Case Number: 2302959/2018

THE EMPLOYMENT TRIBUNAL

SITTING AT:	**LONDON SOUTH**	
BEFORE:	**EMPLOYMENT JUDGE MARTIN**	
MEMBERS:	**Mrs Bailey** **Ms O'Hare**	
BETWEEN:	**Ms Mariam Karim**	**Claimant**
	and	
	Greensleeves Housing Trust	**Respondent**
ON:	**16-18 December 2019**	

APPEARANCES:

For the Claimant: **Mr J Duffy - Counsel**

For the Respondent: **Mr Johnson - Consultant**

JUDGMENT

The unanimous judgment of the Tribunal is that the Claimants claims are dismissed.

REASONS

1. By a claim form presented to the Tribunal on 9 August 2018 the Claimant claimed that the Respondent had constructively unfairly dismissed her, had indirectly discriminated on the ground of sex and treated her unfavourably for a reason related to taking maternity leave and pregnancy. The Respondent denied this claim in its response presented on 5 October 2018. Essentially this claim arises following the Claimant taking period of maternity leave and her return to work when that leave ended.

The issues

2. The issues that the Tribunal had to determine were agreed by the parties:

3. Constructive unfair dismissal

   3.1 The Claimant alleges that the Respondent breached both implied and express terms of her contract as described in her particulars of claim. The Tribunal will have to determine whether the Claimant can show:

      3.1.1 That the Respondent conducted itself as alleged and if so, whether individually or cumulatively it amounted to a fundamental breach of the said contractual terms. The Claimant alleges that the content of the Respondent's email of 10 May 2018 (which confirmed a requirement for her to undergo re-induction training at a location involving a two-hour commute) was the last straw.

      3.1.2 That she resigned in response to the breach/es

      3.1.3 That she did not delay too long before resigning thus affirming the contract and losing the right to claim constructive dismissal.

   3.2 If the Claimant was constructively dismissed, the Tribunal will have to determine whether the dismissal was fair or unfair having regard to section 98 (4) of the Employment Rights Act 1996.

   3.3 If unfair:

      3.3.1 whether the Respondent can show that it would or might have dismissed the Claimant in any event (Polkey) such that any compensatory award would be reduced/adjusted.

      3.3.2 Whether the Respondent failed to deal with the Claimant's grievance and thus unreasonably failed to comply with the ACAS code of practice such that compensation should be subject to an uplift.

   3.4 Discrimination on the grounds of maternity under section 18 (4) of the Equality Act 2010:

      3.4.1 requiring the Claimant to work on day shift rather than nightshift;

      3.4.2 dismissing the Claimant.

      3.4.3 If so, has the Claimant prove primary facts from which the Tribunal could properly and fairly conclude that it thus treated the Claimant unfavourably because she exercised the right to ordinary or additional maternity leave?

      3.4.4 If so, what is the Respondent's exclamation? Does it prove a non-

discriminatory reason for any proven treatment?

3.5 Indirect discrimination under section 19 (1) of the Equality Act 2010

3.5.1 the Tribunal will have to determine

3.5.2 whether the Respondent applied the following provisions, criteria and/or practices (PCPs)

3.5.3 the requirement for employees who have been away from work for a period of six months or more to undergo re-induction training;

3.5.4 the requirement that such re-induction training be undertaken during the day.

3.5.5 Whether the application of the PCPs, or either of them, put women at a particular disadvantage when compared to men.

3.5.6 Did the application of the PCPs, or either of them, but the Claimant at that disadvantage?

3.5.7 Can the Respondent show that the treatment was proportionate means of achieving a legitimate aim? The Respondent relies on the following:

3.5.8 the requirement to have a care worker sufficiently trained and competent to carry out their duties.

3.5.9 The requirement for the delivery of training in a care establishment to be undertaken during day shifts when such training is demonstrable, rather than nightshift when training is less likely to be achievable.

3.6 Breach of contract (notice pay)

3.6.1 upon the unopposed application by the Claimant her claim is amended to include a claim for notice pay.

The Law

4. The law as relevant to the issues:

4.1 s95 Employment Rights Act 1996 provides that an employee is dismissed by his employer if the contract under which he or she is employed is terminated by the employer (whether with or without notice) or the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice, by reason of the employer's conduct.

