



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr N Carter

v

Vodafone Group Services Ltd

Heard at: Reading Employment Tribunal (by CVP)
On: 17 to 20 April 2023
Before: Employment Judge George

Appearances

For the Claimant: In person
For the Respondent: Mr S Cheetham KC of leading counsel

RESERVED JUDGMENT

1. The claimant was not dismissed.
2. The unfair dismissal claim is not well founded and is dismissed.
3. The remedy hearing provisionally listed for 29 September 2023 will not now take place.

REASONS

1. Following a period of conciliation that took place on 21 December 2021 the claimant presented a claim form on 23 December 2021, approximately a week before his employment was due to end on 31 December 2021. The respondent presented an in time response on 28 February 2022 by which they defended the claimant's allegation of constructive unfair dismissal.
2. The claimant's employment had started on 16 December 2013. The role that he was employed in and the job title associated with that role at the time of his resignation was one of the matters in dispute in the present proceedings.
3. On 1 May 2022 the tribunal sent a notice of hearing for the final hearing of 17 to 19 April 2023 and made various case management orders. At that point the pre-estimated time estimate from the tribunal was three days which was extended to a five day listing on the application of the parties by a communication sent on 31 December 2022. Unfortunately, the limitations of the available judicial resource meant the case had to be allocated to

myself and I was unavailable to sit on Day 5. Evidence and submissions were completed by 2.20pm on Day 4 and judgment was reserved.

4. I had available to me at the hearing an electronic file of documents to which both parties had contributed that ran to 702 pages and page numbers in these reasons refer to that file. The witness statements had been assembled into a witness statement bundle of 77 pages and page numbers in that bundle, where necessary, are referred to as WB Page 1 to 77 as the case may be. The claimant had also prepared a supplementary witness statement dated 22 March 2023 which was four pages long and a second supplementary statement dated 8 April 2023 which was also four pages long. No objection was taken on behalf of the respondent to those being adopted in evidence alongside the original statement.
5. The respondent relied on the following witnesses:
 - 5.1 Molly Connor – HR Business Partner (WB page 56);
 - 5.2 Michael Gregoire – Senior Chapter Manager and the claimant’s line manager from April 2021 (WB page 44); and
 - 5.3 Marco Valdivia – Senior Delivery Lead (WB page 67).
6. They all adopted their statements in evidence and were cross examined upon them.
7. The claimant had put forward a witness statement of Andrew Morrow – a Product Manager with the respondent prior to September 2020 whose statement was tendered on behalf of the claimant. Mr Morrow did not attend to be cross examined upon it and, after consideration, the respondent consented to his evidence being taken as read.
8. The respondent had put forward a list of acronyms and industry terminology which the claimant took the time to consider. An amended version was ultimately agreed by the claimant and is replicated within these reasons for ease of reference. After consideration, the claimant was also able to agree the cast list but the respondent’s chronology was not an agreed document.
9. Evidence was completed and submissions heard on Day 4. The respondent put forward draft written submissions which were supplemented orally and are referred to as RSA page 1 to 7 in these reasons.
10. The original intention when the case was timetabled on Day 1 was for evidence to be completed by lunchtime on Wednesday with closing speeches on Wednesday afternoon leaving the potential for oral judgment to be delivered on Thursday. As is not uncommon in a short track case, the claim had not been listed for a preliminary hearing to ensure that there was an agreed list of issues to be decided in order to determine all the matters in dispute between the parties. The respondent had put forward a draft list of issues which the claimant considered while I was reading the witness statements and then time was taken to clarify those issues before evidence

was heard. In particular, to clarify that the claimant relied not only on an alleged breach of an express term as to his role but also on an alleged breach of the implied term of mutual trust and confidence. Final amendments to the list of issues were agreed on Day 2 and it is that list of issues which is incorporated within these reasons.

The issues

11. The issues to be determined are as follows:

“Constructive unfair dismissal (Employment Rights Act 1996 sections 95 & 98)

1. The factual questions for the tribunal will be:
 - (i) Did the Respondent indicate that it was going to change the substance of the Claimant’s job in its email of 15 September 2021?
 - (ii) Was the role that the Claimant was employed to do in March 2020 markedly different from the one he was instructed to do in September 2021?
 - (iii) What - if any – change did the Respondent propose to the Claimant’s role in concluding its staffing review in August 2020? The Claimant says that he was told the title would change, but not the substance.
 - (iv) What – if any – changes did the Respondent make to the Claimant’s role in and after September 2020?
 - (v) Had those changes altered the substance of the Claimant’s role? The Claimant says that he was told there would be no changes to the substance, but that he later came to realise there were changes. The Respondent says that there had been no significant changes.
 - (vi) Did the email of 15 September 2021 amount to a proposal to alter the substance of the Claimant’s role?
2. Did the actions set out above amount to an actual or anticipatory breach of an express term of the contract as to the substance of the Claimant’s role?
3. Did the actions set out above amount to a breach of the implied term of trust and confidence, in that it was behaviour that was calculated to destroy or seriously damage the trust and confidence between the Claimant and the Respondent?
4. If there was a breach, was it a fundamental one, in other words one that was so serious that the Claimant was entitled to treat the contract as being at an end? If so, when did the actual breach occur?
5. Did the Claimant resign in response to that actual or anticipatory breach?

6. If there was a repudiatory breach, had the Claimant affirmed the contract before resigning, in other words, do his words or actions show that he had chosen to keep the contract alive?
7. If the Claimant was constructively dismissed, what was the reason or principal reason for the dismissal and was it a potentially fair reason?
8. Did the Respondent follow its Grievance Policy in its handling of the matter?"

12. List of acronyms and terminology

Term	Definition
Areas within Vodafone	
VBPS	Vodafone Business Platforms and Solutions The team responsible for Vodafone’s technology strategy, including all aspects of product development and customer solutions.
VBTS	Vodafone Business Technology Solutions Part of VBPS which works for enterprises to design and deliver fixed line services, e.g. landlines and wired internet connections. Not agreed. It included customer facing roles.
VCS	Vodafone Carrier Services A team which provides voice and messaging services to wholesale telecommunications service providers.
VF	Vodafone This is shorthand used on occasion in internal messages.
GTES	Global Technology and Enterprise Services. The original name of VBTS (defined below).
Roles	
HR BP	Human Resources Business Partner
(LoB) PM	(Line of Business) Product Manager (a commercial role responsible for deciding “what” products the customer wants/needs). In summer 2020 the Respondent proposed that Product Managers would be located in a department/area called “Line of Business.” They were later moved back to a central team within VBPS
(VBPS) PM	(Vodafone Business Platforms and Solutions) Product Manager. (a commercial role responsible for deciding “what” products the customer wants/needs)
PO	Product Owner. Responsible for determining “how” product, specified by the Product Manager, can/will be delivered.
TPO	Technology Product Owner (sometimes described as “Technical” Product Owner). Vodafone’s term for the industry-standard role of Product Manager.
Industry terms	
Scaled Agile Framework (SAFe)	An industry product development method, chosen by Vodafone, prior to March 2020 for its product development. It seeks to create products with a focus on collaboration, speed, quality, and customer-focus. See p194 for a diagram.
Waterfall	An approach to product development whereby one aspect is completed before moving onto the next stage (in contrast to Agile)
RAPID	An acronym used to define the activities performed by different roles. It aims to help decision makers make better decisions by clarifying the different types of feedback they obtain from each stakeholder. It allows the decision maker to get the full benefit of the stakeholders’ expertise.
RACI	A decision-making model. Acronym for “Responsible”, “Accountable”, “Consulted” and “Informed”.
Vodafone term	

POM	Product Operating Model
RFQ	Request for Quotation

13. Some other abbreviations or acronyms are also referred to in the evidence and/or otherwise require a little more explanation.
14. The industry term RAPID stands for Recommend Agree Perform Input and Decide. It is referred to in page 324 which is part of the presentation seeking to implement this new way of working. As I understand it, the intention is to provide clarity about the role of different people within a team who are working on particular project so that the decision is made with the input and agreement of the relevant stakeholders but there is clarity about the identity of the individual who holds responsibility for the decision. The intention appears to be that there should be efficient decision making but well informed decision making.
15. The decision making model RACI is covered in Mr Gregoire's statement, paragraph 12. This appears to be another model by which different elements of a project could clearly be allocated to different people although Mr Gregoire explains that an individual might be responsible or accountable for certain elements but "In reality it was a collective responsibility as the work would all be done in agreement".
16. This has been a case in which not all of the evidence has pointed seamlessly in one direction and some evidence has been apparently inconsistent with other pieces of evidence in a way that is not possible to reconcile. I have had to make a decision on occasions to give weight to some pieces of evidence rather than others and when I have done so I have weighed all of the evidence both oral and documentary, considering the consistency of the accounts that I have hear with accounts given by the same witnesses on previous occasions and with contemporaneous document where those exist.
17. It is worth noting at the outset that despite obvious attempts by the parties to be clear and accurate in their use of acronyms and abbreviations, there have sometimes been inaccuracies in the language used when explaining those acronyms or giving evidence.
18. Both when giving evidence before the tribunal and in communications at the relevant period the use of jargon to enable discussion of concepts in a streamlined way sometimes appears to have obscured the meaning even in conversation between those who are familiar with the terms.
19. I also wished to state at the outset that one area of common ground is that both the claimant and the respondent agree that the claimant was very effective in his role and was doing his role well. The respondent is clear that they wanted him to continue but the parties are unable to agree on what the role was.

