# EMPLOYMENT TRIBUNALS

**Claimant:** **Charlotte Rose O'Neill**

**Respondent:** **The Richmond Partnership**

**Heard at:** **Newcastle Employment Tribunal**

**On:** **6th, 7th, 8th March 2024**

**Before:** **Employment Judge Sweeney**

**Representation:**

**For the Claimant: Rachel Senior, counsel**
**For the Respondent: Sam Healy, counsel**

# RESERVED JUDGMENT

**The Judgment of the Tribunal is as follows:**

1. **The claim of unfair dismissal is well founded and succeeds.**

# REASONS

**The Claimant's claims**

1. By a Claim Form presented on **06 July 2023**, the Claimant brought a claim of unfair constructive dismissal. The case was listed for one day with standard case management orders having been issued with the Notice of Hearing. However, one day was insufficient to dispose of the claim and following an application by the parties, the matter was relisted for three days. There was no case management preliminary hearings and no list of agreed issues had been drawn up.

**Documents**

2. The parties had agreed a joint bundle consisting of **362 pages**. At the beginning of the hearing, Ms Senior handed up some further documents, consisting of some payslips and an amended schedule of loss, which took the total bundle to **368 pages**.

**The issues**

3. At the outset of the hearing. I discussed the issues with the legal representatives. They are summarised in the Appendix to these reasons. It was confirmed that there was a single claim of unfair constructive dismissal. The Claimant contended that the Respondent had repudiated her contract of employment in two ways:

   3.1. It had, without reasonable and proper cause, conducted itself in such a way that was calculated or likely to seriously damage or destroy the relationship of trust and confidence (the implied term of trust and confidence).

   3.2. It had unilaterally changed her job duties and responsibilities (the term being the Claimant's duties).

4. The conduct relied on as amounting to a breach of the implied term of trust and confidence was set out in paragraph 5(a) to (i) of the Grounds of Complaint {**pages 59-61** of the bundle]. Ms Senior also relied on the alleged unilateral change to duties as being a breach of the term of trust and confidence, as well as being a breach of a free-standing term. The alleged repudiatory conduct can be summarised thus:

   4.1. Bullying conduct which got worse around **October 2022** (para 5a).
   4.2. Ms Hanson stating, around **October 2022**, that she had no desire to continue with crime work (para 5b).
   4.3. Criticism by Ms Hanson of the Claimant's work. Telling the Claimant's colleagued her time recording was wrong (para 5c).
   4.4. Being required to undertake additional work without support or a pay increase (para 5d).
   4.5. Unreasonable criticism by Ms Hanson, out of work hours, of the Claimant's work and use of templates (para 5e).
   4.6. On **03 January 2023**, Ms Hanson stating to the Claimant's colleagues that she was unsure of the Claimant's whereabouts and telling them that the Claimant's time recording was not done correctly. Telephoning the Claimant that day after jury service and accusing the Claimant of not doing work for which the Claimant was not responsible (para 5e).
   4.7. From **January 2023**, Ms Hanson stopped speaking to the Claimant and failed to communicate with her when the Claimant tried (para 5g).
   4.8. In January 2023, the Claimant raised her concerns about Ms Hanson with two partners, Mr Emery and Mr Barker (para 5h).
   4.9. The removal by Mr Barker of the on-call phone (para 5i).
   4.10. The increasing of the Claimant's responsibilities without consultation and with no offer of support or extra pay (para 6).

**Witness evidence**

5. Sworn evidence was given by:

5.1. The Claimant, Charlotte O'Neill

5.2. Michelle Smith, legal secretary of the Respondent

5.3. Suzanne Hanson, partner at the Respondent firm

5.4. Jonathan Emery, partner at the Respondent firm

6. Prior to the hearing,**13 February 2024**, the Respondent had made an application to strike out the Claimant's claim under rule 37(1(b) of the ET Rules of Procedure, alleging that the Claimant had acted scandalously, unreasonably and/or vexatiously in the way she had conducted herself in the proceedings on the basis that she had sought deliberately to mislead the Respondent and the Tribunal in her schedule of loss. This was resisted by the Claimant who then subsequently made an application for costs against the Respondent in respect of the application. At the beginning of the hearing, Mr Healy confirmed that the Respondent was not pursuing that application but that he would cross examine the Claimant on the issue. Ms Senior said that the Claimant was still pursuing the application for costs but submitted that this should be dealt with at the conclusion of the hearing, with which I agreed, albeit I expressed some surprise of the amount of costs sought.

7. Towards the end of the hearing, just before Mr Emery gave evidence, the Claimant applied to amend the ET1 to bring a complaint of wrongful dismissal in that she was not paid the correct notice. I refused to give permission to amend in that it was entirely academic. If the Claimant's claim of constructive dismissal failed, then there was no failure to give notice. If the Claimant were to succeed in the claim, she would be compensated financially.

**Findings of fact**

8. The Respondent is a law firm. For most of the period relevant to these proceedings it consisted of three partners: Suzanne Hanson, Jonathan Emery and Jonathan Barker. Another partner, David Bradley retired from the partnership in about **March** or **April 2020**. The firm is based at an office in Chester le Street. However, up until about **August 2023**, it occupied another office in Durham. It specialises in four areas of law: crime, family law, conveyancing and wills and probate. It employs between 20 and 30 employees, consisting of solicitors, conveyancing executives, paralegals and support staff.

9. The Claimant commenced her employment with the Respondent in **March 2010** as a Legal Secretary to Ms Hanson. The Claimant was and had always been based in the Respondent's Chester le Street office. In about **December 2016** the Claimant became an accredited police station representative and was employed as such by the Respondent from at least **2018**, when she was given a pay rise, until she resigned with effect from **09 March 2023**. She was never issued with a written contract of employment or a written statement of particulars in respect of her employment as a police station representative.

10. Suzanne Hanson is the head of the criminal law department and has been a partner in the firm since **2006**. She undertakes Magistrates Court advocacy as well as public law children work. About 75% of her practice is criminal law. There is some overlap between the family work and criminal work in the sense that there are cross referrals from crime to family. Many of the criminal clients also lead to work in the family law arena. She was based in Chester le Street up until about **August 2013** when she moved to the Durham office where she remained until its closure in **August 2023**. Ms Hanson is supported by a legal secretary, Diane Jones. In respect of her work as a legal secretary and then a police station representative, the Claimant reported to Ms Hanson other than during the period **2013** to **2018**, when she reported to another solicitor, Kate Duncan. However, when Ms Duncan left the firm sometime in **2018**, the Claimant again reported to Ms Hanson. Janet Place, the office manager, was responsible for other matters, such as holidays and sick leave.

11. Jonathan Emery is based in Chester le Street although he has previously been based in the Durham office. He started with the firm in about **2004** and has been a partner since about **2016**. He undertakes mainly public law family work – care proceedings - but also overseas conveyancing and probate work.

12. Jonathan Barker was based at the Chester le Street office. He has a civil practice, a significant part of his work being employment law. He was the 'go to' person when it came to any employment or HR related issues within the firm. He left the partnership at the end of **June 2023**.

13. Bill Davison ('WD') is an experienced solicitor specialising in criminal law. He participated on the Duty Solicitor scheme, whereby among other things, he would attend and advise detainees at police stations.

14. Michelle Smith is a legal secretary who has worked for the Respondent for 27 years. She is and was during the period relevant to these proceedings based at Chester le Street.

**Relationship between the Claimant and Ms Hanson**

15. The relationship between the Claimant and Ms Hanson is at the heart of these proceedings. Their perceptions of that relationship are also important. Ms Hanson genuinely believed she had a good working relationship with the Claimant. Ms Hanson sees herself as being approachable. She believes that if she has a bad day, for example at court, she will close her office door so that people know not to disturb her and that she goes quiet. Ms Hanson accepts that she can also be loud in the office but distinguishes that from shouting or exhibiting aggression towards people.

16. For her part, the Claimant also believed, by and large, that she and Ms Hanson had a good working relationship. However, there was a caveat to this, namely that

from the Claimant's perspective, that depended on what kind of mood Ms Hanson was in. If she was in a good mood, the relationship was good. If Ms Hanson was in a bad mood, she would be difficult, often uncommunicative and unapproachable. Both the Claimant and Ms Hanson have a tendency to express themselves in day-to-day terms with the odd swear-word but neither directed their swearing at the other in any way. It was simply a part of their normal vocabulary, especially when under some pressure or when expressing frustration with any given situation.

17. I find that, by and large, the two generally got on reasonably well but at times, when Ms Hanson was in a bad mood - which tended to coincide with whether she was having a good day at work or a bad day – she manifested this in her demeanour leaving the Claimant feeling intimidated by her and reluctant to approach her for fear of being criticised. She considered Ms Hanson to be unapproachable in a way that other partners were not. It is more likely than not that the additional pressure Ms Hanson felt under in 2022 led to more 'bad days' than had been the case in the past and that this adversely affected her mood.

18. The impression I have of matters (and these things often come down to impression) is that many of the issues that existed between the Claimant and Ms Hanson came down to personality. The Claimant, in her own way, was quite a big personality at work. She is naturally quite loud and outgoing and is, generally speaking, able to speak up for herself. She, like Ms Hanson, is a forceful character. However, Ms Hanson is the boss, a solicitor and partner and the Claimant an employee who is not legally qualified.

19. Moving away from matters of perception, I accept and find that Ms Hanson had in fact a tendency to outwardly manifest or exhibit her bad days in bad moods. On such occasions, if she had cause to speak to the Claimant about her work, she would be more blunt with her than she might otherwise be. She would be insensitive in that she was unwilling to listen to the Claimant's attempts to explain herself.

