



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs G Caspa

v

Tesco Stores Limited

Heard at: Watford, in person

On: 9-13 February 2026

Before: Employment Judge Hyams

Members: Mr D Bean
Ms C Grant

Representation:

For the claimant: In person
For the respondent: Dr C Hill, of counsel

UNANIMOUS JUDGMENT ON LIABILITY

1. The claimant's claim of age discrimination fails and is dismissed.
2. The claimant resigned and was not dismissed within the meaning of section 95(1)(c) of the Employment Rights Act 1996.
3. The claimant's claim for a redundancy payment fails and is dismissed.

REASONS

These reasons

- 1 On 13 February 2026, we announced our decision to dismiss the claimant's claims and gave our reasons for that decision orally. At the end of the hearing,

the claimant asked for our reasons to be provided in writing. These are those written reasons.

The claims made by the claimant

- 2 By an ET1 claim form presented on 30 August 2023, the claimant claimed that she had been dismissed “constructively” by the respondent, at whose Brent Cross store she was working at the time of her resignation. The claimant claimed that she had been dismissed constructively unfairly (within the meaning of section 98(4) of the Employment Rights Act 1996 (“ERA 1996”)) by being, she said in box 8.2 of the claim form, “bullied” into taking a “new role with no training”, after a redundancy selection process in the course of which she expressed a wish to be dismissed for redundancy but was retained. The claimant also claimed, as stated in box 8.2 of the claim form, that she was “age discriminated also for not being offered the redundancy”.

Preliminary hearing before Employment Judge (“EJ”) Quill

- 3 There was a preliminary hearing before EJ Quill on 2 July 2024. The record of that hearing was at pages 51-71 (i.e. 51-71 of the pages of the bundle put before us for the hearing which we conducted in the week of 9-13 February 2026; any reference to a page below is to a page of that bundle). The issues were listed by EJ Quill on pages 54-57. They included a claim of harassment with the protected characteristic for the purposes of section 26(1) of the Equality Act 2010 (“EqA 2010”) of age. The conduct which was claimed (as stated in paragraphs 8.12-8.15 on page 56) to be harassment within the meaning of that subsection was (1) failing to offer the claimant voluntary redundancy, (2) failing to dismiss the claimant with a redundancy payment, and (3) dismissing the claimant either within the meaning of *Hogg v Dover College* [1990] ICR 39 or a “constructive” dismissal within the meaning of section 95(1)(c) of the ERA 1996.

The approach we have taken in these reasons

- 4 Given that the claims of the claimant were heavily dependent on the law of contract, we first state the applicable test and sub-tests for determining whether or not the claimant was dismissed within the meaning of section 95(1)(c) of the ERA 1996. We then refer to the law relating to age discrimination or harassment.
- 5 After that, we describe the evidence which we heard and read. We then state our findings of fact. Finally, we state our conclusions on the claimant’s claims.

The relevant law

The case law relating to deciding whether or not a person has been constructively dismissed within the meaning of section 95(1)(c) of the ERA 1996

- 6 The test for determining whether an employee has been dismissed “constructively”, i.e. within the meaning, now, of section 95(1)(c) of the ERA 1996, is contractual. The classic formulation is that of Lord Denning MR in *Western Excavating v Sharp* [1978] ICR 221, at 226A-C, namely:

“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once.”

- 7 The test is objective. The intention of the claimed wrongdoer is relevant, but that intention is to be discerned from the circumstances determined objectively. That is the result of the decision of the Court of Appeal in *Tullett Prebon Plc v BGC Brokers LP* [2011] EWCA Civ 131, [2011] IRLR 420. There, Maurice Kay LJ, with whose judgment in this regard the other two members of the Court of Appeal (Hooper and Tomlinson LJ) agreed, said this (in paragraph 24 of his judgment) about intention in this context:

“the central question is whether [the party who is claimed to have repudiated the contract] had ‘clearly shown an intention to abandon and altogether refuse to perform the contract’ (*Eminence Property Development Ltd* [i.e. [2010] EWCA Civ 1168, [2011] 2 All ER (Comm) 223], at paragraph 61). As Etherton LJ went on to say (at paragraph 63):

‘... *all the circumstances must be taken into account insofar as they bear on an objective assessment of the intention of the contract breaker*. This means that motive, while irrelevant if relied upon solely to show the subjective intention of the contract breaker, may be relevant if it is something or it reflects something of which the innocent party was, or a reasonable person in his or her position would have been, aware and throws light on the way the alleged repudiatory act would be viewed by such a reasonable person. [Emphasis supplied].’

- 8 The main passage in the first part of the headnote of the judgment of the Court of Appeal in *Tullett Prebon* neatly summarised the effect of that paragraph (24) and the following ones up to and including paragraph 28 in so far as they referred to repudiation. That passage was as follows.

“The question of whether or not there has been a repudiatory breach of the duty of trust and confidence is a ‘question of fact for the tribunal of fact’. It

a highly context-specific question. The legal test is whether, looking at all the circumstances objectively, that is from the perspective of a reasonable person in the position of the innocent party, the contract breaker has clearly shown an intention to abandon and altogether refuse to perform the contract. The issue is repudiatory breach in circumstances where the objectively assessed intention of the alleged contract-breaker towards the employees is of a paramount importance.

In the present case, the judge had approached the issue correctly. He had not applied a subjective approach. He had objectively assessed the true intention of Tullett, and had reached the conclusions that their intention was not to attack but to strengthen the employment relationship. That was a permissible and correct finding, reached after a careful consideration of all the circumstances which had to be taken into account insofar as they bore on an objective assessment of the intention of the alleged contract breaker.”

- 9 That case involved the application of the implied term of trust and confidence, which was the term of the claimant’s contract of employment here on which she was in our judgment required to rely in the circumstances as we found them to be (that is to say, as stated below). That is the obligation not, without reasonable and proper cause, to act in a way which is “calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee”. That is the formulation used in paragraph 14.2 of the judgment of Dyson LJ (as he then was) in *Omilaju v Waltham Forest London Borough Council* [2005] ICR 481. That case, among others, makes it clear that the question whether there has been a breach of the implied term of trust and confidence is answered by looking at the circumstances objectively. It is not answered by asking whether the party seeking to rely on the term has lost trust and confidence in the other party. Confirmation of that is to be found in the decisions of the Employment Appeal Tribunal in *Tolson v Governing Body of Mixenden Community School* [2003] IRLR 842 and *Healy v Slough Borough Council* UKEAT/0125/19/JOJ (unreported, 11 October 2019).
- 10 A breach of the implied term of trust and confidence will occur only where there is conduct which is “of such a grave and weighty character as to amount to a breach” of that term. Those words were used by Mr Pushpinder Saini QC, sitting as a Deputy Judge of the High Court, in paragraph 36 of his judgment in *Ardron v Sussex Partnership NHS Foundation Trust* [2018] IRLR 917, where among other things he applied what Lord Jauncey, sitting as a Special Commissioner in the case of *Neary v Dean of Westminster* [1999] IRLR 288 said in paragraph 22 of his judgment in that case (*Neary*), which was this.

“What degree of misconduct justifies summary dismissal? I have already referred to the statement by Lord James of Hereford in *Clouston & Co Ltd v Corry*. That case was applied in *Laws v London Chronicle (Indicator Newspapers) Ltd* [1959] 1 WLR 698, where Lord Evershed MR, at p.700,

said: 'It follows that the question must be – if summary dismissal is claimed to be justified – whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service.' In *Sinclair v Neighbour* [1967] 2 QB 279, Sellers LJ, at p.287F, said: 'The whole question is whether that conduct was of such a type that it was inconsistent, in a grave way – incompatible – with the employment in which he had been engaged as a manager.' Sachs LJ referred to the 'well established law that a servant can be instantly dismissed when his conduct is such that it not only amounts to a wrongful act inconsistent with his duty towards his master but is also inconsistent with the continuance of confidence between them'. In *Lewis v Motorworld Garages Ltd* [1985] IRLR 465, Glidewell LJ, at 469, 38, stated the question as whether the conduct of the employer 'constituted a breach of the implied obligation of trust and confidence of sufficient gravity to justify the employee in leaving his employment ... and claiming that he had been dismissed.' This test could equally be applied to a breach by an employee. There are no doubt many other cases which could be cited on the matter, but the above four cases demonstrate clearly that conduct amounting to gross misconduct justifying dismissal must so undermine the trust and confidence which is inherent in the particular contract of employment that the master should no longer be required to retain the servant in his employment."

