



EMPLOYMENT TRIBUNALS

Claimant: Mr. I Griffiths
Respondent: Calor Gas Limited
Heard at: Midlands West (by CVP)
On: 10 and 11 April 2024
Before: Employment Judge C Knowles

Representation

Claimant: In person
Respondent: Mr. A Lloyd (Solicitor)

RESERVED JUDGMENT

The claimant's complaint of unfair constructive dismissal is not well-founded and is dismissed.

REASONS

1. By a claim form presented to the Tribunal on 25 July 2023, the claimant brought a claim for constructive unfair dismissal.

Procedure, documents and evidence heard.

Agreed List of Issues

2. Each party had submitted to the Tribunal a different suggested list of issues. On the first morning of the hearing, I read those lists of issues and discussed them with the parties. With the benefit of that discussion, I then prepared a draft list of the issues that it appeared the Tribunal needed to resolve. This was sent by the Tribunal to the parties for them to consider whilst I was completing my reading of the witness statements. After I had completed my reading, and following further discussion with the parties, it was agreed that

the issues set out below (under the bold heading “Issues”) were the issues that the Tribunal needed to decide at this stage. If I did find that the Claimant had been unfairly constructively dismissed, I would then need to hear further evidence and submissions on remedy (compensation).

3. The agreed list of issues does not include any reference to matters after 6 March 2023, and this is because the Claimant clarified that the “final straw” for him was what he says was an excessive work demand on 6 March. He says that nothing that came afterwards impacted upon his decision to resign. The Claimant also confirmed that he was not relying on a breach of any express term of his contract, but that he was relying on an alleged breach of the implied term of mutual trust and confidence. Similarly, the agreed list of issues does not include consideration of whether any dismissal was fair, nor does it make any reference to contributory fault or to what lawyers refer to as “Polkey” (following Polkey v AE Dayton Services Limited [1987] UKHL 8). This is because Mr. Lloyd confirmed that *if* the Tribunal found that there had been a constructive dismissal, the respondent would not suggest that it was fair, that there should be any finding of contributory fault, or that the claimant would have been (fairly) dismissed in any event.

Documents and evidence

4. I read witness statements, and heard oral evidence under cross-examination, from the following witnesses:
 - (a) The Claimant. His Witness Statement was dated 6 March 2024, and he gave evidence on 10 April 2024.
 - (b) Karl Bateman, National Partnership Manager of the Respondent. His Witness Statement was dated 4 March 2024, and he gave evidence on 11 April 2024.
 - (c) Tom Melton, who was HR Business Partner at the time with which this claim is concerned. His Witness Statement was dated 4 March 2024, and he gave evidence on 11 April 2024.

(d) Scott Young, Respondent's Area Sales Manager for Scotland and the North of England. His Witness Statements were dated 5 March and 2 April 2024, and he gave evidence on 11 April 2024.

5. The parties had agreed a final hearing bundle of 347 pages (including index). I read the documents which were referred to by page number in the Witness Statements, and any other documents to which I was specifically referred by the parties.

Further evidence admitted on 11 April 2024

6. On the morning of the second day of the hearing, the claimant applied for further evidence to be considered by the Tribunal, namely a recording (audio and video) of a meeting held by Microsoft Teams on 6 March 2023. The claimant identified this as being relevant to the "cylinder recovery plan" (issue 1.1.1.6 in the list of issues).
7. Initially, Mr. Lloyd objected to this further evidence being adduced, primarily on the basis that it had not been disclosed to the respondent, and due to the potential logistical difficulty that it may cause. However, once the claimant had provided the respondent with a copy of the video, and the respondent had had an opportunity to view it, Mr. Lloyd agreed that it was appropriate for the video to be viewed by the Tribunal. The video was then admitted into evidence by consent.
8. The late disclosure of the video did cause delays on the second day of the hearing, but with the parties' co-operation, it was possible to timetable the case so that the evidence and submissions could be completed within the two-day listing. Unfortunately, as submissions did not finish until around 4.30pm on the second day of the hearing, there was not sufficient time for me to reach my decision in the case on that day. I therefore had to reserve Judgment.

Issues

9. Following the discussions on the morning of 10 April 2024, it was agreed that the issues that the Tribunal had to consider were as follows:

1.1 Was the Claimant dismissed?

1.1.1 Did the respondent do the following things:

1.1.1.1 Force him to change his role on 19 September 2022 without notice or consultation.

1.1.1.2 Force the Claimant to accept unreasonable changes in how he works, specifically:

1.1.1.2.1 not setting him any work;

1.1.1.2.2 his line manager or superior not making contact with him between 7 January and 5 March 2023;

1.1.1.2.3 not giving performance targets;

1.1.1.2.4 not giving him training;

1.1.1.2.5 not acknowledging him or showing him appreciation or care after his change of manager at the start of January 2023.

1.1.1.3 Fail to carry out risk assessments in relation to the Claimant being a home / lone worker;

1.1.1.4 Alternatively, if risk assessments were carried out, fail to follow those risk assessments.

1.1.1.5 Fail to contact the claimant to discuss the issues brought to the Respondent's attention by Rachel (his colleague – "RH").

1.1.1.6 Instruct the Claimant on 6 March and by email from Scott Young to perform excessive tasks that were 4 times that given to his peers, and to an impossible deadline? (The Cylinder recovery plan). (The

Claimant relies upon this last issue as being a “last straw”.)

1.1.2 Did those things cumulatively breach the implied term of trust and confidence? The Tribunal will need to decide:

1.1.2.1 whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

1.1.2.2 whether it had reasonable and proper cause for doing so.

1.1.3 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

1.1.4 Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant’s resignation.

1.1.5 Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant’s words or actions showed that they chose to keep the contract alive even after the breach.

Findings of Fact

10. Considering all the evidence, I found the following facts on the balance of probabilities. Where I refer to page numbers, I am referring to pages of the hearing bundle.

11. The respondent is a company which sells liquified petroleum gas (**LPG**). On 15 August 2016, the claimant commenced employment with the respondent

as a Cylinder Salesperson, based at home and covering the Peterborough Region. He was provided with written terms and conditions of employment (p32-38).

Claimant's appointment as a Specifiers Consultant in 2018

12. On 5 February 2018, the claimant was seconded to the position of Specifiers Consultant. This role was still based from home, but the claimant now reported to Ian Digby, Specifier Sales Manager. This secondment was expected to last until 30 July 2018.

13. On 11 September 2018, the respondent sent to the claimant a letter offering him the claimant the role of Specifiers Consultant, Band D, on a permanent basis (p51-2). The offer letter set out that the role would be based at home and that the claimant would report directly to Mr. Digby, Specifier Manager. The formal terms of the offer were then set out. The claimant accepted the offer, and the respondent provided the claimant with a statement of "Terms and Conditions (Specifiers Consultant)" (p53-60) ("**the contract**"). Although the role was described in the offer letter and contract as being that of "*Specifiers Consultant*", it was referred to in evidence as "*Specifier Consultant*". I use that latter description in my Judgment, and I find that nothing turns on whether the word "Specifiers" or "Specifier" is used.

14. I accepted the claimant's evidence that the job description for the Specifier Consultant role that he accepted in September 2018 was the one within the job advertisement at pages 48-9 of the bundle. That is the only Specifier Consultant job description that was in the bundle that clearly dates from around the relevant time, and I will refer to it as "the 2018 Specifier Consultant Job Description". It referred to the role as being one of "*Sales Professional – Specifier Consultant (Travel required to cover the South)*". It said that the successful candidate would be "*responsible for selling and promoting the use of LPG into the third party specifier and developer market. They will also be responsible for supporting the Specifier Sales Manager to develop and implement a medium- long term national strategy.*" The document then went on:

"Key responsibilities will include:

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- *Effectively identify and plan calls on potential customers within territory to ensure continuous growth (to include some cold calling both online, via telephone and face to face).*
- *Able to identify, network and nurture leads via social media (primarily LinkedIn).*
- *Work closely with the relevance COC/Engineering staff to ensure customer intimacy is paramount.*
- *Research and work closely with all third party influencers to ensure they are trained and feel part of the Calor Team.*
- *Work closely with sales management to maximise the sale of company's products and achieve individual sales targets, develop a new network of advocates and maximise customer service, thus contributing to the Company's overall objectives of volume, contribution and service.*
- *Keep fully up to date in all developments in territory that could affect potential or existing business.*
- *Ensure accurate and regular feedback of information to Specifier Sales Manager on competitor activity.*
- *Complete all reports and paperwork in a timely and accurate manner.*
- *Participate in monthly team meetings.*
- *Complete all Wire reporting in a timely and accurate manner.*
- *1Attend¹ events, exhibitions and shows as required.*
- *Ensure the distribution of gas and the storage of gas on customer premises or within customer control, complies with all safety regulations and codes of practice.*

¹ The "1" is in the original document.

- *Presenting CPD style and technical presentations to housebuilders.*

15. In practice, although no reference was made to this in the offer letter, the contract, or the job description, the claimant's day-to-day role in 2018 was in the Metered Estates team. In simple terms, the role of the Metered Estates team was to sell the respondent's product for use on housing estates that were unable to connect to mains gas, by persuading developers and housebuilders to buy and install the respondent's underground metered estate LPG solution. Between September 2018 and August 2022, the manager of the Metered Estates team was Mr. Digby, Specifier Manager.