20. Some managers are good at not letting pressure or 'bad days' affect how they deal with staff. It is my impression that Ms Hanson is not one of those people. On the good days she was approachable and supportive and got on well with the Claimant. She let the bad days affect how she interacted with staff. It is more likely than not that she did this unconsciously and not consciously. It explains how the Claimant, a popular, hard-working and long-serving member of staff regarded her as difficult and unapproachable. It also explains how Ms Smith, another long-serving member of staff came to see Ms Hanson as unapproachable and difficult. I considered both the Claimant and Ms Smith to be genuine and honest witnesses, with no intention to mislead the Tribunal. They had a very different impression of the other partners. I find that Ms Hanson did fluctuate in her moods and that when she was in a bad mood, staff got to know about it because she manifested it to them. It is a different matter as to whether, objectively, the manifestation of these moods warrants the description of 'bully'. I address in my conclusions.

21. Ms Hanson is unable or unwilling to accept this side to her character. That is unsurprising, as it is a difficult thing to reflect on. I have no doubt and so find that Ms Hanson genuinely liked the Claimant and regarded her as a good worker who was popular at work and with clients. However, the root cause of the issues that came to arise in these proceeding is that she does not appreciate how she comes across to employees when she is having bad days.

22. The plight of a high street legal aid firm is not great at the best of times. The departure of one solicitor (see below, '**BB')** and the declining health of another, '**WD'** in **2022**, resulted in an increased workload for Ms Hanson who had to pick up on their work. As regards **WD**, the firm was experiencing some significant issues with regards to the Legal Aid Agency's assessment of his ability to maintain his position on the duty solicitor scheme. The agency was threatening to remove him from the duty solicitor rota as he was struggling to attain a particular level of attendance demanded by the Agency. This was related to **WD**'s health. These additional pressures, in an area of work of low margins, led to Ms Hanson becoming frustrated and disillusioned by things and voicing her general unhappiness with the lot of a criminal lawyer. She accepts that, in the presence of the Claimant and others, she said that it would be easier if she did not do criminal work at all. She said in her witness statement that this was a flippant comment, said once only in about **February 2022**, and that she was just sounding off.

23. To the extent that there is a dispute about the number of times Ms Hanson said this, or something like this, I accept the Claimant's evidence and find that Ms Hanson did say more than once that she did not want to do criminal law work and would prefer to focus on care work. This was said not just in **February 2022** as Ms Hanson maintained but also in **October 2022** as the Claimant maintained and it may have been said more than this (although I do not make any positive finding of that). Further, it was not, as Ms Hanson maintained, a remark that '*it would be easier if I did not do criminal work*'. I find that it was as the Claimant maintained, that she said she had no desire to continue with criminal work and she wanted to focus on her care work. Hearing these things being said by the Head of the criminal law department unsettled the Claimant and made her concerned for her future. I reject the evidence of Ms Hanson that she tried to reassure the Claimant that she was not serious.

**The Claimant's role as a police station representative**

24. The Claimant is not a lawyer and has no legal qualifications. However, in about **2016** or **2017** she passed her Police Station Accreditation, which she funded herself and studied for in her own time. She was then appointed to the role of Police Station Representative. From **2018** her primary responsibility was to manage police station rotas and attend police stations to advise clients. She would also take calls from clients and take initial details of people walking in off the street for legal advice. She also did some other work supporting the family department such as attending child protection conferences/ PLO meetings. However, by far the lion's

share of her time was spent on police station work and associated follow up work. Thus, her job title.

25. Attendances at police stations can take place at any time of the day. For this reason, as an essential part of the Claimant's role, she was expected to be on-call and to visit police stations out of hours as necessary. She was not the only person who was required or expected to attend police stations out of hours. However, in practice there were not that many available to do this work.

26. After attending the police station, the Claimant would the complete any necessary paper-work and return this to Ms Hanson.

**On-call**

27. The on-call system works as follows. A police detainee informs the police that he would like legal advice. The police contact the Defence Solicitor Call Centre ('**DSCC**') which is operated by the Legal Aid Agency ('**LAA**'). The **DSCC** then calls one of its contracted law firms (such as the Respondent) using a dedicated phone number for those purposes. The person who takes the call will ordinarily note the **DSCC** reference number, the name of the client, the police station, the date of arrest and offence. The **DSCC** reference number is needed as it must be identified on the legal aid form for the purposes of payment. If the number is not obtained upon first taking the call from the **DSCC**, it can be obtained from the police or from the **DSCC** website.

28. For this to be managed effectively, there were at the very least two basic requirements:

    28.1. That there be an on-call rota,

    28.2. That the person on call be contactable

**The on-call rota**

29. The Claimant managed the on-call rota. Whoever was on-call that night was paid an 'on-call fee' of £25 (whether called or not). If the person was called and had to attend a police station out of hours, they were paid an additional fee ('the call out fee') amounting to half of that which the legal agency paid the firm. That varied according to the area or scheme involved. For example, if it was a Durham call-out the fee was about £103 whereas it was lower if a Newcastle call-out. This payment was referred to as overtime.

30. When the person on-call receives a call from the **DSCC** out of hours, say in the early hours of the morning, it does not necessarily follow that he or she must then visit the police station right away or even out of normal office hours. This could be for a multitude of reasons. The police might not be ready to interview the detainee yet, for example if the detainee is drunk, they must wait for him to sober up before

undertaking any interview. Often, the interview will take place later, during normal office hours and this can be arranged during the initial call. In cases where the Claimant received a call out of hours but attended during normal office hours, she would receive no additional payment over and above her basic salary. However, she was still paid the on-call sum of £25.

31. Those available to do on-call work varied over the years. Although head of crime, Ms Hanson did not attend police stations out of hours (other than on exceptional occasions). She was not on the on-call rota. Mr Davison (**WD**) was on the rota. During the period **April 2021 to February 2022**, the Respondent employed a part-time solicitor ('**BB'**) for three days a week. She too was on the rota in that period. However, **BB** left the firm in **February 2022** (see paragraph 18 of Ms Hanson's witness statement). In the last few years of her employment and certainly since the emergence of the Covid pandemic, the Claimant did the lion's share of on-call work.

32. The Respondent produced the on-call rota for the period **May 2022** to **January 2023 [pages 315 – 323]**. Although there is some data missing for the month of **June 2022** the rota identifies only two employees as being on-call in that period: the Claimant and **WD**. It shows the Claimant as on call for over 80% of the time. That is not to say that she was called out on these occasions. Nor does it appear to take account of annual leave. Nevertheless, it demonstrates what was not really in dispute, which is that the Claimant did the vast amount of on-call work. This was not a choice made by the Claimant. Whilst she understood that on-call work was necessary and was happy and willing to assist in this regard, it was circumstance that led to her being on-call so much. Certainly, in the last few years of her employment, it was largely down to her and **WD** to cover the rota and **WD**'s health was such that his ability to cover on-call was limited. In addition to the Claimant, **WD** and **BB** (all employees), the Respondent also engaged external police station advisers, one of whom was Ryan Dunwoodie ('**RD**'). As confirmed by Ms Hanson in her evidence, there is no financial impact on the firm in using **RD** or any other external police station adviser out of hours. This did not incur any greater fees for the Respondent. That is because **RD** was paid the same call-out fee as an employee, whether that be the Claimant or **WD**. The only additional cost is if an external rep is used during normal office hours. That is because the Respondent can expect the Claimant or Mr Davison to attend to that, as part of their normal basic salary. When using an external representative, such as **RD**, that representative is required to send Ms Hanson their police station visit notes within 24 hours of the visit.

**Monitoring of police station visits**

33. Whereas the rota shows which employees are on the firm's out of hours rota, it does not show whether any of those employees actually attended a police station out of hours (or at any other time). That information is available elsewhere. So as to comply with Legal Aid Agency requirements, every police station visit is logged. Ms Hanson regularly reviewed the number of police station visits, including identifying those who attended during office and out of office hours. She did this by

printing out **DSCC** records and checking on files to see who had attended and when. The trial bundle contained a sample of these **DSCC** print-outs for the period **August to December 2022** [**pages 106 – 123]**. They show: the scheme name (for example 'Darlington & Sought Durham'), the case reference number, the date and time the file is created, the name of the police station and the name of the solicitor/rep who took the initial call. There is then one column headed 'offered' and the other 'accepted'. Offered means that the **DSCC** had offered the firm the opportunity to visit the station and accepted, whether the person taking the call has accepted that offer. There are some hand-written annotations of Ms Hanson's. Under the 'accepted' column can be seen variously 'CO' (that is the Claimant, Charlotte O'Neill) and 'RD' (that is the external rep used by the Respondent).

34. The **DSCC** print outs show all police station visits offered and accepted in the identified periods as follows:

    34.1. **August 2022: 20 visits, pages 106 – 109**

    34.2. **September 2022: 19 visits, pages 110 – 112**

    34.3. **October 2022: 20 visits, pages 114 – 116**

    34.4. **November 2022: 16 visits, pages 118 – 120**

    34.5. **December 2022: 8 visits, pages 122 - 123**

35. Ms Hanson can then see from the files whether an external agent (by and large, **RD**) or an employee of the firm (by and large, the Claimant) had attended a station and whether such a visit was during normal office hours or out of hours. For example, on **page 119 RD** attended during the day on a daytime in relation to the file created on **19 November 2022**. Most visits were done by the Claimant.