- 11 An employee must, as Lord Denning said in *Western Excavating v Sharp*, resign in response to a repudiation or fundamental breach of contract. However, that need not be the main reason for the resignation, as long as the resignation is in part in response to the repudiation or fundamental breach: *Wright v North Ayrshire Council* [2014] ICR 77.

Age discrimination

- 12 Direct discrimination because of a protected characteristic (which occurs where a person, A treats another person, B, less favourably because of a protected characteristic "than A treats, or would treat, others": section 13(1) of the EqA 2010), involves the court or tribunal determining a claim of such discrimination in coming to a conclusion about what was in the mind of the alleged wrongdoer. There must be a motivation of the kind discussed by Underhill LJ in paragraph 72 of his judgment in *Unite the Union v Nailard* [2019] ICR 28. A mere hunch that there was such a motivation is insufficient to justify a finding that there was such a motivation. The difficulty of proving such a motivation has long been recognised by the appellate courts in this context, and the effect of that recognition was given statutory effect by section 136 of the EqA 2010, which is in the following terms.

"(1) This section applies to any proceedings relating to a contravention of this Act.

- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
 - (3) But subsection (2) does not apply if A shows that A did not contravene the provision.”
- 13 There is much case law concerning the application of that provision. As a result, of it, we thought that the issues arising in relation to a claim of direct discrimination were best stated as follows.
- 13.1 Applying section 136(2) of the EqA 2010, are there (among those things which the tribunal has found were facts) facts from which the tribunal could decide, in the absence of any other explanation, that the claimant was treated less favourably and detrimentally because of a protected characteristic? When asking that question it is possible to take into account the respondent’s evidence about, but not its explanation for, the treatment. That is clear from paragraphs 19-47 of the judgment of Leggatt JSC (with which Lord Hodge, Lord Briggs, Lady Arden and Lord Hamblin agreed) in the Supreme Court in *Efobi v Royal Mail Group Ltd* [2021] UKSC 33, [2021] ICR 1263.
 - 13.2 If so, then, applying section 136(3) of that Act, has the respondent satisfied the tribunal on the balance of probabilities that the claimant was not to any material extent so treated?
 - 13.3 Alternatively, applying the decision of the House of Lords in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, what was the real reason for the manner in which the tribunal has found the claimant was in fact treated?
- 14 Age discrimination will not be unlawful (applying section 13(2) of the EqA 2010), “if [the claimed discriminator] can show [his/her/its] treatment of [the claimant] to be a proportionate means of achieving a legitimate aim”.

Harassment with age as the protected characteristic for the purposes of section 26(1) of the EqA 2010

- 15 Section 26 of the EqA 2010 provides:

- “(1) A person (A) harasses another (B) if–
 - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of–

- (i) violating B's dignity, or
- (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

...

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account–

- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.”

The evidence which we heard

- 16 The claimant did not put anything in the form of a witness statement before the respondent until the morning of the first day of the hearing before us, despite have been required to provide a witness statement for herself and any of her witnesses by 19 February 2025. The statement was unsigned and in un-numbered paragraphs, and there were no references to the pages of the bundle in it. That was unhelpful, but it was better than having no written statement of any sort of the evidence which the claimant was intending to give. We gave Dr Hill and the respondent time to consider it and Dr Hill said that the respondent (helpfully) did not object to us taking into account what was said in it, despite the fact that there were in it allegations of wrongdoing by Mr Depass on 7 and 9 August 2023 on which the claimant was now plainly intending to rely in claiming that she was dismissed constructively which (for the reasons which we give in paragraph 77 below) were entirely new as far as these proceedings were concerned.
- 17 We heard oral evidence from the claimant on her own behalf, and, on her behalf, from Mr Razvan Alungulez and Mrs Valerie Sibanda. Both of those witnesses were former colleagues of the claimant during the claimant's employment at the respondent's Brent Cross store. Where we refer below simply to "the store", we refer to that store, i.e. the Brent Cross store.
- 18 On behalf of the respondent, we heard oral evidence from Ms Alice Boniface, Mr Conor Basquil, Mr Gerry Furlong and Mr Anton Depass. Ms Boniface was at the time of the claimant's resignation an adviser in the respondent's human resources team (as "People Partner for the North London area"). Mr Basquil was at the material time the manager of the respondent's Yeading store. Mr Gerry Furlong was at the material time the Lead Manager at, i.e. the deputy manager

of, the respondent's Brent Cross store. Mr Depass was at that time the manager of the respondent's Brent Cross store.

- 19 There was in addition before us a bundle of documents which contained 776 pages including its index. That is the bundle to which we refer first in paragraph 3 above. We read the documents in that bundle to which we were referred. Two further documents were sent to us during the hearing. Those further documents related to the claimant's period of absence from work, without pay, for what the respondent referred to as a "lifestyle break". After the hearing had ended, we were sent by the claimant a text, or WhatsApp, message from Ms Smita Joshi. We have set out that text in paragraph 79 below.

Our findings of fact

The claimant's work as the manager of the petrol filling station at the Brent Cross store

- 20 The claimant was for a number of years employed as the manager of the petrol filling station at the respondent's Brent Cross store. The precise number of years was not relevant, but she had been so employed at least during the period from 2013 to 2015, and was initially employed in that role in a full-time capacity, which meant working in that role under a contract of employment which required at least 36.5 hours per week. At some point, and probably (given the evidence of Mrs Sibanda) at some point between 2013 and 2015, the respondent required the claimant to reduce her hours per week to 25. The earliest set of terms and conditions of employment for the claimant before us was at page 106, and the number of hours required of the claimant by the document on that page (which was signed by the claimant on 9 July 2020) was 25 "plus any additional hours that may be reasonably required for you to fulfil your duties properly".
- 21 It was the claimant's evidence that after she became part-time, (1) she found herself being contacted about issues relating to the petrol filling station during her non-working hours, (2) she voluntarily worked more than 25 hours per week, including by going to work on Sundays when she was not required to work, and (3) sometimes she was paid for going to work on Sundays and sometimes she was not. We accepted that evidence, not least because of the operational and legal requirements of operating a petrol filling station, but also because we accepted the claimant's evidence that
- 21.1 the store manager was very much in charge of the store (she said that he was "king"),
- 21.2 if, having been asked by the store manager to help outside her usual 25 hours per week she refused to help, there was a realistic possibility that her refusal would have soured the relationship with the store's manager, and

21.3 the claimant loved her job and was dedicated to it.

The change to the claimant's job description in April to May 2021

22 During April 2021, the respondent proposed a change to the terms and conditions of the claimant and other managers at the respondent's larger stores. That change was evidenced by the documents at pages 107-114. The first of those pages was an "Individual Meeting Narrative" to be used in informing affected employees of the proposed change, which, it was said, would be effective from Sunday 11 April 2021 onwards. Almost all of page 107 was relevant. The relevant passage was as follows.

"Background & Context

In response to a change in our customer's shopping habits in recent years, we are moving our large Superstores and Extras to a simpler operating model and structure.

In order to simplify ways of working, as well as build skills and agility for the future, we are making some changes to our management structures. These structure changes include:

- Reducing the number of Lead Managers in each store
- Reducing the number of Team Managers in each store
- Introducing a new Shift Leader role. This role will be 100% supervisory, completing a defined set of activities across the whole store

These changes will be achieved over time, through natural attrition and the informal movement of management hours. As well as protecting employment, moving to the new structure in this way will minimise disruption to customers, colleagues and the operation, and allow us to build the capability and agility of our teams over time.

Alongside this, it has been identified that all of our Lead and Team Manager roles have generic core responsibilities: at least 80% of responsibilities are the same, regardless of the department/area of responsibility. Therefore, we have made the decision to make changes to the job titles and responsibilities of all Team and Lead Managers.

What does this mean for you?

We understand that this announcement may be unsettling for you; I'd now like to talk you through what this means for you, and support you with any questions you may have.

Change to job titles and responsibility splits

- The job titles of Team Managers will no longer include a specific department, e.g. Grocery Team Manager. Instead, all Team Managers will have the generic job title of 'Team Manager', who can manage any area of the operation. The only split will be whether you work days, nights or GHS.
- To ensure that a Team Manager role is of equal size all Team Managers will move towards managing an equal number of colleagues over time. The colleagues you manage may be a mixture of those who work across different areas.
- If there are no vacancies, responsibility splits will remain as is until any movement begins.
- If there are vacancies and when any movement in management positions occurs, Team Manager responsibilities will be re-split."