16. In September 2021, Scott Young, whose substantive role was that of Area Sales Manager, was appointed as the respondent's National Sales Manager (Head of Sales) on a temporary basis.

August and early September 2022

17. By 2022, legislative changes meant that new-build homes could no longer have LPG boilers. The respondent took a decision not to install new metered estates solutions and not to buy any new underground tanks, and to effectively wind up the metered estates team.

18. The respondent decided that it would make sense for the claimant, and his colleague RH (also a Specifier Consultant) to move across into what was to be known as the Partnership Team, reporting to Karl Bateman, who would be National Partnership Manager. Mr. Bateman had previously been seconded as Area Manager though his substantive role had been Commercial Specifier Manager. In that substantive role he had managed other Specifier Consultants.

19. Discussions took place between managers (Mr. Young, Mr. Digby, Mr. Bateman and Steve Donaldson (Head of National Accounts)) to assess the extent to which the proposed move to the Partnerships Team would involve any change in duties for the claimant and RH, and whether or not consultation needed to take place with them before the decision to implement the change was confirmed.

20. The emails that were exchanged between managers at the time suggest some initial confusion as to which job description applied to the claimant's role of Specifier Consultant. At the hearing before me, there was also some confusion about which job description applied. The confusion at the hearing was compounded by a job description having been sent to the claimant's colleague, RH, on 1 March 2023 (p233) which did not reflect the job description which the respondent was now suggesting was the Specifier Consultant role in the Partnership Team.
21. I find that what happened is that having asked for the job description of the claimant and RH, Mr. Young was initially provided with the job description at p61-2 (also at p233-234) ("the 2019 job description"). Mr. Digby, who had been the claimant's line manager since 2018, and must have had a good knowledge of what the claimant's role involved, then questioned whether the 2019 job description was the correct one. This led to Mr. Young being provided with a different job description, namely the one at p75-6. That job description at p75-76 was then considered, and it was agreed that would also be the job description that would apply to the claimant going forward as a Specifier Consultant in the Partnership Team (albeit that the geographical location would be different than p75-6 in respect of the claimant). That is consistent with the contemporaneous emails, in particular Mr. Young's email dated 2 August 2022 (p73), where he says: "*Karl could you please use the "Specifier Consultant -North JD for future use as this is more detailed, just needs a couple of tweeks [sic] on names and CRM etc".*" This can only have been a reference to the job description at p75-76, because the 2019 job description (i.e., the one at p61-62, which was the one later sent to RH in March 2023 – p233) did not make any reference to the North.
22. Mr. Young therefore decided, having had discussions with the other managers, that whilst a move to the Partnership Team would involve a change in line management for the claimant, it was not going to involve a fundamental change in the job that the claimant was employed to do. The claimant's line manager Mr. Digby was copied into the email of 2 August 2022 (p73). He did not raise any query about, or objection to, the use of the job description at p75-6. Given that Mr. Digby had earlier raised a query

when the 2019 job description had been referred to, I find that the lack of further query or objection (to p75-6) suggests that Mr. Digby was satisfied that the job description at p75-6 did reflect the job that the claimant was already employed to do. At that time then, the position was that the claimant would remain a Specifier Consultant, though his title would change to “Partnership Specifier Consultant”, he would be required to fulfil the same job description, on the same salary and otherwise with the same terms and conditions. In the circumstances, Tom Melton, HR Business Partner, considered that this was a simple line management and title change and that it did not require any consultation to take place with the claimant (or RH). No individual lone worker or home working risk assessment was carried out for the claimant because he had always been a home / lone worker and he was going to continue being a home / lone worker (though required to travel to customers, as he had been before). The claimant had access to the respondent’s intranet which included dedicated pages on mental health, and wellbeing resources. I address the extent to which there were in fact changes to the Claimant’s day-to-day duties, below.

23. On 11 August 2022, the claimant and RH attended a meeting with Mr. Digby at a service station, at which they were told that the Metered Estates team would cease to exist, that they would move to a different manager’s team, and that Mr. Digby would stay to tie up loose ends for a couple of months before moving on to a different team himself.

24. At paragraph 14 of his witness statement, the claimant said that he was told that Mr. Melton was their contact in HR and that he and RH contacted Mr. Melton on several occasions asking for clarity and new job specifications that were never forthcoming. Later, at paragraph 26 he suggested that *“each time a member of our team went off sick with work related stress we would speak to Tom Melton to explain and ask for some sort of contact...”* (emphasis added). In oral evidence, the claimant initially maintained that he had had a conversation with Mr. Melton on the telephone prior to March 2023. He then accepted that he had not had conversations with Mr. Melton before 15 March 2023 but said he may have spoken to someone else. I find that having been told on 11 August 2022 that he would be moved from the Metered Estates team to the Partnership Team, the claimant did not contact

HR to suggest any dissatisfaction with his employment until he had already decided to resign in March 2023. I find that he did not personally speak to anyone else in HR either. Whilst the claimant said in oral evidence that he may have spoken to someone else, he was not able to clearly identify who this may have been, and had he spoken to someone, it is likely that there would be some documentation evidencing that, and there was none.

25. In oral evidence the claimant said that having been told about the team move in August 2022, he would have had a look round to other jobs in August / September 2022. However, the claimant chose not to leave the respondent's employment at that time. He did apply, unsuccessfully, for a different role within the respondent in National Accounts.

26. Overall, I find that the claimant was supportive of the move from the Metered Estates team to the Partnerships Team, at least from shortly after he had been told of it and in the first few months. The documentary evidence that I had from a few weeks after the claimant had been notified of the forthcoming change is consistent with his attitude having been positive. On 5 September 2022, the Claimant emailed Mr. Bateman (p87). After discussing his interview for the National Accounts role, he wrote:

"Whenever we have met you may have picked up that I am a positive person and that I am hungry for a new challenge and view the new National Partnerships team and role as that. We discussed the outline of the role when the 4 of us met a few weeks ago and it would be good to meet up again soon to discuss it in more detail now that the dust has settled and start to become an integral part of the team and start generating fresh leads in this very visible role."

27. Mr. Bateman replied to the claimant's email that same day, saying that he was delighted that the claimant was on board and that they would touch base at the end of the week.

Changes implemented in September 2022

28. The claimant moved to the Partnership Team with effect from 19 September 2022. The Partnership team comprised five people: two Specifier Consultants (the claimant and RH); two Outbound Agents (Tayla and Anna);

and the National Partnership Manager (Mr. Bateman). Initially, the claimant and RH were required to assist with some ongoing Metered Estates enquiries, but this stopped around October 2022, as I describe further below.

29. Mr. Melton asked an administrator to send out a letter to the claimant confirming that from 4 October 2022 his job title would change to “*Partnership Specifier Consultant*”, that he would report to Mr. Bateman, and that there would be no other changes to his terms and conditions. Mr. Melton did not personally send the letter, there was no proof of it being posted, or of it having been emailed to the claimant, and the claimant said in evidence he had not received it. I find that the claimant did not receive the letter, but that he had been told all the information in the letter, as he accepted in oral evidence.
30. Given that it is the claimant’s case that the move to the Partnership Team involved a forced change of role, it was necessary for me to look carefully at what role the claimant was employed to do prior to 19 September 2022, and what role he was required to do afterwards. In his oral evidence, the claimant described the role prior to 19 September and the role from that date onwards as “*chalk and cheese*” and referred to the role in the Partnership Team as representing a demotion.
31. As I have already said, I find that the job description that applied to the Specifier Consultant role that the claimant accepted in 2018 was that at p48-49, and I find that the job description the respondent expected the claimant to fulfil in the Partnership Team was that at p75 – 76. That job description at p75-76 referred to the role as being that of “*Sales Professional – Specifier Consultant (Travel Required)*”. The role was described as home based, though nationwide travel would be required as part of the role. The jobholder would be “*responsible for selling and promoting the use of LPG into the third party specifier and developer market. They will also be responsible for supporting the Specifier Sales Manager to develop and implement a medium-long term national strategy.*”

Key responsibilities will include:

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- *Effectively identify and plan calls on potential customers within territory to ensure continuous growth (to include some cold calling both online, via telephone and face to face).*
- *Able to identify, network and nurture leads via social media (primarily LinkedIn).*
- *Work closely with the relevance COC/Engineering staff to ensure customer intimacy is paramount.*
- *Research and work closely with all third party influencers to ensure they are trained and feel part of the Calor Team.*
- *Work closely with sales management to maximise the sale of company's products and achieve individual sales targets, develop a new network of advocates and maximise customer service, thus contributing to the Company's overall objectives of volume, contribution and service.*
- *Keep fully up to date in all developments in territory that could affect potential or existing business.*
- *Ensure accurate and regular feedback of information to Specifier Sales Manager on competitor activity.*
- *Complete all reports and paperwork in a timely and accurate manner.*
- *Participate in monthly team meetings.*
- *Complete all Wire reporting in a timely and accurate manner.*
- *Attend events, exhibitions and shows as required.*
- *Ensure the distribution of gas and the storage of gas on customer premises or within customer control, complies with all safety regulations and codes of practice.*
- *Presenting CPD style and technical presentations to housebuilders."*