**The on-call phone**

36. Each of the partners has a mobile phone paid for by the firm and which is used for business purposes. The Respondent also made available a mobile phone for use by the person who was on call for police station work (the 'on-call phone'). Initially, the on-call phone was held by whoever was on-call on any particular night. Thus, it was passed from person to person according to the rota. At some point in time, although no-one could say when, the firm was able to make use of a call divert facility, whereby the Claimant – rather than pass the phone over to, say, **WD**, would simply set up call divert so that any call from **DSCC** would be diverted to his mobile phone. From then, in practice, the Claimant held the on-call phone using it as her office mobile, on which she also undertook other tasks, such as speaking to clients, police and arranging interviews and meetings. By the time she resigned, she had held the phone for about 80% to 90% of the time for about 5 years. Although it was not meant for her exclusive use, in practice it was almost always in her possession. She regarded it as an essential tool to enable her to do her job.

**LEAP case management system**

37. In about **August 2022**, the Respondent introduced case management software called 'LEAP' which involved things like automated document production, time recording facilities and billing information. All employees required to use LEAP, including the Claimant, received training on the software upon its introduction. From about **October 2022**, the Respondent began to use the system to generate its monthly legal aid crime submission.

38. Prior to LEAP, the Claimant had organised matters by way of preparing a 'dummy file', whereby she would create a file containing her proforma notes from the police station, a client information form, a 'key dates' form and a legal aid declaration. She did not 'technically' open any file as that was the responsibility of Ms Hanson, or a solicitor. She noted down the time she had spent on police station visits and passed the dummy files on to Ms Hanson who would check them. Ms Hanson would then officially open a file and she would prepare attendance notes and draft letters to clients.

39. The introduction of the new, more efficient systems within LEAP this meant the Claimant was required to undertake tasks such as:

    39.1. Opening a file (as opposed to passing documents on to Ms Hanson for her to do this)

    39.2. Writing letters to clients (as opposed to the previous practice of Ms Hanson writing letters, taking information from the Claimant's notes in the dummy file)

    39.3. Time recording in LEAP

40. In **October 2022**, Ms Hanson asked the Claimant to come to the Durham office so that she could show her how she could operate LEAP. The Claimant says that she was there for about two hours during which Ms Hanson showed her how to use the system for about 15 minutes and spoke about herself for the rest of the time. I do not accept this simplistic characterisation. People are notoriously poor at estimating time. It is more likely than not, and I so find, that the two of them talked casually amidst the exercise of demonstrating how the system worked. That is a perfectly natural thing to do. The conversation undoubtedly swayed from work to personal matters on both sides. However, essentially, Ms Hanson explained to the Claimant how to open case files on the new system. It was a relatively straightforward task, given the experience of the Claimant, to convert her practice from opening a 'dummy file' to opening the actual file. What was new to her was the LEAP software, but that was the case for all employees, and everyone received appropriate training. The need to open the file using LEAP probably resulted in the task taking longer, as the Claimant was new to the system and there were some teething problems. The other thing that was new to her was letter writing. This was

not something that the Claimant had done before. This had always been undertaken by Ms Hanson using the Claimant's notes from her dummy file. The Claimant was asked to take on this task in future.

41. There are various template letters available on LEAP covering the various scenarios that a lawyer or police station representative might encounter from time to time and which may have to be recorded in a letter to clients. After every police station visit, the firm would write to the client with a summary of what had happened, what the current position was and what was to happen next. For example, a person might have been interviewed and bailed to appear in court at a future date. The firm would write to explain this and remind the client of the bail conditions. It involved accessing LEAP, opening the appropriate template letter relevant to the scenario and completing those parts that were left blank, for example by inserting the instructions given, dates, offences, bail conditions, court venues and so on. Although this was a new task, the Claimant agreed to it and was keen to do it as she wanted to develop and progress her career. Ms Hanson showed the Claimant how to access and complete the letters. Whist this task may seem straightforward to trained and experienced lawyers, it was not so for the Claimant, who, rightly, took it very seriously. She found it time-consuming in a way that someone trained and experienced in letter writing might not.

42. Prior to the new time recording software, the Claimant would enter in the dummy file the number of units of time she had spent in attendance at a police station (in units of six minutes). This was, essentially, time-recording. She was required to do the same thing from **October 2022** albeit now she was required to enter the units into the new computer system, LEAP. Like everyone else she had to adapt to the new system and to enter the appropriate codes. However, to borrow Mr Healy's phrase, she had been doing the nuts and bolts of this task for some time. Ms Hanson showed the Claimant how to time-record on the new system. The Claimant made some errors, as she had been using the wrong time-recording codes, but no-one took issue with this as it was accepted by Ms Hanson and others that there would be teething problems following the introduction of LEAP and that staff would need time to get used to the new software. The Respondent engages an external specialist company called SQM Solutions to help them with billing and compliance matters on legal aid work. The Claimant was able to ask them for advice and guidance on matters of time-recording and general file maintenance. An example of this could be seen in her exchange with SQM in **January 2023** [**page 155**].

43. On an occasion in **December 2022**, the Claimant took some files to the Durham office to be checked by Ms Hanson. The Claimant expressed to Ms Hanson that she found working with the new system time consuming. Ms Hanson replied '*now you know how I feel*'. This was a passing remark by Ms Hanson who had to spend considerable periods of time on paperwork, dealing with the legal aid agency. As I have already articulated, the life of a High Street practitioner is not an easy one and I find this blunt remark was intended as a 'comrade-in-arms' type comment from Ms Hanson to the Claimant. At its highest, it was insensitive to the Claimant's concern that she found the tasks time-consuming and it highlighted a lack of

appreciation of the employer/employee dynamic. Ms Hanson checked and corrected the letters that the Claimant had written on each file. As she finished with each file, she dropped it on the floor before moving on to the next one. As far as Ms Hanson saw this, she was simply putting them on the floor as there was no space for them on the table. That may be so and I accept that evidence in so far as it goes. However, I find that it is more likely than not that the way in which she placed them on the floor (dropping them, rather than placing them) suggested to the Claimant, at least, that she was frustrated and irritated by having to go through the files and correct her work. Indeed, I find that she was frustrated by having to do this and that she exhibited her irritable mood by being blunt with the Claimant and dismissingly dropped each file to the floor, one by one.

44. On **03 January 2023**, the Claimant was summoned for jury service. When she was released by the court she would pop into the office or do some work from home. That was something she said she would do and which she wanted to do. As part of her claim, the Claimant complains that she had heard from someone that Ms Hanson had been looking for her, saying that she (Ms Hanson) was unaware of the Claimant's whereabouts. It may be that Ms Hanson asked if anyone knew where the Claimant was, and I find it more than likely that she did – as the two of them spoke later in the day. I find nothing unusual or wrong with Ms Hanson doing so. The Claimant had fully intended to work in between bouts of jury service. She had not intended to be out of contact for the whole two weeks. To the extent that Ms Hanson asked about the Claimants whereabouts one afternoon, this was entirely understandable and innocuous, albeit the Claimant believed Ms Hanson to be checking up on her.

45. One other occasion in **January 2023** which was referred to in evidence was when Ms Hanson had been completing paperwork for submission to the legal aid agency. She noted that on one case she could not find the **DSCC** number. This was in relation to a police station call out attended by **WD** over the Christmas period. On the police station proforma he had written '**CO** has the **DSCC** number'. Ms Hanson could not find anyone on file to match the name of the client so she rang the Claimant to find out who the client was so that she could then obtain the **DSCC** number. Ms Hanson gave an account of the discussion in paragraph 24 of her witness statement. Ms Hanson describes how the Claimant shouted and swore at her and ranted. I do not accept that evidence. I accept the evidence of the Claimant and find that she did not shout or swear. However, Ms Hanson had called the Claimant for good reason and with a perfectly genuine and reasonable query. I find that this was one of those occasions where she conveyed to the Claimant in clear terms that she regarded her to be at fault, in that it had been her responsibility to obtain the **DSCC** number and that she had failed to do so. I have no doubt that Ms Hanson was frustrated by having to spend time trying to find the name and reference number and that she was direct with the Claimant on this occasion. She manifested her mood or frustration to the Claimant, who explained what had happened from her perspective. The Claimant, feeling what she considered to be the injustice of being told she had made a mistake, became defensive and

forcefully explained that she had done nothing wrong. During this forceful explanation by the Claimant, Ms Hanson put the phone down on her.

46. I do not accept that when Ms Hanson said to the Claimant '*I can't be fucking bothered with this'* that it was in response to the Claimant shouting and swearing at her for having made a perfectly reasonable request for information. If that had been the case, it is surprising that Ms Hanson did not take any action or even contemplate taking action against the Claimant. After all, on her account, in response to a perfectly reasonable request, the Claimant launched into an offensive 'rant' towards her. It is more likely, and I so find, that as the Claimant was defending her position Ms Hanson was simply uninterested, was unprepared to continue the conversation, said she could '*not be fucking bothered with this*' and hung up. This was, I find, a good example of Ms Hanson manifesting her bad days to employees. However, it was the only occasion during the time the Claimant was employed that Ms Hanson had put the phone down on her.

47. By the time we get to **mid-January 2023**, the Claimant was concerned about Ms Hanson's behaviour towards her. Her concerns included the fact that Ms Hanson had put the phone down on her and had sworn at her when doing so, that she believed Ms Hanson was discussing her errors with other members of staff, that she was saying she wanted to give up crime work, that she was asking her whereabouts despite knowing that she was on jury duty.