- 23 On the next page, page 108, it was said that that there was an "Alternative option to step down into a new Shift Leader role (if applicable for your store)", and the terms of that new role, which included the option of pay protection in it.
- 24 The outcome of the process followed was that the claimant was given, by hand, a letter of which there was a copy at page 114. The letter was dated 22 May 2021, and was in these terms.

"RE: Minor change to role – Lead Managers and Team Managers

Thank you for attending the final meeting on Friday 21st May 2021 , where we discussed some minor changes to your role, comprising of moving to a generic Team Manager Job title.

You will be responsible for Service (all areas) As a reminder, the responsibilities can rotate should any management movement or leavers occur and to ensure that over time you gain management experience across the whole store.

This change will take effect from 11 April 2021 .

You will receive updated terms and conditions of employment within four weeks of this change, reflecting your new job title.

If you have any questions about this change, please do not hesitate to speak to me."

- 25 We noted that the respondent insisted there that the change was a "minor" one, but we could see that as far as the claimant was concerned, being required to

move from managing the petrol filling station to being a manager of another area of the operations of the store was going to be more than minor.

The claimant's lifestyle break of 2021-2022

- 26 On the evidence before us, which included the two documents which were sent to us during the hearing as we say in paragraph 19 above, the claimant started a lifestyle break on 19 November 2021. In the claimant's witness statement, she said this about the sequence of events in that regard.

"I was on options for senior manager CSM [i.e. Customer Services Manager], stepped down to full time petrol station manager, and was forced to take a part time job due to company restructuring. When the role of PFS [i.e. petrol filling station] manager went in 2021, I was forced to move into Stores and offered a part time services manager role, which I did as a job share with Suben. I tried the role for a year, working 14 hour shifts and sometimes not still meeting my required targets. Accountabilities were never clear on the job, and my colleague and I worked tirelessly to deliver the role. Sometimes even duplicating tasks and even having to come to work on my days off just to make up. But in all I tried my best to deliver the role, but I would still not meet up. Life was unbearable and there was no work life balance. This forced me to take up a lifestyle break as my family life was being compromised and I had to seek to see what else I could do. The lifestyle break lasted a year and I returned to work in December.

My colleague had taken up the service checkout position as she was full time, so I was told to take over non food and my colleague Raz to take over Fresh food. It was quite challenging as Raz never wanted to move over to fresh due to the complexities of the job. We however managed to work together but it was not easy due to lack of accountabilities."

- 27 The letter from the respondent about the claimant's lifestyle break which was sent to us during the hearing stated that the break would end on 21 February 2022. Plainly, therefore, the claimant's lifestyle break was extended to a period of over a year. The claimant's reasons for asking to take a lifestyle break were in a handwritten letter dated 4 November 2020, and were stated as follows.

"I would like to apply for a Life style Break from the 29th November 2021 to the 21st of February 2022.

This is to enable me spend quality time with my friends & family parents from all over the world. It would also be my golden anniversary. Family holidays and reunions has not been possible this past year due to the global pandemic."

- 28 As the claimant said in her witness statement, when she returned from being on her lifestyle break, she was required to manage the non-food department. However, she had before she went on her lifestyle break been a job-sharing Team Manager responsible for “Services” in the store for some time: probably not a year, as she said in the evidence which we have set out in paragraph 26 above, but certainly a substantial number of months. The inaccuracy of the witness statement in that regard caused us to be cautious about accepting the whole of that evidence at face value. In arriving at our conclusion stated in paragraph 96 below, we took into account fully the passage of the claimant’s witness statement that we have set out in paragraph 26 above.
- 29 The claimant’s role when she started her lifestyle break was Team Manager with the responsibilities stated in the letter at page 114 the terms of which we have set out in paragraph 24 above, and when she returned from that break, she remained such a Team Manager. She did not object formally to being the Team Manager with shared responsibility for Services before she went on her lifestyle break, or to being the Team Manager with shared responsibility for the management of the non-food department at the store after she returned from that break. (We concluded that the claimant had shared responsibility for the management of the non-food department when she returned from her lifestyle break because that is what she said in her email of 22 March 2023 whose text we set out in paragraph 51 below.)

The redundancy process followed in the first months of 2023

- 30 The claimant was in that position for only 6-8 weeks before the respondent announced a consultation about an intention to reduce the number of persons employed as Team Manager at the Brent Cross store. Mr Depass described the manner in which he was informed about that intention in paragraph[s] 6-14 of his witness statement, which we accepted. He was informed of the change on 30 January 2023, in the detailed, clear, and prescriptive document at pages 230-253. At page 247, this was said under the heading “Days team manager - reducing number”:

“Please use the text below to brief relevant managers on Tuesday 31 January from 11am”

***“In the new structure, the number of days team managers we will have will be reducing. You are therefore in a reducing pool.*”**

Explain that the pool will be made up of days team managers only, but excludes non-impacted roles (GHS Team Managers, Pharmacy Managers, Phone Shop Managers and Café Managers).

Confirm how many people are in the pool and how many your store is reducing to, using your structure chart.

Explain that we will be collectively consulting with Usdaw from w/c 6 February, over a 45 day period.

Explain that the selection criteria will be discussed during collective consultation and, once agreed, all colleagues in the pool will be scored against it. This is due to take place between Wednesday 22 and Tuesday 28 February.

Explain that the selection scoring will be completed by the manager's manager (which may be you - the Store Manager – or a lead manager), and will be checked and verified by another manager.

Explain that once selection has been completed for all colleagues in the pool, another individual informal meeting will be held with all colleagues to confirm the outcome of selection, which will either be:

- Successful at selection and therefore remain in role as a days team manager; or
- Unsuccessful at selection and therefore placed at risk of redundancy and will be taken through the individual consultation process from 6 March.

Explain that if they are unsuccessful they will:

- Receive an indicative redundancy schedule w/c 27 February
- Have at least 3 formal individual consultation meetings and can have as many interim meetings as they need during the consultation period to support them
- Have the opportunity to explore alternative opportunities, including applying for vacancies or stepping down to an available shift leader role, with financial support. See the 'stepping down and financial support' section for more details".

31 As Mr Depass said in paragraph 11 of his witness statement, "the Team Manager (days) headcount at Brent Cross would be reduced from six to four, with each remaining Team Manager being assigned one of four re-aligned areas of operational responsibility". Those were "Service", "Fresh Replenishment", "Grocery Replenishment", and "Home and Clothing, Stock, Cash and Admin".

32 Mr Depass said this in paragraphs 14-16 of his witness statement.

"14. In accordance with the communications approach set out in the Change Guide (page 233), once I had reviewed the materials provided, I held a briefing meeting with all affected colleagues at the Brent Cross store on

the afternoon of 30 January 2023. Geraldine [i.e. the claimant] attended this meeting in person.

15. At the initial briefing meeting, I read the prescribed announcement contained in the Change Guide (page 239). The announcement informed the colleagues of the proposed changes, that there would be a reduction in headcount of Team Managers, and that a collective consultation process with USDAW was taking place. During this briefing, I also informed the Team Managers that they would be placed in a selection pool and a selection criteria would be applied to decide who would be placed at risk of redundancy, though we did not yet know what the criteria would consist of as this would be agreed during the collective consultation process.
16. Following the initial briefing on 30 January 2023, each affected colleague was provided with a handout sheet containing essential information (pages 642 – 644).”

- 33 The claimant and Mr Alungulez said that they did not receive the handout at pages 642-644, but Mr Alungulez said that it was available on the respondent’s intranet. We concluded that it was made available to the claimant at least by her being informed that it was on the respondent’s intranet. So far as relevant, this was said at page 643.

“What happens next?

As soon as possible after the business announcement, all colleagues will have an informal announcement meeting with a Manager. This meeting is to make sure that you understand the announcement and what it means for you for example your role is being removed from the structure and therefore you are at risk of redundancy; the number of roles required is reducing and therefore you are in a selection pool; or there is a minor change to your role only.

What meetings will I have?

There will be a minimum of 4 meetings, although a colleague can request as many interim meetings as they require, to ensure they have all the information they need:

- Informal announcement meeting – to clarify a colleague’s understanding of what has been announced and the impact on them. Where a colleague is in a selection pool, there will be a second informal announcement meeting after selection scoring has been carried out, to confirm whether the colleague has secured a role or they are at risk of redundancy.