32. I find that in all material respects, the job description at p75-76 (paragraph 31 above) was the same as the 2018 Specifier Consultant Job description at p48-49 (paragraph 14 above). The claimant was employed as a Specifiers Consultant in 2018, and he remained a Specifiers Consultant on and after 19 September 2022. There was no material change in his contractual role or the job description that applied to the role.
33. However, the claimant said in evidence that the 2018 Specifier Consultant job description “*would have evolved*” during the time that he was doing the Specifier Consultant role in the Metered Estates team.
34. The key differences that were explained to me by the claimant were that in Metered Estates the role of the Specifier Consultant focused on building long-term relationships, and sales, and it was a technical role. By contrast, the claimant said that the Partnership Team was all about lead generation and was not technical.
35. I do accept that in practice there were some differences between the work that the claimant was doing as a Specifier Consultant by August 2022 in the Metered Estates team, and the work that he was then doing from 19 September 2022 onwards as a Specifier Consultant in the Partnership Team. Indeed, the respondent’s witnesses accepted that there were some differences. However, I do not find that the differences were such that the change in team represented a demotion, or that a comparison prior to the change and after the change was like “*chalk and cheese.*”
36. Dealing first with lead generation, I find that in practice Mr. Digby had managed the Metered Estates team in a way that meant he tended to be the person who focused on generating new leads. This meant that the Specifier Consultants (the claimant and RH) were less involved in generating new leads day to day and left more to focus on building long term relationships with developers and pursuing leads that had already been brought in by Mr. Digby or from existing sources within the respondent. They used their technical knowledge of the respondent’s product when doing this. However, the first two bullet points in the 2018 Specifier Consultant job description (p48-49) related to lead generation, which supports the evidence of the respondent that this was something that had

always been part of the job description of the claimant. This is consistent with the evidence that I heard from the respondent's witnesses when they told me that it later transpired (after the claimant had moved to the Partnership team) that in the Metered Estates team, the Specifier Consultants had not been carrying out all of their full job description. Lead generation remained part of the job description of a Specifier Consultant in the Partnership Team (p75-6), and the claimant was required to undertake that aspect of the job description. In addition, whereas Metered Estates had been an established team, the Partnerships Team was new, and so it is likely that there would be in practice, a particular emphasis on lead generation in the early days of the Partnership Team in comparison with the established Metered Estates team.

37. In relation to long-term relationship development, I accept that this was a key part of the work that the claimant did as a Specifier Consultant in the Metered Estates Team, but I find that a key role of the Partnership Team was also to manage the respondent's relationships, and that this would again require the claimant to use his technical knowledge of the respondent's product. This is consistent with the email that Mr. Bateman sent to (amongst others) the claimant on 16 September 2022, where he said (p106-7):

"The National Partnership team's – main role and duties are, to manage and nature any partnership deal Calor has. While making sure all leads are recorded correctly on our CRM (Salesforce). It is important to advise the teams, that we won't be taking sales off anybody, but just helping manage the relationship to produce more leads for everyone."

38. The claimant relied upon an email from RH dated 28 February 2023 in support of his contention that his role had been fundamentally changed without consultation. RH did not give evidence at the hearing and so what she says in her email has not been tested under cross-examination, and I have to bear that in mind when deciding what weight should be given to the account she provides in her email. I find that her email has to be placed into the context that it was sent at the end of February 2023, when there had been a further change of line manager, and that it is clear that she was anxious about her job security in the context of the respondent's overall

business undergoing changes. I will discuss that period later in my Judgment.

39. On balance then, and considering all the evidence that was before the Tribunal, I find that whilst there were some differences between the Specifier Consultant role as it was done in the Metered Estates team and the Specifier Consultant role as it was required to be done in the Partnerships team, the differences were not fundamental. The job description that applied to the claimant prior to, and following, 19 September 2022 was fundamentally the same, his grade was the same, his salary was the same (approximately £34,000 gross p.a.), and apart from a change of line manager and team, the role he was contractually required to do was the same. The claimant was eligible for the quarterly Sales Incentive Scheme (SIS) before, and after, 19 September 2022.

September 2022 – December 2022

40. The claimant accepted in his oral evidence that he had got on well with Mr. Bateman and had a good relationship with him. The claimant accepted that he himself had taken the lead with the Partnership Team, but said he had had no alternative, and that there was a lot of “*treading water*” in those first few months. Mr. Bateman accepted that for the first three months, the claimant was not set targets as such, as the target incentive payment (under the sales incentive scheme) had already been set and agreed by the claimant’s previous manager, and it would give the team a chance to build their work in the Partnership Team.

41. I find that the contemporaneous evidence from the period between September and December 2022 is consistent with the claimant enjoying his role in the Partnership Team at that time. Mr. Bateman and the claimant spoke regularly, at least every other day. The pair exchanged regular emails, as could be seen from documentation in the bundle. Mr. Bateman held weekly catch-ups with the Partnership Team using Microsoft Teams. The claimant did not raise a grievance about the change of team or line manager, nor did he raise any written objection to those changes.

42. Whilst the claimant and RH had initially been helping manage the tail end of the work from the Metered Estates team, a decision was taken on around 20 October 2022 that they should no longer have to do that, and that Mr. Digby would deal with any and all ongoing Metered Estates work. On 20 October 2022, Mr. Bateman emailed the claimant and RH, telling them that anything to do with old metered estates should be passed to Mr. Digby to pick up, and that the sole purpose and role of the claimant and RH should now be lead generation. Although Mr. Bateman here did not refer to the relationship development aspect of the role in the Partnership Team, I find that was still a key part of the claimant's role, and that Mr. Bateman was simply using short-hand to make the point that the claimant should now focus on the Partnership Team as opposed to the old Metered Estates work. I find that the claimant viewed this as a positive development, as his reply shows (p157):

“Boom! It’s really important to be able to focus on one thing or the other, chat more at 10am.”

January to March 2023

6 January 2023

43. On 6 January 2023, the claimant was told that Mr. Bateman was moving to a new position within the company and that Mr. Young was now his line manager. The respondent's intention was that this would be on an interim basis, whilst the respondent looked to appoint someone to replace Mr. Bateman.

44. Mr. Bateman and the claimant had had a very good relationship and Mr. Bateman had been impressed by the claimant. Mr. Bateman suggested to the claimant that it was worth the claimant speaking to Mr. Young about whether the claimant could lead the Partnership Team.

45. The claimant emailed Mr. Young on 6 January 2023 (p186-7). He said that as Mr. Bateman's role was now vacant, he wanted to “throw his hat into the ring”. He said he had already planned a presentation for Mr. Bateman outlining his Partnerships Team strategy for the next 3 – 6 months, and that he would like to go through it with Mr. Young. He said that: *“it includes new*

initiatives I'd like to progress in the immediate short-term using Glenigans² and OFTEC data; as well as short to medium term prospects." Mr. Young replied that same day, saying that he would send him through a calendar appointment for Tuesday morning (i.e., 10 January 2023), and the claimant replied that this was "*superb*" and that he looked forward to meeting on Tuesday (p186).

10 January 2023

46. I find that the claimant and Mr. Young met on 10 January 2023, that date being consistent with the email exchange on 6 January (p186). The claimant and Mr. Young had slightly different recollections about exactly how long the meeting lasted. Mr. Young recalled it being 1.5 hours whereas the claimant recalled it being ½ to 1 hour. Whatever the precise length of the meeting, the claimant agreed that it was sufficient time for him to make his presentation, supported by PowerPoint slides, and that it was a "*good, substantial meeting.*"

47. There was a disagreement between the claimant and Mr. Young as to whether the claimant's presentation had included the claimant's proposals for the work he would do from that day forward (as Mr. Young recalled), or whether it represented only "*blue sky thinking*" about what the Partnerships Team might do in the future (the claimant's recollection).

48. The task of resolving this disagreement was made more difficult by the fact that no notes were taken of the meeting, and the PowerPoint presentation was not in the bundle. Mr. Young had not kept a copy, on the basis that he understood the claimant intended to also rely upon the PowerPoint when making an application for the National Partnership manager role (i.e., the role Mr. Bateman had just left) and he did not want there to be any perceived unfairness to other candidates. It was not clear why the claimant, who was the author of the presentation, did not provide a copy.

49. I find that whilst the claimant's presentation included some proposals that he had for growing the Partnership Team over the medium / longer term, it also included at least some reference to the work that he planned to do as

² A database.

Specifier Consultant from that day going forward and in the immediate / shorter term. That is consistent with the claimant's email to Mr. Young on 6 January, where he said of his presentation: "*it includes new initiatives I'd like to progress in the immediate short-term.*" There would have been no reason for the claimant to make reference to the immediate short-term if the presentation had only been about "*blue sky thinking*" and / or a plan for the medium or longer-term. The fact the claimant had already planned to give the presentation to Mr. Bateman, before he knew that Mr. Bateman was changing role, is also consistent with the presentation including work the claimant intended to do as Specifier Consultant and not just plans he had if he were to be appointed as National Partnership Manager. Further, had the meeting on 6 January 2023 only discussed "*blue sky thinking*", and had the claimant then not known what work he was supposed to be doing going forward, it is likely that he would have contacted Mr. Young or HR to specifically tell them that he did not know what work he was supposed to be doing. He did not do so. I do not find that his email of 19 January 2023 suggested that he did not know what work he was supposed to be doing.