20. The project management technique known as Agile is illustrated by a diagram at page 194. The idea seems to be that products are developed incrementally with soft releases and Mr Gregoire says in his paragraph 4 that, in particular, the respondent was keen to approach software development in this way. Proposed changes to the Product Operating Model which I will discuss in more detail below were designed to roll the Agile approach across Vodaphone Business as the rest of the telecoms market were already using that delivery model. SAFe is a version of the Agile project management technique which is used in Vodaphone but not exclusively in Vodaphone.
21. When in these reasons I refer to a job title I mean a job title that an individual has been appointed to by their contract or offer letter. When I refer to their role I am referring to what the individual is doing from day to day. When I refer to a post holder I mean an individual such as the claimant who is in post with a particular job title, for example, Product Manager. I have also heard that particular job titles are described as industry standard and the claimant describes there being formal job descriptions for particular job titles that were industry standard. The extent to which this evidence can legitimately inform my decision making about what the claimant's role involved is disputed because one of the areas on which the parties do not agree is the extent to which Vodaphone's use of particular job titles should be taken to mean that a particular postholder was carrying out a role on a day to day basis that contained broadly the job content that is industry standard for that job title.
22. On occasions witnesses referred to an individual having an 'Agile role' or a 'SAFe role'. I understand that to refer to the activities that the postholder was carrying out on a particular project that was being delivered using the Agile project management technique. So, for example, Mr Gregoire said on occasions that the claimant had acted as a SAFe Project Manager but that was his Agile role not necessarily his job title. He stated, by way of comparison, that his own job title was Senior Chapter Manager but that he would sometimes have the Agile delivery role of the Product Owner. The Agile project management technique appears, on the basis of what I have heard during the course of this hearing, to have the potential to lead to the risk of overlap of responsibilities. Where a team is working cooperatively with good communications that may well lead to efficiency in terms of the speed of delivering a viable product to the customer. Where the team is not working quite so cooperatively there is the potential for confusion about where ultimate responsibility for particular actions lies. There should not be any conflict if they understand and follow the decision making techniques discussed above.

Findings of fact

23. I make my findings of fact on the balance of probabilities taking into account the evidence both documentary and oral which was admitted at the hearing. I do not set out in this judgment all of the evidence which I heard but only my principal findings of fact those necessary to enable me to reach conclusions on the issues in dispute.

24. The claimant started his employment with the respondent on 16 December 2013. In January 2020 he applied for a vacant Product Manager role in the Vodaphone Business Technology Solutions department (VBTS) which is part of the Vodaphone Business Group which supplies technology solutions to business customers rather than to personal customers.
25. The heart of the disagreement between the claimant and the respondent in the present case is about what this role, to which the claimant was appointed on 4 March 2020, encompassed; what was the job title? what was the job description? what was the job content on a day to day basis in the Carrier Services Department within which the claimant was working?
26. Mr Gregoire took over management of the Carrier Services Team in the Spring of 2021 from Simon Robinson and became the claimant's line manager at that point. His evidence was that although the post occupied by the claimant had the job title of Product Manager "He did not carry out a true Product Manager role" (para 6 MG). The relatively small size of the team meant that Mr Carter was more focussed on the delivery of the product than would classically have been the case in a Product Manager role which followed more restrictively the industry standard description of a post bearing that title. Mr Gregoire says that such an "aggregator" role aligned with how the business saw the new Technology Product Owner role. He produces a role mapping exercise apparently undertaken by the respondent in the Spring or Summer of 2020 (page 517). In that Mr Morrow and Mr Carter are respectively stated to have the "role title" Messaging Product Manager and Voice & IPX Product Manager.
27. The lifecycle of a product is broken into three stages: strategy, manage and develop/deliver. The amount of time spent by the postholder on activities that fall within each of those three stages (together with a fourth element representing the amount of time they spend time interacting with internal teams) has been analysed for each of Mr Carter and Mr Morrow (page 520). Whoever filled this in has, by this template, apparently expressed the view that Mr Carter spent 5% of his time on strategy, 20% of his time on activities that manage the production of a particular project and 65% of his time developing or delivering the project. The remaining 10% is allocated to interface.
28. The respondent's position is that this mapping exercise was carried out by Simon Robinson who was the claimant's line manager until Spring 2021. The claimant was unwilling to accept this. I did not hear from Mr Robinson directly but notes of an interview between him and Mr Valdivia are at page 613. It is also Mr Valdivia who explained in his paragraph 32 that he had been told by Nick McDonald, the Head of Organisation Effectiveness and HR Analytics, about the mapping project which had taken place between April and July 2020.
29. Mr McDonald informed Mr Valdivia that he and his team had developed a framework into which information obtained from line managers was placed. It is clear from pages 513 to 514 that Mr McDonald was talking about the analysis I describe at paragraph 27 above, Mr McDonald's understanding

was that the then HR Team and line managers had been involved in making the judgments and inputting the data which, in the claimant's case, had shown that he carried out 65% of his activities within the Technology, Develop, Delivery activity. It appeared that the framework had been based on pre-existing work from Accenture that the HR Team had amended following input from "senior leadership team members and other stakeholders to ensure the framework was fit for purpose". At page 515 is an email by which Mr McDonald forwarded the spreadsheet to Mr Valdivia during his grievance investigations.

30. I am satisfied on the basis of this that the percentages entered into the spreadsheet at page 520 were as a result of information directly received from Simon Robinson who was the claimant's line manager at the time and had been line manager for his predecessor.
31. The claimant describes this document as flawed (see paragraph 11 of his first witness statement). In his paragraph 12, he proposes an alternative analysis. He points out that he only became aware of this mapping exercise after he left the respondent's employment and did not have access to documents from during his employment which he states would demonstrate the amount of time he spent on activities which could legitimately be described as falling within the descriptions in the different column headings on pages 520 and 521. I accept that the claimant was not consulted or asked to agree the assessments of time spent in the different activities.
32. However, given my findings about when and by whom the information was provided, this mapping exercise evaluates the role into which the claimant had been appointed a mere one to three months before the activity was carried out. The claimant draws quite heavily on work done in 2021 in what I shall refer to as the Cloud Numbers Project and discuss in more detail below. The request for quotation for that project is at page 165 and appears activity on it to date from approximately November 2020. Even if it is correct that activities carried out by the claimant in support of this project could reasonably be described as falling under the orange and yellow headings, that does not in my view provide strong evidence that back in June 2020 the established role regularly involved those activities. The provenance of the spreadsheet at page 520 gives it authority and I give weight to it as good evidence of the claimant's line manager's assessment of what the role actually involved at about the time of the claimant's appointment. The claimant's criticisms of it do not detract from its evidential value.
33. It is however only one piece of evidence. Documents relevant to the contractual provisions about the claimant's role include extracts from the Employee Handbook which starts on page 49, the job description for the job title Product Manager at page 57 and the offer letter dated 4 March 2020 at page 59. The last of these congratulates the claimant on his transfer "as a Product Manager G Band effective from 6 April 2020". It states that his duties and responsibilities will be as discussed during his interview and that the enclosed information handbook explains the general terms and

conditions of employment applicable to all Vodaphone employees. Furthermore, “Together with your offer letter this handbook will form the basis of your contract of employment with the company”.

34. The extract from the Handbook includes at page 52, the following:

“Job title

We have confirmed your job title in your offer letter. We may ask you to do any work which reasonably falls within the scope of your capability. We will let you know if your job title needs to change.”

