Case No: 2219737/2024

EMPLOYMENT TRIBUNALS

Claimant: **Shanice Buckley**

Respondent: **Soho House (UK) Limited**

Heard via Cloud Video Platform (London Central) On: 18 September 2024

Before: Tribunal Judge Peer acting as an Employment Judge

Representation

Claimant: Mr J. Kinsey of Counsel
Respondent: Mr T. Perry of Counsel

RESERVED JUDGMENT

The judgment of the tribunal is that:

1. The name of the respondent is amended to Soho House (UK) Limited.

2. The claimant's claim for unauthorised deductions from wages is not well-founded and is dismissed.

3. The complaint of breach of contract in relation to failure to pay a bonus is not well-founded and is dismissed.

4. Under section 163 Employment Rights Act 1996 it is determined that the amount of the redundancy payment paid to the claimant was correctly calculated.

5. The complaint in respect of the failure to inform and consult in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 is not well-founded and is dismissed.

6. The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.

7. There should be a 100% *Polkey* deduction to the claimant's compensatory award.

REASONS

CLAIMS AND ISSUES

1. The claimant is Shanice Buckley. At the hearing, the respondent clarified that Soho House (UK) Limited was the proper respondent to the claim and asked that this entity be substituted for Soho House as the respondent. The claimant did not object. The respondent to the claim is therefore Soho House (UK) Limited. The claimant worked for the respondent from 17 June 2020 until 2 February 2024 as a General Manager. After conclusion of ACAS conciliation on 9 May 2024, the claimant presented her claim to the Tribunal in time on 15 May 2024. The claimant claims unauthorised deductions from wages, breach of contract, incorrect calculation of statutory redundancy pay, unfair dismissal and breach of duty to consult (TUPE).

Unauthorised deductions from wages

2. The Tribunal will have to decide:
    a. Did the respondent make unauthorised deductions from the claimant's wages?
    b. If so, how much was deducted?

Redundancy payment

3. Did the respondent wrongly calculate the amount of payment by failing to include a £300 uniform allowance as part of the calculation of gross pay within the meaning of section 162(2) of the Employment Rights Act 1996?

Breach of contract

4. The Tribunal will have to decide:
    a. Did this claim arise or was it outstanding when the claimant's employment ended?
    b. Did the respondent fail to pay the claimant a bonus?
    c. Was that a breach of contract?
    d. How much should the claimant be awarded as damages?

Unfair dismissal

5. The claim for unfair dismissal arises out of the claimant's dismissal by the respondent in February 2024. The respondent asserts the reason for dismissal was redundancy or in the alternative some other substantial reason being a business reorganisation for reasons of economy and efficiency. Redundancy is a potentially fair reason for dismissal, section 98(1) Employment Rights Act 1996. The issues for the hearing are as follows:

    a. Did the respondent act reasonably in all the circumstances in treating redundancy as a sufficient reason to dismiss the claimant. The Tribunal will usually decide, in particular, whether:

i. The respondent adequately warned and consulted the claimant;
ii. The respondent adopted a reasonable selection decision, including its approach to a selection pool and/or selection criteria;
iii. The respondent took reasonable steps to find the claimant suitable alternative employment;
iv. Dismissal was within the range of reasonable responses of a reasonable employer.

b. If the dismissal was procedurally unfair, what was the chance of the claimant being fairly dismissed if a fair procedure had been followed?

c. If the dismissal was procedurally unfair, what remedy is appropriate? The claimant requests compensation only and does not wish for reinstatement or reengagement.

Breach of duty to consult (TUPE)

6. In order to decide this claim the Tribunal has to determine:
   a. Was there a relevant transfer (and when)?
   b. Who were the affected employees (and was the claimant an affected employee)?
   c. Was there a failure to elect and therefore consult with representatives of the affected employees?
   d. What should the amount of any protective award be (limited to 13 actual weeks' pay)

THE HEARING

7. The hearing was a remote public hearing, conducted using the cloud video platform (CVP). The parties agreed to the hearing being conducted in this way.

8. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. There were some minor connection difficulties experienced.

9. The claimant was represented by Counsel Mr J. Kinsey. The respondent was represented by Counsel Mr T. Perry.

10. Evidence was heard from the claimant. Evidence was also heard from Ms Rachel Sutton (Global Director Soho Works).

11. There was a hearing bundle indexed to 295 pages (HB). The claimant provided written submissions. I read the evidence in the bundle to which I was referred during the hearing and the page numbers of key documents relied upon in reaching my decision are cited below.

12. The hearing was allocated two days but for reasons which it is not necessary to set out here did not go ahead on day one. The parties were keen to preserve the trial window and avoid any delay. I heard evidence and

submissions on day two. There was insufficient time to deliberate and give judgment and reasons orally. I therefore reserved my judgment.

FINDINGS OF FACT

13. I considered all of the evidence before me and I found the following facts on a balance of probabilities. I have recorded the findings of fact that are relevant to the legal issues and so not everything that was referred to by the parties before me is recorded.

Background

14. The respondent, Soho House (UK) Limited, is a company within the Soho House Group. Soho House operates sites known as 'Houses' which typically contain the facilities of a member's club, hotel, restaurant, bar and gym. A 'House' has a House General Manager (HGM).

15. The claimant was employed by the respondent but she worked for Soho Works UK. Staff working for Soho Works and for Soho House are employed by the respondent. The claimant reported to Rachel Sutton. Rachel Sutton is the Global Director of Soho Works UK and has day to day responsibility for all Soho Works UK staff.

16. Soho Works UK is a separate legal entity within the Soho House Group which provides serviced work spaces situated within the same building or next to a House. The Soho Works sites are leased by Soho Works UK from other entities within the Soho House Group and Soho Works UK has a separate bank account for Soho Works specific membership fees and funds.

17. There is a House at 180 The Strand known as 180 House. There is a Soho Works site at 180 The Strand. There are also Soho Works sites in the UK at Shoreditch, White City, Dean Street. The claimant was the Soho Works general manager (SWGM) at 180. The SWGMs were supported by floor managers (FMs). At 180, the Soho Works site included an event or 'loft space' for hospitality. The FM of the loft space reported to the claimant.

Claimant's contract of employment

18. The claimant's employment with the respondent started on 17 June 2020. Clause 3 of the claimant's contract of employment which she signed on 23 June 2020 (HB 64-75) is headed 'Job Title and Duties' and provides that the claimant is employed in the capacity stated in Schedule A to the contract and that from time to time she may be required to undertake additional duties or other duties as necessary or to provide services to other companies within the Group.

19. Clause 7 is headed 'Salary, Pension and Expenses'. Clause 7.1 states that 'Your salary is set out in Schedule A.' and clause 7.2 sets out that 'The rate of salary from time-to-time payable shall be reviewed by the Company, which shall, in its absolute discretion, determine whether or not it shall be increased and if so the amount of that increase. There is no obligation by the Company to award an increase.' There is no reference to any bonus

scheme or payment within clause 7. Clause 7.5 refers to eligibility to be enrolled into the pension scheme 'as and when such scheme may be set up by the Company'.

20. Schedule A to the respondent's standard contract of employment (HB 74) contains the bespoke details that the claimant was employed as a 'General Manager' and that her normal place of work was 'Soho Works 180 Strand'. The claimant's manager is specified as 'Head of Soho Works UK'. For 'Clause 7.1 Salary', a figure of £55,000 for the claimant's annual salary paid weekly is provided followed by the wording 'GMs/Head Chefs – Inclusion in the Soho House Bonus Scheme'.

21. Clause 17 of the contract is headed Benefits and sets out that applicable benefits are set out in Schedule A with further details in the Employee Welcome Book and that, 'The Company may at any time in its absolute discretion withdraw or reduce or amend the terms of any benefits (including but not limited to the level of benefit provided).' Further that, 'any benefits…not expressly set out in this Contract will not be regarded as forming part of your contract of employment and therefore you will have no contractual right to them.' There is no reference to any bonus scheme or payments in clause 17. Although clause 17 covers benefits, and pension is covered by clause 7, Schedule A includes for 'Clause 18 Benefits' the list 'Single Private Health Care, Life Assurance and after 3 months Every House membership and Inclusion in the Soho House Pension Scheme'.

22. Clause 22 contains an entire contract clause that 'This contract (together with Schedule A and any terms in the Employee Welcome Book which are expressly stated to be contractual) will constitute the entire and only contract between us …you acknowledge that in entering into this Contract, you have not relied on any representation or undertaking (whether oral or in writing) except such as are expressly incorporated herein.'