- First Individual consultation meeting – This meeting starts the formal individual consultation. N.B. If collective consultation is required, the individual consultation meetings will not commence until collective items have been agreed e.g. selection criteria for reducing pools, redundancy payments, redeployment principles, etc.
- Interim individual consultation meeting – This meeting is to check if the colleague needs any further support or answer any outstanding questions.
- Final consultation meeting – This meeting is the final meeting, at which we confirm there are no outstanding questions and we either issue Official Notice of Redundancy where a colleague is leaving via redundancy or confirm they have been redeployed into an alternative role.”

34 We concluded, having heard both the claimant and Mr Depass give evidence, that Mr Depass’s announcements to the six Team Managers at the end of January 2023 were precisely as the document at pages 230-253 required them to be. Accordingly, we accepted paragraph 15 of Mr Depass’ witness statement, which we have set out in paragraph 32 above. We therefore concluded that he said that there would be a selection procedure but that the criteria for the selection of two Team Managers to be dismissed for redundancy unless they were redeployed to another role in the respondent’s business (which might be as a shift leader with pay protection) were not yet known as they had yet to be the subject of consultation with the recognised trade union, which was USDAW.

35 The claimant did not want to be redeployed. She wanted to be dismissed for redundancy.

36 The respondent’s selection criteria which were the subject of consultation with USDAW were at pages 343-351. Those pages were referred to by Mr Depass in paragraph 19 of his witness statement, but we were not referred to those pages by either the claimant or Dr Hill during the hearing. The pages were of considerable importance here. We saw that at page 347, the consultation form had at the top of the page a box with this text in it:

“**Tie Breaker** If 2 or more colleagues have scored the same after completing all sections of the selection form, you will need to consider the following:

Has the colleague expressed a preference for redundancy?”

- 37 Immediately below that, there were factors to take into account and against which a score should be given “If the colleagues in the tie break have all expressed the same preference”.
- 38 Mr Depass said this in paragraph 27 of his witness statement.

“Geraldine was not the only Team Manager who had expressed a preference to leave but was not made redundant. Another Team Manager, Smita, expressed a preference to leave but scored 33 on application of the selection criteria and so was not placed at risk of redundancy (page 645). Ultimately, as agreed with USDAW, colleague preference was only to be used in the event of a tiebreak, as was clearly expressed in the selection forms and communicated during informal meetings. No tiebreak situation occurred at Brent Cross and so it was never necessary to consider Team Managers’ preferences. This was not a voluntary redundancy process and Geraldine was aware of that.”

- 39 However, at page 349, this was said.

“Using manager preference for redundancy

The business will look to agree to colleague preferences wherever possible and practical, taking the remaining managers skills and experience into consideration. The final decision sits with the Store Manager.

Principles

We should use manager preference if:

- the selection scores are close, and the remaining managers have the necessary skills and experience
- where there is no clear rationale for refusal

We should not use manager preference if:

- the operation is jeopardised by the remaining managers not having the necessary experience or skills.
- there was a large disparity in selection scores, and it meant keeping a much weaker performer.

We may choose not to use manager preference if:

- someone who has been highlighted for a move (for example, a signed off Lead Manager awaiting an Express Manager vacancy),

or is on the Talent Plan as having the potential to move into a bigger role.

- someone has skills or experience that we want to retain (such as being SP2 or Sickness Absence Level 3 trained), or where it would take a replacement a significant time to learn. NB: We should still look to use manager preference where we can, even if someone has such a skill or experience.

Preference should be looked at in the following order:

- within each reducing pool
- within each store

Whilst there is no commitment to considering preference across stores (due to complexity and the time it would take), we will try to accommodate this where possible. When looking across the store/pools, it may be necessary to juggle more than the manager At Risk (A) and the manager expressing a preference (B).”

- 40 We concluded, given that page, that Mr Depass’ evidence about preference not being relevant unless there was a tie-breaker was not accurate, since it flew in the face of the instructions which he was given by the respondent. This page was not drawn to our attention by the claimant and it was not put to Mr Depass. Nevertheless, we were able to come to a clear conclusion on the evidence before us on the rationale for his decision that the claimant should not be made redundant. That was for the following reasons.
- 41 The scores of the six Team Managers at the Brent Cross store applying the selection criteria at pages 344-347 were recorded in the document at page 645 (with the names of the other three successful candidates inexplicably and inappropriately redacted). The claimant was fourth with a score of 25. The fifth-placed person was Mr Alungulez, with a score of 22. The sixth-placed manager, Mr Thevarajah, had a score of 19. However, those scores were only part of the picture.
- 42 The scores for the three managers whose scores were greater than that of the claimant were of 37 for the top two candidates, and 33 for the third-placed candidate. Because (as a result of her lifestyle break) the claimant had not been in post long enough for the “rating performance” criteria which were at page 345 to be scored for her (in fact, the forms used at Brent Cross referred only to one of the possible two years shown at page 345), she scored nothing, i.e. a zero, in that regard. That was shown on page 456, which was the relevant page for her scoring. In contrast, both of the managers who got 37 points had a score of 12 for performance (shown at pages 462 and 474), and the one who got 33 points

also had a score of 12 for performance (shown at page 468). Even Mr Alungulez got a score of 12 for performance (shown at page 679). However, Mr Alungulez was given a score of zero for the “key accountabilities” in relation to which Mr Depass had recorded this by hand on page 680:

“Always seems to want to do [h]is own thing when he feels like and is not a team player and not inclusive. Not working with the team to achieve. Not currently performing at the level expected.”

- 43 It was Mr Depass’s oral evidence that Mr Alungulez had in the past performed well, and we accepted that evidence, since we concluded that Mr Alungulez would not have been appointed to the role of Team Manager if he had not in the past, i.e. before being appointed to that role, performed well.
- 44 Mr Alungulez wanted to stay in the respondent’s employment, and the claimant wanted to leave it, but Mr Depass, we concluded without any hesitation, wanted the claimant to stay and Mr Alungulez to leave because he, Mr Depass, valued the claimant’s technical and personal managerial skills highly.
- 45 Mr Alungulez was at that time aged 29 years old. Mr Thevarajah was aged 53, and the claimant was aged 51. Both Mr Alungulez and Mr Thevarajah did not want to be made redundant and wanted to continue in their posts as Team Manager.
- 46 On 3 March 2023, the claimant was informed formally by Mr Depass in the letter at page 479 that her “role was not at risk of redundancy”, and that “Any minor changes to [her] role [would] be fully communicated to [her] by Gerry Furlong shortly, during an informal one to one”. On 13 March 2023, the claimant sent the email at page 500 to Ms Boniface. The email had the heading “Changes to the management structure”. In it, the claimant asked for “a meeting” with Ms Boniface, about her (the claimant’s) “personal circumstances” which the claimant said had been “greatly affected by the changes, plus [her] medical situation too [was] now a problem”.
- 47 Ms Boniface did not respond before Mr Depass informed the claimant formally on 15 March 2023 that she was not going to be dismissed for redundancy and that she was from 1 May 2023 onwards going to be employed in the “Team Manager Role on the Fresh Food Department” (as recorded in the note of the meeting at page 501) and continue to work 25 hours per week. Mr Depass in paragraph 48 of his witness statement said this about what happened at that meeting.

“During our conversation, Geraldine expressed that she felt she wasn’t trained for a Fresh Replenishment role and that she had health concerns regarding her mobility. I explained to Geraldine that training and support would be provided, that the role was mostly identical to what she had done

before, and that there was no difference in terms of physicality as compared to her current and previous responsibilities. I also explained that if she felt she needed adjustments or if it was appropriate to take occupational health advice, we could arrange this, but she was not interested. My reassurances did not seem to change her position, and she remained very unhappy and made clear that she did not intend to take on the Fresh Replenishment role.”

- 48 We accepted that evidence, which was not materially different from that of the claimant about what happened at that meeting. The claimant accepted during the hearing before us that training was available via the respondent’s online training portal. Mr Furlong said in paragraph 26 of his witness statement, and we accepted, not least because the claimant accepted, that training was available on the portal. We accepted the following part of that paragraph:

“Geraldine’s concerns regarding training were also addressed in full but this had no impact on her position. She was saying that she was not trained to do the Fresh Replenishment role, and I made it clear to her that all necessary training was available through the training portal and that we would allow her as much time as she needed to complete the training and get comfortable with it before starting, but she was not interested.”