48. Therefore, on or shortly before **16 January 2023**, the Claimant asked to speak to Mr Barker and Mr Emery. They met in Mr Emery's office. This was, on any analysis, an informal grievance by the Claimant. She did not wish to have to raise a formal grievance, but she expressed her concerns about how she perceived Ms Hanson had treated her. She said that she did not want to have to leave the firm, but she felt undervalued. Mr Barker made a note of 11 bullet points. [ **page 181]**. Mr Barker said that he would have to speak to Ms Hanson and would get back to her. The Claimant hoped that things could be resolved without the need for a formal complaint and that she would not be given the 'cold shoulder'. To the extent that it was suggested by Mr Healy that Mr Barker and Mr Emery arranged a follow up meeting, I find that they did not. There was no mention of any meeting until **31 January 2023**.

49. Mr Barker called Ms Hanson either the same day (**16 January 2023**) or the following day. He told her that the Claimant had been '*twisting his ear'*, that whilst she did not wish to raise a formal complaint, she felt that she had been bullied by Ms Hanson. Ms Hanson asked what had been alleged but was told by Mr Barker that there was no specific incident just '*general whingeing*'. He also told her that the Clamant had asked for a pay rise. Whilst it is right that the Claimant referred to not having had a pay rise, this was in the context of her saying that she felt she was overworked and undervalued. However, her complaint was not primarily about pay. That was secondary and in the context of expressing that she felt undervalued. Ms Hanson said to Mr Emery and Mr Barker that she would leave the partnership if they thought she was a bully. I was unpersuaded by Ms Hanson's

evidence that she felt distraught when she heard of the Claimant's complaint, to the point that she submitted her resignation from the partnership. It is notable that when she came to learn of the Claimant's concerns from Mr Barker that she immediately rejected them. I accepted that she said to Mr Emery that she would leave the partnership. However, I was not persuaded that she had any real intention to do so nor that she said this because she was so devastated by the complaints, which she regarded as 'utter rubbish' and which had, on her evidence, been described to her as 'twisting Mr Barker's ear' and 'general whingeing'. I find that she said it as a reaction as she was offended and angered by the allegations that she was a bully and I infer that it was also to test the resolve of her two partners to stand by her.

50. Although Mr Barker and Mr Emery had spoken to Ms Hanson either the same day or on the day following the Claimant's informal grievance, neither Mr Barker nor Mr Emery had got back to the Claimant by **31 January 2023** despite her asking Mr Barker for an update.

51. On the morning of **31 January 2023**, a Legal Aid audit was carried out at the Chester le Street office. Ms Hanson attended the office to meet with the auditor. Although the audit was generally positive, a significant issue raised was the removal by the legal aid agency of Mr Davison from the duty solicitor rota, which the auditor maintained was to have retrospective effect. That gave rise to the prospect that the firm would have to repay the legal aid agency fees in the region of £8,000. After the audit concluded, Ms Hanson went to speak to Mr Barker and Mr Emery in Mr Emery's office to update them. This was not far from the Claimant's office, just along the corridor.

52. The Claimant had been working in the office alongside Ms Smith. She was aware that the three partners were meeting. She had still not heard anything back from Mr Barker or Mr Emery following their meeting with her some two weeks earlier. At approximately 4pm, Mr Barker entered the Claimant's office. He asked her to give him the mobile phone. As he asked for this, he appeared nervous and was visibly blushed. He looked embarrassed. This was distinctly noticed by Ms Smith and the Claimant. The Claimant gave him the phone and asked why he was taking it. Mr Barker did not give her any explanation. The Claimant became upset. Mr Barker took the phone and left the office.

53. Mr Barker then returned to the office about 20 minutes later. The Claimant was still upset. This time he gave her an explanation for taking the phone. He said that they there had been a crime audit and that they were looking to reduce overheads in the criminal department and that Ms Hanson was going to hold on to the phone. He said that the partners wanted to have a meeting with her and suggested Friday, **03 February 2023**. He did not say what that meeting was to be about. The Claimant and Ms Smith did not accept that Mr Barker said that the phone was to be held by Ms Hanson for the time being or on a temporary basis. The Claimant does not accept that the explanation given was a genuine one. She does not accept that the phone was required to monitor or reduce overheads. She believed the act of taking

the phone was a reaction by Ms Hanson to her complaint, that it was to show the Claimant that she was in control over her. When Mr Barker offered his explanation, she said something along the lines that he could tell Suzanne (Ms Hanson) that she can stuff the phone.

54. The suggestion of removing the phone from the Claimant's possession had been made by Ms Hanson at the meeting with her fellow partners that afternoon. Ms Hanson did not suggest to the other partners that call divert could be used to divert calls to her. There was no discussion about how they could or should go about monitoring the cost of external reps. There was no evidence as to any actual monitoring undertaken by Ms Hanson on or after **31 January 2023**.

55. Mr Barker emailed his fellow partners at 16:26 the same day [**page 190**] saying:

*"Rather than come back into the office and make it obvious I was tittle-tattling, I thought I should email to let you know that CO ['Charlotte O'Neill'] wanted to know what was happening – why the phone had been taken off her. I explained we has [sic] undergone the crime audit and were looking to reduce our overheads where possible and that Suzanne had taken the phone back for the time being. She indicated she would be quite happy not to have the phone back!*

*I told her we wanted to have a meeting with her and suggested Friday. She suggested she may tender her notice immediately but will wait to hear what we say first.*

*I got the clear impression that we may be paying one wage less in the near future*."

56. The last sentence of the first paragraph, accompanied by the exclamation mark, was, I infer, a rather diplomatic reference to the Claimant telling Mr Barker that Suzanne could stuff the phone. The things referred to by Ms Hanson in paragraph 46 of her witness statement were never conveyed or explained to the Claimant. Mr Barker did not explain that the phone was to be held only for a temporary period. I accepted Ms Smith's evidence that Mr Barker did not say 'for the time being'. Nor did Mr Barker explain that Ms Hanson would be allocating the duty calls or that the Claimant would still continue to be contacted for out of hours duty work. Nothing like this was said by Mr Barker. All that Mr Barker said, on my findings, is set out in paragraph 53 above.

57. The Respondent contended that Ms Hanson needed to retrieve the phone from the Claimant in order to monitor the number of police station calls they were receiving and how many were being allocated to outside reps to deal with during office hours. There was no additional cost to using a rep out of hours (see paragraph 32 above). In cost terms, it did not matter whether it was the Claimant or **RD** who attended out of normal business hours. I could easily understand why the Respondent would need to monitor the use of external reps in normal office hours. However, I had some difficulty in understanding why it was necessary to take the phone from the Claimant in order to do so. After all, Ms Hanson's practice had always been to

monitor police station attendances (precisely as she had done in respect of the examples in the bundle covering the period **August to December 2022** - paragraphs 33 to 35 above). She could and regularly did glean from the information available to her who had attended and when. When I asked why that was not enough, Ms Hanson said that she needed to monitor the visits in 'real time'. This was the first time there was any reference to such a 'real time' necessity. I had some difficulty in understanding why it was necessary to retrieve the phone even for this 'real time' exercise. The external representatives were required to send police station visit notes within 24 hours of their visit. There was also the facility of call-divert. A divert could easily be set up on the 'on-call phone' to divert calls to Ms Hanson's mobile. That would enable her to monitor in real-time. Her employees (the Claimant and Mr Davison) could also be asked to monitor the use of external reps as they would be receiving the calls and making the necessary arrangements. Therefore, Ms Hanson had the information and the facility to get more information without having to remove the phone from the Claimant. The other matter I struggled to understand was why Mr Barker gave the Claimant no explanation for taking the phone when he first went to see her. Why, I asked myself, would a partner leave a meeting with his fellow partners, remove a phone from an employee in the knowledge that it would have a financial impact on her without proffering any explanation? That seemed very odd. His return to the office seemed very much like an afterthought, for the purposes of giving the Claimant 'some' explanation, in the face of her visible upset. It did indeed seem on the face of things like an excuse. I set out my conclusions on this vexed issue below.

58. The following day, **01 February 2023**, the Claimant went to speak to Mr Barker. She was upset and told him she was resigning and that she would work her notice [**page 180**]. The following day Mr Barker told the Claimant that she was not required to work her notice, confirming this in an email of the same date [**page 182**]. On **09 February 2023**, the Claimant confirmed her resignation in writing and that her last day would be **01 March 2023.** She said that she had sought legal advice and believed she may have a claim for constructive dismissal [**page 185**].

59. On **14 February 2023**, Mr Barker wrote to the Claimant [**page 191**]. He said:

*"I appreciate that I had agreed to accept your oral notice when we spoke a few days before this letter. However, I confirm that your notice will be effective from 9th February. Your last day of employment will, therefore, be **9 March 2023**…*

*In your letter, you identified, in general terms, the reasons that you had resigned. I appreciate that, when we first discussed matters, you did not want to raise a grievance. However, we are required to treat your letter of 9th February as notification of a grievance under our Grievance Policy….."*

60. She responded on **20 February 2023** agreeing to meet [**page 192 – 195**]. The Claimant described how she had heard nothing from Ms Hanson or Mr Barker or Mr Emery until around the beginning of February. Although she referred to February, this was in fact a reference to **31 January 2023**. She added:

*"You came into mine and Michele's room and asked for the on call phone for Suzanne, no explanation as to why, however, I know why, it is a control element, she would take it away from me knowing I would not be able to do overtime, she could take that away from me anytime which she used to advantage in the end. Basically I was told Suzanne was trying to save money for the firm, as you are aware I was paid a £25.00 per night for holding the on call phone…"*

61. The last sentence was a reference to when Mr Barker returned to the office on **31 January 2023** to provide an explanation which he had not when he first took the phone from her. Mr Barker met with the Claimant on **23 February 2023** to hear her grievance. Typed notes made by Mr Barker were sent to the Claimant who made a minor amendment to them: [**pages 216 – 218**].

