EMPLOYMENT TRIBUNALS

Claimant: Mrs J Lewis

Respondent: Watson Woodhouse Ltd

Heard at: Teesside Employment Tribunal

On: 2-6 June 2025 (evidence and submissions), 2 July 2025 (deliberations), 3 July 2025 (judgment)

Before: Employment Judge Jeram, Ms C Hunter and Ms P Wright

Representation
Claimant: In person
Respondent: Mr G Menzies of Counsel

JUDGMENT having been sent to the parties on 2 October 2025 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. By a claim presented on 24 May 2024 the claimant's complaints of unfair constructive dismissal and a failure to make reasonable adjustments. claimant.

Issues

2. The issues were identified at a case management hearing. They were discussed at the outset of the hearing and confirmed as follows.

Unfair Constructive Dismissal

2.1 Did the respondent insist that the claimant complete an excessive workload, which often exceeded the workload of her full-time colleagues in her part time hours without support and assistance and a failure to make reasonable adjustments?

2.2. Did the respondent leave the claimant to manage two files which were outside her expertise and capabilities in the time she had available, resulting in a deadline being missed.

2.3 Was that a breach of the implied term of trust and confidence? If so, it was repudiatory.

2.4 What was the last straw? After discussion about the principle, the claimant confirmed, that she maintained that she relied upon the events of 5 October 2023, when she discovered that she had missed the date for compliance with a court order.

2.5 Did the claimant resign in response to that breach? Did she affirm or otherwise delay in her resignation?

Failure to Make Reasonable Adjustments

2.6 Was the claimant at the material time a disabled person within the meaning of s.6 Equality Act 2010 by reason of anxiety and menopause?

2.7 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

2.8 Did the Respondent have the following PCPs: the respondent required all fee earners to run a full case load, without assistance

2.9 Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that she struggled with a full case load?

2.10 Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?

2.11 What steps could have been taken to avoid the disadvantage? The Claimant suggests: the respondent could have reduced the claimant's workload and afforded the claimant assistance by way of additional fee earners to work on the claimant's case load.

2.12 Was it reasonable for the **Respondent** to have to take those steps and when? Did the Respondent fail to take those steps?

Evidence and Procedure

3. The Tribunal considered:
   3.1 The oral and written evidence of the claimant, and her witnesses Margaret Donaghy (personal assistant), Lucy Wennington (solicitor), Claire Dunn (solicitor);
   3.2 The oral and written evidence of the respondent's witnesses: Sarah Magson (Head of Civil Department), Paul Henderson (solicitor) and Alistair Smith (Team Leader, Civil Department).

3.3 Those documents contained in an agreed bundle consisting of 799 pages that the Tribunal was taken to;

3.4 Oral and written submissions of both parties

4. Neither party sought reasonable adjustments to the procedure

Findings of Fact

5. The respondent is a law firm providing services in several areas including personal injury.

6. The claimant was an experienced paralegal with 14 years' experience of civil litigation when she commenced employment with the respondent in September 2012. In 2017 she qualified as a Legal Executive and became a Fellow of the Chartered Institute of Legal Executives in 2019. In the period from which we are concerned, that is, commencing in or around September 2021, the claimant was a Grade A fee earner.

7. The claimant was a member of the civil litigation team. She was contracted to work part time, equating to three days per week. After lockdown, the claimant conducted a significant proportion of her work from home. Her office was located on a different floor to other colleagues in her team.

8. The claimant's line manager and Head of the Civil Department was Sarah Magson ('SM'). The claimant had a good relationship with SM, with whom she regularly and openly communicated. From March 2023, the claimant was a member of the newly established personal injury sub team, of which Alaistair Smith ('AS') was the sub team leader.

9. The claimant's colleagues held her in high regard both personally and professionally. The claimant had a stoic demeanour; she did not readily display negative emotion.

10. The claimant had a strong work ethic. She was keen to explore new areas of work and learn new processes. She set for herself high standards for the quality of work she produced, and her approach was highly detail oriented; she had a need to explore 'the roots and branches' of her cases.

11. The clamant had a training development plan; she was content with such as training she was provided. The last of her appraisals took place in 2019; she did not book for herself another appraisal thereafter.

<u>The Claimant's Case Mix</u>

12. The claimant's caseload broadly comprised of the following matters: personal injury claims, CICA cases, debt claims and claims against public authorities including actions against the police. The claimant was the team member with the most experience in cases that were allocated to the multi-track, i.e. the track reserved for cases which are complex, lengthy and/or high value. Her cases consisted of a mix of privately paying and legal aided clients.

New Client Rota

13. Like other fee earners, the claimant was, in addition to her workload, required to take enquiries from potential new clients, in accordance with the 'new client rota'. Broadly speaking, each fee earner, whether working full time or part time, was responsible for attending to new client enquiries one week in every six weeks.

14. New enquiries were fielded by receptionists and directed to the relevant department, and to the fee earner on the rota. Upon triage, the fee earner may decide to do any number of things, including making an appointment for the new client in their own diary, offering the lead to colleagues in the event that they have no personal capacity to take on a new client, re-direct the client to a more appropriate colleague, or decline the client. It was a time-consuming exercise for all fee earners on the rota.

15. The claimant's assistant, Margaret Donaghey ('MD') fielded enquiries on the claimant's behalf. Where she considered it appropriate to do so, MD made appointment for potential new clients for the claimant.

16. The respondent did not collect data of how many occasions a fee earner worked on the rota. Occasionally fee earners sought and were granted break from working on the new client rota, principally because of the pressures of current workload. No request to be suspended from rota duties was ever refused. Similarly, no data was collected on the number of enquiries were converted to new clients, or refused. There were no consequences for a fee earner if they declined a potential client or declined to take on work after a new lead was directed to them.