The claimant’s response to being retained as a Team Manager at the Brent Cross store, responsible now for Fresh Replenishment

- 49 Seven days later, on 22 March 2023, Ms Boniface sent the claimant the email at the top of page 500. It was sent at 06:30 and was in these terms.

“Thank you for your email. I’m sorry to hear that you are experiencing problems. I would ask you to please reach out to your line manager to support with any issues as they are best placed to help you. I hope you both will be able to work together to support you.”

- 50 Ms Boniface explained the delay in her reply to the claimant and the terms in which she did reply to the claimant’s email of 13 March 2023 to which we refer in paragraph 46 above in the following terms (which were the first sentence of paragraph 14 of her witness statement):

“I often receive emails like these from colleagues and in the first instance, unless there are some extenuating circumstances, I will refer the colleague back to their line manager to discuss their issues.”

- 51 At 9:03pm on 22 March 2023, the claimant sent the email at pages 524-525 to Mr Ken Murphy, the respondent’s Chief Executive Officer, copying it to Mr Jonathan Taylor, the respondent’s Managing Director Large Stores. The email was sent from the Brent Cross store’s email address and was in the following terms.

“Dear Sir,

My name is Geraldine Caspa I work at Tesco Brent Cross.

I have written to our store director and group personnel manager without any satisfactory response and with the unions advise sending this email.

I was asked at the beginning of the consultations if I wanted to leave or stay and I made it quite clear my option was to leave.

I then got put into a selection pool and was selected and offered fresh team manager on a three day job role shared contract.

I have job shared in two roles one as services manager and the other as non-food manager offered on my return from my lifestyle break which was an uphill task .This break was mostly driven by the complexities of job sharing given each manager has their ways of working and a different set of priorities even though to achieve the same results in the end.

I was a senior manager in Tesco and stepped down for personal reasons. I returned to the petrol station as a full-time section manager a job which I enjoyed and delivered excellent results. A few years later I was forced to do a part time role in the petrol station which left me financially disadvantaged and forced me to find an alternative source of income.

I am glad that I have been valued and confidence bestowed on me and I have been offered through the selection criteria a fresh manager role. I am also glad that through my hard work and dedication I was selected but I am seriously concerned about my ability to perform in this new role and I know I will be unable to fulfil the expectations of the new job role.

I have my personal circumstances as well as my medical condition which are clearly a deterrent to my success in the new role. My legs now really bad triggered from constant movements at work which was not the case previously. I went to see my doctor today because of the constant pain while waiting for a scan and imminent operation and I was signed off for three weeks after examination but still came in to work to support. My leg is going to be an ongoing issue even after the operation due in a few months.

It is therefore on this note that I think its only fair I am considered for redundancy after twenty-two years of dedication and hard work. Unless nonetheless I am guaranteed a job that will suit my needs .and was told there wasn't any.

I can not deliver as a fresh team manager on a three day basis, job sharing is an uphill task. Who has the accountability for a SHARED role. This role offered me is larger than I am able to commit on a part time basis and I would not be able to achieve in the department as it feels like two captains in a ship.

My preferred choice was to leave and I made it clear in the beginning because I thought we had a choice as we were asked so in the very beginning. I now feel that despite my personal circumstances and deteriorating medical condition which is a clear hinderance to do the job I am being offered. I feel I am now being penalised for doing by best in Tesco for twenty two years.

If I can not be offered a role that I can safely do and be solely accountable in the three days then unfortunately my choice remains to take the redundancy.

After twenty-two years of dedicated service and hard work to the company I feel it's only fair that the option of redundancy is considered as I have delivered my 110% to the job but moving forward, I cannot commit to do so any longer for all the reasons I have mentioned above."

- 52 Understandably, Ms Boniface was asked by Mr Taylor to respond to that email, which Ms Boniface did, the next day, 23 March 2023, in the email at page 523, asking the claimant for her personal email address. In paragraph 17 of her witness statement, Ms Boniface said that the claimant did not respond to that email initially so Ms Boniface sent a "chaser" email on 28 March 2023, and that once the claimant had responded to that email and sent her personal email address, Ms Boniface sent the claimant the email of 5 April 2023 at page 522. That email included the statements that (1) because the claimant would be job-sharing, both she and the person with whom she shared the job of being Team Manager for Fresh Replenishment would be "able to complete the accountabilities needed to fulfil the role", (2) the claimant herself would be "accountable for what is achievable on a three day week contract – ie. your manager would not expect you to complete a full time manager's role in three days", and (3) Ms Boniface hoped that that "reassurance" would make the claimant "feel more comfortable." Ms Boniface concluded:

"It is important that we support you with your health condition and we will make adjustments in order to do this. I would recommend that you go through the Workplace Adjustments process with your line manager, and as part of this agree to an Occupational Health referral, so that we can support you. I hope that by putting adjustments in place you will feel confident in delivering your Team Manager role."

- 53 We record here that at no time did the claimant “go through the Workplace Adjustments process” and therefore she did not as part of that process “agree to an Occupational Health referral”. Nor did she otherwise seek such a referral during 2023. We also record that the claimant did not contend that any of the emails to which we refer in these reasons were not what they purported to be.
- 54 Ms Boniface’s witness statement described what happened next in the following manner (and we accepted that it was accurate; the most important email in the chain was probably the one at page 528 of 6 April 2023, the content of which we took into account fully):
- ‘19. Geraldine promptly responded to my email on the same day (page 521) and she was clearly not happy with my responses to her issues. In this email, she raised largely the same issues again regarding the job share role and health issues.
 - 20. I responded to Geraldine’s email on 6 April 2023 reiterating the points that I made in my initial email of 5 April and making absolutely clear that she will not be expected to deliver on Fresh Replenishment alone and that the area would be run on a job share with another manager (pages 520 – 521). As I explained in that email, job shares are an important part of Tesco’s business in order to allow part-time managers to work successfully and we have a vast number of successful job shares throughout the business even up to Store Manager level. Geraldine was a very experienced and capable manager and her concerns in respect of this issue did not seem reasonable.
 - 21. Twenty days later, on 26 April 2023, Geraldine responded to my email copying Jonathan Taylor and Antone Depass (pages 519 – 520). In this email she sought to raise a grievance against the redundancy process, in particular the fact that she was not offered redundancy after expressing her preference to leave and that she was being “*forced to stay*” with Tesco.’
- 55 Ms Boniface then “liaised with CR”, as she put it in her email to Mr Taylor of 27 April 2023 at page 519, and said that she would liaise with the claimant directly because the respondent was “not in a position to hear this as a grievance” because the respondent had “followed the process as agreed by the union”, but that Ms Boniface would “support [the claimant] with some extra adjustments which should help her concerns around job sharing”. Ms Boniface then responded to the claimant’s email of 26 April 2023 at pages 519-520 in the email of 28 April 2023 at pages 526-527. Ms Boniface accurately stated in numbered paragraphs 23-26 of her witness statement (which were plainly intended to be one paragraph, paragraphs 24-26 being intended to be subparagraphs of paragraph 23) that she said in her email of 28 April 2023 at pages 526-527 that

55.1 “the redundancy process was not a voluntary redundancy process and as such the option of taking redundancy was not available to her”;

55.2 “any concerns which she ha[d] should be raised with her line manager and that she should go through an adjustments process so that she [could] be supported with her health conditions [in fact, Ms Boniface referred, in the part of the email at the top of page 527, to the claimant’s health condition, not conditions, but the meaning was the same here]”; and

55.3 “that the process which she was complaining of had been agreed in collective consultation with USDAW and as such this matter would not be heard as a grievance.”

56 The claimant responded on the same day (28 April 2023) in the email at page 526 in which she said, among other things, that this was “another attempt to lure [her] into a full time role working and being paid on a part time basis”, and that “Unless there is a job with clear part time accountabilities then I am sorry it’s not for me.” She said too: “I still hold that the process is unfair because we were asked preferences in the beginning.”

57 That email was also copied to Mr Taylor, and he asked Ms Boniface to prepare a response, which she did. Her proposed response was at page 534 and was sent to Mr Taylor on 29 April 2023. It started:

“I am sorry to hear that you are unhappy with the process. We asked every manager their preference at selection stage at the request of the union, which was considered and where possible were granted. This was at the discretion of the selection manager, and was validated by a second manager to ensure scores and therefore decisions were fair and consistent.”

58 Ms Boniface believed that that draft response was sent by Mr Taylor to the claimant, and the claimant did not challenge that belief in cross-examination.