2% pay increase in 2022

23. I find that the claimant had no contractual entitlement to a review of her rate of salary at any particular point in time or to any pay rise of any particular amount or at any particular interval based on the terms of her contract. The claimant gave evidence that she did not receive any pay rise in 2020 or 2021.

24. Further to a meeting between the claimant and Rachel Sutton on 22 September 2022, the claimant understood that a review had been carried out and that she should have received a salary increase of 2%. The following day Rachel Sutton informed the claimant by email (HB 136) that, 'I totally spoke out of turn. The 2% was not something issued to the full company and didn't relate to Soho Works. To confirm there is no change to be issued however we are budgeting and looking into wages for next year'. The claimant's salary continued to be paid at £55,000 per annum and not £55,000 plus 2%. When it was put to her in cross-examination that she had accepted this at the time as she didn't contest the position until much later, the claimant said that there were, 'many things I had to contest and fight for.' I find this statement, whilst not directly answering the question, suggests a degree of difficulty with the dynamics of the employment

relationship from the claimant's perspective but also indicates ability to contest and a degree of selection or choice by the claimant as to what she fought for which was not the alleged failure to implement a 2% pay increase. There is no evidence the claimant raised any complaint about this until just over a year later.

25. In April 2023, the claimant was given a salary increase of 7%. Rachel Sutton agreed the claimant was performing well in all aspects of her role and she was rated 4 out of 5 and a key player at her performance review. Rachel Sutton also gave evidence that the claimant's pay increase was high for the group. Thereafter the claimant's pay at each pay period reflected the salary amount of £58,500 per annum.

26. In October 2023, the claimant raised a query with HR about the 2% pay increase for 2022. The email reply (HB 132) confirmed the pay rise she had received earlier in that year and then referred, 'believe Rachel spoke out of turn as she mentions below as increases for salaried members of staff should not be happening outside reviews, as all increases now require sign off from the board.'

27. In oral evidence, Rachel Sutton told the Tribunal that the claimant brought up the issue of a pay rise at the meeting in September 2022. She said that she didn't agree to anything at the meeting but had assumed the claimant should have had a 2% pay rise and told the Tribunal, 'so in effect I misspoke'. Rachel Sutton said that she believed another SWGM had received a 2% pay rise. Asked in cross-examination if she agreed that if one SWGM had a pay rise the others should, she referred to this as 'quite simplified' and although you could probably say that overall, it was about the person and the performance. Rachel Sutton also accepted that it was possible that in September 2022, she could increase pay without board sign-off.

28. I accept Rachel Sutton's evidence that she didn't offer or agree to a 2% pay rise to the claimant in 2022 but rather was operating on an assumption that the claimant should have had a 2% pay rise which turned out to be erroneous as this did not apply across the group. This is consistent with the contents of her contemporaneous email of 23 September 2022. Her evidence about giving the same pay rises as 'quite simplified' is also consistent with the approach to the claimant's 2023 pay rise in that this was quite high for the group. I find that the claimant did not receive any legally binding commitment to any backdated 2% salary increase in September 2022.

Uniform allowance

29. The claimant's written statement sets out that, 'One of the employment benefits I received was a uniform allowance, where a £300 voucher was issued every six months' and that she did not receive any voucher in the last six months of her employment. Neither the body of her contract of employment nor Schedule A contains any reference to any uniform allowance by way of the issue of a voucher or any such benefit in kind. There is no evidence before me of any applicable term in the Employee Welcome Book expressly stated as contractual pertaining to any uniform allowance

by way of voucher or any such benefit in kind. I find that on the evidence available to me the claimant had no contractual entitlement to any uniform allowance as an employment benefit or as a component of pay under her contract of employment.

Bonus payment

30. The respondent's grounds of resistance contend that SWGM are not eligible for the Soho House bonus scheme. In oral evidence, Rachel Sutton said that the claimant was not entitled to be in the Soho House bonus scheme but when she was referred to Schedule A to the claimant's contract of employment and asked whether she agreed the claimant was part of a bonus scheme, she said it was in her contract. She also gave evidence that she didn't think there was a bonus scheme in place at that time and said that she had never seen a formal bonus scheme.

31. The claimant says that she specifically requested a bonus scheme when she was offered the role which is why it was included in her contract and that this was a 'significant factor' in her decision to accept the position and formed 'a crucial part of my overall remuneration package.' The claimant contends that the failure to pay bonus is a breach of contract. There is no dispute that the claimant was never paid any bonus during her employment.

32. The claimant's schedule of loss (HB 61) refers 'bonus of up to 10% of the Claimant's annual gross salary is provided, contingent upon the achievement of quarterly financial targets established by the Respondent, which includes gross profits and cost savings.' The claimant sets out at paragraph 116 of her written statement that, '[Rachel Sutton] mentioned that she would need to find out how the House bonus scheme was set up, as it could be a 10-15% sum based on a percentage of gross profits…'. Rachel Sutton's oral evidence was that she did not remember discussing 10% and she did not accept that she had agreed any such terms. I find that on the claimant's evidence, Rachel Sutton did not agree or communicate terms rather that she would find out how the House scheme was set up.

33. The claimant sets out in her particulars of claim that 'Despite her persistent advocacy for the initiation of the scheme, she either received no response or was given assurances of imminent implementation that ultimately proved unfounded.' In her written statement, the claimant refers 'seeking clarity on how it would be implemented.' Rachel Sutton accepts that the claimant raised the issue of bonus on occasion during her employment but does not accept she told the claimant at a meeting on 31 March 2022 that a scheme would be set up in April 2022. Her written statement sets out, 'I would not have been so firm and specific unless a particular scheme had been approved by the relevant people in finance and management. Any such scheme would also have applied to me, so I knew that there was no such scheme.' She gave evidence that she had wanted to set up a scheme for Soho Works and that she was, 'probably forthright in thinking she could do that' and she accepted that this was a case of misspeaking when she had said something she did not entirely mean.

34. Rachel Sutton explained that paragraph 17 of her written statement which stated that where there were bonus schemes these were confirmed in

writing countersigned by the employee and were discretionary, not paid to employees under notice of termination on the payment date or who had left and not due unless EBITDA plus target was met reflected the terms of the scheme currently in place for HGMs and Head Chefs. She said she had proposed to put this in the bundle. The Tribunal was told that the claimant had objected to the inclusion of the document in the bundle as it related to the 2024 bonus year thus after termination of her employment. Rachel Sutton's evidence was that the same terms had applied in 2023.

35. In oral evidence, the claimant accepted that her written statement that a person did not need to achieve 100% of 'the budget' to be awarded a bonus was because that was generally how bonus schemes were structured and her only information about terms was from speaking with Rachel Sutton. She said she was not aware that a term of any scheme was to meet EBITDA plus target. The claimant was not able to confirm in evidence how many quarters she managed this during her employment.

36. I accept the evidence of both the claimant and Rachel Sutton that provision for a bonus was discussed before the contract of employment was entered into. The claimant's evidence is not that she was informed before she entered into the contract as to the terms and conditions that would apply to the payment of any bonus rather that Rachel Sutton had mentioned that she would need to find out how the Soho House Bonus Scheme was set up. That statement if made as reported by the claimant does not unequivocally support that the intention at that time was to include the claimant in the Soho House Bonus Scheme. Finding out how one scheme was set up could be a prelude to putting in place a similar scheme. Thereafter, conversations said to have taken place during employment were consistent with Rachel Sutton trying to set up a scheme for Soho Works and I find consistent with an understanding that there was to be a scheme.

37. I find that in entering into the contract, the claimant had no knowledge or understanding as to the terms and conditions that would apply to any bonus payment and as such could not reasonably form any estimate as to the amount of any bonus payment if any conditions were met. I therefore find that the claimant entered into the contract in a position where she did not have any certain terms or conditions as to payment of any bonus. Indeed, the claimant's evidence was that the only information or knowledge that she had about the terms and conditions of any bonus scheme were based on either her own general understanding or what she was told by Rachel Sutton. In those circumstances, it is difficult to see how the claimant has formed the understanding that the applicable terms are that she is entitled to 'up to 10% of the Claimant's annual gross salary is provided, contingent upon the achievement of quarterly financial targets established by the Respondent, which includes gross profits and cost savings.' Although the claimant claims in her schedule of loss particular amounts, she was not able to give any detailed evidence when asked whether she had met EBITDA plus target in any particular quarter during her employment.