62. Mr Barker responded to the Claimant's grievance on **13 March 2023** [**page 222 – 224**]. He then forwarded the Claimant's letter that she read out at the grievance meeting, the minutes of the grievance meeting and his outcome letter to Ms Hanson and Mr Emery on **14 March 2023** [**page 227-228**]. Ms Hanson replied to Mr Barker and Mr Emery saying that she was gutted by this, that it was utter rubbish and that it paints her out to be a monster. On **15 March 2023**, Mr Barker responded to her and Mr Emery to say that he could fully understand her reaction and that the letter and minutes were intensely personal and hurtful. He added:

*"In our grievance response, I have dealt with what she used as her "last straw" argument of the withdrawal of the on-call phone. Her complaints, otherwise, are non-specific and could, if she were to pursue her unfair dismissal complaint, be answered by us simply saying that she was being constructively managed and didn't like the fact that she was being directed (properly) in her work. I am sure she will take the case further, but we have used the grievance proc to minimise her claim and make it considerably more difficult to pursue – and cheaper and simpler to settle if she does."*

63. The Claimant appealed Mr Barker's decision to Mr Emery. He met with her to hear the appeal on **29 March 2023**. The meeting lasted 15 minutes and Mr Emery rejected the appeal [**pages 229 – 231**].

64. After the Claimant resigned, she obtained some work police station advice work through a firm called AC Legal Services Limited from mid-**March 2023** to the end of **July 2023**. This is a firm with which the Respondent is familiar. In her schedule of loss dated December 2023, she indicated that she received £1,000 as a self-employed Police Station Representative in the period **16 March 2023** to **30 July 2023**. On **16 January 2024**, in response to a query from the Respondent's solicitors, the Claimant's solicitor stated that the Claimant had evidence of the only payment she received from AC Legal in her bank statement, that being £1,000. In fact, the Claimant had been paid over £8,000 by AC Legal Services Ltd, something the Respondent was made aware of on **06 February 2024**. This resulted in the Respondent making the strike out application referred to in paragraph 6 above.

65. Although not pursued as a strike out application, nevertheless Mr Healy put it to the Claimant that she had deliberately lied about her income with a view to inflating her claim for compensation before the Tribunal. This was in keeping with how Mr Healy put to the Claimant that she had been lying to the Tribunal about the allegations of bullying and about Ms Hanson's conduct at work.

66. I listened carefully to and observed the Claimant during her evidence, as I did with all the witnesses. She was, I find, an honest witness. She was not prone to exaggeration. She conceded points appropriately when put by Mr Healy. There was a genuineness about her that is often lacking in witnesses in the throes of litigation. The Claimant had worked hard to develop and better herself during her time with the Respondent, and self-funded her police station accreditation. She was almost universally liked and respected in the firm. Whilst recognising the force of the Respondent's argument, given the discrepancy between £1,000 and £8,000, I considered it unlikely that she was prepared to risk all by underplaying this element in her schedule of loss. The amount claimed by way of compensatory award was £22,196.91 (which included a future loss award of about 3 months from **December 2023** to **March 2024**). That total amount claimed was substantially less than her annual pay with the Respondent. Had she been looking to inflate any claim for compensation, she could have sought to recover compensation beyond **March 2024**.

67. After careful consideration, I accepted her evidence that when she first provided her solicitor with the information to prepare her schedule of loss, she genuinely believed that she had received £1,000. She did not have any documentary record at the time and did not give the matter due care and attention. It was only on being alerted to the matter in **February 2024** that she called her bank asking for confirmation of the payments having been credited to her bank account. Her bank confirmed the amounts and she submitted an amended schedule of loss. During the period she worked with AC Legal, the Claimant' personal life was in some turmoil. She was borrowing money and was feeling stressed with the burden of having to make ends meet. She recognised that this issue made her look bad. However, I was satisfied that the Claimant was not lying and that she was not trying to mislead the tribunal or to inflate her losses. It was a genuine, albeit a careless, error on her part.

**Relevant law**

**Constructive dismissal**

68. Section 95 Employment Rights Act ('ERA') defines the circumstances in which an employee is dismissed for the purposes of the right not to be unfairly dismissed under section 94. Section 95(1)(c) provides that an employee is dismissed by his employer if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without

notice by reason of the employer's conduct. This is known as 'constructive dismissal'.

69. The word 'entitled' in the definition of constructive dismissal means 'entitled according to the law of contract.' Accordingly, the 'conduct' must be conduct amounting to a repudiatory breach of contract, that is conduct which shows that the employer no longer intends to be bound by one or more of the essential terms (express or implied term) of the contract of employment: **Western Excavating (ECC Ltd) v Sharp** [1978] I.C.R. 221, CA.

70. It is for a claimant to prove that the employer repudiated the contract of employment.

**The implied term of mutual trust and confidence**

71. In many cases, the breach of contract relied upon is of the implied term of trust and confidence. In **Malik v Bank of Credit and Commerce International SA (in liquidation)** [1998] A.C. 20, the House of Lords definitively established the ambit of this term. Often referred to as 'the Malik term' it can be stated thus:

"*The employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee*"

72. An employee may well genuinely lose trust and confidence in his employer (and vice versa) but that, of itself, does not mean that the term has been broken. A tribunal must assess objectively whether the conduct of the Respondent is such that it can be said the relationship of trust has been seriously damaged or destroyed. That may come about either by a single instance of conduct, or by conduct which, viewed as a whole, cumulatively cross the '*Malik*' threshold.

**Unilateral changes to contractual duties**

73. If an employer unilaterally requires or imposes changes to the duties of an employee under his or her contract of employment, this may amount to a fundamental breach of contract. Once the contractual duties are established along with the extent of any change to those duties, a tribunal has to consider whether the employer was contractually entitled to change the duties and if not, whether its breach of contract in that regard was a repudiatory breach, entitling the employee to resign: **Land Securities Trillium Limited v Thornley** [2005] I.R.L.R. 765. However, employees can be expected to adapt to new methods and techniques in performing their contractual duties, provided the employer arranges for them to receive the necessary training in the new skills and the nature of the work does not alter so radically that it was outside the contractual obligations of the employees: **Cresswell v Inland Revenue** [1984] I.C.R. 508.

**Resignation in response to fundamental breach**

74. If an employee proves a fundamental breach, he or she must resign in response to that conduct and not delay too long in doing so, lest he be found to have affirmed the contract. It is enough that the employee resigned in response, at least in part, to fundamental breaches of contract by the employer. The fact that the employee also objected to other actions or inactions of the employer, not amounting to a breach of contract, would not vitiate the circumstances of the repudiation: **Meikle v Nottinghamshire County Council** [2005] ICR, CA. It follows that once a repudiatory breach is established, if the employee leaves and even if he may have done so for a whole host of reasons, he can claim that he has been constructively dismissed if the repudiatory breach is one of the factors relied upon: **Wright v North Ayrshire** [2014] I.C.R. 77 and **Abbey Cars West Horndon Limited v Ford** UKEAT 0472/07, per Elias J @ para 34.

**Last straw cases**

75. The final incident which causes the employee to resign does not in itself need to be a repudiatory breach of contract. Nor does it necessarily have to amount to unreasonable or blameworthy conduct. In other words, the final incident may not be enough of itself to justify termination of the contract by the employee. The resignation may still amount to a constructive dismissal if the act which triggered the resignation was an act in a series of earlier acts which cumulatively amount to a breach of the implied term. This final incident or act is commonly referred to as the 'last straw'. The last straw does not have to be of the same character as the earlier acts. An entirely innocuous act on the part of the employer cannot be a final straw, regardless of whether the employee perceived it. When taken in conjunction with the earlier acts on which the employee relies, it must amount to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant so long as it is not utterly trivial**:** ***Omilaju v Waltham Forest London Borough Council*** *[2005] IRLR 35*. If the act that triggers the employee to resign is entirely innocuous, an employee may still claim to have been constructively dismissed if there was earlier conduct that amounts to a fundamental breach, the contract had not been affirmed by the employee and the employee resigned at least partly in response to it. That sort of case would not be a 'last straw' case in the legal sense: **Williams v Governing Body of Alderman Davies Church in Wales Primary School** [2020] I.R.L.R, EAT.

76. The thorny issue of how the law on affirmation applies in 'last straw' cases where there has been past repudiatory conduct has been addressed (and resolved) by the Court of Appeal in **Kaur v Leeds Teaching Hospitals NHS Trust** [2019] I.C.R.1. The effect of the last straw is to revive the employee's right to resign in cases where arguably an employee had affirmed an earlier fundamental breach by the employer. The tribunal should consider:

    a. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

b. Has he or she affirmed the contract since that act?

c. If not, was that act (or omission) by itself a repudiatory breach of contract?

d. If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence?

e. Did the employee resign in response (or partly in response) to that breach?

77. Thus, in a case where a claimant relies on a breach of the term of trust and confidence, if there had been earlier conduct which crossed the Malik threshold, followed by affirmation, but there was then further conduct which did not cross that threshold but which would be capable of contributing to a breach of the Malik term, then the employee could treat that conduct, taken with the earlier conduct, as terminating the employment conduct. If the most recent conduct was not capable of contributing something to a breach of the Malik term, then the tribunal would need to consider whether the earlier conduct entailed a repudiatory breach, whether the contract had since been affirmed, and if not affirmed, whether the earlier repudiatory conduct had contributed to the decision to resign. In such a case, a constructive dismissal may still be made out even if the 'trigger' for resigning was innocuous **Williams v Governing Body of Alderman Davies Church in Wales Primary School** @ paras 33-34.

