondents accepted in the light of the evidence that both Claimants were employed by the First Respondent, Moortown CStore Ltd, within the meaning of Section 230 of the Employment Rights Act 1996. The Tribunal accepts this as a proper concession, supported by the evidence. The parties also agreed that both Claimants have been continuously employed for a period of more than two years, due to a transfer of the Claimants' employment under the Transfer of Undertakings (Protection of Employment) Regulations 2006 from the Co-operative Group Ltd to Moortown CStore Ltd.

10. The Respondents also accept that there was no written statement of employment particulars. In the absence of a contractual notice period all parties agreed that the statutory notice period of 12 weeks applies to both Claimants. The Respondents do not seek to rely on any mobility clause in the contract.

11. In this case the dispute relates to whether notice pay, and/or redundancy pay is due. In particular regarding notice pay the Respondents allege that the Claimants are not entitled to notice pay since the Claimants resigned without giving notice, and were not dismissed. Regarding redundancy pay the Respondents allege that the Claimants are not entitled to redundancy pay since they unreasonably refused an offer of suitable alternative employment. The effective date of termination is also in dispute.

12. If the Claimants are successful in their claims for statutory redundancy pay the amounts in the Claimants' schedules of loss are agreed, £5894.30 for the First Claimant, (18 weeks x £327.46), and £4674 for the Second Claimant (19 weeks x £246). If the Claimants are successful in their claims for notice pay the sums claimed in notice pay are not agreed between the parties.

The Facts

13. The Respondents form part of a group of connected companies which primarily operate petrol stations. It is an extensive organisation. The Second Respondent, Valli Forecourts Ltd purchased a convenience store in Moortown, Leeds, from the Co-Operative Group Ltd during September/November 2021. This store contained a Post Office branch within it, ("the Post Office Moortown Store"). Decisions within Valli Forecourts Ltd are made by Mr Valli and two of his brothers.

14. The First Respondent, Moortown CStore Ltd, sub-leased the store from the Second Respondent, Valli Forecourts Ltd, and also operated the Post Office Moortown Store. The First Respondent was controlled by Mr Valli and his brother Mr Farook Valli. After the purchase the store traded under the Nisa banner. The Post Office Moortown Store was the first Post Office managed by the Respondents. It was situated adjacent to another site, a petrol station, owned/operated by the group. A store manager Ms Minakshi Vij was in charge of the overall operation of both the convenience store and the Post Office contained within the store.

15. Miss Newton was employed as a Post Office Supervisor at the Post Office Moortown Store by the Co-Operative Group Ltd, starting in 2010. She was paid £1419 per month before tax. Miss Newton states that she was first employed in this role on 30 June 2010. In their ET3 and in Mr Valli's witness statement the Respondents state that she was first employed on 17 August 2010. Miss Peel was employed as a Post Office Counter Clerk at the Post Office Moortown Store by the Co-Operative Group Ltd. She was paid £1025 per month before tax. Miss Peel states that her employment started on 1 August 2005. In their ET3, and in Mr Valli's witness statement the Respondents state that she was first employed on 25 September 2004. At the start of the hearing the Respondents confirmed that they accepted the employment start dates put forward by both Claimants. In cross examination Miss Peel confirmed that she initially worked on the shop floor of the convenience store for six months, before progressing to the Post Office Counter Clerk role in 2005.

16. The Claimants were TUPE transferred from the Co-Operative Group Ltd to the First Respondent on 23 November 2021. After the transfer the Claimants retained their roles and job titles. The Co-Operative Group Ltd did not supply the Respondents with copies of the Claimants contracts of employment. The Claimants also did not receive new contracts of employment from the First Respondent. Whilst the First Respondent made some attempts to obtain copies of the contracts from the Co-Operative Group Ltd it did not manage to do so.

17. The Claimants' work hours were 0830 to 1730, and 0900-1730 respectively. Miss Newton worked 24 hours a week, and Miss Peel 30 hours a week. Unlike the shift patterns at the Moortown Post Office Store the shift patterns at the petrol stations operated by Valli Forecourts Ltd were 0700-1500, 1500-2300, and 2300-0700. The Claimants had written contracts of employment with the Co-Operative Group Ltd. Following their TUPE transfer they did not receive a written

contract from the First Respondent, or any particulars of change. In the absence of a written contract with the First Respondent, they both believed that their notice period was 4 weeks. They were reinforced in their belief by the fact that they were given 4 weeks' notice by the Respondents that the store was being closed. It is now agreed that the statutory notice period for both Claimants is 12 weeks. Prior to the closure of the store neither Claimant was informed by the Respondents that their notice period was 12 weeks.

18. The store proved to be insufficiently profitable, and a decision was made to close the store. The Claimants both received both a WhatsApp message on 9 August 2022 and a letter from Valli Forecourts Ltd dated 9 August 2022, inviting them to a meeting, and informing them that their employer needed to change the terms and conditions of their employment. A meeting took place on 10 August 2022, which was attended by (amongst others), the Claimants and Mr Valli. Mr Valli chaired the meeting. The meeting was minuted by the Respondent and the minutes were confirmed as accurate by both Claimants.

19. At the start of the meeting the Claimants were informed that the Respondents had decided to close the shop, provisionally on 9 September 2022, and that the staff would all be "relocated to the shops". For those unwilling to relocate Mr Valli stated "we could look into redundancy", but that he would need to get back to the staff on this point. He confirmed in oral evidence that he was not offering redundancy at this point as other roles were available. The Post Office staff were informed that since the Post Office could not be run by itself, the store closure would also mean the closure of the Post Office.

20. The staff were informed that not all of them would be able to be moved to the adjacent BP Moortown site, and that there were 4-5 other locations where they may be relocated to. At this point, as Mr Valli accepts in cross-examination, he did not know exactly where each staff member would be relocated to. Since the group did not have another Post Office the Post Office staff would be offered forecourt retail roles. From this point onwards both Claimants have consistently maintained that there are significant distinctions between the Post Office roles that they carried out, and the forecourt retail roles.

21. When asked during the meeting if staff could work the same hours, Mr Valli responded "Let me answer that, remember this place is closing, and our other shops are operating 24/7 and we will try our best to accommodate you all." In reply Mr Valli was informed by Miss Newton, and also by Ms Toni Masterton that their contract did not require them to be available 24/7. Mr Valli accepts that at this point he was not sure if the staff were going to change shifts, or if they would have to work nights. No specific offer was made to staff members at this point.