Fee Targets

17. Fee earners' targets were set annually, after consultation with the relevant fee earner. Individual targets were visible to the team, as well as the amount of work billed to date. Failure to achieve targets did not affect salary, or lead to disciplinary sanction or any other consequence.

18. In contrast with other fee earners, the claimant's personal targets were not increased after 2020.

Claimant's Health

19. Between September 2021 and the end of her employment with the respondent, the claimant experienced anxiety as well as other menopause related symptoms to varying degrees.

20. In September 2021, the claimant informed SM that she was stressed and worried about her caseload. Also in 2022, the claimant emailed SM to say that she was suffering from anxiety. In 2022, the claimant was prescribed HRT which she was taking daily. Between October and November 2022, the claimant attended counselling with the respondent's provider. In December 2022, after six weeks of HRT treatment she reported a relief of anxiety and brain fog associated with menopause. By January 2023, the benefits she had enjoyed from HRT had reduced, and in May 2023, she attended a consultation with the respondent's counselling services, and undertook CBT and other treatment in June 2023, which she considered to be helpful.

21. The claimant did not take any time off work; her attendance of the years and notwithstanding various challenges in her personal life, was exemplary.

Case A and Case B

22. In 2019 the claimant took on to two cases, Case A and Case B; both were high value multi-track cases.

23. Case A was a claim against the police in which it was alleged that the claimant had sustained a brain injury while detained in police custody. It was a complex piece of litigation, and the claimant had no experience of brain injury cases. The file was likely to generate significant fees; approximately twice the claimant's annual target. She claimant developed a strong relationship with the client.

24. Claire Dunn ('CD'), who had significant experience in actions against the police, assisted the claimant in Case A including attending an internal police investigation in the matter. Proceedings were issued soon thereafter; pleadings were settled by counsel, who was retained to advise.

25. Case B was a matter that commenced as claim for an unpaid invoice claim but developed into a commercial contract dispute. The clients were unpleasant, demanding and aggressive. SM arranged for the claimant to receive assistance from colleague Paul Henderson ('PH') to amend the pleadings. King's Counsel was retained to advise and prepare for the trial.

26. We are not persuaded that the matters were outside the claimant's professional competency. As a matter of professional conduct, we would have expected her to have raised this matter with her employer, but she raised no issues regarding her ability to manage either case until July 2022. CD, who assisted the claimant with case A, confirmed in her evidence that the claimant was competent to conduct her cases.

Before September 2021

27. The claimant began to raise concerns about her workload, more generally, during the Covid pandemic; she described herself as being overwhelmed. She liaised regularly with SM about her workload between March 2020 and September 2021. SM was of the view that the claimant's concerns were not dissimilar to those expressed across her team. SM made and implemented several suggestions to mitigate the pressures of her team, including arranging team meetings to facilitate discussion about individual fee earners' respective workloads, arranging assistance with typing. In March 2020, SM offered the claimant a named colleague to provide support. In May 2020, SM invited the claimant to contribute her own ideas as to how she could be better supported, although the claimant did not suggest any.

28. Nevertheless, in May 2020, SM implemented two measures specific to the claimant with a view to assisting her.

29. First, MD was allocated to assist the claimant. She was the only fee earner to have a dedicated assistant and furthermore, MD worked exclusively for the claimant, on a full-time basis despite the claimant's part time hours. MD was a highly experienced capable and confident assistant. MD on the claimant's behalf took calls and carried out routine tasks on relatively straightforward matters such as the debt files, including drafting letters before action, issuing proceedings and entering judgment.

30. Second, and insofar as the claimant was still working above her contracted hours, SM agreed to pay the claimant overtime hours. She did so because the claimant told SM that she wanted to be paid for the overtime that she worked; the claimant did not inform SM that she had an issue with working overtime per se. SM agreed to pay the claimant her overtime hours. Again, the arrangement was exclusive to the claimant, other colleagues were not paid for any overtime worked. The claimant's hours or claims for overtime were not scrutinised by SM; her claims were submitted directly to the payroll department.

31. In 2021 and 2022 and 2023, the claimant worked an average of 3-4 hours per week overtime. The sole exception to this was March 2023, which we address further below.

32. We recognise that the claimant says she became increasingly despondent about the respondent's unsuccessful plans to recruit additional fee earners in the period with which we are concerned. The claimant does not suggest that that was as a result of any failing on the part of management.

September 2021

33. The claimant confirmed to the Tribunal that that the relevant period of her complaint relates to events from September 2021.

34. On 11 September 2021, in one of numerous emails that we were taken to that we consider to be representative of a proactive and empathetic management style, SM emailed her team to express her recognition that the loss of two team members coupled with an unsuccessful attempt to recruit their replacements had led to members of her team to feel under pressure.

35. SM informed her team that CD had asked for a break from taking on new clients and she asked for feedback from other members of the team who might feel the same way; she said that she would be open to such requests.

36. The claimant replied two days later, on 13 September 2021. She said she was struggling to get a grip of her workload but hoped that her children returning to school and her resuming a 3-day week would assist. She said that being on the new client rota was *'not ideal'* but recognised that there was a need generate work and that she could diarise any new appointments as appropriate. She said she had deadlines to meet the following month and that she was not getting any work done on her debt files, which was a source of worry for her.

37. Fifteen minutes later, SM responded, offering to allocate colleague RT to take calls from new clients for two days of the five days that the claimant was on the new client rota. The claimant agreed. Ultimately the claimant was removed from the new client rota for the rest of 2021.