What happened on and after 1 May 2023 up to the time of the claimant’s resignation

The claimant’s refusal to take up the role of Team Manager responsible for Fresh Replenishment

59 The claimant refused on and after 1 May 2023 to accept the role of Team Manager responsible for Fresh Replenishment.

What was the respondent’s response to that refusal? Part 1

60 That was a cause of concern for both Mr Depass and Mr Furlong. However, we concluded, they did their best to persuade the claimant to accept the role. The claimant said that she was not spoken to by either Mr Depass or Mr Furlong in that regard before, on 31 July 2023, Mr Furlong had a meeting which he recorded as a “let’s talk” meeting, the record of which was at page 562, which was brief and to the point. “What we talked about” was recorded (by hand: the parts recorded by Mr Furlong were hand-written) as “Taking Fresh Team Manager Role”. The “actions or agreed outcomes” were recorded as: “Refuse to take the role. Because [the accountabilities] for a part time manager are not clear”. In answer to the third and final section of the record, which was “Do we need to catch up again?”, this was written by Mr Furlong: “Yes once your appeal [it might have been grievance] result comes through”. We return to what happened at the Brent Cross store so far as relevant in paragraph 72 below, as it is convenient first to refer to what happened as far as the grievance procedure was concerned.

The claimant’s grievance

61 On 31 May 2023 the clamant sent the email at page 536 to Mr Depass and Ms Boniface, which was in these terms.

“This is the second time at the request of the union I am formally raising a grievance against the process of the change to management structure announced by the company in January 2023.

We were in the beginning asked a preference as to stay or leave my preference was made very clear that I wanted to leave.

From my understanding we were given a choice, my choice was clear to leave. I do not know why without further consultation I was then put through a selection pool and then given a job which is completely different from what I have done in my 22 years in the company.

I therefore feel that there was no consistency of the business in the application process and this needs to be addressed formally.

I asked for a grievance previously and was denied which I think I am entitled to as an employee.

It is clear the business has not followed process and I want this to be addressed as I have a job unfairly imposed on me.

I expect the business to address this with me formally in the nearest future.

I have raised a few concerns which have not been addressed satisfactorily, job share hours, hours of working and accountability etc.”

- 62 Ms Boniface responded by email on 14 June 2023. The email was at pages 728-729 and was short. In it, Ms Boniface asked this:

“Please can you provide me with evidence of where the company has broken it’s process and evidence of where you were offered redundancy? This will help me understand what it is best to do moving forward.”

- 63 The claimant responded on 16 June 2023 in her email at pages 727-728. It included this passage:

“In the first brief that was read out to us as managers and which I got colleagues that can attest to we were told that managers whose jobs have gone will be offered redundancy . We all left that meeting as managers working out that everyone whose job had gone will get redundancy. I do not recall at any point that any conversation was logged .I was never told that there will be a selection criteria.

There is no transcript signed clarifying what was said or agreed. That alone is reasonable grounds to raise a grievance against the process. As a business nothing was documented or agreed as to what was discussed.

My new role given is a completely different role from my previous job.

Let me recap what my issues are and more clarity can be given .

I left a meeting believing I would get redundancy .I never knew there was a selection criteria until I was offered a job which is completely different from what I have done in 22 years very demanding and impossible to achieve on a part time basis I made it clear I wanted to leave I was at no point consulted to say I was put into a selection criteria I was given a fresh role without ascertaining my suitability for the job .that was not was not what I was meant to believe .there is no integrity of the process. The new job offers me has completely different responsibilities.”

- 64 On 3 July 2023, Ms Boniface sent the claimant the email at page 727 saying that the respondent would permit the claimant to press as a grievance her “concerns to be heard regarding being treated differently regarding the language used”, but that:

“To be clear, we will be unable to hear any concerns in regards to the structure change process or change of department as this has been followed correctly and as agreed with Usdaw through the collective consultation process.”

- 65 Ms Boniface asked Mr Basquil to hear the grievance. For the sake of brevity, we conclude our description of the grievance procedure followed and what happened in that regard by quoting paragraphs 37-40 of Ms Boniface’s witness statement (which we accepted):

- “37. Geraldine’s grievance was heard fully and fairly by Conor, who interviewed all Team Managers at Brent Cross, as well as the Lead Manager and Store Manager regarding the redundancy announcement and process (pages 563 - 583). Geraldine’s grievance was not upheld on the basis that it was found that she had not been misinformed or misled during the process and the correct guidance had been followed throughout (page 588).
38. Geraldine sent me an email on 10 August 2023 appealing her dismissal outcome primarily on the ground that she felt Conor Basquil had failed to understand the issues (page 601 – 602).
39. I responded to Geraldine’s email on 14 August informing her that I would confirm shortly who would be hearing her appeal (page 600). However, on 15 August 2023 Geraldine commenced a period of sickness absence due to stress at work and panic attacks (page 604). I had started looking for an appropriate appeal manager, but later the decision was made, taking advice from our Colleague Relation experts, to pause Geraldine’s grievance appeal until she was well enough to attend work and any necessary meetings.
40. Geraldine subsequently submitted another fit note on 21 September 2023 on the basis of chronic kidney disease (page 605) and so her grievance appeal remained on pause. At no point, as far as I am aware, did Geraldine raise any concerns about her appeal being paused or ask for it to resume whilst she was on sick leave.”

What happened during the period of the claimant’s sickness

- 66 There was a note at page 608 which purported to have been written by Mr Furlong and to which he attested in paragraph 42 of his witness statement in the following manner.

“During Geraldine’s sickness absence we maintained an appropriate level of contact in accordance with the Sickness Absence Policy (pages 192 - 227) and her wishes. I phoned Geraldine on 29 August 2023 to check on her wellbeing and she made it clear that she did not want to speak to me and so I took a step back and kept contact to what was necessary (page 608).”

- 67 The claimant did not cross-examine Mr Furlong on that evidence, but during her closing submissions, which she made after Dr Hill had made his submissions on behalf of the respondent, she said that the document at page 608 was false and that Mr Furlong had not called her on 29 August 2023. In the circumstance that that evidence had not been challenged, and given that we found Mr Furlong to be an honest witness, doing his best to tell the truth, we were driven to the

conclusion that the document at page 608 was what it purported to be and that it was a genuine record of Mr Furlong having telephoned the claimant on 29 August 2023.

68 In paragraph 43 of his witness statement, Mr Furlong said this.

“On 20 September 2023 I contacted Geraldine via WhatsApp (page 734) to arrange a wellness meeting in accordance with our Sickness Absence Policy (page 212). The aim of this meeting was to discuss her condition, any support we could offer to facilitate a return to work, and to raise the possibility of an occupational health referral. The meeting was scheduled for 22 September 2023, but Geraldine did not attend, I believe because she said she could not get a union representative.”

69 The claimant complained about what happened in that regard. The WhatsApp messages at pages 734-735 showed that the claimant was invited to a “Wellness Meeting” at 2pm on 22 September 2023 with Mr Furlong, and he added, after sending a photograph of a letter containing that invitation: “We can do over the phone”, and “Hope you are well”. The claimant responded: “Good evening”. “The meeting can be held on Monday provided I can get a rep failure to get one we would have to postpone”. “Thanks”. Mr Furlong then replied simply: “Ok”. The claimant then messaged Mr Furlong at 10:54 on 25 September 2023: “Morning”. “Are u at work?”, and Mr Furlong responded: “Sorry on holiday for a week”. The claimant then replied: “OK no worries”. “Was going to come in as said earlier on”. “I have sent a sick note to Sandy”.

70 During the hearing before us, but only when she was being cross-examined, the claimant said that she went to the store in the morning of 25 September 2023 and (1) only then did she discover that Mr Furlong was on holiday, and (2) she “handed” her sick note to a colleague by the name of Sandy. That did not tally with the texts which we set out at the end of the preceding paragraph above. In any event, Mr Furlong was cross-examined on this, and his evidence was: “I misread the message about the meeting being on Monday; I did not realise that I would be on holiday on Monday.” We accepted that evidence.

71 At no time was the claimant informed that her grievance appeal was being paused while she was absent from work on account of sickness.

What was the respondent’s response to the claimant’s refusal on and after 1 May 2023 to accept the role of Team Manager, with responsibility for Fresh Replenishment? Part 2

72 As we say in paragraph 60 above, the claimant’s evidence was that she was not spoken to about her refusal to accept the role of Team Manager with responsibility for Fresh Replenishment before 31 July 2023. Mr Depass and Mr Furlong both gave evidence that they did speak to her informally on a number of

occasions about that refusal, and we accepted that evidence if only because we found it inconceivable that they would not have done so. Mr Depass' witness statement contained this passage.