22. On 19 August 2022 the First Respondent sent out a letter to the Claimants signed by Mr Valli to arrange a meeting on 22 August 2022. Store staff and Post Office staff were to be met separately. The letter stated, "you may be asked to change locations and make some minor adjustments to hours. Your role will mostly stay the same." The letter additionally stated "I need to make clear that if no agreement is reached, your current contract will be terminated because we

would be unable to maintain your current terms and conditions. At that point, you will be served notice on your current contract and will be offered re-engagement on the new terms we are proposing." Further, the letter stated that if the offer was not accepted and no alternatives could be found then the outcome could be termination on the grounds of some other substantial reason.

23. The meeting took place on 31 August 2022. The Claimants and Mr Valli (amongst others) were present. A trade union official, Ms Michelle Hargreaves, also attended the meeting, via Zoom. The meeting was minuted, and the minutes signed by the Claimants. During the meeting Mr Valli confirmed that the Claimants would be offered customer service positions, but he was not then in a position to provide copies of the job descriptions or contracts, which were requested by Ms Hargreaves. Mr Hamzah Valli was asked to make a note of this request, and confirmed that he would send the job descriptions to Ms Hargreaves before Monday 5 September 2022. Mr Valli took the position that the retail roles were similar to their Post Office roles "Like customer service, serving customers."

24. During the meeting the Claimants were informed that their contract and pay would remain the same (24 hours a week for Miss Newton, and 30 hours a week for Miss Peel respectively). On being asked how this would fit into the shift patterns at the petrol stations Mr Valli replied "You have never worked nights here so hopefully you won't be doing nights." The Claimants took the position that the hours, and roles were not the same, and asked to be offered redundancy.

25. Mr Valli accepts that he did not inform the Claimants of the locations of the new roles, since at this point the locations of the new roles being offered to the Claimants had not been determined, and he had left this to the Valli Forecourts Ltd Operations Manager to determine.

26. On 2 September 2022 Mrs Valli emailed Ms Hargreaves with the job descriptions of the proposed new retail roles for the Claimants. These job descriptions were not accompanied with the job descriptions of the roles which were then carried out by the Claimants, which have been produced for the hearing. Although the job descriptions were sent to Ms Hargreaves, they were not seen by the Claimants. There was also no discussion of these job descriptions prior to the meeting of 29 September 2022. The job descriptions which the Respondents drafted for the Claimants' Post Office roles were not sent to Ms Hargreaves or the Claimants, but have been provided for the purpose of this hearing. It is clear that some of the text between the job descriptions for the retail and Post Office roles has been cut and pasted between the two documents.

27. A further meeting occurred on 5 September 2022. The Claimants, Mr Valli, and Ms Hargreaves (amongst others) were present. During this meeting Mr Valli confirmed that the Claimants would not be required to carry out the night (2300-0700), or the 1500-2300 shifts, unless they informed him that they didn't mind these shifts, and that their contracted hours would be honoured (at the meeting of 29 September 2022 he further confirmed that they would be required to undertake the 0700-1500 shifts). They were informed that their contracts would remain the same.

28. During this meeting Miss Newton was informed orally that she would be offered a role at the Gledhow petrol station (BP Spar Gledhow, 355 Roundhay Road, Leeds, LS8 4BU), (which was 2.8 miles away from the Moortown site), and Miss Peel was to be offered a role at the Moortown petrol station (BP Spar Moortown, 401 Harrogate Road, Leeds, LS17 6DJ) adjacent to the Moortown Post Office Store. Mr Valli refused to offer redundancy on the basis that he considered that alternative positions were available. He further stated at the meeting: "I don't think I can give you redundancy legally as it will be against the law because I have similar positions available." He informed Ms Peel that from Friday (when the store closed) there would be things to do in the store, and if not that she would be sent to the petrol station next door. He confirmed that the Claimants would be offered 40 hours' full training for the new customer service roles. He confirmed that the site would be closing on 9 September 2022, but that the process would be until 14 September 2022.

29. The Moortown CStore Ltd site closed on 9 September 2022. This was the Claimants' last working shift at the Post Office Moortown Store. Miss Peel considered herself dismissed at this point since her job was obsolete and the doors of the shop were closed. Miss Newton also considered the 9 September 2022 to be her last day.

30. A further meeting took place between the Claimants and Mr Valli on 14 September 2022. This meeting (as with the other meetings) took place at the Moortown Post Office Store. Ms Hargreaves was also in attendance. During this meeting Mr Valli offered the Claimants a four week trial period of the new roles, and that at the end of the four week period they would meet again to see how the roles were going. This was the first time that a trial period was mentioned to the Claimants. He informed them that if they did not take up the 4 week trial period they would lose their redundancy rights. Ms Hargreaves queried the statement that there was a loss of redundancy right, since there was no offer of redundancy. Redundancy was not offered at the meeting. Mr Valli was also unable to confirm the identity of the new employer at the meeting, but he stated "I believe it will be under Valli Forecourts Ltd, this is a bigger and stronger organisation." On 14 September 2022 both Claimants raised a written grievance with their employer, and submitted this during the meeting of the 14 September 2022. The Claimants were paid up to the 14 September 2022 on the request of Ms Hargreaves. After this point the First Respondent stopped paying the Claimants. Neither Claimant took up the offer of a trial period.

31. Other staff members were paid until the 9 September 2022, however, the Claimants were paid until the 14 September 2022, since this had been requested by their Union Representative so that they would be paid to attend the meeting on Wednesday 14 September 2022. The First Respondent also paid them to attend a meeting on 29 September 2022 at the previously contracted rate after the Union made a request for the Respondents to do so.

32. On 23 September 2022, by letter, the Claimants' grievance was rejected. In particular the letter stated that regarding the alternative roles "[a]lmost everything will be exactly the same", further that "[a]s a company we have never had to

make staff redundant ever since we started the business in 2002". The letter was not signed, and it is not clear which company purported to send the letter. Since Moortown CStore Ltd was incorporated specifically to operate the newly acquired Moortown Post Office Store, and had not been operating in 2002, the Tribunal finds on the balance of probability that the reference to the company refers to Valli Forecourts Ltd.

33. On 27 September 2022 Mr Valli wrote to Miss Peel stating that she was required to attend a meeting on 29 September 2022. The letter stated that her notice period ran until 2 December 2022, and that there was an expectation that she should make herself ready and available to work this period in the role of a Customer Team Member at Spar Moortown (the Moortown BP petrol station), and that a failure to do so could result in her notice pay not being paid. This was the first time that a 12 week notice period was mentioned to either Claimant.