38. On the morning of Saturday 25 September 2021, the claimant sent a lengthy email to SM. In it, she said that she could not continue to work as she had been; she awoke with a knot in her stomach worried about her work and that it was impacting on her ability to relax, and her home life. She said she recognised that she was learning new types of claims and processes that might take her longer to get to grips with. She said she recognised that she was *'reluctant to give files away but maybe this is a solution'.*

39. The claimant said she had asked herself why she was unable to cope, and concluded, she said, that she had a full-time case load. She said from what she understood, she had a similar case load to her colleagues PJH and CD.

40. She said she could not continue with the debt collection work, and that they were not always suitable for delegation to MD; she said MD was also '*overloaded'* with work. The clamant acknowledged that she had been assured by SM that she could '*park'* the debt files but it was their existence, the number of actions outstanding on them and the fact that new debt matters were being referred to her that she said was overwhelming.

41. The reference to '*parking'* debt files was a reference to earlier statements by SM that progression of the debt files was not a priority for the respondent.

42. Twenty minutes later, SM replied. She said that the claimant's email warranted an in-person meeting; she asked the claimant for her availability and stated she would try to fit around the claimant's availability. SM offered suggestions until such time as they were able to meet. Regarding the new client rota, she suggested that the claimant be taken off the new client rota and debt work with a review of the situation in 4-6 weeks. She suggested that that arrangement might indirectly assist the pressure the claimant had said that MD felt, also. She suggested that a colleague who was due to start work soon could assist with the new client work and who might benefit from the ability to pick up her own work. As for debt work, SM suggested that apprentice solicitor ET could take over, although she also recognised that the claimant may still need to support ET. She said colleague RT would be happy to assist with any actions against the police or early-stage litigation that to conduct, reassuring the claimant that she would receive credit for work done on the files to date. Finally, SM reassured the claimant that these were all suggestions, for further reflection and discussion in the coming week.

43. That same afternoon SM followed up with another email. In it, she expressed gratitude, reassured the claimant that her hard work did not go unnoticed and acknowledged that the claimant could not continue without *'burning out'.* She reminded the claimant that her targets had been deliberately frozen since 2020, although others had been increased. She added that the claimant ought not be scared to say no to new clients or refer them to others if she had no capacity. She also said *'P.S. I absolutely acknowledge that you have a FT caseload and bring FT fees – on just 3 days'.*

44. Neither party adduced evidence of what happened in any subsequent meeting that followed and the claimant makes no specific complaint about any failing on the part of SM to follow through with her offers of support. We note, however, that on 30 September 2021, SM was in touch with the claimant, asking after the claimant's son's health and asking whether she can assist the claimant, with her task of preparing witness statements, or otherwise.

45. From 4 January 2022, SM assigned apprentice solicitor SK to work two days per week to the claimant. SK assisted on the personal injury files and actions against the police; she accompanied the claimant to visits, to interviews and she conducted typing for the claimant.

46. By March 2022, debt work had been reallocated to SK and apprentice solicitor ET although the files remained, notionally, in the claimant's name. The claimant in her written evidence said that she considered the debt files to be a full-time job in themselves; the allocation of the work to SK and ET were measures that were therefore, on her own case, significant.

47. In July 2022, having conducted an appraisal of SK, SM emailed the claimant to suggest that it might not only assist with the claimant's workload, but also help in the development of SK's skills, if the claimant could entrust SK to assist on specific cases, rather than requiring her to dip in and out of different files, assisting with ad hoc tasks.

Meeting, July 2022

48. In July 2022, the claimant sought a meeting with SM to discuss her workload. In advance of the meeting the claimant made a note of what she wished to discuss. She made a note that the volume of work for three days was *'too high'.* She noted Case A and Case B, alongside which she wrote *'big worry'.*

49. On or around 14 July 2022, the claimant met with SM about the claimant's workload. The claimant informed SM that she felt overwhelmed by her work.

50. SM asked the claimant to identify files that the claimant said she sought to relinquish. Contrary to the claimant's evidence, we find that SM did not define the scope of files that the claimant was permitted to transfer and nor did she identify a limit to the number of files the claimant was permitted to transfer. We are so satisfied, principally because we regard SM to be a compelling, reliable and measured witness of fact whose management style was consistently open, empathetic and generous. The claimant's own case was hampered by several problems. For example, we were provided with no compelling explanation by the claimant why if, as she contends, SM had restricted her to transfer *'up to 10 straightforward files'* the claimant then chose in September 2022 to select only 8 files to be transferred. The claimant did not contend that the rest were of unsuitable complexity and had she done, the respondent's print out summary of the claimant's work in July 2023 demonstrates that the claimant held numerous other files that could comfortably be described as 'straightforward'. Further, had there been a limitation placed on the claimant of the type alleged, we would have expected to some reference to that, however oblique, in correspondence in the years that followed; we were taken to none.

51. We reject the claimant's oral evidence that at this meeting the claimant informed SM that she wanted to be relieved of Case A and of Case B but that the request was met with a refusal. On her own written evidence, the extent of the claimant's complaint about this meeting was that she was not given *'the option'* of transferring Cases A and B. Given the importance of these cases to the claimant's case, had she asked, and been refused a transfer of these files, we would have expected this to appear in her pleaded case, in her written evidence, or however fleetingly, in correspondence in the 18 months that followed. We would also have expected there to be evidence of the exchange that necessarily would have followed e.g. who else in the firm had the experience or capacity to take over these complex files, and when. Finally, we note that the claimed desire to relinquish these files is wholly at odds with the

claimant's own behaviour in relation to Case A during her notice period in November and particularly in December 2023.

52. For clarity, we have no doubt that the claimant raised Cases A and B in that discussion, and furthermore that she discussed the pressures that they placed upon her. Finally, we accept that the claimant found the meeting stressful; we do not doubt, however, SM's evidence, consistent with AS's evidence of the claimant's demeanour more generally, that she did not on this or any other occasion display her distress to SM at that meeting.