**Potentially fair reason**

78. In a complaint of unfair constructive dismissal, because the employer has not expressly dismissed the employee, it is not a case of it having to show a reason for the 'dismissal'. The employee has, after all, resigned in response to what he says is repudiatory conduct. However, the Respondent must still show the reason for the constructive dismissal, which for all intents and purposes means it must show the reason it repudiated the contract of employment: see **Berriman v Delabole Slate Ltd** [1985] I.C.R. 546, CA. If an employer does not attempt to show a potentially fair reason in a constructive dismissal case but instead simply relies on the argument that there was no dismissal, a tribunal is under no obligation to investigate the reason for dismissal or its reasonableness: **Derby City Council v Marshall** [1979] I.C.R. 731, EAT.

**ACAS Code of Practice on discip0linary and grievance procedures 2015**

1. The Code provides basic practical guidance to employers and employees and sets out principles for handling disciplinary and grievance situations in the workplace. Employment Tribunals may adjust any awards made in relevant cases by up to 25 per cent for unreasonable failure to follow the guidance set out in the Code.

Conversely, if they feel an employee has unreasonably failed to follow the guidance they can reduce any award by up to 25 per cent (Section 207A Trade Union & Labour Relations Act 1992 'TULRCA'). The EAT in **Allma Construction Ltd v Laing** UKEATS/0041/11 gave some guidance to tribunals when considering an uplift under section 207A of the 1992 Act.

**Discussion and conclusions**

**Unilateral change to contractual duties**

79. I shall deal firstly with the allegation that the Respondent fundamentally breached the Claimant's contract by unilaterally changing her duties and responsibilities.

80. The Claimant has simply not established that there was any unilateral change to her duties and responsibilities. Although there was no written job description in this case (a failure of the Respondent's), when asserting that there had been a unilateral change to her contractual duties, it is incumbent on her to identify what her existing contractual duties were and what was the alleged change. The Claimant looked at what she did in practice up until about **October 2022** and essentially asserted that anything done differently after that amounted to a unilateral change to her contractual duties. I reject this. As regards the requirement to open files, in fact, she had always opened a 'dummy file'. That had been part of her role for years. The requirement to open the actual or 'real' file in future was simply a change in practice and one in respect of which the Respondent had good reason to implement. To say this fell outside the Claimant's existing contractual role was unsustainable and unsupported by any evidence. This change in practice was not, in any event, forced on the Claimant. She agreed to do it by her willingness and enthusiasm to do the best in her role and by carrying out the task without objection. That she expressed to Ms Hanson that the task was time consuming was not any indication to her that the Claimant did not wish to do it. As far as Ms Hanson understood, the Claimant was content to do the work. It is inevitable that it would take her some time to become entirely comfortable with it as the new case management system would take some time to master.

81. As regards time-recording, the Claimant had also already been doing this in practice albeit not by inputting the time on to a case management system. Again, adapting to new technology and methods, it was not outside her existing role to ask her to time-record by entering the times onto LEAP. This was the sort of thing that employees could be expected to adapt to, as envisaged in **Cresswell v Inland Revenue.**

82. The only significant change in terms of duties was the requirement to write letters to clients. However, as the Claimant said in her evidence, she was keen to help and agreed to do this. She always wanted to progress and develop her career. The Claimant agreed to the task and did not ask for a pay rise. I was not satisfied that this was such a radical alteration to the nature of her role as to constitute a change to contractual duties. In any event, the task was by no means imposed on her. She

agreed to do it. Nor was the Claimant unsupported in it. She had been trained in the use of LEAP along with other staff. Ms Hanson showed her which templates to use for writing the letters and how to time-record. There was also assistance on time recording available from SQM Solutions. The Claimant did not ask for any particular support in respect of any of these tasks. She said that she found the work time-consuming but no more than that.

**The implied term of trust and confidence**

83. I then turned to the question of trust and confidence, reminding myself of the legal principles above. Having regard to the alleged repudiatory conduct set out in paragraph 4 above, my conclusions are as follows:

Alleged bullying conduct

84. We are all social beings and generally adept at picking up on the moods of those we work closely with. People communicate with each other consciously and unconsciously not only in words but non-verbally through mannerisms, tone of voice and body language. It is part of daily human life. The Claimant gave her general account of her experiences and perceptions of working for Ms Hanson. To the extent that Mr Healy suggested that she was lying and exaggerating her description of Ms Hanson, I reject this. I found the Claimant to be a genuine and honest witness. Ms Smith also has an impression of Ms Hanson as being a dominant and demanding boss. She too sees Ms Hanson as prone to manifest her bad moods by becoming uncommunicative with staff, or as she put it, ignoring them. I found Ms Smith also to be an honest, measured witness who was not seeking to exaggerate or to lie to the tribunal or to mislead. These were both long-serving, loyal members of staff. They were able to form their own views from personal experiences over a long period of time.

85. The impression that the Claimant and Ms Smith had of Ms Hanson is not one they have of Mr Emery or Mr Barker. However, as they accepted, their impressions and perceptions can be difficult to demonstrate in 'evidential' terms. They did not note down examples of their experiences at the time and they never expected to have to give examples of the conduct that led them to form their genuine perceptions. That does not make what they say any less real, albeit it makes it difficult to prove on evidence. This is a constructive dismissal claim. That means the Claimant must establish the relevant conduct complained of so that its effect can be judged on the relationship of trust and confidence. While I accepted the general theme advanced by the Claimant that, at times, Ms Hanson could be distant and unapproachable and direct with her, that falls considerably short of establishing repudiatory conduct. I accept Mr Healy's submission that, insofar as the Claimant's case relied on allegations of wider behaviour of Ms Hanson, there was simply insufficient evidence or specifics to warrant any conclusion that her conduct, judged objectively, had the effect of seriously damaging or destroying trust and confidence.

86. There is a tendency nowadays to label a very wide range of behaviour as 'bullying' behaviour. It is a very emotive word, subjectively loaded. The implication is often (although not always) that the person knows what they are doing. I must make clear in my judgement that based on the evidence I have heard and seen, the description of Ms Hanson as a 'bully' is objectively unwarranted. At its highest, my findings lead me to the conclusion that she can fluctuate in mood and that she cannot keep her bad moods to herself. However, Ms Hanson never shouted at the Claimant. She was not aggressive towards her. She never threatened her with disciplinary sanctions. There was only one occasion in the whole of the Claimant's employment where Ms Hanson put the phone down on the Claimant. At most Ms Hanson would 'huff and puff' so to speak and could at times exude an air of being irritated and unapproachable. For example, when correcting errors that the Claimant had made on some of the Claimant's files or letters (see paragraph 43 below), this put Ms Hanson into a sour mood, which she manifested by dropping each finished file onto the floor before moving on to the next one.

87. On the facts as I have found them to be, in my judgement, Ms Hanson was insensitive to the effect her bad moods had on the staff she and her partners employed. To that extent, she lacked a degree of insight into her own character. That does not, in my judgement, make her a bully, or in her own words to Mr Barker, a monster.

88. In the context of bullying, one of the Claimant's complaints was that Ms Hanson would criticise her work to colleagues. However, she was unable to give any examples of this when questioned by Mr Healy. There is no concrete or reliable evidence that Ms Hanson inappropriately undermined the Claimant behind her back or that she imposed an unreasonable workload on her. The Claimant believed this to be the case but there was nothing evidentially before me, beyond the bare assertion and belief. Ms Smith's evidence did not advance this in any way as she had no direct knowledge of such things.

89. The Claimant gave an account in her witness statement that Ms Hanson's behaviour, as she put it, got worse from **October 2022**. She referred in very general terms to there being no communication. Again, she was unable to give any concrete examples of this alleged behaviour when questioned by Mr Healy. Where I have been able to make findings on the evidence I have done, for example in paragraphs 43 to 46 above. The Claimant alleged that Ms Hanson did not communicate with her at all from **January 2023**. However, there were few, if any instances, where they were in the same office in this period. She also accepted that there may well have been good reason for not hearing from Ms Hanson, for example because she was busy. If asserting that Ms Hanson had ignored her in relation to her work, it was at the very least incumbent on the Claimant to adduce some evidence of occasions when she had contacted Ms Hanson, what it was about, when she could reasonably have expected a response, and that no response was forthcoming. However, there was nothing like this presented in evidence. Nor were there any concrete examples of Ms Hanson 'blanking' or ignoring the Claimant. Whilst I found the Claimant's evidence to be genuinely given

and I have no doubt that she believed she was being blanked or ignored at times, that is not sufficient to establish the fact of the things complained of.

90. Therefore, insofar as concerns paragraphs 4.1, 4.3, 4.4, 4.5 and 4.6, 4.7 and 4.10 above, the Claimant has failed to establish these things and she cannot rely on them as constituting repudiatory conduct whether individually or taken cumulatively.