50. I accept Mr. Young's evidence that he was very impressed with the claimant and his knowledge, that he felt the claimant was competent and knew what was expected of him and that Mr. Young did not consider that further action in terms of training or additional support was required. I also accept his evidence that he agreed with the claimant's plan and told him to carry on. The claimant invited me to conclude that this was implausible: who would be checking that he was not doing something that was damaging the respondent? I did not find Mr. Young's evidence to be implausible. Mr. Young's assessment of the claimant's competence and ability was consistent with the assessment that Mr. Bateman had reached. By all accounts, the claimant appears to have been an impressive, self-motivated, employee. By this stage the claimant had worked for the respondent for over six years, and for over four of those he had been a Specifier Consultant. He had proved himself and there was nothing to suggest he had ever done anything to damage the respondent. Both parties agreed that at this time Mr. Young was extremely busy. Being so busy, and having been so impressed by the claimant, it seems entirely likely that Mr. Young would tell the claimant to get on with it. Mr. Young did not himself set the

claimant particular targets that he expected him to meet over the following three months. He believed that the claimant had a plan and would be following that plan, and Mr. Young was happy for him to do so.

11 January to 2 March 2023

Meetings held by Mr. Young with Tayla and Anna

51. On 13 January 2023, Mr. Young met via MS Teams with Talya, an Outbound Specialist in the Partnership Team, and on 30 January 2023 he met with Talya and Anna. I find that neither of these meetings were Partnership Team meetings. When it was put to the claimant in cross-examination that they related to return to work / absence, the claimant said that he did not know the content of the meetings, but at the same time asserted that work would also have been discussed. The calendar invitations and emails that are in the bundle are consistent with these meetings having been related to return to work and / or sickness absence (p189, 193, 205), and I accept that was the purpose of those meetings. Even if work had been discussed at these meetings, that would not mean that the claimant could reasonably have expected an invitation. He did not line manage Talya or Anna and there would be no good reason why he should be invited to these meetings.

52. It was not in dispute that Tayla had had some time off due to stress, though Mr. Melton could not recall if this was work-related. I find that she was back at work by mid-January 2023.

Mr. Young's interaction with the claimant

53. On 19 January 2023, the claimant emailed Mr. Young (p192). After saying it was excellent news that Tayla was "*back fulltime*", he wrote:

"Following on from our Teams meeting I have updated and mind-mapped my plan / ideas for the Partnerships Team. Before I progress them further I wanted to ask if I'm barking up the right trees, the attached certainly aren't the finished article.

We are doing some good work in the team but being honest there is also some treading water whilst we in this period of change. I really do want to

step up into Karl's vacant role to lead and grow the Partnership Team, and if it were a secondment role that would give you the flexibility of finding out more about myself. Those that have worked with me and recently interviewed me....have seen my potential and I'd relish the opportunity to show yourself what I'm capable of.

I'd appreciate your feedback on my Partnerships Team plans when convenient."

54. I considered whether this email showed that the meeting on 6 January 2023 had only been about "*blue sky thinking*" and /or medium to longer term plans and / or things the claimant planned to do if he were appointed as National Partnership manager. I found that it did not. Whilst this email supports the fact that the presentation did include some plans for the future, and plans the claimant would have for the team if appointed as Mr. Bateman's successor, I find that the presentation had also included plans for the immediate and shorter term for the reasons I have already explained at paragraph 49. What the email of 19 January 2023 did not say is that the claimant did not know what work he was supposed to be doing in the short-term, or that he had no work to do in the immediate / short-term.

55. Mr. Young had not provided a reply to this email by the date of the claimant's resignation. In his oral evidence, Mr. Young accepted that he had not managed the Partnership team as effectively as he would have liked to have done between the period from January to March 2023. He accepted that he hadn't proactively contacted the team between the meeting that he had with the claimant (10 January) and the invitation to the meeting sent on 2 March. He accepted that this had not been a good way to manage the team, but it had been due to him being extremely busy. The claimant did not chase Mr. Young for a reply to the email of 19 January, although he accepted in evidence that he did have Mr. Young's email address and telephone number. As I have already explained, I find that he did not contact HR either.

56. The claimant invited me to compare calendar entries in the bundle which he said showed that after 1 January 2023 he was not given work to do. I found it difficult to draw conclusions from the calendar entries about what work the claimant was undertaking. The calendar clearly did not show everything

that the claimant was doing, only where meetings had been placed into the calendar. I do accept that the calendar entries are consistent with the fact that Mr. Young did not hold weekly team meetings, as Mr. Bateman had done, nor did he hold regular meetings with the claimant personally. I accept that Mr. Young did not set work for the claimant. As I have already found, Mr. Young believed that the claimant was following the plan he had discussed with him on 11 January 2023.

57. On 23 January 2023, various emails were sent between members of the team, copied to Mr. Young (p199 – 202). Tayla emailed setting out what the Outbound Specialists were working on, and RH replied to say that she and the claimant “*had a chat earlier on and will provide a similar list for you, this way everyone knows what each other is working on.*” Later that day, the claimant sent an email, providing some information and suggesting the team get together on Teams. The email was copied to Mr. Young. The email did not say that the claimant did not know what work he was supposed to be doing, or that he had no work to do.

58. On 3 February 2023, Mr. Young emailed the claimant to confirm his Sales Incentive Scheme (SIS) payment for Q4 (p207).

59. Between 3 February and 23 February Mr. Young was then on holiday.

RH’s correspondence with Mr. Young

60. On 6 February 2023, RH emailed Mr. Melton (p208). This email was not copied to the claimant, and it stated that “*at this stage, I would like this information to stay strictly between us.*” RH raised difficulties that she said she had experienced following the change of team and line manager to Mr. Bateman. She said that despite those difficulties she had come to start “*to feel comfortable with the new role, and I was looking forward to starting the year with the newly formed team.*” She then described having been told on her return to work after the new year that Mr. Bateman had got another job, starting immediately, and that:

“since then, I have had no contact off anyone, I have emailed Scott Young twice, text and phoned and have had no response. I understand he is really busy and have held off sending this email, as I was hoping someone would

have been in touch to let me know what is going on". She said that this was now affecting her health. She said "*there has been no clear guidance, we have not had a new job description or adequate training.*" She said she could not see the point in her being required to present a CPD presentation to Architects on the following Wednesday as due to building regulation changes building on LPG would be difficult. She suggested that the respondent was disorganised, and uncaring about its staff.

61. Following this email, Mr. Melton met with RH, and provided her with a job description, though which one was not clear from the evidence before me. On 16 February, RH emailed Mr. Melton again (p213). She said that she had heard that there were changes in National Accounts and Marketing and wanted to know if they would affect her. She said that she could not continue working this way without any clarification of job security, and that if she could not find out what was going on until Mr. Young returned on 23 February, she felt the best way forward was for her to take some time off until clarification could be given. Mr. Melton replied the same day, and RH then sent him a further email (p212-213). In this she suggested that she had been moved into a new role without real consultation or her approval, and that "*the new job role has turned out to be a nightmare – having no clear understanding of what markets or customers I should be targeting and with no manager who I can talk to and raise these concerns with and in an open and honest way.*" She said that uncertainty and lack of communication was starting to impact her health. Restructuring of other areas of the business, whether she was impacted or not, was not helping. She could not be an effective and productive employee unless the long-term security of her job role was given and what was expected of her in her role was clearly defined. She wanted to know what her targets and objectives were, who the new manager would be, and which sectors they should focus on (p212).

62. Mr. Young returned to work after his holiday on 23 February 2023. Having already been very busy prior to his holiday, on his return he had been allocated responsibility for a further 8 National Account Managers and 16 sales professionals, due to the person in charge of the National Accounts team being on secondment. This meant that Mr. Young now had close to 100 people for whom he was responsible.

63. On 28 February 2023, Mr. Young met with RH and Mr. Melton. Whilst the claimant was not invited, I find that this was not a team meeting, but was in response to the specific concerns that RH had raised. Given that RH had asked Mr. Melton to keep matters confidential in her first email and had not copied the claimant into any of the emails to Mr. Melton, the claimant could not reasonably have expected an invitation to this meeting. At this meeting Mr. Young agreed to hold weekly catch-ups with RH.
64. Following the meeting, RH emailed Mr. Young and Mr. Melton thanking them for the meeting (p229-230). She said that she had felt better after their chat, but that following a Teams Webinar from the Management Team she now had further concerns / questions, which she set out. I find that it is clear from this email that RH was concerned that there would be further redundancies within the respondent. She also stated that *“the job role I am now doing is completely different to the role I was doing previously (despite what you say!). feel more like an Internal salesperson than a Specifier. I was actively signing Metered Estates and visiting developers this time last year, and I had a clear understanding of what was expected of me. I was moved across into this role with no consultation and minimal training / guidance of what was expected of me.”* She asked for confirmation that the job description Mr. Melton had sent to her earlier had been the job description that applied when she first started as a Specifier Consultant in 2019.
65. Mr. Young replied to RH’s queries on 1 March (p231). In response to a question about why a CPD presentation was being given, Mr. Young said that he would obtain clarity on the existing CPD presentation *“however if you are in any doubt on the presentation, please reach out to either myself or Ivan.”* “Ivan” was a reference to the claimant. I find that at this time, Mr. Young was still of the view that the claimant was following the plan he had outlined to Mr. Young in January, and that he would be able to help RH if she required information. In response to the question about the job description, he said *“I can confirm that the job role is exactly the same as Specifier sales Consultant job description as per attachment.”* I find that the attachment (p233-234) was not the job description which Mr. Young had himself directed should be that which applied to the Specifier Consultant

role in the Partnership Team in his email of 2 August 2022 (p73, 75-6). Instead, what he sent to RH was a copy of the 2019 job description (p61). Mr. Young was very busy at the time he replied to RH, but the sending of the 2019 job description caused confusion both for RH at the time, and as part of this claim. However, for the reasons that I have already addressed at paragraphs 20 to 32 above, I find that the job description that applied to the claimant's role after 19 September 2022 was that at p75-6 (save that the claimant's area was the south rather than the north).