35. The claimant confirmed in evidence that he was aware of this provision.
36. The claimant’s evidence was that the job description at page 57 (which he analyses in paragraph 7 of his first witness statement) and the interview that he attended (as well as his activities once he had started carrying out the role) confirmed that he was hired to be and performed as a Product Manager “in close accordance with the industry definition of the role”. The key distinction that he sees that distinguishes the Product Manager role is their responsibility for deciding what the products requirements are. As he puts it in paragraph 6:

“The two roles have markedly different responsibilities and decision making. All decisions relating to the business-focused “what” of product requirements rest with the Product Manager, with the Product Owner deciding only the technical focussed “how”.”

37. In his evidence it came across clearly that this element of focussing on what the customer wants was an important part of the claimant’s job satisfaction. Elements within the job description that the claimant relies on as being hallmarks of this distinction include:

37.1 Define product requirements, communicate these effectively to GTES Development Delivery Organisation for both new developments and in-life improvements – the claimant argues that this activity is absent from the Product Owner job description.

37.2 Manage the end to end Product Lifecycle from incept through to in-life activity – the claimant states that this is also absent from the Product Owner role profile. (page 285)

37.3 Act as interface between Vodaphone’s customer facing staff and the Product Development Delivery area.

38. I pick three examples given by the claimant. When Mr Gregoire was cross examined about this job description he agreed that the job description was consistent with his understanding of what the role of Product Manager classically would involve. However, he said that discussions with Mr Robinson, Ms Connor and Paul Williamson (another Senior Chapter Lead) had given him the understanding that the role actually carried out under the title Product Manager *within Carrier Services*, tended

“to not always do what your job description says. You evolve, you adapt and you would take on responsibilities that are needed at the time. I do agree that this job description is for a Product Manager. I do not agree that this was my understanding the job he performed day to day”

39. Ms Connor gave evidence to a similar effect. It was suggested to her in cross examination that someone who had experience in product management and product marketing would know whether the job they were applying for was indeed a Product Manager job and that the interview would confirm to the applicant whether the job they were applying for had the role content they thought it did. Ms Connor agreed that when anyone who was applying for a job the job description sets out the job they are applying for but qualified that by saying “when anyone joins a new role their job description isn’t fully what they are doing day to day”. She had not personally been part of the interview process.
40. The claimant also relied upon other more circumstantial points to seek to build up a picture of what he describes as the central responsibility for the “What” in the role to which he was appointed to commence in April 2020. He produced the LinkedIn profile of the predecessor in role who declares that in that position she was “accountable for road map, product profitability management, KPI and “going to market” readiness” (page 590). Although I have no reason to think that the previous postholder is inaccurate in what she states on LinkedIn, this is not strong evidence about the amount of time on a day to day basis spent on activities that fall within that description. Furthermore, without knowing what she meant by terms such as ‘accountable’ this is not strong evidence of the assertion in paragraph 9(e) of the claimant’s statement that she had autonomy in deciding the “What” of product requirements.
41. The claimant’s appointment was announced on 9 April 2020 (page 67) where he is announced as joining the team as the Voice and IPX Product Manager who “will have accountability for the Carrier Voice and IPX Products within the Technology Team.”
42. An organisation chart bearing the date April 2020 is at page 68. The claimant’s arguments are supported by the presence of himself and Mr Morrow under the heading Product Management, reporting to Mr Robinson. However, I do notice that there are apparently four people designated as Project Managers also under the Project Delivery heading. There is no one in the Carrier Services Organisation Chart bearing the title Product Owner.
43. Mr Morrow’s statement is simply that he was employed as a Product Manager and was told that his role would change to Product Owner in September 2020, those being roles that he understood to be markedly different from each other. He does not provide detailed evidence about the activities he carried out as a Product Manager and does not comment on the mapping exercise at page 520, which may not have been available to the claimant at the time he took a statement from Mr Morrow. His evidence therefore does not assist at all with whether the respondent’s view that the Product Manager role undertaken by the claimant within Carrier Services

was more closely aligned to what, as an industry standard, might be referred to as a Product Owner role. However, it does appear that Mr Morrow's understanding was that the change in his case occurred in September 2020 and he decided to accept it.

44. My conclusion on this is that the claimant focuses on the black letter of the job description provided at the time he applied for the role but that in reality in that department a more bespoke job description would have been more accurate. I have no doubt that the claimant believed that he would have responsibility for the "What" and that that attracted him to the position. There is no reason for think that he was positively misled but, equally, Mr Robinson was the individual who was best placed to look at the activities carried out in the role in reality. The mapping exercise did not have input from the postholders, which does detract somewhat from its reliability, and assigning percentage scores might cause someone to think a more clinical exercise was carried out than appears to be the case. The evidence presented to me does not suggest that the data retained by the respondent permits a truly objective and scientific analysis of the amount of time spent upon one task rather than another. I say this, not least because when someone is involved in delivering a project they may take on many different roles. It has come across clearly to me that flexibility is prized by the respondent and that means that the percentage figures given may have been somewhat impressionistic. Nevertheless, they seem to me to be reliable evidence that the postholder in this particular job bearing the title Product Manager prior to late Spring and early Summer 2020, spent the majority of their time involved developing and delivering the project and a comparatively small amount of time deciding what was to be developed.
45. The consequence of this finding is that the day-to-day reality of the Product Manager job in Carrier Services did probably not involve as much of the part of the role that really excited the claimant, the part that was important to him as he had anticipated. It is human nature that one might seek to do more of what interests one where it is possible to influence or control one's role within a team.
46. A new Product Operating Model or POM was introduced in September 2020 following planning that had taken place over a number of months. The background to this change is explained by Mr Gregoire as being an objective of the CEO of Vodaphone Business (see paragraph 3 of Mr Gregoire's statement). There is documentary evidence that the senior management believed the then current model to be confusing and the CEO wanted to differentiate between accountability for product management on the one hand and the technical development and delivery of products on the other. At the same time the business wished to put into effect the Agile Project Management Technique. SAFe has been described to me by a number of witnesses as a flavour of the Agile method used by Vodaphone.
47. Mr Gregoire states (at paragraph 5 of his statement) that the Carrier Services Team had already been operating on an Agile delivery model before the POM changes in September 2020. It seems possible that this is

part of the reason why the job description had become apparently misaligned with the day-to-day content of the role.

48. The timetable for implementing the new POM was sent out on 7 August 2020 in an email at page 641 and a plan for line managers is at page 655.
49. In the evening of 1 September 2020 the claimant received a call from Mr Robinson and his next but one manager which informed him that the latter was leaving. He states in paragraph 14 that he recalls being told that his job title might change as a result of the announcement but that his responsibilities would not.
50. The announcement itself was made on 2 September 2020 and it is clear that this is part of a Product Operating Model transformation which affected many roles. Page 101 makes clear that the new operating model will clearly differentiate between product management on the one hand and technical development and delivery of products on the other. It is also stated that this meant that some people with product management accountability were being moved from VBPS to Line of Business which, as I understand it, would be a more directly customer facing role.
51. The role mapping of the claimant's and Mr Morrow's roles shows that their line manager's assessment was that, regardless of their job title, they would map most seamlessly into the Technology Product Owner role in VPS in the future. There are documents in the bundle which suggest that at one time consideration was given to moving the claimant's role to sit elsewhere within the organisation but this was the structure that was decided upon and it seems clear to me that it was decided and announced in early September 2020.
52. Mr Robinson carried out a review of the claimant's job description (see para.66 below). The comments in red on the annotated job description at page 291 represents Mr Robinson's view. As the claimant put it "The change that would occur to those responsibilities in the event the role holder was a TPO". Mr Valdivia agreed to that when it was put to him in cross-examination. However, I find that the job description on which the claimant started his role was somewhat misaligned with the day-to-day activities of the role. The suggested changes in drafting do not necessarily reflect actual changes in what the postholder is being directed to do.
53. In any event, it is noteworthy that among the comments by Mr Robinson are those which suggest that a number of the stated responsibilities are still valid in the TPO role but need to be understood in the context of the SAFe Project Management Technique. Responsibilities are set out under the heading "With us you will". Mr Robinson has apparently stated that the activity "Defined product requirements, communicate these effectively to GTS Development Delivery Organisation for both new developments and in-life improvements" is still valid in the TPO role but the nature of the responsibility of a TPO for that activity is to fulfil the 'A' & 'P' within the RAPID decision making matrix for the capabilities of the product and the 'D' on features.