91. I turn now to my conclusions regarding the matters raised in paragraphs 4.2, 4.8 and 4.9 above. From my factual findings, the Claimant has established that:

    91.1. Ms Hanson stated that she had no desire to continue with criminal law work [para 4.2 of the issues]

    91.2. The Claimant raised her concerns with Mr Barker and Mr Emery in **January 2023** [para 4.8 of the issues] and neither reverted back to her

    91.3. Mr Barker removed the on-call phone [para 4.2 of the issues]

**Para 4.2: Ms Hanson stating, around October 2022, that she had no desire to continue with crime work**

92. It may well be that, if Ms Hanson had a choice, she would drop her criminal law practice and concentrate on public law work. That would be a matter for her and perfectly legitimate. However, that is and was unrealistic. She is primarily a criminal practitioner. It represents the bulk of her practice and there is an overlap with her public law work. The firm has no intention of getting out of criminal law. However, that is not the real issue in this case. Referring back to my findings in paragraph 23 above, I conclude that Ms Hanson said these things flippantly (by which I mean disrespectfully and lacking in seriousness). It was not, however, said with levity or as a joke but out of a sense of disillusionment and frustration with the deteriorating situation the criminal law department was in at the time. It was a reaction and, in my judgement, consistent with Ms Hanson's tendency to exhibit her bad days at work. I did not accept that Ms Hanson explained to the Claimant that she was not serious and that she sought to reassure her. Looking at my findings and from my assessment of the witness as a whole I conclude that Ms Hanson was simply insensitive to how such public manifestation of her frustrations in front of the Claimant would and did engender a sense of insecurity in her mind.

93. The making of such comments in front of more employees is likely to have a negative effect on them, in that It is likely to adversely affect staff morale. Unless reassured, such comments are likely to unnerve the employees who are likely to develop a concern about their futures. That is, on my findings, precisely what happened: the Claimant became unsettled and worried that Ms Hanson was 'getting out of crime' which she feared would have a knock-on effect on her employment with the firm. It played on her mind that her future in the firm was uncertain. She began to see a pattern developing: the requirement to move from

'dummy files' to opening real files, the requirement to write letters to clients and to time-record, as manifestations of Ms Hanson's desire to 'get out of crime'. She was wrong about this, but it is what she perceived. This is part of what she was complaining to Mr Barker and Mr Emery about in **mid-January 2023** when she spoke about being overworked and undervalued and that Ms Hanson wanted to give up crime work, all of which she felt was demoralising.

94. In and of itself, the 'flippancy' with which Ms Hanson said what she said – without then reassuring the Claimant – is objectively likely to 'dent' the relationship of trust and confidence. However, it is not, in and of itself, conduct, in my judgement at least, that is likely to seriously damage that relationship or to destroy it.

**Para 4.8: the Claimant raised her concerns about Ms Hanson with two partners, Mr Emery and Mr Barker**

95. The clear implication here is that Mr Emery and Mr Barker did not follow up with the Claimant about her concerns. Indeed, that was the specific matter raised by the Claimant in her evidence. It is accepted that she raised her concerns in **mid-January 2023** and it is not disputed that Mr Barker did not get back to her. Indeed, the Respondent's case was that the Claimant did not allow it sufficient time to get back to her because she submitted her resignation on **01 February 2023**.

96. A period of two weeks had elapsed between the Claimant raising her concerns, saying that she was thinking of resigning because of the way she perceived Ms Hanson to treat her and the next event below. In and of itself, considered objectively, that failure to get back to the Claimant in that two-week period is also likely to 'dent' the relationship of trust and confidence. It is not, in itself, conduct, in my judgement, that is likely to seriously damage that relationship or to destroy it.

**Para 4.9: the removal by Mr Barker of the on-call phone**

97. As can be seen from my findings in paragraph 32 above, for the vast majority of the period **May 2022** to **December 2022**, the Claimant was on call. In **September 2022**, she was on call every night. At an on-call rate of £25 a night, that represents a monthly payment of **£775**. She had attended a police station out of hours 9 times in that month [**page 110**], which at a payment of about £100 equated to **£900**. On an objective analysis, that is a significant financial benefit to the Claimant.

98. In their evidence, both Ms Hanson and Mr Emery accepted that the removal of the 'on-call phone' with the consequence that the Claimant was not to be 'on call' would mean a financial loss to her of the on-call fee of £25 a night. However, they maintained that the majority of the out of hours duty work would still come to her (and she would be paid the overtime rate for being called out). When Ms Senior put it to Mr Emery that this had never been explained to the Claimant by Mr Barker, all that Mr Emery was able to say was that he was not present when Mr Barker took the phone on **31 January**. Clearly the same applied in the case of Ms Hanson,

who was not present when Mr Barker removed the phone. Therefore, neither could say what it was that Mr Barker said.

99. Mr Barker was not called to give evidence in these proceedings. When asked whether the Respondent was advancing any reason for not doing so, I was told not. This was not a case of a witness being unavailable or uncooperative. Given that the thing that triggered the Claimant's resignation had been the removal of the phone and the manner in which it was done, I would reasonably have expected Mr Barker to be called as a witness and to be able to give relevant evidence regarding this matter – and indeed other matters regarding the wider complaints and how they were handled. Mr Barker would be able to say why no explanation was given when he first removed the phone and why he decided to go back to give an explanation. He would be able to answer the questions I had posed to myself in paragraph 57 above and to explain that what seemed odd on its face was perfectly explicable. I infer from his absence as a witness, from my findings both as to his demeanour and as to what happened on that day (paragraph 52 above) that he did not agree that there was a genuine need to remove the phone from the Claimant. I infer from my findings that he returned to give an explanation only because he knew how upset the Claimant was and that the Respondent would have to provide some kind of explanation to her. I infer that he suspected what was coming, which is why he subsequently invited the Claimant to put forward a formal grievance in the hope of mitigating or 'minimising' any future claim (see paragraph 62 above). Having regard to this and to my findings that the information was already available to enable the Respondent to monitor calls and to call divert to Ms Hanson's phone,

100. The issue for the Clamant was not whether she had any 'contractual right' to the phone. She never insisted that she had. However, it was a significant thing for her. She had held this phone for many years. She used it not just for the purpose of receiving call outs to police station visits, but to speak to clients, to speak to the police and to arrange interviews and meetings. She was also regularly on call which generated a substantial financial benefit to her. The removal of the phone without any initial explanation and then to be followed up with what she regarded as a half-hearted and disingenuous excuse sent out a message to her that she was not valued. That was all the more so, in light of the fact that she had heard nothing back regarding the raising of her concerns on 16 January 2024. As far as she was concerned, the sequence of events was: concerns raised, period of silence, removal of on-call phone. It was the trigger for her decision to terminate her employment.

101. Ms Senior submitted that the way in which the Respondent conducted itself on **31 January 2023** was, in itself, likely to seriously damage the relationship of trust and confidence. I agree. The conduct must be looked at in the context of an employee who had brought concerns to two of the partners, who had heard nothing back from them, who was already concerned about her future. Then, on **31 January 2023** she found herself having an essential tool of her trade removed from her without discussion, without explanation and without any indication as to how long she was to be without it.

102. In his closing submissions, Mr Healy argued that it did not matter that there were other ways of monitoring the calls. What mattered, he submitted, was that the Respondent was of the view that it required the phone to monitor matters in real time. That, he submitted, was a matter for the Respondent as the employer. Of course, I accept that as a matter of principle. However, I have concluded that, in fact, Ms Hanson did not at the time genuinely require the phone for the purposes of monitoring calls. I arrived at that conclusion through an assessment of the evidence and from my findings of fact (paragraphs 36, 51-57) and the absence of Mr Barker as a key witness. As became clear in the course of the hearing, and as I have set out in paragraph 36 above, the Respondent had the facility to divert calls to Ms Hanson's phone (or to any other phone). It had not been necessary at all to remove the phone to another on-call fee earner for some time. This is not a case of me conceiving of some other more reasonable way of monitoring costs. My conclusion is that this was not the real reason for removing the phone. Although I do not need to determine what that real reason was, I infer that it was, as the Claimant suggested, to send a message to her personally, that Ms Hanson was in control of events and that she did not think much of her concerns.

103. In any event, even if the genuine reason for removing the on-call phone was to monitor calls in 'real time', the way in which the Respondent went about this without any discussion, considered objectively was likely to and did have the effect of seriously damaging trust and confidence. The financial impact on the removal of the on-call phone from the Claimant can be gleaned from the on-call rota (see paragraph 32 above). For example, in **September 2022**, she was on call every night. At an on-call rate of **£25** a night, that represents a monthly payment of **£775**. She had attended a police station out of hours 9 times in that month [**page 110**], which at a payment of about **£100** equated to **£900**. In addition to the financial impact, it made the Claimant very concerned about what lay ahead in terms of her relationship with Ms Hanson. I conclude that the removal of the phone amounted to repudiatory conduct, entitling the Claimant to terminate her employment without notice.

104. Even if it were not in itself a breach of 'the Malik term', when viewed cumulatively with the other conduct, I conclude that the Respondent conducted itself in a manner likely to seriously damage that relationship, namely:

104.1. The failure to get back to her regarding her concerns about Ms Hanson's conduct and

104.2. Ms Hanson's references to not wanting to do criminal law work engendering concerns about her future employment.

105. As the case law makes clear, it is not enough that the employer conducts itself in such a way that is likely to seriously damage or destroy the relationship of trust and confidence. Before any tribunal can conclude that the 'Malik term' has been breached, it must be satisfied that the employer had no reasonable and proper

cause for so conducting itself. I revisited Mr Healy's submission, where he submitted that the Respondent had a good reason for removing the phone, even if it could have achieved the same outcome by other means, so that it had reasonable and proper cause. I do not agree. I repeat my conclusion that the proffered reason was not the genuine reason. An employer acting without a genuine reason is not acting with reasonable and proper cause. But even if I were wrong about the genuineness of the reason, it is not just the 'fact' of removal of the phone that constitutes the conduct complained of. It was the manner of removal. There was no reasonable or proper cause for the way in which the Respondent conducted itself by removing the phone without discussion with the Claimant in advance; and without explaining that it was temporary or the effect on her. As Ms Senior submitted and put to the Respondent's witnesses, all that Ms Hanson had to do was to say to the Claimant that she wished to monitor the number of police station visits by external reps during normal business hours. That was quite a simple exercise. All that was required was to ask the Claimant and/or Mr Davison to let Ms Hanson know immediately who had attended. She could also have asked for the call divert to be set up on a temporary basis. I do not accept that the fact that the Claimant had raised concerns informally rendered it impracticable or undesirable for Ms Hanson to approach the Claimant and speak reasonably to her. There was no 'green light' so to speak for communication to stop. Ms Hanson was the Claimant's line manager. After all, that was the very kind of thing the Claimant wanted, i.e. for Ms Hanson to communicate with her differently. In any event, Mr Barker could have done this on her behalf or with her. I was satisfied that the conduct of the Respondent in removing the phone in the way that it did on **31 January 2023** was conduct for which there was no reasonable and proper cause.