66. RH forwarded a copy of Mr. Young's response to the claimant, who advised RH to ask the respondent to provide her with a copy of her job description from when she had started (which had been in 2019), and a copy of the job description for her role as at March 2023 so that she could compare the two. RH replied thanking him and saying, "*another month with no manager....the joys!*" (p235).

Claimant's contact with Mr. Bateman

67. In cross-examination, it was suggested to the claimant that if he did not feel that he was getting support from his line manager there were other people he could have approached. I accept that there were a couple of occasions after Mr. Young became his line manager when he spoke to Mr. Bateman. I find that these were between the end of January 2023 and 15 February 2023, because Mr. Bateman was away training in January 2023 and then started consultation himself on 15 February 2023 and was not available. I accept Mr. Bateman's evidence that the claimant expressed some frustration that Mr. Bateman was no longer his line manager, that he had not been replaced, and that he felt that the respondent was slow off the mark to make commitments when the claimant found a good lead generator. Mr. Bateman encouraged the claimant to speak to Mr. Young as much as possible. Despite this, the claimant did not contact Mr. Young, or HR, to raise any concerns that he had with them directly.

2 to 6 March 2023

68. On 2 March 2023, Mr. Young invited the claimant and the rest of the Partnership Team to attend a meeting on 6 March. Field Sales Professionals, the National Accounts team, and Installation Advisers who

had access to a vehicle and could travel were also invited. The context for this meeting was that the respondent had a project called “BOOST”. Mr. Young described this as being the largest project the respondent had ever taken on. In preparation for “BOOST”, which was due to begin in June 2023, the respondent needed to carry out a stock reconciliation of all the cylinders out in the field, i.e., at customers’ premises. This was known as the “Cylinder Recovery Plan”.

69. No notes were taken of this meeting, but the claimant recorded the first twelve minutes or so without telling the respondent that he was doing this. At the meeting, Mr. Young explained the cylinder recovery plan, that it was going to run for around three weeks, and that each of about 3,400 customers needed to be visited and a stock count completed. Mr. Young showed the attendees a list (“the spreadsheet”). The spreadsheet contained different columns, detailing different types of customers that needed to be visited. The first type of customer, lapsed users since 2022 (“the Rx customers”), he described as *“the priority one that I want everybody to concentrate on to start off with.”* The list also allocated particular customers to particular members of the respondent’s teams. Mr. Young acknowledged that some people had got a lot more customers than others, but said that it had been split on a geographical area within each employee’s area (of sales). Mr. Young described the cylinder recovery plan as a priority over selling, and acknowledged other pressures that people had on, but said that *“if we can get this done over the next three weeks or at least the majority of the calls done over the next three weeks, then that puts us in good state moving into the next quarter.”* He said that he would send out a briefing pack with numbers, and that *“for some of the ones that we’ve identified, they’ve got higher numbers sort of Richard for example, I think you’re sitting with 233 counts. I’ve already spoke to Paul Goodall and what we’re doing is what we’re looking to try and split some of these out. But the main thing is looking to prioritise....Prioritise and the Rx customers.....the RX customers, obviously they’re smaller numbers with the exception of Ivan who’s sitting there about 167. However, these are all in the same sort of post code area, we reckon there are some sort of customers just coming out of Norwich. So some of these will be a 2-minute call that’ll just be going in...”* At the end of his presentation, Mr. Young invited questions. The

claimant did not record the questions and answers. He accepted in evidence that he had not personally asked any questions.

70. Later that day, Mr. Young emailed those who had attended the meeting, including the claimant, describing the Cylinder Recovery plan as a “*high priority project*”, requiring a “*boots on the ground*” approach, “*with all the targeted customers personally visited by you to discuss stock levels and identify cylinders for collection, where applicable. Ideally, we would like this completed by 31st March 2023.*” A link was provided to the spreadsheet, setting out which customers had been allocated to which person, and which category those customers were in. The spreadsheet showed that 167 customers had been allocated to the claimant, all in the “Rx” category. Mr. Young concluded his email by saying “*any questions, please let me know*” (p239-240). The claimant did not reply to Mr. Young’s email.

71. In all, 3,406 customers had to be visited by 37 employees. The claimant had been allocated the largest number of Rx customers, and the second largest number of customers overall. The claimant says that it would have taken him 55 working days without interruption to visit all 167 (whereas there were 19 working days left until 31 March). On the information that was presented to the Tribunal, it was not possible for me to reach a conclusion as to whether the claimant’s assessment of 55 days was accurate, but I do accept that the claimant would not have been able to visit all 167 customers by 31 March 2023. Mr., Young also accepted this in his evidence.

72. However, I also find that objectively it was clear from what Mr. Young had said at the meeting, and when taken together with his email, that the 31 March was not a hard deadline and that additional support may be able to be provided for those with particularly high numbers. The claimant suggested that this was not the case, highlighting that at the meeting, Mr. Young had only named Richard when he spoke about trying to split some of the customers out for those who had larger numbers. I find that taking everything Mr. Young said as a whole, it would have been evident to anyone at the meeting that Mr. Young was not suggesting that efforts could only be made to support Richard, because he used the words “*for example*”, which would have been unnecessary if Richard was the only person for whom support could be arranged.

The claimant's resignation

73. On 7 March 2023, the claimant emailed Mr. Melton (p250):

"You are aware of how the Partnerships Team including myself have and are being treated, now this Cylinder Recovery Plan that I have been told to be fully involved in without prior discussion or consultation is the final straw. I need some distance away from this situation for my own sake. I will send a calendar request to you for next week to discuss further on my return."

74. This was the first time that the claimant had notified Mr. Melton that he was unhappy with his treatment by the respondent. Mr. Melton forwarded the claimant's email to Mr. Young (p251).

75. On 8 March 2023, the claimant failed to attend a Partnership Team meeting chaired by Mr. Young. Mr. Young sent the claimant a text message but did not receive a reply. The claimant was not issued with a fit note from his GP and did not give ill-health as a reason for his absence.

76. On 15 March 2023, the claimant met with Mr. Melton. Although the meeting had initially been arranged to be by MS Teams, it in fact took place in person. It was a short meeting at which the claimant handed Mr. Melton his resignation letter and told him that he wanted to leave the respondent's employment. Mr. Melton invited the claimant to expand on the issues he had raised in his email of 7 March, but the claimant did not want to.

77. The claimant's resignation letter stated that his resignation was to take effect immediately (p291):

"I have no alternative but to resign without notice due to how I have been treated in recent months' from my forced change of role on 19/9/2022 without notice or consultation; to forcing me to accept unreasonable changes in how I work including but not limited to neglect; alienation; exclusion from team communication / meetings; not being set work tasks when co-workers are, no acknowledgement or recognition or appreciation or care since my change of manager at the start of January 2023."

The letter stated that Mr. Melton had personally been made aware of the treatment of the team and the claimant in his discussions with RH and that

“despite you being aware of our treatment you nor any other member of management nor anyone else have been in contact with myself at all, not by phone, email, message nor face to face.

I emailed yourself on the 7th March 2023 at 17.07 after learning in a Teams meeting Monday 6th March 2023 and receiving a subsequent email from Scott Young instructing me to not only perform tasks that are not within my job description, but 4 times the amount given to my peers; this coming after being excluded from work in the last 3 months within my own role / team. I have not had a response since contacting you.”

78. Although the claimant’s resignation letter referred to not having received a response to his email of 7 March, the claimant told me that this did not contribute to his decision to resign. He said that he had decided to do that following the meeting and email from Mr. Young on 6 March 2023.

79. In the claimant’s witness statement, he said that an accumulation of events had forced him to resign *“due to [the respondent] not following and / or having ineffective Risk Assessment procedures, and / or failing in other employer responsibilities.”* I find that the alleged failure to have effective risk assessment procedures was not a reason in the claimant’s mind at the date that he resigned. Had it been, it is likely that he would have mentioned that in his letter of resignation, or at least in his claim form, whereas he did not mention it until his witness statement.

80. The claimant started his new employment, on a salary of approximately £40,000 p.a. in March 2023. There was no documentation in the bundle showing exactly when the claimant applied for, or was offered, this role.