38. The only reference in the contract to bonus is the wording 'GMs/Head Chefs – Inclusion in the Soho House Bonus Scheme'. It is this wording that is the express contractual provision to the extent it is an enforceable term of the contract of employment. It is possible the claimant and Rachel Sutton

understood that as a SWGM, the claimant was a 'GM' for the purpose of the Soho House Bonus Scheme and the wording is designed to reflect agreement as to inclusion in that bonus scheme or the only bonus scheme there was. Although if it were the case that 'GMs' includes SWGMs, the reference to 'GM' and certainly the reference to 'Head Chefs' is superfluous in the claimant's individual contract of employment whereas such wording might be relevant in a generic contract with defined terms so as to ascertain eligibility for the individual. If the claimant as a SWGM is not eligible as a 'GM' for the Soho House Bonus Scheme it is unclear why the wording is included in her contract at all. Schedule A differently refers simply to 'Inclusion in the Soho House Pension Scheme'.

39. Rachel Sutton's evidence is that the contract provided for inclusion in a bonus scheme but not the Soho House Bonus Scheme and that she was not able to make provision during the claimant's employment for any bonus scheme applicable to Soho Works staff. Rachel Sutton also gave evidence that she was not aware of any formal Soho House Bonus Scheme in any event. This evidence is internally inconsistent. This evidence is at odds with the wording in the contract which refers to 'the Soho House Bonus Scheme' unless the wording was designed to record an aspiration for inclusion in a Soho House Bonus Scheme to be set up. It is certainly incongruous if the intention was to reflect agreement for inclusion in a scheme to be set up specifically for Soho Works. Schedule A also provided for inclusion in the Soho House Pension Scheme although clause 7.5 sets out that eligibility is as and when such a scheme is set up. There is no qualification in the contract itself to suggest that the Soho House Bonus Scheme is not set up but of course other than the wording in Schedule A the contract is silent on bonus in both the pay clause and the benefits clause.

40. I find that if the Schedule A wording provides for inclusion in a bonus scheme, the terms and conditions for any payment under a bonus scheme were not certain. The claimant contends for a scheme where the respondent had discretion to establish quarterly financial targets to include both gross profits and cost savings. The respondent contends for discretion and a requirement to meet 'EBITDA plus target' as these terms are said to have applied to the Soho House Bonus Scheme in 2023. The parties therefore contend for different measurements as terms of applicability for bonus payments. Neither party contends for measurements which take no account of profitability of the business.

41. There is no dispute between the parties that there were difficult financial circumstances for Soho Works during the claimant's employment. Rachel Sutton's written evidence sets out that Soho Works is currently non-profitable and she gave oral evidence that bonus would not be awarded if it weren't profitable. The financial information in the bundle supports Rachel Sutton's written evidence that Soho Works made an operating loss in the financial years 2020, 2021 and 2022. There is no information for 2023. The claimant was awarded a 7% pay increase in 2023 related to her performance as a key player. The claimant's written statement at paragraph 127 sets out that during a meeting in 2023 Rachel Sutton wrote in her performance review that she would, 'receive a bonus back payment and the scheme would be initiated imminently'. If that was what Rachel Sutton confirmed in writing, it is agreement to an unspecified amount of bonus

payment based on a scheme stated not to be in place. In oral evidence, the claimant confirmed that this was written in an electronic performance review document. This document is not within the bundle. Rachel Sutton explained that a system called Flow was used but there were no notes on there and she couldn't find them but maintained that she had never agreed a bonus or back payment at any meetings.

Claimant's job description and role

42. The claimant explained in evidence that prior to working for the respondent she had been responsible for launching and leading other private members' clubs and that overseeing all departments for Soho Works at 180 included responsibility for an event space – this is the loft space - and kitchen with 350 capacity in addition to the work space. The claimant said that in her SWGM role she had comprehensive financial controls and led site operation teams including maintenance, health and safety and reception for the site at 180. I accept that the site at 180 was larger than those at White City, Shoreditch and Dean Street and different given the inclusion of the event space.

43. The claimant said that she had been encouraged at one point to apply for a HGM role although she was not successful. Rachel Sutton said that this role was for Dean Street Townhouse which was not a 'House' as it didn't have a gym, pool, club space or members and was a public restaurant and hotel. The claimant had also led on the launch of '180 Garden' in the summer of 2021 which was a collaborative project with Soho House and the landlord of 180 Strand. Further to this the claimant was offered a role of 180 Building Manager which would have involved 'leadership over multiple cafes and restaurants within 180 Strand, an event space hosting high-profile events …cinema, Soho Works and supporting 180 House.' The claimant declined this offer.

44. The claimant agreed her SWGM role included the duties as set out in her job description (HB 188). I find that the job description reflects the claimant's role. The requirements of the role listed in the job description include: assumes responsibility for the operation of the Soho Works site, its services, staff and users; oversees all departments and is responsible for the monthly financials; day to day management of reception, Lofts & café team - delegation of daily duties…; assists with management of F&B; active member of the reception team- participate in team duties as necessary;…fully trained in all operational software…; responsible for upkeep & stock control…; deals with disciplinary issues and seeks advice from P&D as required; ensuring upkeep of Soho House standards; any ad hoc duties as directed by Head of Soho Works.

45. The House at 180 was managed by a HGM responsible for a health club, rooftop pool, members' space and restaurant. Rachel Sutton says this is a larger operation and the span of responsibility of a HGM was much wider in scope than that of a SWGM given the HGM was responsible for multiple income streams and the role was considerably more senior than that of a SWGM. The SWGM had supervision of the Soho Works site at 180. Rachel Sutton's evidence is that after the redundancies, she remained responsible for all Soho Works staff and they conducted management of all matters

related to delivering the facilities within the Soho Works site save that supervision over the whole 180 site or building sat with the HGM. Rachel Sutton said, 'general day to day operation of the site was under the general manager of the House' and that she was still responsible for the Soho Works sites. I find that the HGM role carried much wider responsibility and was a more senior role than the SWGM role.

46. Rachel Sutton's written evidence sets out that the same food and beverage and other suppliers, maintenance teams and people and development teams were used by Soho Works for their sites and the Houses for the member facilities delivered in the House.

47. In cross-examination, the claimant was asked whether she accepted that Soho Works and Soho House had joint resources. In answer, the claimant explained that Soho Works had an individual dedicated to them for maintenance. She did not agree there was a shared resource and said they would be charged if they called on resource and referred to asking the landlord for plumbing support on occasion. The claimant said that Prijin Rajan in the safety and operations team was the only member of staff she knew who split his time between Soho Works and Soho House. It was put to the claimant that these were joint services and on occasion she had to deal with them but managing them was not the principal purpose of her role. The claimant maintained that she had responsibility and without maintenance and cleaning the flagship site at 180 would not work.

48. I accept the claimant's evidence about her interactions relating to provision of services for the operation of the Soho Works site but I do not accept that her descriptions of her interactions and calls to resolve certain maintenance matters or ensure cleaning standards undermine the position that both the House and Soho Works shared services both before and after her dismissal. I find that the House and the Soho Works site at 180 had shared resources.

49. I find that the claimant's role included both hands on team duties such as acting as a member of the reception team together with overseeing the management and operation of the shared work spaces and event space by the FMs including the loft manager and other staff. This also included oversight of management of the provision of services for the operation of the Soho Works site from shared resources including cleaning, maintenance and using shared systems for stock and ordering of supplies.

Proposal for removal of SWGMs

50. Rachel Sutton's written evidence sets out that from August 2023 she was developing the idea that they could remove the SWGM role and that layer of management or oversight and that "their duties could be absorbed by the Soho House General Managers and the Floor Managers (who would be redesignated Soho Works Mangers [sic] – a position slightly senior to Floor Manager but junior to the existing Soho Works General Manager role)." The proposal had approval by the end of 2023.

51. In cross-examination, Rachel Sutton was asked about an organisation chart dated May 2020 (HB 63) and it was put to her that the outcome after the removal of the SWGMs was that there was in fact no headcount reduction.

The chart shows SWGMs for East, Central and West supported by staff including an Assistant General Manager (AGM) at Dean Street and 3 FMs. Rachel Sutton agreed the chart and agreed that the references to 'Floor Support' were to FMs such that there were 2 FMs at 180. Rachel Sutton gave oral evidence that by the time of the redundancy, the AGM had left and no-one was re-hired to the role. I find this to be the case and it was not really disputed by the claimant. There was a loft manager at 180. In re-examination, Rachel Sutton said that whilst before at 180 there had been 5 staff consisting of the SWGM, the loft manager and at one point 2 FMs together with an office manager; after there were 4 staff being the loft manager, 2 FMs and the office manager. I find that there was a headcount reduction due to the removal of the SWGM at 180 and the other SWGM roles. I also find there would have been cost savings associated with personnel given the SWM role had a lower salary band.

