



EMPLOYMENT TRIBUNALS

Claimant: Miss C McCourt

Respondent: Capita Business Services Ltd

HELD AT: Leeds (via CVP)

ON: 3rd and 4th March 2021

BEFORE: Employment Judge Eeley

REPRESENTATION:

Claimant: Mr P Wareing, counsel

Respondent: Ms H Marsland, solicitor

RESERVED JUDGMENT

1. The claimant's claim of constructive unfair dismissal fails and is dismissed.

REASONS

Background

1. The claimant brings a claim of constructive unfair dismissal against the respondent. I received written and oral evidence from the following witnesses:
 - Miss Cherie McCourt, the claimant
 - Mr Robert Dickson, Director of Business Intelligence within the respondent.
 - Mr Jasvinder Chumber, Head of Management Information and Analysis- Health and Welfare within the respondent.
 - Ms Rachel Biggs, HR Operations Partner within the respondent
 - Ms Alyson Kelly, HR Operations Partner within the respondent's PIP department.

I was also referred to documents within an agreed bundle running to 426 pages. I am grateful to both parties' representatives for their helpful oral submissions.

2. The issues for determination were agreed between the parties at the outset of the hearing thus:

- (1) Was the claimant dismissed?
 - a. Did the respondent do the following things (as alleged by the claimant in her claim at page 16 of the bundle):
 - i. Ask the claimant to do an additional job role on top of the one she already had?
 - ii. Require the claimant to "know" (as part of the Health & Welfare MI role) all of the source data/reporting solutions for the PCSE contract and the PIP contract?
 - iii. Drastically reduce the overall allocated resources and provide unsuitably skilled resources, when it should have been known there was an increase in work coming to the PCSE team due to the transformation handovers/gaps in solution?
 - iv. Fail to issue the claimant with written updated terms and instead ask the claimant to agree to these changes "over email"?
 - v. Signpost a 'Consultation Period' when it did not allow for any objections/protests to be made?
 - vi. Fail (as part of the grievance process) to put things right decisively and instruct a fix to resourcing issues in a timely manner?
- (2) Did such conduct breach the implied term of trust and confidence? In particular:
 - a. Did the respondent behave in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent?
 - b. If so, did the respondent have reasonable and proper cause for doing so?
- (3) Did the claimant resign in response to the breach? Was the respondent's alleged breach of contract the reason for the claimant's resignation?
- (4) Did the claimant affirm the contract before resigning?
- (5) If the claimant was dismissed, what was the reason or principal reason for dismissal i.e. what was the reason for the breach of contract? The respondent is relying on Some Other Substantial Reason.
- (6) Was it a potentially fair reason?
- (7) Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?
- (8) If there is a compensatory award, how much should it be?
- (9) What basic award is payable to the claimant, if any?

3. It was agreed at the outset of the hearing that I would deal with liability first and only consider evidence and submissions on remedy at a second stage, if applicable. All numbers in square brackets below are references to pages in the agreed bundle unless otherwise indicated.

Findings of Fact

4. The respondent is part of the Capita Group which is a consulting, digital services and software business with six main divisions: Software, People Solutions, Customer Management, Government Services, Technology Solutions and Specialist Services.
5. The claimant commenced employment with the respondent on 1st September 2017 as Head of Management Information and Analysis within the Primary Care Services England business unit (“Head of MI- PCSE”) at a salary of about £70,000 (gross). She was based at the respondent’s Business Centre in Leeds. The PCSE work stream is a contract which the respondent has with the NHS which involves the respondent delivering Primary Care Support Services and core administrative and payment services on behalf of NHS England. This involves a range of services including payment information, management of supplies and the administration and movement of medical records, amongst other things. The services are provided to NHS General Practitioners, dentists, opticians and pharmacists across England. The claimant in her role of Head of MI for PCSE was responsible for the strategic management of the PCSE MI team who provide reports and analyse the operational delivery of the PCSE contract to the NHS. The claimant’s job description for this role is at [111-115]. She was at that time managed by Andrew Clarke.
6. The PIP team works on a contract which the respondent has with the Department of Work and Pensions and the Department for Communities for the delivery and services of support of Personal Independent Payments to eligible individuals. The PIP MI Team is a small team of people allocated to focus upon the operational and contractual management information requirements for this contract to ensure that the respondent meets its business objectives and services its client (DWP and DfC) as efficiently and effectively as possible. The PIP MI team was responsible for providing reports on the operational and contractual delivery of the PIP contract. Mr Chumber joined the respondent at the end of October 2019 on a fixed term contract as a Data and Insights Manager for Management Information and Analysis within the PIP team. In May 2020 he took on the role as Head of the team (“Head of MI- PIP”). His job description is at [116-118]. By May 2020, therefore, the claimant and Mr Chumber were performing the same role as “Head of” for the PCSE MI team and the PIP MI team respectively. They were at the same level of seniority but overseeing MI for two different contracts.
7. As at January 2020 Mr Chumber was responsible for managing a team of 5 full time employees. Mr Meads was also part of the PIP MI structure but he was not managed by Mr Chumber. Instead both Mr Meads and Mr Chumber reported in to David Edwards (Support Services Director for PIP).

8. Mr Dickson joined the respondent on 6th January 2019 most recently as the Director of Business Intelligence (also referred to as Director of Business Insight) within the Government Services Division. His role involves running the Business Insight function across Government Services. He did not manage the claimant in her original role and only started to have contact with her when there were discussions about the new Value Stream proposals.
9. Prior to submitting her resignation, the claimant's role had broadened to that of Head of Management Information and Analysis within the Health and Welfare business area, which was part of the newly formed Health and Welfare Division ("Head of MI- H&W"). This role involved carrying out strategic day-to-day management of the two Management Information and Analysis ("MI" teams within the Health and Welfare business area (namely the PCSE MI team and the PIP MI team). It was essentially this change in her role which led the claimant to resign. The claimant resigned on 2nd October 2020 and her employment terminated at the end of her notice period on 30th October 2020.
10. In the course of her witness evidence to the Tribunal the claimant gave a history of the staffing levels within her team at various points. It is apparent that throughout her time with the respondent the staffing levels fluctuated. The organogram from September 2019 shows 10 direct reports but does not reflect the reality 'on the ground', certainly by early 2020 [119]. One employee had never in fact joined the team, two employees had left in November 2019 and one was on planned sick leave until February 2020. Only one person was brought in on secondment to fill one of the vacancies but that secondment came to an end by the end of January 2020. There was a further resignation in February 2020. It appears therefore, that on the claimant's own account she was doing the job with a team of 6 incumbents from around February 2020.
11. A further employee in the claimant's team resigned in May and left on 2nd June and Elsie went on long term sick in June 2020. The claimant points to the fact that the Risk Register was updated [309] to show concerns about lack of resource. However, this does appear to focus on lack of suitable expertise rather than lack of workers per se. It is apparent that there was a lack of skills to deal with BAU work which needed to be addressed. On the other hand, the opportunity seems to have been taken to develop automated solutions on this particular work so it is not clear that this would be a long-term problem once those solutions were up and running.
12. The claimant's job description suggested that there would be 10 personnel in the team. However, it appears that this was never in fact the case. I do not accept that, because the job description indicated a workforce of 10, that anything less than this was in fact understaffing or would, of necessity, cause difficulties to the claimant in managing her workload. The identification of 10 in the job description is not a statement that this was the minimum required to do the role. Rather, it is a prediction as to what the department/team would look like. In any event, it is important to focus on the staffing levels in 2020 in the run up to the reorganisation, to determine