54. What this means is that the TPO must '*agree*' and '*perform*' in relation to the capabilities of the product but the *decision* as to what those capabilities are sits outside the VBPS. However, decision making on what the features of the product should be is the responsibility of the TPO and it appears to be on that basis that Mr Robinson has indicated that that bullet point is still suitable for a job description whether the role title is called Product Manager or Technology Product Owner.
55. It is not necessary for me to go into that level of detail with every bullet point on the job description but the analysis that I have just done demonstrates that the job description is of limited importance and assistance when it comes to understanding whether the claimant was actually asked, whether in September 2020 or at any time, to change what he was doing on a day-to-day basis. It suggests that drafting a job description for an organisation which follows an Agile model is a task likely to lead to considerable debate. Although it appears and will become clear from the chronology I set out below, that a dispute continued over the next 12 months about what the claimant's job title should be and drafting a job description, what the respondent wanted to achieve with the new POM was clear and was clearly communicated to the claimant in September 2020.
56. The proposed structure for VPTS Carrier Services was shared on 23 September 2020 (see page 117 at 122). It shows a team described as the 'Voice Squad' within which Mr Carter appears to be intended to sit as Voice and IPX Product Owner and a team described as the 'Messaging Squad' within which Mr Morrow is to sit as the Messaging Product Owner.
57. As the claimant says, it was on 20 October 2020 that there was a meeting to discuss the Product Operating Model RAPID (see page 140 and following). The members of the Carrier Services Team had the draft presentation that starts at page 141 circulated to them for feedback. The table at page 143 is one of a number of iterations of similar tables which illustrates the RAPID decision making framework and shows how decision making in relation to the 'What' is from that point onwards to be clearly the provenance of the Product Manager in LoB and the decision making for the 'How' is to be the provenance of the Technology Product Owner. Again, to the extent that there was to be a change of significance to the claimant in the responsibility he had for the 'What', this is something that was communicated to him at this point. It seems to me that although he argues he was constantly reassured that there was no change to his role, it should have been apparent that his employer did not think that his role involved ultimate decision making rather than input into the part of the process of product development and delivery that he so values from a job satisfaction perspective.
58. Indeed, he seems to be alert to this if one looks at the email at page 493, dated 26 October 2020, by which he wrote to Mr Robinson under subject heading "Role change from Project Manager to Technical Product Owner".
59. It is apparent from the wording of that email that the Cloud Numbers project on which the claimant was heavily involved was taking up a fair amount of

time but he does in his email say that he had been warned “of an apparent enforced role change” and that “I now realise I am being asked to accept a role change from Product Manager to Technical Product Owner”. What he appears to take issue with is having to take on decision making on aspects which he considers to be the delivery function.

60. I have considered the respondent’s grievance policy. It seems to me that seeking to resolve the issue raised by the claimant in this email informally was an appropriate course of action. The claimant followed this up in another email of 23 November 2020 (page 492). The claimant apparently confirmed that he was happy to proceed informally. The action taken by the respondent appears to have taken the form of seeking to reassure the claimant that there had been no substantive changes which ultimately the claimant did not accept to be true. However, I accept, as the claimant asserts in his paragraph 26, that he did not receive any written response to those emails.
61. The claimant went outside his line manager and HR for guidance on how the respondent was going to introduce the Agile framework and obtained a presentation about it which he forwarded to Mr Robinson on 4 January 2021 (page 190). The advice he received on 23 December 2020 (page 206) that the roles of Product Manager and Product Owner were over 50% different I do not regard as being relevant to the question of what the claimant was doing on a day to day basis because it is a generic response. Similarly, the response he received from a presenter who was training on this decision making model in January 2021 (paragraph 28 of the claimant’s statement) may have been to identify a post with the job description the claimant had been given at interview as being the Product Manager role but that is an off the cuff reaction given by someone who did not have any direct knowledge of what the claimant was doing or what the postholder would be doing on a day to day basis and whether the job description matched it.
62. I do consider, however, that these interactions suggest that the claimant was not misled about the respondent’s intentions and was not unaware that there was a difference of understanding between himself on the one hand and the respondent on the other about what the core elements of the role would involve on a day to day basis.
63. These conversations, and particularly that with Mr Sonnier , seemed to have caused the claimant to repeat his concerns on 8 February 2021 (page 245) in an email with an HR contact. The subject heading is “Role change from Product Manager to Technical Product Owner”. The argument he runs is that his role is being changed to the extent that the organisation is trying to put him into the Technical Product Owner role which is 80% different to the one he took on which he considers should trigger redeployment or redundancy. It was put to Mr Carter in cross examination that at this point in February 2021 the role change was one he regarded to be a significant difference and one which was not subject to further alternative by the respondent; the respondent’s stance remained constant. He stated that the only change was when he saw the final job description. It was suggested to

him that this new job description had confirmed his understanding and he answered “Reinforced it, confirmed it, yes”.

64. When I described earlier in paragraph 22 above that a particular team member with a job title might be allocated a role in a project that led them to be described by a different title because that was the Agile team role they were carrying out, this is illustrated by the planning for the Cloud Numbers project which starts at page 220, in particular the diagram at 226. One can see there that in the bottom row, four Agile teams are outlined. Two of them have three members including the claimant who is described as a Product Owner. However, in the middle level of the diagram, the claimant appears described as a SAFe Product Manager.
65. This does provide evidence to support the claimant’s assertion that on this particular project he was carrying out some elements of a Product Manager’s role but that does, in my view, to negate the evidence provided by the mapping about what his role involved for the most part. It does however show that for particular purposes, to ensure roles within the Agile decision making model were clear, someone whose job title was Product Owner might be described as the SAFe Product Manager because that corresponded with the activity they were doing in that particular situation. To an outsider it may seem a somewhat cumbersome way to describe things and potentially formulistic. But in a large organisation such as the respondent, it has been described to me as the way that the CEO wanted to organise its business at this point in time with the aim of providing flexibility and efficiency in decision making and execution. The claimant cannot justifiably argue that he was confused by documents such as this when it appears to have been dated January 2021 shortly before the 8 February email by which he raised concerns (para.63).
66. According to the claimant, someone from HR asked for a copy of his job description and said that they would investigate the concern he had raised by that email. He states in his paragraph 30 that he assumed his concern was being treated as a formal grievance. This is the point at which Molly Connor’s direct involvement began (see her paragraph 12). HR investigations led to Mr Robinson providing the marked up version of the claimant’s job description aligned with the product operating model RAPID (see MC paragraph 17 and page 291). Mr Robinson explained his annotations in an email of 10 February 2021 at page 283 in which he said the following:

“My view is either no change to a lot of the activities or the activities still need to be performed and there is a Perform Input or Agree that sits with the TPO role, however the D may have been consolidated to the LoB Product Manager role. I believe this a 20 to 40% change at most in activities and accountabilities nowhere close to 80%

I believe the crux of the issue Nick is raising is specific to the “D” and the accountability he would like the role to have alongside of a view you the role has been “devalued” to a delivery only role doing what he is told by the LoB. This has been exacerbated by :

1. Some very challenging stakeholders in the LoB whose Agile understanding is low.
 2. Cloud Number is in a busy and with some challenging timeframes to meet.
 3. Different interpretations on how the model is implemented across the business for often where the LOB has the “D” the “TPO” will have the “A” and vice versa – this can be conflicting at times”
 4. Often where the LoB has the ‘D’ the TPO will have the ‘A’ and vice versa – this can be a conflicting a times (we have some discussions with the LoB whereby comments are raised such as ‘feel free to make the decision we will confirm its not what we want once development has finished).”
67. According to Ms Connor, further explanation from Mr Robinson was that the 20 to 40% change was not to Mr Carter’s role in itself but to the RAPID product operating model. Mr Gregoire explained this in paragraph 21 as being a 20% change in accountabilities under the RAPID model. However that, in his view, only impacted upon about 5% of the activities carried out by the claimant.
68. Following this investigation by Ms Connor there was a call between Mr Robinson, Ms Connor and the claimant (in her paragraph 18). Page 335 is a confirmation that a call was arranged for 19 February. A further call between Ms Connor, Mr Robinson and the claimant took place on 9 March 2021 and it seems to have appeared to her that the claimant’s difficulty was with his job title because he explained that he was experiencing confusion and consequent stress as having a job title of Technical Product Owner in his interactions with LoB Product Managers (see para.21 of MC’s statement).
69. The claimant in his paragraph 35 refers to these conversations and states that he was advised by Ms Connor to continue working in accordance with his contracted role. This does not give any clarity to the situation because the claimant seems to have considered that his contracted role had changed or that there was an attempt to change it whereas the respondent did not. In the light of the claimant’s explanation to Ms Connor that he wished to have the matter dealt with informally, which I accept, the continued discussions over this period were an acceptable way to deal with it.
70. Page 365 appeared to be a confirmation from the claimant on 8 April 2021 that he had clarity on the business requirements responsibility but asked for his job title to be changed back to Product Manager in the system. He received a clear response from Ms Connor the same day saying that everybody in VPS in the product role had been retitled to Technical Product Owner as part of the August and September changes and for his role title to be changed again he would need to liaise with his line manager directly. Although I accept that the claimant remained dissatisfied with the situation, that was not, due to any lack of clarity on the part of the respondent as to what their understanding of the position was.