52. The job descriptions for the SWGM and the new SWM role are nearly identical although the claimant gave evidence that she was not comfortable agreeing this given she considered there were multiple elements to her role. The SWM job description (HB 249) differs only in so far as there is no 'membership' role. The claimant agreed that the membership aspect of the SWGM role was not a significant aspect and was the only element being taken away. She said it was 'never a core feature of my role' given there had always been a membership team. The Job Purpose of the SWM is described as 'ultimately responsible for the day to day operational running of the businesses, member satisfaction and financial performance of the site excluding membership' with budget responsibilities as 'responsible for delivering the daily sales excluding membership. These are food and beverage sales and meeting room sales' and reporting to the Director of Soho Works UK and 'General Manager of local Soho House (Dotted line into)'.

53. The claimant was asked if she accepted that the hands on aspect of her role making the site work on a day to day basis had not transferred to the HGM given this work would be done by the SWMs. The claimant said that what she had heard was that the HGM had little to no involvement with Soho Works but that a lack of interest was not lack of responsibility. The respondent says that whilst the HGM has theoretical responsibility across the House now, below the HGM there are individuals or Heads of Department who run each area, the gym, restaurant. It was put to the claimant that the change had very little effect on the HGM role. The claimant said that this would depend on the particular site and person as some would need more support than others.

54. I find that the claimant thus acknowledged that the extent to which support would be needed day to day from an HMG on site would be ad hoc. I find that the proposal was that Soho Works staff would continue to be formally managed within Soho Works and in particular the SWMs would formally report to Rachel Sutton who remained responsible for Soho Works operations across London although the 'dotted line' on the job description indicated that they could draw on support from the HGMs and the HGMs had day to day responsibility or oversight of operations on site including the Soho Works site.

55. The majority of the duties carried out by the claimant were to be carried out by FMs redesignated as SWM and the need for a SWGM carrying out those duties in addition was no longer required. Further the element of the SWGM role that was responsible for the operations 'on the floor' was considered otiose due to the ability of the FMs/SWMs to manage and deliver themselves and the SWM job description provides for them to assume responsibility for day to day operations.

Redundancy process

56. On 15 January 2024, a meeting was held with the three SWGMs at which using a script (HB 184-185) which she says she did not depart from Rachel Sutton told the SWGMs that they were at risk of redundancy. The script refers to an 'initial organisational review' and a 'need…restructure teams accordingly.' The script also refers to the role of an FM 'being redefined to [SWM] and deemed as a suitable alternative due to a job title change'. The script also refers to consultation commencing on that day and that the process 'should finish around the beginning of February'. The staff at risk of redundancy were therefore told that within a period of a fortnight they might be redundant. There was however a vacant SWM role at 180 due to movements of FMs that was deemed a suitable alternative.

57. By letter dated 15 January 2024 sent by email at 1716, the claimant was invited to an individual consultation meeting at 1pm on 17 January 2024. The letter sets out that 'purpose of this meeting is to discuss the proposed redundancy and consider any alternative proposals or suggestions you may have to avoid redundancies' and that following the meeting 'you will be invited to a second consultation meeting and you will have the right to be accompanied and that 'likely that this second meeting will bring this consultation period to a close and a decision will be made as to whether or not the redundancy will go ahead.' The claimant was given less than 48 hours' notice of the first consultation meeting from the time she was told she was at risk of redundancy and invited to put forward proposals to avoid redundancies. The covering email referred to the SWM role as open for one week internally. The claimant was also sent the respondent's list of current vacancies at various London sites most of which were being advertised externally as well as internally.

58. Rachel Sutton acknowledged in evidence that if the consultation was with a view to avoiding redundancies one outcome might be that there would be no need for a second consultation meeting but could not explain the use of 'will' in the invitation to the first meeting. When it was put to her that the decision to dismiss followed from the selection of the three SWGMs and that the plan was never to engage in meaningful consultation, Rachel Sutton explained that she had tried for many years to make sure Soho Works was not included in redundancies and she did not set out without the time and space to hear options. She also referred to head of operations roles being removed from the Houses and that regional general managers had been trialled in the past as background to explain how the proposal had been reached.

59. Rachel Sutton agreed that she had not reflected on what skills or attributes the claimant or other SWGMs had and that she was focused on removal of

the role. Rachel Sutton's evidence was that she didn't consider pooling with FMs or HGMs or the AGM. When it was put to her that she clearly didn't understand what selection criteria were, she said that she hadn't educated herself on this but they didn't apply because the role was being removed. She did not accept it would be fair to compare the SWGM and HGM role given the latter was a larger scale role, team to manage and many departments. The claimant did not accept in evidence that the HGM were operating at a different level. Rachel Sutton accepted that she had not applied her mind to whether she could pool the SWGM with others even though she said that there was no need to pool. She agreed that the SWGM and FM/AGM had interchangeable skills for the 'day to day running of spaces'. The AGM had sign off if the SWGM was not available but the AGM was not included as they were not re-hiring to that role and the individual in the AGM role had resigned by that time.

60. On the morning of 17 January 2024, the claimant emailed a proposal (HB 208-209) to Rachel Sutton and Lauren McDonagh (Head of HR). The proposal was that the claimant oversee all London Soho Works sites. The claimant set out that floor managers did not have the training or experience to deal with certain duties or financial responsibility.

61. At 1300 on 17 January 2024, the claimant, accompanied by Prijin Rajan (Safety & Ops Manager) attended a meeting with Rachel Sutton and Lauren McDonagh(HB 241-245). Rachel Sutton was referred during cross-examination to paragraph 5 of her written statement which sets out that 'Soho Works operates as a department within the Respondent' and her statement in the consultation meeting that 'we become a department in the site – with that going into this structure that role is not needed' and asked whether it was fair to say that this gave the impression that Soho Works was not a department of Soho House at the time. Rachel Sutton said, 'yes I suppose so' and explained that she had used that description in the meeting to refer to the space within the building. She accepted that Soho Works had its own departments for maintenance, kitchen, admin but explained that they shared the same suppliers and people and would pay a portion of salary for any staff used. Rachel Sutton gave evidence that Soho Works would still own the same space with the same team including the reception floor and that when she referred to 'transferring' or 'absorbing' she was trying to explain in a visual way how it looks with the full structure of the House. The proposed structure chart (HB 202) shows Soho Works as a component part of 180. She said she didn't speak with legal advice but with her ability to describe change. She maintained that financial management remained with Soho Works and the company had separate profit and loss accounts from the House with regard to costs and sales.

62. At the first consultation meeting the claimant was told that if she applied for the SWM role she was 'likely' to get the role. The claimant did not apply for the role. The role was advertised at a salary band which was 20-25% less than the claimant's salary. In evidence the claimant said that she had felt rushed and that given the tone she did not feel that it was likely she would get the job and she did not feel that there was a genuine opportunity to mitigate the redundancies. Rachel Sutton thought that the time allowed to apply for the SWM role was adequate. There was no other discussion at the meeting around alternative roles or opportunities for the claimant. As such,

although the claimant was told it was 'likely' she would get the role this was not accompanied by any encouragement or positive messaging about retention of the claimant.

63. On 24 January 2024, Rachel Sutton replied to the claimant in relation to the claimant's proposal. Rachel Sutton said that the proposal did not allow for efficiencies as it maintained the SWGM role and reduced rather than removed headcount and therefore 'selection criteria would need to be undertaken'. She maintained in evidence that the respondent gave due consideration to the claimant's proposal. The claimant did not agree and she said that there was in any event no headcount reduction.

64. On 24 January 2024 at 1417, the claimant was emailed a letter invite to a second consultation meeting on 25 January 2024 at 10AM. This letter set out the likely redundancy package and that dismissal would be effective from 1 February 2024.

65. The second meeting took place in one of the hotel bedrooms at 180. The claimant said she found this distressing. The second meeting minutes (HB 254-260) record that the claimant was offered an ex gratia payment subject to signing a voluntary redundancy agreement. I note that the claimant would need to review and sign this agreement within 4 working days to avoid the indicated compulsory redundancy at any point after 1 February 2024. The claimant was told no solicitor would be required. During the meeting, the claimant asked a number of questions to understand the changes and the minutes do not convey the impression that the claimant felt inhibited in raising queries. Rachel Sutton is asked whether, and recorded as agreeing that, there was a business transfer as 'part of the business responsibilities have been transferred to the house'. That there would be grouping of resources 'Health and Safety and operations in terms of stock and ordering. Adaco and ER issues and this would also include rotating. Menus will fall into the house and chef kitchen. Membership will fall into office sales.' The claimant asked if that would include 'building management staff resourcing maintenance S&O cleaning KPIs e.g. cost of sales' and Rachel Sutton said 'yes'. Rachel Sutton also agreed that 'Soho works is merging into the operation of Soho House' and that the consultation needed to complete with the merge around mid-February. She also said 'floor managers as a department and a HOD are similar roles and suits Soho works. Falling into a department into the wider house fits and suits the structure- it aligns with the floor managers'.