what they were and to determine whether or not there were pre-existing problems with under resourcing during early 2020 which would make the later proposals unworkable, as the claimant asserts. It is notable when looking at the contemporaneous documentation that the claimant had not raised a formal grievance around understaffing prior to the planned reorganisation. This does rather suggest that although the team did not look as big as she had initially thought it would be, the level of staffing was adequate for her to do her job. Otherwise, she surely would have done something about either via grievance or by request for financial authorisation to recruit.

13. In early 2020 discussions took place at a high level within the respondent regarding the possibility of centralising those working in MI across the business into a core "Value Stream". The intention was to highlight unnecessary overlap and requirements for further resource and find improvements to ways of working. It was hoped that this would increase the efficiency and effectiveness of the function. A Value Stream proposal was developed which would contain six vertical business areas of the respondent namely: Education; Health and Welfare; Local Government; Central Government and Justice; Defence; and Transport. There would then be an individual allocated to each of the six vertical business areas to lead the MI function for that area. In the claimant's case that would be the Head of MI- H&W post referred to at paragraph 9 above.

14. At the time the new merged MI structure was being discussed the claimant had the following staff in the PCSE MI Team:

- The claimant (full time)
- Two full time, permanent employees, one of whom was on long term sick (Elsie).
- Three full time but fixed term contractors. Of these, one was due to finish in 2021 and two were due to finish in August 2020.

At the same time the PIP team comprised the following:

- Mr Chumber
- Four FTE permanent employees.
- Mr Meads, a separate Data and Insights Manager who also worked on the PIP contract. Although he was not directly managed by Mr Chumber, he counted towards the "resource" available to the PIP team at this time.

15. The respondent's view was that although the PIP and PCSE MI teams were allocated to different contracts, meaning that their reporting outputs differed slightly, there were still large similarities between the workings and requirements of both teams. Ultimately, both teams reported on the MI aspects of contracts in the health and welfare sector. Hence it was thought sensible to amalgamate the two teams under the management of one "Head Of" the H&W MI Team. The view was taken that each separate team was not particularly large in terms of the numbers of employees managed. Hence it was thought proportionate to have a single "Head Of" overseeing the combined team. The respondent's management view at the time these discussions were taking place was that, although there had been one resignation from the PIP MI team in early 2020, the team still had some

“pockets” of spare capacity which could be used to assist the work on the PCSE contract and reduce some of the pressures on the PCSE team.

16. As the claimant was the permanent employee it was proposed that she would be mapped into the Head of MI- H&W role and Mr Chumber’s contract would terminate, as originally planned, in September 2020.
17. Clause 3 of the claimant’s contract of employment provides [98]:
“The Company reserves the right to change your duties and responsibilities during your employment reflecting the changing needs of the business and/or to comply with new legislation in line with the statutory consultation process.” The respondent concedes that the clause had to be exercised reasonably.
18. The expectation within the respondent’s internal guidelines (the Blue Book) is that line managers will typically have between 8 and 14 direct reports [126]. Both Mr Chumber and the claimant fell squarely within that guidance in their original ‘Head of’ roles. The merged Head of MI H&W role, even though it would involve the oversight of a bigger team, still fell within the guidance. The proposal was that the claimant would be managing 6 individuals in total as at September 2020 (two from the PCSE team and four from the PIP team). This head count did not include the one full time permanent employee from PCSE who was on long term sick (Elsie). At the time it was not clear whether she would be fit to return and in any event the claimant was proposing to make her redundant [156-157]. The headcount of 6 also did not include the two contractors whose contracts were due to end in August 2020.
19. During discussions the claimant raised concerns about resourcing – essentially asserting that she would not have enough employees in the team to cover the work. As a result of those concerns the respondent agreed to “loan” 2 additional employees into the PCSE team and extend the contracts of the two additional contractors who were due to expire in August 2020. The revised proposal would therefore see the claimant managing a de facto team of 10 albeit this would be a mixture of permanent employees and fixed term contractors. The intention was that the fixed term contractors would be retained for as long as they were needed to cover the MI team’s work.
20. Managers at the “Head Of “level are employed to carry out the more strategic and high-level management of their teams. The team “does” the work and the “Head Of” oversees or manages it at a strategic level. The manager would not require the same level of in-depth knowledge of the detail of each team member’s job as the person actually carrying out the role. They would need sufficient knowledge to be able to effectively manage the contracts and the people carrying out the work. They would be providing a strategic role whereas their direct reports would, effectively, be more operational. That said, all contracts and all management occurs within a context. Some operational subject knowledge and understanding would be required in order to be able to manage the direct reports’ work on the contract but it would not be at the same level of detail as required of the direct reports themselves. When merging the work of two teams who have previously worked on different contracts it is inevitable that the person

managing the merged team will have to acquire some additional “subject knowledge” about the context and workings of the contract which they have not managed before. This would be true of whoever took on the overall ‘Head of MI H&W’ role unless they had already specifically worked on both contracts previously. Indeed, it would be true of any external recruit to the position too. Every time someone moves to a role with a new employer there is a degree of learning ‘on the job’ whilst the individual gets to grips with the day-to-day workings of the new organisation and the contract/subject area they are managing. It is a matter of degree to determine the extent to which the change is one which can reasonably be expected of someone with the background experience, knowledge and expertise of the particular individual (in this case the claimant). It is also a matter of degree to assess the extent to which the acquisition of this new knowledge and expertise falls within the remit of the existing role/level of management or whether it essentially makes it into a new post/job or a role at a higher level within the organisation. This is essentially what is meant when saying that clause 3 of the claimant’s contract must be exercised reasonably: changes to the role can be made and the role may grow in subject matter but there comes a point where the proposed changes are so great that the employer is effectively changing the entire nature of the contract and forcing the employee to take on new terms and conditions without the employer accepting that it is a new job rather than a variation to the existing terms and conditions. This is a matter of fact and degree and part of what the Tribunal has to engage with when considering whether there has been a fundamental breach of contract by the respondent in this case. The claimant accepted in cross examination that when she started work at the respondent she had not worked on the PCSE contract before so she herself had had to gain that knowledge initially whilst working on the job.