53. Also in July 2022, the claimant says she made handwritten note of the numbers of files she believed she was responsible for as well as those of PH. The note indicates that the claimant had 223 files, compared to PH's 110 files. We agree with the claimant's own witness that numbers alone do not provide a reliable guide of workload since much depends on a variety of factors including the type of claims, their complexity matters, and the stage of the litigation reached.

54. By January 2023, solicitor RT took over the debt files, with the assistance of an administrative assistant.

<u>February / March 2023 – Case B</u>

55. Case B was listed for a 2-day trial on 6 and 7 March 2023. The expert instructed in the case had altered their position, adding to the claimant's stress.

56. The claimant informed SM by text message in February that she was , that her anxiety levels were *'through the roof'* and that she was having palpitations. She said she could not go on in the same vein as before, conscious that she had in the past month been inattentive to all but three files because of the demands of Case B; she said that she was working excessive hours and suffering from what she believed to be symptoms of menopause. The claimant was working excessive hours; for the month of March 2023, she was paid for 78 hours overtime almost all of which she informed the Tribunal related to Case B.

57. SM responded immediately by text with several suggested actions, attempting to address each matter of concern the claimant raised. She started by reassuring the claimant that she wanted to support her. SM offered, significantly in our view, whether any files could be passed on to someone else, whether someone could be assigned to her to help her, whether she would like SM to come to see her. She asked her what the department could do to assist her with her current challenges, which included Case B; the claimant responded by listing her concerns. SM responded to each concern. She offered to sit with solicitor apprentices and match correspondence to files to identify the current position and see if anything required action but the claimant declined. She asked the claimant to consider whether MD could assist with the drafting of witness summaries but the claimant said she had

other tasks for MD. The claimant asked SM to ensure an application was re-sent to Court, which SM agreed to do. She asked to meet with SM to go through a 'plan of action' with her on a file. SM asked the claimant whether she was personally needed at the trial of Case B, or whether someone else could attend in her stead. SM assisted with the preparation of the application advised by Counsel before she, SM, sent it to Counsel. SM attended court with the claimant for the hearing of the application; she assisted in settlement discussions on the evening of the first day and the morning of the second day of the hearing.

58. Case B concluded on 7 March 2023.

59. On 9 March 2023, the claimant sent a text to SM saying she was going home because she felt faint like she was going to be sick. She observed that she had started her period, but that these were unusual symptoms. SM asked whether the symptoms were attributable to the stress of the case over the last two weeks and assured her that if she was *'not 100% then don't worry about work – get yourself right xxx'.*

60. The claimant was highly stressed by Case B, of that we have no doubt. She said in her text messages at the time that she had had palpitations. The first mention of the claimant having panic attacks around now was not made until 8 April 2024, in her letter before action, when she said she 'believed' she had had panic attacks. That stated belief is inconsistent with her own replies in a medical questionnaire she completed on or after 2 May 2023.

<u>New sub teams</u>

61. In March 2023, new sub team leaders were appointed. PH was claimant became the new personal injury sub team leader. The claimant did not raise any specific concerns about her case load to PH in sub team meetings that took place thereafter. There was one instance when the claimant dictated work before she took annual leave in July 2023 and in which she sought assistance with progression of Case A, but the claimant did not mark the dictation as urgent, and it had not been typed up and drawn to the attention of anyone until after the claimant returned to work.

62. The claimant was taken off the new client rota in March 2023. Save for one instance when, in September 2023, the claimant's name appeared on the rota, and which she declined due to lack of capacity, the claimant did to resume her role on the new client rota before the end of her employment.

<u>Meeting with Mr Watson – March 2023</u>

63. In early March the claimant met with Mr Joe Watson ('JW'), partner of the respondent, as part of biannual meetings with all staff to discuss career progression. The claimant told him about her menopause symptoms. The

claimant did not say to JW that her symptoms could give rise to a danger of her mis-diarising deadlines. They discussed the claimant's need for assistance. JW spoke to SM not about the claimant specifically, but about whether more apprentices were required or could be accommodated.

March 2023 – Case A

64. On 17 March 2023, SM emailed the claimant with a copy of a draft order filed with the court for approval and sealing after a Costs and Case Management Conference that had taken place on 27 February 2023, i.e. on the approach to the trial in Case B. She informed the claimant that other than review the order, she had taken no further steps but observed that medical evidence was due to be filed in a months' time. SM added that she could arrange for CD to assist the claimant if she wished.

65. The claimant accepted the offer, stating she required assistance in two separate areas: with the medical evidence and with the legal aid costs position, the claimant being concerned that a retaining a KC may prove too expensive for the legal aid costs provision. She took the opportunity to remind SM that SM had earlier offered to conduct research into an alternative barrister.

66. SM arranged, at the claimant's request, for CD to assist the claimant with a second opinion on the medical evidence and the claimant agreed in evidence that this measure assist her; in her email to them both she suggested that they work together allowing the claimant to bounce any ideas she may have with CD who could provide her with an objective view. She added further reassurances and comments. She informed the claimant that she was *'happy to step in if decisions need to be taken that may impact the firm.'* She stated that she had contacted specialist chambers and had identified a named silk who was prepared to accept instructions on a legal aid basis. Finally, she provided her own thoughts about a possible strategy to encourage settlement.

67. SM led the application to extend the legal aid allowance on Case A. The claimant did not ask for a meeting with SM to discuss how to approach the application. SM told the claimant not to worry about the missed deadline and arranged for a retrospective extension of the costs limit. She arranged for the costs draftsman to transpose those figures provided to the court at the CCMC, at legal aid rates, into the legal aid application form. The use of the information generated by the costs draftsman was a sensible and effective use of the firm's resources. SM described herself as taking 'ownership' of the application; we did not consider her use of word as either an attempt to diminish the claimant's contribution, or in danger of having that effect.