71. Mr Gregoire became the claimant's line manager in April 2021 and the claimant explains that he raised his concerns again which led to conversations between the two of them about whether the claimant had ceased to be *responsible* for a particular element of work necessary to a product life cycle or had become *accountable* for it . I accept Mr Gregoire's evidence that:

“The model was just making clear that the ultimate responsibility to the customers sat with the Line of Business Product Manager but in reality it was a collective responsibility as the work would all be done in agreement and Nick would sit down with the Line of Business Product Manager every three months to agree exactly what would be delivered.”

72. All of this adds to a firm impression that I have received that the dispute was not a matter of substance but a matter of form.
73. In June 2021 there was an exchange of Team messages between the claimant and Ms Connor (page 368). He repeated that he was finding that the roles in the Portfolio Team (which I understand to be in LoB) promote themselves as the “Business Owners/Product Managers to the wider team, rendering it impossible for me to the job I signed up to do.” He informed Ms Connor that he was exploring the possibility of an employment tribunal. In that exchange, the claimant presented the problem as being a relationship issue with the Portfolio Team rather than with a change in his role.
74. The claimant wrote to Mr Gregoire on 2 July 2021 (page 372) saying that he felt he was not able to perform the role he was taken on to fulfil owing to “enforced organisation changes rolled out earlier this year.” I comment that in reality the organisation changes took effect in late 2020. He repeated that there was a situation where he seems to regard the title Technology Product Owner as problematic because others assume it means he is the SAFe Product Owner when, as I have explained, that may not be the case in relation to a particular project. But this is a problem with explaining his role to others, not with him understanding it or with the respondent seeking to change it further in any way. He seems to complain that he did not enjoy the autonomy in business ownership has he had expected when appointed to the role. However, he has not given an example of an instance where he did not have autonomy and business ownership but someone else did that would not have been the case had the organisational changes in September/October 2020 not taken place.

75. This email led Ms Connor writing to Mr Gregoire to say that:

“His concerns [...] need to be addressed once and for all and a resolution for all going forward. Whether that be acceptance of his duties in the role he is employed to do, or a joint effort in looking for other roles (but not our obligation)”

76. The claimant was signed off work for two weeks; which he attributes to work related stress caused by the conflict I have referred to above. He had proposed a meeting before becoming unwell (page 378) seeking a discussion with a view to one of two outcomes. This appears to have

ultimately taken place after the claimant's return from sickness absence and then annual leave on 5 August 2022. A transcript is at page 384 which the claimant accepted to be accurate. In his paragraph 45 the claimant states that he regarded Mr Gregoire's attitude as being dismissive of the grievance he was seeking to bring and contrasted that with his own perspective which was that he was "being expected to take on a role that was unreasonably different from the one I was hired to do and doing". He also states that he made clear in the call that he regarded being asked to do the Product Owner role as amounting to a constructive dismissal. The claimant asked for a job description for what he describes as a proposed role. What he actually asked for (see top of page 390) was a role description for TPO, the Technology Product Owner role. Ms Connor stated that she did not have one but would find one.

77. Mr Robinson was also on the call and the two managers' perspective, as set out in paragraph 22 of Mr Gregoire's statement, is that the call just went over points that had been discussed with the claimant at length much earlier in the year. Mr Gregoire accepted that an updated job description had not been provided at the time of the product operating model changes.
78. In hindsight this was unfortunate given that the claimant had not been operating entirely closely aligned with the job description provided at interview. I do refer back to the explanation of that job description given by Mr Robinson which, in essence, are to the effect that the bullet points in the job description do not distinguish in all cases between the type of responsibility or accountability that the postholder has for the activity described in the job description.
79. The claimant started a second period of sickness absence and had written an email on the same day as the call, 5 August 2021 (page 392). This largely repeats points he had already made. Mr Gregoire did not reply to it because the claimant was unfit to work, as he explains in his paragraph 24. The claimant then had a period of two weeks leave and on 10 September 2021 the claimant emailed saying that he was still awaiting a response. The two solutions that he repeated were that he be transferred to a Product Management role in another department or that his Product Manager role in Carrier Serves was made redundant.
80. I accept Mr Gregoire's evidence about the dynamic nature of roles with the respondent. Although he says in his paragraph 26 that job descriptions are naturally dynamic, the written document, if not updated (as has happened in this case) is not dynamic. It is the role which adapts, as Mr Gregoire explains, to meet its customer's needs and keep up with the market.
81. Ultimately Mr Gregoire replied to the claimant on 15 September 2021 in an email at page 406. He attached a job description for the Technology Product Owner role – which at one place in the email he misdescribes as the Technical Product Owner – and states that:

“To move forward we need to agree that you will accept the change in role from Product Manager to Technical Product Owner and accept the attached job description.”

82. In doing this he merely restates something that had been said clearly in the meeting of 5 August 2021:

“Your role is a TPO and whilst we understand your concerns around this this is the role you were employed to do and have been doing over the last past year. We do want to continue to support you however we need to close this matter off as it is going around in circles and it has not been satisfied on your end. This is now starting to impact on other areas of business and needs to be resolved.

So as this is your role we expect you to perform it at your normal standard, We appreciate you may not enjoy the role however this is not a redundancy situation and our obligation to find you a suitable alternative role is not required. However we will support you in finding the right role for you and will continue to support you in your current role or if you decide to look for other roles within Vodaphone you are entitled to do so like all other employees.”

83. So when Mr Gregoire says (page 406) that Vodaphone asked that he continue delivering in the Technology Product Owner role this was repeating the position that had remained essentially unchanged since September or October 2020. The precise way in which the RAPID Decision Making Model informed the TPO’s responsibility and accountability for particular actions was made clear in February 2021. Where in paragraph 3(a) on page 406 Mr Gregoire states that Vodaphone do not consider a redundancy situation to be triggered, this merely repeats what was said on 5 August. He provides further information about how the nature of the postholder’s responsibility for particular areas may have changed.
84. The claimant resigned on 20 September 2021 in a letter at page 412 attached to an email at page 410. In the letter of resignation he acknowledges receipt of the job description which he states proposes a major change to his current role of Product Manager. He cites constructive dismissal. Two days later he presented a grievance (page 431).
85. The claimant was placed on garden leave on 30 September 2021 (page 444).
86. Mr Valdivia investigated the grievance and conducted a grievance meeting on 12 October 2021 (page 455). I reject the claimant’ argument that had in fact raised a grievance in February because I have accepted Ms Connor’s evidence that the claimant was content for it to be dealt with informally. Mr Valdivia had a follow up meeting with Mr Carter on 15 October 2021. He interviewed Mr Robinson on 21 October 2021 and I have already referred to the notes of that meeting. He also interviewed Ms Connor on 2 November 2021 and Mr Gregoire on 4 November 2021.
87. He interviewed Mr Sonnier and Mr Marston on 22 November 2021 as he explains in paragraph 25 to seek to understand the context to the February 2021 training session and what the SAFE product development meant to the

job content of individuals. In paragraph 25 of Mr Valdivia's statement he explains his understanding of how there can be shared responsibility across two roles.

88. His outcome letter was delivered on 15 December 2021 (page 550) and it arrived during the claimant's notice period. The claimant confirmed in oral evidence that where in the grievance and in the grievance meeting he sought outcomes which would keep him in employment those were genuine proposals. So, in the grievance at page 455 he repeats his suggestion that a possible solution would be for him to move to another department which had a Product Manager vacancy. In the penultimate paragraph on page 476 the claimant repeated the same suggestion in the grievance meeting. Mr Valdivia did not uphold the grievance and the claimant appealed on 23 December 2021 (page 558 & 559). This was acknowledged prior to the end of the claimant's employment and was ultimately heard and dismissed by Svetlana Grant, the Partnerships and Eco Systems Senior Manager (page 564).