21. The claimant’s job description [112] is framed in the context of the NHS PCSE contract. The job title is “Head of Management Information and Analysis”. The business unit is named as PCSE. It states: “*The Head of MI will be responsible for leading team of 10 FTE that support our Client, outsourced operations and commercials, reporting and analysing...*”. At [113] it states: “*Please note. This role profile is not exhaustive; it will be subject to periodic review and may be amended to meet the changing needs of the business. The post holder will be expected to participate in this process and we would aim to reach agreement to the changes.*”. On [113] there is a table of key accountabilities. Clearly, when the role description was drafted it was done in the context of the PCSE contract but there is nothing I can discern which would prevent, as a matter of principle, these accountabilities being applicable in the context of a different contract (see e.g. “Contract Reporting”, and “Operational Reporting.”). They are generic categories of activity set in a contract specific context.
22. In cross examination the claimant accepted that prior to the restructure she had already gone beyond the remit of her stated job description (e.g. in building applications to plug gaps in IT systems even though it was not in her job description). This demonstrates that the claimant was prepared and able to be flexible about what was and was not within her job responsibilities up to a point and was not wholly wedded to the specific requirements of the paper document. In cross examination the claimant seemed to accept that

the primary problem was under resourcing and not the requirement to take on additional responsibilities per se.

23. Mr Chumber confirmed that when he was head of the PIP team he was responsible for the high level management of the team. He did not need to know (and still does not know) full working details of the PIP contract. That is not his area. The analysts within his team know more detail about the workings of the contract than he does because they are the ones who are actually working day-to-day with the MI statistics and data. As long as he knows the core elements of the PIP contract that is all that is required in order for him to do his job effectively. His job description showed that it was anticipated that he would spend 60% of his time managing the performance of the team and just 40% of the time completing other duties such as project activities or data analysis. He says that when he transferred to the new Head of MI for H&W role the substantive parts of the job description were still applicable but the amount of time he spent managing the team increased.
24. One of the claimant's assertions in her claim to the Tribunal is that even prior to the restructure, the PCSE team was under resourced and that as a result they were struggling. She says that her team were not able to take annual leave because of the demands of the workload. However, by her own admission, during the period of Covid lockdown from March to June 2020 her team did not in fact request annual leave, presumably because in the prevailing circumstances it would not have been well used. She accepted in cross examination that she had not had to reject any staff requests for annual leave during this period. Her staff certainly started taking annual leave from July onwards. It is apparent from the record that she herself took annual leave in late July 2020. Additionally, when she resigned she had only 3 days of accrued but untaken holiday from that holiday leave year. This suggests that she had in fact been able to take holidays throughout the year as desired. Her work levels had not prevented this. The respondent's evidence from Alyson Kelly that their records showed the team taking various days of annual leave throughout the year was not challenged in cross examination.
25. Throughout her employment in a 'Head Of' role the claimant was responsible for ensuring that she had sufficient resources in her team to carry out the tasks assigned to it. More specifically, it was within her remit to evaluate her team and work out if there was a need for further people to ensure that the work was done as required. She would then assess the need for further workers and make a proposal to her line manager. She would have to get financial authorisation from higher up in order to get funding for the additional worker. Once this was accomplished she would be able to go ahead and recruit the necessary worker/s and would have full involvement in candidate selection and appointment. This is what is meant by the claimant being responsible for recruitment. She did not "hold the purse strings" but apart from that it was down to her to recruit and manage her team. This would be the case both pre and post the proposed structural changes in 2020.

26. The proposal was for the new Value Stream to be in place from September 2020 and Mr Dickson liaised with Mr Chumber and the claimant with a view to achieving this.
27. The claimant was first notified of the proposals in June 2020 along with the other employees across the MI teams.
28. On 11 June 2020 Mr Clarke (the claimant's then line manager) told Mr Dickson that there would be a resources gap from the end of August 2020 in the PCSE MI team as that was when the two fixed term contractors were due to leave [131-132]. He also said that they needed a Data Warehouse manager too. This was apparently something which needed to be addressed irrespective of the proposed amalgamation of the two teams but as Mr Dickson was overseeing the structural changes it was passed to him to address.
29. Mr Dickson's solution to the problem identified by Mr Clarke was to arrange for Mr Deschamps to transfer from the Local Public Services team to the PCSE team on a loan basis for as long as was needed. This was confirmed to the claimant and Mr Clarke [127-136].
30. At the time this correspondence took place Mr Dickson asked Mr Clarke what the intention had been regarding the two contractors who were due to leave in August 2020. The indication at that stage was that their contracts might be extended but that this had not been firmly decided [129].
31. On 29 June David Edwards (Support services Director for PIP and Mr Chumber's then line manager) provided the claimant with a copy of the PIP reports completed by the PIP MI team along with their frequency [138]. He asked the claimant to add in the same information for the PCSE team. On 3rd July 2020 the claimant provided the completed report and added some additional points in the covering email regarding the work carried out by PCSE and where she thought it differed from PIP [137].
32. The claimant then emailed Mr Edwards to discuss her 3rd July email to ensure that the restructure plans took into account all planned work and resource required in the PCSE MI team [144-147]. The respondent took the view that this indicated that the claimant did not disagree with the proposed restructure in principle, so long as there was sufficient human resource available to do the work properly.
33. On 14th July 2020 the claimant and Mr Dickson met to discuss the proposed changes to her role in more depth. Mr Dickson explained that the PIP MI team had some spare capacity and would therefore be able to assist with the PCSE MI work too. He confirmed that she would be reporting in to the central MI function and not the PCSE business. Mr Dickson's view is that the claimant did not disagree with the proposals during this meeting. He also confirmed to the claimant that the H&W MI team would consist of six individuals but that there would be no planned reduction in team sizes as a result of the merger. He says that he also told the claimant that if she needed any further support or resource arranging then this could be discussed and actioned.