68. On 23 June 2023, the claimant met with Counsel about Case A. A 6-month timescale was agreed for the amendment of pleadings and the production of further expert evidence. Counsel complimented the claimant's handling of the case, but the claimant perceived that her actions were questioned by Counsel.

69. SM spoke to the claimant about the conference immediately afterward. She sought to arrange for a senior solicitor at a partner firm to assist the claimant, unsuccessfully as it happened - he was approaching retirement. Colleague AMcC at the same firm agreed to assist the claimant with any specific enquiries that the claimant had, but she did not ask for any assistance from him.

70. AS and trainee DB attended a further conference with Counsel on the same case, in place of the claimant: AS allocated tasks arising from that conference between them.

Claimant's case load – March 2022 to November 2023

71. In her evidence, the claimant said she made a handwritten note of the number of files she managed. Her note recorded that she conducted a caseload comprising of 223 files in July 2022 and 110 files in August and September 2023.

72. She also made a note of the numbers of files said to be held by PH and CD. In evidence, they agreed that they were likely to have held 110 and 130 files each, as per the contents of her note. CD had a case load of around 80-120 personal injury matters. Unlike the claimant, they both worked full time.

73. Also before the Tribunal was a printout summary of the claimant's files as at July 2023, produced by the respondent. The claimant did not dispute its accuracy. It was the only objective evidence before the Tribunal of the number and type of files the claimant held.

74. Having regard to the printout together with the parties' evidence about its contents, we make the following findings in relation to the claimant's workload.

75. In July 2023, the claimant had a case load of 58 files. Of those 58 matters:
    a. 19 were debt files. These files were still notionally in the claimant's name, but they had run by apprentice solicitors since March 2022;
    b. 17 were CICA matters, which were, in the main, relatively straightforward matters consisting mainly of administrative steps. The majority of these matters were opened before September 2022 and therefore were files that could have been added to the list of 8 files that the claimant asked to be transferred, if she wished to do so;
    c. 15 matters were personal injury matters. Fourteen were a mix of small claims and fast track cases; liability was in dispute in six cases, and in the remaining 8 cases only quantum was in issue. One case was a multitrack case (presumably Case A).
    d. A total of 3 new matters were opened in 2023, 2 of which were for claims on behalf of the same claimant for complaints arising in similar circumstances.

76. Excluding the debt cases, therefore, the claimant was in July 2023 conducting 39 cases according to this file summary. The figure is consistent with the claimant's own email written in November 2023, during her notice period. At page 790 of the bundle, in an email to SM, the claimant provided a full list of her files and informed SM that she had *'around 40 of which only two were multitrack'*. We assume the reference to a second multitrack case was a reference to perhaps an outstanding costs matter in relation to Case B, alternatively a matter that was not an issue in this case.

77. We are not satisfied that the claimant was in fact holding 223 files in July 2022, since it formed no part of her case that there had been a dramatic reduction in the number of files she held to leave her with only 58 in July 2023. Similarly, we are unable to agree with her that she is likely to have held 110 files in August / September 2023, since that figure is inconsistent with the printout one month earlier and her own email two months later in November 2023.

78. Because it formed no part of the claimant's case that her workload was affected by dramatic increases and reductions in file numbers, we consider on balance that the claimant was likely to have had an active case load of around 40 or so files from March 2022 (when colleagues took over the debt files) until termination of employment in December 2023.

11 September 2023 – Case A hearing files

79. On 23 August 2023 the claimant asked SM for advice regarding software with which to produce hearing bundles for a conference with Counsel and medical experts in September. SM responded by informing her that although the firm was transitioning from one software programme to another, preparation of the bundles on the outgoing software would be preserved for use with the incoming software. Neither programme was Adobe Pro.

80. On the claimant's own case, it was Counsel who insisted on the use of Adobe Pro, who required a volume of documents to be included in the bundle and who belatedly provided her with an index to work to. The claimant took it upon herself to learn Adobe Pro. She and MD struggled. Colleague Lucy Wennington ('LW') suggested she could assist the claimant and MD, but rather than doing so, she informed them she was going home. The claimant and MD worked until late in the night attempting to create bundles on Adobe Pro.

81. Ultimately it was MD who sought assistance internally. She did so by email on 2 November 2023, the same day that the bundles were due to be filed at court. It was not until then that SM learned of the issue, for the first time. She responded the same day. She assigned named individuals to assist the claimant; she sought authorisation for a member of the IT team to be assigned to the task.

5 October 2023

82. The claimant incorrectly diarised the date by which she could make an application to extend time to serve amended pleadings. The deadline was 3 October 2023; she did not appreciate this until 5 October 2023. The error was because of oversight and it was not a measure of her competence; we have no doubt that in the days between the claimant was attending to other pressing matters.

83. On discovering her error, the claimant was, in her own words, devastated. It was the first time in her lengthy career that she had failed to comply with a court order. She was supported by colleagues who sought to reassure her that the problem was not unusual, that it could be fixed and the other side would not object to an application for relief from sanction. PH, CD and trainee DB assisted her in drafting the application; the other party did not resist the application. Relief from sanction was ultimately granted by the court.

84. On 6 October the clamant spoke to SM and informed her that she was thinking about resigning because she felt like she could not do the job as well as she would like. SM asked her not to rush into anything.