34. On 29 September 2022 a further meeting was held between the Claimants, Mr Valli and Ms Hargreaves, (amongst others). The position of the Claimants was that they had served their notice, or that they did not need to do so, and that the last day of employment was 14 September 2022. Their position was that their employment ended when the Post Office Moortown Store closed. The Respondents stated that they expected the Claimants to work a notice period until 2 December 2022 in the new retail roles and locations at the two respective petrol stations. Ms Hargreaves confirmed that she had received the job descriptions, but that they were not like for like. A detailed discussion followed on how the jobs differed. Mr Valli confirmed that Miss Newton would be offered the role as a supervisor, and trained to do the role.

35. On 30 September 2022, Ms Hargreaves emailed Mr Valli on behalf of Miss Newton and Miss Peel to appeal the decision and clarification given on 29 September 2022. Further on 30 September 2022 Miss Peel sent the following WhatsApp message to Ms Vij: "Hi Min, could you please send my p45 to my home address many thanks MSG FROM CLAIRE". Ms Vij responded "I am good thank you How are you?? Alright will ask Samin to send it to ur home address [smiley face emoji]".

36. In her witness statement Mrs Valli states that this was not the first time that a P45 was requested by the Claimants. She asserts that "[s]everal meetings took place during which neither Claimant raised the issue of wanting a P45 but as soon as the meetings officially ended and were not being minuted, the Claimants would seek out Haroon or the Operations Director and or the Store Manager and demand to know when they would receive their P45 despite." Recollections inevitably differ over time, and it can be difficult to distinguish between meetings. However, in cross-examination Mrs Valli confirmed that she was not present at any of the meetings, and she was reporting only what she heard via a telephone call from Mr Valli. Neither Mr Valli (who was present), or any of the other parties who were present make this claim in their evidence. Neither do any of the comprehensive meeting notes refer to P45s, or a request for P45s, which is surprising if this issue had been raised after previous meetings. The Tribunal

therefore finds on the balance of probabilities that this was the first request made for a P45.

37. On 4 October 2022 Mr Valli sent a letter to both Miss Newton and Miss Peel stating that the redundancy consultation had now been concluded, and that the letter should be treated as a formal dismissal due to redundancy. The letters informed the Claimants that they would be required to work until 2 December 2022 and since they had refused to do so they would not be paid notice pay. The letter also stated that the Claimants were not entitled to redundancy pay since they had refused the trial periods in the new roles, and maintained the position that the Claimants had not provided "a sound and compelling reason why the alternative employment is not suitable."

38. At 1600 on 7 October 2022, Mrs Valli emailed Miss Newton to confirm that she had indicated a wish to leave the company on 14 September 2022, that payroll would be finalised for that date, and a P45 issued. On that day Miss Newton also sent a WhatsApp message to Ms Vij to enquire why her wage slip and P45 were not available. The P45s for both Claimants were issued, and dated 24 January 2023, both recorded a leaving date of 14 September 2022. The Tribunal finds on the balance of probabilities that Miss Newton also requested a P45 from the First Respondent on or after the 14 September 2022.

39. On 20 September 2022 Miss Peel obtained a new job as a Post Office Counter Clerk. The new role paid £960 a month. On 19 September 2022 Miss Newton also obtained a new job as a doctor's receptionist carrying out administrative tasks. The new role paid £1605 a month. Miss Newton then subsequently returned to a Post Office role obtaining the position of Post Office Clerk.

The Roles

40. The Claimants worked at the Moortown Post Office Store as a Post Office Supervisor and a Post Office Clerk respectively. For the purposes of this hearing the Respondents produced job descriptions for the two roles carried out by the Claimants:

"**Post Office Counter Clerk**
Post office counter clerks usually work behind the counter in branch post offices. They provide a wide range of postal services to customers, plus other services such as bill payment, banking services and lottery sales. On top of this you will also be required to serve store customers."

"**Post Office Supervisor**
Post Office Supervisors report to the Store Management Team, you will support the Store Manager to maximise sales and profit, lead and develop their team, control costs and leakage and the provision of friendly, excellent service to customers, colleagues and visitors."

[typographical errors in the original]

41. The Respondents also produced job descriptions for the alternative roles offered to the Claimants:

> "**Customer Sales Assistant**
> As a Customer Service Assistant, you will be the face and voice of our stores and your main priority will be to ensure that our customers are provided an excellent service every time. If you aren't serving our loyal customers at the till, then you'll be busy making sure the till area looks fabulous, and well-stocked, ready for the next customer!"
>
> "Shop Supervisor
> As a Shop Supervisor, if you aren't serving our loyal customers at the till then you'll be busy working the shop floor ensuring our shelves are merchandised, look fabulous, and well stocked! In addition to this, shop supervisors will support the Store Manager to maximise sales and profit, lead and develop their team, control costs and leakage and the provision of friendly, excellent service to customers, colleagues and visitors."
>
> [There are many font changes contained within the original description for Shop Supervisor, these have not been reproduced here].

42. These job descriptions were written by the Second Respondent's Operations Manager. Miss Peel accepted that the job description of Post Office Clerk was an accurate description of the role, but that it lacked a full understanding of the role. Miss Newton also accepted that the job description of the Post Office Supervisor was accurate. However, the Post Office Supervisor role would also require her to be able to carry out any of the roles that a Post Office Clerk would carry out, since she would also need to be able to step in.

43. Mr Valli gave evidence that the roles carried out by the Claimants and the offered roles were similar, and that both Claimants would be required to carry out similar duties, for instance customer service, and stacking shelves. He stated that both roles involved greeting and dealing with customers, cash, and parcels, and running a till. Both roles would also involve handling parcels.

44. Whilst on the face of the job descriptions, both roles involved serving customers, the similarities were only at a macro level, the Tribunal accepts that there were a number of significant differences between the roles. Miss Peel considered that the similarity stopped with the serving of customers, and that in "any job you have to give excellent customer service". Miss Peel was also not required to stack shelves in her Post Office role. Miss Newton accepted that there were transferrable skills which applied between the roles of Post Office Supervisor and Shop Supervisor, but that these skills, such as "excellent customer service" would also apply to a wide variety of roles.

45. To train for the Post Office role Miss Peel attended an initial training course, there were then regular updates and online training courses, and documents that needed to be read to ensure that they were up to date for the role (indeed both the First and Second Claimant's roles required this). Miss Peel explained that they were constantly training and learning as things changed, for instance the rules on overseas parcels following the recent "cyber-incident" and customs

rules have changed. Miss Newton received one to one training for 3 years, before transferring to Moortown as a Supervisor.

46. Whilst, there were some similarities in role in that the Post Office did sell stationery: envelopes, and Sellotape, and also dealt with the lottery (including payouts), the Claimants would not have been able to immediately work in the new offered roles. Mr Valli stated that they would need 40 hours of training for these new roles. Although he considered that at the macro level the duties and responsibilities were similar, he accepted in cross-examination that "in terms of the details, comes with time, training, and experience. Both behind counter. Naturally Post Office Clerk, the other is Sales Assistant Forecourt, they will be different."