4.2 ***Western Excavating (ECC) Ltd v Sharp*** **[1978] ICR 221 CA**, held that an employee would only be entitled to claim that he or she had been

constructively dismissed where the employer was guilty of 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'. It was not sufficient that the employer was guilty of unreasonable conduct - he must be guilty of a breach of an actual term of the contract, and the breach must be serious enough to be said to be 'fundamental' or 'repudiatory'.

4.3 ***Woods v WM Car Services (Peterborough) Ltd*** **[1981] IRLR 347** held that to constitute a breach it is not necessary that the employer intended any repudiation of the contract: the issue is whether the effect of the employer's conduct as a whole, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.

5. Indirect sex discrimination

5.1 Section 19 of the EqA provides:

A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim."

5.2 Indirect discrimination is when there's a provision criteria or practice which applies to everyone in the same way, but it has a worse effect on some people than others. i.e it puts the employee at a particular disadvantage. The provision criteria or practice can be formal or informal. It can be a one-off decision or a decision to do something in the future. A key characteristic of indirect discrimination is that it applies to everyone in the same way. Therefore, it follows that if something only applies to some people who all have the same protected characteristic, it would not be indirect discrimination. This type of discrimination can be objectively justified

6. Pregnancy discrimination

6.1 S18(4): A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional

maternity leave.

The hearing

7. The Tribunal heard from the following witnesses:

   7.1 For the Claimant: The Claimant

   7.2 For the Respondent: Ms Beverley Simms Dick and Mrs Susan Polden

8. The Tribunal had an agreed bundle of documents comprising 116 pages, a supplementary remedy bundle and a bundle of witness statements.

The Facts that the Tribunal found

9. The Tribunal found the following facts on the balance of probabilities having heard the evidence and read the documents referred to by the witnesses. These findings of fact are limited to those findings that are relevant to the issues to be determined and necessary to explain the decision reached. Even if not specifically referenced below, all evidence was considered by the Tribunal.

   9.1 The Claimant was initially employed by the Respondent as a bank care worker. This enabled her to care for her children. She applied for a permanent Night Care Assistant role as her husband could look after the children when he came back from work. The Claimant was employed as a permanent night worker from 8 March 2016 and signed a contract of employment on 8 March 2016. This contract described her as a "Care Assistant" but did not specify whether this was night or day shifts. The working week is set out as "**you are required to work 30 hours per week on a rota basis, to include some weekends**". There is a clause in the contact about flexibility which says: **"The Trust may require you to perform a reasonable amount of work in addition to your normal hours of work, depending on the needs of the business**". This included flexibility as to hours and place of work.

   9.2 The working week was for 30 hours. This equated to three ten-hour shifts per week. The Claimant had previously signed a job description when a bank worker for day shifts and another job description for night shifts. In the two-year period before going on maternity leave in 2017 she only worked nights, although she would help out with other shifts if needed and attended training during the day when requried.

   9.3 The Respondent is regulated by the CQC and local authority and is required to ensure that all staff are safe to work to ensure that the health and safety of residents, colleagues and themselves is maintained. There are five areas which require mandatory training and without current training in these areas means that the employee is not able to undertake that type of work. For example, manual handling. These five areas are trained annually. The Claimant's training on all the five mandatory areas had expired during her maternity leave.

9.4 At the home the Claimant worked in there were limited staff on night shifts. There was one Senior and two Care Assistants. At other homes there were more staff which meant that training during the night shift was possible, for example at Sevenoaks and Tunbridge Wells. This was not possible in the home in which the Claimant worked.

9.5 The Respondent uses external trainers for some aspects of the mandatory training and these training sessions are done during the day on a date which many staff can attend. It was not possible or financially feasible for the Respondent to organise one to one training during the night as the Claimant suggested in her evidence it could have done.

9.6 On 14 November 2016 the Claimant notified the Respondent that she was pregnant with her third child and would be taking maternity leave from 10 April 2017. The Claimant complains that Ms Simms Dick did not seem pleased and that her congratulations was not sincere. The Tribunal found no evidence to substantiate this. The Claimant was absent on maternity leave for one year. During that time there was no communication between the Claimant and the Respondent.