85. The same day, SM sent an email to the claimant, bearing the subject heading *'big hugs'.* She said she wanted to give the claimant a virtual hug because she knew the claimant did not like public displays of affection. She reassured the claimant that her concern for the claimant was genuine, that she recognised that the claimant was struggling. She volunteered information about the possibility of another fee earner joining the team in a matter of weeks. She also shared with the claimant an idea that she thought might be worth exploring, namely that the claimant revert to a *'standard case load' 'to see if it is just the complex out of comfort zone matters that have caused you to feel like you do'*. SM suggested that might have the benefit of giving the claimant some breathing space before reassessing her position. She emphasised that there was no pressure on the claimant, it was simply and option adding that she believed the claimant to be an amazing lawyer. Thus, SM was specifically suggesting to the claimant that she had the option of shedding Case B, to see if things improved.

Resignation and Notice Period

86. The claimant decided to resign in response to her own error. Notwithstanding discussion about the last straw principle at the outset of the hearing, and a reminder of that principle given to the claimant whilst giving evidence, the claimant maintained in her oral evidence that it was her own error in mis-diarising the court order that she relied upon as amounting to the last straw.

87. On 16 October 2023, the claimant submitted her resignation in writing to SM, giving 3 months' notice and thanking her for the opportunity of working with her, wishing her all the best. The claimant worked her contractual notice period.

88. In November, the claimant provided SM with a full list of her files. A team meeting took place at which all files, save for Case A, were redistributed to her team members. Her workload was absorbed by her colleagues; no fee earner was recruited to backfill her role. The claimant chose to retain Case A; she had a good relationship with the client and it made commercial sense that the handover of that file was dealt with at a slower pace. From around mid-November until her last day in the office, the claimant worked, exclusively, on Case A.

89. During the claimant's notice period, in November 2024, the claimant's colleague, and witness, CD, resigned from her employment as a solicitor to explore another opportunity; her departure was unconnected with the matters being raised by the claimant. In her exit interview, CD described the respondent flexible and of SM, CD said *'Sarah has always been flexible. . . . she is a supportive manager. She allows a space for you to be psychologically safe - you can be open to her if things go wrong. She will help you calmly think about how things can be sorted'. When asked whether there were any conflicts or dynamics within the team that could be improved, CD replied 'not aware of any. Everyone is lovely'.*

90. We set out these parts of CD's exit interview not only because they express her contemporaneous view of the working environment, but also because her comments accord with the evidence of AS who was able to expand, compellingly so, on the challenging but collegiate nature and supportive atmosphere of the team.

91. The claimant's last day in the office was Friday 22 December 2023, on which day the office closed at 1pm for the festive period; although her colleagues departed, the claimant decided to remain in the office, working on Case A.

92. In December, the claimant was paid for 13 hours of overtime; on the balance of probability, that was for hours worked in November and/or December 2023.

93. On Saturday 23 December 2023, the claimant decided to send a text to SM. In it, the claimant wished SM well over the Christmas period before continuing:

> *'I kept it together yesterday until I read your card [red heart emoji]. Thank you so much for what you said, it means so much to me. I am sad to leave and I don't think I'll ever have such a lovely boss as you. Your energy is infectious and you are a big part of why I found it hard to leave, even when I knew I had to. I have loved working alongside you and are proud of how the department has grown. You should be very proud of yourself as it's*

down to your hard work an enthusiasm. Take care of yourself (and my Margaret) . .xxx'.

94. The claimant's employment ended on 29 December 2023.

ACAS Early Conciliation

95. The claimant commenced ACAS early conciliation on 14 March 2024; a certificate was obtained on 25 March 2024. In response to the Tribunal's question as to why she had waited for so long to commence ACAS early conciliation, the claimant replied that she had not considered litigating the matter but it was only when discussing matters with 'a friend', adding perhaps it was someone at her new employer, that she decided to do so.

96. On 8 April 2024, the claimant sent to the respondent a letter before action. For the first time, the claimant complained about her treatment during employment. She stated *'in early 2021 I informed Sarah I was struggling with my caseload and she recognised I had a full-time caseload, despite my part time hours. She authorised paid overtime for work carried out outside my three days for this reason'.*

97. Her letter continued that she had informed SM that she was struggling with health, and that although she had informed SM that she was conducting to conference multitrack cases that caused her additional worry, she stated *'despite this the complex files remained with me'.* She did not in her letter suggest that she had ever requested Case A and Case B to be removed from her. She stated that she failed to diarise correctly a court deadline and that this was the last straw, leading her to resign.

98. She stated she sought compensation because reason adjustments should have been made to accommodate her anxiety and menopause symptoms. She added that she was treated less favourably because of her part-time status, her age and her sex.

99. On 24 May 2024, the claimant presented her claim to the employment tribunal.

The Law

100. The right to complain of unfair dismissal includes where a claimant contends that they have been constructively dismissed: section 95(1)(c) of the Employment Rights Act 1996 provides that there is a dismissal when the employee terminates the contract with or without notice in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct.

101. For an employer's conduct to give rise to a constructive unfair dismissal it must involve a repudiatory breach of contract: **Western Excavating (ECC) Limited v Sharp [1978] ICR 221**

102. A finding that there has been conduct which amounts to a breach of the implied term of trust and confidence will mean inevitably that there has been a fundamental or repudiatory breach going necessarily to the root of the contract, and entitling the employee to resign and claim constructive dismissal: **Morrow v Safeway Stores Ltd [2002] IRLR 9, EAT**

103. The implied term was held to be that an employer shall not, without reasonable and proper cause, conduct itself in a manner which is calculated or likely to destroy or seriously damage the relationship of confidence and trust between the employer and the employee: **Malik v Bank of Credit & Commerce International SA [1997] IRLR 462.**

104. The test is an objective one: **Omilaju v Waltham Forest London Borough Council [2005] 1 All ER 75, Leeds Dental Team Ltd v Rose [2014] IRLR 8, EAT**.