“60. Around April 2023 I became aware that a vacancy had arisen at the Hackney Superstore as a part-time Team Manager responsible for the “Service” area, which included responsibility for checkouts, desks, trolleys and PFS. The Hackney Superstore was in easy travelling distance for Geraldine and a part-time Service role would ostensibly resolve all of Geraldine's concerns regarding Fresh Replenishment. As such, I spoke to Geraldine and raised the possibility of applying for this role as an alternative to moving to Fresh Replenishment at Brent Cross. Geraldine completely refused to consider this and expressly told me that she would not take any role offered to her in Brent Cross or elsewhere and that she wanted to be made redundant. She had made it unequivocally clear that her primary concern was that she wanted to be made redundant, and her response indicated to me that her objections to the Fresh Replenishment role were disingenuous.

61. On 1 May 2023 the remaining Team Managers at Brent Cross formally took on their new areas of responsibility but Geraldine continued to refuse to do so. Gerry and I continued to discuss this with her to no effect.

62. As a result of Geraldine's refusal, from 1 May 2023 we had to resource alternative cover for the departments under the Fresh Replenishment purview, including asking other managers to work overtime and requiring Shift Leaders to cover the area.

63. During this period, Geraldine was picking up ad-hoc management tasks around the store and for the most part was doing whatever she wanted. Her attitude during this time was extremely poor and this was having an impact on the morale of the rest of the team. However, we knew that Geraldine was in contact with HR regarding her concerns and that she was seeking to raise a grievance in respect of the restructuring, and so we put off any further action for the time being.”

73 The claimant challenged that evidence quite strongly, taking issue with the proposition that she was during that period “doing whatever she wanted”. She also said that she had good reason to refuse to seek the job at the Hackney store because in the course of doing the job there she would be forced to tackle shoplifters and that would make her feel uncomfortable walking around her neighbourhood. However, the claimant accepted that she steadfastly refused to undertake responsibility as Team Manager for Fresh Replenishment, and that was at the heart of her own case. It was her case that Mr Depass was happy for her to do other work, such as managing sickness absences, and undertaking

audit work in relation to the petrol filling station, but we accepted Mr Depass' evidence to us that the claimant picked and chose what work she did, and that he stood back and did not take her to task because of her ongoing grievance. We concluded that he and Mr Furlong stood back also because they continued to hope to persuade the claimant to take up the role of Team Manager with responsibility for Fresh Replenishment. However, we also accepted that by the end of July 2023, which was three months after the claimant had been intended to take up responsibility for Fresh Replenishment, Mr Depass was being put under pressure by his line manager to do something about the situation, and that what Mr Depass said in paragraphs 65-68 of his witness statement was apt, including that (1) the claimant's "ongoing refusal to take on the Fresh Replenishment role had become extremely disruptive and could not be allowed to carry on", and (2) "She was essentially refusing to do her job."

- 74 We add that Mr Furlong said that he spoke to the claimant at least once every two weeks, but mostly once a week, seeking to persuade her after 1 May and before 31 July 2023 to take up responsibility for managing the Fresh Replenishment team, and that we accepted that evidence, despite the claimant's vehement denial of it.
- 75 Mr Furlong's evidence on what happened on and after 31 July 2023 was in the following paragraphs of his witness statement, which we accepted.

'33. I sat down with Geraldine on 31 July 2023 (page 562) and 2 August 2023 (page 585) to again request that she moved to the Fresh Replenishment role and these conversations were documented by way of "Let's Talks". She continued to refuse to do the role and in doing so raised the same objections which had already been addressed with her at length.

34. At this point, we could no longer tolerate Geraldine's behaviour. We had been extremely lenient with her thus far to give her the opportunity to raise any concerns that she had and come around to moving into Fresh Replenishment. We discussed her concerns with her at length, addressed them in full and reassured her that she was capable to fulfil the role and would be supported. No matter what we said to her, she was not interested and flatly refused to do the role or indeed any other role offered. She was completely refusing to do her job.

35. Accordingly, it was decided to refer Geraldine to a disciplinary investigation for refusing a reasonable management request (page 584).

36. The Disciplinary Policy (pages 175 - 184) sets out the circumstances in which an investigation might be conducted, and states as follows (page 177):

“If an allegation has been made against you, or if there are areas of concern regarding your conduct, this will be looked into, either by your manager or another manager. This is called an investigation.”

38. On 2 August 2023 I handed Geraldine a letter inviting her to an investigation meeting on 4 August 2024 (page 584). Geraldine sent me a message via WhatsApp later that day saying that she would not attend the meeting because she did not have a representative and because her grievance was ongoing (page 732).

39. After Geraldine’s grievance outcome was confirmed on 7 August 2023 (page 586) I invited her to another investigation meeting to take place on 11 August 2023 (page 599). She did not attend this meeting because she was unwell.”

76 After the claimant went home on 9 August 2023, she did not return to work before resigning in the manner to which we refer in paragraph 85 below. The letter at page 599 was dated 9 August 2023, and it was, we concluded, handed to the claimant before she went home from work on that day. That was on one of the two days to some of the events of which we now turn.

What happened on 7 and 9 August 2023

77 It was not in the list of issues for determination that the claimant alleged that she had been mistreated by Mr Depass on 7 and 9 August 2023. Only on the first day of the hearing before us did the claimant make that allegation. She did so in the witness statement which she put before the respondent and us at the start of the hearing. That was done in the following two paragraphs.

“On the 7th August, I had the results of my grievance. I was in the confidential room when the store manager sent for me. I told my colleague I was trying to make calls with Usdaw and I will join them later because I had to brief the union rep on the result of the grievance and the next step . She came back insisting that I had to be in the meeting. I was made to understand I was the topic of discussion at the meeting and I was ridiculed.

On the day i went home sick, I was still looking after SYA [which concerned the management of sickness absences at the store], and during the team 5 meeting on the 9th August I was asked to talk through SYA. I had not been feeling great, so I asked for someone else to do it and the store manager insisted that I do it in an abrupt and harsh manner. I took the folder and read out the figures but I soon became breathless and only after my shift went home sick.”

- 78 On 12 and 13 February 2026, while we were deliberating, the claimant sent two emails. The first was sent late on 12 February 2026 and was in these terms.

“I would like to add the last straw doctrine into my submission because I think it ties into my case .

The Tribunal is invited to apply the principles set out in *Omilaju v Waltham Forest IBC* (2005) namely that the final act need not be serious in isolation, provided it is not entirely trivial or innocent and forms part of a continuing course of conduct

This ties in with the incidents of the 7th and 9th of August .

This events took place and can be proven .”

- 79 In the second email, sent at 09:30 on 13 February 2026, the claimant forwarded a WhatsApp message from Smita Joshi, in the following terms.

“My name is Smita Joshi , me and Geraldine Casper were colleagues at Tesco Brent Cross .

I was present at the daily Team 5 meeting , I don't remember the exact date but was aware of the phone call I made by Antoine who was the store manager at the time . He was very agitated and insisted that Geraldine attend the team 5 meeting . After the call Antoine asked me to go and convey to her in person that she must attend the meeting, which I did and upon which I found her in a really distressed state as she was preparing a response and had some paper with her . I conveyed this back to her but he insisted that she must attend the meeting and had a rant about Geraldine .

On second occasion a few weeks later at a team 5 meeting, Geraldine got distressed and was crying and left the meeting.

Hope this is ok”.

- 80 We noted that the message from Ms Joshi was inconsistent in material ways with the part of the claimant's witness statement which we have set out in paragraph 77 above. In fact, we found what Ms Joshi said to have been more likely to be correct than what the claimant had put in her witness statement.

- 81 Mr Depass was asked in cross-examination about what had happened on 7 and 9 August 2023, and he was unable to recall anything about the claimed events of that day.

- 82 Dr Hill's submissions on this aspect of the claimant's case were as follows.

“80. On 7 August 2023, C was provided with the outcome to her grievance, at [586]-[588].

81. C alleges that on 7 August, she was “ridiculed” in relation to a JTPM meeting at which she was unable to attend. C's account of this allegation lacked any meaningful detail. She was unable to express

what was said or how she was ridiculed. It was not supported by any witness evidence, and should be rejected in its entirety.