66. At the second consultation meeting, the claimant confirmed that she did not want to apply for any of the current vacancies.

67. The reference to 'department' in Rachel Sutton's statement occurs after an explanation as to Soho Works as a separate company and is followed by the explanation that the House and the Soho Works site had shared resources. I accept that given the context her use of 'department' in her written statement was to explain that day to day the Soho Works site operated and looked as if it was like the other facilities in the House such as the gym, restaurant and as such as if it was a department of the House. I find that the use of 'department' in the meeting as with her use of

'transferring' and 'absorbing' did not indicate that there was to be any substantive change in the existing arrangements.

68. I do not accept as put to the claimant by the respondent, that the claimant had a sophisticated agenda to suggest there was a business transfer. The claimant gave frank evidence that she had spoken about what must have been shocking and upsetting news about being at risk of redundancy with her family which included relatives who were legal professionals albeit not employment lawyers. Their guidance was to ask questions and understand the circumstances. I observe that this is sensible guidance confronted with the prospect of losing one's employment and likely in an emotional state which might come from anyone and is not confined to the type of steer that a lawyer might give. It is the case that if the minutes are considered, the claimant could be regarded as steering or controlling the conversation but equally she could be regarded as picking up on and exploring the answers given and language used by Rachel Sutton.

69. I find that it is not unreasonable that at various points during the relationship the claimant has formed certain impressions as to circumstances given the language used by Rachel Sutton. I accept Rachel Sutton's evidence that at times she was not speaking having taken legal advice and that she was not intentionally using words to convey any legal sense rather pictorially and as a matter of presentation. I consider that, as with many of the statements that under scrutiny Rachel Sutton admitted were her having 'misspoken', it is possible that she was communicating in a positive, forward-facing or aspirational manner. With hindsight, this is of course unhelpful. I refer to the 2% pay rise and bonus issue as other examples of this. It is also the case that the consultation meeting clearly conveyed the impression of change beyond the removal of the SWGM layer of management.

70. Rachel Sutton was cross-examined about the statements made during the second consultation meeting. Her evidence was that what she meant by 'grouping of resources' and her references to stock and ordering was that she was referring to resources such as safety and operations. Adaco was the supplier system and an online platform for ordering food and beverages. She said certain products were already ordered by the safety and operations team on site but maintained that before and after orders, such as 'croissants' which was the example put to her, would sit with Soho Works. All staff remained employed by the respondent both before and after. Soho Works would pay a portion of staff salary if staff were utilised by Soho Works. She accepted that staff grievances would have gone to the claimant in her role as SWGM but afterwards they could go to the SWM or the HGM. The provision of resources such as employee relations and HR did not change. She explained that Soho Works held separate profit and loss accounts and maintained that financial management, cost of sales, Adaco and ordering underwrite all remained with Soho Works.

71. In re-examination, Rachel Sutton explained that the mechanism for meeting a portion of salary for shared resource staff was a back of house financial transfer whereby Soho Works assumed and accounted for a percentage of the salary costs. She gave evidence that this stayed the same after the redundancy and February when the claimant contended the transfer had taken place. She gave evidence that health and safety, operations, events

and reception were all shared and that the time the claimant would have spent dealing with this and delegating would have been a 'small portion of her day'. She said the reason she knew that profit and loss accounts remained separate and had not been merged was because she oversaw this for Soho Works. Rachel Sutton was asked what how much changed day to day for the HGMs and she said, 'nothing, not really, nothing.'

72. On 29 January 2024, the claimant declined the offer of voluntary redundancy and the enhanced package. The voluntary redundancy agreement provided (HB 265-266) contains a term that acceptance of the voluntary redundancy payment is in 'full and final settlement of all claims you may have'.

73. By letter dated 2 February 2024, the claimant was given notice of termination of employment on 2 February 2024. The letter set out details of the payments the claimant would receive comprising statutory redundancy payment, pay in lieu of notice and pay in lieu of unused accrued holiday. The letter also provided the claimant with a further 5 working days to reconsider acceptance of the voluntary redundancy package.

74. On 15 May 2024, ACAS conciliation having concluded, the claimant presented her claim.

LAW

Unfair dismissal

75. Section 94 of the Employment Rights Act 1996 ("the Act") gives employees a right not to be unfairly dismissed. The right is enforceable by way of complaint to the Tribunal.

76. The test for unfair dismissal is set out in section 98 of the Act and there are two stages. Section 98(1) of the Act provides that it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal and that it is a potentially fair reason within section 98(2). Redundancy is a potentially fair reason. An employer can also rely on some other substantial reason of a kind such as to justify the dismissal of an employee and this can include business reorganisation.

77. Section 139(1) of the Act provides that an employee who is dismissed is taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the employer having ceased or intending to cease to carry on the business for which the employee was employed or to carry on the business in the place where the employee was employed; or the requirements of the business for employees to carry out work of a particular kind or to carry out work of a particular kind in the place the employee worked have ceased or diminished or are expected to cease or diminish.

78. The second stage is for the Tribunal to consider whether the respondent acted fairly or unfairly in dismissing for that reason and the burden of proof is neutral. Section 98(4) provides that the determination of the question as to whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances

(including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and this shall be determined in accordance with equity and the substantial merits of the case.

79. In considering reasonableness, the tribunal cannot substitute its own view. The tribunal must apply the 'range of reasonable responses' test to the decisions and actions of the employer. The question for the tribunal is therefore whether the dismissal was within the band of reasonable responses of a reasonable employer.

80. In the case of *Williams and ors v Compair Maxam Ltd 1982 ICR 156, EAT*, the EAT gave guidelines that a reasonable employer might be expected to follow in making redundancy dismissals such as: warning and consultation about the redundancy; whether union views were sought; whether the selection criteria were objective and applied fairly; and whether any alternative work was available. The tribunal must not substitute its own view and these guidelines assist a tribunal in assessing whether an employer has behaved reasonably in dismissing for redundancy and in particular whether the dismissal is within the band of reasonable responses of an employer.

81. The case of *Polkey v AE Dayton Services Ltd [1987] UKHL 8* established procedural fairness as an element of the reasonableness test at section 98(4) of the Act. Lord Bridge stated that *"the employer will not normally act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by deployment within his own organisation."*

Remedy/Polkey reduction

82. The principles established by the case of *Polkey v AE Dayton Services Ltd [1987] UKHL 8* provide that if I find the dismissal to be unfair, I must consider the possibility (in terms of a percentage chance) of the respondent fairly dismissing the claimant and when this might have occurred and make a 'Polkey deduction' from any award.

Unauthorised deductions from wages

83. Section 13 of the Act gives workers a right not to have unauthorised deductions made from their wages by an employer. The right is enforceable by way of complaint to the Tribunal. The complaint must be brought before the end of three months beginning with the date of payment of wages from which the deduction was made or the last in a 'series of deductions'.

84. Whether there is a 'series of deductions' is a question of fact requiring a sufficient factual and temporal link between the underpayments. A gap of more than three months does not necessarily break any series, *Chief Constable of the Police Service of Northern Ireland and anor v Agnew and ors [2023] UKSC 33, SC.*

Redundancy payments

85. Section 135 of the Act gives employees a right to a redundancy payment from the employer if the employee is dismissed by reason of redundancy. The right is enforceable by way of complaint to the Tribunal. Section 162 provides that the amount of a redundancy payment is calculated based on length of service, age and gross weekly pay at the 'relevant date'. A week's pay is calculated in accordance with the provisions at sections 220-235 of the Act. The case law provides that remuneration for calculating a week's pay does not include benefits in kind, *S and U Stores Ltd v Wilkes 1974 ICR 645, NIRC*. A week's pay is subject to a cap for the purpose of calculation of the amount of any redundancy payment.

Breach of contract – bonus

86. Where a claim for breach of contract arises or is outstanding on termination of employment, proceedings for damages may be brought before the Tribunal.