47. In offering the new roles Mr Valli did not look into the training the Claimants had needed to undertake to work in the Post Office. He stated it was "not relevant for me." He also did not consider it relevant that a significant amount of their training would not be relevant to the new roles. He considered their training relevant to meeting and greeting customers and taking cash on the forecourt side.

48. There were however a number of significant differences between the roles. Both Claimants had significant experience of both retail work, and of Post Office work. Whilst the Tribunal accepts that there were some overlapping skill sets between the two roles the Claimants were able to compellingly set out the significant differences between the roles in terms of training, complexity, skills, and knowledge required, and the Tribunal accepts the Claimants' evidence on these points. Both Claimants considered the Post Office roles higher status, they spoke of progressing from retail to Post Office roles, and in the meeting of 10 August 2022 Miss Peel stated "I don't want to go down in position, no offence to anyone but I don't want to [be] stacking the shelves." They also subsequently referred to having worked hard to move from retail into Post Office roles.

49. There were differences in how payments were processed, with shop work the assistants use a till, whereas with the Post Office work the Claimants needed to carry out a manual reckoning, and would have to work out how much change to give customers. The role required good maths skills.

50. The Post Office roles, unlike the forecourt roles, dealt with banking, both current account and business accounts. Individuals or businesses would come in with their takings, these would need to be counted using a machine, checked for forgeries, and inputted into their bank accounts. Customers would also request cash withdrawals and pay in cheques. The Claimants would deal with thousands of pounds of banking a day.

51. Passport checks were also part of the Post Office roles, and not the forecourt roles. The Post Office staff would be required to check the application, ensure that the relevant parts of the form were completed, that the writing was within the

boxes, and that the relevant documents which are needed were provided. This could be complicated, particular with overseas birth certificates.

52. The Claimants were also required to issue international driving licences. Again this would not be undertaken in the forecourt roles. This would require them to fill out the permits, there being different permits for different countries. They would need to check that the licence was up to date and correct, and transfer the details onto the permit, and apply the correct stamp to the permit (which may vary). Miss Newton explained that this work could be intense, if they got it wrong then a customer would not get a passport, or if they got the wrong number on the international driving licence then the customer could not drive abroad.

53. Both Post Office roles required the Claimants to be knowledgeable on every Post Office product. For instance with travel insurance they would need to know where the customer was travelling to and the coverage required. With financial services and savings accounts they would need to understand the products, and ask if customers wished their savings to be accessible, or to have a growth bond. This knowledge would not be needed for the forecourt retail roles.

54. As Miss Peel stated there is “so much more detail in a Post Office product than just selling a stamp”. With postage, Miss Peel explained that this was more than simply asking if a first or second class stamp was required, they would also need to know what was inside and its value, and the regulations on dangerous goods. They were also required to operate the Horizon Computer system.

55. Within the Post Office Supervisor role Miss Newton was also required to ensure that all books and balances were correct. Whereas, in the offered retail supervisor role Miss Newton stated that there “no back office things, nothing got mentioned about that”.

56. Although Mr Valli considered that a customer service assistant could work in the Post Office if they were trained to do so, it is clear from the evidence that the significant training and experiential knowledge required to work in the Post Office made this difficult. The store manager Ms Vij had received some Post Office training, and had undertaken a course. Miss Newton stated: “Min came in, worked a couple of hours. She was really stressed and couldn’t cope.” Ms Peel also noted in her witness statement that the training course was not sufficient to prepare Ms Vij to be able to work in the Post Office, she “could not work with us she wasn’t capable and was stressed out by it all. Working in a shop or petrol station is not the same and does not require the level of skills that I had built up.”

Reasons for Rejecting Roles

57. Both Claimants rejected the alternative roles proposed by the Respondents. Core to both of their decisions was that the offered roles were not equivalent to their existing roles. They considered that much of the training, skill set, and experience they had developed in their Post Office roles would not be used in the offered roles.

58. The location of the alternative role was not an issue for Miss Peel, the new role being on the other side of the forecourt, adjacent to the Moortown Post Office Store. Miss Peel rejected the alternative role on the basis that it was not like for like, and in her opinion it was not even a similar role. She considered the role offered was a demotion. She considered that her skills as a Post Office Counter Clerk, which she had accumulated would not be implemented in the new role.

59. Miss Newton ideally wanted a Post Office role, or something like for like, or similar, for instance work in a bank. In cross-examination she explained that she had "worked in retail for 20 years, I didn't want to go back to something I did 20 years ago. I felt that I had progressed. Didn't want to waste that training." She also rejected the role due to the lack of information given in relation to it, and for reasons of location.

60. Miss Newton also had car problems, and her car wasn't working at the time, she would thus need to take a bus to get to work. The Moortown Post Office Store location was a 15 minute bus journey from home, whereas the new job location would require her to get two separate buses, and wait for the connection between them. This would be a journey of an hour or more to work. However, she did not inform Mr Valli of her transportation difficulties. The change in shift pattern to 0700-1500 did not influence her decision.

61. Neither Claimant took up the trial period offered. Miss Newton did not take up the offered trial period as she felt that she did not need to. As she stated, she "knew exactly what they did in there. I worked in retail for 20 years. Just till, stocking shelves, and shop floor. I worked in retail for 20 years, didn't need a trial period to know." Miss Peel was also familiar with retail work, having worked in retail, including at the Moortown Post Office Store before commencing her Post Office role.

62. Although the Claimants primarily rejected the roles on the basis that they were not like for like, both Claimants also rejected the alternative roles on the grounds of the lack of detail provided. Miss Peel stated that the details were unclear, for example there was no clarity in which shifts they were being given. Only their hours were clarified, not the actual shifts they were going to do. Although she accepts that by the process of elimination only the 0700-1500 was available. Her Post Office shift was 0900-1730. Miss Newton also considered that the detail on the roles was lacking "nothing was set in stone, no contract, or job description. Had nothing, didn't know what was happening." Nothing was written down, as Miss Newton stated there was "no written contract, not in writing, just verbal, that's it." The identity of the new employer was also not confirmed during the meeting of the 14 September 2022.

63. Mr Valli accepts that a valid offer requires sufficient detail. He also accepted in cross-examination that the job descriptions provided would not be enough to allow him to decide whether or not to accept a job, to accept either job he stated "I would want more specification." However, he stated that he provided more detail in the meetings and considered that the Claimants were able to ask him any question in the meetings if they wished to do so.