34. Mr Dickson made the point (in his statement to the Tribunal) that at this point in the chronology Mr Clarke had not organised what was going to happen to the contractors who were due to leave in 2020. He says this is the reason that it may have looked like the PCSE team headcount was going to reduce in size. However, his point was that these were not changes caused by the proposed restructure but ones which would have happened in any event in the absence of a decision to the contrary by the claimant and Mr Clarke in their pre-restructure roles.
35. Mr Dickson emailed the claimant to request her confirmation in writing that she was happy with the proposal for how her role would be mapped going forwards [147].
36. The claimant emailed on 16th July 2020 requesting further information about the proposal before she could assess whether she was comfortable with the change. She asked for confirmation of who her line manager would be, who she would be managing, insight into what was delivered by the PIP MI team and whether she and the team would be provided with new contractual documentation. She confirmed that her main concern was ensuring that she could deliver the MI service to both the PCSE and PIP with the resource of 6 individuals [146].
37. On 17 July 2020 the claimant emailed Mr Dickson a copy of the PCSE MI Delivery Plan [148-155]. There was a tab within this document setting out the current ongoing risks in the PCSE MI Team, some of which were resourcing issues. Mr Dickson's view was that these resourcing issues were not the result of the new proposed Value Stream but were existing risks and issues which would have arisen in any event under the old structure and for which the claimant and Mr Clarke were responsible in terms of planning and preparation. Given that the expected resourcing gaps had not been addressed already by that stage Mr Dickson discussed them further with the claimant to better understand what support could be offered. A weekly appointment took place with the claimant to discuss the PCSE MI support, often between the claimant and members of Mr Dickson's team.
38. Between July and August meetings continued between the claimant and members of the wider MI Value Stream to share learning and explore what potential support could be offered, whether technical or in the form of additional resource. The overall plan was to identify additional resource and gaps in resource across the value stream so that resources could be loaned from where they were not needed to plug potential gaps. This might avoid the need for further recruitment across the business or, at the end of the day, might identify the need for additional recruitment. This was part of the process of integration of the new Value Stream.
39. Between 7th and 16th August the claimant was on annual leave. On 17th August the claimant sought legal advice. On the claimant's return to work she was told by Mr Clarke that he had got approval to extend the contracts of the two contractors due to finish in August. The final approval for the contract extension came through in late August.

40. On 18th August 2020 the claimant emailed Mr Dickson to request further clarity on any additional responsibilities she would have as well as ensuring that sufficient resource would be in place [158].
41. On 19th August 2020 Mr Dickson telephoned the claimant to discuss her outstanding points. He reiterated the plans for the H&W MI team and confirmed that he would be her line manager. He explained that the outputs of the PIP MI team and the PCSE team were very similar and that the PIP team knew their roles and responsibilities well and knew what was required of the PIP contract. He explained that consequently the business did not need the claimant to know the detail of the tasks which the PIP team worked on. Rather, she would be carrying out day-to-day management of them, ensuring that deadlines were met and outputs delivered. She would gradually learn more about the PIP contract over time but this was not actually necessary for her managerial role.
42. Mr Dickson's view was that whilst the individuals in the PIP MI team had not worked in the PCSE team before, the work undertaken by them and the outputs delivered by the team were very similar and where there were any differences the PIP MI team could be trained up. Mr Dickson accepted that there were some concerns regarding the performance of one of the members of the PIP MI team. However, this was being monitored and it was not affecting the overall output for the team. His view was that a manager should expect issues such as grievances, performance concerns and disciplinary issues to crop up from time to time and be equipped to address these. The fact that there were some performance issues with one member of the team did not, in his view, negate the fact that the PIP team were overall working to a high standard and no internal or client concerns had been raised.
43. Following the telephone call on 19th August Mr Dickson emailed the claimant to confirm the content of the call [158] including:
- That her job description and terms and conditions would remain unchanged. Her role would still be Head of MI but would cover the wider remit of the two contracts.
 - Mr Chumber would work alongside the claimant until the transition the following month to ensure a full handover and to also help her develop the combined health and welfare delivery plan.
 - In addition to the six individuals already planned to be part of the H&W MI team (i.e. the then current permanent members of the PIP and PCSE teams) he had also arranged for Mr Deschamps and Mr Meads to provide additional full-time support on a temporary basis which would be reviewed after a couple of months. He reassured her that this support would be in place for as long as was needed.
 - He confirmed that he was there to support and work with the claimant.

As the claimant did not raise any further issues regarding this, he considered that the claimant's initial reservations had been resolved. The net result was that Mr Dickson altered the original plan and took Messrs Meads and Deschamps from the central team and arranged for them to be part of the claimant's team going forwards.

44. The claimant did further work on the plan to update it. She highlighted some risks, in particular those which would arise if the two contractors left the business taking their knowledge base with them. One of the proposed solutions was to extend their contracts. This is in fact what happened
45. Mr Dickson emailed the claimant and Mr Chumber to arrange a meeting with them the following week to discuss their plan for the transition to the combined H&W MI team [167]. He reiterated details of the eight individuals allocated to specifically support them with developing the plan.
46. On 27th August the claimant emailed Heather Stark (HR Operations Partner) asking if she would be receiving formal communication from HR regarding the change to her new role. Ms Stark recommended that the claimant should discuss this with Mr Dickson.
47. The claimant underwent her mid-year review with Mr Clarke on 28th August 2020 [168-174]. There is no record of her raising any concerns about the restructure as part of this conversation. The claimant points out that it is recorded that she had worked hours “far in excess of contracted.”
48. On 28th August Mr Clarke emailed the claimant, Marie Heracleous (Health and Welfare Chief Operating Officer) and Mr Dickson to confirm that the contracts for the two temporary contractors in the team were expiring that day but that an extension to their contracts had been approved in order to ensure a smooth transition to the new Value Stream structure [180-181]. Mr Dickson confirmed the various actions he had already put in place to support the PCSE MI team ahead of the restructure which included two resources from the PIP MI team during August 2020 [179-180].
49. The claimant took the lead in devising the plan for the transition with the support of Mr Chumber. A copy of the plan was at [199-201].
50. On 2nd September 2020 there were IT issues which meant that some month end reports had not been completed. The claimant describes how she, Farran and Dean had to work had to resolve the issues. As a result, it was confirmed that the two contractors could be brought back into the PCSE MI team to support the issues prior to required up to date screening checks having been completed. This shows what additional support could be provided to the claimant at short notice if required [177-191 and 193].
51. On 2nd September the claimant held a return to work interview with Elsie which apparently descended into an argument with a continuing exchange of emails and complaints.
52. On 3rd September the claimant was informed that Matt Turner had found an alternative contract role and this would be his last day with PCSE.