82. On 9 August 2023, following the grievance outcome, C was invited to an investigation meeting to be held on 11 August 2023, to discuss allegations of refusing a reasonable management request [599].

83. On 9 August, C alleges that Mr Depasse spoke to her in an abrupt and harsh manner, at a Team 5 meeting, after she told him she was unwell. She could not recall when challenged what words he used, or how she could say he was being harsh or abrupt. Mr Depasse gave a credible account of how he would have responded to her had she raised an issue, and the Tribunal is invited to prefer Mr Depasse's evidence that this is unlikely to have occurred as alleged."

83 We concluded that what happened on 7 August 2023 was that the claimant refused to attend a meeting which Mr Depass had arranged and at which she should have attended. He was then insistent that she attend it, but she still refused to do so. In that regard, she was in open defiance of Mr Depass in the same way that she was in open defiance of him by refusing to accept responsibility as Team Manager for Fresh Replenishment. He may well have made some critical comment in response at that time, but we could not make a finding of fact about what it was, since the claimant put before us no evidence at all about the words used.

84 As for what happened on 9 August, the lack of particularity in the evidence of the claimant was comparable. All that Ms Joshi could say was that the claimant was upset, but that was about the claimant, not about what Mr Depass did. We were prepared to accept that Mr Depass expressed irritation towards the claimant, but we also concluded on the balance of probabilities that it would have been surprising if he had not exhibited, possibly inadvertently, at least some frustration arising from the claimant's continued refusal to do the work which she had been assigned.

The claimant's resignation

85 On 2 October 2023, the claimant resigned in the email at pages 609-610. That email was an important indicator of the reasons why the claimant resigned. We do not set out the text here, as it is not necessary to do so. It is sufficient to say that the reasons given included the following assertions.

85.1 "I had a choice FACT and was robbed of that choice by a selection creteria."

85.2 "My colleague who passed the selection criteria was offered redundancy
My colleague who failed the selection criteria was offered to job share and it was unsuitable and so he took redundancy.

WHY WASN'T IT GIVEN TO ME?"

Our conclusions on the claims of the claimant

Introduction: the manner in which we approached the claimant's claims

86 We took the claims of the claimant to be as they were pressed at the end of the hearing before us, i.e. including by taking into account the emails sent on 12 and 13 February 2026 as we describe in paragraphs 78 and 79 above. We did so despite the fact that the basis for the claimant's claim to have been dismissed constructively expanded during the hearing, not only by the addition of a claim that the events of 9 August 2023 to which we refer in paragraphs 77 and 79 above were the last straw, but also on the basis, advanced in oral submissions, that the failure to inform the claimant that her appeal against the dismissal of her grievance had been put on hold while she was absent from work on account of sickness was part of the conduct of the respondent on which the claimant relied in claiming that there had been a breach of the implied term of trust and confidence. For the avoidance of doubt, we took into account all of the claimant's closing submissions, including that the respondent had failed to comply with its "duty of care" and had failed to apply "due diligence" to her.

Age discrimination and/or harassment

87 We saw nothing on the facts as found by us from which we could conclude, in the absence of any explanation from the respondent, that the claimant's selection to be retained in the employment of the respondent and not be dismissed with a redundancy payment, was to any extent because of the claimant's age. There was in addition nothing overt to justify in any way a conclusion that the claimant's selection to be retained and not dismissed for redundancy was related (within the meaning of section 26(1) of the EqA 2010) to her age. In any event, we were completely satisfied by the respondent's evidence that the claimant's age had nothing whatsoever to do with her being selected to be retained and not dismissed for redundancy. Indeed, the fact that Mr Thevarajah was two years older than the claimant was contrary to the proposition that the claimant was treated differently, or less favourably to any extent, because of her age.

Constructive dismissal

88 We concluded that the claimant's contract of employment empowered the respondent to require the claimant to work as a Team Manager, managing Fresh Replenishment.

89 The real reason why the claimant resigned was that she had, in January 2023, for the first time considered the possibility of leaving her employment with the respondent with some compensation, and she liked the idea very much. She heard (or, it might be better to say, remembered) only that it was an option, not

that her choice was not determinative and that it would be capable of being determinative only in the event of a tie break, as shown by what we say in paragraph 36 above. Even then, it was open to the manager carrying out the redundancy process to decline to give effect to the preference as long as (we concluded, applying the implied term of trust and confidence) it was not for capricious reasons. That was because of what was said as set out in paragraph 39 above, including that “The final decision sits with the Store Manager.”

- 90 Rather than it being capricious to retain the claimant, Mr Depass had very good reasons for wanting to retain the claimant as a Team Manager. Accordingly, the decision not to dismiss the claimant was far from being capricious. That was clear from all of the evidence before us, including the lengths to which Mr Depass and Mr Furlong went in seeking to persuade the claimant to take up her new responsibility for Fresh Replenishment.
- 91 The fact that Mr Depass and Mr Furlong did not start the disciplinary procedure until 31 July 2023 was the result of both the desire of both of them to retain the claimant as a Team Manager at Brent Cross and the fact the claimant had stated a grievance about the situation. They started that process because (as we say in paragraph 73 above), Mr Depass was being put under pressure by his line manager to take some concrete action about the situation. We concluded that what happened in the form of (1) Mr Furlong holding two “let’s talk” meetings on 31 July 2023 and 2 August 2023, and then (2) on 2 and 9 August 2023 inviting the claimant to an investigatory meeting, was done for reasonable and proper cause, even though the outcome of the claimant’s grievance was not known until 7 August 2023.
- 92 There was in our view nothing wrongful in the manner in which the respondent dealt with the claimant’s grievance except that it did not inform her that it had put her appeal on hold while she was absent from work because of sickness. However, bearing in mind the facts that (1) the grievance related to the circumstances which had led to the disciplinary investigation which had been commenced and during the course of which the claimant became sick, and (2) the grievance was founded on what we found was the false premise that the claimant’s choice was determinative, the failure to inform the claimant that the grievance appeal was not going to be determined was not so seriously wrong that it amounted in itself to a breach of the implied term of trust and confidence. Nor was there a breach of that term arising from that failure taken together with such frustration as we have found Mr Depass exhibited on 7 and 9 August 2023.
- 93 We could not see in the facts as found by us evidence of an intention to breach in the future the implied term of trust and confidence by assessing the claimant’s performance as if she were a full-time employee, despite the fact that she was only part-time.

- 94 Given what we say in paragraphs 47 and 48 above about training, we concluded that appropriate training was available to the claimant at all material times, if nothing else via the respondent's training portal, and that it was the respondent's intention to give the claimant time to undertake that training and to take that time into account in assessing her performance in the future.
- 95 Equally, we concluded that the respondent intended to do what it reasonably could to assist the claimant in regard to any physical difficulties that she might have as a result of any medical conditions of hers.
- 96 In the circumstances as they stood by the time of the claimant going home sick, on 9 August 2023, and at all times after then until the claimant's resignation on 2 October 2023, the only objectively-justifiable inference was that the respondent, having been made aware (if it was not already aware) of the claimant's capacity to stand firm, had no intention of seeking to pressurise the claimant in any way to work more than her contracted hours of 25 a week plus any additional hours which could justifiably be said to be reasonably required, as was possible under the terms of her employment the relevant part of which we have set out in paragraph 20 above.
- 97 In that regard, the only option that the claimant had as far as the law of contract was concerned was to take up the new responsibility and, if she had been treated in breach of the implied term of trust and confidence, resign and claim constructive dismissal. Her resignation here was, in that regard, premature.
- 98 We also saw nothing substantially wrong in the way in which Mr Furlong dealt with the claimant during her period of absence through illness. What he did wrong was to forget that he was on holiday in the week after Friday 22 September 2023. That was not even such as to contribute to an accumulation of conduct which together might have constituted a breach of the implied term of trust and confidence.
- 99 In all of the circumstances as we have found them as stated above, there was in our judgment no conduct on the part of the respondent which was "of such a grave and weighty character as to amount to a breach" of the implied term of trust and confidence. In our judgment, the respondent was not at any material time in breach of that term.
- 100 As a result, the claimant resigned and was not dismissed constructively.

In conclusion

- 101 For all of the above reasons, none of the claimant's claims succeeded.

Approved by Employment Judge Hyams

Case Number: 3310707/2023

Date: 16 February 2026

SENT TO THE PARTIES ON

18 April 2026

FOR THE TRIBUNAL OFFICE