The law

Constructive Dismissal

89. Section 95(1)(c) of the Employment Rights Act 1996 makes it clear that a dismissal includes the situation where an employee terminates the contract of employment (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct. This is commonly referred to as constructive dismissal and the leading authority is Western Excavating (ECC) Ltd v Sharp [1978] ICR 221 CA. If the employer is guilty of conduct which goes to the root of the contract or which shows that he no longer intended to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance of it. The employer's conduct must be the cause of the employee's resignation and thus the cause of the termination of the employment relationship. If there is more than one reason why the employee resigned then the tribunal must consider whether the employer's behaviour played a part in the employee's resignation.
90. In the present case the claimant argues that he was unfairly dismissed because he resigned because of breaches of two terms:
- 90.1 An express or implied term as to the substance of the claimant's role;
- 90.2 The implied term of mutual trust and confidence; a term implied into every contract of employment.
91. The implied term of mutual trust and confidence imposes an obligation that the employer shall not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. One question for the tribunal is whether, viewed objectively, the facts found by me amount to conduct on the part of the respondent which is in breach of

the implied term. Whether the employment tribunal considers the employer's actions to have been reasonable or unreasonable can only be a tool to be used to help to decide whether those actions amounted to conduct which was calculated or likely to destroy or seriously damage the relationship of trust and confidence and for which there was no reasonable and proper cause.

92. Whether or not there was a fundamental breach requires considering whether the conduct is:

“a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.” Western Excavating (ECC) Ltd v Sharp [1978] ICR 221, CA

93. What appears to be a change in contractual terms may, in fact, be within the scope of an existing term.

94. Whether a breach of another term is a fundamental breach is a question of fact and degree taking into account the following:

94.1 the effect on the employee is relevant;

94.2 the employer's subjective intention is not a key part of the test. It may be relevant, but the intention must be judged objectively;

94.3 whether the employer acted reasonably is not part of the test;

94.4 a breach of the implied term of mutual trust and confidence necessarily goes to the root of the contract.

95. If that conduct is a significant breach going to the root of the contract of employment (applying the Western Excavating v Sharp test) and the employee accepted that breach by resigning then he was constructively dismissed. The conduct may consist of a series of acts or incidents which cumulatively amount to a repudiatory breach of the implied term of mutual trust and confidence.

96. Once he has notice of the breach the employee has to decide whether to accept the breach, resign and claim constructive dismissal or to affirm the contract. Any affirmation must be clear and unequivocal but can be express or implied. Langstaff P (as he then was) discussed affirmation in the case of Cockram v Air Products plc [2014] ICR 1065, EAT paragraphs 11 to 25, where he stated that mere delay in resigning is unlikely to amount to affirmation by itself although delay can be taken as evidence that the employee has affirmed the contract and decided to carry on working under notwithstanding the breach. Langstaff P also gave the example of a situation where an employee has called for further performance of the contract and that might lead to affirmation being implied from that conduct if it is consistent only with the continued existence of the contract. Cockram involved a situation where the first instance finding of fact was that the

employee had given significantly more than his contractual notice period solely for his own financial reasons. The claimant's counsel had argued that such "post-resignation affirmation" could not be relevant but Langstaff P saw no reason in principle why that should be the case,

"Where he gives notice in excess of the notice required by his contract, he is offering additional performance of the contract to that which is required by it. That additional performance may be consistent only with affirmation of the contract. It is a question of fact and degree whether in such circumstances his conduct is properly to be regarded as affirmation of the contract." ([2014] ICR 1065 @ para.25)

97. A constructive dismissal situation can arise where the employee resigns in anticipation of a breach of contract where the intention fundamentally to breach the contract of employment has been communicated to them. However, such an employee must be careful not to act too hastily because if the tribunal finds that the proposal communicated to them did not amount to an unequivocal intention to breach the contract then the right to resign and consider themselves dismissed has not arisen.
98. Once the tribunal has decided that there was a dismissal they must consider whether it was fair or unfair in accordance with s.98 ERA 1996.

"Section 98 Employment Rights Act 1996

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-
 - (a) the reason (or, if more than one, the principal reason) for the dismissal, and
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it-
 - (a) Relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
 - (b) Relates to the conduct of the employee,
 - (c) Is that the employee was redundant, or
 - (d) ...
- (3) ...
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal was fair or unfair (having regard to the reason shown by the employer)-
 - (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer

acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

- (b) shall be determined in accordance with equity and the substantial merits of the case.”

99. It is fair to say that the respondent, while not conceding the question of whether any dismissal was unfair, has focused their evidence and submissions on the question of whether their conduct prior to resignation entitled the claimant to resign. If it did, they rely upon “some other substantial reason”.

Conclusions

100. As Mr Cheetham KC has done, I shall address the questions posed by the list of issues (hereafter LOI) in a different order.
101. I ask first (LOI 1(iii)) What change did the respondent propose to the claimant’s role in concluding its staffing review in August 2020? I have accepted that weight should be given to the mapping exercise at page 520 to 521 as evidence of what the claimant was doing on a day-to-day basis between April 2020 and about June to July 2020 and about what the previous postholder had been doing in the opinion of their line manager Mr Robinson; he was well placed to assess that. He also assessed the amount of time spent by Mr Morrow, the claimant’s witness, who, like the claimant, had the job title Product Manager prior to September 2020.
102. Instruction number 5 on the mapping matrix confirms that what Mr Robinson was looking at was percentage of work time spent on different functions of the role. He assessed that a total of 25% of each of the claimant’s and Mr Morrow’s time was spent on Strategy and Managing which are, broadly speaking, elements that have been described as the “What” as opposed to the “How” of the product design lifecycle. It is this that the claimant relies on as the distinction between an industry standard Product Manager role and an industry standard Product Owner role. Both individuals are marked identically so there is no obvious reason why Mr Morrow had the legend ‘Good fit for Technology Product Owner’ role inserted against his line and not the claimant. It seems to me that the right inference to draw is that based on the amount of time spent and the importance of the activities in the context of the role as a whole, the Voice and IPX Product Manager role was equally a good fit for a Technology Product Owner role by this mapping exercise.
103. How you spend your time is not the only way to gauge the proportion of your role which is spent on a particular activity,. The extent to which that activity is central to what distinguishes the role from another is also relevant. So, for example, a disciplinary manager may spend 90% of their time interviewing witnesses for disciplinary investigations and 10% of their time making a decision about whether the information amounts to a particular misconduct offence. But if that activity is removed then they cease to be the manager responsible for the disciplinary outcome and are indistinguishable

from an investigator. Nevertheless, if one looks at the column headings in the orange and yellow sections where the claimant and Mr Morrow did not spend any time those would appear to have much more impact on the “What”; on identifying what the capabilities of a product should be as opposed to what features were needed to deliver those capabilities.

104. That is a distinction explained in the page 291 annotation to the Product Manager job description provided to the claimant when he applied for the role. I am of the view that Mr Robinson’s annotations at page 291 are reliable as evidence that the difference between the job description the claimant was recruited to and the role he would be doing as a TPO in Carrier Services was certainly not as fundamental as the claimant would say. Seen through the prism of the RACI or RAPID operation model I understand why Mr Robinson has concluded that the bullet points in the job description would need relatively little change. I refer back to para.66 above and Mr Robinson’s email of 10 February 2021 which is quoted there (see page 283). I consider this to be reliable evidence that there was a change in decision making responsibility for a very narrow aspect of what was, by then, the TPO role. The TPO was still working on those activities.
105. It is important that I record that I have accepted that the claimant was actually carrying out the same functions at all times and the respondent did not intend his functions to change.
106. Although Mr Robinson’s proportions are not particularly scientific or qualitative. He also states:
- “I believe the crux of the issue Nick is raising is specific to the “D” and the accountability he would like the role to have alongside a view the role has been “devalued” to a delivery only role doing what he is told by the LOB.”
107. This email was sent in February 2021 and my findings of fact are that nothing of substance changed from the point when this opinion was communicated to the claimant. The claimant, by his response in cross-examination referred to in para.63 accepted as much.
108. Nevertheless, the claimant relies heavily upon the job description. Although he states also that there is the industry definition of the Product Manager role, that is not something I give great weight to. All of the respondent’s witnesses that the claimant’s job description was that of a Product Manager. However, I accept what Mr Gregoire said which was effectively that the job description the claimant was hired to had not been updated to mirror the role the claimant was actually being asked to do although the way in which it mapped to the activities Mr Robinson expected that postholder to carry out were clearly explained to the claimant in February 2021. As Mr Gregoire said:

“From my discussion with multiple people both in the Agile product delivery with SR with PW on a lesser extent and MC to a lesser extent my understanding of your role was the same as for my own role. You tend to not always do what your job description says. You evolve, you adapt and you take on responsibilities that are needed with the time. I do agree that this is the job description for

Product Manager I do not agree that this was my understanding of the job you perform day to day.”