9.7 As often happens during an extended period, the home went through many changes. When the Claimant returned to work there were significant differences. For example, many residents had changed. The home cares for people over the age of 90 and inevitability the clientele will change. When the Claimant's maternity leave period ended, and she was ready to return to work there were between 5 and 10 new residents out of a total complement of 28. Additionally, there was a new computer system, new equipment and new policies and procedures.

9.8 The Claimant had a meeting with Ms Simms Dick on 27 February 2018 to discuss her return to work which was agreed to be on 9 April 2018. As the Claimant had been absent for a prolonged period and needed her mandatory training updated and to be trained in other changes within the home Ms Simms Dick advised the Claimant that she would need to be re-inducted or retrained before she could work at night. Given the limited numbers of staff working at night, the night staff had to be, and had to be seen to be, sufficiently trained in all areas as they would be required to make autonomous decisions as situations arose with residents. It was Ms Simms Dick's view that a period of 12 weeks was necessary to complete this training. This was discussed with the Claimant on 27 February 2018.

9.9 The Tribunal accepts Ms Simms Dick's evidence she intended this retraining to be at shifting times of the day so the Claimant could get to know all the residents and their needs at every point during the day and night. The intention was to start with a mid-shift, and then move to other shifts to cover all aspects and to get to know the residents.

9.10 Ms Simms Dick acknowledged that there were childcare issues for the

Claimant. The Tribunal was taken to a file note which makes clear the times required. The first week was to be from 9 – 5 pm and then the times would change. It was anticipated that the Claimant would work her contracted 30 hours during this retraining period.

9.11 This discussion was confirmed by letter dated 7 March 2018 which says that the Claimant was required to work on day shifts in this period.

> **"Returning to work**
>
> **You explained you wished to return to work as soon a s possible and offered to carry out additional shifts due to financial reasons. As explained at the time of our discussion; all staff that have been away from the home for a period of 6 months or more would need to undertake a period of re-induction. There have been many changes since you last worked in the home, namely residents and staff and changes to policies and procedures.**
>
> **All staff at Queen Elizabeth House are required to work shifts as determined by the rota which is designed to balance the available skills and needs of the residents".**

9.12 The Claimant interpreted this to mean all shifts would be day shifts, whereas Ms Simms Dick says that whilst she was required to work day shifts in this period the shifts were to change to cover all hours and inevitably there would also be night shifts and other shifts at some point. The Tribunal accepts that there is some ambiguity, however in the context of the return to work interview the Tribunal finds that the Claimant would understand that she would be doing a range of different shifts throughout this retraining period. The Claimant did not query this and went to work at 8 am on 9 April as required.

9.13 The intended plan was that Ms Simms Dick was to spend that day with the Claimant discussing her training plan, hours of work and so on. Unfortunately, Ms Simms Dick had to leave the home to deal with a family emergency and as therefore not able to talk to the Claimant. She arranged for a Senior to take the Claimant to a specific training event happening on that day.

9.14 The Claimant complained that there was a payslip from someone else in her locker and assumed her locker had been used and complained that there was no uniform for her. She also complained that she was not put on the rota.

9.15 The Tribunal accept the explanation for the uniform and locker issues which was not challenged. Uniforms are the responsibility of the employee once they have been issued with one, and therefore no uniform was put out for the Claimant. It was assumed she would bring her own. In relation to the lockers the explanation was that papers can fall from a higher locker into the Claimant's locker. In any event it appears the Claimant still had access to her locker even after being absent for a year. The Respondent's evidence was not challenged. The

Tribunal does not consider that it would have been a breach of contract in any event if her locker had been used by someone else in the peirod she was absent from work.

9.16 Whilst undergoing the retraining the Claimant was supernumerary. This meant that she was not put on the rota in the normal way and this explains why she did not see herself on the rota when she returned to work. Her working hours were going to be discussed with Ms Simms Dick however due to Ms Simms Dick having to leave work at short notice this did not happen. It is not known from the evidence whether the Claimant was notified of this at the time. At this time the Claimant was still subject to a 12-week retraining programme which she did not agree to.