87. In *Investors Compensation Scheme v West Bromwich Building Society [1008] UKHL 28*, Lord Hoffman summarised the principles of contractual interpretation as follows:

> "(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.
>
> (2) The background was famously referred to by Lord Wilberforce as the "matrix of fact," but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.
>
> (3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.
>
> (4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax. (see *Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd.* [1997] 2 WLR 945
>
> (5) The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said

in *The Antaios Compania Neviera S.A. v. Salen Rederierna A.B.* 19851 A.C. 191, 201:

> ". . . if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense.""

88. In the case of *Ostilly v Meridian Global VAT Services (UK) Ltd [2020] IRLR 945, EAT*, the scope of a contractual bonus entitlement set out in a letter of appointment which stated, 'you will be entitled to a maximum annual bonus of 20 per cent of your salary which will be tied to your own performance and that of your market region. Further details on the bonus system will be forwarded to you shortly' was considered. The further details were never forwarded. The EAT held that in exercising its discretion the employer 'can treat its own financial position and performance as a relevant consideration …in the absence of clear contrary words, that proposition is to be regarded as inherent in the language of the clause. To displace it, I look for express words and find none.' The discretion was not required to be exercised in 'a commercial vacuum'.

Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE Regulations)

89. The TUPE Regulations place a duty on employers to inform and consult in relation to relevant transfers. A complaint that the employer has not met its duty may be brought before the Tribunal. If there is a failure, the Tribunal must make a declaration to that effect and may order payment of appropriate compensation which is a sum not exceeding thirteen weeks' pay as the tribunal considers just and equitable having regard to the seriousness of the failure to comply with the duty. A week's pay is calculated in accordance with the 1996 Act. The calculation is based on actual gross weekly pay and there is no cap on the amount of a week's pay for this purpose.

90. The TUPE Regulations define relevant transfers as either regulation 3(1)(a) 'business transfers' or regulation 3(1)(b) 'service provision changes'. Regulation 3(1) to (3) is as follows:

> **3 A relevant transfer**
> (1) These Regulations apply to—
> (a) a transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom to another person where there is a transfer of an economic entity which retains its identity;
> (b) a service provision change, that is a situation in which—
> (i) activities cease to be carried out by a person ("a client") on his own behalf and are carried out instead by another person on the client's behalf ("a contractor");
> (ii) activities cease to be carried out by a contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by another person ("a subsequent contractor") on the client's behalf; or
> (iii) activities cease to be carried out by a contractor or a subsequent contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by the client on his own behalf,
> and in which the conditions set out in paragraph (3) are satisfied.

> (2) In this regulation "economic entity" means an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.
> [(2A) References in paragraph (1)(b) to activities being carried out instead by another person (including the client) are to activities which are fundamentally the same as the activities carried out by the person who has ceased to carry them out.]
> (3) The conditions referred to in paragraph (1)(b) are that—
> (a) immediately before the service provision change—
> (i) there is an organised grouping of employees situated in Great Britain which has as its principal purpose the carrying out of the activities concerned on behalf of the client;
> (ii) the client intends that the activities will, following the service provision change, be carried out by the transferee other than in connection with a single specific event or task of short-term duration; and
> (b) the activities concerned do not consist wholly or mainly of the supply of goods for the client's use.

91. In the case of *Cheesman and ors v R Brewer Contracts Ltd 2001 IRLR, 144, EAT,* the EAT reviewed the case law of the Court of Justice of the EU (ECJ) including the leading authority of *Spijkers v Gebroeders Benedik Abattoir [1986] 2 CMLR 296, ECJ* and summarised the principles for determining whether an economic entity 'retains its identity'. A multifactorial assessment is required taking account of the following factors:

    a. The type of undertaking or business
    b. Whether the business's tangible assets (such as buildings and movable property) or intangible assets are transferred and the value of intangible assets at the time of transfer.
    c. Whether goodwill has transferred.
    d. Whether the majority of the employees are taken over.
    e. Whether the customers are transferred.
    f. The degree of similarity between the activities carried on before and after the transfer and the period, if any, for which those activities are suspended.
    g. The use of the employees by the transferee.

92. The case law has also held that there can be a business transfer inside a group of companies and even without a change of ownership, **Allen v Amalgamated Construction Co Ltd [2000] IRLR 119, ECJ.**

93. In the case of **Rynda (UK) Ltd v Rhijnsburger [2015] IRLR 394, CA**, the court held that when considering whether there is a service provision change, a sole employee can be an organised grouping. The approach to identifying a service provision change is to identity the service provided to the client, the activities performed to provide that service, the employees who ordinarily carried out those activities and whether those employees were an organised grouping for the principal purpose of carrying out those activities.

ANALYSIS AND CONCLUSIONS

94. I turn to apply the law to the facts that I have found in this case.

Unauthorised deductions from wages

95. I refer to my findings above that the communications in September 2022 did not give rise to any enforceable right to any 2% salary increase contractual or otherwise.

96. For completeness, if that is wrong, I refer to my findings above that the claimant opted not to contest any non-payment for the period of a year and until October 2023 in circumstances where she indicated an ability to 'contest and fight for' even if as an employee she was under a degree of pressure as to how to respond in circumstances of alleged breach of contract where employment was continuing. In addition, the claimant accepted payment of increased salary of £58,500 from April 2023 reflecting the 7% increase for the period of six months to October 2023. I consider the period of six months itself constitutes delay in all the circumstances so as to be sufficient to constitute acceptance of the £58,500 as constituting contractual pay and undermine any argument that the claimant was performing her contract under protest. On that basis, I would conclude that by her conduct the claimant accepted any such breach and affirmed the contract for salary of £55,000 and subsequently £58,500.

97. Accordingly, there was no deduction from the amount of wages properly payable on each relevant occasion wages were paid due to any non-implementation of any 2% increase. It is therefore unnecessary to analyse whether there was any series of deductions with the last deduction being in time.

98. I therefore concluded that the complaint of unauthorised deductions from wages was not well-founded and dismissed it.

Inadequate calculation of redundancy package

99. I refer to my finding that the claimant had no contractual entitlement to any uniform allowance by way of voucher or any such benefit in kind. For completeness, when calculating a week's pay for the purpose of section 162 of the Act the provisions at sections 220-235 are applicable. I have therefore concluded that even if the claimant had any entitlement to uniform allowance by way of voucher this would not fall within remuneration for the purpose of calculating the amount of a week's pay for any statutory redundancy payment. In addition, as was evident and acknowledged at the hearing, the claimant's week's pay for this purpose was in any event in excess of the applicable statutory cap of £643.

100. I concluded that the claimant's statutory redundancy payment was not inadequately calculated by not including any £300 uniform allowance. I further determined that under section 163 of the Employment Rights Act 1996 the amount of the claimant's redundancy payment was not incorrectly calculated.

Breach of contract through non-payment of bonus

101. The claimant submits that the respondent breached the claimant's contract of employment through non-payment of bonus in circumstances where the claimant was contractually part of the respondent's 'Soho House Bonus Scheme' with terms as set out in the claimant's schedule of loss.

102. The respondent's grounds of resistance set out that whilst a bonus scheme is offered for HGMs and chefs, a Soho Works General Manager (SWGM) like the claimant was not eligible to join this scheme. Further that any bonus would be discretionary and conditional on business and personal performance and that given Covid 19 and that Soho Works had not met targets for financial years 2021 to 2023 there was no basis to award any bonus.

103. I refer to my findings above as to the wording in the contract which is confined to 'GMs/Head Chefs – Inclusion in the Soho House Bonus Scheme' and that this wording is incongruous given the evidence that SWGM were not entitled to participate in the scheme, that it appears there was no formal Soho House Bonus Scheme in operation at the time of entry into the contract and the impression that what was desired was a bonus scheme applicable to Soho Works and no such scheme was in existence at the time of entry into the contract or at any time during the claimant's employment.

104. The background suggests aspiration in the sense that inclusion would be as and when there was a bonus scheme and that arguably the wording should be read in this way even though that is not what is literally provided for in the contract signed by the claimant. In any event, the contractual wording does not connote any absolute entitlement to a particular payment nor is it sufficient to incorporate or provide for any particular scheme containing particular terms and conditions and far less for any scheme that is fixed for the duration of employment. The evidence available to me does not enable me to find that any particular terms are more likely than not to have been in place at any applicable time. In light of the evidence given, I do not accept that any payment would be divorced from any conditions as to either individual and/or business performance or that there would be no discretion as to the amount payable. The claimant does not contend for such a scheme in any event and she was not able to give any real or any detailed evidence about her individual financial performance during her employment.

105. I have concluded that the extent of the contractual entitlement was to inclusion in a bonus scheme which would not inherently result in payment of any bonus. I have also concluded that the claimant did not have any contractual entitlement to any bonus payment in the amounts claimed by the claimant in her schedule of loss. I have therefore concluded in all the circumstances that in failing to provide any bonus payment to the claimant, the respondent did not breach the claimant's contract of employment.