Legal Principles

64. A failure on the part of an employer to give the proper notice period is likely to amount to a breach of contract entitling the employee to bring a wrongful dismissal claim unless the employer is contractually entitled to dismiss without notice. However, to bring such a claim a Claimant must have been dismissed, (including constructively dismissed). It is also a requirement to bring a claim for a statutory redundancy pay that the Claimant has been dismissed (including constructively dismissed).

Dismissal

65. So far as redundancy is concerned, Section 136 of the Employment Rights Act 1996 provides, so far as material, as follows:

"Circumstances in which an employee is dismissed.

(1) Subject to the provisions of this section and sections 137 and 138, for the purposes of this Part an employee is dismissed by his employer if (and only if)—

(a) the contract under which he is employed by the employer is terminated by the employer (whether with or without notice),

… or

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

66. The burden is on the employee to show that there has been a dismissal. Section 136(1) refers to termination by the employer. Where there are no express words of dismissal from the employer it is possible in some circumstances to infer a dismissal from the actions of the employer (*Kirklees Metropolitan Council v Radecki* [2009] ICR 1244, CA), provided the employee is aware of this conduct (*Sandle v Adecco UK Ltd* [2016] IRLR 941, EAT).

67. The unilateral imposition of different terms of employment by the employer, may be deemed to be a dismissal where it effectively withdraws the old contract. In *Hogg v Dover College* [1990] ICR 39, EAT, it was held that a letter to a teacher removing him from the position of head of history and offering him new terms as a teacher was an express dismissal. The new terms were held to be so different

from the old terms that it was considered to be the termination of one contract and the formation of a new one. Whether this has happened in a particular case is a matter of fact and degree for the Tribunal to determine (*Alcan Extrusions v Yates and Others* [1996] IRLR 327 EAT; *Cosmeceuticals Ltd v Ms T Parkin* UKEAT/0049/17/BA).

68. Section 136(1)(c) concerns constructive dismissal where the employer has committed, or is threatening to commit, a repudiatory breach of contract, thereby entitling the employee under the law of contract to leave without notice. In the case of constructive dismissal the reason for the dismissal is the reason for the employer's breach of contract that caused the employee to resign. Where the reason for the employer's breach of contract is redundancy, then the employee will be redundant (*Berriman v Delabole Slate Ltd* [1985] ICR 546, CA).

69. Not every change to an employee's job content or status gives rise to a constructive dismissal. Some changes may fall within the employee's existing job description or be covered by a flexibility clause. In order to establish a constructive dismissal an employee must show that: (a) there was a fundamental breach of contract on the part of the employer, (b) the employer's breach caused the employee to resign, and (c) the employee did not affirm the contract (*Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221, CA). The fundamental breach may be actual or anticipatory.

70. A fundamental breach is one that repudiates the whole contract. It must therefore be determined whether the breach is fundamental. An employee is not justified in leaving employment and claiming constructive dismissal merely because the employer has acted unreasonably, instead the breach must be fundamental (*Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221, CA).

71. It is for the Tribunal to decide if the breach is sufficiently fundamental. In the absence of a mobility clause, or the new role being within the job description, imposing a new role on an employee may in and of itself give rise to a breach of contract which entitles a Claimant to resign and claim constructive dismissal (*Lees v Imperial College of Science, Technology and Medicine* EAT 0288/15), as may a significant change in job content and status (*Gibbs v Leeds United Football Club Ltd* [2016] IRLR 493, QBD). Requiring a move to new more distant premises, in the absence of a contractual right to do so may also give rise to such a right (*David Webster Ltd v Filmer* EAT 167/98; *Strachan St George v Williams* EAT 969/94), as may a failure to provide an employee with the work that they were employed to do, and requiring them to undertake other work (*Melia v Green Contract Services Ltd* ET Case No.2902217/08) (although there is no general duty to provide work). However, these examples are merely illustrative, this is not always the case and the determination depends on the facts of the case at hand. The Tribunal also notes *Hogg v Dover College* [1990] ICR 39, EAT, and *Dr B Lees v Imperial College of Science Technology and Medicine* UKEAT/0288/15/RN.

72. In every contract of employment there is an implied term of trust and confidence (*Malik v Bank of Credit and Commerce International SA (in compulsory liquidation)* [1997] ICR 606, HL), that an employer: "will not, without reasonable and proper cause, conduct his business in a manner likely to destroy or seriously damage the relationship of trust and confidence between employer and employee" (*Malik*). The term covers a wide range of behaviour. Unlike some other breaches of contract a breach of the implied term of trust and confidence inevitably gives rise to a repudiatory breach of contract which entitles a Claimant to resign and claim constructive dismissal (*Morrow v Safeway Stores plc* [2002] IRLR 9, EAT). This implied term covers a broad range of actions. An employer may be in breach of this implied term where it seeks to impose a role change on its employee, for instance where it fails to properly assess the differences in roles between the previous role, and the new role (*Argos Ltd v Kuldo* EAT 0225/19).

Statutory Redundancy Pay

73. Section 139(1) of the Employment Rights Act 1996 provides, so far as material, as follows:

"139 Redundancy.

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

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

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

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

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

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

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

74. For a dismissal to be by reason of redundancy a redundancy situation must exist (for the relevant test see *Safeway Stores plc v Burrell* [1997] ICR 523, EAT, and *Murray and anor v Foyle Meats Ltd* [1999] ICR 827, HL).

75. So far as the claim for statutory redundancy pay is concerned, for this claim there is a presumption of redundancy. Section 163 of the Employment Rights Act 1996 provides, so far as material, as follows:

"163 References to employment tribunals.

(1) Any question arising under this Part as to—

(a) the right of an employee to a redundancy payment, or

(b) the amount of a redundancy payment,

shall be referred to and determined by an employment tribunal.

(2) For the purposes of any such reference, an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy."

76. To resist the claim for redundancy payment the Respondent must prove on the balance of probabilities that the dismissal was not for reasons of redundancy. The Tribunal will consider all the evidence to decide if this presumption has been rebutted (*Greater Glasgow Health Board v Lamont* EATS 0019/12; *Willcox and anor v Hastings and anor* [1987] IRLR 298, CA).

77. A Claimant may lose their right to statutory redundancy pay where they refuse an offer of suitable alternative employment. Section 141 of the Employment Rights Act 1996 provides, so far as material, as follows:

"Renewal of contract or re-engagement.

(1) This section applies where an offer (whether in writing or not) is made to an employee before the end of his employment—

(a) to renew his contract of employment, or

(b) to re-engage him under a new contract of employment,

with renewal or re-engagement to take effect either immediately on, or after an interval of not more than four weeks after, the end of his employment.

(2) Where subsection (3) is satisfied, the employee is not entitled to a redundancy payment if he unreasonably refuses the offer.