109. The claimant was completely unwilling to consider that the size of the team or type of team made any difference to the role to be carried out by a particular postholder. I can well image that it would. The functions which need to be carried out by someone may be divided between a smaller number of people in a small team than in a big team meaning that each individual may be carrying out functions which in a larger team might be the responsibility of a postholder with a different or more specific job title.

110. There were no Product Owners in the Carrier Services Team despite it already having moved to the Agile Product Development Framework. Someone must have been carrying out those functions. As Mr Gregoire says in his paragraph 8:

“As Nick’s team (Carrier Services Team) was a relatively small team, there would historically have probably been overlap between the individuals deciding the “What” and the “How” so Nick would , to some extent have had accountabilities for both aspects.”

111. The claimant suggested in his submissions that it was nonsense to suggest that if a customer says their needs had changed it might change the role. That was to criticise Ms Connor’s evidence that a role and job description can change over time to respond to the needs of the customer. The claimant countered that that was Agile was all about and that the Product Manager role had not changed since 2020. That may be the case for a particular project with a particular customer but, as I understand it, Agile refers to continuous incremental changes and the whole system should be set up to be able to react and adapt to the work requirements. That is not the same as what Ms Connor was suggesting.

112. On the other hand, it is clear that there were some changes to the claimant’s role because of the September 2020 announcement. It appears from the mapping that the claimant had some decision making responsibilities for some elements of the “What” which truly was a Project Manager specific activity. I accept that it continued to have that in the period January/February 2021 in relation to the Cloud Numbers tender but the documentation explaining the team toles for that show that he was assigned roles on that project as part of the Agile way of working and not because it was specifically part of the Technology Product Owner’s core role.

113. Putting those matters together it seems to me that clarity about the impact of the staffing review in August 2020 and the implementation of the Product Operating Model on the day-to-day activities of the postholder in the role the claimant undertook from April 2020, became clear over time but should have been clear to the claimant no later than February 2021. They were limited to removal of ultimate decision making responsibility for an element of his role and when set against the totality of the day-to-day activities, that was not a very substantial change.

114. I next consider LOI 1(iv) and (v): What, if any, changes the respondent made to the claimant's role in and after September 2020 and did those changes alter the substance of the claimant's role?
115. I have effectively answered this. The claimant was told on 1 September 2020 that there would be a change in job title but no change of substance to the role. I have broadly accepted the respondent's evidence that the role described as a Project Manager within Carrier Services was as set out in the mapping exercise. The annotation to the job description shows that there were some changes and the RAPID framework set out in the table at page 311 explains that decision making for at least one element had moved from the "How" to the "What". After all that was the purpose of the new Product Operating Method that was rolled out. This was also communicated in October 2020 by the draft RAPID framework at page 143 as I explain in paragraph 57 above. This shows clarity about which roles make which decisions; it separates tasks into designing a product into the "What" and the "How"; "What" being what product is to be designed to bring to market and the Product Owner being responsible for the "How", the technical solution. Page 143 shows where the decision making responsibility would fall as between the LoB Portfolio Manager, the LoB Product Manager, the VBPS Technology Product Owner and the VBPS Architect.
116. I take account of the claimant's analysis of the Product Manager job description at paragraph 7(a) in particular where he states:
- "Whilst I took account of other's views I like my predecessor in the role held total autonomy in deciding which views to consider and how to use them in deciding requirements. Such decision-making is a core aspect of the Product Manager role and entirely absent from the Product Owner role, the role I was ultimately instructed to do."
117. His argument is that he was still doing the original role and no one asked him to change. So, in his submission he said:
- "I am saying up to 15 September I was continuing to do the Product Manager role. No one can point to anything of being given instruction to change. It was all about verbal instruction on 5 August 2021 [no] absolute definition."
118. What I have accepted, however, is that this was true because the original role had not involved a significant amount of decision making in the "What" areas.
119. The respondent has disclosed a list of movers (page 658 and 659) which none of the respondent's witnesses have been able fully to explain save to say that it was not the final outcome. It does show that the outcome for the claimant at one point was potentially going to be outside VBPS. The only conclusion I can draw from this is that when set against the other evidence I have seen it does not provide evidence of what the claimant was actually doing and the mapping exercise which has been attested to by the respondents gives reason to think that Mr Morrow and Mr Carter should have been treated the same. This is an example where it is not possible to

reconcile all of the evidence and explain exactly how everything fits; the date of this document and whether it was a final document are unclear. The weight of the evidence supports, in my view, the conclusions that I have described above.

120. The claimant's submission presupposes that there was a significant change but, as I have explained, the change was not as significant as he describes although it affected that element of the role which had most attracted him to it when applying. Furthermore, he was clearly told how Mr Robinson saw the role fitting within the SAFe framework and how Mr Robinson saw the key responsibilities and accountabilities in the RAPID decision making being allocated amongst people who had to work together.
121. I therefore consider that the answer to the factual question outlined by LOI 1(iv) and (v) is that there was clarity which emerged after September 2020 about changes caused by the new Product Operating Model but that, between the draft presentation shared in October 2020 (page 143) and the analysis of the job description provided in February 2021 (page 291), little, if anything, that would affect what the claimant did on a day-to-day basis was changed.
122. In the meeting on 5 August 2021 the claimant described the RAPID that he had previously talked about with Mr Robinson as (see the transcript page 384 at 388):

“A close approximation to what I thought I was doing with some exceptions. It doesn't work. I can't do it because I got the whole world saying they're just not aligned because its not been communicated. I've asked for this to be communicated months ago. You're asking me to its now August.”
123. This explains the problems of communication of the roles but it is important to note that the claimant says that he thought the role was as communicated by Mr Robinson in January or February 2021 and Mr Robinson confirmed that (see page 390). The respondent may be open to criticism for not communicating the detail of how the VBPS team and LoB team would need to work together although that has not been the subject of investigation in this hearing.
124. It seems to be the case that, within the respondent organisation, there can be changes of sufficient substance to trigger a formal consultation process and potentially even redundancy. Mr Gregoire in August 2021 (see page 390) restated the respondent's then position that it was only about a 20% change but sought to give oral evidence that he meant 20% of a small element of the role (see MG statement paragraph 21) . His and Ms Connor's position has been that this was insufficient to trigger a formal consultation.
125. It appears that implementation of the Technology Product Owner role was sometime after January 2021 and the name was updated on the system at that point. That is when the changes, such as they were, applied to people who were effectively put into those roles. That is consistent with Mr

Morrow's witness statement. I also conclude that a part of the problem with communication was not the change to the claimant's role but the changes to the roles of those with whom he was liaising who had the job title of Product Managers.

126. I accept that probably the claimant's role always involved activities that in other organisations would be described as those of Product Owner's role. Change to what he was doing on a day-to-day basis was probably relatively modest in terms of how his time was spent. The mapping was done relatively early in the claimant's tenure by Mr Robinson who was in a position to know what the role involved. The fact that the claimant was willing to accept that the RAPID document broadly outlined the role suggests that by the time that was circulated the claimant understood that what he was being asked to do did not include aspects of decision making that, in an industry standard job description, would fall within a Product Manager role. Those aspects may have been carried out by his predecessor prior to the introduction of the new product operating model. However, this did not remove from him all business related activities as the claimant confirmed in April 2021 and the email at page 350 to 351.
127. Realistically, the claimant therefore knew in January or February 2021 and certainly no later than April 2021 what the detail of the job content was. He increasingly found that others did not understand the breadth of his responsibility which understandably frustrated him, hence he was asking for the name to be changed back.
128. The change removed decision making responsibility from business areas and also, to judge by page 360, it changed the active element, the verb, in some places by having the Technology Product Officer directed by the LOB Product Manager and changed to Lead Execution of Strategy to Collate the Technology Strategy. In the claimant's words, The buck no longer stopped with him with some elements of the role and those were elements that he was most passionate about.
129. However, I accept that the respondent was best placed to know whether this was in reality a big change in the day-to-day activities of the occupant of that role and that it was not (see my conclusions in paras.101 to 113 above).
130. I next consider LOI 1(i) and (vi): Whether the email of 15 September 2021 amounted to a proposal to alter the substance of the claimant's role? I review my findings in paragraph 83 above. The actions in August and September 2021 seem to me to be a management of the situation issue rather than a change. Essentially, the respondent decided that they had been clear enough and, although they had kept talking with the claimant informally, they had to seek to draw a line under further discussion. This did not amount to a new change.
131. It is true that the job description for the Technology Product Owner was sent on 15 September 2021. Although it is undeniably different to the job description for Product Manager, the so-called new job decision is described

by the covering email as reflecting the role the claimant was already carrying out. That job decision (page 285) has not been shown to make a difference to the activities the claimant would have been carrying out thereafter had he not resigned. The respondents have been consistent in saying they wished the claimant to continue doing what he was doing and that is made clear in the transcript of the meeting on 5 August. One area of common ground is that the role of Technology Product Owner was within the claimant's capability. My conclusion is that the vision of the job description did not amount to a significant change proposed to the claimant's role.