Breach of duty to consult (TUPE)

106. There will be no breach of the duty to consult unless there is a relevant transfer to which the TUPE Regulations apply. In order to identify whether there is a relevant transfer, it needs to be identified when the business transfer or service provision change took place. The claimant says this was in mid-February 2024 after her employment terminated. The claimant submits that there was a business transfer being the transfer of the management of Soho Works manager (employee) managerial operations, stock, and other resources as referred to by Rachel Sutton during the

second consultation meeting to Soho House. The claimant submits that Rachel Sutton was unlikely mistaken during the consultation meetings in referring to 'transfer' and becoming a department and that after the transfer the economic entity of Soho House took over responsibility and control of the activities of Soho Works and if the claimant had not been dismissed this would have changed the legal position between employer and employee. The day to day responsibility for the claimant's employed activity changed as Soho House took over responsibility and control of the activities of Soho Works. The claimant further submits that the retention of bank accounts, leases and assets is likely for convenience within a group context and not good evidence that there was no transfer and further the respondent has failed to provide any financial documentation to prove there was no transfer. The claimant submits that there is no dispute that Soho Works Ltd remains in existence and has retained its identity carrying on the same business activities.

107. I refer to my findings above. Other than the shift to overarching on-site oversight of the Soho Works site to the HGM, nothing of substance changed as to the day to day operations of the Soho Works business delivering shared work spaces including the site at 180 Strand. The claimant accepts that bank accounts, leases and assets have not transferred. All employees remain employed by the respondent and there has been no formal transfer of responsibility from Soho Works for those staff. The resources used to deliver the operations have remained shared with the House and the arrangements to account and pay for those resources have not altered. The Soho Works business retained its economic identity. I accept that there is oversight responsibility and support on site to the managers working for Soho Works by the HGMs but I do not accept that this of itself constitutes a transfer of control and responsibility for the entire Soho Works business within the group and that economic entity remains within Soho Works UK. I concluded that there had been no relevant transfer within the meaning of regulation 3(1)(a) of the TUPE Regulations.

108. The claimant contends in the alternative that there has been a service provision change in that the activity of the duties of the SWGMs was carried out before and after for the client Soho House but the activity was brought in house when the SWGMs ceased to carry out the activity upon redundancy and the activities were fundamentally the same following the change in service provider.

109. I refer to my findings above that the SWM role and the SWGM role were almost the same and that the SWM would assume responsibility for the day to day operations of the Soho Works site as the SWGM had previously. The claimant's activity thus continued to be carried out by the SWMs allocated to work for Soho Works. I accept that a purpose of the claimant's role was to provide direct management of the FMs and oversight of the delivery of operations. The structure had provided for seniority and oversight in the claimant's role but the redundancy was implemented as this layer of management or degree of direct supervision was no longer required. To the extent the HGM were required to perform any activity in relation to the Soho Works business it was oversight at a level more senior than the claimant had been operating and hands on operational activities were not carried out by the HGMs after the SWGMs were made redundant. I have therefore

concluded that so far as the SWM reported to the HGM via a dotted line and the HGM had overarching responsibility across all components of 180 including the facilities within the House and the Soho Works site, this did not constitute a service provision change within the meaning of regulation 3(1)(b).

Unfair dismissal

110. I remind myself that in relation to unfair dismissal I must not substitute my own view rather I must apply the range of reasonable responses test and thus in making findings and reaching conclusions on reasonableness I am applying this objective test.

Redundancy as the reason for dismissal

111. I refer to all my findings above. The respondent contends that there was a redundancy situation within the meaning of section 139(1)(b)(i) as the requirements of the business for SWGMs had ceased or diminished and/or was expected to cease or diminish. I refer to my findings above. I have concluded that there was a redundancy situation at the time the claimant was told she was at risk of redundancy and at the time her employment ended on 2 February 2024. The respondent had identified that the business did not require the claimant's role as the majority of the role could effectively be carried out by the SWM a new role which could be performed by staff in an existing FM role who did not require supervision and that in so far as those staff required support they could have recourse to available support from a more senior manager who had overarching responsibility for the operations on-site or could escalate to off-site line management.

112. The claimant advances that the role of a general manager remained in existence and the new SWM role was substantially if not entirely the same role as the SWGM and the role was simply rebranded and the requirements for the role did not cease or diminish. The claimant further denies that the respondent can prove there was a business reorganisation carried out in the interest of economy and efficiency if they fail to prove the dismissal was for reason of redundancy but has not really advanced any alternative reason for the dismissal. Based on my findings, I have concluded that there was a headcount reduction after the redundancies and cost reduction given the lower rated salary band and a diminution in the need for persons carrying out the hands on day to day operations and management of those activities. I have therefore concluded that the respondent has shown that the reason for the dismissal was redundancy which is a potentially fair reason for dismissal in accordance with section 98.

113. The real focus of the claimant's complaint is that the redundancy was unfair because it was a fait accompli and the respondent did not engage in genuine consultation because it did not consult at any formative stage or meaningfully apply its mind at any stage to any alternatives to dismissal. The claimant also contends that the respondent did not adopt a fair basis to select for redundancy as the pool of SWGM was too narrow and did not consider employees with interchangeable skills such as HGMs or the AGM or FMs, did not meaningfully consider the claimant's alternative proposal, did not consider bumping the claimant into either the HGM or AGM role, no

alternatives were genuinely considered and the claimant was given insufficient time to consider the alternative role of SWM and there was no appeals process. The claimant submits that the respondent did not act reasonably in treating redundancy as a sufficient reason for dismissal and avers that there should be no or a very limited *Polkey* deduction as the claimant's performance record and similarity of the role to HGM means she would likely have retained her employment had there not been an unfair procedure.

114. The respondent contends it acted reasonably in all the circumstances in dismissing the claimant for redundancy and, in the alternative, there was a business reorganisation driven by Soho Works' financial situation. The respondent submits that the claimant's role was not required and was not comparable with the HGM role, there was consultation and due consideration given to the claimant's alternative proposal. I have considered the process overall. For a redundancy dismissal to be fair the tribunal needs only to be satisfied that the procedure used by the employer builds in the components of reasonable and genuine consultation, a fair and reasonable selection process and reasonable steps to find suitable alternative employment.

Was consultation genuine and reasonable?

115. I have concluded that the consultation the respondent carried out with the claimant was flawed.

116. A consultation should include:

a. an opportunity for the affected employee to put forward any suggestions for ways to avoid their redundancy;
b. an opportunity for the affected employee to comment on the basis of selection for redundancy both the pool and the selection criteria;
c. an opportunity for the affected employee to challenge their selection and explain factors which may have influenced their selection which the employer was not aware of;
d. consideration of alternative employment; and
e. any other concerns.

117. The employer must approach consultation with an open mind and be capable of being influenced about the matters which are to be included within consultation.

118. I have concluded that the respondent did not provide for a genuine and meaningful consultation for the following reasons:

a. the claimant was warned that she was at risk of redundancy just over 48 hours before the first individual consultation meeting and accordingly had very limited time to reflect upon the circumstances, consider the issues and formulate any meaningful representations to respond to the issues as they affected her.
b. the notification that she was at risk was essentially a fait accompli as the employees notified as at risk were the 3 SWGMs and they were told the proposal was to remove 3 roles.

c. the script used for the meeting on 15 January 2024 stated that 'the detail of the proposal' would not be gone into at that time and as such the claimant had very little information to consider beyond being given generic information that this was due to a need to 'streamline activities and costs … restructure teams accordingly'.
d. the claimant was told at the outset that the whole process would conclude around the start of February which provided a very limited timeframe of two weeks in which she could absorb the warning which would have come as a shock; take any actions to secure advice, support or engage herself with the process.
e. the contracted timeframe presents as somewhat arbitrary and is not explained in any way as necessary and/or linked to any particular event and overall appears designed to constrict the possibility of the claimant engaging and as such is demonstrative of the respondent not expecting or being genuinely open to consider any alternative proposals to redundancy.
f. the invite letter to the first consultation meeting set out that after there 'will' be an invite to a second consultation meeting after which consultation will be closed indicates that consultation was being conducted in a closed rather than open manner.
g. the respondent did not engage with or reply to the claimant's alternative proposal sent on 17 January until 24 January and the day before the second consultation meeting scheduled for 10AM providing the claimant minimal time to engage and/or reply to the respondent's reply or put forward any other alternatives given the indicated timeframe.
h. the claimant was still asking questions to understand the overall circumstances and proposals at the second consultation meeting and whilst the respondent may have dealt directly with the claimant's questions during consultation meetings and proposals had been invited the constricted timeframe meant there was no meaningful opportunity for the claimant to comment and raise concerns on the proposal or engage in exploring any alternatives to redundancy.
i. the respondent (Rachel Sutton) accepted that she had never applied her mind to any pool or selection criteria and overall the impression was that any suggestions or discussion around altering the approach would not be entertained.