105. **Omilaju** is also helpful when considering whether or not the resignation of an employee is a response to a last straw in a series of acts by the employer which amount, together, to a fundamental breach of contract. It is noted in that judgment: *'The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.'*

106. In considering a complaint of constructive unfair dismissal Underhill LJ at para 55 summarised the proper approach as a five stage test in **Kaur v Leeds Teaching Hospitals NHS Trust [2018] IRLR 833:**

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

2 Has he or she affirmed the contract since that act?

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

*4 If not, was it nevertheless a part (applying the approach explained in **Omilaju**) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation, for the reason given at the end of para [45], above.)*

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

107. For completion, we are aware that a few days after providing oral reasons for our judgment, the EAT reaffirmed the importance of the principles above in **Marshall v McPherson Ltd [2025] EAT 100 9 July 2025, unreported.**

108. Disability is defined at s.6 Equality Act 2010.

109. The duty to make reasonable adjustments is set out at s.20 Equality Act 2010. It requires that where a provision, criterion or practice of the employer puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

Discussion & Conclusions

110. We recognise that between September 2021 and termination of her employment, the claimant was plainly experiencing symptoms of anxiety which no doubt affected the claimant's ability to work as well as her own perception of her performance.

111. However, we consider it necessary to note from the outset that we had significant difficulty reconciling the claimant's case with contemporaneous documentation adduced by both parties.

112. The correspondence between the claimant and SM disclosed a warm, responsive and supportive relationship, entirely consistent with the claimant's farewell sentiments contained in her text to SM on 23 December 2023. The claimant was unable, in cross examination, to reconcile the unsolicited contents of her own text message to SM, with the complaints she now seeks to make of her.

113. We remind ourselves of the claimant's central contention i.e. that she was required to work an excessive workload which often exceeded that of her full-time colleagues and in that, she was unsupported by the respondent.

114. We start with general observations. We consider it unlikely that the claimant worked over 3 years at such an elevated level of efficiency that she achieved in 3-3.5 days' work that which it would take her full-time colleagues a 5 day (plus overtime) week to achieve, and to maintain this notwithstanding the health impairments she described. In addition, the claimant suggested that the debt files amounted to a full-time job in and of themselves, yet the removal of them did not have any significant effect on her overtime levels. Finally, when the claimant did resign, her role was not backfilled, rather her files were redistributed, indicating either that her colleagues were not busy (her case was that they were all under significant work pressure) or that her workload may not be as significant as her claim suggests.

115. The claimant invites us to consider the number of files that she says she held. We were surprised and unpersuaded by the suggestion that it would be possible to reliably infer from the number of files the demands they made of her, principally for the reasons given by her own witness, CD, who confirmed that much rests upon a variety of factors such as complexity and the stage of the litigation.

116. Nevertheless, even if we were to adopt the claimant's approach, we have, for the reasons given above, found that for almost two years in 2022 – 2023, the claimant was likely to be running a case load that was unlikely to be far in excess of 40 or so files, i.e. significantly fewer than the 110-130 files run by her comparator full-time working colleagues, PH and CD.

117. We have regard to the types of cases that featured in the claimant's workload. The July 2023 printout provides the only objective and contemporaneous evidence put before the Tribunal.

118. The printout of July 2023 demonstrates that the vast majority of the claimant's workload was well within her experience e.g. small claim and fast track cases, CICA claim; we did not really understand the claimant to be suggesting otherwise.

119. Furthermore, the claimant had junior colleague SK to assist her in the personal injury matters for 2 days out of the claimant's 3-day week since early 2022 and by mid-2022 SM was offering suggestions as to how SK's assistance could be better utilised.

120. We turn to the two multitrack cases, Case A and Case B, and their relevance to the claim. The claimant had the most experience in multitrack cases, and she was competent to conduct Cases A and B. Plainly, in the weeks before the trial in Case B, the claimant was working excessive hours, no doubt also having to manage her challenging clients, all of which took a toll on the claimant's wellbeing. But the scale of the overtime hours worked in March were restricted to that month alone and on the claimant's own case attributable almost entirely to Case B.

121. As for Case A, the claimant was given an open offer to transfer files in February 2023 and more specifically on 6 October 2023; her decision to retain Case A even whilst working her notice period suggests to us that the claimant was sufficiently comfortable with the file to even discuss or engage with the offers of transfer.

122. We have found that the claimant did not ask for Cases A and B to be taken from her. We have considered whether SM should have taken steps to remove them from her, which appeared to be the claimant's implicit case. On the face of the contemporaneous documentation, SM did make open,

generalised, offers to remove some of the claimant's files, including in July 2022, March 2023 and more directly on 6 October 2023. It is not difficult to imagine the opposite problem; that SM risked undermining the claimant, who had the most multitrack experience, if she instigated a conversation about the claimant's ability to manage Case A and Case B.

123. In summary, we consider that the claimant's unease with these cases is more consistent with her need to explore and prepare the details of her cases, coupled with what she herself recognised was a difficulty relinquishing files even when she able to.

124. We have considered the relevance of fee targets but consider them to more likely to be a reliable guide to the profitability of a fee earner's case mix than an indicator of the demands they represent. The claimant did not suggest that she had any difficulty achieving her own target and it may be that Case A and Case B was a factor in that. We received no evidence of any other fee earner's target, much less other factors we would need to be able to make a meaningful comparison e.g. type of cases, proportions of cases that are privately paying, insurance led, legally aided etc.

125. We have had regard to SM's comment in September 2021 that she '*absolutely'* recognised the claimant had a full-time case load despite working three days a week. We attach relatively little weight to the comment, for the following reason. The comment was a response to the claimant's own explanation as to why she felt such pressure – that she had asked herself why she did and concluded it was because of her *'full time case load'*. SM's reply was given within minutes of the claimant's own email. The claimant had not conducted any form of detailed audit of the files she held compared to her full-time colleagues, and she did not suggest to SM that she had. We consider SM's response was an attempt at comfort and empathy rather than a reliable confirmation of the objective reality.