53. On 4th September the claimant emailed Ms Stark to ask if there was a formal HR process for her to object to the proposed changes to her role. Ms Stark confirmed that there was not, other than the grievance process.
54. Later, on 4th September, Mr Dickson emailed the claimant to ask if the employee who was on long term sick in her team had returned to work and asked for an update regarding the steps taken regarding this. The claimant confirmed that the individual had returned on 1st September 2020 and that steps were being taken to consult with her [194-195] with a view to making her role redundant. This proposed redundancy had been considered since early 2020 prior to the proposed restructure. Mr Dickson noted that it was at odds with the claimant's concerns regarding lack of capacity/resource in the PCSE MI team.
55. Later still on 4th September there was a telephone meeting between the claimant, Mr Chumber and Mr Dickson to discuss the delivery plan for the H&W MI team [196-201]. Following this meeting the claimant asked Mr Dickson if she could speak to him alone. She raised her concerns that she did not have capacity to take on the management of the PIP MI team and that she thought that there would still be a lack of resource within the H&W MI team. Mr Dickson says this was a surprise to him because she had just presented a plan in the main meeting which had showed the way in which the H&W MI team could be managed. She then explained that she had created a PowerPoint detailing her perceived issues and she talked through this with Mr Dickson.
56. Mr Dickson says that he reiterated his commitment to support and work with the claimant throughout the transition period and reminded her of the individuals specifically allocated to work with her. He also clarified that if the claimant did not wish to continue working in the role which had been mapped for her then other options for her could be seeking an alternative role either internally or externally. At the end of the telephone call the claimant confirmed her intention to raise a grievance.
57. Again, on 4th September the claimant confirmed to Mr Dickson via email that she did not accept the changes to her role and would therefore be working "under protest" [202]. She made the point: "I am not objecting to continuing with my current PCSE role & accountabilities- just the additional PIP accountabilities." She also sent him a copy of the PowerPoint slide deck referred to above [203-217]. In that she noted that Mr Deschamps had been provided on loan and Carl Meads was potentially on loan to her [203]. At [205] the claimant set out a chart showing where there was the additional potential to automate tasks and increase productivity. It is notable that she thought that there was significant potential to automate the work being done by 4 members of the PIP team. Presumably once automation was complete this would free up these people to provide support on the PCSE work. The claimant also set out a number of strategy options with their attendant risks and benefits [207] and showed a timeline for how they could be

implemented [208-210]. This certainly gives the impression that these various ways of implementing change were in fact workable and that the claimant viewed them as such. Otherwise, why include them in her plan? At [216] she sets out an organogram which shows 4 workers reporting into her in the PCSE function, including Elsie. She does not refer to the availability of Mr Deschamps, or Carl Meads who would take the numbers up to 6 line reports.

58. Mr Dickson's observations on the slides were that:
- a. Despite the claimant's assertion as part of her tribunal claim that it was unfair to reduce the overall resources available to the team, she confirmed at [203] that there was no change to the H&W head count figures and sets out that Mr Deschamps and Mr Meads had been provided as additional support. She also confirmed that they needed more workers like Mr Deschamps [206] and that he was learning well [203].
 - b. Despite the claimant's claim in her ET1 that the PIP team did not have the relevant abilities to help the PCSE team she says in the PowerPoint that some "upskilling is possible/desired" by the PIP MI team.
 - c. Throughout the PowerPoint the claimant highlights resourcing issues but these were legacy resourcing issues quite separate from the Value Stream restructure. These issues, it is said, should have been planned for and managed by the claimant and Mr Clarke as part of their previous roles.
 - d. On the last PowerPoint slide [217] the claimant sets out the proposed structure of the H&W MI as at September 2020 but failed to include Mr Meads and Mr Deschamps and also John Pressdee (the contractor whose contract was extended).
 - e. The claimant continued to consult about making Elsie redundant rather than retaining that resource to assist in the new structure.
59. The transition to the new structure was completed on 7th September.
60. From 8th September to 9th September the claimant was off work sick and self-certified as having a stomach bug. She returned to work on 10th September [219-223].
61. On 11th September the claimant and Mr Dickson again discussed the issue of the role change. From the claimant's point of view there was no satisfactory progress made as a result of this conversation and the concerns she had raised about the changes still remained.
62. On 11th September Mr Dickson responded to the claimant's email from 4th September confirming the content of their discussion [224].

63. On 14th September the claimant sent a grievance to Mr Dickson and Ms Sneath (Lead HR Business partner). The main grievance points were that:
- a. She did not agree to the change in her role. She considered that she was being asked to do two job roles with fewer, less skilled people.
 - b. She considered that there had been inadequate due diligence carried out prior to the decision being reached to merge the teams;
 - c. The way the change had been conducted lacked clarity and transparency.

The grievance letter was accompanied by supporting documentation.

64. Upon receipt of the grievance the claimant was reminded of the availability of the Employee Assistance Programme and arrangements were made to hear her grievance.

65. On 18th September 2020 Mr Dickson emailed the claimant and the wider Government Services team an update on the implementation of the new structure [242].

66. The claimant's grievance hearing took place on 22nd September. It was chaired by Simon Smith, Managing Director of Entrust Support Services Ltd who had had no prior involvement in the matter. The material points made by the claimant in the course of the hearing were that:

- (a) After the first year of her managing the team some staff had left and so she spoke to Mr Clarke about recruitment as she felt they would need to look to replace those who had left. This apparently did not materialise. Some contractors were brought in to help on a project. The contractors were due to leave at the end of August 2020 and she and Mr Clarke knew that they would need to back fill the contractor roles at that point. No details were given of the steps Mr Clarke and the claimant had taken to plan for this.
- (b) She explained her concerns about being mapped into the new role within the structure and her concern that she did not think she could manage both the PIP team and the PCSE MI team.
- (c) She reiterated her resourcing concerns. She felt that the big issue was that they needed Microsoft BI Stack skilled people and the contractors had that skillset (those who were due to leave August 2020 but whose contracts had been extended.)
- (d) At the end of the meeting the claimant confirmed that she felt that she could do the Head of MI role, the issue was that she still did not think that there was enough resource within the PCSE MI and PIP MI teams [250].