81. Following the claimant’s resignation, RH emailed Nia Fortune, the respondent’s Chief People Officer, on 31 March 2023 (p295-6), raising further concerns. Ms. Fortune sent this to Mr. Melton, and Mr. Melton replied to Ms. Fortune on 12 April (p294) setting out *“the background I have on this team”*, which was a reference to the Partnership Team. He said that they were *“responsible for lead generation through installers and specifiers and passing to the sales team.”* They had been reporting into Mr. Digby, *“both in their current Specifier Consultant roles”*, and had then been moved under Mr. Bateman who had himself then moved *“and we were unable to*

backfill with Blueprint / org redesign.” He went on to say that: “they have had several line manager changes and don’t feel that what is expected of them has been made clear, or that they have had enough direction. When the initial change happened I was consulted by Scott Young and asked whether their roles would be changing more than 30% and was informed that they would not be. It has since transpired that they were only doing a small amount of the Specifier Consultant role under [Mr. Digby] and therefore consider the move under [Mr. Bateman] and the extension of their duties (to what they should have been doing) to be a unilateral change in their role. Since [Mr. Bateman] moved....they said they had not contact from their line manager ([Mr. Young] in the absence of a backfill). [The claimant] resigned with immediate effect and I’ve attached his resignation letter (I have not heard anything from his since but do consider there to be a constructive dismissal risk should he raise a claim.).....I am disappointed that [the claimant] did not reach outI was unaware of how he was feeling....[Mr. Young] is aware of the situation and I've informed him of the risk around changing job roles without consulting and needing to know the detail prior to making changes. He has been interacting with the team more often however I do feel as though he is quite stretched already...”

82. The claimant notified ACAS for the purposes of early conciliation on the 7 June 2023, and a certificate was issued on 11 July 2023. The ET1 was presented on 25 July 2023.

Law

83. If an 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 due to the employer’s conduct, that is treated as a dismissal for the purposes of a claim for unfair dismissal (Section 95 (1) (c) of the Employment Rights Act 1996 (**ERA 1996**)).

84. In Western Excavating (ECC) Limited v Sharp [1978] IRLR 27, Lord Denning described constructive dismissal as follows:

“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer

no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of his employer's conduct. He is constructively dismissed. The employee is entitled to in these circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of notice. But the conduct must in either case be sufficiently serious to entitle him to leave all at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."

85. In Malik v Bank of Credit and Commerce International SA [1997] IRLR 462, the House of Lords held that the implied term of mutual trust and confidence in an employment contract means that "*the employer shall not without reasonable and proper cause conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.*" The conduct relied upon as constituting a breach of the implied term of mutual trust and confidence must be such that looked at objectively it is likely to destroy or seriously damage the relationship of trust and confidence.

86. Any breach of the implied term of mutual trust and confidence will amount to a repudiation of the employment contract. The very essence of the breach of the implied term is that it is calculated or likely to *destroy or seriously damage* the relationship (Omilaju v Waltham Forest London BC [2004] EWCA Civ 1493, at paragraph 14).

87. A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. The last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is does the cumulative series of acts taken together amount to a breach of the implied term. Although the final straw may be relatively insignificant, it must not be utterly trivial. The essential quality is that "*when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust*

and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.” (Omilaju, at paragraphs 15, 16, 19 and 20). Dyson LJ in Omilaju made clear that the last straw does not necessarily need to be unreasonable or blameworthy. However: “if the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous, it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle.” (Omilaju paragraph 21).

88. In Kaur v Leeds Teaching Hospitals NHS Trust [2018] IRLR 839, Underhill LJ said, at paragraph 55 that:

“In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:

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

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

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

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

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

89. At paragraph 45 in Kaur, Underhill LJ said that there are two theoretically distinct legal effects to which the 'last straw' can be applied. The first is where the legal significance of the final act in the series is that the employer's conduct had not previously crossed the Malik threshold; in such a case the breaking of the camel's back consists in the repudiation of the contract. In the second situation, the employer's conduct has already crossed that threshold at an earlier stage, but the employee has soldiered on until the later act which triggers his resignation: in this case, by contrast, the breaking of the camel's back consists in the employee's decision to accept, the legal significance of the last straw being that it revives his or her right to do so. *"If the tribunal considers the employer's conduct as a whole to have been repudiatory and the final act to have been part of that conduct (applying the Omilaju test), it should not normally matter whether it had crossed the Malik threshold at some earlier stage: even if it had, and the employee affirmed the contract by not resigning at that point, the effect of the final act is to revive his or her right to do so."*

90. In Bournemouth University v Buckland [2010] EWCA Civ 121, the Court of Appeal made clear that the question of whether the employer has committed a fundamental breach of the contract of employment is not to be judged by a range of reasonable responses test. The test is objective. Further, where there has been an actual repudiatory breach of contract, that breach is not capable of being remedied so as to preclude acceptance. The wronged party may treat the breach as terminal, regardless of his reason or motive for so doing. All the defaulting party can do is to invite affirmation by making amends.

Submissions

91. Both parties made oral submissions at the hearing. Whilst I do not repeat them word for word in this Judgment, I took all of the submissions into account.

92. In summary, the respondent submitted that:

- (a) The claimant had to prove that there had been a fundamental repudiatory breach, that this had caused him to resign and that he had not delayed too long (Sharpe). The claimant had to show that the respondent's actions went beyond merely what was unreasonable (and in this respect, the respondent relied on Buckland). If the Tribunal did find that there was a breach of the implied term of mutual trust and confidence, it was accepted that would be a fundamental breach (Morrow v Safeway Stores plc [2002] IRLR 9, EAT). However, the question was not whether the claimant had subjectively lost confidence, but whether objectively there had been a breach of the implied term of mutual trust and confidence (Woods v WM Car Services (Peterborough) Limited [1982] IRLR 413). Context was important (and here the respondent relied upon Tullet Prebon plc v BGC Brokers LP [2011] EWCA Civ 131). The claimant needed to show that the fundamental breach was an effective cause of the resignation. If he would have left anyway the Tribunal should not find a constructive dismissal. If he left it too long to resign, he may lose the chance to claim constructive dismissal. The respondent's case was that the claimant simply resigned and was not dismissed.
- (b) The respondent had not really done anything wrong, but even if the Tribunal found something could have been done better or there had been unreasonableness, that was not enough to justify a finding of constructive dismissal. Employers were entitled to change line managers if people left or were promoted or had a lateral move. The claimant had accepted in cross-examination that managers come and go.
- (c) The respondent accepted that the claimant had been told his job title was to be changed (to Specifier Consultant – Partnership) without first obtaining his consent or consulting with him, but he had been provided with notice it was going to happen in August 2022 and it had not come into effect officially until 19 September 2022. On the information that was available to the respondent at the time, the job was fundamentally the same. Although there had (in the evidence)

been confusion about the job description, it was clear that Mr. Young had had access to the job descriptions at p61 and p75 and the claimant had accepted that the latter was very similar to his at p48 that he accepted was representative of his role in July 2018. It was not agreed that the Managing Estates role had not been about generating sales leads but only about established relationships. There could not be a sale without a lead. There had not been a redundancy situation in August / September 2022, but had there been the Partnerships Team role would have represented a suitable alternative role. The claimant's allegation that the partnership role was a demotion was a new allegation in his evidence, and not accepted by the respondent. It was a lateral move with no reduction in salary. Even on the claimant's own evidence, it sounded more like a promotion than a demotion, with greater responsibility to generate his own work and if anything, a step up. Regardless of that, far from this being something that had been forced upon the claimant, he was "hungry for a new challenge." There had been no fundamental breach of contract in the move from the Metered Estates team role to the Partnership team role.

- (d) The claimant had not been forced to accept fundamental changes to how he worked. Whilst it was accepted that in practice there were some changes between the two teams, in that the net was going to be cast wider in the partnership team, any changes were not unreasonable. It was clear that the claimant had flourished in his first few months with Mr. Bateman. Mr. Bateman had leaned quite heavily on the claimant. The claimant had accepted that Mr. Bateman was a "good guy" and that was reflected by the exchanges between the two of them in evidence.
- (e) Mr. Young had been exceptionally busy at the time that he took over responsibility for the claimant and the other people in the partnership team. He had taken on a lot of people, it was a very busy period, he was managing people on sick leave, the cylinder recovery plan and boost programme. In the period before 6 March he was also on annual leave for 3 weeks. Mr Young and the claimant had held a

substantial meeting on 3 January in excess of an hour and the claimant had put together his plan for the following 3 – 6 months. To the extent that Mr. Young did not set him targets, he had been completely impressed with the claimant's plan, felt him competent, felt he clearly knew what was expected of him and that nothing further was needed. Mr. Young had made clear that his door was open and that if the claimant needed support all he needed to do was ask.