126. We now turn to the general allegation that the respondent failed to provide the claimant with support and assistance.

127. We start by noting that it formed no part of the claimant's case that any request she made for assistance ever went unheeded by SM – or for that matter, PH. Whenever she sought assistance, however generalised, SM responded, often swiftly and accompanied by a flurry of suggestions. What was striking in its absence was any attempt on the part of the claimant to prepare or present a rationalised request for specific help or even to facilitate a constructive discussion about her current predicament. We do not criticise the claimant for approaching SM with indirect requests for help since she was plainly struggling at times, nor do we criticise the relationship dynamic since it appeared to be one that suited them both, but we are unattracted by a case that rests upon criticising SM for failing to provide help that the claimant did not specifically seek.

128. The claimant was granted a reprieve from the new client rota for significant periods of time. Notably, the first occasion in the period with which we are concerned, the claimant did not herself ask for a reprieve, but rather responded to SM's email to all her team in September 2021, in which SM acknowledged that they were working under pressure and invited any requests to be suspended from the rota. The claimant was taken off the rota in the last quarter of 2022 and again from March 2023 until termination of her employment. Furthermore, SM reassured the claimant that no adverse consequences followed from a refusal to take on a new client.

129. Similarly, with respect to the debt files, the claimant was informed by SM that the respondent did not see the debt files as a priority. She was informed that she could '*park'* them. SK assisted the claimant from early January 2022 and they were reallocated to ET and SK from around March 2022. RT and an administrative assistant took them over from January 2023.

130. It did not form any credible part of the claimant's case that she asked to transfer files away from her but was refused or even dissuaded. SM told her in July 2022 that she could transfer files to other fee earners when she indicated she was struggling; it was the claimant who decided the number and types of files to transfer. In February 2023, she was again asked whether it would assist her to pass files on. On 6 October 2023, the claimant was asked whether reverting to a 'standard' caseload i.e. relinquishing Case A would be worth considering

131. SM herself offered and gave various types of help. She arranged for MD to give the claimant full time support. She arranged for CD to assist the claimant with Case A, she reviewed the claimant's application to amend pleadings, took 'ownership' of the legal aid application, researched alternative counsel, asked if another fee earner could attend the trial of Case B in the claimant's stead, attended the trial with the claimant, assisted in settlement discussions, offered to have someone go through the claimant's post and action urgent work for her whilst she was out of the office. She rearranged the duties of ET, SK and RT to assist the claimant, suggested more efficient means to delegating to SK, and she offered help of colleagues on other occasions.

132. Our impression of the claimant's case is that her real complaint is not that SM failed to assist her, but that what assistance was offered and delivered to the claimant, was insufficiently effective for the claimant's needs. Her allegation that she found herself working late into the night to meet a demand of counsel, as being something that the respondent should be responsible for, even though it was ignorant of the request, is illustrative of the point. The office was a collegiate, supportive place to work. We cannot disagree with the evidence of AS to the effect that the claimant's absence

from the office did not assist her ability to bear the stresses and strains of a challenging workload.

Unfair Constructive Dismissal

133. The last straw whether in and of itself of a repudiatory nature must nevertheless be an act done by the respondent. We recognise that the claimant felt pressurised at work, and that she was busy at the time attending to other tasks, but those were matters of background. Even if we took the view that the alleged excessive workload or inaction contributed to the error, the fact remains that it was her own error that led to her mis-diarising the date for compliance with a court direction. The failure cannot, properly, be regarded as conduct done by the respondent. The claimant cannot rely on her own error as the last straw and for that reason alone the case fails.

134. Further and in any event, we are not satisfied, for the reasons above, that the claimant was conducting *'an excessive workload'* nor a workload *'that often exceeded that of her full time colleagues in her part time hours'.* The respondent did not '*insist'* she did so. She was not left *'without support and assistance'.* On the contrary, we were taken to many occasions when SM assisted her personally or arranged significant amounts of assistance to be provided by others. On at least three occasions, SM extended an offer to transfer files away from the claimant and by March 2022 she had arranged for others to take over conduct of all her debt files.

135. We reject the claimant's contention that she was *'left to manage'* Case A and Case B *'which were outside her expertise and capabilities in the time she had available, resulting in a deadline being missed'*. We have found that claimant was given various amounts of assistance at various stages by both SM and her colleagues in her conduct of Case A and Case B and in respect of which she also had the assistance of senior Counsel. They were not matters that were outside her expertise and capabilities. She managed both cases within her part time hours, working relatively modest amounts of overtime hours, albeit unfortunately consistently, save for in March 2023. It was her own error that led to the mis-diarising of a compliance date and whilst we have little doubt that she was pressurised at work, and that this may well have contributed to her error, we simply do not recognise the claimant's description of her treatment in relation to either Case A or Case B.

136. The claim of unfair constructive dismissal is not well founded.

Failure to Make Reasonable Adjustments

137. We are not satisfied that the respondent had a provision, criterion or practice that *'required fee earners to run a full case load without assistance'.*

138. Our findings show that fee earners were given assistance. Generally, we have found that no fee earner was refused a request to take a break from the new client rota. More specifically, we have found that in or around September 2021, both CD and the claimant were granted breaks from the rota.

139. Furthermore, and for the same reasons as above, we are satisfied that the claimant received significant amounts of assistance on many occasions and in various forms.

140. The complaint of a failure to make reasonable adjustments is not well founded.

Employment Judge Jeram

Date: 27 November 2025