(3) This subsection is satisfied where—

(a) the provisions of the contract as renewed, or of the new contract, as to—

(i) the capacity and place in which the employee would be employed, and

(ii) the other terms and conditions of his employment,

would not differ from the corresponding provisions of the previous contract, or

(b) those provisions of the contract as renewed, or of the new contract, would differ from the corresponding provisions of the previous contract but the offer constitutes an offer of suitable employment in relation to the employee."

78. While there is no requirement that the offer be put in writing it must be reasonably precise in its terms if it is to be capable of acceptance. It is for the employer to show both that the job offered was suitable and that the employee's refusal was unreasonable (*Jones and anor v Aston Cabinet Co Ltd* [1973] ICR 292, NIRC). Suitability and reasonableness are questions of fact for the Tribunal, and are given their ordinary meanings (*Hudson v George Harrison Ltd* EAT 0571/02 and *Devon Primary Care Trust v Readman* [2013] IRLR 878, CA). Whilst suitability is assessed objectively, it takes into account the particular employee. The assessment of suitability includes (amongst others) job content, status, and terms and conditions.

79. Reasonableness involves assessing the Claimant's subjective reasons for the refusal (*Dunne v Colin and Avril Ltd t/a Card Outlet* EAT 0293/16). Reasonableness also considers factors which are personal to the employee, such as their personal circumstances, and is assessed subjectively at the time of the refusal (*Executors of JF Everest v Cox* [1980] ICR 415, EAT; *Devon Primary Care Trust v Readman* [2013] IRLR 878, CA). It is not for the Tribunal to substitute its own view as to the reasonableness of a refusal (*Bird v Stoke-on-Trent Primary Care Trust* EAT 0074/11). This is a factual determination for the Tribunal, but the factors may also take into consideration the factors taken into account in assessing suitability, and are not limited to personal factors extraneous to the job (note *Spencer and anor v Gloucestershire County Council* [1985] IRLR 393, CA; *Cambridge and District Co-operative Society Ltd v Ruse* [1993] IRLR 156, EAT; *Commission for Healthcare Audit and Inspection v Ward* EAT 0579/07).

80. In making this determination Tribunals may consider (amongst others), job content, status, workplace, hours, and the timing of the offer. Employment is not necessarily suitable simply because the employee has the skills to do it, a drop in status may make a job unsuitable (see *Taylor v Kent County Council* [1969] 2 QB 560, Div Ct; *Harris v E Turner and Sons (Joinery) Ltd* [1973] ICR 31, NIRC). A change in duties may also make a new job unsuitable, where it does not use an employee's skills, or contains significantly different content. Changes in shift patterns, or hours worked may also be considered. The timing of an offer may also be relevant in assessing reasonableness (*Bryan v George Wimpey and Co* [1967] 3 KIR 737, ET; *Thomas Wragg and Sons Ltd v Wood* [1976] ICR 313, EAT; *Tavistock and Summerhill School and anor v Richards and ors* EAT 0244/13).

81. So far as trial periods are concerned, this is provided for in Section 138 of the Employment Rights Act 1996. There is no obligation on an employee to undertake a trial period. The statutory right to a trial period arises when the provisions of the new contract differ from the previous contract. Section 138 provides:

“No dismissal in cases of renewal of contract or re-engagement.

(1) Where—

(a) an employee’s contract of employment is renewed, or he is re-engaged under a new contract of employment in pursuance of an offer (whether in writing or not) made before the end of his employment under the previous contract, and

(b) the renewal or re-engagement takes effect either immediately on, or after an interval of not more than four weeks after, the end of that employment, the employee shall not be regarded for the purposes of this Part as dismissed by his employer by reason of the ending of his employment under the previous contract.

(2) Subsection (1) does not apply if—

(a) the provisions of the contract as renewed, or of the new contract, as to—

(i) the capacity and place in which the employee is employed, and

(ii) the other terms and conditions of his employment, differ (wholly or in part) from the corresponding provisions of the previous contract, and

(b) during the period specified in subsection (3)—

(i) the employee (for whatever reason) terminates the renewed or new contract, or gives notice to terminate it and it is in consequence terminated, or

(ii) the employer, for a reason connected with or arising out of any difference between the renewed or new contract and the previous contract, terminates the renewed or new contract, or gives notice to terminate it and it is in consequence terminated.

(3) The period referred to in subsection (2)(b) is the period—

(a) beginning at the end of the employee’s employment under the previous contract, and

(b) ending with—

(i) the period of four weeks beginning with the date on which the employee starts work under the renewed or new contract, or

(ii) such longer period as may be agreed in accordance with subsection (6) for the purpose of retraining the employee for employment under that contract; and is in this Part referred to as the “trial period”.

(4) Where subsection (2) applies, for the purposes of this Part—

(a) the employee shall be regarded as dismissed on the date on which his employment under the previous contract (or, if there has been more than one trial period, the original contract) ended, and

(b) the reason for the dismissal shall be taken to be the reason for which the employee was then dismissed, or would have been dismissed had the offer (or original offer) of renewed or new employment not been made, or the reason which resulted in that offer being made."

82. There is no dispute that when the proceedings were begun, the First Respondent was in breach of its duty to give the Claimants a written statement of employment particulars, and/or a change to those particulars. If the Claimants are successful in their claims, since the First Respondent was in breach of its duty to give the Claimants a written statement of employment particulars or of a change to those particulars, the Tribunal must consider if there are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under Section 38 of the Employment Act 2002. If not, the Tribunal must award two weeks' pay and may award four weeks' pay if it is just and equitable to do so.

Application of the Law to the Facts

83. Applying those principles to the findings of fact above, my conclusions on the issues are as follows.

84. The Claimants were not dismissed on 9 September 2022. A mere failure to provide work for the Claimants, when the Claimants continued to be paid does not constitute a dismissal. Instead the First Respondent dismissed both Claimants on 14 September 2022. The First Respondent closed the Moortown Post Office Store on the 9 September 2002, and stopped the Claimants' pay after the meeting of 14 September 2022, and required them to take up two new different roles, with a new employer, after the 14 September 2022. At the time of the meeting of the 14 September the identity of the new employer was not confirmed.