132. It is clear from what I have said that I consider that the role that the claimant was employed to do in April 2020 (rather than March as is in the LOI) was not markedly different from the one he was instructed to do in September 2021 (LOI 1(ii)).
133. I am next asked to consider whether the actions I have found amounted to an actual or anticipatory breach of an express term of a contract as to the substance of the claimant's role (LOI 2).
134. Based on my findings the latest that breach could have happened, if at all, would have been in February 2021 when the annotations to the job description were provided to the claimant and it is clear that the extent of the change was understood by the claimant from his emails to Ms Connor of April 2021.
135. It is clear that the contract was formed by the offer letter of 4 March 2020 at page 59 and the employee information handbook. The relevant section headed "Job Title" confirms that that is as in the offer letter; namely Product Manager. The term in the handbook under that heading appears therefore to have been a term of the contract. That is to say that it was a term of the contract the respondent may ask the claimant to do "any work which reasonably falls within the scope of your capabilities. We will let you know if your job title needs to change." The claimant confirmed that he was aware of that term.
136. The focus of the claimant's argument has not been on the change of job title in itself but that the change from Product Manager to Technology Product Owner removed the core decision making and responsibility for the "What" that was an important part of the role and important to him. The contractual term referred to in para.135 above suggests that the job title was something that the respondent could change and simply notify the employee of.
137. I do not think that the reservation of the right to ask the claimant to do any work which reasonably falls within his capabilities is endlessly elastic. To give an absurd example to illustrate the point, that term would not mean that the respondent could ask the claimant, who is described in his biography on page 67 as being able to play classical guitar, to use that particular skill at work. The respondent's apparent practice that there are times when a change in role is so significant that it triggers a formal process acknowledges as much. However, where a focus of a role is pivoting away

from autonomy in decision making on one aspect to contributing to the decision taken by others, whilst there remains autonomy on decision making in other elements of the role – all of which are within the capabilities of the postholder - that does, potentially, fall within the terms of the contract.

138. It is common ground that the TPO role was within the scope of the claimant's capabilities as I have said (see also page 443).
139. The claimant was still involved in the decision making process for "What" and was decision maker for "How"; he was capable of doing the role, he had input into the decision making process, he just was not the final decision maker on elements which had particularly attracted him to it. My conclusion is that the extent of the change was comparatively small. I judge that it fell within the scope of amendment to the role that the respondent had reserved to itself within the contract. I conclude that these changes to the claimant's role were not a breach of an express term as to the substance of his role and if they were they certainly were not a repudiatory breach.
140. I need separately to consider whether the actions amount to an actual or anticipatory breach of the trust and confidence role (LOI 3). In his submissions the claimant relied on the following matters as contributing to a breach of the implied term of trust and confidence:
 - 140.1 He alleged that Mr Gregoire ignored the grievance when he took over in April 2021.
 - 140.2 He said Mr Gregoire ignored the request to discuss the situation with Mr Robinson.
 - 140.3 He complained that Mr Gregoire professed no awareness of the claimant's concerns when he met him although they had been raised with HR previously.
 - 140.4 He complained that Mr Gregoire ignored his perspective which left him with the only alternative of applying for an alternative role elsewhere in the business.
141. My findings are that the raising of concern in February 2021 by the claimant was appropriately dealt with informally by the respondent in the person of Ms Connor which would be a satisfactory explanation for Mr Gregoire's lack of knowledge of that exchange. Although Mr Gregoire said that he was surprised that the claimant was still concerned about changes that had taken place some months previously, he did not ignore the claimant's concerns and appreciated, correctly in my view, that the practical concern of the claimant was the communication difficulties he had with people in the LOB section whom the claimant considered did not properly understand the claimant's responsibilities. Mr Gregoire did attempt to help the claimant with that. It is not surprising that Mr Gregoire replied to the claimant's concerns that he was a Technology Product Owner because that is what the respondent's position had been since the POM was implemented.

142. I do not see that those matters can fairly be described as behaviour that was calculated or was likely to destroy or seriously damage the trust and confidence between the claimant and the respondent and I reject the argument that there was a repudiatory breach of the implied term of mutual trust and confidence. That being my conclusion on that issue I do not need to go on to consider whether if there was a repudiatory breach the claimant had affirmed the contract.
143. However, in the alternative, I go on to consider the arguments relied on by the respondent in respect of this issue. They argue the following:
- 143.1 The claimant affirmed the contractual changes by continuing to work in essentially the same role but with a different job title from September 2020 onwards.
- 143.2 Alternatively they argue that even if the changes did not occur in September 2020 or had not occurred by the time he resigned he was repeatedly arguing against them long before he did so and therefore any anticipatory breach occurred at least prior to February 2021. Working in the knowledge that the respondent intended to bring these changes into effect but continuing nonetheless is relied on as raising the issue of affirmation. On this point I reject the argument. The reason I do so is in part because in reality the claimant's argument was not that there was an anticipatory breach but that the instruction to work on the terms of the job description provided on 15 September 2021, was an actual breach. I struggle conceptually with the argument that a contract can be affirmed before it has actually been broken.
144. The respondent also relies upon the remedy which the claimant sought in his grievance which he accepted in evidence would keep him in employment.
145. Given that the alternative of remaining in employment but in a Product Manager role in a different department was only one of two outcomes sought by the claimant in his grievance (the other being redundancy) and also that that outcome from the claimant's perspective would retain him in post as a Product Manager, I do not think that it can be said that seeking that outcome can only be explained by the continued existence of the contract.
146. However, if I am wrong and the changes to the claimant's role in substance was sufficiently significant to amount to a breach of contract, I find that there is a considerable amount of evidence that the claimant continued to work in the role with full knowledge of the changes that the new product operating model would bring. In December 2020 he wrote to David Abraham saying that he considered the roles of Product Manager and Product Owner to be significantly more than 50% different. On 4 January 2021 he wrote to Mr Williamson saying that he had been placed in the TPO role which was responsible for feature definition, part of the "How". He knew from early 2021 when he received a copy of the SAFE presentation that Vodafone considered the Product Manager role to be similar to the Technical Product

Owner role. Although he disagreed that the position he had applied for was barely different to the Product Owner role he knew that that was Mr Robinson's view and had explained to him by a number of sources how Vodaphone saw product management and product ownership interlocking to deliver the product (see the graphic on page 203).

147. To the extent that the claimant continued to seek to define what the role covered by what it was called that was not a reasonable stance to take given the business environment. The claimant asked for his role to be changed back to Product Manager in April 2021 and was told he would need to ask this of his line manager directly which, essentially is a refusal (see page 365). Although he came back to this position again on more than one occasion, he did carry on working, did not formally do so under protest, and appeared to have understood by his email at the bottom of page 365 that he was going to work from then on in the role described for him by Mr Robinson. As part of the whole I note (see para.73) that the claimant chose to continue in work for 3 months after he was exploring the applicability or benefit of a Tribunal claim.
148. These matters seemed to me to be only consistent with an election to affirm the contract in full knowledge of the respondent's position.
149. Having considered the issues set out in the LOI, I have come to the conclusion that although the claimant resigned in response to receiving a draft job description by email of 15 September 2021, this did not amount to either on its own or in combination with anything else, to a repudiatory breach of contract entitling him to resign and consider himself dismissed.
150. The claimant was not dismissed by the respondent and the unfair dismissal claim fails.

Employment Judge George

Date: ...1 September 2023

Sent to the parties on:
1 September 2023

For the Tribunal Office