67. On 28th September 2020 Mr Smith met Mr Dickson to discuss the claimant's grievance. During that meeting Mr Dickson explained the business rationale for the newly formed H&W division and why it was deemed reasonable to have one Head of MI and not two. His view was that the 'Head of' level role

is less operational and more about strategic leadership and making the best use of the team and resources and managing them accordingly. His view was that there was “nothing that would be coming in from PIP that would be broadly different at that Head of level.” [254]. He also explained the additional support he had put in place for the claimant the PCSE MI team when the claimant had raised resourcing issues. He confirmed his confidence in the claimant to carry out the Head of H&W MI role.

68. On 28th September there was also a meeting between Mr Smith and Mr Clarke in relation to the claimant’s grievance. Mr Clarke confirmed that he thought that the mapping of the claimant into the Head of H&W MI role was sensible and that she was an obvious choice for the role and with the right resources would be of the right calibre to lead the H&W MI team.
69. Mr Smith considered the grievance and concluded that he did not feel that anyone was setting the claimant up to fail, as she had alleged. Both Mr Dickson and Mr Clarke showed that they had confidence in her to do the ‘Head Of’ role. The claimant herself had said that if she had the right team she thought she could do the role. He did not consider the decision to have one Head of H&W MI team to be unreasonable. From the claimant’s comments it sounded to Mr Smith as though the claimant was focusing on the details of the PCSE MI contract rather than working at a strategic level. With this in mind (and taking into account the claimant’s remaining concerns about resourcing) he thought a further review of the resource of the team should be carried out as well as general support being offered to the claimant to ensure she was working at a ‘Head Of’ level. Mr Smith also thought that a letter issued to the claimant confirming the change to her role and an updated job description would be beneficial. He also felt that if the claimant had been involved in the initial due diligence and discussions surrounding the centralisation of the MI teams and the mapping of her role this would have helped to be more on board with the changes. This was summarised in the grievance outcome letter.
70. On 2nd October 2020 at 11.14am Mr Smith sent the claimant the grievance outcome letter and hearing notes to the claimant. The grievance was partially upheld insofar as it was recommended that the claimant should be provided with a letter to confirm the changes to her role and an updated job description and the claimant could have been more involved in the initial due diligence process which would have helped her to feel that she had the capacity to carry out the Head of MI for H&W role. In rejecting the remainder of the grievance, he explained that:
 - (a) It was not unreasonable to merge the two MI teams in light of the fact that the manager is supposed to do strategic and high level management and the number of direct line reports was within the guidelines in the respondent’s blue book.
 - (b) There had been no reduction in the headcount to the teams as part of the Value Stream changes. Separate to the merger there had been a headcount reduction in PCSE in the previous 12 months but steps had been taken to ensure that there was sufficient resource within the team going forward.

- (c) The claimant had not been set up to fail as both her current and new line managers thought she was capable of doing the job.
71. On receipt of the grievance outcome the claimant was disappointed. She says she felt she had no alternative but to resign. She felt that her new job was completely untenable. She says that her line manager had lied to her and her PCSE colleagues and had ignored and manipulated information. She says that she did not appeal the grievance outcome because the outcome was significantly far from what she wanted (an appropriately sized and skilled team); she was told that dissatisfaction with the outcome was not grounds for appeal; and any further delays would be seen as accepting the changes and invalidating her constructive dismissal claim. Later that same day (2nd October) the claimant emailed her resignation to Mr Dickson, at 7.14pm [265-267]. She did not appeal the outcome of the grievance.
72. On 2nd October M Smith sent Mr Dickson a copy of the grievance outcome letter and recommended that he send the claimant a letter confirming the change to her role together with revised job description. He also recommended, for completeness, that a further review of resourcing be undertaken to ensure that this was adequate. Due to the timing of the claimant's resignation, Mr Dickson had had no opportunity to implement Mr Smith's recommendations prior to the claimant taking the decision to resign.
73. On 5th October Mr Dickson acknowledged the claimant's resignation and provided her with an opportunity reconsider her decision should she wish to do so. However, the claimant confirmed that her position remained unchanged.
74. The claimant worked her four weeks' notice (albeit she was on leave from 22nd October to 30th October).
75. In light of the claimant's departure Mr Chumber agreed to transfer onto a permanent contract of employment and take over the Head of H&W MI role which the claimant would otherwise have taken. The claimant worked with Mr Chumber during her notice period to complete a handover.
76. Since the claimant's departure the H&W MI team has apparently operated as planned. Mr Chumber has carried out the 'Head Of' role and has not raised issues about managing both teams. The PIP individuals have also provided support to the PCSE MI individuals without any significant issues. Mr Chumber confirmed that since taking over both teams his working hours have remained at the same level (37-40 hours per week). He has achieved this by prioritising and managing the most urgent issues. He confirmed that there is no requirement or expectation for him to work additional and unsustainable hours to deliver on the projects. He accepts that taking on the management of the PIP MI team was an additional responsibility but it

was not an unreasonable one in his view and he had managed the change without any issues. He has been able to use resources within PIP to assist with the PCSE contract. He has worked broadly in line with the impact assessment [281-286]. Since the claimant's resignation Mr Chumber has taken on additional responsibility for the JETs contract. Whilst an MI Report Analyst has been recruited to start imminently, he has been able to use existing PIP MI resource to support the MI for the JETs contract in the interim. Nevertheless, Mr Chumber maintains reasonable working hours of between 37.5 to 40 hours per week. He was able to confirm to the Tribunal that whilst the PIP and PCSE teams reporting requirements do operate slightly differently, they are fundamentally very similar in terms of the requirements being ascertained and the output then delivered. The output is the same for both of the teams in terms of producing a mechanism to provide information to the business. However, the delivery mechanism for producing those reports is slightly different within the teams (e.g. the PCSE team has a Data Warehouse which is slightly more complex than what the PIP team uses to produce reports.) However, he has confirmed that this is something that can be learned over time and is not too complex for the PIP team to start working on.