9.17 There was then a series of emails from 10 April 2018. At 10.51 the Claimant complained about her first day back at work referring to the uniform, locker and rota issues. Ms Simms Dick responded in detail at 14.15 the same day. The Tribunal has considered this email and finds the wording to be quite terse. This was very different to how Ms Simms Dick came across in her oral evidence. This may well have been due to the family emergency she was dealing with. This email said: "**The hours discussed at the time was initially 8.00 to 15.oo as you mentioned you would need to collect your children from school and in time when I am satisfied with your performance, knowledge and behaviour you would be moved to shifts"**. Other matters were set out regarding the locker, payslip and uniform. The Claimant had not attended for work on 10 April 2018, she says because she was not on the rota and this was also addressed in this email.

9.18 The correspondence continued with the Claimant sending an email to Ms Folkes from HR on 11 April. This followed telephone calls that the Claimant had made on 9 April 2018 to find out when she was working next. The upshot was that Ms Polden stepped in. She considered that a face to face meeting was the best way to move forward to seek a resolution. There were a series of emails setting up a meeting and eventually a meeting was held on 20 April 2018. The meeting was chaired by Ms Polden and Ms Sims Dick was in attendance. Ms Forde took notes. The Claimant attended accompanied by her Unison trade union representative, Mr Paul Coles. The Respondent had not responded to Claimant's emails of 10 April 2018 as it intended that the meeting would be the correct forum to consider them as it had been convened to resolve these issues.

9.19 The Tribunal find that the relationship between the Claimant and Ms Simms Dick was friendly before she went on maternity leave, this was Ms Simms Dick's evidence and it is shown out by the return to work meeting in February 2018. Then because of the difference in view about the training required on the Claimant's return to work their relationship soured.

9.20 On 18 April 2018, before the meeting, the Claimant sent a grievance letter. Ms Polden telephoned the Claimant and it was agreed that the grievance would be put on hold pending the outcome of the meeting on 20 April. Therefore, Ms Polden did not specifically refer to the grievance letter at the meeting.

9.21 In the bundle were meeting notes of the 20 April 2018 meeting. The Claimant said the notes were not an accurate reflection of the meeting. Both Ms Simms Dick and Ms Polden said that they were. The Tribunal notes there was a dedicated note taker at that meeting. The Claimant has not put forward any notes that either she took, or her union representative took during the meeting. On balance the Tribunal accepts that the notes are an accurate reflection of the meeting. The Claimant did write with what purports to be her correction to the notes, but which were largely the Claimant again putting her point forward rather than amending the notes themselves. It is significant that Mr Coles did not criticise the notes and in his witness statement said the notes were accurate. It was only in evidence that he resiled from this but given the passage of time was unable to pinpoint what was inaccurate and simply referred to the Claimant's note. Ms Polden did not agree that the notes were inaccurate but accepted the Claimant's note and put this on the file without changing the minutes themselves.

9.22 In this meeting there was a discussion about the length of retraining required. Ms Simms Dick was of the view that 12 weeks was appropriate. The Claimant disagreed. In addition to the length of the retraining period, the structure of the training shifts was discussed as well as how the shifts would change over the training period so that the Claimant got to know the residents at all times of the day and night. During this meeting Mr Coles specifically requested a period of 4 weeks retraining. He also suggested splitting up day and night shifts. The splitting of shifts was considered unsafe and not possible by the Respondent. There was general discussion about various options regarding retraining and hours and shifts and other homes where the Claimant could be trained on the night shift. The Claimant was not prepared to go to other homes for training on night shifts.

9.23 Before the Claimant went on maternity leave there had been an incident which had been unresolved. This was considered by the Respondent to be a performance issue which still needed to be addressed. This was something that upset the Claimant.

9.24 At the end of the meeting the Claimant handed in a sick note. She did not return to work before resigning. Ms Polden said that had the Claimant told her she had been signed off work, she would not have gone ahead with the meeting as she would have wanted the Claimant to have recovered before addressing the issues. She initially said she would not write to the Claimant after the meeting as she was on sick leave but did so when the Claimant requested a response via Mr Coles

in an email he sent on 25 April 2018. Ms Polden responded on 27 April 2018 to say that she was out of the office that week but would respond the following week. Mr Coles chased Ms Polden up on 5 May 2018. The Tribunal accept that Ms Polden had the Claimant's best interests in her mind when considering whether to write to her after the meeting.