119. The respondent submitted that a clear and reasoned response was given to the claimant's proposal and this was not given on the same day but took a week to produce. I consider that the respondent did provide a clear and reasoned response which engaged with the claimant's proposal. It is the case that the respondent took a week to reply but this of course underlines that the claimant was placed in an invidious position in terms of the claimant's ability and time to engage fully in consultation with a view to exploring alternatives to and avoiding her redundancy given the tight timeframe applied to her.

120. I also considered that whilst the offer of an enhanced package would not have avoided the claimant's redundancy per se, the circumstances were not conducive to exploring this outcome which may have been beneficial to both parties. Acceptance of the enhanced package was conditional upon it being in full and final settlement of any claims the claimant might have against the

respondent thus wider than claims related to the redundancy. The claimant was told by the respondent that the agreement – which purported to waive a range of legal rights - was 'simple' and 'did not need a solicitor to review it'. However, the statutory conditions for a settlement agreement to be effective at extinguishing the right of a person to bring an unfair dismissal and most other employment related claims before the tribunal are set out at section 203 of the Act and include that the person must have received advice from a 'relevant independent adviser' albeit a 'relevant independent adviser' is a category wider than solicitors. The offer was made on 25 January 2024 on the basis that the claimant would have to accept it within about four working days which gave her no real time to consider whether it was appropriate for her.

121. Having regard to the flaws identified with consultation, I was not satisfied that the respondent acted reasonably with regard to adequate warning and consultation with the claimant overall.

Was the selection process including the pool and any choice and application of criteria fair and reasonable?

122. The respondent's position is that as removal of a role there was no requirement for any pool or selection criteria. It is not clear how Rachel Sutton could decide a pool was not necessary if she had never applied her mind to any pool or selection criteria. In an abstract sense the pool and selection criteria went hand in hand with the decision to place those in the SWGM role at risk of redundancy. The evidence is that in removing the role, the respondent did not give any real or meaningful thought to whether it was fair and reasonable to place only those in that role at risk of redundancy. That said, I also consider that the focus on removal of the role and therefore those in that role is not unreasonable. I also consider that there are obvious initial considerations as to whether it is at all fair and reasonable to include in a redundancy process and place at risk a person working in a role which will continue even though in certain circumstances it might be.

123. The claimant contends that the respondent acted unreasonably in having no regard to relevant skills and abilities and not including HGMs or alternatively FMs in the selection pool for redundancy. The respondent's position is that as the role was being removed and was not comparable to HGMs it was reasonable not to place HGMs in a pool with SWGMs from which to select those who would be made redundant. The respondent submitted that the suggestion that HGM be placed in a pool with SWGM takes a similar job title of general manager and ignores that the HGM responsibility is of a totally different order of magnitude. I refer to my findings above that the HGM role was a more senior role with a wider span of responsibility. I refer to the finding that at the relevant time there was no longer any AGM in role and the role was not being re-hired to in any event. There was no reduction in the requirement for the FM role redesignated as SWM.

124. I remind myself that in considering whether the respondent behaved reasonably in determining any selection pool that I must not substitute my view but decide whether the selection process and any pool and/or selection criteria was within the range of reasonable responses of an employer in the

respondent's circumstances. I have concluded the respondent acted within the range of reasonable responses of an employer in the circumstances in selecting for redundancy only those in the role no longer required and being removed.

125. For completeness, there was no evidence to demonstrate that the claimant would invariably and inevitably have displaced a HGM if any such pool for selection had been used and the respondent's position is that she did not have the relevant skills and abilities. I refer to the findings above. I note that in relation to the issue of selection criteria, my task is in any event not to decide what selection criteria were appropriate but whether those chosen by the employer were within the range of reasonable responses. Further not to engage in a microscopic level of scrutiny of the selection criteria or their application or substitute my own view as to any scoring.

126. I am satisfied that the selection process was fair and reasonable overall.

Was suitable alternative employment considered and/or offered for the claimant?

127. The period of time between the claimant being notified that she was at risk of redundancy and the indicated and actual end of consultation was approximately two weeks. This presented a very short period of time in which to consider, explore and/or offer suitable alternative employment for the claimant. The steps taken by the respondent consisted of sending the claimant the current vacancy list and inviting application for the vacant role of SWM at 180 as a suitable alternative role. The consultation meetings did not devote much if any real time to covering options for the claimant to remain employed with the respondent.

128. Although the claimant was told it was likely she would get the SWM role and I refer to my findings above regarding that, the claimant was given a very limited period of time in which to consider this and make any application. Given my findings above that the role was similar to the SWGM role, it does present as a suitable alternative role for the claimant to perform although it carried a significant reduction in salary and less seniority. The claimant did not want to apply for the role. The majority of roles on the vacancy list were marked as being advertised externally and internally and do not present as being offered to the claimant with any consideration as to whether they presented suitable alternatives rather she is just being provided with a vacancy list with the indication she would be competing with external candidates in addition to any internal ones for any of the available roles. There is no record of the claimant asking about any of the roles or any discussion as to which if any of the roles might be suitable for the claimant and might avoid her being made redundant by the respondent. The vacancy list did include an AGM role at a restaurant and several roles stated as FM roles across the respondent's London estate. The claimant did not want to apply for any of the current vacancies.

129. Although I have some concerns about the timeframe and I consider the respondent could have been more engaged with exploring options for the claimant to continue in employment with the respondent, I am satisfied that

the respondent took reasonable steps in all the circumstances to find suitable alternative employment for the claimant.

Appeal

130. The claimant was not provided with any right of appeal against the decision to terminate her employment for reason of redundancy. Indeed, the respondent did not have any redundancy procedure or policy which it was able to provide to the claimant. There is no requirement to provide for an internal right of appeal but in all the circumstances I find that the lack of any appeal given the tight timeframe is not without relevance and reinforces the impression of the redundancy as a fait accompli from the outset.

Conclusion

131. Although I accept that the respondent was in a difficult financial position such that staff redundancies were not unreasonable and that removal of the claimant's role per se was within the range of reasonable responses, I have reached the conclusion that the dismissal was unfair. I have concluded that the dismissal was unfair due to the element of procedural unfairness arising from the flaws I have identified in particular with the consultation phase.

Additional conclusion - Polkey

132. I have found that the claimant's dismissal was unfair because of flaws in the consultation process. In order to conclude my judgment, I am required to speculate what would have happened had a fair procedure been adopted following the principle in *Polkey* and whether the flaws in the consultation process made any difference to the final outcome.

133. I have concluded that if the respondent had not limited the consultation and enabled the claimant to provide meaningful representations or demonstrated that the employer's mind was not closed to options other than removal of the claimant's role, this would not likely have resulted in other options being taken account of by the respondent or indeed alternatives to the claimant's redundancy arising. There is no dispute that the respondent was in a difficult financial position with the Soho Works business. There is nothing inherently wrong with the respondent deciding to respond to financial pressures and seek to restructure its business.

134. The claimant submits that if there had been a fair process she would have been retained given her performance record and the similarity of her role to that of the HGM. I refer to my findings above. I acknowledge her performance was rated highly as 4 out of 5 and that of a key player in the SWGM role for 2023 but I do not accept that her role equates to the HGM role and have not found this to be the case. The Dean Street role she unsuccessfully applied for in the past Dean Street is not equivalent to the HGM role managing a House. Pertinently when offered a broader role of building manager in the past, the claimant declined that role. The claimant also declined the opportunity of taking up the SWM which she was told she would likely get if she applied and she did not apply for any of the manager roles on the current vacancy list. I have considered whether absent time pressure, the claimant might on reflection applied for a different available

role and remained in employment with the respondent. There is no real evidence that the claimant would have taken up any opportunity within the respondent other than an HGM role which was not reasonably on offer at that time or likely to be offered by the respondent within a reasonable period of time. This means that although the dismissal is unfair, I have decided that a *Polkey* deduction of 100% is appropriate in this case.

Tribunal Judge Peer acting as an Employment Judge

Date 9 November 2024

JUDGMENT SENT TO THE PARTIES ON

19 November 2024

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FOR EMPLOYMENT TRIBUNALS