- (f) The allegations of failure to make risk assessments were “odd”. The first time such allegations were made was in the Tribunal proceedings. The claimant had always been a home worker, and continued to be a home worker in his new employment. He had never raised anything about home working, lone working or anything like that. He hadn't mentioned it in his resignation letter. The respondent did not know the claimant felt he should have a risk assessment, nor that he was feeling neglected or alienated. He did not raise anything in writing. He said he had mentioned it to Mr. Bateman and Mr. Digby on the phone, and Mr. Bateman said he had suggested that the claimant take this up with Mr. Young, but the claimant did not do that. The claimant had not raised a grievance at any point. The claimant didn't have any period of sick leave.
- (g) The suggestion that the respondent should have contacted the claimant to discuss matters brought to the respondent's attention by RH was an attempt by the claimant to piggy back on what was happening to others. Others clearly were struggling and there was a lot going on in 2022/2023, but RH had set her concerns out very clearly and the claimant simply never did so.
- (h) The request to assist with the cylinder recovery fell squarely within the definition of a reasonable management request. It was high priority, important, and no less than 35 people were asked to help. No one else raised a complaint. The claimant mistakenly assumed his workload was greater than it was. Whilst his customers may all have been “priority”, he was not expected to visit the most customers, and Mr. Young had been clear that this was an initial, quick, data pull,

subject to refinement and discussion. The average number of customers was higher than the claimant suggested, and he was given customers grouped together geographically. Mr. Young had opened up the floor and invited questions and comments and followed it up with an email and he had never got to explain these points because the claimant had downed tools and stopped working. Mr. Young had made a polite request which was not a fundamental breach and not a last straw.

- (i) The claimant had admitted that he had been job-hunting as far back as September 2022, and that his new employment started in March 2023. Even if there had been a fundamental breach, that was not an effective cause of the claimant's resignation. The true cause was the availability of an alternative job.
- (j) Finally, on the question of delay, the first alleged breach dated back to August 2022 and the claimant had not resigned until over six months later and even then not straight after 6 March 2023. He had affirmed the contract and lost the right to claim.
- (k) The respondent's witnesses had all been credible. The claimant had been sincere and amenable in giving evidence but what he was saying was simply not borne out by the documents and evidence of what happened at the time.
- (l) The Tribunal should take a holistic view and see the wood for the trees. There had been a period of significant change and although the claimant had not been at risk of redundancy, there had been other structural changes and it was an unsettling time. The Tribunal might feel it was reasonable for the claimant to have felt unsettled but the issues were not serious enough to show there was a fundamental breach of the implied term of mutual trust and confidence. The claimant had initially been on board with the change (to the partnership team), but then became frustrated by a lack of clarity and progress and then about Mr. Young not being as contactable as he might have been. There was no last straw in a legal sense. The claimant had simply become disillusioned with the

respondent and decided it was best to become an employee of another company. It was the sort of thing that happens every day. The bar for showing a fundamental breach of contract was a really high one and in this case insurmountable.

93. The claimant submitted that:

- (a) It was clear that no consultation had been offered in August 2022, and when looking at the roles with clear eyes there should have been.
- (b) He had been forced to accept unreasonable changes. He had not been set work (by Mr. Young), not given targets or training, emails hadn't been acknowledged. No bonus was allocated to what effort he was putting in compared to someone else.
- (c) Being a homeworker was different to being an office worker. He was failed and extra look outs, i.e., risk assessments, should have been made, particularly when 50% of the team had gone off with work-related stress. HSE standards suggested that good companies should have those in place. Being a lone worker can be high risk. He had a mobile phone, but other things should have been looked at.
- (d) On 6 March 2023 he had been given excessive tasks. The video showed that he was given more priority customers than anyone else and he was not sure why he was singled out. Another person who had been given a high number had been mentioned in the meeting in relation to giving him assistance, but there had been no mention of giving assistance to the claimant. He was willing to muck in but the workload was ridiculous. He had gone from the sublime of being given no work for months, and whilst the respondent may say he had his "magic plan" of work to do, who was checking if he was doing something that might damage the company? The suggestion was implausible.

- (e) The claimant and RH were both in similar roles and both not being led. It should have been obvious to the respondent that they had a duty of care to look out for him and that if they were not reaching out on a regular basis, maybe RH's complaint was an alarm bell.
- (f) The allocation of the excessive workload had been the last straw. He had not delayed too long after that. He submitted his resignation very soon after. As regards the job change, most people have looked and said there was a unilateral change to the role. Whilst Mr. Young had tried to stay firm, others could see it was very different. The respondent's attempt to argue it was if anything a promotion rather than a demotion could not be further than the truth. It was menial.

Conclusions

1.1 Did the Respondent treat the Claimant as alleged?

1.1.1.1 Did the respondent force the claimant to change role on 19 September 2022 without notice or consultation?

94. As I have found, the claimant was notified on 11 August 2022 that he was going to be moving to the Partnerships Team and that his line manager would become Mr. Bateman. There was no consultation prior to this notification. The changes took effect on 19 September 2022. However, the claimant was a Specifier Consultant before and after the change of team (albeit that afterwards his title was "Partnership Specifier Consultant"), he was required to work to the same job description, and his salary and grade remained the same. Whilst there were some changes in how the role of Specifier Consultant was carried out in the Partnership Team as compared with the Metered Estates team, I have found that the differences were not fundamental.

1.1.1.2 Did the respondent force the claimant to accept unreasonable changes in the way that he worked?

Not setting him any work

95. I have found that it was not the case that the claimant was not set any work between September 2022 and 6 January 2023. The claimant was enjoying

his role during this period and had a good relationship with Mr. Bateman, with whom he was in regular contact.

96. I have found that from 6 January 2023 until 6 March 2023, Mr. Young did not set the claimant particular tasks to do or targets to follow. This was because the claimant had given Mr. Young a presentation on 10 January 2023 that included his plans for immediate and short-term work, and Mr. Young had been impressed with the claimant's plans and had told him to go ahead with them. Thereafter Mr. Young was under the impression that the claimant was following his plans.

Not making contact with him between 7 January and 5 March

97. There was a meeting between the claimant and Mr. Young on 10 January 2023, and on 2 March Mr. Young invited the claimant to a meeting to take place on 6 March 2023. However, during the period between 11 January 2023 and 1 March 2023, Mr. Young did not make contact with the claimant. Mr. Young was extremely busy, he was on leave for 3 weeks from early February, and when he returned, he became even more busy. He believed that the claimant was getting on with his plan, and he was unaware that the claimant had any concerns about what he was supposed to be doing or the way in which he was being managed. The claimant did not contact Mr. Young or HR to express any concerns about the level of contact he was having with management, or the way in which he was being managed.

Not giving performance targets

98. I have found that the claimant was not given performance targets, either by Mr. Bateman or Mr. Young. In the case of Mr. Bateman this was because time was being allowed for the claimant to develop in the Partnership Team. Mr. Young believed that the claimant was following his plan and did not consider it necessary to set him further targets.

Not giving him training

99. Neither Mr. Bateman nor Mr. Young provided the claimant with training. The claimant had been a Specifier Consultant for four years before his move to the Partnership Team. The claimant did not suggest to either Mr. Bateman or Mr. Young that he required training. He presented a PowerPoint

presentation to Mr. Young on 10 January 2023 that I have found included his plans for the immediate and shorter-term.

Not acknowledging him or showing him appreciation or care after his change of manager at the start of January 2023.

100. When the claimant contacted Mr. Young on 6 January 2023 after the change of line manager had been announced, Mr. Young did acknowledge the claimant's email asking for a meeting. Mr. Young invited the claimant to the meeting on 10 January 2023, at which the claimant gave his presentation. This was, as the claimant acknowledged, a good, substantial meeting. Mr. Young did not reply to the claimant's subsequent email on 19 January 2023 and did not make contact with the claimant between 11 January and 1 March 2023. Mr. Young believed that the claimant was following the plan he had described to Mr. Young on 6 January 2023. The claimant did not chase for a reply to his email of 19 January or otherwise contact Mr. Young to ask for a meeting or telephone call. Nor did the claimant contact HR until 7 March.

101. The claimant said that 50% of his team had been off with work-related stress and that should have been an "alarm bell" for the respondent. Tayla was absent due to stress, but had returned to work by mid-January 2023, i.e., only shortly after the change of line manager from Mr. Bateman to Mr. Young. Given that the claimant was all consistent with the claimant having enjoyed the role under Mr. Bateman's management, I do not find that Tayla's absence should have alerted the respondent to a need to contact the claimant specifically. RH later took some time off, and I address below the allegation that the respondent should have contacted the claimant about RH's issues.

1.1.1.3 Did the respondent fail to carry out risk assessments in relation to the claimant being a home / lone worker?

102. The respondent failed to carry out any individual risk assessment of the claimant as a homeworker, or lone worker in his role as a Specifier Consultant in the Partnership Team. Throughout his employment, the claimant had always been based at home (though he was required to travel

to customers), and in that sense had always been a lone worker. That remained the case when he moved to the Partnership Team.

1.1.1.4 In the alternative to 1.1.1.3, if those risk assessments were carried out, did the respondent fail to follow those risk assessments?

103. As I have found that no individual risk assessment was carried out for the claimant, this alternative question does not arise.

1.1.1.5 Did the respondent fail to contact the claimant to discuss the issues brought to the respondent's attention by RH?

104. The respondent did not contact the claimant to discuss the issues brought to the respondent's attention by RH. RH had first contacted Mr. Melton on 6 February 2023, and she had specifically asked him to keep things confidential. She had not copied the claimant into her subsequent correspondence with Mr. Young or Mr. Melton and had not asked that the claimant be present at the meetings.

1.1.1.6 Instruct the claimant on 6 March and by email from Scott Young to perform excessive tasks that were 4 times that given to his peers, and to an impossible deadline? (The Cylinder recovery plan).