85. Considering *Hogg v Dover College* (and the other authorities cited above), the Tribunal considers that the nature of the new retail roles which the Claimants were ordered to undertake by Mr Valli in order to be continued to be paid after 14 September 2022 were substantially different from the Post Office roles previously undertaken by the Claimants such that it would constitute the termination of one contract and the formation of a new one. These new roles had different job titles, and job descriptions, and these new roles did not require the carefully acquired skills which the Claimants had developed in their Post Office roles. Although the new retail roles had a customer service function and would also involve the handling of payments (which the Claimants' Post Office roles also both involved), the nature of the work was substantially different, the tasks undertaken substantially differed, the skills used differed, and both roles represented lower status roles to the Claimants' existing roles. The new activities did not fit within a reasonable description of the Claimants' Post Office job roles. The job descriptions created by the Respondent for the purposes of this hearing,

did not fully encapsulate the job titles contained within the Claimants' contracts of employment, or the range of tasks which such job titles would involve. In particular the jobs descriptions of the Post Office Supervisor and the Shop Supervisor were partly cut and pasted and did not take into account the fact that the Post Office Supervisor would also need to be able to carry out a wide range of Post Office tasks also undertaken by the Post Office Clerk role, and supervise these.

86. The Second Claimant was informed that her role was in a building adjacent to the Moortown Post Office Store. For her dismissal mobility is not a factor. However, in the case of the First Claimant, there was also no mobility clause in the contract, and the Respondents did not seek to rely on any such clause, either express or implied. However, her new role was a further 2.8 miles away from the location of the existing role. Mobility must be considered within the context of the case. Here this consideration is in the context of a local convenience store in an urban area, where the contract did not contain a mobility clause. This feature also reinforces the fact that the First Claimant had been dismissed from her existing contract, and a new contract offered to her.

87. I am bolstered in this conclusion that both Claimants were dismissed by the First Respondent by three additional points. Firstly on 14 September 2022 the First Respondent made it clear that it would cease to employ the Claimants, but that alternative employment was available with a different employer. The First Respondent was dismissing the Claimants. It would cease to have a contractual relationship with them. It was proposing a new contract with another employer, potentially the Second Respondent.

88. Secondly, during the meeting of the 14 September 2022 Mr Valli referred to the loss of the redundancy right if the Claimants did not undertake the trial period of work following the meeting. In doing so he was tacitly acknowledging the existence of the redundancy right that arises only on dismissal. For a right to exist the Claimants must have been being dismissed. Thirdly, the Tribunal also holds that the reference to the trial period was also an acknowledgement by Mr Valli that the roles materially differed, and represented new contracts of employment, since the statutory trial periods were only in play since there were material differences between the contracts of employment.

89. This dismissal on 14 September 2022 was without notice. The Claimants were informed that they would need to work their full notice periods in the new retail roles if they were to be paid notice pay.

90. If I had not found that the Claimants were directly dismissed on 14 September 2022, I would have found that they were constructively dismissed on the same date. The First Respondent's breaches of contract are as follows: 1) stopping the pay of the Claimants; 2) imposing new roles which involved a significant change in job content and status (the First Respondent required the Claimants to undertake these roles if they wished to continue to be employed); 3) requiring the First Claimant to move to more distant premises in the absence of a mobility clause; and 4) a breach of the implied term of trust and confidence.

91. The implied term of trust and confidence was breached by the following acts (including in combination), which destroyed or seriously damaged the relationship of trust and confidence between employer and employee:

    a) stopping the pay of the Claimants on 14 September 2022;

    b) imposing new roles which involved a significant change in job content and status (if they wished to continue to be paid);

    c) requiring the First Claimant to move to more distant premises in the absence of a mobility clause;

    d) informing the Claimants that they must take up the trial periods if they wished to receive any redundancy right, (the trial period is an option, and an employee is not obliged to undertake it);

    e) failing to properly consider the difference in training and skill between the roles currently undertaken by the Claimants and those offered, (as set out in the findings of fact above, there was limited consideration of the differences between the roles, and Mr Valli accepted in cross-examination when asked if he had looked at the training that the Claimants needed to undertake their work at the Post Office, that he had not done so and stated that he had not considered it relevant to him); and,

    f) as the Claimants were required to accept the new roles if they wished to be paid after 14 September, the failure to provide sufficient information on the new roles (including, amongst others, the identity of the employer) in order to allow the Claimants to make an informed choice on or before 14 September 2022; (Mr Valli accepted in cross-examination that the information provided to the Claimants would be insufficient to allow him to make a choice).

92. Breaches 1 and 2 are fundamental breaches of the contracts of employment, since they go to the core of the contract, repudiating the whole contract. Breach 3 is not, since the distance of 2.8 miles is not such to constitute a matter which goes to the core of the contract such as to repudiate the whole contract. Breach of the implied term of trust and confidence is also a fundamental breach of contract.

93. By refusing these new roles, not attending the trial periods, and requesting their P45s the Claimants accepted these repudiatory breaches. The Tribunal does not accept Mr Todd's submission that requesting a P45 is to merely accept the situation. Where there is a repudiatory breach, requesting a P45 is to accept the breach and bring the employment to an end. The actions of the Claimants were caused by the First Respondent's repudiatory breaches. In the meeting of 29 September 2022 the Claimants maintained that this had occurred on 14 September 2022, in that this was the last day of their employment. That the Claimants' P45s are dated 14 September 2022 also reflects this. The Claimants did not affirm the contract. However, the Tribunal holds this acceptance was not

in fact necessary since they were in fact already dismissed on 14 September 2022 by the First Respondent. It is in this context that the requests for the P45s were merely acceptances of the situation.

94. The Claimants were therefore wrongfully dismissed, the dismissal being by the First Respondent's conduct, (or in the alternative, constructively on the same date), and both Claimants are entitled to notice pay from 14 September 2022. There was no contractual basis on which the Claimants could be dismissed without notice.

95. The agreed period of notice pay is 12 weeks for both Claimants. However, the award needs to take into consideration the amount received from other employment during this period. Both Claimants took reasonable steps to mitigate their losses. The Tribunal has calculated the figures using gross pay to reflect the likelihood that the Claimants will be taxed upon it as Post Employment Notice Pay. Further, since the Claimants were not able to provide after tax amounts for the income from their new employment, this has also necessitated a need to use gross figures.

96. The First Claimant was paid £1419 per month before tax in her role as a Post Office Supervisor, (£17,038/52, a weekly rate of £327.65; £17,038/365, an average daily rate of £46.65). Her final paid day of employment was 14 September 2022. She was unemployed from 15-18 September 2022 (4 days). During which time she made a loss of £186.60. She then obtained a new, more highly paid, job on 19 September 2022, (paying £1605 a month). From 19 September onwards she had fully mitigated her loss. The First Claimant is therefore owed the sum of **£186.60** in notice pay from the First Respondent.