9.25 Following this meeting there were further communications between Ms Polden and Mr Coles. The email of 25 April 2018 from Mr Coles alleged that the Respondent had discriminated against the Claimant, discussed training and said "**Mariam has indicated that she would be prepared to work for 1 month on days. Tuesday to Friday between 9-3 pm, although this will cause her immense difficulty with childcare. While Mariam accepts that it is reasonable for her to do a short re-induction to bring her up to date with changes to systems she strongly disagrees that 12 weeks is "reasonable"……".** In addition, Ms Polden said that there was telephone communication with Mr Coles. Clearly there was an ongoing dialogue. At some point, Ms Polden told Mr Coles that the Respondent pay 30 hours for 24 hours work while the Claimant was retraining.

9.26 A letter was sent on 10 May to the Claimant from Ms Polden. This enclosed a revised support programme giving 4 weeks on days which was "**designed to support you on returning to work. As you raised concerns around childcare, it is agreed you can work on days Tuesday to Friday between 9 – 3. During this period you will temporarily paid for 24 hours per week which will commence on your return to work. To be clear, this programme includes the mandatory training you are required to do as previous modules are now out of date. Some of this training may have to be attended at a home other than Queen Elizabeth House to ensure you can complete the relevant training during the four week period. If this training means that you have to work longer hours that the 9 – 3 you will be paid for the additional hours". The letter ends "I do hope the proposed way forward is acceptable for you. Please do not hesitate to contact me on ……. If you have any further queries. I wish you a full recovery to health and we look forward to your return to work at Queen Elizabeth House**".

9.27 On 15 May Mr Coles sent an email to Ms Polden asking for clarification that after the four-week induction the Claimant would be able to revert to night shifts if all was alright. It appears that around this time the Claimant sought separate legal advice and was not communicating with Mr Cole who not knowing this was still pushing for confirmation of the induction period, the shifts after it ended and for the Claimant to be paid 30 hours per week even if working less.

9.28 It is clear from the correspondence from Ms Polden, that she was making proposals or suggestions. This indicates she expected an ongoing dialogue. The Claimant sent a letter resigning on 17 May 2018 saying **"Due to the way I have been treated at work, I hereby confirm this letter as notice of resignation from my position as a night care assistant at greensleeves care trust (QEH) with immediate effect"**. (sic). Ms Polden replied on 17 May 2018 making it clear that the induction period was four weeks and Ms Polden asked the Claimant to reconsider her resignation. At this time Ms Polden thought, quite reasonably, that Mr Coles was still representing the Claimant as she had not been told otherwise. This letter is very clear.

The induction period is to be for four weeks and the Claimant would be paid for 30 hours even if working less. On 22 May 2018 the Claimant confirmed her resignation.

9.29 The Claimant relies on the last straw resulting in her resignation being the 10 May letter which she said confirmed a requirement for her to undergo re-induction training at a location involving a two-hour commute. This does not state that there was a requirement for training to be done at another location but that there may be a need. Ms Polden was clear in her evidence that the training and travelling would be in the Claimant's working hours, and if her hours were exceeded, she would be paid for them.

9.30 The evidence showed that there was an ongoing dialogue from 10 May 2018 as shown by Mr Coles going back to the Ms Simms Dick with more information, asking for clarification on the letter and requesting payment which the Respondent then agrees to.

Submissions

10. Both parties gave submissions which were considered by the Tribunal in deliberations.

The Tribunal's conclusions

11. Having found the facts as set out above the Tribunal has come to the following conclusions on the balance of probabilities:

11.1 The Tribunal first considered the terms of the contract the Claimant had with the Respondent. The Tribunal finds that although the contract does not specify day or night shifts that it was implied through custom and practice that the Claimant worked night shifts subject to the general provisions on flexibility and the need to attend training during the day. This conclusion is reached as the Claimant only worked on night shifts during the two years employment prior to this period of maternity leave save for occasional day shifts and attending training. Her contracted hours were for 30 hours per week.

11.2 The Tribunal then considered the requirement in general terms that the Claimant would need to undergo a period of retraining before being allowed to return to night shifts. The Tribunal finds this was both reasonable and necessary given the regulated environment in which the Respondent operates.