77. Mr Chumber drafted a chart [297] which shows the team as at 18th Jan 2021. There are five named individuals working in the PCSE team, 5 named individuals working in the PIP team and one vacancy on the JETs team, all reporting in to Mr Chamber.
78. In September 2020 Elsie (the member of the PCSE team) raised a grievance against the claimant alleging that she had been treated poorly by the claimant. On about 15th October a meeting took place with the claimant to discuss the allegations. Elsie has since been reinstated and is now working in the H&W MI team, apparently without issue.

The law

79. The claimant's claim is for constructive unfair dismissal relying on the definition at section 95(c) Employment Rights Act 1996 that an employee is dismissed if:
"the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."
80. In order to claim constructive dismissal, the employee must establish that there was a fundamental breach of contract on the part of the employer, that the employer's breach caused her to resign and that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

81. For an employer's conduct to give rise to a constructive dismissal it must involve a repudiatory breach of contract (Western Excavating Ltd v Sharp [1978] ICR 221). In this case the claimant asserts that there was a breach of the implied term of mutual trust and confidence. Given the nature of that implied term as fundamental to the contract of employment, any breach of it will be regarded as a fundamental breach of contract (Morrow v Safeway Stores plc 2002 IRLR 9). The implied term of mutual trust and confidence is an implied term that an employer will not, without reasonable and proper cause, conduct his business in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee" (Malik v BCCI 1997 ICR 606; Woods v WM Car Services (Peterborough) Ltd 1981 ICR 666). It is not necessary that the employer intended any repudiation of the contract. The tribunal must look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.
82. A breach of the implied term of mutual trust and confidence will only occur where there was no 'reasonable and proper cause for the conduct in question'. The burden of proving the absence of reasonable and proper cause lies on the party seeking to rely on such an absence. The breach need not be intentional.
83. Individual actions by an employer that do not in themselves constitute fundamental breaches of any contractual term may have the cumulative effect of breaching the implied term of mutual trust and confidence. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a 'last straw' incident even though that incident by itself does not amount to a breach of contract (Lewis v Motorworld Garages Ltd Ltd [1986] ICR 157). The last straw does not need to be of the same character as the earlier acts in the series but it must contribute something to the breach of trust and confidence (Omilaju v Waltham Forest London Borough Council 2005 ICR 481)
84. Once it has been established that the employer has committed a repudiatory breach of contract the employee must go on to show that he or she accepted the repudiation by resigning. An employee will only be regarded as having accepted the employer's repudiation if her resignation has been caused by the breach of contract in question. The Tribunal must determine what was an effective cause of the resignation. Once an employer's repudiation of contract has been established it is for the tribunal to ask whether the employee has accepted that repudiation by treating the contract as at an end. The fact that the employee also objected to other actions which did not amount to a breach of contract does not vitiate acceptance of the repudiation Meikle v Nottinghamshire County Council 2005 ICR 1). The employer's conduct must be 'an' effective cause of the resignation, not necessarily 'the' effective cause of the resignation.

85. Where the employee waits too long after the breach of contract before resigning she may be taken to have affirmed the contract and lose the right to claim constructive dismissal. The tribunal should not look merely at the passage of time in isolation. What matters is whether, in all the circumstances, the employee's conduct has shown an intention to continue in employment rather than resign. The employee's own situation should be considered as part of the circumstances Chindove v William Morrison Supermarkets plc EAT 0201/13. An employee may continue to perform the contract under protest for a period without necessarily being taken to have affirmed the contract.
86. Even if a constructive dismissal is established it is not necessarily an unfair dismissal. The employer may still show that it was for a potentially fair reason within the meaning of s98 of the Employment Rights Act 1996 and that it was reasonable in all the circumstances pursuant to section 98(4) ERA. In this case the respondent relies on "some other substantial reason" within the meaning of section 98(1)(b), namely the plan to restructure the business and make changes to increase efficiency.

Conclusions

87. I return to the agreed list of issues in order to draw my conclusions in this case.
88. The respondent clearly made significant changes to the claimant's job role and responsibilities. The substance of those changes was to ask the claimant to take on management of an additional contract and the workforce assigned to it in addition to her pre-existing management responsibilities. The substance of the role remained the same: managing an MI team. The number of employees and the subject matter of the contract was changed. The necessary skill set for the claimant to do the role was essentially the same albeit the claimant would gain additional knowledge of the workings of the PIP contract over time. To some extent it is a question of semantics. The claimant perceives this as giving her an additional job role on top of the one she already had. I take the view that it is the expansion of her existing role to cover a new contract with new direct reports. It was certainly a change to her role and she was certainly given new responsibilities.
89. I do not accept that claimant was required to "know" (as part of the H&W MI role) all of the source data/reporting solutions for the PCSE contract and the PIP contract. In any organisation there will be a difference in knowledge level between the operatives doing a piece of work and the manager who manages the operatives. The crucial skillset for the manager is the strategic management skillset. This is a transferable skillset which can be applied to various subject matters/contracts. Of course, a manager will need to have some subject knowledge in order to manage the team properly but it has not been established in this case that the claimant needed to know the "ins and outs" of the two contracts in quite the way she asserts. The respondent makes the valid point that whenever someone moves into a different role

there will be a period of knowledge acquisition. This will happen on joining a new employer as well as when there is a change in the workstream of the current employer. It is a matter of degree. I accept that the claimant will have needed to acquire some knowledge over time to get to grips with managing the PIP team but the reality is that this was not an unreasonable expectation, as is demonstrated by the fact that Mr Chumber has done the same thing 'the other way around' in terms of getting to know PCSE. The claimant's viewpoint also does not take into account the fact that she would be provided with support from the outgoing manager during the transition period (Mr Chumber) and that she would be inheriting a workforce who had already been working on PIP and had the requisite knowledge of it.