106. As regards the failure of Mr Barker and Mr Emery to get back to the Claimant regarding the raising of her concerns, I conclude that there was no reasonable and proper cause for this failure. This is a small organisation and Mr Barker had spoken to Ms Hanson on the **16th or 17th January 2023**. Although Mr Emery was very busy at the time, there was no evidence before me that Mr Barker was too busy in the two-week period to update the Claimant or to explain to her what was happening. Mr Barker and the Claimant worked out of the same office and he, not Mr Emery, took the lead on HR related matters and on the Claimant's complaint. I infer that it was perfectly feasible for him to speak to her in that period and conclude that there was no reasonable or proper cause for him not doing so. He could have sent an email explaining what he was doing and what he was proposing. However, despite chasing him, the Claimant heard nothing.

107. As regards Ms Hanson's 'sounding off' about not wanting to do criminal law work, whilst it is perfectly understandable that Ms Hanson might from time to time be frustrated and somewhat stressed by bureaucracies of the legal aid agency and the pressures of a criminal law practice, it was not reasonable or proper behaviour for the Head of Department to voice those frustrations in the way that she did and without then reassuring the Claimant.

108. Whether this case is properly a 'last straw' case is not to the point, in my judgement. The Claimant resigned her employment in response to a course of conduct that had carried on over a period of time, the trigger being the last act complained of, the removal of the phone on **31 January 2023**. Having concluded that the event that triggered her resignation (the events of **31 January 2023**) was itself repudiatory and sufficient to justify her taking the action of resigning her employment, no question of 'last straw' or affirmation arises. However, even if the events of **31 January 2023** did not justify the Claimant in terminating her employment, the cumulative effect of that conduct and the conduct referred to in paragraphs 106.1 and 106.2 (for which there was no reasonable and proper cause) was likely to and did seriously damage trust and confidence, even if each considered separately did not have that effect.

109. To the extent that it is necessary, applying the legal principles outlined in paragraph 76 above:

109.1. The most recent act on the part of the Respondent that triggered the Claimant's resignation was the removal of the phone on **31 January 2023**.

109.2. She did not affirm the contract since that act. She submitted her resignation the following day.

109.3. That act was, in my judgement, by itself a repudiatory breach of contract for the reasons set out above.

109.4. Even if it was not, it was nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively amounted to conduct likely to seriously damage trust and confidence and in respect of which there was no reasonable or proper cause.

109.5. The Claimant resigned in response to the repudiatory conduct.

110. The Claimant was, therefore, constructively dismissed.

**Reason for dismissal and fairness**

111. The Respondent did not advance any reason for dismissal (effectively, for the repudiatory conduct). In those circumstances, I conclude that the Claimant was unfairly constructively dismissed.

**ACAS Code of Practice**

112. Ms Senior submitted that the Respondent had unreasonably failed to comply with paragraph 4, bullet point 3 of the Code and with paragraph 43.

113. Paragraph 4, bullet point 3 states: "*Employers should carry out any necessary investigations, to establish the fact of the case*."

114. Paragraph 43 states: "*The appeal should be dealt with impartially and wherever possible by a manager who has not preciously been involved in the case*."

115. Mr Healy submitted that the Claimant had unreasonably failed to comply with paragraph 32 of the Code, which states: "*If it is not possible to resolve a grievance informally employees should raise the matter formally and without unreasonable delay with a manager who is not the subject of the grievance. This should be done in writing and should set out the nature of the grievance*."

116. Dealing first of all with Mr Healy's submission, the Claimant raised her grievance informally on **16 January 2023**. It seems to me rather opportunistic to submit that the Claimant should have raised the matter formally because it had not been possible to resolve the grievance informally. It was not a case of the Claimant being unable to resolve the grievance informally. She raised the grievance, chased it up, heard nothing and then the Respondent repudiated her contract of employment on 31 January 2023. I was not at all persuaded that paragraph 32 applied as submitted. In any event, the failure (if there was one) was plainly not 'unreasonable' as it was down to the lack of response from the Respondent. Finally, when she was asked to put it in writing by Mr Barker, she did so, without unreasonable delay. She sent it in writing to Mr Barker, who was a manager who was not the subject of the grievance [**pages 192-195**].

117. Turning now to Ms Senior's submission, she submitted, by reference to paragraph 4 of the Code that employers should carry out any necessary investigations but that following the invitation to submit the grievance in writing, Mr Barker carried out no investigation at all. There was no evidence of any such investigation submitted Ms Senior. She submitted that Mr Barker's email at **page 227** demonstrates that the Claimant was invited to submit a formal grievance to minimise any claim, and not with any genuine intention of investigating or establishing the facts.

118. I agree with Ms Senior. I conclude that the invitation to submit a written grievance was done entirely for tactical reasons and without any genuine attempt to establish the facts. It is no criticism of Mr Emery when I say that he was surprised that there was any need to investigate a grievance after a person had submitted her resignation. It was only because Mr Barker took the view that they should do so that they treated the resignation as a grievance. Ms Hanson says little about any investigation in her witness statement. In paragraph 53, she says only that Jonathan Barker needed to discuss the grievance with her in order to properly investigate. However, the only evidence of any discussion was that of Ms Hanson herself where she said Mr Barker spoke to her either on the day of the informal grievance being raised or the day after (paragraph 49 above). That was the only evidence of Mr Barker 'investigating' and it was before the submission of the written grievance. The Respondent produced no notes of any interview of Ms Hanson by Mr Barker. That is because, I conclude, there was no investigation interview in response to the written grievance.

119. Referring to my findings of fact in paragraph 62, I noted that Mr Barker emailed Ms Hanson and Mr Emery on **14 March 2023** attaching typed letter from the Claimant, typed minutes of the grievance meeting and his email to the Claimant rejecting the grievance. He had already rejected the grievance before he sent the Claimant's letter and minutes of the meeting to his fellow partners. It was clear from her response [**page 227**] that Ms Hanson was seeing the detail of what was said for the first time.

120. I conclude from this that the Respondent did indeed fail to comply with paragraph 4 in that Mr Barker did not carry out necessary investigations to establish any facts. That failure was unreasonable in my judgement. The Respondent is a firm of solicitors which ought to understand the value in establishing facts, especially when the invitation to submit a grievance has been expressly made to the employee. Mr Barker was not called to give any evidence on the issue. Only he was in a position to address the matter on behalf of the Respondent. I infer that the intention was not genuinely to investigate but to 'minimise' the Claimant's prospects in any subsequent litigation.

121. I was not persuaded that there was an unreasonable failure to comply with paragraph 43 of the Code. Mr Emery dealt with the appeal. Although he was present at the initial meeting, the Code says 'wherever possible' the appeal should be by a manager who has not previously been involved in the case. He was the only partner who could have heard the appeal. In my judgement, there was no failure in that regard.

122. Turning to section 207A of TULRCA, I may increase any award of compensation by up to 25% if in all the circumstances it is just and equitable to do so. I do consider it just and equitable to increase the award because the Claimant was invited to put her grievance forward and to attend a hearing. She could genuinely expected the Respondent to carry out the necessary investigations, which at the very least was to invite Ms Hanson to respond to what the Claimant had said to Mr Barker at the grievance meeting before rejecting her grievance. As to the percentage increase, I do not consider it just and equitable to increase the award by any more than 15%. The Claimant was not going to submit a formal grievance in writing until she was asked to do so. Further, although Mr Barker did not, on my findings, carry out necessary investigations, he did consider the grievance himself to some extent (albeit with an eye very much on minimising litigation risks). For both of those reasons, I do not consider it just and equitable to award anything more than 15% to the compensatory award.

123. In light of my conclusions there will have to be a remedy hearing, unless that is the parties are able to reach an agreement to resolve the issue of compensation. I shall allow a period of 21 days from the date this judgment is sent for the parties to attempt to reach an agreement. If not, they must send dates of non-availability for a one-day remedy hearing in the period **July to September 2024**.

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Employment Judge Sweeney

Date: 4 April 2024

## APPENDIX

1. Did the Respondent repudiate the Claimant's contract of employment in that:

    a. without reasonable and proper cause, it conducted itself in such a way that was calculated or likely to seriously damage or destroy the relationship of trust and confidence (the implied term of trust and confidence).

    b. It unilaterally changed her job duties and responsibilities (the term being the Claimant's duties).

2. If so, did the Claimant resign at least in part in response to the repudiatory conduct?

3. Did the Claimant affirm the contract prior to resigning?

4. If the Claimant was constructively dismissed, can the Respondent show a potentially fair reason for dismissal?

5. Did the Respondent or the Claimant fail to comply with any part of the ACAS Code of Practice?

6. If the Claimant was unfairly constructively dismissed, what remedy is she entitled to by way of a basic award and a compensatory award?