11.3 The Tribunal does not consider that the letter of 10 May 2018 could be considered a last straw. Although a last straw does not need to be a fundamental breach of contract, it does need to be a breach of some sort. Here the Respondent was trying to get the Claimant back to work and to do this she had to be re-inducted and complete mandatory training. The letter does not denote a breach of contract as the terms

were within the general flexibility in the written contract of employment and the concessions regarding pay and hours of work to fit in with childcare. The tenor of the communications was of an ongoing dialogue to reach a mutually satisfactory arrangement rather than something cast in stone.

11.4 The Tribunal finds that the Claimant resigned and was not constructively dismissed. The Claimant has failed to show that the Respondent made a fundamental breach of contract that shows that they no longer wish to be bound by the contract. Quite the reverse is evident. The Respondent wanted the Claimant to continue to work but the Claimant needed further training in mandatory matters and to get to know the new residents and equipment before she could work on nights. The Tribunal accepts that the night shift in particular, requires all staff to be trained given the limited number of staff on duty and the need to make autonomous decision more quickly. There was a on going dialogue.

11.5 In all the circumstances the Claimant's claim for constructive unfair dismissal is dismissed.

12. **Breach of contract**

12.1 Having concluded that there was no dismissal, the Claimant's claim for breach of contract in respect of notice pay is dismissed.

13. **18(4) Pregnancy discrimination**

13.1 The treatment that the Claimant is relying on for this part of her claim is the need to work on day shifts rather than on night shifts for a 12-week period. The difficulty for the Claimant is that the Respondent having considered what the Claimant had to say, reduced the induction period to 4 weeks to accommodate her childcare needs. Although this occurred when the Claimant returned form maternity leave, there was no evidence that this was treatment because of her pregnancy as such. The treatment was because after a period away from the workplace the Claimant's training was out of date.

13.2 The Claimant was treated the same as any other employee who may have been away from the workplace for an extended period for any reason (for example, ill health). The Respondent says that six months absence from the workplace would be enough to require retraining or a re-induction to the workplace. As the Respondent submitted it was the absence, not the maternity leave which was relevant.

13.3 The Tribunal is satisfied that there was a non-discriminatory reason for the requirement to work on days for a period of time. That is because of the regulated environment in which the Respondent operates and the requirement for all staff, including the Claimant, to have completed mandatory training and be familiar with the residents and the equipment.

The Respondent was under a duty to ensure the health and safety of the service user, other care worker and the Claimant and training was necessary to ensure this. The Tribunal accept the reasons given by the Respondent about why training could not have been done during the Claimant's night shifts.

14. **Indirect sex discrimination**

14.1 The PCP relied on by the Claimant is the requirement to work on day shifts to undertake training when absent from work for a significant period. The Tribunal accept that the Respondent operates on a period of 6 months to trigger re-induction into the workplace plus whatever mandatory training was outstanding.

14.2 The Tribunal finds that there was a requirement that training was undertaken during the day at Queen Elizabeth House because of staffing levels. The Claimant was given the option work at another home where there were higher levels of staff at night which would have enabled training to have been done then.

14.3 The Tribunal accepts the submission by the Respondent that the Claimant has not shown that the requirement for reinduction to be done in the day, would put women at a greater disadvantage compared to men. However even if it did, the Tribunal finds that the Respondent had a legitimate aim in ensuring that all staff were trained to the necessary levels and that the training it put in place was a proportionate means of achieving that aim. The Tribunal is satisfied that the training had to be done during the day. Although the Tribunal has found that custom and practice meant the Claimant worked night shifts, this did not preclude the Claimant from attending training during the day which she did even before her period of maternity leave.

14.4 The Respondent submitted that Ms Simms Dick did not waiver from requesting a twelve-week retraining/re-induction period. This is correct. Even at the hearing Ms Simms Dick was of the view that 12 weeks was necessary. She is entitled to this view. However, Ms Polden having listened to the Claimant's concerns put together a training plan which encompassed four weeks, which is what the Claimant wanted. She overrode Ms Simms Dick's opinion. As such there was no requirement for a twelve-week reinduction period.

15. In all the circumstances the Tribunal finds the Claimant's claims to be unfounded and they are dismissed.

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Employment Judge Martin
Date: 13 January 2020