90. I also note that the claimant took on additional job activities over and above her job description even before the restructure (e.g. managing the Data Warehouse). Mr Chumber's evidence shows that it was not an additional job role and was not too much for one person to manage. I compare the diagrams at [206] and [297] and note that the individuals in the workforce have stayed. The claimant knew who she would get as direct reports from the other team when she created the chart at [206].
91. As set out above, in April 2020 there were effectively 6 people in the team which C was managing. By the time it got to September there were the following people to work in the PCSE team: Craig Brotherton, Farran Deschamps, John Pressedene, Dean Field, Carl Meades, Elsie Reed. Matt Turner left in September. The claimant therefore still had 6 direct reports on the PCSE side of the team. Of that six, 3 were direct employees (albeit one was on sick leave/proposed redundant), the rest were contractors or secondees. She inherited the PIP team with the staffing levels it had operated on prior to the restructure.
92. In light of my findings above I do not accept that there was a drastic reduction in overall allocated resources. The reality is that the restructure effectively joined together two existing teams of employees to do work on two existing contracts. The amount of work done by the two teams was not expected to increase or decrease. The number of employees/contractors actually working on the contracts was not reduced as part of the restructure. They were effectively put together using the workers already in situ. Any changes in actual headcount (by which I mean people actually in post actually doing work, as opposed to 'notional' headcount of vacancies/positions on HR systems) were entirely unrelated to the reorganisation and would have happened even without the change. Insofar as those changes occurred in the PCSE team the claimant would have had to manage this even if her role had stayed the same. She has never suggested that she was unable to do her original PCSE role or that changes in that regard would amount to a breach of contract by the respondent. It is also difficult to understand why the claimant was content to make Elsie redundant if she felt she did not have enough people in the team.
93. The claimant makes a subsidiary point here: she is not just talking about headcount, she is also talking about suitability of the workers and adequacy

of the skillset for the work. The reality is, however, that the contractors who had the particular skills she was concerned about had their contracts extended. There was no indication that they would be removed before the claimant was happy for them to go. She effectively had them as long as she needed them. She further asserts that having such reliance on contractors is too precarious. This is not necessarily the case. After all, even a permanent full-time employee can resign and move on. A contractor is not necessarily less reliable or long term than a direct employee. Furthermore, if there was an issue of 'succession planning' to ensure that knowledge was not lost if someone left the organisation, this was something which formed part of her management responsibilities (and would have done so even in the absence of the restructure). She would have had to take a view about getting the contractors to train up their colleagues on the particular subject matter or recruiting further resource to pass the knowledge on to before the contractors left the business.

94. The respondent clearly did not issue the claimant with updated written terms and conditions and instead asked her to agree to the changes over email. However, this was not necessarily inappropriate in all the circumstances. The claimant had clearly been told the nature and extent of the proposed changes to her job description and the scope of her management responsibilities. There was ongoing correspondence and discussions about this. Whilst her job title would change and the scope of her management responsibilities would change this would be better reflected in an updated job description. The remainder of her terms and conditions remained the same. The important thing is that she had been told what was happening. In any event, to the extent that this was part of a breach of contract on the respondent's part, it had no causal relevance to the claimant's decision to resign. She received the grievance outcome which sought to rectify this particular point but resigned the same day. She did not wait for the new documents to be produced. This suggests that it was not relevant to her decision to resign. If it had been then she would have waited to see if they would correct their error before making the decision to resign.
95. In looking at the issue of consultation it is important to look at the substance of what happened and not just the format. There was apparently a consultation period. The claimant was involved in discussing the plans and how they would work. The claimant did in fact object to the changes where she disagreed with them. She further took out a grievance to raise her objections. The problem was not that she was not given the opportunity to object, rather it was that she did not get the outcome that she wanted when she raised those objections. No consultation process will guarantee that the consultee receives the outcome they want. That consultation process will still have value. The fact that parts of the process in this case were formally referred to as a grievance does not mean that they were not an opportunity to consult. Likewise, the period from the announcement of the proposed changes up until the raising of the grievance was also a de facto consultation period. The claimant drafted documents and plans and discussed them with her managers. She had an active role and was not just the passive recipient of their information. Indeed, decisions were taken to loan resources because of the representations that the claimant had made.

96. I do not accept that the respondent failed (as part of the grievance process) to put things right decisively and instruct a 'fix' to resourcing issues in a timely manner. To the extent that extra resource was definitely required this was addressed with the extension of contractor contracts and the loan of other employees. The grievance outcome provided for a further review but the claimant did not wait to see what the outcome of this would be. The grievance process itself was carried out reasonably speedily and it is not asserted that any delay to the solutions was caused by delays in the grievance process itself.
97. My overall conclusion is that the respondent's actions did not, either individually or cumulatively, amount to a breach of the implied term of mutual trust and confidence. The claimant was evidently being taken through an unsettling period of change. There are always things which can be improved in the way that a restructure is handled and the claimant may have some legitimate criticisms of the way it was handled in this case. However, the implied term of mutual trust and confidence does not require a counsel of perfection. On the contrary, there must be behaviour which was calculated or likely to destroy or seriously damage the trust and confidence between the parties. The burden of proof rests on the claimant. The respondent's conduct in this case does not meet that threshold. The respondent had been sufficiently responsive to the claimant's representations for her to at least wait and see if any of her anticipated problems became a reality once she started to do the enlarged role. Nor is this really a "last straw" case, as the claimant's representative seemed to suggest in closing submissions. Even taking all the events cumulatively there was no fundamental breach and no "last straw" event to tip the circumstances over into a fundamental breach entitling the claimant to resign. In any event, the respondent had reasonable and proper cause for acting as it did as it had good business reasons for wanting to rationalise the structure of its business and run the MI function in the most effective and efficient way.
98. In light of my findings above it is not strictly necessary for me to address the remaining legal issues. That said, I am satisfied that the claimant did resign in response to the proposed changes to her job role and her concern that she did not have adequate resources or personal knowledge of the PIP contract to be able to carry out the expanded role. She was not responding to a drastic reduction in personnel, as alleged, because there had in fact been no such drastic reduction. The failure to issue updated terms and conditions was not material to the claimant's decision to resign as she did not to see what would happen following the outcome of the grievance but resigned that same day. She did exercise her right to consult if one considers the substance of the interactions. She did not resign in response to a failure by the respondent to put in place a timely 'fix' as she did not wait to see if the problems in the new role actually materialised as she feared and instead resigned before testing this out.

99. If a fundamental breach of contract had been established I would not have found that the claimant affirmed the contract before resigning. If anything, she resigned too soon and did not wait to see if her fears about the changes in fact became a reality before terminating her employment.
100. In the absence of a constructive dismissal I make no further findings on the remaining issues in the agreed list of issues.

Employment Judge Eeley

Date 16th March 2021

SENT TO THE PARTIES ON

Date 22nd March 2021

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.