105. At the meeting on 6 March, Mr. Young did tell those present, including the claimant, that the Cylinder Recovery plan was going to run for around three weeks, that all the customers on the spreadsheet he referred to would need to be visited, and that the customers referred to in the first column ("Rx customers) were the priority customers that he wanted everyone to concentrate on to start off with. The claimant was allocated 167 customers, all of whom were "Rx". He had the largest number of "Rx" customers, and the second largest number of customers overall. I was not satisfied that I could say this was four times the work given to peers, because the Tribunal was not provided with evidence of things which would have been required to assess this. For example, various factors would impact upon how much work a particular number of customers might represent for any one individual, such as their working patterns and the location of their customers relative to their other customers on the list. It plainly did not appear to be four times the work given to all peers. Nor was

it possible to assess whether it would have taken the claimant 55 working days to complete visits to all of these customers, but it would have taken the claimant longer than 3 weeks to visit them all. However, looking at the meeting and email objectively, I found that it was clear that 31 March 2023 was not a hard deadline. For example, in the meeting Mr. Young said, *“if we can get this done over the next three weeks or at least the majority of the calls done over the next three weeks, then that puts us in good state moving into the next quarter.”* His email referred to *“ideally”* completing the exercise by 31 March 2023. I also found that, looked at objectively, it was clear that additional support may be able to be provided for those with particularly high numbers. Nor was the conversation closed, because Mr. Young invited questions.

1.1.2 Did the respondent’s treatment breach the implied term of mutual trust and confidence? Did the respondent, without reasonable and proper cause, conduct itself in a manner calculated or likely, to destroy, or seriously damage the relationship of trust and confidence between the respondent and the claimant?

106. I have already set out my conclusions as to the way in which I have found the respondent treated the claimant.

107. I will now consider each of those items of treatment, individually and then collectively, to look at whether the respondent breached the implied term of mutual trust and confidence. In considering this, I remind myself that the test is objective. It is not enough that the claimant, subjectively, felt that there had been a breach. Similarly, it is not enough that the respondent, subjectively, may have felt that there had not been a breach or that it had good intentions.

108. First, I consider the team move in September 2022. Looked at objectively, I conclude that the claimant had not shown that this was a breach of the implied term of mutual trust and confidence. I have found that the claimant had been employed as a Band D Specifier Consultant on a permanent basis since September 2018, and that he remained a Band D Specifier Consultant (albeit with a slight title change to include the word “Partnership”) after 19 September 2022. His contractual job description

remained the same, his salary remained the same, and he was not demoted. Whilst I have found that there were some changes in how the role of Specifier Consultant was carried out in Metered Estates and in the Partnership Team I have found that there was no fundamental change in the claimant's role, and that at, or shortly after, the time that the claimant was first notified of the change of team, he was positive about the change.

109. Secondly, I consider whether the specific matters that I have addressed at paragraphs 95 to 101, viewed objectively, were without reasonable and proper cause calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence. I find that they were not. In particular:

- (a) Although Mr. Young did not himself set the claimant any work in the period 6 January 2023 and 2 March 2023, the context is important. The context in which Mr. Young did not set the claimant work himself is that on 10 January 2023, the claimant had made a presentation to Mr. Young in which the claimant had set out a plan, including his plans for the immediate / short-term period. Mr. Young had been impressed and had agreed the claimant should get on with his plan. It was against that background that Mr. Young did not then consider it necessary to set the claimant work tasks, over and above those the claimant had planned.
- (b) Mr. Young's management of the Partnership Team between 11 January 2023 and 2 March 2023 was very "hands-off", and this was in contrast to the style of management Mr. Bateman had. It would clearly have been better if Mr. Young had been more proactive. However, viewed in context and objectively, the claimant had presented a plan, Mr. Young had agreed he should get on with it, and Mr. Young understood the claimant to be doing that and to understand the work he was required to do. The claimant had contact details for Mr. Young if he felt that he didn't understand. He didn't say to Mr. Young in his email of 19 January 2023 that he did not understand what he was supposed to be doing, he didn't suggest in that email that it required a response by a particular date, and he didn't chase it up. Whilst it could have been better, I do not find that Mr. Young's management of the claimant during this period was so

poor as to amount, objectively, to a breach of the implied term of mutual trust and confidence.

- (c) Whilst Mr. Bateman did not set the claimant performance targets or provide him with training, I find that looked at objectively and in context, that did not amount to a breach of the implied term of mutual trust and confidence. It is clear that the claimant had regular contact with Mr. Bateman and was enjoying his role in the Partnership Team under his management.
- (d) Mr. Young did not set the claimant performance targets or provide him with training, but again I find that looked at objectively and in context, that did not amount to a breach of the implied term of mutual trust and confidence. The claimant was a well-thought of Specifier Consultant with several years' experience, he had made a presentation to Mr. Young that included his plans for the immediate short-term and had not suggested he had any training gaps or confusion about what he was supposed to be doing in the immediate / shorter-term.
- (e) It is not correct to say that the claimant was not acknowledged, or shown appreciation or care, after the change of line manager. Mr. Young responded to the claimant's email of 6 January by inviting him to a meeting on 10 January 2023, and having a good, substantial meeting. Thereafter, Mr. Young was not as proactive as he should have been, but for the reasons I have already explained, I do not find that objectively that conduct was so serious as to amount to a breach of the implied term of mutual trust and confidence in the circumstances of this case. I do not find that Tayla's absence due to stress should have been an alarm bell that the claimant required particular support. Tayla was back at work shortly after Mr. Young had taken over as line manager.

110. Thirdly, I consider whether the respondent's failure to carry out home worker / lone worker risk assessments for the claimant was a breach of the implied term of mutual trust and confidence. I find that it was not. The claimant had always been a home worker and lone worker. There was no change in this status after September 2022. Tayla's absence had ended by mid-January 2023 and looked at objectively could not be expected to alert

the respondent to any risk to the claimant's health, particularly when he had clearly enjoyed his role under Mr. Bateman. RH's absence was later. Whilst she was also a Specifier Consultant, she was writing in the context of raising concerns about her own position. By contrast, the claimant had raised no concerns about his health or the way in which he was being managed, or the change in role and had shown no signs of a risk to his health. In any event, I have found that this failure to carry out a risk assessment was not in the claimant's mind when he took the decision to resign, and it cannot have been an effective reason for his resignation.

111. Fourthly, I consider whether the respondent's failure to contact the claimant to discuss the issues brought to the respondent's attention by RH was a breach of the implied term of mutual trust and confidence. I find that it was not. Given that RH had specifically asked for her concerns to be kept confidential initially, and thereafter had not copied the claimant into her correspondence to Mr. Melton or Mr. Young, the claimant could not reasonably have expected an invitation to the meetings with RH. The context of RH's correspondence was that she was raising concerns about her own individual position. Whilst some employers might have taken the view it was sensible to speak to other members of the team, without raising specifics, to check how they were, I don't find that the failure to do so can be said objectively to have been conduct without reasonable and proper cause calculated or likely to destroy or seriously damage the relationship of trust and confidence. The claimant was an experienced Specifier Consultant, well thought of, who in many respects appeared to be taking a voluntary lead in the Partnership Team, who had not shown any signs of stress or anxiety himself, and who knew how to raise concerns or seek help if he needed to.

112. Finally, I consider the instruction given to the claimant by Mr. Young at the meeting and in the email on 6 March 2023. Looked at objectively, and looked at by itself first of all, I do not find that this amounted to a breach of the implied term of mutual trust and confidence. I find that it was a legitimate request for Mr. Young to ask the claimant, in common with many other colleagues across the respondent, to "muck in" on a task that was required in order for the respondent's important BOOST project to be able

to go ahead. Whilst I accept that the claimant could not have visited all 167 customers in three weeks, I have found that objectively it was clear that the deadline was not a hard deadline, and that it was also clear that additional support may be available for those with higher numbers such as the claimant, and that the conversation was not closed. Questions were invited both in the meeting and in the email. Viewed objectively, it was clear that this was a situation where Mr. Young was willing to listen to concerns or difficulties.

113. This final allegation, relating to 6 March 2023, was relied upon as being a “last straw”. As discussed in Kaur, there are two ways in which something may be a “last straw”. One is where something is not a breach of the implied term by itself, but when taken together with other conduct, cumulatively, amounts to a breach of the implied term of mutual trust and confidence. I consider then whether, cumulatively, taken as a whole, the respondent’s treatment of the claimant, as I have found it to be at paragraphs 94 to 105 amounted to a breach of the implied term of mutual trust and confidence. Standing back, and looking at the respondent’s conduct objectively, in the context of the circumstances of the case as I have found them, I find that it did not. There are things that the respondent could have done better, in particular in the way that Mr. Young managed the Partnership Team after the further line management change on 6 January 2023, but I am not satisfied that the conduct was so serious as to be calculated or likely to destroy or seriously damage the relationship of trust and confidence.

114. Another way in which something may be a “last straw” is that it may revive a claimant’s right to resign in response to an earlier fundamental breach of contract. However, given that I find that the respondent had not breached the implied term of mutual trust and confidence before 6 March 2023, this concept does not apply in this case.

Other Issues

115. As I have found that the respondent did not breach the implied term of mutual trust and confidence, it is not necessary for me to go on to consider the other questions in the list of issues.

Employment Judge C Knowles

Date 24 June 2024

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