97. The Second Claimant was paid £1025 per month before tax in her role as a Post Office Counter Clerk (£12,300/52, a weekly rate of £236.54; £12,300/365 an average daily rate of £33.70). Her final paid day of employment was 14 September 2022. She was unemployed from 15-20 September 2022 (5 days). She obtained a new job on 20 September 2022, (paying £960 a month) (£11,520/52, a weekly rate of £221.54; £11,520/365, an average daily rate of £31.56) partly mitigating her loss. Her notice pay is calculated as follows. Notice pay = 12 weeks x £236.54 = £2838.54; mitigation, 11 2/7 (11 weeks, 2 days) x £221.54 = £2,500.24. This produces a difference of £338.30. The Second Claimant is therefore owed the sum of **£338.30** in notice pay from the First Respondent.

98. Turning now to the claim for statutory redundancy pay, there was a genuine redundancy situation. In this claim there is a presumption of redundancy and the First Respondent has not proved that the Claimants were not dismissed by reason of redundancy. The Tribunal therefore holds that the Claimants were made redundant.

99. The Claimants were however offered alternative work. The Claimants' entitlement to statutory redundancy pay hinges on whether or not the offers of alternative employment were suitable, and whether it was reasonable for the Claimants to decline this work. The First Respondent has the burden to demonstrate that the offers of alternative work were suitable, and that it was unreasonable for the Claimants to reject this work.

100. The Tribunal holds that the First Respondent has not discharged its burden. The Tribunal holds that the work was not a suitable offer for both the First and Second Claimants, and that both the First and Second Claimants reasonably rejected the offers of alternative work. The following factors have been taken into account in this determination.

101. Whilst the offer does not need to be made in writing, the offer must be clear and have sufficient precision for it to be able to be accepted. It should also be made in a timely fashion to permit the Claimants to properly consider and reflect on the offer. The Tribunal holds that the offers were neither sufficiently clear, or timely. It was only possible for the Claimants to piece together aspects of the offer during the series of meetings leading up to the meeting of 14 September 2022. Key elements of the offer only became clear, and in some cases only by inference, on 14 September 2022, the last day of the Claimants' employment. In particular at this stage the identity of the new employer was still not confirmed. There was no certainly as to which entity was making the offer of employment. It is not open to the First Respondent to argue that the Claimants should have taken the initiative to ask further questions to extract more detail from the First Respondent as to the appointments. Indeed the transcripts of the meetings show that the Claimants asked numerous questions as to the roles, including as to the identity of the new employer.

102. The job content and status of the jobs also differed considerably. Although the roles then undertaken by the Claimants and the offered roles both involved customer service skills, and the taking of payments, this factor is common to a very wide range of disparate roles, for instance employment as a plumber, butcher, or hairdresser. Both Claimants had experience of retail work prior to undertaking their Post Office roles and they were able to convincingly and compellingly set out the numerous differences between their Post Office roles and retail work. The Tribunal heard detailed evidence on the tasks undertaken by the Claimants in their Post Office roles from banking, to insurance, to passport checks and the issuing of international driving licences (amongst others). This work substantially differed both in content, detail, complexity and nature to retail work in a petrol station forecourt. The Post Office work also required substantial training (both formal, and experiential, the latter over years) to undertake properly, which also significantly differed to that required for retail work. Whilst the new retail roles would use the Claimants' customer service skills it is also clear that the Claimants would not have used a number of their carefully acquired skills, which they had obtained through their Post Office roles. They would not be using their detailed knowledge of Post Office products and systems, and would not be undertaking tasks such as banking, the issuing of

international driving licences, or which required knowledge of customs regulations. That the Claimants would also have needed to undertake 40 hours of training to undertake the retail roles, again, demonstrates the substantial differences in the roles.

103. The complex nature of many of the tasks undertaken by the Claimants in their Post Office roles, which required detailed knowledge of each Post Office product, from banking to insurance, combined with the absence of activities such as shelf stacking (which would be required in the retail roles), meant that the Post Office roles were higher status roles. Both Claimants perceived the Post Office roles to have a greater status than the retail roles offered. Both spoke of having progressed to these roles from retail work. Miss Peel considered retail work involving shelf-stacking as going down in position.

104. The timing of the offer is also relevant to the issue of reasonableness. Key features of the offer only became apparent on the meeting of the 14 September 2022, and the details provided of the roles, as accepted by Mr Valli were not sufficient to have enabled him if he were in the position of the employee to make a decision. Whilst he felt that the trial periods offered addressed this issue, an employee is not obliged to undertake these periods, and the Claimants' refusal to do so was entirely reasonable since both Claimants had significant experience in retail prior to their Post Office roles, and did not need further experience in retail to be able to make a decision as to whether to accept retail customer service/supervisor roles.

105. There were changes in shift patterns between the Claimants' Post Office roles and the retail roles, but since this factor did not concern either Claimant, this has not been taken into account in this assessment of suitability or reasonableness. Regarding the First Claimant, her significant additional travelling time to the location of the new job offered was additionally a factor which has been taken into account in the determination that her refusal was reasonable. However, even without this factor her refusal was reasonable.

106. Since the roles offered were not suitable, and the Claimants acted reasonably in rejecting the roles offered, the Claimants are entitled to statutory redundancy pay. The Tribunal also notes that there was no obligation on the Claimants to turn down the (orally) offered roles in writing. The sums for statutory redundancy pay for the First and Second Claimants have been agreed as **£5894.30** and **£4674** respectively.

107. It is agreed that when the proceedings were begun, the First Respondent was in breach of its duty to give the Claimant a written statement of employment particulars, and/or particulars of change. The Tribunal holds that there are no exceptional circumstances that would make it unjust and equitable to make the minimum award of two weeks' pay to the Claimants under Section 38 of the Employment Act 2002. However, the Tribunal does not award the Claimants four weeks' pay. The Tribunal rejects the Respondent's contention that this did not prejudice the Claimants, indeed the confusion over the period of notice pay, and

the identity of the employer directly stems from the lack of a written statement of employment particulars, and/or particulars of change, which necessitated joining the Second Respondent to the action. In making the determination, that two weeks, and not four weeks' pay should be awarded the Tribunal takes into account that the Claimants were TUPE transferred from the Co-operative Group Ltd, and the First Respondent did make some unsuccessful attempts to obtain a copy of the contract between the Claimants and the Co-Operative Group Ltd. Further, the First Respondent did manage to obtain a template contract for Co-Operative Group Ltd employees, but it is unclear if this version also pertained to the Claimants' employment and if these were the terms contained within the Claimants' contracts.

108. In respect of the First Respondent's breach of duty to give the Claimants written statements of employment particulars, and/or particulars of change the Tribunal awards two weeks gross pay to each Claimant. Namely, to the First Claimant the sum of **£655.30** (2 x £327.65), and to the Second Claimant the sum of **£473.08** (2 x 236.54).

Employment Judge P Morgan
21 August 2023